

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.187 OF 2016
WITH
CRIMINAL APPLICATION NO.979 OF 2017
IN
CRIMINAL APPEAL NO.187 OF 2016**

- 1) ABDUL LATIF ABDUL RASHID SHAIKH)
@ GUDDU)
2) RIYAZ ALI ABUBAKAR SHAIKH @ RIYAN)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Kirti Dabir, Advocate for the Appellants.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 3rd DECEMBER 2018

ORAL JUDGMENT :

1 By this appeal, appellants/accused Abdul Latif Abdul Rashid Shaikh @ Guddu and Riaz Ali Abubakar Shaikh @ Riyan

are challenging the judgment and order dated 29th January 2016 passed by the learned Additional Sessions Judge, Mumbai, in Sessions Case No.414 of 2010, thereby convicting both of them of the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as U.A.P. Act for the sake of brevity). Appellant/accused no.1 Abdul Latif @ Guddu was sentenced to suffer rigorous imprisonment for 12 years apart from directing him to pay fine of Rs.10,000/- and in default, to undergo rigorous imprisonment for 6 months. Appellant/accused no.2 Riaz Ali @ Riyan was sentenced to suffer rigorous imprisonment for a period of 10 years apart from direction to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for a period of 3 months. They both were acquitted of the offence punishable under Sections 120B, 120B read with 511 and under Section 436 read with 34 of the Indian Penal Code as well as under Section 18B of the U.A.P.Act.

2 Facts in brief, leading to the prosecution of the appellants/accused persons are thus :

- (a) On 2nd March 2010, Assistant Commissioner of Police, Anti-Terrorist Squad, Mumbai, received information that a person based in Pakistan is conspiring with his associates in Mumbai for committing terrorists activities at several places in Mumbai such as ONGC building, Mangaldas Market and Gujarati Chawl near Thakur Mall. A person based in Pakistan was called as “Uncle” and he was communicating with appellant/accused no.1 Abdul Latif @ Guddu on mobile phone number 9323947342 of appellant/accused no.1 Abdul Latif @ Guddu. The information was disclosed to the superiors and a team headed by PW9 Vijay Kadam, Police Inspector, Anti-Terrorist Squad, was formed to monitor movements and to gather further information.
- (b) Thereafter a proposal as per provisions of Section 5(2) of the Indian Telegraph Act, 1885, came to be moved to the Government of Maharashtra for intercepting the telephonic conversation for collecting evidence in respect of intended terrorist activities. In pursuant to that proposal moved by

the Police Department, the Additional Chief Secretary of the Home Department of the State Government gave orders in writing directing and authorizing interception of all telephonic communications, SMS messages to and from the mobile numbers 9321485576 and 9323947342 to the Additional Director General of Police, Anti-Terrorist Squad, Mumbai, as well as Police Officers deputed by him. Authorized by this order Exhibit 137 dated 6th March 2010 issued by the Additional Chief Secretary of the Home Department of the State of Maharashtra under directions of their superiors PW7 Rajesh Kasare, Assistant Police Inspector and PW8 Datta Gawade, Assistant Police Inspector of the Anti-Terrorist Squad intercepted telephonic conversation in respect of the targeted number 9323947342 from 6th March 2010 to 12th March 2010. Compact Disk of recorded conversation Articles G, H, I, J, K and L were prepared and the transcripts of recorded conversation (Exhibits 47 to 51(c)) also came to be prepared. Considering the material available against the appellants/accused persons PW9 Vijay

Kadam, Police Inspector, Anti-Terrorist Squad, lodged the First Information Report (FIR) Exhibit 73 on 13th March 2010 against the appellants/accused persons with the Anti-Terrorist Squad, Mumbai, which resulted in registration of Crime No.8 of 2010 for offences punishable under Sections 18 and 18B of the U.A.P.Act.

- (c) During the course of investigation of the subject crime, the appellants/accused persons came to be arrested on 13th March 2010 by Assistant Police Inspector Wakurdekar. Their personal search came to be conducted by PW20 Sanjay Patil, Police Sub-Inspector, in presence of panch witness PW1 Jagannath Jadhav. The mobile handset of Reliance Company having Sim card of Airtel Company bearing mobile number 9323947342 apart from sundry items was found on person of appellant/accused no.1 Abdul Latif @ Guddu. The mobile handset of Motorola Company having Sim card of BPL Cellular Company bearing mobile number 9773084167 was found on person of appellant/accused no.2

Riaz Ali @ Riyan apart from some cash. Those articles came to be seized vide Panchnama Exhibit 31 on 13th March 2010 itself. Search of house of appellant/accused no.1 Abdul Latif @ Guddu was conducted. Samples of voice of both the appellants/accused persons were taken in presence of panch witness PW22 Satpal Singh by PW26 Subhash Dudhgaonkar, Police Inspector of the Anti-Terrorist Squad, Mumbai. It was also found during investigation that appellant/accused no.1 Abdul Latif @ Guddu had received some amount through hawala from Al Hind Tours and Travels as well as from UAE Exchange and Financial Service Limited as vouched by PW16 Yusuf Puttukudi and PW19 Kishor Putran. PW15 Hasan Viswas was the panch witness to the disclosure statement of appellant/accused no.1 Abdul Latif @ Guddu recorded by PW26 Subhash Dudhgaonkar, Police Inspector, of Anti-Terrorist Squad, Mumbai.

- (d) Statement of several witnesses, some of whom happen to be friends of appellant/accused no.1 Abdul Latif @ Guddu,

indicating incitement to them for committing terrorist act by appellant/accused no.1 Abdul Latif @ Guddu came to be recorded during the course of investigation. The samples of voice of the appellants/accused persons so also the intercepted Compact Disks containing recording of the intercepted conversation were sent for Audiometry Report to the Forensic laboratory. On completion of investigation, appellants/accused persons came to be charge-sheeted after obtaining sanction for prosecuting them from the State Government by invoking Section 45(1)(ii) of the U.A.P.Act

- (e) The learned trial court framed Charge for offences punishable under Section 120B read with 436 and Section 115 read with 34 of the Indian Penal Code as well as under Section 18 and 18B of the U.A.P.Act against both the appellants/accused persons. They pleaded not guilty and claimed trial.

