IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice M. Enayetur Rahim
And
Mr. Justice Amir Hossain
Death Reference No.135 of 2008

The State
-------- Petitioner
-Vs-
Mufti A. Hannan Munshi alias Abul Kalam and others
-----Condemned prisoners.
With
Criminal Appeal No.03 of 2009
Md. Delwar Hossain Ripon
--- Appellant
-Vs-
The State
--- Respondent
With
Criminal Appeal No.468 of 2009
Mufti Abdul Hannan Munshi @ Abul Kalam and others
--- Appellants
-Vs-
The State
--- Respondent
With
Criminal Appeal No.9345 of 2015
(arising out of Jail Appeal No.92 of 2009)
Mufti Moinuddin @ Abu Jandal @ Masum Billah @ Khwaza
--- Appellant
-Vs-
The State
--- Respondent

Jail Appeal No.71 of 2009

Mufti A. Hannan

--- Appellant

-Vs-

The State

--- Respondent

With

Jail Appeal No.72 of 2009

Delwar Hossain @ Ripon

--- Appellant

-Vs-

The State

--- Respondent

With

Jail Appeal No.73 of 2009

Sharif Shahidul Alam alias Bipul

--- Appellant

-Vs-

The State

--- Respondent

With

Jail Appeal No.92(A)/2009

Mohibullah

--- Appellant

-Vs-

The State

--- Respondent

Mr. Mahbuby Alam, Attorney General
with
Mr. Sheikh A.K.M Moniruzzaman,DAG
Mr. Bashir Ahmed, A.A.G and
Mr. Md. Shahidul Islam Kha,AAG and
Mr. Mia Sirajul Islam, AAG

----For the State

Ms. Hasna Begum, Advocate

---State Defence Lawyer

(In Death Reference No.135 of 2008)

Mr. A.K.M Faiz, Advocate

--- For the Appellant

(In Criminal Appeal No.03 of 2009)
Mr. Mohammad Ali, Advocate
--- For the Appellants
(In Criminal Appeal No.468 of 2009
and Criminal Appeal No.9345 of 2015)
Heard on 06.01.2016, 07.01.2016, 13.01.2016, 14.01.2016, 20.01.2016, 21.01.2016, 27.01.2016, 28.01.2016, 03.02.2016 & Judgment on 11th February,2016.

M. Enayetur Rahim,J:

The Death Reference No.135 of 2008 has been made by the Druta Bichar Tribunal, Sylhet for confirmation of the death sentence of 1. Mufti A. Hannan Munshi @ Abul Kalam, son of late Noor Mohammad Munshi of Village-Hiron, Police Station-Kotalipara, District-Gopalgonj, 2. Sharif Shahidul Alam @ Bipul, son of Md. Hemayet Hossain Patwary of Village-Moishadi, Police Station and District-Chandpur and 3. Md. Delwar Hossain @ Ripon, son of Abu Yousuf of Village Konagaon, Police Station-Kulaura, District-Moulavibazar.

The condemned prisoners and two other appellants namely Mufti Moinuddin @ Abu Jandal @ Masum Billah @ Moin @ Khaza and Mohibullah @ Mofizur Rahman @ Mofiz @ Ovi **[herein after referred as accused]** were put on trial before the Druta Bichar Tribunal, Sylhet in Druta Bichar (Session Case No.14 of 2007) and charges were framed against them under sections 120B/111/302/326/114/34 of the Penal Code. The Druta Bichar Tribunal having found guilty 1.

Mufti A. Hannan Munshi @ Abul Kalam, 2. Sharif Shahidul Alam @ Bipul, and 3. Md. Delwar Hossain @ Ripon on the charges under sections 120B/302/109/ 111/114/326 of the Penal Code and sentenced them to death and also to pay a fine of Tk.10,000/-(ten thousand) and sentenced accused Mohibullah alias Mofizur alias Mofiz alias Ovi and Mufti Moinuddin alias Abu Jandal to suffer imprisonment for life with a fine of Taka 10,000/- in default to suffer rigorous imprisonment for 02(two) years.

Being aggrieved by the judgment and order of conviction and sentence Mufti A. Hannan Munshi, Mohibullah @ Mofijur Rahman @ Mofi @ Ovi and Sharif Shahidul Alam @ Bipul have preferred Criminal Appeal No.468 of 2009 and Jail Appeal Nos. 71 of 2009, 92(A) of 2009 and 73 of 2009, Md. Delwar Hossain @ Ripon has filed Criminal Appeal No.3 of 2009 and Jail Appeal No. 72 of 2009 and Mufti Mohinuddin @ Abu Jandal @ Masum Billah @ Khaza has preferred Criminal Appeal No.9345 of 2015 and Jail Appeal No.92 of 2009 respectively before this Court.

Prosecution Case

The prosecution case, in short, is that on 21.05.2004 at about 12.30 P.M. The High Commissioner of the United Kingdom to Bangladesh Mr. Anwar Chowdhury went to the 'Shrine' **[herein after referred as Mazar]** of Hazrat Shahjalal (R:) in order to perform Jumma prayer therein. Having completed

Jumma prayer while he was coming out from the Mazar and reached near the main gate a frightening explosion was taken place thereon and smokes brought out; after removal of the smokes the High Commissioner was found injured with the splinters of bomb. Due to explosion of bomb three persons died in the Sylhet Osmani Medical College Hospital when they were under treatment and several persons were injured and some 40/45 injured persons including the British High Commissioner were taken into the Osmani Medical College Hospital for treatment. The police upon searching the place of occurrence seized some splinters of grenade and some other alamats.

Over the incident an FIR was lodged by the PW-8 S.I. Prodip Kumar Das and on the basis of the same Kotwali Police Station Case No.64 dated 21.05.2004 was started.

The case was investigated by the CID and after investigation the CID submitted a charge sheet on 07.06.2007 against four persons namely Mufti Abdul Hannan Munshi alias Abul Kalam, Mohibullah alias Mofizur Rahman alias Mofiz alias Ovi, Sharif Shahidul Alam alias Bipul and Md. Delwar Hossain alias Ripon under sections 120B/326/302/34/109/114/ 111 of the Penal Code. Eventually, a supplementary charge sheet was submitted on 11.03.2008 by the investigating officer recommending prosecution for Mufti Moinuddin alias Abu Jandal Alias Masum Billah

along with the earlier charge sheeted accused persons under sections 120B/326/302/34/109 /114/111 of the Penal Code.

Commencement of the trial and procedural history and defence case

The case being ready for trial the case record was transferred to the court of Sessions Judge, Sylhet and it received the case record on 05.07.2007 and the case was numbered as Sessions case no.469 of 2007.

Eventually, the case was transferred to the court of Druta Bichar Tribunal, Sylhet by the order of the Ministry of Home Affairs.

The Druta Bichar Tribunal, Sylhet duely framed charge against the accused persons to which they pleaded not guilty and claimed to be tried.

At the time of the trial the prosecution in all examined 56 witnesses.

The defence cross-examined the prosecution witnesses but did not adduce any defence witness.

However, at the time of examination under 342 of the Code of Criminal Procedure the respective accused persons by filing written statement claimed that they were innocent and they had got no connection with the alleged occurrence.

However, the case of the defence, in short, is that the accused are innocent and they have been implicated in the case falsely and the alleged

confessional statements made by accused Abdul Hannan Munshi, Sharif Shahidul Alam, Delwar Hossain alias Ripon were not true and voluntary and they compelled to make such statement due to inhuman torture during prolong police remand.

On conclusion of the trial the learned Druta Bichar Tribunal found guilty to accused persons and awarded the above conviction and sentence to them.

Evidence adduced by the prosecution

P.W-1 Md. Shamsuzzaman deposed that on 21.05.2004 he was serving at police office, Sylhet. On that day at about 11.05 hours he along with constable Raboti Ranjan Chakma, Yasin Miah, Nitai Chandra Deb, Subinoy Chandra Deb vide C.C No.4083 dated 21.05.2004 went to the Mazar of Hazrat Shahjalal (R:) to maintain law and order situation as British High Commissioner to Bangladesh was supposed to come there to offer Jumma prayer. Having reached there at about 11.20 hours he found S.I Alamgir Hossain, S.I Prodip Kumar Das of Kotwali Police Station and he reported to them about their presence. S.I Alamgir Hossain deputed him and Constable Netai Chandra Deb for the security of the vehicle of British High Commissioner and constable Yasin, Raboti and Subinoy were also given responsibility for the security in different places of Mazar area. At about 12.40 P.M. British High Commissioner arrived at the Mazar premises. He along

with his accompanied constables was guarding the vehicle of the High Commissioner which was 14/15 cubits away from the main gate of the Mazar. After offering Jumma prayer at about 13.14 hours when High Commissioner Mr. Anwar Chowdhury came near to the Mazar gate at that time, he heard a big sound and the people out of fear were started moving here and there. At that time 40/50 people having received injury fell down on the earth. British High Commissioner to Bangladesh Mr. Anwar Chowdhury and Deputy Commissioner, Sylhet Abul Hossain also fell down on the earth having received injuries. Then they took steps to send Mr. Anwar Chowdhury to Sylhet Osmani Medical College Hospital by his car. In the meantime the Superintendent of Police, Office-in-Charge of Kotwali Police Station and other members of the mobile party made arrangement to send the injured persons to the hospital. At the instruction of the High Officials he along with other forces cordoned the place of occurrence. Due to bomb explosion A.S.I Kamal Uddin, Rubel and an unknown person died. Later on he came to know that the name of the unknown person was Habil Mia.

Accused Delwar Hossain alias Ripon declined to cross-examine the said witness.

In cross-examination by other accused persons he stated that the bomb explosion took place at about 13.40 hours and he was nearer to the car of

the High Commissioner. The car was 103/12 cubits away from main gate.

P.W-2 Md. Jahangir Alam deposed that at the time of the occurrence he was serving as a driver in I.T.I British College. On 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. Having offered Jumma prayer when he was coming out and reached near to the main gate at about 1.40 P.M then he heard a big sound of explosion. He received injuries on his right heel and left leg by the splinters; so many people were also injured. The local people took him to Mohanagar clinic and thereafter, he was taken to Osmani Medical College Hospital where he saw British High Commissioner to Bangladesh Mr. Anwar Chowdhury and Deputy Commissioner Abul Hossain along with other injured persons. He was admitted in Sylhet Medical college hospital on 21.05.2004 and was discharged from the hospital on the following day i.e. on 22.05.2004.

Defence declined to cross-examine the said witness.

P.W-3 Police Constable Netai Chandra Deb deposed that on 21.05.2004 he was serving in R.R.F at Sylhet and on that day under the leadership of Nayek Md. Shamsuzzaman they went to the Mazar of Hazrat Shahjalal (R:) for the security of British High Commissioner to Bangladesh Mr. Anwar Chowdhury

who was supposed to come to the Mazar. S.I Alamgir Hossain and S.I. Prodip Kumar Das assigned their duties. He along with Nayek Shamsuzzaman was given duty for the security of the vehicle of the High Commissioner. They took position in front of the gate and Constable Raboti Ranjon Chakma, Yasin Mia and Subinoy Deb were deputed at the front side of the lane. At about 12.45 hours British High Commissioner in Bangladesh came to the Mazar and he and Nayek Shamsuzzaman were guarding the vehicle of the High Commissioner which was 10-15 cubits away from the main gate. At about 13:40 hours he heard a big sound and saw smokes and the people were started moving here and there. Having seen British High Commissioner to Bangladesh injured they made arrangement to send him to hospital by his car. After such explosion the Superintendent of Police along with some mobile parties came to the place of occurrence and the place of occurrence was cordoned by them. Later on he came to know that A.S.I Kamal Uddin, Rubel Ahmed and Habil Mia succumbed to bomb injuries and so many persons were also injured.

Defence declined to cross-examine the said witness.

P.W-4 Police Constable Raboti Ranjon Chakma deposed that on 21.05.2004 under the leadership of Nayek Shamsuzzaman they went to the Mazar of Hazrat Shahjalal (R:) for giving security to the British

High Commissioner to Bangladesh. Having reached there S.I Alamgir Hossain and S.I Prodip Kumar assigned their duties. Nayek Shamsuzzaman and Constable Netai Chandra Dey were given responsibility for guarding the vehicle of the High Commissioner. He and Constable Subinoy and Yasin were deputed in front of the lane. The High Commissioner in Bangladesh came to the Mazar at about 12.45 hours and after offering Jumma prayer at about 13.40 hours when he was coming out and reached near to the main gate then he heard a sound of explosion of bomb and saw the people to move here and there. British High Commissioner to Bangladesh and Deputy Commissioner, Sylhet, Abul Hossain along with many others received injuries. They took step to send the injured persons in the hospital. As per the instruction of High Officials they cordoned the place of occurrence. Later on he came to know that A.S.I Kamal Uddin, Rubel Ahmed and Habil Mia succumbed to bomb injuries and at the evening British High Commissioner to Bangladesh was sent to Dhaka by Helicopter

Defence did not cross-examine the said witness.

P.W-5 Yasin Miah deposed that on 21.05.2004 he was serving in police line, Sylhet. On that day under the leadership of Nayek Samsuzzaman he along with other forces went to the Mazar of Hazrat Shahjalal (R:) for the security of British High

Commissioner to Bangladesh. On reaching there S.I Alamgir Hossain and S.I Prodip Kumar Das assigned their duties. Nayek Shamsuzzaman and Constable Netai were given responsibility for guarding the vehicle of the High Commissioner and Constable Subinoy Kumar Deb and Reboti Kumar Chakma and he was given duty in front of the lane. While they were on duty at about 12.45 hours British High Commissioner came to the Mazar by his car. After offering Jumma prayer when he was coming out and reached near the main gate then he heard a sound of explosion and the people present there were started moving here and there. So many people including High Commissioner Mr. Anwar Chowdhury and Deputy Commissioner Abul Hossain received injuries. The injured persons were sent to different hospitals. He along with other police forces cordoned the place of occurrence as per the instruction of the higher authority. Eventually, he came to know that A.S.I Kamal Uddin and Rubel succumbed to bomb injuries and on that day at the evening the High Commissioner was sent to Dhaka by Helicopter.

Defence declined to cross-examine the said witness.

P.W-6 Salam Mia deposed that on 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. British High Commissioner Mr. Anwar Chowdhury along with other officials also came

to Mazar for offering Jumma prayer. After completion of Jumma prayer when he reached at main gate of Mazar at 1.40 P.M he heard a big sound of bomb explosion and he received splinter injuries on his right knee and waist. He was admitted to Sylhet Osmani Medical College Hospital and after getting treatment for four days he was released from the hospital. Three persons succumbed to bomb injuries and 50/60 persons were also injured including the British High Commissioner and the Deputy Commissioner, Sylhet.

The defence declined to examine the said witness.

P.W-7 Shahidul Islam Khokon deposed that he was working in Rainbo Tailors at Jindabazar area of Sylhet. On 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After completion of the prayer at about 1.40 P.M when he was coming out from the Mazar and reached near the main gate he heard a big sound of explosion of bomb and saw black smokes. British High Commissioner Mr. Anwar Chowdhury also came to the Mazar for offering Jumma prayer. He [P.W-7] having received injuries fell down on the earth. He was admitted in Osmani Medical College Hospital and on the following day he was released from the hospital. About 50/60 persons were injured including the British High Commissioner

and Deputy Commissioner, Sylhet due to bomb explosion.

Defence declined to cross-examine the said witness.

P.W-8 Prodip Kumar Das deposed that on 21.05.2004 he was serving at Kotwali Police Station, Sylhet. On that day he along with S.I Alamgir, Shamsuzzaman, Raboti Ranjon, Nitai Chandra, Subinoy Dey and Yeasin were on duty at the Mazar of Hazrat Shahjalal (R:). At about 12.15 hours Deputy Commissioner, Sylhet Abul Hossain came to that place and waited for British High Commissioner Mr. Anwar Chowdhury. At about 12.30 hours British High Commissioner along with his protection party came to the Mazar area. The High Commissioner along with Deputy Commissioner Abul Hossain entered into the Mazar premises. Having completed Jumma prayer at about 13.40 hours when they were coming out from the Mazar and reached near the main gate and exchanging greetings with the people present there then an explosion took place with a big sound. Having found the British High Commissioner injured he [P.W-8] with the help of other police forces having rescued the High Commissioner boarded him to his car. Deputy Commissioner Abul Hossain, S.I Alamgir, S.I Abdur Rahman, A.S.I Kamal Uddin, Constable Jibon Mia, body guard of Deputy Commissioner also became seriously injured. He informed about the incident to the

higher authorities and having received the information DIG, Superintendent of Police, officer-in-charge of Kotwali Police Station and the mobile parties came to the place of occurrence and they took steps for sending the injured persons to Sylhet Osmani Medical College Hospital and other hospitals. Ruble succumbed to his injuries while he was under treatment. 40/50 other injured persons were also admitted in the hospital including Abdul Hai Khan, President of District Bar Association. Immediate after the incident the occurrence place was cordoned by the police force and the police recovered various alamats including a small steel made olive colour handle which was being used as handle of grenade, some splinters, steel made paths, bloodstained caps(toopie) etc. S.I Fazlul Haque prepared the seizure list in presence of the witnesses. The unknown persons with an ill motive and plan in order to kill British High Commissioner exploded the bomb. He lodged the First Information Report, exhibit-1, with the Kotwali Police Station. He proved his signatures on it as exhibit-1/1-1/5. Eventually, A.S.I Kamal Uddin and an unknown person succumbed to bomb injuries. Later on he came to know the name of the unknown person as Habil Mia. S.I Md. Younus Mia filled up the FIR form and he knew the hand writing of said Younus Mia. He proved the ejahar form and two signatures of S.I Md. Younus Mia on it as

exhibit-1(Ka) and 1(Ka)/1-2 and the signature of S.I Md. Younus Mia on the FIR exhibit-1/6-8.

In cross-examination by accused Delwar Hossain Ripon he stated that in the FIR no name was mentioned as suspected accused. He could not known the total area of the Mazar of Hazrat Shahjalal (R:); so many people were present in the Mazar on that day but he could not say the actual number of them. He did not receive any injury. Besides the police force of Kotwali Police Station other 20-25 police personnel's were also on duty. He was not with the High Commissioner when he offered 'Fatiha' in the Mazar. He heard the sound of explosion at about 1.40 P.M but he could not remember from which side of him the sound occurred. He lodged the FIR with the police station. He denied the defence suggestions that he did not know the hand writing of A.S.I Md. Younus Mia and the place of occurrence was not shown by him to the investigating officer. When the High Commissioner was exchanging greetings with people his force was on duty outside the gate.

P.W-9 Constable Subinoy Deb deposed that on 21.05.2004 he was in the Sylhet police line and at about 11.00 hours under the leadership of Nayek Shamsuzzaman they went to the Mazar of Hazrat Shahjalal (R:) for the security of the British High Commissioner. Having reached there they reported their presence to S.I Alamgir and Prodip Kumar of

Kotwali Police Station. Then they assigned duty to Nayek Shamsuzzaman and Constable Netai for guarding the vehicle of the High Commissioner and he along with Raboti and Yasin were assigned duty in front of the lane. The High Commissioner after offering Jumma prayer at about 1.40 P.M when he came near the Mazar gate then a bomb explosion took place and the people present there started running here and there. With the help of protection party they sent the High Commissioner to the Osmani Medical College hospital as he received injuries. Deputy Commissioner, Sylhet Abul Hossain and Mr. Abdul Hai Khan, the President of District Bar Association, along with 40/50 persons were also injured. The injured persons were sent to different hospitals for their treatment. As per the instructions of higher authority they cordoned the place of occurrence. Later on he came to know that A.S.I Kamal Uddin, Rubel Ahmed and Habil Mia succumbed to bomb injuries. British High Commissioner was sent to Dhaka in the evening by Helicopter for his better treatment.

In cross-examination by accused Delwar Hossain Ripon he stated that he along with Raboti Ranjon Chakma, Yeasin Mia were on duty in front of the interception of Rajar Goli (lane). They were 150/200 yards away from the car of the High Commissioner.

In cross examination by other accused he stated that having heard the sound of explosion they rushed to the place of explosion.

P.W-10 Noor-e-Alam Al-Kowsar deposed that at the time of the occurrence he was a student of class VI of Shahjalal Jamia Islamia Kamil Madrasha. On 21.05.2004 at about 12.55 hours he went to the Mazar of Hazrat Shahjalal (R:) for offering of Jumma prayer. After offering Jumma prayer when he came near the eastern gate of the Mazar he heard a sound of bomb explosion at about 1.40 P.M. He received injuries and fell down on the earth. His father was with him who took him in Sylhet Osmani Medical College Hospital. He admitted in the hospital and on the following day he was released from the hospital. The British High Commissioner, Deputy Commissioner, Sylhet and President of the Bar Association were also received injuries.

In cross-examination by accused Md. Delwar Hossain Ripon, he stated that after 5/6 months of the alleged occurrence the police recorded his statement at the police station. The other accused declined to cross-examine him.

P.W-11 Md. Giash Uddin, a rikshaw puller, deposed that on 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After offering Jumma prayer at about 1.40 P.M when he came near the main gate then an explosion took

place and he received injuries on his left heel and thigh. The local people took him to Osmani Medical College Hospital. He admitted in ward no.4. On the following day the hospital authority released him. The police took his statement and so many people were injured due to the occurrence.

In cross-examination by accused Delwar Hossain Ripon he could not say how long after the occurrence the police recorded his statement. The other accused declined to cross-examine the said witness.

P.W-12 Md. Abdul Hai Khan deposed that he is the President of the Sylhet District Bar Association and also the President in the year 2004. On 21.05.2004 at 9.30 A.M he received British High Commissioner to Bangladesh Mr. Anwar Chowdhury at Sylhet Airport. At that time the Deputy Commissioner and Superintendent of Police, Sylhet were also present. The High Commissioner expressed his desire to offer Jumma prayer at the Mazar of Hazrat Shahjalal (R:). From the Airport the High Commissioner went to the High Commission Office situated at Sylhet and he accompanied the High Commissioner. Thereafter, he went to his house. At about 12.25 hours he along with Deputy Commissioner Abul Hossain received the High Commissioner at Mazar gate. The High Commissioner at first offered 'Fatiha' and thereafter offered Jumma prayer. He was with him. After completing the Jumma prayer the High

Commissioner had been exchanging greetings with the people present there and he along with the High Commissioner was moving towards the main gate. At about 1.40 P.M he heard a big sound and sensed hot on his body and fell down on the earth and the High Commissioner fell on his body. At that time the High Commissioner uttered 'save my life'. Thereafter, he with the help of others took British High Commissioner in his car and took him to Sylhet Osmani Medical College Hospital. He also received injuries on his right and left leg. Due to such injuries he used to take treatment in abroad till date. The High Commissioner is his relative. A.S.I Kamal Uddin, Rubel Ahmed and Abul Mia succumbed to bomb injuries and another 60/70 persons were injured. The grenade was exploded with a view to kill the British High Commissioner. He at first took treatment in Sylhet Osmani Medical College Hospital and thereafter Bangkok and Kolkata.

The defence declined to cross examine him.

P.W-13 Abdul Mukit deposed that he was the Manager of Hotel Azmir, a residential hotel. On 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After offering prayer when he reached near the main gate at about 1.40 P.M he heard a big sound of bomb explosion. He received injuries on his leg and belly. He was taken to Osmani Medical College Hospital by the local

people. Having got treatment for 04 days he was sent to Dhaka for better treatment. Eventually, he came to know that British High Commissioner and Deputy Commissioner, Sylhet along with 50/60 persons were seriously injured and 03(three) persons died.

In cross-examination by accused Delwar Hossain Ripon he stated that he could not remember the number of injured persons who were under treatment in the ward with him. He became senseless and he regained his sense at 12.00 at night. On 23.05.2004 police recorded his statement.

In cross-examination by other accused he stated that in each Friday he used to go to Mazar to offer Jumma prayer. On the day of occurrence there were 5/6 thousand Musullies.

P.W-14 Md. Sadrul Alam deposed that on 21.05.2004 at about 1.05 hours he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After offering prayer and 'Jiarat' when he was coming out he saw the British High Commissioner surrounded by many people. At about 1.40 P.M when he reached near the main gate of the Mazar a bomb explosion took place and he received injuries on his leg, chest and belly. The local people took him to Osmani Medical College Hospital. He was under treatment in ward number-4. Thereafter, he came to know that High Commissioner and the Deputy

Commissioner, Sylhet were also injured among 50/60 others.

In cross-examination by accused Delwar Hossain Ripon he stated that two days after the occurrence police recorded his statement. He denied the defence suggestion that he did not state before the I.O that he received injury on his chest.

In cross-examination by other accused he stated that hearing a sound of explosion he lost his sense and after 2/3 hours he regained his sense.

P.W-15 Mofazzal Hossain alias Kachu Peer deposed that on 21.05.2004 in his presence the police prepared a seizure list of various alamats including an olive coloured steel made small handle, two paths of steel, some splinters, burnt cloths, five toopies including two bloodstained toopies, a bloodstained Panjabi, a bloodstained stoking, 11 shoes, two pens and some blood. He proved the seizure list and his signature as exhibit-2, and 2/1. He also proved the seized alamats material exhibits-I,II-II(i),III-series, IV-IV(i), V- series, VI-VI(4), VII, VIII, IX-IX(10), X-X(i) XI.

In cross-examination by accused Mufti Moinuddin, he stated that the seized goods were not available before the Court. The other accused declined to cross-examine the said witness.

P.W-16 Md. Muhibur Rahman deposed that on 21.05.2004 he was working as the staff reporter of

the Daily Jugberi and at present he is working as the staff reporter of the Daily Jalalabad. On 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer as well as performing his professional duty. He shacked his hand with the British High Commissioner. After ending the Jumma prayer he was following the British High Commissioner and when the High Commissioner reached near the main gate of the Mazar at about 1.30 P.M he heard explosion of bomb and as a result the smokes broke out in surrounding area. He received injuries on both legs and on right arm. He also lost his sense. The local people took him to Osmani Medical College Hospital and he was under treatment for 18 days in ward number-4. His right leg was also operated. Till date he has been suffering due to such injuries. Later on he came to know that due to bomb explosion the British High Commissioner Mr. Anwar Chowdhury, Deputy Commissioner, Sylhet Abul Hossain and President District Bar Association Abdul Hai Khan were also injured among 40/50 others.

In cross-examination by accused Delwar Hossain Ripon, he stated that he went to Mazar area at about 11.40 hours. He had the knowledge that British High Commissioner would come there. He denied the various suggestions put by the defence including that he did not say to the investigating officer that he shacked

his hand with the British High Commissioner and he received injuries on his legs.

In cross-examination by other accused he stated that he met with the High Commissioner before Jumma prayer. He could not ask the High Commissioner whether his visit was official or private.

P.W-17 H. M. Khokon Rana deposed that on 21.05.2004 he was in Sylhet and working in a N.G.O and resided in a mess. On that day at about 1.05 hours he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After ending of the prayer he saw a gathering near the main gate and also saw the British High Commissioner Mr. Anwar Chowdhury. He was behind the High Commissioner when High Commissioner reached near the main gate at about 1.40 P.M. At that time a bomb explosion took place. He received injury on his right leg and fell down on the ground. At that time the British High Commissioner Mr. Anwar Chowdhury, Deputy Commissioner Abul Hossain and so many people were also injured. The locals made arrangement for sending him to Osmani Medical College Hospital. On 26.05.2004 he got release from the Hospital. Thereafter, he took better treatment outside the Hospital. Later on he came to know that due to bomb explosion S.I of police Kamal Uddin, Rubel Ahmmed and Habil Mia died.

In cross-examination by accused Delwar Hossain Ripon this witness stated that police took his statement and he was 04 cubits away from the main gate of the Mazar. There were around 5/7 thousands people. He did not see the bodies of the dead persons. He also stated that the explosion might be suicidal.

In cross examination by other accused he stated that he was in the Hospital for four days and police recorded his statement after 4/5 days.

