

M.C.O.C. SPECIAL CASE NO.21 OF 2006DATE: 3RD APRIL, 2013Ext.3719

DEPOSITION OF WITNESS NO.33 FOR THE DEFENCE

I do hereby on solemn affirmation state that:

My Name : Sadiq Israr Ahmed Shaikh

Age : 37 years

Occupation : Nil.

Res. Address : C/1/19, Chittah Camp, Trombay, Mumbai-18.

(Witness is informed that there is no compulsion on him to give answers to the questions that may be put to him)

Examination-in-chief by adv Wahab Khan for A2, 6, 7, 10, 12 & 13

1. (Learned advocate submits that he is producing certified copy of confessional statement of the witness/accused in MCOCC 04/09, by an application. Learned SPP submits that he has objection.

Production of the document is allowed in view of the order below Ext S 3720).

2. I stay at the given address since birth along with my parents, brothers, brother's wives and my wife. I have passed the B.A. first year by distance education from Maulana Azad Urdu University, Hyderabad in the year 2000. I had done the ITI after SSC and

YBS

thereafter worked as a refrigerator technician in Godrej Company at Vikroli from 1996 to 2000. I became jobless thereafter as the company transferred its plant and I shifted in June, 2000 with my parents to my native village Para, Police Station Saraimir, Dist. Azamgadh, UP. My brothers and their wives continued staying in Mumbai. I stayed in my village upto the start of 2007 and then I shifted to Mumbai. I did not do any work at my native village during this period. I came to Mumbai in search of job as I had married and had children. I again started staying at the given address. I did the four months course of computer hardware and networking from Trombay. I started doing the said work. I got a job in CMS Computers, which was doing the work of Aditya Birla Retail Limited, who had outsourced their work to it. My duty timings were from 9.00 a.m. to 6.00 p.m. I worked there upto 16/09/08. I was picked up by the Crime Branch, Unit-III, Mumbai people at 10.00 a.m. on 17/09/08 from outside my office when I was going in my office. Sr. Inspector Arun Chavan was amongst them.

(Adjourned for recess)

Date : 03/04/2013

Special Judge

YD Shinde
3/4/13

Resumed on SA after recess.

3. I was arrested on the allegation that I was a member of Indian Mujaheeddin. I do not know exactly where I was taken, but it was probably in Wadala on the ground floor, as I heard the sounds of railways. Sr. Inspector Arun Chavan, Dinesh Kadam, high ranking officer Deven Bharati and other police officers were there. It was like a flat, but no family was residing in it. I was there upto that evening. I was tortured there. I was taken to the Crime Branch, Unit-III at N. M. Joshi Marg, Dadar in the evening. There also I was tortured. I was produced before the Killa Court on 24/09/08 for the first time by the Crime Branch in CR No. 152/08. I was sent to police custody. I was in the custody of the Crime Branch upto 04/11/08. Afzal Usmani, Ansar Ahmed Badshah, Akbar Chaudhary, Asif Bashir, Arif Badruddin, Yasir Anis, Ahmed Bawa, Naushad, Mansoor Peerbhoy, Majid Shaikh, Aniq Sayyad, Javed Ali, Mohd. Ali, Farooq, Fazle Rehman, Zakir, whom I did not know at that time, were with me in the police custody. I came to know their names when we were in the prison. ACP Ashok Duraphe was the investigating officer.

4. I was charged with the offences under sections 120,121, Arms

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and Explosives Act and MCOB Act. Police had alleged that there was an organization by name Indian Mujahedin and we are its members and we do bomb blasts, that we had a plan to do kidnapping. I was in judicial custody from 04/11/08. I was tortured during the police custody and other agencies like ATS, Delhi Special Cell, Hyderabad Octopus, I.B., RAW, UPSTF, investigating teams from Bangalore, Mangalore, Gujarat, Rajasthan used to come and question me in connection with their cases of bomb blasts. The cases of Gujarat were in connection with Ahmedabad blast and train blast. The case of Rajasthan was in connection with the blast at Jaipur. The case of Delhi was in connection with blasts on 13/09/08 at Connaught place or India Gate. I do not remember the names of 4-5 other blasts in Delhi. The cases of UP were in connection with the blasts in the market at Gorakhpur in November 2007, at Sankatmochan Mandir in Varanasi, at Varanasi railway station, in the premises of the courts in Lucknow, Faizabad and Varanasi, in Shramjivi train and firing at the CRPF camp in Rampur. The cases of Hyderabad were the blasts at Mecca Masjid and at Gokul Chat and Lumbini Park. The cases of Karnataka were the blasts of 25/07/08 at Bangalore, firing at the

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conference of scientists at Bangalore. I. B. and RAW people inquired in respect of the blasts all over India and RAW people also inquired whether I had gone out of India. I had never gone out of India. I had obtained a passport in UP in my name from Lucknow Passport office in 2006 for doing some job. I do not know where it is now. I did not use it at any time.

5. After the judicial custody in the crime branch case, the charges are not yet framed after filing chargesheet. It was filed on 17/09/10. I was given the copies of the chargesheet on that day and I have gone through the chargesheet. The chargesheet is against me and the persons whose names I have stated earlier. The allegations in that case are that we are members of Indian Mujahedin organization, that we were going to do blasts, that we had done blasts, that we had a plan of kidnapping. I do not remember the other allegations.

6. I was produced before the Killa Court and this MCOCC Court between the period from 24/09/08 to 04/11/08. I was not produced anywhere else. I do not remember the dates of the production in the courts and for how many times. I was produced before the courts in connection with the allegations of the police. There was no other

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reason for my production. I used to be produced before the magistrate in the court and at no other place.

7. I will be able to recognize the papers of the chargesheet. The documents in the chargesheet that were in my connection were in respect of recovery of arms, i.e., FSL report. Recovery of one carbine, two revolvers and some rounds was shown against me as being recovered from some garment factory at Sewree at my instance from the factory of one Abu Rashid. I do not know who he is and where he is. He is shown as wanted accused in my case. There is a document about my mobile, i.e., forms of sim card and CDR. I do not remember the number of the mobile mentioned in the document. I do not remember what other documents are in the chargesheet that are against me.

8. Thereafter I was arrested by the Ahmedabad Crime Branch in the Ahmedabad Serial Bomb Blasts case in which the bombs had exploded and some unexploded bombs that were found at Surat. The case was so named because there were about 20-25 blasts. 30 unexploded bombs were found. I cannot tell the names of the localities where the bombs had exploded. 60 persons had died and

more than 100 had been injured in those blasts. There are 73-74 accused who have been arrested and 22 persons are shown wanted accused. The allegation about my role is that I had sent some people to participate in the blasts. The police have alleged in MCOC 04/09 that five minutes before the blasts at Ahmedabad, an e-mail had been sent to the media on their e-mail ID by the accused from Mumbai.

9. I was then arrested in five bomb blasts cases of Delhi. Sanjeev Kumar Yadav of the Special Cell, Delhi is the investigating officer of all the cases. I was remanded to police custody. I do not remember the allegations in those cases as the chargesheets were given to my lawyer. I was involved in that case on the statement of another accused Mohd. Saif that the e-mails had been arranged by me. There are 13 accused in all the five cases, about 6-7 are shown wanted accused and two are shown dead, i.e., Atif Amin and Chota Sajid. It is in the chargesheet that they were killed in an encounter at 10 Batla house in Delhi. Inspector Mohanchand had died in that encounter. It is alleged that I had a connection with Aftab Ansari, allegedly connected with underworld and terrorist organization Huji.

10. I was then arrested by the Octopus Hyderabad in connection

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with the bomb blasts at Gokul Chat and Lumbini Park. There are three more accused in that case. As per the chargesheet 45 people were killed and some were injured. 4-5 persons are shown as wanted accused. They are Iqbal Bhatkal, Riyaz Bhatkal, Amir Raza Khan. I do not remember the names of others. These three are also shown wanted in MCOOC 04/09, in the Special Case No. 38/09 at Gujarat and in the cases at Delhi. I do not know in what other cases they are shown as wanted. I am not made an accused in UP cases. It is alleged in the chargesheets, that I and Riyaz Bhatkal were earlier members of SIMI and then we both and Iqbal Bhatkal became members of Indian Mujahedin. It is also alleged that Riyaz Bhatkal was in need of timers and that I had sent co-accused Arif Badar to him with the timers that were used in the bomb blasts at Gujarat and Delhi. There are no other allegations in connection with us. It is alleged in the chargesheet that Riyaz Bhatkal used to provide explosives and Amir Raza and Iqbal Bhatkal are conspirators in the conspiracy of committing blasts at Gujarat, Delhi, Hyderabad and Jaipur. As per the chargesheet, Riyaz Bhatkal and Iqbal Bhatkal are of Kurla, Mumbai and Amir Raza is of Kolkata.

