GAHC010259672017

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

1. **Criminal Appeal No.238 of 2017**

Shri Mohet Hojai,
Son of Shri Thangmai Hojai,
Resident of Village: Boildura, PO & PS: Halflong, District: Dima Hasao, Assam.

.....Appellant

-***Versus***-

The National Investigation Agency, through its Standing Counsel.

.....Respondent

2. **Criminal Appeal No.205 of 2017**

Shri Jayanta Kumar Ghosh,
Son of Late Balaram Ghosh,
Resident of 119/3 Maharaja Nanda Kumar Road, Kolkata-36, District: 24 Paraganas, West Bengal.

.....Appellant

-***Versus***-

The National Investigation Agency.

.....Respondent

3. **Criminal Appeal No.206 of 2017**

Shri Sandip Kumar Ghosh,
Son of Late Samarendra Kumar Ghosh,
Resident of K.C. Das Lane, Manipuri Basti, Paltan Bazar, Guwahati-781007.

.....Appellant

-Versus-

The National Investigation Agency.

.....Respondent

4. Criminal Appeal No.233 of 2017

Shri Redaul Hussain Khan,
Son of Latet Haji Mohammed Hussain Khan, Resident of House No.14, Bye Lane No.2, Tarun Nagar, Guwahati-781006, Assam.

.....Appellant

-Versus-

The National Investigating Agency, through its Standing Counsel.

.....Respondent

5. Criminal Appeal No.237 of 2017

Shri Phojendra Hojai,
Son of Late Surjaya Hojai,
Resident of Sarat Nagar, Sarkari Bagan, PO & PS: Haflong, District: Dima Hasao, PIN – 788819, State: Assam.

.....Appellant

-Versus-

The National Investigation Agency, through its Standing Counsel.

.....Respondent

6. Criminal Appeal No.256 of 2017

Shri Ahshringdaw Warisa,
Son of Shri Putul Warisa,
Resident of Village: Disgaoraji, PO & PS: Haflong, District: Dima Hasao, Assam.

.....Appellant

-Versus-

1. The National Investigating Agency, represented by its Director General, 6th

& 7th Floor, NDCC-II Building, Jai Sing Road, New Delhi- 110001.

2. Shri Mukesh Singh, Superintendent of Police, Chief Investigating Officer, National Investigating Agency, Branch Office - Guwahati, Assam.

.....Respondents

7. Criminal Appeal No.259 of 2017

Shri Niranjan Hojai,
Son of Shri Jopolal Hojai,
Resident of Disgaoraji, PS: Haflong in the District of N.C. Hills (Dima Hasao), Assam.

.....Appellant

-***Versus***-

1. National Investigation Agency (NIA), under Ministry of Home Affairs, Government of India, New Delhi (Camp – Guwahati), PIN – 110001.

2. The State of Assam.

.....Respondents

8. Criminal Appeal No.261 of 2017

Shri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Son of Late G.N. Barman, Resident of Village/Town: Haflong, Near Government Girls High School, PO & PS: Haflong, PIN - 788819, District: Dima Hasao, Assam.

.....Appellant

-***Versus***-

1. The National Investigating Agency, represented by its Director General, 6th & 7th Floor, NDCC-II Building, Jai Sing Road, New Delhi -110001.

2. Shri Mukesh Singh, Superintendent of Police, Chief Investigating Officer,

National Investigating Agency, Branch Office - Guwahati, Assam.

.....Respondents

9. Criminal Appeal No.262 of 2017

Shri Debashish Bhattacharjee @ Bappi,
Son of Late Sujit Bhattacharjee,
Resident of House No.44, K.C. Patowary Lane, Manipuri Basti, Paltan Bazar - 781008.

.....Appellant

-***Versus***-

The National Investigation Agency.

.....Respondent

10. Criminal Appeal No.286 of 2017

Shri Babul Kamprai,
Son of Purna Kanta Kamprai,
Resident of Village: Daudang under Mahore Police Station in the District of Dima Hasao, Assam.

.....Appellant

-***Versus***-

National Investigation Agency

.....Respondent

11. Criminal Appeal No.290 of 2017

Vanlalchhana,
Son of Tluangkipthanga,
Permanent resident of Village: Saron Veng, House No.B-37 under Aizawl Police Station in the District of Aizawl Mizoram.

.....Appellant

-***Versus***-

National Investigation Agency (NIA).

.....Respondent

– B E F O R E –
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Appellants	**:** Mr. D.K. Mishra, Senior Advocate, assisted by Mr. B. Prasad, Advocate in Criminal Appeal No.238/2017 and Criminal Appeal No.237/2017.
	: Mr. A. Chowdhury, Senior Advocate, assisted by Ms. B. Chowdhury, Advocate in Criminal Appeal No.205/2017 and Criminal Appeal No.262/2017.
	: Mr. N.N.B. Choudhury, Advocate in Criminal Appeal No.206/2017.
	: Mr. Z. Kamar, Senior Advocate, assisted by Mr. Z. Alam, Advocate in Criminal Appeal No.233/2017.
	: Mr. S. Borgohain, Advocate in Criminal Appeal No.256/2017 and Criminal Appeal No.261/2017.
	: Mr. B.K. Mahajan, Advocate, assisted by N.J. Das, Advocate in Criminal Appeal No.259/2017.
	: Mr. P. Kataki, Advocate in Criminal Appeal No.286/2017.
	: Mr. Z. Kamar, Senior Advocate, assisted by Mr. D. Talukdar, Advocate in Criminal Appeal No.290/2017.
For the Respondents	**:** Mr. R.K.D. Choudhury, Deputy Solicitor General of India, assisted by Ms. B. Devi, Advocate.
	: Mr. Sathyanarayana, Senior Public Prosecutor, NIA.
	: Mr. D.K. Das, Special Public Prosecutor, NIA, assisted by Ms. G.D. Choudhury, Advocate.
Dates of Hearing	**:** 25.04.2023; 26.04.2023; 28.04.2023; 03.05.2023; 04.05.2023; 08.05.2023; 09.05.2023; 10.05.2023; 11.05.2023; 12.05.2023; 15.05.2023; 16.05.2023; 17.05.2023; 18.05.2023; 19.05.2023; 22.05.2023 and 23.05.2023.
Date of Judgment & Order	**: 11th August, 2023.**

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

These appeals under Section 374 of the Cr.PC are directed against the judgment dated 22.05.2017 passed by the learned Special Judge, NIA in Special NIA Case No.1/2009 *[National Investigation Agency (NIA) -Vs- Shri Phojendra Hojai & 12 Ors.]*, whereby the appellants herein have been convicted and sentenced as under:-

Sl. No.	Name of the accused	Sections of law under which they found guilty	Sentence
1.	Phojendra Hojai	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 12 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
2.	Babul Kemprai	120-B IPC	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
3.	Mohit Hojai	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for Life with fine of Rs.25,000/-, i/d to further SI for 6 months.
4.	R.H. Khan	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 12 years with fine of Rs.25,000/-, i/d to further SI for 6 months.

5.	Jewel Garlosa	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for Life with fine of Rs.25,000/-, i/d to further SI for 6 months.
		16 UA (P) Act	RI for Life with fine of Rs.25,000/-, i/d to further SI for 6 months.
		20 UA (P) Act	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		25(1)(d) of Arms Act	RI for 5 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
6.	Ashringdao Warissa	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 12 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
7.	Vanlalchanna	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		25(1)(d) of Arms Act	RI for 5 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
8.	Malswamkimi	120-B IPC	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
9.	Niranjan Hojai	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for Life with fine of Rs.25,000/-, i/d to further SI for 6 months.

		16 UA (P) Act	RI for Life with fine of Rs.25,000/-, i/d to further SI for 6 months.
		20 UA (P) Act	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		25(1)(d) of Arms Act	RI for 5 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
10.	Joyanta Kr. Ghosh	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
11.	Debasish Bhattacharjee	120-B IPC	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 10 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
12.	Sandip Ghosh	120-B IPC	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
13.	Karuna Saikia	120-B IPC	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.
		17 UA (P) Act	RI for 8 years with fine of Rs.25,000/-, i/d to further SI for 6 months.

2. We have head Mr. D.K. Mishra, learned senior counsel, assisted by Mr. B. Prasad, learned counsel representing the appellants in Crl. Appeal No.238/2017 and Crl. Appeal No.237/2017; Mr. S. Borgohain, learned counsel representing the appellants in Crl. Appeal No.256/2017 and Crl. Appeal No.261/2017; Mr. Z. Kamar, learned senior

counsel, assisted by Mr. Z. Alam, learned counsel representing the appellant in Crl. Appeal No.233/2017; Mr. Z. Kamar, learned senior counsel, assisted by Mr. D. Talukdar, learned counsel representing the appellant in Crl. Appeal No.290/2017; Mr. P. Kataki, learned counsel representing the appellant in Crl. Appeal No.286/2017; Mr. B.K. Mahajan and Mr. N.J. Das, learned counsel representing the appellant in Crl. Appeal No.259/2017; Mr. N.N.B. Choudhury, learned counsel representing the appellant in Crl. Appeal No.206/2017 and Mr. A. Chowdhury, learned senior counsel, assisted by Ms. B. Chowdhury, learned counsel representing the appellants in Crl. Appeal No.205/2017 and Crl. Appeal No.262/2017. Also heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, assisted by Ms. B. Devi, learned counsel; Mr. Sathyanarayana, learned Senior Public Prosecutor, NIA; Mr. D.K. Das, Special Public Prosecutor, NIA, assisted by Ms. G.D. Choudhury, learned counsel representing the respondents.

3. It may be stated here that another case being NIA Case No.2/2009 was also registered by the National Investigation Agency (NIA) in relation to a different incident dated 11.02.2009 but with generally similar allegations. On 19.10.2010, NIA filed a petition seeking joint trial of NIA Case No.1/2009 and NIA Case No.2/2009. The learned Special Judge rejected the said prayer on 04.12.2010 but later on, vide the order dated 01.08.2013, the said prayer was accepted. The set of witnesses in both the cases were common and thus, evidence of the witnesses was commonly recorded in NIA Case No.1/2009 and NIA Case No.2/2009.

Nonetheless, despite the order of clubbing, the cases were decided by separate judgments on the same day, i.e. 22.05.2017.

4. As we have noticed that the facts in both the cases are slightly different and since the cases were decided by separate judgments, we have first taken up and heard the set of appeals arising from NIA Case No.1/2009, which are being decided by this common judgment.

5. Succinctly stated, the facts of this case are as follows:-

The prosecution alleges that a terrorist gang by the name of Dima Halam Daogah (Jewel Garlosa) [in short, "DHD(J)"], having its base in the North Cachar Hills was involved in various terrorist activities, viz. waging war against the Government by procuring illegal arms, killing innocent persons, disrupting developmental activities such as gauge conversion, construction of four lane highway, etc. The gang members captured administration of N.C. Hills District Council by overawing the elected Chief Executive Member Depolal Hojai under threat to life, etc.

The accused/appellant Jewel Garlosa was alleged to be leader of DHD(J) and the accused Niranjan Hojai was alleged to be its Commander-in-Chief. It is stated that the gang operated in North Cachar Hills and adjoining areas of Assam and required funds to carry on its activities. The members of the gang pressurized Shri Depolal Hojai (PW-126), the duly elected Chief Executive Member of the North Cachar Hills Autonomous Council (in short, "the Council") to

resign from his post and in his place, the accused Mohet Hojai, a component of DHD(J), was elected as the Chief Executive Member of the Council. In order to garner funds for fostering the terrorist activities of the DHD(J), the accused Mohet Hojai hatched a conspiracy with the accused R.H. Khan, Director of Social Welfare Department of the N.C. Hills Council and the accused Karuna Saikia, Executive Engineer, Public Health Engineering Department of the N.C. Hills Council. In furtherance of this conspiracy, the funds being received for developmental projects in the areas falling under the jurisdiction of the Council were fraudulently misappropriated and siphoned off by forging official records so that the same could be utilized for procuring arms and funding the terrorist activities of DHD(J). For this purpose, fake orders were placed and cheques were given to non-existent firms being operated by the accused Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh. From these very siphoned off funds, a sum of Rs.1 Crore was being carried by the accused Phojendra Hojai and the accused Babul Kemprai, who were apprehended on 01.04.2009 at the 14th Mile, G.S. Road, Guwahati by Maijuddin Ahmed, Sub-Inspector of Police, Basistha Police Station (PW-10). On the basis of this seizure, an First Information Report (FIR) No.170/2009 came to be registered at the Basistha Police Station for the offences punishable under Sections 120(B)/121/121(A) IPC read with Sections 25(1-B)(A) of the Arms Act and investigation was commenced. The recovered currency notes worth Rs.1 Crore were deposited in Kamrup Treasury.

6. The information about the recovery and the registration of the above FIR was forwarded to the Central Government because there was strong suspicion to suggest that the money so recovered was meant for being used in terrorist activities. The Ministry of Home Affairs, Government of India, issued an order dated 01.06.2009 (Exhibit-462), directing the NIA to conduct the investigation of the Basistha Police Station Case No.170/2009. On 05.6.2009, the NIA re-registered the case as a NIA FIR No.1/2009 (Exhibit-461) and the investigation of the case was assigned to Superintendent of Police, NIA Shri Mukesh Singh, Chief Investigating Officer (PW-150) [hereinafter referred to as the "CIO (PW-150)"].

7. The CIO (PW-150) made a prayer to the learned Chief Judicial Magistrate, Kamrup for tagging the FIR, other documents and case properties of Basistha Police Station Case No.170/2009 with the NIA Case No.1/2009, which was accepted. On 11.06.2009, the CIO filed yet another application to the learned Chief Judicial Magistrate for adding the offences punishable under Sections 17, 18 & 19 of the Unlawful Activities (Prevention) Act, 1967 to the case [hereinafter referred to as the "UA (P) Act"], which was also accepted on the same day.

8. The prosecution further alleges that the funds siphoned off from the PHE Department and Social Welfare Department of the Council were routed to the accused Phojendra Hojai and accused Malswamkimi, who engaged the originally charge-sheeted accused George Lam Thang, for getting the same converted to US Dollars at Kolkata. It is

further alleged that this siphoned off money so converted to US Dollars was provided to the accused Vanlalchhana who procured illegal arms and ammunition from foreign countries, viz. Bangladesh, Myanmar, etc. The weapons were so procured at the behest of the accused Jewel Garlosa so as to facilitate the terrorist gang DHD(J) to carry on its illegal terrorist activities.

9. The Investigating Officer deputed his associates, namely, Shri Harish Singh Karmyal, Inspector of Police (PW-56); Shri Devinder Singh, Deputy Superintendent of Police (PW-59); Shri Hemen Das, Sub-Inspector of Police (PW-74); Swayam Prakash Pani, Superintendent of Police (PW-146); Shri Sanjay Kumar Malviya, Inspector of Police (PW-147); Shri Santosh Kumar, Inspector of Police (PW-148) and Shri Khadak Singh Thakur, Deputy Superintendent of Police (PW-149), to carry out different steps of investigation. The statements of material witnesses were recorded.

10. The CIO (PW-150) claims to have received information regarding a cache of arms and ammunitions hidden in Sarong Veng area of Mizoram upon which, Shri Harish Singh Karmyal, Inspector of Police (PW-56) was directed to proceed to Aizawl because the arms and ammunitions were suspected to be linked with the NIA Case No.1/2009. Shri Harish Singh Karmyal, claims to have reached Aizawl on 28.07.2009. It would be apposite to mention here that prior thereto, an FIR No.238/2009 had already been registered at the Aizawl Police Station on 18.07.2009 for the offence punishable under Sections

25(1)(a), 1(b) of the Arms Act in connection with the same cache of arms.

11. Shri Harish Singh Karmyal, Inspector of Police (PW-56) claims to have participated in the interrogation of the accused Vanlalchhana being undertaken by the Investigating Officer of Aizawl Police Station Case No.238/2009, namely, K. Lalnithanga (PW-13), and a disclosure statement of Vanlalchhana (Exhibit-43) was allegedly recorded on 30.07.2009 and acting in furtherance thereof, recovery of a cache of arms and ammunition was shown to have been effected on the very same day from the house of one Lalrova. Custody of accused Vanlalchhana was taken in the NIA Case No.1/2009 under orders of the Magistrate concerned of Aizawl.

12. During the course of investigation, various Computer Hard Disks were recovered from the Office of the Social Welfare Department of the N.C. Hills Council. The documents, i.e. bills, purchase orders, etc., granted to the accused Jayanta Kumar Ghosh and Debashish Bhattacharjee were also seized. The Investigation Agency further claims that the contracts for procurement were granted to the firms of accused Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh without following the due process of law. The procurements were made at steep rates. The contractors were paid money in advance. The cheques provided to them against the unethical procurement orders were deposited into newly opened Bank accounts, the details whereof were collected, which reflected that huge

withdrawals were made immediately after the cheques being deposited and from these very withdrawn amounts, a sum of Rs.1 Crore was being transported by the accused Phojendra Hojai on 01.04.2009, which was intercepted and seized.

13. The Call Detail Records (CDRs), voice recordings, the Hard Disks seized during investigation were forwarded for analysis by scientific experts and reports were procured. After concluding the investigation, in the month of November, 2009, the CIO (PW-150) claims to have forwarded the case file to the competent authority seeking prosecution sanction under Section 45(1) of the UA (P) Act. The competent authority proceeded to issue an order dated 15.11.2009 (Exhibit-301) granting sanction to prosecute the arrested accused in the following terms:-

"No.11034/10/2009-IS-VI(Pt)
Government of India
Ministry of Home Affairs
(Internal Security-I Division)

North Block, New Delhi
the 15th November, 2009

ORDER

WHEREAS in respect of Crime No.170/2009 dated 1st April, 2009 of Basistha Police Station, Guwahati City, Assam u/s 120-B, 121 and 121(A) of IPC and 25(1-B)(A) Arms Act that was registered after the search of two vehicles at 14th Mile, GS Road, Guwahati and two pistols from accused Phujendra Hojai and Rs. One Crore Indian Currency from accused Babul Kamprai meant for Dima Halem Dougah (DHD(J)) a terrorist gang active in North-Eastern region were recovered, the Central Government in exercising the powers conferred under section 6(5) of the National Investigation Agency Act, 2008 vide Ministry of Home Affairs' Order No.17011/50/2009-IS.VI dated 1st June, 2009 directed the National Investigation Agency to investigate the above case. The National Investigation Agency registered the above case as Crime No.01/09 u/s

120-B, 121(A) of IPC 25(1-B)(A) Arms Act. And subsequently section 17, 18 and 19 of the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004 and 2008) were added and took up investigation of the case.

WHEREAS the Central Government in the terms of the provisions of Section 45(2) of the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004 and 2008) and the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 constituted an Authority and referred the case to the authority so constituted, for the purpose of making an independent review of the evidence gathered in the course of investigation.

WHEREAS the Authority has after being satisfied on the materials available on the records and on the facts and circumstances stated therein, recommended sanction for prosecution.

AND WHEREAS the National Investigation Agency also moved the Central Government for sanction for prosecution u/s 196 Cr.P.C. to prosecute offenders under Section 121 and 121A IPC.

NOW, THEREFORE, the Central Government in pursuance of Section 45(1) of the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004 and 2008) and 196(a) and (b) of Cr.P.C., 1973, after fully and carefully examining the materials before it in regard to the circumstances of the case and the recommendation of the Authority as mentioned above, hereby accords sanction of prosecution for offences under 120(B), 121 and 121(A) of IPC, Section 16, 17, 18, 19 and 20 Unlawful Activities (Prevention) Act, 1967 (as amended in 2004 and 2008) and 25(1)(d) of Arms Act against Phojendra Hojai, Babul Kamprai, Mohit Hojai, Md Redaul Hussain Khan, Jewel Garlosa @ Mihir Barman @ Debojit Singa, Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Samir Ahmed, Vanlalchhama @ Vantea, Malsawmkimi, George Lam Thang, Niranjan Hojai, Jayanta Kr. Ghosh, Debasis Bhattacharjee and Sandip Kr Ghosh @ Shambhu Ghosh, and for taking cognizance of the said offence by a Court of Competent iurisdiction.

BY ORDER AND IN THE NAME OF
THE PRESIDENT OF INDIA

R V S MANI
UNDER SECRETARY TO THE GOVERNMENT OFNDIA"

14. After completion of investigation, charge-sheet came to be filed against the accused persons with the following conclusions:-

> *"On the basis of investigation made and evidence so collected, there is sufficient evidence to prosecute A-1 to A-14 under sections 120(B), 121, 121A IPC, and sections 16, 17, 18 and 20 UA(P) Act and also against A-1 and A-8 u/s 25(1)(d) Arms Act and section 19 of UA(P) Act against A-7.*
>
> *The sanction for prosecution under section 45(2) UA(P) Act and section 196 CrPC has been obtained which is enclosed herewith.*
>
> *It is therefore prayed that the accused Phojendra Hojai A-1, Babul Kemprai A-2, Mohet Hojai A-3, RH Khan A-4, Jewel Garlosa A-5, Ahshringdao Warisa A-6, Samir Ahmed A-7, Vanlalchhana A-8, Malsawmkimi A-9, George Lawmthang A-10, Niranjan Hojai A-11, Jayanta Kumar Ghosh A-12, Debashis Bhattacharjee A-13 and Sandip Ghosh A-14 may please be summoned and tried as per provisions of law. It is also prayed that necessary process may be started to secure the presence of the accused Niranjan Hojai in the court of law to face trial since he is in the custody of the State.*
>
> *Since the involvement of Public Servants in NC Hills for misappropriation of Government funds and their criminal misconduct, forgery etc has been revealed, the matter is being referred to the Central Government for investigation by the CBI after obtaining necessary consent from the State of Assam or investigation by the Anti-Corruption Branch of Assam Police."*

It may be mentioned that the DHD(J) came to be declared as a terrorist organisation on 09.07.2009, i.e. well after registration of the case at hand.

15. The Special Court, NIA framed charges against the accused, which are briefly reproduced herein below in a tabular form for the future reference:-

1.	Phojendra Hojai	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.

2.	Babul Kemprai	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
3.	Mohet Hojai	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
4.	Redaul Hussain Khan	Under Section 120B IPC and Section 17/18 of the UA (P) Act.
5.	Jewel Garlosa @ Mihir Barman	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
6.	A. Warisa @ Partho Warisa	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
7.	Samir Ahmed	Under Section 19 of the UA (P) Act.
8.	Vanlalchhana @ Vantea @ Joseph Mizo	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
9.	Malswamkimi	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
10.	George Lamthanga	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
11.	Niranjan Hojai @ Nirmal Rai	Under Section 120B/121/121A IPC, Section 16/17/18/20 of the UA (P) Act and 25(1)(d) of Arms Act.
12.	Jayanta Kumar Ghosh @ Dhruba	Under Section 120B IPC and Section 17/18 of UA (P) Act.
13.	Debashis Bhattacharjee @ Bapi	Under Section 120B IPC and Section 17/18 of UA (P) Act.
14.	Sandip Kumar Ghosh @ Sambhu Ghosh	Under Section 120B IPC and Section 17/18 of UA (P) Act.
15.	Karuna Saikia	Under Section 120B IPC and Section 17/18 of UA (P) Act.

16. The language of charges read over to the accused would require consideration at an appropriate stage of discussion and hence, the same is being reproduced herein below for the sake of ready reference:-

"Charge with 8 Heads
(No.XXVIII (I), SCHEDULE V, Act 1838)
(Sections 221, 222, 223 of Code of Criminal Procedure)

I, Md. I. Hussain,
Special Judge, N.IA.
Assam, Guwahati

hereby charge you –

1. *Sri Phojendra Hojai*
2. *Sri Babul Kemprai*
3. *Sri Mohit Hojai*
4. *Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha*
5. *Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha*
6. *Sri Vanlalchhana @ Vantea @ Joseph Mizo*
7. *Smt. Malswmkimi*
8. *Sri George Lawmthanga*
9. *Sri Niranjan Hojai @ Nirmal Rai*

As follows :-

Firstly –

That, you after forming terrorist gang DHD(J) or Black Widow in 2004 and particularly during the period of January to March, 2009 entered into agreement with Redaul Hussain Khan, Jayanta Kumar Ghoah, Karuna Saikia, Debashish Bhattacharjee and Sandip Ghosh to do illegal act or an act which is not illegal but by illegal means i.e. to raise fund for the terrorist gang by siphoning Govt. fund, convert Indian currency to US dollar, to procure arms and ammunition to wage war, caused death of innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc. and thereby committed an offence punishable u/s 120B I.P.C. and within my cognizance,

Secondly-

You after forming said terrorist gang in 2004 entered into conspiracy amongst its members to wage war against the Government or attempts to wage war or abets the waging of such war and thereby committed an offence punishable under Section 121A I.P.C. and within my cognizance,

Thirdly-

You after forming said terrorist gang in 2004 wage war against the Government by procuring illegal arms,

killing innocent persons, disrupts developmental activities such as gauge conversion, construction of four lane Highway, captured administration of NC Hills District Council by overawing elected CEM Dipolal Hojai under threat to life etc. and thereby committed an offence punishable under Section 121 IPC and within my cognizance.

Fourthly-

That you being a member of Dima Halim Daogah, in short DHD(J), a terrorist gang did terrorist act by killing ten innocent truck drivers in May, 2008, seven CRPF personnel and seven Assam Police personnel in 2008, disrupted developmental works such as gauge conversion, construction of East West corridor which are essential service to the life of the citizen, kidnap and abducts persons tor ransom, overawed elected CEM Dipolal Hojai of NC Hills District Council in January 2009 etc. and thereby committed an offence punishable under Section 16 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance,

Fifthly-

That you after forming terrorist Gang DHD(J) in 2004 directly or indirectly involved raising and collecting funds or attempts to collect funds by extortion, kidnapping, siphoning and defalcation of Gov. fund through Mohit Hojai and others and in committing such activities kidnapped R.S. Gandhi and realized Rs.4.5 Crore, siphoning Govt. fund with the help of Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh by paying money without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bill, vouchers, delivery challan, money receipt etc. and thereby committed an offence punishable under Section 17 of the Unlawful Activities (Prevention) Act,1967 and within my cognizance.

Sixthly-

That you after forming terrorist gang DHD(J) in 2004 conspires, attempts to commit or abets, advises, incites, directs for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act and thereby committed an offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance,

Seventhly-

That you being a member of Dima Halim Daogah, in short DHD(J) involved in terrorist act as mentioned in the foregoing Head of Charge in fourth head and thereby committed an offence punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967 and, within my cognizance.

Eighthly –

That you after forming Dima Halim Daogah, in short DHD(J) a terrorist gang, in 2004, purchased illegal arms and ammunition from the International market, particularly the Cox bazaar of Bangladesh and brings into Indian Union, in contravention of Section 11 of the Arms Act, and thereby committed an offence punishable under Section 25(1)(d) of the Arms Act and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charges.

Sd/- illegible
4.8.12
Special Judge, N.I.A,
Assam, Guwahati

Particulars of charges is read over and explained to the accused persons to which they all pleaded not guilty and claimed to be tried.

Dated this 4th day of August, 2012.

Sd/- illegible
4.8.12
Special Judge, N.I.A,
Assam, Guwahati

Charge with 3 Heads
(No.XXVIII (I), SCHEDULE V, Act 1838)
(Sections 221, 222, 223 of Code of Criminal Procedure)

I, Md. I. Hussain,
Special Judge, N.I.A.
Assam, Guwahati

hereby charge you –

1. *Sri Karuna Saikia*
2. *Sri Jayanta Kumar Ghosh*
4. *Sri Debasish Bhattacharjee.*
4. *Sri Sandip Ghosh*

as follows:-

Firstly-

That, you after formation of Dima Halim Daogah i.e. DHD(J) in 2004 and particularly from January to March 2009, entered into an agreement with the members of DHD(J) to do illegal act or an act which is not illegal but by illegal means to help them in raising their funds and in order to commit said illegal acts siphoned off Govt. money allotted for development of N.C. Hills district, handed over the money to the terrorist gang DHD(J) through Mohit Hojai in raising the fund, convert Indian currency to US dollar to procure arms and ammunition to assist in continuing terrorist acts and thereby committed an offence punishable u/s 120B I.P.C. and within my cognizance,

Secondly-

That you during the period from 2004 to 2009 directly involved in raising and collecting funds or attempts to collect funds for DHD(J) by siphoning of and defalcation of Govt. fund allotted for development of N.C. Hills district and in doing so, payments were made without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challans, money receipts etc. and thereby committed an offence punishable under Section 17 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance.

Thirdly-

That you during the said period conspires, attempts to commit or abets, advises, incites, directs the terrorist gang DHD(J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act and thereby committed an offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance,

And I hereby direct that you be tried by the said Court on the said charges.

Sd/- illegible
4.8.12
Special Judge, N.I.A,
Assam, Guwahati

Particulars of charges is read over and explained to the accused persons to which they all pleaded not guilty and claimed to be tried.

Dated this 4th day of August, 2012.

Sd/- illegible
4.8.12
Special Judge, N.I.A,
Assam, Guwahati

Charge with 3 Heads
(No.XXVIII (I), SCHEDULE V, Act 1838)
(Sections 221, 222, 223 of Code of Criminal Procedure)

I, Md. I. Hussain,
Special Judge, N.A.
Assam, Guwahati

hereby charge you –

Sri Redaul Hussain Khan

as follows :-

Firstly-

That, you after formation of Dima Halim Daogah i.e. DHD(J) in 2004 and particularly from January to March 2009, entered into an agreement with the members of DHD(J) to do illegal act or an act which is not illegal but by illegal means to help them in raising their funds and in order to commit said illegal acts siphoned off Govt. money allotted for development of N.C. Hills district, handed over the money to the terrorist gang DHD(J) through Mohit Hojai in raising the fund, convert Indian currency to US dollar to procure arms and ammunition to assist in continuing terrorist acts and thereby committed an offence punishable u/s 120B I.P.C. and within my cognizance,

Secondly –

That you during the period from 2004 to 2009 directly involved in raising and collecting funds or attempts to collect funds for DHD(J) by siphoning of and defalcation of Govt. fund allotted for development of N.C. Hills district and in doing so, payments were made without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challans, money receipts etc. and thereby committed an offence punishable under Section 17 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance.

Thirdly –

That you during the said period conspires, attempts to commit or abets, advises, incites, directs the

terrorist gang DHD(J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act and thereby committed an offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance,

And I hereby direct that you be tried by the said Court on the said charges.

Sd/- illegible
6.8.12
Special Judge, N.I.A,
Assam, Guwahati

Particulars of charges is read over and explained to the accused persons to which they all pleaded not guilty and claimed to be tried.

Dated this 6th day of August, 2012.

Sd/- illegible
6.8.12
Special Judge, N.I.A,
Assam, Guwahati

Charge with 1 Head
(No.XXVIII (I), SCHEDULE V, ACT 1838)
(Sections 221, 222, 223 of Code of Criminal Procedure)

I, Md. I. Hussain,
Special Judge, N.I.A,
Assam, Guwahati.

Hereby charge you-

Sri Sameer Ahmed

As follows :-

Firstly-

That, you during the period 2009 voluntarily harboured or concealed Sri Jewel Garlosa and Sri Ahshringdaw Warisa being the members of terrorist gang DHD(J) by providing them shelter at Bangalore and assisted in procuring driving license with false documents and thereby committed an offence under Section 19 of the Unlawful Activities (Prevention) Act, 1967 and within my cognizance

And I hereby direct that you be tried by the said Court on the said charges.

Sd/- illegible
6.8.12
Special Judge, N.I.A,
Assam, Guwahati

Particulars of the charge is read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
Dated this 6th day of August, 2012.

Sd/- illegible
6.8.12
Special Judge, N.I.A,
Assam, Guwahati"

Samir Ahmed confessed to the charges and was convicted and sentenced accordingly.

17. The accused George Lam Thang, filed an application to turn approver and accordingly, he was granted pardon by the Special Court vide order dated 06.11.2013 and was taken into custody. His statement was recorded under Section 164 Cr.PC (Exhibit-76). The other accused denied the charges and claimed to be tried.

18. The prosecution examined altogether 150 witnesses and exhibited 464 documents and 71 material articles so as to bring home its case. Upon being questioned under Section 313 Cr.PC and when confronted with the circumstances appearing against them in the prosecution evidence, the accused emphatically denied the same, claimed to be innocent and also claimed that they had been falsely implicated in the case. One witness was examined and 15 documents were exhibited in defence.

19. After hearing the arguments advanced by the learned Public Prosecutor and the defence counsel and appreciating the evidence available on record, the trial Court proceeded to convict and sentence the appellants as above vide the impugned judgment dated 22.05.2017 passed in NIA Case No.1/2009, which is assailed in this bunch of appeals. It may be noted that the accused Malswamkimi did not file appeal against the impugned judgment and has served out the sentences awarded to her by the trial Court.

20. The trial Court formulated 11(eleven) points for determination, which are reproduced herein below for the sake of ready reference. (It may be stated here that point Nos.(x) and (xi) are verbatim the same and hence, point No.(xi) is omitted.):-

> *"(i) Whether the accused persons namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal Rai after forming terrorist gang DHD(J) or Black Widow in 2004 and particularly during the period of January to March, 2009, entered into an agreement with Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Ghosh to do illegal act or an act which is not illegal but by illegal means, i.e., to raise fund for the terrorist gang by siphoning off Govt. fund, convert Indian currency to US dollar, to procure arms and ammunition to wage war, caused death of innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc.?*
>
> *(ii) Whether the accused persons, namely: Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo,*

Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal after forming said terrorist gang in 2004, entered into conspiracy amongst its members, to wage war against the Government or attempts to wage war or abets the waging of such war?

(iii) Whether the accused persons, namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojlt Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal after forming said terrorist gang in 2004, wage war against the Government by procuring illegal arms, killing innocent persons, disrupts developmental activities such as gauge conversion, construction of four lane Highway, captured administration of NC Hills District Council by overawing elected CEM Dipolal Hojai under threat to life etc?

(iv) Whether the accused persons namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ MIhir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal being a member of Dima Halim Daogah, in short DHD (J), a terrorist gang did terrorist act by killing ten innocent truck drivers in May, 2008; seven CRPF personnel and seven Assam Police personnel in 2008, disrupted developmental works such as gauge conversion, construction of East West corridor which are essential service to the life of the citizen, kidnap and abducts persons for ransom, overawed elected CEM Dipolal Hojai of NC Hills District Council in January 2009 etc.?

(v) Whether the accused persons, namely:- Sri Phojendra Hojal, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojal @ Nirmal after forming terrorist gang DHD(J) in 2004 directly or indirectly involved raising and collecting funds or attempts to collect funds by extortion, kidnapping, siphoning and defalcation of Govt. fund through Mohit Hojai and others and in committing such activities kidnapped R.S. Gandhi and realized Rs.4.5 crore, siphoning Govt. fund with the help of Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh by paying

money without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challan, money receipt etc.?

(vi) Whether the accused persons, namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anardra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal after forming terrorist gang DHD(J) in 2004 conspires, attempts to commit or abets, advises, incites, directs for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US dollar to procure arms to the commission of such terrorist act?

(vii) Whether the accused persons, namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ MIhir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal being a member of Dima Halim Daogah, in short DHD (J) involved in terrorist act by killing ten innocent truck drivers in May, 2008; seven CRPF personnel and seven Assam Police personnel in 2008, disrupted developmental works such as gauge conversion, construction of East West corridor which are essential service to the life of the citizen, kidnap and abducts persons for ransom, overawed elected CEM Dipolal Hojai of NC Hills District Council in January 2009 etc.?

(viii) Whether the accused persons, namely:- Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal after forming Dima Halim Daogah, in short DHD(J), a terrorist gang, in 2004, purchases illegal arms and ammunition from the International market, particularly the Cox bazaar of Bangladesh and brings into Indian Union, in contravention of Section 11 of the Arms Act?

(ix) Whether the accused persons, namely:- Sri Redaul Hussain Khan, Sri Karuna Saikia, Sri Jayanta Kumar Ghosh, Sri Debasish Bhattacharjee, Sri Sandip Ghosh after formation of Dima Halim Daogah i.e. DHD(J) in

2004 and particularly from January to March, 2009, entered into an agreement with the members of DHD(J) to do illegal act or an act which is not illegal but by illegal means to help them in raising their funds and in order to commit said illegal acts siphoned off Govt. money allotted for development of N.C. Hills district, handed over the money to the terrorist gang DHD(J) through Mohit Hojai in raising the fund, convert Indian currency to US dollar to procure arms and ammunition to assist in continuing terrorist acts?

(x) Whether the accused persons, namely:- Sri Redaul Hussain Khan, Sri Karuna Saikia, Sri Jayanta Kumar Ghosh, Sri Debasish Bhattacharjee, Sri Sandip Ghosh after formation of Dima Halim Daogah i.e. DHD(J) in 2004 and particularly from January to March, 2009, conspires, attempts to commit or abets advises, incites, directs the terrorist gang DHD(J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act?"

21. The learned trial Court analyzed the evidence and culled out the individual role of each accused. For better appreciation of the case, it would be apposite to reproduce verbatim the conclusions drawn by the trial Court *qua* each individual accused in the impugned judgment:-

Phojendra Hojai

"61. Thus the role played by accused Phojendra Hojai becomes apparent from the evidence of the evidence of aforementioned witnesses discussed herein above. We find no ground to disbelieve their versions which are clear and cogent and able to inspire our confidence. The submission of the ld. counsel for the accused is, thus, found to be devoid of merit. The facts and circumstances transpiring against the accused Phojendra Hojai can be recapitulated as under:

1. *He was carrying a sum of Rs.1.00 crore on 01.04.2009 from Guwahati to Shillong along with Babul Kemprai and caught red handed at 14th Miles G.S. Road.*

2. *Two pistols were found with him, one with licence and another without licence and three blank letter*

heads of DHD (Jewel) and one letter of Mohit Hojai written to Supdt. Engineer, PWD (R&B), NC Hills, Haflong to award contract of Rs.88 lacs to him, also found with him.

3. *He has given money on three occasions to Malswamkimi amounting to Rs.4.00 crore, one occasion Rs.1.00 crore and on another occasion Rs.2.00 crore and on another occasion Rs.1.00 crore for conversion to U.S. Dollars.*
4. *The money, so converted to U.S. Dollars by Malswamkimi goes to the hand of Vanlalchanna @ Vantea.*
5. *He received phone call from accused Mohit Hojai and Niranjan Hojai while he was in custody and taken to Basistha P.S. and found recorded in his Mobile hand set.*

Babul Kemprai

62. The role played by this accused Babul Kemprai is very limited. And from the evidence of the witnesses discussed here in above, the facts and circumstances appearing against him can be recapitulated as under:-

1. *He was carrying a sum of Rs.1.00 crore wrapped by a blanket, on 01.04.2009 from Guwahati to Shillong in a hired Tata Sumo vehicle along with Phojendra Hojai and caught red handed at 14th miles G.S. Road.*
2. *No plausible explanation has been offered by him for carrying such a huge sum in his vehicle.*
3. *He was seen in the flat of accused Mohit Hojai on 31.03.2009 by P.W. 115 Shri Sonam Lama.*
4. *He has gone out of Guwahati in Tata Sumo vehicle of Chandra Sharma on 01.04.2009 and arrested on that day and P.W.115 seen him and Phojendra Hojai in T.V. News to the evening.*

Mohet Hojai

127. The accused has cross-examined the witnesses mentioned herein above, but nothing tangible could be elicited to discredit them. On a dispassionate analysis of the above evidence the facts and circumstances appearing against accused can be recapitulated as under:-

(i) He has written a letter to the Supdt. Engineer, PWD (R&B), NC Hills, Haflong to award contract of

Rs.88.00 lacs to A-1, Shri Phojendra Hojai, which was found in possession of A-1 while he was carrying Rs.1.00 crore along with Babul Kemprai on 01.04.2009 and intercepted by Police at 14th mile, Jorabat.

(ii) He has connection with Shri Karuna Saikia A-15, and gets some cheque issued in the name of some persons viz. Dilip Phonglong and Munna Phonglong, without allotting any contract works to them and got the cheques encashed through them and collects the amounts.

(iii) He called Kalyan Brata Mukharjee Executive Engineer PHE Haflong to Hotel Pragati Manor in the month of March 2009, and forced him to issue cheques to some firms registered in the name of Debasish Bhattacharyee without supply of any material by them.

(iv) He compelled Nikhil Kanta Nath to verify bills of Maa Trading for payment without receiving any materials.

(v) Despite weak position of PLA fund, and despite recommendation of the Principal Secretary, NCHAC he approved withdrawal of amount more than recommended.

(vi) Immediately after resignation of Depolal Hojai he became CEM of NCHAC and the resignation of Depolal Hojai is a consequence of conspiracy hatched by him with other accused.

(vii) George Lamthang, who was instrumental in converting money to US Dollars at Kolkata, possessed one Mobile no.9903234905 and the Subscriber ID of the same was as Mohet Hojai, and the service provider was Airtel.

