

7/11 Mumbai Train Blast Case

State of Maharashtra Vs. Kamal Ahmed Mohd. Vakil Ansari & Ors.

Date of Incident: 11 July 2006

Place of Incident: Maharashtra (MH), Mumbai City

Nature of the case: "Islamic Terrorism ": Foreign Origin

Sub nature: Terrorist Attack Case

Fatalities: 187

Injuries: 817

Case Status: Trial Complete

Verdict on terror charges: Some Accused were Acquitted, while some were Convicted of Terror Charges

Organization Affiliated to the Incident: SIMI and LeT

No. of Accused: 13

Names of Accused:

Kamal Ahmed Mohd. Vakil Ansari

Tanvir Ahmad Ansari

Mohd. Faisal Aatur Rahman Shaikh

Ehtesham Qutubuddin Siddiqui

Mohamad Majid Mohamad Shafi

Shaikh Mohd. Ali Alam Shaikh

Mohammad Sajid Margub Ansari

Abdul Wahid Deen Mohammed Shaikh

Muzzammil Aatur Rahman Shaikh

Suhail Mehmood Shaikh

Zameer Ahmed Latifur Rehman Shaikh

Naveed Hussain Khan Rasheed Hussain Khan

Asif Khan Bashir Khan

Case Number: MCOCA 21 of 2006, Special Court No. 1, Mumbai

FIR Number: 5 of 2006

Police Station: ATS, Mumbai

Investigating Agency: State Special Police

Motive Of the Attack: "Revenge for atrocities on a community", "To overthrow the government"

Case Analysis

After detailed analysis of the available information regarding the case, following flaws in the criminal justice process have been identified

- Motive(s) alleged in the case "Revenge for atrocities on a community"
- Motive(s) alleged in the case "To overthrow the government"
- Accused in the Case were Partially Acquitted & Partially Convicted of Terror Charges

Prosecution Story

It is alleged that a wanted accused Azam Chima @ Babaji, a Pakistani national, the arrested accused A3, A13 and others, conspired sometime in the year 1999 and thereafter, both within and outside India, to do and cause to be done illegal acts with objectives including - to wage war against the Government of India, to collect muslim youth for training in Pakistan by exploiting their communal sentiments, to terrorise people and cause destruction of property through bomb explosions, to continue unlawful activities of banned organisations, i.e., SIMI and LeT, with an intention to promote enmity between different groups on grounds of religion prejudicial to the maintenance of harmony, and so on.

It is alleged that in pursuance of the said conspiracy:

Wanted accused Azam Chima organised training camp in Pakistan for training of Indian Muslim youths in the handling and use of arms and explosives. He sent money to India for funding travel of Indian Muslim youths. During the training, Azam Chima incited the trained youths to avenge the alleged atrocities committed on Muslims in India, by causing wide spread insurgent and terrorist activities by exploding / bombing financial nerve centers and causing mass damage to life and property thereby crippling the economy of the nation.

Training: A3, A2, A1, A9, A10, A11 and A6 went to Pakistan and received training in the handling of arms and explosives in the training camp run by wanted accused Azam Chima. The travel plans were elaborately planned by the conspirators in order to ensure that passports of the accused did not bear the arrival and departure stamps into and out of Pakistan. During the course of investigation, the A3, A9, A10, A11 and A2 have been found in possession of maps showing travel route from Tehran to Pakistan with details, i.e., names and/or phone numbers of persons who could be contacted for making their travel arrangements. Investigation has disclosed that the accused persons were trained in the handling and use of arms and explosives.

Sometime in the year 2000, Azam Chima recruited A1. Accordingly A1 traveled to Pakistan on a fake Nepalese passport on an assumed name Kamal Ahmed Mohd. Munshi through Wagha border. He accordingly sent his cobrother Anwar Ul Haque to Pakistan for undergoing training in the handling and use of arms and explosives. While A3 was still in Pakistan, he instructed his brother, i.e., the A9 to send some more Muslim youths to Pakistan for undergoing training. Accordingly, the A9 paid and arranged for the travel and training of the A2 in Pakistan. It is alleged that on return from training, the A2 induced the A11 to undergo training in Pakistan to

achieve the larger objective of conspiracy.

Though A2, A9, A10 and A11 traveled from India to Iran on a ziyarat visa, they did not visit Mashad, but instead crossed the Iran border and went to Pakistan and underwent training in the camp of wanted accused Azam Chima. The absence of the stamps/seals on their ziyarat visa page are conclusive proof of the same. Though the A2, A9, A10 and A11 traveled to Pakistan via Iran on a ziyarat visa, their visas are not stamped as required at Mashad.

Funds: Between 1999 and 17/07/06 wanted accused Azam Chima, through wanted accused Mohammed Rizwan Dawrey and Rahil Ataur Rehman Shaikh, sent money through various means to India to A3 and A9, after A3's returned from Pakistan post his training, for publishing jihadi literature, promoting anti-India sentiments and bearing the expenditure for the travel of those Indian Muslim youths who were to be sent for training to Pakistan and escape of those who participated in the bombing operations with an intention to achieve the objectives of the larger conspiracy referred to above. The money on various occasions was received by Smt. Khalida Iqbal Shaikh and one Hidaytulla Mehboob Sundke, PW64, one Afzal of Pune for handing over to Abdul Rehman Dawrey and so on.

Saudi Riyals 15000 were seized during the house search of the A3 at Bandra(W), Mumbai on 28/07/06. Saudi Riyals 11200 sent by wanted accused Rizwan Dawrey were seized on 30/07/06 from Abdul Rehman Dawrey, PW71, brother of wanted accused Mohammed Rizwan Dawrey.