P.W-18 Md. Jibon Mia deposed that he was the body guard of Deputy Commissioner Abul Hossain. On 21.05.2004 at about 12.55 hours he along with the Deputy Commissioner went to the Mazar of Hazrat Shahjalal (R:) and waited for the British High Commissioner. Eventually, the Deputy Commissioner received the High Commissioner and thereafter they entered into the Mosque for offering Jumma prayer. After completing prayer the High Commissioner was moving towards the main gate and exchanging greetings with the local people and at that time he and the Deputy Commissioner also with him. At about 1.40 P.M when they reached near the main gate of the Mazar a bomb explosion took place with a big sound. The High Commissioner Anwar Chowdhury, Deputy Commissioner Abul Hossain and he along with others received injures. He and Deputy Commissioner were admitted in Noorjahan Clinic. Later on he was taken

to Osmani Medical College Hospital. Eventually, he came to know that A.S.I Kamal Uddin, Rubel Ahmed and Habil Mia died and so many people were injured. He released from the hospital on the following day.

In cross-examination by accused Delwar Hossain Ripon this witness stated that the investigating officer took his statement twice including on the day of occurrence. He denied the defence suggestion that the police did not record his statement on the day of occurrence and he at first made his statement on 23.05.2004 before the police. Deputy Commissioner took treatment in Noorjahan Clinic Hospital and it was situated on the eastern side of the Mazar. He heard that the High Commissioner was taken to Medical College Hospital. He took the Deputy Commissioner to Noorjahan Clinic. He had no knowledge who blasted the bomb.

The other accused declined to cross-examine him.

P.W-19 Motiur Rahman, another seizure list witness, deposed that on 22.05.2004 at about 10.20 A.M in his presence police seized some materials including dust, broken pieces of tiles, a piece of bone of a human body and a round ring. He proved the said seizure list and his signature on it as exhibit-2(Ka) and 2(Ka)/1 and proved the alamats as material exhibits-XII, XIII, XIV and XV.

In cross-examination by accused Mufti Mainuddin he stated that the pieces of tiles and other alamats were not before the Court.

P.W-20 Sarkoum Yousuf Amanullah deposed that he was serving as the Mutwalli of the Mazar of Hazrat Shahjalal (R:) for 30 years. On 21.05.2004 at about 10.00 A.M he went to Tajpur village for personal reason. At about 2.00 P.M he came to know that a bomb explosion took place in the Mazar and so many people were injured. At about 4.00 P.M he came to Sylhet town and heard that the British High Commissioner, Deputy Commissioner, Sylhet and Advocate Abdul Hai were injured along with others and two persons died and later another named Habil Mia also died. On 20.05.2004 he came to know that the British High Commissioner would come to the Mazar on 21.05.2004.

In cross-examination by accused Delwar Hossain Ripon he stated that there were hostels and Madrasha at the Mazar premises. In cross examination by other accused he stated that the Mazar authority did not take any security measure for the High Commissioner.

P.W-21 Cherag Ali deposed that he has been serving as the Chowkider of the Mazar of Hazrat Shahjalal (R:). On 22.05.2004 at about 10.20 A.M in his presence the police after seizing some broken pieces of tiles, dust, a piece of human bone, a ring, prepared a seizure list and he put signature

on it. He proved the seizure list as exhibit-2(Ka)/2 and material exhibits-XII, XIII, XIV and XV respectively.

In cross-examination by accused Md. Delwar Hossain Ripon he stated that the sized ring was small in size. He put his signature on the seizure list as per the instruction of the police. The other accused declined to cross-examine the said witness.

P.W-22 Sallik Mia deposed that on 21.05.2004 at about 4.45 hours when he came out after seeing his nephew, who was injured by bomb explosion, he saw a dead body outside the ward and he put his signature on the inquest report as the Daroga asked him to do so. He proved the photostat copy of the inquest report and his signature on it as exhibit-3 and 3/1. Later on he came to know that it was the dead body of Habil Mia.

In cross-examination by accused Md. Delwar Hossain Ripon he stated that having seen the dead body he put his signature on the inquest report. He saw the dead body covered by white cloths. He did not see the injuries on the body of the deceased.

In cross-examination by Mufti Moinuddin he stated that he was a witness of the inquest report and he did not know about the identity of Habil Mia at the time of preparing the same.

P.W-23 Mir Md. Mizanur Rahman deposed that on 21.05.2004 he went to Sylhet Osmani Medical College

Hospital to see his cousin Abdus Salam who was injured by bomb blast. On that day at about 4.35 P.M at the 3rd floor in front of ward no.4 in his presence police prepared inquest report of a dead body and he put his signature on it. He proved the inquest report as exhibit-3 and his signature on it exhibit-3/2. On the following day he came to know that it was the dead body of Habil Mia of village Baistila.

In cross-examination by Md. Delwar Hossain Ripon he deposed that the dead body was covered by white cloths and he put his signature on it as the police asked him. He did not know the name of deceased Habil Mia. He further stated, in cross examination by accused Mufti Moinuddin, that he did not know the person who prepared the seizure list.

P.W-24 Shoyeb Ahmmed deposed that Rubel Ahmed was his younger brother. On 21.05.2004 at about 5.35 P.M. he succumbed to bomb injuries which took place in the Mazar of Hazrat Shahjalal (R:) when he was under treatment as Sylhet Osmani Medical College Hospital. He identified the dead body of Rubel. The dead body was injured allover. Police prepared the inquest of the dead body. He put his signature on it. He proved the photostat copy of the said inquest report as exhibit-3(Ka) his signature as exhibit-3(Ka)/1.

In cross-examination he stated that the original copy of the inquest report is not available at present. He could not know the names and addresses of other witnesses of the inquest report.

P.W-25 Dr. Sheikh Emdadul Haque deposed that on 22.05.2004 he was serving as a lecturer in Sylhet MAG Osmani Medical College Hospital. On that day at about 10.15 hours he held the autopsy of deceased Rubel as identified by Constable Motiur Rahman. He found the following injuries on the body of the deceased:

1. Multiple punctured wound on abdomen, chest, neck with irregular margin with scorching, tattooing and blackening measuring about 1/4” X1/4” X1/4” X cavity depth (about twenty).
2. One incised looking wound on right front to partial region 2”X1/4” X scalp depth.

On dissection of the body the above injuries were found. There was tattooing, scorching and blackening of external injuries due to splinters injuries.

P.W-25 opined that the death was due to neurogenic shock and hemorrhage which was due to above mentioned injuries which was antemortem and homicidal in nature.

Weapon used the splinters of bombs.

He proved the autopsy report and his signature as exhibit-4 and 4/1.

On very that day he also held autopsy of an unknown person and found following injuries on his body:

1. Multiple punctured wound on chest, abdomen, lower abdomen, pelvic region, thighs, both arms & forearms with irregular margin, scorching, tattooing & blackening measuring ¼”X1/6”X1/4”X to cavity depth.

   On dissection of the body above mentioned injuries were found. There was tattooing, scorching, blackening of the external injuries due to splinters effect.

   He opined that the cause of the death was due to hemorrhagonic shock which was due to above mentioned injuries which was ante mortem & homicidal in nature due to bomb blasting effect.

He proved the said report of autopsy as exhibit-4(Ka) and his signature as exhibit-4(Ka)/1.

He also held the autopsy of A.S.I Kamal Uddin and found the following injuries on his body.

1. Multiple lacerated injuries on both thighs & legs in different sizes 6”X2”X skin muscle depth with scorching, blackening & tattooing with communicated fracture of right tibia & fibula.

2. Multiple punctured wound with stitched on right maxillary, temporal region and ear and also in face, lt. side of chest, lower abdomen 1/6”X1/6”X1/6” to different (Illegible).
3. Stitched wound on abdomen 5”X1/4”X stitched.

On dissection of the body was found the above mentioned injuries. There was tattooing, scorching & blackening of external injuries due to splinters effects.

The death was due to hemorrhage shock which was due to above mentioned injuries which was ante mortem and homicidal in nature due to bomb blasting effect.

He proved the said report of autopsy as exhibit-4(Kha) and his signature as exhibit-4(Kha)/1.

In cross-examination he stated that the father’s name of Rubel was Lildar Ali of village Bhatipara, Police Station-Dhiry, District-Sunamgong. He held the autopsy of deceased Rubel at about 10.15 hours on 22.05.2004. The injuries were caused by the splinters of bombs. He denied the defence suggestion that the blackening used to cause if injuries caused from short place. He could not say the size of the bomb as he was not a blasting expert. The second dead body was brought by Constable Motiur Rahman and death was due to bomb blasting effect. He further

stated that A.S.I Kamal Uddin also succumbed to bomb blasting injures. He saw bomb in 1971 during the liberation war. He denied the defence suggestion that he did not held the post mortem properly.

In cross-examination by Mufti Moinuddin he stated that he held the post mortem of the three deceased persons. The police brought the dead bodies.

P.W-26 Md. Motiur Rahman, a police Constable, deposed that he took the dead bodies of A.S.I Kamal Uddin, Rubel Ahmed and an unknown person to the forensic department of MAG Osmani Medical College Hospital from the varanda of Ward No.4 and in presence of the Doctor he identified the dead bodies. He handed over the dead body to their respective relatives. He handed over the dead bodies of Rubel and another unknown person on 22.05.2004 to their relaties.

In cross-examination by accused Delwar Hossain Ripon he stated that dead body of the unknown person was received by his brother-in-law. He denied the defence suggestion that the unknown dead body was not taken by his relatives.

P.W-27 Mashuk Ahmed deposed that since 1997 he has been residing at Hawapara, Sylhet Town taking rent of a house and doing business at Bandor Bazar area. He used to offer Jumma prayer in the Mazar of Hazrat Shahjalal (R:). On 21.05.2004 he went to the

Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After ending of the Jumma prayer at about 1.40 P.M he saw that the British High Commissioner to Bangladesh and Deputy Commissioner, Sylhet along with others were moving towards the main gate. At this stage he heard a big sound of bomb blasting. He received injuries on his two legs and belly and fell down on the ground. He was taken to Osmani Medical College Hospital and admitted there for treatment. He was under treatment in the said hospital up to 25.04.2004. Due to bomb explosion British High Commissioner to Bangladesh and Deputy Commissioner, Sylhet received injury among other 50/60 persons.

In cross-examination by accused Delwar Hossain Ripon he stated that the investigation officer recorded his statement after two days of the occurrence. He denied the defence suggestion that the investigating officer never recorded his statement. In cross examination by other accused persons he stated that having heard the sound of bomb explosion he lost his sense.

P.W-28 Mamunur Rashid deposed that he knew deceased Rubel. On 21.05.2004 said Rubel received bomb injuries at the Mazar of Hazrat Shahjalal (R:) and he succumbed to his injuries while he was under treatment in Osmani Medical College Hospital. On 21.05.2004 at about 5.35 P.M in his presence police prepared the inquest report of deceased Rubel. He

proved the inquest report and his signature on it as exhibit-3(ka) and 3(ka)/2.

In cross-examination by accused Md. Delwar Hossain Ripon he stated that he saw the dead body at the time of preparing the inquest report and he put his signature on the inquest report as the police asked him.

P.W-29 Md. Farid Uddin deposed that A.S.I Kamal Uddin was his nephew. He died when he was under treatment at Sylhet Osmani Medical College Hospital having injured by bomb explosion at the Mazar of Hazrat Shahjalal (R:). Having heard the said information he went to Osmani Medical College Hospital and found the dead body of his nephew. On 23.05.2004 at about 11.45 hours police prepared the inquest of the dead body of A.S.I Kamal Uddin. He put his signature on the inquest report. He proved the inquest report as exhibit-3(kha) and his signature 3(Kha)/1.

In cross-examination by accused Delwar Hossain Ripon he stated that beside three others he put signature on the inquest report. He saw the dead body covered by white cloths. The dead body was taken to police line and after completing the 'Namaz-e-Janaja' the dead body was handed over to them.

P.W-30 Md. Golam Mostafa Sarkar deposed that A.S.I Kamal Uddin was his brother-in-law. He

received injuries by blasting of bomb on 21.05.2004 at the Mazar of Hazrat Shahjalal (R:) and he succumbed to his injuries when he was under treatment at Osmani Medical College Hospital. On 23.05.2004 at about 4.00 A.M in his presence the police prepared the inquest report of the dead body and he put his signature on it. He proved the inquest report as exhibit-3(Kha) and his signature on it as exhibit-3(Kha)/2.

In cross-examination by accused Delwar Hossain Ripon he stated that witness Farid Uddin is the uncle of his wife. The dead body of A.S.I Kamal Uddin was taken to police line and after completion of his 'Namaz-e-Janaja' the dead body was handed over to them.

In cross-examination by other accused persons he stated that he was serving at the office of Upazila Nirbahi Officer and hearing the information about the incident they came to Osmani Medical College Hospital by a microbus.

P.W-31 Surat Ali deposed that he was a photo journalist of the Daily Sylhet Bani. He on 21.05.2004 went to the Mazar of Hazrat Shahjalal (R:) for covering the news of visiting British High Commissioner to Bangladesh. After ending of Jumma prayer at about 1.40 hours when the British High Commissioner and Deputy Commissioner, Sylhet came near the main gate, an explosion took place with a

high sound. He was beside them. He received injuries on his head, eye, cheek and hand. He was admitted in Sylhet Osmani Medical College Hospital and on 25.05.2004 he was released from the hospital. Thereafter, he took treatment in different places privately. His left portion of the body is still paralyzed. In the hospital he came to know that so many people were injured due to bomb blast.

In cross-examination by accused Delwar Hossaion Ripon he stated that after 21 days police asked him about the occurrence. He did not see who blasted the bomb. He was 10 cubits away from the British High Commissioner. He could not say how many people were in between the High Commissioner and him. He went to the Mazar to perform his professional duty. He further stated that two persons died on the spot. He could not say whether the bomb was exploded by a suicidal squad. He did not collect the information how many police forces were there for the security of the British High Commissioner.

In cross examination by other accused persons he stated that he is a photo journalist. He used to use niko-108 brand camera. After the occurrence he did not found his camera and other papers kept with him.

P.W-32 Md. Kawsar Ahmed deposed that on 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering Jumma prayer. After completing the

prayer when he was coming out he saw that British High Commissioner was moving towards the main gate and there were so many people. At about 1.40 P.M a bomb exploded with high sound. He received injury on his leg. The local people took him in Sylhet Osmani Medical College Hospital. He was under treatment at bed no.2 ward no.4 upto 02.06.2004. Thereafter, he took treatment at Dhaka. His leg is still abnormal and he could not work without the help of 'stick' (lathi). Due to bomb explosion three persons died and so many people were injured including the British High Commissioner and Deputy Commissioner, Sylhet.

In cross-examination by accused Delwar Hossain Ripon he stated that at the time of occurrence he lost his sense and he regained sense on the following day in the hospital. Two persons of DGFI came to him. The investigating officer took his statement after 2/3 days and after four months a CID official took his statement.

He denied the defence suggestion that neither the investigating officer nor the CID official recorded his statement. He was 10/12 cubits away from the main gate when the bomb was exploded. The High Commissioner was 8/9 cubits away from him and in between them so many people were there.

P.W-33 Md. Aziz Ahmed deposed that A.S.I Kamal Uddin was his cousin and 21.05.2004 he came to know

that A.S.I Kamal Uddin having received bomb injuries at the Mazar of Hazrat Shahjalal (R:) was taken to Sylhet Osmani Medical College Hospital. Having gone there he found the dead body of A.S.I Kamal Uddin at ward no.4, 3rd floor of the Hospital. At about 4.00 A.M the police prepared the inquest report of the dead body.

In cross-examination by accused Md. Delwar Hossain he stated that he saw punctured wound on the body of the deceased. He along with Farid Member and brother-in-law Golam Mostafa came to the hospital and also was present at the time of preparation of the inquest.

In cross-examination by other accused persons he stated that having heard the information that A.S.I Kamal Uddin received injuries by bomb explosion they came to the Hospital by hireing a microbus at about 3.00 A.M.

P.W-34 Md. Rifatur Rahman deposed that on 21.05.2004 at about 5.35 P.M in his presence the Police prepared the inquest of deceased Rubel. He put his signature on it. He proved the inquest report of Rubel and his signature on it as exhibit-3(Ka)/3. He found so many punctured wounds on the body of the deceased Rubel. Rubel became injured due to bomb explosion at the Mazar of Hazrat Shahjalal (R:). On that day British High Commissioner Mr. Anwar Chowdhury, among others, was present there.

In cross-examination by other accused persons he stated that Rubel was his neighbour and at about 4.00 P.M they came to know that Rubel having received bomb injury was under treatment in the Hospital.

P.W-35 Dr. Jahir Ahmed deposed that Mr. Anwar Hossain Chowdhury the British High Commissioner to Bangladesh admitted in Sylhet Osmani Medical College Hospital on 21.05.2004 and on the same day he was released from the Hospital. On very that day at about 2.00 P.M he was examined at surgical unit-1 and on his body following injuries were found;

Right lower limb:

1. On extensive lacerated injury of about 3”X1/2”X muscle depth present in the middle of the right culf muscle with compressing hematoma impairing the circulation of leg.
2. There is also a lacerated injury of about 2”X1/2”X muscle depth presents in the back of right culf muscle containing splinter.
3. There are multiple penetrating injuries by splinter through out the right lower limb with active bleeding.

Left lower limb:

4. Multiple penetrating splinter injury about 10 in number present in the left lower limb.

He further deposed that the injuries were grievous caused due to explosion of bomb and the age

of injuries were one and half an hour later. He issued certificate to that effect. He proved the said certificate exhibit-5 and his signature as exhibit 5/1.

In cross-examination by accused Mufti Hannan, Ovi and Bipul he stated that he did not give treatment to the patient. He issued the certificate on 07.02.2007 consulting with the register of the hospital.

In cross examination by accused Delwar Hossain Ripon he stated that he had no personal knowledge other then issuing the certificate.

P.W-36 Abdun Noor deposed that deceased Habil Mia was his brother-in-law. His father's name was Md. Taher Ali of village-Purba Baistila, Police Station-Sylhet Sadar, District-Sylhet and his age was about 35 years. On 21.05.2004 he came to the Mazar of Hazrat Shahjalal (R:) with 'Sinni' as he was blessed with a child. Having not returned in the house they had been making search for him and through television news they came to know that three persons died due to bomb blast at the Mazar of Hazrat Shahjalal (R:). Then they went to the Sylhet Osmani Medical College Hospital at night. On the following day his autopsy was held. Having found the dead body they identified deceased Habil and they received the dead body by putting signature on the receipt (চালান). He proved the Photostat copy of the

receipt and his signature on it as exhibit-6 and 6/1.

At that time his brother-in-law Tara Mia a Member of Ward No.3 Khadimnagar Union Parishad, was present.

In cross-examination by accused Delwar Hossain he stated that his house is 10/12 miles away from the place of occurrence. He did not come at the Mazar on the day of occurrence. The house of deceased Habil Mia is 01(one) kilometer away from his house. Habil Mia used to do agriculture work. He came to know about the blasting of bomb from the locals and television news. He had no knowledge whether Habil Mia received injury due to suicidal explosion. One and half year back a Daroga went to him. He could not say the date, month and year of it. He denied the defence suggestion that no police went to him. Having received the summons he came to the Court.

In cross-examination by other accused persons he stated that his house and his brother-in-law's house is situated in the same ward. The age of his nephew is now about four and half years. He did not know whether the death of Habil Mia was registered. He denied the defence suggestion that Habil Mia died long before the alleged occurrence.

P.W-37 Md. Tara Mia stated that he knew Habil Mia who was the husband of his sister-in-law. His

father’s name was Md. Taher Ali village-Purba Baistila, Police Station- Sadar, District-Sylhet. Purba Baistila village is situated within Ward No.3 of Khadimnagar Union. He is an elected member. Habil Mia went to the Mazar of Hazrat Shahjalal (R:) on 21.05.2004 as he got child but he did not return to the house. At the evening they came to know that bomb explosion took place in the Mazar. On the following day they came to know that autopsy of two dead persons was held but the dead body of one was not identified. Then he along with his brother-in-law Abdun Noor went to Osmani Medical College Hospital and identified the dead body of Habil Mia, who was earlier unidentified. Abdun Noor received the dead body of Habil Mia signing on a receipt. He proved the receipt and his signature as exhibits 6, 6/2.

In cross-examination by accused Md. Delwar Hossain he stated that he had no document to show that Habil Mia is the husband of her sister-in-law. Habil Mia did not inform anything to him before coming to the Mazar. Having gone to the house of Habil Mia he came to know that he went to the Mazar with 'Sinni'. They did not submit the voter list of Habil Mia. But he could be able to submit the voter list of Habil Mia. He was not present when inquest or autopsy was taken place. He made statement after one and half months of the alleged occurrence. In

the house of the Habil Mia police recorded his statement. He could not remember whether Abdun Noor was present at that time. Parents and wife of Habil Mia are still alive.

In cross-examination by the other accused persons he stated that he could not remember whether he made any statement before the police. He identified deceased Habil Mia. His parents were in the house and they are pious persons. He denied the defence suggestion that the parents of the Habil Mia refused to identify the unknown dead body as their son Habil Mia. He had no knowledge whether the explosion was suicidal in nature. He denied the suggestion that the police compelled him to identify the unknown dead body as the dead body of Habil Mia.

P.W-38 Md. Anwar Hossain deposed that 28.12.2006 he was working at Sylhet Kotwali Police Station as A.S.I. As per the requisition of CID pursuant to the inquiry slip, he went to village Baistila on 28.12.2006 and having made inquiry he came to know that Habil Mia died due to bomb explosion at the Mazar of Hazrat Shahjalal (R:) on 21.05.2004.

In cross-examination by accused Abdul Hannan, Ovi and Bipul he stated that during his inquiry he examined 06(six) persons. He denied the defence suggestion that with a malafide intention they had tried to identify dead body of an unknown person as

Habil Mia. He could not ask the local Chairman whether the death of Habil Mia was registered in his office. He denied the defence suggestion that Habil Mia was not the person who died due to bomb explosion.

P.W-39 Md. Akter Hossain deposed that on 09.01.2007 he was in service at Sylhet Kotwali Hospital and for verification of the information slip he verified the address of accused Sharif Shahidul Islam @ Bipul and found that his address was 14/1 Santibagh, Police Station Kotwali, District-Sylhet and he had a wife and a child aged about one and half year. From them he came to know that accused Sahidul Alam hailed from village-Muhishadi under Police Station-Chandpur Sadar, District-Chandpur. He submitted the report on 09.01.2007. He interrogated the wife of accused Shahidul Alam and his brother-in-law.

In cross-examination he stated that in his report he did not state anything whether Sharif Shahidul Alam @ Bipul was in abroad for a long time. He got information that accused Sharif Shahidul Islam @ Bipul was a contractor. He had no knowledge whether accused Shahidul Alam resided at 14/1 Shantibagh for doing his job.

P.W-40 Md. Jalal Ahmed deposed that he was a mason. On 21.05.2004 he went to the Mazar of Hazrat Shahjalal (R:) for offering prayer and at about 1.45

hours a bomb was exploded near the main gate when the British High Commissioner exchanging greetings with the people present there. He received injury by the splinter of bombs and later on admitted in the Sylhet Osmani Medical College Hospital where he was under treatment for 7/8 days.

In cross-examination by Delwar Hossain Ripon he stated that he was in the western side from the main gate. He did not see the British High Commissioner. On the following day the police took his statement.

P.W-41 Sattajit Barua deposed that on 21. 05.2004 he was serving as S.I in Sylhet Kotwali Police Station. Having heard the news of bomb explosion at the Mazar of Hazrat Shahjalal (R:) he went to Osmani Medical College Hospital and at about 4/5 P.M he found a person dead in Ward No.4. As per instruction of the officer-in-charge he prepared the inquest of the said dead body at about 16.35 hours. At about 17.15 hours he having gone to the morgue prepared the inquest of deceased Rubel. Thereafter, the dead body was sent for autopsy. He proved the photostat copy of inquest report as exhibit-3, 3(Ka), his signature-3/3, 3(Ka)/4.

The defence declined to cross-examine the said witness.

P.W-42 Md. Fazlul Alam deposed that on 21.05.2004 he was serving as S.I in Sylhet, Kotwali Police Station. On 21.05.2014 at about 15.10 hours

pursuant to the G.D entry No.1493 he went to the Mazar of Hazrat Shahjalal (R:) and having found a olive coloured small handle (allegedly handle of grenade) 02 still paths having notched, some splinters, pieces of cloths, 05 toopies (cap), a bloodstained, Panjabi, 11 shoes of different colours, bloodstained earth and prepared seizure list of those. He proved the seizure list as exhibit-2 his signature on it as exhibit-2/2.

In cross-examination he stated that he did not mention in the seizure list as to the length and wide of the Mazar premises. He did not seize the bloodstained plaster and tiles. He prepared the seizure list and he had knowledge about the grenade and it has handle. He found splinters on the body of the victims.

In cross examination by accused Mufti Moinuddin he stated that the seized goods were before the court and he identified the round shape splinters. He denied the defence suggestion that those alamats were not of the grenade. He also denied the defence suggestion that he did not seize any alamats from the place of occurrence.

P.W-43 Md. Sirajul Islam deposed that A.S.I Kamal Uddin was his brother-in-law. Hearing his death news by bomb explosion he went to Sylhet Osmani Medical College Hospital on 23.05.2004 and going there he found the dead body of A.S.I. Kamal

Uddin at bed number 13, Ward No.4. In his presence at about 3.45 A.M the police prepared inquest report of deceased Kamal Uddin. He put his signature on the inquest report as exhibit-3(Kha) and his signature on it as exhibit-3(Kha)/3.

The defence declined to cross-examine the said witness.

P.W-44 Debojit Singh deposed that on 31.05.2007 the investigating officer of the case Munshi Atikur Rahman produced witness Md. Abul Kalam Azad for recording his statement under section 164 of the Code of Criminal Procedure and he recorded his statement. He read over the same before him and he put his signature on it.

In cross-examination by accused Delwar Hossain he stated that he did not ask the witness how many days he was in police custody. He did not give any certificate that said witness made the statement voluntarily and truly. He further stated that it could not be possible for him to say after giving statement where the witness used to go.

In cross-examination by other accused he stated that the said witness disclosed his name as Md. Abul Kalam Azad son of late Md. Alamgir of 1557 Purba Nandipara, Khilgaon, Dhaka. He recorded the statement following the legal procedure. He did not ask the said witness whether he made the statement due to the pressure of police.

P.W-45 Dr. Md. Kamrul Alam deposed that on 21.05.2004 he was serving as the Assistant Registrar of Sylhet Osmani Medical College Hospital. One Shamim son of Shamsar Uddin of Bianibazar, Sylhet at about 4.10 P.M admitted into the hospital receiving serious injury on his left leg. Dr. A.K.M Salim and Dr. Mahmud operated him and his left leg was cut off as his leg was totally damaged. He issued the certificate exhibit-5(Ka). He proved his signature on it as exhibit 5(Ka)/1.

P.W-46 S.A. Newazi deposed that on 21.05.2004 he was serving as the Officer-in-Charge of Sylhet, Kotwali Police Station. He investigated the case from 21.05.2004 to 30.05.2004. He visited the place of occurrence, prepared the index, sketch map, and took steps to prepare the inquest of the dead persons. On 22.05.2004 at 10.20 A.M he prepared the seizure list. The concerned police officer seized some alamats material exhibit-XII-XV and prepared the seizure list as exhibit-2(Ka). He proved the sketch map, index and his signature on those as exhibit-8(Ka) and 8/1 and 8(Ka)/1. He recorded the statement of some witnesses and arrested some suspected persons. Eventually, he handed over the case record to CID official Munshi Atikur Rahman.

In cross-examination he stated that ejahar was lodged on 17.25 hours. Immediate after the occurrence he went to the place of occurrence. After

lodging of the First Information Report he again visited the place of occurrence. He arrested 09 persons as suspect and the said persons were recommended for discharge. He got the information regarding the visit of British High Commissioner Mr. Anwar Chowdhury from police station.

P.W-47 Md. Noor-e-Alam Siddique deposed that on 16.10.2006 he was serving as Magistrate, 1st Class, Sylhet collectorate. On that day S.I Md. Iqramul Haque produced accused Md. Sharif Shahidul Alam @ Bipul and Md. Delwar Hossain Ripon. He having allowed them sufficient time for reflection recorded their respective statements under section 164 of the Code of Criminal Procedure observing all the legal formalities. After recording the respective statements he read over the same to them and they put their signatures on those. He proved the statement made by accused Md. Sharif Shahidul Alam @ Bipul and accused Md. Delwar Hossain Ripon as exhibit-9, 9(ka) and his signature on it as exhibit-9/1-9/5 and 9(ka)/1-9(ka)6.

