

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 15th September, 2014**
Date of Decision: 1st October, 2014

+ **Crl. Appeal 903/2010**

Mohd. Ameen Wani alias Khalid and Anr. Appellant

Through Mr. Ashok Aggarwal, Advocate with
Ms. Sridevi Panikkar and Mr. Anuj
Kapoor, Advocates.

Versus

State ...Respondent

Through Mr. Sidharth Luthra, Sr. Advocate with
Mr. Rajiv Mohan, APP,
Ms. Rajdipa Behura, APP,
Mr. S. Thareja, Advocate with
Mr. Subhash Vats, Delhi Police Spl. Cell

Crl.A. No. 1430/2010

Luthfur Rahman alias Haroon ...Appellant

Through Mr. Vivek Sood, Mr. Prem Prakash,
Ms. Janvahi Mahana and
Mr. Jaydeep Tandon, Advocates.

Versus

State (Govt. of NCT of Delhi) ...Respondent

Through Mr. Sidharth Luthra, Sr. Advocate with
Mr. Rajiv Mohan, APP,
Ms. Rajdipa Behura, APP,
Mr. S. Thareja, Advocate with
Mr. Subhash Vats, Delhi Police Spl. Cell

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

SANJIV KHANNA, J.

By the impugned judgment dated 16th February, 2010, Mohd. Ameen Wani and Luthfur Rahman stand convicted in the chargesheet arising out of FIR No.2/2007, P.S. Special Cell, Lodhi Road. They have been sentenced to undergo imprisonment and fine by order dated 10th March, 2010, for the following offences:

Mohd. Ameen Wani alias Khalid

Section	Act	Punishment	Fine
121A read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
121 read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
122 read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
17	Unlawful Activities (Prevention) Act, 1967	R.I. for life	Rs.1,00,000/-
18	Unlawful Activities (Prevention) Act, 1967	R.I. for life	Rs.1,00,000/-
19	Unlawful Activities (Prevention) Act, 1967	R.I. for life	Rs.1,00,000/-

Luthfur Rahman alias Haroon

Section	Act	Punishment	Fine
121A read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
121 read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
122 read with 120B	Indian Penal Code, 1860	R.I. for life	Rs.1,00,000/-
17	Unlawful Activities (Prevention) Act, 1967	R.I. for life	Rs.1,00,000/-
18	Unlawful Activities (Prevention) Act,	R.I. for life	Rs.1,00,000/-

	1967		
19	Unlawful Activities (Prevention) Act, 1967	R.I. for life	Rs.1,00,000/-
5	Explosive Substances Act, 1908	R.I. for life	Rs.1,00,000/-
14	Foreigners Act, 1946	R.I. for 5 years	Rs.50,000/-

In default of payment of fine, the appellants are sentenced to undergo rigorous imprisonment of a period of 1 year on each count. The sentences are to run concurrently. In the event of non-realization of fine also, the sentences are to run concurrently.

2. Luthfur Rahman is a Bangladeshi national and accepts and does not challenge his conviction and sentence under Section 14 of the Foreigners Act, 1946.

3. The prosecution case in a nutshell is that the two appellants were members of the banned terrorist organization Harkat-ul-Jihad-e-Islami ('HUJI', for short). Mohd. Ameen Wani was detained near Adarsh Nagar bus stand at about 2:50 PM on 4th January, 2007 and was found to be in possession of Rs.4,50,000/- which were seized vide Memo, Ex.PW1/A. Upon interrogation, his disclosure statement, Ex.PW2/C was recorded on 4th January, 2007. Acting on the disclosure statement, Luthfur Rahman was arrested at about 9:15 PM on the same day, i.e. 4th January, 2007 from outside the *Dargah*, near

Bawri Gate, Nizamuddin, New Delhi, causing recovery of 1.610 kg of explosives, two non-electric detonators, a black coloured timing device and four pencil cells seized vide seizure memo Ex.PW2/D.

4. The prosecution alleges that the explosive material was Pentaerythritol Tetranitrate, commonly known as PETN, a high grade explosive belonging to the Nitrate ester class of organic compounds.

5. Before the trial court, one sample marked 'S1' of 10 gm PETN was produced, and the balance quantity i.e. the case property weighing 1.590 kg PETN and another 10 gm sample of PETN 'S2', it was claimed was destroyed in a fire on 10th February, 2007 in the *malikhana* room of Police Station, Special Cell, Lodhi Road. Sample S1, was not destroyed in the fire as it was sent and was with the Central Forensic Science Laboratory ('CFSL', for short) for examination, at the time of fire.

6. As per the CFSL report, Ex. PW9/A, sample S1 contained small quantity of an off white coloured material in a plastic container which tested positive for presence of PETN.

7. The contention of the appellants is that the alleged recovery of 1.610 kg of PETN is concocted and the sample S1 planted. As per seizure memo Ex.PW2/D, 1.610 kg of brown coloured explosive material was seized. Pertinently, Dalip Kumar (PW8), in his

examination-in-chief as well as cross-examination and the Investigating Officer ACP Sanjeev Kumar Yadav (PW10), in his examination in chief had affirmed that the explosive material recovered was brown in colour. PW10 in his cross-examination in categorical terms asserted that the explosive was dark brown in colour.

8. FIR No.13/2007 was registered at P.S. Special Cell, Lodhi Road under Section 436/427 of the Indian Penal Code, 1860 ('IPC' for short) regarding the fire in the *malkhana* room on 10th February, 2007. Relying upon the CFSL report as to the cause of fire, closure report was filed under Section 173, Cr.P.C. The same was accepted by the Metropolitan Magistrate and the proceeding arising out of FIR No.13/2007 was closed. The appellants were conspicuously non-participants, unaware and oblivious of the said proceedings. The FIR No.13/2007, the CFSL Report as to the cause of the fire, the closure report, etc. were not filed and proved in the trial in the present case, though oral sworn testimonies regarding the fire were made.

9. During the course of arguments before us, discrepancies in DD Entry No. 14 (Ex.PW10/DA) and DD entry No.15 (Ex.PW10/DB) recorded at 7.00 PM and 7:30 PM respectively on 4th January, 2007, were highlighted. Provisions of the Explosive Substances Act, 1908 stand recorded in the aforesaid DD Entry Nos.14 and 15 but as per the

prosecution, the explosive material was recovered only at 9:15 PM on 4th January, 2007, i.e. after recording of the aforesaid DD Entries earlier in the evening at 7:00 PM and 7:30 PM, respectively.

10. After the counsel for the appellants had argued the appeals, prosecution filed applications under Section 391 read with Section 311, Cr.P.C. for placing on record, (1) original DD Entry Nos.14 and 15 dated 4th January, 2007, maintained in P.S. Special Cell, Lodhi Road; (2) FIR No. 13/2007 dated 10th February, 2007, P.S. Special Cell, under Section 436/427 IPC; and, (3) report under Section 173 Cr.P.C. of FIR No.13/2007. To prove the said documents, prayer for recording of additional evidence of ASI Paramjit Singh (PW6), ACP Sanjeev Kumar Yadav (PW10) who had already deposed before the trial court, and re-examination of expert witness, A. Dey (PW9), was made.

11. By order dated 26th March, 2014, this Court, partly allowed the applications permitting the prosecution to lead additional evidence of ASI Paramjit (PW6), ACP Sanjeev Kumar Yadav (PW10) and to record statement of ASI Amrik Singh, Duty Officer In-charge of *Roznamchal/Malkhana*. The author of the CFSL report in FIR No.13/2007 was permitted to be examined as a witness. In addition, the court felt that an expert witness from the Defence Research and Development Organisation (DRDO), familiar and having knowledge

of PETN should also be called to testify. Request for recall of A. Dey (PW9) was declined, noticing his earlier statement and the fact that he was recalled even by the trial court.

12. Thereupon, supplementary statement of ASI Paramjit Singh (PW6), ACP Sanjeev Kumar Yadav (PW10) and first statement of Amrik Singh (PW12), the then *Malkhana* In-charge and Mr. N.B. Bardhan, Principal Scientific Officer (Ballistics) cum Assistant Chemical Examiner, Govt. of India, CFSL, New Delhi (PW13) were recorded. Statement of Dr. Mahadev B. Talawar, Sr. Scientist (Scientist 'E'), High Energy Materials Research Laboratory (HEMRL), Pune, was also recorded as Court Witness (CW1). Supplementary statements under Section 313, Cr.P.C. of the two appellants were thereafter recorded in the High Court.

13. As per the prosecution case, there was no actual commission of any act of terrorism or physical violence and there are no public witnesses to the alleged recovery. The prosecution relies upon the police witnesses. We record the aforesaid position as a fact and the narration should not be construed as a reason or ground for the final opinion expressed by us. Indeed, prosecution can succeed and in countless cases has secured conviction solely on the testimonies of police witnesses. We are acquainted with and acknowledge the practical problem in associating and securing public witnesses,

especially when the case relates to an attempt to cause or perpetrate terror and violence. Each case has to proceed on its own facts, evidence and material brought on record without any bias, partiality and predisposition.