As a part of the conspiracy and with a view to gain respectability and status, some of the coconspirators fraudulently obtained forged and fake degree/education certificates using which they got gainfully employed even in foreign countries, ostensibly for the purpose of raising funds for the organised crime syndicate and/or for the purpose of siphoning funds from foreign countries for achieving the larger goal of conspiracy.

SIMI Affiliations: It is alleged by the prosecution that though the SIMI was banned in the year 2001, A13, A3, A2, A4, A10, A11, A7, A8, A6 and A9 and wanted accused Rizwan Mohammed Dawrey and Rahil Ataur Rehman Shaikh, continued to remain members of the said banned organisation and continued to take part in the activities of 'Students Islamic Movement of India'.

Blast Plan: Between February and May, 2006, arrested accused persons held several conspiratorial meetings in the house of the A3 at Bandra (W), Mumbai, in Mira Road at the house of A7. The said meetings were attended by A13, A10, A3, A4, A2, A9, A11, A12, A6 and A7. In the said meetings it was decided to survey and select targets for causing large scale

explosions. During one meeting held in the month of May, 2006 in the house of the A3 at Bandra (W), the plan to cause explosions in western railway local trains was finalised.

Infiltration of Pakistani Nationals: In the month of May, 2006, the A5, made arrangements and ensured the infiltration of wanted accused and Pakistani nationals, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan into India through Bangladesh border. These accused persons traveled from Kolkata to Mumbai by train. Similarly, in the month of May, 2006, wanted accused, viz., Salim, Sohail Shaikh, Abdul Razak and Abu Umed illegally crossed over from Pakistan into India from Kutch border in Gujarat. A1 made arrangements for and illegally escorted wanted accused Pakistani nationals, viz., Aslam and Hafizullah into India through Nepal border. Wanted accused, Pakistani national Ehsanullah illegally crossed over into India and came to Mumbai. He brought with him RDX, which was used for causing explosions in Mumbai on 11/07/06. The accused who crossed over from Bangladesh border, Kutch border and Nepal border were housed and harboured by A13 in Mira Road (Thane), by A3 in Bandra (W) and A1 & A7 in Mira Road respectively. After the bomb blasts on 11/07/06, A4 provided shelter and harboured the wanted accused brought by the A5, at Mumbra, Thane, rented by the A8. After staying for a while post the incident of blasts, these accused were provided a safe passage by the A5 out of Mumbai.

Recce of Target Locations: A3, A2, A10, A11, A9 and A4 traveled in western railway local trains between Mumbai and Virar in order to make a reconnaissance of the target. The conspirators decided to cause bomb blasts in the evening of a working day so as to cause maximum damage to the lives and to the property and also to strike against a symbolic institution of governmental authority. The same was approved by the blast mastermind wanted accused Azam Chima, top commander of LeT and based in Bahawalpur, Pakistan, and yhr modus conforms to the professed ideology and agenda of LeT.

Preparation of Bombs: Sometime in the month of April, 2006, A4, A2, A3 and A12 went to the house of the A6 and surveyed the surroundings. Between 08/07/06 upto 10/07/06, accused persons, viz., A7, Sohail Shaikh, Pakistani national and one more unknown Pakistani national assembled seven explosive devices at Govandi, the house belonging to the A6. They were assisted, aided and abetted by various means by co-conspirators, viz., A6, A2, A4, A12, A13 and A3.

Planting of Bombs: On the evening of 10/07/06, accused persons, viz., A6, A3, A12 and Sohail

Shaikh, Pakistani national and one unknown Pakistani national, transported seven rexene bags containing explosive devices from the house of the arrested accused A6 in Govandi to A3's house in Bandra(W) in his Maruti car bearing no.MH01V9568 and one taxi.

On 11/07/06 between 1500 hours and 1630 hours arrested accused persons, viz., A4, A12, A13, A3 and A1 and wanted accused Hafizullah, Aslam, Salim, Ammu Jaan, Abu Umed @ Abu Osama, Sabir and Abu Bakr traveled with the seven bags containing explosives devices in different taxies to Churchgate Railway Station on western railways.

A1 alongwith wanted Pakistani accused Salim, Hafizullah and Aslam planted explosive device which blasted at Matunga Railway Station, for which C. R. No. 77 of 2006 was registered at Mumbai Central Railway Police Station.

A12 alongwith wanted Pakistani accused Abu Umed @ Abu Osama planted explosive device which blasted in between Santacruz and Khar Railway Stations, for which C. R. No. 87 of 2006 was registered at Bandra Railway Police Station.

A3 alongwith wanted Pakistani accused Abu Bakr planted explosive device which blasted at Jogeshwari Railway Station, for which C. R. No. 41 of 2006 was registered at Andheri Railway Police Station.

A13 alongwith wanted Pakistani accused Sabir planted explosive device in bogie no. 935A, which blasted at Borivali Railway Station, for which C. R. No. 156 of 2006 was registered at Borivali Railway Police Station.

A4 alongwith wanted Pakistani accused Ammu Jaan planted explosive device in bogie no. 846A, which blasted at Mira Road Railway Station, for which C. R. No. 59 of 2006 was registered at Vasai Road Railway Police Station.

An unidentified Indian and Pakistani accused planted explosive devices which exploded at Mahim and Bandra Railway Stations, for which C. R. No. 78 of 2006 and 86 of 2006 were registered at Mumbai Central Railway Police Station and Bandra Railway Police Station respectively.

