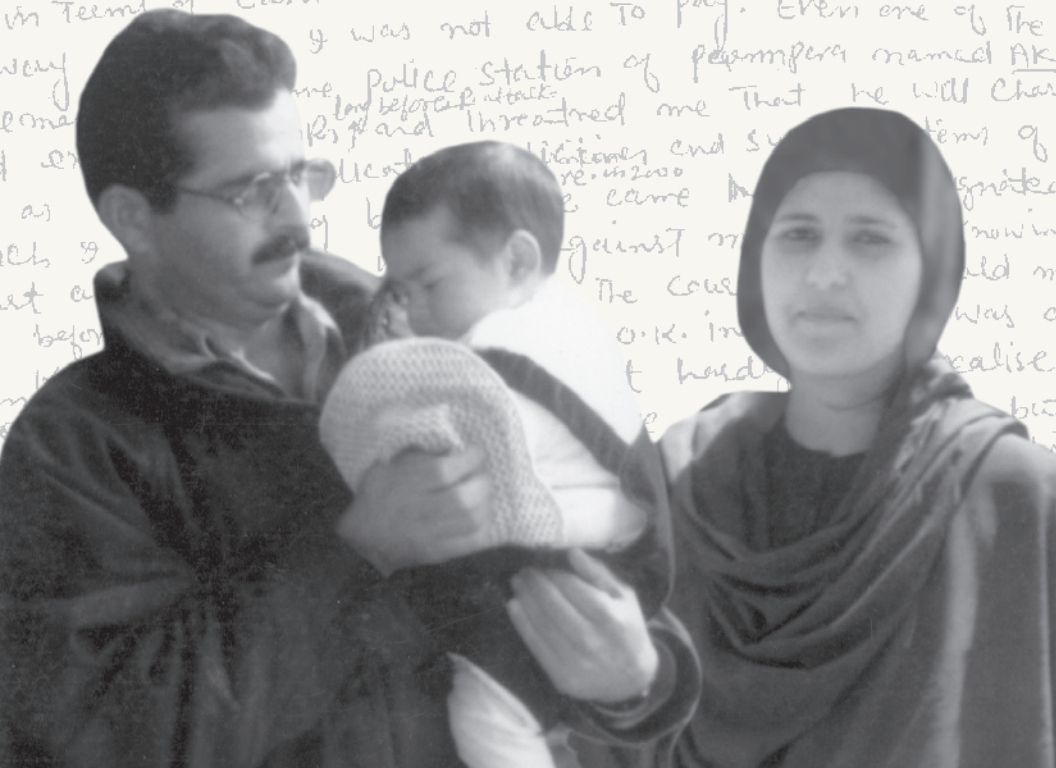


The Afzal Petition A Quest for Justice



The Afzal Petition

A Quest for Justice

...very dependent on Washington
in sponsorship.
shed Whatever he may be guilty of, Afzal
Afzal has not been accused of being either a
guilty has not been accused of being either a
in a direct participant or a major conspirator
and in the 2001 attack on Parliament. The
un- murder of 2,000 Indian citizens in Guj-
ni- arat in 2002 was, by any realistic stan-
for dards, a more severe and damaging
un- attack on the fabric of Indian democracy.
al- Yet prominent individuals whose com-
Phi- plicity in that crime is far more direct
ath for and more clearly established than Afzal's
un- complicity in the attack on Parliament
al- remain unpunished, and indeed have yet
Phi- to be brought before a court of law.
ath

Betrayed trust

There is no excuse for the prem

— The State and the Right to Life,
Mike Marqusee in *The Hindu*, February 11, 2007

The Afzal Petition

A Quest for Justice

PROMILLA & CO., PUBLISHERS
in association with
BIBLIOPHILE SOUTH ASIA

NEW DELHI & CHICAGO

CHAMPA : THE AMIYA & B. G. RAO FOUNDATION
NEW DELHI

Published by

PROMILLA & CO., PUBLISHERS

in association with

BIBLIOPHILE SOUTH ASIA

URL : www.biblioasia.com

C-127, Sarvodaya Enclave

New Delhi 110 017, India

and

Champa : The Amiya and B.G. Rao Foundation

25, Nizamuddin East, New Delhi 110 013 India

Copyrightfree. Can be reproduced and translated with acknowledgment

First published 2007

All rights reserved

ISBN : 978-81-85002-83-5

Typeset in FrankfurtGothic

Layout and processing by Tarun Beri, New Delhi

Printed and bound in India by Uthra Print Communications, New Delhi

Contents

<i>Why Afzal Must Not Hang</i>	7
<i>Amrit Wilson's Letter to Afzal</i>	13
<i>British MPs' Motion in Parliament</i>	16
Afzal's Petition	17
<i>Annexures</i>	53
1. <i>Rights of Man</i> <i>Times of India Editorial</i>	55
2. <i>A Valley Scarred</i> <i>by A.G. Noorani</i>	56
3. <i>Arguments for Hanging Afzal</i>	57
4. <i>Order of Sessions Court</i> <i>dated 12.7.2002</i>	60
5. <i>Record of Examination and</i> <i>Cross Examination of</i> <i>10 Prosecution Witnesses</i>	62