In cross-examination by accused Delwar Hossain he stated that he could not remember whether on that day he was in charge of cognizance court. He recorded his statement in his office. The accused were brought to him at 7.00 A.M and the office hour was 9.00 A.M-4.00 P.M. He did not make the query whether the said accused persons made any statement

with regard to the occurrence before the police. He having satisfied as to the statement made by the accused person, gave certificate. He denied the defence suggestions that the police having written the statement of the accused handed over the same to him and he did not record any statement of them. He did not ask the said accused how many days were they in police custody before making such statement. He denied the defence suggestion that the accused made complain before him that they were tortured when they were in police custody. It was recorded that the accused were produced before the court from RAB-9, Head Quarter Office. The accused were given time for reflection in his chamber. He denied the defence suggestion that he was under the control of armed police. He also denied the various suggestions put by the defence that he did not give any certificate as per provision of section 164 of the Code of Criminal Procedure and he had no knowledge whether accused Ripon filed any application for retraction of his statement.

P.W-48 Md. Abul Kalam Azad deposed that since in the year 2000 he had a tea stall beside the Badda main road. From the first part of the year 2002 a bearded man used to come to his tea stall and took tea and discussed about Islam religion. The said person used to say that in the country antisocial activities like wine, gambling oppression on the

women were going on and it had been destroying the image of Islam. He was impressed to hear the said words. He asked him about his residence and he disclosed that he would take him to his house. In this way the said person off and on came to his tea stall and they used to talk each other and eventually, he came to know that the name of said person was Ahsan Ullah and he hailed from Faridpur. In the first part of 2003, one day, he took him in a Madrasa inside Badda DIT project. Some Mowlana used to come in that house and he used to serve them tea and other foods. The persons who used to come there were Mufti Abdul Hannan, Abu Jandal, Mofiz, Ratan, Mowlana Abu Jafar. They used to talk about an organization named 'Harkatul Zihad'. In the first part of 2004, one day, he along with Ahsan Ullah, Mufti Abdul Hannan, Mofiz and Abu Jandal while talking in that house at that time a tall man came there and Ahsan Ullah giving him [PW-48] a note of Tk.50/- asked to take tea and '*Chanachur*'. Having taken tea and '*Chanachur*' while he served the same before them at that time the said tall man was saying that the innocent people were being killed due to bomb explosion. From there talking he also came to know that the name of the tall man was Bipul and he was from Sylhet. Bipul also said that because of the killing of innocent people the image of their party was being lost. Then Mufti Hannan said from

now they would kill the persons belonging to 'Awami League'. Then Bipul told how they would implement the said task. At that time Ahsan Ullah asked him [PW-48] to clean the cups and he went to nearby washroom and from there he heard that Mufti Hannan was telling that there were grenades with him and they would use it on the leaders of 'Awami League'. Mufti Hannan also said that in a suitable time he would supply grenade to them to kill the leaders of 'Awami League' in Sylhet. Thereafter, one after another they all left the house. He returning Tk.15/- to Ahsan Ullah also left the house. Thereafter, he used to go to the house of Ahsan Ullah and Ahsan Ullah also used to come to him. In the month of April 2004 one day at the evening he along with Ahsan Ullah, Mofiz, Abu Jandal were talking and at that time Bipul along with another came there with a box of computer. Ahsan Ullah through mobile phone informed someone that Bipul had come. Thereafter, he came to know that the name of another person was Ripon. Ahsan Ullah having finished talking through mobile brought 04(four) *packets* from wall cabinet and handed over those to Bipul and thereafter Bipul and Ripon having kept those in side the computer box and hurriedly left the place. Later on he also came out from the said house. After one and half months he heard that grenade attack was taken place in the Mazar of

Hazrat Shahjalal (R:) at Sylhet and 3/4 persons were killed and so many people including British High Commissioner to Bangladesh Anwar Chowdhury was injured. Then he could remember that Ahsan Ullah supplied Bipul 04(four) packets containing grenade. Thereafter, he closed his tea stall and went to hiding and also stopped to go to the house of Ahsan Ullah. Later on he came to know that Mufti Abdul Hannan, Bipul and Ripon were arrested by the police. He made statement before the Magistrate. He identified Mufti Abdul Hannan Munshi, Mafiz, Bipul and Ripon present in the dock.

In cross-examination by accused Delwar Hossain he could not say how long the Badda main road was. The tea stall was his own. He could not say the nature of shops situated opposite side to his shop as those were about one mile away from his shop. He could not say the name of said shop owners. The person (Ahsan Ullah) who used to come to his tea stall discussed about the 'Islam'. There was no holding number of his tea stall. He on 23.03.2007 gave the statement in the CID office. Thereafter, he did not meet the police. He could not say how many days he went to the alleged house. He could not say the holding number of the said house. He had no other source of income except the income of the said tea stall. He could not say the exact date of delivery of the packets. He stated that the packets

were like the packet of 'Bulb'. He stayed about two hours in Malibagh CID office and possibly he put a signature on a paper. He denied the defence suggestions that he deposed as tutored by the prosecution and he was a managed witness. At present he has no shop as the police removed his shop and he owns a house at 1557, East Nandipara, Khilgaon.

In cross-examination by other accused persons he stated that when Ahsan Ullah came to his tea stall other customers also used to present there. Before went to hiding he did his business of tea stall. The house where Ahsan Ullah took him was situated inside the DIT Project and the said house appeared to see like a 'Madrasa'. He did not ask Ahsan Ullah how many students were in the said 'Madrasa'. The room where he went was square in seize but he could not say the measurement of the same. He denied the defence suggestions that he deposed falsely and he was a source of police and he had no tea stall as he stated in deposition.

On re-call by the prosecution he further deposed that he knew accused Abu Jandal and Mufti Moinuddin. The design of the house was like a 'Mosque' and it was inside DIT Project. He found Mufti Hannan, Moinuddin @ Abu Jandal, Ratan, Mofiz and Mowlana Abu Jafor. He knew them as he was introduced before them. He used to serve tea and foods to them.

He identified accused Abu Jandal along with other accused persons present in the dock.

In cross-examination by accused Ripon he stated that he could not know the father's name of accused Ripon and his village home. He voluntary stated that on the last occasion Ripon went there with Bipul. He denied the defence suggestion that he did not know accused Ripon.

In cross-examination by accused Abu Jandal he stated that he did not know the father's name and the address of Abu Jandal. He denied the suggestion that CID officer Jubar identified Abu Jandal to him when he was on dock.

P.W-49 Md. Shafiq Anwar stated that on 19.11.2006 he was serving as the Metropolitan Magistrate at Dhaka and in connection with Ramna Police Station Case No.201 of 2004 accused Mufti Abdul Hannan Munshi was produced before him for recording his statement under section 164 of the Code of Criminal Procedure. He observing all the formalities recorded the statement of said accused. He proved Photostat copy of the said statement as exhibit 9(kha), his 25 signatures on it 9(kha)/1-9(kha)/25. He recorded the statement by following of the provision of section 164 and 364 of the Code of Criminal Procedure. He put his signature on the memorandum and he believed that the statement was true and voluntary.

He also identified the signatures of Mufti Abdul Hannan as exhibits-9(kha)/26-9(kha)/48.

In cross-examination by accused Delwar Hossain he stated that he recorded the statement of accused Mufti Abdul Hannan in connection with a Ramna Police Station Case. A CID inspector produced accused Abdul Hannan before him. He sent accused Abdul Hannan to jail after recording his statement. He denied the defence suggestions that he did not send the accused Abdul Hannan into the jail after recording the statement and he recorded the statement violating the provision of sections 164 and 364 the Code of Criminal Procedure.

On behalf of the other accused person all most similar suggestions were put to the said witness which he denied.

P.W-50 Md. Abdul Awal Chowdhury deposed that on 21.05.2004 he was serving as S.I in Kotwali Police Station, Sylhet and while he was on patrol duty in Sylhet town, the officer-in-charge through wireless message asked him whether British High Commissioner to Bangladesh was in the Consulate office of High Commission at Kumarpara. Then he went to consulate office at Kumarpara and came to know that British High Commissioner Mr. Anwar Chowdhury would go to the Mazar of Hazrat Shahjalal (R:) at 12.30 P.M for offering Jumma prayer. Thereafter, he escorted British High Commissioner Mr. Anwar Chowdhury on the

way to Mazar and after reaching Mazar he again came to his patrol duty. After completion of the Jumma prayer at about 1.40 P.M. while he was on duty in front of Noorjahan Clinic he heard a big sound and saw that the people were running here and there and he also found so many injured persons. Thereafter, he took step to send Mr. Anwar Chowdhury and Deputy Commissioner Abul Hossain who were injured to Sylhet Osmani Medical College Hospital and informed the said fact to the higher authority. Later on he came to know that three persons died and many people were injured due to bomb explosion.

In cross-examination by Delwar Hossain Ripon, he stated that the Officer-in-Charge asked him to know about the program of British High Commissioner at about 10.00 A.M and he came to know about the program of British High Commissioner from his personal assistant and prior to that the Officer-in-Charge did not know about the program of British High Commissioner.

In cross examination by other accused this witness stated that he had no knowledge whether some persons were arrested from the place of occurrence on the same day. He took British High Commissioner and the Deputy Commissioner to the Sylhet Osmani Medical College Hospital along with S.I Shah Alam.

P.W-51 Md. Sabiur Rahman deposed that on 23.05.2004 while he was serving as S.I in Sylhet

Kotwali Police Station at about 4.00 A.M at night he prepared the inquest of deceased Kamal Uddin at Ward No.4, Bed No.13 with the help of electric light and sent the dead body through Constable Motiur Rahman to morgue. When he prepared the inquest report he found that the belly of the deceased was covered by bandage. He proved the said inquest report as exhibit-3(ka) and his signature on it 3(kha)/4. On 22.05.2004 at about 8.00 A.M he seized bloodstained shirt of injured Abdul Mukit, bloodstained lungi of injured Nurul Islam, bloodstained lungi of injured Jubair Ahmed and a bloodstained trouser of injured Surut Ali. He proved the seizure list as exhibit-2(ka) and his signature on it 2/(Kha)/1. He also identified the alamats as material exhibit-VI, VII and VIII.

In cross-examination by accused Delwar Hossain Ripon he stated that at the time of preparation of inquest report so many people were present but he did not know them personally.

P.W-52 Md. Shah Alam deposed that on 21.05.2004 he was serving as O.C of D.S.B. On 21.05.2004 at about 12.30 A.M he came to know that British High Commissioner would come to the Mazar of Hazrat Shahjalal (R:) for offering Jumma Prayer. The higher authority asked him to deploy D.S.B officers and forces in the Mazar area. He along with office assistant Sirajul Islam went to the Mazar area.

After ending of Jumma prayer he was waiting for the British High Commissioner outside the Mazar. British High Commissioner after offering prayer and 'Fateha' started to move towards the main gate. He was accompanied by Deputy Commissioner, A.S.I of D.S.B Kamal Uddin along with other forces. At about 13.40 hours a big sound took place near the newly constructed Mazar gate and having received injury many persons fell down on the earth. He informed the said fact to the higher authority through wireless message and took step to send the injured persons to the hospital. British High Commissioner Mr. Anwar Chowdhury and Mr. Abdul Hai Khan, President of District Bar Association also received injuries.

In cross-examination by accused Delwar Hossain Ripon he stated that D.S.B office received the tour program of British High Commissioner on 20.05.2004 at the evening and said fact was intimated on the same day to the officer-in-charge of Kotwali Police Station. He did not see in which floor the British High Commissioner offered Jumma prayer. When the big sound took place he was behind 6/10 yards away from the High Commissioner inside the compound. He went to the Mazar before starting 'Khutba' with Sirajul Islam. When the sound took place Deputy Commissioner and his Gunman, D.S.B Gunman A.S.I Kamal Uddin and another Gunman Abdur Rahman were present there. 20/30 persons were present when the explosion took

place and it was not possible for him to mention all the names who were present in front of British High Commissioner. There were thousands of people inside and outside the Mazar. At that time no police personnel was with him. He could not see where the Deputy Commissioner was taken. Noorjahan Clinic is 400/500 cubits away from the place of occurrence. He did not leave the place of occurrence. He had no knowledge whether the explosion was suicidal.

In cross-examination by other accused persons he further stated that in the main program of British High Commissioner there was no program for visiting the Mazar. He had no knowledge whether at the instance of Abdul Hai Khan that program was eventually added. Abdul Hai Khan was with the British High Commissioner when the High Commissioner was coming out from the Mazar. He had no knowledge whether one Habibur Rahman was arrested from the Mazar gate after the occurrence. He had no knowledge whether British High Commissioner went to Mazar as his personal visit.

P.W-53 Munsi Atiqur Rahman the investigation officer in his deposition stated that he was served at the Assistant Police Super of CID from April 1993 to April 2007. He was entrusted for investigation of the case of Sylhet Kotwali Police Station Case No.64 dated 21.05.2004 vide CID Office Memo No. CA/Sylhet/PD-11-04/10419/1(4) dated 27.05.2004.

Having received the case docket from the previous investigating officer he consulted with the same along with the collected papers, visited the place of occurrence and recorded the statements of the informant and other witnesses including the injured persons under section 161 of the Code of Criminal Procedure. He arrested some persons as suspect out of them Sharif Shahidul Alam Bipul and Delwar Hossain had made confessional statement under section 164 of the Code of Criminal Procedure.

He forwarded them before the concerned Magistrate for recording their respective statements under section 164 of the Code of Criminal Procedure. He collected the confessional statement of Mufti Abdul Hannan made before the Metropolitan Magistrate of Chief Metropolitan Magistrate Court, Dhaka in connection with another case. He visited the house where conspiracy had taken place. The house is being No.53, road No.12, DIT extension road, Badda, Dhaka. He prepared map and index of the said house. He recorded the statement of witness Abul Kalam Azad [PW-48] and produced him before the Magistrate to record his statement under section 164 of the Code of Criminal Procedure. He proved the map and index of the place of conspiracy as exhibits-8(kha), 8(Ga) and his signature on it as exhibits-8(Kha)/1 and 8(Ga)/1. He did not prepare the sketch map and index of the place of occurrence as he found those correct

which was prepared by the earlier investigating officer.

During his investigation he learnt from the statements of the accused persons and other materials that accused Mufti Abdul Hannan had taken training in Afganistan and he participated in the war and after his return from there he formed an organization named 'Bangladesh Harkatul Jihad Al-Islami' among the persons who went to Afganistan for fighting to establish Islamic Rule. Accused Mufti Abdul Hannan and his accomplices blasted bombs in different places of the country including at 'Ramna Batmul' and in Jessore in the program of 'Udichi'. In 1996, when the Awami League formed Government, High Court Division having issued a Suo-muto Rule stopped to give 'Fatwa' by the 'Alims'. Beside an incident also took place in Brahmanbaria regarding the activities of NGO (Non Government Organization) and so many Islamic Scholars including Fazlul Haque Amini and Shykhul Hadith were arrested and because of such activities 'Harkatul Zihad' believed that the Awami League was the enemy of Islam and agent of India. In the month of July, 2002 in order to kill the then Prime Minister Sheikh Hasina, Mufti Hannan took an attempt planting 'mine' near the helipad and stage of the public meeting at Kotalipara, Gopalgonj. But their plan was not successful. However, a case being Kotalipara Police Station Case

No. 5(7) 2004 was started against Mufti Abdul Hannan and others. Eventually, he also sent Mowlana Abu Syed and others with bombs in order to kill Ex-Prime Minister Sheikh Hasina while she visited Sylhet. Mowlana Abu Syed and his associates having failed to kill Sheikh Hasina went to the house of Dr. Refat and while they tried to defuse the bombs then their associates Abu Musa @ Musa Morol and Lokman succumbed to injuries.

In the first part of 2004 accused Shahidul Alam Bipul, leader of Sylhet area, met with Mufti Abdul Hannan at his house 53, Badda and at that time accused Mohibur Rahman @ Mafiz @ Ovi, Abu Jandal, Ahsan Ullah Kazal were present along with Mufti Abdul Hannan and they discussed about their future plan and they decided to attack on the leaders and workers of Awami League in order to kill them using grenade. Accused Abdul Hannan asked accused Sharif Shahidul Alam to resist the leader of Awami League at Sylhet area and he told them that in appropriate time he would supply grenade. In the month of April,2004 accused Shahidul Islam, accused Sharif Shahidul Islam, Bipul and Delwar Hossain Ripon came to the Madrasha of accused Abdul Hannan at 53, Badda. Accused Abu Jandal having taken consent from accused Abdul Hannan supplied 04(four) grenades to Bipul and Ripon in presence of Ahsan Ullah Kazal, Abu Jandal and Mohibullah. Bipul and Ripon carried

the said grenades to Sylhet inside a computer box. On coming to know about the information that on 21.05.2004 British High Commissioner would come Sylhet and accused Bipul informed the said fact to accused Abdul Hannan. The American and British were involved in attacking various Muslim countries and if they would kill British High Commissioner it would be a tremendous job for them and accordingly, they plan to kill British High Commissioner.

In furtherance of their plan, on 21.05.2004 accused Sharif Shahidul Islam Bipul asked accused Delwar Hossain Ripon to come at the Mazar of Hazrat Shahjalal (R:) with grenade and accordingly at about 12.30 A.M Ripon came there with grenade and they met there. Accused Bipul and Ripon also offered Jumma prayer along with the other 'Musallies' and followed the movement of British High Commissioner. After completion of the prayer when British High Commissioner started moving towards the main gate and exchanging greetings with the people present there at that time at the instruction of accused Sarif Shahidul Alam Bipul accused Delwar Hossain Ripon having open the pin of the grenade threw the same aiming British High Commissioner. The grenade was blasted causing big sound. British High Commissioner and Deputy Commissioner, Sylhet along with 50/60 persons were injured. Three persons including one A.S.I, who was on duty, were died.

Having completed investigation he submitted two separate charge sheets against the accused persons, one was under sections 120B/326/302/34/109/ 114/111 of the Penal Code and another was under sections 3/4/5/6 of the Explosive Substances Act.

In cross-examination by accused Delwar Hossain Ripon he stated that the occurrence took place on 21.05.2004 at about 13.40 hours and on that day FIR was lodged at about 17.25 hours. He submitted the charge sheet on 07.06.2007. He further stated that he visited the place of occurrence. While the occurrence took place his place of service was at Dhaka. The previous investigating officer arrested 09 (nine) persons being suspected them and he arrested 11 persons. He recommended 18 suspected persons for discharged. The owner of house number 53, road number 12 of Badda was Colonel Golam Rabbani. He recorded his statement under section 161 of the Code of Criminal Procedure but he did not cite him as a witness in the charge sheet. The house was three storied building and the owner of the house also resided in the house. He denied the defence suggestion that he did not cite him as a witness as had he been examined he would not support the prosecution story. He did not record the statement of British High Commissioner Anwar Chowdhury and cite him as a witness due to protocol reasons. He also did not record the statement of

Deputy Commissioner Abul Hossain. He tried to record his statement but he did not find him. He denied the defence suggestion that he did not cite Abul Hossain, Deputy Commissioner, Sylhet as a witness as he would not support the prosecution story. He found witness Md. Abul Kalam Azad on 20.03.2007 at his house and he recorded his statement under section 161 of the Code of Criminal Procedure on that day at about 19.00 hours and he did not know him previously. One day after, he produced the said witness before the Magistrate to record his statement. He did not preserve any photograph of witness Abul Kalam. He had a tea stall previously; he did not ask him what he was doing at the time of recording his statement. He did not see the tea stall. He denied the defence suggestion that witness Abul Kalam was a hired witness. He did not seize any documents with regard to *'Harkatul Zihad Al-Islami Bangladesh'*. He denied the suggestions that his statement regarding the 'Fatwa' and explosion of bombs were imaginary. He did not record the statement of the witnesses under section 164 of the Code of Criminal Procedure. He forwarded accused Delwar Hossain Ripon before Magistrate to record his statement but he did not remember who produced him before the Magistrate. Accused Ripon was produced before the Magistrate on 16.10.2006 through Inspector Md. Eqramul Haque. Md. Eqramul Haque was

not cited as a witness. He arrested accused Delwar Hossain Ripon on 04.09.2006 and he was on remand for 10(ten) days in between 04.09.2006 to 16.10.2006. Then he was taken to remand in connection with another case. Thereafter, he was again taken on remand on 15.10.2006. He could not say whether he took him again on remand. He did not see to hand over the grenades to accused Bipul and Ripon by accused Abdul Hannan. He denied the defence suggestions that accused Ripon never took any grenade from any one and the attack on British High Commissioner was imaginary. He received the report of ballastic expert done by Scotland Yard, where it has been held that the alamats were of Urges grenade. He had no knowledge whether accused Ripon was under 40 days remand and he was tortured during his remand. He also denied the suggestion that in presence of the police and RAB the statement of Ripon was recorded and accused Ripon was innocent.

In cross-examination by other accused person he stated that Mufti Hannan was known as a kind man in his locality. He had no knowledge when accused Abdul Hannan was arrested. But he on 24.03.2007 submitted an application to show him arrest in this case. He had no knowledge whether accused Abdul Hannan was on remand for 77 days before he making his confessional statement and after recording his statement he was also on remand for 100 days. Mufti Hannan was not

taken remand in this case. He denied the defence suggestion that Mufti Hannan was compelled to make the statement as he was tortured when he was on remand and his statement was recorded in presence of RAB. A.S.I Md. Enamul Haque produced Bipul before the Magistrate. He was taken remand in total for 12 days. He had no knowledge whether Bipul was on remand for 40 days. During his investigation he did not investigate about the working place of Bipul. He had no knowledge whether Bipul was a contractor of a Mobile Phone Company. He denied the defence suggestion that Bipul was implicated in the case at the instance of his rival business group. He denied the suggestion that having created false confessional statement he implicated accused Abdul Hannan and Bipul in this case and he investigated the case in a perfunctory manner. He denied the defence suggestions that accused Abdul Hannan, Bipul and Ovi were not at all involved with the alleged occurrence and they did not make any conspiracy and Mufti Hannan did not supply any grenade to anyone. The accused did not know each other.

On re-call he further deposed that having found the address of accused Abu Jandal he filed supplementary charge sheet. He proved the expert report done in United Kingdom regarding the seized alamats, which was forwarded to him by the Ministry of Home Affairs exhibit-X series and proved the

forwarding and respective signature of concerned officer y-y(3).

In cross-examination by accused Ripon he stated that he did not cite any one from the Ministry of Home Affairs as witness to prove exhibits-X and Y. He denied the suggestion that exhibit-Y is not related with regard to the alamats of explosive. He did not examine British High Commissioner to Bangladesh Mr. Anwar Chowdhury due to legal complication. Abu Jandal was not arrested by him. In his investigation he did not assert from where Mufti Hannan got the grenades. He denied the defence suggestion that Mufti Moinuddin is not Abu Jandal and he was not a member of *'Harkatul Zihad'*.

In cross-examination he stated that accused Bipul made his statement before the Magistrate as per his prayer but Hannan and Ovi did not make any statement in connection with this case.

He denied the suggestion that accused Mohibullah alias Mofiz was not Ovi despite he had been implicated in the case. He investigated the case with regard to the grenade attack on 21.04.2004 in Dhaka for sometimes. He also denied the suggestion that without investigating the case he submitted the charge sheet implicating the accused Hannan, Ovi and Ripon.

P.W-54 Dr. Mohammad Abdul Gaffar deposed that on 21.05.2004 he was serving at Osmani Medical

College Hospital, Sylhet. On call he used to treat the patient in Noorjahan Hospital. On 21.05.2004 at about 2.45 hours after the Jumma prayer on call he went to Noorjahan Hospital by its vehicle and treated Abul Hossain, Deputy Commissioner, Sylhet. He was also treated by Professor Dr. D.E. Raza Chowdhury. He found superficial injury of soft tissue on different parts of his body and fracture on leg. He gave plaster on the leg of the victim and later on he issued certificate on 07.06.2007 consulting with the record of the Clinic. He proved the said certificate and his signature as exhibit-10 and 10(1). In the certificate they mentioned about 07(seven) injuries. The cause of injuries was bomb blast and fracture of Rt. Tibia, Fibula probably due to fall. The victim was referred to Dhaka, Combined Military Hospital for better treatment. He also proved the signature of Dr. D.E. Raza Chowdhury exhibit-9(2). The victim was treated as an outdoor patient.

In cross-examination by accused Delwar Hossain Ripon he stated that at the relevant time he resided at the old quarter of Medical College which is 1 (one) kilometer away from Noorjahan Hospital. Around 1.45 P.M he was called on. At first Dr. Raja treated victim Abul Hossain. Fracture might have caused as he fell down on the ground and he did not found any injury of grenade on his body. Dr. Raja is still in

the Sylhet. The other accused declined to cross-examine him.

P.W-55 Sunil Kumar Karmakar deposed that while he was in Faridpur Kotwali Police Station he inquired about accused Ahsan Ullah @ Hasan @ Kazal whether he was alive or death. The brother of Ahsan Ullah informed him that he had died but they did not get his dead body. He proved his report and his signature on it as exhibit-11 and 11(1).

In cross-examination by accused Delwar Hossain Ripon he stated that he did not submit the death certificate of deceased Ahsan Ullah.

P.W-56 Md. Juber, Police Inspector, CID, deposed that on 21.02.2008 at the instruction of higher authority he took the responsibility for further investigation of the case and he submitted charge sheet against accused Mufti Moinuddin alias Abu Jandal as he found his address. Earlier his address was not found and he was not charge sheeted. He filed supplementary charge against Mufti Abdul Hannan, Mohibullah @ Mofizur Rahman @ Ovi, Sharif Shahidul Islam, Delwar Hossain Ripon and Mufti Moinuddin @ Abu Jandal under sections 120(B) 326/302/34/109/114/111 of the Penal Code.

From the record of Motijheel Police Station Case No.97(A) of 2004 he came to know about accused Abu Jandal. During his investigation he found that Abu Jandal was an active leader of ‘Harkatul Jihad’.

Accused Mufti Abdul Hannan and Sharif Shahidul Alam and Bipul in their respective statements under section 164 of the Code of Criminal Procedure stated that in the first part of 2004 in a Madrasa situated at Badda, Dhaka they took part in a conspiracy and when the grenades were supplied accused Abu Jandal was present. He identified accused Abu Jandal present in the dock.

During his investigation he did not visit the place of occurrence and he did not prepare any map or index. He verified the statement of the witnesses under section 161 of the Code of Criminal Procedure. He denied the defence suggestion that the statement under section 164 of the Code of Criminal Procedure made by accused Delwar Hossain Ripon was not voluntary. He did not produce accused Ripon before the Magistrate for recording the statement under section 164 of the Code of Criminal Procedure. There was no material to file charge sheet against accused Ripon.

In cross-examination by accused Mufti Moinuddin alias Abu Jandal he stated that previously he was not charge sheeted as his address could not be traced out. He examined the statement under section 161 of the Code of Criminal Procedure and the statements under section 164 of the Code of Criminal Procedure made by the concerned accused persons and

he did not fell necessary to visit the place of occurrence and collect the alamats afresh.

He denied the defence suggestion that Mufti Moinuddin was not known as Abu Jandal. He did not go to the permanent address of Mufti Moinuddin but the local police after verified the same submitted report. He denied the defence suggestion that in order to satisfy the government he submitted the charge sheet. He did not file any documents whether Mufti Moinuddin was a leader of 'Harkatul Jihad'.

In examination by the court he informed that the grenade which was used was not possible to manufacture by any private person. He had no knowledge whether the other agencies of the Government investigated about the source of grenades.

Those are the evidence available on record.

Submissions on behalf of accused Mufti Abdul Hannan Munshi, Sharif Shahidul Alam alias Bipul, Mufti Moinuddin alias Abu Jandal and Mohibullah alias Mofiz.

Mr. Mohammad Ali, the learned Advocate has appeared for accused Mufti Abdul Hannan, Shahidul Alam alias Bipul, Mufti Moinuddin alias Abu Jandal and Mohibullah alias Mofiz.