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11. Iqbal Bhatkal, Riyaz Bhatkal, Amir Raza, Abu Rashid, Abu Kama, Abu Kafa are shown wanted accused in MCOB04/09. It is alleged that Abu Kama and Abu Kafa are of Pakistan. It is alleged in the chargesheet that they are members of L-e-T and are in contact with Iqbal Bhatkal, Riyaz Bhatkal and Amir Raza. They are also shown wanted in the cases at Delhi. It is alleged that Indian Mujaheedin a part of L-e-T of Pakistan and Iqbal Bhatkal, Riyaz Bhatkal, Amir Raza are alleged to be leaders of Indian Mujaheedin, which is alleged to be connected with ISI of Pakistan.

12. It is alleged in the chargesheet of MCOB 04/09 that the Indian Mujaheedin is committing the bomb blasts since 2005 in India at Hyderabad, Delhi, Gujarat, Mumbai 7/11 local train blasts of 2006, blasts in UP and Jaipur. These allegations are also there in the chargesheets of cases at Gujarat, Delhi, Hyderabad. These allegations in the chargesheet of MCOB 04/09 are on the basis of my alleged confessional statement and the confessional statements of other two accused, who claim that I told them about it. I cannot tell about the material in the chargesheets of the other cases on the basis of which such allegations are made.

13. I came to know about the allegations of the police as a copy of my alleged confessional statement dated 17th or 19/10/08 in two parts is in the chargesheet and which I have read. It is shown to be recorded in front of DCP Vishwas Nangre Patil. I cannot tell the timings when both parts of the confessional statement are shown to be recorded. The chargesheet shows that after the second part was recorded I was sent to the custody of the crime branch, but I do not remember the date shown in the chargesheet on which I was sent to the custody of the crime branch. I cannot say how I was sent to the crime branch custody from the DCP. I am not sure, but it is shown in the chargesheet that there was a gap of two days between the two parts of the confessional statement. It is shown in the chargesheet that during that period I was kept in the Colaba Police Station as directed by the DCP for reflection to consider that whatever I state would be used against me and no other reason.

(Adjourned at 5.00 p.m. at the request of learned advocate).

Date : 03/04/2013

YD Shinde
31/2/13
Special Judge

Date : 04/04/2013

Resumed on SA

14. It is in the chargesheet of MCOCC 04/09 that I had gone to Pakistan and had taken terrorist training that was imparted by L-e-T at Muzaffar Nagar. Similar allegations are made against three co-accused, i.e., Arif Badar, Zakif and Ansar Badshah. In respect of Zakif, it is alleged that our sentiments were hurt because of the demolition of Babari Masjid, Bombay riots and Gujarat riots and therefore we took training for doing bomb blasts in India after returning. It is alleged in the chargesheet that we went to Pakistan via Bangladesh, that I had recruited the above three co-accused and sent them to Pakistan. The allegations about going to Pakistan for training is in respect of me and above three co-accused, that Azam Chima of Pakistan gave the training to me and Ansar, that ISI gave the training to Arif Badar and Zakir. I do not remember the names of other trainers mentioned in the chargesheet. It is alleged in the chargesheet that we were given training in arms and explosives, preparing bombs by explosives and blasting them. I do not remember the names of the explosives mentioned.

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15. It is alleged in the chargesheet that two types of timers were used, one, table clocks of Samay company, and second, electronic circuit boards, that Arif Badar modified the table clocks and I gave the instructions to him, that electronic circuit boards were provided by S Zainuddin, who is an accused in the Hyderabad blast and who is in Bangalore Jail in connection with the blast in Bangalore on 25/07/08.

It is also alleged in the chargesheet that I was sent to Dubai by Riyaz Bhatkal and worked there as salesman in the showroom of Amir Raza Khan, that after taking training in Pakistan, I had gone to Nepal and from there I came to India. There is no other allegation in respect of my visit to Nepal. All the above allegations are based on my alleged confessional statement, which bears my signatures. I will be able to identify my signatures. (Learned advocate requests that the confessional statement of the witness/accused in MCOCC 04/09 be shown to the witness. Witness is shown the confessional statement at pages no,151 to 164 in MCOCC 04/09). The said confessional statement contains my signature on pages 152,154,156,158,160,162 and 164. (Learned advocate shows page no. 149 of the record of MCOCC 04/09, which is the 3rd page of the letter dated 20/10/08

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addressed by the incharge CMM, Mumbai to this court). The page contains my signature at the bottom and the date 18/10/08 is written. I was taken to the Killa court and I had signed on it there in the chamber of the magistrate before him. (Learned advocate requests that the certified copy of his statement be exhibited. Learned SPP submits that only the signature part be exhibited and objects to exhibiting the entire statement as no questions are put about the contents. The entire statement is exhibited subject to the objection, which will be decided finally. Hence, it is marked as Ext.3725).

10. Before being taken to the chamber of the magistrate, the crime branch people had beaten me and threatened to do as they instruct and to put my signatures and they also gave threats that they would arrest my brothers and wife and put them in prison. This threat was given to me once in the lockup of the Crime Branch, Unit-I three days before I was taken to the magistrate and second time before entering the chamber of the magistrate. The magistrate asked me my name and address and asked me to sign, but did not tell me the reason.

16. I was taken from the office of the Crime Branch, Unit-I to the chamber of the magistrate. I was taken to the office of DCP Vishwas

Nangre Patil from the lockup of Colaba Police Station, from there I was taken to Crime Branch, Unit-I office and then to the magistrate. I was taken before the DCP twice. PSI Nikam took me on the first occasion to the office of the DCP near VT Railway Station. I was made to sit in a side room with two constables, the officer went away and after sometime I was informed that the DCP had called me. I was taken inside the chamber of the DCP where PSI Nikam was already present. The DCP told me that he has had a discussion with the officer who had brought me there and he then asked me to sign on already written papers, without explaining anything to me. (Learned advocate requests that the certified copy of Part-I be exhibited. Learned SPP submits that only the signature part be exhibited and objects to exhibiting the entire statement as no questions are put about the contents. The entire statement is exhibited subject to the objection, which will be decided finally. Hence, it is marked as Ext. 3726). The date below my signatures is 15/10/08. The DCP told me that he is sending me for rest for two days and that we would meet after two days. A PSI of Colaba Police Station took me to that police station and put me in the lockup. The officer who had taken me to the

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DCP visited me in the lockup and told me to do as the superior officers says so that everything will be peaceful and there will be no problem for me.

17. The same PSI of Colaba Police Station took me to the office of the DCP after two days. PSI Nikam of Crime Branch was present there. The PSI of Colaba Police Station handed me over to PSI Nikam. PSI Nikam kept me with two constables and left. After sometime I was taken to the chamber of the DCP. PSI Nikam was present there. The DCP told me to sign on already written papers and he gave the papers to PSI Nikam, who placed them before me and asked me to sign. (Learned advocate requests that the certified copy of Part-II be exhibited. Learned SPP submits that only the signature part be exhibited and objects to exhibiting the entire statement as no questions are put about the contents. The entire statement is exhibited subject to the objection, which will be decided finally. Hence, it is marked as Ext.3727). The dates below my signatures are 17/10/08 and 18/10/08. I had put the dates as instructed by PSI Nikam.

(Adjourned for recess. Learned advocate submits that he will come at

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3.00 p.m. as he wants to attend a part-heard matter in another court).

YD Shinde
6/4/13

Date : 04/04/2013

Special Judge

Learned advocate appeared at 3.45 p.m.

Resumed on SA

18. The chargesheet in MCOCC 04/09 shows my arrest panchanama and seizure panchanama of arms. I do not remember whether any other document in connection with the alleged confession is in the chargesheet.

Q. Who is Riyaz Bhatkal?

(Question is disallowed as it is not relevant).

Q: Who is Atif Amin?

(Question is disallowed as it is not relevant).