- (f) In order to bring home the guilty to the appellants/accused persons, the prosecution has examined in all 28 witnesses. The defence of the appellants/accused persons was of total denial. According to them, they had done nothing and are falsely implicated in the crime in question. As per version of appellant/accused no.2 Riaz Ali @ Riyan he was working as salesman in the Thakur Mall. He was intending to marry a woman, who ultimately left him and had implicated him in the crime falsely.
- (g) Upon hearing the parties, the learned trial court by the impugned judgment and order was pleased to convict the appellants/accused persons of the offence punishable under Section 18 of the U.A.P.Act and they were sentenced accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard the learned counsel appearing for the appellants/accused persons at sufficient length of time. By taking

me through the record and proceedings, she strenuously urged that the prosecution has failed to establish that the conversation between the appellants/accused persons so also with some other persons is intercepted legally by following due process of law. In her submission, telephone tapping is serious invasion to the right of privacy, and therefore, strict adherence to the provisions of Indian Telegraph Act, 1885, so also to the judgment of the Honourable Apex Court in the matter of People's Union for Civil Liberties vs. Union of India and Another¹ is necessary. However, cross-examination of PW28 Mohan Kulkarni, Assistant Commissioner of Police, shows that he was not aware about the proposal sent to the Government and he had not sent the record regarding public emergency. This witness had not maintained any record regarding his visit to Mantralaya. Cross-examination of PW7 Rajesh Kasare, Assistant Police Inspector, and that of PW8 Datta Gawade, Assistant Police Inspector, shows that they were not having any written order from their superior in respect of interception of telephonic conversation and no documentary evidence is placed on record to show that at the relevant time this

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witnesses were present on the duty. There is nothing on record to suggest that they were having special training for interception and recording of telephonic conversation. Attendance record of these witnesses was not produced and evidence regarding affixing seals while seizing the Compact Disks is not adduced by the prosecution. The learned counsel further argued that evidence regarding the voice identification of the appellants/accused persons is lacunatic and the procedure adopted fails to inspire any confidence. Evidence of PW4 Usman Batliwala so also that of PW5 Shanawaz Shaikh and other witnesses is not worth reliance because these witnesses have not even reported the matter to police. There is no evidence to show that the appellants/accused persons had visited any place to execute the terrorist act as per intercepted conversation. Seizure of the mobile phones is not proved. The alleged recovery is from the open place and petrol cannot be considered as hazardous article. The learned counsel further argued that sanction accorded to prosecute the appellants/accused persons is without application of mind.

4 As against this, the learned APP supported the impugned judgment and order by contending that by adducing cogent and trustworthy evidence, the prosecution is successful in proving the guilt to the hilt.

5 I have considered the submissions so advanced and perused the record and proceedings including oral as well as documentary evidence. Both the appellants/accused persons are convicted of the offence punishable under Section 18 of the Unlawful Activities (Prevention) Act, 1967, which deals with punishment for conspiracy etc. of the terrorist activities. Conspiring, attempt to committing, advocating, advising, abetting, inciting or facilitating a terrorist act or any act preparatory to the commission of the terrorist act is made punishable by this Section and the sentence which can be imposed for this offence ranges from 5 years to imprisonment for life apart from liability to pay fine. The term "terrorist act" is defined by Section 15 of the said Act which reads thus :

“15 Terrorist act — (1) Whoever does any act with intent to threaten or likely to threaten the

unity, integrity, security, economic 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 injuries 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 an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.”

6 The case of the prosecution, to a large extent, hinges on the intercepted conversation between the appellants/accused persons, so also the intercepted conversation between appellant/accused no.1 Abdul Latif Shaikh and his handler referred in the conversation as Uncle.

7 By now it is settled that right to privacy is included in Article 21 of the Constitution of India and it is a part of the right to protection of life and personal liberty. This right to privacy which is a part of right to life and personal liberty guaranteed by Article 21 of the Constitution of India includes holding of a telephonic conversation by a citizen which can be of a confidential nature. Telephonic conversation is one of the means for exercising right to freedom of speech and expression as enshrined in Article 19 of the Constitution of India. Thus, right to have telephonic conversation in privacy can be curtailed only as per the procedure established by law. This procedure is prescribed by Section 5 of the Indian Telegraph Act, 1885, and for our purpose, reproduction of provisions of sub-section 2 of Section 5 is necessary for the ready reference. It reads thus :

“5 Power for Government to take possession of licensed telegraphs and to order interception of messages.—

(1)

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer

specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order: Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this subsection.

8 As per provisions of Section 4 of the Indian Telegraph Act, 1885, within India, the Central Government has exclusive

privilege of establishing, maintaining and working telegraphs. The term “telegraph” is defined by Section 3(1AA) of the said Act to mean appliance, instrument etc. used or capable of being used for transmission or reception of sounds, signs, intelligence, signals, images, writings etc. by wire or electromagnetic emission radio waves and other modes. Section 5(2) of the Indian Telegraph Act, 1885, clearly lays down the contingencies or situations under which the power to intercept messages or conversations can be exercised. The Central or a State Government or authorized officer can direct that any message or class of messages to or from any person brought for transmission by or transmitted or received by any telegraph may be intercepted or detained in the event of contingencies mentioned in Section 5(2) of the Indian Telegraph Act, 1885. The concerned Government or the Authorised Officer can issue such directions for such interception if “due to occurrence of any public emergency” or “in the interest of the public safety” it is satisfied that this mode of action is necessary or expedient in the interest of a) sovereignty and integrity of India, b) the security of the State, c) friendly relations with foreign

states, d) public order, or e) for preventing incitement to the commission of an offence. The concerned Government or the Authorised Officer for this purpose has to pass a reasoned order for interception of the message. Occurrence of public emergency or the interest of the public safety are the prerequisites to exercise powers conferred by Section 5(2) of the Indian Telegraph Act, 1885. Fulfillment of either of the condition is mandatory for invoking the power of interception and detention of the message.

9 In the matter of **People's Union for Civil Liberties** (**supra**) the Honourable Apex Court has considered the provisions of Section 5 of the Indian Telegraph Act, 1885, which in fact curtails the fundamental right conferred on the citizens by Articles 19 and 21 of the Constitution of India and laid down necessary procedural safeguards to rule out the arbitrary exercise of the power under the said Act, after interpreting the said provision. Occurrence of any public emergency or the interest of public safety are the two grounds on which such powers of interception of conversation/message can be invoked and that too by following

the due process of law. Paragraphs 28 and 29 from the judgment of the Honourable Supreme Court in the matter of **People's Union for Civil Liberties (supra)** needs reproduction and those read thus :

“28 Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. “Occurrence of any public emergency” or “in the interest of public safety” are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities has no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression “public safety” means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorized officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of

sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interests of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.”

“29 The first step under section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with

foreign States, (iv) public order, or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so.”

In paragraph 35 of the said judgment, procedural safeguards are prescribed for invocation of such powers. Said paragraph 35 reads as under :

“35 We, therefore, order and direct as under :-

1 An order for telephone-tapping in terms of Section 5(2) of the Act shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Government not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order.

2 The order shall require the person to whom it is addressed to intercept in the course of their transmission by means (of) a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to disclose the intercepted material to such person and in such manner as are described in the order.

3 The matters to be taken into account in considering whether an order is necessary under Section 5(2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means.

4 The interception required under Section 5(2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person specified or described in the order or one particular set of premises specified or described in the order.

5 The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The authority which issued the order may, at any time before the end of two months period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months.

6 The authority which issued the order shall maintain the following records :

- (a) the intercepted communications,
- (b) the extent to which the material is disclosed,
- (c) the number of persons and their identity to whom any of the material is disclosed,
- (d) the extent to which the material is copied, and
- (e) the number of copies made of any of the material.