Why Afzal Must Not Hang

On September 26, 2006 the electronic media announced that the date, time and place of execution of Mohammad Afzal Guru had been fixed for October 20, 2006 at 6 a.m. in Tihar Jail.

There was an outrage of protest in Kashmir and hundreds and thousands of men, women and children took to the streets in Srinagar to protest against the impending execution. It was an extraordinary outpouring of anger, grief and outrage. Kashmir had not witnessed such a show of solidarity even when Maqbool Bhatt was hanged in Tihar jail.

The spontaneous processions continued for several days compelling every political party and the leaders of the Kashmiri movement for self-determination to protest against Afzal's death sentence. Even Ghulam Nabi Azad, the Congress Chief Minister of J&K, issued a statement protesting against the death sentence.

The moment Ghulam Nabi Azad's statement was published the BJP attacked Congress of pandering to terrorism. The BJP burnt Afzal's effigies and organized virulent protests all over the country.

The electronic media conducted "debates" on the question of Afzal's death penalty but these panel discussions generated more heat than light because few knew the facts of the case. Real political and human rights issues got lost.

Mohammad Afzal Guru's petition to the President of India has both the hard facts and the political context. Unfortunately, the petition has not been made available to the public and perhaps that is the reason why some misconceptions have arisen. In fact some unnecessary controversy around the petition has also generated further misunderstanding among the public.

The BJP ran a campaign that Afzal should be hanged because he had not filed any mercy petition before the President. On the other hand Indian intelligence agencies wanting to undermine the

Kashmiri peoples' protests spread the rumour that in fact Afzal Guru had pleaded for mercy and that is why he had not made his petition public.

In fact Afzal has filed a petition under Article 72 of the Indian Constitution on November 11, 2006. Afzal carefully read the petition and made some changes in the draft prepared by his lawyers and all the changes were incorporated. Afzal himself submitted his petition through the jail authorities. His petition reads like a statement of a political prisoner who is asserting his legal right to justice, not begging for mercy.

And now Afzal waits for the President of India to give him justice.

But even while he is locked up inside a cage in the high security wing of Jail No 1 of Tihar Jail the intelligence agencies do not allow him even a little reprieve. They have used all kinds of ways to try and break his spirit. They are angry because Afzal has managed to expose the ugly side of the Special Task Force through his letters to human rights organizations and to his lawyer. The intelligence agencies have tried every possible way to make Afzal retract those letters and his allegations of torture, extortion and corruption of the STF.

The intelligence agencies even used Afzal's elder brother Aijaz to break Afzal. Aijaz, who never went to meet his brother all these years went several times after the execution date was announced and told him to retract the letters for the sake of the family. It has since been revealed that Aijaz has taken a lot of money from political leaders and instead of spending it on his brother's defence has built himself a big home and bought a new car.

Afzal has maintained his dignity and refused to surrender his self respect even in these very trying times. But he is still being subjected to all kinds of insidious pressure and the media continues to be unfair to him. They have even broadcast a "confession" he gave to the police even though it is not admissible in law. The media did not even bother to broadcast the protest lodged by Afzal's lawyer, N D Pancholi, against the unethical practice of broadcasting confession extracted under coercion. Pancholi is the only lawyer who has been in regular contact with Afzal after the execution date was announced.

The jail authorities have stopped the International Red Cross from visiting him even though they have a special agreement with the Government of India with regard to Kashmiri political prisoners.

Champa Foundation is publishing the Afzal's petition with all the annexures so that the issues raised in it become a part of informed debate. We believe there are three major issues that have been raised in Afzal's petition. All these issues are related to the problem of lowering of human rights standards in the name of countering terrorism.

Right To Fair Trial

The court records are voluminous and not available to the general public. However, without going through these records it is not possible for the public to judge whether Afzal got a fair trial. It is not possible to print 10 volumes of the records but in Afzal's petition he has annexed the full court record of the examination in chief and cross examination of 10 important witnesses.

A reading of the court records show clearly that these witnesses on whose testimony Afzal was handed death sentences by all the three courts were not cross examined and the lack of cross examination was held to be admission of the prosecution version. This is a gross violation of all standards of fair trial.

