

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1575 OF 2013

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANTS/ACCUSED NOS.2,3,11,15,21&22:

- 1 M.H.FAISAL, AGED 29 YEARS
S/O.ABDUL RAHMAN, CHANDINTEVIDA HOUSE,
KANNUR AMSOM, URUVACHAL.
- 2 NASEER T THADIYANTAVIDA NASEER @HAJI@UMMAR HAJI
@ USTAD @ HAJI USTAD, AGED 37 YEARS
S/O.ABDUL MAJEED, BAITHUL HILAL,
KANNUR AMSOM, TAYYIL
- 3 EBRAHIM MOULAVI, AGED 48 YEARS
S/O.MOIDU, PATHUNGAN HOUSE,
PADINJARETHARA, NEAR PADINJARETHARA POLICE STATION,
WAYANAD.
- 4 ABDUL JABBAR@ANOOP@SATHAR, AGED 40 YEARS
S/O.KUNJI BABA @ BAVAN, TAYATIL HOUSE,
MUTTANNOOR, VALAMARUTHOOR, KARANCHERI, MALAPPURAM.
- 5 SAINUDHEEN@SATHAR BHAI, AGED 62 YEARS
S/O.MUHAMMED, EDAKANUTHODI HOUSE, PERUVALLOOR, KONDOTTI
(BANNDALAGUDA, ISMAIL NAGAR-18-13-132/1/9HYDERABAD)
- 6 UMMER FAROOQ, AGED 35 YEARS
S/O.CHEKUTTY HAJI, BAIN KANNAKATHU HOUSE, PUTHUKKULLAM,
CHETTIPPADI, PARAPPANAMGADI

BY ADVS.

SRI.NANDAGOPAL S.KURUP FOR R1

SRI.ABHIRAM T.K.

SRI.SURESH BABU THOMAS FOR R2

SRI.S.RAJEEV FOR R4

SRI.K.K.DHEERENDRAKRISHNAN

SRI.V.VINAY

RESPONDENT:

STATE

REPRESENTED BY SUPERINTENDENT OF POLICE,

NATIONAL INVESTIGATION AGENCY NEW DELHI REP. BY ITS

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY ADVS.
SRI.M.AJAY, SPL. P.P FOR NIA
SRI.M.AJAY SPL. P.P FOR NIA
ASG
SRI.MANU S., ASG OF INDIA()

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.474/2014, 1567/2013 AND CONNECTED CASES, THE COURT
ON 09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 474 OF 2014

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT:

NATIONAL INVESTIGATION AGENCY
REPRESENTED BY ITS DEPUTY SUPERINTENDENT OF POLICE, KOCHI
BRANCH OFFICE, NO. 28/443, GIRINAGAR, KADAVANTHRA,
KOCHI - 682020.

BY ADVS.

SRI.M.AJAY, SPL. P.P FOR NIA, SC,
SRI.MANU S., ASG OF INDIA()
SRI.SUVIN R MENON
SRI.JAISHANKER V NAIR

RESPONDENTS/ACCUSED A1, A2, A3, A4, A5, A11, A12, A14, A15, A16, A21, A22 & A23

AND STATE:

- 1 ABDUL JALEEL (A1), AGED 38/08, S/O. MOOSA, KARIPPAYIL,
PUTHIYAPURAYIL VEEDU, KADAMBOOR, KOTTOOR,
KANNUR - 670 663.
- 2 M.H. FAISAL (A2), AGED 24/08, S/O. ABDUL RAHMAN,
CHANDINTEVIDA HOUSE, KANNUR, AMSOM, URUVACHAL - 670 702.
- 3 NASEER T (A3) @ THADIYANTAVIDA NASEER @ HAJI @ UMMAR HAJI
@ USTHAD @ HAJI USTHAD, AGED 32/08, S/O. ABDUL MAJEED,
R/O. BAITHUL HILAL, KANNUR AMSOM, TAYYIL - 670 003.
- 4 P. MUJEEB (A4), AGED 26/08, S/O. MOIDEEN, R/O MUNEERA
MANZIL, MUTHUKUTTI, CHEMPILOTU AMSOM MOLLANCHERI,
CHAKARACKAL POLICE STATION LIMIT- 670 003.
- 5 SHAFAS SHAMSUDIN (A)5, AGED 24/08, S/O. SHAMSUDIN,
SHAFNAS, KANNUR AMSOM, THAYYIL, POUNDUVALAPPU, KANNUR -
670 003.
- 6 IBRAHIM MOULAVI (A11), AGED 43/08, S/O. MOIDU, R/O.
PUTHUNGAN HOUSE, PADINJARETHARA, NEAR PADINJARETHARA
POLICE STATION, WAYANAD - 673 575.
- 7 FIROZ (A12), AGED 28/08, S/O. PAKKAI, R/O. VELLARKODATHU

VEEDU, KOONAMTHAI, AMBALAM ROAD, KALAMASSERY,
ERNAKULAM - 683 104.

- 8 MUHAMMED NAVAS (A14) @ NAVAS, AGED 30/08, S/O. ABDUL RAHMAN, R/O. KOLLARATHU MUTHARAKANDI, RAHMANIYA PONDAVALAPPU, KANNUR- 670 003.
- 9 ABDUL JABBAR (A15) @ ANOOP, @ SATHAR AGED 35/08, S/O. KUNJI BABA @ BAVAN, R/O. TAYATIL HOUSE, MUTTANNOOR, VALAMARUTHOOR, KARANCHERI, MALAPPURAM - 679 581.
- 10 SABIR P. BUHARI @ SABIR (A16), AGED 29/08, S/O. BUHARI, R/O. MUNDAKATTU VEEDU, PARAPPURAM, PERUMBAVOOR VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM- 683 593.
- 11 SAINUDHEEN (A21) @ SATHAR BHAI, AGED 57/08, S/O. MUHAMMED, R/O. EDAKKANUTHODI HOUSE, PERUVALLOOR, KONDOTTI - MALAPPURAM DISTRICT -673 638, (BANNDALAGUDA, ISMAIL MAGAR - 18-13-132/1/19, HYDERABAD)
- 12 UMMER FAROOQ (A22), AGED 30/08, S/O. CHEKUTTY HAJI, R/O. BAIN, KANNAKATHU HOUSE, PUTHUKULAM, CHETTIPADI, PARAPPANANGADI - 676 319.
- 13 SARFURAZ NAVAS (A23) @ HAKKIM @ SANJU @ SUFUR NAVAS, AGED 35/12, S/O. P.K. HASSAN, R/O. KANNIYATT KUDIYIL VEEDU, PALLIKKARA, ERNAKULAM - 683 562
(RESPONDENTS 1 - 13 ARE NOW INCARCERTATED IN CENTRAL PRISON - POOJAPURAM, THIRUVANANTHAPURAM)
- 14 STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 018.

BY ADVS.

SRI.ABHISHEK KURIAN

SRI.K.GOPALAKRISHNA KURUP SR.

SRI.SADER E.REAZ

SRI.S.RAJEEV FOR R1,R9 R11

SRI.NANDAGOPAL S KURUP FOR R2&R4

SRI.SURESH BABU THOMAS FOR R3 &R13

SRI.C.K SREEDHARAN, FOR R5

SRI.SUNNY MATHEW FOR R5

SRI.ISSAC SANJAY FOR R6&R12

SRI.T.K.KUNHABDULLA FOR R7&R8

SRI.S.SREEKUMAR SR. FOR R10

SRI P.PRAJITH FOR R10

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1567 OF 2013

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/ACCUSED NO.5:

SHAFAS SHAMSUDDIN, AGED 29 YEARS
S/O.SHAMSUDDIN, SHAFNAS, KANNUR AMSAM, THAYYIL,
POUNDUVALAPPU, KANNUR.

BY ADVS.
SRI.SUNNY MATHEW
SRI.C.K.SREEDHARAN

RESPONDENT:

THE SUPERINTENDENT OF POLICE
NATIONAL INVESTIGATION AGENCY, NEW DELHI, REPRESENTED BY
THE SPECIAL PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

BY ADVS.
SRI.Sunny Mathew
ASG
SRI.MANU S., ASG OF INDIA()

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1574 OF 2013

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/ACCUSED NO.1:

ABDUL JALEEL, AGED 43 YEARS
S/O.MOOSA, KARIPPAYIL, PUTHIYAPURAYIL VEEDU, KADAMBOOR,
KOTTOOR, KANNUR.

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT:

STATE
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI, REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY ADVS.
ASG
SRI.MANU S., ASG OF INDIA()

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1576 OF 2013

AGAINST THE ORDER/JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF
NIA CASES, ERNAKULAM

APPELLANT/ACCUSED NO.14:

MUHAMMED NAVAS @ NAVAS
AGED 35 YEARS
S/O. ABDUL RAHMAN, KOLLARATHU MUTHARAKANDI, RAHMANIYA
POUNDAVALAPPU, KANNUR.

BY ADV SRI .T.K.KUNHABDULLA

RESPONDENT:

STATE
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI, REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY ADVS.
SRI.M.AJAY, SPL. P.P FOR NIA
SRI.M.AJAY SPL. P.P FOR NIA
ASG
SRI.MANU S., ASG OF INDIA()

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1577 OF 2013

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/ACCUSED NO.12:

FIROZ, AGED 33 YEARS , S/O.PAKKAI
VELLARKODATHU VEEDU, KOONAMTHAI, AMBALAM ROAD,
KALAMASSERY, ERNAKULAM.

BY ADV SRI.T.K.KUNHABDULLA

RESPONDENT:

STATE
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI, REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY ADVS.
ASG
SRI.MANU S., ASG OF INDIA()

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1578 OF 2013

AGAINST THE ORDER/JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF
NIA CASES, ERNAKULAM

APPELLANT/ACCUSED NO.16:

SABIR P. BUHARI @ SABIR, AGED 34 YEARS
S/O. BUHARI, MUNDAKATTU VEEDU, PARAPURAM, PERUMBAVOOR
VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM.

BY ADVS.

SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.R.GITESH
SRI.MANJUNATH MENON
SRI.HARIKRISHNAN S.
SRI.AJAY BEN JOSE
SRI.SACHIN JACOB AMBAT

RESPONDENT:

STATE
REPRESENTED BY SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI, REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 873 OF 2014

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/ACCUSED NO.23:

SARFURAZ NAVAS @ HAKKIM @ SANJU @ SUFUR NAVAS
AGED 35 YEARS
S/O. P K HASSAN, R/A.KANIYATTU KUDIYIL HOUSE, PALLIKKARA,
ERNAKULAM

BY ADVS.
SRI.PRAKASH P.GEORGE
SRI.SADER E.REAZ
SRI.SURESH BABU THOMAS(S-1369)

RESPONDENT:

STATE
REP BY THE SUPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 9TH DAY OF MAY 2022 / 19TH VAISAKHA, 1944

CRL.A NO. 1638 OF 2013

AGAINST THE JUDGMENT IN SC 1/2010 OF SPECIAL COURT FOR TRIAL OF NIA
CASES, ERNAKULAM

APPELLANT/ACCUSED NO.4:

P. MUJEEB, AGED 31 YEARS
S/O.MOIDEEN, MUNEERA MANIZIL, MUTHUKUTTI, CHEMPILOTU
AMSAM MOLLANCHERI, CHAKARACKAL POLICE STATION LIMIT

BY ADVS.
SRI.ISAC SANJAY
SRI.T.M.JOSEPH SHYLAN
SMT.T.S.REMYA
SRI.V.G.SREEJITH

RESPONDENT:

STATE REPRESENTED BY SPERINTENDENT OF POLICE, NATIONAL
INVESTIGATION AGENCY, NEW DELHI REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 301.

BY ADV ASG

OTHER PRESENT:

SRI.S.MANU, ASGI assisted by SMT.MINI GOPINATH, CGC
AND SRI.ARJUN AMBALAPATTA Senior GP for NIA cases

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.04.2022,
ALONG WITH CRL.A.1575/2013 AND CONNECTED CASES, THE COURT ON
09.05.2022 DELIVERED THE FOLLOWING:

K.VINOD CHANDRAN & C. JAYACHANDRAN JJ

Crl.Appeal Nos.1575 of 2013, 1567 of 2013,
1574 of 2013, 1576 of 2013, 1577 of 2013,
1578 of 2013, 1638 of 2013, 474 of 2014 &
873 of 2014

Dated, this the 09th May, 2022

JUDGMENT

Vinod Chandran, J.

Lured by the pleasures of a heavenly paradise, achieved only by killing human brethren and fellow nationals, five young men journeyed to the '*Paradise on Earth*', only to embrace death before becoming its messengers. Whether the dead, now enjoy the pleasures of the elusive paradise is a moot question, but they sure created a living hell for their families who were plunged in grief, coupled with shame. The trial saw the kith and kin breaking down and a sister narrating how her studies, abruptly ceased. The accused are alleged to have conspired to incite young men, radicalise them and recruit them into terrorism to wage war against their own country. The sole recruit left alive, developed cold feet, ran back to the bosom of his own country; the very same country against

which he waged war, which gave him a fair trial and convicted him with some others arraigned. We are called upon to decide the legality of the conviction and the propriety of the sentence, in the appeal by the accused. The National Investigation Agency (NIA), which filed the final report has filed an appeal against the acquittal under Sections 120(B), 122, 124(A), 465 & 471 of the Indian Penal Code, of those who were convicted under the other offences alleged.

I. THE PROLOGUE:-

2. The prosecution case is that A7 to A10 and A15 were instigated and radicalised in the 'Jihadi' Classes conducted at the behest of the various accused, particularly A3 and financed by A23, recruited to wage war against India, in pursuit of which common goal A7 to A10 met with death, having been shot dead in three separate encounters at Kashmir. Originally there were 24 accused of which A7 to A10 lost their lives in Kashmir, A20 and A24 are still absconding and 18 stood trial. A6, A13 and A17 to 19 stood acquitted by the trial court. The appellants 13 in number were convicted for various

offences under the IPC and the Unlawful Activities (Prevention) Act, 1967 (UA(P)A). A15 stands convicted under S.121 IPC and S.16 UA(P)A for which he was sentenced to life imprisonment on both counts and Rs.50000/-, as fine, also on both counts. Accused Nos.1 to 5, 11, 12, 14, 15 16, 21,22 and 23 were convicted under S.121A IPC and S.18 UA(P)A with sentences of imprisonment for life on both counts with a fine of Rs.50000/- each. A23 was further convicted under S.17 and sentenced to imprisonment for life and fine of Rs.50,000/-. A16 was also convicted under S.19 of UA(P)A to undergo imprisonment for life and fine of Rs.50,000/-. Appropriate default sentences for various periods, to run on default of payment of fine were also indicated.

3. The genesis of the case is from the surveillance of A1 and the FIR registered *suo motu* by PW158, Sub Inspector, Edakkad Police Station, Kannur as Crime No. 356/2008 (Ext.P397). A1, arrested on the same date was kept under surveillance for his involvement with a banned organisation by name Students Islamic Movement of India (SIMI). A1 was

found using two mobile numbers 97443 82047 and 96057 49262 alternatively. PW158 obtained the call details of the first mobile number, which, on examination revealed that number to have been deactivated after 05.10.2008 and ten calls having been received by A1 on the 1st and 2nd of October, 2008 from Jammu & Kashmir (J&K). Inquiries with the intelligence agencies revealed that the calls could be related to terrorists, shot dead in Kashmir. PW158 took A1 for questioning and initially A1 feigned ignorance and asserted innocence. Later, he pleaded for a pardon with the Officer; being the first instance, and promised that he would not indulge in any such activities, thereafter. A1 was arrested and FIR was registered on 18.10.2008. A phone diary (Ext.P123), mobile phone (MO.3) and the SIM Card (MO.3A) in the phone, were seized from him. Later the house of A1's wife was searched and by Ext.P117 search list, Ext.P400 passport and MO.22 SIM card were seized. Considering the ramifications, a Joint Investigation Team (J.I.T) was constituted under PW174. PW158 arrested A14 on 11.11.2008 and A18 on 19.12.2008.

After investigation, a final report dated 19.01.2009 was submitted by PW174 as against A1 to A22. On the very same day an application for further investigation was filed under S.173(8) Cr.PC and later a supplementary final report dated 17.08.2009 was submitted, adding A23 to the array of accused. Due to the nature of the case, it was transferred to the National Investigation Agency (NIA) who registered Crime No.2/2010 on 21.01.2010 by FIR marked as Ext.P473. PW170 is the officer of the NIA who filed the final report dated 16.02.2011 against A1 to A24.

4. The prosecution examined 186 witnesses and marked Exhibits P1 to P607; many in series, being connected documents, extracts, recitals, calls between specified numbers and so on. The defence marked Exts. D1 to D32, more in the form of contradictions. The CDRs and other digital data, except that of the CDR from Kashmir, are supported by Section 65B certificates and the documents are seized by different officers of the Joint Investigation Team. We are not referring to the seizures individually as they have been referred to by the trial Court. The defence has

also not singularly objected to any of the seizures; except the admissibility of the call data records of the BSNL number, alleged to be of Kashmir. The learned Counsel appearing for the different accused are: Sri.S.Rajiv for A1, A15 & A21, Sri.Nandagopal S. Kurup for A2 & A4, Sri.Suresh Babu Thomas for A3 & A23, Sri. C.K.Sreedharan for A5, Sri.Isaac Sanjay for A11 & A22, Sri.P.K Kunjabdulla for A12 and A14, Sri.S.Sreekumar, Senior Counsel instructed by Sri. Prijith.P for A16. Sri. S. Manu, learned Assistant Solicitor General appeared for the NIA, ably assisted by Smt. Mini Gopinath, Central Government Standing Counsel, and a host of officers of the NIA.

II. THE DEFENCE:-

5. On behalf of A1, it was argued that he was implicated on the sole flimsy premise of having received some telephone calls from Kashmir. A *suo motu* FIR was registered on the allegation of connection with terrorist outfits, investigation taken over by JIT and after two final reports, handed over to the NIA. The allegation in the final report is only with respect to a conspiracy based on the phone calls to

and from his mobile. The witnesses examined to prove the conspiracy did not even establish his involvement in the *Thareeqath* movement nor was he identified as a participant in their classes. The mere fact that he had received ten calls from Kashmir and he had regular contact with the other accused cannot implicate him, either in the conspiracy or with the alleged recruitment into terrorist organisations. All the accused were alleged to be part of a conspiracy to wage war against India and A2, in addition, of having abetted A7's movement to Kashmir. None of the witnesses spoke anything incriminating about A2 and not even a participation in the religious classes. The depositions regarding involvement of A2 in the *Thareeqath* classes in Neerchal and A2's mind set to meet evil with evil were marked as omissions in the prior statements. Many of the witnesses examined to prove the conspiracy spoke nothing about A2 nor was he identified. As for abetting A7 to join '*Jihadi*' classes and wage war against India, the only allegation was that A2 travelled along with A7 and A8 to Hyderabad. Admittedly A2 came back after two days

as has been deposed by the sister of A7. There is nothing to show that A2 was aware of A7's further travel to Kashmir nor is there anything to indicate that A2 was instrumental in A7 going to Kashmir.

6. On behalf of A3, it was contended that the entire allegations are based on the death of A7 to A10 who along with A15 went to Kashmir to wage war against India. The first paragraph of the Court charge is read over to indicate that there is nothing to show the recruitment having been made by A3. CWs. 39,99 & 100 who figured in the final report, to speak on such recruitment, were not examined, warranting an adverse inference against the prosecution. As far as the reference to '*Jihad*' in PW1's evidence, it is argued that the observations were only the opinion of PW1 and not the statements of A3. There is in fact nothing to establish a conspiracy in Kerala and if at all the others were involved in a conspiracy, it was only at Hyderabad, for which A3 is not responsible. The trial court had taken the testimony of A,B & C (PWs.35,36&39) as a dying declaration under S.32 of the Evidence Act. Reading S.32, it is urged that the

death of A7 to A10 is not the subject of trial in the present proceedings and hence the trial court erred in treating the statements as dying declaration. Bhairon Singh v. State of Madhya Pradesh [(2009) 13 SCC 80] was placed to urge the above proposition. There is nothing to prove the telephone call of A1 to A3 and in the context of conspiracy having not been proved, there is no question of invoking S.10 of the UA(P)A.

7. The charge against A4 is again of conspiracy and the conduct and arrangement of 'Jihadi' classes under the guise of *Thareeqath* classes. A4 has not travelled out of Kerala; not even to Hyderabad, and PW1 did not identify A4 as a person who attended his classes. There was again no reference to A4 or a worthy identification by any of the witnesses. The only circumstance proved against A4 is the handwriting in the reservation slip (Ext.P34), for the train journey of A2, A7 & A8. A4 did not accompany them and there is no allegation that tickets were booked in fake names. Admittedly the accused hail from the same locality and they are acquainted with each other. Even the fact that A15's wife stayed with A4 does not

incriminate him in either the activities carried on by A15 or the death of the others in Kashmir. The allegation of a phone call from Kashmir to the number of A4 has not been substantiated. The trial Court has erroneously found that the telephone number given at Salim Manzil and noted in the train ticket reservation form were that of A4. The learned Counsel would place reliance on K.R Purushothaman v. State of Kerala 2005(12) SCC 631 to rubbish the allegation of conspiracy. In defence of A5, paragraphs 461 to 471 in the impugned judgment were seriously assailed. The only testimony against A5 is the participation in *Thareeqath* classes, which is not the conspiracy alleged. A8's father and sister merely made a bland allegation that A8 left home for an employment in Bangalore arranged by A5. A8 went to Hyderabad and then to Kashmir where he was shot dead; which endeavour was not in the knowledge of A5. The mere fact of renting out a house from PW15 and allowing A15's wife to stay with A5's family does not make him privy to the activities of A15. The alleged transfer of money by A23 is one year prior to the incidents

which led to the present investigation. The only allegation proved against A5 is that he was arrested along with A3 from the Indo- Bangladesh border.

8. As far as A11 is concerned, he is a native of Wayanad and the allegation is regarding convening of *Thareeqath* Classes. PW126 who identified him as the person who had contact with a Kashmir number was a witness brought before Court with no prior statement under Section 161. The prosecution has also failed to establish that A1 called A11 after he received a call from Kashmir, from the CDR, Ext.P290. A11 never stepped out of Kerala and there is nothing to show that he had been instrumental in recruiting people to join terrorist groups. A12's position is similar to that of A13 who stood acquitted. PW1, though identified A12, did not speak of A12 having attended any religious classes. His connection with A10 as spoken of by PW5 and PW6, the father and brother of A10, was only friendship and there is nothing to show any influence having been exerted on A10 to convert or to proceed to Kashmir. The sole allegation against A12 is of abetting A7 to move to Kashmir; which was not

proved. The alleged role of A14 is similar to that of A6, who stood acquitted. A14 had absolutely no role to play in the conspiracy.

9. A15, it is argued, had no involvement in the conspiracy and even his presence in Kashmir, in a terrorist camp, is not proved. The only evidence is of his presence at Hyderabad, without anything to show his company with the other accused. The handwriting in the reservation form from Hyderabad to Delhi was not that of A15, as spoken of by PW29. It is specifically emphasized that there is no evidence of A15 having handled a weapon or used it against the security forces which alone could establish an overt act of terrorism. It is pointed out that the Senior Superintendent of Police, PW124, who registered the three FIRs, two in Lalpura Police Station and one in Sogam Police Station, does not even speak of A15. The CD produced from Salim Manzil at Delhi is not acceptable in evidence. The so called extra judicial confession to PW1 cannot be relied on since the prosecution has not proved that PW1 is a close confidant of A15. The evidence of PW 72, who too spoke

of an extra judicial confession cannot be believed. As far as A16 is concerned, the allegations are of harbouring A15's wife and receiving money from A23. The documents relating to the account of A16 does not prove the receipt of money. The testimony of PW71 about his involvement in some cash transactions on the directions of A16, is exculpatory. The testimony of PW71 is not at all believable, looking at the relationship between A16 and PW71, as spoken of by PW71 himself. The prosecution has utterly failed to connect A16 with A15 and the latter's stay and employment in Perumbavoor.

10. A21 has been roped in only because he is the father in law of A9. The identification of A21 by PW19 arises from a lunch to which the witness was invited by A9, where A9 was present; quite natural given the relationship with A21. The money transaction between PW59 and A21 was testified to be in the presence of A3, which was proved to be an omission by PW179. A21's letter was produced through PW75, the contents of which was not proved and there is no proof of the handwriting. A22 has only been proved to be a

regular in *Thareeqath* classes. His friendship with A9 as spoken of by PW85, is only natural since both of them were engaged in the work of 'light and sound' as testified by PW17. A23 was arrested and certain material objects were recovered from his suitcase. The mere fact that he send money to some of the accused does not prove his involvement in the conspiracy; the execution of which or even his knowledge of the use to which the said money was put to, are not proven. In fact, there is absolutely no evidence as to the money sent by him having been used for any terrorist activities.