Q. Who is Sajid?

(Question is disallowed as it is not relevant).

Q. Who is Amir Raza?

(Question is disallowed as it is not relevant).

(Learned advocate submits that the questions be allowed as he will show the relevancy thereafter. Learned SPP submits that whenever

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any question is objected, the person asking the question should ^{Y. S. Adv. for DS} ~~satisfy~~ the court about the relevancy and admissibility of the evidence. There is no procedure to allow such question under the assumption that at a later stage the relevancy and admissibility will be shown. The objection to the relevancy of the questions and the answers given and their admissibility will be decided finally. Hence, learned advocate is allowed to ask the questions).

19. I do not know who Riyaz Bhatkal, Atif Amin, Sajid and Amir Raza are. I do not know Iqbal Bhatkal. I have never met Riyaz Bhatkal, Iqbal Bhatkal and Amir Raza and I never had any talk with them. I have never met Atif, Amir and Sajid and I never had any talk with them. All these persons never gave any instructions to me. I heard their names for the first time in the office of the Crime Branch when I was given a written paper containing a story to learn by heart. This story was relevant to the 7/11 blasts. I was given the story after I had been taken to the office of the DCP. Officer Dinesh Kadam of the Crime Branch had given it to me. It was written in Hindi on a paper. The story was that I and Atif had made a plan at Saraimir, Dist. Azamgadh to cause bomb blasts in Mumbai and as per the plan I

went to village Sajarpur and met Abu Rashid and Dr. Shahnawaz and prepared them to cause the 7/11 Mumbai local train bomb blasts, that thereafter I went to Mumbai to my house in Chittah Camp, that some days after I came back, Abu Rashid and Dr. Shahnawaz came to Bombay and Abu Rashid took a flat on rent in Sewree and he and Dr. Shahnawaz started staying there, that I left my house in Chittah camp and started staying with them, that I had brought timers when I came back to Bombay from my village, that Atif came from Delhi to the said flat bringing Rs. 50000/- with him, that I sent Atif to Riyaz Bhatkal to bring explosives, that Atif also convinced a boy by name Sajid to help in causing the blasts, that I obtained first-class passes of myself, Atif, Sajid, Dr. Shahnawaz and Abu Rashid, that I obtained time tables of Mumbai local railways and studied them, that in the meanwhile we obtained pressure cookers and traveling bags from Sewree, that as per the plan in the story, we all gathered in the said flat at Sewree in the morning on 11/07/06 and assembled seven bombs there, that before that I had taken those four persons and traveled with them in the first-class local trains from Churchgate, that as per the plan in the story I started from the Sewree flat with a bag

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containing bomb, that from Dadar I went by western railway to Churchgate, that as per the plan in the story Atif left the flat with two bags containing bombs, that I kept the bag containing the bomb in a first-class bogie, that thereafter I got down at Marine Lines railway station and returned back to Churchgate, that I met Atif at our already decided point in the railway station and took a bag containing bomb from him, that Atif went and sat in a train and after keeping the bag in a first-class bogie, got down at Dadar, that I boarded the first-class compartment of another train and kept the bag in the bogie and got down at the next station and returned to Churchgate, that as per the story Abu Rashid and Sajid were to leave the flat of Sewree together and come to Churchgate, that when I reached Churchgate after planting the second bomb, those two were there, that they boarded the trains that were assigned to them, that Abu Rashid left the bag in the train and got down at Dadar and went to Sewree and Sajid got down at Bandra Railway Station, that as per the story Dr. Shahnawaz was to leave the Sewree flat after Abu Rashid and Sajid, with two bags containing bombs and was to come to Churchgate, that Dr. Shahnawaz met me at the decided point in Churchgate Railway

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Station and I took one bag from him, that as per the story, Dr. Shahnawaz sat in the train that was assigned to him and got down at Dadar and went to Sewree, that I took the bag that I had taken from him and boarded a train and traveled upto Dadar and got down at Dadar and went to Sewree, that as per the story the blasts took place on the same day, that Abu Rashid threw all the articles that were remaining after the bombs were prepared in the Mahim creek, that two days after the blasts, I and Atif went by train to Azamgadh and Dr. Shahnawaz went thereafter to Lucknow, that Abu Rashid used to stay in Sewree and he stayed there and Sajid stayed at his house in Andheri. As per the story the bombs were kept in pressure cookers, that explosives, Samay timers and detonators were kept in pressure cookers, which were of three liters capacity and kept in traveling bags, that the timers were set in the afternoon for 6.30 p.m., that the bomb laden bags were kept on the racks of the first-class compartments. I do not remember what was in the story as to who had arranged for the detonators. This story was in connection with the bomb blasts of 11/07/06 in seven trains in first-class bogies. The story was in three pages. I read it and learnt it by heart. I was made

to relax and told to learn the story by heart as I was to tell it before a camera. They asked me to tell this story before a camera in a relaxed manner and they shot the video of my telling the story. I was telling the story for about 45 minutes. It was probably officer Dhamankar of Crime Branch, who had burn injuries on his face and hand, who had done the shooting.

20. Same thing happened twice in Gujarat. I was told by the Gujarat police to tell the same story that was told by me before the camera in the Crime Branch, Mumbai. They also recorded my story in front of camera. Same story was not recorded anywhere else. I did not state the same story anywhere else. I had not stated the said story in Mumbai.

21. I was arrested by the ATS in view of this story on 21/02/09 and taken to Kalachowki. I was taken to the Killa court by making me an accused in the 7/11 case. I again say that I was taken to the MCOB court. I was remanded to police custody for about 14 days. I was remanded to judicial custody on 21/03/09. I was kept in Kalachowki and Bhoiwada lockup during this period. I was taken to the court and to these two places only during this period. I was beaten during this

period asking me as to why I have given the story against their case.

I told them that I was given that story, that I did not tell it on my own and I was beaten and tortured and forced to tell the said story. They beat me once ^{7 again or} and told me to go before a magistrate and say that I

5 want to make a statement. The magistrate means MCOC court.

When I was taken to the court, it was told to the court by the ATS that

I want to make a statement. The Special Public Prosecutor Raja Thakare made such a statement before the court. The judge asked me whether I want to make a statement and I said yes. ACP

10 Bhagwan Kamble was the officer present on that day. ACP Kamble, Pl Khanwilkar, Sachin Kadam and 2-4 others, whose names I do not remember, had beaten me before I was taken to the court. Thereafter I was taken to the lockup of the ATS and kept there. I again say that I was taken to the lockup of the ATS from the court. Thereafter I was

15 told by ACP Kamble that it is not necessary for me to give any statement saying that they would complete the further process of my giving the statement before the magistrate. I was not taken before the magistrate and my statement was not recorded.

x
22. ATS gave me a story when I was in police custody and took a

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video of my narration of the story.

(Adjourned at 5.05 p.m. at the request of learned advocate as he wants to go to CR No. 29, where a witness is called from Delhi in a part-heard case).

Date : 04/04/2013

YD Simwale
6/4/13
Special Judge

Date : 05/04/2013

Resumed on SA

Q. What reason the Crime Branch officers told you for recording your video?

(Learned SPP objects on the ground that the evidence that the learned advocate wants from the witness is hearsay and cannot be taken on record. Subject to the objection the answer is recorded).

x Before taking my video in the Crime Branch, some officers of the Crime Branch had told me that they were in the ATS earlier and they know that the persons arrested in the 7/11 blasts are falsely arrested and that they know that they had not done the blasts, but I and some other persons had done the blasts and they would implicate us. The officers in the Crime Branch were Ashok Duraphe, Dinesh Kadam, Deven Bharati, Dhamankar, Marde, Sawant, Nikam, Rodrigues and others whose names I do not remember. Dhamankar and Dinesh Kadam were the officers who told me that they were in the ATS earlier. Other officers also told me that the accused in the 7/11 case are falsely involved.

23. I came to know later on that my videos were telecast on a English news channel, whose name I do not know. I did not take any

action in that respect. My father and brother had met me once during my police custody period. My lawyer did not meet me during my police custody. My father and brother started crying on meeting me and I also started crying and they told me that everything will be fine.

5 There was no other talk between us. The video shooting was done 5-6 days after I had been produced before the DCP. I do not remember whether I was produced before the court during this period. I was produced in the court after the video shooting from police custody. The court had asked me whether I had any complaint

10 of ill-treatment. I had replied in the negative. I do not remember how many times I was produced in the court after the video shooting, but I was remanded to judicial custody and sent to the Arthur Road Prison after the police custody. The court asked me about complaint of ill-treatment on every occasion that I was produced from police custody.