Recovery of Explosives: During the course of investigation, about 500 grams of RDX, which is an explosive, was seized from A1's house in village Basopatti, Dist. Madhubani, Bihar on 20/07/06. Also traces of RDX were recovered from A6's house in Govandi on 29/09/06. Traces of RDX were also recovered from Maruti car No.MH01V9568 belonging to the A3 on 22/10/06 recovered from the compound of Al Hatim building, Millat Nagar, Andheri(W), Mumbai. Traces of RDX were also recovered from the house of A3 in Bandra(W) on 28/07/06. At the instance of the A13, 2.7 kg. of Ammonium Nitrite powder and 10 detonators were recovered from his house

in Mira Road. Similarly, corrosive materials namely Sulphuric Acid, Acetone and Hydrogen Peroxide were recovered from the possession of A2. The same, according to expert's opinion, could when mixed in the right proportions, be turned into a deadly mixture called TATP, capable of causing high intensity blasts. Experts have opined that RDX, Ammonium Nitrate, Nitrite and Petroleum Hydrocarbon oil was used in the explosions that took place in the seven firstclass compartments of western suburban trains of Mumbai on 11/07/06.

(paragraph 218 - 252 of the trial court judgement)

Name of the accused	Under trial period	Punishment	Alleged Organisations	Alleged Organisations
Organizational affiliation proved	Tortured by Police	Alleged fabrication	Allegations of fabrications	Allegations of fabrications
Kamal Ahmed Mohd. Vakil Ansari		SIMI and LeT		
Tanvir Ahmad Ansari	SIMI and LeT			
Mohd. Faisal Aatur Rahman Shaikh		SIMI and LeT		
Ehtesham Qutubuddin Siddiqui		SIMI and LeT		
Mohamad Majid Mohamad Shafi		SIMI and LeT		
Shaikh Mohd. Ali Alam Shaikh		SIMI and LeT		
Mohammad Sajid Margub Ansari		SIMI and LeT		
Abdul Wahid Deen Mohammed Shaikh			SIMI and LeT	
Muzzammil Aatur Rahman Shaikh			SIMI and LeT	
Suhail Mehmood Shaikh	SIMI and LeT			
Zameer Ahmed Latifur Rehman Shaikh			SIMI and LeT	
Naveed Hussain Khan Rasheed Hussain Khan			SIMI and LeT	

Asif Khan Bashir Khan

Prosecution Evidence

Witnesses

Name	Allegedly tutored?	Whether retracted / Hostile Witness	Considered credible by court?
Rajesh Satpute (PW-77)	Data Unavailable	No	Yes
Santosh Singh (PW-63)	Data Unavailable	No	Yes
Subhash Nagarsekar (PW-57)	Data Unavailable	No	Yes
Devendra Patil (PW-52)	Data Unavailable	No	Yes
Vishal Parmar (PW-74)	Data Unavailable	No	Yes

Details:

Rajesh Satpute, PW-77

Witness statement: Rajesh Satpute (PW-77) states that he reached Carter Road in Bandra in the afternoon on 11/07/06 when two persons came from the left side of his taxi after 15-20 minutes, engaged his taxi for Churchgate, sitting on the back side, one of them had a black bag with him, which he kept on the front seat by his side, i.e., by the side of the witness. He described an incident that happened en route, viz., that he was required to apply the brakes when he had gone some distance, at that time the bag moved ahead slightly, the person behind caught the handle of the bag and told him to drive the taxi carefully, where upon he asked him whether the bag should be kept in the boot, but the other person said that there are valuable articles in the bag and it should remain there. He unhesitatingly identified the A3 at the end of his chief examination as the person who had hired his taxi on 11/07/06 for Churchgate, had a black bag with him, had caught hold handles of the bag, which is a substantive evidence and whom he had identified in the third test identification parade on 07/11/06. (Page 440-441, para 431)

Defense arguments:

lack of visibility of passengers: Learned advocate also questioned as to whether it was possible for the witness to see the two persons, when it has come in his evidence that he was on his seat reading the newspaper when the persons approached him and he was continuously on his seat till he reached them at Churchgate Station. He submits that a taxi driver is required to concentrate on the road in front and a casual look at a person does not enable him to identify the person after four months. (Page 452, para 444)

Court's view: To my mind, these submissions and the criticism are baseless, because it is common knowledge that a person of a particular profession views their work or the objects of their work in their routine course of work and they can very much be aware of the details even if they do not see or observe the particular object for a long time in detail. Take the example of a cobbler, or tyre puncture repairer or a dentist, the list can be endless. (Page 445, paragraph 436) It is observed that the taxi drivers glance at passengers who approach their vehicles and know the number of passengers as well as the baggage whether it is small or big which is with them and it is commonly noticed that they ask the passengers whether the luggage should be kept in the boot. After the passengers board the taxi, the taxi driver usually glances in the rear view mirror that is inside the taxi, looks at who the passenger/s is/are, looks at their eyes and asks them about the destination and some times the route also. (Page 446, paragraph 436)

Inconsistencies with other testimonies: Learned advocate pointed out inconsistencies in the evidence of this witness and the evidence of Devendra Patil, PW-62, a traveller in the train, who allegedly saw the A3 placing a black coloured bag in the local train. It is in respect of Rajesh Satpute, PW-77, stating that the two persons did not have any other thing in their hands, where as, Devendra Patil, PW62, stated in his cross examination that out of the two persons, who boarded the train at Churchgate, the second person was having a hand bag, which was in his hand and he had not kept it anywhere. (Page 452, paragraph 444)