Mr. Ali submitted that in the instant case after submission of the charge sheet when the case record was transferred to the court of Sessions, the

learned Sessions Judge, Sylhet having received the case record on 05.07.2007 fixed the date on 12.07.2007 for hearing on cognizance matter but eventually the learned Sessions Judge without taking cognizance of the offences against the accused persons proceeded with trial and framed charge against them and concluded the trial and as such the trial is illegal and in not taking cognizance in accordance with law the whole trial has been vitiated.

Mr. Ali referring to the evidence of P.W. 47, the Magistrate who recorded the alleged confessional statement of accused Md. Sharif Shahidul Alam Bipul [exhibit-9] submitted that the accused was produced before the Magistrate for recording the statement under section 164 of the Code of Criminal Procedure from the custody of RAB personnel beyond the period of office hour after a prolong remand and the Magistrate without comply the provision of sections 164 of 364 of the Code of Criminal Procedure recorded his statement [exhibit 9] and thus the said statement cannot be said true and voluntary and it has got no evidentiary value and as such the Tribunal erred in law in convicting accused Sharif Shahidul Alam Bipul relying on exhibit 9, the alleged confessional statement made by him.

Mr. Ali further submitted that exhibit 9(kha), a Photostat copy of the alleged confessional

statement of Mufti Abdul Hannan, was not made in connection with the present case, rather, it was made in connection with Ramna (Dhaka Metropolitan area) Police Station case no.46(4)2001. As such said confessional statement cannot be used and considered as evidence in this case. In support of his submission he referred to the case of State vs. Md. Khurshed Alam and others, reported in 17 BLC, page 10. He also submitted that alleged confessional statement [9(kha)] was the result of prolonged remand and in human torture. Further, in recording the said statement the Magistrate (PW-49) also did not comply the provision of section 164 and 364 of the Code of Criminal Procedure. Thus, the alleged confessional statement is not true and voluntary and is not admissible in evidence. To substantiate the above submission he referred to the cases of State Vs. Raza Abdul Majid and others, reported in 1 BLC, page-144, Chunnu Vs. State, reported in 65 DLR, page-127, Belal alias Bellal and 2 others Vs. State, reported in 54 DLR, page-80, the State vs. Ali Hossain, reported in 18 BlD, page-655, Nurul Islam vs. The State, reported in 28 BLD, page-114.

Mr. Ali referring to the evidence of PW-48 submitted that the said witness is a hired and managed witness. For the purpose of this case the prosecution having tutored him produced before the court. Moreover, the investigating officer recorded

his statement after long laps of time and this inordinate delay in examining the important prosecution witness creates a serious doubt as to the truth of the prosecution case. In fact he was a source of Police and his contradictory and inconsistence evidence makes the whole prosecution case doubtful and he cannot be said a trustworthy and reliable witness and his evidence must be left out for consideration.

Mr. Ali also submitted that the investigation officer investigated the case in a perfunctory manner and that the prosecution withheld so many vital witnesses, which presumed that had they been examined they would not support the prosecution case and non examination of the vital witnesses creates adverse presumption as to the veracity of the prosecution case. The prosecution also failed to prove the place of conspiracy and ingredients of conspiracy. He referring to exhibit 8(kha), the sketch map of alleged house of conspiracy submitted that in the said sketch map house number, road number and other particulars have not been mentioned therein.

Mr. Ali submitted that the Tribunal most illegally convicted accused Mufti Moinuddin and Mohibullah relaying on the retracted, involuntary and untrue statements made by co-accused Mufti Abdul Hannan, Sharif Shahidul Alam alias Bipul. It is well

settled proposition of law that confession of a co-accused cannot be the sole basis to convict another accused. In this case there is no corroborative evidence to lend support to the said confessional statement.

Mr. Ali lastly submitted that the prosecution miserably failed to prove its case beyond doubt and there is no legal evidence to convict the above accused persons and as such the impugned judgment and order of conviction and sentence is liable to be set aside and they deserve acquittal.

Submission on behalf of accused Md. Delwar Hossain Ripon-

Mr. A.K.M Faiz, the learned Advocate appearing for the accused Delwar Hossain Ripon refrained himself to make submission on merit. He submitted only on the point of sentence. He referring to the cases of State Vs. Romana Begum alias Noma, reported in 66 DLR (AD), page-183, Giasuddin Vs. State, reported in 54 DLR (AD), page-146, Nurul Haque Kazi Vs. State 52, reported in 7 BLC (AD), page-52, Rahmat Ali Vs. State, reported in 18 BLC (AD), page-109 submitted that considering the suffering of death agony of the accused in the condemned cell for the last 08(eight) years, his age and having no previous Criminal record the sentence of death may be commuted and altered.

Submissions on behalf of the State-

Mr. Mahbubey Alam, the learned Attorney General, Mr. Sheikh A.K.M. Moniruzzaman, the learned DAG, Mr. Basir Ahmed, the learned AAG, Mr. Md. Shahidul Islam Khan, the learned AAG and Mr. Md. Sirajul Haq Miah, the learned AAG have appeared on behalf of the State.

Mr. Sheikh A.K.M Moniruzzaman, the learned DAG having placed the evidence, impugned judgment and order of conviction and sentence and other materials on record submitted that the prosecution by adducing cogent, reliable and trustworthy evidence has proved the charges brought against the accused persons beyond reasonable doubt. He submitted that a good number of prosecution witnesses were the victims of the occurrence and as such they are the most competent, natural and credible witnesses and the defence has failed to shake their respective evidence in any manner.

He further submitted that it is now well settled proposition of law that conviction on the basis of a confessional statement upon the maker can be very much based even if the confessional statement had been retracted at a later stage.

Further, confession of a co-accused can be taken into consideration and on the strength of that confession another co-accused can be convicted if it is corroborated by any other evidence, both direct and circumstantial. In the instant case P.W-47 Md.

Noor-e-Alam Siddique, the Magistrate, who recorded the confessional statement under section 164 of the code of Criminal Procedure of accused Md. Sharif Shahidul Alam alias Bipul and Md. Delwar Hossen therefore, [exhibit 9 and 9(Ka)] and [P.W-49] Mr. Shafiq Anwar, who recorded the confessional statement of accused Mufti Abdul Hannan Munshi [exhibit 9 Kha], in their respective deposition categorically and consistently deposed that they had recorded the statements complying the mandatory provisions of law as provided in section 164 and 364 of the Code of Criminal Procedure and the respective accused persons made the said statements voluntarily. As such, exhibits 9, (9ka) and 9 (Kha) are enough to convict its makers and the other accused-persons whose name they had been disclosed.

Refuting the submission of Mr. Mohammad Ali, the learned Advocate for the defence, the learned DAG submitted that PW-48 was a natural and competent witness. His evidence corroborated exhibits 9, 9(Ka) and 9(Kha) and thus the learned trial Judge did not commit any error or illegality in awarding the conviction and sentence to the accused persons. Minor discrepancies, if any, in the evidence of PW-48 do not makes the prosecution case fatal.

Mr. Basir Ahmed, the learned AAG, mainly submitted on legal issues. He referring to the case of **Firozuddin Basheeruddin and others Vs. State of**

Kerala, reported in (2001) 7 SCC page-596 submitted that regarding admissibility of evidence, loosened standards prevail in conspiracy trial and in such a case declaration by one conspirator, made in furtherance of a conspiracy is admissible against co-conspirator. Hearsay evidence is also admissible in conspiracy prosecution.

Mr. Ahmed having referred to the case of **State of Maharasthra Vs. Kamal Ahmed Mohammad Vakil Ansari and others, reported in (2013) 12 SCC, page-17** submitted that 9(Kha), the confessional statement of accused Mufti Abdul Hannan under section 164 of the Code of Criminal Procedure made in another case is also admissible in the present case, particularly when he was charged for the offence of conspiracy and accused in both the cases. He further submitted that in a case of conspiracy confession of co-accused, even without corroboration, can be taken into consideration.

Mr. Mahbubey Alam having referred to the case of **Sevaka Perumal Vs. State of Tamil Nadu reported in (1991) 3 SCC page-471** Submitted that the trial Court having considered the gravity of the offence rightly and justly awarded the capital punishment. He submitted that it is the duty of the Court to award proper sentence having regard to the nature of the offence and manner in which it was executed or committed.

Mr. Alam further submitted that in the instant case in the name of Holy religion 'Islam' the accused persons attacked on British High Commissioner to Bangladesh Mr. Anwar Chowdhury aming to kill him by blasting grenade and in the said incident 03(three) persons died and more than 50(fifty) persons were injured including the High Commissioner.

The terrorist act of the accused persons to achieve something by illegal means is an offence against the society as well as State and as such there is no scope to take any lenient view in awarding the sentence.

Heard the learned Advocates for the respective parties.

We have also perused the evidence and others materials of record as well as the impugned judgment and order of conviction and sentence.

Let us now decide whether the impugned judgment and order of conviction and sentence passed by the Druta Bichar Tribunal, Sylhet is justifiable.

Whether the prosecution has been able to prove the time, place and manner of the occurrence-

On scrutiny of the evidence of PW-2, PW-6, PW-7, PW-10, PW-11, PW-13, PW-14, PW-16, PW-17, PW-27, PW-31, PW-32, PW-40 it appears that all the said witnesses in a similar voice categorically and consistently corroborating each others testified

that on 21.05.2004 they went to the Mazar of Hazrat Shajalal (R:) for offering Jumma Prayer and the British High Commissioner to Bangladesh Mr. Anwar Chowdhury at about 12.40 hours came to the Mazar of Hazrat Shajalal (R:) for offering Jumma prayer. After completing Jumma prayer when the said witnesses and the British High Commissioner and his other companions were coming out from Mazar premises and reached near the main gate then a bomb explosion with a big sound took place. As a result, the said witnesses received injuries and eventually they all were admitted in Sylhet Osmani Medical College Hospital and got treatment for various days in the hospital. The said witnesses also testified that due to bomb explosion the British High Commissioner Mr. Anwar Chowdhury, Deputy Commissioner Sylhet, Mr. Abul Hossain also received injuries and 03(three) persons died.

PW-1, PW-3, PW-4, PW-5, PW-8, PW-9, the police personnel, who were on the duty at the Mazar area for the security of British High Commissioner they also corroborating each other deposed that on 21.05.2004 before Jumma prayer they went to the Mazar of Hazrat Shajalal (R:) for the security of the British High Commissioner Mr. Anwar Chowdhury who was supposed to come to the Mazar for offering Jumma prayer. At about 12.40 hours the British High Commissioner reached at the Mazar area and he was

received by the Deputy Commissioner, Sylhet. Having completed Jumma prayer when the British High Commissioner along with his companions were coming out form Mazar premises and reached near the main gate then an explosion of bombs with a big sound took place and the British High Commissioner, Deputy Commissioner, Sylhet, Advocate Abdul Hai (PW-12) along with 40/50 people were injured. The said witnesses having rescued the British High Commissioner sent him to Osmani Medical College Hospital for treatment. They had also taken steps with the help of the local people to sent the injured persons to the hospital.

PW-12 Advocate Abdul Hai, a relative of British High Commissioner Mr. Anwar Chowdhury and president of Sylhet District Bar Association, who accompanied the High Commissioner also in same manner narrated about the occurrence. He also received injuries due to bomb explosion and treated home and abroad and still he has been suffering for such injuries.

PW-24, PW-28, PW-34 proved exhibit 3(Ka), the inquest report of deceased Rubel. The said witnesses deposed that victim Rubel having received bomb injuries on 21.05.2004 at the Mazar premises of Hazarat Shajalal (R:) while he was under treatment at Osmani Medical College hospital on very that day at about 05.35 hours he succumbed to his injuries. The said witness identified the dead body of

deceased Rubel in the Sylhet Osmani Medical College Hospital.

PW-29 (uncle of deceased A.S.I Kamaluddin), PW-30 (Brother-in-law of deceased Kamaluddin), PW-33 (Cousin of deceased Kamaluddin) proved exhibit 3(Kha), the inquest report of deceased A.S.I Kamaluddin. The said witnesses corroborating each other testified that having received the information that A.S.I Kamaluddin became injured due to bomb explosion at the Mazar premises of Hazrat Shajalal (R:) they came to Osmani Medical College Hospital and found the dead body of A.S.I Kamaluddin at word No.4, situated at 3rd floor of the hospital. In presence of them the police prepared the inquest report of deceased Kamaluddin.

PW-36 (brother-in-law of deceased Habil Miah), PW-37 (husband of sister-in-law of Habil Miah) proved exhibit-6, the receipt by which they had taken the dead body of Habil Miah. The said witnesses stated that on 21.05.2004 Habil Miah went to the Mazar of Hazrat Shajalal (R:) to fulfill his 'Manat'. But he did not return to home and from the television news they came to know that bomb explosion took place at Mazar premises and three persons died over the incident. Then in the night they went to Osmani Medical College Hospital and there they identified the dead body of Habil Miah

and also found that his post-mortem had already been completed.

PW-25, Mr. Sheikh Emdadul Haque, the doctor, who held the autopsy of deceased A.S.I Kamaluddin, Rubel Miah and an unknown person (Habil Miah) proved exhibit-4, post-mortem report of deceased Rubel Miah, exhibit-4 (Ka), post-mortem report of deceased an unknown person (Md. Habil Mia) and exhibit-4(Kha), postmortem report of A.S.I Kamaluddin respectively.

In those reports he categorically and consistently opined that the injuries found on the dead bodies of the deceased (tattooing, scotching and blackening) were ante-mortem and homicidal in nature due to bomb blasting effect.

P.W-35, Dr. Jahir Ahmed, proved the medical certificate exhibit-5. From the said certificate it appears that British High Commissioner to Bangladesh Mr. Anwar Bakat Chowdhury was treated in the Osmani Medical College Hospital on 21.05.2004 at about 2.00 P.M in Surgical Unit No.1. Multiple penetrating injuries by splinter throughout the right and lower limb with active bleeding were found among other injuries.

P.W-54 Dr. Mohammad Abdul Gaffer proved exhibit-10, the Medical Certificate of Deputy Commissioner Sylhet Abul Hossain.

The British Police also came to Bangladesh and visited the place of occurrence at the Mazar of Hazrat Shah Jalal (R:), during their visit they collected some alamats, photographs from the spot for the purpose of examination and forensic examination whether the blasted articles were grenade or other thing. The alamats seized by local police also handed over to them for examination.

Those alamats were examined in the forensic Explosives Laboratory, Defence Science and Technology Laboratory, Fort Hatstead, Sevenoaks, Kent TNI47BP.

Forensic case officer Sarah Louise Lancaster in his report [exhibit-x] opined to the effect:

> "SUMMARY AND CONCLUSIONS
>
> Based upon my examinations, the information provided and having studied the printed copies of the scene photographs, it is my opinion that the damage near the Hazrat Shahjalal Mosque and injuries described were caused by the explosion of an anti-personnel grenade.
>
> The items collectively included metal (Most likely steel) spheres/balls from a functioned grenade, explosively damaged, drab/brown coloured, plastics fragments, which probably originated form a grenade body and/or grenade fuze and a conventional fly-off lever from a

grenade fuze. Trace quantities of the high explosive PETN were found on the explosively damaged plastics fragments in items NF/20 and RB/1. Such residues are consistent with having resulted from, for example, the detonation of a grenade containing a PETN based explosive composition. Item as/3 comprised a pair of severely damaged and bloodstained trousers, parts of which were peppered with small holes that were likely formed by explosively propelled metal spheres similar to those contained within items NF/5, NF/6 and NF/7".

AND

"Although the type of grenade cannot be conclusively and unequivocally identified, the appearance of the lever shows that it most likely originated from an ARGES type grenade such as the HG 84 or an ARGES licensed produced grenade. An example of an Inert Arges HG 84 grenade (disassembled and less any explosives components) is shown in photographs 9 and 10. The grenade lever shown in these photographs is similar in size and general appearance to the lever contained in item NF/19. As with other Arges designes, this type of grenade consists of a plastic

body that contains steel balls and a filling of PETN high explosive.

It may also be of interest to note that, according to the literature, the Pakistan Ordnance Factories (POF) plastic hand grenade is a licensed produced Arges model known as the 84-P2A1 grenade, which consists of a plastic body that contains approximately 5000 steel balls and a plasticized PETN explosive composition.

As demonstrated at the scene, the explosion of such a hand grenade could cause damage to property and would be likely to result in death or very serious injuries to persons in the proximity of the explosion. Persons within range of the fast moving shrapnel could also suffer serious injuries".

If we consider this report, exhibit-X, coupled with the oral evidence of the above witnesses and the post mortem reports exhibits 4, 4(Ka) and 4(Kha) we have no hesitation to hold that the prosecution has been successfully able to prove that on 21.05.2004 after Jumma prayer the offenders exploded grenade aiming British High Commissioner to Bangladesh Mr. Anwar Chowdhury when he was leaving Mazar premises having completed Jumma prayer and because of such grenade explosion he along with

40/50 others were injured and 03(three) others succumbed to their injuries.

Let us now discuss whether the confessional statements under section 164 of the code of criminal procedure made by accused Md. Sharif Shahidul Alam @ Bipul, Md. Delwar Hossain Ripon and Mufti Abdul Hannan Munshi [exhibit-9, 9(Ka) and 9(Kha)] are true and voluntary and can be the sole basis to convict them.

The confessional statement made by accused Md. Sharif Shahidul Alam @ Bipul [exhibit-9] runs as follows:

> "আমার বাবা ফেঞ্চুগঞ্জ সার কারখানায় চাকুরী করতেন। আমি ছোট থেকে ফেঞ্চুগঞ্জ সার কারখানায় বড় হই। ১৯৮৯ সালে ফেঞ্চুগঞ্জ সার কারখানার স্কুল হতে এস,এস,সি ১৯৯১ সালে ফেঞ্চুগঞ্জ ডিগ্রী কলেজ হতে উচ্চ মাধ্যমিক পাশ করি। এম,সি কলেজে বি, এস, সি ভর্তি হই। ফেঞ্চুগঞ্জ সার কারখানায় থাকাকালই আমি নিয়মিত নামাজ পড়তাম। মসজিদে যেতাম। ১৯৯৪ সালে ফেঞ্চুগঞ্জের স্থানীয় লোক মহিদুল ইসলাম প্রিন্স আরো কয়েকজন লোককে নিয়া আসর নামাজের পর মসজিদে বয়ান করে। অন্যান্যরা হলেন মাওলানা আব্দুর রউফ (ভালুকা (অপাঠ্য), মাওলানা (ছেড়া) আঃ করিম, মাওলানা আব্দুল মতিন, সৈয়দ আলীম। তারা সবাই হরকাতুল জিহাদ আল ইসলামী বাংলাদেশ নামক সংগঠনের সদস্য। তারা আফগানিস্তানের মুসলমানদের নির্যাতনের বিষয়ে বয়ান করে। আমি তাদের বয়ানে উদ্বুদ্ধ হই। আমি তাহাদেরকে বলি আমি কিভাবে আপনাদের সংগঠনের সাথে কাজ করতে পারি। তখন তারা আমাকে জানায় যে, সিলেট শহরের জিন্দা বাজারস্থ বায়তুল আমান জামে মসজিদে তাদের অফিস। আমি পরবর্তীতে সেখানে যোগাযোগ করি। আমি উক্ত সংগঠনের কাজকর্ম শুরু করি। ১৯৯৫ সালের দিকে ফেঞ্চুগঞ্জ খেলার মাঠে ২০ দিনের ১টি প্রশিক্ষন হয়। আমি সহ লোকাল ১৫ জন লোক (কখনো কম কখনো বেশী) প্রশিক্ষন নেই। খেলার শারীরিক কসরত হতো। বরিশালের সাইদ এই প্রশিক্ষন পরিচালনা করে।

১৯৯৬ সালে লালখান বাজারে হরকাতুল জেহাদের প্রশিক্ষন দেখি, উখিয়াতে একটি গ্রামে যাই, আরাকান মুসলমানদের অবস্থা দেখি, টাকা পায়সা, কাপড় চোপড় সাহায্য করি।

এই সময় হরকাতুল জিহাদের নেতা মাওলানা শেখ ফরিদ কবি শামসুর রহমানকে হত্যার নির্দেশ দিলে দলে মতবিরোধ তৈরী হয়। আমাদের মূল লক্ষ্য ছিলো নির্যাতিত মুসলমানদের সহযোগীতা করা। কিন্তু সংস্থার মাঠ পর্যায় আমরা যে চাঁদা তুলতাম তা কিছু কিছু নেতা যথাযথ উদ্দেশ্যে ব্যবহার না করে ব্যক্তিগত উদ্দেশ্যে ব্যবহার করার কারণে তাদের সাথে দুরত্ব তৈরী হয়। মুফ্তি হান্নান মুন্সী সংগঠনের কর্মকান্ড পরিচালনা করার জন্য দলের আমীর মুফতি আঃ হাই এর নিকট টাকা চাইলে তিনি টাকা দেয়ার আশ্বাস দিলেও পরে টাকা না দেয়ায় তাদের মধ্যে মত বিরোধ তৈরী হয়।

আমি ১৯৯৯ সালে লিবিয়া চলে যাই। ২০০২ সালে আমার মা মারা যায়। ঐ বছর ডিসেম্বর মাসে আমি দেশে ফিরে আসি। ২০০১ সালে আমার বাবা সার কারখানার চাকুরী হতে অবসর গ্রহণ করলে আমাদের পরিবার ফেঞ্চুগঞ্জের পাঠ চুকিয়ে স্থায়ী ভাবে গ্রামের বাড়ীতে বসবাস করতে থাকি। আমি ও বাড়ীতে চলে যাই।

আমার বাবা তখন গ্রামের বাড়ীতে ঘরবাড়ী নির্মান করছিলেন। আমি কিছুদিন এই সব দেখা শুনা করি। ২০০৩ সালে আমি আলী এন্টারপ্রাইজ নামক একটি নির্মান প্রতিষ্ঠানে যোগ দেই। আমার এক বন্ধু আঃ কুদ্দুসের সাথে পাথরের ব্যবসায় নামি। সোয়াইনঘাটের বিজন কান্দিতে পাথরের ব্যবসায় টাকা বিনিয়োগ করি। ঢাকায় আমার মামার সাথে রিকন্ডিশন গাড়ীর এবং গার্মেন্টের এর পরিত্যাক্ত মালামালের ব্যবসা করি।

বিদেশ যাওয়ার পূর্বে হরকাতুল জিহাদের কর্মী থাকার সময় আমার মুফতি হান্নান মুন্সীর সাথে পরিচয় ছিলো। বিদেশ হতে ফেরার পর ২০০৩ সালের মাঝামাঝি কোন একসময় ঢাকায় পুনরায় আমাদের যোগাযোগ হয়। তার সাথে সংগঠনের বর্তমান অবস্থা নিয়া বিস্তারিত আলোচনা হয়। সে জানায় হরকাতুল জিহাদ তখন ২/৩ ভাবে বিভক্ত। আমি তার বাসায় যাই। তখন এই বাসায় মুফতি হান্নানের ভাই অভি, লিটন এবং লম্বা দাড়িওয়ালা ২/৩ জন ছিলো। তিনি আমাকে পুনরায় সংগঠনের কাজ করার জন্য বলে। ঐ সময় দেশের বিভিন্ন স্থানে বোমা হামলা হচ্ছিল। কর্মীদের সাথে আলোচনায় বুঝতে পারি এগুলি মুফতি হান্নানের কাজ। আমি তাকে বলি এগুলি করে কোন ফল আসবে না। বরং দেশে সহিংসতা সৃষ্টি হচ্ছে।

আমরা কিভাবে কাজ করব এ বিষয়ে একটি সিদ্ধান্ত নেয়ার জন্য আমি তার সাথে আলোচনা করি। আমাদের মাঝে আলোচনা হয় যে, এই দেশে আওয়ামীলীগই সবচেয়ে বেশী ইসলাম

বিদ্বেষী কাজ করে। কওমী মাদ্রাসা বন্ধ করে দিয়েছে। ফতোয়া বন্ধ করেছে। ভারতের চর হিসাবে কাজ করছে। আমাদের দেশের আলেম ওলেমাদের গ্রেফতার করছে। এই হিসাবে আওয়ামীলীগ ইসলাম এবং মুসলমানদের উপর অত্যাচার করছে। আমাদের আলোচনায় সিদ্ধান্ত হয় যে, আওয়ামীলীগের নেতাদের আক্রমন করে তাদের প্রতিহত করতে হবে। মুফতি হান্নান এ বিষয়ে সম্মতি দেন।

আমরা কিভাবে তাদের প্রতিহত করব এ বিষয়ে জানতে চাইলে মুফতি হান্নান জানান, যে, তার নিকট গ্রেনেড আছে। তিনি আমাদেরকে দিবেন। তার কথামত রাহী মোহাম্মদ কাজল অভির পার্শ্বঘেরা কাঠের ওয়ালে কাঠের ওয়াড্রপের ভিতর হতে গ্রেনেড বের করে অভির নিকট দেয়। অভি মুফতি হান্নানকে দেয়। আমি প্রথম বারের মতো গ্রেনেড দেখি। আমাদের আলোচনা শেষে আমাকে সিলেটের আওয়ামীলীগ নেতাদের উপর আক্রমন এবং তাদের প্রতিহত করার জন্য মুফতি হান্নান আমাকে বলে।

কুলাউড়ার রিপন ভাই আমাদের সংগঠনের কর্মী তার সাথে আমার পূর্ব হতে পরিচয় আছে। আমি, রিপন ভাই ২০০৪ সালের এপ্রিল মাসের দিকে ঢাকায় যাই। আমি মুফতি হান্নানের মেরুল বাড্ডার অফিসে যাই। রিপন ভাইকে আসতে বলি। এরপর আমি কিছু সময়ের জন্য বাইরে যাই। সন্ধ্যার দিকে রিপন ভাই একটি কম্পিউটার কিনে ঐ বাসায় নিয়ে আসে। ঐ সময় সেখানে রাহী মোহাম্মদ কাজল, অভি ওরফে মফিজ উপস্থিত ছিলো। আমি কাজলকে গ্রেনেডের কথা বলি। সে মুফতি হান্নানের অনুমতি নিয়া রুমের ভেতর হতে গ্রেনেড নিয়া আসে, অপর ১ জন কাজী খাটোমতো, বয়স ২০/২২, মুখে হালকা দাড়ি, নাম মমিন তার হাতে দেয়। সে ৪টি শক্ত কাগজের প্যাকেটে ৪টি গ্রেনেড আমার হাতে দেয়। আমি ও রিপন ভাই গ্রেনেড ৪টি কম্পিউটারের মনিটরের কার্টুনে রাখি। রাত্রের ট্রেনে সিলেট আসি। সেখানে নেমে রিপন ভাই গ্রেনেড সহ কম্পিউটারের কার্টুন দিয়ে রিক্সা যোগে তার মেসে যায়। আমি টীলাপাড়াস্থ আমার মেসে চলে আসি।

২০০৪ সালের মে মাসের ২১ তারিখ বৃটিশ হাই কমিশনার সিলেট আসবেন-এর আগের দিন সকালে আবু আবদুল্লাহ পরিচয়ে সংগঠনের একজন কর্মী আমাকে মোবাইলে জানায় সে বলে আমাকে আপনি চিনবেন না। বৃটিশ হাই কমিশনার সিলেট যাচ্ছে। একটু খেয়াল রাখবেন। এর অনুমান $\frac{১}{২}$ ঘন্টা পর মোহাম্মদ কাজল আমাকে মোবাইল ফোনে বলে যে, বৃটিশ হাইকমিশনার

আসতেছে, তাকে দাওয়াত দিতে হবে। দাওয়াত খাস সংগঠনের ভাষায় আমরা বুঝি আক্রমন করা।

আমরা চিন্তা ভাবনা করে দেখি যে, বৃটিশ হাইকমিশনার সিলেটে আসলে অবশ্যই হযরত শাহজালাল (রঃ) এর মাজার আসবেন। ঐ সময় বৃটিশ বাহিনী ইরাকে (অপাঠ্য) আক্রমন করে মুসলমানদের উপর নির্যাতন করছিলো। বৃটিশ হাই কমিশনারকে হত্যা করতে পারলে সংগঠনের পক্ষে একটি বড় ধরনের কাজ হবে বিশ্বাস করি। বৃটিশ হাইকমিশনারের উপর গ্রেনেড হামলার সিদ্ধান্ত নেই।