15 I replied in the negative on every occasion. I did not inform the court about the video shooting till the time I was sent to judicial custody. I was represented by an advocate before judicial custody. Some lady by name Chawla was the police prosecutor. I did not give information about the alleged confessional statement and video recording to my

advocate as I had no talk with him. My father and brother used to remain present on the court dates during police custody. I was not allowed to talk with them, therefore, I did not tell them about the confessional statement and video shooting. I do not remember

whether I had told or complained about it anywhere.

24. Crime Branch people had inquired with me and had taken my statement, but had not read it over to me. ATS people had inquired with me, but had not taken my statement.

Q. Where are the people whose names you stated at the time of taking your video?

(Learned SPP objects on the ground that there is no such document on record and therefore the question cannot be allowed. Witness has already stated that he ^{78c} ~~has~~ narrated the story given to him by the Crime Branch people before a camera, which included the names of

the persons. Hence, the question is allowed, subject to the objection about its relevancy and admissibility). Out of the said persons Arif Badar is in jail and I ^{79d} come to know that Atif is killed in encounter. I do not know about the other persons.

405 25. I do not remember the make of the mobile handset that I was

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using in 2008. I was using only one sim card since 2007. It was prepaid card of MTNL issued in my name. I do not remember what documents I had given to obtain it. I had given my photograph. I did not get copy of the application form in the chargesheet of MCOB 04/09. There is a document which the Crime Branch is saying was given by me to obtain the sim card. I have seen the copy of the CDR in connection with the form which is alleged to be given by me. I do not remember the starting period, but the CDR is upto starting ~~the~~ ^{the} ~~the~~ ^{the} of September 2008. I do not know with whom contacts of that number are shown in the CDR. I did not make any complaint in connection with the CDR. I was using the sim card that was in my name for keeping contact with my family members and acquaintances. My mobile and sim card were with me when I was arrested. I do not know what happened to it. Officer Arun Chavan took them from me.

15 I have read the arrest panchanama. There are panchas and my name in it to show that it is my arrest panchanama. I sign in English. I do not remember what else is there in the panchanama to show that it is mine. I can identify it. I do not know where it was prepared. I do not remember whether my signature was taken on it.

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(29995)

26. The recovery from me is shown in the presence of panchas. I do not know the date of the recovery and after what time and how many hours after the arrest it is shown.

(Adjourned for recess)

Date : 05/04/2013

YD Sharma
516113
Special Judge

Resumed on SA after recess.

27. The ATS took me to Kalachowki, Bhoiwada and Nagpada after my arrest. They also used to take me to the KEM Hospital. Crime Branch people used to take me to the GT Hospital. I do not remember how many times. I cannot tell the gap in between two occasions that I was taken to the hospital. The Crime Branch took me to the hospital after I was produced before the court and till I was in police custody. Officer Rodrigues used to take me to the hospital to the doctors to tell about any problem that I have. Before being produced before the doctors, I used to be told not to make any complaint to the doctor. I used to tell the doctor that I have no problem. The doctors used to take my thumb impression and send me back.

28. (Learned advocate asks the witness to point out any officer of

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the ATS if he is present in the court. Witness points to PI Mohite). He was present when ATS took my custody and used to come and go when I was in the custody of the ATS and being questioned.

Q. Whether you took the ATS police to the house of Abu Rashid, one shop of pressure cookers and one shop of bags?

(Learned SPP objects on the ground that it is a leading question. Question is leading. Hence, it is not allowed).

29. I used to be taken in handcuffs by the ATS to the office and the handcuffs were opened after reaching the office. I was not allowed to wear chappal and an officer and two constables used to take me. I do not know by what route they used to take me because I used to be veiled. The veil used to be removed at the office of the DCP.

30. Crime Branch officer Nikam used to be present there. Crime Branch people used to take me in handcuffs and in veil to the DCP office. The veil used to be removed in the DCP office. Crime Branch officer used to ask me to remove it. There was a large table in the DCP office, the DCP used to sit on the chair on one side and there were 3-4 chairs on the opposite side. I was made to stand. On the first occasion I stood there for 4-5 minutes. (Learned advocate

requests that he be permitted to put leading questions about the contents of the confessional statement of the witness given in MCOCC 04/09. Permitted). It did not happen that from the DCP office I was taken in veil to a magistrate. It did not happen that the magistrate read over the confessional statement to me. It did not happen that I signed on the statement Ext.3725 saying that the contents of the confessional statement are true and correct. (Learned advocate submits that he is declaring the witness hostile and requests permission to cross-examine the witness as he is not acknowledging the contents of Ext. 3725. Permission granted).

Cross-examination by adv Wahab Khan for A2, 6, 7, 10,12 & 13

31. It is true that I was taken before the magistrate in his chamber in veil by the officer of Colaba Police Station. It is not true that the officer handed over a sealed packet to the magistrate in my presence. Witness volunteers - he had already given it to the magistrate. It is not true that the magistrate read over the confessional statement. It is true that I admitted that it was correctly recorded as I had been threatened outside. It is not true that I so admitted as the magistrate had read it over to me. I only said that

whatever is in the documents there is true. I was not told as to what were the documents. It is true that the documents were open before the magistrate. I did not know at that time that they were my confessional statement. I cannot say whether it is wrongly written in

Ext. 3725 that the magistrate had read over the confessional statement to me.

32. Crime Branch officers used to interrogate me in police custody before I was taken to the DCP. Rakesh Maria, Deven Bharati and high ranking officers also interrogated me. The officers who had been transferred from the ATS to the Crime Branch. They used to interrogate me about the bomb blasts all over India and at different places at Bombay. I was also inquired about the bomb blasts in the railways in Bombay on 11/07/06. This inquiry continued for many days during my police custody along with the inquiry of other cases. I was inquired with from different angles in respect of the train blasts, including how the blasts were done. Witness volunteers- at that time I used to tell them that I had not done those blasts and I do not know anything about it. It is true that they were repeatedly asking me as to what explosives were used in the railway blasts and from where they

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were procured. Witness volunteers- at that time I used to tell them that I do not know anything about it as I had not done it. I was asked about the kind of triggering device used in those blasts and how they were used, as to who are the people involved in causing the blasts and which organization is involved, as to who had provided the funds and from where, as to where the bombs were assembled and how they were transported, as to why we had done the blasts that killed innocent people. It is true that they used to tell me that they do not know even after the passage of two years as to the type of triggering device used in those bomb blasts. It is true that they used to tell me that they have involved 13 dummy people in the railway bomb blasts case and in fact we had done the blasts, that they have involved innocent people in the Malegaon blast 2006. It is true that they used to tell me that because of us 13 people are going to hang. I used to reply to all their questions. Witness volunteers- I used to say that I have not done any blasts, that I am not involved and I am not concerned with any blasts and I do not know anything.

33. It is not true that before 15/10/08, I expressed to ACP Duraphe of the Crime Branch that, I am repenting my actions and I want to make

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a confessional statement. PSI Sanjay Nikam and staff of the Crime Branch had taken me to the office of the DCP in veil, but I am not confirmed whether it was on 15/10/08 and whether I was produced at 4.15 p.m. I do not know whether Jt. CP, Crimes had nominated DCP Vishwas Nangre Patil for recording my confessional statement. It is not true that when I was produced before DCP Patil in his chamber, he called his typist Hemant Dalvi in his chamber and asked PSI Sanjay Nikam to go out of his chamber, that thereafter I, the DCP and typist were only in his chamber, that thereafter he rang the bell and told his peon to close the door and not to allow anyone to come inside, that he asked me and I told him that I know Hindi, that he told the typist to type on the computer the questions that he would put and the answers that I would give. It is wrong if it is so written in Ext. 3726.

Q. Can you assign any reason why it is so written?

(Learned SPP objects on the ground that it is an admission given by the witness. Hence, it cannot be proved in view of ⁷⁰⁵ ~~the~~ Section 21 of the Indian Evidence Act. Learned advocate Wahab Khan submits

that the document which is on record is the confessional statement of

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the witness and the admissibility of the confessional statement can be decided finally in view of the law laid down in the case of Bipin Shantilal Panchal. In my view, the relevancy and admissibility of the confessional statement can be decided finally in view of the judgment of the Supreme Court in Criminal Appeal no. 445/13). I cannot assign any reason why it is so written.