(viii) He sent money to Kolkata meant for Joyanta Kr. Ghosh through witness Imdad Ali PW-35.

(ix) He sent money to Kolkata on several occasion through hundi Operators namely Shyamji.

(x) He was in touch with accused Phojendra Hojai while he was carrying a sum of Rs.1.00 Crore on 01.04.2009 and the same was recorded in the mobile of A-1.

(xi) One Note dated 3rd Nov. 2008, in his name, addressed to Principal Secretary, N.C. Hills Autonomous Council requesting him to issue supply

order of different materials, sewing machines etc. under Social Welfare and Anganwadi Materials under ICDS Project and construction works as per the approve rate of Autonomous Council, Haflong for the year 2008-2009 to the list suppliers/firms enclosed there with, which also contains the name of the firms of accused Debasish Bhattacharyee, were recovered in the Material Object no.78, is a hard. Disc bearing SI. No.WMAT13626680 and in the Material Object no.79, is another hard disc bearing SI. No.6RADASTD, which were seized from the official computer of accused R.H. Khan thereby established his nexus with accused R.H. Khan and accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh.

R.H. Khan

164. Thus the facts and circumstances appearing against this accused, from the evidence discussed herein above, which could not be shaken in cross-examination, can be recapitulated as under:-

(i) At the relevant time he was working as Deputy Director, Social Welfare Department, NCHAC.

(ii) Though he was posted as Deputy Director, Social Welfare Department, NCHAC, yet he was also working as liaison officer of the council during the period of Governor's rule.

(iii) He has allotted contract works for supply of material to some firms, registration of which were not even renewed beyond 31st March of the Financial year 2008.

(iv) While awarding contract works the Assam Financial Rules have not been followed.

(v) He took signatures of the Secretary Minerate Club Md. Zagir Khan on some papers after giving him Rs.15,000/- and Rs.25,000/- respectively for the club. In lieu of that he got some papers signed from him in respect of the above.

(vi) While distributing the food items to Anganwadi Centre the procedure was not been followed by him and he has specifically told the Supervisors not to fill up the quantities of the food item given to the Anganwadi Centre and obtain their signatures on the blank challans.

(vii) *Some of the money receipts of the bills paid by him bears forged signature of the proprietor of the Firms who have allegedly supplied the materials to the department.*

(viii) *The C-DAC has recovered a few bills, challans, and work orders from the unallocated areas of hard discs, the Material Object no.78, bearing SI. No.WMAT13626680 and Material Object no.79, bearing SI. No.6RADA5TD which were shown to have been seized from Mrs. Phionica Swer as evident from the report vide Ext 306 at page 11 and 12.*

(ix) *He failed to give any plausible explanation as to how bills, challans, and work orders finds place in the hard disc of his office computers. This shows his nexus with accused Mohit Hojai and Bedasish Bhattacharyee.*

(x) *One Note in the name of Mohit Hojai, addressed to Principal Secretary, NCHAC was retrieved from the Hard Discs of his computer. This shows his nexus with accused Mohit Hojai.*

(xi) *Bills of some SHGs were recovered from the Hard Discs to which supply orders have been given and payments have been made but the SHGs could not be traced out by the Post Man, for which reasonable inference could be drawn that the bills were false.*

(xii) *A sum of Rs.4,00,000/ was recovered from his house and he failed to account for such possession.*

(xiii) *There were short supply of materials by the suppliers as evident from the version of PW-37, and while he informed accused he advised him to receive the materials telling him that supply will be made later on.*

(xiv) *He has given Ext. 70/28, 70/29, 70/32, 70/33, 70/34, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/44, 70/43, 70/47, 70/48, 70/49, 70/51, 70/52, 70/53 to PW-45 along with the bills which were not of the proprietors of the concerned firms and payment were not made by cheque.*

Jewel Garlosa

Thus the role played by this accused can be recapitulated as under:

1. *DHD (Dima Halam Daogah) a militant organization led by Jewel Garlosa,*

2. *The arms and ammunition requires for operation of the organization were purchased locally also used to get from Bangladesh.*

3. *He is the Chairman and Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the C-in-C.*

4. *On 1.1.2003, the organisation declared cease fire and the 300 cadres were shifted to the Designated camp.*

5. *In Oct., 2003 he formed another militant organisation in the name DHD(J).*

6. *Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and accusing finger is pointed out to DHD(J) and Maorung Dimasa, who belong to DHD(J).*

7. *Many efficient govt. officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD(J) and there was killing and kidnapping.*

8. *There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, and food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD(J) group had resorted to firing on moving train.*

9. *Because of counter insurgency operations, laying down of arms by DHD(J) cadres in March/April, 2010 took place but there was apprehension that all the arms and ammunition of DHD(J) were not handed over at the time of laying down of arms.*

10. *On 08-07-10, at Disa Kisn area search was conducted and several gunny bags containing sophisticated weapons including AK-47, M-16 pistols, Lithod guns as well as M-21 Rifles and in connection Haflong P.S. Case No.54/2010 was registered.*

11. *He was apprehended in a Gym and Partho Warisa was apprehended in a flat 102, 1st Floor Pankaj Residency along with Samir Ahmed and they were brought to Guwahati on 05-06-09, and among other thing, one driving licence No-KA -2509/09-10 in the name of Jewel Garlosha as Debojit Sinha having his photograph was found and seized.*

12. *E-mails sent by him to NDFB organisation were recovered from one e-mail ID 'dimahasao@yahoo.com' with password TOMAHAWK belonging to accused Ashringdao Warissa, on the disclosure made by accused Ashringdao Warissa.*

13. *Three blank letter heads of DHD (Jewel) have been recovered from the possession of Phojendra Hojai on 01.04.2009, while he was carrying Rs.1.00 crore to Shillong.*

Ashingdao Warissha @ Partho Warisa

Thus the facts and circumstances appearing against this accused can be recapitulated as under:-

1. *He was caught at a Flat of Bangalore on 03.06.2009, and he provided shelter to accused Jewel Garlosha, the C-in-C of DHD(J).*
2. *He had communication with DHD(J) and an e-Mails sent by accused Jewel Garlosha to NDFB organisation was recovered from one e-Mail ID dimahasao@yahoo.com to that effect.*
3. *He visited Aizwal and concealing his real identity of Ashrigdao Warissa.*
4. *Rs.10,00,000/ was deposited in his bank account at Standard Chartered Bank Guwahati, within a short span of time, and there is no plausible explanation to show wherefrom the money came.*

Vanlalchhanna @ Vantea @ Joseph Mizo

225. Thus the incriminating materials apparent from the evidence discussed above can be recapitulated as under:

1. *He used the service of Malswamkimi to convert money that he received from Phojendra Hojai at Kolkata, to US Dollars.*
2. *After conversion of money to US Dollars he received the same from Malswamkimi.*
3. *At his instance the arms and ammunitions recovered and seized from the house of Sarong Vang were recovered and the same was in his exclusive knowledge.*
4. *He often visited Kolkata, and on two occasions he visited abroad with Indian Passport.*

5. *He identified the photographs of accused Niranjan Hojai and Jewel Garlosha in a photo identification exercise carried out on 08.08.2009.*

Malswamkimi

238. Thus the facts and circumstances, that have been emerged against the accused Malswamkimi, can be recapitulated as under:-

1. *She was engaged by accused Vanlalchanna for conversion of money to US Dollars.*
2. *She used to bring money from Aizwal to Kolkata for conversion. In the month of August, 2008, she brought Rs.15 lakhs from Aizwal for conversion to US Dollar. In Oct., 2008, she brought Rs.20 lakhs for conversion to US Dollar from Aizwal. In April, 2009; May, 2009; June, 2009; July, 2009, Malsawmkimi brought Rs.15 lakhs from Aizwal from conversion into US Dollar.*
3. *She was collecting the money from Phojendra Hojai to the tune of Rs.4.00 crore, with PW-29, at the behest of Vanlalchana. First in Nov., 2008, from Madhumilan Hotel at Kolkata she collected Rs.1 crore from Phojendra Hojai. Thereafter in Feb., 2009, she collected Rs.2 crore from Phojendra Hojai from Madhumilan Hotel at Kolkata. Then in March, 2009, she collects Rs.1 crore from Phojendra Hojai from Shalimar Hotel at Kolkata.*
4. *A sum of Rs.10,00,000/- was recovered from her possession at Shalimar Hotel Kolkata on the basis of her disclosure statement Ext-257.*
5. *She was earning commission for her job of conversion of money to US Dollars."*

It may be reiterated that Malswamkimi did not challenge the judgment of the trial Court and was released after serving out the sentence awarded to her.

Niranjan Hojai

303. Thus the facts and circumstances appearing against the accused from the evidence discussed above, and which the prosecution side has been abled to prove, can be recapitulated as under:-

(i) In Oct., 2003 Jewel Garlosa formed one militant organisation in the name DHD(J).

(ii) He (Niranjan Hojai) was the C-in-C of the DHD(J), and Jewel Garlosa was the Chairman of DHD(J).

(iii) On 2nd October, 2009 DHD(J) cadres surrendered formally and in the aforesaid ceremony Niranjan Hojai was the Sr. most DHD(J) cadres along with other cadres who led the surrendered ceremony.

(iv) There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD(J) group had resorted to firing on moving train.

(v) On the disclosure made by Vanlalchanna, an identification memo was prepared in which he identified the photographs of Niranjan Hojai & Jewel Garlossa. This shows his familiarity with Vanlalchann, the arms supplier.

(vi) He was at Kualampur in February 2009, and PW-23 Kulendra Daulagapu meets him there.

(vii) Various documents, bank A/c including City Bank A/c, Royal Thai orchid A/c and credit card, Marriott club card etc. which he was carrying in the name of Nirmal Rai while staying at Nepal, concealing his real identity.

(viii) It was he, under whose dictation Depolal Hojai has submitted resignation from the post of CEM of NCHDAC.

(ix) He has connection with Mohit Hojai the then CEM of NCHAC, at whose instance the Govt. funds meant for development of NCHAC were defalcated and channelized to the DHD(J) through the Govt. servants and contractors.

Jayanta Kr. Ghosh

(i) He used to do contract works in name of five firms registered in the name of Debasish Bhattacharyee viz. (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee, permits of which were valid upto 31.03.2008 only.

(ii) He has nexus with accused Mohit Hojai who was the CEM of NCHAC at the relevant time.

(iii) He remained present at Hotel Pragati Manor in the month of March 2009, where accused Mohit Hojai

and the Executive Engineer PHE, Haflong K.B. Mukherjee and Executive Engineer of Maibong Division, Sh. Kuton Namasudia also remained present and at that time CEM, Sh, Mohet Hojai directed Executive Engineers to issue all the cheques in favour of Maa Trading, a firm of accused Joyanta Kr. Ghosh registered in the name of Accused Debasish Bhattacharyee.

(iv) Having received the cheques he got two accounts opened at BI Zoo Road Branch in the name of two firms proprietor of which were Mr. Debasish Bhattacharyee on 27.03.2009 and deposited a high value cheque of Rs.1.3 crore and withdrawn a huge amount Rs.84,00,000/- after two days.

(v) He had nexus with accused Mohit Hojai and Mohit Hojai told PW-21 – Shri Chandra Sharma to meet him (accused Joyanta Ghosh) and sent one man with a packet and having received the same he handed it over to him (Joyanta Kr. Ghosh).

(vi) He had nexus with Imdad Ali who carried mony of accused Mohit Hojai on several occasions to Kolkata.

(vii) Once while PW-34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. ·Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs.1.20 Crore.

(viii) He has nexus with accused R.H. Khan (A-4) and some challans and bills of supplying material in the name of a firm Debasish Bhattacharyee, were recovered in the Hard Discs, which were seized from of the official computer of R.H. Khan.

(ix) No satisfactory explanation has been offered as to how the bills and challans of the firm, under which he was doing contract, finds place in the hard disc of the computer of accused R.H. Khan.

(x) There were excessive supply of material after arrest of accused Phojendra Hojai on 01.04.2009 and prior to that there was no supply of material, as evident from the evidence of PW-103, Shri Sushil Chandra Das.

(xi) PW-103, Shri Sushil Chandra Das was compelled to show receipt of material at back date and to

verify the bills of M/s Loknath Trading, and M/s Jeet Enterprise. Material were started to send in April 2009.

(xii) Payment to the firms, from where material was purchased were made in the months of April as evident from PW-17.

(xiii) Admittedly the accused did not participated in tender process as bidder, notwithstanding, M/s Jeet Enterprise, M/s Loknath Trading, M/s Maa Trading, received supply order of G.I. Pipes for a huge sum. (Para No.106 of Written Argument)

(xiv) Blank challans Ext. 70/47, 70/48 and 70/49 of Maa Trading, without challan number and date, wherein store keeper has put his signature on the printed words 'receipt the above which is in good condition' are supplied by J.K. Ghosh shows existence of nexus between him and R.H. Khan and clearing of Ext.70/43, bill of Maa Trading and 70/50, bill of Barail Enterprise, which are without date were cleared by R.H. Khan further fortified the unholy nexus.

(xv) Ext.279 shows that the firms - Borail Enterprise and Loknath Trading had no existence at Guwahati and also had no entry in the Guwahati Municipal Corporation Register for the year 2009.

(xvi) Accused Mohit Hojai exerted extreme pressure to the officers of PHE department to issue cheques Ext.318 and Ext.319, even without supply of any materials.

(xvii) Once while PW-34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghosh, D. Bhattacharjee and Sandip Ghosh to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs.1.20 Crore.

Debasish Bhattacharyee

(i) He had five firms registered in his name viz. (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee, permits of which were valid upto 31.03.2008, and through the said firms accused Joyanta Kr. Ghosh used to do contract works in NCHAC.

(ii) He remained present at Hotel Pragati Manor in the month of March 2009, where accused Mohit Hojai and the Executive Engineer PHE, Haflong K.B. Mukherjee and Executive Engineer of Maibong Division, Sh. Kuton Namasudra also remained present and at that time CEM, Sh, Mohet Hojai directed Executive Engineer to issue all the cheques in favour of Maa Trading a firm of accused Joyanta Kr. Ghosh registered in his name.

(iii) Having received the cheques he got two accounts opened at SBI Zoo Road Branch in the name of his firms Maa Trading, on 27.03.2009 and deposited a high value cheque of Rs.1.3 crore and withdrawn a huge amount Rs.84,00,000/- after two days.

(iv) His associates Joyanta Kr. Ghosh is known to accused Mohit Hojai and witness Imdad Ali, and Mohit Hojai sent money on different occasions to his associate Joyanta Ghosh sometimes through Imdad Ali and sometimes through hundi operator.

(v) Once while PW-34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs.1.20 Crore.

(vi) He has nexus with accused R.H. Khan (A-4) and some challans and bills of supplying material in the name of his firm Debasish Bhattacharyee, were recovered in the Hard Discs, which were seized from of the official computer of R.H. Khan.

(vii) No satisfactory explanation has been offered how the bills and challans of the firm under which he is doing contract, finds place in the hard disc of the computer of accused R.H. Khan.

(viii) There were excessive supply of material after arrest of accused Phojendra Hojai on 01.04.2009 and prior to that there was no supply of material, as evident from the evidence of PW-103, Shri Sushil Chandra Das.

(ix) PW-103, Shri Sushil Chandra Das was compelled to show receipt of material at back date and to verify the bills of M/s Loknath Trading, and M/s

Jeet Enterprise. Material were started to send in April 2009.

(x) Payment to the firms, from where the materials were purchased, were made in the months of April as evident from PW-17.

(xi) Without participating in tender process as bidder, M/s Jeet Enterprise, M/s Loknath Trading, M/s Maa Trading, received supply order of G.I. Pipes for a huge sum.

(xii) Blank challans Ext. 70/47, 70/48 and 70/49 of Maa Trading, without challan number and date, wherein store keeper has put his signature on the printed words 'receipt the above which is in good condition' are supplied by J.K. Ghosh shows existence of nexus between him and R.H. Khan and clearing of Ext.70/43, bill of Maa Trading and 70/50, bill of Barail Enterprise, which are without date were cleared by R.H. Khan further fortified the unholy nexus.

(xiii) Ext.279 shows that the firms - Borail Enterprise and Loknath Trading had no existence at Guwahati and also had no entry in the Guwahati Municipal Corporation Register for the year 2009.

(xiv) Accused Mohit Hojai exerted extreme pressure to the officers of PHE department to issue cheques Ext.318 and Ext.319, even without supply of any materials.

Sandip Ghosh

(i) He is the close associate of accused Joyanta Kr. Ghosh @Dhruba and Debasish Bhattacharyee.

(ii) He accompanied accused Joyanta Kr. Ghosh @ Dhruba and Debasish Bhattacharyee to open accounts at SBI Zoo Road Branch in the name of a firms Maa Trading, of Debasish Bhattacharyee on 26.03.2009 and after opening of account accused Debasish Bhattacharyee has deposited a high value cheque of Rs.1.3 crore on 27.03.2009 and he and Debasish Bhattacharyee has withdrawn a huge amount Rs.84,00,000/- after two days.

(iii) After withdrawing the amount he and Debasish Bhattacharyee has left the bank on Maruti Alto Vehicle with commercial registration.

(iv) He lent a son of Rs.2,00,000/- to PW-28 Shri Diganta Vikram Gayan PW-28 who helped them in opening the accounts.

(v) He delivered Rs.15,00,000/- to Shri Shyam Ajitsaria, PW-76 on 30.03.2009 on receipt of which Shri Ajitsaria has supplied G.I. Pipes to Maa Tradings and he told Shri Ajitsar that they wants the material urgently. He also represents Jeet Enterprise.

(vi) Once while PW-34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghosh, D. Bhattacharjee and Sandip Ghosh to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs.1.20 Crore

(vii) Since he is the close associate of accused Joyanta Kr. Ghosh @ Dhruba and Debasish Bhattacharyee, the acts of these two accused are attributable to him also.

Karuna Saikia

406. Mention to be made here that in cross-examination of the aforemention witnesses, nothing tangible could be elicited to cast doubt the veracity of their version. Their evidence and the evidence of expert witness established following facts and circumstances, against the accused Karuna Saikia:-

1. *He has connection with the accused Mohit Hojai, who was the CEM of NCHAC.*
2. *As per direction of Mohit Hojai he has issued work orders in the name of fictitious firms and also issued cheques without doing any work by the said firms and gets the cheque amounts collected from the persons in whose name the cheques were issued and handed over to the men of Mohit Hojai.*
3. *Assam Financial Rules has not been followed while awarding the contracts. A quotation has been invited for fixation of the rate of G.I. Pipes. He forced PW-44 Sh. Monoj Kumar Talukdar, a Jr. Engineer, PHE to prepare the comparative statement in double the rate of prevailing market rate as submitted by the contractors, despite his objections.*

4. *The lowest bidder Smti. Salota Thousan has not been allotted the works, instead he called PW-44 to Guwahati in February, 2009, for the preparation of supply order of M/s Jeet Enterprise, M/s Loknath Trading, M/s Alampuria Enterprise, Jibangshu Paul, Gyan Das, M/s Maa Trading, Monoj Gorlosa, M/s M&B Associates, Hajar Naiding, without participation as bidder in the tender process, and after preparation he taken away the same from him.*

5. *He had good relation with Jibangsgu Paul who is also a contractor of Haflong and while signing and issuing the cheques, he was sitting in the house of Jibangshu Paul who was arrested by police at Thijuary at around 3.15 PM, on 11.02.2009, in one Scorpio vehicle bearing regd. No.AS-08-5133., carrying cash amount of Rs.32,11,000/-.*

6. *This shows nexus between him and contractors in siphoning out the govt. funds.*

7. *The details of payments made after receipt of Rs. 1,92,49,000/- (Ext 91/4) and Rs.1,00,00,000/- (Ext 91/5) are not mentioned in the Cash Book Ext.86."*

It is pertinent to mention here that the accused Karuna Saikia has passed away during pendency of the appeal.

22. From the above conclusions drawn by the trial Court, the broad canvas of the prosecution case can be outlined as below:

The DHD(J) was a terrorist organisation/gang formed by accused Jewel Garlosa and Niranjan Hojai was its Commander-in-Chief thereof. The organisation was active in the North Cachar Hills region and required funds, arms and ammunition for its operations. Shri Depolal Hojai was elected as the Member of the Council and took over the charge of Chief Executive Member (CEM) of the Council in January,

2008. However, on an aspersion that he failed to do much for the Dimasa people, Shri Depolal Hojai was forced to resign and in his place, the accused Mohet Hojai, an active member of DHD(J), was elected as the CEM. After being elected, Mohet Hojai, hatched a conspiracy to defalcate the Government funds meant for the development of North Cachar Hills with the help of the public servants R.H. Khan and Karuna Saikia employed in the Social Welfare and Public Health Engineering Departments of the N.C. Hills Council, respectively. This conspiracy took place at Haflong, District Headquarter of Dima Hassao (erstwhile North Cachar Hills).

23. As an outcome of the above conspiracy, accused Mohet Hojai (CEM of the Council) in collaboration with the Contractors, namely, accused Jayanta Kr. Ghosh, Debasish Bhattacharjee and Sandip Kumar Ghosh, met the Government officials Kalyan Brata Mukherjee (PW-94) and Kuton Ch. Namasudra at Hotel Pragati Manor, Guwahati on 25.03.2009, where a decision was taken to issue cheques in the names of the firms of Jayanta Kr. Ghosh, which were registered in the name of Debasish Bhattacharjee and the cheques were issued accordingly. The accused Jayanta Kr. Ghosh, Debasish Bhattacharjee and Sandip Kumar Ghosh opened current accounts in the State Bank of India, Zoo Road Branch, Kamrup on 27.03.2009 in the name of firm M/s Maa Trading, etc., and on the same day, two high valued cheques, amounting to Rs.84 Lakhs and Rs.57 Lakhs, were deposited in this account by Debasish Bhattacharjee.

24. On the next working day, i.e. Monday, Debasish Bhattacharjee withdrew a sum of Rs.84 Lakhs from the

account of M/s Maa Trading. Another sum of Rs.3,50,000/- was also withdrawn on the same day. Thereafter, on 01.04.2009, the accused Phojendra Hojai and Babul Kemprai were arrested by the Assam Police at 14th Mile, Jorabat under Basistha Police Station while they were carrying a sum of Rs.1 Crore for delivering the same to terrorists of DHD(J). Along with this money, two pistols, a letter of Mohet Hojai addressed to the Superintending Engineer, PWD (R&B) to issue the work order in favour of Phojendra Hojai and three blank letterheads of DHD(J) were also recovered. During the course of investigation, the accused R.H. Khan was arrested and a sum of Rs.4 Lakh was recovered and seized from his house.

25. In continuation of these illegal transactions, on different occasions, the defalcated sums of money were sent to Kolkata through different modes of transmission sometimes by Hundi operators or sometimes by hand for conversion into US Dollars. The accused Malswamkimi, Phojendra Hojai and Vanlalchhana engaged the approver George Lam Thang for getting the Indian currency to the tune of more than Rs.5 Crores converted to US Dollars through a money changer in Kolkata. It is further alleged that the funds siphoned off from the development projects of the Social Welfare Department and the PHE Department of the Council, after being converted to US Dollars, were provided to the accused Vanlalchhana who procured arms and ammunitions for the DHD(J) so that its members could wage war, cause death of innocent persons, terrorize the people and extort money, disrupt works of gauge conversion and

construction of East West Corridor of the four lane National Highway and thereby establishing all the basic ingredients of the charge of conspiracy and terrorist activities as defined in the UA (P) Act. The final conclusions of the trial Court, after analysis of the evidence, were summarized in the following paragraphs of the judgment:-

> *"423.(i) The prosecution side has also been able to prove beyond all reasonable doubt that accused Sri Phojendra Hojai (A-1), Sri Babul Kemprai (A-2), Sri Mohet Hojai (A-3), Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha (A-5), Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha (A-6), Sri Vanlalchhanna @ Vantea @ Joseph Mizo (A-8), Smt. Malswamkimi (A-9), Sri Niranjan Hojai @ Nirmal (A-11), after forming terrorist gang DHD(J) in 2004 entered in to agreement with Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh to do an illegal act i.e. to raise fund for the terrorist gang by siphoning Govt. funds, converts Indian currency to US Dollars, to procure arms and ammunitions to wage war, cause death of innocent persons, terrorize people and extort money disrupt works of gauze conversion and construction of East West Corridor. It is of course true that the prosecution side has failed to establish kidnapping for ransom here in this case. Notwithstanding, failing to establish this, the other parts have been proved by the prosecution side beyond any shadow of doubt and the same unerringly points out the guilt of the accused and except that no other hypothesis is possible on the facts and circumstances on the record. Accordingly, the accused persons named here in above are convicted u/s 120-B IPC.*
>
> *424. Now, coming to the charge u/s 17 and 18 of the Unlawful Activities (Prevention) Act, we find from the above discussion and findings that the accused Redaul Hussain Khan (A-4), Karuna Saikia (A-15), Joyanta Kr. Ghosh (A-12), Debasish Bhattacharyee (A- 13) and Sandip Ghosh (A-14) have either directly or indirectly, conspired to raise fund, for DHD(J) and we find from the evidence on the record that involved in raising and collecting funds for DHD(J) and they did so by siphoning off and defalcation of Govt. fund allotted for development of N.C. Hills district and in doing so they made payment without supply or short supply of articles, making the*

rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challans, money receipts, etc. and provides to terrorist gang DHD(J) to procure arms and ammunitions to assist in continuing terrorist act.

425. The prosecution side also been able to prove beyond all reasonable doubt that Sri Phojendra Hojai (A-1) Sri Babul Kemprai (A-2), Sri Mohet Hojai (A-3), Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha (A-5), Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha (A-6), Sri Vanlalchhanna @ Vantea @ Joseph Mizo (A-8), Smt. Malswamkimi (A-9), Sri Niranjan Hojai @ Nirmal (A-10), after forming terrorist gang DHD(J) in 2004, directly or indirectly involved raising and collecting funds or attempts to collect funds by extortion, kidnapping, siphoning and defalcation of Govt. fund through Mohit Hojai and others and in committing such activities, kidnapped R.S. Gandhi and realized Rs.4.5 crore from him, siphoning Govt. fund with the help of Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh by paying money without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challan, money receipt etc. it has of course failed to prove kidnapping of R.S. Gandhi and realizing Rs.4.5 crore from him. It has not examined said R.S. Gandhi as witness. Notwithstanding it has been able to establish other parts beyond all reasonable doubt.

426. It is, however, correct that mere raising and collecting funds will not satisfy all the ingredients of the charges u/s 17 and 18 of the Unlawful Activities (Prevention) Act. One more requirement i.e. knowledge is also necessary. But, having considered all the facts and circumstances, which the prosecution side has proved against them in totality, it cannot be said that all commissions or omissions have happened without their knowledge. The transaction amounts were always very high. The said amounts were defalcated from the Govt. fund meant for development of NCHAC. The same were withdrawn with utter disregard to the official norms and rules and channelized to Kolkata. Under the above facts and circumstances, can it be said that all these happened without their knowledge. To our considered opinion the answer is no. It happened with their connivance and knowledge. The Government Officers A-15 of PHE Department and A-4 of Social Welfare Department made payments to the contractors without supply of materials making the rate of supply more than

double the market rate, by preparing false bills and vouchers, delivery challans and money receipt. Can it be said that it happened without their knowledge. The contractors have withdrawn huge sum of money from the banks on a given day. Can it be said that they it happened without their knowledge. Huge sum of money were converted to US Dollars, can it be said that it was a normal business. Huge cache of sophisticated arms and communication equipments were recovered at the instance of the accused, can it be said to be a normal circumstance. The answer to all these circumstances is emphatic no. Therefore, we are inclined to hold that the accused persons have the knowledge that those funds likely to be used by such persons to purchase arms and ammunitions to commit terrorist act.

427. It is of course argued by the defence side that no knowledge could be attributed to the accused persons. The submission is considered in the light of facts and circumstances on the record. But considering the materials on the record in its entirety, the submission is found to be bereft of merit. In the result we find and hold that the prosecution side has been able to establish all the basic ingredients of the charge u/s 17 of the Unlawful Activities (Prevention) Act against all the accused persons beyond all reasonable doubt and accordingly, they are convicted under the said sections of law.

428. However, on the facts and circumstances we already find and hold that the conspiracy u/s 120-B IPC stand proved against all the accused persons. But on the same facts and circumstances the offence u/s 18 of the Unlawful Activities (Prevention) Act stand made out. Since we have already held the accused guilty u/s 120B IPC, for the charge of conspiracy, we are of the view that their conviction and sentence u/s 18 of the Unlawful Activities (Prevention) Act is unwarranted. Accordingly they are acquitted of the same."

26. From a threadbare analysis of the above conclusions, the prosecution case can be split up in two specific parts. The first part being attributed to eight accused persons, namely, Phojendra Hojai (A-1), Babul Kemprai (A-2), Mohet Hojai (A-3), Jewel Garlosa (A-5), Ahshringdao Warisa (A-6), Vanlalchhana (A-8), Malsawmkimi (A-9) and Niranjan Hojai (A-11), regarding the formation and the subversive

activities of the terrorist gang DHD(J) and the second part being attributed to the accused, namely, Redaul Hussain Khan (A-4), Jayanta Kumar Ghosh (A-12), Debashis Bhattacharjee (A-13) and Sandip Kumar Ghosh (A-14), holding them responsible for siphoning off of the funds of the N.C. Hills Council so as to finance the activities of the DHD(J). We propose to first take up the appeals of the accused connected with the first part, i.e. the formation of the DHD(J) and its alleged terrorist activities, viz. (i) Mohet Hojai, (ii) Phojendra Hojai, (iii) Jewel Garlosa, (iv) Ahshringdao Warisa, (v) Vanlalchhana, (vi) Niranjan Hojai, (vii) Babul Kemprai. We would also be discussing the case of Malsawmkimi though she has not preferred an appeal to challenge her conviction.

DISCUSSION IN CRL. APPEAL NO.238/2017 (MOHET HOJAI) AND IN CRL. APPEAL NO.237/2017 (PHOJENDRA HOJAI)

27. Learned senior counsel Mr. D.K. Mishra, assisted by Mr. B. Prasad, learned counsel representing the accused/ appellants Mohet Hojai and Phojendra Hojai submitted that there is no evidence whatsoever to bring home the charges against these accused. The foundation of the prosecution case that the accused persons being the members of DHD(J) pressurized the elected CEM of the Council, Shri Depolal Hojai (PW-126) and forced him to resign from the said post and thereafter Mohet Hojai got himself elected as the CEM, is not established by even a semblance of admissible legal evidence. It was contended that the witnesses, namely, Ronsling Langthasa (PW-20); Kulendra Daulagopu (PW-23); Mohindra Ch. Nunisa (PW-79); Mayanong Kemprai (PW-81);

Bijoy Sengyung (PW-82); Subrata Hojai (PW-87); Depolal Hojai (PW-126) and Dilip Nunisa (PW-129), were examined by the prosecution to establish this allegation but apart from Kulendra Daulagopu (PW-23), all other witnesses, including the CEM Depolal Hojai (PW-126) himself did not support the prosecution case and were declared hostile. It was fervently contended by the learned senior counsel that the trial Court acted in a grossly illegal and perverse manner while admitting the 161 Cr.PC statements of these witnesses brought on record during the evidence of the Investigating Officer(s) as substantive evidence to hold that the covert acts attributed to the accused were proved from such previous statements, which constituted admissible evidence.

28. Mr. Mishra urged that the previous statement of a witness recorded during investigation can only be used either to contradict or corroborate the testimony of such witness. The provisions of Indian Evidence Act and the principles of appreciation of evidence do not allow admitting such previous statements proved by the Investigating Officer as substantive evidence. It was contended that the trial Court indulged in a grossly illegal exercise of allowing reproduction of the entire text from previous statements of the witnesses, referred to above, during the evidence of the CIO (PW-150) and then, used the same as substantive evidence even though the witnesses denied to have stated so. In order to demonstrate this fact, as an illustration, Mr. Mishra, learned senior counsel referred to the findings recorded by the trial Court at Paragraph 446 of the impugned judgment, which are reproduced herein below:-

"446. Another witness is P.W. 129 Shri Dilip Nunisa. He is an ex cadre of DHD. His evidence reveals that In the year 1995, he has joined as a member of DHD group. The group was led by the then President Jewel Garlosa. DHD's objective was to create a separate state of Dimasa people within the territory of India. He remained with the organisation till the ceasefire was signed with the Government of India and Assam in the year 2003 w.e.f. 1st January, 2003. Their organisation DHD worked for general up liftment of the people of the locality and their educational and other rights and also for their social up liftment. He does not correctly remember that he was interrogated by NIA officials in connection with this case and he also do not correctly remember if his statement was recorded in connection with this case. ***Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O - P.W.150 who proved that this witness stated before him that:-*** *'Early in the 1990s, the DNSF headed by Bharat Langthasa was operating in NC Hills. Jewel Garlosa was a member of this group and his demand was that he should become the Chairman of DNSF. The house did not pass the proposal and made Jewel the Foreign Secretary. He came out of the group and started running Printing Press by the name of Hadingma Printing Press. I was only a student leader at that time. DNSF subsequently surrendered but 3 members, Bijay Naidung, Samphulal Thaosen @ Negro and one Langthasa broke away. One more group of 7-8 members led by Kanta Langthasa (Now the Home Secretary of Ceasefire group) also joined the Bijoy Naidung group. Jewel joined this group with Bijoy. By the end of 1995, Jewel was given the post of the President of the group since Bijoy was illiterate. Jewel Garlosa had killed an Executive Member of the Council from his own Carbine before I joined him. The President Jewel Garlosa used to arrange for weapons from Cox Bazar (in Chittagong Hill Trades) in Bangladesh through NSCN (IM). The NSCN (IM) has an office in Dhaka. That time (1995) Jhon Simang was the commander of NSCN (IN). He was also involved in a Jail Break incident in 1994 in Shillong. We used to receive the weapons after paying money and got them in vehicles from Srimangal Tourism Sylhet (Presently Moilvi Bazar District). There are Khasi village in Moulvi Bazar. We had a joint camp of DHD and NSCN (IM) in Khasi Village. From there we used to come by bus to Kaliganj Border area near Badarpur 'Gumrah' in Sylhet District.' 'Jewel burned a Dimasa village in the year 2005, he also*

burned a village Dujupathar in October, 2005.' 'There was another attack on CRPF at Thaijuwari where 7 persons were killed by Mourang of DHD(J).' 'In November, 2008, NiranJan Hojai (C-in-C) of DHD(J) called up during a meeting of the Council and talked to all Executive Members on phone. He asked Dipolal Hojai to resign as CEM and told that Mohet Hojai should be made the CEM. Similarly at a meeting of the DHD(J) at Sonapur (before the James group deserted) Niranjan Hojai gave a directive through mobile phone conference to kill the prominent people namely, Dipolal Hojai, Mukul Bodo, Hamjanan Langthasa, and others. It is due to this that the James group deserted them.' 'The Jewel group has an agreement with Mohet Hojai to provide money. Phojendra Hojai is the key man for supplying money to Niranjan Hojai. He was earlier a small Contractor from Barikhai village and used to deal in second hand motorcycle. Now, because of his proximity with Niranjan Hojai of DHD(J), he has become big contractor. On the day of being caught Phojendra Hojai openly stated before NE TV and News Live that Mohet Hojai was sending money to Niranjan Hojai through him to be paid at Shillong.''

(Emphasis supplied)

29. Mr. Mishra urged that the approach of the trial Court in this regard is absolutely illegal, because only such part of the previous statement recorded under Section 161 Cr.PC, which the witness admits upon being confronted by the Public Prosecutor, may be taken into reckoning and that too for seeking corroboration and nothing beyond that. The procedure of extracting the entire confronted parts of 161 Cr.PC statements in the deposition of Investigating Officer despite denial by the witnesses and treating the same to be substantive piece of evidence, is totally alien to the principles of criminal jurisprudence. He thus, urged that the findings recorded by the trial Court, whereby such previous statements even though not admitted and rather specifically denied by the witnesses upon being cross-examined by the

prosecution after being declared hostile were taken to constitute substantive evidence, are *per se* illegal and perverse.

30. Mr. Mishra further contended that the finding recorded by the trial Court to the effect that the accused Mohet Hojai transmitted large sums of money to Kolkata through Chandra Sarmah (PW-21), Md. Imdad Ali (PW-35) and Mr. Ravi Agarwal (PW-106) is also perverse and unsustainable inasmuch as none of these three witnesses supported the accusation so made by the prosecution and that the trial Court, without any justification, accepted the evidence of the witnesses as substantive evidence. PW-106 Ravi Agarwal did not utter the name of accused Mohet Hojai and rather stated that Imdad Ali brought a bag of money to his office in the first part of 2009 and gave it to one Shyamji. The witness Imdad Ali (PW-35) only stated that Mohet Hojai contacted him on a couple of occasions and asked for his help to send money to Kolkata but no such transaction actually materialized. He admitted that during the corresponding period when the alleged terror funding activities took place, there were transactions worth almost nearly Rs.3.5 Crores in his Bank accounts. However, no effort was made to probe his accounts, which again creates a doubt on the bonafides of the Investigation Agency. Arguing the appeal of accused Phojendra Hojai, Mr. Mishra criticized the evidence of the approver witness George Lam Thang (PW-29) and contended that the witness made an exculpatory confessional statement during investigation (Exhibit-76) without admitting his guilt even to the slightest degree. He also pleaded not guilty when

the charges were framed. Subsequently, during trial on the application moved by George Lam Thang (accused No.10 in the array of accused), which was supported by the NIA, the trial Court granted pardon to him and he was examined as PW-29. Even in the sworn testimony, the approver George Lam Thang made an exculpatory statement and did not inculpate himself in any manner with any of the criminal acts. It was thus contended that the exculpatory statement of the approver cannot be legally admitted as a reliable piece of evidence.

31. Placing reliance on the judgments of the Hon'ble Supreme Court in the cases of ***Mohd. Husain Umar Kochra -Vs- K.S. Dalipsinghji & Anr.***, reported in ***(1969) 3 SCC 429*** and ***Dagdu & Ors. -Vs- State of Maharashtra***, reported in ***(1977) 3 SCC 68***, it was contended by Mr. Mishra that uncorroborated testimony of an accomplice cannot be accepted as reliable evidence. He further urged not one of the witnesses Kamalesh Pandey (PW-18), Nabajit Buragohain (PW-40), Dinesh Vohra (PW-58), Devinder Singh (PW-59), Lalrinawma Traite (PW-63), Sheo Kumar Pandey (PW-69), Dipankar Chatterjee (PW-136) and Swayam Prakash Pani (PW-146), on whose testimony the trial Court placed reliance so as to hold that they corroborated the testimony of George Lam Thang, the accomplice, made even a bald utterance that the accused Malswamkimi with the accomplice George Lam Thang came to the hotels concerned or that they saw Phojendra Hojai giving any money to Malswamkimi or George Lam Thang.

32. Without prejudice to above, it was contended that even from the sworn statement of George Lam Thang (PW-29), it is clear that he did not know the accused Phojendra Hojai from before. Thus, identification memo prepared by NIA during investigation (Exhibit-119), whereby the photograph of the accused Phojendra Hojai was allegedly identified by George Lam Thang and Malswamkimi is totally inadmissible, because Shri C.P. Phukan, who was associated in this process of identification, was an Executive Magistrate and hence, he could not assume the role of a Magistrate as provided under Section 26 of the Evidence Act. Reliance in support of this argument was placed by Mr. Mishra on a Full Bench judgment of this Court in the case of ***Kartik Chakraborty & Ors. -Vs- State of Assam***, reported in ***2017 (5) GLT 144***. It was further contended that the identification of Phojendra Hojai by the approver witness George Lam Thang (PW-29) during his deposition is unreliable because he admitted in his cross-examination that prior to identification of the accused Phojendra Hojai for the first time in Court on 25.11.2013 he was shown a photograph of the said accused by the NIA Officers during investigation. It was thus, urged that there is no sanctity in identification of Phojendra Hojai by the approver George Lam Thang.

33. Further criticizing the evidence of George Lam Thang, Mr. Mishra pointed out that the witness admitted that all the transactions of converting Indian currency into US Dollars were undertaken through one Tapan, who was also arrested by the Kolkata Police but was thereafter let off. It was contended that this version of the approver was not

controverted by the prosecution by re-examining him and thus, the conduct of the Investigation Agency comes under a grave cloud of doubt because the person named Tapan who was actually responsible for conversion of the Indian currency to US Dollars was neither arraigned as an accused nor was he cited as a witness in the case. It was thus contended that the most important person who could have corroborated the prosecution theory that the approver George Lam Thang (PW-29) got huge sums of Indian currency converted to US Dollars at the instance of the accused Phojendra Hojai, Malswamkimi and Vanlalchhana could have been the said Tapan *qua* whom no investigation was made by the Investigation Agency. He urged that the Investigating Officer did not recover a single US Dollar during investigation which fact completely demolishes the prosecution case regarding the so called conversion of Indian currency to US Dollars. It was further contended by Mr. Mishra that the prosecution theory that using the US Dollars acquired through George Lam Thang, the accused Vanlalchhana purchased arms and ammunitions and delivered the same to DHD(J) in furtherance of the conspiracy hatched with the accused Mohet Hojai, Phojendra Hojai, Niranjan Hojai, etc., is absolutely concocted and cooked up. No witness of the prosecution could give reliable evidence to satisfy that Vanlalchhana is an arms smuggler. The trial Court concluded at Paragraph 208 of the judgment that the recovery of the cache of arms and ammunitions made at Aizawl could not be read as incriminating evidence in the present case because

the seizure was made prior to the disclosure statement of Vanlalchhana being recorded by the Officials of NIA.