14. With regard to recovery of money, we have virtually identical depositions of SI Vinay Tyagi (PW1), SI Rajender Sehrawat (PW2), Dalip Kumar (PW8) and HC Rushtam Ahmed (PW5). They have spoken in seriatim about apprehension and arrest of Ameen Wani at about 2:50 PM with the money at Adarsh Nagar bus stand. Discrepancies pointed out in their statement on certain aspects have been dealt with below.

15. Similarly, we have testimonies of Rajender Sehrawat (PW2), Dalip Kumar (PW8) and Sanjeev Kumar Yadav (PW10), on detention and arrest of Luthfur Rahman from Nizamuddin at 9.15 PM. From Luthfur Rahman, it is alleged, that the explosive, i.e. PETN weighing 1.610 kg, two detonators, one timing device and four pencil cells were recovered, vide seizure memo Ex.PW2/D. The question and issue for deliberation and adjudication is, should the court accept their testimonies or there are foundational discrepancies and intrinsic improbabilities negating and falsifying the prosecution version. In

order to examine the contentions raised, we would like to divide them into three broad categories for clarity and elucidation:

- A. Description and colour of the alleged explosive material;
- B. Failure to produce the case property and sample S2, and the alleged story of fire in the *malkhana* on 10th February, 2007; and,
- C. Other contentions and discrepancies.

(A) **DESCRIPTION AND COLOUR OF THE ALLEGED EXPLOSIVE MATERIAL**

16. The seizure memo (Ex.PW2/D), records that an oil based explosive of brown colour, weighing 1.610 kg, packed in one transparent locking polythene and kept in black coloured polythene, which was further concealed in a pink coloured polythene was recovered from one multi coloured jute hand bag with the words, 'TEN SPORTS DEKHO' written thereon on both sides. From the same jute bag, white edible *murmure*, *gur* and rice-*chiwda* in pink coloured polythene were also recovered. Two samples of 10 gms each were drawn and kept in two white small plastic containers which were then packed in two white cloth *pulandas*. The said two pulandas were sealed with the seal of 'SKY'. The remaining brown coloured explosive material weighing 1.590 kg was packed in one transparent polythene and kept in the black coloured polythene in which it was

found, and wrapped in a white cloth pulanda and sealed with the seal of 'SKY'. The seizure memo at two places, specifically mentions that the seized explosive material was of brown colour and the material was described as an oil based explosive material.

17. SI Rajender Sehrawat (PW2) had proved the seizure memo (Ex.PW2/D) but did not depose as to the colour. SI Rajender Sehrawat (PW2) was witness No.1 to the seizure memo Ex.PW2/D. SI Dalip Kumar (PW8), the second witness, in his examination-in-chief deposed that brown coloured explosive material was found packed in transparent locking polythene and kept in a black coloured polythene. On weighing it was found to be 1.610 kg. Two samples of 10 gms each were taken out in two small plastic containers and remaining explosive weighing 1.590 kg was kept in the same recovered polythene wrapper in a white cloth and pulandas were prepared. In his cross-examination Dalip Kumar (PW8) again asserted that the explosive material and the samples were brown in colour.

18. Sanjeev Kumar Yadav, the Investigating Officer (PW10) in his examination-in-chief deposed the colour of the explosive to be brown and had affirmed the same in his cross-examination declaring it to be of dark brown colour. He was confronted that as per the CFSL

Report, sample S1 was off white in colour. As this statement in the cross-examination is of relevance, the relevant excerpt is reproduced:

“I do not remember if expert from FSL has sought clarification before giving the report or DM sought and (*sic, any*) clarification from me before grant of sanction. The explosive recovered was of dark brown colour and nothing was mixed in the samples taken by me as S-1 and S-1 (*sic, S-2*). I had seen the report of the FSL but I do not remember the about the colour of the explosive which was mentioned in report. I can not deny nor admit that the colour of the substance mentioned as (off-white) in the FSL report.”

19. In the earlier portion of the judgment, we have referred to the CFSL report (Ex.PW9/A) wherein the colour of the sample was recorded as off white. Author of the report (Ex.PW9/A), A. Dey, Principal Scientific Officer cum Assistant Chemical Examiner, Govt. of India, CFSL, CBI, Lodhi Road had deposed as PW9. In his examination-in-chief, recorded on 20th March, 2009 before the trial court, PW9 had testified that the parcel S1 contained small quantity of an off-white coloured putty like material. In his cross-examination, he accepted that the sample tested by him was of off-white colour. On a suggestion, PW9 asserted that PETN is a putty like material generally light yellow in colour. He could not state why the colour of the sample was off-white. He had voluntarily added in the cross-examination that litmus paper test was positive for presence of acids as the paper had turned deep blue in colour. There are many acids

like Sulphuric acid, Hydrochloric acid etc. but PW9 had not mentioned the type of acids or their names in his report, Ex.PW9/A. Trial court during the course of hearing final arguments, by order dated 18th November, 2009, observed that the clarification was required regarding colour of the substance in view of the report Ex.PW9/A. Thereafter, application filed by the prosecution under Section 311, Cr.P.C. was allowed by order dated 23rd January, 2010, recording that re-examination of A. Dey (PW9) would facilitate the court in reaching proper and fair conclusion in a case of a very serious nature.

20. A. Dey (PW9) was recalled for further reexamination on 27th January, 2010 and he had deposed that there existed a possibility of change of colour in case PETN was adulterated. Presence of PETN as well as Ammonium Nitrate and acids in sample S1 was confirmed. He opined that “due to the chemical reaction as in this case there was possibility of change of color of substance”. In the cross-examination, PW9 accepted that he could not determine percentage of PETN, Ammonium Nitrate and other acids, as this was not asked. The basic colour of PETN was off white and Ammonium Nitrate in pure form is crystal white and acid is a colourless water like liquid.

He denied the suggestion that if PETN, Ammonium Nitrate and acid are mixed, the substance would be off white in colour and opined:-

“If ammomium nitrate and acid are mixed with PETN there is possibility of a change in color. It cannot be said with certainty that a particular color would come if ammonium nitrate and acid are mixed with PETN as such a mixing was not done in the lab. Even as a expert I cannot tell what color would come if all the above three substances are mixed until the test is conducted. The PETN, ammonium nitrate and acid have a chemical reaction if kept in a plastic jar with plastic but I cannot say with certainty about the change of color if the explosive is kept in a sealed plastic jar or a closed space. I have not read the literature or books or journal regarding the color change of the explosives regarding this particular case as it was not asked.

xxx

I cannot tell if brown color after reaction with acid can turned to off white. Vol. said that there may be many colors which can cause due to reaction. I do not remember that in how many cases I noticed the change in color or questions was asked on that point ...”

21. PW9 on 27th January, 2010, had produced the worksheets comprising of four pages (Ex.PW9/B). The worksheet (Ex.PW9/B) records in writing that sample S1 contained off white putty like material in small plastic vial. On chemical examination, it tested positive for PETN, Ammonium Nitrate and acid. Ex.PW9/B records that physio-chemical and TLS tests confirmed presence of PETN based high explosive, Ammonium Nitrate and acid in the contents of parcel S1. The CFSL report (Ex.PW9/A) records that the parcel S1 contained small quantity of an off white coloured putty like material in a plastic container.

22. We have elaborately dealt with the testimony of A. Dey (PW9), who had affirmed that there was presence of PETN, Ammonium Nitrate as well as acids, but the sample was off white in colour. PW9 has been ambiguous and ambivalent on whether the colour could have changed. He had not conducted any experiment to ascertain whether the colour of PETN could change from brown colour to off white. In his deposition on 27th January, 2010, he had opined on “possibility of change of color”, but accepted that he was not certain. He had not done mixing in his laboratory and could not tell as an expert, as to the change of colour of the compound, if all the three substances were mixed. He admitted that he had not read literature, journals or books regarding change of colour of explosives of this nature.

23. We, therefore, have no hesitation in holding that A. Dey (PW9) had not affirmed authoritatively or even on preponderance of probabilities that the colour of PETN mixture could change from brown to off white because of adulteration of PETN with Ammonium Nitrate and acid. In fact, the testimony of PW9 on the question of change of colour, as an expert, deserves to be completely expunged as mere ersatz for lack of personal knowledge and expertise on the subject of PETN. He was unaware of scientific research and papers on PETN, change in colour with passage of time on storage due to adulteration, etc.

24. Evidence of opinion or expert evidence is admissible under Section 45 of the Evidence Act, 1872, when the court has to form an opinion on the point relating to foreign law, science, art or identity of handwriting, finger impressions, etc. In trials, both civil and criminal, the courts are required to decide matters in which opinion of a skilled expert by way of special study or experience may be necessary as the Judges or the Presiding Officers may not be properly equipped to answer/adjudicate issues involving special skill or knowledge.

25. Opinion by its very nature refers to an inference drawn from the observed facts. Relevancy and credibility of the expert's opinion is based upon the assumption that the said expert has the necessary skill, qualification and experience to come to an objective and truthful conclusion/opinion on the basis of examination undertaken by him. Opinions given by experts are necessarily predicated upon their acquired skill, experience and understanding of the particular subject.