III. THE PROSECUTION:-

11. The learned Assistant Solicitor General, emphasized the conspiracy to carry out anti-national activities, which developed over a long period and occurred in various places and at different points of time; not necessarily with the knowledge of all the accused regarding every single activity. The endeavour commences with the financial transactions starting in 2007, with the money sent to India by A23 who was working abroad. A pivotal role is played by A3, who

arranged the meeting of the various persons involved at different places and co-ordinated the activities, which culminated in the death of four persons, recruited and send to Pakistan through Kashmir. The specific purpose of their recruitment was to be trained in arms and ammunition and then wage war with India by spreading terror within India. The fact that five recruits joined a terrorist camp, received training in arms and fought against their own country is clear from their death at the hands of the security forces in Kashmir. The decision of the Honourable Supreme Court in Firozuddin Basheeruddin v State of Kerala (2001 (7) SCC 596) is placed before us to urge that there is no requirement that, to prove conspiracy, the presence of all at one place at one time has to be established. If the circumstances cumulatively show the close interaction of the various persons associated with the conspiracy and the roles they played; each one of them, having acted with a common mind-set, would stand implicated for the offences committed in furtherance of the conspiracy, even if they had no active role in the culminating

act.

12. The arrest of A1, a known member of a proscribed organisation, by name SIMI, resulted in the examination of call records of the two mobile phones held by A1, which led to the arrest of all the accused. The learned ASG took us meticulously through the call records and supporting evidence to show the connection of various accused and especially, A23, who is said to have funded the furtherance of the conspiracy. The details of SMS to the mobile phone number seized from A23 on his arrest clearly indicates his connection with a terrorist at Pakistan. The mobile phone MO3 seized from A1, as is evidenced from Exts.P309, P310 and P321 produced and proved by PW133, has been used by A3 and A8. Likewise Ext.P338 produced and proved by PW128 evidence the use of MO3 mobile instrument by A4 with his SIM number. All these factors were put to the respective accused under S.313 of the Cr.PC for which no answer was given. Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731] and Dr.Sunil Clifford Daniel v. State of Punjab [(2012) 11 SCC 205] was relied on to contend that in a case based purely

on circumstantial evidence, the falsity or the total absence of a valid explanation, under Section 313 questioning, forms a link in the chain of circumstances. A1 was identified as a relative of A3 by PW13.

13. A2's conduct is not above board as argued by the defence. It has been proved that he went along with A7 and A8 to Hyderabad for 'Chilla' which extends to the whole of the Ramzan month. They boarded a train from Kerala on 10.09.2008 as proved by the ticket recovered from his possession and except A2 the other two proceeded to Delhi on 12.09.2008. As per the unchallenged testimony of the sister of A7, A2 returned two days later. The intention was hence only to send A7 and A8 to their death at Kashmir. The omission marked from the testimony of PW14, that A2 and A7, were persons who wanted to meet 'evil with evil' is only a slight variation from the S.161 statement. PW174, I.O, deposed that PW14 spoke ill of the character of both A2 and A7. Minor discrepancies cannot be treated as omissions as held in State of Madhya Pradesh v. Dal Singh [(2013) 14 SCC 159] and

Takdir Samsuddin Sheikh v. State Of Gujarat [(2011) (10) SCC 158]. The evidence led by the prosecution proves unequivocally that A2 was one spoke in the wheel of conspiracy as has been observed in Firozuddin Basheeruddin (supra).

14. A3 according to the prosecution, is the kingpin, the person referred to as the Commander in Kerala. PW1's evidence clearly indicates the divisive attitude of A3 and the venom spewed in *Thareeqath* classes; to which PW1 took strong objection. A3 has been identified to have harboured divisive and destructive thoughts and shared it in the *Thareeqath* classes as spoken of by PWs. 1, 13, 14, 19 & 72. These witnesses also spoke of A3 being known as *Ummar Haji* and *Haji Usthad*. The deposition of a number of witnesses were pointed out to show the close association of A3 with A9, A15 and A23. Learned ASG asserts that what was stated by PW1 is not his opinion but what A3 spoke in the classes after PW1's sermon. PWs.35,36&39 who were present along with A7 to A10 in Kashmir had specifically spoken of the killed terrorists having referred to the Commander in Kerala.

There is nothing wrong in the said statements being treated as dying declarations under S.32. Patel Hiralal Joitaram v. State of Gujarat [(2002) 1 SCC 22] held that Section 32 cannot be taken in a very restricted sense and the circumstance however remote, ultimately resulting in the death of a person, is admissible. The other circumstances against A3 are said to be the conversion of A10 which was in A3's presence, the close association of A3 with A23, the messages between them as proved by the Call Data Records (CDR) produced, the financing for the operation sourced from A23, the use of the mobile instrument of A1 and recovery of another instrument used by A3 from A15's house and he having absconded on 07.10.2008 and later arrested from Meghalaya on 06.12.2009. The learned ASG also specifically pointed out that both the mobile numbers used by A3 were obtained in other people's identity as has been proved by PW 139 and PW87.

15. As far as A4 is concerned it has been proved that it was in his handwriting that the reservation form for the travel of A2, A7 and A8 to

Hyderabad from Kannur was filled up. A4 also harboured A15's wife and there were two mobile numbers deciphered from call records of the mobile instruments seized from his house. The CDR of the said mobile numbers indicates his close connection with A3 and he has also used the handset M03, in which A1 received calls from J&K. A5, A11 and A12 were identified by PW1 as regulars in *Thareeqath* classes. Many witnesses spoke of the association of these accused with the other accused. A5's presence in Hyderabad and later harbouring of A15's wife has been established. A5 received amounts in the year 2007 from A23 which stands proved by the testimony of PW76. There is no explanation offered in S.313 with respect to the financial transaction with A23; which provides a link in the circumstances against A5. Further A5 also absconded from Kerala and was later arrested from Meghalaya along with A3.

16. A11 was working in PW63's Mosque and then in another Mosque as revealed from PW98's evidence. PW126 had clearly pointed out the telephone calls received by A11 in his telephone booth. As to no prior

statement under S.161 having been taken from PW126, the learned ASG relied on a number of decisions of High Courts, wherein it was held that the prosecution's right to examine witnesses under Section 213 Cr.P.C and the power of the Court under Section 311 cannot be curtailed(Ram Achal v. State of U.P 1990 Cri.LJ 111, Bhima Muduli v. State of Orissa 1996 Cri.LJ 1899, Om Prakash v. State of Rajasthan, 2003 Cri.LJ 4704 and Ravichandran K v. Inspector of Police 2019 Cri.LJ 144). PW174, the I.O deposed that he was unaware of PW126, which is only because there was a JIT and the statement was taken by another officer of the JIT. The connection between A12, A1 and A11 is brought out from the CDR produced. A12 was instrumental in the conversion of A10 and had also accompanied A10 to the place where the conversion was carried out. His phone also stood switched off after 07.10.2008. As far as A14 is concerned, he had rented out the rooms in various places, where the 'Jihadi' classes were conducted under the guise of *Thareeqath* classes.

17. The involvement of A15 in the conspiracy

and the terrorist camp stands unequivocally established. A15 travelled with A7 to A10, to Nizamuddin and then to Kashmir, where they joined a terror camp. A7 to A10 were shot dead in separate encounters and A15 escaped and came back to Kerala, for a time stayed in Perumbavoor in an assumed name and later returned to Hyderabad from where he was arrested. At Hyderabad he made a confession to PW1, whose deposition of the earlier conduct of A15 clinchingly proves the role of A15 in the conspiracy. The CDR of A15 also is a pointer to his close association with the other accused and the part played in the conspiracy. A16 assisted A15 when he stayed at Perumbavoor, under cover, and aided the financial transaction with A23. A16 conversed with A23 on crucial days and the CDR further established his links with the conspiracy and by harbouring A15, involved in the furtherance of the same.

18. A21 was the father-in-law of A9 and the husband of the sister of A15's wife, who maintained close links with all the accused. He was involved in other terror activities and was well versed in the

making of explosives; as revealed from the letter of A23. A21 also was involved in financial transactions with A23, the financier; who was also described by PWs.35,36 & 39 as the Commander at Dubai, aiding the recruitment of youth to terrorist camps to wage war against India. A22 was also argued to have ties with the accused. He was close friends with A9, a regular presence in the religious classes both in Kerala and at Hyderabad; which often were converted to 'Jihadi' classes by A3. This is sufficient to uphold the conviction of A22. The materials seized from A23 at the time of his arrest and the financial transactions from abroad makes him one of the kingpins of the operation. The learned ASG, with reference to the time in which the amounts were send from abroad, the persons who received it and the contextual relevance to the connected activities in India, sought to establish the guilt of A23. The FSL report at Ext. P588, which dealt with the various narratives in the digital mode, as ferreted out from the devices seized on his arrest, was put forth to further establish the culpability of A23.

19. The learned ASG while asserting the legality of the conviction and sentence of the appellant/accused, prayed for reversing the trial court's order to the extent of acquittal in some of the offences charged under the IPC. When the other offences stand established there is no perceivable reason why they were acquitted under the offences charged of criminal conspiracy, collection of arms with the intention of waging war against India, sedition, forgery of ID cards and use of such forged documents for availing services; where mandatory disclosure of the true ID of the user was necessary. The learned ASG argued for dismissing the appeals filed by the accused and allowing the appeal of the NIA.

IV. Preliminary Objection On Sanction:-

20. A preliminary objection has been raised by the learned counsel for the appellants/accused that the sanction of the Kerala Government produced as Ext.P574 and P567 were not in accordance with the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 and that even the

subsequent sanction by the Central Government dated 03.02.2011 is in violation of the Rules of 2008. It was also argued that once cognizance has been taken by the Special Court, on the basis of a defective sanction, it does not stand cured, even if the further sanction by the Central Government is proper. The learned Counsel specifically relied on our decision in Crl.Rev.Pet Nos. 732 to 734 Roopesh v. State of Kerala dated 17.03.2022.

21. As far as the sanction of the State Government, we see that there is no reference made to the Authority, appointed by the Government for making an independent review of the evidence gathered in the investigation. The orders issued, soon after Amendment Act 35 of 2008 incorporating sub-section (2) of Section 45 of UA(P)A was brought into force; violate the mandate of the new provision and the cognizance taken at that stage was bad.

22. As for the sanction of the Central Government, after the investigation was transferred to the NIA, the ground urged is of the time stipulation as prescribed in the Rules of 2008 having not been

complied with. We called for the files from the Central Government, which is produced before us. We have perused the files in the presence of the learned Counsel for the defence. We see from the files that the Central Government had addressed the Authority constituted under Section 45(2) by a letter dated 04.02.2011, requesting the Authority; consisting of a retired High Court Judge and a retired Secretary to go through the report and evidence collected and evaluate the same and consider, recommending the sanction sought for prosecution. The Authority, we find, has taken up the matter on 13.01.2011, considered the issue elaborately and recommended prosecution of twenty of the twenty four accused; four having expired. We do not find any date of receipt or date of dispatch of the orders from the files. But still, the letter seeking consideration was dated 04.01.2011 and the Authority considered the same on 13.01.2011. We find that 05.01.2011, 08.01.0211 and 09.01.2011 were public holidays. Hence the Authority had definitely considered the issue and made the recommendation within seven working days from the date of the request

made by the Central Government.

23. Subsequently, after the report was received by the Central Government, on 21.11.2011, a decision has been taken to sanction the prosecution. We find from the decision taken on 21.11.2011 that the Investigation Report of the NIA has been gone through and eleven points have been discussed recommending sanction for prosecution. The same was kept for vetting by the Ministry of Law and Justice. The Ministry of Law and Justice vetted the same and confirmed it on 25.11.2011, which was placed before the Minister for approval and on 02.02.2011, the same has been approved and the order dated 03.02.2011 issued.

24. We have to note that the requirement as per Rule 3 of the Rules of 2008, is for the Authority constituted under sub-section (2) of Section 45 to make report containing recommendation within seven working days of the receipt of the evidence gathered by the Investigating Officer; which we already found, has been complied with. As per Rule 4, the Central Government is obliged to take a decision regarding

sanction for prosecution within seven working days after receipt of the recommendation of the Authority. We emphasize that the requirement is not of issuance of the order, but the decision being taken by the Central Government. From the files we see that the decision was taken on 21.01.2011, which is just eight days from the date on which the recommendation has been made by the Authority under Section 45(2); the date of receipt being not discernible. We also take note of the fact that 14.01.2011, 15.01.2011 and 16.01.2011 were holidays. The decision hence was taken within five working days. The decision was vetted by the Ministry of Law and Justice and then approved by the Minister and stood issued on 03.02.2011; which was produced before the trial Court and marked in evidence as Ext. P574. We find that the decision of the Central Government to sanction prosecution is in accordance with Rule 4 of the Rules of 2008. We also see from the decision taken, as available in the files that there has been comprehensive consideration of the matter, showing clear application of mind. Ext. P574 is less elaborate

but reflects an application of mind with reference to the specific provisions alleged. The cited decision is not applicable.

25. The next contention is with respect to the cognizance being first taken by the Special Court on the sanction issued by the Government of Kerala. We found from the sanction orders that there has been no reference to the Authority and sanction is not in accordance with Section 45(2) r/w Rules of 2008. However, after the investigation was handed over to NIA, the NIA had filed a fresh final report along with sanction for prosecution by the Central Government, which sanction is with respect to all the twenty accused; barring those who expired. We do not find any irregularity in such cognizance being taken by the Special Court. The earlier cognizance taken, even if it is irregular, the judicial acts of the Special Court, after production of the sanction of the Central Government is perfectly in order. We reject the preliminary objection.

V. THE PLOT: -

26. Conspiracy as has been held in Saju v.

State of Kerala (2001) 1 SCC 378 is always hatched in private and in secrecy, for which direct evidence would rarely be available. But that does not absolve the prosecution from producing evidence that each of the accused had knowledge of the object of the conspiracy, to which end, they acted in cohort. It is difficult to trace the precise contribution of each member of the conspiracy, but there has to be cogent and convincing evidence that each of the accused acted in furtherance of the conspiracy and there was a meeting of minds to carry out the conspiracy, though they may not have been associated with every material aspect as has been declared in Firozuddin Basheeruddin (supra). The allegation against the accused are that, they conspired together to incite and instigate Muslim youth to wage war against the Country, for reason of the presumed atrocities perpetrated on the community, for which end, they chose A7 to A10 and A15 to proceed to Kashmir and kept ready another 180 young men; under the leadership of A3. The intention was to infiltrate into Pakistan, to get training in arms and ammunition and then come back to Kerala, to wage war against

India through terrorist activities. The five persons joined a terrorist camp at Kashmir, commenced training in arms and ammunition, while awaiting to infiltrate into Pakistan; but died in an encounter with the security forces of India. Though the case originated with the *suo motu* FIR registered against A1, the gravamen of the accusations originate from the encounter between the security forces and the members of a terrorist group, 'Lashkar-e-Thaiba' ('LeT') at Kashmir, a proscribed group, in which A7 to A10 were killed. What has hence, to be first looked at is the evidence led and the circumstances leading to the travel of A7 to A10 and A15 to Kashmir, where they were killed and later identified by the security forces through the Police of the Kerala State. As far as A15 is concerned, he came back and stood trial which aspects have to be considered separately. Even before that, the evidence of PW1 has to be considered, whom even the defence describe as the star witness of the prosecution.

VI. THE PATH - Straight or Crooked ?

27. *Thareeqath*, the word, is an indigenous

improvisation of the Arabic Word '*Tariqah*' which means '*Way*'. PW1 is a Muslim Scholar and Teacher who conducts *Thareeqath* classes in Kerala, Hyderabad and Maharashtra, who is also a native of the State of Kerala, but permanently residing and employed in Hyderabad. '*Nurisha Thareeqath*' according to PW1 is another name for the *Sufi* movement, teaching the spiritual aspects of '*Quran*'. He identified A2-Faisal, A3-Nazeer, A5-Shafaz, A11-Ibrahim Moulavi, A12-Firoz, A14-Nawaz, A15-Abdul Jabbar, A19-Abdul Hameed, A21-Sainudheen Haji, and A22-Ummer Farooq from the dock. He has no acquaintance with A4-Mujeeb, A13-Badarudheen, A16-Sabir, A17-Anas and A23-Sarfuras Nawas. Those he identified from the dock were persons who were attending his classes at various places within Kerala and at Hyderabad. He identified A10, Yasin @ Ringmon from the photocopy of a photograph in Ext.P1. Fayis, A8 was identified from the photograph in the driving licence produced as Ext.P2. A20, who is absconding was identified from his passport application registration form produced as Ext.P3. A9, Abdul Rahim, was identified, from the Election I.D

produced as Ext.P4 which has the name '*Shakeer*' S/o *Mohammed*'. A3, an active participant in his classes was deposed to be a person hailing from Kannur.

28. The manner in which *Thareeqath* classes were conducted was explained by the witness. The classes commence with a prayer and then a sermon is delivered, followed by clearance of doubts and the audience are also encouraged to interact. Both A3 & A9 were active participants and A3 often expressed his personal emotions in the interaction. He often expressed concern over the atrocities on Muslims in India, for which, according to A3, there were no legal remedies. A3 proclaimed the need to make Muslims conscious of the necessity to react, that too violently. A3 often used the expression '*jihad*', which however the witness, a scholar himself, says is not a term for such retaliatory measures. According to PW1, in the 12 years, before the Muslims fled from Mecca to Madeena under the Prophet, there were a lot of atrocities committed on them, but there was no call for '*jihad*'. Only when, after establishing a Muslim State in Madeena, there were attacks by the enemies,

there was a call for 'jihad', which call can arise, only from the Muslim King. As far as A3 was concerned, PW1 deposed, 'jihad' meant retaliation by organising young men, to beat those who beat and kill those who kill, Muslims. The exhortation of A3 for retaliation, were with weapons and to instigate, A3 specifically alleged atrocities committed on Muslims in Gujarat and various parts of India. PW1 resisted A3's radical views and pointed out that in India there is more freedom for the Muslims than even in the Muslim countries.

29. Twice in an year, in Hyderabad there is a congregation of Muslims called the 'Chilla', which is attended by about 3000 people, one of which is in the Ramzan Month. It was in one of these camps that PW1 met A10, who was brought there by A9. PW1 saw A10 last on September 10th, when he said that he was going on a trip. When PW1 asked him, why he digressed from his earlier resolve to study (obviously religious studies), he said there was an emergency and that A3 was calling him. On the same evening, A15 also came to him to bid farewell and promised him that the loan

availed, of Rs.1,500/-, would be repaid by A3. A15, A9, A8 and A7 requested PW1 to do 'dua' for them before departing from Hyderabad. They did not tell him where exactly they were going and hence PW1 refused to pray for them; obviously suspicious of their intentions. The next day, 11th, was a Friday, and on that day there was a prayer at the *Jaram* of Noorisha Thangal. This was a regular affair and everybody including A7 to 10 and A15 participated after which they left. A3 also participated and left Hyderabad around 13th, along with Ummar Farooq (A22) and Badarudheen (A13).

30. To a specific question as to whether PW1 saw A15 after that, he answered that on the 10th of November he was informed by his son, at his residence, that A15 had come to see him. PW1 refused to see him, but A15 persisted, upon which, PW1 asked him to come near the lake. PW1 asked him about the news that A7 to A10 were killed in Kashmir, when A15 told him that during '*Chilla*', the five of them proceeded to Kashmir through Delhi along with Sabir and Hayaz. Sabir (A20) was to take them to a camp in Kashmir and come back.

Kashmiris, who were in the camp, went out and was apprehended by the Police, since they did not have valid papers. This alerted the security forces and in the ensuing encounters A7 to A10 were killed. A15, according to PW1 told him that first Yasin (A10) and Abdul Rahim (A9) were killed and then Fayaz (A7) and Fayiz (A8); but A15 escaped. PW1 scolded A15 and send him away and informed the authorities. In cross-examination PW1 was unshaken, though certain omissions were pointed out from his prior S.161 statement. He explained that he had stated everything he remembered at that time. PW1, we find, is a truthful witness, whose evidence can be believed. PW1's S.164 statement, Ext.P3 was marked by himself and proved by PW112, the Magistrate who recorded the same. There is no substantial variance pointed out in cross-examination and it fully corroborates the testimony.

31. PW13 is the younger brother of PW1 who identified almost all of the accused. He first identified A14 as a person who used to regularly assist him to reach Neerchal where he used to take *Thareeqath* classes. A11 was identified as another

person who arranged the classes while A2, A4, A6 & A22 were regular attendees. A1 was identified as a relative of A3 and A21 was the relative of the witness himself, known as '*Sathar Bhai*'. A17 & A18 were identified on sight, but PW13 did not know their names. A12 and A13 have not attended the classes of PW13 and A15, though has come to his residence had not attended any classes. PW13 identified A8 from Ext. P15, the Electoral ID Card in the name of *Rebi S/o Kurian* and A9 from Ext. P4, the Electoral ID Card in the name of *Shakeer S/o Muhammed*. These were fake ID cards in the name of real people, with the photographs of A8 & A9. They also travelled from Hyderabad to Nizamuddin in these assumed names; as we would later detail. PW14 is yet another person having the title of '*Khilafath*' (Religious Teacher), as is PW1 & PW13; which confers the authority to take *Thareeqath* classes. He identified A2, A4, A5 and A14 as regular attendees in the classes.

32. We remind ourselves that *Thareeqath* is not a proscribed movement and the evidence of PW1 discloses that they have never taken any extreme line and they

do not support the concept of 'jihad' as propounded by the accused. In fact PW1 categorically states that the retaliatory measures contemplated by A3 and propounded by him in the religious classes is not 'jihad'; which in any event A3, has no authority to call for. The evidence of the above witnesses clearly establish the close association of all the accused and it has to be highlighted that the very accusation raised by the Prosecution is the holding of 'Jihadi' classes in the guise of *Thareeqath*. PW1 & PW13 speaks of their sermons being followed by others, especially A3 who towed an extremist line. PW1's evidence also reveals very incriminating material against some of the accused which we will discuss at a later point. The testimonies discussed above disclose the accused having used the *Thareeqath* movement to spread subversive and divisive thoughts and thus diverting even the *Thareeqath* classes into crooked ways intended at radicalising Muslim youth to spread terror amongst the people of ones own nation.

VII. THE 'JIHADIS'- A7 to A10:-

33. The journey to the northern most State of

Jammu & Kashmir commenced from the southern most State of Kerala. PW20, PW21 and PW22 are railway officials, respectively, the Chief, Clerk and Supervisor of Kannur Railway Reservation Office. Ext.P33 marked through PW20, is the Seizure Mahazar of Ext.P34 reservation form and Ext.P35 marked through PW21, is the ticket for the journey from Kannur through Shornur to Hyderabad for A7, A8 and A2, allegedly booked by A2, the journey commencing on 10.09.2008. PW22 also produced Ext.P36 & P37 reservation forms filled up by one Rizwan seized as per Ext.P36 Mahazar. As per Ext.P37, A3 along with five others were scheduled to travel to Hyderabad and Ext.P38 is the application for booking tickets for three others, again to travel to Hyderabad, which journey commenced on 31.08.2008.

34. PW29 is the Senior Divisional Operations Manager of the South Central Railways, Hyderabad Division at Secunderabad. He produced the reservation requisition for Ext.P48 by which Shakeer (A9's assumed name), Jabbar (A15), Anaz (A17? - but acquitted), Ringmon (A10), Rebi (A8's assumed name) and Fayaz (A7) booked tickets from Secunderabad to Nizamuddin.

However Ext.P49, PNR history indicates that only five of them, excluding A7-Fayaz travelled on 12.09.2008 in the sleeper class, one in a confirmed ticket and the others in RAC. Ext.P50 is the document evidencing cancellation of the booking for Fayaz. Here we have to immediately notice that though the travel of A7 has not been established with documentary proof, his death in Kashmir stands confirmed. The reservation chart at Ext.P51, proved through the TTE, PW62, confirms the journey and the seat numbers of the other five persons who travelled as per ticket issued on Ext. P48. The other travel details as evidenced from Ext. P51 relate to persons who travelled from Hyderabad back to Kerala. Relevant is the fact that one of the persons in Ext. P52 ticket is the wife of A15, who was a resident of Hyderabad. Equally relevant is the fact that Ext. P48 & P52 shows the applicant as Jabbar and Abdul Jabbar (A15) with addresses shown respectively of that at Hyderabad and Kerala. The mobile numbers as shown in the reservation forms, respectively are 99126 61040 and 97466 22350; of which the first one has a significance, as proved to be carried by A7 to A10 and

A15 to Delhi.