34. It was further submitted that the trial Court misread the evidence by concluding that the mobile number 99032-34905 allegedly being used by George Lam Thang belonged to the accused Mohet Hojai, as he was never a subscriber of the said number. It was pointed out that the Call Details Record (Exhibit-434) clearly establishes that the mobile number referred to (supra) was not subscribed in the name of the accused Mohet Hojai. It was contended that the trial Court discarded the entire trail of electronic evidence pertaining to the mobile phones, CDR, etc., at Paragraph 77 of the impugned judgment observing that the same were not accompanied by the mandatory certificate under Section 65-B of the Evidence Act and, therefore, could not be admitted in evidence. It was further submitted that George Lam Thang himself did not utter a single word in his evidence that Mohet Hojai provided him any mobile SIM or that he was using any such mobile number. Thus, it was contended that the finding recorded by the trial Court on this aspect is perverse and amounts to misreading of evidence.

35. On the aspect of charge under Section 17 of the UA (P) Act, it was contended by Mr. Mishra that the finding recorded by the trial Court on this aspect holding that the accused persons hatched conspiracy and funds were raised by extortion, kidnapping, siphoning and defalcation of Government money, thereby committing the offence under Section 17 of the UA (P) Act is perverse and unsustainable. It

was contended that the section pre-supposes an act of funding a ***"terrorist activity"***. However, no specific terrorist act was made subject matter of investigation or trial and thus, the charge that the funds siphoned off from the N.C. Hills Council were used to finance terrorist activities cannot stand and has to fail. It was further contended that the trial Court acquitted the accused from the charge under Section 18 of the UA (P) Act and thus, their conviction for the offence under Section 120B IPC suffers from a serious anomaly and is fallacious and illegal on the face of the record. Mr. Mishra further urged that the procedure of conducting trial in this case suffers from gross irregularities and illegalities because the contradictions appearing in the statements of witnesses were not proved as per law and the trial Court recorded contradictory findings on many aspects of the case. He referred to the Division Bench judgments of this Court in the cases of ***State -Vs- Misir Ali***, reported in ***AIR 1963 (Gau) 151*** and ***Gautam Das -Vs- State of Tripura***, reported in ***2008 (3) GLT 625*** and urged that the prosecution has failed to lead even a semblance of evidence so as to bring home the charges against the accused/appellants Mohet Hojai and Phojendra Hojai.

36. It was also contended that the most significant prosecution allegation that the appellant Mohet Hojai forcibly removed Depolal Hojai from the post and got himself elected as the CEM of the Council and thereafter, he hatched conspiracy with the public servants, namely, R.H. Khan, Director of Social Welfare Department and Karuna Saikia, Executive Engineer, Public Health Engineering Department of

the N.C. Hills Council to defalcate the funds of the Council with the aid of the Contractors Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh so that these amounts could be used for financing the terror activities of DHD(J), is absolutely unbelievable and could not be proved. Mr. Mishra contended that though in the language of the charges, the ingredients of the offences of fraud, fabrication in official records, misappropriation of Government funds and criminal misconduct were set out but no pertinent charges for these specific offences, be it under the Indian Penal Code or the Prevention of Corruption Act, were framed against any of the accused including the appellant Mohet Hojai. Thus, as per Mr. Mishra, the proceedings suffer from vagueness and uncertainty and rather the procedural flaws amount to gross illegality going to the root of the matter and vitiate the proceedings. His further contention was that the Investigation Agency claims to have handed over the investigation into these allegations to the CBI and hence, the conviction of the accused for these very allegations albeit without framing a formal charge would be hit by protection against double jeopardy guaranteed by Article 20 of the Constitution of India and Section 300 of the Cr.PC.

37. Mr. Mishra, learned senior counsel representing the appellant Phojendra Hojai urged that the case set up against the accused is based on false and fabricated evidence. He contended that the prosecution projected that the accused Phojendra Hojai was involved in the nefarious activities of DHD(J) and that on 01.04.2009, he was apprehended by the police officers of Basistha Police Station

while transporting a sum of Rs.1 Crore; blank letterheads of DHD(J) and a letter signed by Mohet Hojai recommending that the Executive Engineer, PHE Division, Haflong should grant a contract to the accused Phojendra Hojai. The prosecution alleged that this amount of Rs.1 Crore was meant to be provided to some extremists/terrorists in the Jorabat area but the nefarious plan of the accused could not succeed as the money so being transported was intercepted and seized at the 14th Mile, G.S. Road by the Officers of Basistha Police Station. He urged that the entire procedure of interception/search and seizure of the amount of Rs.1 Crore is highly dubious and cooked up. The prosecution could not prove the fate of the currency notes so seized by reliable evidence. He further urged that the alleged seizure of blank letterheads of DHD(J) and the signed letter of Mohet Hojai by Maijuddin Ahmed, PW-10 on 01.04.2009 is also a planted one because the prosecution failed to prove that these documents were actually seized and sealed at the spot. The G.D. Entry of Basistha Police Station in furtherance whereof, Sub-Inspector Maijuddin Ahmed (PW-10) was instructed to proceed to G.S. Road area for intercepting the money and the suspects, was not brought on record despite a pertinent objection being raised by the defence and inspite of direction given by the trial Court. In this regard, Mr. Mishra referred to the evidence of Chandra Kanta Boro (PW-2), posted as the Officer-in-Charge of Basistha Police Station at the relevant point of time, where this witness admitted that the General Diary of the Police Station was not available in the Court. The witness also admitted in his cross-examination that the case

diary which he had brought to the Court was in loose sheets of paper and not in a bound register. On 01.09.2012, the evidence of the witness was deferred and a pertinent direction was given by the trial Court but still, he did not produce the G.D. Entry No.1162/2009 dated 01.04.2009 referred to in the FIR in Court when his evidence was resumed on 27.02.2013. Thus, as per Mr. Mishra, this is a strong reason warranting adverse inference to be drawn against the prosecution and the entire proceeding of search and seizure effected on 01.04.2009 deserves to be discarded as being tainted. It was contended that as per the prosecution case, Sub-Inspector Maijuddin Ahmed (PW-10) was sent to intercept two vehicles in which the accused Phojendra Hojai and Babul Kemprai were suspected to be carrying Indian currency worth Rs.1 Crore pursuant to a secret information received by Shri Sudhakar Singh, Additional Superintendent of Police (PW-26) and Shri B. Rajkhowa, Additional Superintendent of Police. Mr. Mishra submitted that whilst Chandra Kanta Boro (PW-2) stated that Sudhakar Singh and B. Rajkhowa came to the Basistha Police Station and informed that some members of the DHD(J) group were going to deliver money to the extremist group at Jorabat area, but to the contrary, Shri Sudhakar Singh (PW-26) stated in his evidence that he got an information from the superior officers that Phojendra Hojai of Haflong would be carrying a huge sum of money nearing about Rs.1 Crore to be delivered to some arms smugglers.

38. Mr. Mishra drew attention of this Court to the Typed Report Exhibit-30 and urged that though a reference is

made to a source information in this report, however, there is no description as to what precisely was the source of information on the basis whereof the interception was planned. It was further urged that the Report Exhibit-30 does not refer to seizure of the recommendation letter signed by Mohet Hojai bearing endorsement in favour of Phojendra Hojai on which, reliance was heavily placed by the prosecution. As per Mr. Mishra, this omission creates a grave doubt on the genuineness of the prosecution case and completely discredits the recovery.

39. Mr. Mishra further submitted that the very factum of seizure of Rs.1 Crore currency notes is under grave doubt on account of contradictory versions of the concerned Police Officials. Whilst the seizure officer Maijuddin Ahmed stated that the exercise of counting the notes and preparation of the seizure list, Exhibit-38 was undertaken at the spot where the vehicles were stopped but in total contradiction, Sudhakar Singh (PW-26) stated that the process of counting the notes was undertaken at the Guest House of 4th A.P.Bn and thereafter, the seizure list was prepared at the Basistha Police Station. It was submitted that Maijuddin Ahmed (PW-10) admitted that though the currency notes and other incriminating material were seized from two separate vehicles, he prepared a common seizure list. Fervent contention of Mr. Mishra was that in the Typed Report Exhibit-30, it is not specifically mentioned as to in which of the two vehicles, the particular articles, i.e. currency notes, weapons and the documents, etc., were found. It was submitted that this grave omission/contradiction in the Typed

Report filed by Sub-Inspector Maijuddin Ahmed (PW-10), goes to the root of the matter and virtually destroys the fabric of the prosecution case regarding the seizure allegedly made on 01.04.2009 by the Officers of Basistha Police Station. Attention of the Court was also drawn to the admission made by Maijuddin Ahmed in his cross-examination that the seized articles do not bear his seal and signature as the Seizure Officer. The panch witnesses also did not sign on the body of the seized articles. The senior Police Officer Sudhakar Singh (PW-26) though claimed to be present during the search proceedings but still, he did not sign any of the documents including the seizure list and thus, a grave doubt is created as to whether the seizure was actually made at the place and in the manner stated by Maijuddin Ahmed (PW-10).

40. Mr. D.K. Mishra, referring to the statements of the attesting witnesses Bunu Sonar (PW-64) and Dipankar Deka (PW-113) contended that the testimony of these witnesses who were drivers of the vehicles from which the seizure was allegedly effected, completely destroys the substratum of prosecution case so far as the incident of 01.04.2009 is concerned. Mr. Mishra pointed out that Bunu Sonar (PW-64), upon being examined by the prosecution, did not utter a single word that any currency notes, weapons or documents as alleged by the prosecution were recovered by the police when the search of the vehicles was undertaken. Likewise, Dipankar Deka (PW-113) also did not state that any such recovery was made. Mr. Mishra submitted that the 164 Cr.PC statements of these witnesses were got exhibited by

the prosecution during their testimony but these previous statements do not constitute substantive evidence and hence, the same cannot be relied upon for any purpose whatsoever.

Mr. Mishra further submitted that both these witnesses admitted that the vehicles were stopped and searched by police near Barapani, Shillong, which is located in the State of Meghalaya. However, the prosecution did not make any attempt to re-examine and seek clarifications the witnesses on this important aspect of their deposition. Thus, as per Mr. Mishra, the FIR and the seizure list were created by the Police Officers concerned by sheer manipulation and twisting of facts in order to somehow project that the seizure was made within the jurisdiction of Basistha Police Station whereas the fact remains that the vehicles were searched in the territory of Meghalaya State. Thus as per Mr. Mishra, the entire action of alleged seizure of currency notes, incriminating documents pertaining to DHD(J) and weapons by Sub-Inspector Maijuddin Ahmed was beyond the jurisdiction of Basistha Police Station and the place of search and seizure was deliberately changed so that the jurisdiction could be created at Police Station Basistha. He submitted that this fact is further affirmed from the admission as appearing in the testimony of Sudhakar Singh (PW-26), wherein he accepted that he did not stay back for witnessing the procedure of seizure and did not even sign the seizure list though he was the senior most police officer present at the spot. Mr. Mishra thus urged that the entire case projected by the prosecution regarding the seizure of currency notes,

incriminating documents and weapons attributed to the accused Phojendra Hojai and the accused Babul Kemprai at 14th Mile, G.S. Road is cooked up, unconvincing and unacceptable on the face of record.

Mr. Mishra drew the Court's attention to the following excerpts from the evidence of PW-10, Maijuddin Ahmed where he admitted to have recorded in the seizure list Ext-38 that the cash amount found in the Scorpio was reportedly kept by Phojendra Hojai and his further admission that he did not remember who gave him this information;

> *"In the seizure list I have stated that the cash amount was found in the airbag seized from the Sumo which was reportedly kept by Phojendra Hojai. I do not remember who has reported to me that the money kept in the airbag which was found in the Sumo belongs to Phojendra Hojai."*

41. Mr. Mishra further submitted that the trial Court drew much water from the fact that soon after the seizure dated 01.04.2009, calls were received on the mobile instrument of accused Phojendra Hojai having been made by the accused Niranjan Hojai and accused Mohet Hojai. Mr. Mishra submitted that the mobile instrument had been seized by Maijuddin Ahmed, Sub-Inspector of Police, Basistha Police Station (PW-10) and thus, there was no possibility that any call could have been received on the said device, which was in possession of the Police Officer. He took us through the deposition of Maijuddin Ahmed, PW-10 and pointed out that the witness did not utter a word in his evidence that any calls were received on the mobile phone of Phojendra Hojai after the suspected vehicles were intercepted and

searched. He thus, urged that this finding is perverse and unsustainable on the face of the record.

42. On these submissions, Mr. Mishra implored the Court to discard the entire prosecution case regarding the alleged seizure of currency notes and the so called incriminating documents pertaining to DHD(J) purportedly effected by Sub-Inspector Maijuddin Ahmed (PW-10) on 01.04.2009. He urged that once this recovery is discarded, there remains no evidence on record of the case against the accused Phojendra Hojai.

43. Mr. Mishra further urged that the case set up by the prosecution regarding the DHD(J) group being involved in terrorist activities and that the funds meant for developmental activities in the N.C. Hills were siphoned off with the aid of public servants, i.e. accused Shri R.H. Khan and Shri Karuna Saikia, and thereafter the defalcated money was used for terror funding, is based on conjectural theory projected in the evidence of the witness Amitava Sinha (PW-24). He submitted that the trial Court misread the evidence while appreciating the testimony of Amitava Sinha (PW-24) because the witness admitted in his cross-examination that the entire narration made in his examination-in-chief wherein he referred to the alleged violent/subversive activities of DHD(J), viz. disrupting train services plying from Lumding to Badarpur, thereby adversely effecting food grain supply to Barak Valley and to the State of Mizoram, Tripura and Manipur; resorting to firing on moving trains from both sides of 120 Km hill track, etc., was not stated by him when he

gave the statement to the Investigating Officer during investigation. Mr. Mishra urged that the trial Court failed to appreciate the impact of the sheer improvement made by this witness on this material aspect while testifying on oath. He urged that otherwise also, the witness failed to point out any particular incident in reference whereto, he imputed the violent activities (supra) to the DHD(J). Mr. Mishra submitted that as a matter of fact, the deposition as made by the witness in the above terms was simply a half baked fictional story based on informations gathered from unverified sources.

44. In order to buttress this contention, Mr. Mishra referred to the findings recorded by the trial Court at Paragraphs 449, 450, 455; 456; 457; 458 & 459 of the impugned judgment reproduced infra –

> *"449. Now the question is whether the evidence of these nine witnesses are sufficient to establish the charge u/s 121/121(A) IPC against the Phojendra Hojai, Babul Kemprai, Mohit Hojai, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, George Lamthang, and Niranjan Hojai?*
>
> *450. The answer is got to be emphatic no. There is no doubt that the conduct of the accused, as apparent from the evidence discussed above are subversive as well as heinous in nature. <u>There was some killing, extortion of money and throwing of grenede which took place at Dima Hasao. But the aforesaid five five prosecution witnesses failed to give the actual account of the incidents and also there is no documentary proof in support of the same. The documents exhibited by P.W. 24, being Photostat copy cannot be taken into account</u>. But having tested the evidence of nine prosecution witnesses, on the touchstone of the parameters laid down by the Hon'ble Supreme Court in State (NCT of Delhi) Vs. Novjot Sandhu @ Afzal Guru (supra) it can safely be concluded that their evidences are quite insufficient to establish the ingredients of the charges u/s 121/121A IPC against the*

said accused persons. As held by Hon'ble Supreme Court, in the above referred case law, all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government, as the DHD's objective was to create a separate state of Dimasa people within the territory of India and it worked for general up liftment of the people of the locality and their educational and other rights and also for their social up liftment as evident from P.W. 129 Shri Dilip Nunisa, who is an ex cadre of DHD. True this witness is declared hostile by the prosecution side. But the value of hostile witnesses has already been discussed in foregoing paragraphs of this judgment.

[Emphasis supplied]

455. To appreciate the rival submission of the ld. Advocates of both side let us first understand what 'terrorist act' means. Section 2(k) of the UA (P) provides that 'terrorist act' has the meaning assigned to it in section 15, and the expressions 'terrorism' and 'terrorist' shall be construed accordingly. Section 15 of the Act provides that:- 'Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, -

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-

(i) death of, or injures to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Explanation:- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.

456. To establish this 'terrorist act' the prosecution side has relied upon P.W. 20 - Shri Ronsling Langthasa, P.W. 23 -shri Kulendra Daulagopu, P.W. 24 - Shri Amitav Sinha, P.W. 46 - Shri Nairing Daulaguphu, P.W. 126 Depolal Hojai, P.W. 129 Shri Dilip Nunisa. We have already discussed their evidence in details.

457. We find from the evidence of P.W. 24 that in the year 2009, while he joined as Addl. S.P. (Head Quarter), at NC Hills and was responsible for maintenance of Law and order and crime detection in the area, there was spurt in violence because of DHD(J), there was Naga and Dimasa ethnic clashes, DHD(J), has stopped the train services plying from Lumding to Badarpur, thus virtually stopping the food grains not only to Barak Valley but also to states like Mizoram, Tripura & Manipur. DHD(J) would resort to firing on the moving train from the hills on both sides of the more than 120 k.m. Railway track. After counter insurgency operation things gradually improved and finally leading to the laying down of arms by DHD(J) cadres in March/April, 2010. But there was always a feeling and apprehension and some intelligence inputs as well that all arms & ammunition of DHD(J) were not handed over at the time of surrender and a huge consignment were recovered from Disa Kisn area. It is true that he has admittedly not stated before the I/O. Now the question is can the evidence of this witness be discarded on this count alone. Can it be said that he has imported a complete new thing, so as to demonstrate that the two statements cannot co-exist together. If his evidence is perused in totality then it would be clear that his evidence is very much consistent. He has not imported any new things except that of law and order which is nothing but a collateral issue with that of recovery of huge cache of arms. There is nothing on the

record to show that he has animosity with the accused and on that score he deposed falsely. He is a responsible police officer of the Rank of Addl. S.P. and he was responsible for maintain law order and found to have been deposed ostensibly. It is to be mention here that the defence side has not disputed his posting at N.C. Hills during the year 2009 and that he was responsible for maintain law and order. Therefore, we are inclined to believe his version.

458. Not only the evidence of P.W. 24 but also the evidence of P.W. 46 - Sh. Nairing Daulaguphu also reveals that he joined DHD (Dima Halam Daoga) DHD, a militant organization led by Jewel Garlosa who was the Chairman of the group, in 1995. The arms and ammunition required for the operation of the organization were purchased locally and also they used to get it from Bangladesh. Their militant camps were always on mobile and the cadres used to move so the arms and ammunition were received at different places. In the year 2006, when he came to Liaison Office, Dibarai, Haflong to meet Dilip Nunisa and on my return to his camp at Harangajao, on his way he was attacked by Daku Singh @ Athen Haflongbar and another person belonging to the group of DHD(J).

459. What can be deduced from above discussion is that DHD(J) is a 'terrorist gang' and earlier Niranjan Hojai was the Commander-in-Chief of DHD(J) and Jewel Garlosa was the Chairman of DHD(J). And the activities of the organization, as discussed here in above, to our considered opinion falls in the category of 'terrorist act', as is apparent from the prosecution evidence discussed above. ***It is true that at the time of registration of this case DHD(J) was not declared as unlawful association. The defence side has rightly pointed this out during argument. But in view of the observation made by the Hon'ble Supreme Court in Redaul Hussain Khan Vs. NIA : (2010) 1 SCC (Crl.) 282 this submission of the defence side is found to be devoid of force.*** *And being the Commander-in-Chief and Chairman of the organisation, and being member of the same, both of them are culpable for the charge. So, they are attributed to the charge u/s 16 and 20 of the U.A. (P) Act. The evidence on the record are, however, falling short of to establish the charge against rest of the accused namely, Phojendra Hojai, Babul Kemprai, Mohit Hojat, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi and accordingly they are entitled to acquittal and they are acquitted accordingly."*

[Emphasis supplied]

45. Mr. Mishra urged that the most important prosecution witness, on whose testimony the trial Court placed reliance for holding the so called terrorist acts of DHD(J) established was Amitava Sinha (PW-24). The entire version of Amitava Sinha on this aspect was a sheer improvement and in addition thereto, he neither stated about any particular instance of terrorist/violent activity, wherein the members of DHD(J) were involved nor did he claim to have personally perceived any such incident. Thus as per Mr. Mishra, there is no evidence to prove the charges under UA (P) Act against any of the accused. He referred to the findings recorded at Paragraph 426 of the impugned judgment, reproduced below:-

> *"426. It is, however, correct that mere raising and collecting funds will not satisfy all the ingredients of the charges u/s 17 and 18 of the Unlawful Activities (Prevention) Act. One more requirement i.e. knowledge is also necessary. But, having considered all the facts and circumstances, which the prosecution side has proved against them in totality, it cannot be said that all commissions or omissions have happened without their knowledge. The transaction amounts were always very high. The said amounts were defalcated from the Govt. fund meant for development of NCHAC. The same were withdrawn with utter disregard to the official norms and rules and channelized to Kolkata. Under the above facts and circumstances, can it be said that all these happened without their knowledge. To our considered opinion the answer is no. It happened with their connivance and knowledge. The Government Officers A-15 of PHE Department and A-4 of Social Welfare Department made payments to the contractors without supply of materials making the rate of supply more than double the market rate, by preparing false bills and vouchers, delivery challans and money receipt. Can it be said that it happened without their knowledge. The contractors have withdrawn huge sum of money from the banks on a given day. Can it be said that they it happened without their knowledge. Huge sum of money were converted to US Dollars, can it be said that it was a*

normal business. Huge cache of sophisticated arms and communication equipments were recovered at the instance of the accused, can it be said to be a normal circumstance. The answer to all these circumstances is emphatic no. Therefore, we are inclined to hold that the accused persons have the knowledge that those funds likely to be used by such persons to purchase arms and ammunitions to commit terrorist act."

46. Mr. Mishra urged that these findings are totally conjectural and hypothetical. The trial Court raised presumptions and assumptions against the accused without any legal basis. He contended that the only presumptions which are available under the UA (P) Act are provided in Sections 38, 39 & 40 thereof, which deal with membership, support and raising funds for a terrorist organisation. As per Mr. Mishra, since the DHD(J) was not a terrorist organisation declared under the Schedule, raising of presumptions and assumptions by the trial Court for drawing inferences of culpability against the accused persons is absolutely illegal. Regarding the observation made in Paragraph 426 of the impugned judgment that it could not be said that all commissions and omissions had happened without their knowledge, he submitted that the conclusions drawn by the trial Court are contrary to the settled principles of criminal jurisprudence and hence, the same are perverse and untenable.

47. Mr. Mishra further urged that the trial Court also relied upon the evidence of Nairing Daulagopu (PW-46) for holding that the DHD(J) was indulged in terrorist activities. Referring to his testimony, Mr. Mishra urged that the witness stated that he joined DHD which was a militant organisation led by Jewel Garlosa, in the year 1995. He went to

Bangladesh in the year 1995 but the organisation could not set up a base because of financial problems and thus, he came back. In January, 2003, ceasefire was declared between the militants and the Government and some of the cadres also surrendered. However, Jewel Garlosa went on to form another militant organisation by the name of DHD(J). Mr. Mishra contended that in cross-examination, the witness admitted as noted below that he did not give any statement to the NIA:-

"My statement was not recorded by the NIA."

48. Thus, as per Mr. Mishra, the evidence given by this witness apart from being sheer improvement, is unreliable and unconvincing as he did not state a word about the activities of DHD(J) to the Investigating Officer of NIA. Mr. Mishra urged that even if the testimony of this witness were to be accepted, he did not utter a single word about any activities of DHD(J) in his evidence because admittedly, he was only associated with DHD and parted ways with the organisation in the year 2003. Mr. Mishra pointed out that the witness stated in his deposition that in the year 2006, when he came to Haflong to meet Dilip Nunisa, he was attacked by Daku Singh and another person belonging to the group of DHD(J). However, neither any FIR nor any charge-sheet pertaining to the said incident was brought on record so as to corroborate the version of this witness that any such assault took place or that the assailants were members of DHD(J).

49. Attention of the Court was drawn by Mr. Mishra to the evidence of Anurag Tankha (PW-72), who was posted

as Superintendent of Police, N.C. Hills, Haflong at the relevant point of time. Mr. Mishra urged that this witness exhibited a forwarding letter (Exhibit-271) and lists of cases [Exhibit-272(2) to Exhibit-272(4)] in which the accused Jewel Garlosa and Partho Warisa @ Ahshringdao Warisa were allegedly charge-sheeted and the lists of weapons allegedly surrendered by DHD(J) cadres [Exhibit-272(6) to Exhibit-272(8)]. He contended that evidence of Anurag Tankha (PW-72) and the lists were heavily relied upon by the trial Court to conclude that the DHD(J) was involved in terrorist activities. Attention of the Court was drawn to the forwarding letter (Exhibit-271) and it was contended that reference to Jewel Garlosa and Partho Warisa @ Ahshringdaw Warisa was made only in the forwarding letter sent by the witness to Swayam Prakash Pani, SP, NIA, Delhi (PW-146), but if the list of cases and the list of surrendered weapons annexed with the forwarding letter, i.e. Exhibits-272(6) to 272(8) are seen, there is nothing therein which could even remotely suggest that any of the accused persons in this case including Jewel Garlosa and Partho Warisa @ Ahshringdaw Warisa were involved in the enlisted cases or that the surrendered weapons belonged to the DHD(J) Cadres. He submitted that in the list [Exhibit-272(2)], only in the case at serial No.2 being Umrangso Police Station Case No.3/2008, a vague reference was made that the DHD(J) extremists entered the Kapili Power House, killed two guards and snatched the rifles and ammunitions. Mr. Mishra urged that if at all the prosecution was desirous of proving the theory that these lists pertained to the violent/ subversive activities of DHD(J)

or any of its constituents, including the accused Jewel Garlosa and Partho Warisa @ Ahshringdaw Warisa, then it was imperative to bring on record the charge-sheets of these cases and in absence thereof, the mere list of cases could not constitute acceptable plausible evidence sufficient to draw an inference that these cases were connected with the so called terrorist activities of DHD(J).

50. Mr. Mishra urged that the trial Court recorded very peculiar finding at Paragraph 463 of the impugned judgment while referring to the lists Exhibits-272/6 to 272/8 concluding that these lists pertaining to surrender of weapons by the DHD(J) cadres have not been disputed by the defence side and thus, constituted incriminating evidence. He submitted that it is not a case wherein the documents had been put up for admission denial under Section 294 Cr.PC in which exercise, the defence admitted the same. Thus, the finding so recorded suffers from the highest degree of perversity because there was no basis for the trial Court to have concluded that the lists were not disputed by the defence side and hence, the same constituted unimpeachable evidence. He further contended that even if the lists are seen and accepted as such, there is no indication therein that the same have any connection with DHD(J) or its cadres. Anurag Tankha (PW-72) admitted in cross-examination that the lists were prepared by his subordinate staff from the available record of weapons surrendered physically. Thus, as per Mr. Mishra, the lists [Exhibit 272(6) to 272(8)] are nothing but compilations made from source records which were not

exhibited and hence, the same do not constitute tangible legal evidence.

51. Mr. Mishra also referred to the evidence of Swayam Prakash Pani (PW-146) Superintendent of Police, NIA, who also assisted Mukesh Singh, Chief Investigating Officer (PW-150) in investigation of the case. Mr. Mishra urged that this witness did not corroborate the version of Anurag Tankha regarding forwarding of list of criminal cases along with forwarding letter Exhibit-271. Reference was also made to the deposition of the Chief Investigating Officer, Mukesh Singh (PW-150) and the cross-examination conducted from the said witness, wherein he made the following admission:-

> *"It is a fact that I have not investigated any violent incident committed by the DHD(J) in connection to this case. .....I did not carry out investigation into individual terrorist actions carried out by DHD(J)".*

52. Mr. Mishra urged that Shri Mukesh Singh, despite being the Chief Investigating Officer, did not visit Haflong even once to associate in any part of the investigation conducted in the areas where the alleged criminal activities happened or the conspiracy was hatched.

53. Reiterating and concluding his arguments, Mr. Mishra submitted that there is not even a semblance of evidence what too talk of reliable legal evidence on record of the case to satisfy the Court that DHD(J) was involved in any kind of terrorist or illegal activity or that the funds meant for the developmental projects in the N.C. Hills were actually siphoned off to be used for procurement of arms and

ammunitions to fund the activities of DHD(J). As per Mr. Mishra, not one of the 150 witnesses examined by the prosecution could state about the connection of the accused Phojendra Hojai and Mohet Hojai with DHD(J) or its terrorist activities.

54. Mr. Mishra submitted that as per Section 8 of the National Investigation Agency Act, 2008, the NIA was empowered to conduct investigation into the allegations of fraud, forgery in public records and misappropriation of Government funds but the Agency consciously gave up this part of the case and handed over the investigation thereof to the CBI. In this regard, attention of the Court was drawn to the findings recorded by the trial Court at Paragraph 378 of the impugned judgment, wherein it was observed that the investigation into the allegations of misappropriation of funds allotted to the N.C. Hills Council had been assigned to the Central Bureau of Investigation.

> *"378. There, of course, remains no doubt that some commission or omission on the part of the investigating agency. It has not investigated the other offences, i.e. defalcation of funds of NCHAC, connected to the schedule offence, and handed over the task to CBI. The ld. defence counsel has rightly pointed this out in his argument. It is also pointed out that the prosecution side has brought on record the inadmissible evidences. There is substance in the said submission also. As for instance, the prosecution side has collected the CDRs of the mobile phones of the accused persons without certification under section 65-B Evidence Act. But the fact remains that that was the law at that point of time after the case of The State (N.C.T. of Delhi) vs. Navjot Sandhu @ Afsan Guru (supra). The I/O in his evidence categorically stated the same in his evidence. The law relating to secondary evidence in the form of CDRs has changed only after the judgment of Hon'ble Supreme Court in Anvar P.V. vs. P.K. Basheer's (supra) case in the year 2014. Despite, such commission and omission, the facts and circumstances so brought on*

record and proved are found to be sufficient to establish their complicity."

55. Referring to these observations, it was submitted that the trial Court categorically held that the Investigation Agency indulged in commission and omission by not investigating into the offences regarding defalcation of funds of N.C. Hills Autonomous Council, connected to the scheduled offences and handed over the task to the CBI and that the prosecution brought on record inadmissible evidence. Despite holding so, it was concluded that significant sum of money meant for the development of the Council was misappropriated and that the defalcated amounts were thereafter, used for funding terrorist activities of DHD(J). Mr. Mishra urged that there is an inherent perversity in the impugned judgment because at Paragraph 419 of the impugned judgment, the trial Court concluded that there was no direct evidence to show the routing and/or the use of US Dollars which were allegedly handed over to the accused Vanlachanna after conversion of the Indian currency procured by defalcation of funds meant for development of the Council.

He contended that once it was held that the prosecution failed to prove the culmination of actions pursuant to the alleged conversion of the defalcated Indian currency to US Dollars, the finding that this money was used for funding terrorist activities is on the face of it self-contradictory, perverse and thus, unsustainable in facts as well as in law.

It was further submitted that the trial Court concluded at Paragraph 419 that the prosecution could not link the recovery of weapons to Vanlachanna but taking a

contradictory stand immediately thereafter, a sheerly conjectural finding was recorded that the arms and communication equipments were recovered at his instance. It was thus contended that the judgment under challenge suffers from inherent infirmities, incongruity, loopholes and shortcomings inasmuch as inadmissible pieces of evidence were relied upon, evidence was misread and contradictory findings were recorded.

On these submissions, Mr. Mishra implored the Court to accept the appeals of Mohet Hojai and Phojendra Hojai and acquit them of the charges.

DISCUSSION IN CRL. APPEAL NO.286/2017 (BABUL KAMPRAI)

56. Mr. P. Kataki, learned counsel representing the accused/appellant adopted the arguments advanced by Mr. D.K. Mishra on behalf of the accused Phojendra Hojai to great extent. He further contended that other than the conjectural allegations of the prosecution witnesses, the trial Court recorded the following findings for holding Babul Kemprai guilty of the charges:-

> *"1) He was carrying a sum of Rs.1.00 (one) crore wrapped by a blanket, on 01.04.2009 from Guwahati to Shillong in a hired Tata Sumo vehicle along with Phojendra Hojai and caught red handed at 14th Miles G.S. Road.*
>
> *2) No plausible explanation has offered by him for carrying such a huge sum in his vehicle.*
>
> *3) He has seen in the flat of accused Mohit Hojai on 31.03.2009 by P.W. 115 Sri Sonam Lama.*
>
> *4) He has gone out of Guwahati in Tata Sumo vehicle of Chandra Sharma on 01.04.2009 and arrested on that*

day and P.W. 115 seen him and Phojendra Hojai in T.V. News to the evening."

57. Mr. Kataki submitted that even if these findings are accepted on the face of the record, the same cannot lead to any inference holding the accused/appellant guilty of the offences punishable under Section 120B IPC and Section 17 of the UA (P) Act. Mr. Kataki urged that the trial Court placed reliance on the testimony of only three witnesses, i.e. PW-2, Chandra Kanta Boro, PW-10, Maijuddin Ahmed and PW-26, Sudhakar Singh so as to hold the accused guilty of the charges. He contended that in the seizure list Exhibit-38 the prosecution has categorically alleged that the currency (Rs.1 Crore) recovered belonged to Phojendra Hojai and thus, the recovered currency cannot be linked to the accused/appellant Babul Kemprai. He further urged that the drivers of the two vehicles, namely, PW-64, Bunu sonar and PW-113, Dipankar Deka categorically stated that the vehicles were intercepted at Barapani, Meghalaya. Thus, as per Mr. Kataki, the seizure list Exhibit-38 and the statements of the witnesses referred to (supra) cannot be considered constituting reliable, tangible evidence so as to link the accused Babul Kemprai with the alleged offences. On these grounds, Mr. Kataki implored the Court to accept the appeal and reverse the findings recorded by the trial Court convicting the accused/appellant and sentencing him as above.

DISCUSSION IN CRL. APPEAL NO.259/2017 (NIRANJAN HOJAI)

58. Mr. B.K. Mahajan and Mr. N.J. Das, learned counsel representing the accused Niranjan Hojai urged that

the prosecution has failed to prove any incriminating material so as to hold the appellant guilty of the offences alleged. The trial Court summarised the following issues for determination while discussing the case of the appellant:-

1) In October, 2003, Jewel Garlosa formed one militant organisation in the name of DHD(J).

2) Accused Niranjan Hojai was the C-in-C of the DHD(J), and Jewel Garlosa was the Chairman of DHD(J).

3) On 2nd October, 2009 DHD(J) cadres surrendered formally and in the aforesaid ceremony Niranjan Hojai was the Sr. most DHD(J) Cadres along with other cadres who led the surrender ceremony.

4) There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura and Manipur was stopped. DHD(J) group had resorted to firing on moving train.

5) On the disclosure made by Vanlalchanna, an identification memo was prepared by which he identified the photographs of Niranjan Hojai and Jewel Garlossa. This shows his familiarity with Vanlalchanna, the arms supplier.

6) He was at Kualalampur in February, 2009 and PW-23, Kulendra Daulagopu meets him there.

7) Various documents, bank A/D including City Bank A/D, Royal Thai orchid A/D and credit card, Marriott

club card etc. which he was carrying in the name of Nirmal Rai while staying at Nepal, concealing his real identity.

8) It was he, under whose dictation Depolal Hojai has submitted resignation from the post of CEM of NCHDAC.

9) He has connection with Mohit Hojai the then CEM of NCHAC, at whose instance the Govt. funds meant for development of NCHAC were defalcated and channelized to the DHD(J) through the Govt. servants and contractors.

59. Learned counsel Mr. Mahajan and Mr. Das pointed out that the prosecution examined witnesses, namely, Ronsling Langthasa (PW-20), Nairing Daulagopu (PW-46), Mohindra Ch. Nunisa (PW-79), Mayanong Kemprai (PW-81), Bijoy Sengyung (PW-82), Subrata Hojai (PW-87), Nipolal Hojai (PW-98), Depolal Hojai (PW-126) and Dilip Nunisa (PW-129) in its endeavour to prove that the DHD(J) was a militant organisation formed by Jewel Garlosa in the year 2003. They contended that except PW-46, all the other witnesses were declared hostile by the prosecution and their previous statements were relied upon by the trial Court without following the due process of law and contrary to the settled principles of appreciation of evidence as laid down by Hon'ble Supreme Court. As per Mr. Mahajan and Mr. N. Das, the trial Court indulged in a grossly illegal exercise of extracting the entire 161 Cr.PC statements of the witnesses during the evidence of the CIO, Mr. Mukesh Singh, PW-150

and then admitted the same as substantive pieces of evidence. By doing so, the learned trial Court held that the issue for determination Nos.1, 2, 8 and 9 were found to be proved against the appellant. They urged that as the trial Court relied upon inadmissible evidence so as to hold these issues proved, the findings so recorded are perverse and unsustainable on the face of the record. It was further contended that the trial Court committed error in placing reliance upon the alleged surrender ceremony of the DHD(J) cadre which allegedly took place on 02.10.2009 (issue no.3). He contended that the CD of the surrender ceremony was discarded by the trial Court by findings recorded at Paragraph 275 of the impugned judgment because it was not accompanied by the certificate as prescribed under Section 65 B of the Indian Evidence Act. No witness present during the so called surrender ceremony was examined by the prosecution and hence, there is no legal proof of this allegation.

60. Mr. Mahajan further contended that the evidence of PW-72, Anurag Tankha, wherein he deposed regarding this so called surrender ceremony was not put to the accused Babul Kemprai in his statement under Section 313 Cr.PC. He also pointed out that the witness admitted in his cross-examination that lists Exhibit-272/6 to Exhibit-272/8 being the alleged list of arms deposited by the surrendered DHD(J) cadres were prepared by his subordinate. He further contended that there is no evidence about the source through which the said list and the other list concerning the cases registered against the DHD(J) were prepared.

61. Learned defence counsel also criticized the finding of the trial Court on the **Issue No.4** urging that this finding was recorded merely on conjectures made by the witness PW-24, Amitava Sinha in his evidence.

62. Regarding the finding on the **Issue No.5**, the contention of Mr. Mahajan was that the identification memo whereby, the accused Vanlalchanna allegedly identified Niranjan Hojai and Jewel Garlossa and the consequential finding that this exercise of identification indicated the proximity of accused with the arm supplier Vanlalchanna is also grossly illegal. He contended that that the evidence laid by the prosecution to prove this identification memo Exhibit-241 is highly contradictory. In this regard, it was contended that the witness PW-40, Nabajit Buragohain remained silent in his deposition about any such exercise having been conducted in his presence. PW-52, C.P. Phukan stated that the photo identification proceedings were held at SOU Police Station, Kahilipara but the document Exhibit-241 indicates that it was prepared at House No.5, Rukmini Nagar, Guwahati-6. This fact was also admitted by the Investigating Officer concerned, i.e. PW-148, Santosh Kumar. Thus, in addition to the circumstance that the identification memo prepared at the instance of one accused to identify another accused is hit by Sections 25 and 26 of the Evidence Act, otherwise also the same cannot be read in evidence, because identification proceeding conducted during the investigation are not substantive piece of evidence and identification would have to be made by leading substantive evidence in trial. Thus, it was the fervent contention of learned defence

counsel that the procedure undertaken by the prosecution with regard to identification of the accused vide Memo Exhibit-P-241 is nothing but an exercise in futility because the photo identification of one accused by another is of no evidentiary value.