Court's view: In my humble opinion, this will not be an inconsistency, because no further clarifications are asked from Devendra Patil, PW-62, in respect of the hand bag. The hand bag may be 4" x 6" or 8" x 10" and as compared with a big bag, it may be a pouch not

noticeable to the taxi driver. It may or may not have been with the persons, but this inconsistency even if it is assumed to be true, is inconsequential. (Page 453, para 444)

Got up witness: Learned advocate submitted that Rajesh Satpute, PW-77, is a got up witness and as he is of the Kalachowki area in which the ATS Police Station is situated, he was just got up by the investigating machinery to stop the public outcry and to save themselves from the electronic media from failure to investigate and to bring the culprits to the book by creating the evidence to fix the persons, who were arrested on suspicious doubts without having any material. (Page 453, paragraph 445)

Court's view: The efforts of the learned advocate to discredit the investigating agency as well as the witness is totally smashed by a further question. Learned advocate asked the witness to verify whether this is mentioned in the case diary and the witness went through the case diary and stated that there is an entry in the case diary dtd. 03/11/06 about this. What this means is that his evidence in chief examination is confirmed by the existence of the entry in the case diary and has ruled out the possibility of the witness being got up. (Page 456-457, para 449). ACP Patil, PW-186, the investigating officer after the MCOC Act was applied, has denied the suggestion that he introduced Rajesh Satpute, PW-77 and Santosh Singh, PW-63, the taxi drivers in this case... He came to know when the statement was placed before him that Rajesh Satpute, PW-77, was driving the taxi of someone else. The most important answer that he gave is that the constables had made inquiries with the taxi drivers at his instance, that he had directed number of officers and constables in general to make inquiries to find out the taxi drivers, that this direction was given about 15 days prior to 03/11/06, that they were making efforts, that they succeeded in finding two taxi drivers on 03/11/06 only. Now this piece of evidence is sufficient to show the truthfulness of the investigation insofar as the independence of Rajesh Satpute, PW-77, is concerned and fully rules out the possibility of he being a got up witness. (Page 457-8, para 449)

Delay in recording statement: It was argued in respect of the delay in recording the statement of the witness that it is only after the accused retracted having made their confessional statements that the investigating agency created this evidence. The confessional statement of the A3 was allegedly recorded prior to 07/10/06, because the noting of Remand Application No. 67 of 2006 dtd. 09/10/06 shows that the Vakalatnama of advocate Shahid Azmi was filed on behalf of the A3, A5 and A7 on that day and the A3 submitted that his confessional statement was recorded under pressure, etc. (Pg. 458, paragraph 450)

Court's view: Relying on this, it is submitted by the learned advocates for the defence that in view of the contents of the confessional statement the evidence in the nature of the taxi drivers and travelers was created. This submission is not acceptable if one considers the cogent and unimpeached evidence given by Rajesh Satpute, PW-77, about which there is contemporaneous entry in the case diary which is brought on record during crossexamination itself. On the contrary, it appears that after reading the confessional statement, the investigating machinery made the inquiries in the right direction and got certain witnesses. (Page 459, para 450)

Court's observations on witness testimony: In my humble opinion, it appears that the witness is honest and is a straightforward person and he has given firm answers and given information that he knew. Learned advocate for the accused while submitting that the witness is a got up witness, criticized the investigating machinery for not having collected copies of his driving licence and documents of the taxi, like, registration certificate, permit, etc., and of not recording the statement of the owner of the taxi. (Page 444, paragraph 433) In view of the above discussion, it will have to be held that Rajesh Satpute, PW-77, has given a very straightforward evidence, it is not artificial, it is not articulated or decorated with any fantasies or falsehood and he has not made any tall claims. To my mind, if the investigating machinery, i.e., the ATS wanted to fabricate such type of evidence practically at the end of investigation, because the chargesheet was filed on 30/11/06, it would not have stopped at only two taxi drivers. Nothing prevented them from creating such type of evidence of taxi drivers to give evidence against some more accused. (Page 463, para 456)

Santosh Singh, PW-63

Witness statement: Santosh Singh (PW-63) is a taxi driver who allegedly carried A-13 and his companion from Perry Cross Road, Bandra to Churchgate Station on 11/07/06. two passengers for Churchgate came, one of them had a black heavy bag and umbrella, they sat on the back seat in his taxi keeping the bag between them that he took them to Churchgate, that en route they told him to drive the taxi carefully as the articles they had with them were delicate, that they asked him that how much time it will take and he told them that it will take about one hour and if there is a traffic, it would require more than that, that he left them near the subway by which one can go to Churchgate Station, that the fare was Rs. 180/, they gave him a note of Rs. 500/, he did not have the change to give the balance amount and told them that he would bring it and they should wait for two minutes, however, they were in hurry and told him to keep the change and they got down taking the bag with them. It has also come in his evidence that this was his first experience about the passengers keeping such a big amount of change, that normally before they take the passengers, they look at the passengers and en route one of the passengers was talking in Mumbai Hindi language and other was talking somewhat in Punjabi language. He described the built and approximate age of the passengers. It has come in his evidence that he was called by the police on 07/11/06 and he identified the A13 in the parade conducted by SEO Barve, PW-82, as one of the persons, who had travelled in his taxi on that day. SEO Barve, PW-82, then asked the accused his name which he told as Asif Bashir Khan. He clarified that he had identified the person who had a bag and umbrella with him and had travelled in his taxi on 11/07/06 and who had paid the fare. The discussion about the test identification parade will be made subsequently, but the witness has identified the A13 in the court unhesitatingly after looking around the court room which is a substantive evidence. (Page 464-465, para 457)