পরের দিন শুক্রবার ১২.০০/১২.৩০ টার সময় রিপন ভাই আমাকে ফোন করে। জানায় যে মাজারে আছে। আমিও রুম হতে কিছুক্ষনের মধ্যে মাজারে আসি। রিপন ভাইকে জিজ্ঞাস করি জিনিষ এনেছে কিনা। সে জানায় এনেছে। আমরা মসজিদের খোলা চত্বরে লস্কর গাছের নিকট জুমার নামাজ আদায় করি। নামাজ শেষে আমরা মসজিদের সিড়ির নিকট আসি। আমি বৃটিশ হাইকমিশনারের খোজে মূল মাজারের নিকট যাই। তাকে না পেয়ে নীচে নেমে আসি। ২ জন আলোচনা করে সিদ্ধান্ত নেই যে, বৃটিশ হাইকমিশনার যেখানেই থাকুক না কেন মূল গেইট দিয়েই যাবেন। আমরা মূল গেইটের নিকট চলে আসি। কিছুক্ষন পর বৃটিশ হাইকমিশনার লোকজনের সাথে হ্যান্ডশ্যাক করতে করতে এগিয়ে আসে। দেখতে পাই। আমার নির্দেশে রিপন ভাই গ্রেনেডের পিন খুলে বৃটিশ হাইকমিশনারের উদ্দেশ্যে ছুড়ে মারে। ৩/৪ সেকেন্ড এর মধ্যে গ্রেনেড বিস্ফোরিত হয়। আমরা অন্যান্য লোকজনের সাথে দৌড়াইয়া মূল রাস্তায় চলে আসি। চৌহাট্টা হতে রিক্সা যোগে টীলাগড় আমরা মেসে চলে আসি।

ফোনে ঘটনা মুফতি হান্নান কে জানাই। মুফতি বলে যে, ভাল কাজ করেছ। পরে পত্র পত্রিকায় দেখতে পাই যে, উক্ত গ্রেনেড হামলার কারনে পুলিশ সহ ৩জন নিহত হয়, বৃটিশ হাইকমিশনার, জেলা প্রশাসক সহ বহু লোক আহত হয়। রিপন ভাই তার নিকট থাকা অপর গ্রেনেডটি আমার নিকট হস্তান্তর করে।

জুলাই মাসের মাঝামাঝি সময়ে আমি হুমায়ুন কবীর হিমুদের বাসায় সন্ধ্যার সময় বসে সাংগঠনিক কথাবার্তা বলছিলাম। তখন ঐ রুমে ফখরুল ইসলাম ফাহিম উপস্থিত ছিলেন। তারা ২জন আমাদের সংগঠনের কর্মী। আমি রিপনকে তার নিকট রক্ষিত অবশিষ্ট গ্রেনেড ২টি নিয়ে আসতে বলি। সে বাসার কাছে রাস্তায় গ্রেনেড দুটি আমাকে দেয়। আমি তা হিমুর নিকট হস্তান্তর করি। হিমু তা বক্স খাটের বক্সে রেখে দেয়।

০৭/০৮/০৪ তারিখে সিলেটের গুলশান সেন্টারে আওয়ামীলীগ কর্মী সম্মেলনে মেয়র বদরউদ্দিন কামরান উপস্থিত থাকবেন মর্মে জানতে পারি। উক্ত কর্মী সম্মেলনে মেয়রের উপর গ্রেনেড হামলার বিষয় আগের দিন সন্ধ্যায় হিমুদের বাসায় আসি। হিমু ও ফাহিম আলাপ আলোচনা করি। হামলার সিদ্ধান্ত নেই। বিষয়টি মুফতি হান্নানকে মোবাইল ফোনে জানাই। অনুমতি নেই। সিদ্ধান্ত হয় হিমুর কাছে থাকা ০২টি গ্রেনেড নিয়া গুলশান সেন্টারে যাবে। মেয়রের উপর ফাহিম গ্রেনেড হামলা করবে। হিমু সার্বিক তত্ত্বাবধান করবে। আমি উপস্থিত থাকব। সিদ্ধন্ত মতে হিমু ও ফাহিম গ্রেনেড নিয়া গুলশান সেন্টারে যায়। গুলশান সেন্টারের উল্টা দিকের মসজিদে মাগরিবের নামাজ পড়ে। আমি রুম হতে মাগরিবের নামাজ আদায় করে গুলশান সেন্টারের উদ্দেশ্যে রওনা হই। পথে মোবাইলে হিমুকে তাদের অবস্থান জানতে চাই। তারা জানায় যে, তারা গুলশান সেন্টারে আছে। একটু পর হিমু আমাকে জানায় মেয়র কামরান সাহেব বের হয়ে দোকান হতে পান খেয়ে চলে গেছে। আমি তার কাছে দাড়ানো ছিলাম। তাই হামলা করা সম্ভব হয় নাই। আমি বলি আওয়ামীলীগের অন্যান্য নেতারা আছে। আমি বলি আমি আসতেছি।

একটু পর জিন্দাবাজার পয়েন্ট হতে তালতলী রাস্তার মুখে ফাহিমের সাথে দেখা হয়। সে জানায় তারা হামলা করেছে। আমি বলি হিমু কোথায়। সে জানায় হিমু দোকানে পেপার কিনতেছে। আমি হিমুকে ফোন করে জিন্দাবাজার পয়েন্টে বনফুল মিষ্টির দোকানে আসতে বলি। ঐ সময় আমাদের সংগঠনের অপর কর্মী সাইদ আমার সাথে ছিলো। সেও আমাদের নিকট গ্রেনেড থাকার বিষয়, হামলার বিষয়ে জানত। হিমু আসলে আমরা মিষ্টি ও অন্যান্য খাবার কিনে (অপাঠ্য) করে হিমুদের বাসায় চলে যাই। তাদের বাসার ছাদে বসে মিষ্টি ও অন্যান্য নাস্তা খাই। হামলার বিস্তারিত বিবরণ শুনি। টেলিফোনে মুফতি হান্নানকে জানিয়ে দেই। ২০০৪ সালের ডিসেম্বর মাস আওয়ামীলীগের এম,পি জেবুনেছা হকের বাসায় মহিলা আওয়ামীলীগের কর্মীদের একটি সভা হবে জানতে পারি। এবার আগের দিন সন্ধ্যার পরে ফাহিমকে হিমুদের বাসায় আসতে বলি। সে আসে। আমরা একত্রে শলা পরামর্শ করি, সভায় গ্রেনেড হামলার সিদ্ধান্ত নেই। টেলিফোনে মুফতি হান্নানকে জানাই। তার অনুমতি নেই। ২৪ ডিসেম্বর আমার বিবাহের দিন ধার্য ছিলো। সিদ্ধান্ত হয় যে, ফাহিম এবং হিমু হিমুর নিকট থাকা শেষ গ্রেনেডটি দিয়ে মহিলা এম.পির বাসায় আওয়ামীলীগের কর্মী সম্মেলনে হামলা করবে। ঘটনার দিন আমরা বিবাহের অনুষ্ঠানিকতা শেষ করে ৩.০০/৩.৩০ ঘটিকায় হিমুকে ফোন করি। সে জানায় যে, ফাহিম সহ ঘটনাস্থল তাতী পাড়ায় পৌঁছেছে। আমি বলি আমি আসছি।

আমি সাইদ সহ মোটর সাইকেল যোগে বন্ধুদের বাসায় মিষ্টি বিতরনের জন্য বের হই। ০৪.০০ টার সময় তাতীঁপাড়া পৌছে জেবুন্নেছা হকের বাসার রাস্তার মোড়ে স্কুলের কাছে পিলারের নিকট হিমুকে দেখতে পাই। ফাহিমকে জেবুন্নেছা হকের বাসায় ঢোকার মুখে রাস্তায় পাই।

আমি বুঝতে পারি সব কর্মী তখনো পৌছে নাই। আমি ইশারা দিয়ে চলে আসি। আমি আর সাইদ বায়তুল আমান মসজিদে আসরের নামাজ পড়ে নীচে নেমে দেখি তাতী পাড়া ঢোকার রাস্তার মুখ সাদা পোশাকের লোকজন বন্ধ করে দিয়েছে। বুঝতে পারি হামলা হয়েছে। আমি সাইদ সহ বাসায় চলে আসি। সন্ধ্যার পর শিবগঞ্জে হিমুদের বাসায় যাই। হিমু ও ফাহিমের নিকট হামলার বিস্তারিত বিবরণ শুনি। টেলিফোনে মুফতী হান্নানকে ঘটনা জানাই।

২০০৫ সালের ডিসেম্বর মাস টালীগড় এলাকায় সাজ্জাদুর রহমান স্মৃতি ব্যাডমিন্টন প্রতিযোগীতার উদ্বোধন করবেন মেয়র বদরউদ্দীন কামরান। ২/৩ দিন আগে হতে মাইকে বিষয়টি ব্যাপক ভাবে প্রচারিত হয়। আমি ২য় বার মেয়রের উপর হামলার পরিকল্পনা করি। ইতোপূর্বে রিপন ভাই বৃটিশ হাই কমিশনারের উপর হামলার পরে অবশিষ্ট গ্রেনেডটি আমাকে দিয়াছিলেন আমি তা এম.টি কলেজে আমার নির্মান কাজে ব্যবহৃত বাশ, কাঠ ও অন্যান্য মালামালের গোডাউনে রেখেছিলাম। ঘটনার দিন সন্ধ্যার সময় আমি ফাহিমকে গ্রেনেডটি দেখাই। ফাহিম গ্রেনেডটি নিয়ে আসে। আমি এম.সি কলেজে যে বিল্ডিংয়ের নির্মান কাজ করছিলাম তার ছাদে বসে আমি, ফাহিম ও হিমু শলাপরামর্শ করি। সিদ্ধান্ত হয় যে, ফাহিম টালীগড় এলাকায় পরিচিত। তাকে লোকজন চিনে ফেলতে পারে। হিমু অনুষ্ঠান স্থলে গিয়ে মেয়রের উপর হামলা চালাবে। আমি হিমুকে গ্রেনেড দিয়ে দেই। ফাহিম ও হিমু হামলার উদ্দেশ্যে টালীগড়ের অনুষ্ঠান স্থলের দিকে চলে যায়।

আমি হোন্ডা দিয়ে কলেজ হতে বের হয়ে অনুষ্ঠান স্থলে ২/৩ টা চক্কর দিয়ে আমার বাসার সামনে রাখা পাথরের ডিবির উপর বসি। কিছুক্ষনের মধ্যেই আমার মেঝের সামনের রাস্তায় গাড়ীর ভীড় জমে যায়। আমি বুঝতে পারি পরিকল্পনা মোতাবেক হামলা হয়েছে।

আমি বাসায় যাওয়ার পথে ফাহিমকে ফোন করি। সে জানায় তারা অনুষ্ঠান স্থলে পৌছে মেয়রকে হত্যার উদ্দেশ্যে গ্রেনেড ছুড়ে মেরে ছিলো। কিন্তু গ্রেনেডটি বিস্ফোরিত হয়নি। পরের দিন ফাহিম ও হিমুর নিকট হতে বিস্তারিত জানি। ” [Underlines supplied]

The confessional statement made by accused Md. Delwar Hossain Ripon [exhibit-9(ka)] runs as follows:

"আমি ১৯৯৮ সাল কুলাউড়া উপজেলার ব্রাক্ষণ বাজারের জালালবাদ উচ্চ বিদ্যালয় হতে এস.এস.সি পাশ করে সিলেটে আসি। মদন মোহন কলেজে এইচ.এস.সি ভর্তি হই। এইচ, এস, সিতে পড়াকালীন সময়ে মাশরুর নামের একজনের সাথে আমার পরিচয় হয়। আমি প্রায়ই বন্দর বাজার মসজিদে জোহর, আছর নামাজ পড়তাম। সেও ঐ মসজিদের নিয়মিত মুসল্লী ছিলো। মসজিদে প্রায়ই তার সাথে দেখা হতো। এই ভাবেই পরিচয় হয়। সে আমাকে জিহাদী দাওয়াত দেয়। বিভিন্ন প্রকার ইসলামী বই দেয়। সে আমাকে বলে যে, তার (ছেড়া) আমি স্বেচ্ছায় তাকে ৫০/১০০ টাকা দিতাম। তখন (ছেড়া) বই কিনেও পড়তাম। আমি তাকে জিজ্ঞাসা করি এক (ছেড়া) নেতা কে, সে বলে বিপুল নামে তাদের একজন সাথী আছে। মাশরুরের সাথে পরিচয়ের প্রায় ৩ মাস পর আমি তাকে ১০০০/- টাকা ধার দেই। সে আমার টাকা পরিশোধ না করায় তার সাথে সম্পর্ক খারাপ হয়। আমি পরে আর তার সাথে যোগাযোগ করি নাই।

আমি উচ্চ মাধ্যমিক পাশ করে ম্যানেজম্যান্ট-এ অর্নাস পড়তে থাকি মদন মোহন কলেজে। ঐ সময় আমি জিন্দাবাজারস্থ নাইনটিন জীমে নিয়মিত যেতাম। সেখানেই শরীফ সাহেদুল আলম বিপুলের সাথে আমার পরিচয় হয়। বিপুলের সাথে আলাপ পরিচয়ের পর জানতে পারি যে, মাশরুর ইতোপূর্বে যে বিপুলের কথা বলেছে এই সেই বিপুল। সে আমাকে জিজ্ঞাসাবাদে স্বীকার করে যে, সে আগে ঐ সংগঠনে জড়িত ছিলো। সে আমাকে বলে যে, মার্কিন, বৃটিশরা, ইসরাইলরা বিভিন্ন দেশে মুসলমানদের উপর নির্যাতন করেছে। সে আমাকে ইসলামী জেহাদে উদ্বুদ্ধ করে।

আমি তার সাথে ২বার ঢাকাস্থ মেরুল বাড্ডার একটা বাসায় যাই। এটা কার বাসা জানি না। ঐ বাসায় কাউকে আমি চিনতাম না । একজন লোককে নাম পরিচয় জিজ্ঞাসা করলে সে বলে এই সব ঠিক না।

আমি যখন বিপুলের সাথে ২য় বার ঢাকায় যাই, এলিফ্যান্ট রোড হতে আমার বন্ধু মাহবুবু এর জন্য ১টি কম্পিউটার কিনি। বিপুল আমাকে ফোনে জানায় আমরা একসাথে সিলেট যাব। আমি যেন মেরুল বাড্ডার ঐ বাসায় চলে আসি। আমি কম্পিউটার কিনে দুপুরের দিকে ঐ বাসায় আসি, বিপুল বাসায় ছিলো না। সে বিকালের দিকে বাসায় আসে। বিপুল আমাকে ৪টা প্যাকেট

দেয়। আমি বলি এগুলি কি? সে জানায় এইগুলি গ্রেনেড। সিলেট নিয়ে যেতে হবে। সিলেটে আমাদের কাজ আছে। আমি আর বিপুল গ্রেনেডের প্যাকেট গুলি কম্পিউটারের মনিটরের বক্সে ঢুকাই। উপবন ট্রেনে করে সিলেট নিয়ে আসি। আমি আমার মুরিদ বাজারস্থ এসে চলে আসি। প্যাকেট গুলি বের করে আমার ড্রায়ারে রাখি। কম্পিউটার আমার বন্ধুকে দিয়ে দেই।

অনুমান ০২(দুই) মাস প্যাকেট গুলি আমার নিকট ছিলো। ঘটনার দিন সন্ধ্যায় বিপুল আমাকে মোবাইলে জানায় যে, আগামীকাল বৃটিশ হাইকমিশনার সিলেটে আসতেছে। তার উপর একটা গ্রেনেড নিতে হবে। আমি যেন মাজারে এসে তাকে বৃটিশ হাইকমিশনারের প্রোগ্রাম জানাই। আমি পরের দিন ১২.৩০ ঘটিকার দিকে মাজারে আসি। বৃটিশ হাইকমিশনারের মাজারে আসবেন মর্মে জানতে পারি, বিপুলকে জানাই।

৫/৭ মিনিট পর বিপুল আসে। আমাকে জিজ্ঞাসা করে জিনিস (গ্রেনেড) এনেছি কিনা। আমি জানাই এনেছি। আমরা একত্রে বাজারের সামনের চত্বরে নামাজ পড়ি। নামাজ শেষে আমরা মসজিদের সিড়ি পর্যন্ত আগাইয়া যাই। আমি সিড়ির কাছে থাকি, বিপুল মাজারের দিকে যায়। একটু পর ফিরে আসে। আমরা প্রধান গেইটের নিকট চলে আসি। বৃটিশ হাইকমিশনারের গাড়ি মাজারের মূল গেইটে ছিলো। আমাদের বিশ্বাস ছিলো সে এদিক দিয়েই যাবে। একসময় বৃটিশ হাইকমিশনার লোকজনের সাথে হ্যান্ডশেক করতে করতে গেইটের দিকে আগাইয়া আসে। আমি ও বিপুল প্রধান গেইটের সামনে দাড়াই। বিপুল আমাকে গ্রেনেডের পিন খুলে ছুড়ে মারতে বলে, সামনেঅনেক লোক ছিলো, আমি বলি আমিতো সামনে কিছু দেখতে পাচ্ছি না। সে বলে দেখার দরকার নাই। তুমি পিন খুলে ছুড়ে মার। আমি তার কথামত প্যান্টের পকেট হতে ১টি গ্রেনেড বের করে পিন খুলে ছুড়ে মারি। আমি ৫/৭ ফিট দুর হতে গ্রেনেড ছুড়ে মারি। মারার সাথে সাথেই বিকট শব্দে তা বিস্ফোরন হয়।

আমি আর বিপুল দোড়াইয়া মেইন রোডে চলে আসি, টালীগঞ্জস্থ বিপুলের মেসে যাই। আমার নিকট থাকা অপর গ্রেনেডটি তাকে দেই। এর মাস/দেড় মাস পর আমাকে বিপুল ফোন করে বলে যে, আমার নিকট থাকা অপর ২টি গ্রেনেড দিয়ে আসতে। আমি তার কথামতো আমার নিকট থাকা ২টি গ্রেনেড শিবগঞ্জের ১টি বাসার কাছে রাস্তায় তার নিকট দিয়ে চলে আসি। এরপর মাঝে মধ্যে বিপুলের সাথে দেখা সাক্ষ্যাত হতো। এই বিষয়ে আর কোন আলাপ হয়নি আমার সাথে।

গ্রেনেড ছুড়ে মারার সময় আমার মধ্যে একটা জোস কাজ করতেছিলো। ছুড়ে মারতেই হবে। এই গ্রেনেডের ক্ষমতা কি । কি ক্ষয়ক্ষতি হবে এ সম্পর্কে আমার কোন ধারনা ছিলো না।”

[Underlines supplied]

The confessional statement made by accused Mufit Abdul Hannan Munshi [exhibit-9(Kha)] runs as follows:

“আমি একজন মাদ্রাসার শিক্ষক। আমি প্রথমে নিজ গ্রামের প্রাইমারী স্কুলে ৫ম শ্রেনী পর্যন্ত পড়াশুনা করে পরে গ্রামের মাদ্রাসায় পড়াশুনা শুরু করি। ১৯৭৫ সালে গহর ডাংগা মাদ্রাসায় কোরআন শরীফ হেফজ শুরু করে ১৯৭৯ সালে শেষ করি। কিছুদিন শর্সিনা আলিয়া মাদ্রাসায় লেখা পড়া করে মাস কয়েক পর দেওবন্ধ মাদ্রাসায় চলে যাই। সেখানে জামাতি লাইন লেখাপড়া আরম্ভ করে ১৯৮৭ সালে দাওরা হাদিস লেখা পড়া কালে আলী গড় বিশ্ববিদ্যালয়ে ইসলামকি ষ্টাডিজ-এ এম.এ. পাশ করি। ১৯৮৭ সালে দেশে এসে পুনরায় লেখাপড়া করার জন্য পাকিস্তানে যাই। সেখানে জামিয়া ইউসুফ বিন নুরিয়া মাদ্রাসা করাচী নিউ টাউনে আল কোরআন, আল হাদিস ও ফেকা শাস্ত্রে পড়া শুনা করার জন্য ১৯৮৮ সালে ভর্তি হই। সেখানে এক মাদ্রাসায় ০৩ বছর লেখাপড়া চলাকালে রমজানের ছুটির সময় আফগানিস্থানে আফগানদের পক্ষে যুদ্ধ করতে যাই। সেখানে ১৫ দিন যুদ্ধের ট্রেনিং করি। সেখানে পক্তিয়া প্রদেশের মোন্ত শহরে যুদ্ধ শুরু হয়। ঐ যুদ্ধে আমাদেরকে যোগদান করার আহ্বান জানালে আমরা প্রায় এক হাজার লোক উক্ত শহরে রমজান মাসের ১ তারিখে যুদ্ধে অংশ গ্রহণ করি। সেখানে প্রায় ২ লক্ষ লোক অংশগ্রহন করে। যুদ্ধ চলাকালে রমজানের ১৫ তারিখে মোন্ত শহরের বতন কেল্লা নামক স্থানে আমি যুদ্ধে আহত হই। আমি পাকিস্তানের পেশোয়ারে কুয়েতি আল হেলাল হাসপাতালে ভর্তি করি চিকিৎসা করা হয়। সেখানে যুদ্ধে মাওলানা ওবায়দুল্লাহ (কুমিল্লা), হাসান (চট্টগ্রাম), মাওলানা আবু মুসা (কুমিল্লা), সালাউদ্দিন (চট্টগ্রাম) ও আরও অনেক লোক ছিল। ঐ হাসপাতালে ১০ মাস চিকিৎসার পর পুনরায় করাচী মাদ্রাসায় চলে আসি। দুইমাস পর পুনরায় ঐ হাসপাতালে চিকিৎসার জন্য যাই। চিকিৎসা শেষে দুই মাস পর আবার করাচী এসে লেখা পড়া শেষ করে ১৯৯৩ সালে দেশে আসি।

আফগান যুদ্ধ ১৯৯২ সালে শেষ হয়। ইতিমধ্যে বাংলাদেশের কিছু যোদ্ধা ১৯৮৯/১৯৯০ সালে দেশে ফেরৎ এসে হরকাতুল জেহাদ আল ইসলামী বাংলাদেশ নামে একটি ইসলামী দল গঠন করে। উহার প্রতিষ্ঠাতা শহীদ আবদুর রহমান ফারুকী। পরে উনি আফগানস্থানে যেয়ে শহীদ

হন। আমি নিজ গ্রামের মাদ্রাসায় কিছুদিন শিক্ষকতা করি। পরে কোটালী পাড়া ঘাঘর বাজারে কোটালীপাড়া আদর্শ ক্যাডেট মাদ্রাসা নামে একটি মাদ্রাসা স্থাপন করি। ১৯৯৪ সালে গহর ডাংগা মাদ্রাসায় হরকাতুল জেহাদের নেতা মুফতি শফিকুর রহমান, মুফতি আবদুল হাই, মাওলানা আবদুর রউফ, মাওলানা সাইদুর রহমান প্রমুখ নেতা গহরডাংগা মাদ্রাসায় মিটিং করলে উক্ত মিটিংয়ে আমি দাওয়াত পেয়ে সেখানে যোগদান করি এবং ওদের কথায় উদ্ভুদ্ধ হয়ে হরকাতুল জেহাদ পার্টিতে যোগদান করি। আমাকে থানা লেভেলে প্রচার সম্পাদক হিসাবে নিয়োগ দেয়া হয় এবং আমি হরকাতুল জেহাদের পক্ষে নিজ থানা এলাকায় কাজ করতে থাকি। আমাদের ২/৩টি থানা মিলে আমীর ছিলেন সাইদুর সিলেটী। আমাদের দলের উদ্দেশ্যে ছিল দেশের ভিতর প্রশিক্ষন প্রাপ্ত হয়ে দেশের বাইরে কোন মুসলমানদের উপর অত্যাচার হলে সেখানে গিয়ে যুদ্ধে অংশ গ্রহন করে মুসলমানদের সাহায্য করা। এভাবে আমাদের দেশের কওমী মাদ্রাসায়, স্কুল, কলেজ ও বিশ্ববিদ্যালয়ে অনুমান ২ লক্ষ লোক প্রশিক্ষণ নিয়েছে বলে মনে হয়। আমি ১৯৯৫ সালে যশোর শহরে মুরশিদিয়া মহিলা মাদ্রাসা স্থাপন করি। ওখানে ১(এক) বছর থাকার পর ১৯৯৬ সালে দেশে ফেরৎ আসি এবং পুনরায় ক্যাডেট মাদ্রাসায় এসে শিক্ষকতা আরম্ভ করি। ঐ বছরই আল ফারুক ইসলামিক ফাউন্ডেশন নামে একটি এন.জি.ও স্থাপন করি। আমি এরপর হতে ঢাকা হরকাতুল জেহাদের অফিস খিলগাঁও, তালতলার অফিসে যাতায়াত শুরু করি এবং বিভিন্ন মিটিং-এ যোগদান করি। আমাদের সংগঠনের পত্রিকা ছিল জাগো মুজাহিদ। ঐ সব মিটিং-এ পবিত্র কোরআন শরীফে জেহাদ সম্পর্কিত আয়াত এবং হাদিসের উপর আলোচনা করে সবাইকে জেহাদে উদ্ভুদ্ধ করা হত। আমরা ইতিমধ্যে আরাকানের জেহাদী সংগঠন আর.এস. ও এবং আর. এফ.এ সংগঠনে আমাদের তরফ হতে যোদ্ধা প্রেরণ করি। দেশে অনৈসলামিক কাজ বন্ধ করায়ও আমাদের দলের মৌখিক সিদ্ধান্ত ছিল।

১৯৯৯ সালের ফেব্রুয়ারী মাসের শেষের দিকে মোহাম্মদপুর বাস ষ্ট্যান্ডে সুপার মার্কেট হতে ভিতরের দিকে একটি রোডে আমাদের অফিসে ৪/৫ জন মিলে একটি আলোচনা সভা হয়। সেখানে মওলানা আবদুর রউফ (রাজৈর), হাফেজ জাহাঙ্গীর বদর (দোহার), হাফেজ ইয়াহিয়া (সিলেট), মওলানা আবু বকর (সিলেট), মওলানা সাব্বির (বগুড়া) সহ বাগের হাটের আবু মুসা সহ আরো ২/১ জন উপস্থিত ছিল। সভায় পত্রিকায় উদীচি শিল্প গোষ্টি যশোর শহরে মাস ব্যাপী একটি অনুষ্ঠান করবে বলে জানি। বাংলাদেশে উদীচির উলঙ্গ গান-বাজনা বন্ধ করার বিষয়ে আলোচনা করে আমাদের উদ্দেশ্যে দলের আমীর মুফতী শফিকুর রহমানকে জানানোর

সিদ্ধান্ত হয়। ঐ দিনই মাগরেবের পর মুগদা অফিসে আমরা সবাই যেয়ে আমীর মুফতি শফিকুর রহমান, মুফতি আবদুল হাই (দাউদ কান্দি), সাইদুর রহমান (ফেনী) কে হাজির পেয়ে সেখানে উদীচির উলঙ্গ গান বাজনা বন্ধ করার বিষয়ে আলোচনা আরম্ভ করি এবং হাফেজ ইয়াহিয়া আলোচনা করে বলেন যে, আমরা পত্রিকা মারফত জানতে পেরেছি যে, যশোর উদীচি শিল্প গোষ্ঠী মাস ব্যাপী একটি অনুষ্ঠান আয়োজন করেছে। উদীচির গানের অনুষ্ঠান বন্ধ করার বিষয়ে আমীর সাহেবকে জানালে তিনি বলেন যে, এভাবে কোন কাজ হবে না। আপনারা সরেজমিনে তদন্ত করে আমাকে জানান। তখন মওলানা আবু বকর ও আবু মুসা ও সাব্বিরের উপর তদন্তের ভার দেয়া হয়। ঐ ৩ জন যশোর উদীচির গানের অনুষ্ঠানের তদন্ত করে আমীর সাহেবকে মুগদার অফিসে জানালে আমীর সাহেব আমাদের সবার উপস্থিতিতে মওলানা সাব্বির এবং আবু মুসাকে বলেন যে, তোমরা হালকা-পাতলা ২(দুই)টি বোমা তৈরী করে রাখবে এবং দেখবে যদি যশোর উদীচির গান চলে তবে সেখানে ব্যবহার করবে। এ কথার পর আমরা সবাই চলে যাই। আমি আমার বাড়ীতে ছিলাম।