These records clearly show that Afzal was not represented at all at the sessions court trial.

Death Penalty

Afzal's petition confirms one of the most important arguments for the abolishment of capital punishment. If Afzal Guru had been hanged there would be no way to reverse the miscarriage of justice and his right to fair trial would have been meaningless.

It has been argued that capital punishment acts as a deterrence to crime and insurgency. The hanging of Maqbool Bhatt did not deter the insurgency in Kashmir; it inspired the movement.

There is no historical, legal or political evidence to suggest that death penalty deters crime. In the past enlightened regimes

like the Travancore-Cochin Kings and Maharaja Ranjit Singh abolished death penalty.

Latin America and Europe have abolished death penalty and there is no move to bring it back despite the threat of terrorism. In fact 122 countries around the world have abolished capital punishment from their statute books. Even in cases of genocide and crimes against humanity death penalty is no longer acceptable under international law. The International Criminal Court and the international criminal tribunal for Rwanda and Former Yugoslavia do not have any provision for death penalty.

The Indian state is committed to abolishing the death penalty and even the Jan Sangh had advocated against capital punishment to honour the memory of Lord Mahavira founder of the pacifist religion, Jainism.

It has been argued that by hanging Afzal the victims of December 13 attack on Parliament would get justice. However, those who have put forward this argument have never spoken out against the fact that the victims' families have not been given adequate compensation and those security personnel who were injured have not even been given promotions.

The victims and relatives of victims of September 11 have come together and condemned the war against terrorism and the bombing of Iraq because they feel that revenge is no way to get justice.

In fact many people who have joined Save Afzal Guru Campaign have done this precisely because they have been shocked by the logic of the Supreme Court of India for awarding death penalty to Afzal. The Supreme Court did not award Afzal the death penalty because he was the mastermind or because he was involved in killing any of the security personnel or even of actually planting any bombs. The charge sheet in the parliament attack case accused three Pakistanis, Maulana Masood Azhar, Ghazi Baba and Tariq Ahmed of master minding the attack. The five persons who actually carried out the attack were stated to be all Pakistanis and their names were: Mohammad, Raja, Rana, Haider and Hamza. According to the prosecution these men were all Pakistanis but no proof was produced of their identities.

Therefore, it is clear that even the prosecution did not accuse Afzal of being involved in the actual attack, killing or planning. Therefore, under the law he could not be given a death sentence. In fact there was no evidence at all that Afzal belonged to any banned or illegal organization. He was acquitted of charges of belonging to any terrorist organization. But despite these facts the Supreme Court thought they should punish him to satisfy the collective conscience of the country. These are the actual words of the highest court of the land:

“The incident, which has resulted in heavy casualties, has shaken the entire nation and the collective conscience of the society will be satisfied if capital punishment is awarded to the offender.”

Many Indian citizens expressed shock at such reasoning which went against the principles of rule of law. Besides, how can a collective conscience of any people ever be satisfied if a fellow citizen is hanged with having a fair chance to defend himself.

War Against Terror and the Kashmir Question

The attack on our Parliament was without question the most serious assault on our democracy and deserves to be condemned from every angle. However, the attack has been used to mobilize fear and hatred against Muslims in general and Kashmiris specifically.

It is true there was a very vociferous section of the Indian public demanding that Afzal be hanged. But there was also a wide spread protest in India against death penalty because increasing number of people became aware that Afzal was denied a fair trial. At a protest dharna organized at New Delhi's Jantar Mantar people from all walks of life cutting across ideologies came to show their solidarity for Afzal. Staunch Gandhians, senior Supreme Court lawyers, writers, film makers and academics all made common cause with Afzal.

Champa, the Amiya and BG Rao Foundation has been an integral part of the campaign to save Afzal from the gallows. In December 2006 we brought out a pamphlet entitled: “The right to

information in the time of terror: case study of the parliament attack case.” Later Champa participated in the launch of Nandita Haksar’s book “Framing Geelani, Hanging Afzal: Patriotism in Time of Terror” both in Delhi and in London. The book motivated many people to join the campaign to save Afzal.

Naeem Malik of the Guantanamo Campaign wrote that “for somebody living in the West, originating from the sub-continent from a different side of the dividing line, Nandita Haksar’s book is an inspiration and a ray of hope in the other wise gloomy and oppressive world we find ourselves in today.”

Amrit Wilson, daughter of Amiya and B G Rao, has written about the campaign in Europe to Afzal. We are reproducing her letter here along with the motion by 23 British MPs. Two of the MPs took up Afzal’s case with the Indian President when he visited the European Union.