26. Section 45 of the Evidence Act, 1872 makes the evidence of experts admissible, but the credibility of the said evidence and to what extent reliance can be placed upon it, has to be adjudicated by the Court. Ultimately, it is for the Court to decide whether the said opinion should be relied or acted upon or not. It is the duty of the

Court to test and evaluate the accuracy and credibility of the said opinion and form their independent judgment on the facts proved by evidence. Section 46 of the Evidence Act, 1872 makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, *when such opinions are relevant*. The Supreme Court in ***Baso Prasad v. State of Bihar*** (2006) 13 SCC 65, has observed,

“37. Opinion of an expert, therefore, is a relevant fact. The court may, thus, take the expert opinion into consideration. But appreciation of evidence is the court’s job.”

27. In matters relating to science, arts, etc. evidence or testimony of an expert invariably carries weight and may influence the ultimate issue or question which has to be decided. Therefore, care and caution has to be exercised by the Court while scrutinizing and accepting the expert opinion and the expert’s competency, skill and knowledge on the subject matter as well as his objectivity and reliability of the finding. Both aspects have to be ascertained and judiciously appreciated. In matters of serious offences, higher standards of accuracy and objectivity are required from the expert testifying for the prosecution. The Supreme Court in ***Murari Lal v. State of M.P.*** (1980) 1 SCC 704 had discussed,

“4. ... An expert deposes and not decides. His duty “is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence” [Vide Lord President Cooper in *Davis v. Edinburgh Magistrate*, 1953 SC 34 quoted by Professor Cross in his Evidence].”

Recently again in *Dayal Singh v. State of Uttaranchal* (2012) 8 SCC 263, it has been held,

“37. Profitably, reference to the value of a expert in the eye of the law can be assimilated as follows:

“ ... The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence.

If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use ... The court is not to believe the ipse dixit of an expert. ... “In other words, the value of expert evidence depends largely on the cogency of reasons on which it is based.” [See *Forensic Science in Criminal Investigation & Trial* (4th Edn.), by B.R. Sharma.]

40. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such a report is not binding upon the Court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final

opinion as to whether such report is worthy of reliance or not ...”

28. This brings us to the testimony of the Court Witness, Dr. Mahadev B. Talawar, Senior Scientist (Scientist E), High Energy Materials Research Laboratory, Pune, Masters and a Doctorate in Organic Chemistry, who had been working in the field of explosives and allied defence materials, in the aforesaid laboratory since 1994. He testified that he was familiar with PETN having performed and done scientific research on the said substance, including its chemical composition and characteristic. PETN, he deposed, is off white in colour and he had not seen PETN of any other colour. The colour of PETN could change if it is adulterated with another compound. When excess amount of Nitric acid is present in PETN, the colour could be slightly brown. On a specific question put by the court, as to whether excess Nitric acid could cause change of colour of PETN with passage of time, he answered that he had not conducted any such experiment in respect of PETN in pure form. However, Nitric acid is a strong oxidizer and could destroy the original identity and structure of the compound. CW1, accepted that he was not aware, what would be the colour of the compound after Nitric acid oxidizes PETN as he had not conducted any such experiment nor he could answer whether

PETN would retain its character and quality as an explosive after oxidization by Nitric acid. He, however, clearly stated that Thin Layer Chromatography (TLC) test was a basic test and would indicate by way of dots, the number of chemicals present and the said test could indicate whether Ammonium Nitrate or any other acid was present. In categorical terms, he denied having seen PETN of dark brown colour. PETN, he explained, is created by mixing Nitric acid and Pentaerthoritol. It could contain Nitric acid as an impurity, if the compound is not washed with plenty of cold water. He clarified that he had not made PETN from chemicals and could not state whether during the manufacturing process or due to chemical reaction, at any stage, the mixture could be of dark brown colour. On cross-examination by the prosecution, CW1 accepted that if PETN is not properly washed with cold water, traces of Nitric acid would be left in the synthesized PETN compound, which could oxidize the compound. PETN, in its purest form, is insoluble in water, but is soluble in Acetone and Methyl Acetate. He refused to state in affirmative or negative whether impurities like Ammonium Nitrate, Dinitrate, Trinitrate, Nitro cellulose and Sulphuric acid etc. when mixed with PETN, could change its colour, and reiterated that PETN in purest form was colourless and white. He testified that he had not

done any experiment of mixing PETN with Sulphuric acid, Ammonium Nitrate, Nitro cellulose or fuel oil.

29. Questions and answers relied upon by the prosecution read as under:-

“Question: If ammonium nitrate is present in a mixture which also has PETN and this ammonium nitrate absorbs moisture from the atmosphere and converts into ammonium hydroxide, please specify whether this ammonium hydroxide will react with nitric acid and sulphuric acid without any human intervention?

Answer: I cannot comment. As per text books, it is possible. Reactions take place when acid and base are mixed.”

However, in subsequent cross-examination, he has stated as under:-

“Question: In an acid base reaction, impurities present in a substance may undergo chemical reaction?

Answer: I am not certain whether reaction in such cases would result in change of colour or substance which is undergoing this reaction.

Question: The impurities present in the compound containing PETN may undergo reaction or change because of the heat, even if the said substance does not react?

Answer: Due to change of temperature, morphology or the impurity may undergo change.”

30. In cross-examination, by the counsel for the appellants/accused, CW1 stated that when Ammonium Hydroxide reacts with Nitric acid, water i.e. H_2O and $\text{NH}_4^{(+)} \text{NO}_3^{(-)}$ which are salt compounds are created and that one unit of Ammonium Hydroxide would result in one unit of water in numeric terms. He further stated

that High Performance Liquid Chromatography (HPLC) test could be undertaken to find out percentage of each compound in a substance and the said machine and apparatus is commonly available in most of the research institutes in India. He voluntarily added that if mixing of chemicals is done in a precise manner then crude product could in fact be a pure PETN and the term 'crude PETN' meant 'washed PETN'. When 'washed PETN' is not properly washed, it could contain Nitrous acid in unstable form, but he was not aware if this Nitric acid could result in an auto catalytic decomposition reaction in PETN. He had further stated that if Nitric or Nitrous acid were added to pure PETN, it could result in acid hydrolysis and in such cases original integrity of the compound could get affected resulting in decomposition of PETN, although he had himself not conducted any such experiment. Reaction of Nitric acid would depend upon the volume of Nitric acid added and he was unable to comment as to what percentage or volume of Nitric acid could have caused reaction in pure PETN.

31. The statement of Dr. Mahadev B. Talawar (CW1) on the said aspect does not support the prosecution version that the brown coloured PETN could have changed its colour because of adulteration. We do not think CW1 endorsed the said view. Certainty

and affirmation on change of colour from brown to off white remains credulously doubtful and positively uncertain. The assurance required by the court in the facts of the case is absent and lacking. The change in colour from brown to off white has not been satisfactorily explained by the prosecution to merit acceptance and conviction. Thus, there is a strong element of doubt whether the sample S1 in fact was the sample drawn at the time of seizure as per the seizure memo (Ex.PW2/D).

32. Confronted with the aforesaid position, the prosecution had argued that the seizure was effected on 4th January, 2007 at about 9:15 PM and possibly the officers did not ascertain or notice the colour correctly as it must have been a dark and cold night. The said submission is meritless and has to be rejected. The seizure memo (Ex.PW2/D) specifically mentions the colour of the seized material as brown at two places. The deposition of PW8 and PW10, as noticed above, are also categorical and assertive on the colour being brown. PW10 was cross-examined on the said aspect with reference to the CFSL report and no such defence or explanation was given. Upon seizure, two samples of 10 gms each, were drawn and the explosive material, as per the prosecution case, was duly weighed. The said exercise of weighing would have taken some time and it is reasonable

to infer that there would have been ample and sufficient light. Nizamuddin area is well lit and an urbanized colony of Delhi and it would be fallacious, far-fetched and incongruous to uphold the said contention.

33. We have also noticed that there is a slight discrepancy in the description of the seized material in the seizure document (Ex.PW2/D), in which it is described as ‘an oil based explosive’; and the CFSL report (Ex.PW9/A) and the worksheet (PW9/B), in which sample S1 has been described as ‘off white putty like material’. The aforesaid difference by itself may not be significantly relevant. This does not impinge and reflect on our findings recorded earlier, which are clear and categorical.

(B) FAILURE TO PRODUCE THE CASE PROPERTY AND SAMPLE S2 AND THE STORY OF FIRE IN THE MALKHANA ON 10TH FEBRUARY, 2007

34. As noticed above, the prosecution had informed the trial court that the case property, i.e. explosive material weighing 1.590 kg and the second sample, S2 weighing 10 gms, were destroyed in the fire in the *malkhana* on 10th February, 2007. What was produced before the trial court was the sample S1, the detonators and the timing device. The prosecution did not lead evidence to prove the incident of fire,

FIR No.13/2007, the report under Section 173 Cr.P.C., the CFSL report filed with the closure report, etc.