7 The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act.

8 Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5(2) of the Act.

9 There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

(a) The Committee shall in its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set

aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) of the Act, it shall record the finding to that effect.”

10 Now let us examine the order dated 6th March 2010 at Exhibit 137 issued by the Additional Chief Secretary (Home) to the State of Maharashtra under Section 5(2) of the Indian Telegraph Act, 1885, authorizing interception of two mobile phones including mobile phone bearing number 9323947342. The authority empowered to authorize interception and detention of conversation and messages is required to get itself satisfied as to “occurrence of any public emergency” or the “interest of public safety” prior to such authorization for intercepting the message. As seen from the order at Exhibit 137, the Additional Chief Secretary (Home) prior to issuance of order authorizing interception of all telephonic communications to the targeted

mobile phones, had perused the report submitted by the Deputy Commissioner of Police, Anti-Terrorist Squad, Mumbai, to the Additional Director General of Police, Anti-Terrorist Squad, Maharashtra. The order of authorization (Exhibit 137) issued by the Additional Chief Secretary reflects that there is due application of mind by the authorising authority to the facts of the case. Recitals in the order at Exhibit 137 makes it clear that the Competent Authority under the Indian Telegraph Act, 1885, had kept in mind the fact that in view of recent blasts at the German Bakery, Koregaon Park, Pune, some foreigners are contacting their associates in India and are planning to execute destruction as well as commission of serious offences. The order at Exhibit 137 makes it clear that the authorizing authority has come to the conclusion that other modes of enquiries for gathering intelligence have failed and therefore, it is necessary to permit interception of the targeted mobile phone numbers for preventing incitement to the commission of serious offences. It is, thus, clear that, the order passed under Section 5(2) of the Indian Telegraph Act, 1885, and the recitals thereof shows that the same was passed in

the interest of the public safety which is one of the ground for authorising interception of conversation. Perusal of the order at Exhibit 137 issued by the Additional Chief Secretary (Home) as such shows that it was necessary to avert danger or risk to the people at large and this was the consideration for issuance of the order. Perusal of the order granting authorisation to intercept shows that the same is demonstrating the fact that there had been proper application of mind on the part of the authority for coming to the conclusion that it was necessary, in the interest of the public safety, for preventing incitement to the commission of an offence, to intercept conversation from the targeted mobile phones. The learned counsel for the appellants/accused persons tried to assail the said order by pointing out admission in cross-examination of PW28 Mohan Kulkarni, Assistant Commissioner of Police, to the effect that he had not maintained any record of his visit to Mantralaya, and before going to Mantralaya for getting the order at Exhibit 137 from the authorising authority, he had not seen the record regarding public emergency. This argument is of no avail to the appellants/accused persons because PW28 Mohan

Kulkarni, Assistant Commissioner of Police, was not the authority competent to permit interception and detention of the telephonic messages and conversation. He is the Requisitioning Officer. The material demonstrating occurrence of public emergency or the interest of the public safety is required to be scrutinized by the Appropriate Government or its Officers specially authorised in that behalf. This witness was not such an officer nor was he competent to authorize interception of conversation. Thus, evidence on record unerringly points out that considering the interest of public safety, on getting itself satisfied that it is necessary to intercept to do so for preventing incitement to the commission of an offence, the Additional Chief Secretary (Home) of the State of Maharashtra was constrained to issue the order at Exhibit 137 on 6th March 2010 authorising interception of the targeted mobile phones numbers including mobile phone number 9323947342. The order at Exhibit 137 itself makes it clear that the concerned authority has considered directions given by the Honourable Supreme Court in the matter of People's Union for Civil Liberties (supra). The appellants/accused persons failed to

bring any material on record to show that the Review Committee at the State level has come to the conclusion that there has been any contravention of the provisions of Section 5(2) of the Indian Telegraph Act, 1885, while issuing the order dated 6th March 2010 by the Additional Chief Secretary (Home), State of Maharashtra. It is not shown that the said order is set aside, at any point of time, on investigation by the State level Committee constituted in terms of judgment of the Honourable Apex Court in the matter of **People's Union for Civil Liberties (supra)**. Thus, it needs to be put on record that, by following due process of law, the order at Exhibit 137 came to be passed by the authorising authority permitting interception of the conversation from the targeted mobile phone numbers.

11 Now let us examine whether the prosecution has proved interception of telephonic conversation from the targeted mobile phones and whether such intercepted conversation demonstrate indulging in conspiracy, advocating, advising or inciting commission of terrorist act or any act preparatory to

commission of the terrorist act by the appellants/accused persons or any of them. It will have to be seen whether it is proved by the prosecution that the appellants/accused persons had indulged in any act preparatory to commission of the terrorist act with intent to strike terror in the people by using inflammable substance to cause or likely to cause death or injuries to persons and loss, damage or destruction to the property. For this purpose, the prosecution is heavily relying on the evidence of PW7 Rajesh Kasare, Assistant Police Inspector and PW8 Datta Gawade, Assistant Police Inspector, working with the Anti-Terrorist Squad of Mumbai Police. Evidence of both these witnesses makes it clear that they were entrusted with duty to intercept the phone calls, to record the conversation and to prepare two Compact Disks of the recorded conversation. One of such Compact Disk, as seen from their evidence, was to be given to Shri Banerjee, Senior Police Inspector, and another to PW9 Vijay Kadam, Police Inspector, working with the Anti-Terrorist Squad. Evidence of PW9 Vijay Kadam, Police Inspector, shows that he was authorised to monitor the telephonic conversation with the help of his technical

personnels and human resources, on receipt of the order Exhibit 137 under Section 5(2) of the Indian Telegraph Act, 1885. PW9 Vijay Kadam, Police Inspector, deposed that accordingly he gave mobile phone number 9323947342 to the technical unit of the Anti-Terrorist Squad where PW7 Rajesh Kasare, Assistant Police Inspector and PW8 Datta Gawade, Assistant Police Inspector were working, being entrusted with the duty to record the conversation from mobile phone number 9323947342 in the mission called as “Operation Yatra”. PW7 Rajesh Kasare, Assistant Police Inspector and PW8 Datta Gawade, Assistant Police Inspector working with the Anti-Terrorist Squad have recorded conversation made from that mobile phone number from 5.51 p.m. of 6th March 2010 to 6.11 p.m. of 12th March 2010. In all ten telephonic conversations from this mobile phone number were intercepted and recorded. Evidence of both these witnesses shows that they had then prepared transcript of the telephonic conversation from mobile phone number 9323947342.

12 It is in evidence of PW7 Rajesh Kasare, Assistant Police Inspector, that he recorded conversation from mobile phone number 9323947342 (which was found in possession of appellant/accused no.1 Abdul Latif @ Guddu on 13th March 2010) on which incoming call was there from mobile phone number 9773084167 (which was found in possession of appellant/accused no.2 Riaz Ali @ Riyan on 13th March 2010). Similarly, this witness has intercepted and recorded conversation in respect of incoming call to mobile phone number 9323947342 from mobile phone number 5044 of Uncle from Pakistan. PW7 Rajesh Kasare, Assistant Police Inspector, has stated that transcript of intercepted telephonic conversations at Exhibits 47 and 48 are the same documents prepared reflecting the telephonic conversations intercepted by him.