Defence arguments:

Delay in making statement: Learned advocate Wahab Khan submitted that this witness had important information about the incident of bomb blasts and it has come in his cross-examination that he came to know about the bomb blasts in the night of 11/07/06, he saw the news on the TV, but till 02/11/06 he did not think that he had some important information about the incident of the bomb blasts. Learned advocate Wahab Khan further attacked the veracity of this witness in view of his answer that it is true that after about a week it is difficult to remember a passenger and it becomes more difficult after a month also. Learned advocate Wahab Khan further attacked the veracity of this witness in view of his answer that it is true that after about a week it is difficult to remember a passenger and it becomes more difficult after a month also. (Page 477, para 468)

Court's view: To my mind, the submissions of the learned SPP Raja Thakare in connection with this, that the memory of a person is triggered when the facts are refreshed, is once again applicable to this witness also and this answer does not affect the veracity of the witness. (Page 477, para 468)

Omissions and contradictions: Learned advocate has criticized the evidence of Santosh Singh, PW-63, on the basis of the so-called omissions and contradictions, on the basis of the alleged confusion about the ownership of the taxi and the inconsistencies in his evidence read with the evidence of PI Wadmare, PW-175, and ACP Patil, PW-186. (Para 479, para 471)

Court's view: I have already held that the omissions and contradictions are not material to the factual aspects of the events about which the witness gave evidence and there are no inconsistencies in his evidence vis-à-vis the evidence of the two investigating officers. (Para 479, para 471)

Court on witness: In my humble opinion it is clear from the above discussion that the evidence of Santosh Singh, PW-63, is a cogent and convincing evidence and his credibility has not been impeached during his cross-examination. The most important fact is that he has no criminal antecedents, no history of him having acted as a panch or a witness in any other case and no contact with the police, which rules out the possibility of him being a pliable police witness. Therefore, it will have to be held that he is not at all a got-up witness and his evidence is not fabricated. He is surely a total independent witness and his evidence inspires confidence. I have, therefore, no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence prosecution has proved that on 11/07/06 the A13 along with one more person had traveled in a taxi from Perry Cross Road, Bandra at about 3.15 to 3.30 p.m. to a subway of Churchgate Railway Station, reaching there at about 4.45 to 5.00 p.m. and that they were carrying a black heavy bag with them. (Page 482, para 474)

Subhash Nagarsekar, PW-57

Witness statement:

Subash Nagarsekar, PW-57, states that he was travelling to Thane on 11/07/06. He sat down in the first class compartment which was first from the Virar side of the fast train heading to Churchgate station, and sat down the window side. He mentions that at Churchgate, while many people were entering the compartment, two men entered from the left side door with a big rexine bag and placed it on the rack above him, which he described as being blackish and mentioned that the two persons stood in the train. He mentioned that he got down at Dadar, as did the two persons with the bag. He mentions further that he took a slow train to Thane from Dadar. (Page 498-99, para 493)

It has come in his evidence that police took his statement about his travel on that day and what had happened in his presence and he also told them that he could identify the person who had kept the bag, if they have caught him. He gave the description of the persons. His further evidence is in respect of the test identification parade conducted on 7th and 08/11/06, which will be discussed at a later stage, but it has come in his evidence that in the parade conducted by SEO Barve, PW-82, he identified the A1 by touching him as the person whom he had seen keeping the bag on that day on the rack in the train. It has come in his evidence that SEO Barve, PW-82, asked that person his name which he stated as Kamal Vakil Ansari. He unhesitatingly identified the A1 in the court, which is a substantive evidence. His further evidence is about the test identification parades on both days, telling ACP Patil, PW-186, that he remembered that the other person with the A1 was stout and having a beard and wearing black shirt and white pants and when the A1 got down at Dadar Station behind him two more persons had got down with him, but the stout person who was with him, had not got down, therefore, the A1 went towards the window of the train and was signaling someone inside the train by hand to come out and most important of all, that when the A1 got down at Dadar Station he did not have the rexine bag with him. (Page 500-01, para 494)

Defence arguments:

Got-up witness: It was argued by the learned advocates for the defence that it is only after the retraction of the confession by the A1 that the police created the evidence of this witness and therefore this witness is a got up witness and for that purpose they are relying on his cross examination in respect of his work of income tax, his mobile as well as landline phone and his alleged association with Arun Gawali. (Page 513-514, para 505)

Court's view: Nothing is revealed from his cross examination to discredit his version or impeach his credibility. The submissions of the learned advocates of the accused have been covered at the appropriate places and it will suffice to mention a few submissions about the factors that were pointed out by the learned advocates. (Page 517, para 508). It will not be incorrect to say that the connection of this witness with Arun Gawali is absolutely irrelevant and it was nothing but a fishing expedition. I have already discussed about the reluctance of the witness to give the name of his business and his mobile number, etc. (Page 518, para 509)

Learned advocate Shetty for the accused submitted that when a person travels in the train at such peak hours, he comes in contact with so many persons and therefore it is not possible to remember the individual features of any person, keep him in the mind for a long period and to identify him. (Page 517, para 508)

Court's view: This submission is covered by the learned SPP's submission in respect of the taxi driver and how the memory of a person is triggered if certain facts are provided. It is submitted by the learned advocate that nothing uncommon had happened in the presence of the witness, because railway commuters enter in the train or go out and the bag is not uncommon. He is perfectly right in submitting that nothing unusual had happened in his presence. But insofar as the bag is concerned, in view of the answer by the witness that there were small brief cases and tiffin bags on the luggage racks, it is clear that a bigger bag is something uncommon. (Page 517-518, para 508)