35. According to the prosecution, the five persons who travelled from Hyderabad to Delhi stayed at Salim Manzil, near the Nizamuddin Dargha. PW32, in charge of Salim Manzil spoke of the procedure by which guests are given rooms which require an ID proof, the photocopy of which is retained with them and entries made in the register. Ext.P60 register as seized by the Investigating team was identified and Entry 97 (Ext.P60(a)) was pointed out, which bears the residential address and the name, 'Shakeer, S/o Muhammed, age 32, mobile no.99126 61040'. Shakeer is the assumed name of A9 and the mobile number, identical to that in Ext.P48 reservation form signed by Jabbar (A15). The entry in the register was on 13.09.2008 at 6.30 p.m and the purpose shown was to visit 'Khabar'. The guests vacated the room on the next day at 4 p.m. The photocopy of the ID card of Shakeer, S/o.Muhammed, retained with Salim Manzil and seized as per Ext.P62 on 30.12.2008, along with Ext.P60, was produced and marked as Ext.P61. The witness also spoke of the reception area of Salim

Manzil being covered by a CC TV, the hard discs and CPO of which, were handed over to the police who seized it as per Ext.P63 mahazar. The hard discs contained the numbers FO2173245Y(Ext.P64) and OF9-OMAXTOR (Ext.P65). Among the six persons, only the person whose photograph is seen in the ID, A9, spoke Hindi according to the witness, who did not identify A15 from the dock.

36. The DVD received from C-DAC was played in open court, marked as Ext.P66, from which Shakeer was identified as the person who was standing in front, who caused Ext.P60(a) entry to be made and spoke to the witness. The witness identified himself, from the video footage, as the person sitting in the counter with a ring on his right hand; which ring he was wearing in Court too (clear from the recorded deposition). His head and right hand were visible from the DVD. PW32 identified the person who took the room, from the photograph in Ext.P61 ID Card. Ext. P61 is identical to Ext P4 ID card. PW33 the room-boy of Salim Manzil, confirmed that PW32 is the Manager. Though he could not identify any of the accused, he

affirmed witnessing the seizure made from PW32.

37. PW150 is the Assistant Director of C-DAC (Centre for Development of Advanced Computing) who examined the hard disc seized from Salim Manzil. The objection raised by the defence with regard to Ext.P66 DVD was that in re-examination, it was stated that Annexure I in Ext.P386 showed that the file was created in the hard disc on 31.12.2008, the day of seizure and the last access was also on the very same day. The hard discs as identified by PW32, Ext.P64 and P65 were identified by PW150 as sent by the police through Ext.P374 forwarding note. As rightly pointed out by the trial court, the factum of PW32's presence along with A9, killed in Kashmir; identified by PW32 from Ext.P61, in the reception area of Salim Manzil establishes the fact that A9 along with others resided for a day in Salim Manzil as is evident from Ext.P60 register. There are certain circumstances which surpass even an expert opinion and death is one of them. If a handwriting in a document with a specific date thereon is said to be that of a person, who died before its execution, the expert opinion of the

handwriting, being that of the deceased, can only satisfy the Court of its execution before death and not on the date shown in the document. Likewise the video cannot be taken to be one after death of A9. Again, coupled with the testimony of the Manager of Salim Manzil, as also the documentary proof, the video can only be of the date on which the five stayed at Salim Manzil, just prior to the death of A9.

38. PW73, who was the Tahasildar, Thirurangadi produced Ext.P169, page 19 of Electoral Voters List in which was marked Ext.P169(a) entry having the details and photo of *Shakeer S/o Muhammed* with ID No. of CSK 1220797, the original ID card of which was produced as Ext. P171. The ID card No. is identical to that in Ext.P4 and Ext. P161, but with a different photograph. PW74 is the real *Muhammed Shakeer*, who identified Ext. P169 (a) and 170 as his own ID. PW74, who was acquainted with A9 also identified him from Ext.P4 Electoral ID card, which had PW74's name, fathers name and address. The photo in the fake ID card Ext.P4 was also identified by PW75, the business partner of A21, as that of A9, son-in-law of A21.

39. PW35, PW36 and PW39 are natives of Kashmir, forced to join terrorist camps, from which they escaped and surrendered before Police. All of them speak of having joined a Camp where the *Lashkar* Commander was one Abdulla, who trained them in 'AK47'. While they were in the terror camp, a lady by name Parveen brought five boys who were handed over to Abdulla. After some days, Abdulla gave a phone to *Shakeer @ Rahim*, one of the said boys, who called *Ummar*, their Commander in Kerala. The other persons who accompanied Shakeer were Yassin(A10), Fayaz(A7), Fayiz(A8) and Jabbar(A15). PW35 and PW36 also spoke of Shakeer (A9) having informed them that they had two other Commanders in Dubai, by name Wali and Sarfuraz and that approximately 180 boys were kept ready in Kerala, by Ummar, recruited for training in terror camps at Kashmir. Walli and Sarfuraz were accumulating contributions in Dubai and sending it to Ummar. After about 20 days, the Army surrounded the terror camp and in encounters, A10 and A7 were killed. Again, there was an encounter with the Army in which three militants were killed, one Pakistani and two others

from Kerala, ie: Shakeer and Fayiz, A9 and A8. It was later that PW35 escaped from the terror camp and went to the Police Station, Lalpura. PW35 identified A15 from the dock and A15, A9 and A8 from Ext.P66 DVD. From Ext.P1 photograph, A10 was identified and again from Ext.P4, fake electoral card in the name of *Shakeer S/o Muhammed*, A9 was identified with A8 being identified from Ext.P15, a fake electoral ID card in the name of one *Rebi S/o Kurian*. *Shakeer and Rebi* are the names we find in Ext.P48 reservation application form and Ext.P51 reservation chart for the journey from Hyderabad to Delhi on 12.09.2008. As noticed earlier, A8 and A9 travelled in the fake ID's of *Rebi and Shakeer*, A10 in his name before conversion and A15, in his own name.

40. PW35 also categorically stated that all the said persons from Kerala were given training in 'AK47' and their intention was to go to Pakistan and come back to Kerala to spread terror in the State. In cross examination, PW35, when confronted; with his prior statement, that '*... being fed up he ran away, after which the encounter killing of two boys occurred*

and then later three boys were killed ...', responded that he did not remember. A further statement in his prior statement that he surrendered before Lalpura Police Station on 24.10.2008 was also not confirmed. PW36 also had an identical version to recite regarding the terror camp, the arrival of five persons from Kerala, brought by Parveen, to the terror camp under Abdulla. PW36 specifically spoke of picking a fight with Abdulla since Kashmiris were always used for frontal attacks, with Pakistanis taking up the rear. He too surrendered at Lalpura Police Station on 04.10.2008 and as per the directions of the police, he led them to Devar Margi where there was an encounter in which A10 and A7 were killed. Again, an encounter took place after three days when A9 and A8 were killed, along with a Pakistani militant. PW36 identified four persons, except Fayaz (A7), from the documents, as were earlier identified by PW35. In cross examination, Ext.D6 contradiction was marked from his prior statement, which read as, himself coming to know of the encounters on 4th, 6th, 10th and 11th of October after he escaped from the terror camp.

More significantly, A9 speaking about a Commander by name *Ummar Haji @ Nazeer* in Kerala, was marked as an omission from his S.164 statement to the Magistrate. Obviously, no such omission was marked from the prior statement to the police. In cross examination, he also said that he was taken to Badibera after three days of escaping from the terror camp, when he identified the bodies of two Malayalees and one Pakistani; killed in the third encounter. PW39 identified A15, from the dock and A9 from Ext.P4 ID Card in the name of Shakeer (A9). He spoke of five Keralites who joined the terror camp under the command of Abdulla. He too spoke of A9 having spoken of an *Usthad* in Kerala by name *Ummar* who had kept ready 180 boys to become militants. He did not speak of being in the encounter in which the four Keralites were killed.

41. There is some confusion from the testimony of PW35 & PW36 as to whether they witnessed the killing of Keralites and were in the terror camp when the encounters occurred. However, it is clearly established that all three of them saw the five persons being brought to the camp by Parveen and being

entrusted with Abdulla; the *Lashkar* Commander. Their intention, as spoken of, by A9, who is now dead, also comes out clearly in the identical testimony of the three witnesses. PW35 and PW36 identified A8 to A10 from photographs and A15 from the dock; the latter of whom along with A9 was identified by PW39 also. The statement made by A9, of a Commander in Kerala was spoken by all the three and an omission was marked from the prior statement to the Magistrate by PW36. But the S.164 statement of PW35 & 36 taken by PW129, CJM, Shopian, Kashmir corroborated the arrival of five Malayalees in the terror camp, the 180 boys kept ready by Omar and the training imparted to them. Ext.P71, S.164 statement of one of the said witnesses, PW35, spoke of *Ummar*, as a representative of *Lashkar* in Kerala and not as a Commander. PW36, in his S.164 statement, from whom the omission was marked, spoke of the Commanader in Kerala, *Ummar*, and the two at Dubai, Walli and Sarfuraz. That five Keralites joined the terror camp, were given training in 'AK47', their association with the terrorists, their death in three separate encounters with the security forces stand

established. Their narration of the activities carried on by A3 & A23, from inside Kerala and outside the Country were consistently stated by the witnesses. Worthy corroboration is available from the identification by the near relatives of the killed militants and from the records maintained by the police in their native State, which are discussed below.

42. The evidence of the witnesses from the Army and the Police in Kashmir offers further proof of the death of A7 to A10 in encounters. PW38 was working as DSP Head Quarters, Kupwara, on 07.10.2010 when he handed over three sets of documents to NIA. The memos were marked as Ext.P73, P83 and P93 relating to three FIRs; two registered at Lalpura Police Station and one at Sogam P.S. The documents were true copies of the original as verified and certified by the witness. By Ext.P73, Ext.P74 to Ext.P82 were handed over. Ext.P74 is FIR No.34 of 2008 of Lalpura P.S, Kupwara registered on 07.10.2008 and Ext. P75, the FIS. Ext.P76 is the Report of the Unit of 28 Rashtriya Rifles(JAK RIF) intimating the joint operation carried

out by themselves and J&K Police in Demnari Area, on input received of presence of terrorists and an encounter in which one terrorist was killed on 06.10.2008 at 13.55 hours. The AK47 Rifle and ammunitions seized from the body of the killed terrorist were also noticed in Ext.P76. Ext.P77 is the handing over of cadaver, Ext.P78 seizure memo of weapon and ammunition and other personal effects, Ext.P79 a re-seizure memo, Ext.P80 post mortem report, Ext.P81 photograph of the killed militant (who was later identified as Fayaz [A7]), Ext.P82 is the letter of the father of the killed militant (A7) requesting burial in some mosque at J&K. Ext.P10 is the original photograph of a shot militant marked also as Ext.P81 which was categorically identified to be that of A7, by his mother and sister, PWs.2&3.

43. Ext.P83, is the memo by which Ext.P84 to Ext.P92 documents were handed over to NIA relating to FIR 33 of 2008. Ext. P84 to Ext. P91 are respectively the FIR dated 4/5.10.2008, the FIS, the application for lodging FIR with respect to the encounter on 05.10.2008 in Bodnar area carried out jointly by Unit

of 9 Para (SF) and J&K Police, handing over of the body, seizure memo of one Rifle AK(MS) and ammunition, re-seizure memo, photograph of the killed militant and the post mortem report. Ext.P92 is the letter of the father of A10 informing the SP, Kupwara that he had identified the photograph of his second son K.J.Varghese @ Ringmon who converted to Islam three months back and left his home with the name of '*Muhammed Yassin*'. Ext.P92 also requested burial of the body at J&K. The encounter occurred on the morning of 05.10.2008. Ext.P12 is the original photograph of a shot militant marked also as Ext.P90 which was categorically identified to be that of A10, by his father and brother, PWs.5&6.

44. Ext.P93 is the memo, handing over documents relating to FIR No.46 of 2008 dated 11.10.2008 of Sogam P.S. Ext.P94 to Ext.P99 are the FIR dated 11.10.2008, three post mortem reports, request for lodging FIR regarding encounter on 11.10.2008 at 00.15 hrs when three unidentified terrorists were eliminated in general area Badibari jointly by Unit of 9 Para (SF) and J&K Police and the handing over of three

bodies. Ext.P100 is the seizure memo indicating the name of *Rebi, S/o.Kurian & Abu Saquib*, both from Kerala and *Abu Hafiz* from Pakistan, all belonging to *LeT*. It also indicates seizure of three rifles and ammunition. PW38 also marked Ext P4 Electoral ID Card of *Shakeer S/o Muhammed (A9)* and Ext. P15 photocopy of Electoral ID Card in the name of *Rebi S/o Kurien (A8)*. This clearly indicated the ID cards having been recovered from the dead bodies of the militants, shot dead, clearly enabling identification from the photographs. It has been clearly established by the identification from the photographs in the ID Cards that A9 was impersonating *Shakeer S/o Muhammed*; the real Shakeer being PW74. So was A8 impersonating *Rebi S/o Kurien*; the real Rebi being PW82. The translation of the FIS by PW117 are produced as Ext.P238, Ext.P234A and Ext.P233A.

45. Ext.P233A is the translated FIS of FIR 33 of 2008, which indicates that on 05.10.2008, when operation was conducted in the Bodnar general area, movement of terrorists were detected, and on challenge they opened fire, which was retaliated by the security

forces killing one terrorist and recovering a rifle and ammunition. Ext.P234A is the FIS of FIR 34 of 2008, when a similar encounter occurred at 13.55 on 06.10.2008 killing one terrorist and recovering a rifle and ammunition from the shot militant. FIS of FIR 46 of 2008, P234A, is yet another encounter that occurred on 11.10.2008 killing three *LeT* militants in the retaliatory fire leading to recovery of three numbers of rifles and ammunition from those shot dead. The FIRs and the seizure mahazar establish the death of A7 to A10 and another Pakistani militant in the three encounters and also the recovery of arms and ammunition from each of them, which obviously were used to fire at the security forces, to counter which, retaliatory fire was unleashed by the security forces. PW68, PW69 & PW70 spoke of the post mortem conducted on the unknown dead bodies, the first two having conducted post mortem of one each and PW70 of two bodies.

46. PW104 was working as 'Selection Grade Constable and Munshi' in Lalpura Police Station, where FIR 33 of 2008 was registered based on an application,

the certified copy of which is marked as Ext.P185. On 04.10.2008 on being informed of the presence of militants, the same was intimated to the Army and PW104 was a member of the joint operation carried out. He spoke of detection of terrorists, the demand raised for surrender, opening of fire and retaliatory action taken by the security forces in which one militant was killed. Again on 06.10.2008 the security forces in a similar encounter killed another militant. He also spoke of another incident at 2 a.m on the 11th where three militants were killed. According to him the killed militant in the first encounter was A10, the second, A7 and the third to fifth, A9, A8 and a Pakistani. He identified three of the deceased from the photographs of the dead bodies; Ext.P12 of A10, Ext.P174 of A9 and Ext.P10 of A7. Ext.P12, P174, P10 and Ext.P16 photographs are of the shot militants; the last of A8. These photographs were send on requisition by Superintendent of Police, Kupwara to PW180 Asst. Commissioner Special Bureau, Mumbai, as deposed by him.

47. PW83 is a Major from the '9 Para (Special

Forces), who carried out the operation on 11.10.2008. According to him, at around 2 O'Clock in the morning the security forces detected three militants; who, when challenged, opened fire. In self defence and retaliation, the security forces fired back killing three unidentified militants. Three AK47 weapons, ammunition and magazines were seized from the dead bodies of the militants. The operation was led by PW84 and the witness identified MO9, MO10 & MO11; AK47 rifles with registration numbers as seen from the weapons. The six magazines and the ammunition were also identified as MO12 & MO13 series. MO14 'under barrel grenade launcher' was identified as recovered from the body of one militant. He confirmed that on information received from the J&K Police, earlier operation was lodged in Bodnar area in Dewar Margi, J&K, on the midnight of 04.10.2008 (FIR 33 of 2008 Ext. P84) when an encounter occurred, in which a militant was killed. The rifle seized was identified as MO15, which is a variant of 'AK47' called the 'AKMS', proved by Ext. P86 application for lodging FIR and Ext. P88 Seizure Memo both relating to FIR 33/08.

The magazines and ammunitions were marked as MO16 & MO17. PW84 is a Lieutenant Colonel, who confirmed the two encounters, which took place on 05.10.2008 & 06.10.2008 under his command with PW83, his junior officer leading the contingent. PW84 was an Officer, who had 18½ years of commissioned service; of which except three years, the entire period was spent at Kashmir.

48. PW2 is the mother of A7 and PW3, his sister. They testified that on the 10th day of Ramzan while they were sleeping after having their morning food, they woke up to the sound of somebody shaking the grill. It was A2, who woke them up and A7 went along with him. Later, on further enquiry with A2, he told them that A7 had gone to Hyderabad and that he would return a reformed man. It was also admitted by the mother and sister that A7 was involved in some petty crimes. PW2 identified her son from the photographs in Exts. P7, Electoral ID Card & P8 photograph, both seized from her house by Ext.P6 search list. She spoke of having seen the photograph of her son shot dead in Kashmir; shown to her by the

Police and identified the photograph at Ext.P10, of a shot militant. Despite searching cross-examination, she stuck to her version and a mere reading of the deposition brings out the grief of a lamenting mother, who lost her son to a hollow cause. There were suggestions made as to no complaints having been given to the Police about the missing of PW2's son, which we find irrelevant. As far as the family of A7 was concerned, he had gone to reform himself, though they had certain doubts. There is no question of a missing man complaint being raised, because A2 who took him from the house, knew about his whereabouts and assured the family that A7 would comeback. PW3, sister of Fayas made a categoric identification of her brother from Ext.P10 and despite needling in cross-examination, kept her cool and affirmed the identity of her brother, who, she said she had been seeing from his birth. Ext.P10 is the photograph of the shot militant.

49. PW8 & PW9 are respectively A8's father and sister. Both the witnesses identified A8 from the photograph in Ext. P15 (Ext.P102) copy of Electoral ID

Card of *Rebi S/o Kurian*, which was recovered from Kashmir. A8 was also identified from Ext P16, the photo of the shot militant, which PW8 selected out of a group of photos. It was the deposition of the witnesses that A8 had left his house on the 10th day of Ramzan to Bangalore allegedly to join an employment offered through A5, Shafaz, who was his close friend. Both of them confirmed the death of A8, having been informed to them by the police and PW8 stated that he did not want the dead body to be brought back. A8 was inclined to follow religious practices and classes and was said to be a close follower of one Abdul Bari Usthad. PW9 identified A8 from his photograph in the passport marked as Ext.P18. She spoke of having discontinued her studies after the death of Fayiz, due to the circumstances of her family surrounding the death of her brother. PW9 was again summoned and she identified her brother from Ext.P326, Customer Application Form of Airtel connection and P327, Electoral ID Card, as also from the footage displayed in Court from Ext.P66 DVD.

50. *Rebi S/o Kurian*, as we saw, was the

assumed name of A8, in which he travelled from Hyderabad to Nizamuddin. PW79, Tahasildar explained the process of entering the name of fresh voters in the voters list on their attaining majority and the procedure for issuing ID Cards. He marked Ext.P178 Electoral ID Card and the photocopy of the relevant page of the Voters List containing the details of Rebi. This was verified with the fake ID card, Ext.P15, which contained the identical number ('KL/10/077/474298') of the original ID card of Rebi, Ext. P178; but with a different photograph, identified to be of A8. PW82, Rebi Kurian deposed that he had given a copy of his Electoral ID Card for the purpose of subscribing a mobile connection. However, on the next day the shopkeeper told him that the ID proof was not clear and hence he gave a copy of his driving license. He did not receive back the earlier copy, of the electoral ID card, given at the shop; presumably used to create the fake one. He identified Ext. P178 ID card as his original one and disputed the photo in Ext. P15; which however had his name and details similar to that in the original.

51. PW4 is the mother of A9, who turned hostile. She even went to the extent of saying that she does not know the father-in-law of her son, who was none other than A21. Despite PW4 admitting to have made enquiries about A9, along with his mother-in-law, she refused to identify A21. PW7 is the wife of A9, who also turned hostile. She definitely identified A21, her father who was in the dock. PW4 and PW7 nurtured and expressed the hope that A9 is still alive. PW85, father of A9 identified his son from Ext. P32, the copy of the Electoral ID Card of one *Shakeer S/o Muhammed*. Ext.P32 was marked through PW18, witness to the seizure as per Ext.P31 Mahazar, carried out by PW172, a member of the JIT. The said copy of the Electoral card was received by e-mail from J&K, at the Office of the Superintendent of Police, Malappuram District, which was handed over by PW18, the Confidential Assistant of the DSP, to PW172. PW23 took on rent a room of one Yousuff, whose caretaker is PW17. Ext.P28 agreement of renting out to PW23, is executed by the caretaker PW17. PW23 admitted Ext. P28 agreement and was a frequenter in *Thareeqath* classes

conducted once a week. He spoke of Sharafudeen, Ummar Farooq, Rahim, Yoosuf and Naushad being regulars in the class. A22 was identified and he admitted that A9 was no more. He was a regular visitor to '*Chilla*' at '*Nooriya Maskan*' in Hyderabad and identified A3, whom he knew as Ummar Haji . He knew A9 from childhood and identified his photo from Ext.P32. In addition A9 was identified by PW75, a former business associate of A21, who is the father-in-law of A9. PW75 identified A9 from the photograph at Ext.P4. He also picked out the photograph of A9 from the four photographs of the shot militants and marked A9's as Ext.P174. The other photographs of the shot militants were already identified and marked as Exts. P10, P12 & P16. PW75 also identified A3 & A15 and also affirmed the alias of A3, *Ummar Haji*. PW138, the first cousin of A9, was a follower of *Thareeqath* and a regular in the classes at Kerala and Hyderabad. He identified A9 from Ext.P66 DVD and also from Ext.P143(a). PW138 identified and spoke of A3, A5, A22 and A10 as having been present at Hyderabad along with A9.

52. PW5 is A10's father, who identified him

from Ext.P1 photograph. Though he spoke of Firoz and Badaruddin (A12 & A13) being close friends of A10, he did not identify them. He spoke of his son having converted to Islam, upon which PW5 sent him out of his house after which A10 was living separate. PW5 came to know of his son's death in Kashmir through the Police and he conveyed his desire not to see the body, especially since the son was involved in anti-national activities. PW6 is A10's brother who corroborated PW5's testimony and identified A12 and A13 as his brother's friends. According to PW6, his brother A10 converted to Islam, two to three months before his death. He identified his brother from Ext.P1 and also Ext.P12, the photo of one of the slain militants, which he selected from a group of four photographs handed over to him. An omission was marked in his cross examination that he did not mention about A12 and A13 having frequently come to their house in search of his brother, in his prior statement. The witness was again summoned to identify his brother from Ext.P140, P143(a) P304, and P305.

53. A10 was converted at one *Therbiyath Islam*

Sabha at Kozhikkode, the Manager of which was PW56. PW56 claimed the Sabha was entitled to give certificate of conversion to Islam. Ext.P140 is the application given by A10, which also contains his photo. The details of the person who seeks conversion and the by-stander accompanying him are written in a Book, Ext. P141; where the relevant entries regarding A10 is at serial no. 327 marked as Ext. P141(a). The bystander of A10 was A3 and the telephone numbers shown are 99953 25748 and 97450 02528 (Firoz) (A12). Ext P142 is the register maintained at the gate wherein the entry separately marked as Ext.P142(a) is the name of A3. Ext.P143 is the Discharge certificate issued to A10, which also contains his photo [Ext.P143(a)] and the new name on conversion. While A3 was identified by PW56, A12 could not be identified. PW56 deposed that the phone number of Firoz also was spoken to by *Ummar*, A3.

54. PW34 is the Assistant Scientific Officer, FSL Srinagar who took the finger prints of the four, who died at different encounters at Kashmir. The computer print outs of the finger prints so taken of

A8, Robin (sic), involved in FIR No.46 of 2008 was marked as Ext.P67, that of A10, Yassin involved in FIR No.33 of 2008 was marked as Ext.P68, that of A7, Fayaz involved in FIR No.34 of 2008 was marked as Ext.P69 and of Abu Saquib (@Shakeer-A9) in FIR No.46 of 2008 was marked as Ext.P70. PW153, the police man who took the finger prints from Abdul Rahim (A9) in Crime No.469 of 2005 of Ernakulam Town Police Station, being the crime registered on the 'Kalamassery Bus Burning' produced Ext. P357, fingerprint impressions. He identified Abdul Rahim from the video footage played from Ext.P66 in Court. PW154, a Senior C.P.O identified Ext.P354 as the finger prints of A7 taken by him in connection with Crime No.11 of 2008 of Chakkarakkal Police Station. A7 was A1 in that crime and the witness identified A7 from Exts. P7 & P8 photographs. PW155, Inspector of Police affirmed that PW154 took the finger print of A7 on his instructions. He also identified Fayaz (A7) from Exts.P7 & P8.