13 PW8 Datta Gawade, Assistant Police Inspector, has spoken about interception and recording of in all eight conversations from targeted mobile phone number 9323947342 seized from appellant/accused no.1 Abdul Latif @ Guddu. His

evidence shows that at 5.51 p.m. of 6th March 2010, a call from unknown person came on this cell phone. He intercepted the same, got it recorded, and prepared the Compact Disk, and the transcript at Exhibit 45 is in respect of the same conversation recorded by him. As per version of PW8 Datta Gawade, Assistant Police Inspector, at 7.57 p.m. of 6th March 2010, out going telephonic call was made from the targeted mobile phone number 9323947342 to mobile phone number 5044 of Pakistan. By intercepting that call, he recorded the same and prepared the Compact Disk. The transcript of conversation at Exhibit 46 is that of recorded conversation. The third intercepted conversation, as per version of this witness, took place at 7.58 p.m. of 10th March 2010. There was incoming call from mobile phone number 923072574692 of Pakistan to the targeted mobile phone number 9323947342. After intercepting this call PW8 Datta Gawade, Assistant Police Inspector got it recorded and prepared the Compact Disk. He stated that the transcript of conversation at Exhibit 49 is in respect of conversation during this call. Fourth conversation intercepted and recorded by PW8 Datta Gawade,

Assistant Police Inspector, as deposed by him, is that of a call to the targeted mobile phone number 9323947342 from mobile phone number 9773084167 seized from appellant/accused no.2 Riaz Ali @ Riyan. As stated by this witness, he recorded this intercepted call and prepared the Compact Disk. Exhibit 50 is the transcript of that conversation. PW8 Datta Gawade, Assistant Police Inspector, further testified that on 12th March 2010 at 5.18 p.m. there was a call from Pakistan on the targeted mobile phone number which he intercepted and recorded. The Compact Disk of that conversation was prepared and the transcript thereof is at Exhibit 51. Next call intercepted and recorded by this witness is a out going call from the targeted mobile phone number 9773084167 (which was seized from appellant/accused no.2 Riaz Ali @ Riyan) made on 13th March 2010 itself. The Compact Disk of this recorded conversation was prepared, so also the transcript thereof at Exhibit 51A. Evidence of PW8 Datta Gawade, Assistant Police Inspector, further shows that at 5.31 p.m. of 12th March 2010 there was call to the targeted mobile phone number from mobile phone number 9773084167 (which was seized from

appellant/accused no.2 Riaz Ali @ Riyan). This witness prepared conversation of this intercepted and recorded call and the transcript thereof is at Exhibit 51B. The last call recorded by the prosecution and coming on record through evidence of PW8 Datta Gawade, Assistant Police Inspector, is the one made to the targeted mobile phone number from mobile phone number 923072674692 from Pakistan at 6.11 p.m. of 12th March 2010. Compact Disk of the intercepted and recorded conversation was prepared and the transcript thereof is at Exhibit 51C.

14 Perusal of evidence of these witnesses PW7 Rajesh Kasare, Assistant Police Inspector and PW8 Datta Gawade, Assistant Police Inspector shows that during the course of recording of their evidence, the Compact Disks of the recorded conversation were played and the conversation was tallied with the respective transcript. Both these witnesses have vouched about intercepting the conversation recorded in those Compact Disks and preparation of the transcripts which were tallying with the conversation recorded in the Compact Disks.

15 The defence tried to assail evidence of these witnesses by their searching cross-examination. However, nothing could be brought on record to disbelieve version of both these witnesses. They were working in the technical department and PW7 Rajesh Kasare, Assistant Police Inspector, declined to disclose the location of that department, it being an official secret. His evidence shows that the technical department of the Anti-Terrorist Squad is not maintaining the Station Diary and not keeping the proof of attendance such as muster. He was hearing conversation on the head-phone of which specifications he was not recollecting while in the witness box. These aspects are not going to the core of the testimony of this technical expert. The technical department of the Anti-Terrorist Squad is not a police station and as such, maintaining of the Station diary is not required. Cross-examination of PW8 Datta Gawade, Assistant Police Inspector, shows that he had not made any record of calls intercepted up to 5th March 2010. This is obvious because he was legally entitled to intercept the calls from 6th March 2010 and prior to that he might

not have intercepted the calls nor made record thereof. Some questions eliciting opinion of this witness were asked to him but those were rightly rejected by the learned trial court. The fact that this witness did not register the FIR though he heard conversation depicting cognizable offence is not of any advantage to the defence because this witness was a part of larger mission which was collecting actionable material in the matter. His superior officers were to take care of taking legal action in the matter. This witness refused to disclose names of the equipments used for intercepting the phone calls, rather rightly. The crux of the matter is whether these two witnesses had, infact, intercepted the targeted mobile phones and whether they had recorded conversation by intercepting the calls in respect of the targeted mobile phones. On this aspect evidence of both these witnesses remain unshattered and therefore, the same deserves to be accepted.

16 The Compact Disks containing conversation of telephonic calls regarding mobile phone number 9323947342 was

played during the course of recording of evidence of PW3 Ishfaq Batliwala, PW4 Usman Batliwala, PW5 Shanawaz Shaikh and PW6 Mohd.Arif Galib. All these witnesses are well acquainted with appellant/accused no.1 Abdul Latif @ Guddu. PW3 Ishfaq Batliwala is elder brother of PW4 Usman Batliwala, who is colleague of appellant/accused no.1 Abdul Latif @ Guddu. PW5 Shanawaz Shaikh and PW6 Mohd.Arif Galib were classmates of appellant/accused no.1 Abdul Latif @ Guddu. They had an occasion to hear voice of appellant/accused no.1 Abdul Latif @ Guddu regularly. During the course of recording of their evidence, all these Compact Disks containing intercepted and recorded conversation during the course of telephonic calls in respect of mobile phone number 9323947342 were played and got tallied with the transcripts thereof. All these witnesses categorically deposed that the conversation recorded in the Compact Disks which are at Articles G to L contain voice of appellant/accused no.1 Abdul Latif @ Guddu.

17 After registration of the FIR, both appellants/accused persons came to be arrested on 13th March 2010 by Assistant Police Inspector Wakurdekar. Personal search of both appellants/accused persons was then taken in presence of PW1 Jagannath Jadhav by PW20 Sanjay Patil, Police Sub-Inspector. Clear, cogent and consistent evidence of both these witnesses goes to show that from person of appellant/accused no.1 Abdul Latif @ Guddu, mobile handset of Reliance Company having Sim card of Airtel Company bearing mobile number 9323947342 came to be seized. Similarly, from person of appellant/accused no.2 Riaz Ali @ Riyan, mobile handset of Motorola Company having Sim card of BPL Cellular Company bearing mobile number 9773084167 came to be seized. This seizure was effected vide Panchnama Exhibit 31 on 13th March 2010 itself. The same is duly proved by the prosecution through evidence of PW20 Sanjay Patil, Police Sub-Inspector, and that of panch witness PW1 Jagannath Jadhav. Cross-examination of both these witnesses has not created any dent in their version and there is nothing to infer that seized cell phones with the Sim cards were planted on the person of

appellants/accused persons. There was no question of offering search of the police personnel to the appellants/accused persons as there is no iota of material to make out a case of planting.