Court's observations on witness testimony: A baseless submission was made that the witness has worked as a panch for the police in 2013. There is no evidence for this. Thus, at the cost of repetition it will have to be said that the evidence of Subhash Nagarsekar, PW-57, in respect of the incident in question, is unimpeached and is a cogent evidence. He has withstood the test of cross-examination and nothing material has been brought on record to discredit his version. That the witness is a totally independent witness, is absolutely clear from the most important fact that he has no criminal antecedents and no prior connection with the police either as an accused or a witness or a This rules out the possibility about he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. (Page 518-519, para 509)

Devendra Patil, PW-62:

Witness statement:

Devendra Patil, PW-62, states in his testimony that after finishing his work at the Custom House in Fort, he headed to Churchgate station at 5:15 PM to go to Goregaon/Malad and on reaching the platform, the 5:36 slow local was on the platform and he boarded the first class bogie which was fourth from the motorman cabin. He stood near the last row when he saw two persons boarding the train along with him, one of whom was carrying a black bag. On entering the train, they headed to the east side and the person carrying the bag tried to keep it on the overhead rack but he couldn't due to paucity of space, and put it under the seat facing Churchgate and sat down while the other person stood. He mentions that he was in the bogie when the blast took place and mentions that as the train passed 23 stations on its route, the bogie got crowdier and he lost sight of the two persons because he was pushed back with the crowd. He states that at 6:15 PM, after the train started from Jogeshwari, there was a loud explosion and he was thrown off the train and people fell on him. For some time, he did not know what happened. When he regained his senses, he got up and saw people severely injured. He caught an auto-rickshaw, went to Dahisar Check Naka and caught another rickshaw to head to Mira Road. On reaching, he went home. He mentions that his ears were affected for half an hour because of the explosion and that he had sustained some injuries to his back due to the fall and people falling on him. (Page 522-23, para 514)

It has come in his evidence that he participated in the test identification parade that took place on 07/11/06, the evidence of which will be discussed subsequently and, in the parade

conducted by SEO Barve, PW-82, he identified the A3 as the person who had kept the bag in the train on the day of the blast. He stated that SEO Barve, PW-82, called that person and asked his name and that person told his full name, but the witness could only remember his name as Faisal. He unhesitatingly identified the A3 in the court which is a substantive evidence. (Page 524, para 516)

Defense arguments:

Witness emerged unscathed from the accident: Learned advocate Shetty attacked the credibility of this witness on several counts on the basis of the answers given by him in the cross-examination and learned advocate Wahab Khan also made submissions on the same lines on those points. He submits that it cannot be believed that though so many persons in that bogie died and were injured, this witness does not even sustain a slightest injury, does not go to the doctor and for the first time he goes to the ATS office after about three months and gives his statement. (Page 526, para 519)

Court's view: In this connection in his chief examination itself Devendra Patil, PW62, had explained that after the train started from Jogeshwari, there was a loud explosion, there were tall persons in front of him, he was thrown down in the train and people fell on him. (Page 526, para 519). I do not think that this is something unnatural or unbelievable, because of the nature of the injury, though it was not visible, the witness did not think it necessary to go to the doctor. One often comes across news of accidents, in which nearly all except one person of a vehicle are killed and the person who survives is unscathed, he does not even get a single bruise. Apart from this, the chargesheet shows that there were 142 persons injured in the blast at Jogeshwari, but it could prove only injury certificates of 100 persons as per the Table No. 10 supra. That does not necessarily mean that the remaining 42 had not sustained injuries and had not travelled in that train. (Page 527, para 519)

Delay in making statement: Learned advocate Shetty's submission on the next point is in respect of the delay made by the witness in going to the police and the police taking his statement. He submitted that it is not that the delay in giving the statement before the police in such a case is unexplainable, but the explanation that the witness has given cannot be accepted and giving all the latitude to him, one can imagine if there is a delay of a day or two in such a case, but it definitely cannot stretch beyond three months. He submitted that the witness was travelling in the same compartment in which the blast took place, several persons died and several were injured, but he did not sustain even a slightest injury and for the first time he goes to the ATS on 20/10/06, after about three months of the blast and the police officer also records his statement. He submits that undoubtedly the witness is a got up witness to create some material against the arrested accused when the investigating machinery failed to have any concrete evidence against them. (Page 528-29, para 520)

Court's view: In my humble opinion, as mentioned at the start of the discussion of the evidence of this witness, his evidence is a clear and natural evidence and nothing appears to be fabricated. This can be gathered from his evidence, because it is in his evidence that after some

days it was in the news that some persons had kept black bag containing bomb in the train and the blast had taken place and he thought that he had seen the person keeping the bag in the train and therefore he should go to the police. (Page 530, para 521)