35. The aforesaid failure was a serious lapse and omission on the part of the prosecution. The case property of the present case, as per the prosecution version, had got burnt to become a subject matter of FIR No.13/2007. The present appellants/accused in FIR No.2/2007, had a cause and concern to know as to what happened to the case property and why it was not produced in the court. Why and what caused the alleged fire leading to destruction of the case property, was a relevant fact in a present case given the factual matrix. The appellants were vitally affected, and principles of fair trial and natural justice required and mandated that the evidence should have been brought on record. The right of defence to question the fire as a cover up and camouflage cannot be muffled and stifled, on the ground that the cause of fire, etc. was a subject matter of another FIR, with which the appellants were not concerned. The cause of fire, etc. had fundamental and significant bearing on the case set up by the prosecution. Aforesaid lapse and failure had resulted in a material irregularity and caused unacceptable prejudice to the appellants. It hampered the ends of justice and overlooked the principles of a fair

trial. The case of the appellants is that the explosive and other articles had been planted to falsely implicate them.

36. As noted above, we had allowed the application of the prosecution and supplementary statements of ASI Paramjit Singh (PW6), ACP Sanjiv Kumar Yadav (PW10) and statements of Amrik Singh (PW12) and N.B. Bardhan (PW13) were recorded.

37. Sanjiv Kumar Yadav (PW10), in his supplementary statement recorded on 1st April, 2014, has testified that he was aware of FIR No.13/2007, but was not associated with the investigation of the said FIR. He accepted having filed the closure report under Section 173 Cr.P.C. marked Ex.PW10/CC, relying on the CFSL report (Ex.PW10/CE). The closure report (Ex.PW10/CC) was accepted by the trial court vide order marked as Ex.PW10/CD. In the cross-examination, Sanjiv Kumar Yadav accepted that as the ACP, he did supervise the 'proceedings' in FIR No.13/2007. PW13 was the investigating officer of the present FIR No.2/2007. The connect between the two FIR is obvious and evident.

38. ASI Paramjit Singh (PW6) has deposed that he was the *malkhana* In-charge in February, 2007 and on the night of 9th February, 2007, had locked the *malkhana* room and had gone to sleep

at 10:00 PM. At about 4:00 AM, Const. Ram Naresh who was on duty informed him that smoke could be seen emanating from the *malkhana* room. He then opened the room and saw that the case property kept on top of the chest had caught fire. He, along with others present in the police station, doused the fire and informed the SHO. His statement, Ex.PW6/CA was recorded. The CFSL experts were called who collected four samples of the burnt case property. Vivek Tyagi, the investigating officer of the said FIR No.13/2007, took the case property in his custody and the same was deposited in the *malkhana* and entries were made in the *malkhana* register. Three bags, four pencil cells, as well as parcel E and sample S2 relating to FIR No.2/2007 had got burnt in the said fire. Similarly, one bag and two hotel registers relating to another FIR No.91/2006 had also got burnt. However, cash parcel (mark R) did not burn or get damaged as it was kept inside the chest. Similarly, the sample marked S1, mark T and mark D did not burn as they had already been sent to the CFSL.

39. In the cross-examination, Paramjit Singh (PW6) elaborated that in order to extinguish the fire they had thrown a blanket on the burning case property which was then dragged outside the *malkhana* room. Some water was thrown but he could not state how much water was used. PW6 affirmed that the case property of FIR No.2/2007 in

eight pulandas was kept on the top of the safe, had got burnt in the fire. He accepted as correct that he had not packed the said pulandas in any bag. The case properties were kept by him year-wise in a systematic manner and the case property in FIR No.2/2007 was kept in one section. PW6 had accepted that as per Register No.19 beginning from 1st January, 2007, explosives seized in four cases were lying in the *malkhana* on 10th February, 2007, and even the explosives seized prior to the year 2007 were kept in the *malkhana*. This was the only incident of fire during his tenure as the *malkhana* In-charge from 2002 to 2009. He deposed that on 10th February, 2007, when he opened the door of the *malkhana*, he could see flames from the top of the safe to the ceiling. The safe was 7-8 feet in height and the top of the safe was 2'x2'. The fire/flames had left a mark on the wall and the ceiling. He denied the suggestion that FIR No.13/2007 was false or that the FIR was lodged on instructions of his seniors and story of fire was fabricated because there was no incriminating material or evidence seized in FIR No.2/2007.

40. This brings us to the cause of the fire as mentioned in the CFSL report (Ex.PW10/CE) and the deposition of N.B. Bardhan (PW13). We deem it appropriate to begin with the deposition of N.B. Bardhan (PW13) that he had come to the scene of crime, a fact accepted by

ASI Paramjit Singh (PW6) that experts from CFSL were called and had collected four samples of the case property. PW13 affirmed that they had reached the spot at 1:30 PM to examine the scene of crime and for ascertaining the cause of fire and remained there till 4:30 PM. The fire was noticed by Paramjit Singh (PW6) in the morning at 4:00 AM. PW13 deposed that he had advised the investigating officer to subsequently send the relevant material through official channel for examination. The forwarding letter enclosing therewith the exhibits, sent by the DCP, Special Cell, Delhi to the CFSL in relation to FIR No.13/2007 is dated 12th February, 2007, but was received in the laboratory on 19th February, 2007. The said exhibit, marked Ex.PW13/DA consists of 14 pages and includes the seizure memo. The seizure memo drawn up by Vinay Tyagi was signed by N.B. Bardhan as witness No.1. As the contents of the seizure memo are of some relevance, and the relevant portion is reproduced below:-

- “(1) 04 burnt pencil cell placed in transparent polythene.
- (2) Some burnt material/remains placed in transparent polythene.
- (3) Steel frame along with other burnt clothes/pulanda remains related to exhibits of case FIR No. 02/07 of Spl. Cell/SB.
- (4) Some burnt cloth along with partly burnt books (urdu) apparently related to exhibits of the case FIR No. 91/06, Spl. Cell.

All the material so collected from SOC as per direction of experts have been taken in to possession. The material lifted vide Sl. No. 1 & 2 has been placed in a white cloth pulanda and the same has been sealed with the seal of 'VKT'. The material collected vide Sl. No. 3 apparently related to crime exhibits/pulanda of FIR No. 02/07 Special Cell/SB, has been placed in a plastic bag (katta) and the same has been sealed with the seal of 'VKT'. The material collected and lifted vide sl. No. 4 has been placed in one separate bag (rice bag) 'Lovel' and the same has also been sealed with the seal of 'VKT'. All the material so collected and sealed with the seal of 'VKT' has been taken in to possession for expert examination etc and purposes of investigation. The proceedings have been carried out today dt. 10.02.07 in the instant presence of visiting CFSL experts team at Malkhana P.S. Special Cell/SB Lodhi Colony."

41. The aforesaid seizure memo states that the parcels Nos.1 and 2 i.e. four burnt pencil cells placed in transparent polythene and some burnt material placed in transparent polythene were placed in 'a' white cloth and the same was (the expression used is 'has been' and not 'have been') sealed with the seal of 'VKT', whereas the material collected at Serial No.3 relating to crime exhibits/case property of FIR No.2/2007 was placed in a plastic bag/*katta* and sealed with the seal of 'VKT'. Lastly the material mentioned at Serial no.4, was placed in a separate bag (rice bag) with the word 'Lovely' on it with the seal of 'VKT'. Thus, there were three packs (*pulandas*). In the first pack, items mentioned at Serial Nos.1 and 2 were kept in separate polythene bags but thereafter packed in one i.e. 'a' white cloth *pulanda*. However, as per the CFSL report (Ex.PW10/C) and

the worksheet there were four separate packs/*pulandas*. How did the three packs/*pulandas* become four; remains unintelligible creating doubt and suspicion. The worksheet (Ex.PW13/CA), for the sake of completeness is again reproduced below:

Sl.No.	Parcel No.	Description of cover	No. of description of seal(s)	Contents
1.	1	Cloth cover	01/VKT	It contained following exhibits:- (i) Four burnt pencil Cell. (ii) Small quantity of brown colour putty like material. (iii) Blackish powdery material of burnt residue.
2.	2	Cloth cover	01/VKT	It contained a lump of whitish powdery material.
3.	3	Plastic gunny bag	02/VKT	It contained following exhibits: (i) one burnt metallic frame portion of hand bag. (ii) One burnt audio cassette. (iii) Burnt piece of a jute bag. (v) Burnt piece of a black colour hand bag. (vi) One white cap (vii) Burnt pieces of jacket and trouser of a track suit.
4.	4	Jute gunny bag	02/VKT	It contained following exhibits: (i) Two partially burnt books. (ii) One partially burnt towel. (iii) one partially burnt full-sleeve jacket. (iv) One partially burnt jean pant. (v) One partially burnt full sleeve shirt. (vi) One handkerchief. (vii) One partially burnt cap. (viii) One pair of partially burnt

				socks. (ix) One partially burnt black colour hand bag. (x) Newspaper and carbon paper pieces.
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42. We have reproduced the contents of the four parcels/*pulandas* for another reason also. As per the seizure memo quoted above, Serial No.2 consisted of burnt material/remains, placed in a polythene. Serial No.1 consisted of only four burnt pencil cells. Worksheet (Ex.PW13/CA) mentions the contents of the Serial No.2 as whitish powder material. In Serial No.1, small quantity of putty like material was found which as per the worksheet and as per the deposition of B.N. Bardhan (PW13), was burnt *gur*. This description does not tally and match with the seizure memo. The aforesaid discrepancy, individually and with reference to the seizure memo mentioning that Serial Nos.1 and 2 were kept in one or single cloth *pulanda*, would not be of much relevance but when read in tandem, with several surrounding circumstances, ambiguity and uncertainty arises. Serial No.2, as per seizure memo (Ex.PW13/DA) had burnt material/remains and not white powder, the substance as mentioned in the worksheet (Ex.PW13/CA). As per the seizure memo Serial No.4, consisting of burnt clothes along with partly burnt books etc., relates

to FIR No.91/2006 and not to FIR No.2/2007. But it appears that Serial No.4 included alleged seized articles relating to FIR No.2/2007.