55. PW121 was the Director of the Finger Prints Bureau under the Kerala Police who produced Ext.P281 report. He had compared the finger prints, of the

four dead bodies, handed over to him by the ADGP, Intelligence. The finger print in FIR No.34 of 2008 relating to Fayaz, was identical to that taken in Crime no.111 of 2008 of Chakkarakkal Police Station. Likewise, the finger print from the dead body under the name Abu Saquib was identified to be that of Abdul Rahim involved in Crime No.469 of 2005 of Kalamassery Police Station. The other two finger prints from the dead bodies could not be traced. As we noticed, the finger prints produced were computer print outs and the learned Public Prosecutor after examining PW121, submitted before Court that the original finger prints are being produced along with an application to send it to the Finger Print Bureau, Thiruvananthapuram for comparison and opinion, which was recorded by the learned trial Judge in the deposition of PW121.

56. PW145 made the further comparison of the originals as evident from his deposition. The original finger print of Yassin (A10) was marked as Ext.P68(A), of Fayaz (A7) as Ext.P69(A), of Abu Saquib (A9) as Ext.P70(A) and of Robin (sic) (Rebi-A8) as Ext.P67(A). The expert opinion was produced and marked

as Ext.P350. The opinion in paragraph A of the report was regarding the comparison of the photographic enlargement of the finger print made on 19.04.2008 at *Tharbiathul Islam Sabha*, Kozhikode produced as Ext.P114 which is the admission form No.209 of 2008 in the name of Rin K.J, the original name of Yassin. This is the document produced through PW56; the application of A10, when he was admitted to the said institution for conversion to Islam. The comparison made of the above finger print with that received under code name Yassin in FIR No.33 of 2008 of Lalpura Police Station revealed it to be identical. The photographs of the finger prints were marked as Ext.P352 and Ext.P353. Similarly, the finger print under code name Fayaz in FIR No.34 of 2008 of Lalpura Police Station was identical to that taken in Crime No.111 of 2008, from A7 at Chakkarakkal Police Station. Ext.P354 original document and Ext.P355 and Ext.P356 finger print impressions were also marked. The finger print under code name Abu Saquib in FIR No.46 of 2008 of Sogam Police Station was identical to that of Abdul Rahim arrested in Crime No.469 of 2005 of Kalamassery Police

Station. The relevant documents having fingerprint impressions were marked as Ext.P357 to Ext.P359.

57. The finger print evidence regarding the three accused A7, A9 and A10, corroborate the testimonies of the various witnesses discussed above. The identification made by PW8 and PW9 of A8 from the photographs also establish the fourth person who died in Kashmir to be A8. That A7 to A10, along with A15 and another travelled to Delhi from Hyderabad, has been fairly established by the evidence of PW29 and PW62 who produced Ext.P48 reservation application and Ext.P51 reservation chart of the train. A7, who had also booked along with the others, cancelled his ticket, but obviously made the journey. The telephone number in Ext.P48 reservation application form, we already found, was identical to that noted in Ext.P60 register seized from Salim Manzil, the entries indicating the fake ID assumed by A9. The presence of A7 to A10 in Hyderabad is established from the testimonies of the various witnesses, especially that of PW1, PW13, PW14, PW19 and PW23. A7 and A8 had also travelled from Kannur to Hyderabad as revealed from

Ext.P34 reservation application form and Ext.P35 ticket dated 10.09.2008 recovered from A12.

58. From the above evidence, coupled with the fact that A7 to A10 met with their death in Kashmir, it is established beyond doubt that they were killed in three separate encounters, that they were in a terrorist camp and were carrying weapons which were recovered from their bodies along with ammunition. A7 to A10 waged war with India and lost their lives in the encounters, thus escaping from the long arm of law. That the five young men from Kerala travelled to Hyderabad, associated in a spiritual congregation and then went all the way to Kashmir, where they met their end is established and what remains is the conspiracy alleged to have been hatched which resulted in their journey, with the intention of waging war against India, ultimately culminating in their death. That they were misled by indoctrination, under the guise of *Thareeqath* classes, is fairly established and what remains is the evidence led against the other accused. If the role of the conspirators are established; then the several acts of inciting, instigating and

recruiting the five to obtain training in arms in terror camps at Kashmir or Pakistan for unleashing terror in their native State, ropes the other accused also under the offence of waging war against India; their own Country.

VII. CALL DATA RECORDS of A7, A8 & A10:-

59. A7 was using the mobile number 98950 94609. PW133 Nodal Officer of AIRTEL proved Ext.P324 Customer Application Form (CAF) and Ext.P325 ID proof with the photograph of A7, from which photo A7 was identified by PW3, the sister of A7. Ext.P320 CDR of the said number shows three calls to A4 on 06.09.2008 and 08.09.2008 as per Ext.P320(a) to (c). A4 is the person who booked the tickets of A7 & A8 to Hyderabad from Kannur. A8 used 97466 91814, the CAF and ID proof of which number was produced as Ext.P326 and Ext.P327 by PW133. The photograph in the said documents were proved by PW9, sister of A8 who also confirmed the last digits of the mobile number of her brother as '814'. Ext.P310 is the CDR of the said phone which shows nine calls with A1, Ext.P310(a) to (i), 65 calls to A3, Ext.P310(j) to (bv), 43 calls to A4,

Ext.P310 (bw) to (dm), 18 calls to A15 Ext.P310 (fe) to (fv), two calls to A11 Ext.P310 (ep) and (eq), 3 calls to A16 Ext.P310 (fw) to (fy), 9 calls to A21 Ext.P310 (gy) to (hg) and 22 calls to 99126 61040, the phone number given by A9 at Salim Manzil; Ext. P310 (hh) to (ic). The SIM card of A8 was also used in 6 instruments, the IMEI numbers of which are evidenced from Ext.P310. IMEI number 35088 81092 29770 in which was used A8's number on 13.08.2008 is found to have been used for operating 97461 86452 (A3) as evidenced from Ext.P338, to receive two SMS but the calls of the same day were made from another instrument. The handset with the above noted IMEI number was also recovered from the residence of A15 at Hyderabad evidenced by search list, Ext.P151. The second IMEI number used by A8 is that of MO3 mobile which was used by A1 and A3. The third IMEI number 35293 50241 36670 is reflected in Ext.P309 and Ext.P338 the CDR of 97461 86452 (A3) and 97471 83033 (A4). In addition to the above, PW164 one of the I.Os of JIT had recovered Ext.P137 hard disc from the house of A8, as per Ext.P19 search list witnessed by PW53. PW150 from the C-DAC, retrieved the

contents from the hard disc and the DVD, Ext.P387 was played in Court. The trial court had noticed that the contents were highly fanatic and anti-national, exhorting Muslim youth to join 'LeT' and to wage war against India for the cessation of Kashmir from India. The CDRs have to be looked at, also in the context of PW14's evidence that A3, A4, A7 and A8 had very close association and they were persons who wanted to meet 'evil with evil' as also harboured violent tendencies. It is also very pertinent that Ext. P320 CDR of A7 shows the operation having ceased on 07.09.2008 and then resumed on 27.09.2008 and again switched off. Ext.P310 of A8 shows the operation having ceased on 10.09.2008; both A7 & A8 having left for Delhi immediately after that.

60. Mohammed Yasin @ Rinmon (A10) used the number 93880 32889, the CAF and ID proof of which were produced as Ext.P304 and Ext.P305, by PW122 Nodal Officer of RELIANCE. Ext.P284 is the CDR which shows respectively 18 and 11 calls to A12 and A13 in their numbers 97450 02528[A12]-Ext.P284(a) to (r) and 97446 85556 [A13] - Ext.P284(s) to (ac). It also showed one

call to A3 at Ext.P284(ad) and 3 calls to A21 at Ext.P284(ah) to (aj). The CDR also shows that on 07.08.2008, Ext.P284(ah) to (aj) are calls to A21, made between 2 & 4 in the after noon, after A10 reached Hyderabad. It also indicates A10 having contacted A12, Ext.P284(o) to (p) (24.08.2008) at the time when he was in Hyderabad earlier. The connection of the dead militants with other accused, is further established and the exchange of handsets makes it incriminating to those accused in connection with these four.

IX. THE COMMANDER-A3:-

61. *Nazir* (A3), who went by the alias of *Ummer Haji* and *Haji Usthad* was the '*Usthad*', the Commander in Kerala who played the pivotal role, according to the prosecution, in the conspiracy to wage war with India, which conspiracy attracts the provisions of the UA(P)A and the IPC. As we found, A8 to A10 & A15 travelled from Hyderabad to Delhi on 12.09.2008. At Hyderabad they were attending '*Chilla*'; along with many of the other accused as has been proved from the testimony of the witnesses, of which

the presence of A3 is undisputed. A3 has travelled to Hyderabad from Kannur through Shornur as per Ext.P37 railway ticket proved through PW22. A3 having travelled on 31.08.2008 from Kannur to Hyderabad, was at Hyderabad when the five desperadoes proceeded to Kashmir. The defence argued that there is nothing to show the recruitment by A3 or the role played by him, in recruiting the five persons or their journey to Kashmir, or the association with the terrorist group. It was also urged that the non examination of CW39, 99 and 100, who were to speak on recruitment, as seen from the final report warrants an adverse inference against the prosecution.

62. As has been found in Saju (supra), direct evidence would be rarely available when a conspiracy is hatched in private and in secrecy. More so, when the conspiracy is with respect to a terrorist act, the very execution of which depends upon the stealth with which it is carried out. As for drawing an adverse inference, for not examining certain charge witnesses, there is no rule that the prosecution should examine all the witnesses cited before Court. The prerogative

of the prosecution to examine those witnesses in favour of the prosecution and to give up those, whose testimony would only be repetitive or even in derogation of the prosecution case is declared in Hukam Singh v. State of Rajasthan (2000) 7 SCC 490; noticed by the trial Court. The above proposition is held to be flowing from the words employed in Section 231 Cr.P.C, even in cases where the prosecution has to choose between independent and related witnesses; which discretion could be exercised when the former are sure to turn hostile. It is in this context that we have looked at the evidence against A3. The testimony as to the general outlook of A3, his manner of speech, especially in the spiritual classes and the attendant circumstances could definitely lead us to a reasonable inference of conspiracy.

63. PW1's testimony speaks volumes on the conduct, outlook and attitudes of A3. We have already discussed the identification made of the many accused by PW1, who have been regularly attending his *Thareeqath* classes; which though not constituting any offence; the prosecution accuses it to be a cover to

push the '*Jihadi*' concept and incite the youth to take up arms against their own nation. The defence argued that what is spoken of by PW1 is just an opinion, certainly not possible of being ascribed to A3. On a reading of the testimony of PW1 we find the said contention to be feeble, frivolous and totally unacceptable. PW1 after explaining the mode of taking classes, spoke of the main sermon being followed with interactions; where those active disciples themselves deliver talks to others. A3 was one of such persons, who used to elaborate on the main sermon; interspersed with his own emotions. A3 used to emotionally speak of the sufferings of Muslims and atrocities committed on them, all over the country, for which, according to him sufficient legal remedies were absent. He spoke of the need to make the Muslims conscious about such atrocities, which included those perpetrated in Gujarat and other parts of India. He exhorted the Muslim brethren to retort; which retort he termed as '*jihad*'. PW1 specifically spoke of '*jihad*' not being that propounded by A3; which we discussed earlier. What A3 intended was a retaliation by enrolling young

men, to strike back and kill, those who raised their hands against Muslims and killed them. The above testimony of PW1 regarding the radical views of A3 is sufficiently corroborated by PW14, who spoke of A3 having the outlook to meet evil with evil, and of PW19, according to whom the sermons of A3 proceeded on terrorist lines. PW19 also spoke of an instance when A3 took classes in a house at Hyderabad where A3 was staying with the other accused. A3 is said to have exhorted the audience to join the people with black turbans and later started weeping. PW19 being unhappy with the manner in which the class was proceeded with went back to 'Khan Gavvu' where the others who congregated for 'Chilla' were residing. Pertinently A3 along with some of the other accused, were staying outside the 'Khan Gavvu'.

64. PW1 specifically spoke of A3 having been restrained from speaking in those terms and having reminded A3, that India, home to crores of Muslims, ensured freedom for religious gatherings and educational institutions, far more than even Muslim countries. PW1 deposed that he had warned A3 against

speaking or acting in such terms within the country, which clearly indicates A3 having incited the community to take up arms and retaliate against the motherland. A7 to A10 were regulars in the *Thareeqath* classes, where A3 also spoke and they were together at Hyderabad, just before their journey to embrace death. In addition to this, A10, who was a recent convert to Islam, travelled along with close associates of A3; A8, A9 & A15 to Kashmir from Hyderabad, where he too was attending '*Chilla*'. PW1 testified that he saw A10 last on September 10th, when he was brought to '*Chilla*' by A15, where the Ramzan month was spent in fasting and learning. A10 approached PW1 and told him that he is proceeding on a journey, contrary to his earlier resolve expressed, to learn; presumably the religion, as he was a new entrant. PW1 specifically asked him why he is leaving early, to which A10 replied that there is a reason and A3 is calling him. PW1 specifically reiterated that A10 told him that, for an emergency A3 is calling him. A10 confided the said fact to PW1, since PW1 was the hierarchical '*Usthad*' at '*Noori Maskan*', where '*Chilla*' is held and since A3

had a special relationship with PW1. A3 hence had an overbearing influence in A10 proceeding for the so called '*jihad*' and he acted as the prime motivator in the conversion of A10; which we discussed in the portions dedicated to A10. It was the call of A3 that motivated A10 to travel to Kashmir and enroll himself in terror camps where he was trained in arms and ammunition and met his death in an encounter. The proclaimed intention of the youth who went to Kashmir, as spoken to the witnesses (PWs.35,36 & 39) who were also available in the camp, was to infiltrate into Pakistan, obtain further training and then come back to Kerala to retaliate.

65. The conversation with A10, occurred on the evening of 10.09.2008 and on the same night A15 approached PW1 and informed him that he too was proceeding on a journey. A15 also informed PW1 that the loan of Rs.1,500/- taken from PW1 would be returned by A3; clearly indicative of A3's commanding role. A9, A10, A7 & A8 later came to PW1 and informed him of their journey and requested him to pray for them. When PW1 enquired about their destination, they

did not disclose and PW1 did not pray for them. On the next day morning, when prayers were held near the 'Jaram' of 'Noorisha Thangal', near the Mosque, all of these persons were present. Later, they left and were not seen thereafter, but A3 continued and along with A22 & A13 left on September, 13th, the day after the so called 'jihadis' departed; another link in the chain of circumstances against A3. PW1 subsequently saw A15 on the 10th of November. A15 came to PW1's residence when he was at the Mosque. His son informed him that A15 wanted an audience with him, which was declined by PW1. Again his son approached him and informed that A15 refused to leave his house; when PW1 asked A15 to come to the lake. The interactions between PW1 and A15 can be addressed in the portion dealing with A15. Suffice it to notice that the testimony of PW1 speaks specifically on the general conduct of A3, his divisive attitudes, which came out as emotional outbursts during the Thareeqath classes; definitely intended at inciting Muslim youth, his presence at Hyderabad where the so-called 'jihadis' convened before they went on their journey and his departure

immediately thereafter from Hyderabad, after which he also absconded. A10 & A15, in their conversation with PW1 had spoken of the pivotal role played by A3, on whose motivation they left for Kashmir; very reasonably presumable, on the totality of the circumstances proved.

66. PWs.35,36 & 39 are the persons who were in the terrorist camp, closely associated with A7 to A10 & A15, who joined their camp at Kashmir. Their testimony has been elaborately discussed by us in the preceding paragraphs. They spoke of A7 to A10 having spoken of a Commander in Kerala and two in Dubai; those in Dubai being the hub of finances. The Commander in Kerala referred to as '*Ummer Haji*' was responsible for recruitment. This is clearly discernible from the testimonies of the misguided youth from Kashmir, who were forced into terrorism, but later escaped. PWs.35,36 & 39 deposed that according to the five Keralite boys, about 180 youth were kept ready in Kerala, by A3, for being sent to Pakistan for training in arms and ammunition, with the specific intention of coming back to their home state,

Kerala, to carry out terrorist activities within the State. That A3 went by the alias of 'Ummer Haji' was spoken of by PW19, PW72 and PW13. PW13, the brother of PW1, deposed that A2, A3 & A4 were close confidants, who attended the *Thareeqath* classes together and A3 was known as 'Ummer Haji' and 'Haji Usthad'. According to PW19, who too identified A3 and spoke of his alias, A3 was staying outside the 'Nooriya Khan Gavu' along with A15, A5 & A22. Ten days before 'Chilla', there was a class in the house of Ummer Haji, when, after the Ustad, Ummer Haji took a class on *Thareeqath* and towards the end, spoke of the need to join people with the black turbans and then sat motionless for a long time, shedding tears. PW19 deposed that he was not happy with the style of speech and he had left from the house of A3 to go back to 'Nooriya Khan Gavu'. He also said that he had not heard of such speeches from either Areefuddhin Jilani, his spiritual Guru and the other Usthads, who were *Khalifas* of the *Thareeqath* movement. To a specific question as to what was the essence of the speech of A3, PW19 replied that he felt it was a terrorist measure that was propounded. The

defence marked an omission, of there being no reference to terrorist measures, in the prior statement of PW19 to the Police. We do not think that the statement made has to be treated as inadmissible, especially since PW19 had in the S.161 statement expressed his displeasure, of the manner in which A3 spoke at the *Thareeqath* classes, which also was not in tune with the vision of *Thareeqath*. It was to a specific question in chief-examination of what according to him the innuendo of the speech made by A3 was, that the said statement was made, which according to us is quite acceptable in evidence.

67. The next question raised by the defence is on the treatment of the statements made by A9 to PWs35,36 & 39, about the Commander in Kerala, as dying declaration under S.32 of the Evidence Act. PW35,36 & 39 spoke of "Shakeel'(A9) having told them about the Commander in Kerala who has kept 180 boys ready for training in Kashmir, who will come to Kashmir after them(the five). Obviously the five who joined the terror camp were the advance party. PW39 also said that he was talking only to A9. Here, we have to

notice that PW32, the Manager of Salim Manzil deposed that only A9 spoke to him in Hindi. Obviously A9 alone, among the five, was fluent in Hindi. Bhairon Singh [supra] arose from a conviction under S.498A IPC, where the death of the wife occurred accidentally after ten years of marriage. The only evidence against the accused was the testimony of two sisters of the deceased, to whom the deceased made complaints of torture and demands for dowry by the husband. The Hon'ble Supreme Court held that the statement of a dead person would be admissible in law, only if it is with reference to the cause of death or as to any circumstance which resulted in the death, that too in a case in which the cause of death comes into question. The death in that case was accidental and the circumstances did not relate to the death nor even was the death, a relevant issue under S.498A.

68. In this context we have looked at Patel Hiralal Joitaram (supra); paragraph 29 of which is extracted hereunder:

29. *The above provision relates to the statement made by a person before his death. Two categories of statements are made admissible in evidence and further made them as substantive*

evidence. They are: (1) his statement as to the cause of his death; (2) his statement as to any of the circumstances of the transaction which resulted in his death. The second category can envelop a far wider amplitude than the first category. The words "statement as to any of the circumstances" are by themselves capable of expanding the width and contours of the scope of admissibility. When the word "circumstances" is linked to "transaction which resulted in his death" the sub-section casts the net in a very wide dimension. Anything which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the purview of the sub-section. As the possibility of getting the maker of the statements in flesh and blood has been closed once and for all the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it therefrom. Admissibility is the first step and once it is admitted the court has to consider how far it is reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case.

[underlining by us for emphasis]

69. Obviously the death of A7 to A10 occurred in Kashmir in an encounter between the terrorists and the Security Forces and they were among the terrorists. A7 to A10 hailing from the southern most tip of the country travelled all the way to the northern most State, to infiltrate into Pakistan, which has a history of hostility with India, the main area of dispute being Kashmir. The deposition of PW84, a

Colonel, who has spent 18 ½ years out of his 21 years service, in Kashmir, explicitly describes the situation in Kashmir. PW84 has been part of many operations in Kashmir against the terrorists and says that the situation since 1998 to 2008, was very grim. The population was living in fear and normal day to day activities, even of livelihood were restricted. According to him the situation was fomented by Pakistan to destabilize the peace and tranquillity in J&K. The design was to divert the minds of innocent people with the aim of breaking away from India. The then existing conditions were life threatening for not only the soldiers, but the entire population. Frequent attacks of army camps, civil installations and local population were reported and many soldiers under his command had lost their lives in trying to protect the sovereignty of India. He also spoke of various terror organisations, including *Lashkar-e-Thoiba*; which are supported by Pakistan. The testimony of PWs.35,36 & 39 clearly show the five Keralites, A7 to A10 and A15 having joined the terror camp under the *Lashkar* Commander Abdulla; which was not at all coincidental

and was part of the larger conspiracy as we discern from the digital evidence recovered from A23, the financier.

70. The intention of A7 to A10 & A15, who were also members of the conspiracy, is very clear and it was in the process of carrying out such intention to infiltrate into Pakistan, be trained in arms and ammunition and then to travel back to India, to wage war against India, that their journey commenced from Kerala through Hyderabad. They joined a terrorist camp in Kashmir again in furtherance of the conspiracy, got trained in weapons and was killed in an encounter with Security Forces; when they were armed, as revealed from the seizure of weapons and ammunition, carried out from their dead bodies. The conspiracy alleged and the culmination in death are inextricably linked, though the plan to infiltrate into Pakistan and come back did not fructify. The cause of death as medically spoken of, with reference to the history, is by reason of the injuries sustained on being shot in an encounter as revealed from the post mortem reports, we referred to earlier. Every activity in furtherance of

the conspiracy to wage war with India has a nexus with the death of A7 to A10 and their death is a direct result of such measures taken in furtherance of the conspiracy. The death of A7 to A10 while waging war with the Security Forces of India is a relevant issue in the instant case and it is an important circumstance proved, in establishing the charges against the various accused. In fact, even in this judgment the first aspect we considered was that of the death of the four militants and their identification. The death of the four, is very much a relevant fact which comes into question in the trial of the present case, of whom one is A9 who spoke of the circumstances leading to the five joining the terror camp.

71. The deaths occurred in shoot-outs, in the course of three encounters, which is the direct cause. But, though distant in time, the conspiracy to join divisive forces to fight against India led to the death of the four persons. The reference to the Commander in Kerala who has kept ready 180 young enlists to terror, makes it clear that the five are

the advance party send for training in arms and ammunition for which they joined the terror camp; which resulted in their death, on being challenged by security forces. The conspiracy is a very important circumstance which led to the transaction which resulted in their death. A Division Bench of the Karnataka High Court in Ameer Jan vs. State of Karnataka MANU/KA/0684/2003 held: " For a statement to be attracted under Section 32(1) of Evidence Act it is neither necessary that the death should have nexus in terms of fixed time with the statement nor that the victim who made the statement should essentially be in apprehension of immediate death. On the other hand, such statement should relate to circumstances surrounding the event (assault) which ultimately led to death. There should be nexus between the circumstances stated by victim and his/her death"(sic). We are in respectful agreement with the above declaration of law. We are convinced that the reference to the Commander from Kerala, *Ummer Haji*, established to be an alias of A3, Nazeer, and the preparations made by him to keep ready 180 persons to

be sent for terrorist training after the five who already reached there, unequivocally establish the charges against A3. There can be a reasonable inference drawn that A7 to A10 & A15 were the persons sent by the said Commander and others were expected to be sent, as we will see when discussing the evidence of the other accused; specifically that against A23.

72. We cannot but notice here, the one fact from the CDR of the mobile phone numbers, proved to have been used by A3. They were used from different instruments, specifically from MO3, recovered from A1 and the other, MO26, recovered from A15's residence. Pertinent is also the fact that the said phone number 97461 86452 ceased operation immediately after the death of A7 to A10, as per Ext.P309 CDR of the said number. A3 absconded from the State and was later apprehended from the Indo-Bangladesh Border at Meghalaya on 02.12.2009, by PW93, Company Commander of the BSF and subsequently arrested by PW91, the Police Officer from Shillong. It was PW93's testimony that the two apprehended, A3 & A5 were thrown from the

Bangladesh side.