The Save Afzal Guru Campaign is the first campaign where Kashmiris, Indians and South Asians living in Britain have come together to fight for the life of a Kashmiri political prisoner. The Afzal petition is not only the story of a man denied a fair trial by a growing authoritarian state but also about the violence perpetuated on Kashmiris in the name of Indian nationalism. The Save Afzal Campaign is an integral part of the struggles to preserve democratic, secular values in the face on the onslaught on human rights and human dignity by the so called war against terrorism.

Champa

The Amiya and B G Rao Foundation

New Delhi: June 2007

Amrit Wilson's Letter to Afzal

Dear Afzal,

I had heard about your case in 2001, but when I was in Delhi last year, I heard in detail about the terrible injustices you have faced. I went to the dharna organised by Pancholiji on 10 December. Two days after that on 12 December, Champa, the human rights organisation set up in memory of my parents held a meeting where Nandita Haksar spoke about your case and what you had gone through. I felt I wanted to do whatever I could to support you.

I live in London and when I returned in January 2007, I decided that I would raise your case here to put pressure on the Indian government.

I and others from an organisation which I belong to here, South Asia Solidarity Group organised a protest in front of the Indian High Commission on 26 January (Republic Day). We also got three British Members of Parliament and several representatives of Indian and Pakistani organisations to sign a letter urging the Indian President to grant you a reprieve. The protest got a lot of publicity (The Times of India and Hindu publicised it.) People in London who had never heard of your case before contacted us and urged us to continue campaigning on your behalf. I kept Pancholiji and Nandita informed throughout and they sent us information about your case, about POTA and so on without which we could not have done anything.

On the 12 of April we held our next big event. This was a public meeting which we organised in Central London at which we invited Moazzam Begg, a man unfairly incarcerated in Guantanamo, to speak in support of you. We also launched Nanditaji's book 'Framing Geelani, Hanging Afzal.' The book which brings out the reality of what you have faced, as well as the reality of the Indian state's

repression in Kashmir had a powerful effect in motivating people to campaign for you.

At the end of the meeting the Save Afzal Guru Campaign in the UK was set up by a number of individuals and groups like South Asia Solidarity, the Islamic Human Rights Commission, the 1857 Committee, Cage Prisoners and Campaign Against Criminalising Communities. We sent out letters to all Members of the European Parliament (MEPs) prior to the Indian President's visit. Some had already heard of your case but our letters and telephone calls pressurised them to bring your case up with the Indian President and urge him to grant you a reprieve. We were successful in that two of them Sajjad Karim and Sarah Ludford decided to take up your case with Abdul Kalam. Three others also wrote to the President of the European Parliament asking him to urge the Indian President to grant a reprieve. Yet others are trying to pressurise Abdul Kalam through the European Commission. What is really good is that a number of people from different groups and very different backgrounds are now active in the campaign for justice for you.

We have also managed to get a British MP John McDonnell to pass a motion in the British Parliament urging the President to grant a reprieve and also hold a public inquiry into your conviction. We are now persuading other MPs to sign the motion. 23 MPs have signed so far and we are hoping to get quite a few more to do so. Our next major meeting – in a few weeks time - will be held in the House of Commons and attended by a number of these MPs .

At least now people know about your case and what happens to you is being watched internationally. A number of well-known writers and actors have also been contacted and we are fairly confident that they will also campaign for your reprieve and more than that your release. We have also asked people to write to you in Tihar jail – then too, even if you are not given the letters, the authorities will know that we are watching.

The campaign has also set up a website (it is not yet complete but soon will be) and we have put the lovely picture of you with you wife and son on the main page. Please send us a message through Pancholiji which we can add to the website.

I will write to you again before too long, for now I just wanted you to know about our activities in England and Europe.

For you sitting in the jail all this may seem very little but we are hoping that one day you will be out with us and we will be able to celebrate together. Moazzam Begg sends you his warmest greetings.