43. At this stage, we would refer to the seizure memo (Ex.PW1/A) relating to recovery of money from Ameen Wani and Ex.PW2/D, relating to recovery of explosives, etc. from Luthfur Rahman. From Ameen Wani, one black and red coloured shoulder bag with 'JANSPTS' written on it, was recovered. In addition to Rs.4,50,000/-, the bag contained one shirt, one jacket, one blue lower and one white cap. As per the seizure memo (Ex.PW2/D), one multi coloured jute bag with the words 'TEN SPORTS DEKHO' printed on it and one black coloured attaché-bag with the word 'combed' written on the front side of it were recovered from Luthfur Rahman. The attaché-bag had two *kurtas*, *pyzama*, cap (*namazi*), two urdu books and two audio cassettes, in it.

44. As per the Worksheet (Ex.PW13/CA) in Serial No.3, there was one completely burnt/damaged metallic frame of a hand bag of black colour with some plastic material stuck to it. One piece of burnt/damaged jute carry bag with burnt pink coloured polythene. In addition, there was one black coloured hand bag almost burnt and damaged with some plastic material, melted and stuck. The hand bag was having lateral base portion of 26x16 cms approximately. It had a

chain based circuit and a strong smell of acid (which appeared to be a mineral acid).

45. Hurdles and difficulties in accepting the prosecution version may be recorded here. The seizure memos, Ex.PW1/A and Ex.PW2/D do not specifically and clearly refer to this black hand bag with the base of 26x16 cm or the presence of a strong acid smell. The seizure memo (Ex.PW13/DA), after the fire, does not refer to acid smell emanating from any bag. Most importantly, the bag was not produced before the trial court or before us for examination. In fact, none of the three/four parcels/*pulandas* were produced for examination/inspection before us.

46. Now we come to the cause of fire as opined in the opinion/report, Ex.PW10/CE. The black bag as per PW13, was subjected to physio-chemical examination to confirm the presence of high explosive mixture based on PETN, Ammonia Nitrate and acid, PW13 in the CFSL Report (Ex.PW10/CE) recorded:-

“(1) The Physio-Chemical examination confirmed the presence of “High-explosive mixture” based on PETN, Ammonium Nitrate and mineral acids in the black colour hand bag contained in parcel No. ‘3’ and hence the fire in question could have been initiated due to exothermic reaction of acids with the explosive mixture of PETN and Ammonium Nitrate.”

47. As per the worksheet (Ex.PW13/CA), 'hot water extract' and 'acetone wash extract' of the available residues, were taken by washing/swabbing and each was put in marked glass container for performing chemical tests. The chemical test of the burnt/damaged black coloured hand bag, 26x16 cms in size, was positive for PETN and acid. As noticed above, as per the worksheet, the said bag had a strong smell of acid, i.e. a mineral acid. Water extract from the black coloured hand bag, upon other chemical tests with Griess reagent and Nessler's reagent confirmed the presence of 'Nitrates' and 'Ammonium'. Similarly, the Acetone extract, upon chemical tests such as the Spot Test and the TLC Test, gave positive results for the presence of PETN in the Acetone extract sample from the black coloured hand bag. Other samples gave negative results. The HPLC analysis could not be done as the machine was out of order. The worksheet, concluded presence of 'Ammonium Nitrate', "PETN" and strong acid (mineral acids but not H_2SO_4 or $\text{SO}_4^{(-2)}$, viz. HCl/HNO_3) in the black coloured hand bag.

48. In his court deposition, PW13 testified that in his opinion, when PETN was mixed with Ammonium Nitrate, it would burn but would explode only if necessary detonating shock wave was created because of the burning effect. It was not necessary that in all cases of

burning, the shock wave would be created. In cross-examination on behalf of Ameen Wani, PW13 accepted that in an exothermic reaction heat is generated and fire may take place when the quantum of heat exceeds a particular level. This happens when the flash point is reached. PW13 was unaware that the explosion temperature of PETN at 5 seconds is 225°C, or the scientific term, 'deflagration to detonation transition' (DDT) but was aware of concepts of 'deflagration' and 'detonation' separately. PW13 testified in his cross-examination as follows:

"I am not aware, again said I cannot state what is the explosion temperature of PETN. From my memory, I can say that melting point of PETN is 141 degree centigrade. I do not remember what is the boiling point of PETN. The unit for measuring shock waves is in terms of velocity of detonation and is expressed in meter per second.

Q. What is the velocity of detonation required to ignite/burst PETN?

Ans. I am not aware.

Q. Please see your answer to the question "if PETN mixed with ammonium nitrate is burnt, will it explode or not?" and state what is the required velocity of detonating shock wave necessary to explode PETN?

Ans. I amnot aware of the quantum/scale of detonating shock wave required to cause explosion of PETN.

xxx

Q. If exothermic reaction of acid with PETN occurs (as is claimed) what would be the required temperature at which it would ignite or catch fire?

Ans. When the temperature reaches the ignition point of PETN, it would catch fire.

xxx

Q. if exothermic reaction is possible, would it be very rapid and fast or would it take place for a period of over a month?

A. It is a chain reaction and, therefore, can take place over a period of one month.

Q. If such exothermic reaction were to take place, it would raise the temperature to the point that PETN would explode and it would not burn?

A. No.

Q. If such a reaction takes place, it would reach explosion temperature of PETN and would result in explosion and not merely burn in the manner stated by you?

A. It is incorrect.”

The aforesaid answers in the cross examination do not inspire confidence and are unconvincing. Hesitation, if not doubts, persist whether the report (Ex.PW13/CA) was a result of an intensive, meticulous and rigorous scientific study and examination to opine that exothermic reaction was the cause of fire. Why there was no explosion, how the fire was confined and controlled, why did the smell of the strong acid remained palpable inspite of the fire? These are some questions which remain conspicuously unanswered. PW13 had not personally conducted experiments on exothermic reaction in PETN, nor has he referred to scientific studies and papers written by others, relied upon by him. PW13 was aware that PETN has an explosion temperature as other explosives, but stated that he was not aware of the said temperature as he had not conducted any tests. He claimed he had read about the explosion temperature but could not

orally recollect the explosion temperature of any explosive. What is perspicuously missing from the CFSL report is the reason why no explosion took place inspite of the fire. It is apparent that this aspect and question was not examined. Exothermic reaction as the cause of fire, remains a faint possibility, but not a conclusive opinion. When we notice the surrounding circumstances, and the said cause is pitted and contrasted with the challenge that the fire was deliberate and intentional façade to destroy the alleged case property which never existed or was never seized, the opinion it has to be held is incredulous and unsubstantiated.

49. Some other answers by N.B. Bardhan (PW13) in his cross examination also reflect and create doubt about the understanding of the witness on the said highly technical and complex subject in question:-

“Generally when the quantity is larger, then due to exothermic reaction more heat is generated.

Question: In your last answer, you have referred to quantum of heat and not the temperature as a result of exothermic reaction?

Answer: temperature is directly related to the quantum of heat generated.

Question: Exothermic reaction in PETN weighing 1 Kg and PETN weighing 10 gms would happen at the same temperature?

Answer: It is incorrect. *Vol.* In my opinion the exothermic reaction in 1 Kg of PETN will result in higher temperature, than in lesser quantity.

Question: Do we understand that 1 litre of water will boil at a lower temperature than 10 litres of water?

Answer: When the water reaches the boiling point, it will boil.

Question: Therefore, it boils at same temperature at which exothermic reaction takes place, whether it is 1 Kg or 10 gms, it will be the same?

Answer: In my opinion, it will not be the same because the exothermic reaction is a chain process and during this process heat is generated, but when more heat is generated temperature will rise.

xxx

While examining the present exhibits, I did not conduct any test to ascertain presence of di nitrates, tri nitrates and mono nitrates of pentaerthritol.

xxx

Question: As per the opinion of Mr. D.M. Chambers for presence of PETN in fire or explosions is usually confirmed by testing for the lower nitrates of pentaerthritol?