Inconsistencies in the statement: The main attack on the testimony of PW-62 by learned advocate Wahab Khan is in respect of his evidence that the train was on platform no. 2, entered the bogie from direction of Hutatma Chowk, and that the 5:36 local was approaching the platform. He submits that the information obtained under the RTI Act i.e. the Note Ext. 3052 proved by Avdesh Kumar Shukla, DW-16, Chief Controller of Mumbai Division, Western Railways and the PIO under the Act shows that the blast took place at Jogeshwari Rly Stn in train BO 619 DN on 11/07/06, and that the scheduled departure was at 5:36 PM from platform 1. He also pointed out the contents of the train control chart proved by the same witness, Ext. 3052(2), and submitted that the scheduled and actual time of departure of the said train was 1736 hours and this shows that Devendra Patil, PW-62, is lying by stating that the train was 23 minutes late and it shows the possibility that he may have boarded some other train. Learned advocate submitted that if the train control chart is seen then the other trains going towards Borivali from Churchgate around the 1736 train are not far apart in timing, which means that the witness may have boarded some other train going to Borivali. (Page 542-43, para 530)

Court's view: I do not think that this can be so understood or interpreted because the train control chart Ext. 3052(2) shows an earlier train going to Borivali at 1730 hours, which actually left one minute late, then there is a train BO 617 for which there are no timings upto Bandra and the subsequent is BO 627 at 1739 hours, which left one minute late and then is BO 629 at 1742 hours, which left one minute late. Thus, I do not think that there is any confusion in the mind of the witness about the timing of the train. Now, insofar as the platform number is concerned it is a fact that at the terminus like Churchgate or CST, i.e., the starting or ending point of local trains the platform no. 1 comes after one enters the entry of the railway station, thereafter is the first track, thereafter is the platform no. 2, thereafter is the platform no. 3, thereafter is the second track and so on. So a person can board the train standing on track no. 1 from the platform no. 1 or the platform no. 2 also. Thus, considering this situation and in view of the discussion upto now, it cannot be said that Devendra Patil, PW62, did not travel in that train on that day. (Page 543-44, para 530)

Court's observations on witness testimony: In view of the above discussion, it will have to be held that Devendra Patil, PW-62, has given cogent and convincing evidence. Considering the fact that no criminal antecedents or his connection with the police or he having acted as a panch or witness or as an accused in some case have been brought on record, it will have to be held that he is an independent witness. This rules out the possibility of he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. I have, therefore, no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A3 had kept a black coloured bag in the first class compartment of the 5.36 p.m. ChurchgateBorivali slow train at Churchgate and he was accompanied by one more person. (Page 548-549, para 536)

Vishal Parmar, PW-74:

Witness Statement: Vishal Parmar, PW-74, states that on 11/07/06 he had gone to an ENT Hospital in front of Hutatma Chowk at 4.30 p.m., that after his work was over and on getting a call from his employer directing him to go to the BMC Bank at Dadar, he went to Churchgate Station at 5.15 p.m. and went to platform no. 3, stood near the firstclass bogie that was in front and saw the indicator on the platform that was showing a Virar train of 5.19 p.m. It has come in his evidence that two persons came there and asked him whether Virar fast train would go from there, he looked at indicator and confirmed it, that out of them the person who had asked him the train and time had a black rexine bag with him, that they stood there, that 23 minutes thereafter the train came, those two persons started to board the train before him and when he was boarding the train, the rexine bag hit his leg and though he wanted to catch the window seat, he could not do so and sat on the long seat having 7 seats facing Churchgate, at the third seat from Hutatma Chowk side. It has come in his evidence that the two persons stood in the passage in between at some distance and when he looked at the bag when the train started, he thought that it was a big bag being carried in the first class compartment. It has come in his evidence that the bogie became crowded at Bombay Central and as he wanted to get down at Dadar, he started going towards the door after the train had passed the Elphinstone Station. The two persons got down in front of him and were walking fast empty handed, about which he did not think much at that time as he was engrossed in the thought of his work. Thereafter his evidence is about he meeting the client in the BMC Bank in front of Plaza Cinema at Dadar and coming to know after half an hour that there were blasts in the trains. Now in respect of he approaching the ATS on 02/11/06, it has come in his evidence that after some months there were news that some accused had kept bombs in black colour bags in the trains and it struck to his mind that on that day he had also seen the two persons keeping a black coloured bag in the train. It has come in his evidence that on searching in the newspapers he came to know that the ATS police of Bhoiwada are making the inquiry about the blasts. Therefore he went there, met officer Patil and told him about the incident and then his statement was recorded by officer Khandekar, PW-174. (Page 549-50, para 538)

Defense arguments:

Witness' boss was a regular panch witness: Learned advocate Wahab Khan also discussed the details of the said four panchanamas in which Mukesh Rabadia is seen to have acted as a panch witness and submits that because of this background the prosecution felt that it could not use Mukesh Rabadia as an eyewitness, therefore through him, Vishal Parmar, PW-74, was introduced as an eyewitness and who following the footsteps of his employer acted as a witness for the police. (Page 553, para 541)

Court's view: To my mind, the aspect of Mukesh Rabadia, employer of Vishal Parmar, PW-74,, having acted as a panch witness in several cases, including in this case, will not per se discredit the evidence of this witness, unless, as is rightly stated by the learned SPP, it is demonstrated and shown specifically that he is a witness provided by Mukesh Rabadia. It does

not affect the evidence of Vishal Parmar, PW-74, because it is not shown that at the instance of his employer or under the influence of his employer, Vishal Parmar, PW-74, gave false evidence. Infact, Vishal Parmar, PW-74's evidence was recorded in March, 2011 and it has come in his evidence that his employer died in the year 2010, therefore, there was really no need for him to give false evidence. (Page 555, para 544)