63. Regarding the **Issue No.6**, the contention of Mr. Mahajan was that the prosecution claimed that the appellant was at Kualalampur in February, 2009, and the witness Kulendra Daulagopu, PW-23 met him there. However, it was pointed out that Kulendra Daulagopu was not made to identify the accused in the Court during his deposition. Thus, his evidence is of no consequence whatsoever. It was further contended that even if it is assumed that Kulendra Daulagapu met the accused Niranjan Hojai at Kualalampur, it is apparent from his version in examination-in-chief that he alone met Niranjan Hojai and Mohet Hojai was not present in this meeting. At that time, Niranjan Hojai generally asked the witness about his election aspirations. It was contended that from the tenor of conversation which the witness had with Niranjan Hojai, no such inference can be drawn that the accused was trying to project or pursue the goals of DHD(J) or any other organisation for that matter. It was further pointed out that in cross-examination, the witness admitted that his meeting and conversation with Niranjan Hojai at Kualalampur was out of sheer co-incidence. He thus contended that no inference linking the accused/appellant Niranjan Hojai for any subversive or terrorist activity connected with DHD(J) can be drawn from the statement of this witness. Attention of the Court was drawn to the

following admission made by the witness Kulendra Daulagopu (PW-23) in his cross-examination:-

> *"……Regarding the activities of DHD(J) I do not have any personal knowledge and my knowledge is confined to the media as well as people."*

64. The trial Court's finding on **Issue No.7** was criticized on the ground that the disclosure memo, Exhibit-125 and the seizure memo Exhibit-126 leading to the alleged discovery of bank account pass-book, Royal Thai orchid A/C and credit card, Marriott club card etc. which the accused was allegedly carrying in the name of Nirmal Rai while staying at Nepal, were not proved by examining the Investigating Officer, P.K. Choudhury who undertook this exercise. The attesting witnesses who put their signatures on the disclosure memo and the seizure memo were also not examined in evidence. Moreover, no question related to these documents was put to the appellant during his examination under Section 313 Cr.PC and hence, this circumstance could not have been read in evidence against the accused/appellant.

65. Regarding the finding on **Issue No.8**, the contention of learned defence counsel was that the trial Court relied upon the evidence of the hostile witness, to be specific of Depolal Hojai, PW-126, who himself did not support the prosecution case on this aspect. It was further pointed out that the trial Court also relied upon the alleged conversation held between the accused/appellant and PW-23, Kulendra Daulagapu. However, Kulendra Daulagapu did not make any reference to any such conversation. Furthermore,

the Call Detail Records of the mobile phones were not proved by proper legal evidence. Thus, it was contended that the finding of the trial Court on this issue is also perverse and based on no evidence.

66. Learned defence counsel criticized the finding on **Issue No.9** contending that there is nothing on record to show that the accused/appellant was having any affinity with Mohet Hojai based whereupon a conspiratorial design was hatched to defalcate the funds of the alleged N.C. Hills Council and channelize the same to DHD(J). As per Mr. Mahajan, this prosecution theory is again based on sheer conjecture and surmises. He contended that if at all the prosecution was desirous to link the accused/appellant with the alleged conspiracy, the best evidence would have been to collect his mobile phone number and to procure the CDRs thereof. However, no such effort was ever made by the Investigation Agency. It was further contended that the trial Court placed reliance on the fact that the appellant made a call on the phone of Phojendra Hojai after he was apprehended on 01.04.2009 with currency notes to the tune of Rs.1 Crore. However, regarding this allegation, it was contended that the mobile device of Phojendra Hojai was in the possession of the seizure officer, PW-10, Maijuddin Ahmed and thus, there is no possibility that any call could have been received on the said device after its seizure by police. Furthermore, PW-132, Jayshree Khersa, who allegedly prepared the transcript of conversation, did not state that she could identify voices of the persons referred to in the script. It was further contended that the voice of the

accused/appellant was sought to be got compared through the CD allegedly given to the Investigating Officer by PW-27, Hiteswar Medhi who claimed to have prepared the same during an interview allegedly given by the appellant to his news channel. It was submitted that the procedure of collecting specimen voice sample in this manner is totally illegal. Hiteswar Medhi, PW-27 admitted in his evidence that he was not familiar with the voice of Niranjan Hojai. He also admitted that voice contained in the material Exhibit-15, i.e. the CD may not be of Niranjan Hojai. Thus, Mr. Mahajan, learned counsel representing the accused/appellant Niranjan Hojai urged that the finding recorded by the trial Court on this issue has no sanctity for want of legal evidence to support the same.

67. Regarding the recovery of money and arms on 01.05.2009 effected at Shillong as stated by PW-61 Ian Onel Swer and PW-62 K.D. Marak, it was contended that the appellant has not been charge-sheeted in connection with the said recovery and merely on the *ipse dixit* of these two witnesses, a finding was recorded that the money was being carried for delivery to DHD(J). No document pertaining to the said seizure was proved on record.

68. In regard to the next circumstance regarding the recovery of money effected in connection with Diyungmukh P.S. Case No.3/2009 from Jibangshu Paul and Golen Daulagaphu, it was submitted that this allegation was sought to be proved through the evidence of PW-33, S.I. Nur Mohammad Khan and PW-36 Ratneswar Das, who were the

informant and the Investigating Officer of the original case being Umrangso P.S. Case No.77/2009. It was contended that there is no material to show that the accused/appellant was in any manner connected with this recovery, who was not charge-sheeted in connection thereof.

69. Regarding the allegation that money was sent to Kolkata through George Lam Thang and Malswmkimi for being converted to Dollars, the defence counsel criticized the said finding alleging that George Lam Thang's evidence is unacceptable on the face of the record and even otherwise, he did not implicate the appellant in this case in any manner whatsoever.

70. Regarding the allegation of recovery of arms in connection with Haflong P.S. Case No.54/2010, it was contended that investigation of the said case resulted into a negative final report which was duly accepted by the competent Court and thus, the said recovery could not have been relied upon by the trial Court as an incriminating circumstance against the accused/appellant. It was further contended that the list of cases registered against the DHD(J) and the arms and ammunitions allegedly deposited during the surrender ceremony by the DHD(J) sought to be proved through PW-72, Anurag Tankha have no evidentiary value whatsoever because the Officer was not the scribe of the documents or of the lists of the cases. It was also contended that the evidence of Anurag Tankha was not put to the appellant during his statement under section 313 Cr.PC. On these grounds, Mr. Mahajan urged that the

prosecution miserably failed to complete the chain of incriminating circumstances which unerringly point towards the guilt of the accused. Hence, the appellant deserves to be acquitted of the charges.

71. Per contra, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India and Mr. Sathyanarayana, learned Senior Public Prosecutor, NIA vehemently and fervently opposed the submissions advanced by Mr. Mishra, learned senior counsel representing the accused/appellants Mohet Hojai and Phojendra Hojai; Mr. Kataki, learned counsel representing the accused/appellant Babul Kemprai; and Mr. Mahajan and Mr. Das, learned counsel representing the accused/appellant Niranjan Hojai. They supported the findings recorded by the trial Court holding these appellants guilty of the charges. Their fervent contention was that the Investigating Officers of NIA had no malice against the accused/appellants and thus, there was no reason for them to have manipulated the evidence. They urged that the evidence of the witnesses relied upon by the trial Court to hold the accused/appellants guilty of the charges is unimpeachable and hence, the impugned judgment does not warrant any interference. On these grounds, they implored the Court to dismiss both the appeals.

We shall be discussing the arguments in appeals of Mohet Hojai, Phojendra Hojai, Niranjan Hojai and Babul Kemprai at a later stage.

DISCUSSION IN CRL. APPEAL NO.290/2017 (VANLALCHHANA)

72. The accused Vanlalchhana has been branded to be a very important character in the entire case as being the

arms supplier of DHD(J). The trial Court dealt with the case of the said accused from Paragraphs 194 to 225 of the impugned judgment. The imputations as against this accused were drawn at Paragraph 225, which are reproduced herein below:-

> *"225. Thus the incriminating materials apparent from the evidence discussed above can be recapitulated as under:-*
>
> 1. *He used the service of Malswamkimi to convert money that he received from Phojendra Hojai at Kolkata, to US Dollars.*
> 2. *After conversion of money to US Dollars he received the same from Malswamkimi.*
> 3. *At his instance the arms and ammunitions recovered and seized from the house of Sarong Vang were recovered and the same was in his exclusive knowledge.*
> 4. *He often visited Kolkata, and on two occasions he visited abroad with Indian Passport.*
> 5. *He identified the photographs of accused Niranjan Hojai and Jewel Garlosha in a photo identification exercise carried out on 08.08.2009."*

73. A major thrust of the prosecution case hovers around an allegation that a huge sum of money was defalcated from the funds of N.C. Hills Autonomous Council and the accused Malswamkimi and Phojendra Hojai got the siphoned off money converted into US Dollars with the aid of George Lam Thang. The foreign currency, i.e. US Dollars, so procured were then provided to the accused Vanlalchhana to purchase arms and ammunitions for being used in the terrorist/subversive activities of the DHD(J). The trial Court placed reliance on the evidence of the following witnesses so

as to conclude that the prosecution allegations were proved against the accused/appellant:

1. Shri K. Lalnithanga (PW-13).
2. Shri Laltanpuia Sailo (PW-14).
3. Shri George Lam Thang (PW-29).
4. Shri Nabajit Buragohain (PW-40).
5. Shri C.P. Phookan (PW-52).
6. Shri Jatin Chandra Deori (PW-54).
7. Shri Harish Singh Karmyal (PW-56).
8. Shri Dinesh Kr. Vohra (PW-58).
9. Shri Devinder Singh (PW-59).
10. Shri Lalrinawma Traite (PW-63).
11. Shri Sheo Kr. Pandey (PW-69).
12. Shri Kamal Krishna Das (PW-105).
13. Shri Satyendra Kr. Deka (PW-137).
14. Shri Swayam Prakash Pani (PW-146).
15. Shri Santosh Kumar (PW-148).
16. Shri Mukesh Singh (PW-150).

74. The following findings were recorded by the trial Court so as to hold the accused/appellant Vanlalchanna guilty of the charges:-

> *"465. It also appears from the evidence of P.W.13, P.W. 14, P.W. 56 and P.W. 63 that in connection with Aizwal P.S. case No.238/09, u/s 25(1)(a) (1)(b) accused Vanlalchanna @ Vantea was arrested on 26.07.09. Later, on 30.7.09, during police custody he made a disclosure about weapons which he kept in a house located at Saronveng, Aizwal. The name of the house owner was Lalrova. The search team conducted the search and recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas, one telescope Bushnell. Ext.43 is the disclosure memo dtd. 30.7.09 prepared on the spot on the disclosure made by Vanlalchhana. The recovered arms and ammunitions were seized vide seizure list Ext. 250. As it was found during interrogation that the arms and*

ammunitions were not related to Aizwal P.S. Case No.238/09, the said case was closed and found involved in NIA Case No.01/09 as the arms were meant for DHD(J) according to accused Vanlalchanna @ Vantea the same were handed over to P.W. 56 and P.W. 56 taken custody of the accused.

466. It is to be mention here that except the version of the accused that the arms were meant for DHD(J) there is no direct evidence to link the recovered arms with DHD(J). And being made before the police his statement cannot be taken into account legally. But, there is evidence to show that accused Vanlalchanna @ Vantea received US Dollars from accused Malswamkimi, who converted Indian currency at instance of P.W. 29 Shri George Lamthang after receiving the same from accused Phojendra Hojai (Rs.4.00 Crore) at Kolkata. What he did with the US Dollars was in his exclusive knowledge and as such he is bound to explain it. But in his examination u/s 313 Cr.P.C he failed to give any plausible explanation for the same. This being the position this court is entitled to draw an inference u/s 106 of the Evidence Act that with the said US Dollars he purchased the seized arms for the DHD(J). In holding so we derived authority from a decision of Hon'ble Supreme Court in The State of West Bengal Vs. Md. Omar and another (2000) 8 SCC 323, where it has been held that:-

> *'Section (106 Evidence Act) is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.'*

It is further observed that:-

> *'The pristine rule that burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious cases would be major beneficiaries and the society would be casuality.'*

467. The inference of this court is further fortified by recovery and seizure of Rs.1.00 crore and three blank letter head of DHD (Jewel) and one letter of Mohit Hojai from accused Phojendra Hojal on 01.04.2009 at 14th mile Jorabat. This fact makes the picture very clear. Besides, accused Vanlalchanna has identified the photographs of accused Niranjan Hojai and Gewel Garlossa in a photo identification sessions in presence of independent witness. This establish his familiarity with accused Niranjan Hojai the C-in-C of DHD(J) and Jewel Garlossa the Chairman of DHD(J).

468. …….

469. …….

470. …….

471. Now, it has to be seen against whom the prosecution side has been able to establish the charge u/s 25(1)(d) Arms Act. As is evident accused Vanlalchanna @ Vantea and being C-in-C and Chairman of DHD(J) accused Niranjan Hojai and Jewel Garlosa are the person against whom the prosecution side has been able to bring home the charge. The evidence on the record are falling short of to bring home the charge against rest of the accused namely Phojendra Hojai, Babul Kemprai, Mohit Hoja, Ashringdao Warissa, and Smti. Malswamkimi, and they are entitled to acquittal of the same and acquitted accordingly."

75. Mr. Z. Kamar, learned senior advocate appearing for the accused Vanlalchhana urged that the appellant has been falsely implicated in the case. It is a case of mistaken identity because it is clearly spelt out from the evidence of the police witnesses from Aizawl, namely, K. Lalnithanga (PW-13) and Laltanpuia Sailo (PW-14), that there were two persons answering to the name and description of Vanlalchanna and that the appellant herein was never known to be having the alias Vantea before this case.

He further urged that the arrest memo of the appellant was never proved and the disclosure statement (Exhibit-43) does not bear his signatures. No incriminating

recovery/discovery was made at his instance and hence there is no evidence on record so as to justify the conviction of the appellant as recorded by the trial Court

76. *Per contra,* learned counsel for the prosecution supported the impugned judgment and urged that conviction of the accused Vanlalchhana is based on an apropos appreciation of evidence and deserves to be confirmed.

77. Now, we proceed to discuss the evidence of the witnesses, referred to (supra), on whose evidence, the trial Court placed reliance so as to record guilt of the accused/ appellant Vanlalchhana.

78. PW-13 (K. Lalnithanga) deposed that he was posted as Sub-Inspector of Police at Aizawl Police Station, Mizoram in the year 2009. He took up the investigation of Aizawl Police Station Case No.238/2009 dated 18.07.2009 registered for the offences under Section 25(1)(a) & (1)(b) of the Arms Act against the accused Vanlalchhana of Saron Veng, Aizwal. The evidence of this witness makes very interesting reading and hence, the relevant extracts from his deposition are reproduced herein below for the sake of ready reference:

> *"..... When I was in Aizwal police station I took up the investigation of Aizwal police station case No.238/09 dtd. 18.7.09 U/S 25(1)(a), (1) (b) Arms Act against accd. Vanlalchama of Saronveng, Aizwal. During further investigation another person, viz., Vanlalchhana @ Vantea who is temporarily living at Saronveng, Aizwal is also suspected to have involved in the above case. He was then arrested in connection with the above case and forwarded to the Aizwal court for police remand for 4 days. The prayer of police remand is allowed by the Court. During the remand period he was interrogated but*

could not find his actual involvement in connection with the above Aizwal Police Station No.238/09 dtd.18.7.09. He was then forwarded to the Court praying to discharge from the liability of the case. However, he is suspected to have involvement in NIA Case No.1/09. The prayer was made vide a Petition, Ext.41 which is a certified photo copy of my Petition (Under Objection). Ext.41(1) is my signature. On the basis of my said Petn. Ext.41 the ld. magistrate passed an order on 31.7.09. Ext.42 is the certified photo copy of the said order.

XXXXXXXXXXXXX Cross for accused Vanlalchhana :

I have not seized the documents as exhibited as Ext. 41 & Ext. 42. I have never seen these 2 documents earlier than today. ***Prior to this case this Vanlalchama was not known as Vantea****. I have been interrogated by the NIA authority in connection with this case.* ***I have not reported before the I/O, NIA that the name of Vanlalchama is also Vantea****. It is not a fact that I have reported before the I/O, NIA the name of Vanlalchama to be Vantea. I do not remember what was the allegation labeled against him on the basis of Aizwal police station case was registered. Vanlalchhana was also arrested & subsequently he was discharged from the Aizwal police station case since no material as against him was found. I do not know the involvement of Vanlalchhana in connection with the NIA Case No.1/09. It was during the remand period I have been informed by the NIA authority, I came to know about the involvement of Vanlalchhana in connection with the NIA Case. Mr. H.S. Karmyal from NIA reported me."*

(Emphasis supplied)

From a bare perusal of the evidence of this witness, it becomes clear that he did not prove a single document pertaining to the FIR No.238/2009 of Aizawl Police Station so much so that even the FIR was not exhibited in the instant case. He admitted that appellant Vanlalchhana was not having any alias of Vantea. Thus, a genuine doubt is created about the identity of the accused from the evidence of this witness.

79. PW-14 (Laltanpuia Sailo) deposed that he was posted at CID Special Branch, Aizawl in the year 2009. In June, 2009, a team of NIA came to Aizawl for investigation of NIA Case No.1/2009 and that they were on the lookout for an arms smuggler, whose identity he later came to know as Vanneichem @ Vantea @ Vanlalchhana, son of Ngunkipthang of Saronveng, Aizwal. The relevant extracts from the examination-in-chief of this witness are reproduced herein below for the sake of ready reference.

> *"They were looking for one armed smuggler whose identity we later came to know Vanneichem @ Vantea @ Vanlalchhana, S/o- Ngunkipthang of Saronveng, Aizwal. We arrested him at village, Lungmuat on 26.7.09 around 3.30 a.m. He was later taken to Aizwal and interrogated. Later on 30.7.09, he made a disclosure about weapons which he kept in a house located at Saronveng, Aizwal. The name of the house owner was Lalrova. The search team conducted the search and recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas, one telescope Bushnell. Earlier we have also recovered one passport which was in the name of Vanlalchhana. The accused was later taken away by the NIA team. Ext.43 is the disclosure memo dtd. 30.7.09 which I have prepared on the spot on the disclosure made by Vanlalchhana. Ext. 43(1) is my signature. Ext. 43(2) is the signature of Vanlalchhana. Ext. 43(3) is the signature of house owner, Lalrova. Ext. 43(4) is the signature of another witness, Zohmingthanga. As the accd. was detained in Aizwal Police Station case No.238/09 so the reference of the said case is given in Ext. 43. Ext. 44 is the Passport in the name of Vanlalchhana which I have recovered during the search."*

80. The following extracts from the cross-examination of this witness would also have a material bearing on our conclusions and hence, the same are reproduced herein below:-

> *".....When we have proceeded to recovery of the materials, one NIA officer has also accompanied us. We*

have acted with the Mizoram Police officers as per the supervision of the NIA officer in recovering the mat. Exts. Mizoram Armoury where the Mat. Exts. were stored is a Deptt. under the direct control of Mizoram Govt. ..... 'I have been interrogated by the NIA'. I have not stated before the I/O, NIA as, 'on the input received from NIA team, New Delhi, we were searching for one, Joseph one suspected arms dealer of Myanmar origin, who was also suspected in arms smuggling of Aizwal P.S. Case No.238/09 being investigated by S.I., K. Lalnithanga.' ..... ***When we have gone for recovering the Mat. Exts., we have found Vanlalchhana in the village, Lungmuat. He was at large at that point of time when we met Vanlalchhana and he is nowhere connected with any case****. The building where from all the Mat. Exts. were recovered was under the possession of whom is not known to me. The rented house from where the Mat. Exts. were recovered was under the possession of one Nempui. Nempui has not been made an accused in connection with this case by the NIA officer accompanying me nor I have advised them for making her an accused despite the fact that all these Mat. Exts. has been recovered from her rented house. .....I believe that the entire contents made in Ext.43 is true. The Passport is a documents which I have exhibited where only the name of Vanlalchhana has appeared and no other name in the form of alias has appareled in Ext.44. Every particulars of the role of the armed smugglers of Mizoram has been seized by the NIA authority from the Mizoram Police. This document consists of about 50 nos. of the names & photographs of armed smugglers of Mizoram.* ***While dealing with the name of Vanlalchhana @ Vantea and in showing his history as regard his address no reference has been made that he has had his origin in Myanmar****.*

XXXXXXXXXXXXXXX Cross for accused R.H. Khan :

..... ***On 30.7.09 accused Vanlalchhem was in the custody of Aizwal P.S. The Ext.43 is written on my handwriting****. I did not file any petition before the Court for recording the statement of Vanneichem. I have not been shown the original case dairy of Aizwal P.S. Case No.238/09. Unless I go through the original case dairy of Aizwal P.S. Case No.238/09, I am not in a position to say exactly where the statement of Ext.43 was recorded. I did not file any petition before the Magistrate for recording the statement of Vanneichem U/S 164 Cr.P.C.*

It is not a fact that what I have written in Ext.43 is not given by Vanneichem voluntarily. We did not prepare any seizure memo while alleged seizure of Mat. Exts.11 to Mat. Exts.14. In the Mat. Ext.11 to 14 there does not

appear any signature of mine nor any person involved in the raid.....

XXXXX Cross for accused Jowel Garlosa & Niranjan Hojai :

*..... **Accd. Vanneichem alias Vanlalchhana was never an accused in connection with Aizwal P.S. Case No.238/09 and that is why he was discharged**. At the behest of NIA officials, I prepared Ext.43. It is not a fact that no recovery of Mat. Exts.11 to 14 were ever made."*

(Emphasis supplied)

81. The witness claimed to have recorded Exhibit-43, the disclosure statement of Vanlalchhana at the instance of the NIA officials which allegedly led to the discovery of arms and ammunition from the house of one Lalrova in which one Nempui was living as a tenant. The memorandum (Exhibit-43) being the disclosure statement allegedly recorded at the instance of the accused Vanlalchhana is a very important document and hence, the contents thereof are reproduced verbatim:-

"I, Vanneichem @ Vanlalchhana @ Vantea @ Joseph (28), S/o- Ngunkipthang, r/o Saron Veng, H/No.D-37, Aizwal voluntarily disclosed, in the presence of independent witnesses namely, (1) Lalrova (54), s/o Sangliana (L), (2) Zohmingthanga (41), s/o L.S. Vuana that, a deal was struck between DHD(J) and John Mizo @ John Silus to supply arms for the use of DHD(J), an insurgent group active in N.C. Hills area. It came to my knowledge from one Thanga of Tahan, Myanmar that a consignment of arms containing M-16 assault rifles and other communication equipments have been despatched by him meant for DHD(J) group. The said consignment was kept/concealed in a house taken on rent by one lady Nempuii. I can identify the said house in Saron Veng area and lead the recovery of the said consignment. I am giving this disclosure voluntarily without any pressure."

82. The most important circumstance reflected from this document is that it does not bear any time of recording.

The document also does not indicate that Vanneichem @ Vanlalchhana @ Vantea @ Joseph, the person who made the disclosure, was in custody in connection with any criminal case. Furthermore, the father's name of the said accused in this document is mentioned as Ngunkipthang. Thus, the said disclosure statement cannot even remotely be connected with the accused/appellant Vanlalchhana because there is a serious discrepancy regarding the parentage of the person, who made the disclosure and that of the accused/appellant. In addition thereto, we have compared the signatures appended by the so called accused Vanlalchanna on Exhibit-43 and the signatures appended by the appellant Vanlalchanna in the statement under Section 313 Cr.PC and on a careful visual comparison thereof, we are of the firm view that the signatures as appearing on the document (Exhibit-43) are totally distinguishable from the signatures, which the accused/ appellant appended in his statement under Section 313 Cr.PC. The variations in the 2(two) signatures are too stark and prominent so as to be ignored.

83. It is also relevant to state that Harish Singh Karmyal (PW-56), the Officer of NIA, who allegedly accompanied Laltanpuia Sailo (PW-14) in this procedure, did not append his signatures on the document. The scribe of this disclosure statement (Exhibit-43), namely, Laltanpuia Sailo (PW-14), did not utter a single word about the seizure memo by virtue whereof, the weapons were recovered. Thus, there is no link between the disclosure and the discovery of arms and ammunitions. The prosecution has come out with a clear case that the accused/appellant Vanlalchhana was not

found involved in the Aizawl Police Station case and hence, he was got discharged from the said case by virtue of order dated 31.07.2009 (Exhibit-42) passed by the learned Chief Judicial Magistrate, Aizawl on the application (Exhibit-41). The application for discharge (Exhibit-41) reveals that the person sought to be discharged was Vanneichem @ Vantea, son of Haukipthanga. The order of the Magistrate (Exhibit-42) dated 31.07.2009 also reveals that Vanneichem @ Vantea, son of Haukipthanga was being discharged from the case at Aizawl. It is startling to note that no memorandum proving arrest of the accused/appellant Vanlalchhana in the NIA case was proved by the prosecution. Almost all the documents pertaining to the Court proceedings from Aizawl were presented as photostat copies and were taken on record without following the procedure of admitting secondary evidence.

84. A pertinent fact required to be noted here is that during the deposition of K. Lalnithanga (PW-13) and Laltanpuia Sailo (PW-14), the prosecution made no effort whatsoever to get the appellant identified as being the Vanlalchanna @ Vantea @ Vanneichem, who was allegedly responsible for making the disclosure statement leading to the incriminating recoveries.

85. The prosecution heavily placed reliance on the evidence of the approver PW-29 (George Lam Thang) so as to seek corroboration to its case as against the appellants Vanlalchanna, Phojendra Hojai, Niranjan Hojai and

Malswamkimi. Now, we proceed to discuss the testimony of the approver.

His statement was recorded on 25.11.2013, wherein he stated that he was into the business of booking air tickets in Kolkata. He came into contact with Malswamkimi in January, 2008 and would do the bookings of her air tickets whenever she approached him for the same. In April, 2008, Malswamkimi asked him as to whether he had any idea about conversion of Indian rupees to US Dollars. At that stage, he feigned ignorance. In June, 2008, while he was sitting at a roadside tea shop near the New Market area, he overheard two persons discussing about conversion of US Dollars. He got himself introduced to one of those persons whose name was Tapan, the money changer and he remained in touch with the said person. In August, 2008, he informed Malswamkimi regarding the source of converting Indian currency to US Dollars. Malswamkimi thereafter would bring different sums of money ranging from Rs.15 Lakh to Rs.20 Lakh from Aizawl and he got the same converted into US Dollars through Tapan after retaining his commission @ 50 Paisa per US Dollar. In the month of October, 2008, Malswamkimi brought Rs.20 Lakhs from Aizawl for converting the same to US Dollars. Once, he visited Hotel Centre Point, Kolkata to collect the Indian currency from Malswamkimi, on which occasion, he saw the accused Vanlalchhanna staying with Malswamkimi in the same Hotel. The witness categorically stated that he did not know Vanlalchhanna and Malswamkimi identified him as Vantea of Aizawl. After collecting the money, he proceeded to his rented house,

contacted Tapan and completed the conversion in three to four days. He retained his commission and gave the converted foreign currency to Malswamkimi.

In November, 2008, Malswamkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel for collecting money of Vantea (Vanlalchhanna). They both went to Madhumilan Hotel where Malswamkimi collected a sum of Rs.1 Crore from Phojendra Hojai. The witness categorically stated that he did not know Phojendra Hojai at that point of time. Both of them collected the Indian currency and proceeded to his rented house where they counted the notes and verified the same to be Rs.1 Crore. He started the process of conversion to US Dollars which was completed in ten days. After the conversion, he gave the US Dollars to Malswamkimi. Similar sequence took place in February, 2009 when a sum of Rs.2 Crores was collected from Phojendra Hojai and was got converted to US Dollars through Tapan. This time, the process took twenty days. He claims to have seen Vantea for the second time when he visited Malswamkimi at the Centre Point Hotel to give the converted foreign currency. Another such transaction for a sum of Rs.1 Crore (allegedly of Phojendra Hojai) took place in March, 2009.

The witness stated that though he accompanied Malswamkimi to the said two Hotels but he did not have any knowledge about Phojendra Hojai from whom Malswamkimi collected money. On three occasions, he claims to have learnt from Malswamkimi that she was collecting the money at the behest of Vanlalchhanna. The witness further stated that in

April, 2009; May, 2009; June, 2009 and July, 2009, Malswamkimi brought Rs.15 Lakhs from Aizawl and got the same converted to US Dollars. He denied having any knowledge about further use of the converted money. He heard from Malswamkimi that she had been sent by businessmen in Aizawl and was earning commission for her job. The witness stated that he was arrested on 11.08.2009 by Kolkata Police, who seized a sum of Rs.5 Lakhs from his possession, which was given to him by Malswamkimi on 07.08.2009 without any instruction on what to do with the money. He denied having any collaboration with the other co-accused stating that he was only a commission agent working to get some remuneration so as to maintain his family. His statement under Section 164 Cr.PC was exhibited as Exhibit-76. The identification memo of Hotel Madhumilan and Hotel Shalimar from where he and Malswamkimi allegedly collected money from Phojendra Hojai was proved as Exhibit-77. The witness identified Malswamkimi, Phojendra Hojai and Vanlalchhanna stating that they were present in the Court.

In cross-examination, the witness stated that the person whom he referred as Tapan was arrested by Kolkata police in connection with the present case. The actual conversion of money from Indian currency to US Dollars was done by Tapan. In cross-examination made on behalf of Vanlalchhanna, the witness stated that he never had any direct dealing with Vanlalchhanna and that he incidentally met Vanlalchhanna, who never directly entrusted Indian currency to him for being converted to US Dollars.

In cross-examination made on behalf of Phojendra Hojai, the witness agreed that before identification of the said accused for the first time in Court on 25.11.2013, he was shown his photograph by the NIA during investigation. He further admitted that he never had any direct dealing with Phojendra Hojai.

86. *Qua* the case of Vanlalchhanna, all that can be culled out from his testimony is that he saw the accused Vanlalchhanna with Malswamkimi on two occasions in a hotel at Kolkata. The witness affirmed that Vanlalchhanna never entrusted him any money for being converted.

A serious question mark is posed on the conduct of the Investigation Agency when we consider the admission made by the witness that the person named Tapan, who was principally responsible for conversion of a huge sum of Indian currency to the tune of nearly Rs.5 Crores to US Dollars, was arrested but was thereafter let off. The amount of money allegedly got converted by the approver George Lam Thang (PW-29) through underhand dealings was huge running into more than Rs.5 Crores and thus, without any corroboration of the claim made by the approver that he got such huge sum of Indian currency converted to US Dollars, it would not be prudent to place implicit reliance on his evidence, more so, when he was originally an accused in this case and has given a totally exculpatory statement after being granted pardon and turning an approver.

87. There is a very important admission in the cross-examination of this witness conducted on behalf of the

accused Malswamkimi, wherein he stated that he had given evidence in Court on the basis of the confessional statement given at the time of investigation while he was in judicial custody. Apparently thus, a genuine doubt is created as to whether the deposition as made by the witness in Court is based on truth or whether the same is purely a reproduction of what he confessed after being arrested by the NIA.

88. We may further add that as per the prosecution case, the total amount of Indian currency which was allegedly got converted to US Dollars through George Lam Thang, was not a pittance but was more than 5 Crores rupees. Conversion of such a huge sum of Indian currency into foreign currency could only have been managed through potentially sound resources and would definitely leave a trail. Geroge Lam Thang categorically stated in his evidence that the actual conversion was done by a person named, Tapan, who was also arrested in this case by the Kolkata police but was thereafter let off. The rank inaction on the part of the NIA Investigating Officers in pursuing the trail of conversion of huge amount of Indian currency to foreign currency so as to seek corroboration to the version of George Lam Thang, who, till filing of charge-sheet was an accused in this case, again poses a big question mark on the credibility of the actions of the Investigation Agency. It was imperative that the above stated version of the George Lam Thang should have been corroborated by proper follow up investigation. Lack of efforts in this direction on part of the Investigating Officers of NIA, raises a grave doubt in the mind of the Court that they were primarily interested in creating evidence

against the accused persons through George Lam Thang and were not serious enough in their efforts to collect tangible evidence to prove the case. In any event, total lack of corroboration to the testimony of the approver, George Lam Thang, is by itself a strong ground to discard his version, more particularly, as he gave totally exculpatory statement in the Court after turning an approver. Hence, the evidence of George Lam Thang does not provide any reliable material to the prosecution in its quest to prove the case as against the accused/appellants Vanlalchanna, Phojendra Hojai, Niranjan Hojai and accused Malswamkimi, who did not file any appeal.

89. PW-40 (Nabajeet Buragohain) was posted as Assistant Excise Inspector, Kamrup (Metro). He claims to have assisted the NIA officials during the investigation of the NIA Case No.1/2009. He stated that when he went to Kahilipara Special Operation Unit (SOU), number of accused connected with this case were present. The accused Vanlalchhana allegedly approached the witness and volunteered to disclose regarding his associate lady, namely, Sawmi. Thereafter, Vanlalchhana made a disclosure in Mizo language, which was recorded as such by a Mizo Officer and later translated into English. The document was recorded as a disclosure memo (Exhibit-118), wherein the accused allegedly stated that he knew a lady named Sawmi, who stayed in Aizawl along with another person Thanga, and used to convert Indian rupees to US Dollars for him (accused Vanlalchhana) to be supplied to DHD(J) Group. He took their help three times for this work. She used to go to Kolkata for this work. Her telephone number was 9436197755. The

disclosure memo was proved as Exhibit-118 dated 07.08.2009.

In cross-examination, the witness admitted that the statement (Exhibit-118) was recorded by the Mizo Officer and the accused gave the statement in Mizo language.

90. The fact remains that the said statement did not lead to discovery of any incriminating material and hence, it is of no consequence whatsoever. The mobile phone number which was referred to in this statement could not be linked to any of the accused in this case.

91. PW-52 (C.P. Phookan) was the Executive Magistrate, Kamrup (Metro), who participated in the identification proceedings held at the SOU Police Station, Kahilipara on 08.08.2009, wherein the accused Vanlalchhana @ Vantea allegedly identified the photographs of the accused Jewel Garlosa and Niranjan Hojai. The said witness was associated in the proceedings presumably in order to surmount the bar created by Section 26 of the Evidence Act, which provides that confession made by any person whilst is in the custody of a Police Officer shall not be proved, unless it be made in the immediate presence of a Magistrate.

92. The testimony of this witness (C.P. Phookan) has been criticised by learned defence counsel urging that the Magistrate, as referred to in Section 26 of the Evidence Act, must be a Judicial Magistrate and presence of an Executive Magistrate would not cure or validate the proceedings as being compliant of Section 26 of the Evidence Act. Reference in this regard has been made to the Full Bench judgment of

this Court in the case of ***Kartik Chakraborty & Ors. -Vs- State of Assam,*** reported in ***2017 (5) GLT 144.***

93. The exercise undertaken by the trial Court to treat the photo identification of one accused by another is absolutely illegal and alien to the principles of appreciation of evidence in a criminal case. In this regard, we would like to refer to the following observations made by the Hon'ble Supreme Court in the case of ***Kartar Singh -Vs- State of Punjab***, reported in ***(1994) 3 SCC 569***, wherein, while discussing the provisions of the TADA Act, 1987, the Hon'ble Supreme Court struck down Section 22 of the TADA Act, which provided that the evidence of a witness regarding identification of a proclaimed offender in a terrorist case on the basis of the photograph was given the same value as the evidence of a test identification parade. The observations made by Hon'ble the Supreme Court at Paragraphs 360 & 361 of the said judgment are reproduced herein below for the sake of ready reference:-

> *"360. Though no oral argument has been advanced by the learned counsel challenging the validity of this provision, since we are scrutinising the entire Act, we feel that it would be better if our view on this provision is also recorded. However, Mr. Jethmalani in his written submissions has stated that this section is unintelligible and that it is quite impossible to identify any person on the basis of his photograph especially in the present day when trick photographs are being taken. I see much force in this submission.*
>
> *361. If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result. Therefore, we are inclined to strike down this provision and accordingly we strike down Section 22 of the Act."*

Seen in light of the ratio of the above judgment of Hon'ble Supreme Court, we have no hesitation in holding that the trial Court committed gross error in the eyes of law in treating identification of photo of one or more accused by another to be admissible in evidence. The finding so recorded is illegal, unjustified and unsustainable on the face of the record. Once the evidence of photo identification is excluded, a major part of the prosecution case in trying to link one accused with others is completely wiped off.

94. In this sequence, the next witness relied upon by the trial Court was PW-54 (Jatin Chandra Deori). He was working as a Superintendent in the Office of the Regional Passport Office, Guwahati and proved the production-cum-seizure memo (Exhibit-244) by which the passport application form, election ID card, family ration card, birth certificate, police report with personal particulars of Vanlalchhana, were collected, certified and thereafter handed over to the NIA Investigating Officer. He also proved the passport of the accused as Exhibit-44.

In cross-examination, the witness admitted that in the application form (Exhibit-244), Vanlalchhana did not mention any of his alias names. The address of the applicant as mentioned in the application form was son of Tluangkipthanga, resident of Saron Veng, House No.B-37, Aizawl.

Evidence of this witness creates a further doubt on the credibility of the prosecution case because the father's name of the accused/appellant Vanlalchhana has been mentioned by the prosecution as Ngunkipthang in the

charge-sheet. Thus, a serious question mark is raised on the identity of the accused Vanlalchhana put up for trial in this case.

95. Next, we would refer to the evidence of most important prosecution witness Harish Singh Karmyal (PW-56), who allegedly carried out the seizure of arms and ammunitions in furtherance of the disclosure statement (Exhibit-43) of Vanlalchhana. The witness stated that he was posted as Inspector, NIA Headquarter, New Delhi in the year 2009. He was instructed to participate in investigation of the present case. In initial part of the investigation, he arrested the accused Ahshringdaw Warisa, Jewel Garlosa and Samir Ahmed. Then he proceeded to Aizawl as directed by the Chief Investigating Officer and during his stay at Aizawl, he received information that Vantea @ Vanlalchhanna, a Myanmaree National living in Mizoram was actively involved in smuggling arms and used to supply the same to DHD(J). The source also informed that the said person was having an Indian Passport issued from Guwahati. He collected the Passport file from the Regional Office at Guwahati (Exhibit-244/2 to 244/7). On 27.07.2009, the Chief Investigating Officer received information from Mizoram Police regarding arrest of one Vantea @ Vanlalchhanna at Aizawl on 26.07.2009, who allegedly divulged during interrogation that he was instrumental in supplying arms to DHD(J). Accordingly, the witness Harish Singh Karmyal reached Aizawl on 28.07.2009 and joined the investigation with CID, Mizoram team in whose police custody the accused Vantea @ Vanlalchanna was. The witness stated about the disclosure

statement of Vantea @ Vanlalchanna. He further stated that on the basis of this disclosure, Mizoram Police obtained a search warrant and the accused led them to the discovery of arms and ammunitions from the house of Lalrova.

He proved the seizure memo (Exhibit-250) on which he appended his signatures. This document is yet another interesting piece of evidence, which fortifies our conclusion that the Investigation Agency actually indulged in creating false documents in order to somehow or the other prove the case. The first and foremost fact which is reflected from this document is that though the same was prepared on 30.07.2009 at 11:30 AM, it does not bear the details of the criminal case in connection whereof, it was being prepared. The document further reflects that the search and seizure were being made in pursuance of a warrant to search the suspected places issued by the Magistrate, 1st Class, Aizawl Court, dated 30.07.2009. It does not refer to any disclosure statement made by the accused Vanlalchhana. The actual seizure was made by one Mr. H.L. Thangzuwala, Additional SP, CID, Mizoram, who was not examined during trial. Even the attesting witnesses associated with the recovery were not examined in evidence. The search warrant was also not brought on record.

Harish Singh Karmyal (PW-56) further stated that interrogation done from Vantea on 31.07.2009 revealed that the recovered arms had no connection with the Mizoram Police Station Case No.238/2009 as the same were meant for DHD(J) group and thus, the Mizoram Police decided to file a closure report in their case. However, it is noteworthy that

this so called interrogation note was also not brought on record.

96. The witness Harish Singh Karmyal (PW-56) thereafter, moved an application to seek custody of the accused Vantea @ Vanlalchhanna and the seized articles before the Court at Aizawl which allowed the application and accorded 2(two) days transit remand to produce the accused before the Special Judge, NIA, Guwahati. Harish Singh Karmyal (PW-56) proved the taking over and handing over note (Exhibit-251). However, the said note nowhere recites that the custody of the accused was being taken by the Officer Harish Singh Karmyal (PW-56). The order of the Judicial Magistrate, whereby custody of the accused was handed over to Harish Singh Karmyal was not brought on record by the prosecution. The order which has been proved as Exhibit-42 only refers to the fact that on expiry of 4(four) days remand period, the accused Vanlalchanna @ Vantea, son of Haukipthanga, was produced by the Police before the Court with a prayer submitted by the Investigating Officer Shri K. Lalnithanga (PW-13) of Aizawl seeking his discharge from the liability of the instant case. The prayer was allowed and the accused was discharged from the said case on 31.07.2007. This order does not reflect that the custody of the discharged accused was being handed over to Inspector Harish Singh Karmyal.

97. In cross-examination, the witness Harish Singh Karmyal (PW-56) agreed that in the passport application form, the father's name of Vanlalchhana was mentioned as

Tulangkipthanga and in none of these documents, was the alias name of Vanlalchhana mentioned. Specific suggestion was given to this witness in cross-examination that the disclosure memo dated 30.07.2009 was not the disclosure memo of the accused Vanlalchhana and was signed by some other person. He admitted that the seizure list does not contain the signature of the accused Vanlalchhana.

98. After thorough reappraisal of evidence of this most important prosecution witness, we are of the affirmative view that not only did the Investigation Agency conceal material facts from the Court but it also indulged in creation of false documents/evidence. Not a single arrest memo of any of the accused arrested in connection with the Aizawl Police Station case or the NIA case was proved on record.