18 The prosecution has examined Rafiq Khan as PW25. His evidence shows that by the end of the year 2007, he had obtained Sim card of BPL Cellular Company having mobile number 9773084167. This witness, who was working as an agent in the Regional Transport Office (R.T.O.) at Andheri was knowing appellant/accused no.2 Riaz Ali @ Riyan. Version of this witness goes to show that when appellant/accused no.2 Riaz Ali @ Riyan had been to him somewhere in the year 2008 for obtaining the Driver license, that Sim card was given by this witness to appellant/accused no.2 Riaz Ali @ Riyan. PW25 Rafiq Khan has made it clear that since then, appellant/accused no.2 Riaz Ali @ Riyan had not returned the said Sim card to him.

19 This evidence adduced by the prosecution proved a fact that appellant/accused no.1 Abdul Latif @ Guddu was using

mobile phone bearing number 9323947342 whereas appellant/accused no.2 Riaz Ali @ Riyan was using the mobile phone bearing number 9773084167 till the date of their arrest on 13th March 2010. Evidence as discussed supra adduced by the prosecution makes it clear that from 6th March 2010 till 12th March 2010 under valid orders of the Authorised Officer of the State, conversation which was taking place through mobile phone number 9323947342 was being recorded by the Anti-Terrorist Squad of Mumbai. The transcripts of that conversation are at Exhibit 45 to Exhibit 51C and the Compact Disks of that conversation, on being placed before the learned trial court, are at Articles G to L. Let us, therefore, see whether the transcripts of the recorded conversation from the mobile phone belonging to appellant/accused no.1 Abdul Latif @ Guddu with a person from Pakistan as well as with appellant/accused no.2 Riaz Ali @ Riyan indicates any act preparatory to commission of terrorist act as well as conspiracy to commit the terrorist act apart from inciting, advocating and advising the same.

20 The duly proved transcript of telephonic conversation from targeted mobile phone number 9323947342 are at Exhibits 47 to 51C. The first intercepted conversation is of 17.51 hours of 6th March 2010, the transcript whereof is at Exhibit 45. It was a call to the targeted mobile phone number 9323947342 from unknown number. The caller was asking appellant/accused no.1 Abdul Latif @ Guddu about progress in the matter of obtaining passport to appellant/accused no.1 Abdul Latif @ Guddu. The next call to this targeted mobile phone bearing number 9323947342 was from the Uncle based in Pakistan from mobile phone number 5044. It was at 19.57 hours of 6th March 2010. The transcript of this recorded call is at Exhibit 46. Perusal of this transcript shows that the Uncle based at Pakistan was advising appellant/accused no.1 Abdul Latif @ Guddu to purchase one mobile phone Sim card in the name of another person and not to disclose that phone number to anybody else. Progress in the matter of obtaining passport by appellant/accused no.1 Abdul Latif @ Guddu was also asked by the caller. He was told by the

caller to arrange for 2 to 4 friends for executing the work. It was assured that the caller will arrange for money. Upon that, appellant/accused Abdul Latif @ Guddu informed the caller that by Friday he will tell his two associates the time to set fire. The next intercepted call was at 15.20 hours of 7th March 2010. It was from the targeted mobile phone number 9323947342 to the mobile phone number 9773084167 which was seized from appellant/accused no.2 Riaz Ali @ Riyan vide Seizure Panchnama Exhibit 31 on 13th March 2010. The transcript of this recorded conversation is at Exhibit 47. During this call, appellant/accused no.1 Abdul Latif @ Guddu was telling appellant/accused no.2 Riaz Ali @ Riyan that he will give details about the work of setting fire afterwards. Appellant/accused no.1 Abdul Latif @ Guddu was telling appellant/accused no.2 Riaz Ali @ Riyan not to call by his own telephone number. The conversation reflects that work of setting fire to some building was entrusted by appellant/accused no.1 Abdul Latif @ Guddu to appellant/accused no.2 Riaz Ali @ Riyan. Thereafter, the prosecuting agency has recorded the telephonic call in between targeted mobile phone number

9323947342 and international telephone number 5044. This was a call at 19.04 hours of 9th March 2010. Transcript conversation at Exhibit 48 of this recorded call goes to show that the Uncle was asking appellant/accused no.1 Abdul Latif @ Guddu as to what work he can do. Appellant/accused no.1 Abdul Latif @ Guddu answered that he can do any work entrusted to him. Appellant/accused no.1 Abdul Latif @ Guddu asked the Uncle as to whether he should blast out the ONGC building and upon that the caller/Uncle informed appellant/accused no.1 Abdul Latif @ Guddu to set that building on fire. Appellant/accused no.1 Abdul Latif @ Guddu then informed the caller/Uncle that he will do this work and he has one associate for executing this work. The subsequent call recorded at 19.38 hours of 10th March 2010 is between the targeted number 9323947342 seized from appellant/accused no.1 Abdul Latif @ Guddu and mobile phone number from Pakistan bearing number 923072674692. The recorded conversation is transcribed and the said transcript is at Exhibit 49. Perusal of this transcript shows that during that call, the Uncle was questioning appellant/accused no.1 Abdul Latif @

Guddu as to whether the entrusted work is done. Then appellant/accused no.1 Abdul Latif @ Guddu had asked the caller/Uncle as to whether the Thakur Mall should be targeted. He also informed the caller/Uncle that behind the Thakur Mall there is a colony of rich Gujarati persons. The Uncle then cautioned him to speak briefly and advised him to send a message. Appellant/accused no.1 Abdul Latif @ Guddu then informed the caller/Uncle that he is purchasing a new Sim card for having detailed conversation. Then the next call intercepted by the prosecuting agency is of 23.07 hours of 10th March 2010. It was from the targeted mobile phone number 9323947342 which was in possession of appellant/accused no.1 Abdul Latif @ Guddu to the mobile phone number 9773084167 which was in possession of appellant/accused no.2 Riaz Ali @ Riyan. The transcription of this intercepted conversation is at Exhibit 50. In this detailed conversation of six minutes and 2 seconds duration, both appellants/accused persons were talking about conspiracy to set fire at Thakur Mall and the nearby colony by pouring petrol. Appellant/accused no.1 Abdul Latif @ Guddu was telling