34. I never met DCP Vishwas Nangre Patil in the Crime Branch. He was not conducting the investigation of my case. I had never met him before. It is not true that when I went in his chamber, he told me that he is the DCP of Zone-I, that he had no concern with the investigation of my case and that I am in his custody and not in the custody of the investigating officer of my case. It is true that I did not make any complaint to him. I did not tell him that I was tutored, threatened or tortured. I did not feel like complaining to him. He only asked me my name and address, but did not ask me my age. He did not ask me in which school I studied and in which language. I had no idea that I had been taken to a DCP for recording my confessional statement. It is not true that he had asked me why I had been produced before him and I told him that I wanted to make a confessional statement. It is

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not true that he asked me as to for what crimes I want to make the confessional statement and I told him that I want to confess about myself and my association with Indian Mujahedeen and the blasts made in India at various places and the e-mails sent in that regard. It is not true that he told me that it is not binding on me to give confessional statement and I told him that I understood this. It is not true that he told me that if I give the confessional statement it would be used against me and the co-accused as evidence on the basis of which we all can be punished and I told him that I have understood it, that if I do not give the confessional statement before him, he will not send me back to the police who are investigating my case and I said that I understood it, that he asked me whether police have threatened or induced me or promised to make me an approver to make the confessional statement and I replied in the negative. It is not true that he asked me whether I want to keep any relative, friend or advocate present at the time of giving the confessional statement and I said no. It is not true that he told me that he is giving me 24 hours to think peacefully and with a cool mind whether to give a confessional statement and for that purpose I would be kept in the lockup of

Colaba Police Station and I said yes. It is not true that I was given 41 hours time to think and to change my mind. It is not true that he read over all the above things to me and I admitted that they are correctly written, that all this work was completed between 1615 and 1730 hours of 15/10/08 and he took my signature on it and he also signed on it. It is not true that he took me in his custody and sent me with the officers of Colaba Police Station directing them to keep me in the lockup of Colaba Police Station and not to allow any officer of the Crime Branch to meet me without his permission and to veil me during transit. I cannot assign any reason why it is so written in Ext. 3726. It is not true that all these things had happened, therefore, I had signed as they were true. It is true that I put the date below my signature. I do not know whether it was 15/10/08 on that day. It is true that I had signed at two places before the DCP on the first day.

35. I do not know whether the DCP had ordered to produce me before him at 10.30 a.m. on 17/10/08. I do not remember whether officer Rahul Naik and staff had produced me before the DCP on 17/10/08 at 10.30 a.m. It is not true that I was produced in veil. I was produced before the DCP on the second occasion by the Colaba

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Police. It is not true that after being produced before the DCP, he asked me to remove veil, again called his typist and confirmed that no one could see or hear us. I cannot assign any reason why it is so written in Ext. 3727. It is not true that the DCP put questions to me and I answered them, that he asked me whether the period of 41 hours given to me was sufficient for reflection and whether I wanted more time and I said that the time was sufficient and I did not want any more time, that he asked me whether any officer of the Crime Branch had met me and I said no, that he put questions to me as he had put on the earlier occasion and I answered all the questions, that he asked me as to why I wanted to give the confessional statement and I said that I am repenting, therefore, I want to make it. It is not true that he started writing my confessional statement as he was satisfied that I was making it voluntarily without any threat, promise or pressure and because I was repenting my act. It is not true that I have passed the 11th standard. I have done refrigeration and air conditioner course from Habib Technical Institute, Dongri. It is not true that I was saddened^{ins}_{ed} because of the demolition of Babri Masjid and the riots thereafter. It is not true that I told the DCP about my

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qualifications, occupation, association with SIMI, the meeting places and our discussions about the issues. I cannot assign any reason why it is so written. It is not true that I told the DCP about going to Pakistan and taking training, about returning back and preparing Arif Badar for going for training to Pakistan, that I was trained in Pakistan to use explosives, detonators and circuits and fix timers for preparing bombs and that I told Arif Badar that some more boys are to be sent for training, that I requested the DCP to give me some more time for giving my further statement and he gave me time upto the morning of 18/10/08. I cannot assign any reason why it is so written. The DCP had taken my signature. It is not true that he had signed. It is not true that thereafter I was taken to Colaba Police Station and kept me in a lockup there upto the morning of 18/10/08. I cannot assign any reason why it is so written.

36. It is not true that I was produced before the DCP by PSI Nitin Kakde and staff of Colaba Police Station at 10.30 a. m. on 18/10/08, that the DCP called his typist and then asked me the similar questions that he had asked me on the earlier day and on that day also I had told him that I am making the statement as I am repenting

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what I had done. I cannot assign any reason why it is so written. It is not true that I had stated to him that I used to remain in contact by e-mail with one Azizbhai, that Mujahid Salim was killed at Hyderabad in police firing, that I gave copy of my passport to Aziz, who sent me a tourist visa on which I went to Dubai on August, 2002 and there I came to know that the said Aziz is Riyaz Bhatkal, ~~and~~ ^{that's} I met Amir Raza and worked at his shop and he used to tell me to send boys for training and had told me to prepare a big group. It is not true that I had stated that I used to send boys to Pakistan on the say of Amir Raza and Riyaz Bhatkal, that I had formed a group of 13-18 boys. It is not true that when many boys returned after taking training from Pakistan, Amir Raza told me to show some work and then with the help of Riyaz Bhatkal, Arif Badar, Atif, Dr. Shahnawaz and other boys we caused the blasts at Govindpura in Delhi, Sankatmochan Mandir at Varanasi, in Shramajivi Express and in Bombay railways on the say of Amir Raza. It is not true that I had stated so before ~~the~~ ^{the} DCP Patil on 18/10/08, that he typed all these things and all other things that I told him, that I told him that explosives were kept at the house of Abu Rashid and were sent to other places in India for causing

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blasts, that I had given my mobile number and the mobile numbers of the persons, who used to work with me. It is not true that my mobile number was 9969506112. I never used this number. It is true that the chargesheet shows recovery of the sim card of this number from me.

5 I do not know whether the chargesheet shows contact from this number with the numbers of the co-accused.

Q. The CDR of this number shows that it was used on 11/07/06 at all the places as per the story that was given to you about your movement from the flat at Sewree to the Churchgate railway station and further movements.

A. I do not want to answer this question.

(Learned advocate requests that the witness be compelled to answer this question).

(Adjourned as court time is over).

Date : 05/04/2013

YDS Shimole
576113
Special Judge

Date : 06/04/2013

Resumed on SA

37. (Witness is directed to answer the question). It is false.

Q. It is my case to you that mobiles no. 9969506112, 09415834241 of Dr. Shahnawaz, 9820805390 of Abu Rashid, 9730313929 of Riyaz Bhatkal, 94553758519 of Saif, and 9870911350 of Arif Badar were in use before the blasts of 11/07/06 and thereafter along the sites of the blasts as per the story given to you?

(Learned SPP objects on the ground that no foundation is laid to show that the numbers were of particular persons. Question is disallowed as it is presumptive and no foundation is laid). I had not stated in my alleged confessional statement that the above mentioned numbers were of those persons, that we used to contact each other from PCO and STD, that I used to contact them from PCO and STD in Marol. I cannot assign any reason why it is so written. It is not true that I had stated in my alleged confessional statement that some days after the incident of Delhi, Riyaz told me that there is some problem, therefore, I stopped going for work and police caught me and Arif on 24/09/08 in Nehru Nagar, Kurla. It is not true that the DCP read over all that he had written and I said that it was correct as

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per my say and I signed it and then he also signed it, that this entire work was completed from 10.30 a.m. upto 2.10 p.m. on 18/10/08. It is not true that the DCP gave certificate that I gave the confessional statement voluntarily without any threat, pressure, coercion, promise or inducement, that I had given the confessional statement knowing that I was not bound to make it and it could be used as evidence against me and the co-accused.