Answer: I do not agree with the said suggestion.

xxx

Question: What is the temperature of a gas stove flame?

Answer: I do not recollect.

Question: As a chemist, are you aware that all substances have an auto ignition point?

Answer: I am aware of ignition point, but I am not aware of auto ignition point.”

50. We confess and accept our limited and sparse knowledge or awareness on the said subject, but our aforesaid disapproval and disinclination on Ex.PW13/CA is reflective and based on the hesitancy and doubts expressed by CW1, Mahadev B. Talawar as to the cause of fire opined in Ex.PW13/CA. CW1 in his court examination opined that PETN cannot ignite or catch fire on its own if it is in its pure form. On being questioned, “if PETN has got impurities, can it ignite on its own?”, he answered that he had no

experience and could not state whether it could catch fire on its own, if it is impure or mixed with Ammonium Nitrate or Nitric acid. However, PETN would explode if it is ignited in a confined state. He had not seen PETN catching fire and could not state the consequences or effect of PETN catching fire without exploding. On being cross-examined by the prosecution, he explained that melting point of PETN is 141.3°C in pure form and PETN can be mixed with plastics and converted into plastic explosives by introducing Nitro cellulose and polymer bonded explosives. On further cross-examination, he accepted that it is possible the Nitric acid may react with Ammonium Hydroxide when moisture is present in the atmosphere but this reaction would generate a very low intensity heat. He was not aware if such low intensity heat could have formed hot spots. On court question, he denied having come across any such hot spots of low intensity heat. On being questioned by the counsel for the appellant, he opined that binding 1.5 kg of PETN in two plastic sheets as well as in a tight cloth would not amount to confining which can result in explosion on ignition, but he accepted that if the PETN is found with Nitric acid in two layers of plastic/polythene and packed in a cloth, there may not be any absorption of moisture for Ammonium Nitrate to convert to Ammonium Hydroxide, if the wrapping is proper. He

added that the compound could absorb oxygen and moisture from the atmosphere before it is wrapped, and in such circumstances depending upon the quantum of moisture absorbed, there may be a reaction. He opined that the presence of Nitric acid upto 0.01% will not lead to an exothermic reaction or cause fire or explosion. However, it was difficult for him to answer as an expert whether exothermic reaction was possible after PETN is stored for six weeks with Nitric acid concentration being above 0.01%. He had not conducted experiments involving burning of PETN and could not state whether PETN burns quickly or takes time. He accepted that PETN is used to make fuse wires and added that fuse wires are made of substances which generate high heat so that the main explosive/charge can be ignited. In such cases PETN is mixed with some other substances. Theoretically, he accepted that when PETN decomposes, Nitrous oxide is released along with lower compounds like Dinitrates, Trinitrates and Mononitrates of Pentaerthritol. He confirmed that 100% Nitric acid is unstable and normally 72% Nitric acid is kept in laboratories, but explained that even that would fume to some extent. He accepted that if 72% Nitric acid is added to PETN, it will continue to fume. He accepted that as per Table I of the article of D.M. Chambers, the explosion temperature at 5 seconds is 225°C

which means that if PETN is kept for 5 seconds at 225°C, it will explode. He voluntarily added that it will explode even if it is not kept in confinement. Further temperature of normal gas stove is 550°C approximately. Theoretically, PETN would melt at 141.3°C which may result in breaking of its bonds and release of energy, as a result of which it may explode. At 180°C, PETN boils and at 225°C, the bonds will break and in this way, energy would be released causing an explosion. He accepted as correct that all substances have auto ignition point at which they catch fire spontaneously. On being reexamined by the prosecution with reference to the assertion at page No.53 of the text book titled “Chemistry of Explosives” by J. Akhavan, CW1 opined that the aforesaid passage shown refers to main charge explosives and PETN, though a main charge is used as a booster and, therefore, the said passage is not applicable. He voluntarily added that they had heated PETN in glass test tubes at 225°C and after 5 seconds, the test tube exploded but had not heated PETN at 225°C in a porcelain. He denied the suggestion that heating PETN in test tubes amounted to confining, stating that one end of the test tube was open.

51. A reading of the aforesaid testimonies, generates skepticism and leaves us perplexed as to the cause of fire. The deposition of

PW13 and his report (Ex.PW10/CE), does not inspire confidence or merit acceptance. The report is based on assumptions, if not reflecting proneness. It is not duly supported by scientific data, papers, literature or tests by the witness required to ascertain and discern whether exothermic reaction was possible, and whether it could have resulted in a fire of the said nature. Also, if there was an exothermic reaction and fire, why PETN, 1.590 kg in weight did not explode; why acid fumes inspite of fire were present; what analysis were conducted to rule out the possibility of deliberate and intentional fire; why did the fire confine itself to a few articles, etc. These are only a few of the several aspects which the expert should have investigated and probed into, before he could have opined on the subject. There are gaps which remain unanswered and have left us perplexed and confused. As per the case of the prosecution, 1.590 kg PETN got burnt and nothing remained, but surprisingly, the bag in which it is stated that the PETN was kept did not enkindle completely and had a strong smell of acid fumes. The other two bags including the steel framed attaché-bag had suffered extensive damage. The cause and reason of fire remains a mystery, unsolved and unexplained. Ex.PW10/CE, the opinion, does not deserve and merit credulous acceptance.

52. We have not commented on the clinical findings of A. Dey (PW9) in the CFSL report (Ex.PW9/A) that the sample S1 had tested positive for PETN and on presence of acid, or the CFSL report (Ex.PW10/CE) of N. Bardhan (PW13) that Acetone extract and water extract had tested positive for PETN, acid etc. What is in question and under doubt is the oral testimony of A. Dey (PW9) on change of colour from brown to off white and the adjunct issues whether PETN was recovered; whether sample S1 was drawn from the material recovered etc. The CFSL report (Ex.PW10/CE) is under challenge on the finding/opinion on the cause of fire and other related issues noticed above. These questions and doubts are relevant as we have to rule out falsity and contrivance as to the cause of fire and to expunge and erase doubts of PETN contamination and introduction post fire in the material sent to the CFSL for examination. This disbelief and demur arises due to the given factual matrix of the case.

(C) Other contentions and discrepancies pointed out by the appellants.

53. A number of other contentions pointing out inconsistencies and discrepancies in the oral statement of witnesses and documents on record have been highlighted. Many of them we perceive are explainable and do not substantially affect the prosecution version or

tilt the scale in favour of the appellants. These are being noted hereunder for the sake of completeness:-

(a) Difference in the time of arrival of ACP, Sanjeev Kumar Yadav (PW10) at the Adarsh Nagar bus stand, i.e. the place of arrest of Ameen Wani has been highlighted. PWs-1, 2, 8 and 10 in their examination-in-chief have deposed as to the arrival of ACP Sanjeev Kumar Yadav (PW10) at the place of arrest of Ameen Wani at about 3:50 PM. Contra, PWs-1, 2, 5 and 8 in their statements under Section 161, Cr.P.C., had asserted that ACP Sanjeev Kumar Yadav (PW10) had reached the said location at 5:30 PM. When confronted, PW10 claimed that this was a typographical error. The correct time was 3:50 PM. Appellant Ameen Wani was detained at 2:50 PM and PW10's arrival at the spot at 3:50 PM is more logical and plausible. It is noticeable that Head Constable Rustam, (PW5), who had left the spot with *rukka* at 4:20 PM, had deposed that by the time he left the spot, PW10 had arrived. A typographical error in recording the time as 3:50 PM, instead of 5:30 PM, is possible as it could be the result of interchange of numerals, '3' and '5'.

(b) There is a slight discrepancy about the time of recording of the disclosure statement (Ex.PW2/C) of Ameen Wani. HC Rustam (PW5) had affirmed that the aforesaid disclosure statement was recorded in

his presence. PW5 had however, left Adarsh Nagar bus stand with the *rukka* at 4:20 PM. R.S. Shehrawat (PW2) testified the time of the disclosure statement (Ex.PW2/C) as between 4:20 PM to 6:30 PM, PW10 similarly asserted that the disclosure statement was recorded between 5:40 PM to 6:30 PM. Disclosure statement will generally involve two parts; the oral disclosure and then the transcription in longhand. Thus, we do not perceive a material discrepancy. Testimonies of the said witnesses were recorded after a substantial delay and, therefore, some latitude and imprecisions in recollecting in the exact time is not unusual but rather natural and normal.

(c) PW5's deposition that he had returned to the Adarsh Nagar bus stand with copy of the FIR to hand over the document to the Investigating Officer ACP Sanjeev Kumar Yadav (PW10) is not correct and stands contradicted by testimonies of the other witnesses. Depositions of PWs-1, 2, 8 and 10 are categorical that the copy of the FIR was handed over to the Investigating Officer at the police station. The said version is correct and merits acceptance as there was no reason and occasion for PW5 to go back to Adarsh Nagar bus stand. The wrong assertion by PW5 does not affect the prosecution case.