X. THE DESERTER-A15:-

73. According to the defence there is nothing to show that A15 at any time handled arms and ammunition or travelled to Kashmir along with A7 to A10 or came back from J&K. A15 was one of the five persons who travelled by a ticket taken as per Ext.P48, as evidenced from Ext.P51 reservation chart, proved respectively by PW29 and PW62. Ext.P48 shows the application having been made in the name of A15. PW1 identified A15 and spoke of having known him from 2003 and he was a regular person in the *Thareeqath* class. We have, while discussing the evidence against A3 referred to the testimony of PW1, wherein A15 informed PW1 about the journey he was to undertake and the promise of the loan taken by him, being repaid by A3, on 10th of September just prior to the departure to Delhi on 12.09.2008. We have also elaborately dealt with the evidence of PWs.35,36 & 39 in the earlier paragraphs. PWs.35,36 & 39 identified A15, from the dock, as one of the Keralites who came to the terror camp in Kashmir and who had been imparted training in

weapons from the *Lashkar* Commander Abdulla. As was noticed, all the four, shot dead in encounters, were carrying weapons and A15; who was also in the terror camp along with the others and who confessed to PW1 about the flight of the terrorists to a nearby mountain after the first encounter and also of the later encounters, definitely would have been carrying weapons. The direct testimony is further corroborated by the following evidence.

74. PW1 spoke of a confession made by A15 near the lake as to A7 to A10 having been killed in Kashmir in an encounter with the Military. When PW1 asked him about A7 to A10's death at Kashmir, A15 explained that all of them, who were in Hyderabad during *Chilla*, went to Kashmir through Delhi. A20 and one Hayas were also with them. A20 took them to a camp in Kashmir and returned. Some Kashmiris in the camp went out and were apprehended, who led the Police to the camp. When the Military came near the camp, they moved to the top of a mountain where there was an encounter in which first A9 and A10 were killed and later A7 and A8, but A15 escaped. There is some contradiction, in the

deposition, as to when the respective accused died. We have however found from the other evidence, especially documentary, that first A7 & A10 died in the two encounters on the 5th and 6th of October 2008 and then A8 & A9 in the encounter on the 11th of the same month. However that is not very relevant as this could be a mistake in the narration, either of A15, or occurred when PW1 recounted. This clearly indicates the actions of A15 which attracts the offences charged against him. The defence argued that the trial court erred in treating the statements alleged to have been made by A15 to PW1 as extra judicial confession especially since there is nothing to prove that PW1 was a close confidant of A15.

75. PW1 was the *Usthad* or the Spiritual Teacher, first in the hierarchy of such teachers, who was based at Hyderabad and who used to carry out classes in Kerala and Maharashtra also. PW15, 19 and 23 are persons who identified A15 having participated in *Chilla* at Hyderabad in the year 2008. PW23 in addition to that, spoke of A15 having arranged a room in Chettipadi for conducting *Thareeqath* classes. PW75

was a person who had a mosque in his property where A3 was the *Usthad*. A3 had conducted *Thareeqath* classes in which A15 had attended. According to PW75, A15 was very closely associated with A3 and A21. PW138 spoke of the *Thareeqath* classes, held in many places in Kerala and also the *Chilla* at Hyderabad wherein he identified A15's presence. A15 being closely associated with *Thareeqath* and PW1 being the first in the hierarchy of the living teachers, would definitely be a confidant of A1. All the accused who left for Kashmir, including A15, sought the blessings of PW1, by way of 'dua' ie: prayers to the almighty; presumably in the backdrop of the risk and seriousness involved in the mission for which they were deputed. It is only natural that having seen the death of his companions and having escaped by the skin of his teeth, from the terror camps and the jaws of death, he would have first approached his spiritual teacher to confide and repent. Whether A15 repented is not a question which we have to go into, which would be answered by a higher Court in the nether life, probably by denying him entry into the elusive

paradise. But what he confided to PW1 is admissible evidence as an extra judicial confession in the real world and its Courts of law.

76. CD Field's Commentary on Law of Evidence 13th Edition in Volume 2 at page 2058 has the heading 'Influence of a religious or moral nature'; which quotes Mr.Joy. The reference obviously is to the book; *'On the Admissibility of Confessions and Challenges of Jurors in Criminal Cases in England and Ireland'* by Henry Holmes Joy. The learned author opined that law admits a confession for the purpose of obtaining the truth and only when the circumstances under which it is obtained, have a tendency to falsehood, it is not relied on, since the object is likely to be frustrated. It was opined: *'It seems difficult to imagine that a man under spiritual convictions and the influence of religious impressions would therefore confess himself guilty of a crime of which he was not guilty; or that a man, under a strong sense of his spiritual relation with God, could hope to please God by a falsehood... Such spiritual conviction, or spiritual exhortation, seem, from the nature of*

religion, the most likely of all motives to produce truth. They are, therefore of a class entirely different from those that exclude confession' (sic) (reference- Kindle Locations 822-967. A.Milliken. Kindle). The learned author stated that only temporal hopes, lead to falsehood and spiritual hopes, can lead to nothing but the truth. In the case before us, PW1 is in the status of a spiritual teacher to A15, who was a regular in his classes and was also a follower of the *Thareeqath* movement. PW1 did not hold out any temporal inducement or even a spiritual one. PW1s testimony clearly indicates that when A15 asked for an audience, he refused to comply and only on further insistence he agreed to a meeting, but outside his own home and the '*Nuriya Muskan*'. It is in this context we have to approach, A15s revelation to PW1, about the failed mission of the five persons to spread terror in the country; abruptly culminating with the shooting down of four and himself escaping, both from the terrorist camp and the security forces. Even if it is not a confession made to a spiritual teacher it does qualify as a confession '*tanquam quilibet*', as made to

an ordinary acquaintance without the confidence or the seal of a religious duty; as would Mr. Joy proclaim. We find immense force in the propositions put forth by Mr. Joy. The confession we are dealing with is made without any inducement and can definitely be admitted in evidence. The extra judicial confession made by A15 to PW1 is further corroborated by the testimony of PW72. The credibility of PW1 is impeccable, and together with the circumstances in which and the time at which the confession was made and the manner in which the same was made, as testified by PW1, definitely commends us to accept the same. It has been held that the Courts cannot approach an extra judicial confession with a presumption that it is a weak type of evidence -State of Rajasthan v. Raja Ram (2003) 8 SCC 180 & Sivakumar v. State by Inspector of Police (2006) 1 SCC 714.

77. Ext.P48 and P52 are reservation application forms showing the name and address of the applicant, which is Jabbar and Abdul Jabbar (A15) but the handwriting on the mere perusal is different. PW137 examined the handwritings in Exts.P48 and P52

reservation application forms with that of the sample taken from A15; Ext.P318 taken by PW164. As per the opinion at Ext.P398 though the handwriting in Ext.P48 did not tally with that of A15, that in Ext.P52 tallied. We have also examined the same and found ourselves in agreement with the expert opinion. Ext.P52 is relevant insofar as on 07.09.2008 even before *Chilla* was over, the wife of A15, Naziya, along with two others were sent to Kerala; while she was a resident of Hyderabad. We accept the contention of the learned ASG that the journey to Kerala on 07.09.2008 just a few days before the onward journey of A9 to Kashmir, which commenced on 12.09.2008, is an important circumstance in the chain of circumstances. We have also seen the DVD at Ext.P66 which is the footage recovered from the hard disc at Salim Manzil, from which PW150, the uncle of A15, identified A15 clearly.

78. According to the prosecution, after A15 came back from Kashmir, he was in Perumbavoor under the assumed name of Anoop. PW27 is the Accountant of one Kanampuram Veneers, from whose possession, Ext.P46

diary was seized as per Ext.P45 on 01.12.2008. Ext.P46(a), entry marked from the diary is the name and address of Anoop, who was appointed as the Security Guard in the Company, on the direction of PW42, the owner of the factory. PW27 also said that the person who accompanied the Police at the time of seizure made, as per Ext.P45, was Anoop, who had worked as a Security Guard for 3 or 4 days; a month before the day on which the Police came. Anoop, according to the witness, was specifically asked to produce the ID proof, which he said he will bring on Sunday, when he returns from home. However, on Monday, Anoop did not turn up. PW27 could not identify A15 from the dock. PW41 is another Accountant of the very same factory, who wrote the name and address of Anoop in Ext.P46 diary. He also did not identify A15 from the dock and said that Anoop worked for only four days in the factory. PW42 is the owner of the factory, who deposed that it was PW71 who introduced Anoop, but he was not sure as to the number of days Anoop worked in his factory and he had not seen him, when he was working there.

79. PW71 identified A17, A16 & A15 from the dock. A17, acquitted by the trial Court, is his neighbour and A15 was introduced to him by A16. A16 requested an employment for A15; which he arranged at the unit of PW42. PW71 identified his signature on Ext.P107, which is the receipt for an amount of Rs.49,950/- sent by Sarfaras Navas; received on 29.10.2008. According to PW71, he received the money as instructed by A16. He went to the Post Office, showed his Election I.D Card and received the money which came from Oman. The secret code for identifying the recipient was given to him by A16. He deposited the money in the Perumbavoor Branch of S.B.T as per Ext.P167 in the name of Sabir along with some more money given by Sabir, who is A16. He confirmed his handwriting in Ext.P167.

80. PW71, admitted a dispute with A16 regarding a missing car. PW71 made a complaint regarding the missing car and A16 was one of the accused. However, PW71 did not remember whether the dispute arose before or after the money transaction. PW71 denied the suggestion that he was inimical

towards A16. The defence also did not attempt to prove the exact time when the other crime was registered. Here, it is relevant to recall that PW42, deposed that he employed Anoop on the request of PW71, providing sufficient corroboration. PW43 & PW44 are respectively the Postmaster and Postman of Perumbavoor Post Office. PW43 explained the manner in which money is transferred from abroad through Western Union Money Transfer. The sender deposits the money at the Western Union Office, abroad and sends a ten digit number, given by the Western Union, to the recipient. The recipient approaches the Post Office with I.D proof and the secret number, on the strength of which the Post Office pays the amount to the recipient. She identified the TRM form marked as Ext.P107 and also Ext.P108 Register, from which Ext.P108(a) marked, was the subject transaction. PW44 was the mahazar witness. The transaction is alleged to be the money paid by A23 to A15 through A16, which was received by PW71. There is nothing to disbelieve the testimony of PW71 and the presence of A15 in Perumbavoor stands established. The arguments addressed by the Senior Counsel appearing

for A16 against the veracity of the money transaction will be addressed at a later point; which, we assert, does not find favour with us.

81. PW80 is the Deputy Tahsildar, who marked and proved Ext.P118 voters' list and Ext.P181 seizure mahazar. From the above documents it is proved that Ext.P157 I.D Card of Anoop is forged and PW65, who is the brother of Anoop as seen from Ext.P180 voters' list specifically stated that the photograph in Ext.P167 is not that of his brother Anoop. PW125, the real Anoop, was also examined fully corroborating his brother's testimony. PW115 is the relative of A15; son of elder sister of PW115's wife. He pointed out the room in which A15 was residing and witnessed Ext.P268 mahazar by which were seized Ext.P126, Ext.P224, P225, Ext.P227 & Ext.P229; documents with photographs. He identified A15 from Ext.P66 video also. Ext.P224 was the driving licence and Ext.P225-the learner's licence, from which the photograph of A15 was identified, which is identical to that of Ext.P125, the fake I.D of Anoop.

82. PW45, PW46 & PW77 are respectively the Managing Director, the Doctor, and the nurse of one Vathiyat Hospital at Perumbavoor. As per Ext.P111 mahazar, Ext.P112 file from the hospital was seized; from which Anoop's name is seen in relation to 'O.P No.23708 and I.P No.3830', which portion was marked as Ext.P112(a). Anoop hence was first treated as an outpatient and then admitted to the hospital as an inpatient. He also identified the burned bills marked as Ext.P113 to Ext.P116, which were issued by the hospital, to the patient named Anoop. These burnt bills were seized by PW172, the I.O, as per search list Ext.P151 from the house in which A15 had resided at Hyderabad; which was witnessed by PW61. Ext.P42 seizure relied on by the prosecution as a recovery under S.27 of the Evidence Act, did not lead to the disclosure of any fact relevant to the crime and is not admissible under Section 27. But it is definitely relevant to establish the presence of A15 at Perumbavoor. PW46, the Doctor & PW77, the Nurse who attended to Anoop, did not identify him. PW77 however said that the patient named Anoop was admitted on

26.10.2008 and discharged on 28.10.2008. This date corresponds to the date seen from one of the burnt bills and also is just before the day on which the money transfer from A23 occurred; on 29.10.2008, after which A15 was not seen in Perumbavoor. Moreover the fake Electoral ID of Anoop, with A15's photograph was another seizure made through Ext. P151 search list, marked as Ext.P157. The recovery of the burnt bills, we reiterate along with the Electoral ID card used by A15 is yet another circumstance confirming A15's presence at Perumbavoor.

83. PW72 is the friend of A15 who identified A15, A3 & A13 from the dock. A15, according to PW72 was his neighbour in the year 2007 when A15 stayed, near the residence of the witness, under the assumed name of Sathar and was engaged in contract work. PW72 got acquainted with A3 from A15's house and they also attended Mosque and religious classes together. A3 took classes and often spoke of the harassment Muslims were subjected to, in India and exhorted the youth to protest against it. PW72's deposition is crucial in so far as the confession made to him by A15. A15 called

PW72 and expressed a desire to see him and in private showed him a paper cutting, carrying the news of the death of four Malayalees in Kashmir; Yassin, Faiz, Fayaz & Rahim. He also said that he was the Abdul Jabbar who escaped from Kashmir and said that the injury to his knee was caused when he fell while coming down a mountain. He also spoke of the arms training and plan to infiltrate to Pakistan. These statements made, qualify as another extra judicial confession of A15, corroborating the earlier one to PW1 and the other attendant circumstances as revealed from the evidence led in the trial.

XI. CALL DATA RECORDS of A1 & A3:-

84. The Call Data Records or the CDR is a literal labyrinth of facts relating to mobile numbers, the subscribers, the International Mobile Equipment Identity (IMEI) numbers of the instrument used, the location and the incoming and outgoing calls. We strove hard to go through the maze without losing our way and record here the facts ferreted out especially applicable to A1 and A3 and their links to the other accused. We discuss the individual incriminating

circumstances with respect to the other accused, available from their CDRs, in those portions dedicated to each of them. The defence for A1 is that merely on account of some calls sourced from J&K he is arraigned, without anything more.

85. On arrest of A1 by PW158, MO3 mobile phone, with IMEI No. 35197 01290 7931 and MO3A SIM card, having number 96057 49262 were seized from him as per Ext. P122 Mahazar. Likewise, on search of the house of the wife of A1 by PW158, SIM card (MO22) having number 97443 82047 was recovered by Ext P117, witnessed by PW47. PW128, Nodal Officer of Idea Cellular Ltd. proved Ext.P343(7) Customer Application Form (CAF) of MO3A and Ext.P343(9) CAF of MO22; both in the name of A1 along with Ext.P343(8)&(10) ID proof of A1, which is the Electoral ID Card. PW110 is the AGM, Vigilance of BSNL, Kerala who produced Ext.P264 CDR of mobile number-94694 02387, deposed to be a J&K number, between 01.10.08 and 07.12.08. The J&K number is said to be in the name of one Manzoor Ahmed Lone. On 01.10.2008 between 14:02:46 and 16:46:34 there were ten calls from the J&K number to MO22 number belonging

to A1, marked as Ext. P264 -(c) to (g) and (j) to (n). The tower location of the J&K number was identified to be in J&K at the time the calls were made within tower number 04F42606413FD5. The tower location is at Wawoorra (Sogam) Kupwara Sector 1 in J&K as per Ext.P486 certificate proved by the Divisional Engineer of BSNL at J&K, PW173. Ext P290, is the CDR of MO22 number, between 01.08.2008 and 31.10.2008, proved through PW128, which shows the above 10 calls from the J&K number at Ext. P290 (A) to (J). The ten calls were of different duration varying from 11 to 152 seconds, necessarily not a mistaken call to a wrong number; which when put to A1, in S.313, there was no explanation offered. He also denied using the number, the SIM card of which was seized from him and further proved by the CAF and ID produced by the service provider. The defence argument that Manzoor Ahmed Lone was not proved to be a terrorist, is not very relevant considering the fact that the period synchronizes with the period when A7 to A10 were proved to have been shot dead in Kashmir, while attached to a terrorist camp. There was no explanation coming forth from A1 as

to the source of the said calls, which has been proved to be from J&K. It is also very unlikely that a terrorist would take a SIM card in his own name and we have ample evidence in the case of the accused itself of SIM cards obtained on the strength of ID cards of others. Coupled with the total absence of an explanation, this becomes a very incriminating factor against A1.

86. The defence, stiffly opposed acceptance of Ext.P264, not supported by a S.65B certificate. Ext.P264 CDR was issued from J&K, BSNL and transmitted to BSNL, Kerala thorough e-mail, a print out of which is marked before Court. The learned ASG filed an application seeking permission to examine the officer who issued Ext.P264. We allowed the said application especially looking at Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (AIR 2020 SC 4908). While holding that the requirement of a certificate under S.65B is mandatory, it was also noticed that S.65B has created huge judicial turmoil, with the law swinging from one extreme to the other in the past 15 years. It is hence their Lordships laid down that the

certificate could be produced at any time and hence we allowed the application filed by the ASG relying on the cited decision. We are justified in this regard by virtue of the specific enabling provision under S.391, read with S.311, CrPC. The ends of justice certainly requires acceptance of that additional evidence in the form of S.65B certificate and we find no prejudice having been caused to the accused persons on account of the same. We issued summons and the witness appeared on 19.04.2020 before us. The witness was examined by the Prosecutor for NIA, Sri Arjun Ambalapatta and was cross-examined by two learned Counsel, appearing for the accused, on behalf of all.

87. PW187 produced Ext.P608 certificate under S.65B issued by him, which is dated 06.04.2022 in which context, the defence raised a contention that related CDR would not be retained in the system on the said date and the witness is also now retired. However the testimony of PW187 is categoric that he was in charge of the system of the BSNL, when Ext.P264 was issued. The certificate though anti-dated is related to the date on which the CDR was issued pertaining to

which the certification is made. It was PW187 who generated the certificate from the system, as deposed by him. The S.65B certificate, according to PW187, a retired official was issued after permission from the General Manager, BSNL, J&K and countersigned by the Nodal Officer, who is now in charge. PW187 has specifically spoken of the calls made from the J&K number to the mobile numbers of A1 and A12 as seen from the call records, which were earlier marked. In cross-examination PW187 has denied the suggestion made by the defence that he has tampered with the CDR. The suggestion was made since PW187 agreed with the defence lawyer that both the IMEI numbers of the SIM cards, in conversation, would be reflected in the CDR. Though PW187 answered in the affirmative, a mere perusal of the various CDRs produced herein, would indicate that only the IMEI number of the phone, for which the CDR is issued, would be reflected. We hence accept the evidence of PW187 and the S.65B certificate produced as Ext.P608 to the files of the above appeals. We have also questioned the accused, under S.313 Cr.P.C, who were before us on Video Conferencing

from the Parappana Agrahara Central Prison, Bangalore and two of them who were on bail; physically present before us.

88. We have to pertinently notice that even if Ext.P264, the CDR of J&K number, 94694 02387 is ignored, the CDR of MO22 number of A1 produced as Ext. P290 shows the ten calls from the J&K number to the SIM card of A1. The said CDR is accompanied by S.65B certificate and has been produced and proved by PW110, the AGM of BSNL, Kerala. It has also been deposed that the number from which the calls came to A1 & A12 is a J&K number. Here we also have to notice the connection of A1 with the other accused as revealed from the CDR of his SIM number and the use of the same equipment, the phone, by others. Ext.P588 is the report of the CFSL, after examination of the various MOs recovered from A23, on his arrest by PW182, ACP, B'lore Central Crime Branch. The SIM cards and other digital devices recovered from A23 were subjected to extraction of data. Ext.P588(ar) marked by PW183, the official of CFSL is a message giving the J&K number with which A1 conversed 10 times, to A23; send from a Shameem Pak

and the senders mobile number was of Pakistan. The said J&K phone number ie: 94694 02387, was saved in two of A23's SIM cards as '*Mujahid Kashmiri*' as per Ext.P588 (s) & (bc). PWs.35,36 & 39, surrendered terrorists had spoken of A9 having talked in Malayalam in the mobile of Abdulla (*Lashkar* Commander) and the only inference is that the contact was made to the number of A1 by A9 who joined the terrorist camp. Here it has to be pertinently noticed that PW84, army officer, had stated in cross-examination that pre-paid mobile connections from outside states were not allowed to be used in J&K. A23 obviously was aware of the number from which the contact was established which was saved in his SIM cards as that of '*Mujahidi Kashmiri*'; the connection unmistakable. A23's involvement is clear from the further messages received from the Pakistan number and the literature seized from him, all of which were spoken by PW183; which we will discuss at the time of discussing the evidence against A23.

89. A1 immediately after receiving the calls in MO22 number called 98476 14811 (A11) as revealed

from Ext.P290 at Ext.P290 (f1), (fm) & (fn) which were respectively the next calls from Ext.P290 (D), (F) & (H); those from the J&K number. SIM card 98476 14811 belongs to one Najib, as is proved from Ext.P212 CAF and Ext.P213 ID proof as made available by the IT Officer, Vodafone, PW143; who was examined as PW97. Ext.P336 CDR of the phone number 98476 14811 produced by PW143 shows the corresponding incoming calls at Ext.P336(b) to (d) which are immediately after the calls to A1's, MO22, from the J&K number. There is a further call from A1 to 98467 14811 (A11), on the next day marked as Ext.P366(d). PW97 is Najeeb, who affirmed that he had a number in Kerala, while he was regularly employed in B'lore in his father's shop, which had the number 98467 14811. He identified A11 who was his teacher in a Madarasa, who took his SIM card with cell number 98467 14811 assuring him that it will be given back for his use, when he is in Kerala. PW97 deposed that A11 never gave back the number. A11 did not have any explanation regarding the calls made to that mobile number, proved to be in his use, in close proximity to the calls received from J&K, in the

number of A11 from A1's number. There is a further accusation that A11 immediately after the call from A1 called the J&K number from a booth owned by PW126. However there was no prior statement from PW126 and the I.O, PW174, categorically deposed that he was not aware of the witness or the facts deposed by him. The learned ASG sought to dispel our doubts, reminding us that the investigation was by a JIT and another officer would have taken the statement. But there is no attempt made to produce that officer and make him testify to this aspect. We hence place no reliance on PW126.

90. A1 used his other number 96057 49262 only between 20.09.2008 and 25.10.2008 as revealed from Ext.P342 CDR, proved through PW128. Ext.P342 CDR also is that between 01.08.2008 and 31.10.2008. The said number of A1 was used in three instruments, those with IMEI numbers:- 35189 70129 07930, 35555 80134 27330 and 35867 00166 43040. The instrument having IMEI No. 35189 70129 07930 was used to operate SIM numbers 99953 25748 and 97461 86452 both used by A3, 97471 83033 used by A4 and 974666 91814 used by A8. In Ext.

P141 book of *Therbiyath Islam Sabha*, telephone numbers of A3 & A12 who accompanied A10 is entered as 99953 25748 (A3) and 97450 02528-Firoz (A12). Ext.P342 (a) to (e) are calls between 96057 49262 (A1) and 97450 02528 (used by A12). A1's instrument with IMEI No. 35189 70129 07930 was used to operate 99953 25748, one of the numbers used by A3, as proved from Ext.P321 on 20.04.2008 between 07.40 and 17.20.

91. The CDR Ext.P321 also reveals the tower location of the number 99953 24748 on 19.04.2008. The said number, according to PW56, the Manager of *Therbyath Islam Sabha*, to which A10 was taken for conversion to Islam; was given by A3 and entered in the Book, the extract of which is Ext P141, kept at the Sabha on 19.04.2008 evident from Ext.P141(a) entry. A3 and A12, it is alleged, accompanied A10 and their telephone numbers were noticed in the Book maintained at the Sabha at entry No.327 separately marked as Ext.P141(a). Ext.P142 the register maintained at the gate, at Ext.P142(a) shows the name of A3. A3 was identified by PW 56 and the phone numbers were said to have been given by A3. The number

99953 24748 is in the name of one Suraj Mohan whose CAF and ID proof were marked respectively as Exts.P330 and P331. Suraj Mohan who was examined as PW139 deposed that though he took the above SIM and had used it for sometime, he had lost it along with a purse in which he had kept the SIM card. It is the number of this SIM card that A3 gave to PW56 as his number at the time of admitting A10 to the Sabha for the purpose of conversion. According to PW133, Ext.P321 contains the call details of the said number from 01.04.2008 to 10.06.2008. From 01.04.2008 to 18.04.2008 as is evidenced from Ext.P321 the phone was being operated from Ernakulam. On 19.04.2008 the date on which A10 was taken for conversion, the phone had travelled from Kalamassery; its location on the previous day, to Kozhikode and from there on the same day to Kannur, which coincides with the movement of A10, a resident of Ernakulam, upto Kozhikode, where the conversion centre is located. This clearly indicates that A3 was with A10, upto the Conversion Centre, which is another link of proving the allegation of recruitment carried out by A3. Here we have to remember that at Hyderabad,

before he travelled north, A10 had confided to PW1 that he was on a journey, to which he was urgently summoned by A3.