appellant/accused no.2 Riaz Ali @ Riyan to execute the work of setting fire at the Thakur Mall and the nearby colony by asking as to how much expenditure is required to be incurred for getting this work done. Appellant/accused no.2 Riaz Ali @ Riyan by referring the inflammable substance as water was telling appellant/accused no.1 Abdul Latif @ Guddu that about 30 to 35 litres of water would be required to execute this operation. Appellant/accused no.1 Abdul Latif @ Guddu, as seen from this intercepted conversation, had assured appellant/accused no.2 Riaz Ali @ Riyan that he will pay all money which is required for execution of the work and had advised appellant/accused no.2 Riaz Ali @ Riyan to go underground for about one or two months after finishing the mission. Appellant/accused no.1 Abdul Latif @ Guddu had categorically informed appellant/accused no.2 Riaz Ali @ Riyan during this telephonic talks that lot of money would be paid if the work entrusted is executed, but it should be done at any cost by keeping secrecy, by not even disclosing the same to the family members. This telephonic conversant indicates that appellant/accused no.2 Riaz Ali @ Riyan was intending to flee

from the country after executing the work, along with his fiancée. The telephonic call exchanged between the targeted mobile phone number 9323947342 which was in possession of appellant/accused no.1 Abdul Latif @ Guddu and the mobile phone bearing number 9773084167 which was in possession of appellant/accused no.2 Riaz Ali @ Riyan came to be recorded at 17.29 hours on 12th March 2010 came to be intercepted and recorded. The transcript thereof is at Exhibit 51A. Perusal of the transcript of this intercepted call shows that appellant/accused no.1 Abdul Latif @ Guddu had informed appellant/accused no.2 Riaz Ali @ Riyan to text him the full address of the colony situated behind the Thakur Mall which was to be set ablaze. It was informed by appellant/accused no.1 Abdul Latif @ Guddu to appellant/accused no.2 Riaz Ali @ Riyan that he has demanded the money for execution of this work and had cautioned appellant/accused no.2 Riaz Ali @ Riyan that the work should be executed. Appellant/accused no.2 Riaz Ali @ Riyan assured that the work of setting fire to the colony will be done positively. At about 17.31 hours of 12th March 2010, there was a call exchange between the

targeted mobile phone number 9323947342 possessed by appellant/accused no.1 Abdul Latif @ Guddu and the mobile phone number 9773084167 possessed by appellant/accused no.2 Riaz Ali @ Riyan. Appellant/accused no.1 Abdul Latif @ Guddu asked whether the Sim card of mobile phone number which is being used by appellant/accused no.2 Riaz Ali @ Riyan is standing in his name. When appellant/accused no.2 Riaz Ali @ Riyan informed that the mobile phone number is in his own name, appellant/accused no.1 Abdul Latif @ Guddu had requested appellant/accused no.2 Riaz Ali @ Riyan to give some other mobile phone number which is not registered in the name of appellant/accused no.2 Riaz Ali @ Riyan. Appellant/accused no.2 Riaz Ali @ Riyan assured to give another mobile phone number to appellant/accused no.1 Abdul Latif @ Guddu. Then, at about 18.11 hours of 12th March 2010, there was telephonic conversation between appellant/accused no.1 Abdul Latif @ Guddu who was holding targeted mobile phone number 9323947342 and the Uncle based in Pakistan holding the Pakistani mobile phone number 923072674692. Transcript of this

intercepted call is at Exhibit 51C. The caller Uncle asked appellant/accused no.1 Abdul Latif @ Guddu as to the progress of work of obtaining passport by appellant/accused no.1 Abdul Latif @ Guddu. He advised appellant/accused no.1 Abdul Latif @ Guddu to bribe the concerned for getting the passport early.

21 If the conversation recorded in the intercepted calls, the transcripts whereof are at Exhibits 45 to 51C is appreciated in proper perspective, then it is clearly revealed that the appellants/accused persons along with the Uncle based at Pakistan were indulging in conspiracy of committing the terrorist act in Mumbai with intent to strike terror in the minds of people at large by using inflammable substance for causing death of persons and destruction of property apart from disruption of supplies of services essential to the life of community. It is clearly reflected from the intercepted conversation that the Uncle based at Pakistan had entrusted the work of commission of terrorist act at Mumbai to appellant/accused no.1 Abdul Latif @ Guddu and in turn, appellant/accused no.1 Abdul Latif @ Guddu had entrusted

execution of this work to appellant/accused no.2 Riaz Ali @ Riyan. The telephonic conversation intercepted by the prosecuting agency indicates that appellants/accused persons were planning to set the Thakur Mall, the colony adjacent to Thakur Mall as well as the building of the ONGC on fire. The meticulous planning was being made by deciding to use 30 to 35 litres of inflammable substance which was deliberately referred to as water in the telephonic conversation. The telephonic conversation indicates that the Uncle based at Pakistan was taking due caution by instructing appellant/accused no.1 Abdul Latif @ Guddu to have a brief talk in the matter instead of narrating the entire details. This was obviously done to avoid detection of conspiracy which was being hatched by appellants/accused persons with the aid and assistance of the Uncle based at Pakistan. The material gathered by the prosecution in the form of the telephonic conversation shows that the appellants/accused persons were intending to execute the act with intent to strike terror in the people by using inflammable substance for causing death or injuries to the people at large apart from mass

destruction of property. The conspiracy to commit the terrorist act is writ large from the intercepted telephonic conversations.

22 Now let us examine whether the intercepted telephonic conversations from the mobiles phones having the targeted mobile phone number 9323947342 and mobile phone number 9773084167 which were ultimately seized from both appellants/accused persons vide Seizure Panchnama Exhibit 31 belong to appellants/accused persons. For this purpose, the Investigating Officer had collected sample of voice of both appellants/accused persons after their arrest. This was done in presence of panch witness PW22 Satpal Singh by PW26 Subhash Dudhgaonkar, Police Inspector, Anti-Terrorist Squad. Both the appellants/accused persons were directed to talk on the telephones and their voice came to be recorded in the tape recorders attached to another telephone. The appellants/accused persons were asked to read from the written pages given to them. The recorded conversation from the cassette was got verified in presence of the panch witnesses by playing those cassettes, and

subsequently, those cassettes were sealed. All these events were recorded in the panchnama of taking voice samples, by seizing cassettes, which is at Exhibit 118. Perusal of evidence of PW22 Satpal Singh – panch witness and the Investigating Officer PW26 Subhash Dudhgaonkar, Police Inspector, Anti-Terrorist Squad, leaves no doubt in the mind in respect of collection of voice samples of the appellants/accused persons by following due process by the prosecuting agency. The voice samples so collected were then sent for audiometry report to the Forensic laboratory by the investigating agency. The report sent by the Forensic laboratory upon examining the voice samples of the intercepted telephonic conversations is to the following effect :

“----The authority analysis of recorded voice exhibits of speaker marked “Ex.1” and “Ex.7” and subsequent acoustic analysis of voice exhibits by using Computerized Speech Lab. (CSL), revealed that the questioned voice exhibit of speaker marked “Exh.1” is similar to the specimen voice exhibit of speaker marked “Ex.7”.