99. Without any justification, the arms and ammunitions seized by virtue of the seizure list (Exhibit-250) dated 30.07.2009 were tried to be foisted upon the accused/ appellant Vanlalchhana even though, the document nowhere indicates that the arms and ammunitions were discovered or were being seized in furtherance of any disclosure made by the said accused. Admittedly, the seizure list (Exhibit-250) does not bear signatures of the accused Vanlalchhana. The owner of the house from where weapons were recovered, namely, Lalrova, and the tenant in whose possession the house was, namely, Nempui, were neither made accused nor were they examined as witnesses. The attesting witnesses to the seizure list (Exhibit-250) were also not examined in evidence. No document pertaining to the Aizawl Police

Station case, except for the disclosure statement (Exhibit-43), was exhibited in the evidence and thus, it is crystal clear that the prosecution has intentionally and willfully, held back relevant documents and material evidence thereby misleading the Court and adverse inference has to be drawn against the prosecution for this conduct.

100. PW-58 (Dinesh Vohra) testified that he was working in Hotel Shalimar, Kolkata from the year 1991. In the year 2009, he was working as a Receptionist in the said Hotel, which provided lodging as well as food. He proved the entries made in the Register of the Hotel relating to visit of a customer named Phojendra Hojai on different dates. Thus, the evidence of this witness is of no use whatsoever to the prosecution its attempt of proving the charges against the appellant Vanlalchhana.

101. PW-59 (Devinder Singh) deposed that he joined as DSP in NIA in the year 2009. He was directed to proceed to Kolkata for assisting CIO, Shri K. Thakur, who was investigating the present case. He claims to have joined interrogation of Malswamkimi and George Lam Thang (PW-29). He stated that a sum of Rs.10 Lakhs was recovered from Room No.113 of Sham Hotel, Kolkata as a consequence of the disclosure statement of the accused. However, which of the accused was responsible for the disclosure statement, the witness did not specify. He further stated that a sum of Rs.5 Lakhs was recovered from the ancestral house of George Lam Thang at Room No.19A, Trity Bazar Street, Kolkata on the basis of his confessional statement.

Thus, manifestly, the said witness also did not utter a single word implicating the accused/appellant Vanlalchhana and his testimony is totally irrelevant for proving the prosecution case as against the said accused.

102. PW-63 (Lalrinawma Traite), who was posted as Deputy SP, CID (SB), Aizawl, stated on oath that in the month of July, 2009, information was received that a person suspected to be involved in arms smuggling was in Aizawl. In pursuance of this information, a man named Vanlalchhana @ Vanchema @ Vantea was apprehended about 40 Km from Aizawl and on his disclosure, some arms and ammunitions were recovered from the residence of Nempui at Saron Veng, Aizawl. However, what is significant to note here is that this witness did not identify the appellant Vanlalchhanna as being the person at whose instance these arms were recovered. Rather, in cross-examination, he admitted that he was not present at the time of recovery of the arms and ammunitions as stated in his examination-in-chief and that he could not state with certainty, the date on which the same were recovered.

Hence, again the deposition of this witness as against the accused/appellant is nothing but an attempt of the prosecution to misdirect the proceedings and mislead the Court and has unnecessarily burdened the records of the case.

103. PW-69 (Sheo Kumar Pandey) stated that he was the Manager of Madhumilan Guest House, Kolkata from eight years prior to 2009. He proved the entries made in the Hotel

Register *qua* the accused Phojendra Hojai. This witness too did not utter a single word as against the appellant Vanlalchanna.

104. The next witness on whose testimony the prosecution relied upon for inculpating the accused Vanlalchhanna in this case was Kamal Krishna Das (PW-105). He was reportedly working in the SSB, West Bengal. He gave evidence about Exhibit-44, Passport of Vanlalchhanna, wherein certain immigration stamps of travel abroad through Kolkata, were appended. However, as there is a doubt regarding the very identity of the person whose Passport was proved by the prosecution and as it cannot be conclusively held to be that of the accused/appellant Vanlalchhanna, nothing significant is discernible from the evidence of this witness when we consider the case of the prosecution as against the appellant Vanlalchhana.

105. Next, we shall discuss the evidence of Satyendra Kr. Deka (PW-137). The said witness, who was working as Deputy General Manager, Mobile Operation & Maintenance in BSNL, Assam Circle, deposed about some call detail records. However, there is no denial by the prosecution that the call detail records were not supported by the mandatory Certificate, as required under Section 65B of the Evidence Act. Furthermore, no witness of the prosecution alleged that the mobile numbers referred to in the testimony of the said witness were any manner connected with the accused/ appellant Vanlalchhana.

In cross-examination, this witness admitted that he did not know who was the signatory of the Call Detail Records (Exhibit-398; Exhibit-398/1 to Exhibit-398/7; Exhibit-400 and Exhibit-401/1 to Exhibit-401/22). He also admitted that these exhibits did not bear any seal of any Department. Otherwise also, we would like to refer to the finding of the trial Court at Paragraph 220 of the impugned judgment, wherein all the Call Detail Records (CDRs) relied upon by the prosecution were discarded for the precise reason that they were not supported by the certificate under Section 65B of the Evidence Act. Thus, we are compelled to reiterate that the prosecution has unnecessarily burdened the record of the case by examining irrelevant persons in evidence and the Presiding Officer also turned Nelson's eye and allowed such irrelevant evidence to be brought on record. Apparently, thus the Presiding Officer in the trial Court had no control over the proceedings.

106. Swayam Prakash Pani, PW-146 is another witness, whose evidence was referred to by the trial Court while discussing the case of the accused/appellant Vanlalchhana. We have carefully gone through the deposition of the said witness and find that he proved the production memo (Exhibit-423) dated 08.08.2009, whereby a woman stated to be the wife of the accused Vanlalchhana allegedly produced a Nokia phone at the SOU Police Station. He also proved 7(seven) SIM cards allegedly owned by Vanlalchhana as presented by one Ms. Thakipcuai, which were seized vide production memo (Exhibit-424).

In cross-examination made on behalf of the accused Vanlalchhana, the witness admitted that there was no notice to produce the material seized vide the production memos (Exhibits-423 and 424). These memos did not bear signature of any of the witness connected to the production.

The fact remains that there is not even the slightest whisper on record to establish that any of the articles seized vide these 2(two) production memos were in any manner connected to the appellant Vanlalchhana. The person who allegedly produced the articles (the mobile phone instrument and the SIM cards) was not examined in evidence. No evidence was collected to establish the identity of the subscriber(s) of the SIM cards. Hence, the testimony of this witness gives no succour to the prosecution in its endeavour to prove the case as against the appellant Vanlalchhana.

107. Santosh Kumar, PW-148, Inspector of Police at the relevant point of time also participated in few steps of investigation in the case and stated that he was deputed to assist the Chief Investigating Officer Mukesh Singh (PW-150). *Qua* the accused Vanlalchhana, the witness stated that he prepared a photo identification memo on 08.08.2009 regarding identification of photographs of the accused Niranjan Hojai and Jewel Garlosa by the accused Vannehcena @ Vantea @ Vanlalchhana @ Joseph. The memo (Exhibit-241) was allegedly prepared in presence of 3(three) witnesses and all concerned appended their signatures on the document. The witness exhibited the memo (Exhibit-241) and identified his own signatures (Exhibit-241/4) on the

same. The 2(two) photographs which were identified were also exhibited as Exhibit-242 and Exhibit-243. The witness also claimed to have prepared a memo of disclosure made by the accused Vannehcena @ Vantea @ Vanlalchhana @ Joseph in presence of the witnesses and proved the same as Exhibit-118. However, what is interesting to note here is that the witness, though claiming to be the scribe of all these documents, did not utter a word that the accused Vanlalchhana also signed any of these memorandums.

Upon a pertinent question being put in cross-examination, the witness admitted that after going through the memo (Exhibit-118), he was unable to state as to how Vanlalchhana came into contact with him. He could not say as to in whose custody Vanlalchhana was on the date of interrogation. He admitted that the disclosure statement (Exhibit-118), did not lead to discovery of any fact. He further admitted that the identification proceedings were held on the strength of photographs of the two accused (Jewel Garlosa and Niranjan Hojai) only.

108. The last witness relied upon by the prosecution as against the accused Vanlalchhana was the Chief Investigating Officer PW-150 (Mukesh Singh). Perusal of evidence of the CIO *qua* the role of the accused Vanlalchhana reveals that he gave a vague statement that on the disclosure of Vanlalchhana, a cache of arms and ammunitions meant for DHD(J) kept in a house at Saron Veng area of Aizawl was recovered. On the basis of analysis of calls made by Vanlalchhana, two persons were identified, who were assisting him (Vanlalchhana) in converting rupees to dollars

at Kolkata. These two persons were George Lam Thang and Malswamkimi and they were arrested from Kolkata. The witness further stated that Vanlalchhana, disclosed during interrogation that he had delivered dollars to Niranjan Hojai at Nepal and Bangkok. Immigration details collected during investigation affirmed his trips to Nepal and Bangkok which fact came to light in the statement of Kamal Krishna Das (PW-105). On the disclosure of Vanlalchanna, an identification memo was prepared in which he identified the photographs of Niranjan Hojai and Jewel Garlosa.

In cross-examination, the witness admitted that no investigation pertaining to Vanlalchhana was carried out by him. While filing charge-sheet against the accused Vanlalchhana, he relied upon the investigation carried out by NIA Investigating Officer Devinder Singh (PW-59) and Inspector of Police Harish Singh Karmyal (PW-56). Thus, the testimony of this witness does not give any support to the prosecution in its endeavour to prove the case as against the accused.

109. From the overall discussion of the evidence of the prosecution witnesses, we are of the firm view that the findings recorded by the trial Court linking the weapons recovered by the Aizawl Police to the accused (Vanlalchhanna) despite holding that the prosecution did not lead convincing evidence to prove the same, is nothing short of a gross perversity.

110. We express our serious reservation on the endeavour of the Investigating Officers who tried to get one

or more accused identified by showing their photographs to another accused. The trial Court also approved and accepted this grossly illegal exercise by placing implicit reliance thereupon. Needless to say that identification during investigation is not a substantive piece of evidence and is just a measure of providing further direction for investigation of the case. Identification of a person to be considered as a substantive evidence will have to be done during sworn testimony of the witness at the trial.

111. Thus, in addition to the fact that this bogus photo identification proceeding of one accused by another does not amount to substantive proof, the further fact remains that no credence can be given to the identification memorandums which were simply the narration of what the Investigating Officer claims to have extracted from the accused during investigation and would be hit by Section 25 of the Evidence Act. There is no material to satisfy the Court that the photographs identified during this process were actually the images of the accused sought to be identified. Hence, in absence of substantive evidence of identification in court, the said memorandums are totally worthless pieces of paper and are fit to be discarded outright. If at all, the prosecution was desirous of proving the factum of identification of one or more accused by another, then pertinent question(s) would have to be put to the accused in the statements under Section 313 Cr.PC and if admitted, perhaps the circumstance could be considered as a relevant fact to be taken into account along with other substantive evidence. In any event, we have no hesitation in holding that the procedure of

holding photo identification of one or more accused by another during investigation is of no evidentiary worth whatsoever. For reinforcing our conclusion, we would again refer to the Hon'ble Supreme Court judgment in the case of ***Kartar Singh*** (supra).

112. That apart, there is another aspect to this totally flawed proceeding of identification conducted by the Investigating Officer during investigation by showing photographs of one or more accused to another accused. At best, it can be treated to be a confession of accused Vanlalchhana that he knew accused Niranjan Hojai and Jewel Garlosa from before. However, confession of an accused recorded by a Police Officer would be hit by Section 25 of the Evidence Act and is not admissible in evidence. As held by Full Bench of this Court in the case of ***Kartik Chakraborty*** (supra), presence of Executive Magistrate, Shri C.P. Phookan, PW-52, who was associated in this procedure would not amount to compliance of the mandate of Section 26 of the Evidence Act because the Magistrate required to be associated in such proceeding should be a Judicial Magistrate as held in the above judgment. The trial Court thus, committed a grave and fundamental legal error while treating identification of photographs of the accused by another accused during investigation as admissible evidence.

113. We would further like to refer to the findings recorded by the trial Court at Paragraphs 465 and 466 (quoted supra) of the impugned judgment which are confusing, self contradictory and go to the extent of being perverse.

The conclusion of the trial Court that the accused Vanlalchhanna @ Vantea received US Dollar from Malswamkimi, who converted Indian currency at the instance of George Lam Thang (PW-29) after receiving the same from the accused Phojendra Hojai, remains unsubstantiated for lack of reliable legal evidence.

114. The finding recorded by the trial Court at Paragraph 466 of the impugned judgment, referred to (supra), by relying upon Section 106 of the Indian Evidence Act holding that on account of failure of the accused Vanlalchhana to give plausible explanation about what he did with the US Dollars, an inference deserved to be drawn against him that he purchased the seized arms for the DHD(J) (Aizawl Police Station case) with the said US Dollars, is absolutely contumacious. We have already discarded the testimony of the approver George Lam Thang (PW-29), the only witness who deposed in this regard, by holding that his evidence is not reliable so as to affirm the prosecution allegation that Vanlalchhanna was provided US Dollars to purchase arms and ammunition for the DHD(J). Without prejudice to the above, even if for a moment it is believed that from his evidence, some kind of inference can be drawn that the accused Vanlalchhanna accompanied Malswamkimi to Kolkata on a couple of occasions and participated in the transactions of conversion of Indian currency to US Dollars, there was no justification for the trial Court to have come to a conclusion that non-furnishing of explanation by the accused Vanlalchhanna as to how the US Dollars were used, would lead to an inevitable inference of the same having

been used to procure the seized weapons. This finding, on the face of it, is sheerly conjectural and hypothetical. US Dollars or any other currency for that matter, can be put to use for buying any article, property or may even be preserved as ill-gotten wealth but the conclusion that failure to give explanation as to the manner in which it was used could give rise to an inference that the same was used to purchase arms and ammunitions is dubious to say the least.

115. The trial Court, at Paragraph 208 of the impugned judgment, recorded an affirmative finding that the disclosure statement of Vanlalchhana was inadmissible but inspite thereof, it was observed that the arms and ammunitions were recovered and seized on being led and shown by the accused from the house at Saron Veng. This finding is patently perverse and unsubstantiated from a bare perusal of the seizure memo (Exhibit-250).

116. We have already highlighted the glaring loopholes and falsehoods in the prosecution case as against the accused/appellant Vanlalchhanna while discussing and dealing with the evidence in the preceding paragraphs and we reiterate and reaffirm our conclusions.

117. Resultantly, this Court is of the firm view that the conclusion drawn by the trial Court based on a totally unwarranted assumption that failure of Vanlalchhanna to give an explanation as to how the US Dollars were used leads to an inference that the same were used to procure arms and ammunitions, is perverse on the face of the record and cannot be sustained.

118. After threadbare appreciation of the entire record, we have no hesitation in holding that the prosecution miserably failed to lead reliable, admissible, legal evidence so as to even create strong suspicion against the accused Vanlalchhana in its endeavour to establish that he was involved in the procurement of the recovered arms and ammunitions or that he conspired with the members of DHD(J) to procure weapons for the organisation with the knowledge that the said organisation was involved in terrorist activities. We further hold that the prosecution has miserably failed to prove that the arms and ammunitions, etc. recovered from Aizawl were in any manner connected with the case at hand or that the same had any connection with the so called terrorist activities of DHD(J). Rather, the entire sequence of recovery of arms and ammunitions from Aizawl is fit to be discarded for the reasons stated in the preceding paragraphs. The failure of the Investigating Officer to recover even a single US Dollar from any of the accused charge-sheeted in the case creates a further doubt on the prosecution case.

119. Now, we proceed to consider whether the prosecution has been able to prove even to a slightest degree that DHD(J) was a terrorist organisation involved in terrorist activity or that the money allegedly siphoned off from the N.C. Hills Autonomous Council, was used to fund the alleged terrorist activities of DHD(J).

120. The trial Court recorded an affirmative conclusion at Paragraphs 429, 433, 449, 450 & 451 (infra) of the

impugned judgment that there was no evidence to bring home the charges under Sections 121A IPC and 121 IPC.

> *"429. Now coming to the charge u/s 121A IPC and u/s 121 IPC we find that the prosecution side has alleged that accused Phojendra Hojai, Babul Kemprai, Mohit Hojat, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, George Lamthag, and Niranjan Hojai, after forming terrorist gang DHD(J) or Black Widow in 2004, entered into conspiracy amongst its members to wage war against Government or attempt to wage war or abate the waging of such war.*
>
> *433. Having understood the meaning of 'waging war' now let it be seen how far the prosecution side has been able to discharge its burden. The Id. Special P.P. has submitted that PW-20 Shri Ronsling Langthasa, PW-23 Shri Kulendra Daulagopu, PW-24 Shri Amitav Sinha the then Addl. S.P. Law & Order, N.C. Hills and PW-46 Nairing Daulagapu, PW-72 Shri Anurag Tankha, PW-87 Shri Subrata Hojai, PW-98 Shri Nipolal Hojai and PW-126 Shri Depolal Hojai, PW-129 Dilip Nunisa, have established the above two charges against the accused persons. However, the defence side has submitted that the material so brought on record are insufficient to prove the charge u/s 121/121A IPC and consequently they are entitled to acquittal of the same."*
>
> *449. Now the question is whether the evidence of these nine witnesses are sufficient to establish the charge u/s 121/121(A) IPC against the Phojendra Hojai, Babul Kempri, Mohit Hojat, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, George Lamthag, and Niranjan Hojai?*
>
> ***450. The answer is got to be emphatic no. There is no doubt that the conduct of the accused, as apparent from the evidence discussed above are subversive as well as heinous in nature. There was some killing, extortion of money and throwing of grenede which took place at Dima Hasao. But the aforesaid five prosecution witnesses failed to give the actual account of the incidents and also there is no documentary proof in support of the same. The documents exhibited by P.W. 24, being Photostat copy cannot be taken into account. But having tested the evidence of nine prosecution witnesses, on the touchstone of the parameters laid down by the Hon'ble Supreme Court in State (NCT of Delhi) vs. Navjot Sandhu @ Afzal Guru (supra) it can safely be concluded that their evidences are quite insufficient to establish the ingredients of the charges***

u/s 121/121A IPC against the said accused persons. As held by Hon'ble Supreme Court, in the above referred case law, all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government, as the DHD's objective was to create a separate state of Dimasa people within the territory of India and it worked for general up liftment of the people of the locality and their educational and other rights and also for their social up liftment as evident from P.W. 129 Shri Dilip Nunisa, who is an ex cadre of DHD. True this witness is declared hostile by the prosecution side. But the value of hostile witnesses has already been discussed in foregoing paragraphs of this judgment.

451. The outcome of above discussion and finding is that the prosecution side has failed to bring home the charges u/s 121/121(A) IPC against the accused Phojendra Hojai, Babul kempri, Mohit Hojat, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi and Niranjan Hojai beyond all reasonable doubt and accordingly they acquitted of the same."

(Emphasis Supplied)

The CIO Mukesh Singh (PW-150) also admitted that he did not make any investigation *qua* the alleged terrorist activities of DHD(J).

121. We have carefully gone through the case set up by the prosecution in the charge-sheet and have also reproduced the language of the charges framed by the trial Court against each accused, the points of determination formulated for adjudication and the conclusions drawn thereupon. We have also minutely and thoroughly analysed and re-appreciated the evidence available on record. After reappraisal of all these aspects, the prosecution's case can be split up into separate compartments. This sequence was elaborated by the trial Court in Paragraphs 412 to 418 of the impugned judgment, which are reproduced herein-below for the sake of ready reference:-

"412. Keeping the above principle of law in mind, if we analyse each of the facts and circumstances on the record, that have been culled out against each of the accused, we will find that there are elements of truth in the prosecution version that after forming terrorist gang DHD(J) or Black Widow in 2004, and particularly during the period of January to March, 2009, accused Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojal, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal Rai, entered into agreement, with Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Ghosh, to do illegal act or an act which is not illegal but by illegal means, i.e., to raise fund for the terrorist gang by siphoning Govt. fund, converting Indian currency to US dollar, to procure arms and ammunition to wage war, caused death of Innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc.

413. If we analyze the series of events, past, contemporaneous and after the episode of 01.04.2009, that can be culled out from the facts and circumstances brought on the record and proved by the prosecution side, in chronological manner, we will find that - Depolal Hojai was elected as Member of Autonomous Council (MAC) and took over as Chief Executive member (CEM) of N.C. Hills Autonomous Council (NCHAC) in January 2008. He continued till 26.11.2008, and he was asked to resign on 26.11.2008, in a meeting held in his house in the evening for being failed to much for the Dimasa people, by accused Niranjan Hojai who was the C-in-C of DHD(J). Depolal Hojai decided to resign in the meeting and decision to elect Mohit Hojai was taken on the next day i.e. on 27.11.2008. It is to be mention here that defalcation of Govt. fund meant for development of NC Hills with the help of Govt. servants were going on in the meantime. This part of conspiracy took place at Haflong, the district head quarter of Dima Hasao, the erstwhile North Cachar Hills.

414. Thereafter, a meeting of CEM Mohit Hojai with the contractors namely Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh and the Govt. Officers namely Kalyan Brata Mukharjee and K.C. Namashudra was held at Hotel Pragati Manor, Guwahati on 25.03.2009, where decision has been taken to issue

cheques in the names of the firms of Joyanta Kr. Ghosh, which were registered in the name of Debasish Bhattacharyee and cheques were issued accordingly. Thereafter, accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh open current accounts in the State Bank of India, Zoo Road Branch 27.03.2009, in the name of Maa- Trading and on the same day two high valued cheques, amounting Rs.84,00,000/- and for Rs.57,00,000/- were deposited by Debasish Bhattacharyee. On the next working day i.e. on Monday Debasish Bhattacharyee has withdrawn Rs.84,00,000/ from the account of Maa-Trading. An small amount of Rs.3,50,000/- was withdrawn on the same day. Thereafter, on 01.04.2009, accused Phojendra Hojai and Babul Kemprai was arrested by Assam Police at 14th Mile Jorabat, under Basistha P.S., while they were carrying a sum of Rs.1.00 crore to Shillong to deliver to the DHD(J). Along with the sum, two pistols one letter of Mohit Hojai addressed to Superintending Engineer, PWD and R & B, to issue work order in favour of Phojendra Hojai, and three blank DHD(J) letter heads were recovered. Baisistha P.S. Case No.170/09 has been registered accordingly on the basis of an FIR lodged by SI Maizuddin Ahmed of Basistha P.S. While the investigation was on accused R.H. Khan was arrested and a sum of Rs.4,00,000/- was recovered and seized from his house at Tarun Nagar, Guwahati. Thereafter, on different occasions by different means, sometimes by hundi operators and sometimes by hand siphoned out funds were sent to Kolkata for conversion into Dollars. This is the second part of the conspiracy that took place at Guwahati.

415. Thereafter, on 01.06.2009 accused Jewel Garlosha and Ashringdao Warissa and Samir Ahmed were arrested at Bangalore and brought to Guwahati. On the disclosure made by accused Ashringdao Warissa his e-mail accounts were opened and in one of e-mail ID, mail sent by Jewel Garlosha to NDFB soliciting logistic support to his cadres were found. These accused persons, concealing their identity at Bangalore and they controlled the affairs of the DHD(J), from there.

416. To further the conspiracy, part conspiracy, which is third in number, took place at Kolkata. The money, so transmitted to Kolkata by different means were received by Malswamkimi. Malswamkimi got the money converted to US Dollars with the help of George Lamthang. The process began for the first time in the month of August 2008 with conversion of Rs.15,00,000/- and the same continued till 11.08.2009 on which George Lamthang

was arrested by Kolkata police. Thereafter, Malswamkimi was arrested and a sum of Rs.10,00,000/- was recovered from her possession and from the possession of George Lamthang a sum of Rs.5,00,000/- given by Malswamklmi was recovered from the possession of George Lamthang. Malswamkimi reported to George Lamthamg that he collected money from Phojendra Hojai whom George has meet twice at the Hotel when he accompanied Malswamkimi to collect money and she also reported to him that she was collecting money at the behest of Vanlalchanna @ Vantea.

417. Thereafter, Vanlalchanna @ Vantea was arrested by Mizoram Police 26.07.2009, in connection with Aizwal P.S. Case No.238/09, u/s 25(1)a), (1)(b) Arms Act. During custody period on 30.07.2009 he made disclosure statement to police and on the basis of the said disclosure huge consignment of Arms and communication equipments were recovered from a house of Sarang Vang. During interrogation, it was found that he is not involved in Aizwal P.S. case No.238/09, but involved in NIA case No.01/2009. This is another part conspiracy that took place at Aizwal where arms and ammunitions were received and sent to DHD(J). Thereafter, P.W.56 took custody of him and taken to Guwahati where he identified accused Niranjan Hojai and Jewel Garlosha in a photo identification process.

418. All the events, so mentioned above, clearly established that there was an agreement to do an illegal act i.e. to raise fund for DHD(J) a terrorist gang, and that too by illegal means, by siphoning govt. funds, converting Indian currency to US Dollars, to procure arms and ammunitions, to wage war, cause death of innocent persons, terrorize the people and extort money, disrupted works of gauge conversion and construction of East West Corridor of four lane National Highway, and there by establishing all the basic ingredients of the charge of conspiracy which are:-

(i) That the accused agreed to do or caused to be done an act;

(ii) That such act was illegal or was to be done by illegal means;

(iii) That some overt act was done by one of the accused in pursuance of the agreement."

122. These findings can be summarized as below:

(i) The terrorist gang DHD(J) or Black Widow was formed in the year 2004 by the accused Jewel Garlosa @ Mihir Barman @ Debojit Singha. Accused Niranjan Hojai, Phojendra Hojai, Ahshringdaw Warisa, Vanlalchhanna, Babul Kemprai, Mohet Hojai, Malswamkimi and George Lam Thang were also members of the said gang, which was indulged in waging war, causing death of innocent persons, terrorising the people, extortion of money, kidnapping for ransom, disrupting works of gauge conversion and construction of East West Corridor of four lane National Highway, etc.;

(ii) For the purpose of carrying out its terrorist activities, the gang required funds and thus, Mohet Hojai forcibly ousted Depolal Hojai and took his position as the CEM of the N.C. Hills Autonomous Council. He then started the process of defalcation and siphoning off the funds of the Council.

Redaul Hussain Khan, Karuna Saikia, Jayanta Kr. Ghosh; Debasish Bhattacharjee and Sandip Kumar Ghosh were deployed in this conspirational design through an implied agreement and they in turn, indulged in fabricating the documents, fraud and misappropriation of funds and siphoning of the funds meant for the development of the N.C. Hills Council by providing fake work and supply orders to the contractors at steep rates.

(iii) The funds so siphoned off by means of fraud, forgery and misappropriation were then transmitted to Kolkata through accused Phojendra Hojai, Vanlalchhanna and Malswamkimi. At Kolkata George Lam Thang helped them in getting these siphoned off funds in form of Indian currency converted to US Dollars, which in turn, were used by Vanlalchhanna to procure arms and ammunitions from the international market, particularly, from Bangladesh and Myanmar. These arms and ammunitions were meant to be used for fostering the terrorist activities of DHD(J).

123. While concluding the case, the trial Court recorded categoric findings at Page 378 of the judgment that the Investigation Agency was guilty of commissions and omissions because it did not investigate the other offences relating to misappropriation, forgery and defalcation of funds of the N.C. Hills Council connected to the scheduled offences under the UA (P) Act and handed over this task to CBI. The prosecution collected CDRs of mobile phones of the accused persons without certification under Section 65B of the Evidence Act but as per the trial Court, the law which was prevailing at the point of time was explained in the case of ***State (NCT of Delhi) -Vs- Navjot Sandhu @ Afsan Guru*** allowed the acceptance of such evidence and the law which was changed only after the judgment of the Hon'ble Supreme Court in the case of ***Anvar P.V. -Vs- P.K. Basheer*** in the year 2014 had a prospective operation. Thus, despite the commission and omission, the facts and circumstances so brought on record and proved were found to be sufficient to

establish complicity of the accused persons. These findings were recorded by the trial Court at Paragraph 378 of the impugned judgment, which is reproduced herein-below for the sake of ready reference:-

> *"378. There, of course, remains no doubt that some commission or omission on the part of the investigating agency. It has not investigated the other offences, i.e. defalcation of funds of NCHAC, connected to the schedule offence, and handed over the task to CBI. The ld. defence counsel has rightly pointed this out in his argument. It is also pointed out that the prosecution side has brought on record the inadmissible evidences. There is substance in the said submission also. As for instance, the prosecution side has collected the CDRs of the mobile phones of the accused persons without certification under section 65-B Evidence Act. But the facts remains that that was the law at that point of time after the case of The State (N.C.T. of Delhi) vs. Navjot Sandhu @ Afsan Guru (supra). The I/O in his evidence categorically stated the same in his evidence. The law relating to secondary evidence in the form of CDRs has changed only after the judgment of Hon'ble Supreme Court in Anvar P.V. vs P.K. Basheer's (supra) case in the year 2014. Despite, such commission and omission, the facts and circumstances so brought on record and proved are found to be sufficient to establish their complicity."*

124. Further finding of the trial Court at Paragraph 419 of the impugned judgment was that there is no direct evidence to show that the money being carried by A-1 and A-2 (Jewel Garlosa and Babul Kemprai) on 01.04.2009 was acquired from the amounts encashed by the accused Debasish Bhattacharjee in the last part of March, 2009, because before his arrest also, Phojendra Hojai carried sum of Rs.1 Crore, Rs.2 Crore and Rs.1 Crore on three occasions to Kolkata and provided the same to Malswamkimi, who got the same converted to US Dollars with the help of George Lam Thang. The US Dollars were then given to Vanlalchhanna @ Vantea, who is an arms smuggler. Relevant

portion of Paragraph 419 of the impugned judgment is reproduced herein below:-

> *"……. But there is no direct evidence to show that the sum carried by A-1 and A-2 were the sum encashed by accused Debasish Bhattacharyee in the last part of the month of March, 2009. Before his arrest also accused Phojendra Hojai carries a sum of Rs.1.00 crore and Rs.2.00 crore and Rs.1.00 crore on three occasions to Kolkata and handed over to Malswamkimi (A-9), who converted the same to US Dollars with the help of George Lamthang (A-10) and handed over to Vanlalchanna @ Vantea (A-8) who is an arms smuggler."*

125. Despite concluding in Paragraph 419 of the impugned judgment that there is no direct evidence to show that from accused Vanlalchhanna where the US Dollars have gone, a totally contradictory and baseless observation was made by the trial Court that it was proved that he (Vanlalchhanna) was an arms smuggler and at his instance, huge quantity of arms and communication equipments were recovered. In the next breath, it was held that there was lack of legal evidence to establish that he (Vanlalchhanna) procured arms and communication equipments and supplied the same to DHD(J), but he was acquainted with the accused Niranjan Hojai (A-11), the Commander-in-Chief of DHD(J) and accused Jewel Garlosa (A-5), the Chairman of DHD(J) and identified their photographs in a photo identification process in presence of independent witnesses. This act of identification, in the opinion of the trial Court, constituted sufficient evidence of conspiracy.

We have already discussed and discarded this aspect of the prosecution case while discussing the case of Vanlalchhana.

126. Regarding the ingredients of the charges under Sections 17 & 18 of the UA (P) Act, the trial Court recorded the conclusions at Paragraphs 425 & 426 of the impugned judgment reproduced (supra). We feel that these findings are also self contradictory and have been arrived at in gross-contravention to the settled principles of appreciation of evidence. The trial Court took aid of presumptions and shifted the burden of proof on to the accused persons to hold them guilty of the charges. It may be reiterated that the provisions of UA (P) Act do not provide the aid of presumption/reverse burden of proof to the prosecution except for the offences under Sections 38, 39 and 40 of the Act, which apply when the activities of a declared terrorist organisation are being probed. Thus, even if for the sake of arguments, the finding of the trial Court holding the accused persons connected with the affairs of the N.C. Hills Autonomous Council, namely, Redaul Hussain Khan, Karuna Saikia, Mohet Hojai, Debasish Bhattacharjee, Jayanta Kr. Ghosh and Sandip Kumar Ghosh responsible for siphoning off the funds of the N.C. Hills Council without specifically charging them for the offences of fraud, fabrication, misappropriation, cheating defined under Indian Penal Code and/or criminal misconduct, as defined under the Prevention of Corruption Act are held to be justified, that by itself would not relieve the prosecution of the burden to independently prove by cogent and plausible evidence that the funds so siphoned off were channelized to Kolkata for being converted to US Dollars with the ultimate objective being that the same would be used for purchase of arms and ammunitions so that the DHD(J) could be

facilitated in carrying out its terrorist activities. The trial Court, vide finding recorded at Paragraph 428 of the judgment convicted the accused persons for the offence punishable under Section 120B of the IPC contemplating that the offence under Section 18 of the UA (P) Act stands made out but immediately thereafter, in the same paragraph, the accused were acquitted from the said charge, i.e. Section 18 of the UA (P) Act.

127. It may be permissible to record a finding of guilt for the scheduled offence under a special Act [UA (P) Act in this case] and not award sentence to the accused on the ground that they were being sentenced for an analogous offence under the general law, i.e. Section 120(B) of the Indian Penal Code but recording acquittal of the accused from the charge under Section 18 of the UA (P) Act, would completely vitiate the findings recorded by the trial Court *qua* the charge under Section 120B of the IPC as well.

128. The trial Court recorded a categorical finding at Paragraph 466 of the judgment, reproduced (supra), observing that except the version of the accused that the arms were meant for DHD(J), there is no direct evidence to link the recovered arms with the DHD(J). However, we have already concluded that the prosecution miserably failed to establish that the cache of arms and ammunition shown to have been recovered at Aizawl had any connection with the present case or the DHD(J). On going through the entire record, we find that no such version of the accused was brought on record that the arms recovered from Aizawl were

meant for the DHD(J). Be that as it may. The trial Court held that being made before the police, statement of Vanlalchhanna cannot be taken into account legally. At this stage, we would like to reiterate that the disclosure statement of Vanlalchhana (Exhibit-43) has already been discarded after threadbare discussion of evidence and all attending circumstances.

129. Upon a minute perusal of the disclosure statement (Exhibit-43), we find that there is not even a bare whisper in the said document that it was in his knowledge that the arms were meant for DHD(J). Thus, the finding recorded by the trial Court in this regard tantamounts to misreading of evidence. The trial Court further held that there was evidence to show that the accused Vanlalchhanna @ Vantea received US Dollars from accused Malswamkimi, who converted the Indian currency to dollars through George Lam Thang after receiving the same from accused Phojendra Hojai at Kolkata. However, as Vanlalchhanna did not explain what he did with the US Dollars, which fact was within his exclusive knowledge, the Court applied the reverse burden of proof under Section 106 of the Evidence Act and drew an inference that with the said US Dollars, he purchased the seized arms for the DHD(J).

It needs to be emphasized that Section 106 of the Evidence Act would only come into play if the party making an assertion, which would be the prosecution in this case, establishes that certain fact(s) were in the exclusive knowledge of the person against whom the same is sought to be proved. In such a situation, the latter would be required to

explain the same and failure to do so may give rise to an adverse inference. In the present case, the prosecution intended to prove that the funds siphoned off from the N.C. Hills Autonomous Council were transmitted to Kolkata through Phojendra Hojai and Malswamkimi and that George Lam Thang got the same converted to US Dollars and then, the converted foreign currency was handed over to Vanlalchhanna. We have discarded this theory after discussing the evidence of the sole witness examined to prove the same, i.e. George Lam Thang (PW-29), who has been found to be an unreliable witness.

Furthermore, there cannot be any presumption under law that US Dollars can only be used for purchasing arms and cannot be put to any other use. Possession of US Dollars may give rise to various inferences, perhaps about the commission of offence under the Income Tax Act, the Customs Act, the Foreign Exchange Regulation Act and the Prevention of Money Laundering Act, etc., but by no stretch of imagination, could the Court have drawn an irrefutable conclusion that failure of Vanlalchhanna to explain about the US Dollars gave rise to an inference that the same were to be used for procuring arms and ammunitions. Further fact remains that not a single US Dollar was recovered by the NIA during investigation.

130. We have already held that the very sequence of arrest and arraignment of the accused Vanlalchhanna in this case is totally fabricated. The trial Court acted in an absolutely slipshod manner by allowing the prosecution to bring on record flimsy, fabricated and inadmissible evidence

and exhibited photocopies of documents despite valid legal objections by the defence. The photostat copies being secondary evidence could not have been allowed to be exhibited without following the procedure laid down in Section 65 of the Evidence Act. The approach of the trial Court was at every stage of proceeding having a deep rooted bias in favour of prosecution. It had no control over the proceedings and irrelevant, inadmissible and extraneous evidence was permitted to be brought on record whereas, essential evidences were left out. The Investigation Agency and the prosecution were absolved of blunders of humongous magnitude without a demur. At the cost of repetition, we may reiterate that in such a grave case, the arrest memos of the accused persons were not exhibited in evidence and in spite thereof, the so called disclosures made by the accused to the Police Officers were heavily relied upon to record findings that such disclosures resulted into recoveries/ discoveries of incriminating facts. Law is well settled that for proving the discovery of an incriminating fact in pursuance of the disclosure statement made by the accused under Section 27 of the Evidence Act, the prosecution would be required to first, prove the fact that the accused was in custody of the Police Officer concerned.

131. However, on going through the evidence of all the Investigating Officers and the 464 documents exhibited by the prosecution, we find that not a single arrest memo was exhibited and brought on record during the trial so as to establish that while making the disclosure statements, the accused concerned was in custody as per the mandate of

Section 27 of the Evidence Act so as to make the disclosure statements relevant and admissible in evidence. Though it is true that the factum of accused being in custody can also be proved by oral evidence, but when we consider the fact that the prosecution has gone to the extent of fabricating the disclosure statement dated 13.07.2009 of the accused Ahshringdaw Warisa (Exhibit-43) because the said accused was admittedly in judicial custody on that day, we are not inclined to accept the oral evidence of the concerned Investigating Officers, wherein they claimed that the accused persons, who made the disclosure statements [Vanlalchhanna (Exhibits-117 & 118) and Malswamkimi (Exhibits-257 & 258)] were in custody when these statements were recorded.

132. We further hold that the procedure adopted by the trial Court in exhibiting the previous statements of the witnesses, who were declared hostile and were confronted with the same by the prosecution in cross-examination, is absolutely lackadaisical, flawed and is fatal to the case of the prosecution. A previous police statement of a witness recorded under Section 161 Cr.PC cannot be proved in evidence as per the embargo contained in Section 162 Cr.PC. However, such previous statement may be used to confront the witness or to corroborate his evidence as provided under Section 145 of the Evidence Act. In this regard, we may refer to the procedure provided in Section 145 of the Evidence Act, which deals with cross-examination as to previous statements in writing. This Section can be split up in two parts. The first part talks of cross-examination of a witness as to previous statements made by him in writing or reduced into writing,

and relevant to the matters in question, ***without such writing being shown to him, or being proved***. The second part of Section 145 provides that if it is intended to contradict the witness by the writing, his attention must, ***"before the writing can be proved"***, be called to those parts of it which are to be used for the purpose of contradicting him. The second part is applicable to the case at hand because the witnesses concerned, upon their attention being drawn to the relevant parts of the previous statements under Section 161 Cr.PC, denied the same. In such circumstance, the writings were required to be proved by marking Exhibit upon the original statement of the witness recorded under Section 161 Cr.PC/164 Cr.PC and marking quotations upon the confronted portions as A to B, B to C and C to D, so forth so on.

133. The previous statement of a witness recorded under Section 161 Cr.PC falls within the definition of a document. If portion/portions of the said document are to be used for confronting or contradicting the witness under the later part of Section 145 of the Evidence Act, then the document, i.e. the previous statement would have to be tendered and proved in evidence by marking an exhibit thereupon during the deposition of the witness concerned as well as the scribe Investigating Officer so as to accept the admissible part thereof as legal evidence. However, neither the prosecution nor the trial Court took the trouble of exhibiting and marking quotations upon the relevant parts of the previous statements of the witnesses during their testimony and since the statement itself being a document, was not tendered in evidence and proved, the entire

procedure so undertaken by the trial Court is fraught with irregularity and illegality. The procedure how to prove the previous statement which is proposed to be used for contradicting or confronting the witness under Section 145 of the Evidence Act was elaborated by the Division Bench of this Court in the case of ***Goutam Das & Anr. -Vs- State of Tripura & Anr.***, reported in ***2008 (3) GLT 625***. The relevant observations made in Paragraph 45 of the said judgment are reproduced herein below.