গত ১৯৯৯ সালের মার্চ মাসের ৫ তারিখ মওলানা আবদুর রউফ সাহেব আমাকে যশোরে আসতে বলেন। আমি নড়াইল হয়ে বেলা ৩.০০ টার দিকে যশোরে যাই। খুরশিদিয়া মহিলা মাদ্রাসায় অবস্থান করি। নুরানী মাদ্রাসায় আসরের নামাজ পড়ি। মাগরেবের কিছুক্ষন পূর্বে আবু মুসা, সাব্বির, মওলানা রউফের সাথে মাদ্রাসায় দেখা হয়। আবু মুসা জানায় যে, আমার নির্দেশ মোতাবেক বোমা নিয়ে এসেছি এবং মাদ্রাসার শিক্ষক মুফতী শামসুল হকের বাসায় রেখেছি সেখানে আবুল হোসেন আছে। এখন রউফ সাহেব যেভাবে বলেন সেভাবে কাজ হবে। আমি বলি যে, আমার এখানে থাকার প্রয়োজন আছে কি-না? তখন সাব্বির বলে দরকার আছে। এরপর মহিলা মাদ্রাসায় মুফতি শামসুল হকের বাসায় আবু মুসা ও সাব্বির যায়। রউফ সাহেব বলেন যে, কাজ করতে হলে লোক প্রয়োজন। সেখানে আবু সাহেবের নাম প্রস্তাব হলে মুফতী শামসুল হক বলেন যে, আবুল হোসেন উচা এবং লম্বা। সেখানে গেলে চোখে পড়বে। একাজের জন্য লোক আসতে বলা হয়েছে। তারা আসতেছে। মুফতী শামসুল হকের সাথে আবু মুসা এবং সাব্বির উদীচির অনুষ্ঠানে বোমা বিস্ফোরনের বিষয় যোগাযোগ করেছিল। আমি ও মাওলানা আবদুল রউফ আমার মাদ্রাসার রুমে ছিলাম। আবু মুসা এসে জানায় যে, অনুষ্ঠানে বোমা পাতার জন্য লোক আসছে। তাদের নাম জিজ্ঞাসায় জানতে পারি আবদুল্লাহ ও ওয়ালিউর রহমান আসতেছে। আবদুল্লাহর বাড়ী চট্টগ্রামে বয়স ১৬/১৭ বছর ও ওয়ালির রহমানের বাড়ী যশোর, চাচড়া মোড় বয়স ১৯/২০ বছর। তাদেরকে বোমা দেওয়ার বিষয়ে আবু মুসা অনুমতি

চায়। তখন মওলানা আঃ রউফ সাহেব তাদেরকে বোমা পোতার অনুমতি দিয়ে লোক দুটিকে প্রয়োজনীয় নির্দেশ দিয়ে বোমা সহ উদীচির গানের অনুষ্ঠানে প্রেরণ করে। রাত ১২.৩০/১.০০ টার সময় উদীচির গানের অনুষ্ঠানে বোমা বিস্ফোরিত হয়। ১০/১২ জন লোক মারা যায় ও শাতধিক লোক আহত হয়। রাতে আমি আমার রুমে ছিলাম। মওলানা রউফ ও মুসাব মোড়ল, আবুল হোসেন, সাব্বির, শামসুল হক এর বাসায় ছিল। রউফ সাহেব, ওয়ালিউর রহমান ও আবদুল্লহ কে বোমা দিয়ে উদীচির অনুষ্ঠানে প্রেরণ করার পর আমি ঢাকার গাড়িতে মাগুরা চলে আসি।

বাংলাদেশ আওয়ামীলীগ ১৯৯৬ সালে রাষ্ট্রীয় আইনানুযায়ী দেশে প্রখ্যাত আলেমগন ইসলামী আইনানুযায়ী দেশে প্রচলিত বিচার ব্যবস্থার বাইরে দেশের বিভিন্ন সমস্যার বিষয়ে কোরআন ও হাদিসের আলোকে ফতোয়া দিয়ে বিভিন্ন জায়গায় অনুষ্ঠান করে। তাতে আওয়ামী সরকার বাধা দিলে উক্ত ফতোয়ার বিচারের বিরুদ্ধে হাইকোর্টে মামলা করলে হাইকোর্ট ফতোয়া দেয়া অবৈধ ঘোষণা করে। যাতে আলেম ওলামাদের ভবিষ্যতে ফতোয়া দেওয়া বন্ধ হয়ে যায়। হাইকোর্টের রায় এখনও বলবৎ আছে। এছাড়া ব্রাক্ষণবাড়ীয়ায় একটি ফতোয়া জনিত ইসলামী জলসায়ে পুলিশ দিয়ে হামলা করে ইসলামী জলসা পন্ড করে দেয়। এর প্রতিবাদ করলে ৬(ছয়) জনকে গুলি করে হত্যা করে এবং বহু লোক আহত হয়। সেখানে বিখ্যাত আলেম মুফতী ফজলুল হক আমিনী সহ অনেককে গ্রেফতার করা হয়। এছাড়া বিভিন্ন কারণে মিরপুর ১১নং মহিলা মাদ্রাসা হতে প্রিন্সিপাল মওলানা শাফায়াত সহ ৪জনকে গ্রফতার করে জেল খানায় প্রেরণ করা হয়। মোহম্মদপুর রহমানিয়া মাদ্রাসায় এন.জি.ও এর একটি ঘটনায় নুর মসজিদের ভিতরে মুসল্লীদের হামলা কালে সেখানে বাদশা নামক এক পুলিশ মারা যায় এবং অনেক মুসল্লী আহত হয়। এঘটনায় সাইখুল হাদিসসহ মাদ্রাসার শতাধিক ছাত্র গ্রেফতার হয়। এসব ঘটনায় দেশের আলেম ওলামারা মনে করেন যে, আওয়ামী লীগ ইসলাম বিদ্বেষী এবং এরা ভারতের দালাল হিসাবে করে ইসলাম ধ্বংস করার কাজে লিপ্ত। এ প্রেক্ষিতে ২০০০ সালের জুলাই মাসের প্রথমে মোহম্মদপুর সুপার মার্কেটের পার্শ্বে পূর্বের অফিসে মওলানা আব্দুর রউফ, মাওলানা সাবির আহমদ, হাফেজ ইয়াহিয়া, মওলানা আবু বকর, আবু মুসা ও আরো কয়েকজনের উপস্থিতিতে একটি আলোচনা সভা হয়। সভায় সিদ্ধান্ত হয় যে, আওয়ামী লীগের নেতা কর্মীদের উপর হামলা করে তাদের প্রতিহত করে আলেম সমাজ তথা দেশ ও ইসলামকে বাঁচাতে হবে। এ সিদ্ধান্ত আমীর মুফতী শফিকুর রহমানকে মুগদা অফিসে যেয়ে মুফতী আঃ হাই ও আরো কয়েকজনের উপস্থিতিতে সিদ্ধান্ত জানানো হয়। উনি জবাবে জানান

যে, তিনি হরকাতুল জেহাদের আরও কর্মকর্তাদের সাথে আলোচনা করে সিদ্ধান্ত জানাবেন। পরবর্তীতে দলের আমেলা (প্রেসিডিয়াম সদস্য) মওলানা আঃ রউফ, শেখ ফরিদ, হাফেজ ইয়াহিয়া, মওলানা আবু বকর, মওলানা সাব্বির আহম্মদ, মুফতী আঃ হাই এর উপস্থিতিতে মুফতী শফিকুর রহমান আওয়ামী লীগকে প্রতিহত করার সিদ্ধান্ত দেয়। উক্ত নেতাগন আমাদেরকে নিয়ে মুগদার ঐ অফিসে আমি, আবু মুসা, মওলানা আঃ রহমান, জাহাঙ্গীর বদর সহ কয়েকজন বসে আলোচনা করে। আলোচনা শেষে কোটালী পাড়ায় শেখ হাসিনা দরিদ্র বিমোচন কর্মসূচীর সভায় গেলে তাকে হত্যা করার জন্য বোমা পাতার সিদ্ধান্ত হয়। সে মোতাবেক ইয়াহিয়া বিস্ফোরক সংগ্রহ করে খুলনায় আবু মুসা ও সাব্বিরের নিকট দিবে সিদ্ধান্ত হয়। বোমা তৈরীর অন্যান্য সরঞ্জাম আবু মুসা এ সাব্বির স্থানীয় ভাবে সংগ্রহ করবে সিদ্ধান্ত হয়। সবকিছু সংগ্রহ শেষ হলে আবু মুসা, মওলানা সাব্বির বোমার সরঞ্জাম সহ ঘটনার ৪/৫ দিন পূর্বে গোপালগঞ্জে আমার সাবান কারখানায় আসে। ১৬ এবং ১৭ জুলাই ২০০০ তারিখ রাতে আমার সাবান কারখানার ভিতরে পর্দা ঘেরা রুমে বসে আমার উপস্থিতিতে আবু মুসা, সাব্বির, নুর ইসলাম (আবার সাবান কারখানার কর্মচারী) সে মুসলমান পাড়া আওয়ামী লীগ নেতা চান মিয়ার বাড়ী কোটালী পাড়া এর বাসার নীচ তলায় ভাড়া থাকত। তারা দুটি বোমা ফিটিং করে। ১৯ তারিখ সন্ধ্যার পর সাবান কারখানার কর্মচারী তারেক, হাসান, নুর ইসলাম, সাব্বির ও রাশেদ ড্রাইভার সাবান কারখানার গাড়ীতে করে বোমা দুটি নিয়ে কোটালীপাড়ায় যায় ও আমার সাবান বিক্রীর দোকানে জড়ো হয়। আমি ও আবু মুসা মোটর সাইকেলে করে কোটালী পাড়ায় যাই। রাত ১২.০০ টার পর আমার নির্দেশে নুর ইসলাম, তারেক, মুসা, সাব্বির মিলে গর্ত করে একটি বোমা স্টেজের পূর্ব পার্শ্বে ওয়াল ও রাস্তার পর পুকুরের কিনারে রাখে। বোমাটির তার একটি টং চার দোকানের নীচ দিয়ে পুকুরে রাখে। অপর একটি বোমা হেলিপ্যাডের কাছে রাস্তায় পূর্ব পার্শ্বে গর্ত করে পুতে রাখে। বোমার তার পুকুরের মধ্য নিয়ে রাখে। আমি ও রাশেদ রাস্তায় দাড়িয়ে পাহারা ও বোমা পাতার তদারকী করি। বোমা পাতার গর্ত করাকালে ২ জন ভ্যান চালক রাস্তার পার্শ্ব দিয়ে যাওয়ার সময় গর্ত করা দেখতেছিল। বোমা পাতা শেষ হলে ফজরের আজান হয়। আমরা সবাই গোপালগঞ্জে চলে আসার সময় পথে ফজরের নামাজ পড়ি। আমি বোমা পাতার সংবাদ আমীর সাহেবকে দেয়ার জন্য ঢাকা আসি। আমি মুফতী শফিকুর রহমান ও আবদুল হাইকো কোটালীপাড়ায় শেখ হাসিনার সভার কাছে বোমা পাতার সংবাদ দিয়ে কিছু প্রয়োজনীয় মালামাল কিনে গোপালগঞ্জে চলে যাই। গোপালগঞ্জে পৌছে জানতে পারি যে, আমাদের পাতা বোমার মধ্যে মঞ্চের কাছের বোমাটি

পুলিশ উদ্ধার করেছে। এ সংবাদে আমি পরে ব্রিফ কেস নিয়ে কাপড় চোপড় সহ পুনরায় ঢাকা চলে আসি। আসার সময় আমি কর্মচারীদেরকে কারখানায় থেকে কাজ করতে বলি।

ঢাকা মহানগরীর দায়িত্বে থাকা আমাদের সংগঠনের রনাঙ্গন শিল্প গোষ্ঠীর সভাপতি হাফেজ আবু তাহের, ঢাকার মওলানা শেখ ফরিদ এর নিকট ১লা বৈশাখ রমনা বটমুলে গানের অনুষ্ঠান চলাকালে অনুষ্ঠান বন্ধ করার লক্ষ্যে বোমা বিস্ফোরন করার জন্য প্রস্তাব আসে। শেখ ফরিদ মোহম্মদপুর শিয়া মসজিদ ও রহমানিয়া মাদ্রাসার মাঝামাঝি স্থানে মহানগর অফিসে আসে। মওলানা আবদুর রউফ, ইয়াহিয়া, সাব্বির, জাহাঙ্গীর বদর, আবু বকর এবং আমি ও আরও কয়েকজনের উপস্থিতিতে শেখ ফরিদের মাধ্যমে তাহেরকে রমনা বটমুলে ১লা বৈশাখ (২০০১) অনুষ্ঠানে বোমা বিস্ফোরনের আদেশ দেয়া হয়। তাহের তার লোক নিয়ে কাজ করবে। এরপর বিষয়টির উপর আলোচনাক্রমে সিদ্ধান্ত হয় যে, বিষয়টি দলের আমীর মুফতী শফিকুর রহমানের অনুমতি ছাড়া করা ঠিক হবে না। যা করতে হয় তার অনুমতি নিয়ে করতে হবে। এরপর শেখ ফরিদ, আবু বকর ও জাহাঙ্গীর বদর বিষয়টি নিয়ে আমীর সাহেবের নিকট আলোচনা করে অনুমতি নেয়ার জন্য যায়। পরে আমি শেখ ফরিদের নিকট জানতে পারি যে, আমীর সাহেব এভাবে অনুমতি দিয়েছে যে, হালকা বিস্ফোরণ ঘটাতে হবে, যাতে লোকজনের ক্ষতি না হয়। আরো জানতে পারি যে, আমীর সাহেব বোমা তৈয়ার দায়িত্ব দেয়। সাব্বির, জাহাঙ্গীর বদর এর উপর এরা বোমা তৈরী করে তাহেরকে দিবে। নির্দেশ মোতাবেক ওরা বোমা তৈরী করে তাহেরকে দেয়। তাহের, হাসান (ঢাকা কলেজে পড়ে) ওমর ফারুক (ঢাকা কলেজে পড়ে) ও আরও ৪/৫ জনকে দিয়ে রমনা বটমূলে ১লা বৈশাখের গানের অনুষ্ঠান চলাকালে বোমা পেতে বিস্ফোরন ঘটায়। ঐ বিস্ফোরনে লোকজন হতাহত হয়।

২০০১ সালে আমাদের সংগঠনের কর্মী সিলেটের জাফর (ফেঞ্চুগঞ্জ) এর মাধ্যমে জানতে পারি যে, শেখ হাসিনা নির্বাচনী জনসভা করার জন্য সিলেটে যাবেন। তার জনসভায় বোমা পাতার জন্য আলোচনা হয়। উক্ত আলোচনা মোহম্মদপুর নুরানী মাদ্রাসার অফিসের সামনে হয়। উক্ত আলোচনায় আমি ছাড়াও মওলানা আবু সাইদ (গফর গাঁও), আবু মুসা, লোকমান (খুলনা), আবু বকর (সিলেট), ডালিম (চট্টগ্রাম), ওবায়দুল্লাহ (ফেনী), নুর ইসলাম (খুলনা) ছাড়া কয়েকজন উপস্থিত ছিল। জন সভায় আলোচনাক্রমে শেখ হাসিনার সিলেটের জন সভায় বোমা হামলা করে তাকে হত্যা করার সিদ্ধান্ত হয় এবং উক্ত কাজের জন্য বোমার সরঞ্জাম সংগ্রহ করে সিলেটে নেবার দায়িত্ব দেয়া হয় মওলানা সহিদ, আবু মুসা, লোকমান, আবু বকর ও ডালিমকে। তাদের সাথে আবু সাইদ, নুর ইসলাম, ওবায়দা (ফেনী) ও আরো ২/১ জন যায়।

এরা সিলেটে যেয়ে ডাক্তার রেফার ল্যাবের কর্মচারী আলালের মাধ্যমে তার বাসায় যেয়ে উঠে। তারা সিলেটে যেয়ে শেখ হাসিনার সভায় বোমা বিস্ফোরনের সুযোগ না পেয়ে ডাক্তার রেফার বাসায় যেয়ে বোমা খোলার সময় বিস্ফোরন ঘটে। তাতে আবু মুসা ও লোকমান মারা যায় এবং কয়েকজন আহত হয়।

আমাদের সংগঠনের মনির বাড়ী গাজীপুর। আমাকে পল্টনের অফিসে এসে জানায় যে, তাজ উদ্দিন নামে তাদের আত্মীয় আছে। সে বায়তুল মোকারম এর উত্তর গেটে দেখা করতে বলেছে। কিছু গুরুত্বপূর্ন কথা আছে। আমি ও মনির ২০০৩ সালের শুরুতে একদিন বিকাল বেলা বায়তুল মোকারম যেয়ে আসরের সময়ে উত্তর গেটে তাজউদ্দীনের সাথে দেখা করি। তখন কথাবার্তা বলায় জানতে পারি সেও জেহাদের হিতাকাঙ্খী। সে এ বিষয়ে পাকিস্তানের মাদ্রাসায় লেখা পড়া করেছে। সে প্রস্তাব করে যে, কিছু মালামাল (গ্রেনেড) দেশের বাইরে পাঠাবে। তাজউদ্দীন বলেন সব আলোচনা এখন দরকার নাই। আমরা আবার বসবো। সে আমাকে বলে যে, আগামীকাল মোহাম্মদপুর সুপার মার্কেটে আসেন। সে আমাকে বলে যে, আগামীকাল মোহাম্মদপুর সুপার মার্কেটে আসেন। তখন থেকে আমাকে নিয়ে আলোচনা করবেন। আমি পরের দিন মোহাম্মদপুর বাসষ্ট্যান্ডের কাছে সুপার মার্কেটে যাই। যেখান থেকে তাজউদ্দীন আমাকে নিয়ে তার মোহম্মদপুর গ্লাস ফ্যাক্টরীর কাছে ভাড়া করা বাসায় নিয়ে যায়। সেখানে নীচ তলায় ২টি রুম আছে। তার একটি রুমে আমাকে নিয়ে একটি কাগজের কার্টুন দেখিয়ে বলে যে, এর মধ্যে গ্রেনেড আছে। এগুলি কলকাতা পাঠাবো। কলকাতায় পাঠানোর দায়িত্ব আমাকে দেয়। সেখান থেকে তাজউদ্দীনের লোক অন্যত্র নিয়ে যাবে। আমি যেহেতু আফগানিস্তানের যুদ্ধে ছিলাম এবং পাকিস্তানে লেখাপড়া করেছি তাই সে আমাকে বিশ্বাস করেছে। গ্রেনেড পাঠানোর বিষয়ে আমি বলি যে, দেখি লোকজন জোগাড় করতে পারি কিনা? এরপর আমি চলে আসি। মওলানা আবু সাইদ মোহম্মদপুর নুরানী মাদ্রাসায় শিক্ষকতা করতো। আমি তার সাথে দেখা করে বিষয়টি জানাই এবং লোক দিয়ে গ্রেনেড পাঠাতে পারবো বলি। সাইদ সাহেব বলেন যে, তাজউদ্দীনকে সে চিনে এবং তার সাথে দেখা করালে তিনি আলোচনা করবেন। একদিন পর সাইদ ভাইকে নিয়ে তাজউদ্দীনের সাথে যোগাযোগ করলে তিনি ধানমন্ডির একটি হাসপাতালে তার আত্মীয় চিকিৎসাধীনে থানায় ঐ হাসপাতালে দেখা করতে বলেন। আমি ও সাইদ সাহেব মাগরীবের নামাজের সময় ঐ হাসপাতালে তাজউদ্দীনের সাথে দেখা করে গ্রেনেড পাঠানোর বিষয় আলোচনা করি। তাজউদ্দীন বলেন যে, অল্প অল্প করে সামনে (গ্রেনেড) নিয়ে এক জায়গায় জমা করতে হবে। সেখানে তার লোক বিদেশে নিয়ে

যাবে। সাইদ ভাই বলেন যে, পরে পরে এগুলি নিয়ে যাওয়া রিক্স আছে। একবার বর্ডারে নিয়ে গেলে রিক্স কম থাকে। ওখান থেকে অল্প করে নিয়ে বিদেশে যাওয়া যাবে। আমি তখন আবু জান্দাল (নড়াইল) মাল (গ্রেনেড) প্রেরণের জন্য চেষ্টা করিতে বলি। সে তার এক বন্ধু বাড়ী সাতক্ষীরাকে লাইন করতে বলে। তখন সে জানায় যে, তার ভগ্নি পতির কোলকাতা বাড়ী। সাতক্ষীরায় থাকে। সে তাকে নিয়ে আসতে পারবে। সে বিশ্বাসী লোক। জান্দালকে আমি বলি তার বন্ধুর ভগ্নিপতিকে ঢাকায় নিয়ে আসতে বললে তাকে ঢাকায় নিয়ে আসে। তার সাথে মালামাল (গ্রেনেড) বিদেশে পাঠানোর বিষয়ে আলাপ করে বলে যে, ঢাকা হতে মালামাল (গ্রেনেড) নিতে হবে। তাজউদ্দীন বলে আপনি থাকবেন আপনার লোকও থাকবে। তখন সে রাজী হয়। বিষয়টি তাজউদ্দীনকে জানিয়ে আলোচনার প্রস্তাব করলে সে সেখানে সোবাহান বাগ ডেন্টাল কলেজের হোষ্টেলের সামনে একটি বড় মসজিদে আসতে বলে। সেখানে যেয়ে তাজউদ্দীনের সাথে লোকটিকে আলাপ করিয়ে দিলে মালামাল প্রেরনের বিষয়ে উভয়ে রাজী হয়। এরপর তারা চলে গেলে তাজউদ্দীন, আবু জান্দাল ও আমি থাকি। তাজউদ্দীন বলে যে, মালামাল বহনের জন্য আমি দুটো ব্যাগ দিচ্ছি এগুলো নিয়ে যান। আমাকে ও আবু জান্দালকে নিয়ে চকবাজারে তাজউদ্দীনের তার কারখানায় যায়। সেখান হতে আমাদেরকে মোটা কাপড়ের দুটো ব্যাগ দেয়। আমরা ব্যাগ নিয়ে বাড্ডা অফিসে আসি। তাজউদ্দীন তার মতো চলে যায়। তাজউদ্দীন পরের দিন আমাদেরকে তার যে রুমে মালামাল ছিল সে রুমে যেতে বলে। আমরা বলি সুপার মার্কেটে আমরা থাকবো। ওখান থেকে আমাদেরকে নিয়ে যেতে বলি। পরের দিন জোহরের পর আমি ও আবু জান্দাল মোহম্মদপুর সুপার মার্কেটে আমরা থাকবো। ওখান থেকে আমাদেরকে নিয়ে যেতে বলি। পরের দিন জোহরের পর আমি ও আবু জান্দাল মোহম্মদপুর সুপার মার্কেটে গেলে সেখান হতে তাজউদ্দীন আমাদেরকে তার বাসায় নিয়ে যায়। তাজউদ্দীন তার বাসায় পেটি খুলে গ্রেনেডের কাপড়ের ব্যাগ সহ প্রথম ৩টি ব্যাগ দেয়। প্রতি ব্যাগে ৮টি করে গ্রেনেড ছিল। আমরা বলি প্রতি ব্যাগে ০২টি করে দেন। তখন আরো একটি গ্রেনেড ভর্তি ব্যাগ দেয়। মোট ৩২ টি গ্রেনেড ব্যাগে রাখা হয়। ব্যাগটিতে গ্রেনেড রাখার পর ভর্তি না হওয়ায় কাপড় চোপড় দিয়ে ভতি করতে বলি এবং আরও বলি যে, আমি বারে বারে আসতে পারবো না। তাছাড়া এখন সাতক্ষীরা যাবার গাড়ী পাওয়া যাবে না। সকালে আবু জান্দাল ও সাতক্ষীরার লোকটি এসে গ্রেনেড নিয়ে যাবে। টাকা পয়সা ভাড়া যা লাগে দিয়ে দিতে বলে আমি চলে আসি। আবু জান্দাল ও সাতক্ষীরার লোকটি পরের দিন মালামাল (গ্রেনেড) সাতক্ষীরা নিয়ে যায়। তাজউদ্দীন মালামাল (গ্রেনেড) সাতক্ষীরা রাখার জন্য বলে এবং বলে

যে, তার লোক গ্রেনেড বিদেশে নিয়ে যাওয়ার লোক ঠিক করতেছে। আবু জান্দাল ও সাতক্ষীরার লোকটি আরও কিছু মালামাল নিয়ে সাতক্ষীরা জমা করতে থাকে। কত গ্রেনেড নেয় তার পরিমান আমার জানা নাই। ইতি মধ্যে ভারতের কোলকাতার একজন লোকের সাথে তাজউদ্দীনের সরাসরি যোগাযোগ হয়। পরে আবু জান্দালকে দিয়ে ৩২টি গ্রেনেড মোহম্মদপুর থেকে বাড্ডায় মাদ্রাসার একটি কক্ষে ওয়াল ওয়ার ড্রপের মধ্যে রেখে দেই। কেননা ইতিমধ্যে বর্ডারের সাথে আপাততঃ আমাদের সাময়িক বিচ্ছিন্ন হয়েছিল।

সিলেটের বিপুল আমাদের হরকাতুল জেহাদের সদস্য এবং সিলেটের নেতা ছিল। সে ১৯৯৯ সালে লিবিয়া চলে যায়। ২০০২ সালের ডিসেম্বরে দেশে ফেরৎ এসে ২০০৩ সালে আমিন বাজারের সাইদ নামে এক ব্যক্তির নিকট হতে আমার ঠিকানা নিয়ে আমার বাড্ডার মাদ্রাসার অফিসে দেখা করে এবং সংগঠনের কাজের বিষয়ে আলোচনা করে। ২/৩ দফায় এ রকম আলোচনার পর ২০০৪ সালের প্রথমদিকে সংগঠনের জেহাদের কাজের বিষয় আলোচনার সময় বলে যে, সংগঠনের কাজ করতে হলে আমাদের কিছু মালামাল (গ্রেনেড) দরকার। তখন আমি বলি যে, ইসলামী ঐক্য জোট হতে আমাদেরকে বলা হয়েছে যে, দেশে বোমাবাজী হয়ে লোকজন মারা গেলে সরকারের দুর্নাম হয়। বোমাবাজী সম্পূর্ণ ভাবে নিষেধ করে দিয়েছে। তবে আমার কাছে কিছু গ্রেনেড আছে যেহেতু আমাদের সংগঠন আওয়ামীলীগের বিরুদ্ধে কাজ করে তাই সিলেট এলাকায় আওয়ামীলীগ নেতাদের উপর আক্রমন করার জন্য বিপুলকে সময় মত আমাদের নিকট হতে গ্রেনেড নেওয়ার জন্য বলি। এরপর সে চলে যায়। বিপুল ২০০৪ সালের ফেব্রুয়ারী মাসের প্রথম দিকে সুনামগঞ্জের হাফেজ নাইমুর রহমানকে ঢাকায় গ্রেনেড নেবার জন্য পাঠায় এবং আমাকে টেলিফোনে জানায়। নাঈম আমার অফিসে আসলে আহসান উল্লাহ কাজল ও মফিজুর রহমান ওরফে অভি তার সাথে কথা বলে। জোহরের নামাজের পর আমি অফিসে যাই। ৪/৫ মিনিট পর কাজল নাইমকে আমার রুমে নিয়ে আসে। তার সাথে পরিচয় হবার পর আমি বলি আপনি যে, জিনিসের জন্য আসছেন বিপুল আমাকে বলেছে। কাজল আপনাকে ০৫টি গ্রেনেড দিবে। আপনি জিনিস নিয়ে চলে যাবেন। ২০০৪ সালের এপ্রিল মাসের দিকে বিপুল ও রিপন আমার ঢাকার বাড্ডার অফিসে আসে। কাজল আমাকে ফোনে জানায় যে, বিপুল ও রিপন গ্রেনেড নিতে এসেছে। কাজলকে বলি অফিসে আর কে আছে? কাজল বলে যে, মফিজ ও মঈন ওরফে জান্ডাল ভাই আছে। আমি বিপুলকে ০৪টি গ্রেনেড দেবার জন্য কাজলকে নির্দেশ দেই। কাজল বিপুলকে ০৪টি গ্রেনেড দিয়ে আমাকে জানায়। আমার সরবরাহ করা গ্রেনেড দিয়ে বিপুল ও রিপন সিলেট হযরত শাহ জালাল (রঃ)

এর দরগায়ে বৃটিশ হাইকমিশনারকে হত্যা করার জন্য গ্রেনেড নিক্ষেপ করে তাতে ০৩ জন মারা যায় এবং ৬০/৭০ জন আহত হয়। এছাড়া গ্রেনেড দিয়ে বিপুল, হেমায়েত ও ফাহিম সিলেট শহরে হোটেল গুলশান চত্তরে মেয়র কামরান সাহেবকে হত্যা করার জন্য এবং জেবুন্নেসার বাসায় জেবুন্নেসাকে হত্যা করার জন্য গ্রেনেড নিক্ষেপ করে । সেখানেও লোকজন হতাহত হয়। গ্রেনেড নিক্ষেপের ফলাফল বিপুল আমাকে টেলিফোনে জানায়।

উল্লেখ্য যে, আমাদের সংগঠনের জন্য চট্টগ্রামের ইউনুস বিন শরীফ (বাংলাদেশী নাগরিক সৌদিতে থাকেন), মুফতী শফিকুর রহমান (ভৈরব), আঃ হাই আল হারভী (কুমিল্লা) এরা বিদেশে থেকে ফান্ড এনে আমাদেরকে টাকা পয়সা যোগান দিত। ঐ টাকা পয়সা দিয়ে বাংলাদেশের ভিতর ও বাইরে থেকে অস্ত্র গোলাবারুদ ক্রয় করা হত এবং মায়ানমারের আরকানের RSO এবং RFO-কে সহযোগীতা করা হত। এই আমার বক্তব্য।”

[Underlines Supplied]

Accused Delwar Hossain Ripon, Sharif Shahidul Alam Bipul and Mufti Abdul Hannan after long laps of time at the fake end of the trial that is on 07.12.2008, 15.12.2008 and 04.12.2008 respectivly by filing separate applications retracted their statements stating *inter-alia* that while they were on police remand they were seriously tortured and compelled to make such statements before the concerned Magistrates. At the time of examination under section 342 of the code of criminal procedure the said accused persons also reiterated their above assertions made in the application for retraction.