38. (Witness is confronted with and read over the portion in the second paragraph in Ext. 3725 titled 'Statement of accused Mohmmad Sadique Israr Ahmed Shaikh, age 33 years'. Hence, it is marked as 'A'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written. (Witness is confronted with and read over the portions in the first three paragraphs in Ext. 3726. Hence, it is marked as 'A'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written. (Witness is confronted with and read over the questions 1 to 19 in Ext. 3726. Hence, it is marked as 'B'). It is not true that I had stated this portion, it was written and then was read over to me. I

cannot assign any reason why it is so written. (Witness is confronted with and read over the portion on page 4 in Ext. 3726. Hence, it is marked as 'C'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written.

39. (Witness is confronted with and read over the portions in the first two paragraphs in Ext. 3727 dated 17/10/08. Hence, it is marked as 'A'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written.

(Witness is confronted with and read over the questions 1 to 11 in Ext. 3727. Hence, it is marked as 'B'). It is not true that I had stated this portion, it was written and then read over to me. I cannot assign any reason why it is so written. (Witness is confronted with and read over the portion on page 2 and 3 in Ext. 3727. Hence, it is marked as 'C'). It is not true that I had stated this portion, it was written and then read over to me. I cannot assign any reason why it is so written. (Witness is confronted with and read over the portion on page 3 and 4 in Ext. 3727. Hence, it is marked as 'D'). It is not true that I had stated this portion, it was written and then read over to me. I cannot

assign any reason why it is so written. (Witness is confronted with and read over the portion on page 4 in Ext. 3727. Hence, it is marked as 'E'). It is not true that I had stated this portion, it was written and then read over to me. I cannot assign any reason why it is so written.

40. (Witness is confronted with and read over the portion on page 1 in Ext. 3727 dated 18/10/08. Hence, it is marked as 'A'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written. (Witness is

5 confronted with and read over the portion containing the questions 1 to 11 on page 1 and 2 in Ext. 3727. Hence, it is marked as 'B'). It is not true that I had stated this portion. it was written and then was read over to me. I cannot assign any reason why it is so written.

10 (Witness is confronted with and read over the portion on pages 6 to 10 in Ext. 3727. Hence, it is marked as 'C'). It is not true that I had stated this portion, it was written and then was read over to me. I cannot assign any reason why it is so written. It is not true that the DCP' gave certificate that I gave the confessional statement voluntarily without any threat, pressure, coercion, promise or
105 inducement, that I had given the confessional statement knowing

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that I was not bound to make it and it could be used as evidence against me and the co-accused.

41. It is true that out of the five cases at Delhi one is CR No. 419/08 registered with Police Station Connaught Place. The chargesheet of this case is received by my advocate. It is not true that I gave a disclosure statement voluntarily to ACP Sanjeev Kumar Yadav on 30/11/08 that I along with Atif conspired to cause the train blasts and prepared the bombs and I kept the bombs in three local trains and that I would assist the police to arrest the wanted accused, that I gave the statement before witnesses and it was prepared on computer. It is true that such a statement is in the chargesheet of that case. It is not true that I gave the disclosure statement voluntarily and it is so written in it.

42. It did not happen that I had stated to the ATS in inquiry that five liters pressure cookers were used in the bomb blasts, costing Rs. 500/- each and that I pointed out the shop from where they were purchased. It is false if the ATS has so claimed. It did not happen that when I was in the custody of the ATS, I had shown a shop from where the bags were purchased for ~~use~~^{use} in the bomb blasts, but the shop

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turned out to be that of chappal. It is false if the ATS has so claimed. It did not happen that I had stated to the ATS that I was staying at Sewree Cross Road, 5th floor during the period of blasts. It is false if the ATS has so claimed and that the ATS went to that address, but found that the family of Abu Rashid was staying on the 2nd floor and the 5th floor flat was possessed and used by Abu Rashid during the period of blasts on the request made by ~~me~~^{YDS} Abu Rashid to the owner. It did not happen that I had stated to the ATS that I got all the timers prepared from Arif Badar. It is false if the ATS has so claimed. I was not taken to the area near Kurla by the ATS when I was in their custody. The ATS had taken me to FSL, Kalina at Santacruz (E) for 2-3 hours. I was taken to the cabin of a lady, introduced to her and then we returned. Nothing else happened there. No scientific tests like brain mapping or polygraph were done there. It is false if it is so claimed by the ATS.

43. It is not true that I, Abu Rashid and others were staying in a flat on the 5th floor in Raza Tower at Sewree during the period of the blasts in this case, that Abu Rashid had taken the key of the flat from its owner saying that it is required for some sick relative, that the

bombs were prepared in that flat and taken from that flat.

44 It is true that it is in the story that I was forced to say before a video camera that the preparations of the blasts were done in the said flat. It is true that the ATS saved me from prosecution in this case. I do not know whether it was the contention of the ATS that

§ eight pressure cookers were purchased from Santacruz. The ATS had inquired with me about a white coloured Santro car. It is not true that the ATS told me that two people had purchased eight cookers and had carried them in the white Santro car. It is true that the ATS did not hold my identification parade, did not confront me with any witness in the ATS office, did not take me to any shop at Santacruz, did not confront me with any shopkeeper of cooker, did not show me any sketch and did not confront me with Arvind Shah, Mahendrabhai Dedhia and Mohanlal Kumawat. It is not true that we had purchased eight pressure cookers from Santacruz and had carried them in Santro car.

45 I did not know the accused in this case sitting in the dock when I was arrested and I never heard their names and no one told me their names and told and threatened me to help them.

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46. It is true that Gujarat police have chargesheeted me for having caused more than fifty blasts including succeeded and failed blasts, that I have been chargesheeted by the Delhi police in five cases of blasts, that the Crime Branch, Mumbai has chargesheeted me for sending e-mail to media channel five minutes before the blasts in Gujarat, that I am chargesheeted in Hyderabad for committing two blasts there, that when the UP police inquired with me, they had already arrested some persons in those crimes. I do not know whether the UP police had already filed chargesheets against those persons. It is true that there are about 70 persons chargesheeted along with me in different jails in India on the allegations that we have caused the blasts with explosive substances and various timer devices in Hindu areas. It is true that after my arrest, whenever there were any blasts in areas dominated by Hindu community, police have taken my custody from the court, that police had never inquired with me about any blast that took place in area dominated by Muslim community. It is not true that I knew when I signed before the DCP that I was signing on the confessional statement that can be used against me as strong evidence. It is not true that I knew when there

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was video shooting of me giving a statement, that it can be used as strong evidence against me. It is true that I have stated for the first time in court that my signatures were taken on the confessional statement by putting pressure on me and that the video shooting was similarly done. It is not true that I have not complained about the alleged confessional statement to any court wherever I was produced. I have sent my retraction in MCOE 04/09 that whatever alleged confessional statement is there is wrong and has been taken by force.

(Adjourned for recess)

Date : 06/04/2013

YAS Shinde
6/4/13
Special Judge

Resumed on SA after recess.

47. I have orally informed the court about retracting my confessional statement, other than my written retraction, about four months after being taken to the DCP, after I returned from Gujarat where I had been taken. I had sent the retraction three months after being taken to the DCP. I had also sent a retraction about one and a half years thereafter. It is true that I did not mention about any CD or video. I had sent the retraction and had orally informed about it as I thought

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that the alleged confessional statement may be used against me. I had given the retraction in writing before I got a copy of the alleged confessional statement. I cannot tell the dates of my retractions and cannot produce their copies. I had consulted my advocate and family members before giving the retractions. They had advised me to send the retraction in writing ^{to the} ~~in a~~ court and accordingly I sent it. It is not true that I was produced in the court many times before I gave the retractions. I was never produced by way of video conference before the retractions. I was in the jail for many days between the date of the alleged confession and between the date on which I gave my retraction. I gave retraction to save myself in that case and I would not have given it if my advocate would not have advised. It is true that I have never complained in writing or orally to any court about the torture or ill-treatment. It is not true that I had not complained to any superior officer about the torture during the police custody. I did not complain to my advocate or family members or to the magistrate in the Killa court about torture or ill-treatment. It is true that my detailed statement was taken whenever I was arrested by the Delhi police, by the Hyderabad police, by the Gujarat police, by the Crime

Branch and the ATS. It is not true that it is reflected in those statements that I and my accomplice have committed the 7/11 bomb blasts. It is true that it is in the chargesheets of Delhi, Hyderabad, Gujarat and Crime Branch, Mumbai, that the 7/11 blasts were done by me and my associates. I have not refuted these allegations before the concerned courts. The Gokulchat blasts case of Hyderabad is bearing CR No. 01/08 of Octopus Police Station. (Learned advocate prays for showing Art-444 (1 to 3) filed along with application Ext. 3373 to the witness. Learned SPP objects on the ground that they are printouts of e-mails. In my humble opinion, the prayer cannot be allowed as these are unproved documents). It is true that there are printouts of e-mails in the chargesheet at Hyderabad in which the Indian Mujahedin has claimed responsibility of the 7/11 blasts. It is in the chargesheet of the Crime Branch, Mumbai that all blasts in Mumbai after 2005 have been done by the Indian Mujahedin. (Learned advocate requests permission to show the arrest panchanama and seizure panchanama and the copies of the mobile application forms in the chargesheet of MCOB 04/09 to the witness as they bear his signatures and disclose his mobile number and the

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pointing out of the house of Abu Rashid at Sewree and producing incriminating articles. Learned SPP objects on the ground that learned advocate is trying to prove the documents though the witness is not their author. In my humble opinion, the request cannot be allowed as the documents are irrelevant to the fact in issue and are not previous statements in writing of the witness).