> *"45. Application of Section 145 and 155 of Evidence Act:- The manner of using such statement for the purpose of contradiction only must be in terms of Section 145 of the Evidence Act, which reads as follows:-*
>
> > *'145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'*
>
> *Though Section 155 of the Evidence Act provides in Clause (3) that the credit of a witness can be impeached by proof of his former statement which is inconsistent with any part of his evidence before the Court, the same is controlled by Section 145 which provides the manner of contradicting such a witness. It is well settled that if it is intended to contradict a witness by his previous statement in writing, his attention must, before the writing is proved, be drawn to that part of it which are to be used for the purpose of contradicting him. The proper procedure would, therefore, be- (i) to ask a witness first whether he made such a statement before the police officer; (ii) if the witness answers in the affirmative, the previous police statement, in writing, need not be proved; (iii) the cross examiner may, if he so chooses, leave it to the party, who called the witness to have the discrepancy, if any, explained in course of re-examination; (iv) if, on the other hand, the witness denies to have made such a previous statement attributed to him*

or states that he does not remember having made any such statement, and it is intended to contradict him with reference to his previous statement, the cross examiner must read out to the witness the relevant portion or portions of the record which are alleged to be contrary to his statement in Court and give him an opportunity to reconcile the same, if he can; (v) the best way of putting a statement is to put it in the actual words in which it stands recorded within quotation marks. A Division Bench of this Court, as far back as in 1963, had laid down, in the State vs. Md. Misir Ali and Ors., (AIR 1963 Assam 151) the procedure for putting contradiction to a witness and the manner of proving the same. In Md. Misir Ali (supra), the Division Bench, speaking through C.K. Nayudu, C.J. , had observed as follows;-

'We also regret to note that the procedure to be followed in the case of proving the contradictions appearing in the statements made by prosecution witnesses to the police during investigation, is not being followed by subordinate Courts, as well as by the counsel appearing in criminal cases. We had occasion to point out the correct procedure more than once and it would be worth while restating it. If it is intended by an accused to contradict the evidence given by a prosecution witness at the trial, with a statement made by him before the police during the investigation, the correct thing to do is to draw the attention of the witness to that part of the contradictory statement, which he made before the police, and question him whether he did in fact make that statement. If the witness admits having made the particular statement to the police that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the accused as establishing the contradiction. If on the other hand, the witness denies having made such a statement before the police, the particular portion of the statement recorded under Section 162, Criminal Procedure Code should be provisionally marked for identification, and when the investigating officer who had actually recorded the statement in question, comes into the witness box, he should be questioned as to whether that particular statement had been made to him during the investigation, by the particular witness, and obviously after refreshing his memory from the Police Case Diary the investigating officer would make his answer in the affirmative. The answer of the investigating officer would prove the statement which is then exhibited in the case and will go into evidence, and may, thereafter, be relied on by the accused as a contradiction. This is the only correct

procedure to be followed, which would be in conformity with Section 145 of the Evidence Act.'

(Emphasis supplied)

46. We fully agree with the above observations made in Md. Misir Ali (supra) and reiterate the same as the correct procedure for proving of contradictions.

134. This judgment is based on the law laid down by the Hon'ble Supreme Court in the case of ***Tahsildar -Vs- State of U.P.***, reported in ***AIR 1959 SC 1012***.

135. Now, we proceed to discuss the prosecution theory of conspiracy amongst the so called members of DHD(J). It may be noted here that a semblance of allegation in the prosecution case regarding connection of the accused with the DHD(J) was against the accused Jewel Garlosa being its founder; Niranjan Hojai, its Commander-in-Chief; Mohet Hojai and Phojendra Hojai. However, apart from the fact that Niranjan Hojai and Jewel Garlosa being Members of the N.C. Hills Autonomous Council, participated in a few meetings of the Council, there is nothing on record, which can even remotely suggest about existence of a conspiracy to commit the offences alleged between Jewel Garlosa and Niranjan Hojai on the one side and Mohet Hojai or any of the other accused on the other. The entire thrust of the prosecution case was that the funds of the N.C. Hills Autonomous Council were defalcated under the directions of Mohet Hojai, who dislodged Depolal Hojai, so that he could wrest control over the Council's financial administration and facilitate funding of the terrorist activities of DHD(J).

The prosecution claimed that the funds of N.C. Hills were defalcated under the direction given by Mohet

Hojai to the accused R.H. Khan and Karuna Saikia, who in turn, conspired with the contractors Debashish Bhattacharjee; Jayanta Kr. Ghosh and Sandip Kumar Ghosh. The contractors were also alleged to be acting in conspiracy under the directions of Mohet Hojai and facilitated the defalcation of the funds of the Council which were then provided to accused Phojendra Hojai for converting to US Dollars. However, the trial Court itself held at Paragraph 419 of the impugned judgment that the prosecution could not prove that the amount of Rs.1 Crore recovered from Phojendra Hojai on 01.04.2009 was linked with the defalcation funds.

136. A feeble attempt was made by the prosecution to establish through the evidence of Sonam Lama (PW-115) that the accused Babul Kemprai was seen at the flat of Mohet Hojai but we find that his testimony is not trustworthy. Thus, there is no material on the record of the case by which an inference can be drawn regarding existence of a prior meeting of minds or conspiracy between Mohet Hojai and Phojendra Hojai and Babul Kemprai for defalcation of Government funds. As per the case of prosecution, the accused Phojendra Hojai utilized the services of accused Malswamkimi and the approver George Lam Thang for converting the money siphoned off from the funds of N.C. Hills Autonomous Council in form of Indian currency to US Dollars. However, other than the approver George Lam Thang (PW-29), whose evidence we have discarded after exhaustive discussion (supra), there is no witness of the prosecution who deposed about existence of even a remote

connection between Phojendra Hojai, Malswamkimi and Vanlalchhanna.

137. There are glaring discrepancies in the prosecution case regarding the process of search and seizure made by the Officers of the Basistha Police Station on 01.04.2009. While reiterating this conclusion, we would again briefly like to refer to the deposition of Chandra Kt. Boro (PW-2), Maijuddin Ahmed (PW-10) and Sudhakar Singh (PW-26). At the outset, it needs to be noted that despite the direction given by the Court during the evidence of Chandra Kt. Boro, the G.D. Entry dated 01.04.2009 of Basistha Police Station was not brought on record.

138. Though the original seizure list was not proved initially during the evidence of Chandra Kt. Boro and Maijuddin Ahmed, however, on 04.05.2013, further examination-in-chief of Maijuddin Ahmed was permitted, wherein the original FIR (Exhibit-30) and the seizure list (Exhibit-38) was proved. The fact remains that in the FIR (Exhibit-30), no description was noted regarding which of the articles were recovered from the particular vehicle searched by Maijuddin Ahmed (PW-10). This is an omission which goes to the root of the matter and discredits the prosecution case.

139. Without any justification, Maijuddin Ahmed (PW-10) mentioned in the seizure list (Exhibit-38) that the sum of Rs.1 Crore belonged to Phojendra Hojai. There is a grave discrepancy in the evidence regarding the place where the seizure list (Exhibit-38) was prepared. Maijuddin Ahmed (PW-10) stated that the list was prepared at the spot from where

the accused and the seized articles were brought to Subhasini Guest House, Kahilipara. The witness stated so in the following manner:-

> *"…. So it took more than one hour for carrying out the said operation including preparation of seizure list at the place of occurrence."*

140. No evidence whatsoever was led by the prosecution to prove the safe custody of the seized documents. Neither the Malkhana In-charge of the Police Station was examined nor was the Malkhana Register proved in evidence. In total contradiction to the said version of Maijuddin Ahmed (PW-10), Sudhakar Singh (PW-26) stated as under:-

> *"……When I reached the place of interception I also found Moijuddin Ahmed, S.I. All the articles which were found in the suspected vehicle were bought to the Guest House of 4th APBN and thereafter the articles were verified and counted and the same were brought to the Basistha P.S. and thereafter the seizure list was prepared. At the time of preparation of the seizure list, I was not present."*

Thus, as per Sudhakar Singh, the seizure list was prepared at the Basistha Police Station. This contradiction is extremely grave and creates a strong doubt on the veracity of the search and seizure proceedings. No independent witness was associated in the seizure even though the place of seizure was a highway and abundance of people were passing by.

141. Maijuddin Ahmed (PW-10) was then directed by the Additional Superintendent of Police, Sudhakar Singh (PW-26) to proceed to Basistha Police Station for registering the FIR. The letter allegedly written by Mohet Hojai (Exhibit-34)

and the blank DHD(J) letterheads [Exhibits-35(A), 35(B) & 35(C)] were proved during the evidence of Maijuddin Ahmed but the same were not found in a sealed position as is apparent from the record of the evidence of the said witness. The witness could not give any reason or justification as to why only one seizure list was prepared though the articles were seized from two separate vehicles.

142. The two drivers of the vehicles, namely, Bunu Sonar (PW-64) and Dipankar Deka (PW-113), categorically stated that the search proceedings were held at Barapani, Shillong. Neither of these two witnesses stated about the seizure of any incriminating material including the cash from either of the two vehicles. Both these witnesses were not declared hostile by the prosecution. Thus, there is no reason to doubt their testimony. These two witnesses, who were allegedly associated in the search and seizure and proceedings, were not made to append their signatures on the seizure list as is evident from a bare perusal of the document (Exhibit-38).

143. Thus, we have no hesitation in concluding that foisting the recovery of Rs.1 Crore made by the officials of the Basistha Police Station on the head of accused Phojendra Hojai was in itself an act of tainted investigation. No plausible evidence was led to establish that Phojendra Hojai had any link with the recovered currency. Thus, the prosecution allegation that Malswamkimi and Vanlalchhanna were acting in conspiracy with Phojendra Hojai to further the cause of DHD(J), is also not established by reliable evidence.

144. The trial Court concluded that a sum of about Rs.5 Crores from the amount defalcated from the funds of N.C. Hills Council was got converted into US Dollars through a money changer named Tapan at Kolkata. However, the Investigation Agency, despite the fact that the said person was apprehended by Kolkata police (as stated by George Lam Thang), did not make any investigation from him. The Investigating Officers concerned made no effort whatsoever to pursue the trail of currency, which was a most important requirement in this case. The finding of the trial Court regarding the US Dollars so procured having been provided to Vanlalchhanna for the purpose of purchasing weapons has already been discussed threadbare and discarded. Thus, there is total lack of direct, indirect or inferential evidence so as to establish a live link between the alleged components of DHD(J), i.e. Jewel Garlosa, Ahshringdaw Warisa; Niranjan Hojai, Mohet Hojai and Phojendra Hojai with any of the other accused persons. The connection between Mohet Hojai, Niranjan Hojai and Phojendra Hojai was in the capacity of being the CEM and Members of the N.C. Hills Autonomous Council and thus, no incriminating inference can be drawn therefrom.

145. The prosecution did not lead any evidence whatsoever to prove even a single act of alleged terrorist or violent activity attributed to the gang DHD(J). It is an admitted position as stated by the CIO Mukesh Singh in his evidence that the said group was declared to be terrorist organisation on 09.07.2009 and the Tribunal confirmed it on 08.01.2010, i.e. much after the institution of the present

case. The Chief Investigating Officer also admitted that he did not investigate any terrorist activity of DHD(J). As a matter of fact, while discussing the charges for the offences punishable under Section 121/121A IPC, the trial Court recorded categorical findings at Paragraphs 449 and 450 of the impugned judgment (supra) that the prosecution could not lead reliable evidence to prove that DHD(J) was involved in any sort of subversive or violent activities. We have extensively discussed the evidence of all material prosecution witnesses and find that apart from Nairing Daulagopu (PW-46), who projected a vague theory regarding an act of violence committed with him in the year 2006 by the cadres of DHD(J), not an iota of evidence was led by the prosecution to even *prima facie* establish that DHD(J) was a terrorist gang or that it was involved in any kind of terrorist/violent activities. The trial Court drew a conclusion at Paragraph 459 of the impugned judgment (reproduced supra) observing that at the time of registration of the case, DHD(J) was not declared an unlawful assembly and that the defence side had rightly pointed out this fact during their arguments. After holding so, this very argument was discarded by referring to the judgment of Hon'ble Supreme Court in the case of ***Redaul Hussain Khan -Vs- NIA***, reported in ***(2010) 1 SCC 521***, the trial Court went on to hold that this submission of the defence counsel was devoid of force.

146. We may note here that in the above referred judgment, Hon'ble the Supreme Court was considering the prayer for bail filed by the accused R.H. Khan and a passing observation was made that merely because DHD(J) had not

been declared as an unlawful association when the said accused was arrested, that by itself would not imply that the organisation could not be indulged in terrorist acts.

147. The fact remains that this judgment was rendered at a very preliminary stage whereafter the entire trial was conducted and evidence has been recorded. After thorough appreciation of the entire record, we have found that not a single of the 150 prosecution witnesses, stated that he/she perceived or witnessed any terrorist or violent activities of DHD(J), except for Nairing Daulagopu (PW-46), as mentioned above. Even *qua* the said allegation of Nairing Daulagopu, we have noted that no charge-sheet relating to the incident which took place with the witness in the year 2006 was placed on record by the prosecution. The trial Court quoted five such subversive activities and attributed the same to DHD(J), i.e. (i) kidnappings; (ii) killings; (iii) throwing grenades on moving trains; (iv) disrupting works of broad gauge conversion; and (v) disruption of construction of East West Corridor. However, not a single from the 150 witnesses examined by the prosecution proved the happening of any such incident. Thus, we have no doubt in holding that the prosecution failed to lead satisfactory evidence so as to prove that DHD(J) (which was admittedly not a declared terrorist organisation by the time of registration of the case) or its members were involved in any kind of terrorist or violent activities.

148. The trial Court placed extensive reliance on the contents of certain news clips proved in the statements of

Hitesh Medhi (PW-27) and Caushiq Kashyap Bezbaruah (PW-70) to draw certain conclusions against the accused persons. However, law is well settled that TV channel news reports, which would be akin to newspaper reports, are not by themselves evidence of the contents thereof. These reports fall in the category of hearsay evidence and the contents thereof would have to be proved by the reporter, who heard the speech or perceived the event. Mere production of the news clippings by the editor or a publisher cannot amount to valid proof of the contents of the news reports. As a matter of fact, these clippings should not have been permitted to be exhibited in the evidence of these two witnesses, who admittedly did not perceive the subject event/events so telecast by the channel. Reference in this regard may be had to the judgment of the Hon'ble Supreme Court in the case of ***Quamarul Islam -Vs- S.K. Kanta & Ors***, reported in ***AIR 1994 SC 1733***, wherein it was held as below:-

> *"47. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the neswpaper reports as duly 'proved' only by the production, f the copies of the newspaper. The election petitioner also examined Abrar Razi, PW 5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his*

evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW 4 and PW 5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein.

48. This Court in Laxmi Raj Shetty v. State of Tamil Nadu, (1988) 3 SCC 319 at 346, considered the question of admissibility of the news items appearing in a press report in the newspaper and opined:

> *'We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aligned. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in S. 78(2) of the Evidence Act, 1872 which an allegation of fact can be proved. The presumption of genuineness attached u/ S. 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.*
>
> *It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported.'*

In the present case, we find that no legally admissible evidence has been led by the respondent-

election-petitioner, in proof of the facts contained in the newspaper reports (news items), messages and advertisements. The appellant, returned candidate, denied the making of the offending statements. The various newspaper reports, advertisements and messages, as published in Bahmani Newspaper cannot be treated as proof of the facts stated therein and cannot be used against the appellant in the absence of any evidence aliunde."

149. In the case of ***Jacob Puliyel -Vs- Union of India & Ors.***, reported in ***(2022) 3 SCR 471***, the Hon'ble Supreme Court held that Courts cannot take judicial notice of facts stated in a news item published in a newspaper. A statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence, unless proved by the maker of the statement appearing in the Court and deposing to have perceived the fact reported.

150. We feel that the same analogy would apply to a report telecasted in a TV channel. Thus, the CDs of news clipping reports sought to be proved in the testimony of Hiteswar Medhi (PW-27) and Caushiq Kashyap Bezbaruah (PW-70) were inadmissible as the same tantamount to hearsay evidence. That apart, the CDs were in form of secondary evidence and absence of certificate under Section 65B of the Evidence Act ruled out their production in evidence.

The prosecution made an attempt to use one of the news clippings to extract the voices of Phojendra Hojai and Mohet Hojai so as to prove the conversation allegedly recorded in the mobile phone seized from Phojendra Hojai on 01.04.2009. However, we have already held that the entire proceeding undertaken by the Investigating Officer of

Basistha Police Station on 01.04.2009 was tainted. The calls which were allegedly recorded in the instrument were received after the seizure thereof by Maijuddin Ahmed (PW-10) and hence, there was no possibility of any such conversation. This again is proof of the malafide attempt of the Investigation Agency to fabricate evidence against the accused persons. The last links in the chain of conspiracy were alleged to be Malswamkimi and Vanlalchhanna. However, as we have discarded the evidence of George Lam Thang, the sole witness who deposed about the involvement of these two accused in the so called conspiracy, there remains nothing on record so as to connect these two accused with any other members of DHD(J).

DISCUSSION IN CRL. APPEAL NO.261/2017 (JEWEL GARLOSA)

151. Mr. S. Borgohain, learned counsel representing the accused/appellant Jewel Garlosa, contended that the entire prosecution case as against the said accused is based on cooked up and unreliable evidence. Mr. Borgohain urged that no plausible evidence whatsoever was led by the prosecution so as to even create a doubt that the said accused was in any manner connected with DHD(J) or its so called terrorist activities.

152. Mr. Borgohain submitted that the trial Court discussed the prosecution case as against this accused and placed reliance on the testimony of the following witnesses, namely, Chandra Kt. Boro (PW-2); Maijuddin Ahmed (PW-10); Sudhakar Singh (PW-26); Dipankar Deka (PW-113);

Naim Uddin Ahmed (PW-117); Laltanpuia Sailo (PW-14); Nakul Boro (PW-16); Ronsling Langthasa (PW-20); Kulendra Daulagopu (PW-23); Amitava Sinha (PW-24); Hiteswar Medhi (PW-27); George Lam Thang (PW-29); Debashis Dutta (PW-34); Imdad Ali (PW-35); Nairing Daulagopu (PW-46); K.D. Marak (PW-62); Ian Onel Swer (PW-61); Caushiq Kashyap Bezbaruah (PW-70); Anurag Tankha (PW-72); Ram Prasad Sarma (PW-89); Kumud Chandra Sarma (PW-96); Nipolal Hojai (PW-98); Depolal Hojai (PW-126); Dilip Nunisa (PW-129) and Swayam Prakash Pani (PW-146). On the basis of evidence of these witnesses, it was concluded that the accused/appellant Jewel Garlosa –

(a) was the leader of DHD, a militant organisation;

(b) that arms and ammunitions required for operation of the organisation were purchased locally and were also procured from Bangladesh;

(c) that in October, 2003, after DHD declared a ceasefire, he (Jewel Garlosa) formed another militant organisation in the name of DHD(J);

(d) that Purnendu Langthasa (who was the CEM of the Autonomous Council) was killed by extremist during election campaign in the year 2006 and the accusing finger was pointed to DHD(J) and Maorung Dimasa, who belongs to DHD(J);

(e) many efficient Government officials were reluctant to be posted at the N.C. Hills because of the extremists and as a consequence, the development works suffered;

(f) the two extremist groups, i.e. DHD and DHD(J), indulged in killing and kidnapping;

(g) there was a spurt of violence because of DHD(J);

(h) the train services plying from Lumding to Badarpur stopped and food grains supplied to Barak Valley, Mizoram, Tripura and Manipur were disrupted;

(i) the group resorted to firing on moving trains; the DHD cadres laid down the arms in March/April, 2010 because of counter insurgency operations but there was an apprehension that all arms and ammunitions were not handed over at the time of laying down of arms;

(j) on 08.07.2010, Disa Kisn area was searched and several gunny bags containing sophisticated weapons including AK-47, M-16 Pistols, Lithod Guns and M-21 Rifles were recovered and Haflong Police Station Case No.54/2010 was registered;

(k) the accused (Jewel Garlosa) was apprehended in a gym from Bangalore and his accomplices Partha Warisa @ Ahshringdaw Warisa and Samir Ahmed were also apprehended from Bangalore and they were brought to Guwahati on 05.06.2009. The driving licence got issued by Jewel Garlosa using a false identity of Debojit Singha was found and seized;

(l) e-mails sent by him to NDFB organisation were recovered from e-mail id - "dimahasao@yahoo.com" with password TOMAHAWK belonging to the accused Ashringdao Warissa;

(m) three blank letterheads of DHD(J) were recovered from the possession of Phojendra Hojai on 01.04.2009 while he was carrying an amount of Rs.1 Crore to Shillong.

153. Mr. S. Borgohain criticized the evidence of these witnesses and urged that their testimony is most unreliable and fit to be discarded in toto.

154. He pointed out that evidence of Chandra Kt. Boro (PW-2) is limited to the presentation of the FIR (Exhibit-30) by Sub-Inspector Maijuddin Ahmed (PW-10) on the basis whereof, Basistha Police Station Case No.170/2009 was registered. Mr. Borgohain urged that a perusal of the seizure list (Exhibit-38) prepared by Maijuddin Ahmed would reveal that the seizure officer prepared a common seizure list pertaining to recovery made from two different vehicles. The articles seized from the two vehicles are attributed to the accused Phojendra Hojai (occupant of Scorpio vehicle bearing registration No.AS-01/AH-1422) and the accused Babul Kemprai (occupant of Tata Sumo vehicle bearing registration No.AS-01/E-0609). He urged that this seizure list does not indicate as to what particular articles were recovered from the individual vehicle. He submitted that mere recovery of DHD(J) letterheads from the vehicles cannot in any manner be considered as connecting the accused/appellant Jewel Garlosa with the recovered currency notes because such letterheads could be printed very easily. He further urged that the letterheads were not separately seized and sealed as was admitted by Maijuddin Ahmed (PW-10) and thus, there is no sanctity in the recovery.

155. Testimony of Maijuddin Ahmed (PW-10) was criticized contending that even if his evidence is believed, there is nothing therein which can connect the appellant Jewel Garlosa with the recoveries, which, as per Mr. Borgohain, were even otherwise planted ones. He pointed out that Maijuddin Ahmed (PW-10), the seizure officer, admitted in his cross-examination that it was not mentioned in Exhibit-37 (ejahar) that the seized articles were properly sealed after being seized vide seizure list (Exhibit-38). He also highlighted contradictions in the testimony of the Police Officers Maijuddin Ahmed (PW-10) and Sudhakar Singh (PW-26) regarding the place where the two vehicles were actually searched and the seizure list was prepared.

156. His contention was that this fact coupled with the circumstance that the letterheads so seized were neither sealed nor did the prosecution give any evidence regarding their safe custody after seizure, makes the entire recovery doubtful. It was further contended that Maijuddin Ahmed (PW-10) did not utter a single word as to whom the seized currency and the documents were handed over. Neither any officer of the Basistha Police Station was examined to prove the safe custody of these seized articles/documents nor was any corresponding Malkhana entry proved to establish that the seized articles were kept in safe custody at the Police Station Malkhana. Furthermore, these letterheads were neither produced in the Court nor were they marked as Exhibits/Articles during the evidence of any of the prosecution witnesses and hence, there is no tangible evidence on record to accept the seizure of the letterheads.

The two drivers of the vehicles, namely, Bunu Sonar (PW-64) and Dipankar Deka (PW-113), stated in their evidence that the seizure was made near Barapani Lake, Meghalaya and hence, a further doubt is created regarding the sanctity of the seizure proceeding, which was heavily relied upon by the prosecution on the basis of evidence of Maijuddin Ahmed (PW-10).

157. He urged that as the letterheads were stated to constitute a highly incriminating piece of evidence, there was no reason as to why the prosecution failed to exhibit them during the evidence of the seizure officer Maijuddin Ahmed (PW-10) or for that matter, any other prosecution witness. He thus contended that the circumstance of seizure of the blank letterheads of DHD(J) relied upon by the prosecution is highly doubtful and no reliance can be placed on this alleged seizure.

158. He referred to the evidence of the Laltanpuia Sailo (PW-14), who was examined so as to prove the recovery of weapons made at the Aizawl Police Station from a house located in Saron Veng area. Mr. Borgohain submitted that evidence of this witness, in no manner, implicates the appellant Jewel Garlosa.

He urged that Nakul Boro (PW-16) did not give any evidence implicating the accused Jewel Garlosa for any kind of criminal activity.

159. The Court was taken through the testimony of Ronsling Langthasa (PW-20) who stated in his evidence that

he was a cadre of DHD of N.C. Hills for about 16 years. From the year 1996, Jewel Garlosa was the Chairman, Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the Commander-in-Chief. From 01.01.2003, the DHD group entered into a ceasefire with the Government. After the ceasefire, Jewel Garlosa continued with the organisation and he suddenly disappeared. Mr. Borgohain urged that there is nothing in the evidence of this witness which can even remotely suggest that any group by the name DHD(J) existed or that Jewel Garlosa assumed the leadership of the said group. The witness did not utter a word that DHD(J) group was in any manner, involved in any kind of criminal or terrorist activities. He pointed out that the witness was declared hostile and thereafter, he was subjected to cross-examination by the prosecution and thus, the evidence of this witness is of no help to the prosecution.

160. He further urged that Ronsling Langthasa (PW-20) stated in cross-examination that he was not read over and explained into Assamese the previous statement which he had been shown in the Court; the statement which was shown to him was not taken down in writing; he did not know English language and he belonged to the Dilip Nunisa group of DHD. He could not say as to whether Jewel Garlosa ran any organisation after ceasefire. He also could not state the names of the organisations operating in the N.C. Hills Districts. He also feigned ignorance as to whether Jewel Garlosa was the Chairman or President of any organisation. No re-examination was undertaken from this witness by the learned Public Prosecutor to explain the anomaly. Mr.

Borgohain, thus, contended that the evidence of this witness does not support the prosecution case in the least.

161. Mr. Borgohain next referred to the statement of Kulendra Daulagopu (PW-23) who stated in his evidence that he contested the MAC election in 2007 and was elected. Subsequently, he was appointed as Executive Member in-charge of Medical and other Departments but after resignation of Depolal Hojai as CEM, the Executive Committee got defunct in the month of November, 2008. He contested the Parliamentary Election in the year 2009 and the Legislative Assembly Election in the year 2011 but was defeated. He claimed to have gained knowledge about the activities of DHD(J), which was demanding more autonomy to the Autonomous Council, on the basis of reports in newspaper and media. They adopted violent means to achieve their objectives as reported in media. Depolal Hojai cited ill health in one of the meetings held in November, 2008 and offered to resign from the post of CEM. His resignation letter was sent to the Governor of Assam, which was accepted and after that Mohet Hojai was elected in that post.

Mr. Borgohain contended that the witness was shown his previous statement under Section 164 Cr.PC and the prosecution got the same marked as Exhibit-56 despite the valid objection of the defence. Regarding the contents of his previous statements under Sections 161 and 164 Cr.PC, the witness stated that as the same were recorded long back in the year 2009, he could not recollect the details. As the witness was neither declared hostile nor was he sought to be cross-examined by the prosecution with reference to his

previous statement, Mr. Borgohain vehemently criticized the procedure adopted by the trial Court of exhibiting the previous statements of the witness without any endeavour of confronting or contradicting him with the same.

162. Mr. Borgohain referred to the cross-examination conducted from the witness on behalf of the accused Niranjan Hojai and Jewel Garlosa, wherein he candidly admitted that regarding the activities of DHD(J), he did not have any personal knowledge and his information was confined to media and people. Mr. Borgohain urged that there is nothing in the entire testimony of this witness, which can even remotely connect the accused Jewel Garlosa with the DHD(J) or its so called terrorist activities. The witness clearly stated that he gathered information about the violent activities of the DHD(J) from the media and people and this being a sheer conjecture, can, by no stretch of imagination, be translated into legally admissible evidence because the same would fall purely within the purview of hearsay evidence. Thus, as per Mr. Borgohain, there is nothing in the evidence of Kulendra Daulagopu (PW-23), which could constitute legal evidence linking the accused Jewel Garlosa with the DHD(J) or its alleged terrorist/ extremist activities.

163. Mr. Borgohain, next referred to the evidence of Amitava Sinha (PW-24) who stated that DHD(J) was involved in various violent/terrorist activities and that the law and order situation in N.C. Hills at that point of time was very bad because of its activities. Mr. Borgohain submitted that after reproducing the evidence-in-chief of almost all witnesses, the

trial Court brushed aside the facts elicited in the cross-examination by making a bald observation that nothing elicited during cross-examination of the witness could discredit the version in examination-in-chief. He contended that the entire examination-in-chief of Amitava Sinha to the extent, he attributed violent activities to DHD(J), was a conjectural theory brought in by way of sheer improvement from his previous police statement which fact was admitted by the witness in his cross-examination. He urged that the entire version of the witness in his examination-in-chief is nothing but a piece of hearsay evidence.

164. He then referred to the evidence of Hiteswar Medhi (PW-27) and contended that the witness testified in the capacity of the Consulting Editor of NE TV and stated that his channel telecasted a story on Niranjan Hojai of DHD(J) and a video clipping thereof was supplied to NIA, which was marked as Material Exhibit-15. The news regarding the arrest of Phojendra Hojai and Babul Kemprai was also telecasted on 02.04.2004 and a CD (Material Exhibit-16) was exhibited in the trial. Mr. Borgohain criticized the role of the trial Judge in allowing the CDs prepared from news channel clips to be marked as material exhibits in a criminal trial, even though the same do not constitute any form of tangible legally admissible evidence. His submission was that the course of action so adopted was absolutely arbitrary and illegal and just added to the bulk of records. He urged that reports telecast on a TV Channel clearly fall under the category of hearsay evidence. Furthermore, lack of certificate under Section 65B

of the Evidence Act would even otherwise make the CDs of news clippings inadmissible in evidence.

165. Mr. Borgohain also referred to the evidence of George Lam Thang - the approver (PW-29) and urged that even the uncontroverted testimony of the said witness, does not give any indication regarding the activities of DHD(J). He did not utter the name of the accused Jewel Garlosa in his evidence and thus, his testimony is also, of no relevance whatsoever while considering the prosecution case as against the appellant.

166. Mr. Borgohain then referred to the evidence of Debashis Dutta (PW-34) and contended that the testimony of this witness also does not provide any tangible material to the prosecution for proving its case as against the accused Jewel Garlosa.

167. Attention of the Court was drawn to the evidence of Imdad Ali (PW-35) who was a PWD Contractor working in the N.C. Hills. He also testified regarding resignation of Depolal Hojai from the post of CEM and Mohet Hojai taking over the said post. The witness also stated that Mohet Hojai tried to use his services for transferring money to Kolkata. However, the witness expressed his inability in doing so. The witness further stated that he gave cheques for sums of Rs.20 Lakhs and Rs.61,45,400/- to Jayanta Kumar Ghosh. Both these amounts were withdrawn by Jayanta Kr. Ghosh and demand drafts were prepared for depositing with the Indian Railway Catering and Tourism Corporation. Mr. Borgohain submitted that the deposition of this witness in no

manner gives any indication about the activities of DHD(J) or the role of the accused Jewel Garlosa therein. However, a most relevant fact elicited during cross-examination conducted from this witness was that huge deposits and significant withdrawals were made from his Bank account between 15.02.2009 to 15.03.2009 and the balance of his account as on 15.03.2009 reflected as Rs.3,08,59,838/-. The witness admitted in his cross-examination that during investigation of the present case, he was neither asked to explain about the transactions made by him in the Bank account of which statement was in possession of the NIA nor was he asked about the existence of any other Bank account or monetary transactions made by him during the corresponding period. Mr. Borgohain contended that the Bank account statement (Exhibit-100) of the witness was available with the NIA but consciously, no enquiry was made about the same even though huge cash transactions were made in the said account in the very same period corresponding to which, the terror funding activities allegedly took place.

168. Mr. Borgohain urged that as the prosecution has claimed that the unexplained monetary transactions made during the corresponding period were relatable to the funding of the prejudicial activities of DHD(J) (terror funding) and since the Investigating Officer had involved this witness in the scheme of things, there was no reason as to why huge deposits and withdrawals reflected in the bank account of this witness were ignored rather than being thoroughly investigated by the NIA officials. He contended that this

intentional omission, casts a grave doubt on the bonafides of the Investigation Agency's actions.

169. Mr. Borgohain then took us through the evidence of Nairing Daulagopu (PW-46). The witness stated that he had joined Dima Halam Daogah (DHD) in the year 1995, which was a militant organisation led by Jewel Garlosa, who was the Chairman of the group. The witness remained with the organisation from 1995 to 2003. The field of operation of the organisation was Karbi Anglong and N.C. Hills (now known as Dima Hasao). Arms and ammunitions required for the operation of the group were purchased locally and also from Bangladesh. In the year 1995, he went to Bangladesh as directed by the organisation DHD but because of financial problems, he had to return. Jewel Garlosa was the Chairman, Dilip Nunisa was the Vice-Chairman and the Commander-in-Chief was Pranab Nunisa of the group.

On 01.01.2003, ceasefire was declared between the militants and the Government and on signing of the ceasefire agreement, around 300 cadres including the witness himself were shifted to the designated camp. In October, 2003, the organisation was disbanded and Jewel Garlosa went and formed another militant organisation by the name of DHD(J). He alleged that in the year 2006, he had gone to Haflong for meeting Dilip Nunisa and while he was returning to the camp at Harangajao, on his way he was attacked by Daku Singh @ Athen Haflongbar and another person belonging to the group of DHD(J). In cross-examination, the witness categorically stated that his statement was not recorded by NIA.

Mr. Borgohain submitted that bare perusal of the statement of this witness would indicate that Jewel Garlosa separated from DHD in the year 2003 and formed another organisation by the name of DHD(J). However, what precisely were the activities of DHD(J) after its formation, were not elaborated by the witness. Thus, as per Mr. Borgohain, the testimony of this witness is of no help to the prosecution.

170. We were taken through the evidence of K.D. Marak (PW-62) who stated in his evidence that he was posted as Sub-Inspector in Madanriting Police Station, Shillong. In the year 2009, he was assigned investigation of a case by City SP. Cash amount of Rs.50 Lakhs had been seized on 01.05.2009 and an FIR Case No.77(07)/2007 was registered at Madanriting Police Station for the offences punishable under Sections 25(1)(a), 1(b) of the Arms Act read with Sections 10/13 of the UA (P) Act. He forwarded the two arrested accused, namely, Darasing Rongpu and Athen Haflonbar, to the Court. Thereafter, custody of Darasing Rongpu was taken over by Assam Police. He claims to have interrogated these two accused persons and alleged that from their interrogation, it came out that the cash to the tune of Rs.50 Lakh seized in the said case belonged to the DHD(J) group, which was meant for purchase of arms at Shillong and Mowblai Madanriting area. The arms dealer could not be identified and during the intervening period, the amount was intercepted and the accused were arrested.

In cross-examination, the witness admitted that he was verbally instructed to take up the investigation of the

case and no written instruction was given to him. The two persons, referred to above, were arrested by another Police Officer. He only came to know by virtue of the statement of the accused that the cash seized belonged to the DHD group. He had no other source or any witness to prove this fact. No documents were available with the seized cash so as to link it with the DHD(J).

Mr. Borgohain urged that the trial Court allowed totally extraneous questions to be put to the witness in his examination-in-chief. Allowing the witness to prove the details of interrogation made from the accused was totally unwarranted because confession of an accused recorded by the Police Officer would be hit by Section 25 of the Evidence Act. Apart from that, no such interrogation note, as referred to in the evidence of this witness was sought to be proved on record. Thus, the testimony of this witness is totally extraneous to the case at hand and does not lend any assistance to the prosecution in arriving at any conclusion against the accused Jewel Garlosa or regarding the activities of the DHD(J).

171. Mr. Borgohain submitted that Caushiq Kashyap Bezbaruah (PW-70), who was the Chief Executive Officer of News Live, on whose testimony the trial Court relied upon, was another witness similar to Hiteswar Medhi (PW-27). He forwarded the CD containing the news of arrest of Phojendra Hojai and Babul Kemprai to the NIA with the alleged video footage of a surrender ceremony. As per Mr. Borgohain, the testimony of this witness has no evidentiary worth because no witness present during the surrender ceremony was

examined in evidence by the prosecution. Thus, video footage of certain events recorded by a third person could not have been proved in the evidence. News items published in TV Channels have to be treated at par with news items published in a news paper and would fall in the category of hearsay evidence. These TV news reports could not have been treated as tangible primary evidence.

172. Mr. Borgohain referred to the evidence of Anurag Tankha (PW-72) and urged that this witness simply collected data of certain criminal cases, lists of surrendered weapons and forwarded the same to DIG, NIA along with a forwarding letter (Exhibit-271). He contended that neither the certified copies of the FIRs nor the charge-sheets referred to in the lists were not produced on record by the prosecution and in only one of these cases, was the involvement of DHD(J) indicated. Furthermore, the charge-sheets of the cases were also not produced on record.

He referred to the cross-examination made from the witness who admitted that he did not know the status of the trial in the cases referred to in the list. The source record from where the case informations enlisted in the list were compiled, was not available in the file. As per Mr. Borgohain, the lists of cases forwarded by this witness constitute half-baked information and are inadmissible and no reliance could have been placed thereupon.

173. Mr. Borgohain referred to the evidence of Ram Prasad Sarma (PW-89), who stated that he was driving a Scorpio vehicle of N.C. Hills allocated to Golon Daulagupu. On

11.02.2009, Golon Daulagupu informed him that he had to proceed to Guwahati for some official work. He, along with Golon Daulagupu and two PSOs, left the bungalow of Golon Daulagupu at about 1:30 PM. On the way, they picked up one Jibangshu Paul, who requested for a lift and desired to be dropped at Railway Station. Jibangshu Paul was carrying a bag. They reached an area called Dima Dao where they were stopped in front of a police barricade. When the bag carried by Jibangshu Paul and Golon Daulagupu was searched, cash amount was found therein. It was contended that Jibangshu Paul and Golon Daulagupu have not been charge-sheeted in connection with NIA Case No.1/2009 and hence, the testimony of this witness is not relevant for the decision of the present batch of appeals.

174. Next witness referred to by Mr. Borgohain was Kumud Chandra Sarma (PW-96), Director, In-Charge, Directorate of Forensic Science, Kahilipara, who proved the report (Exhibit-325) prepared by Late Mukul Chandra Kuli. The report pertained to examination of the e-mails allegedly collected during investigation post interrogation of the accused Ahshringdaw Warisa. Mr. Borgohain submitted that arguments about the authenticity and admissibility of this report would be advanced in the appeal of Ahshringdaw Warisa. He briefly submitted that the prosecution has tried to portray with fervour that the accused Ashringdao Warissa was acting in conspiracy with Jewel Garlosa and was providing him technical help and support and that the mails forwarded on behalf of DHD(J) to different organisations/ individuals were being handled by the accused Ashringdao

Warissa. However, his contention was that this is a totally fabricated story.

175. Mr. Borgohain pointed out that Nipolal Hojai (PW-98) is another in the series of witnesses, who did not oblige the prosecution and was declared hostile. The witness stated in his examination-in-chief that Depolal Hojai, the CEM of the Autonomous Council, resigned from the post on health reasons and then Mohet Hojai became the CEM. After Mohet Hojai assumed the charge of CEM, the witness was made the Executive Member and was given the portfolio of Social Welfare Department. R.H. Khan was the Deputy Director of the Social Welfare Department during this period. After being declared hostile and upon being cross-examined by the prosecution, the witness denied having given any statement to the Investigating Officer implicating Mohet Hojai and R.H. Khan in relation to defalcation/siphoning off of the funds of the Social Welfare Department by fabricating the records and the work orders. As per Mr. Borgohain, evidence of this witness is of no worth whatsoever and that the trial Court fell in grave error while placing reliance thereupon.

176. He then referred to the evidence of Depolal Hojai (PW-126), who was the erstwhile CEM of the Autonomous Council. The witness stated that he was elected on the post in January, 2008 and remained the CEM till 27.11.2008. He submitted resignation from the post on health grounds because both he and his wife were ill at that time. The witness also stated that Jewel Garlosa was an elected Member of the Autonomous Council. He did not know where

Jewel Garlosa was in the year 2008. When he was the CEM, the law and order situation of the Autonomous Council was bad. He could not recollect whether his statement was recorded by NIA. In cross-examination by the Public Prosecutor, the witness denied having given the statement in tune with the suggestions given by the Public Prosecutor by referring to the 161 Cr.PC statement of the witness.

In cross-examination by defence counsel, the witness stated that during his tenure as CEM, no extremist groups interfered with or dictated the day to day affairs of the Autonomous Council. He denied having stated to the police that Mohet Hojai had a role behind his resignation and that he had a link with the DHD(J). During his tenure, none of the elected members of the Autonomous Council belonged to any extremist group. His statement was not got recorded under Section 164 Cr.PC. He further stated that he shifted to Guwahati for the education purposes of his children and not on account of fear from any other corner.