PW-47, Md. Noor-e-Alam Siddique, the Magistrate who recorded the statement of accused Md. Sharif Shahidul Alam @ Bipul and Delwar Hossain Ripon, testified that he having complied the mandatory provisions of law recorded the statement of said

accused persons. He categorically testified to the effect:

> "তাহাদেরকে চিন্তাভাবনার জন্য পর্যাপ্ত সময় প্রদান করি এবং বিধিমোতাবেক যথাযথ সতর্কতা ও অভয়বানী প্রদান করি। তাহারা স্বেচ্ছায় দোষ স্বীকারমূলক বিবৃতি প্রদান করায় আমি তাহাদের উভয়ের বিবৃতি সঠিক ভাবে ও যথাযথভাবে লিপিবদ্ধ করি এবং বিবৃতি লিপিবদ্ধ করিবার পর লিপিবদ্ধকৃত বিবৃতি তাহাদেরকে পাঠ ও ব্যাখ্যা করিয়া শোনাইলে তাহারা উভয়ে শুদ্ধস্বীকারে নিজ নিজ বিবৃতিতে স্বাক্ষর করেন এবং তৎপর আমি উক্ত লিপিবদ্ধকৃত বিবৃতিতে স্বাক্ষর প্রদান করি।"

PW-47 was corss-examined by the accused persons and he denied the defence suggestions that he recorded the statements violating the mandatory provision of section 164 of the Code of Criminal Procedure. The defence failed to shake his testimonies in any manner. The learned defence Advocate having drawn our attention to exhibit-9(ka) submitted that the Magistrate recorded the said statement beyond the period of his office hour and as such it also created doubt about its character of truth and voluntariness.

It appears from exhibit 9(Ka) that accused Delwar Hossain Bipul was produced before the Magistrate (PW-47) at 7.00 A.M. The Magistrate having given 03(three) hours time for reflection to the said accused recorded his statement and sent him to central jail, Sylhet at 11.00 A.M. As such there is no scope to say that the Magistrate recorded the statement of accused Bipul prior to the office hour.

Further, recording of a statement of an accused beyond the period of office hour can not be a plea to hold that the said statement is not true and voluntary. If the said statement is found that same was recorded by the concerned Magistrate having compiled with all the provisions of law then there is no room to say that the said statement is not true and voluntary.

From exibit-9 and 9(ka) it also appears that before recording the statements under section 164 of the code of Criminal procedure of the respective accused persons the Magistrate (PW-47) asked the following question to the concern accused persons:

" ০১। আমি পুলিশ নই, ম্যাজিষ্ট্রেট জানেন কি? উ: হ্যাঁ

০২। আপনি দোষ স্বীকার করতে বাধ্যনন, জেনেও
দোষ স্বীকার করবেন কি? উ: হ্যাঁ করব।

০৩। আপনার স্বীকারোক্তি আপনার বিরুদ্ধে সাক্ষ্য হিসাবে
ব্যবহৃত হতে পারে তা জেনেও দোষ স্বীকার করবেন কি? উ: জ্বি করব।

০৪। স্বীকারোক্তি প্রদানের জন্য আপনাকে কেউ কোন
প্রকার ভয়ভীতি, লোভ দেখিয়েছে কি? উ: না। স্বেচ্ছায় বলব।

০৫। আপনি স্বীকার না করলেও আপনাকে আর পুলিশের
Remand-এ দেয়া হবে না। তা জানার পরও
দোষ স্বীকার করবেন কি? উ: জ্বী, করব।

০৬। আপনি সত্য বলবেন কি? উ: জ্বী বলব।"

It also evident that the Magistrate having completed the recording of the respective statements certified to the effect:

"আসামীকে তার কথিত মতে কাঃ বিঃ ১৬৪ ধারা মূলে লিখিত জবানবন্দি স্বীকারোক্তিমূলক জবানবন্দি পাঠ করে ও ব্যাখ্যা করে শুনানো হল। আসামী সত্য ও শুদ্ধ স্বীকার স্বাক্ষর করলেন।"

The Magistrate also filled up column no.8 in the following manner:

"আসামীকে বাহ্যিকভাবে আমার নিকট সুস্থ মনে হয়েছে।"

And the Magistrate filled up column No.9 on the following manner:

"আসামীকে ০৩ (তিন) ঘন্টার অধিক সময় দেওয়ার পর সে স্বেচ্ছায় এই স্বীকারোক্তিমূলক জবানবন্দি প্রদান করেন।"

In view of the above, there is hardly any scope to say that the Magistrate recorded the statements of the accused Bipul and Ripon violating the mandatory provisions of law. And as such we have no hesitation to hold that the confessional statements made by accused Bipul and Ripon under section 164 of the Code of Criminal Procedure are true and voluntary.

PW-49, recorded the statement of accused Mufti Abdul Hannan. He testified that he recorded the statement of accused Mufti Abdul Hannan, exhibit-9(Kha), in connection with Dhaka Metropolitan Ramna Police Station Case No.46(4)2001. And he having observed all the legal requirements as provided in section 164 and 364 of the Code of Criminal Procedure recorded the said statement. After recording the said statement he in the memorandum put his signature.

He further testified to the effect:

"আমার বিশ্বাস হইয়াছে আসামী স্বেচ্ছায়, স্বজ্ঞানে ও নিঃশর্তে এবং বিনা প্ররোচনায় এই স্বীকারোক্তিমূলক জবানবন্দি প্রদান করিয়াছে।"

In cross examination the defence failed to shake the above positive assertion of the PW-49.

From exahibit-9(Kha) it also appears that before recording the said statement he put the following questions to accused Mufti Abdul Hannan;

" ০১। আমি পুলিশ নই, একজন ম্যাজিস্ট্রেট জানেন কি? উঃ জানি।

০২। আপনি স্বীকারোক্তি দিতে বাধ্যনন, জানেন? উঃ জানি।

০৩। যদি স্বীকারোক্তি দাও তবে তোমার বিরুদ্ধে যেতে পারে-
সাজা হতে পারে জান? উঃ জানি।

০৪। তুমি কেন স্বীকারোক্তি দিবে? উঃ যা জানি তাই বলব।

০৫। অন্যের শেখানো কথায় স্বীকারোক্তি দিবে নাতো? উঃ না।

০৬। আপনি প্রকৃত পক্ষে যা জানেন তাই বলবেন তো? উঃ জ্বী।

০৭। পুলিশ আপনাকে শারিরীক ও মানষিক ভাবে
নির্যাতন করে নাই তো? উঃ না।

০৮। আপনি স্বেচ্ছায়, সজ্ঞানে, নিঃশর্তে নির্ভয়ে বিনা
প্ররোচনায় স্বীকারোক্তি দিবেন তো? উঃ জ্বি হ্যাঁ।

০৯। আপনি স্বীকারোক্তি দিন আর নাই দিন আপনাকে
আর পুলিশ হেফাজতে নেয়া হবে না। উঃ বুঝলাম।"

It also reveals from exhibit 9(Kha) that after recording the said statement PW-49 had given certificate to the following manner:

"এই মর্মে প্রত্যয়ন করা যাচ্ছে যে, আমি আসামীকে বুঝিয়ে দিয়েছি যে, আমি একজন ম্যাজিস্ট্রেট-পুলিশ নই। যা বলবে স্বেচ্ছায় বলবে। Mental reflexion এর জন্য আসামীকে ০৩(তিন) ঘন্টার সময় দেওয়া হয়। অতঃপর তার জবানবন্দি রেকর্ড করা হয়।

জবানবন্দি রেকর্ডের সময় আসামী শাররিক ও মানসিক ভাবে সুস্থ ছিল। আমার বিশ্বাস আসামী স্বেচ্ছায় তার বক্তব্য প্রদান করেছে।

স্বীকারোক্তি লিপিবদ্ধ করার পর আসামীকে তা পড়ে শুনানো হলে সে, সত্য স্বীকারে স্বাক্ষর করে।"

PW-49 filled up the column no. 8 to the following manner:

"আসামীর দেহে কোন জখম বা নির্যাতনের চিহ্ন ছিল না। সে শারিরীক ও মানসিকভাবে সুস্থ ছিল। Mantel reflexion এর জন্য আসামীকে ০৩(তিন) ঘন্টা সময় দেওয়া হয়। অতঃপর তার জবানবন্দি রেকর্ড করা হয়। আসামী দৃষ্টিসীমার মধ্যে কোন পুলিশ ছিল না। আমার বিশ্বাস আসামী স্বেচ্ছায় তার স্বীকারোক্তি দিয়াছে।"

In view of the above, we have also no hesitation to hold that the confessional statement under section 164 of the Code of criminal procedure made by accused Mufti Abdul Hannan is true and voluntary.

It is true that the expression **'confession'** has not been defined in the Evidence Act. 'Confessions' a terminology used in the criminal law is a species of 'admissions' as defined in Section 17 of the Evidence Act. An admission is a statement-oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. Broadly speaking, confession is an admission made at any time by a person charged with crime, stating or suggesting an inference that he committed the crime.

A confession or an admission is evidence against its maker if its admissibility is not excluded by some provision of law.

On careful examination of exhibit-9(Kha) it appears that in the confessional statement accused Mufti Abdul Hannan confessed his guilt in committing similar nature of different offences in different places.

It will be pertinent to reitarate the well settled principle that a confession is admissible provided it is free and voluntary but it does not mean that a mere bald assertion by the accused that he was threatened or tortured or that an inducement was offered to him, can be accepted as true without any thing more. The suggestion must be rejected when there is no material whatsoever to hold that the prisoner was threatened or beaten and the story of tortured is, on the face of it incredible.

It is also well settled that judicial confession, if is found to be true and voluntary, can be formed basis of conviction as against the maker of the same. **[Reference: Islam Uddin Vs State, 13 BLC(AD), Page-81; State vs. Abdul Kader alias Mobile Kader, 67 DLR (AD), Page-6].**

It was argued by the learned Advocate for accused Abdul Hannan that the statement of Mufit Abdul Hannan was not made in connection with present

case and as such the same is not admissible in evidence.

It is true that exhibit 9(Kha) was made by accused Abdul Hannan in connection with Dhaka Metropolitan Ramna Police Station Case No. 46(4)2001.

It appears from the record that said confessional statement was sent to the investigating officer of the present case [PW-53] by the office of GRO (South), Chief Metropolitan Magistrate Court, Dhaka vide memo no.607-41 dated 14.01.2007 and the concerned Magistrate of the Court of Chief Judicial Magistrate, Sylhet had endorsed the same.

Section 63 of the Evidence Act runs as follows:

63. Secondary evidence-Secondary evidence means and includes-

(1) certified copes given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral account of the contents of a document given by some persons who has himself seen it.

Law clearly provides that photostat copy of its original being the secondary evidence is admissible in evidence.

In the case of **State of Maharashtra Vs Kamal Ahmed Mohammad Vakil Ansary, reported in (2013)12 SCC page-17,** it has been held that confessional statement made by the accused in a case would be admissible in another case, if he is an accused in both the cases.

Similar view has been expressed by the Supreme Court of India in the case of **State of Gujarat Vs Mohd. Atik and others, reported in AIR 1998 SC, page-1686.**

In the above case it has been held that if the requirements of law are satisfied the confession becomes admissible in evidence and it is immaterial wheather the confession was recorded in one particular case or in a different case.

In the case of **Syed Mohammad Ibrahim and others Vs State of Karnataka.**
[Source: https://indiankanoon.org/doc/73469817/] the accused persons of the said case were put on trial in 04(four) cases where bombs were blasted at 04(four) different places. Syed Hasanuzzaman one of the accused of the case made confessional statement

which is common to all 04(four) cases. The certified copies were obtained from those original and same were produced and marked in 03(three) other cases. The **High Court of Karnataka at Bengaluru** held that:

> "In such circumstances law provides for production of secondary evidence. The certified copies are obtained from the same court and they are marked in 03(three) other cases, which is permissible in law and the secondary evidence is admissible in evidence. Therefore we do no find any substance in the contention of the learned council for the accused that the original were not producing and hence secondary evidence is inadmissible in evidence."

In the instant case PW-49 the recording Magistrate himself proved the Photostat copy of the original [exhibit-9(Kha)] and the signatures of him and accused Abdul Hannan respectively thereon. Moreover, on behalf of accused Abdul Hannan the veracity of the said document had never been challenged. The accused only in a belated stage retracted the same stating that the same was the out put of prolonged remand and torture.

It is well settled that the document having been marked as an exhibit without objection became admissible in evidence. **[Referrence: Abdullah Vs. Abdul Karim, 20 DLR (SC) page-205]**

Having discussed and considered as above, we are of the view that exhibit-9(Kha) is very much admissible in evidence.

It will be pertinent to mention here that in the instant case most of the documentants exhibited by the prosecution are the Photostat Copies of originals including exhibit 9 and 9(Ka), the confessional statements of accused Ripon and Bipul. The defence did not rasied any objection as to the genuineness of those documents and without any objection those were marked as exhibits. However, the concerned persons of those documents proved the genuineness of the same. As such, those documents are admissible in evidence.

The learned defence Advocate has tried to impress us that the accused persons who made the alleged confessional statement subsequently retracted those and at the time of examination under section 342 of the Code of Criminal procedure they categorically stated that the said statements were obtained by torture.

It is well settled proposition of law that the retraction of the confession was wholely immaterial once it was found that it was voluntary as well as true. **[Reference: Joygun Bibi Vs State 12 DLR (SC) page-156, Abdul Jalil and others Vs State, 1985 BLD page-137, State Vs Rafiqul Islam 55 DLR page-61].**

In a recent case, **State Vs. Abdul Kader alias Mobile Kader, reported in 67 DLR (AD) Page-6,** the Appellate Division held that retraction of a confession has no bearing whatsoever if it was voluntarily made so far the maker is concerned.

As such the argument advanced by the learned Advocate for the accused persons that a retracted confession can not be admissible in evidence has no legs to stand.

Whether, PW-48 Md. Abul Kalam Azad is a credible and trust worthy witness-

Mr. Mohammad Ali the learned Advocate for the defence has tried to convince us that PW-48 is not a credible and trustworthy witness. He was examined by the investigating officer long after three years of the alleged occurrence and his contradictory statement makes him unrealiable and his evidence should be left out of consideration.

If, we scan the evidence of PW-48 coupled with the confessional statements made by accused Sharif Shahidul Alam Bipul, Md. Delwar Hossain @ Ripon and Mufti Abdul Hannan [exhibit-9, 9(Ka) and 9(Kha)] then it would be crystal clear that PW-48 corroborate the incriminating and material parts regarding the offence of the said statements.

PW-48 testified that:

"২০০৪ইং সনের এপ্রিল মাসের প্রথম দিকে একদিন সন্ধ্যার পর আহসান উল্লাহ, মুফিজ, আবু জান্দাল ও আমি ঐ বাসাতে বসিয়াই কথা বার্তা বলিতেছিলাম। ঐ সময় বিপুল আসে

এবং বিপুলের সহিত আরও একজন লোক আসে। ঐ লোকটির হাতে কম্পিউটারের একটি বাক্স ছিল। তখন আহসান উল্লাহ কাহাকে যেন মোবাইল ফোনের মাধ্যমে বলে বিপুলরা আসিয়াছে। পরে জানিতে পারি বিপুলের সাথে আসা কম্পিউটারের বাক্সসহ লোকটির নাম রিপন। আলাপ শেষ করিয়া আহসান উল্লাহ খাটের উপর উঠিয়া কাঠের ওয়াল কেবিনেটের মধ্য হইতে ছোট ছোট ৪টি কাগজের প্যাকেট বাহির করিয়া বিপুলকে দেয় এবং তার বিপুল ও রিপন প্যাকেট ৪টি কম্পিউটারের বাক্সের মধ্যে রাখিয়া তাড়াহুড়া করিয়া বাক্স বন্ধ করিয়া বাক্স সহ সেখান হইতে চলিয়া যায়। ইহার কিছুক্ষন পর আমি সেখান হইতে চলিয়া আসি। ইহার প্রায় দেড়মাস পরে শুনি সিলেট হযরত শাহ জালাল (রঃ) মাযারে গ্রেনেড হামলা হইয়াছে এবং ৩-৪ জন লোক মারা গিয়াছে ও ব্রিটিশ হাই কমিশনার আনোয়ার চৌধুরী সহ অনেক লোকজন আহত হইয়াছে। তখন আমি অনুমান করি আহসান উল্লাহ কর্তৃক বিপুলের নিকট ৪টি প্যাকেটে গ্রেনেড ছিল।”

Accused Sharif Shahidul Alam Bipul in his confessional Statement [exhibit-9] stated that:

“আমি, রিপন ভাই ২০০৪ সালের এপ্রিল মাসের দিকে ঢাকা যাই। আমি মুফতি হান্নানের মেরুল বাড্ডার অফিসে যাই। রিপন ভাইকে আসতে বলি। এরপর আমি কিছু সময়ের জন্য বাইরে যাই। সন্ধ্যার দিকে রিপন ভাই একটি কম্পিউটার কিনে ঐ বাসায় নিয়ে আসে। ঐ সময় সেখানে বারি মোহাম্মদ কাজল, ওভি ওরফে মফিজ উপস্থিত ছিল। আমি কাজলকে গ্রেনেডের কথা বলি। সে মুফতি হান্নানের অনুমতি নিয়ে রুমের ভিতর হতে গ্রেনেড নিয়ে আসে, তারপর একজন কাজী খাটো মতো, বয়স ২০/২২ মুখে হালকা দাড়ি নাম মমিন তার হাতে দেয়। সে ৪টি শক্ত কাগজের প্যাকেটে ৪টি গ্রেনেড আমার হাতে দেয়। আমি ও রিপন ভাই গ্রেনেড ৪টি কম্পিউটারের মনিটরের কার্টুনে রাখি। রাতে সিলেটে আসি।”

Accused Delwar Hossain alias Ripon in his confessional Statement [exhibit-9(Ka)] stated that:

“আমি যখন বিপুলের সাথে দ্বিতীয় বার ঢাকাই যাই, এলিফ্যান্ট রোড হতে আমার বন্ধু মাহবুবের জন্য একটি কম্পিউটার কিনি। বিপুল আমাকে ফোনে জানায় আমরা একসাথে সিলেট যাবো। আমি যেন মেরুল বাড্ডার ঐ বাসায় চলে আসি। আমি কম্পিউটার কিনে দুপুরের দিকে ঐ বাসায় আসি। বিপুল বাসায় ছিল না। সে বিকালের দিকে বাসায় আসে। বিপুল আমাকে ৪টা প্যাকেট দেয় আমি বলি এগুলি কি? সে জানায় এগুলি গ্রেনেড, সিলেট

নিয়ে যেতে হবে, সিলেটে আমাদের কাজ আছে। আমি আর বিপুল গ্রেনেডের প্যাকেট গুলি কম্পিউটারের বক্সে ঢুকাই। উপবন ট্রেনে করে সিলেটে নিয়ে আসি। আমি মুরিদ বাজারস্থ ম্যাসে চলে আসি। প্যাকেটগুলি বের করে আমার ড্রয়ারে রাখি।"

Accused Abdul Hannan in his confessional Statement [exhibit-9(Kha)] stated that:

"২০০৪ সালের এপ্রিল মাসের দিকে বিপুল ও রিপন আমার ঢাকার বাড্ডার অফিসে আসে। কাজল আমাকে ফোনে জানায় যে, বিপুল ও রিপন গ্রেনেড নিতে এসেছে। কাজলকে বলি অফিসে আর কে আছে? কাজল বলে যে, মফিজ ও মঈন ওরফে জান্দাল ভাই আছে। আমি বিপুলকে ৪টি গ্রেনেড দেওয়ার জন্য কাজলকে নির্দেশ দেই। কাজল বিপুলকে ৪টি গ্রেনেড দিয়ে আমাকে জানায়। আমার সরবরাহ করা গ্রেনেড দিয়ে বিপুল ও রিপন সিলেট হযরত শাহজালাল (রঃ) দরগায় ব্রিটিশ হাই কমিশনারকে হত্যা করার জন্য গ্রেনেড নিক্ষেপ করে তাতে ৬০/৭০ জন আহত হয়। এছাড়া গ্রেনেড দিয়ে বিপুল হেমায়েত ও ফাহিম সিলেট শহরে হোটেল গুলশান চত্তরে মেয়র কামরান সাহেবকে হত্যা করার জন্য এবং জেবুন নেছার বাসায় জেবুন নেছাকে হত্যার জন্য গ্রেনেড নিক্ষেপ করে সেখানেও লোকজন হতাহত হয়। গ্রেনেড নিক্ষেপের ফলাফল বিপুল আমাকে টেলিফোনে জানায়।"

The above assertions made in the confessional statements by the said accused persons are corroborative of the evidence of PW-48, who is an independent witness. PW-48 in his deposition categorically stated that while he was doing business of tea stall in Badda main road Ahasanullah Kajal (now dead) used to come to his tea stall and they developed a relationship and he used to visit the house inside Badda DIT project where said Ahsanullah Kajal resided. In the said house he saw the other accused persons and they used to talk about their organizational plan and policy.

In an evening of the month April, 2004 accused Bipul and Ripon came to the house situated at Badda where Ahsanullah Kajal and other accused resided and Ahasanullah Kajal having taken permission from accused Abdul Hannan through mobile phone supplied 04 grenades to Bipul and Ripon in presence of accused Mofij alias Ovi and Moin alias Abu Jandal. PW-48 witnessed the said supply of grenades by Ahsanullah Kajal to Bipul and Ripon. And they took the said grenades to Sylhet keeping the same in a computer box.

The defence by cross examining the said witness failed to shake his evidence on the above material point.

It is true that belated examination of a witness by the investigating officer usually creates a doubt about the veracity of the said witness. But it is now well settled position that mere deley in examination of particular witness does not, as a rule of universal application, render the prosecution case suspect. It depends upon the circumstances of the case and the nature of the offence that is being investigated. It would also depend upon the availability of information by which the investigating officer could reach the witness and examine him. **[Reference: (2011) 3 SCC, page-654, Sheoshankr Singh Vs State of Jharkhanth]**

In the said case it has also been held that:

> "In a case where the investigating officer had no such information about any particular individual being an eye witness to the occurrence, mere delay in examining such a witness would not ipso facto render the testimony of the eye witness suspect or affect the prosecution version."

In the case of **Prithvi (Minor) Vs Mam Raj, reported in (2004) 13 SCC, page-279,** it has been held that:

> "The judgments merely point out that unexplained delay in recording the statement gives rise to a doubt that the prosecution might have engineered it to rope the accused into the case. Delay in recording the statement of the witness can occur due to various reasons and can have several explanations. It is for the Court to assess the explanations and if satisfied accept the statements of the witness." [Underlines supplied]

The delay in examination of a witness is a veriable factor. It would depend upon a number of circumstances. For example, non-availability of witnesses, the investigating officer being pre-occupied in serious matters, the investigating officer spending his time in arresting the accused who are absconding, being occupied in other spheres

of investigation of the same which may require his attention urgently and importantly, etc.

In the case of **Banti alias Guddu Vs State of Maddha Pradesh reported in [(2004) 1 SCC, page-114]** it has been held that:

> "Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage. It cannot be laid down as a rule of universal application that if there is a delay in examination of a particular witness the prosecution version becomes suspects. It would depend on several factors."

In the case of **State Vs. Mobile Kader, reported in 67 DLR (AD), page-6,** it has been held that:

> "It is true that section 157 of the Evidence Act stipulates that the statement of fact by a witness should be made to competent authorily at or near the time when the fact to which the statements relates took place. What should be the span of time of making such statement by a witness is basically a question of fact and no hard and fast rule can be laid down in that regard. It would vary from case to case and upon the peculiar circumstances of a particular case under which delay in recording the statement of a

witness about the fact which he knew or knows might be caused. And mere delay in recording the statement of a witness by the investigation officer cannot be the sole ground to discard his evidence, if he withstands the test of cross-examination and thus appears to be treethful witness."

In view of the above proposition of law and the facts, circumstances and nature of the present case, particularly the offence of Criminal Conspiracy, examination of the PW-48 in a belated stage *ifso facto* does not render his evidence unreliable and shakey.

Mr. Mohammad Ali the learned Advocate for the defence has drawn our attention to some discrepancies/inconsitancies of the evidence of PW-48 and PW-53, the investigating officer.

PW-48 in his cross-examination stated that:

"আহসান উল্লাহ আমাকে যে বাড়িতে লইয়া যায়, ঐ বাড়িটি ডি,আই,টি প্রজেক্ট এর ভিতর এবং বাড়িটি দেখিতে মাদ্রাসার মতো।"

On recall he eventually, stated that:

"আমি আহসান উল্লাহ ভাইয়ের সহিত ঢাকা বাড্ডা ডি.আই.টি প্রজেক্টের ভিতরে মসজিদের মতো ডিজাইন করা তিন তলা বিল্ডিং এর তৃতীয় তলার বাসায় লইয়া যায়।"

He further stated that:

"আমি পুলিশের নিকট ঘটনা সম্পর্কে ২৩/০৩/২০০৭ইং তারিখে জবান বন্দি দিয়াছি মালিবাগ সি.আই.ডি অফিসে বসিয়া। ইহার পর পুলিশের সহিত আমার দেখা হয় নাই। আমি আজকের আগে আর সাক্ষ্য প্রদান করি নাই।"

But PW-53 the investigating officer in his cross examination stated that:

> "সাক্ষী মোঃ আবুল কালাম আজাদকে আমি তার বাড়িতে পাই ২০/০৩/২০০৭ইং তারিখে। ঐ দিন তাহার বাড়িতে আমি তাহার জবানবন্দি ফৌঃ কাঃ ১৬১ ধারার অধিনে লিপিবদ্ধ করি।"

Now the question is whether these inconsistencies or contradictions of the evidence of PW-48 make his entire evidence unreliable.