48. I will be able to identify myself if the CD containing the video is played. The CD was with the Crime Branch when the video was shot. It is not true that I and my associates have done the 7/11 blasts, that I gave a confessional statement before the DCP voluntarily, that I had voluntarily stated a true story at the time of video shooting. It is not true that I am deposing falsely so that I may not be implicated in this case.

Q. You had a deal with ACP Kamble and API Mohite that you would be discharged from this case and therefore, you should not own up the responsibility of the 7/11 blasts anywhere?

A. I do not want to answer this question.

Special Public Prosecutor Raja Thakare is the prosecutor in the MCOG 04/09.

Q. You are deposing falsely about your confessional statement, about the video shooting and your involvement in the 7/11 blasts in order to save yourself and the ATS?

A. I do not want to answer this question.

(Learned advocate submits that the cross-examination of the witness be treated as closed, subject to he praying for showing the CD of his video shooting as he does not have it in his possession at present).

Cross-examination by Adv Sharif Shaikh for A4 & A5

(Adjourned as per the application Ext.3734)

Date : 06/04/2013

YDS (signed)
6/4/11

Special Judge

Date : 08/04/2013
Resumed on SA

49. (Learned advocate Khan Abdul Wahab requests that he be permitted to play on his laptop a CD containing the video shooting of the witness and show it to him and that the CD is filed with the statement of the A12 under Section 313 of the Cr. P. C and marked as Art-451. Learned SPP submits that a similar attempt was made during the evidence of PW-185 Commissioner of Police Anami Roy and it was turned down by this court after hearing both the parties. The logic would be the same and in the first place the authenticity of the CD has not been established. It is nothing but a document. So firstly, the original has to come before the court and it must come from proper custody. In case of secondary evidence, the foundation must be laid for permission to lead secondary evidence. The witness in the box is not the creator of the CD. Consequently the CD cannot be proved by playing it and showing it to the witness. Learned advocate submits in reply that the defence had called upon the prosecution to produce it, but this court had ruled that the prosecution cannot be compelled to produce it. Secondly, the witness has admitted that his statement is video recorded and that it was aired.

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The CD is an electronic record, therefore, even if the certificate is not there, it can be relied upon, because ^{such a CD as} it was relied upon in the case of ^{the}

Parliament Attack without there being a certificate. He submits that

the objection by the learned SPP and the admission given by the

witness is a foundation for it. The issue was different in respect of

PW-185 as he had denied having made any statement that was video

recorded and the prayer of the defence was disallowed as it was not

in a sealed condition. Therefore, this objection is not applicable.

Therefore the prosecution cannot play hot and cold at the same time

by saying that it is not bound to produce and it does not have the CD

and at the same time blocking the defence from producing and

playing it. He submits that he apprehends that the prosecution will

suggest to the witness that no such video recording was done. He

submits that this court has kept many issues open in view of the law

laid down in Bipin Shantilal Panchal's case and therefore, it can be

considered on the same lines. He submits that the Supreme Court

has laid down in Criminal Appeal No. 445/12 that the confessor only

can prove the confession and that the prosecution has compelled the

^{defence} ~~witness~~ to examine this witness, and, last but not the least, that the

witness is the best person who can identify himself. Therefore, in the interest of justice the prayer may be allowed. Learned SPP submits in reply that it is the case of the defence that the video recording of the statement of the witness was done when he was in the custody of the Crime Branch and that it is not the case of the defence that the CD that it has produced and wants to play to the witness, has come from the Crime Branch.

50. In my humble opinion, the prayer cannot be allowed as the source of the CD Art-451 that is produced by the A12 during his statement under Section 313 of the Cr. P. C is not disclosed. It is not contended that the CD is the original one and, if it is a copy, then it does not satisfy the ingredients of sections 65-A and 65-B of the Indian Evidence Act. Similarly, the witness is not the person who has prepared the CD/document and it cannot be proved by the witness).

Cross-examination by Adv Sharif Shaikh for A4 & A5

51. The story that the ATS had given me when I was in police custody and which was videographed, was, that in the second half of June, 2006 I had come to my house at Mumbai in search of work, that during my stay the behaviour of the wife of my brother towards me

was not good, therefore, I became frustrated and decided to go back to my village, that during that period I came to know that Dr. Shahnawaz, a boy from our village, had come to Sewree and was staying in the flat given by Abu Rashid, that thereafter I shifted to that flat thinking that I would go to my village from there, that during that period Atif, who was in Delhi, came to the flat on coming to know of this, that Sajid, a friend of Atif, used to come to meet him, that during that period there was blasts in the local trains in Mumbai, that we all had visited utensils shops as Atif wanted to purchase some utensils, but he did not purchase any utensil as he did not like any, that Atif purchased a traveling bag from Sewree, that after the blasts I and Atif went back to our village and Dr. Shahnawaz went to Lucknow, that Atif went to Delhi from the village, that Atif returned to the village in December, 2006 and called me and told me that we have to accept the responsibility of the railway blasts in Mumbai to take advantage of the fact that at the time of the blasts we all were staying in the flat at Sewree, that if we do not do so, we will have to face dire consequences from Riyaz Bhatkal, that Atif had brought many printouts of newspaper reports of the 7/11 blasts when he came from

Delhi and had also brought timetables of Bombay railway local train, that he had said that whenever the police arrest us, we would take the responsibility by showing the shops where we had gone to purchase utensils, saying that we had purchased pressure cookers from there and to show the shop from where Atif had purchased bag, saying that we had purchased bags from that shop, that we then prepared a story about our role in the bomb blasts in the railway in Bombay and how we had done them and the ATS told me to repeat the story that I had been told to say by the Crime Branch. Officers Khanwilkar, Sachin Kadam and ACP Kamble had given me the story. Officer Khanwilkar did the video shooting. The ATS gave me the story, that was written on paper in Hindi, 4-5 days before the video shooting. The story was given to me after about 20 days after my arrest by the ATS. The above three officers and ATS chief Raghuvanshi used to interrogate me. ATS chief Raghuvanshi interrogated me on four occasions. He had not told me that the confessional statement that I gave to the Crime Branch is damaging their case. It is not true that he had tortured me and told me so.

52. PI Mohite of the ATS used to check whether I had learnt the

story by heart. PI Mohite did not interrogate me personally, but he used to sit with the other officers. The shooting was done by a video camera on a stand at ATS Kalachowki. No superior officer was present at that time. PI Khanwilkar took back the paper on which the story was written. I cannot say how many days before he took it back before I was produced in the court. PI Khanwilkar did not accompany me when I was produced for remand in the court. I cannot say where the video shooting is now.

(Adjourned for recess. Learned advocate submits that he will come at 3.15 p.m. as he is required to argue an anticipatory bail application in OR No. 18).

Date : 08/04/2013

YD Shinde
8/4/13
Special Judge

Learned advocate is not present at 3.15 p.m.

Resumed on SA after recess at 3.45 p.m.

53. I was not shown the video recording during the time I was in the custody of the ATS. Officer Dhamankar of the Crime Branch had taken back the paper containing the story that the Crime Branch had give to me for learning by heart.