Hence, the voice exhibit of speaker marked “Ex.1” & “Ex.7” is the voice of same person (said to Mr.Abdul Latif Abdul Rashid Shaikh @ Guddu) with probable identification.---

---The auditory analysis of recorded voice exhibits of speaker marked “Ex-2”, “Ex-4”, “Ex-5”, “Ex-6” and “Ex-7” and subsequent acoustic analysis of voice exhibits by using Computerized Speech Lab, (CSL), revealed that the questioned voice exhibits of speaker marked “Ex-2”, “Ex-4”, “Ex-5”, “Ex-6” are similar to the specimen voice exhibit of speaker marked “Exh.7”.

Hence, the voice Exhibit of speaker marked “Ex.2”, “Ex.4”, “Ex.5”, “Ex.6” & “Ex.7” is the voice of same person (said to Mr.Abdul Latif Abdul Rashid Shaikh @ Guddu) with possible identification.---

---The auditory analysis of recorded voice exhibits of speaker marked “Ex-5”, “Ex-6”, and “Ex-8” and

subsequent acoustic analysis of voice exhibits by using Computerized Speech Lab. (CSL), revealed that the questioned voice exhibits of speaker marked “Ex-5”, “Ex-6” are similar to the specimen voice exhibit of speaker marked “Exh.8”.

This makes it clear that samples of voices of both the appellants/accused persons matched with the voices appearing in the intercepted and recorded conversation from the targeted mobile phone number 9323947342 and another mobile phone number 9773084167 which happened to be seized from appellant/accused no.2 Riaz Ali @ Riyan.

23 The prosecution has examined friends and acquaintances of appellant/accused no.1 Abdul Latif @ Guddu. Those are PW3 Ishfaq Batliwala, his brother PW4 Usman Batliwala, PW5 Shanawaz Shaikh and PW6 Mohd.Arif Galib. PW4 Usman Batliwala was a colleague of appellant/accused no.1 Abdul Latif @ Guddu. PW5 Shanawaz Shaikh, PW6 Mohd.Arif Galib and

appellant/accused no.1 Abdul Latif @ Guddu were classmates apart from being friends. These witnesses were knowing the voice of appellant/accused no.1 Abdul Latif @ Guddu. Evidence of these witnesses shows that intercepted and recorded conversations in the Compact Disks at Articles G to L were heard by them during the course of recording of their evidence and those Compact Disks were played in open court in their presence. These witnesses have congruously deposed that one of the voice in each intercepted conversation is that of appellant/accused no.1 Abdul Latif @ Guddu. Friends/acquaintances of appellant/accused no.1 Abdul Latif @ Guddu namely PW3 Ishfaq Batliwala, PW4 Usman Batliwala, PW5 Shanawaz Shaikh and PW6 Mohd.Arif Galib have spoken about attempt on the part of appellant/accused no.1 Abdul Latif @ Guddu to obtain passport and efforts taken by him in instigating and encouraging them to indulge in the terrorist act. It is in evidence of PW3 Ishfaq Batliwala that appellant/accused no.1 Abdul Latif @ Guddu came to him for obtaining passport in November 2009. PW4 Usman Batliwala has spoken about invitation by appellant/accused no.1

Abdul Latif @ Guddu to him to Pakistan for getting training in arms and ammunitions in the end of the year 2009 and beginning of the year 2010. He has further spoken about their meeting in the month of February 2010 at a restaurant near Grant Road Station. PW4 Usman Batliwala has deposed that in the course of that meeting, appellant/accused no.1 Abdul Latif @ Guddu told him that he wants to set Gaity and Galaxy theater as well as Mangaldas Market on fire and he is having two more associates. He tried to allure this witness PW4 Usman Batliwala by assuring him that handsome amount would be paid by Bashir Uncle for this work. PW4 Usman Batliwala further deposed that in the evening of that day, appellant/accused no.1 Abdul Latif @ Guddu again met him at railway platform of Bombay Central Station and again asked him whether he is ready for the work. This witness refused to oblige appellant/accused no.1 Abdul Latif @ Guddu. This witness did not try to avoid meeting appellant/accused no.1 Abdul Latif @ Guddu till the end of the year 2009 or beginning of the year 2010 and rightly so, because by that time, there was no offer to do illegal act to this witness. PW4 Usman Batliwala in chief-

examination itself has stated that he did not share the information received from appellant/accused no.1 Abdul Latif @ Guddu as he was frightened and similar stand was maintained by him in the cross-examination.

24 PW5 Shanawaz Shaikh, in a similar manner, has spoke about the offer made to him by appellant/accused no.1 Abdul Latif @ Guddu to join for the military training in Pakistan. PW5 Shanawaz Shaikh deposed that this offer was made when he along with PW6 Mohd.Arif Galib met appellant/accused no.1 Abdul Latif @ Guddu near Amber Hotel. In January 2010, as stated by PW5 Shanawaz Shaikh, appellant/accused no.1 Abdul Latif @ Guddu again told him that his friend Nadeem is joining the military training at Pakistan. In February 2010 also, at the same place, appellant/accused no.1 Abdul Latif @ Guddu informed PW5 Shanawaz Shaikh that if the building of ONGC or the Mangaldas Market is set on fire, then the Uncle would pay a huge sum to them. As stated by PW5 Shanawaz Shaikh, thereafter also on 11th March 2010, appellant/accused no.1 Abdul Latif @ Guddu met

them and asked them to set the wooden building near the Thakur Mall on fire. The cause for not disclosing all these facts, as stated by this witness is to the effect that appellant/accused no.1 Abdul Latif @ Guddu was having relations with wanted accused in the bomb blast case apart from the fright. This witness admitted that he felt that appellant/accused no.1 Abdul Latif @ Guddu was doing wrong and have not told him that there would be no further talks with him. In a similar manner, PW6 Mohd.Arif Galib has deposed about meeting with appellant/accused no.1 Abdul Latif @ Guddu in front of Amber Hotel of Bandra. Evidence of this witness is congruous to the evidence of PW5 Shanawaz Shaikh and it shows that this witness was present when appellant/accused no.1 Abdul Latif @ Guddu met PW5 Shanawaz Shaikh on some occasion.

25 True it is that this witness had not disclosed evil intention of appellant/accused no.1 Abdul Latif @ Guddu to the law enforcing agencies but it needs to be kept in mind that these witnesses were sharing friendly relations with appellant/accused

no.1 Abdul Latif @ Guddu. They were shocked to hear the evil design of appellant/accused no.1 Abdul Latif @ Guddu and so far as they were concerned, they expressed their inability to join the conspiracy which was being hatched by appellant/accused no.1 Abdul Latif @ Guddu. In this backdrop, not reporting the matter by them to the police is not of much significance. Even otherwise it is a matter of common knowledge that people at large are generally insensitive to the crime which is being committed even in their presence. Thus, by evidence of these witnesses, the prosecution has established the fact that appellant/accused no.1 Abdul Latif @ Guddu was advocating, inciting and advising commission of a terrorist act. He was influencing, persuading, stimulating his friends in order to see that they should join him in commission of the terrorist act in Mumbai.