(d) PWs-1, 2, 8 and 10's deposition that they returned to the Police Station Lodhi Colony from Adarsh Nagar bus stand within half an

hour, i.e. at 7 PM is again misplaced, as the time of departure would only be an estimate and not precise. The witnesses could well have left Adarsh Nagar 15 to 20 minutes earlier than as stated. It would be inordinate and unrealistic to expect the witnesses to record or remember the exact time of their every movement.

(e) DD No.14 (Ex.PW10/DA) and DD No.15 (Ex.PW10/DB) are stated to be recorded at the police station Lodhi Colony at 7:00 PM and 7:30 PM, respectively. Certified true copies of said DD entries marked Ex.PW10/DA and Ex.PW10/DB filed by the prosecution before the trial court, refers to provisions of the Explosive Substances Act, 1908. As per the prosecution version, the explosive substance purportedly PETN was recovered only at about 9:15 PM after arrest of appellant Luthfur Rehman. Additional evidence was led in the High Court and the original Daily Diary was produced, photocopies of the DD Entries 14 and 15 were exhibited as Ex.PW10/CA and Ex.PW10/CB. The original DD Entry Nos. 14 and 15, Ex.PW10/CA and Ex.PW10/CB, do not ascribe and refer to the sections/provisions of the Explosive Substances Act, 1908. ACP Sanjeev Kumar Yadav (PW10), when confronted with the aforesaid discrepancy in his cross-examination in the trial court had attributed and claimed that this was a typographical error. It can be argued

that Ex.PW10/DA and Ex.PW10/DB were not the true and correct copies of the original entries as recorded in the Daily Diary Register. To rule out the said possibility of tampering or interpolation, we had examined the original register. The said register was also examined by the advocates for the appellants. There was no sign and indication of such nature. However, it does appear to be strange and is incomprehensible why the typed “true copies”, duly exhibited before the trial court as Ex.PW10/DA and Ex.PW10/DB, were not the true and correct copies of the original DD entries. Such errors and lapses reflect and create doubt and in a way, support the contention that the DD entries were recorded as per their convenience. Moreover, in the present case, the person who had recorded the DD entries has not deposed as a prosecution witness and the person in-charge for recording the said entries, i.e. Amrik Singh (PW12) has stated that he had not recorded the said DD entries in his own handwriting, though he admits that DD Entry Nos.13 and 16 recorded at 4 p.m. and 7.35 p.m., respectively, were in his handwriting.

54. When and in which cases, probative value of evidence in cases of non-compliance of statutory provisions, results in mere irregularity or invalidates the prosecution version/conviction has

been noted and discussed in many decisions. A Division Bench of this court, comprising of both of us (Sanjiv Khanna and G.P. Mittal, JJ.), in *Nipun Gola @ Nikhil versus State*, CrI.A. No.7/2014, decided on 3rd April, 2014, citing various case laws, have discussed the issue in the following words:-

“A Division Bench of this Court, of which one of us (Sanjiv Khanna, J.) was a member, in *Sudhir Kumar versus State*, CrI.A. 605/2013 decided on 2nd September, 2013, held as under:-

“24. ... The discrepancies and gaps noticed in the prosecution case mentioned above are significant and not illusionary. Appellants have succeeded in denting the prosecution version and have created doubts as to the actual story. It is apparent that certain factual aspects have been held back and have not been brought on record, creating grave suspicion. In some cases, lack of or improper investigation is ignored but in the present case the consequences or failure has resulted in incompleteness and uncertainty which leave a number unanswered queries and silence on material aspects. It causes and creates confusion and ambiguity on the involvement of the appellants.”

The detailed discussion on the aspect can be found in *Dayal Singh v. State of Uttaranchal*, (2012) 8 SCC 263 wherein it has been observed:

“19. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the investigating officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:

(i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.

(ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.

(iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.

(iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

20. In order to answer these determinative parameters, the courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in the light of the facts and circumstances of a given case.”

After recording the aforesaid point for consideration, the Supreme Court referred to earlier pronouncements which throw light on the subject in the following words:-

“**27.** Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.* [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab* [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)

“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104 : AIR 1999 SC 644] enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief

would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh (5) v. State of Gujarat* [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

“42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. *Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.*

(emphasis supplied)”

55. However, two discrepancies, not significant independently but when read in tandem with the compelling discrepancies recorded under the headings; (A) description and colour of the alleged explosive material; and, (B) failure to produce the case property and sample S2 and the alleged story of fire in the *malkhana* on 10th February, 2007, gain and acquire relevancy. These are:-

(i) The prosecution version is that consequent to recovery of

Rs.4,50,000/- from Ameen Wani at Adarsh Nagar bus stand,

disclosure statement (Ex.PW2/C) revealed the source and time of acquisition of money as morning hours from a *hawala* operator at Chandni Chowk. Contra to the disclosure statement (Ex.PW2/C), PWs-1, 2, 5, 8 and 10 in their Section 161, Cr.P.C. statements in seriatim and unequivocally ascribed that the *hawala* operator had met Ameen Wani at Adarsh Nagar, which is also consistent with Dalip Kumar's (PW8) oral deposition in the Court. The oral depositions of Vinay Tyagi (PW1) and ACP Sanjeev Kumar Yadav (PW10), however, affirm that Ameen Wani had divulged the source as a *hawala* operator at Chandni Chowk. PW10 when confronted with his contradicting Section 161, Cr.P.C. statements, sought to explain the same as a 'typing mistake'. The explanation is unacceptable and merits rejection. The aforesaid discrepancy is material and relevant and supports the appellant's version that appellant-Ameen Wani had not made disclosure statement (Ex.PW2/C). This also makes the recovery of Rs.4,50,000/- itself dubious and debatable. On alleged recoveries from the appellant, Luthfur Rehman we have expressed doubt. No inquiries or investigation were conducted to ascertain and nab the *hawala* operator. The aforesaid lapse and failure can be explained and justified as impracticable but the discrepancy regarding the place or location where the *hawala* money was received, cannot

be termed as wholly insignificant or attributed as inconsequential. ACP Sanjeev Kumar Yadav (PW10) version is that statements under Section 161, Cr.P.C. were recorded post the disclosure statement (Ex.PW2/C). PW10 in his examination-in-chief also accepted that the disclosure statement of Ameen Wani was recorded before recording statements under Section 161, Cr.P.C. were recorded. Thus, this difference in the disclosure statement (Ex.PW2/C) and Section 161, Cr.P.C. statements remains undecipherable.

(ii) R.S. Shehrawat (PW2) and Dilip Kumar (PW8) have deposed that their statements were recorded by the Investigating Officer, i.e. Sanjeev Kumar Yadav (PW10) at 11 p.m. on 4th January, 2007 after arrest of the appellant Luthfur Rehman. The said statement refers to the disclosure statement of Luthfur Rehman (Ex.PW2/H), which as per PW2, was recorded between 9.30 PM and 11 PM, whereas PW8 deposed that Ex.PW2/H was recorded on the next day i.e. 5th January, 2007 between 11:00 AM and 11:10 AM. PW8 testified that the supplementary disclosure statement of Ameen Wani (Ex.PW-2/G) was recorded on the next day i.e. 5th January, 2007. PWs-2 and 8 are both witnesses to these two disclosure statements, Ex.PW-2/G and H. PW10, in his examination-in-chief, asserted that Ex.PW-2/G and H were recorded on 4th January, 2007 but was confronted with

Ex.PW2/G and H, which bore the date as 5th January, 2007. PW10 thereupon attributed the date recorded in Ex.PW2/G and H, i.e. 5th January, 2007, to be a typing mistake. The date mentioned in Ex.PW-2/G and H is certainly 5th January, 2007. The aforesaid contradiction cannot be explained and justified as a mere typing mistake. Intriguingly, Section 161, Cr.P.C. statements of PWs-2 and 8 bore the date as 4th January, 2007 refer to Ex.PW-2/G and H, recorded by the Investigation Officer on 5th January, 2007.

56. The two statements Ex.PW2/G and H of Ameen Wani and Luthfur Rehman have not been read in evidence as no part thereof led to any recovery under Section 27 of the Evidence Act, 1872 but the aforesaid two discrepancies reflect contradictions, depletes credibility and erodes and impairs confidence and trust in the statements and disclosures recorded, etc. during the investigation. Contemporaneous recording in the Police diary, etc. as mandated is a salutary check and imparts verifiable legitimacy and bestows trust and faith that the prosecution version as unfolded and recounted in the court is truthful, not torpid, and suffering from pretence and posturing. When the courts find it difficult to uncover and discover the truth from the duplicitous and distorted versions, the investigation is not merely irregular but affects the quest to fathom and deduce the truth. It makes

the prosecution version vulnerable and too voracious to be accepted. Doubts and uncertainty affects the veracity and acquires verisimilitude.