177. Mr. Borgohain referred to the evidence of the last witness relied upon by the trial Court for dealing with the case of accused Jewel Garlosa, i.e. Dilip Nunisa (PW-129), who was also declared hostile by the prosecution. In his examination-in-chief, the witness stated that he was a member of the DHD group, which was led by the then President Jewel Garlosa. Objective of the group was to create a separate State of Dimasa people within the territory of India. The organisation worked for the general upliftment of the people of the locality and their education and other rights and also for their social upliftment. At this stage, the witness

was declared hostile and was orally confronted with his previous statement without the same being exhibited. He denied having given any statement to the Investigating Officer, NIA. However, in a suggestion given by the Public Prosecutor, he admitted that at the time of ceasefire in the year 2003, he was the Vice-President of DHD and participated in the ceasefire ceremony. He also admitted that there was a communal clash between the Hmar people and the Dimasa People and a number of Dimasa people lost their lives during that clash. After the clash between the Hmar and Dimasa peoples, Jewel Garlosa separated himself from the organisation formed a group called 'Black Widow'. He denied the other suggestions given by the learned Public Prosecutor for implicating the accused Jewel Garlosa in the alleged violent activities of DHD(J).

178. Mr. Borgohain further submitted that the procedure of arrest of the accused/appellant Phojendra Hojai from Bangalore is also full of inherent infirmities and illegalities. No incriminating material was recovered by the concerned police officers when the accused was arrested from a gym. The trial Court, without any justification, accepted the totally fictitious story of the prosecution that disclosure made by the accused Jewel Garlosa, resulted into discovery of incriminating material from a flat in Bangalore because no such disclosure statement was proved on record.

179. Adopting the arguments of Mr. Mishra, Mr. Borgohain also contended that the trial Court committed a fundamental legal error in placing reliance on the previous

statements of the prosecution witnesses recorded under Section 161 Cr.PC brought on record in course of cross-examination conducted by the Public Prosecutor and proved during the deposition of Shri Mukesh Singh, the Chief Investigating Officer, NIA. He urged that almost all hostile witnesses, whose previous statements were relied upon by the trial Court, denied having given such version to the Investigating Officer. Thus, as per Mr. Borgohain, the trial Court committed a gross legal error in relying upon the previous statements of the witnesses which would be hit by the bar under Section 162 Cr.PC.

180. On these grounds, he implored the Court to set aside the conviction of the appellant Jewel Garlosa as recorded by the trial Court and acquit him of the charges.

DISCUSSION IN CRL. APPEAL NO.256/2017 (AHSHRINGDAW WARISA)

181. Mr. S. Borgohain, learned counsel advanced submissions on behalf of this accused and urged that the prosecution indulged in blatant fabrication of evidence to entangle the accused in the case and that there is no material on record to link him with the charges. The appellant Ahshringdaw Warisa was arrested by the Assam Police from Bangalore on 03.06.2009. On 05.06.2009, NIA took over the investigation and re-registered the Basistha Police Station Case No.170/2009, which is the original FIR in the present Case, to NIA FIR No.1/2009. The case properties seized and the other material collected by the Investigation Officer of Basistha Police Station during investigation of the

FIR No.170/2009 were sought for by the NIA by way of an application filed to the learned Chief Judicial Magistrate concerned on 06.06.2009. Another prayer of the NIA to the Magistrate was to grant custody of the accused Ahshringdaw Warisa, Jewel Garlosa and Samir Ahmed for carrying out further investigation. These prayers were accepted by the learned Chief Judicial Magistrate vide order dated 06.06.2009. On 11.06.2009, accepting the prayer of the NIA, the learned Chief Judicial Magistrate permitted addition of offences punishable under Sections 17, 18 and 19 of the UA (P) Act to the case. On 16.06.2009, the confessional statement of accused Samir Ahmed was recorded, wherein he admitted having provided shelter to the accused Jewel Garlosa. After completion of the police custody period, the accused/appellant Ahshringdaw Warisa and the co-accused Jewel Garlosa were produced before the concerned Magistrate who remanded them to judicial custody on 19.06.2009.

182. The Superintendent of Police, NIA, Swayam Prakash Pani (PW-146), who was assisting the Chief Investigating Officer Mukesh Singh (PW-150), was assigned certain specific tasks of investigation. He stated on oath that he had undertaken training on computer related document handling at the NCRB and thus, he prepared a disclosure memo (Exhibit-117) on 13.07.2009 at the instance of the accused Ahshringdaw Warisa, wherein he divulged about 4(four) email ids i.e. *dimahasao@yahoo.com* with password TOMAHAWK, *ahshringdaw2009@rediffmail.com* with password RAMBOSTARO, *dawha2009@yahoo.com* with password

AHSHRING# and *robertbrown@gmail.com* with password AMBASSDO/A/R, which were being operated by him. As per deposition made by Shri Swayam Prakash Pani (PW-146), the process of interrogation and recording of disclosure memo of the accused Ahshringdaw Warisa took place at the Special Operation Unit (SOU) Police Station, Guwahati **on 13.07.2009**. This disclosure statement was marked as Exhibit-117 in the testimony of this witness, who further stated that Exhibit-117/3 was his signature on the document. The mails were allegedly opened in presence of independent witnesses on 24.08.2009 and the proceedings were recorded in Memorandum (Exhibit-421) and as a consequence, one mail id, i.e. *dimahasao@yahoo.com* opened with password TOMAHAWK, could be assessed and 8(eight) mails sent to *NDFB2001@yahoo.com*, *harasorazee@yahoo.com* and *ahshringdaw2009@rediffmail.com* were discovered. The witness further stated that while undertaking this process, it was ensured that the data taken out as printout from the computer was free from any virus and malware. Printouts of all these mails were taken. The witness tried to explain that because of extremely busy schedule during investigation at the N.C. Hills, he was not able to carry out timely recovery exercise for the above email communications. The witness claimed that this exercise was undertaken in accordance with Section 65B of the Evidence Act but, no Section 65B certificate was prepared in the process. The witness proved the discovery memo as Exhibit-421 and the printouts of the emails were marked as Exhibit-422. In cross-examination

conducted on behalf of the accused/appellant, the witness gave the following pertinent answers:-

> *"..... On being asked that 13th July, 2009 the accused was in police custody and I deny that they were in judicial custody. .....It is only after 2010, Government of India could streamline the MLAT procedure for obtaining data from different email service providers. Being the above position as explained by me I accept that the mails print out copies could not be verified from the respective service providers. I did not furnish any exclusive 65B Evidence Act certificate nor the CIO asked for the said certificate. ..... Yes, it is a fact that the email was accessed after 34 days and the print out were taken out. ..... It is not a fact that the accused Ahshringdaw Warisa was not in police custody on 13the July, 2009 and neither he was present in the SOU police station, Assam while drawing the disclosure memo because as per the Court's record dated 19.06.2009 and 13.07.2009, the accused was in judicial custody lodged in Central Jail. I deny the suggestion that the disclosure memo Ext 117 and the subsequent action thereafter were all manufactured."*

183. Mr. Borgohain urged that the Officers, who arrested the accused/appellants Jewel Garlosa and Ahshringdaw Warisa from Bangalore, namely, Sudhakar Singh (PW-26) and his associates Rukma Buragohain (PW-38) and Bhupendra Kr. Nath (PW-124), categorically stated that they flew to Bangalore where Jewel Garlosa was apprehended from a Gym on 03.06.2009. The accused Ahshringdaw Warisa was apprehended from a flat and the accused Samir Ahmed was arrested from another flat. All these accused were brought to Guwahati on 05.06.2009. These witnesses further claimed that the accused Jewel Garlosa made a disclosure that he also used to stay in the Flat No.102, first floor, Pankaj Residency and that he led them to the flat where accused Ahshringdaw Warisa was

found. However, no such disclosure statement was brought on record by the prosecution. It was further claimed by the prosecution that on search of the flat being conducted, certain documents and one HCL laptop and a driving licence, etc., and various other documents were found.

184. Learned defence counsel urged that the finding recorded by the trial Court that the accused Ahshringdaw Warisa provided shelter to Jewel Garlosa is absolutely perverse and baseless as no witness examined by the prosecution gave evidence to this effect. The allegation as appearing in the testimony of Rukma Buragohain (PW-38) that Jewel Garlosa led them to the flat where accused Ahshringdaw Warisa was found is totally baseless and contradicted by the evidence of Sudhakar Singh (PW-26) and Bhupendra Kr. Nath (PW-124), who were a part of the team which conducted the proceedings at Bangalore. Both did not utter a word in their evidence that Jewel Garlosa led them to the flat from where accused Ahshringdaw Warisa (Partha) was apprehended. Neither of these two witnesses stated anything about the so called recovery of documents and laptop made at the instance of Jewel Garlosa from the flat from where accused Ahshringdaw Warisa was apprehended. Thus, as per Mr. Borgohain, the statement given by Rukma Buragohain (PW-38) that Jewel Garlosa led them to the flat where Ahshringdaw Warisa (Partha) was staying and that the articles seized vide seizure memo (Exhibit-104) were recovered from the said flat is absolutely false and cooked up.

185. It was further contended by the learned counsel Mr. Borgohain by referring to the statements of Sudhakar Singh (PW-26) and Rukma Buragohain (PW-38), that the signatures of the accused Ahshringdaw Warisa were not taken on the Memorandum (Exhibit-421) and thus, he contended that the discovery of the emails can, in no manner, be linked to the accused so as to constitute incriminating evidence. It was further submitted that as per the testimony of Sudhakar Singh, Rukma Buragohain and the proceeding-sheets of the trial Court, it is clear that the accused Ahshringdaw Warisa was arrested from Bangalore on 04.06.2009 and his police custody remand period expired on 19.06.2009. This fact is borne out from the Court records and was affirmed by the Chief Investigating Officer Mukesh Singh (PW-150), who admitted in his cross-examination that as per the order passed by the learned Chief Judicial Magistrate, Kamrup, the accused Ahshringdaw Warisa was in judicial custody on 13.07.2009. It was vehemently argued by Mr. Borgohain that the trial Court undertook a very strange perverse exercise to somehow the other give succour to the cooked up prosecution theory regarding recording of the disclosure statement (Exhibit-117) and the consequential recovery of the disputed mail ids and the passwords. In this regard, the observations and conclusions of the trial Court in Paragraph 198(i) of the impugned judgment were highlighted and it was submitted that ignoring the date of recording of the disclosure memo, i.e. 13.07.2009, as stated by the witness Swayam Prakash Pani (PW-146) on oath and recorded in the disclosure memo (Exhibit-117), the trial Court

turned Nelson's eye to the truth and blindly accepted the unilateral statement of the Public Prosecutor and recorded a contorted finding that the date of preparing the disclosure memo though mentioned in the evidence of the witness and the document was 13.07.2009 but, as a matter of fact, the said exercise was carried out on 13.06.2009 as per the noting in the case diary. He referred to Paragraph 198(i) of the impugned judgment, which is reproduced herein below for the sake of convenience:-

> *"198(i). The ld. Counsel for the accused, during argument, submitted that on the day of making disclosure by the accused Ashringdao warissa i.e. on 13.07.2009, he was in judicial custody. And as such the entire exercise of preparing disclosure memo is false and fabricated. A careful perusal of the case record also shows that accused Ashringdao Warissa was in judicial custody on 13.07.2009. But the ld. Special P.P. has contested the submission that it was error on the part of the I.O. who, inadvertently mentioned the date of recording disclosure memo as 13.07.2009, but in fact the said exercise was carried out on 13.06.2009. In support of his submission the ld. Special P.P. has placed before the court the relevant case diary which reflects that it was carried out in fact on 13.06.2009. There is no doubt that some lapses are there on the part of the I.O., but it will not render the entire exercise pointless. The ld. counsel for the accused has, referring one case law, Mohd. Ankoos vs. Public Prosecutor, (2010) 1 SCC 94, submitted that case diary cannot be used to overcome the contradictions pointed out by the defence. To appreciate the submission of the ld. counsel we have gone through the case law carefully and we find that the ratio laid down the said case law is not applicable in all force to the facts here in this case. In the said case the case diary was used to discard the evidence of the I/O. In the instant case no such circumstances arose. The case diary was placed by the ld. Special P.P. only to show the chronology of events mentioned therein.*
>
> *Thus the facts and circumstances appearing against this accused can be recapitulated as under:-*
>
> 1. *He was caught at a Flat of Bangalore on 03.06.2009, and he provided shelter to accused Jewel Garlosha, the C-in-C of DHD(J).*

2. *He had communication with DHD(J) and an e-Mails sent by accused Jewel Garlosha to NDFB organisation was recovered from one e-Mall ID dimahasao@yahoo.com to that effect.*

3. *He visited Aizwal and concealing his real identity of Ashrigdao Warlssa.*

4. *Rs.10,00,000/- was deposited in his bank account at Standard Chartered Bank Guwahati, within a short span of time, and there is no plausible explanation to show wherefrom the money came."*

186. The learned defence counsel submitted that the trial Court acted in an absolutely arbitrary highhanded manner and peeked into the inadmissible material, i.e. the case diary and concluded that though there were lapses on the part of the Investigating Officer but it would not render the entire exercise pointless. It was submitted that manifestly, the Investigating Officer Sudhakar Singh (PW-26) fabricated the evidence of disclosure and discovery of the mail addresses and foisted the same upon the accused Ahshringdaw Warisa. He fervently criticized the conclusion drawn by the trial Court that one of the mails was sent to NDBF organisation by Jewel Garlosa from the email id of the accused Ahshringdaw Warisa and as he (Ahshringdaw Warisa) failed to explain as to how the mail was sent from his mail id by the accused Jewel Garlosa, this would lead to an inference that these two accused were joined in conspiracy. It was submitted that at Paragraph 196 of the impugned judgment, it was observed that the printouts of the emails were not supported by a certificate under Section 65B of the Evidence Act as has been held by the Hon'ble Supreme Court in the case of ***Anvar P.V. -Vs- P.K. Basheer & Ors.***, reported in ***(2014) 10 SCC 473***, but the ratio of the later

Hon'ble Supreme Court judgment [which has further been affirmed in the case of ***Arjun Panditrao Khotkar -Vs- Kailash Kushanrao Gorantyal & Ors.,*** reported in ***(2020) 7 SCC 1***] was ignored by the trial Court relying on the earlier precedent in the case of ***Navjot Sandhu*** (supra), which had been impliedly overruled on the aspect of requirement of certificate under Section 65B of the Evidence Act. He contended that without any foundation, the trial Court went on to hold that on the basis of the disclosure made by the accused, the email ids were recovered and printouts were taken out by the Investigating Officer. It was urged that the disclosure statement and the mail printouts so collected do not constitute legal evidence and rather the entire exercise is based on fraud, fabrication and intentional manipulation of record by the Investigating Officer which was blindly accepted by the trial Court and hence, the same are liable to be discarded.

187. It was further submitted that the incriminating inference drawn by the trial Court against accused Ahshringdaw Warisa that he gave Rs.3 Lakhs to Nishit Barman (PW-66), who deposited the same in the account of the accused, is totally unjustified because the witness clarified in his evidence that the money was received from the sale of stone crushing chips made by the Firm of the accused Ahshringdaw Warisa, namely, Ahshringdaw Stone Crusher. He urged that the trial Court drew a totally strange inference that the statement of this witness failed to inspire confidence because he did not clarify as to where the Firm of the accused is situated. He submitted that the duty to clarify

the doubts if any in the evidence of the witnesses was upon the prosecution and the defence is only required to create a doubt in the prosecution case, which would be sufficient to discard the same.

On these grounds, Mr. Borgohain implored the Court to discard the entire prosecution case and reverse the findings recorded by the trial Court against the accused Ahshringdaw Warisa and acquit him of the charges.

188. The learned Special Public Prosecutor, on the other hand, vehemently and fervently opposed the submissions advanced by the appellant's counsel. It was contended that the prosecution witnesses, namely, Swayam Prakash Pani (PW-146); Sudhakar Singh (PW-26); Rukma Buragohain (PW-38) and Bhupendra Kr. Nath (PW-124), had no animosity against the appellant. These three Investigating Officers arrested the accused Ahshringdaw Warisa from Bangalore on 03.06.2009 and on the very same day, Jewel Garlosa, the principal accused being the founder of DHD(J), was also arrested from Bangalore. The flat, where accused Ahshringdaw Warisa was residing, was searched as a consequence of the information provided by the accused Jewel Garlosa and incriminating material was recovered. The third accused Samir Ahmed was also arrested from Flat No.6/1C and from there certain documents which established his direct link to the accused Jewel Garlosa (his driving licence with a fake name of Debojit Singha) were recovered. The learned Special Public Prosecutor further submitted that Samir Ahmed confessed to the crime and thus, his confession can be treated to be a relevant piece of evidence against the

accused/appellant Ahshringdaw Warisa and Jewel Garlosa as well.

189. Regarding the process of disclosure and discovery of the incriminating mail ids and passwords of the accused Ahshringdaw Warisa, which were alleged to have been used by the accused Jewel Garlosa to forward mails to the other terrorist organisations, it was submitted by learned Special Public Prosecutor that the error in recording the date in the disclosure statement (Exhibit-117) was inadvertent and unintentional and as a matter of fact, this process was carried out on 13.06.2009 and not on 13.07.2009.

However, the learned Special Public Prosecutor was not in a position to dispute the fact that the document (Exhibit-117) bears the date 13.07.2009. The prosecution made no attempt whatsoever to clarify this glaring discrepancy despite the pertinent suggestion given to Swayam Prakash Pani (PW-146) during his cross-examination that the accused Ahshringdaw Warisa was in police custody on 13.07.2009. The Special Public Prosecutor also admitted that the scribe of the document, namely, Swayam Prakash Pani (PW-146), did not prove the signature of the accused Ahshringdaw Warisa on the disclosure memo. It was also not disputed that the witness Nishit Barman (PW-66) clearly stated that the amount which he deposited in the account of the accused Ahshringdaw Warisa on his instructions was received towards payment of loan to Tata Motors and had been generated from the stone crushing chips business of Ahshringdaw Warisa's Firm.

190. Having appreciated the submissions advanced at bar and the evidence available on record, we are of the firm view that the finding recorded at Paragraph 198(i) (supra) of the impugned judgment shows the partisan bent of mind of the trial Court that by any means, the accused/ appellant Ahshringdaw Warisa had to be convicted. In order to justify its absolutely perverse and virtually predetermined conclusion, the trial Court peeped into the case diary and tried to mutate the date of the Disclosure Memo (Exhibit-117), from 13.07.2009 to 13.06.2009, by observing that there were lapses on the part of the Investigating Officer.

191. No sooner, the question regarding the accused Ahshringdaw Warisa being in judicial custody on 13.07.2009 was put to the witness Swayam Prakash Pani, the prosecution should have been alerted and measures were required to be taken for explaining the glaring discrepancy by way of re-examination from the witness. Furthermore, the Presiding Officer of the trial Court was also expected to remain vigilant as per the mandate of Section 165 of the Evidence Act and rather than acting as a mute spectator should have put Court questions to the witness so as to remove the anomaly.

Be that as it may. It is clear as day light that Exhibit-117, the disclosure statement allegedly recorded by Swayam Prakash Pani (PW-146) is nothing but a sheer piece of fabrication and the consequential opening of the email accounts in furtherance of this disclosure statement is also an exercise in futility. As a matter of fact, all these discrepancies and glaring contradictions are clearly indicative of the grossly

tainted process of investigation and trial. The learned trial Court acted in a sheerly partisan manner and metamorphosed the date of the disclosure memo from 13.07.2009 to 13.06.2009 at the behest of the Public Prosecutor by fishing into the case diary in a grossly illegal manner.

192. The evidence of Swayam Prakash Pani (PW-146) and the documents referred to (supra) are the only pieces of evidence which the prosecution could lay hands on in the endeavour to prove its case as against the accused/appellant Ahshringdaw Warisa. It may be mentioned here that the trial Court, without giving a second thought and by total non-application of mind to the actual evidence available on record, appears to have accepted the fictional story projected by the prosecution that the accused Ahshringdaw Warisa was arrested from a flat where he was living with the accused Jewel Garlosa, the Commander-in-Chief of DHD(J) from Bangalore even though, there is no evidence on record to support this baseless conclusion.

193. We have no hesitation in holding that the findings recorded by the trial Court against the accused Ahshringdaw Warisa at Paragraph 198(i) of the impugned judgment (supra) are on the face of it perverse and are based on misreading of evidence and distortion of facts. There is no material on record to establish that the accused Ahshringdaw Warisa was arrested from the flat where Jewel Garlosa used to reside nor could the prosecution establish any link of Ahshringdaw Warisa with the offending mail ids because the

disclosure statement (Exhibit-117) by itself is a sheer piece of fabrication. It was prepared on 13.07.2009 by showing the presence of the accused Ahshringdaw Warisa at the SOU Police Station, whereas admittedly the accused was in judicial custody on that date. The scribe of this document, i.e. Swayam Prakash Pani (PW-146), did not state that signature of the accused was also taken on the disclosure memo. In absence of the signature of the accused the disclosure memo, otherwise also become redundant. In addition thereto, the fact remains that the procedure of opening the mails was admittedly carried out on 24.08.2009, wherein the accused was not associated and hence, the discovery was manifestly not made in furtherance of the disclosure statement of the accused. The copies of mails downloaded by the Investigating Officer were not supported by the Certificate under Section 65B of the Evidence Act and hence, the same are inadmissible in evidence as held by Hon'ble Supreme Court in the case of ***Arjun Panditrao Khotkar*** (supra). The approach of the trial Court in relying upon the judgment in the case of ***Navjot Sandhu*** (supra) which is impliedly overruled on the aspect of mandate of Section 65B of the Evidence Act reflects an act of rank judicial impropriety.

194. The finding recorded by the trial Court that the accused Ahshringdaw Warisa visited Aizawl by assuming a false identity was based on the testimony of Sahabuddin (PW-39). However, a perusal of the statement of the said witness would reveal that the prosecution did not make any effort whatsoever to get the accused/appellant Ahshringdaw

Warisa identified during his deposition on oath. Thus, the testimony of this witness is also of no avail to the prosecution and does not provide any tangible material in support of the allegation that the accused Ahshringdaw Warisa stayed in the Hotel Tropicana under a fake identity. Further finding recorded by the trial Court that failure of the accused to give plausible explanation to show as to how the sum of Rs.10 Lakhs was deposited in his Bank account at the Standard Chartered Bank, Guwahati within a short span of time incriminates him is also perverse. The trial Court indulged in misinterpreting the statement of Nishit Barman (PW-66), as noted above. No other witness of prosecution stated anything regarding the role of the appellant Ahshringdaw Warisa in support of the alleged conspiracy theory.

As a consequence, we are of the firm view that the entire prosecution case as against this accused/appellant is based on fabricated and cooked up evidence. The prosecution could not lead even an iota of evidence so as to establish that the accused/appellant Ahshringdaw Warisa was in any manner involved in the so called conspiracy or that he was a member of the DHD(J).

195. Having appreciated the arguments advanced at bar and after threadbare sifting, wholesome deliberation and minute analysis of the evidence available on record and with due consideration of the findings recorded by the trial Court, we have no hesitation in holding that the entire case set up by the prosecution/Investigation Agency is full of loopholes, embellishments and is tainted by pre-determined efforts to somehow by hook or crook and even by unethical means,

target and entangle the accused persons in the case without any sincere attempt being made to collect proper, substantive, wholesome and legally admissible evidence so as to bring home the charges. The fact that the Investigation Agency proceeded with pre-determined bent of mind to somehow the other entangle the accused for grave offences without any justification is borne out from the very inceptional sequence of the case. The FIR No.170/2009 was registered at Basistha Police Station merely on the basis of recovery of cash and two licensed weapons but without any basis, the offences of waging war against the country (Section 121/121A IPC) were applied even though the Officer-in-Charge of the Basistha Police Station did not have any material to apply these offences at that stage. Though a big projection was made by the Investigation Agency regarding existence of a deep-rooted conspiracy amongst the components of the DHD(J) for indulging in terrorist activities but, no sincere effort was made to collect proper evidence to establish the theory of conspiracy. Some Mobile phone SIM Cards were recovered but no effort was made to trace or link the subscriber details thereof with any of the accused. The Call Detail Records were brought on record without procuring the mandatory certificate under Section 65B of the Indian Evidence Act, 1872 which made the entire effort an exercise in futility. Inadmissible evidence in form of CDs prepared from news channel clippings were brought on record just in order to mislead the direction of the case and unnecessary addition was made to the bulk of the records. A substantial part of the prosecution case that the funds of N.C. Hills

Autonomous Council were defalcated for the purpose of funding the terrorist/subversive activities of DHD(J) was given up in an absolutely perfunctory manner with a bald assertion in the charge-sheet that the investigation into these allegations had been assigned to the CBI. However, no effort was made to bring on record the details of the case/cases, if any, registered by the CBI on the basis of such assignment. This serious omission on the part of the Investigation Agency has badly hampered and adversely affected the prosecution case and has brought in a huge element of uncertainty in the proceedings. A most important loophole which we have observed in the trial is that neither the Public Prosecutor nor the trial Court made any effort to exhibit the arrest memos of any of the charge-sheeted accused thereby putting a big question mark on the subsequent process of recoveries/ discoveries of incriminating facts. A totally frivolous exercise was made of trying to get the photos of one set of accused identified by another contrary to all tenets of criminal jurisprudence. These shortcomings and loopholes highlighted above have destroyed the very fabric of the prosecution case and have contributed to its downfall and are sufficient to discard the same in its entirety.

196. Learned defence counsel fervently questioned the veracity of the order granting sanction Exhibit-280 and Exhibit-281. We have perused the statements of the witnesses Mr. B. Ramani (PW-90), who proved the sanction letter and the CIO, Mukesh Singh (PW-150) and find that the sanction letter also reflects total non-application of mind to the material fact and circumstances and is as

vague as the conclusions of the Investigating Officer in the charge-sheet. Hence, the lack of non application of mind in issuance of the sanction letters (Exhibits-280 & 281) also goes to the root of the matter and vitiates the prosecution case.

DISCUSSIONS IN CRL. APPEAL NO.233/2017 (REDAUL HUSSAIN KHAN) AND KARUNA SAIKIA

DISCUSSIONS IN CRL. APPEAL NO.205/2017 (JAYANTA KUMAR GHOSH); CRL. APPEAL NO.206/2017 (SANDIP KUMAR GHOSH) AND CRL. APPEAL NO.262/2017 (DEBASHISH BHATTACHARJEE)

197. The appellants herein have been convicted as above primarily on the allegations that they were facilitators who conspired with the accused Mohet Hojai, CEM of the NCHAC and with the aid and assistance of the NCHAC officials, namely, R.H. Khan and Karuna Saikia, the firms of the appellants were granted ante dated illegal work/supply orders even though the firms' licences with the Council had expired; the firms were not registered; the firms had no existence at the given address. Advance cheques were given and money was transferred to the non-existing/unlicensed firms being operated by Debashish Bhattacharjee and Jayanta Kumar Ghosh, who withdrew the amounts of the cheques and thereafter, facilitated the transfer thereof to the terrorist gang DHD(J) through Mohet Hojai for raising funds and for conversion of Indian Currency to US Dollars for procuring arms and ammunitions for continuing their terrorist acts. The points for determination formulated by the trial Court against the accused persons are reiterated hereinbelow for the sake of ready reference:

"(IX) Whether the accused persons, namely:-

Sri Redaul Hussain Khan
Sri Karuna Saikia
Sri Jayanta Kumar Ghosh
Sri Debasish Bhattacharjee
Sri Sandip Ghosh

after formation of Dima Halim Daogah i.e. DHD(J) in 2004 and particularly from January to March, 2009, entered into an agreement with the members of DHD(J) to do illegal act or an act which is not illegal but by illegal means to help them in raising their funds and in order to commit said illegal acts siphoned off Govt. money allotted for development of N.C. Hills district, handed over the money to the terrorist gang DHD(J) through Mohit Hojai in raising the fund, convert Indian currency to US dollar to procure arms and ammunition to assist in continuing terrorist acts?"

198. It may be noted that point Nos.X and XI formulated by the trial Court are virtually the reiteration of point No.IX and thus the same are not being reproduced herein.

Ultimately, after discussing the evidence, the trial Court recorded its findings as against the appellants at Paragraph 370(i), 377, 378 and 379 of the impugned judgment and the same are reproduced herein below for the sake of ready reference:

"370.(i) These undisputed facts which also remained un-explained during trial, established the nexus between accused R.H. Khan with that of accused joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip ghosh beyond any shadow of doubt.

377. Thus, the evidence discussed above, it becomes apparent that how Govt. funds, means for development of Dima Hasao, the erstwhile N.C. Hill District were siphoned off from the Social Welfare Department and PHE Department. The evidence also shows the modus oparendi adopted by the three accused persons in siphoning out the funds. Having considered the facts and circumstances, in the totality, it can safely be concluded that the prosecution side has succeeded in

establishing the complicity and the role played by the three accused persons in the conspiracy, beyond all reasonable doubt. The ld. counsels of the accused, however, pointed out different infirmities in their evidence and questioned their credibility in the light of the same during argument. We have given our thoughtful consideration to the same and we find that on that count their evidence cannot be discarded to hold that prosecution has failed to discharge its burden. Though the ld. defence counsel has pointed out that the prosecution side has failed to prove the charge of conspiracy against the accused persons, notwithstanding, we find the facts and circumstances brought on record are sufficient to prove the same, when considered in entirety.

378. There, of course, remains no doubt that some commission or omission on the part of the investigating agency. It has not investigated the other offences, i.e. defalcation of funds of NCHAC, connected to the schedule offence, and handed over the task to CBI. The ld. defence counsel has rightly pointed this out in his argument. It is also pointed out that the prosecution side has brought on record the inadmissible evidences. There is substance in the said submission also. As for instance, the prosecution side has collected the CDRs of the mobile phones of the accused persons without certification under section 65-B Evidence Act. But the facts remains that that was the law at that point of time after the case of The State (N.C.T. of Delhi) vs. Navjot Sandhu @ Afsan Guru (supra). The I/O in his evidence categorically stated the same in his evidence. The law relating to secondary evidence in the form of CDRs has changed only after the judgment of Hon'ble Supreme Court in Anvar P.V. vs P.K. Basheer's (supra) case in the year 2014. Despite, such commission and omission, the facts and circumstances so brought on record and proved are found to be sufficient to establish their complicity.

(Emphasis supplied)

379. From the evidence discussed above the role, so played by the three accused persons are recapitulated as under:-

***Joyanta Kr, Ghosh**:-*

(i) He used to do contract works in name of five firms registered in the name of Debasish Bhattacharyee viz.(1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s

Debashish Bhattacharjee, permits of which were valid upto 31.03.2008 only.

(ii) He has nexus with accused Mohit Hojai who was the CEM of NCHAC at the relevant time.

(iii) He remained present at Hotel Pragati Manor in the month of March 2009, where accused Mohit Hojai and the Executive Engineer PHE, Haflong K.B. Mukherjee and Executive Engineer of Maibong Division, Sh. Kuton Namasudra also remained present and at that time CEM, Sh, Mohet Hojai directed Executive Engineers to issue all the cheques in favour of Maa Trading, a firm of accused Joyanta Kr. Ghosh registered in the name of Accused Debasish Bhattacharyee.

(iv) Having received the cheques he got two accounts opened at SBI Zoo Road Branch in the name of two firms proprietor of which were Mr. Debasish Bhattacharyee on 27.03.2009 and deposited a high value cheque of Rs. 1.3 crore and withdrawn a huge amount Rs. 84,00,000/ after two days.

(v) He had nexus with accused Mohit Hojai and Mohit Hojai told P.W.21 – Shri Chandra Sharma to meet him (accused Joyanta Ghosh) and sent one man with a packet and having received the same he handed it over to him (Joyanta Kr. Ghosh).

(vi) He had nexus with Imdad Ali who carried money of accused Mohit Hojai on several occasions to Kolkata.

(vii) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. All. Later on he came to know the envelop was containing a cheque amounting to Rs. 1.20 Crore.

(viii) He has nexus with accused R.H, Khan (A-4) and some challans and bills of supplying material In the name of a firm Debasish Bhattacharyee, were recovered the Hard Discs, which were seized from of the official computer of R.H. Khan.

(ix) No satisfactory explanation has been offered as to how the bills and challans of the firm, under which he was doing contract, finds place in the hard disc of the computer of accused R.H. Khan.

(x) There were excessive supply of material after arrest of accused Phojendra Hojai on 01.04.2009 and prior to that there was no supply of material, as evident from the evidence of P.W.103, Shri Sushil Chandra Das.

(xi) P.W.103, Shri Sushil Chandra Das was compelled to show receipt of material at back date and to verify the bills of M/s Loknath Trading, and M/s Jeet Enterprise. Material were started to send in April 2009.

(xii) Payment to the firms, from where material was purchased were made in the months of April as evident from P.W.17.

(xiii) Admittedly the accused did not participated in tender process as bidder, notwithstanding, M/s Jeet Enterprise, M/s Loknath Trading, M/s Maa Trading, received supply order of G.I. Pipes for a huge sum. (Para No.106 of Written Argument)

(xiv) Blank challans Ext. 70/47, 70/48 and 70/49 of Maa Trading, without challan number and date, wherein store keeper has put his signature on the printed words "receipt the above which is in good condition" are supplied by J.K. Ghosh shows existence of nexus between him and R.H. Khan and clearing of Ext.70/43, bill of Maa Trading and 70/50, bill of Barail Enterprise, which are without date were cleared by R.H. Khan further fortified the unholy nexus.

(xv) Ext.279 shows that the firms - Borail Enterprise and Loknath Trading had no existence at Guwahati and also had no entry in the Guwahati Municipal Corporation Register for the year 2009.

(xvi) Accused Mohit Hojai exerted extreme pressure to the officers of PHE department to issue cheques Ext.318 and Ext.319, even without supply of any materials.

(xvii) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghosh, D. Bhattacharjee and Sandip Ghosh to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs.1.20 Crore.

199. Exhaustive arguments were advanced on behalf of these accused by learned senior counsel Mr. Z. Kamar (for Redaul Hussain Khan) and Mr. A. Chowdhury, learned counsel (for Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh) and for the prosecution by Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India.

200. We are of the view that a minute analysis and discussion of these findings is not required in this case because the prosecution did not propose any charges for criminal misappropriation, criminal breach of trust, cheating, fraud and forgery against any of these accused/appellants. It cannot be denied that the allegations reproduced hereinabove would unquestionably give rise to the above offences. As has been mentioned above, the prosecution and the trial Court shook hands off this important aspect of the case by a lackadaisical observation that investigation into these offences had been handed over to the CBI. However, it is an admitted fact that not a single document pertaining to registration of the case(s) by the CBI or the conclusions/ charge-sheet, if any, presented in the Court concerned against the accused/appellants was brought on record of the present case.

201. The major thrust of prosecution allegations in this regard is that officials of the NCHA Council, Redaul Hussain Khan (Social Welfare Department) and Karuna Saikia (PHE), facilitated the illegal transfer of funds to the firms of the accused/appellants Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh by fraud and forgery and thereby the funds meant for the developmental activities of the N.C. Hills Council were siphoned off and were routed to the members of the DHD(J) for funding its terrorist activities. All these financial irregularities, fraud and misappropriation were done under the directions of the accused Mohet Hojai. All accused have been acquitted by the trial Court of the charge under Section 18 of the UA (P) Act

which is the substantive offence of conspiracy under the UA (P) Act. The acquittal from this substantive offence was recorded on the premise that the accused persons were being convicted for a broader offence of conspiracy punishable under Sections 120B IPC. However, what is relevant to note here is that the conviction for the offence under Sections 120B IPC simpliciter has been done without recording specific findings that the accused conspired with each other and committed the offences of fraud, forgery and misappropriation under the Indian Penal Code and criminal misconduct as defined under the Prevention of Corruption Act so that the funds defalcated by these illegal means could be siphoned off to finance the terrorist activities of DHD(J). The accused Mohet Hojai, R.H. Khan, Karuna Saikia, Debashish Bhattacharjee, Jewel Garlosa and Sandip Kumar Ghosh have been convicted for the offence under Section 17 of the UA (P) Act on the allegation that the funds of the Council were illegally routed through them for being provided to the members of DHD(J) for financing its terrorist activities.

202. It is thus obvious that guilt of the two public servants, i.e. R.H. Khan and Karuna Saikia, and the contractors Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh has not been recorded for the actual substantive offences they allegedly committed but by branding them to be in conspiracy with the members of DHD(J). They were straight off convicted for the offence under Section 17 of the UA (P) Act without holding them guilty of the substantive offence which they allegedly committed for siphoning off the funds from the N.C. Hills

Council. Thus, before evaluating the prosecution case against these accused, issue which is required to be assessed before hand is whether the prosecution has been barely able to prove beyond doubt that the DHD(J) was a terrorist gang indulged in terrorist activities which were to be funded by this illegally siphoned off money with the aid and assistance of these five appellants.

203. If the answer is in negative, there would be no requirement to deal with the allegations against these five accused on the aspect of defalcation of funds of the N.C. Hills Council because the prosecution itself claims to have assigned this task to the CBI. In addition thereto, neither charges for the substantive offences reflected from such allegations were proposed by the prosecution nor were any such charges framed by the trial Court. Expression of opinion by this Court on the correctness of these allegations made against these five accused may prejudice the outcome of the CBI case(s) registered in relation to the very same allegations. However, a strong doubt lurks on the veracity of the prosecution allegation that these amounts were actually siphoned off in the precise manner as alleged by the prosecution. Amounts of Rs.1 Crore recovered on 01.04.2009 were found not connected with the defalcated funds as held by the trial Court at Paragraph 419 of the impugned judgment. It may be reiterated that charges for the substantive offences under the Indian Penal Code as disclosed from the language of the charges were not framed by the trial Court despite the power to do so being available by virtue of Section 216 Cr.PC. The prosecution has not given

any details about the CBI case/cases, registered in relation to these very allegations of defalcation, fraud, forgery and criminal misconduct by public servants, as noted at Paragraph 378 of the impugned judgment. Thus, before appreciating and adjudicating upon the role assigned to these five accused, we would, first like to adjudicate the broader issue whether the prosecution has been able to prove that the DHD(J) was a terrorist gang involved in any kind of terrorist activity.

204. The conspiracy theory, as projected by the learned Special Public Prosecutor, was set out in Paragraph 12 of the impugned judgment, which is reproduced hereinbelow for the sake of ready reference:-

> *"12. Here in this case the it is submitted by the Id. Special P.P. NIA that a conspiracy was hatched for waging war against the state and in furtherance of the said conspiracy it was also conspired to overawe the elected regime of North Cachar Hills Autonomous Council (NCHAC) led by Shri Depolal Hojai and, thereafter, to defalcate development funds meant for development of (NCHAC) and to provide the same to the DHD(J) cadres for procurements of arms for terrorist activities, so as to achieve the aforesaid goal."*

205. Now, we proceed to discuss and appreciate the evidence of the witnesses connected with the Executive Council of the N.C. Hills and ex-cadres of DHD/DHD(J). It may be stated here that almost all the witnesses from these categories did not support the prosecution case and turned hostile. The trial Court, discussed the evidence of eight witnesses, namely, Depolal Hojai (PW-126) former CEM, N.C. Hills Council; Ronsling Langthasa (PW-20) [allegedly the ex-cadre of DHD(J)]; Mohindra Ch. Nunisa (PW-79), Member of

N.C. Hills Council; Mayanong Kemprai (PW-81), Member of N.C. Hills Council; Bijoy Sengyung (PW-82), Member of N.C. Hills Council; Subrata Hojai (PW-87), Member of N.C. Hills Council; Nipolal Hojai (PW-98), Member of N.C. Hills Council; Dilip Nunisa (PW-129), allegedly a Member of the erstwhile DHD group. All these witnesses did not support the prosecution case and were declared hostile. Upon being confronted with the previous statements recorded by the Investigating Officer, they denied the major parts thereof, wherein they had allegedly stated about the activities of DHD(J) and the connection of the accused, viz. Jewel Garlosa, Niranjan Hojai and Mohet Hojai with this organisation. Reproduction of testimonies of all these witnesses would make the judgment bulky but in order to illustrate and highlight the manner in which the trial Court verbatim allowed exhibiting and blindly relied upon the extracts from 161 Cr.PC statements of these witnesses, we herein below reproduce Paragraphs 282, 282(i), 282(ii) and 282(vi) of the impugned judgment wherein the trial Court dealt with the evidence of the most important witness viz. PW-126, Depolal Hojai, the CEM of the NCHAC who allegedly resigned on the pressure of Mohet Hojai.