92. A3's association with the other accused also is proved from Ext.P321, CDR of 99953 25748 (A3) proved through PW133. Ext.P321(a) &(b) are calls with A1 in his number 97443 82047. There were 27 calls marked as Ext.P321(aa) to (ba) with 97450 02528 belonging to A12 as revealed from the testimony of PW56. ExtP321(aa) & (ac) are two calls made on 18.04.2008 from the telephone of A3 at Ernakulam and then at Kozhikode. A12's involvement in taking A10 to the Sabha at Kozhikode for conversion is also crystal clear. Ext.P321 also reveals 26 calls, Ext.P321(bb) to (ca) to A16 in his number 93880 81080, 21 calls to A21 in 92465 47313 at Ext.P321(ch) to (db), 4 calls to A23, Ext.P321(dc) to (df) and 14 more calls to A23 itself at Ext.P321(dg) to (dt). Very pertinent are the 20 calls at Ext.P321(du) to (en), with 99126 61040, between 21.04.2008 and 27.04.2008 the number of A9, given at Salim Manzil, Delhi.

93. It is also seen from Ext.P321 that the

number 99953 25748 now established to be that of A3, having been used from six different IMEI numbers, one of which; 35189 70129 07930, used on 20.04.2008, as deposed by PW133 is the instrument belonging to A1 (MO3). PW133 also testified that the first 14 digits of the IMEI number alone is relevant and that alone would be reflected/seen in the CDR. The very same instrument with that IMEI number has been used to operate number 97461 86452 (A3) as seen from Ext.P309 from the 1st to 6th and then from 11th to 31st of August 2008, 15th to 17th of September and also on 2nd of October. In these months the said number was used alternatively with instrument having IMEI number 35088 81092 29770. Very pertinently 97461 86452 was used in instrument having IMEI number 35088 81092 29770 on the 6th and 7th of October 2008 and then both instrument and mobile number ceased operation, as indicated from Ext.P309, which is the CDR of 97461 86452 which was for the period 01.08.2008 to 31.10.2008. IMEI number 35189 70129 07930 is that of MO3 seized from A1 and IMEI number 35088 81092 29770 is that of MO26, seized from where A15 was residing at Hyderabad, by PW172 as

per Ext. P151 search list. A3 absconded on 07.10.2008 and was then arrested from the border by the Meghalaya Police along with A5 on 02.12.2009; as deposed by PW91 & PW93. In Ext.P588 report of the contact list in the SIM card recovered from A23, at page number 117, 97461 86452 (A3) is saved as one belonging to 'Omer' in Q9-SIM and in Q13-mobile phone, as 'Omer Khaleef'. The entry in Q9-SIM is Extp588(1) and that in Q13-mobile phone is Ext.P588(bd). The phone with number 97461 86452 according to PW133 as revealed from Ext.P309 was on roaming between 01.09.2008 to 15.09.2008 and was not used in Kerala. Ext.P36 reservation form contains the name of 'Umer' who according to PWs.35,36 & 39 is the Commander in Kerala. It has also come out in evidence that Nazeer @ 'Umer' (A3) was in Hyderabad during the period the mobile number was said to be in roaming mode. A3 was present in Hyderabad for 'Chilla' where many of the accused congregated and on 12th of September 2008, A7 to A10 & A15 commenced their journey by Train, with destination Nizamuddin, and on the very next day A3 returned without waiting for 'Chilla' to conclude.

94. The mobile number 97461 86452 (A3) was in the name of PW87 who deposed that he lost his purse along with the ID proof. Ext. PW133 proved Ext.P322 CAF and Ext.P323 ID proof allegedly of PW87. The CDR of 97461 86452 (A3), Ext.P309 however reveals constant contact with the other accused while the IMEI numbers in Ext.P321 of 99953 25748 (A3) and Ext.P309 of 97461 86452 (A3) are common, indicating use of same handsets. Ext. P309 CDR is that between 01.08.2008 and 31.12.2008. The contacts too are common and A23 has saved 97461 86452 (A3), in his devices, as that of A3, in his aliases. Ext.P309 reveals more than 100 calls to 97443 82047 (A1) 5 calls to A4 in 97475 98471, 63 calls in 97466 91814 of A8, 46 calls in 97471 83033 of A4 then numerous to A11, A12, A13, A15, A16, A18 to A21 and A23. The web woven by the NIA, with the CDR's clearly draws both A1 & A3, and the other accused in its intricate meshes and provides no mitigation from the inevitable consequence of their involvement in the conspiracy, to the hilt. The CDRs discussed in the above paragraphs were all between 01.08.2008 and 31.12.2008; except Ext. P321 which was of the earlier

period pertaining to that of the conversion of A10. The contemporaneous telephone calls and the exchange of mobile instruments is a very relevant circumstance pointing to the involvement of the accused in the conspiracy as has been held in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600. This equally applies to the frequent calls made between the accused during the said period as discussed in the following paragraphs. A1 offered no explanation for the frequent calls from the J&K number. There is also no explanation forthcoming from the various accused regarding the telephone calls, as disclosed from the CDRs; which again provides a strong link in the chain of circumstances (Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 and Dr. Sunil Clifford Daniel v. State of Punjab (2012) 11 SCC 205).

XII. THE CONSPIRATORS:

95. A2, according to the defence, had only accompanied A7 to Hyderabad, which does not by itself prove any conspiracy. A2 in fact did not have any knowledge about the further journey undertaken by A7,

is the contention. PW1, PW14, PW19 & PW72 spoke about A2 being a regular to *Thareeqath* classes. PW2 & PW3, the mother and sister of A7, deposed that A7 had gone along with A2 on 10.09.2008 and A7 was not seen after that. A2 came back after two or three days, when he informed the family of A7 that A7 had gone to reform himself. That A2 travelled with A7 & A8 is admitted and Ext.P33 ticket of the said journey was seized from A2 on his arrest on 25.10.2008 as per Ext.P118 by PW48. PW24 had also spoken of the close association of A2 & A7. The handwriting in Ext.P34 was proved to be that of A4 as per the deposition of PW137, who produced and marked Ext.P319 report. PW14 had deposed that A2 harboured the opinion that 'evil has to be met with evil', which was proved as an omission through PW174. However, PW174 specifically spoke of PW14 having stated in his prior statement that A2 did not have a good character. As has been held in *Dal Singh* [supra] and *Takdir Samsuddin Shaikk* [supra] minor discrepancies in the deposition of witnesses from their prior statements are not very significant. The very same words need not be used in the prior

statement and the deposition. PW14 had spoken of the character of A2, which was declared to be bad in the prior statement but there was nothing more to show A2's involvement in the conspiracy. He is not shown to have any contact with the other accused and but for his journey to Hyderabad with A7 & A8 there is nothing to show his involvement. He also came back within two or three days. Statements of a broad and general nature to the effect that one's character is not good hardly constitutes an incriminating material, particularly to supplement a relevant omission signifying a statement of specific impact. Mere suspicion, however grave, is not sufficient to find the guilt of an accused. We are unable to find any incriminating material to arrive at the guilt of A2 and he has to be acquitted.

96. A4 was another regular in the *Thareeqath* classes, in which the other accused also actively participated, as deposed by PW1, PW13 & PW14. PW14, an accredited teacher of *Thareeqath*, specifically spoke of the close association between A3, A7, A8 & A4. In cross-examination, it was deposed that A3, A4 & A8

were persons who wanted to meet 'evil with evil' and that they had violent tendencies. Ext.P35 ticket recovered from A2 was taken as per the reservation application form produced as Ext.P34. Ext.P34 had the handwriting of A4. PW174, the I.O, as per Ext.P317 took the sample handwriting of A4 and the same was compared with Ext.P34 by PW137, the handwriting expert. Ext.P319 is the report filed by PW37, which revealed that on comparison of the handwritings; Ext.P317 & Ext.P34, they are found to be by the same person. In addition to this, is the evidence forthcoming, from the call data records linking him closely to A3, A8, A16, A21 and the mobile number given by A9 at Salim Manzil.

97. On his arrest by PW174, on 03.11.2008, A4 was found in possession of two mobile hand sets and two SIM cards, which were recovered from him. The IMEI number of one of the mobile hand sets was 3572 7501 380 3280, in which, was used the mobile number 97471 83033 as proved by PW128 from Ext.P338 CDR. There were six IMEI numbers from which the said SIM card was operated. 97471 83033 stands in the name of PW95,

Lijith as proved from Ext.P343(1) and (2), the CAF and ID proof of PW95. However, PW95 denied having made such an application and deposed that the signature in the CAF was not put by him. One of the mobile hand sets from which the above SIM number was used, with IMEI no. 35088 81092 29770, MO26, was recovered from the residence of A15 on 19.11.2008 by PW172, as per search list, Ext.P151. MO26 was also used to operate the number used by A4 (subscribed by Lijith-PW95); from Ext.P338 CDR. As per Ext.P338 there were 47 calls with A3, between 6.8.2008 and 6.10.2008, in the number 97461 86452 and similarly between 8.8.2008 to 12.9.2008 there were 47 calls with 97466 91814 used by A8, Fayiz. There were also six calls with A13 (97446 85556), 15 calls with A18 (99958 83549), 13 calls with A21 in the number 92465 47313, one call to A16 in his number 93880 81080 and 8 calls between 6.9.2008 to 10.9.2008 to the number 99126 61040 which is the number given by A9 at Salim Manzil, Nizamuddin. The other number seized on the arrest of A4, 97475 98471 was used by A4 in three hand sets, two of which having IMEI number 350 888 104 22180 and 35293 5024 136670

were used to operate the SIM number subscribed in the name of Lijith. Ext.P344 the CDR of 97475 98471 also shows contact with A3 in his number 97461 86452 on 27.09.2008 (Ext.344(a)). The CDR of the two numbers used by A4 reveals the close ties of A4 with the other accused especially with A3, A1, with A8 who was shot dead in J&K and the mobile number given by A9 at Salim Manzil.

98. It is in this context that the evidence of PW57 & PW58 has to be examined. PW57 was a resident of NPC Quarters at Athazhakunnu, Kannur who spoke of Mujeeb (A4) and his wife Sibina, having stayed in a nearby house in the same Quarters. She also spoke of one Naziya having stayed there with two children along with Mujeeb & his family. She identified Mujeeb from the dock as A4 and also Naziya from Ext. P126 photograph; the wife of A15. Naziya had told her that her husband's name is Jabbar and he was working in Delhi. In cross-examination she also said that though she does not remember the exact date, the residence of Naziya with Mujeeb occurred in October-November of 2008. PW58 another resident of the same Quarters,

whose residence there was spoken of by PW57, fully corroborated PW57's testimony. Both the witnesses spoke about the said Naziya being conversant with Hindi and her native place declared to be Hyderabad. A15's wife-Naziya, is a native of Hyderabad, but she opted to stay with A4 and A5 in Kerala. Though for short periods, it corresponds to the period when A15 was at Kashmir after which he hid in an assumed name at Perumbavoor. The circumstance hence is clearly of harbouring the family of a terrorist; which though is not by itself a crime, clearly establish the meeting of minds in designing and executing the conspiracy hatched. The aspect of harbouring A15's wife has to be considered along with the facts revealed from the call records, the use of a SIM subscribed in another person's name, the exchange of handsets; all incriminating circumstances.

99. A5's presence in the *Thareeqath* classes has been proved by PW1, PW13, PW14, PW78 and PW106. PW106, the nephew of absconding A20, who identified A20 from the photographs in Exts.P3, P161, P197, P199 and P237, also identified A3, A5 and A14, as close

friends of his Uncle, A20. PW138, who was in Hyderabad during the Ramzan of 2008, identified A3, A9, A5 and A22 as having been present at Hyderabad. PW8 and PW9, the father and sister of A8, identified A5 from the dock. It was deposed that A8 had left his house last, informing them that he was going to join an employment at Bangalore arranged by A5, a close friend of A8; which by itself cannot be an incriminating circumstance. However, his close association with the other accused, especially A3, and the absconding A20 have been established. Further, PW50 testified that she had rented a house to A5 and his wife where they were staying along with a Hindi speaking lady, who was identified from the photo in Ext.P126; the wife of A15. Ext.P125 diary of A5 & Ext P126 photograph was recovered from PW50's house and PW50 stated that A5 was introduced to her by A11 who was also identified from the dock. A5 stayed along with the Hindi speaking lady, seen from Ext.P126, only for 11 days, deposed PW50. Both A5 and A11, who introduced A5 were identified by PW50. PW51, a neighbour witnessed the seizure, by Mahazar-Ext.P124, and affirmed the seizure

from PW150's house. As in the case of A4, harbouring the wife and children of a terrorist, viewed in the attendant circumstances becomes a crucial, incriminating material fact, which also coincides with the money transaction between A23 and A20 at Kalpetta; which is discussed as an incriminating circumstance of A23.

100. In addition to this, is the circumstance pointed out by the prosecution, of A5 having received Rs.49,500/- sent by A23 from Oman on 26.11.2007. The prosecution contended that the said transaction occurred just prior to the 'Bangalore blasts'; but the defence argued that there is no such evidence led and it has not been proved that the money was used for any clandestine activity much less a terrorist activity. The connection with A3, the Commander in Kerala, charged with the recruitment to wage war against India, is proved. The further charge of A23, being the financier and Commander at Dubai, definitely is also an established relevant fact. In that context, especially considering the fact that A5 had absconded along with A3, after the death of A7 to A10 and was

later arrested from the Bangladesh boundary; A5's role cannot be swept under the carpet.

101. PW76 was a franchisee of Western Union Money Transfer who proved the receipt of Rs.49,950/- by A5, as per Ext.176 carbon copy of the TRM form signed by his staff whose signature was also identified. Ext.P127 is the copy of the driving license of A5 produced to identify himself with the franchisee, from the photograph in which, PW76 identified A5 from the dock. The driving license produced to prove the identity, was proved by PW92 an Assistant in the Mahe Transport Office, who also produced the register maintained at that office, Ext.P207; in which the relevant entry of A5 was marked as Ext.P207(a). The photograph in the driving license was identified to be that of A5 by PW50, the owner of the house in which A5 stayed along with his family and A15's wife. Similar identification was made by PW114, an aunt of A5, who was declared hostile. It is pertinent to note that A5 had no explanation for having absconded from the State, as also his subsequent arrest from the Bangladesh border, that

too, along with A3. A5 definitely was involved in the activities alleged by the prosecution against the accused and was an integral part of the conspiracy.

102. A11 was identified from the dock by PW1 as a follower of Thareeqath and PW63 identified him as having worked as 'Mukree' at Kanhangad 'Kotta Palli'. The copy of the pages of the register marked as Ext.P154, after verifying the original register, indicated A11 having worked in the Mosque between 16.3.2006 and 31.01.2008. The evidence of PW63 is crucial in so far as he having identified A3 from among the accused standing in the dock; who had visited the Mosque to see A11. The evidence regarding the use of SIM number 98467 14811 by A11 has been established by the evidence of PW97 who stated that the said SIM taken in his name was handed over to A11. Ext.P212 and Ext.P213 were marked as the CAF and ID proof of the said SIM number which establishes the subscriber as PW97. It has also come out from the testimony of PW98 that in October 2008, A11 was working in one 'Khadya Rehma' Church near the Hotel owned by PW98. PW98 also confirmed the use of the

above SIM number by A11 and deposed that A11 used to work in his Hotel, at times. Ext.P290 CDR of 97443 82047 (A1) indicates a call having been made to A11's phone immediately after A1 received a call from J&K. Ext.P290 (a) to (c) are the two calls received by A1 at 2:02:30, 2:06:11 and 2:09:46. Immediately after that, A1 called A11 at 2:14:14 which is marked as Ext.P290(fk). Again, at 2:33:00 there was another call from J&K to A1 marked as Ext.P290(d). Immediately after that, a call was made by A1 to A11 on 2:37:31 marked as Ext.P290(fl). All these calls were made on 01.10.2008 and on the next day, A1 received a call from the J&K number at 10:47:37, Ext.P290(f); after which as seen from Ext.P290(fm) at 10:49:32 again A1 called A11. This was repeated on the same day at 1:04:51, as per Ext.P290(fn) just prior to which A1 received a call from the J&K number at 1:01:05 [Ext.P290(h)]. These calls are also reflected in the CDR of the SIM number of A11 at Ext.P336 marked and proved by PW143. The corresponding calls made from A1's number are Ext.P336(b) to (e). There is further evidence led in the form of PW126, who identified A11

from the dock as the person who used the telephone booth of PW126 to call the J&K number. We, however, place absolutely no reliance on the same, since there was no prior statement taken from him and even the I.O was not aware of the investigation having revealed that particular witness. Though the number of a public telephone booth was referred to by PW126, there was nothing to show that the number was subscribed by PW126 or that the said witness had owned such a telephone booth.

103. Ext.P336 is the CDR of 98461 14811 as proved by PW143, Nodal Officer of Vodafone between 01.08.2008 and 31.10.2008. The five calls with A1 are discussed above; in addition to which there were 52 calls with A3 on his number 97461 86452 marked as Ext.P336 (f) to (be), two incoming calls from A8 from his number 97466 91814 [Ext.P336(bl)&(bm)]. Twenty seven calls with A20, the absconding accused, marked as Ext.P336 (bo) to (co) and four incoming calls from 99126 61040 the number given by A9 at 'Salim Manzil'; between 06.09.2008 and 11.09.2008 [Ext.P336(cp) to (cs)].

104. We have also discussed the evidence of PW50, who had rented out a house to A5, wherein the wife of A15 resided along with A5 and his family and the recovery made from the said house. PW50 specifically identified A11 as the person on whose request accommodation was arranged for A5 who is proved to have harboured the wife of A15. A11 hence is drawn into the web of conspiracy from which he has no escape.

105. A12 and A13 were close friends of A10, from among whom A12 alone was identified by PW1, as having attended his classes. PW5 and PW6, the father and brother of A10 also spoke of A12, as the close friend of A10, as was A13. A13 was acquitted and this is projected as a compelling reason for acquitting A12 also. However, the involvement of A12 does not stop with a mere acquaintance or even a friendship with A10. We have already discussed the evidence regarding A10's conversion and the telephone number 97450 02528 having been given at the Conversion Centre as the number of A12, by A3. A10 hence was accompanied by A3 and A12 when he approached the

Conversion Centre and there are calls between A2 and A12 as proved by the CDRs which we discussed above. The said mobile number alleged to be used by A12 was in the name of one Sajan, PW116. PW116 admitted Ext.P270 and P271 CAF and ID proof submitted by him to Vodafone which documents were produced by PW143, an Official of Vodafone. Though PW116 turned hostile, it has come out in cross examination that A12 was a neighbour and close friend and he was identified. What is pertinent is that PW116 did not identify any of the other witnesses, but however the CDR of 97450 02528 clearly indicated communications with A1, A3, A16, A18, A20 and A21, revealing the close ties of whoever used the said number, with the said accused.

106. The further corroboration for the use of the number 97450 02528 by A12, comes from PW148 and PW171 who were employees of Sri Ram Finance Company. Ext.P273 is a loan application for a vehicle submitted by one Shamsudheen before the Company's branch at Edappally on 04.06.2008. A12 stood as a guarantor and his name and address as also the above mobile number were explicitly recorded at the space kept for

reciting the details of the guarantor. PW148 affirmed that the details of the loanee and the guarantor would be verified before processing the loan application. PW171, the Manager of the Branch, verified the loan application and he stated that the verification was done personally by him. The photo given by the guarantor was at Ext.P273(b) and the copy of the driving license of A12 [Ext.P273(c)], was the ID proof submitted before the Finance Company. PW116, the hostile witness also identified the photo of A12 from Ext.P273 application at Ext.P273(b). The above evidence categorically establish the number having been used by A12; proving his assertion to the contrary to be a deliberate falsehood.

107. Ext.P264, the CDR of the J&K number shows three calls from that number to 97450 02528 on the first and second of October, 2008. They are marked as Ext.P264(a), (b) and (i). The tower location of the J&K number was at Sogham in Kupwara as proved by PW173. The CDR of A12's number also confirms the call from the J&K number at Ext.P335(hr), (hs) and (ht). The evidence of PWs.35,36 & 39 specifically indicates A9

having talked over the mobile in Malayalam and very interestingly the CDR Ext.P335 of 97450 02528, though is upto 31.10.2008, the calls ceased on 7.10.2008 after which the said number has not been operated. The date is relevant in so far as A7 & A10 were shot dead just prior to that date. Obviously the conspirators came to know of their death before a proper identification of the dead bodies were made by the security forces at Kashmir.

108. Ext.P335 CDR of 97450 02528 also indicates 45 calls with A1(97443 82047) at Ext.P335(a) to (bs), 6 calls to A1 (96057 49262) at Ext.P335(bt) to (by), 63 calls to A3 (97461 86452) at Ext.P335(bz) to (ec), 18 calls to A10 (93880 32889), at Ext.P336(ej) to (fa), 22 calls again to A10 (92881 47980) at Ext.P335(fb) to (fw), 8 calls to A16 (93880 81080) at Ext.P335(gw) to (hd), 3 calls to A20 (97471 36360) at Ext.P335(hf) to (hh), one incoming call from A21(92465 47313) at Ext.P335(hi) and 8 incoming calls from (99126 61040) at Ext.P335(hj) to (hq), the number given by A9 at Salim Manzil in Delhi. The evidence based on the CDR of the phone used by A12, led by the

prosecution, clearly inculcates A12 in the conspiracy as evidenced from the constant communications with the other accused, especially the ones who travelled to J&K to wage war with India who were shot dead in that very process. We are persuaded to attach critical significance to the above data unfolded by CDR for three reasons; ie: (i) the period during which inter se calls were made (ii) the persons with whom A12 conversed vide the calls afore referred and (iii) the abrupt cessation of calls after 07.10.08, immediately after A7 & A10 were shot dead at Kashmir.

109. A14 was roped in for his connection with *Thareeqath* classes; which alone is not an incriminating circumstance. Many of the witnesses too were followers of *Thareeqath* and some accredited teachers. The evidence against A14 does not prove his involvement in the conspiracy and only indicates the renting of a room from PW10 for the purpose of taking *Thareeqath* classes. PW10's evidence was corroborated by PW1, PW13, and PW14 who deposed that they took the *Thareeqath* class at Neerchal in a room taken on rent by A14. A2, A3, A5 and A8 also participated in the

classes at Neerchal. It has come out in evidence that A3 had propounded violence in the *Thareeqath* classes, but nothing has come out regarding A14 having encouraged it. There is also nothing to establish A14's connection with the conspiracy other than the renting out of a room, which again is for carrying out *Thareeqath* classes.

110. A16 is the person who arranged the stay of A15 at Perumbavoor in the name of Anoop. PW54, with whom A3 stayed even before that, identified A16 & A3 from the dock. He also identified A23 as Hakkim. According to PW54, who identified A3 as Ummer Haji, A3 stayed in a shed behind his house; where his wife arranged 'Quran' classes. A16, a timber merchant had introduced A3 & A15 to the witness. At the request of A16, A3 with his family was permitted to stay in the shed in which religious classes were held. PW54 also spoke of frequent visits of A16 and A23 and his 164 statement (Ext.P138) corroborated this evidence. According to PW54, A3 stayed at Perumbavoor for about one year. A16, as was earlier noticed, also arranged a job for A15 which he left after four days. The

impersonation of A15 as Anoop while at Perumbavoor, which he was privy to and ably assisted, coupled with the financial transaction with A23; inculcates A16.

111. PW71 identified both A16 and A15 from the dock and his evidence has been discussed earlier when A15's role was evaluated. According to PW71, A16 requested him to receive the money sent from abroad, from the post office. PW71 received Rs.49,950/- from the post office at Perumbavoor after furnishing his ID proof and the secret code given by A16. Ext.P107 is the receipt of the above transaction in which PW71 had signed, which signature was admitted in his testimony. The sender of the said amount was one Surfraz Navas and the originating country is Oman. PW71 further deposed that he deposited the said amounts along with further amounts given by A16, in A16's account at the SBT Perumbavoor. Ext.P167 is the pay-in-slip signed by PW71; admitted in his testimony. PW43 the Post Master of the Perumbavoor Post Office spoke about the manner in which money is transferred from abroad, through 'Western Union Money Transfer'; about the ten digit code number and the requirement of ID proof, of the

person receiving the money. Ext.P107 is a computer print out of the TRM form by which one Surfraz Navas sent the money to Subair; A23 and A16 respectively. The deposit of money as proved by Ext.P167 pay-in-slip is further corroborated by Ext.P447 statement of A16's account at the SBT Perumbavoor. The specific entry is seen at Ext.P447(a), of deposit of Rs.880000/- which according to PW71 included Rs.49950/- received from the Post Office.