YDS 54. I did not have driving licence before my arrest. It is not the claim

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of the police in any of the chargesheets filed against me that I had a driving licence. It is not true that it is the claim of the IO in the chargesheet of the Delhi case that I had a licence bearing number MH-03-(10)-969274 that was issued on 08/10/1996. None of the investigating agencies have seized my passport. I do not know whether the investigating agencies had searched my house at Chittah Camp, the flat at Sewree and my house at my village for the passport. I was not using any mobile in June, July 2006. As per the chargesheet Dr. Shahnawaz, Sajid and Atif are residents of village Sanjarpur, Police Station Saraimir, Dist Azamgadh. Sanjarpur is 13 kms from my village Para. It is not true that it is 3 kms from my village Para. Dr. Shahnawaz is shown as wanted accused in Delhi cases. Atif is not shown as wanted accused in any case. Delhi chargesheet shows Sajid, resident of Andheri, as a wanted accused. As per the chargesheet Sajid was having mobile number 9811004309 in his name and the second 9714552899. It is true that RDX is shown as explosive substance in most of the chargesheets against me. I do not know whether till the time I was arrested, Dr. Shahnawaz, Atif and Sajid of Andheri were not shown wanted in any case.

55. It will not be correct to say that I had told Arif Badar and Ansar Badshah, that I, Abu Rashid, Dr. Shahnawaz, Atif and Sajid had committed the bomb blasts in 2006 in the local railways immediately after the said blasts. I do not know whether it is so written in the chargesheet of MCOCC 04/09 and the confessional statements of Arif Badar and Ansar Badshah.

56. DCP Sanjeev Kumar Yadav, the investigating officer of the Delhi cases, has taken my signatures on written as well as blank papers.

Q. It is my case to you that you had signed on a disclosure panchanama before him, which contains your statement that you alongwith the four other persons mentioned above, committed the bomb blasts in the Mumbai railways?

A. It is false.

I do not know whether there is any disclosure panchanama given by me in the chargesheet in the Delhi case.

57. It is the contention in most of the chargesheets that I am a computer engineer. I was never arrested before 2008 case. I do not know whether Abu Rashid, Dr. Shahnawaz, Atif and Sajid were also not arrested or shown wanted before 2008 case. It is in the

chargesheet of the Hyderabad Case, that the Addl. CP, Crime Branch, Mumbai had informed them in writing that I and the others are involved in the Hyderabad Blasts. Same is the case with respect to the chargesheets of Delhi and Gujarat. It will be incorrect to say that on the information given by the Addl. CP, Crime Branch, Mumbai, many investigating agencies had interrogated me.

58. I do not know whether Mumbai local railway timetables were available on the internet in 2006. It is true that vendors sell such timetables at the railway stations in Mumbai. I do not know about brain mapping and narco analysis tests. I have not read the names of the tests like brain mapping, narco analysis, lie detector, polygraph and psychological profiling in the chargesheets that are filed against me. I do not know whether investigating agencies do such tests whenever they arrest any accused by taking his consent and that they are used for unearthing the truth. (Learned advocate has asked a question, which is not allowed as it is an improper question. He submits that he is filing an application to put the question on record. The application is marked as Ext.3736).

59. (Learned advocate submits that he is filing an application calling

upon the prosecution to admit the contents of certain documents. The application is marked as Ext. 3737).

60. It is not true that I know Abu Rashid, Dr. Shahnawaz, Atif and Sajid quite well and they are my friends, that we all were in Mumbai on 11/07/06 and prior to that.

Q. You were using mobile no 9969506112 on 11/07/06 and prior to that?

A. I do not want to answer this question.

It is true that the public prosecutor had applied to the court to ban broadcast of an alleged statement given by me that was videographed. It is not true that I deposed falsely about the story that was given by the Crime Branch officers about the confession and about the torture and ill-treatment. It is not true that I deposed falsely that the Crime Branch people had given me a story to learn by heart and in fact it was a story stated by me on my own.

Q. It is my case that the story that you say was given by the Crime Branch, was in fact not a story, but the factual position about the 7/11 railway blasts?

YDS
A. I do not want to answer this question.

(27917)
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Ext.3719

MCOB SPL NO. 21/06

DW-33/64

(Learned advocate submits that his cross-examination be deferred till the application Ext. 3737 is decided).

(Adjourned as court time is over).

Date : 08/04/2013

YD Sharma
8/4/13
Special Judge

Date : 09/04/2013

Resumed on SA

61. (Learned advocate submits that he does not want to cross-examine the witness further as the application Ext. 3737 is rejected).

Cross-examination by Adv Shetty for A1, 3, 8, 9, 11 and 12

62. (Learned advocate submits that at this stage he does not want to cross-examine the witness, but he may cross-examine, if necessary, after the cross-examination by the learned SPP).

Cross-examination by SPP Raja Thakare for the State

63. (Learned SPP submits that he is filing an application for deferring the cross-examination of this witness till the examination-in-chief and cross-examination of two more witnesses, who are accused in MCOB Special case no. 04/09 are examined by the defence. The application is marked as Ext.3739. Learned advocate Khan Abdul Wahab is not present at 4.00 p.m., when the defence is called upon to file say. Adv Ansar Tamboli, junior of adv Sharif Shaikh, is requested to locate advocate Khan Abdul Wahab to give say on the application. He reports after some time that the learned advocate is
- 10 cross-examining a witness in CR No. 16. He requests that he be

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permitted to take the application and bring the say of the learned advocate. After being permitted, he brings the application after some time with the say of learned advocate behind it and reports that the learned advocate may come after 15-20 minutes.

5 Learned advocate Khan Abdul Wahab appeared at 5.00 p.m. and submits that his say is his argument. Application Ext. 3739 is allowed and cross-examination of DW-33 by the Id SPP is deferred till the defence examines the remaining two witnesses, who are the accused in MCOCC 04/09. Hence, adjourned).

Date : 09/04/2013

YD Shinde
9/4/13
Special Judge

Date : 17/04/2013

Resumed on SA

64. There are 10 cases against me throughout India and I am in custody in all the cases. I am in custody since 2008. My family members come to meet me during this period of custody. I have engaged advocates to defend myself. I have full confidence in my advocates. I have faith in all the courts. It is true that I feel that I have not committed any offences, even then I am in custody since 2008. It is true that even then I have not filed application for bail or discharge in any case.

65. I came to know that I have to give evidence in this case when warrant was received in the jail and the judicial department people told me about it. It was in the summons that I have to give evidence in this case, but it was not mentioned as to on what issue or point I have to give evidence. I did not ask my family members, relatives or friends or my advocate as to the issue or point for which I have to give evidence. It is true that I became ready to give evidence in this case voluntarily when I was produced in this court.

Q. Did you not feel it necessary to consult your advocate about giving

evidence in this case?

A. I did not get the time to consult him.

It is true that my advocate in MCOG 04/09 was present when I was produced in the court. I did not know that I could consult my advocate before I gave evidence in this court, therefore, I did not ask for time

§ from the court to do so.

66. I know the consequences of giving false evidence in the court. It is true that therefore, till today I have not given false evidence in any court. (Learned SPP requests that Exts. 3725 to 3727 be shown to the witness). It is true that I did not go through the contents above the § signatures on these papers on the day advocate Khan Abdul Wahab showed them to me and I have not gone through the contents above the signatures today when you have shown me the signatures.

67. It is true that I was arrested in this railway bomb blasts case by the ATS, but there was no recovery from me, there was neither any statement of any witness against me nor my confessional statement in this case and there was no evidence against me. It is true that I § had explained to the ATS officers that I have no concern with this railway bomb blasts case and therefore I was discharged. It is true

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that I have not read the chargesheet in the railway bomb blasts case and I do not know the number of accused and the evidence against them. It is true that I was fed up with the repeated questions by advocate Khan Abdul Wahab in respect of the 7/11 railway bomb blasts case, therefore, I said to one question that I do not want to answer it. It is not true that no officer of the Crime Branch had ever told me that the accused in the Malegaon blast case of 2006 and in this case of railway blasts have been falsely involved.

(Adjourned for recess)

Date : 17/04/2013

Y.D. Shinde
17/4/13
Special Judge

Resumed on SA after recess.

Cross-examination by adv Shetty for A1, 3, 8, 9, 11 and 12

68. Declined.

No re-examination.

R.O.

Y.D.S

Spl. Judge

Date:- 17/04/13

Y.D. Shinde
17/4/13
(Y.D. SHINDE)
SPECIAL JUDGE
UNDER MCOC ACT,99,
MUMBAI.