In hope and solidarity,

Amrit

London : May 20, 2007

Early Day Motion

EDM 1330

AFZAL GURU

23.04.2007

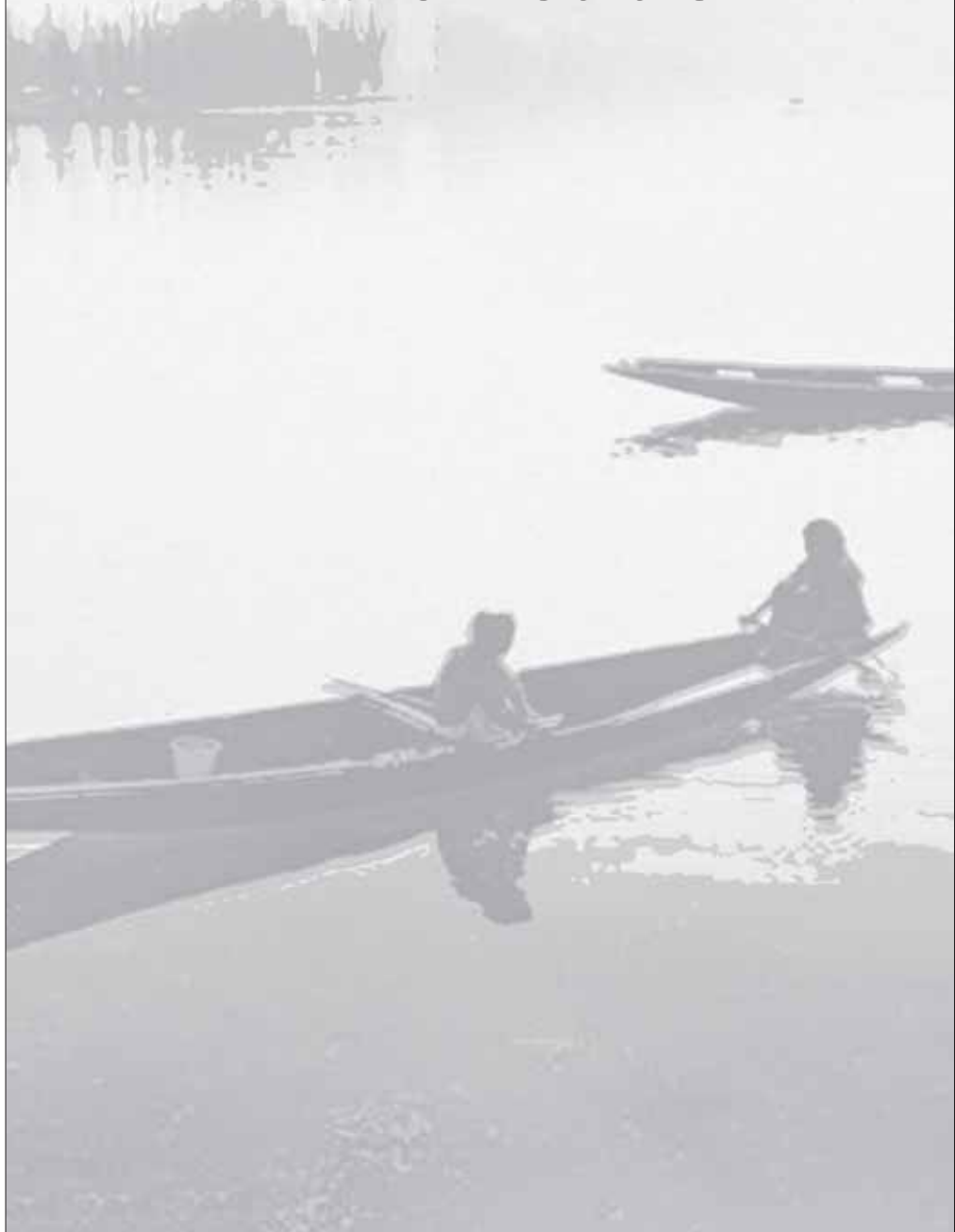
McDonnell, John

23 signatures

Abbott, Diane	Amess, David	<i>Bottomley, Peter</i>
Campbell, Ronnie	<i>Caton, Martin</i>	Clark, Katy
Cohen, Harry	Cook, Frank	Corbyn, Jeremy
<i>Cryer, Ann</i>	Durkan, Mark	Etherington, Bill
Foster, Michael Jabez	Gerrard, Neil	<i>Gibson, Ian</i>
Godsiff, Roger	Hopkins, Kelvin	<i>Jones, Lynne</i>
McDonnell, Alasdair	Simpson, Alan	Vis, Rudi
Wareing, Robert N		

That this House notes with concern that Afzal Guru, convicted of attacking the Indian parliament in December 2001, is facing the death penalty in India; notes that there are concerns and questions being raised by campaigning organisations regarding Afzal's trial and therefore the legitimacy of the verdict; further notes that there are claims that Afzal Guru was tortured by the police and security forces; believes that the death penalty is inhumane; and asks the President of India to intervene urgently to use his prerogative of mercy to revoke the death sentence and call an inquiry into Afzal Guru's conviction.