57. The prosecution has urged that their version should be accepted as there was no reason and cause for them to destroy the case property in a fire on 10th February, 2007 as sample S1 was with CFSL since 22nd January, 2007. Prosecution had nothing to gain as they were unaware of the purported discrepancy in the colour of the case property and sample S1. The CFSL report (Ex.PW10/CE) is dated 15th March, 2007. The appellants contend that the said submissions are hypothetical and assumptuous. The difference in colour was apparent and patent. Appellants urge that the explosive material S1 was actually planted and therefore, the police officers would be aware that they could not have established and proved the large recovery of 1.610 kg of PETN. Appellants submit that accepting the submission would, therefore, be fallacious and contrary to the principles applicable to criminal jurisprudence. Having considered the submissions, we do not think it would be proper to proceed with the assumption that the police officers and the Investigating Officers were not aware of the discrepancy as has been suggested/submitted on their behalf. After elaborate discussion on the question of colour change

and the fire, we have recorded that the prosecution case is conspicuously weak and flounders. There are gaps and vital discrepancies and, therefore, the prosecution story merits rejection.

58. Further, even if we presume that money was recovered from the appellant Ameen Wani, in the absence of any other incriminating evidence or material, when we efface recovery of PETN from Luthfur Rehman, it would not establish and prove any criminal offence for which he has been tried and convicted.

Statement of Ameen Wani under Section 313 Cr.P.C. and his statement under oath as DW2.

59. Appellant-Ameen Wani had appeared as a defence witness and asserted that his statement under Section 313 Cr.P.C. may be considered as a part of his oral testimony on oath. He deposed that he had filed an application, certified copy of which was marked Ex.DW2/A, before the Chief Judicial Magistrate, Kathua, Jammu and Kashmir, on 14th December, 2006. The application was ordered to be listed on 30th December, 2006 before the Principal Sessions Judge. Thereafter, he, through his brother Mohd Akhtar Wani, moved an application before the Chief Judicial Magistrate on 30th December, 2006, certified copy of which was marked Ex.DW2/B. He claimed that he was lifted by the Intelligence Bureau officials

and had been falsely implicated. In his statement under Section 313 Cr.P.C., Ameen Wani was more elaborate and stated that he had gone to attend the Court of Additional Sessions Judge, Kathua in connection with FIR No.43/2003 under Section 419, IPC and learnt that Intelligence Bureau officers had spoken to his co-accused in FIR No.43/2003 and his advocate. They had taken photographs of the co-accused in the Court, which was objected to by the staff and advocates. Officers from the Intelligence Bureau had then claimed that they were reporters. At about 11 AM, when he was speaking to his advocate, an officer of Intelligence Bureau came to meet him. He was familiar with the said person as he had earlier arrested him (Ameen Wani) in a case in 2003. He informed his advocate that the said person was an Intelligence Bureau Officer and not his friend. The Presiding Judge was on leave and the case was dealt with by a subordinate Judge. When he came out of the Court to the seat of his advocate, he was taken away by another person, wearing dark glasses, stating that his senior wanted to talk to him. Appellant Ameen Wani's advocate thereupon intervened and was informed by the person that he was an Intelligence Bureau Officer. The said Intelligence Officer left when his advocate asked him to come to his seat. Ameen Wani then spoke to his brother, Mohd Akhtar

Wani, from his advocate's phone, that he was being watched by some agency and that there was a threat to his life. Ameen Wani asserted that the Intelligence Bureau Officers had spoken to his associates, who were in judicial custody and warned them that Ameen Wani would be booked for 4-5 years. This fact was narrated by his associate in judicial custody, when he met him on 14th December, 2006. Thereupon, his advocate had moved an application before the Second Additional Sessions Judge to provide to him, police security up to his residence. The Judge, after hearing his grievance, informed that he was not competent to provide security, but would keep the application on record for future reference in case of any false implication. Ameen Wani's request that he should be handed over to the local police was turned down. On coming out of the Court, four Intelligence Bureau Officers approached him and one of them at gunpoint asked him to get down from the auto rickshaw and board their vehicle. His eyes were covered with a strip of cloth and after two and a half hours of travel, he was detained in a room at Jammu. He was asked why he had visited relatives of persons killed in fake encounters, to which he replied that he was the President of All India Forward Block, Banihal, District Doda. After four days, he was taken to Tavi River

and again threatened that he would be killed. Subsequently, he was taken back to the same room and detained for four more days. Later, he was brought to Delhi, via Punjab. On 22nd December, 2006, he was produced before Inspector Badrish Dutt of the Special Cell. He remained there till 1st January, 2007 and thereafter was put in a lock up for one day before being falsely booked in the present case. He denied having any connection with the case and asserted that no recovery was made from him and the appellant Luthfur Rehman was not arrested at his instance.

60. We are not inclined to accept the said chain of events and deposition of DW2, i.e. the appellant Ameen Wani for the following reasons:-

(i) Ameen Wani did not produce the advocate, Arvind Kumar in support of his assertion.

(ii) Application, Ex.DW2/A purportedly bore signature of Ameen Wani contrary to what has been stated by him in the Section 313, Cr.P.C. statement, that the application was moved by his advocate and he was subsequently called. The alleged noting of the Judge on the said application records that the application was presented by the advocate. It was noted that the Principal Sessions

Judge, Kathua, before whom the case was pending was on leave and the application was directed to be listed before him on 30th December, 2006.

(iii) The application mentions that four persons posing as Intelligence Bureau officers had taken photographs of co-accused without the permission of the Court. The application does not mention about any connection or conversation between Ameen Wani and the said officers. Nor does it state that Ameen Wani was acquainted with any one of them.

(iv) The application states that Ameen Wani had not committed any other offence and had no other case except for FIR No.43/2003 under Section 419, IPC. In his statement under Section 313, Cr.P.C., Ameen Wani claimed that earlier in 2003, he was detained in a case by an officer of Intelligence Bureau.

(v) The application mentions four Intelligence Bureau Officers had taken photographs, but in the Section 313, Cr.P.C. statement, Ameen Wani claimed that he had met with only two officers in the Court complex. In the application it is stated that the aforesaid persons were unknown to him, whereas he had expressly acknowledged and identified one of them in his Section 313,

Cr.P.C. statement.

(vi) Application marked Ex.DW2/B was purportedly moved by one Mohd Akhtar Wani, brother of Ameen Wani on 30th December, 2006. However, the said brother was not produced as witness. Nor copy of the order passed on the said application has been filed on record.

(vii) Interestingly, Ameen Wani has not the given names of the Intelligence Bureau Officers, not even of the one who had previously arrested him and whom he had claimed to know.

(viii) The application is silent and Ammen Wani in his statements remained mum regarding the names of the persons, in judicial custody and how and whether permission was granted by the Judge to enable Ameen Wani to speak to the said persons.

Final findings and conclusion

61. The findings cast grave doubts on the purported seizure of the material from the appellant, Luthfur Rehman, stated to be of brown colour. The contention that two detonators, one timing device and four pencil cells were recovered and seized from appellant-Luthfur Rahman, we observe stands discredited and gravely suspected when the recovery of the explosive PETN is disbelieved. To accept the said recoveries would be incongruous and contradictory. The recovery and seizure of the articles is disentailed and fused. Appropriately, we have

noticed other discrepancies and lacunas in the prosecution version. There is no evidence or material to show that appellant-Luthfur Rahman was a member of HUJI. No witness has deposed to the said fact. The conviction of the appellant-Luthfur Rahman under Sections 121/121A/122 read with Section 120B of the IPC, under Section 5 of the Explosive Substances Act, 1908 and under Section 17/18/19 of the Unlawful Activities (Prevention) Act, 1967, therefore, has to be set aside and he is accordingly acquitted. However, conviction and sentence of appellant-Luthfur Rahman under Section 14 of the Foreigners Act, 1946 is maintained and upheld.

62. Once we disbelieve the prosecution version on recovery of explosive pursuant to the disclosure statement (Exhibit PW-2/C), conviction of appellant-Ameen Wani under Sections 121/121A/122 read with Section 120B of the IPC, and under Section 17/18/19 of the Unlawful Activities (Prevention) Act, 1967 has to falter and accordingly it has to be set aside. No evidence has been brought on record to show and establish that appellant-Ameen Wani was a member of HUJI. In fact, none of the witnesses have even orally deposed to the said fact. Conviction of appellant-Ameen Wani under Sections 121/121A/122 read with Section 120B of the IPC, and under

Section 17/18/19 of the Unlawful Activities (Prevention) Act, 1967 is, therefore, set aside and he is acquitted.

63. Appellant-Ameen Wani will be accordingly released unless he is required to be detained in any other case in accordance with law (we are informed that appellant-Ameen Wani is presently under detention in another case. The aforesaid acquittal would not affect the said detention). Appellant-Luthfur Rahman has already undergone Rigorous Imprisonment for a period of five years awarded to him for the offence under Section 14 of the Foreigners Act, 1946. He was also liable to pay fine of Rs.50,000/-, in default of which he stands sentenced to undergo Rigorous Imprisonment for one year. Appellant-Luthfur Rahman has suffered incarceration for more than six years and is accordingly entitled to be released unless he is required to be detained in any other case in accordance with law.

The appeals are allowed to the extent indicated above.

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SANJIV KHANNA, J.

-sd-

G. P. MITTAL, J.

October 1, 2014
kkb/NA/VKR