> *"282. PW-L26- Depolal Hojai testified that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CEM, but he submitted resignation and Mohet Hojai became the CEM. On 27th November, 2008 he submitted resignation from the post of CEM on health ground because he and his wife were ill at that time. Ext. 96 is his resignation letter to the Governor of Assam dated 27.11.2008. As the council was in session Mr. Mohet Hojai was elected as CEM immediately. After*

resignation from the post of CEM, he along with his wife came to Guwahati for treatment. At present the CEM of the Autonomous Council of Dima Hasao is Niranjan Hojai. In 2008, said Niranjan Hojai was in jungle. He knows Jewel Garlosa who is now an elected MAC. He also contested the election in the year 2013 and was elected. He do not know where Jewel Garlosa was in 2008, He has not come to the politics during that time. During the time when he was CEM, Kulendra Daulagapu (BJP), Debojit Thousen (BJP), Kalijoy Sengyung (ASDC), Prakanta Warisa (ASDC), Mayanong Kemprai (ASDC), Bijoyendra Sinha (ASDC), Mohendra Ch. Nunisa (ASDC), Mohet Hojai (ASDC), Golon Daulagapu (ASDC), Lalthangsang Hmar (ASDC), Phoudami Zemi (ASDC), Hamjanan Langthasa (BJP), Subrata Hojai(BJP), Nipolal Hojai (BJP), Bakul Bodo (BJP), Lalthangjuala Hmar (ASDC), Smti. Rani

Langthasa(BJP), Kur Rongpi (ASDC) were the members of the Council.

282.(i). His evidence also reveals that during that time when he was the CEM, the law and order situation of the council was bad. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "On 26th November, I was in the Session of the Council. I went as a Chief Guest in a Medical programme. The EM of Medical Department Kulendra Daulagapu was also with me. At 5 PM, when I was reaching home Bijay Sengyung (EM) called me up and said that he had been trying to find me, When I asked him as to what was the matter, he replied that I have been asked to make you talk to Niranjan Hojai of the DHD(J). He also said that if I wait for some time, the phone of Niranjan Hojai will come. I then went to my bedroom and asked Bijoy to wait in the sitting room. The phone came after 15 minutes. He gave the phone to me. Niranjan was talking to me and he asked me to call for a meeting of all elected members to the council to discuss an urgent matter. I called everyone at 7 PM in my house and said that it was an emergency meeting. Most of the members of the ASDC and the BJP attended the meeting. I thought that the meeting was probably to discuss the ceasefire. Probably Bijoy and Mohit Hojai already knew as to what was in store. After we had gathered a phone call again came on the phone of Bijoy Sengyung. Niranjan asked whether all had gathered or not. He asked me to put the speaker phone on the "ON'' mode. Bijoy said that his phone did not have

a good speaker and gave the number to Kulendra Daulagapu. The call of Niranjan came on Kulendra's phone and the mobile speaker was put on full volume and kept at the centre of the table. Niranjan said "I am the C-IN-C of DHD (J). By tomorrow, 10 AM Dipolal Hojai has to resign and Mohet Hojai has to be made the CEM. If you did not listen you will have the same fate as Purnendu Langthasa." One Bebojit Thousen who was slightly drunk tried to argue' He asked him as to why this was being ordered. Niranjan replied that Dipolal did not do much for the Dimasas regarding nomenclature of NC Hills, making a Dimama SP, DC and Dimasa HODs of all departments. Debojit then said that even Mohet Hojai cannot get these things done. Niranjan then told him to shut up. I asked others for support after the call and tried to resist the pressure. But all others did not support due to fear. I had to resign."

'During my term as CEM of 11 months from June, 2008 to November, 2008, I have faced lots of threats by DHD (J) or Black Widow extremisB. Some tome they asked me directly or in directly for huge money but many times I refused to meet their demand. They even asked some 1st class contractors of PWD (Road) for huge money. I also instructed all the contractors not to pay any amount to the DHD (J) but I cannot say, some contractors might have paid to the DHD (J) due to fear of life. Once I fought with the DHD lbcal commander Mindao after some Power Grid people approached me and said that the DHD (J) was demanding Rs.10 lakhs. I am hundred per sure that Shri Mohet Hojai had a role in my resignation from the CEM post and his becoming the new CEM because he has close relatives in DHD (J). His name is Maorung Dimasa who is a dreaded DHD (J) Commander and everybody is afraid of him".

"Regarding the role of RH Khan, I have to say that RH Khan is like the king of NC Hills. When I came to power, I said that we should get rid of this person. But Mohet Hojai said that since he was the EM of Social Welfare, he wants to try him out for three months. I did not agree. Then the Governor Sri Ajay Singh called me and said that RH Khan was an efficient officer and it is only he who can get funds from the State and the Centre. I still resisted and made an AEE of Agriculture department by the name of Hazarika as the Nodal Officer. Hazarika could not get any funds at all. In a desperate move, I made RH Khan as the Liaison Officer after discussing with senior members Prakanta Warisa and Mohet Hojai. They also said that only he can mange funds for the council. RH Khan was the favourite of the Governor and as the Nodal Officer he used to move in a Helicopter to NC Hills".

"Regarding Phojendra Hojai, I have to say that he is a rogue type of element and forced me to give him work. He has a relation with Daniel of the DHD(J). Sometimes when I refused to meet him, he threatened and fought with my guards. I think he takes most of the money from the contractors and the engineers to be paid to the extremists."

"Regarding Dhruba Ghosh, I have to say that he is a big contractor and has taken a lot of works of the PWD. Once when I was travelling from Dihangi to Thaijuwarii, I called him up and told him that he had not done any work on that stretch. I also took that engineer to task for not getting the work done although they had claimed that the work Was completed."

(Emphasis supplied)

282.(ii). It is worth mentioning here in this context that this witness during cross-examination by the prosecution has admitted some facts which are:- that on 26th November, there was Medical departmental programme and he was the Chief Guest. He also remembers that the EM in-Charge, Medical was Kulendra Daulagapu. He also remembers that after conducting the programme, he reached home at around 5 PM. He remembers that Bijoy Sengyung, Kulendra Daulagapu came and met me for holding the Session of the Council. And he remembers that he had fixed the Session at round 7 PM on that day. The meeting lasted for about 1 ½ to 2 hours. In the said meeting he decided to resign. The decision to take to elect the next CEM Mohet Hojai was taken on the next day. He know Purnendu Langthasa, he was the CEM till 2006. He was killed by extremists in the year 2006. He remembers he was killed during election campaign by extremists. It may be DHD (J) but he cannot say exactly. He does not know why he was killed. He remained as CEM for 11 months from January, 2008 till November, 2008. He was never threatened by anybody from the any quarter. He also admitted that he has heard of Maorung Dimasa who belongs to DHD (J) and that he has been killed and his dead body was recovered about 2-3 years back. He was in the Ceasefire Camp. He heard that there was demand for money but nobody complained to him during his tenure as CEM and nobody demanded money from him. He know R.H. Khan, he was the Deputy Director, Social Welfare. He heard that during the time of Governor's rule before he became CEM, he was also working as Liaison Officer. He knows Assistant Executive Engineer of Agriculture Sh. Dipak Hazarika. He made him Nodal officer of the Council as he used to procure funds from Government of Assam as he know that unless somebody

pushes the funds are not released. He was there as Nodal Officer for about 3 months and they found him he was not in a position to bring funds. He do not remember exactly whether RH Khan was made Nodal officer after him. He knows Phojendra Hojai, who was a contractor, He know Deniel who was member of DHD(J). At present he is an elected member of the Council as an independent candidate. Now he has joined BJP and now he is Executive member of the Council. He do not know Dhruba Ghosh but he has heard his name.

282.(vi). The ld. counsel for accused Niranjan Hojai has submitted that though the prosecution side has declared P.W. 126 hostile, yet it has not declared P.W. 23 shri Kulendru Daulagapu as hostile, in whose mobile hand set, the alleged phone call of Niranjan Hojai has came, and who deposed in his evidence before the court that Depolal Hojai has resigned citing health ground and, therefore, it is binding upon the prosecution. There is no doubt about the legal proposition so pointed out by the ld. Counsel. But the thing needs to be analysed to a little depth to find out the actual cause of resignation of Depolal Hojai."

206. On perusal of the text quoted above, we find that the witness Depolal Hojai (PW-126) did not utter a single word in his examination-in-chief that he was pressurized to resign from his post and rather, he made an emphatic statement that he resigned because of ill health of himself and his wife. The trial Court verbatim reproduced the parts of previous police statement of this witness with which he was confronted by the prosecution after declaring him hostile and then, based on the fact that the CIO Mukesh Singh had proved the 161 Cr.PC statement of the witness, the entire previous statement of the witness was accepted as substantive evidence. This finding was recorded by the trial Court at Paragraph 292 of the impugned judgment, which is reproduced herein below;

"292. It would be apposite to mention here that what would amounts omission and what would amounts to contradiction and how a contradiction has to be proved

and the true import of section 16l and 162Cr.P.C.and of section l45, l53 and l57 of the Evidence has been settled by the Hon'ble Supreme Court long back in the year 1959 in the case of Tahsildar Singh & Another vs. State of U.P. AIR 1959 SC 1012. The position of law in this regard is again reiterated by Hon'ble Supreme Court in the case of V.K. Mishra v. State of Uttarakhand (2015) 9 SCC 58. Where it has been held that:-

"16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:

> *(i) of contradicting such witness by an accused under Section 145 of the Evidence Act;*
>
> *(ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and*
>
> *(iii) the re-examination of the witness if necessary.*

17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

> *"145.Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him,*

or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination.

The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted.

If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

292.(i). <u>In the instant case, having gone through the procedure of declaring the aforesaid 7 witnesses and also the other witness as discussed in forgoing paragraphs, hostile, and the manner of proving the contradictions, as discussed the aforesaid case laws, it cannot be said that the prosecution side has done anything wrong or prejudicial to the interest of the defence side. Despite, an attempt has been made by the defence side to find fault with the same. It is pointed out that, the prosecution side, in the case of aforesaid</u>

witnesses, having brought on record their statement u/s 161 Cr.P.C. cannot use them to prove the charge. Referring a case law Vijender vs. State of Delhi, (1997) 6 SCC 171, it is further submitted that statement made before the police officer during investigation cannot be used for any purpose, except when it attract section 27 or 32(1) of the evidence Act. There is no scope of taking another view of the point of law so enunciated in the case law referred by the defence side. At the same time, other provisions of law, relating to same also should not eschew consideration of the court, else it would cause prejudice to the other side.

(Emphasis supplied)

292.(ii). As discussed earlier and in view of the ratio laid down by the Hon'ble Supreme Court in Haradhan Das Vs. State of West Bengal, (supra), the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. There is materials on record to lends corroboration to the evidence of the aforesaid hostile witnesses, that support the prosecution version in respect of the cause of resignation of Depolal Hojai and in respect of the DHD(J) and its activities and its objectives. Therefore, the evidence of aforementioned witnesses cannot be treated as washed off the records."

(Emphasis supplied)

207. We are compelled to state that the approach of the trial Court in accepting the previous statements of these witnesses to be admissible in evidence is absolutely perverse and against all tenets of appreciation of evidence in criminal cases.

208. The trial Court placed reliance on the ratio of the Hon'ble Supreme Court in the case of ***Haradhan Das -Vs- State of West Bengal,*** reported in ***(2013) 2 SCC 297*** for holding that the previous statements of the witnesses from which they had resiled constituting substantive evidence.

However, at Paragraphs 14 and 15 of the said judgment, the Hon'ble Supreme Court clearly held that no doubt, the witnesses were declared hostile by the prosecution but still one fact remains that the examination-in-chief and particularly the above recorded portion of their statements in so far as it supports the case of the prosecution is admissible and can be relied upon by the Court.

209. There cannot be two views on this principle. However, the trial Court contorted the ratio of the judgment and rather than reading relevant and admissible parts from the examination-in-chief of the witnesses, those parts of the previous statements from which they expressly resiled were allowed to be brought on record in the evidence of the CIO Mukesh Singh and were then read as substantive evidence. The approach of the trial Court in this regard is absolutely perverse and contrary to law and thus, cannot be upheld.

210. Keeping in mind the ratio of the precedents cited at Bar and applying them to the material available on record, we are of the firm view that since the witnesses referred to (supra), were declared hostile and upon being confronted with their previous statements, they denied to have given such statements to the police, the parts of the previous statements, which the witnesses emphatically denied, could not have been accepted as substantive evidence. It is only the parts of the previous statement recorded under Section 161 Cr.PC, which the witness admits to have given upon being confronted in cross-examination, such part of the previous statement can constitute admissible/relevant evidence.

The fact that the CIO Mukesh Singh (PW-150), in his evidence stated that the witnesses had given such statements to him during investigation would not make the previous version admissible as the concerned witnesses made emphatic denial of having made any such statements before the police. The part of the previous statements with the witness denies to have given to the police, upon being confronted in cross-examination would then be relegated to the category of a statement under Section 161 Cr.PC and could not have been relied upon for any purpose whatsoever.

211. If the approach of the trial Court is to be accepted, the direct implication thereof would virtually lead to a situation where a previous statement (recorded under Section 161 Cr.PC) would be accepted as substantive evidence only at the instance of the Investigating Officer even though the concerned witness/witnesses denied to have given such version.

212. The Hon'ble Supreme Court in Paragraph 17 of its judgment in the case of ***Tahsildar Singh & Anr. -Vs- State of U.P.***, reported in ***AIR 1959 SC 1012***, clearly explained this concept and laid down the words in Section 162 Cr.PC *"if duly proved"* clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but the same must be duly proved for the purpose of contradiction **by eliciting admission** from the witness during cross-examination and also during the examination of the Investigating Officer.

(Emphasis supplied)

213. Hence, it is clear as daylight that record of the previous statement of the witness can be relied upon only if the witness upon being confronted in cross-examination, admits to have given such version. Resultantly, we have no hesitation in holding that the trial Court committed gross illegality in accepting the confronted portions of the 161 Cr.PC statements which the witnesses denied upon being cross-examined as substantive admissible evidence and those parts have to be eschewed from consideration.

Once this exercise is undertaken, it is apparent that there is no witness of prosecution who gave tangible evidence to support the prosecution theory regarding Depolal Hojai having been forced to resign from the post of CEM of N.C. Hills Autonomous Council by the accused Mohet Hojai and/or other members of DHD(J).

214. We have thus discussed the evidence of the material witnesses and would like to reiterate some of the important findings recorded by the trial Court in the impugned judgment based on the points of determination:-

(i) That the accused Phojendra Hojai, Babul Kemprai, Mohet Hojai, Jewel Garlosa @ Mihir Barman @ Debojit Singha, Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Vanlalchhanna @ Vantea @ Joseph Mizo, Malswamkimi, George Lam Thang and Niranjan Hojai @ Nirmal Rai formed a terrorist gang DHD(J) or Black Widow in the year 2004.

(ii) During the period from January to March, 2009, the accused Mohet Hojai entered into an agreement with

Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Kumar Ghosh to do illegal act or an act which is not illegal but by illegal means, i.e. to raise fund for the terrorist gang by siphoning off Government fund, convert Indian currency to US Dollar, to procure arms and ammunition to wage war, cause death of innocent persons, terrorize the people and extort money, kidnap for ransom, disrupt works of gauge conversion and construction of East West corridor of four lane National Highway, etc.

215. The prosecution story can thus be broadly divided in two parts: the first being that the nine accused persons, named above, formed a terrorist gang DHD(J) or Black Widow in the year 2004 and that they were all involved in a deep-rooted conspiracy. Jayshree Khersa (PW-132) testified that she transcribed the conversation recorded in the call made by Niranjan Hojai and Mohet Hojai on the mobile phone of Phojendra Hojai after he had been apprehended by the Police Officials of Basistha Police Station on 01.04.2009. The said conversation was sought to be proved in order to establish the connection and conspiracy between Phojendra Hojai, Niranjan Hojai and Mohet Hojai. The conversation allegedly recorded in this mobile instrument was in Dimasa language and was translated to English by Jayshree Khersa (PW-132). Suffice is to say that the audio clip was downloaded from the mobile instrument into a CD. However, there is total lack of evidence on record to prove who prepared the CD. Furthermore, the trial Court admitted the

said conversation as primary evidence by findings recorded at Paragraph 36 of the impugned judgment holding that the original Sony Ericsson mobile had been produced in the Court and exhibited as Mat. Exhibit-7, which was primary evidence. However, it is clear that the mobile instrument was never operated during the trial and the conversation recorded therein was never played in the Court and hence, the conversation as recorded in the CD was unquestionably secondary evidence, which could not have been accepted without the mandatory certificate under Section 65B of the Evidence Act.

216. Otherwise also, while discussing the evidence of the seizure Officers, i.e. Maijuddin Ahmed and Sudhakar Singh (PW-10 and PW-26, respectively) at **Paragraphs 39, 40, 41, 154, 155 and 156** of the judgment, we have already concluded that there was no possibility whatsoever that any conversation could have taken place by using the mobile phone seized from the possession of Phojendra Hojai because the said instrument had already been taken into custody by the seizure Officer Maijuddin Ahmed (PW-10) and hence, the accused Phojendra Hojai could not have had any access thereto so as to indulge in a conversion with Mohet Hojai and Niranjan Hojai thereafter. Maijuddin Ahmed (PW-10) himself did not utter a single word that any call was received on the mobile phone seized from Phojendra Hojai after he had started the proceedings. Thus, it is apparent that the prosecution theory that Niranjan Hojai and Mohet Hojai made calls to Phojendra Hojai after the seizure and that the conversation was allegedly recorded in the mobile

instrument is again a piece of fabrication. In addition thereto, we find that for comparison of the voices allegedly recorded in the mobile instrument, the specimen samples of voices of Mohet Hojai and Niranjan Hojai were collected from the clippings downloaded in CDs from reports telecast on TV news channels, which have been discarded at **Paragraph 150** of this judgment. Thus, no sanctity can be attached to the report (Exhibit-170) of the forensic science expert, namely, S.R. Mahadeva Prasanna (PW-60). The report of the scientific expert regarding comparison of voice of Phojendra Hojai, Mohet Hojai and Niranjan Hojai allegedly stored in the mobile instrument of Phojendra Hojai does not constitute legal evidence so as to corroborate the conspiracy theory.

217. Now, we proceed to reiterate our finding on the evidentiary worth of the star prosecution witness, i.e. George Lam Thang (PW-29), who though initially charge-sheeted, was later on granted pardon and was examined as an approver. We may note that the prosecution examined him with the objective of establishing that he was the medium through whom Malswamkimi, Phojendra Hojai and Vanlalchanna got the illegally derived funds siphoned off from the N.C. Hills Council converted into US Dollars for the purpose of procuring arms and ammunitions from Bangladesh and Myanmar to support the activities of DHD(J). The approver George Lam Thang himself did not utter a single word as to how the US Dollars were to be used. He gave pertinent answer in cross-examination conducted on behalf of the accused Malswamkimi that he did not know for

what purpose the aforesaid US Dollars were to be used and by whom.

218. Law is well settled that evidence of an approver should normally not be accepted without independent corroboration. Reference in this regard may be made to the Supreme Court judgment in the case of ***Somasundaram @ Somu -Vs- State***, reported in ***AIR 2020 (SC) 3327***. In the present case, it was all the more essential because the approver gave a totally exculpatory version while trying to save his own skin. Thus, the version of George Lam Thang that he managed to get huge sum of more than Rs.5 Crores Rupees converted into US Dollars, without being corroborated by any other evidence, cannot be accepted *ipso facto* more particularly as the person who actually converted the said money into US Dollars, i.e. Tapan, though apprehended in this case, was neither charge-sheeted nor he was made an witness. Rather, the CIO Mukesh Singh admitted that no investigation was made in this case regarding the role of Tapan. PW-29 George Lam Thang admitted in his cross-examination that he did not have any licence for doing the business of exchange of money which was for him an illegal business. It is impossible to believe that a huge sum of money, nearly to the tune of Rs.5 Crores, could be converted to US Dollars by a person in Kolkata city without leaving any trace. Thus, failure of the Investigation Agency to make any effort whatsoever for collecting evidence regarding the role of Tapan and rather, letting him go scot free despite having been apprehended (as per statement of George Lam Thang) creates a genuine doubt on the *bona*

fides of the Investigation Agency. In addition, as George Lam Thang, being an approver, gave totally exculpatory version, his evidence is otherwise also, not acceptable. Hence, we are of the firm view that the trial Court fell in grave error while placing reliance on the evidence of the approver, George Lam Thang. Once his evidence is excluded, there remains nothing on record so as to substantiate the prosecution case regarding the alleged conversion of money from Indian currency into US Dollars and hence, the very foundation of the prosecution case is breached.

219. The trial Court drew a very strange assumption at Paragraph 466 of the impugned judgment that there was no direct evidence to link the recovered arms with the DHD(J) except for the version of the accused that the arms were meant for DHD(J). However, as there was evidence to show that Vanlalchanna received US Dollars from Malswamkimi, it could be presumed that the aforesaid US Dollars were used to purchase arms for the DHD(J). The trial Court frowned upon the efforts of the Investigation Agency because no attempt was made by the Investigating Officer to collect evidence regarding the role of Tapan, the money changer, who ultimately was responsible for conversion of the Indian Currency into US Dollars. The finding so recorded by the trial Court at Paragraph 227(vi) of the judgment, is reproduced herein below for the sake of ready reference:-

> *"227.(vi). While the submission of the ld. Defence counsel is considered In the light of the facts and circumstances on the record it has been found that there is no substance in the same. It is, however, true that one Tapan, who converted money to US Dollars has not been made an accused nor a witness here in this case in spite*

of his arrest by Kolkata Police. But, there are many corroborating materials on the record to support the conversion of money. Recovery of Rs.5,00,000/ from the rented house of P.W. 29 on the strength of disclosure statement Ext.78 made by him to NIA officer is one of the corroborating fact. The said sum was given to him by accused Malswamkimi on 07.08.2009. Besides, Ext.79- the disclosure statement made by him disclosing that he along with Malsawmkiml went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of money collection and Ext.52 by which he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai, and Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojal and recovery of a sum of Rs. Ext-257 disclosure statement made by which you disclosed about Rs 10 lakh. Ext-258, by which you disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang. Ext.76 - the confessional statement of P.W.29, which has already been discussed earlier, also lends unstinted support to the evidence of P.W.29."

220. The theory that Depolal Hojai, the duly elected CEM of the N.C. Hills Autonomous Council, was overawed and was forced to step down from his post could not be proved by reliable evidence. In this regard, the best evidence could have been of Depolal Hojai himself, who did not support the prosecution case and turned hostile. Thus, as discussed (supra) this theory could not be proved by the prosecution by cogent admissible evidence. The allegation of defalcation of Government funds of the N.C. Hills Council would become relevant and require detailed adjudication only in the situation that prosecution could succeed in proving that DHD(J) was a terrorist gang involved in terrorist activity as defined in Section 15 of the UA (P) Act and then only, the aspect of this money being used for terror funding punishable

under Section 217 of the UA (P) Act would have to be examined.

221. The most material witness on whose testimony the prosecution banked upon to substantiate this allegation is Amitava Sinha (PW-24). Only this witness from amongst the 150 examined by the prosecution, tried to depose about the alleged violent/subversive activities of DHD(J). However, we have extensively discussed the testimony of this witness at **Paragraphs 43, 45 and 163** and found the same to be irrelevant and unconvincing because the entire version of the witness regarding the alleged violent activities of the DHD(J) was by way of sheer improvement from his previous statement to NIA. Furthermore, even if the version in examination-in-chief of this witness is seen, it clearly seems that he has just given a story like narrative about the so called violent activities of DHD(J). The witness never claimed to have personally perceived any of the alleged subversive/terrorist activities of DHD(J) or its members. Hence, the testimony of this witness is also flimsy, unbelievable and fit to be discarded.

It may be reiterated that no prosecution witnesses gave even a bald reference regarding the five so called terrorist activities of DHD(J), which we have discussed extensively at **Paragraph 148** of this judgment.

222. At this stage, we would like to refer to the evidence of a very important official witness, who was examined by the prosecution, namely, Mr. Mukut Kemprai, the Principal Secretary of N.C. Hills Autonomous Council, who

deposed at the trial as PW-128. He stated that in the year 2009, he was working as Secretary in-charge, Finance Taxation of N.C. Hills Autonomous Council. In the entire evidence of this witness, not even a remote suggestion was given by the prosecution that the funds meant for the development of the N.C. Hills Autonomous Council were defalcated or were siphoned off to finance the activities of the DHD(J). The witness though holding an important position in the administration of N.C. Hills, did not state anything about the alleged terrorist activities of DHD(J) in the hill areas. Likewise, even during the evidence of the other official witnesses, who were working in the N.C. Hills Autonomous Council in one capacity or the other, the prosecution did not give any such suggestion that the DHD(J) was involved in any kind of terrorist activities or that the funds of the N.C. Hills Autonomous Council were siphoned off for financing its activities. It is thus clear that failure on part of the prosecution to give any suggestion to these important witnesses being the officials working in the N.C. Hills Council that DHD(J) was involved in some kind of terrorist activities in the N.C. Hills, gives a strong indication that the prosecution itself was not sure about the substance of these allegations.

223. Pertinent questions were put to the Chief Investigating Officer, namely, Shri Mukesh Singh (PW-150), seeking his explanation regarding the conclusions of investigation on the basis whereof the allegations of terrorist activities were attributed to the DHD(J) and the charge-sheeted accused. Some of the material answers elicited

during cross-examination of Shri Mukesh Singh need to be highlighted and are reproduced herein below for ready reference:-

> ***"..... I enquired about the status of accused Mohet Hojai who was at that time CEM of NCHAC. He was an elected member of NCHAC. He was a political person.***
>
> ***..... Regarding seizure of Rs.1 crore, on the first of April, 2009, I learnt from the statement of Sonam Lama, video footage provided by Hitesh Medhi from NE TV, and Kaushik Bezbaruah, NEWS LIVE and from conversation retrieved from mobile phone of Phojendra Hojai retrieved through forensic lab that the money was given by Mohet Hojai to Phojendra Hojai. ..... It is true that DHD(J) was declared as an unlawful association on 9.7.2009 and the Hon'ble Tribunal had confirmed it on 8.1.2010. ..... At the time of registration of NIA case, DHD(J) was not a terrorist organization declared under the Schedule.***
>
> ***..... I have not written to the Govt. of Assam to give the list of the members of the DHD(J). In order to ascertain the membership of DHD(J) I took the assistance of statements of witnesses, contents of the FIR lodged against members of the DHD(J). Since accused Babul Kemprai was the close associate of Phojendra Hojai & Mohet Hojai and he was found in possession of Rs.1 crore and letter head of DHD(J) on 01.04.2009 so, I cited Babul Kemprai as a member of DHD(J).***
>
> *..... During the relevant point of time, accused Mohet Hojai was the CEM, NCHAC. The executive power is with the Principal Secretary, NCHAC but the CEM makes policy decisions with regard to the affairs of the NC Hills.*
>
> *..... I submitted investigation report to the MHA, Govt. of India on 11.11.2009 for grant of sanction. The investigation report is accompanied by statement of witnesses and other documents and list of material evidences. In prosecution sanction Ext.301 it has not been reflected as to on which date the competent authority received the investigation report along with enclosures for grant of prosecution sanction. It is not a fact that on 11.11.2009, I did not submit investigation report along with enclosures for grant of sanction. I have sent the investigation report along with enclosures to the MHA, Govt. of India through messenger.*
>
> ***..... It is a fact that the CDs given by media houses (NEWS LIVE & NE TV) were not accompanied by Sec. 65(B) of the Indian Evidence Act, I have not seized the source from where the CDs were made nor I have sent them for forensic examination, It is a***

fact that the source from where the CDs were made were not verified by me.

…….. It is true that from the last paragraph of the Final report of the present case filed under Sec. 173 of Cr.P.C. I have requested the Central Govt. for investigation of the allegation of misappropriation of Govt. funds, criminal misconducts, forgery etc. by the CBI after obtaining necessary consent from the State of Assam or investigation by the ACB of Assam Police. I am aware that the CBI has investigated the cases of misappropriation of Govt. funds, criminal misconducts, forgery etc. in various Deptts. of the NCHAC. It is true that there is no Law by which two investigating agencies could investigate the same offence against the same accused persons twice.

…….. It is true that Sec.17 & 18 of the UA (P) Act, 1967 falls under Chapter IV of the said Act. It is true that under Sec. 43(c) of the UA (P) Act, 1967 only police officers of the rank of Deputy Superintendent of Police (DSP) or a police officer of an equivalent rank shall investigate any offence punishable under Chapter IV & VI of the UA (P) Act, 1967. It is true that the officers named above i.e., Mr. S.K. Malviya, Sh. H.S. Karmyal, Sh. Santosh Kumar, Sh. Heman Das, Sh. Bularam Terang do not fall under the category of officers authorized to investigate U/S 43(c) of the UA(P) Act, 1967.

It is true that there is no record of any statement of Accused persons except Golon Daulagopu in the present case.

…….. My statement in my examination in chief that there was a huge short supply of materials at different divisions of NCHAC to the tune of approximately 40% of the total supply order may not be correct and it is only an approximation. I am not aware of the details of the actual supply of GI pipes in the Maibong division of NCHAC. It is true that I cannot show from the record of the present case what was the actual supply of GI pipes in the Maibong division of NCHAC.

It is true that I have not personally investigated whether Maa Trading of Lower Haflong, Borail Enterprise of Lower Haflong, Jeet Enterprise of Lower Haflong, Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong were paying the Assam Value Added tax under the Assam Value Added tax Rules, 2005 regularly. It is also true that I have not personally investigated about the existence of the firms Maa Trading of Lower Haflong, Borail Enterprise of Lower Haflong, Jeet Enterprise of Lower Haflong, Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong.

…….. I have not personally visited Haflong for the purpose of investigation of the present case. I have not personally investigated the correctness of the firms - Maa Trading of Lower Haflong; Borail Enterprise of Lower Haflong; Jeet Enterprise of Lower Haflong; Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong. I volunteer to state that this aspect has been investigated by DSP, K.S.Thakur.

…….. It is true that I have stated in my examination in chief that, 'In furtherance to the conspiracy to wage war against the State Niranjan Hojai (C-In-C) DHD(J) sitting abroad directed the then CEM Depolal Hojai to resign and make way for Mohet Hojai to be made the CEM'. It is also a fact that my deposition in my examination in chief to the effect that, 'As a result, on 26.11.2008, Depolal Hojai called for a meeting of all Executive members at his residence. During the meeting, Niranjan Hojai made a telephone call to the mobile of Executive Member Sh. Bijoy Sengyung. Since the audio of mobile of Executive Member Sh. Bijoy Sengyung was not clear, he again made a call at the mobile phone of Sh.Kulendra Daulagopu. The speaker phone was kept on. Niranjan Hojai directed Depolal Hojai to resign as the CEM and make way for Mohet Hojai. He also threatened Depolal Hojai that if he does not comply he will face the same fate as Purnendu Langthasa (CEM who was killed earlier by the DHD(J).' was on the basis of statements of witnesses recorded U/S 161 Cr.P.C.

It is also a fact that my deposition in my examination in chief to the effect that, 'A number of times, cash of huge quantity was sent to the DHD(J) through Hundi operators from Guwahati to Kolkata where it was received by Jayanta Kumar Ghosh and his associates Sandip Ghosh and Debashish Bhattacharjee.' was on the basis of statements of witnesses recorded U/S 161 Cr.P.C. who has been examined as PW-35.

I do not remember whether I recorded the statement of Didar Ahmed Choudhury U/S 161 Cr.P.C. My statement in chief to the effect that, 'On the first of April, 2009 Mohet Hojai asked Phojendra Hojai to deliver Rs.1 crore to the person of Niranjan Hojai at Shillong,' is on the basis of statements of witnesses recorded U/S 161 Cr.P.C. It is also correct that my statement in examination in chief to the effect that, 'Accused Mohet Hojai called accused Phojendra Hojai at his residence on 30.03.09 and asked him to deliver Rs.1 crore in cash to the person of accused Niranjan Hojai of DHD(J) at Shillong,' is also on the basis of statements of witnesses recorded U/S 161 Cr.P.C.

…….. It is also a fact that my statement to the effect that investigation also revealed that many times cash was sent to the DHD(J) by Mohet Hojai through Kolkata is on the basis of statements recorded U/S 161

Cr.P.C. ..... It is also a fact that my statement in examination in chief to the effect that, 'Investigations were also conducted regarding terrorist activities of DHD(J). It was revealed that the prime aim of DHD(J) was to establish a separate Dimasa State through arms struggle. In order to achieve this aim they targeted developmental projects in NCHAC. Two of the main Projects which were targeted by them included the Broad Gauge Conversion Project and East West Corridor Project. DHD(J) also indulged in attack on security forces notable one among them were attack on CRPF personnel in which 6 persons were killed and attack on Assam Police personnel and 7 persons were killed. They also carried out abductions for ransom. It has been found during investigation that some of the weapons obtained from DHD(J) were the same weapons which were looted from the security forces after killing by DHD(J).' is also on the basis of statements of witnesses recorded U/S 161 Cr.P.C. I did not carry out investigation into individual terrorist actions carried out by DHD(J). *I collected voice sample of Niranjan Hojai during investigation from TV channel where he had given an interview. I did not collect the voice sample of Niranjan Hojai after his arrest."*

(Emphasis supplied)

224. Upon appreciation of the above quoted extracts from the evidence of the Chief Investigating Officer Shri Mukesh Singh (PW-150), it can be perceived that the entire thrust of the prosecution case in the charge-sheet that DHD(J) was involved in terrorist activities, was purely based on the 161 Cr.PC statements of the witnesses examined by the CIO during investigation. No actual investigation was made to find out the truth about these allegations which are nothing but castles built in thin air. We have discussed *in extenso* that no witness, who could give direct evidence regarding the alleged terrorist activities of DHD(J), was examined during trial. The witness Amitava Sinha (PW-24) just narrated a fictional story about the activities of DHD(J) and his statement has already been discussed and discarded. The only witness, who remotely mentioned about the so

called violent activities of DHD(J), was Nairing Daulaguphu (PW-46). The major part of his examination-in-chief is relating to the activities of DHD and not DHD(J), which was allegedly a militant organisation led by Jewel Garlosa, operating in Karbi Anglong and N.C. Hills. The witness categorically stated that in January, 2003, ceasefire was declared between the militants and the Government and 300 cadres including Nairing Daulaguphu himself were shifted to the designated camp. He further stated that in October, 2003, the organisation was separated and Jewel Garlosa formed another militant organisation by the name of DHD(J). However, what precisely was the nature of activities of DHD(J), the witness did not state.

225. The witness Anurag Tankha (PW-72) was another Police Officer being posted as Superintendent of Police, N.C. Hills in June, 2009, who was examined to project and prove the alleged criminal and violent activities of DHD(J). However, the witness simply stated that he got a query from the DIG, NIA on 16.06.2009 regarding some ongoing investigation. He conveyed the requisite information as per the available records vide forwarding letter Exhibit-271, annexing therewith a list of cases where Jewel Garlosa @ Mihir Barman and Partho Warisa @ Ahshringdaw Warisa were charge-sheeted. This also included an incident, which occurred on 14.06.2009 at N.C. Hills Autonomous Council. He also submitted a list of weapons surrendered by the DHD(J) cadres.

226. We have discussed the evidence of Anurag Tankha (PW-72) in detail at **Paragraphs 49, 50 and 172** of

the judgment and have held that he simply assimilated the information and forwarded the same to the NIA Headquarters. He admitted that he was not present in the surrender ceremony. That apart, the list which this witness forwarded has also been examined minutely and we have already concluded that this document also does not provide any insight into the alleged terrorist activities of DHD(J). In addition thereto, no evidence was given regarding the source.

227. As an upshot of the above discussion, we have no hesitation in holding that the prosecution has miserably failed to lead reliable admissible and legally acceptable evidence in order to establish its primary allegation that DHD(J) was a terrorist gang involved in any kind of violent activities or that the funds allegedly siphoned off from the N.C. Hills Autonomous Council were routed to the cadres of DHD(J) for the purpose of procuring arms and ammunitions so as to facilitate the so called terrorist activities of DHD(J). Consequently, the findings recorded by the trial Court holding that DHD(J) was a terrorist gang and that the funds allegedly defalcated and siphoned off from the N.C. Hills Autonomous Council were routed to the members of the DHD(J) for the purpose of funding the procurement of arms and ammunitions to facilitate the militant activities of this organisation, are not based on legally admissible and reliable evidence.

We have noticed and highlighted grave lapses on part of the Investigation Agency during investigation and the prosecution and, to some extent, the trial Court during the

trial. The most material witness, who could have thrown significant light on the aspect of defalcation of funds, would have been the Principal Secretary to the N.C. Hills Autonomous Council, who though cited as a witness in the list of witnesses, was not examined in support of the prosecution case for reasons beyond comprehension. The person named Tapan, who was actually responsible for conversion of Indian currency to US Dollars, was not examined as a witness.

228. As the entire theory of the prosecution regarding the DHD(J) being a terrorist gang and that it was involved in terrorist and subversive activities has been discarded by us after minute re-appreciation and exhaustive analysis of evidence led by the prosecution and hence, there remains no scope to maintain the conclusion of the trial Court that the funds allegedly siphoned off from the N.C. Hills Autonomous Council were used to finance the same. Hence, the charge for the offence under Section 17 of the UA (P) Act has to fail as an automatic consequence of the above conclusions. We have already discarded the prosecution case regarding the accused being involved in a conspiracy and thus, the charge under Section 120B of the IPC can also not be sustained.

229. The evidence led by the prosecution so as to connect the two important characters in the case with the DHD(J), namely, Vanlalchhanna and Ahshringdaw Warisa, is fabricated and cooked up. The inception of the prosecution case with the alleged recovery of Rs.1 Crore on 01.04.2009, is also tainted with grave discrepancies and contradictions,

because the two star prosecution witnesses, namely, Bunu Sonar (PW-64) and Dipankar Deka (PW-113), categorically stated that the seizure was made in Barapani area of Meghalaya, whereas the Police Officials of Basistha Police Station projected that the seizure was made within the jurisdiction of the said Police Station. There are grave contradictions regarding the actual manner and place of seizure of the currency notes to the tune of Rs.1 Crore as is evident from the testimony of Maijuddin Ahmed (PW-10) and Sudhakar Singh (PW-26) when we have discussed *in extenso* and the entire seizure has been discarded.

230. That apart, the Investigation Agency very conveniently washed its hands off the most important facet of the case, i.e. misappropriation of Government funds, criminal misconduct and forgery, etc., by claiming that request was made to the Central Government to get these allegations investigated into either by the CBI after seeking necessary consent from the State of Assam, or by the ACB of Assam Police. The Chief Investigating Officer Shri Mukesh Singh stated that the CBI has made investigation into these allegations. Thus, the incriminating findings recorded by the trial Court on these very allegations virtually encroaches into the territory of the proceeding contemplated upon the result of investigation filed by the CBI/ACB, if any. The exact status of the said investigations was not brought on record of the present case, which is yet another loophole in the prosecution case. The findings recorded by the trial Court holding that these allegations stand proved without framing formal charges leads a situation of grave anomaly. The

possibility of these findings having an adverse prejudicial effect on the right to fair trial of the accused who may have been charge-sheeted by the CBI/ACB on these very allegations cannot be ruled out.

231. We may reiterate that we have already held that conviction of the accused Ahshringdaw Warisa and Vanlalchhanna @ Vantea in this case has been recorded on totally fabricated and cooked up evidence. Consequently, we have no hesitation in holding that the prosecution has miserably failed to bring home reliable, legal and admissible evidence so as to prove the charges against the accused appellants beyond all manner of doubt. Since, we have concluded that the prosecution failed to prove commission of any terrorist act by the DHD(J) or any of its members, the charge for the offences under Section 16 and 20 of the UA(P) Act, which have been found proved against the accused Jewel Garlosa and Niranjan Hojai can also not be sustained. No weapon of any kind was recovered from accused Jewel Garlosa, Vanlalchhana and Niranjan Hojai and thus, their conviction for the offence punishable under Section 25(1)(d) of the Arms Act is also unsustainable in the eyes of law.

232. As a consequence, the impugned judgment dated 22.05.2017 passed by the learned Special Judge, NIA in Special NIA Case No.1/2009 does not stand to scrutiny and is hereby quashed and set aside. The accused appellants and the accused Malswamkimi, who did not prefer any appeal, are all acquitted of the charges. However, we make it clear that the findings recorded in this judgment shall not prejudice

the other criminal case/cases, if any, registered against any of the accused in relation to the allegations of defalcation of Government funds, criminal misconduct, fraud and forgery, etc.

233. We direct that copy of the judgment shall be placed before the Director General of Police, Assam and the senior most officer of the prosecution department, Assam State and so also the Assam State Judicial Academy for future references and guidance so that cases with such serious allegations may not meet the same fate on account of grave lapses noted by us on the part of the Investigation Agency, prosecution and the Court.

234. The accused appellants and the accused Malswamkimi, who did not file an appeal against the aforesaid impugned judgment, are acquitted of the charges. Accused appellants Jewel Garlosa, Niranjan Hojai and Mohet Hojai are in custody. They shall be set at liberty forthwith if not wanted in any other case(s). The other accused are on bail. Their bail bonds are discharged, they need not surrender.

235. The appeals are allowed accordingly.

JUDGE **CHIEF JUSTICE**

Mukut | Gunajit

Comparing Assistant