Regular panch witness: Next point is Vishal Parmar, PW-74, himself being a regular panch witness. In this respect the defence has heavily relied on the answers given by the witness in cross examination dtd.08/03/11 in paragraph 21 that he has not worked as a panch witness in any case and has not given any evidence in the court at any time vis-a-vis his answers in recross examination dtd. 29/08/12 that he was called by Tardeo Police Station where he stated to the officer there that he had acted as a panch witness in an accident case that had occurred at Mahalaxmi Race Course and he is denying having acted as a panch witness for a recovery panchanama in C. R. No. 11 of 2006 of the Crime Branch, UnitII. This plus his admission that he has acted as a panch witness for test identification parades in the Byculla Prison on 21/01/12 and in the Arthur Road Prison on 17/03/11 relating to the cases of the Crime Branch and again in the Arthur Road Prison on 03/09/11. (Page 555-556, para 545)

Court's view: It will be far fetched to link such witnesses to the police officers merely because they have appeared as panch witnesses earlier in some cases. Police officers in Mumbai are transferred to different police stations during their service period. The witness is a resident of Mahalaxmi area, within the jurisdiction of Tardeo Police Station. Hence, it is not improbable that he may have been taken as a panch witness at that time and it is also not improbable that he might have travelled in the affected train on the alleged date and time. This aspect, therefore, does not affect his credibility though he has denied having acted as a panch witness in that case. (Page 559, para 547)

Questionable conduct of the witness: The conduct of Vishal Parmar, PW-74, travelling by Virar train for going to Dadar is questioned in the next point as being doubtful on the basis of the answers given by him in paragraph 12 of his crossexamination and on the basis of the information and train control chart, Ext. 3052 (1 to 4) that were proved by Avdheshkumar Shukla, DW16. It was submitted that a person who has some common sense would not travel by Virar fast local as there is a heavy rush in that train and passengers are abused and moreover it is easy for a prudent man to catch a slow train or catch the Borivali fast train which may reach within the same time at Dadar or will take one or two minutes more and it is also questioned as to why he waited for four minutes for travelling in the Virar fast train though at the same time Borivali fast local of 5.15 p.m., which departed at 5.16 p.m., was already standing there. (Page 571-72, para 558)

Court's view: To my mind, drawing an inference that the evidence of Vishal Parmar, PW-74, is doubtful because of his conduct in choosing the Virar train will be far fetched and will amount to disbelieving the witness only for the sake of disbelieving him. As already noted earlier, the witness is a Mumbait and it is only a Mumbait who will dare to go by any train he

likes though he may be knowing that he will encounter a heavy rush in such a train. Moreover, it is common knowledge and it has been brought on record during the evidence of several witness that all trains at the evening time have heavy rush because those are the peak hours when commuters are returning to their homes from South Mumbai to western suburbs. Hence, it will be absurd to draw such inference and to hold that the testimony of Vishal Parmar, PW-74, is not reliable and should be discarded. (Page 572, para 558)

Delay in making statement: It is alleged in the next submission that there is a delay of nearly four months after the blast after which the statement of Vishal Parmar, PW-74, was recorded and even if his explanation that it struck to his mind that on that day he had also seen two persons keeping a black coloured bag in the train when there was news after some months that some accused had kept bombs in black coloured bags in the train is considered. It is the only explanation of delay which is not believable as the news of the bag was published on 01/10/06 and thereafter there is a delay of 33 days. It is alleged that there is a substantial delay in recording his statement and that it was recorded after all accused were remanded to judicial custody and they had retracted their alleged confessional statements. (Page 598, para 578)

Court's view: The submission that news of the bag was published on 01/10/06 is obviously baseless because it is nowhere brought on record that it had so happened. Now insofar as the evidence given by the witness, it is not an omission or a contradiction and in my humble opinion it is a most natural evidence and what more explanation of knowing about a particular thing can be expected? So infact there is no delay in recording his statement, much less a delay of four months because as soon as he came to know about it he approached the police on 02/11/06. (Page 598-99, para 578)

Court's observations on witness testimony: It is clear from the above discussion that in respect of the incident in question the evidence of Vishal Parmar, PW-74, is unimpeached and a cogent evidence and looking at the facts and circumstances of the case it cannot be said that he is a got up witness or that his evidence is fabricated. I have, therefore, no hesitation in accepting his testimony. (Page 603, para 583)

Confessional Statement

Name of the Accused	Statement given to	Whether Retracted	Considered credible by the court
	Police	Yes	Yes
Tanvir Ahmad Ansari	Police	Yes	Yes
	Police	Yes	Yes
Ehtesham Qutubuddin Siddiqui	Police	Yes	Yes
	Police	Yes	Yes
	Police	Yes	Yes
	Police	Yes	Yes

Police Yes Yes
Police Yes Yes
Police Yes Yes

Defense Argument on Confession:

It is submitted by the learned advocate Yug Choudhary, who argued for learned advocate Wahab Khan, on law points, that the provisions of recording confessional statements in TADA and MCOC Act are pari materia, therefore, the judgements under the TADA, POTA, section 24 of the Evidence Act and section 164 of the Cr. P. C. will apply equal force.

Devendra Pal Singh's case (three judges), which has made the job of this court a bit difficult. Pointing out the word 'confirmation' in the sentence 'The purpose of the confessional statement being sent to the court by producing the accused for confirmation (emphasis supplied) of the statement is to ensure that Devendra Pal Singh's case (three judges), which has made the job of this court a bit difficult. Pointing out the word 'confirmation' in the sentence 'The purpose of the confessional statement being sent to the court by producing the accused for confirmation (emphasis supplied) of the statement is to ensure that..... He submitted that these observations will have to be read to mean that if the accused complains, then the envelope has to be opened and the magistrate has to ascertain the nature and circumstances under which the confession was made.