Afzal's Petition



To

His Excellency, the Honourable President of India
Dr APJ Abdul Kalam
Rashrapati Bhawan
New Delhi-110011

Your Excellency,

Re: An Application under Article 72 of the Constitution of India
for grant of pardon/remission of death sentence of
Mohammad Afzal

Assalam Alaikam. It is true that I did not want to file any petition before you but it was not out of any arrogance or ill will. I had no hope of getting justice. Besides, I was told that my lawyers would be filing a curative petition and I was hoping that I may still get justice from the Supreme Court. But my lawyers did not file any such petition and instead my death warrant was issued and the date for my execution was set for October 20, 2006. As you can imagine how shocked my family members were when they learnt about the date of execution from the television reports. My wife and mother asked my permission to file a petition before you and I agreed for their sake. I myself had no hope that I would get a hearing. However, after my wife, Tabassum, my mother, Ayesha Begum and son, Ghalib, told me how graciously you had received them I was really moved and it kindled a new hope that I may still get justice.

I am aware that whatever I write will be treated with suspicion and only as an attempt to save my life. The media has portrayed me as a dehumanized Kashmiri terrorist and there is nothing I can do or say to make any difference. It is true the Kashmiri people have shown solidarity with me and protested against the judgements by the Designated Court, Delhi High Court and the Supreme Court. But after the death warrant was issued I was really moved by the kind of solidarity expressed for me by the Indian people including students, teachers and social activists cutting across ideological

Received
Two
28/11/06
Assistant Superintendent
Cent al Jail No-3,
Tihar, New Delhi

Afzal

divides. I am also surprised that a section of media has also taken a stand against my death sentence. I have two editorials, the first is entitled "Rights of Man" which appeared in the Times of India dated October 24, 2006 and the other entitled "A Valley scarred" by Mr AG Noorani in Hindustan Times of October 24, 2006. I am annexing the said editorials as **Annexure A**.

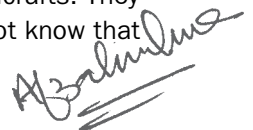
This support has truly given me a new hope that I may still live and be able to see my son grow up. For a man in my position there is nothing else one can hope for.

Your Excellency, I have heard and read the arguments being given for hanging me. When a man faces certain death things become clear and I find myself wondering whether my death can achieve any kind of justice and whether it can bring us closer to peace. I really do not think that my death will help bring us closer to the peace that every Kashmiri longs for and every Indian has hoped for. I have made a chart dealing with the arguments for hanging me in a chart which I am annexing as **Annexure B**.

I am aware that there is one other argument being given for hanging me. They say I have not shown remorse or begged for forgiveness. Your Excellency, I cannot ask for forgiveness for something I have not done. I was entrapped by corrupt officers of the Special Task Force. The fact is that I had surrendered and I was desperately trying to study and earn a living to support my family. However, the STF did not allow me to live a normal life and they destroyed our small family.

In this petition I would like to write and tell you my story as I see it not only with the hope that you will spare my life but also you will understand the stories of hundreds of other Kashmiri youth, especially those who are locked inside jails. I take this opportunity to write to you, the President of India as a Kashmiri because very few Kashmiris get an opportunity to be heard. I want you to understand why the Kashmiri people have taken to the streets on my behalf. Their anger, their anguish and their pain is still not understood in India.

For most Indians Kashmir is a holiday destination. A beautiful valley famed for apples, dry fruits and beautiful handicrafts. They love the land but not the Kashmiri people. They do not know that



for my generation of Kashmiri youth being a Kashmiri has meant living with a daily fear of arrest, torture and death. The insecurity and tension in every Kashmiri home is as tangible as the ice and snow in winter.

Your Excellency, I come from a very poor family. It is an ordinary family trying to eke out a living. My father died when I was very young and my older brother Aijaz brought us up and he was happy that I wanted to be a doctor. I was in first year MBSS when the Kashmiri youth began the armed phase of their movement for self-determination. We were inspired by Omar Mukhtar's film '*Lion of the Desert*' and many youth of my generation saw the film several dozens of times and came out of the cinema halls in processions shouting for azaadi. The film was banned and we saw the film on videos and knew each scene, it was a story of a school teacher who fights for the liberation of his people and is hanged. It reminded us of the story of Sheikh Abdullah who was our hero but who let his people down.

It was during those heady days I like so many thousands of youth left the comfort of our homes, the security of our future jobs and gave up our dreams. I joined the movement and went across to Pakistan. However, I was greatly disillusioned by the fact that both India and Pakistan were using the Kashmiri youth as pawns in their respective politics. In 1993-94 I surrendered to the Border Security Force.

Your Excellency, I do not think you can understand what the life of a surrendered militant is like in Kashmir. We are looked upon as traitors and as agents of the Indians. On the other hand the Special Task Force does not allow the surrendered militant to live a normal life because they want to use us as informers. Your Excellency, all I wanted was to live a normal life with dignity and earn an honest living to support my mother, my wife and my children.