112. The learned Senior Counsel appearing for A16 had first disputed the deposit having included the money transferred from abroad pointing out that the deposit is seen to have been made on 25.10.2008, as is seen from the statement of account of A16, which is prior to the receipt of money as proved by Ext.P107, on 29.10.2008. We have verified the original and compared it with the copy supplied to the parties. We see from the original that the deposit is made on 29.10.2008 itself. A further contention was raised that the money having been sent at 04:10:00 on 29.10.2008 there is no possibility of a deposit having been made in the bank on the same day after its

receipt from the post office. We see from the original of Ext.P107 that the date and time noted is '(EST) 29.10.2008 04:10:00'. Eastern Standard Time is 9.30 hours behind Indian Standard Time(IST). Hence when the time showed is 04.10 EST of 29th it would have been 13:40 IST of 29th itself. The payment as per the seal of the post office at Perumbavoor in Ext.P107 has also been made on 29.10.2008. The pay in slip showed the handwritten date as 28.10.2008 which obviously is a mistake since the credit has come to the account only on 29.10.2008 as is seen from the original of Ext.P447 at P447(a). Cash deposits figure in the account on the very same date. We hence find that the evidence of PW71 to be fully corroborated by the documents produced in proof of the said transaction.

113. The mobile phone No.93880 81080 is a Reliance connection belonging to A16 as proved by Exts.P297, 298 and 299 CAFs and ID proof of A16. Initially the number allotted to A16 was 93870 38510 which according to PW151, the Nodal Officer of Reliance Communication was changed to 93880 81080 evidenced by Ext.P363 certificate. On the arrest of

A16 by PW166 on 05.12.2008 a seizure mahazar was drawn up as Ext.P442 seizing a mobile phone which contained the said SIM number. The aforesaid evidence clearly establish the said SIM number as subscribed to and used by A16. Ext.P285 is the CDR of the said number proved through PW122. It indicates two calls between 04.09.2008 and 06.09.2008 marked as Ext.P285(a)&(b) from 99126 61040; the number given by A9 at Salim Manzil, Nizamuddin, evidencing the direct link to the five persons who joined the terrorist camp. In addition to this there are 24 calls with A3 (97461 86452) at Ext.P285(c) to (z), 3 calls with A8 (97466 91817) at Ext.P285(aa) to (ac), 8 calls with A12(97450 02528) at Ext.P285(ad) to (ak), 5 calls with A23 (96892 979762) at Ext.P285(ev) to (ez), 10 calls with A23(968244 75727) at Ext.P285(fb) to (fk), one call with A4 (97471 83033) at Ext.P285(fl) and 11 calls with A15(97466 22350) at Ext.P285(fm) to (fw).

114. Further corroboration of what was stated by PW71 about the money from abroad, is available from Ext.P285 CDR of No.93880 81080, the number of A16, which indicates two calls on 28.10.2008 from 96824

475727 as evidenced from Ext.P285(fj)&(fk). The said number has been saved as 'My office' in Ext.P588, at page 145; the CFSL report of the data recovery from the digital and electronic devices recovered from A23 on his arrest. A23 has also saved the number of A16 as 'Sabir Parappuram' in page 166 of Ext.P588. The 'To Send Money form' of the above transaction is also recovered from the possession of A23 on his arrest by PW182 which is marked as Ext.P597. A16's role in the conspiracy is crystal clear and his close acquaintance with A3, harbouring of A15, in an assumed name and the receipt of money from A23, immediately after which A15 disappeared from Perumbavoor are sufficient circumstances to find him guilty.

115. A21 was assisted by PW59 in business and was closely acquainted with the family of A21. He identified the sister-in-law of A21 from Ext.P126, who is the wife of A15. PW59 identified the signature in Ext.P146, a receipt dated 10.09.2008. Ext.P146 was a receipt of Western Union dated 10.09.2008 for an amount of Rs.20,000/-. According to PW59, the said amounts were sent for A3 and he was entrusted with the

task of collecting the money. He is said to have collected the money and handed over the same to A21, in the presence of A3. The presence of A3 was not spoken by him in his previous statement and was marked as an omission. As per the testimony of PW59, A21 had enquired with him about the transfer of money from Gulf countries and he had suggested that it could be done through Western Union or UAE exchange. Subsequently, PW59 had called him and asked him to receive the money since he was unwell. PW59 received the money by proffering his Electoral ID card (Ext.P147) and furnishing the 10 digit code number given to him by A21. He identified A3 and A15 and deposed that it was A15's wife, Nazia that he identified from the photograph. PW59 also deposed that A21 was using the number 92465 47313. The corresponding '*To send money for*' was recovered from the possession of A23 on his arrest by PW182; which was marked as Ext.P519. Even if the presence of A3 at the time the money was handed over is not proved, the money transaction between A23 and A21 incriminates A21. The CDR of the SIM used by A21 was produced by

PW123. The call details disclose the following contacts:-59 calls with A3 (9746186452) at Ext.P286(a) to (bg), 2 calls with A1(9744382047) at Ext.P286(bh) and (bi), 13 calls with A4(97471 83033) at Ext.P286(bj) to (bv), 13 calls with A8(97466 91814) at Ext.P286(bw) to (cg), 1 call with A12(97450 02528) at Ext.P286(ch), 9 calls with A20(97471 36360) at Ext.P286(cx) and (cy) and 23 calls with 99126 61040, the number given by A9 at Salim Manzil. The involvement of A21 in the conspiracy is discernible from these circumstances, the regular contacts over telephone with the other accused and also with A8 and A9. A9, of course is his son-in-law and he would have been definitely privy to the journey of the five to Kashmir. There is also evidence of receipt of money from the Commander, abroad, in the name of A15, which transfer was just prior to the journey of the militants from Hyderabad to Kashmir; on 12.09.2008.

116. A22 had close association with others and had participated at *Chilla* in Hyderabad as spoken by PW19 and PW138. PW1 and PW13 also identified A22 and has confirmed his presence at *Chilla*. PW19 spoke

of A22's presence in a class taken at Hyderabad at the separate residence of A3, when, after the speech, A3 wept profusely. PW85, the father of A9, also spoke of the close friendship between A9 and A22. But for this association, A22 has not been established to be a part of the conspiracy.

XIII. The Financier-A23:-

117. A23's presence in India was spoken of only by PW54, who addressed him as Hakhim, but his all pervading presence as the financier and an active participant in the subversive activities, is discernible from the money transactions and the data recovered from the digital devices recovered from his briefcase at the time of his arrest. PW35 and PW36 spoke of two Commanders who were abroad, involved in financing the recruitment operations of A3; the Commander in Kerala who had kept 180 boys ready for training in Kashmir. The Commanders in Dubai were said to be Walli and Sarfuraz; the latter A23. The financial transactions of A23 links him with the various accused; which were also noticed in our discussions with respect to each of the accused as

incriminating material against them. These inculcate A23 in the conspiracy, involving recruitment and waging war against India, hand in hand with the terrorists in Kashmir. The instances of financial transactions, as unearthed on investigation, relevant to us are specifically five in number i.e: on 26.11.2007 of Rs.49,950/- to A5, on 10.09.2008 of Rs.20,000/- to A21, on 23.10.2008 of Rs.20,000/- to A20, on 29.10.2008 of Rs.50,000/- to A16 and on 05.11.2008 of Rs.25,000/- to A20.

118. PW76 runs a franchisee of Western Union money transfer called 'Foremost'. Money transfers from abroad are paid over to customers who furnish the 10 digit MTCN number and ID proof. When money is paid, a receipt is taken from the recipient in the TRA form. Two copies of the said form are got signed by the party, one of which is retained with the franchisee and the other sent to the Head Office at Ernakulam, 'Wisemen Forex', the latter of whom sends monthly statements. He identified Ext.P175 seizure mahazar by which three documents were seized; carbon copy of TRA form kept at the franchisee-Ext.P176, statement from

Wisemen Forex-Ext.P177, and the ID proof of the recipient-Ext.P127. Ext.P176 is the TRA form dated 26.11.2007 for Rs.49,950/-. The same was signed by the recipient and also by the employee of PW76, one Nishal whose signature was identified. From the statement of the Head Office dated 17.12.2007, the particular entry was separately marked as Ext.P177(a). Ext.P127 was the ID proof, the driving license of Shafaz Shamsudheen, A5. PW76 identified A5, from the dock, as the person whose driving license was produced as Ext.P176. PW76 also deposed that he is acquainted with A5, who is a resident of the same City; within 1 km. True, the transaction was in the year 2007 and subject investigation was with respect to an incident which occurred in the year, 2008, almost an year later. The connection between A5 and A23 long before the death of the militants in Kashmir, is clear from the above transaction, which is a relevant link, especially when such operations are commenced and executed, neither in a day or two nor in an year or two. The perilous nature of the conspiracy and the secrecy to be employed requires patient planning and time is not of

significant import; since the war waged, is against the establishment and is intended to have a lasting impact. The time gap hence is of no consequence and does not offer any mitigation to the accused. There is also no explanation as to why the money was transferred by A23 to A5, coming forth from either of the said accused.

119. The next transaction occurred on 10.09.2008, just before A7 to A10 and A15 commenced their journey to Kashmir from Hyderabad on 12.09.2008. We have specifically referred to the evidence regarding the said transaction as spoken of by PW59, a close associate of A21, who received the money on behalf of A21, at his request. Ext.P146 is the receipt dated 10.09.2008 for Rs.20,000/- signed by PW59 and PW147 is the copy of the Electoral ID card of PW59, retained at the franchisee of Western Union Money Transfer. The transfer was from S.Navaz, Oman. PW141 is the franchisee who detailed the procedure of payment of money transfer, which is identical to that noticed in the earlier transaction. PW141 admitted to have handed over Exts.P146 and P147 retained with the

franchisee, to the police, in the course of investigation. PW59 also specifically spoke of the amounts having been handed over to A21.

120. The money transfer on 23.10.2008 was to one Shameer Kollamkudy as seen from Ext.P149 receipt proved by PW67 Deputy Post Master, Head Post Office, Kalpetta. PW67 confirmed that the amount came from Oman sent by one Navaz and the ID proof, furnished was a passport bearing No. E-7080305. The receipt Ext.P149, contained the number of the passport as the ID proof of the recipient. Ext.P148 is the register for Western Union Money Transfer maintained in the Post Office and Ext.P148(a) is the entry showing the address of the party, the amounts and the details of ID proof. However PW67 admitted that the copy of the ID proof furnished was not retained at the Post Office. PW60 proved the production of these documents and the mahazar.

121. PW88 is Shameer Kollamkudy, who is a loading and unloading worker. He deposed that Kollamkudy Alikutty Shameer as seen in Ext.P3 passport application form is himself, but the photograph in the

application as not his. He had taken a passport in 1994 which was pledged and lost from that person. He also denied Ext.P149, the receipt issued on payment of Rs.25,000/-. He denied the signature in Ext.P149 and also the photograph in Ext P3 application for passport and Ext.P161 passport issued in his name. Here we have to reiterate that it was from Ext.P3 passport application that PW1 identified A20's photograph. Ext.P161 passport copy, furnished for receipt of another Money Transfer at Mumbai, also contained the photo of A20, described as Shameer Kollamkudy, which was identified by PW106 as the photograph of his Uncle, A20. The name of the father and mother in the passport application form was confirmed to be that of PW88's parents. PW88 denied the photographs in Ext.P196 application and P197 copy of passport, submitted as ID proof. He also denied the receipt of money as per Ext.P198.

122. PW89 was the Dy.V.P (Complaints & Risk) of Wall Street Finance Ltd, which is a master agent of Western Union Money transfer, with license from the RBI. She produced the receipt Ext.P198 of a money

transfer and the computer print out of the MTCN number which has the copy of passport furnished by the recipient-Ext.P161. These documents were seized by PW180 by Mahazar Ext.P201. The above transfer was on 05.11.2008 at Mumbai. PW109 is an agent of Western Union Money Transfer who paid the money as per Ext.P198 application form and affirmed the receipt by Shameer Kollamkudy, paid as per Ext.P161 ID proof. Ext P161 is the passport of Shameer Kollamkudy having photograph of A20; as identified by A20's nephew. PW90 is the Director at Mumbai in the office of Western Union Money Transfer. He confirmed that Western Union Money Transfer has ten approved agents to process their transfers. He specifically spoke of details of transactions collected by their Subpoena Team in the U.S. The Certificate was marked as Ext.P202. Ext.P202(c) is Rs.20,000/- sent from Oman to India by S.Navaz to Shameer Kollamkudi, paid at Kalpetta Head Post Office dated 23.10.2008. Ext.P202(e) is again a transaction of Rs.25,000/-, by Surfraz Navas to Shameer Kollamkudi dated 05.11.2008; that paid at Mumbai.

123. PW169 is the Senior Inspector of the Crime Branch (Economic Offense Wing) Mumbai. He contacted the DCP, Bureau of Immigration, Mumbai to confirm the departure of Shameer Kollamkudy Alikkutty with passport No. E-7080305 and confirmed that the said person had travelled from Mumbai Airport to Dubai on 21.11.2008. The certificate issued by him was marked as Ext.P471. He confirmed that Ext.P161 and P197 copies of the passport have the very same number of Shameer Kollamkudy referred to earlier. This clearly indicates impersonation by A20 who had fled the country after the death of the four recruits to the terror camp in Kashmir just after he received Rs. 25,000/- as per Ext.P198; the money sent by A23. The receipt of money on 23.10.2008 at Kalpetta and on 05.11.2008 at Mumbai, sent by A23, should in all probability, be by A20; who is still absconding. This inextricably links A23 with the process of recruitment and the death of the four recruits.

124. We have already discussed the evidence regarding the payment of Rs.50,000/- to A16, when considering the evidence against him, since there were

arguments addressed against the documentary proof offered, which we rejected. The presence of A15 at Perumbavoor when the above transaction occurred has also been established beyond doubt. The transaction was just prior to A15 leaving Perumbavoor where he stayed for sometime under the assumed name of Anoop.

125. As against A23 the evidence collected on his arrest and the subsequent examination of the materials seized in the FSL, also crucially binds him to the conspiracy alleged. PW182 is the ACP of Bangalore Central Crime Branch who conducted investigation in Crime No. 314 of 2008 registered in Byatarayanapura Police Station. On 27.02.2009 receiving credible information that one of the absconding accused in the above crime number relating to the 'Bangalore Blast case', viz: Surfraz Navas, is near SRE Travels at Kalasipalayam, he rushed there and arrested A23 in the presence of two witnesses. The suitcase carried by the accused was opened and several CDs, floppies, documents, pen drives, hard disc and passport were seized as per P583. The items seized from the body and suitcase of the accused were

submitted to the Court on the very next day as per Ext.P587. Twenty items were sent for analysis to CFSL Hyderabad, the report from which CFSL is produced at Ext.P588. For our purpose we specifically notice a document indicating a transfer of Rs.49,950/- from Surfraz Navas to Subair V.M dated 28.10.2008 marked as Ext.P597. Another transfer of Rs.20,001/- to Firoz Khan dated 09.09.2008 marked as Ext.P598, transfer of Rs.20,000/- to Shameer Kollamkudy dated 23.10.2008 marked as Ext.P599, another transaction of Rs.25000/- from A23 to Shameer Kollamkudy marked as Ext.P600 on 11.04.2008 which are the Sender's Form of the money transaction from abroad seized from the possession of A23, again unerringly establishing the guilt of A23 in the conspiracy.

126. PW183 is the Assistant Government Examiner of questioned documents, CFSL Hyderabad who marked and proved Ext.P588 report. He received Exts.P589 to P594, respectively external hard disc, two pen drives, five floppy series, 13 CD series and 1 DVD. He also identified M053 to M058 SIM Cards M059 to M062 mobile phones without SIM, a digital camera-M063

and Memory Stick MO64. From the Pen drive Q3PD except the contents in Malayalam, those in English were read out. Under the heading of 'Indian Mujahideen' quotes from the Quran were followed with the following exhortations and narratives:

"Here we are back the Mujahideen of India-the terrorists on the Disbelievers- the radicals of Islam-after our triumphant and successful assault at Jaipur, once again calling you all, who disbelieve in Allah and his messenger Mohammed(Peace be upon him) to accept Islam and bear witness that there is none to be worshipped except Allah and that Mohammed(Peace be upon him) is the messenger of Allah. Accept Islam and save yourself".

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"Oh Hindus! O disbelieving faithless Indians! Have not you still realised that the falsehood of your 33 crore thirty mud, idols and the blasphemy of your dear dumb mute and naked idols as Ram, Krishna and Hanuman are not at all going to save your neck. Insha Allah Allah, From being slaughtered by all hands? Nor is your, fictitious faith in monkeys, pigs and nude statues going to save you from wrath of Allah and his humiliating pun..punish..punishment".

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"We call you Oh Hindus, Oh enemies of Allah, to take an honest stance with yourselves lest another attack of IBN Ourselves, Ibin-e-Qasim sends shivers down your spines, lest another Ghauri shakes your foundations, and lest another Ghaznawi = massacres you, proving your blood to be the cheapest of all mandkind! Have you forgotten your history full of subjugation, humiliation, and insult? Or do you want to repeat it again ? Take heed before it is too late".

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" Here we begin the answer to your tyranny and oppression raising the illustrious banner of Jihad against Hindus... and all those who fight and resist us and here we begin our revenge with the help and permission of Allah-e-a terrifying revenge of our blood - our lives and our honour that will Insha Allah, terminate your survival on this land".

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"So wait !..... AwaAwait now....! Wait only for five minutes it from now..... Wait for the Mujahideen and Fidayeen of Islam and stop them if you can - who will make you feel the terror of Jihad. Feel the havoc cast into your hearts by Allahee Almighty, Face his, Dreadful punishment - and suffer the results of fighting the muslims and the Mujahideen. Await the anguish, agony, sorrow and pain. Await, only for 5 minutes, minutes to feel the fear of

death - death"."

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" o. you sick criminals of the Hindu Parishad ! You nasty dogs of the R.S.S ! Yes ! We know you We identify you by your ugly faces ! We will not be satisfied until we make each and every criminal pay for every drop of blood you spilled and for each and every cry of the oppressed women and children. Our swords are ready to cut off your veins and to push you in re into the hell fire. This is our assurance you, a promise to you, a pledge to you which Allah alone, the most exalted with his will shall fulfill".

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"the terms democracy, secularism, equality, integrity, peace, freedom, voting, election are yet another fraud with us. Have you forgotten what the messenger of Allah (peace be upon him) said said (The believer is not stung twice by the same hole). In another para it is "come, come, oh Muslim Youth ! Make your preparations with whatever you have. Join our ranks and help us - the ranks of India Mujahudeen to strengthen the Jihad against the Hindus - Hindus. Get ready with all the weapons you have. Plan and recognize your move select your targets - targets Target these".

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" With these triumphant attacks, we send our message to all the faithless infidels and their hypocrite allies from amongst the so called Muslims like Arshad Madni & Mehmood Madni who have bartered their faith in Jihad in written of just one seat in the parliament and be hereby declare an ultimatum to all the state governments of India especially to those of Rajasthan, Uttar pradesh, Madhya pradesh, Andhra pradesh, Karnataka and Maharashtra to stop harassing the Muslims and keep a check on their killing, expulsion and encounters".

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"The news of the lawyers of the Bar council in UP denying to fight the cases of our Muslim brethren has already reached us. Remember, you are provoking us to repeat the same blast in civil courts that blew up your bodies into pieces".

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The recitals require no elaboration and A23 is definitely linked to the conspiracy.

127. A23 was also using three mobile phones with numbers 968 92979762, 968 24475727 and 968 99131244. PW140 Chief Manager of UBI who was working at Oman on deputation said that the Oman code is '00968' and the mobile number shown by the persons

having a connection in Oman would be without the above code. PW140 canvassed NRI account for Union Bank and confirmed that Ext.P192 is the NRI account opening form processed by him at Oman. Ext.P192 was submitted by A23 with his address at Oman and the mobile number given is 92979762. Ext.P193 is the copy of the passport of the applicant, ID proof and Ext.P333 is the copy of the resident card issued by Government of Oman furnished by the applicant (A23) at the time of opening the account. PW140 identified A23 from the dock and it is the very same number in the account opening form that is reflected in Ext.P597 to P599 and the Send Money Slips of Western Union Money Transfer (Exts. P597 to P600) recovered from A23 at the time of his arrest. PW86 the Chief Manager of Perumbavoor Branch of the Union Bank corroborated the statements of PW140.

128. Ext.P321 CDR of 99953 25748 (A3) indicates two calls on 18.04.2008 and 08.05.2008 (Ext.P321 (dc) to (df)), the relevant time when A10 was brought for conversion to Kozhikode. Again Ext.P309 CDR of 97461 86452 of A3 indicates two

calls to the above number of A23 on 03.08.2008. Ext.P285(ev) to (ez) are calls made with 93880 81080 of A16 between 01.08.2008 and 29.09.2008; when A16 received money from A23. 96824475727 was saved as 'My Office' by A23 as revealed from page No. 145 of Annexure-A of Ext.P588. There are calls made by A3(99953 24748) and A16 93880 81080 marked as Ext.321(dg) to (dt) and Ext.P285(fb)to (fk) with this number. The 3rd number 968 99131244 is saved as 'My No.' as per Ext.P588(m), entry as shown in Page 170 of Ann-A to Ext.P588. This number again had contact with A3 in his number 97461 86452 marked as Ext.P309(ue) to (vp) between 04.08.2008 and 03.10.2008.

129. Ext.P588 also has extracted the text messages to the mobile of A23 by Shameen Pak. The number from which the messages came was +923 33 83 82 454, a mobile number of Pakistan. As we earlier noticed, Ext.P588(ar) is the message supplying the J&K number, to A23, in which A1 received 10 calls. On 15.09.2008 [Ext.P588(ah)] the message is "*total are 5 and at a time they will reach ? Mean one's time Umair will receive to 5?*". Presumably a reference to the 5

persons who were to be sent to Kashmir. Ext.P588(al) to (as) are also messages with reference to Umair. Ext.P588(au) on 24.09.2008, says '*they r fine. Wats new abt Umer?*', Obviously a reference to the 5 having reached Kashmir and joined the terror camp. On 08.10.2008, the message is '*When Umer wil come 2 u? Wats present situation? Also get satisfaction about their cards and diary. They have original cards?*'. The said message was after A7 to A10 were shot dead in Kashmir and the concern expressed about the cards definitely is that of the ID cards held by the shot militants. The next message on 13.10.2008 at Ext.P588 (u) reads '*remaining persons name is A.Jabbar. Send the number by mail. Will check tomorrow*'. Again the reference is to A15 who had escaped from Kashmir; whose whereabouts were not known to either of the parties.

XIV. THE PRECEDENTS:-

130. State repd. by S.P CBI/SIT v. Nalini (1999) 5 SCC 253 was relied on by the defence specifically to urge the inadmissibility of an admission/confession by an accused as against his

co-accused. The paragraphs specifically pointed out are paragraphs 107,108,576,581 and 665; the first two in the leading judgment, the next two from the second judgment in sequence and the last, in the third opinion. We will refer to the last opinion since it clearly brings out the one aspect on which the other two judges differed. In the leading judgment it was held that the confession of an accused is substantive evidence as against the maker thereof, but not as against the co-accused, against whom it can only be used for corroboration. The second held that confession of an accused is substantive evidence against himself as well as the co-accused, abettor or conspirator. Before we look at the aspect highlighted, we have to notice that the case specifically involved the interplay of the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 *vis a vis* the Indian Evidence Act. S.15(1) of the TADA Act made confession of an accused admissible as against all those tried jointly with him and hence S.30, according to Quadri, J was not required to be invoked in the said case. Quadri, J agreed with the second opinion

but made it clear that even if confession of an accused, is treated as 'substantive evidence' against a co-accused tried along with him, it should be understood in the limited sense of fact in issue or relevant fact; requiring the court to employ prudence and caution to ensure that the innocent are not, unwittingly included with the guilty. 'Substantive evidence' of a fact by itself does not necessarily amount to 'proof of that fact' always; was the profound declaration.