26 Apart from this evidence, case of the prosecution is gaining further corroboration from evidence as to voluntary disclosure statement and resultant recovery at the instance of appellant/accused no.1 Abdul Latif @ Guddu. PW14 Sumit

Tambe – panch witness has deposed about making of a disclosure statement by appellant/accused no.1 Abdul Latif @ Guddu in his presence on 22nd March 2010. As per version of this witness, appellant/accused no.1 Abdul Latif @ Guddu has made a disclosure statement that he would point out the place where the material collected for the mission is kept. This voluntary disclosure statement was made while appellant/accused no.1 Abdul Latif @ Guddu was in police custody and it was got recorded by PW18 Arvind Sawant, Senior Police Inspector of Anti-Terrorist Squad. Evidence of these two witnesses goes to show that appellant/accused no.1 Abdul Latif @ Guddu after making disclosure statement had taken the police party and panch witnesses to the compound wall of National Women Polytechnic of Bandra. It is in evidence of both these witnesses that from under the heap of garbage and plastic bags adjacent to compound wall of National Women Polytechnic, appellant/accused no.1 Abdul Latif @ Guddu dug out a gunny bag and on opening that gunny bag two plastic cans containing petrol as well as the balls made of cloths were found. These articles came to be seized by

preparing composite memorandum of the disclosure statement as well as recovery panchnama Exhibit 86. No doubt, the articles were recovered from an open place accessible to all, but the same were kept sealed under the heap of garbage and appellant/accused no.1 Abdul Latif @ Guddu was knowing the place where those were exactly kept concealed. Therefore, resultant recovery made in pursuant to the voluntary disclosure statement of appellant/accused no.1 Abdul Latif @ Guddu does not become suspicious. Cross-examination of PW14 Sumit Tambe shows that wax seal was put after seizing of the articles under Recovery panchanama Exhibit 86. The articles so seized were then sent for chemical analysis and the report at Exhibit 144 of the Forensic Lab shows that the liquid contained in the can seized at the instance of appellant/accused no.1 Abdul Latif @ Guddu was petrol. This evidence unerringly indicates an act preparatory to commission of terrorist act. The composite effect of the evidence adduced by the prosecution as discussed in foregoing paragraphs goes to show that the appellants/accused persons were intending to strike terror in the people by using inflammable

substance by setting the populous residential colony and market on fire in order to cause death and injuries to the people at large and for interrupting the supply of services essential to the life of the community. Mass destruction by fire would certainly lead to destruction of essential services like electricity and petroleum gas.

27 The fact that both the appellants/accused persons were constantly in touch with each other is evident from the evidence of PW10 Rakeshchandra Prajapati, Nodal Officer of Loop Mobile and PW11 Rajesh Gaikwad, Nodal Officer of Reliance Telecom Communication. As deposed by these witnesses, there were several calls exchanged from mobile phone number 9323947342 and 9664882186 which were in possession of both the appellants/accused persons respectively.

28 That apart, evidence of PW26 Subhash Dudhgaonkar, Police Inspector, as well as that of PW15 Hasan Viswas – panch witness to the Memorandum statement at Exhibit 89 of appellant/accused no.1 Abdul Latif @ Guddu shows that this

accused has received some amounts sent to him through the UAE Exchange Financial Services Ltd. PW16 Yusuf Puttukudi, Manager of Al Hind Tours and that of PW19 Kishor Putran, the Chief Branch Manager of UAE Exchange and Financial Services Ltd. is indicating this fact. Though appellant/accused no.1 Abdul Latif @ Guddu was having exclusive knowledge about the monies received by him through the UAE Exchange and Financial Services Ltd., he has not explained as to why he has received the amount stated by these witnesses.

29 As per provisions of Section 45 of the U.A.P.Act, no court can take cognizance of the offence punishable under Section 18 thereof which is falling in Chapter IV of the Act without the previous sanction of the Appropriate Government. In the case in hand, prosecution launched against the appellants/accused persons is backed by sanction accorded to it by the State Government. The order sanctioning prosecution of the appellants/accused persons is at Exhibit 135. The prosecution has examined the Deputy Secretary, Home Department of the State of

Maharashtra in support of the sanction order. Evidence of this witness shows that after receipt of the proposal for according sanction to prosecute the appellants/accused persons submitted by the Anti-Terrorist Squad of Mumbai Police, it was examined by him as well as the Joint Secretary of the Law Department of the State. Opinion of the Director of the prosecution was independently called. It was then decided to obtain sanction of the Hon'ble Home Minister of the State, and therefore, the matter was placed before the Hon'ble Home Minister of the State. Accordingly, the sanction as envisaged by Section 45(1)(ii) of the U.A.P.Act came to be accorded for prosecuting the appellants/accused persons. Cross-examination of this witness is only to the effect that a draft sanction order was put up before him and he had not read provisions of Sections 15, 16 and 17 of the U.A.P.Act.

30 At this juncture, it is necessary to quote that it was PW27 Suresh Sonawne, Deputy Secretary, Home Department of the State, who was the Sanctioning Authority. The Sanctioning

Authority was the State of Maharashtra and as per rules of business, the sanction came to be accorded by the Home Department of the State. Perusal of the sanction order at Exhibit 135 makes it clear that the sanction was given after application of mind. The sanction order is self contained and its language shows that there was due application of mind by the Sanctioning Authority. The facts constituting the offence under the U.A.P. Act are duly recited in the sanction order. At this juncture, it is apposite to quote the observations in the matter of **Mohd. Iqbal Ahmed vs. State of Andhra Pradesh**² wherein the Honourable Supreme Court has held thus :

“It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the

² AIR 1979 SC 677

satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio....”

The sanction order in the case in hand is clearly reflecting application of mind, and as such, this court needs to accept the same as a valid sanction for prosecuting the appellants/accused persons.

31 The net result of foregoing discussion requires me to hold that the prosecution has established its case regarding indulgence in conspiracy to commit terrorist act by the appellants/accused persons persons as well as commission of act preparatory to commission of terrorist act by them. It is also proved that appellant/accused no.1 Abdul Latif @ Guddu was advocating and advising as well as inciting the others for commission of terrorist act. Appellant/accused no.1 Abdul Latif @ Guddu, on proof of the offence punishable under Section 18 of the U.A.P.Act, is sentenced to suffer rigorous imprisonment for 12

years, whereas appellant/accused no.2 Riaz Ali @ Riyan is sentenced to suffer rigorous imprisonment for 10 years. Fine is also imposed on both of them apart from default sentence, as indicated in the opening paragraph of the judgment. Considering the gravity and seriousness of offence proved to have been committed by the appellants/accused persons, the sentence imposed on them is perfectly correct and requires no interference.

32 In the result, the appeal fails, and therefore, the following order :

ORDER

- i) The appeal is dismissed.
- ii) Consequently, Criminal Application bearing No.979 of 2017 also stands disposed off.

(A. M. BADAR, J.)