However, the officers of the Indian army and the STF would not allow me to live a normal life. They would call me and other surrendered militants to their camp and beat us, tortured us and humiliated us so that we become informers. I was no longer in touch with the movement but I did not want to live as an informer. Two days after my marriage I was picked up by one Maj. Thapa of

Afzal

the Rashtriya Rifles; later Maj. Raj Mohan also called me and he gave me electric shocks and then in 2001 one DSP Vinay Gupta called me and tortured me. After five hours of torture they discovered I was the wrong Afzal they had picked up.

Your Excellency, I feel ashamed to describe the details of torture that these officers of the Indian security forces subjected me to. It is unimaginable that they could do those things to a fellow human being. Their torture included stripping me naked, hanging me upside down and pouring petrol in my anus and putting me in freezing water. It includes giving me electric shocks in my private parts and mercilessly beating me. Why have I been tortured in this manner? What crime did I commit? Hundreds of Kashmiri youth have been tortured and subjected to third degree by the notorious men of the STF in their detention centres and the Government of Mufti Sayeed promised to disband these camps and the force. Who is going to enforce that promise? Who is going to punish these officers who behave more like wild beasts without any humanity?

It was these officers of the STF who used me and introduced me to one Mohammad who was one of the persons who attacked the Indian Parliament. I know no one will ever believe my story because no one will investigate into the true facts. I do not know who this Tariq was and I did not know what the plot was. I became involved in the conspiracy to attack Parliament without my knowledge, intention or willingness.

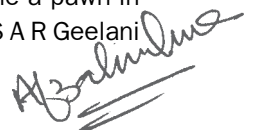
Your Excellency, I was made a scapegoat by the investigating agencies because they could not catch the real masterminds behind this attack. From the time they arrested me in Srinagar the Special Cell kept threatening me that they would eliminate my family members if I did not co-operate with them. The STF had already arrested and detained my younger brother, Hilal and till the time I was sent into judicial custody he was kept in their custody.

Your Excellency, how do I describe in words the atmosphere in the Special Cell Police Station at Lodhi Road? Policemen in uniform urinated on me and in my mouth. It was the Holy month of Ramzan and they said I could break my fast by drinking their urine. I cannot reproduce the abuses they heaped upon me and the others they had arrested. They constantly told me that if I confessed and implicated SAR Geelani I would be given less punishment.

Afzal

I do not know whether you have seen the records of the case but I urge you to study the records and you will see that the investigating agencies did not follow any procedure. All the courts have found that the time, date and place of arrest of all the four of us accused was fabricated. The prosecution stated that I had gone to Srinagar on 13th December 2001 in the truck which was driven by another co-accused Shaukat Hussain and was arrested along with Shaukat Hussain in Srinagar on 15th December 2001. It was also alleged that a laptop and Rs. Ten Lakhs were recovered from the truck in my presence. This story of police is false. I was arrested alone from Batmalu Bus stop at Srinagar. There was neither truck nor Shaukat Hussain. Pertinent aspect is that Shaukat Hussain did not know driving and he had no driving license. Thus there was no question of Shaukat Hussain driving the truck. Any truck or vehicle which goes to Srinagar has to pass through Lakhanpur check post for toll tax where particulars of every vehicle are entered along with name of the driver and his driving license number. The investigation has glossed over this important fact as there is no investigation over this aspect. True, the courts have disbelieved the story of arrest but this fabrication also goes to discredit the alleged recoveries of laptop and Rs. Ten lakhs and many other evidences cooked up by the police against me. The question is why did the investigating agencies need to tell lies about our arrests? Why did they claim that Geelani was the first person arrested when they had arrested many others? Why did they make us all sign sheafs of blank sheets of paper? Why did they forge so-called disclosure statements? Why did they not get any public witnesses and why did they not prepare any arrest memos? Why did they deny us any access to a lawyer at the time of arrest? I am sure the intelligence agencies do not want to be faced with these questions and that is why they want to hang me.

Your Excellency, I believe that I have not had one moment's fair trial and I will give you the facts from the court records to prove to you that I have not made this claim as an after thought but was aware of the fact that I was being denied a fair trial. In fact the investigating agencies thought they could make me a pawn in their hands for their diabolical plan to falsely implicate S A R Geelani



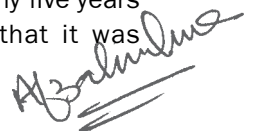
so that they could prove to the public they had resolved the crime. The investigating agencies knew that I am a small fry who could not be portrayed as a mastermind nor did I belong to any terrorist organization. Since they could not catch the real culprits they wanted to frame an educated Kashmiri scholar to make their case look genuine. They wanted me to play their dirty game and they offered me a lighter punishment. I value my life very much but my conscience would not allow me to turn a traitor and be a party to the framing of an innocent Kashmiri.