131. In the present case, the presumption as available under S.15 of the TADA Act does not arise. Further the only statement which amounts to a confession on the part of one of the accused is that of A15. S.30 as has been held by Quadri,J; is a clear departure from the principles of English Law, permitting consideration of a confession made by an accused tried jointly with another as against the co-accused. S.30 applies when more persons than one are being tried jointly for the same offence and confession made by one of such persons affecting himself or some other person is proved; in which

context the court has been conferred with the discretion to take into consideration such confession as against both. A15's confession to PW1 and PW72 is only with respect to the journey to Kashmir undertaken with the four persons who were shot dead and two others. None of them stood trial; the four dead, for obvious reasons and the other two, since they are absconding. Hence the confession does not affect any other person/accused who stood trial, and there is no question of applying S.30. We have also not applied the said provision or treated the confession of A15 as an incriminating circumstance against any of the other accused. We find no application of the dictum as propounded in Nalini (supra).

132. Nalini (supra) is apposite in so far as the following, again from the judgment of Qadri, J:

"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 with 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."

133. We have at the outset looked at the aspect of proof of conspiracy in a criminal trial and the impossibility, oftener than ever, in obtaining direct evidence. Firozuddin Basheeruddin (supra) agreed with E.G. Barsey v. State of Bombay (1962) 2 SCR 195 that when the accused are charged with conspiracy to commit three illegal acts, the mere fact that all of them cannot be convicted for each of the offences, is not relevant in finding the offence of conspiracy. If it is established that the accused were pursuing a course of conduct with full awareness that this was leading to the commission of a crime, by one or more persons, in full agreement with each other, then when the necessary *mens rea* is established, all

are guilty of the offence. Paraphrasing the principle on the facts of this case, the testimonies of the witnesses, especially PWs. 1, 35, 36 & 39, the close association of A3 with the militants and their death in encounters with the security forces, inculcates A3 beyond all reasonable doubt. A1, on the other hand is not found to have any direct connection with the recruitment, but he has acted as a communication hub, especially having direct contact with the militants at Kashmir and relayed information from J&K to the other accused, which ropes him in, inexorably into the offence of conspiracy. As far as A1 is concerned, it is not mere knowledge but there is a meeting of minds as is the case of the other accused; discussed by us in the earlier paragraphs. As a subtle distinguishing aspect, it will be worthwhile to point out the case of A2; who may have had knowledge of what A7 was planning to do, but there is no evidence to indicate his involvement in the conspiracy. The meeting of minds, or agreement to carry out an illegal act and intention to promote the unlawful objective as held in Firozuddin Basheeruddin (supra) are the two elements

required to be satisfied, to successfully bring home a charge of conspiracy; both of which stand established in the present case. Here, it is apposite to mention that the theory of agency in conspiracy, of every conspirator being guilty of the overt act, whether he participated or not, as propounded by Firozuddin Basheeruddin (supra) was not accepted by a co-ordinate Bench in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600, relying on E.G. Barsay (supra) an earlier decision of another co-ordinate Bench.

134. K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631 was relied on by the defence to argue that mere knowledge or even a discussion of the plan, will not per se constitute conspiracy. On facts it was held that the appellant therein, an Assistant Commissioner of the Devaswom Board was not at all responsible for the shortage of gold; which metal was in the exclusive possession of the other accused and so was the supervision of the manufacture of a new ornament. Reiterating, that, to constitute conspiracy, meeting of minds to carry out an illegal act or an act by illegal means, is the first and primary condition;

it was asserted that there is no requirement that each and every detail of the conspiracy should be known to all the conspirators. Neither is it necessary that every conspirator should take part in the commission of each and every conspiratorial act. It was held that:

14. Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC 696, that: (SCC pp. 699-700, para 7)

"[I]n most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."

[underlining by us for emphasis]

"The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution". (sic-para 15)

135. The Hon'ble Supreme Court in Shankarlal Gyarasilal Dixit v. State of Maharashtra (1981) 2 SCC 35) cautioned that the guilt of the accused need only

be established beyond the 'shadow of reasonable doubt' and not 'shadow of doubt'. On reasonable doubt, usefull reference can be made to Sucha Singh v. State of Punjab (2003) 7 SCC 643 :

20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh (1990)1 SCC 445.) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava (1992) 2 SCC 86.) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn.) (1978) 4 SCC 161.] Vague hunches cannot take the place of judicial evaluation.

136. The five principles, constituting the panchseel of the proof of a case based on circumstantial evidence was reiterated in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. State of Andhra Pradesh v. I.B.S Prasad Rao

[AIR1970SC 648] reinforced the settled law that before conviction on circumstantial evidence it must be shown to be conclusive of the guilt of the accused and must also be incapable of explanation on any hypothesis consistent with the innocence of the accused. However, it was cautioned that this is not to say that the prosecution must meet any or every hypothesis suggested by the accused, however extravagant and fanciful it might be.

137. We have noticed the above precedents as relied on by both sides to impress upon ourselves the requirement of law, in entering a conviction wherein a conspiracy is alleged, which brings in every conspirator, whether he was involved in every detail or was aware of all the spokes in the wheel, as long as there was a meeting of minds to carry out an illegal act or an act by an illegal means. As is trite, direct evidence in a case of conspiracy is well nigh impossible. When there is a complete chain of circumstances, which behoves a reasonable inference as to the participants having agreed on the objective of the conspiracy and acted in accordance with the roles

assigned to each of them; whether they be involved in every single detail or had knowledge of such details or had actively participated in the criminal act, would all be inconsequential, in finding them responsible for the offence of conspiracy. It is in this context we have examined the evidence led in the trial. The opening words in Section 10 of the Evidence Act, of there being a 'reasonable ground to believe', that two or more persons having conspired together to commit an offence or an actionable wrong, is the incantation, that opens up the flood gates against the conspirators, literally drowning them in such 'relevant facts' proved in trial regarding anything done, said or written by any of the conspirators with reference to the common intention. Once the gates are open; then every thing done, said or written by one, inculcates the others who joined together towards the common objective.

XV. THE EPILOGUE:-

138. The issues framed by the trial Court, twelve in number are the following; whether (i) A7 to A10 were killed in Kashmir in separate encounters,

whether the accused, (ii) collected arms and ammunition, prepared or concealed an attempt to wage war against the Government Of India or actually waged a war, (iii) committed sedition, (iv) harboured an offender, (v) forged any document and used it with that knowledge, (vi) carried out an unlawful activity or any association declared unlawful, under S.3 of UA(P)A, (vii) committed any terrorist act or conspiracy therefore, (viii) raised funds for a terrorist act, (ix) voluntarily harboured a terrorist within the meaning of S.19 of UA(P)A, (x) associated with a terrorist organization within the meaning of S.38 of UA(P)A, (xi) supported terrorist organization coming under S.39 UA(P)A and/or (xii) raised funds for such terrorist organization. The trial court convicted A15 under S.121 IPC and S.16 UA(P)A, accused Nos.1 to 5, 11,12,14 to 16 and 21 to 23 under S.121A and S.16 UA(P)A. A23 was further convicted under S.17 of UA(P)A and A16 under S.19 of UA(P)A also. The life sentences in the case of A15, A23 and A16 were also made consecutive; which is irregular since life sentences cannot be consecutive. The appeal of the NIA is only

against the acquittal of the convicted accused under Ss.120-B, 122, 124-A, 465 and 471 IPC.

139. A7 to A10 are proved to have been killed in Kashmir as per the evidence discussed by us herein above; while associated with a terrorist camp and in separate encounters with security forces. The others are the members of a larger conspiracy to recruit Muslim youth, to train them in arms and ammunition and then spread terror within the Country. A1 was the quiescent partner of the conspiracy through whom the communications were exchanged between the accused and the militants who journeyed to Kashmir to join the terror camps. We have discussed the incriminating material against the said accused as revealed from the CDRs of his two mobile numbers. Pertinently, the accused has no explanation regarding the 10 calls which came from Kashmir which coincides with A7 to A10's presence in the terror camp at Kashmir. A1 in the S.313 questioning denied having used the two mobile numbers, one seized from him at the time of arrest and the other from his house. Both these mobile numbers have been proved to be subscribed by A1 and

the statement given under Section 313 is a deliberate falsehood. MO3 mobile which was seized from A1 was found to have been used by A3, A4 and A8. The direct link with A3, and the sticky web of calls, makes A1 a static member of the conspiracy; having not moved out of his native place or attended the *Thareeqath* classes. A1's predilection to radical views brought him under surveillance of a shrewd officer, PW158; which led to the unfolding of the story.

140. A3, Nazeer @ Ummar Haji @ Haji Ustad played the pivotal role in the conspiracy, as spoken of by the deceased militants to their mates, PWs 35, 36 & 39; describing him as the Commander, who had recruited 180 boys and kept them ready to be sent for training to terror camps. The venom he spewed in the *Thareeqath* classes on assumed harassment perpetrated on Muslims, despite the sober chiding of PW1, makes him the prime mover in the conspiracy. A3, a native of Kannur is found to have traveled to Ernakulam and accompanied A10, a Christian, to the conversion center at Kozhikkode. A10, as has been shown from the circumstances and the testimony of PW1 was acting

under the directions of A3. A3 not only accompanied him to the conversion center but also sent him on a journey to get trained in arms and ammunition so as to fight against his own country; leading to his death in the very first encounter with the security forces. A7 to A9; who were also closely knit with A3 and the radical movement he propounded, accompanied A10 to Kashmir. A9 was their group leader; who kept contact with his Commander through A1. A3's radical views have been fairly established by the testimony of PW1, PW14 and PW19 and many other witnesses. A3 was a regular teacher in the *Thareeqath* classes who deviated from mere religiosity and traversed into sermons attempting to radicalize the Muslim youth and turn them into terrorists. The presence of A3 in the various classes in Kerala and more particularly at Hyderabad, just before A7 to A10 proceeded to Kashmir, the testimony of PW1 from which a reasonable inference is possible of A3 being the motivating force of A10 and A15, coupled with the declarations made by the deceased A9, to PWs35, 36 and 39 speaks volumes about the role of A3. The CDRs of the mobiles used by A3, subscribed in

the name of real persons, without their knowledge, provide a clear trail of the connection with the other accused. A3 as has been proved, absconded immediately after the deaths in Kashmir and was later arrested from the Indo-Bangladesh border at Meghalaya after more than one year; for which he offers no explanation.

141. A15 has been found to have travelled with A7 to A10 and was identified by PWs 35,36 & 39 as having joined the terror camp at Kashmir. A15 obviously fled Kashmir after the death of the others came to Perumbavoor, where he stayed undercover in an assumed name, then went back to Hyderabad, from where he was arrested. He spoke of the failed escapade to Kashmir to both PW1 and PW72; in atonement to PW1 and as a boast to PW72. The confessions made and the other circumstances clearly establish the active role played by A15 and his presence in the terror camp. That A7 to A10 & A15 were trained in arms and ammunition in the terror camp and there were encounters with security forces also stand established. The very fact that arms and ammunition were recovered from the militants shot,

makes possible a reasonable inference that A15 also having fought against the security forces but escaped with his life, which resulted in his fleeing the terror camp. He had overtly waged war against India, by joining the terror camps and participating in the encounters; in which, five of his group were shot dead. The name of A15, 'A. Jabbar', was referred to as the remaining person, in the message sent to A23 by Shammem Pak. The contention raised by the defence that since he was not arrayed in the F.I.R, there is no proof of his presence in Kashmir is fatuous. The said argument is liable to be rejected immediately, since his name would figure in the F.I.R only if he were caught dead or alive, but A15 obviously escaped with his life from Kashmir. The fact proved of A15 having lived under an assumed name at Perumbavoor and the money transfer from A23, just prior to his disappearance from the locality, further validates the factum of an extra judicial confession made to PW72; which corroborates the testimony of PW1 regarding a similar confession.

142. Of the conspirators, A2 is proved to have

accompanied A7 to Hyderabad and returned after two or three days. PW174 had spoken disparagingly about the character and conduct of A2 and people associated with him. But that alone does not establish his role in the conspiracy and we are of the opinion that despite having followed A7 to Hyderabad, A2 is not proved to be a part of the conspiracy. He might have had knowledge, but there is nothing to show a meeting of minds, evidencing a role in the conspiracy. A4 had close association with A3, A7 & A8 who were also shown to have radical tendencies. Though A4 was not a passenger, he took the ticket for A2, A7 and A8 to Hyderabad. His handwriting has been proved from Ext.P34 reservation form of that journey. The CDR of his mobile numbers also reveal close contact with A3, A8, A16, A21 and also A9 in his mobile number which he gave at Salim Manzil. A4 was using a SIM card in the name of one Lijith, and there were frequent calls between the various accused. A4 also used MO3 instrument from which A1, A3 and A8 used their SIM cards also. MO26 handset recovered from the house of A15 was used by A4. A4 has been shown to have

harboured the wife of A15 and his two children; which though not by itself a crime, is a strong circumstance implicating him with the knowledge of the journey undertaken by A15 and makes him an integral part of the conspiracy.

143. A5 again was a regular in *Thareeqath* classes and had association with the other accused, specifically with A3, A11 and A23 as also the absconding accused A20. A5 was present at Hyderabad before A7 to A10 and A15 journeyed to Kashmir. A5 also harboured the wife of A15, at Kalpetta, which period also coincides with the money transaction between A23 and A20 at Kalpetta. A5 has close ties with A3 and A23. A5 had received an amount of Rs.49,500/- sent from Oman by A23; which transaction went unexplained in the 313 questioning. The said transaction though was in the year 2007, indicates the close ties maintained by A5 with A23 from long back. A5 further had no explanation for absconding and for his subsequent arrest from the Indo-Bangladesh border that too, along with A3. The role of the above accused can be clearly visualized and reasonably inferred from

the evidence led.

144. A11, besides being a follower of *Thareeqath* maintained close ties with A3. He used the mobile number subscribed by PW97, which PW97 had willingly handed over to him. The calls made by A11 immediately after the receipt of calls from J&K, indicates A11 having acted as a spoke in the wheel of conspiracy. The CDR of the mobile number used by A11, indicated calls with A1, A3, A8 and also A9, the last, in the number given at Salim Manzil, that too, between 6.9.2008 and 11.9.2008, immediately before the journey to Kashmir. It has also come out in evidence that A5 was introduced to PW50, by A11. It was in the house rented by A5 from PW50, A15's wife and children stayed along with A5 and his family; a strong circumstance of his role in the conspiracy. A12 cannot draw any parallel with A13, who was acquitted by the trial court. A12 had an active role in the conversion of A10, along with A3, which was a precursor to the journey to Kashmir. The mobile number used by A12 revealed calls from a J&K number, for which he offered no explanation under S.313. Ext.P335 CDR of A12's

mobile number indicates frequent calls with A3, A10 and lesser number of calls with A1, A20 and A21 as also 8 incoming calls from the number given at Salim Manzil. It is also interesting to note that the operation of the mobile number of A12 ceased on 7.10.2008, immediately after the death of A7 & A10 at Kashmir, as evidenced from Ext.P335 CDR. A14 and A22 were roped in for their connection with *Thareeqath* classes and thus the association with the other accused. However, there is nothing further discovered as to their role in the conspiracy.

145. A16 harboured A15 after he came back from Kashmir; with full knowledge of his antecedents since A15 lived there under the assumed name of Anoop. A16 also entrusted PW71 with the task of receiving the money sent from Oman by A23. The amounts received along with further amounts are shown to have been deposited by PW71 in the account of A16, specifically on his directions which amount was also withdrawn on the same day. The CDR of the mobile phone used by A16 had quite a number of calls recorded, with A3 and A23 as also A15. There are also calls with A4, A8 and A12.

A23 has saved the number of A16 in his instrument and the money transaction originating from A23 has also been proved by the document recovered from A23 on his arrest. A21 is the father-in-law of A9 and is also related to A15. A21 during the period had around 59 calls with A3 as also contact with A1, A4, A8, A12 and the number given by A9 at Salim Manzil. He had also received money from A23 as spoken of by PW59, who physically handed over the amounts received on money transfer from A23. The corresponding originating form of the money transfer was recovered from A23 on his arrest. The receipt of money by A21 was just before the journey of the militants to Kashmir. A23 has been established to be the financier, who operated from Oman and the money transfers occurred as early as in 2007. In addition to the money transfer to A5 in 2007 on 10.09.2008, an amount was transferred to A21, just prior to the five so called *jihadi's* commencing their journey from Hyderabad to Delhi on 12.09.2008. One of the two transfers to A20 were on 23.10.2008 to Kalpetta, where A15's wife was staying along with A5's family. A20 at that point, in a fake ID, received the

money from the Post Office and the next transfer of money to A20 was to Mumbai on 5.11.2008 immediately after which A20 has flown out of the Country and is still absconding. There was yet another transaction of money to A16 coinciding with the period he helped A15 to remain undercover, at Perumbavoor, in an assumed identity. The details of the narratives found in the digital devices recovered on arrest from A23's possession have been elaborately dealt with by us. Pertinent also, are the messages received from Pakistan to the mobile number of A23 with specific reference to the five persons who joined the terror camps, four of whom were later shot dead. There is also indication of transfer of money from Pakistan, in the messages, which provide a further link to A3. The close association of the two Commanders, one in Kerala (A3) and the other in Dubai(A23), respectively handling recruitment and collection of funds; as spoken of by PWs.35,36 & 39 stands clearly established; the others being willing partners to the crime.

146. Of the appellants/accused, except A2, A14

and A22, we are convinced that there was clearly a conspiracy to radicalize and recruit Muslim youth to wage war against India. There is also evidence regarding five persons having close association with the other accused, who journeyed to Kashmir, four of whom were finished off in encounters by the security forces of India at Kashmir. One of them, who travelled back, confessed to two witnesses regarding the journey undertaken, the elimination of the other members in the group and his own flight back. The actions of each of the accused found guilty of entering into a conspiracy to wage war against their own country is established from the evidence discussed by us. Each of them acted as a spoke in the hub; the rim of which was provided by A3 & A23, the prime movers [State of Maharashtra V. Som Nath Thappa (1996) 4 SCC 659]. It has been clearly established that a conspiracy was hatched to recruit men for terrorist activities, train them in arms and ammunition and wage war with India, which probably, fizzled out with the four out of the five being shot dead in encounters. It would have resulted in far reaching consequences, generally for

the Nation and particularly for this State; but for the sudden death of four of such recruits in encounters at Kashmir. The testimonies, documents produced, especially the CDRs and the extracts made from the digital devices seized from A8's house and A23 together provide the reasonable belief required to use the evidence led regarding the relevant facts, which stand proved, against all the accused. There is unity of object and purpose, though the means were achieved differently. There is a clear unbroken chain of circumstances connecting the accused, with the plot hatched of recruitment to perpetrate terrorist activities; the overt acts of waging war against the Nation having been proved by the death of the four recruits. The evidence led unerringly inculcate each of the accused as a member of the team of conspirators. The meeting of minds is very evident and the close association validates the allegation of conspiracy as proved from the CDRs during the period the recruits converged in Hyderabad along with many of the accused and were sent for training to Kashmir, with the intention to return and foster unrest and

foment terror within the Nation and the State. The incriminating circumstances of the CDRs when put to the accused, they had no explanation, which assumes relevance under Section 106 of the Evidence Act. We find no reason to upset the findings of the trial court. The conviction and the sentence imposed on all the appellants, except A2, A14 and A22 are confirmed.

147. The direction that the life sentences would run consecutive cannot be upheld since the sentence is one for life; which cannot run consecutively. The Hon'ble Supreme Court has time and again said that life imprisonment means imprisonment for complete and full span of life; subject only to remission. A wealth of decisions were considered in *Duryodhan Rout v. State of Orissa (2015) 2 SCC 783* and the principle reiterated, declaring that when there is a life sentence imposed on an accused along with other minor sentences the latter can only run concurrently. Drawing support therefrom it has to be declared that there is no question of two life sentences running consecutively. A2 is conferred the benefit of doubt and A14 and A22 are acquitted. A2,

A14 & A22, acquitted of the offences, shall be released forthwith, if they are not wanted in any other crime.

148. As far as the appeal of the NIA is concerned we note that there is no discussion regarding the offences on which the appeal is filed, much less any reasoning. A15 is convicted by the trial Court under Section 121 IPC and all the accused under Section 121-A, respectively for waging war against the Government of India and the conspiracy to commit that offence. Under S.122 IPC, not only collection of arms and ammunition, but collection of men and preparation to wage war with the intention of either waging or being prepared to wage such war is also an offence and the conspiracy to commit such offence would be covered under Section 120-B. In the present case, there is ample evidence to indicate recruitment of men who were to be trained in arms and ammunition for the sole purpose of waging war against India, for assumed illegalities perpetrated on a community. Every single person found guilty of conspiracy and the other offences under UA(P)A as also S.121 & 121-A IPC

definitely have to be found guilty of commission of the offence under S.122, since the acts proved are of preparation to wage war against India. In that event, on the evidence led, Section 120-B too is attracted since there is conspiracy for committing such offence by all the accused. We convict the accused/respondents, except A2, A14 & A22, under S.122 and S.120-B of the IPC. Further, under S.124-A any words spoken, written, visible representation or otherwise brings or attempts to bring, hatred or contempt or excite or attempts to excite disaffection towards the Government established by law in India is made an offence punishable with life. A3 is guilty of the offence under S.124-A, as has been disclosed from the evidence led and A1, A4, A5, A11, A12, A15, A16, A21 and A23 are found guilty of the offence under Section 120-B on that count also for conspiring and aiding A3, and so is A3 convicted for conspiracy. A1, A3, A4, A5, A11, A12, A15, A16, A21 and A23 are sentenced to life under Section 122 and a like sentence for conspiracy to commit that offence, under Section 120-B. Likewise, A3 is sentenced to life under S.124-A and A1, A4, A5, A11,

A12, A15, A16, A21 and A23 are sentenced, under Section 120-B, for the conspiracy to commit the offence under Section 124-A, with imprisonment for life. A3 is further convicted with life for the offence of conspiracy under Section 120B for conspiring to commit the offence under Section 124-A.

149. As far as S.465 and S.471, there is no proof as to forging of documents and using them with such knowledge, except as against A8, A9 and A15. As far as A8 and A9 are concerned they are no more. A15 definitely forged the ID under an assumed name and used it as is evident from the records. In such circumstance A15 is further convicted under S.471 and he is sentenced to rigorous imprisonment of two years and fine of Rs.5000/-, in default of which he shall further undergo RI for a period of six months. The other accused who have used SIM Numbers in the assumed name are not shown to have acquired the SIM numbers, in the name of real persons.

149. Crl.A No.474 of 2014 of the NIA is partly allowed. Crl.A No.1575 of 2013 is partly allowed acquitting A2 & A22 who are the first and sixth

appellants and affirming the conviction and sentence of the other appellants. Crl.Appeal Nos.873 of 2014, 1567 of 2013, 1574 of 2013, 1577 of 2013, 1578 of 2013 and 1638 of 2013 are dismissed. Crl.Appeal No.1576 of 2013 is allowed acquitting A14.

XVI. THE TAIL PIECE:-

150. Before we leave the matter we cannot but record our appreciation for the tremendous work put in both by the Kerala Police and the NIA; for which the Investigating Officers literally traveled the length and breadth of this Country on the heels of the divisive forces; from Kerala to Kashmir and Meghalaya to Maharashtra, tirelessly working to bring their straying country men before law. For those who have such radical thoughts, we can only say that the grass is not greener on the other side of the fence, if you just look at history. Larry Collins & Dominique Lapierre in their book '*Freedom At Midnight*' made this observation in Chapter 5, about the partition, which tore asunder *the land in which four hundred million human beings lived together for centuries (sic)*, described by the Authors as '*The Most Complex Divorce*

in History':

Yet, no aspect of partition was more illogical than the fact that Jinnah's Pakistan would deliver barely half of India's Moslems from the alleged inequities of Hindu majority rule which had justified the state in the first place. The remaining Moslems were scattered throughout the rest of India so widely that it was impossible to separate them. Islands in a Hindu sea, they would be the first victims of a conflict between the countries, India's Moslem hostages to Pakistan's good behavior. Indeed, even after the amputation, India would still harbor almost fifty million Moslems, a figure that would make her the third-largest Moslem nation in the world, after Indonesia and the new state drawn from her own womb.

[underlining by us for emphasis]

In the three score years and a dozen hence, there has neither been a single instance of a hostage situation, nor was there good behaviour, as contemplated by the Authors.

151. We would be failing, if we do not place on record our deepest appreciation for the manner in which the arguments in the appeals were addressed. The meticulous study of law and facts, made by the learned Counsel for the defence and the learned Assistant Solicitor General; which was in abundant display in the arguments addressed before us, with remarkable alacrity and astute finesse. We also noticed the presence of the N.I.A Officers in the Court room, who

had the facts on their finger tips and were constantly assisting the learned ASG, ensuring not a moment; was wasted in Court, of precious judicial time.

Ordered accordingly.

Sd/-
K.Vinod Chandran, Judge

Sd/-
C.Jayachandran, Judge

jma/sp/lgk