In this sub-continent it is by now well settled proposition that the maxim ***'falsus in uno, falsus in omnibus*** [false in one thing, false in everything] is not a sound rule of practice and it should not be applied mechanically. Therefore, it is the duty of the Court, in case where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutiny the rest of his evidence with care and caution. If the remaining evidence is trustworthy and substratum of the prosecution case remains in fact then the court should uphold the prosecution case to the extent it is considered safe and trustworthy. Courts have, however to attempt to separate the **chaff from the grain** in every case. They can not abandoned this attempt on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot be reasonably carried out. **[Reference: AIR 1972 SC 2020 (Sohorab Vs. State of M.P); AiR 1980 SC 1322 (Bhimrao Vs. State of Mahrashtra); 29 DLR Sc**

221 (Ekabbar Khan Vs. State); 8 DLR F.C 69 (Adalat Vs. The Crown)].

In the case of **Ugar Ahir and others Vs. the State of Bihar, [AIR 1965(SC), page-277]** the Supreme Court of India has observed to the effect:

> "It is, therefore, the duty of the court to scrutinize the evidence carefully and; in terms of the felicitous metaphor, separate the grain from the chaff. But it can not obviously disbelieve the substratum of the prosecution case or the materials parts of the evidence and reconstruct a story of its own out of the rest."

In the case of **Nadodi Jayaraman Vs. the State of Tamil Nadu, [1993 CrLJ, page-426(SC)] the Supreme Court of India** has observed that:

> "The fact that a witness has not told the truth in one or two particulars will not make his entire evidence unreliable."

In the case of **Sukha and others Vs. the State of Rajastan, [AIR 1956 SC, 513] the Supreme Court of India** has opined that:

> "Where one part of the prosecution story is disbelieved, there is no bar in law to accept by the court of another part of that story and to base conviction there on."

Indian Supreme Court in the case of **State of Rajastan Vs. Smt. Kalki and another [AIR 1981, SC 1390]** has observed that:

> "Immaterial discrepancies do not affect the conclusion one way or the other."

In the case of **Abdul Khaleque Vs. the State, [1983 P CrLJ 898 SC [AJ&K] the Pakistan Supreme Court** has held that:

> "Evidence of prosecution witnesses on main story found to be truthful and of quality which could safely be relied upon."

Having considered the above propositions coupled with the testimonies of PW-48, it is our considered opinion that PW-48 is a most competent, crediable and trust worthy witness. There is no scope to brush aside his entire evidence due to some minor descripencies on immaterial point. We have already observed that PW-48 corroborated the incriminating parts of exhibit-9, 9(Ka) and 9(Kha).

Can the confessional statements made by accused Mufti Abdul Hannan, Sharif Shahidul Alam @ Bipul be used and relied in convicting the other accused namely Mufti Moinuddin alias Abu Jandal and Mohibullah alias Mofizur Rahman alias Ovi?

It is the settled proposition of law that in a joint trial where more persons than one are being tried jointly for the same offence, a confession made by any of them affecting himself and any of his

co-accused can be taken into consideration by the Court not only against the maker of the confession but also against the co-accused, it may not be an evidence within the strict meaning of the term but it can be used to lend assurance to other evidence on record.

Section 30 of the Evidence Act is as follows:

> "**30. Consideration of proved Confession affecting person making it and others jointly under trial for same offence**——When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other of such persons as well as against the person who makes such confession."
>
> [Explanation-"Offence," as used in this section includes the abetment of, or attempt to commit, the offence[36].]

In the case of **State Vs Abdul Kader alias Mobile Kader, reported in 67 DLR (AD) Page-6** our Appellate Division has been held that:

> "When more than one person are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the

Court may take into consideration such confession as against such other such persons as well as against the person who makes such confession.

However, Section 10 of the Evidence Act clearly provides special provision that in a case of conspiracy the confession of a co-accused can be used as evidence against other co-accused.

Section 10 of the Evidence Act runs as follows:

> **"10. Things said or done by conspirator in reference to common design**—where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

From the statements of accused Mufti Abdul Hannan [Exhibit-9(Kha)] and accused Shahidul Alam Bipul [Exhibit-9] it appears that they disclosed the names of accused Mofiz alias Ovi and Moin alias Abu

Jandal. The said accused persons used to come to the house where Ahsanullah resided and when Ahsanullah supplied 04(four) grenades to accused Bipul and Ripon, they were also present there.

PW-48 also testified that he saw accused Mofiz alias Ovi and Moin alias Abu Jandal in the house of Ahsanullah and they used to talk about their organization namely, 'Harkatul Jihad' and their plan and policy. And said accused were also present when Ahsanullah supplied grenades to Ripon and Bipul in an evening of first part of April, 2004.

In the case of Major Bazlul Huda Vs. State (Popularly Known as Bangabandhu Marder Case), reported in 62 DLR (AD), page-1 our Appellate Division has held to the effect:

> "When specific acts done by each of the accused have been established showing their common intention they are admissible against each and every other accused. Though an act or action of one accused cannot be used as evidence against other accused but an exception has been carved out in section 10 of the Evidence Act in case of Criminal Conspiracy. If there is reasonable ground to believe that two or more persons have conspired together in the light of the Language used in 120A of the Penal Code, the

> evidence of acts done by one of the accused can be used against the other."

In criminal law a party is not generally responsible for the acts and declarations of other unless they have been expressly directed, or assented to by him; "*nemo reus est nisi mens sit rea*". This section, however, is based on the concept of agency in cases of conspiracy. Conspiracy connotes a partnership in crime or actionable wrong. A conspirator is considered to be an agent of his associates in carrying out the objects of the conspiracy and anything said, done or written by him, during the continuance of the conspiracy, in reference to the common intention of the conspirators, is a relevant fact against each one of his associates, for the purpose of proving the conspiracy as well as for showing that he was a party to it. Each is an agent of the other in carrying out the object of the conspiracy and in doing anything in furtherance of the common design. [Underlines Supplied to give emphasis]

In the case of **Mohd. Khalid Vs. State of West Bangal, reported in (2002) 7 SCC, page-334,** it has been observed that:

> "Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative

> evidence can be taken into consideration. It can in some cases be inferred from the acts and conduct of the parties."

In the said case it has been further held that:

> "No doubt, in the case of conspiracy there cannot be any direct evidence. The essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrences have to be considered to decide about the complicity of the accused".

It is the duty of the Court to examine the confession carefully and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

Having considered the above propositions of law together with sections 10 and 30 of the Evidence Act, the exhibit-9, 9(Ka) and 9(Kha) and evidence of

PW-48, we have no hesitation to hold that the trial Court rightly and lawfully found guilty to accused Mufti Moinuddin alias Abu Jandal alias Moin and Mofizur Raman alias Mofiz alias Ovi.

'Criminal conspiracy' and proof of standard

In the case of **Firozuddin Basheeruddin Vs. State of Kerala, reported in (2001) 7 SCC, page-596** it has been held that:

> "Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions." [Underlines supplied]
>
> **'Criminal conspiracy'** has been defined in section 120A of the Penal Code. Section 120A of the Penal Code runs as follows:
>
> "**120A. Definition of criminal conspiracy** When two or more persons agree to do, or cause to be done:-
>
> (1) An illegal act, or
>
> (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> *Explanation*—— it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

The recognized definition of a criminal conspiracy is an agreement between two or more persons to engage in an unlawful act. 'Conspiracy', an inchoate offence, refers to an act of agreeing to commit a substantive crime to further plan and policy.

The criminal conspiracy doctrine only requires overlapping chains of agreement that link the physical perpetrator to the accused. However, the lack of a direct agreement between the defendant and the physical perpetrator is no bar to applying the conspiracy doctrine as long as the chain of overlapping agreements connects them.

The act of 'agreement' is to be inferred from act and conduct of the accused-amid, prior or subsequent to the commission of the principal offence.

In the case of **Major Bazlul Huda vs. State [Popularly known as Bangabandhu murder case]** his Lordships Justice Surendra Kumar Sinha **[62 DLR (AD), page-1; para 173]** has opined to the effect:

> "An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence. In pursuance of the criminal conspiracy if the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. It is not required to prove that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime since from its very nature a conspiracy is hatched in secrecy direct evidence of a criminal conspiracy to commit a crime is not available otherwise the whole purpose may frustrate in most cases only the circumstantial evidence which is available from which an inference giving rise to the

commission of an offence of conspiracy may be legitimately drawn."

In the case of **Naline Vs. State by D.S.P, C.V.I, S.I.T, Channai, reported in (1999) 5 SCC, page-253** it has been held that:

"Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences."

In the said case it has been further observed:

"In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge

unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for wsuch offences even if some of them have not actively participated in the commission of those offences." [Underlines supplied]

In the case of **Mohd. Khalid Vs. State of West Bangal, reported in (2002) 7 SCC, page-334** it has been held that:

"The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort would have been impossible, furnish the ground for visiting conspirators an abettor with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and

whenever any member of the conspiracy acts in furtherance of the common design. (American Jurisprudence, Vol. II, Sec. 23, P.559). For an offence punishable under section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication. The offence of criminal conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which

itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused." [Underlines supplied]

The Supreme Court of India in the case of **YASH PAL MITTAL V. STATE OF PUNJAB** reported in **(1977)4 SCC 540** had observed as follows:

"The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of action with one object to achieve the goal and of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object

> or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators." [Underlines supplied]

CONSPIRACY As A CONTINUING OFFENCE

In **HALSBURY'S LAW OF ENGLAND**, third edition, vol. 10, page 327, para 602, while dealing with continuing offence it was stated as under:

> "A criminal enterprise may consist of continuing act which is done in more places than one or of a series of acts which are done in several places. In such cases, though there is one criminal enterprise, there may be several crimes, and a crime is committed in each place where a complete criminal act is performed although the act may be only a part of the enterprise."

Conspiracy to commit crime by itself is punishable as a substantive offence and every individual offence committed pursuant to the

conspiracy is separate and distinct offence to which individual offenders are liable to punish, considering their overt acts, independent of the conspiracy. The agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitute an offence are done the conspirators continue to be parties to the said conspiracy. The agreement continues in operation and therefore in existence until it is discharged or terminated by completion of its performance or by abandonment or frustration.

Lord Pearson explaining the meaning of the term conspiracy has held that:

> "A conspiracy involved an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding because it is unlawful. But as an agreement it has its three stages, namely, (1) making or formation; (2) performance or implementation; (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirator can be prosecuted even though no performance had taken place. But the fact that the offence of conspiracy is complete at the stage does not

mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (termination) by completion of its performance or by abandonment or frustration or, however, it may be."

[Source: Syed Mohammad Ibrahim and others Vs. State of Karnataka.

https://indiankanoon.org.doc./73469817/]

In the case of **KEHAR SINGH AND ORS. V. THE STATE (DELHI ADMINISTRATION)** reported in **AIR 1988 SC 1883 ATP. 1954,** it has observed as under:

"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct

> or circumstantial. . . . . .
> . . . . . .
> It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient."
>
> [Underlines supplied]

Object of the conspiracy and the offence committed in this particular case

On scanning the confessional statement of accused Abdul Hannan [exhibit 9(Kha)] it appears that in his statement he had given a vivid description about their organisational (Harkatul Jihad Al Islami Bangladesh) object, plan and policy. In his statement he categorically stated that while he had been studying at Karachi in Pakistan, he having taken training participated in Afgan war to protect the interest of Muslims and in a fighting he received injury and he was admitted in a hospital at Peshwar in Pakistan. So many people from Bangladesh participated in the said war. The people who participated in the Afgan war having returned from Afganistan formed an organisation namely 'Harkatul

Jihad Al Islami Bangladesh'. He joined in the said organisation and became a top leader of it. The said organisation also sent some members of it to Arakan for participating in the war for RSO and RFA. In order to protect the image of Islam, as per the decision of the said organisation, they attacked by blasting bombs on the cultural program organised by 'Udichi Shilpi Goshti', a progressive cultural organisation, in Jessore and due to such bomb attacked 10/12 persons died and more than hundred peoples were injured. In the month of July, 2000 they had taken a decision to attack the leaders of Awami League in order to save the 'Alims (Islamic Scholars)' of the country as well as the 'Islam'. Due to some actions taken by the Awami League Government against the Islamic Scholars it was their belief that Awami League was against Islam and Islamic Scholars as well as the agent of India. Pursuant to the said decision they had taken several attempts to kill Awami League Chief Sheikh Hasina, particularly in the month of July, 2000 at Kotalipara under district Gopalganj and in 2001 at Sylhet when she went there for holding public meeting. They had also attacked on the cultural program celebrating 'Pohela Boishakh' at Ramna Batmul. To achieve their common object and design they supplied bombs and grenades in the different parts of the country through their organisational

men and made several attempts to kill local Awami League leaders in Sylhet. They used to collect arms, ammunitions, explosives and money from outside and inside the country and they also helped RSO and RFO groups of Arakanees in Mayanmar.

Accused Sharif Shehidul Alam alias Bipul in his confessional statement [exhibit-9] stated that in the year 1994 he joined with the activities of 'Harkatul Jihad Al Islami Bangladesh' in Sylhet and in 1995 he along with 15 others took training in Fenchuganj and in the year 1996 he saw the training program of the members of Harkatul Jihad at Lalkhan Bazar and he knew accused Mufti Abdul Hannan. Eventually, he went to Lebia taking job and having returned from Lebia in the year 2003, he made contract with accused Mufti Abdul Hannan and he went to the house of Mufti Abdul Hannan at Badda, Dhaka where he saw accused Ovi, Moin and others. On discussions among them, they had taken decision to attack on the leaders of the Awami League terming them as the enemy of Islam. They also believed that the Britain and America were also against Islam.

Accused Delwar Hossain Ripon in his confessional statement [exhibit-9(Ka)] also stated that accused Bipul instigated him to join in the said organisation in order to participate in 'Jihad' saying that the Muslims in the different parts of

the world were being oppressed by the America, Britain and Israil.

If we consider the above statements of the accused persons together with the evidence of PW-48 then object, plan, policy and design of the accused persons would be crystal clear. On the plea to protect Islam the accused persons and their organisation namely 'Harkatul Jihad Al Islami Bangladesh' had hatched conspiracy to annihilate the leaders of Awami League, the political party which led the liberation struggle and war of independence of Bangladesh and a secular force of the country, including it's Chief Sheikh Hasina terming them as 'the enemy of Islam' and 'agent of India'. They also took stand against the Bangali culture terming the same as anti Islam. Pursuant to their common plan, policy and design they took several attempts to kill Awami League Chief Sheikh Hasina and the other leaders of Awami League and attacked on the cultural activists in the different parts of the Country. They also attacked on the cultural program organized by Udichi at Jessor and in the program of 'Pohela Boishakh' at Ramna Batmul.

In the instant case in furtherance of their common plan, policy and design the accused had attacked on the British High Commissioner to Bangladesh Mr. Anwar Chowdhury on the day of occurrence by blasting grenade in order to kill him

when he was coming out from the premises of the Mazar of Hazrat Shahjalal (R:) after offering Jumma prayer and as a result of such grenade explosion 03(three) persons died and about 50/60 persons including the British High Commissioner were injured.

We have already discussed about the propositions of law regarding criminal conspiracy and its continuation. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. In a case of conspiracy it does not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trappings of the mischief of criminal conspiracy. As such, we have no hesitation to hold that all the accused are liable for committing the offence to have been committed in this particular case.

Whether any omission or any defect done by the investigating officer in the investigations render the entire prosecution case doubtful-

Mr. Mohammad Ali, the learned Advocate for the accused referring to exhibit-8(Kha), the sketch map

of the house from where grenades were supplied and the accused persons were used to stay, argued that the investigating officer investigated the case in a perfunctory manner. From the said document it appears that in the sketch map of the alleged house he did not mention the holding number, road number and other descriptions of the same.

It is true that PW-49 the investigating officer in the said sketch map [exhibit- 8(Kha)] did not mention the proper address of the house in question. But if we consider the confessional statement of the accused persons, exhibit-9, 9(Ka) and 9(Kha) and the evidence of PW-48 then it will be clear that the alleged house is situated inside the Badda DIT project. PW-53 the investigating officer in examination in Chief as well as in cross-examination categorically stated that he interrogated the owner of the said house which is Road No.12, Holding No.53, DIT extension road, Badda and he visited the said house.

In the case of **Dhanaj Sing Vs. State of Punjab, reported in [2004] 3 SCC, page-654** it has been held:

> "5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to

playing into the hands of the investigating officer if the investigation is designedly defective.” (Underlines supplied)

In the case **Sathi Prashad Vs. State of Uttar Pradesh, reported in (1972) 3 SCC, page-63** it has also been held that:

“It is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored.”

In the case of **State of Karnataka Vs. Kyarappa Reddy, reported in (1999) 8 SCC, page-714** it has been held that:

“It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating

officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officers suspicious role in the case." (Underlines supplied)

In the case of **Ram Bali Vs. State Uttar Pradesh, reported in (2004) 10 SCC, page-598** it has been held that:

"In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective." (Underlines supplied)

In the case of **Dayal Sing Vs. State of Uttranchal, reported in (2012) 8 SCC, page-263** it has been held that:

"During the course of the trial, the learned presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court

> is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well."

Having considered the above principles of law, we are led to hold that mere omission in not mentioning the details description of the house [exhibit 8(Kha)], where the accused persons used to stay, meet and hatch conspiracy to implement their plan and policy and from where accused Ripon and Bipul collected grenades, does not destroy the prosecution case in any manner.

However, no suggestion was put to the investigating officer by the defence with regard to exhibit 8(Kha) and the said document was exhibited without any objection and same was unchallenged by the defence.

Whether the trial has been vitiated it not taking cognizance by the learned Sessions Judge

The learned defence Advocate was argued that in the instant case the learned Sessions Judge, Sylhet having received the case record without taking cognizance of the offences against the accused persons proceeded with the trial and framed charged

against the accused persons and thereby the trial has been vitiated.

Section 193 of the Code of Criminal Procedure speaks of cognizance of offences by the Court of Session and provides as follows:

> "193. **Cognizance of offences by Courts of Session**- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been sent to it by a Magistrate duly empowered in that behalf."

It is pertinent to mentioned here that by way of amendment of law the words 'unless the case has been sent to it' has been inserted in place of the words 'unless the accused has been committed to it'.

In the case of **Dharampal Vs. State of Hariana, reported in (2014) 3 SCC, page-306**, it has been held that:

> The key words in the section are that "no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code". The above provision entails that a case must, first of all, be committed to

the Court of Session by the Magistrate, the second condition is that only after the case had been committed to it, could the Court of Session taken cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr. Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

. . . . . .

It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly

> indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction.
>
> . . . . . .
>
> Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge." (Underlines supplied)

In the said case it has been held that cognizance of offence can be taken only ones either by Magistrate or by the Sessions Court.

In the case of **R.N Agarwal Vs. R.C Bansal and others, reported in (2015) 1 SCC page-48,** it has also been held that:

> "Thus, on a pain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted."

It is also well settled in our jurisdiction that the Court of Sessions or the High Court Division has no jurisdiction to interfere with the

discretion of the Magistrate in the matter of taking cognizance of any offence irrespective of the facts whether the offence is triable by Court of Session or not [Reference: **Abdul Matin Vs. The State, reported in 42 DLR page-286**]

The Appellate Division in the case of **Mr. Haripada Biswas Vs. The State and another, reported in 6 BSCR (AD), page-83** also held that Court of Session is precluded from talking cognizance offence as a Court of original jurisdiction.

In the instant case from the records it appears that the concerned Magistrate having accepted the charge sheet on 26.06.2007 and thereby taken cognizance of the offences against the persons recommended for prosecution sent the case record to the learned Sessions Judge as per provision of section 205C of the Code of Criminal Procedure and thereafter, the learned Sessions Judge proceeded with the case and framed charge against the persons sent to him by the Magistrate duly empowered.

It is by now well settled that cognizance of offence can be taken only ones either by the Magistrate or by the Sessions Court. In the instant case the learned Judge of trial Court framed charges against the accused persons in presence of them and same were read over and explained to them and at the time of examination of the accused persons under section 342 of the Code of Criminal Procedure the

learned trial Judge has brought all the incriminating pieces of evidence and materials to the notice of the concerned accused persons, adduced by the prosecution. Thus, the accused persons were not prejudiced in any manner in the trial. As such, the submissions of the learned Advocate for the accused that the trial has been vitiated, is not at all tenable in law.

Is the prosecution bound to examine all the witnesses cited in the charge-sheet?

Mr. Mohammad Ali, the learned defence Advocate also argued that in the instant case the prosecution failed to examine some of the vital witnesses namely, Mr. Anwar Chowdhury, the British High Commissioner to Bangladesh, Abul Hossain, the Deputy Commissioner, Sylhet and colonel Golam Rabbani, the owner of the house in question at Badda, Dhaka.

PW-53, the investigating officer in his cross-examination stated he did not examine Mr. Anwar Chowdhury, the British High Commissioner to Bangladesh due to protocol reasons.

However, it is well settled that the prosecution is not bond to examine each and every witnesses cited in the charge-sheet. Public prosecution has to take decision in that regard in a fair manner. If the prosecution felt that its case has been well established through the witnesses

examined, it cannot be said that non-examination of some persons rendered its version vulnerable.

Whether the trial Court awarded appropriate sentence to the concerned accused persons

Mr. A.K.M Faiz, the learned defence Advocate, for accused Delwar Hossain Ripon submitted that the sentence of death awarded to the accused is very harsh and he prayed for commutation of sentence considering his age, no criminal antecedent and agony of death in condemn cell for last 8(eight) years.

From the evidence and materials on record we have already found that all the accused persons were the active members of an organisation namely 'Harkatul Jihad Al Islami Bangladesh'. Their organized criminal activates clearly show that they belonged to an organised group and to achieve their goal they also had resorted terrorist activities exploding grenades and bombs targeting innocent peoples and by their such activities innocent persons were being killed.

"Terrorism by nature is difficult to define. Acts of terrorism conjure up emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the U.S. Government cannot agree on one single definition. The old adage "one man's terrorist is another man's freedom fighter" is still

alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation:

> "Terrorism is the use or threatened use of force designed to bring about political change." *Brian Jenkins*
>
> "Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted." *Walter Laqueur*
>
> "Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience." *James M. Poland*
>
> "Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a Government, individuals or groups, or to modify their behavior or politics." *Vice-President's Task force, 1986.*
>
> "Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof,

in furtherance of political or social objectives" *FBI definition."*

[**Source: Mohd. Khalid Vs. State of W.B. (2002) 7 SCC page-334**]

In the case of **Yakub Abdul Razzak Memon, reported in (2013) 13 SCC page-433,** his Lordship's Justice P. Sathasivm has made following observations with regard to the terrorism:

"Terrorism is a plague for a nation or society that should be eradicated."

And

"Terrorism is abhorred and condemned by all the religions of the world."

And

"Terrorism is a global phenomenon in today's world."

And

"Terrorism means use of violence when its most important result is not merely the physical and mental damage to the victim but the prolonged physiological effect if produces or has the potentiality of producing such effect on the society as a whole. Terrorism is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of people at large or any section thereof and it is a totally abnormal

phenomenon. Terrorism is distinguishable from other forms of violence as in terrorism the deliberate and systematic use of coercive intimidation is used." [Underlines supplied]

We cannot overlooked and ignored the facts and circumstances that in the recent past in our country some interested and vested quarters in order to achieve their illegal goals and objects had taken resort of terrorist activities, sometimes on the plea of protecting 'Islam religion' and sometimes in guise of political programs. And to implement their evil design they killed so many innocent people exploding grenades and bombs in public places as well as public and private transports and caused damage to buildings including educational institutions, railway, roads, bridges etc by setting fire. The evil forces also targeted Bangali culture and attacked on different cultarul programs in different places of the country. As such, to protect the interest of the society, innocent people and the State, the offenders of terrorism must be awarded adequate punishment. There is no scope to show any leniency to the offenders of such type of organised crimes.

In the case of **Sevaka Perumal Vs. State of Tamil Nadu, reported in (1991) 3 SCC page-471,** it has been observed:

"9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be- as it should be- decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants being. The facts and given circumstances in

each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organized crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh Vs. State of M.P., this Court while refusing to reduce the death sentence observed thus: (SCC P.82, para-6)

"[I]t will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society

could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

[Underlines supplied]

The Crime of terrorism deserves to be evaluated as 'crimes of serious gravity'

In the case of Yakub Abdul Razzak Memon Vs. State of Maharastra, (2013) SCC, page-434 it has been observed that:

"The crime of terrorism is in itself and aggravating circumstances as it carries a "Special stigmatization" due to the deliberate form of inhuman treatment it represents and the severity of the pain and suffering inflicted.

The "Vulnerability of the victims" and "the depravity of the crimes" constitute additional aggravating circumstances.

The manner of its execution and its design is at a level of extreme atrocity and cruelty."

Our Appellate Division in the case of **Abdul Quader Mollah Vs. the Chief Prosecution, International Crimes Tribunal, Dhaka (in Review**

Petition No. 1718 of 2013) has been observed to the effect:

> "It was further observed that while considering the punishment to be given to an accused person, the court should be alive not only to the right of the perpetrator, but also rights of the victims of the crime and the society's reasonable expectation from the court for the proportionate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused person."

Having considered the above propositions, facts and circumstance of the present case, gravity and nature of the offence, the conduct of all the accused, we do not find any mitigating factors to commute the sentence of any the accused persons as awarded by the trial Court.

Islam: unjust killing and Terrorism

Almighty Allah says in the Holy Qur'an [Surah-5, Al-Ma'idah: Verse-32]-

> "Whoever kills a person [unjustly], except as a punishment for murder or [as a prescribed punishment for spreading] disorder in the land, it is as if he killed all of humanity."

This verse uses the word 'person' [nafs], which is a general expression that gives the verse a broad-based application.

In Surah-4, An-Nisa: Verse 29 & 30 Almighty Allah also says-

> "And do not kill yourselves (nor kill one another). Surely, Allah is most merciful to you. And whoever commits that through aggression and injustice, we shall cast him in to fire, and it is easy for Allah."

Islam not only outlaws the killing of any Muslim but the whole of humanity, without any discrimination on the basis of caste, colour, race or religion. One can appreciate the value and inviolability of human life in Islam by realizing that the act of killing a human being has been equated with slaughtering the entire human race. So in other words unjust killing is completely forbidden, no matter what religion, language or citizenship is held by the victim. This is a sin as grave as killing the whole of humanity. [Underlines supplied to give emphasis]

The Prophet Muhammad [S.M] categorically forbade people to provide help or material support to terrorists. He ordered to isolate them and deny them any numerical strength, financial assistance and moral support. Abu Hurayra reported that the Prophet Muhammad [S.M] said:

> "If any one helps in the murder of a believer-even if with only a few words he will meet Allah with the words written on his forehead: hopeless of Allah's mercy."
>
> **[Source: Fatwa on Terrorism and Suicide Bombings; written by Shaykh-Ul-Islam Dr. Muhammad Tahir Ul-Qadri; published by Minhaj-ul-Quran International (U.K), 292-296 Romford Road, London U.K, Page-65]**

This Hadith contains a strict warning to those who masterminds terrorist acts and misinterprets the Holy Qur'an by brainwashing youth with glad tidings of Paradise for murdering peaceful civilians.

Thus, the criminal acts and conspiracy of explosion of bombs and grenades and killing of innocent people by the accused persons are also violative of the injunctions of Holy Qur'an and prophetic traditions.

Conclusion

Having considered and discussed as above, we are led to hold that the prosecution has been able to prove the charges brought against the accused persons beyond doubt and the learned Judge of the trial Court in assessing and evaluating the evidence and materials on records did not commit any error or illegality which can be interfered by us. The trial Court upon proper appreciation of evidence, gravity of the offence and role of the each accused persons in committing the particularly offence rightly awarded the conviction and sentence to the accused.

In the result, the Death Reference No.135 of 2008 is hereby accepted. The Judgment and order of conviction and sentence dated 23.12.2008 passed by the Druta Bichar Tribunal, Sylhet in Druta Bichar (Sessions) case No.14 of 2007 arising out of G.R. Case No.415 of 2004 corresponding to Kotwali Police Station Case No.64 dated 21.05.2004 is hereby affirmed. The Criminal Appeal nos. 03 of 2009, 468 of 2009, 9345 of 2015 are dismissed. Accordingly, the Jail Appeal nos. 71 of 2009, 72 of 2009, 73 of 2009, 92(A) of 2009 filed by respective accused are disposed of.

Send down the lower Court records along with a copy of this Judgment and order to the trial Court for further necessary actions.

Amir Hossain, J:

I agree

I. Sarwar/B.O