TRIAL BY MEDIA

The records show that a few days after my arrest on December 20, 2001 the officers of the Special Cell, Delhi Police organized a media conference at their Police Station at Lodi Road. Journalists from the print and electronic media were present. I was seated with my hands in handcuff and the officers who had tortured me standing all around. I am sure the viewers did not see either my handcuffs or my tormentors standing over me.

I told the media what ever ACP Rajbir asked me to tell them. They wanted to say that one of the terrorists, Mohammad who was killed was in fact Berger who had hijacked the Indian Airlines flight to Kandahar. (PW 67 also alleged in court that I had identified Mohammad as Berger). I said it. They wanted me to say that Pakistan was involved in the attack. I said it. I did what ever they said except for implicating Geelani. They wanted me to say he was the mastermind that he was somehow linked to Al Qaeda but I refused to do this. The moment I said Geelani was not guilty ACP Rajbir shouted at me and told me that I had been told not to say anything positive about Geelani. One of the journalists present at the time, Shams Tahir Khan testified to this fact when he was called as a Defence witness for Geelani.

Your Excellency, the entire country saw the media conference. They saw me and heard me confessing to a crime that I did not commit. I was portrayed as a mastermind. Even now when my petition is pending before you I am being tried by the media and that interview is being shown on the TV channels nearly five years later even though the Supreme Court has held that it was



inadmissible evidence.. I do not really understand why the media wants to prejudice the public against Kashmiris. Surely, this hate and prejudice will not lead to peace and harmony in our conflict ridden region.

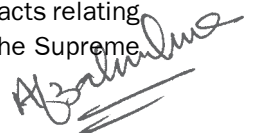
It was this hate and prejudice that was tangible in the atmosphere of the Designated Court at Patiala House. If Your Excellency, reads the judgement of the Designated Court you will see that the Judge was overwhelmed by the propaganda on war against terrorism and he makes all kinds of generalizations about cross border terrorism, Pakistan and Kashmiris. He does not substantiate his statements and has aired his total ignorance and has allowed himself to write a treatise on terrorism on the basis of ignorance and prejudice.

I do not have the words to describe the impact of the overbearing presence of the Special Cell in the court and the lies they fed to the public. There was no way I could have got a fair trial after the media had held me guilty long before the charge sheet was filed. The officers of the Special Cell knew that they had conducted an unfair and unjust trial and that is why the DCP Ashok Chand denied on oath that he had any knowledge of the media conference. The Supreme Court at Para 176 have observed: "The police officials in their over-zealousness arranged a media interview which has evoked serious comments from the counsel about the manner in which publicity was sought to be given thereby. Incidentally, we may mention that PW 60 the DCP, who was supervising the investigation, surprising expressed his ignorance about the media interview."

Your Excellency, it was not a "media interview" but a full fledged media conference in which I was made to incriminate myself by the Special Cell before the entire Indian nation and there was no doubt in anyone's mind that I was guilty. There was no possibility of my getting a fair trial after the media blitz. The Special Cell effectively deprived me of my right under Article 20 and 22 of the Indian Constitution.

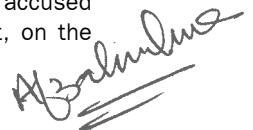
RIGHT TO CONSULT A LAWYER

The Supreme Court in its judgment has dealt with the facts relating to how I was denied access to a lawyer extensively. The Supreme



Court observed at Para 180 that: “It is an undisputed fact that the appellants were not apprised of the right to consult a legal practitioner either at the time they were initially arrested or after POTA was brought into the picture. From Paras 177 to 184 the Supreme Court has dealt with the facts on how I was denied access to legal assistance at the time of investigation.

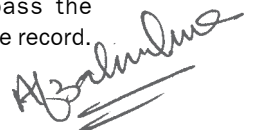
“**177.** Now we look to the confession from other angles, especially from the point of view of inbuilt procedural safeguards in Section 32 and the other safeguards contained in Section 52. It is contended by the learned Senior Counsel Mr. Gopal Subramaniam that the DCP before recording the confession, gave the statutory warning and then recorded the confession at a place away from the police station, gave a few minutes time for reflection and only on being satisfied that the accused Afzal volunteered to make confession in an atmosphere free from threat or inducement that he proceeded to record the confession to the dictation of Afzal. Therefore, it is submitted that there was perfect compliance with sub-section (4) was also complied with inasmuch as Afzal was produced before the Additional Chief Metropolitan Magistrate, PW 63 on the very next day i.e. 22-12-2001 along with the confessional statements kept in a sealed cover. The learned Magistrate opened the cover, perused the confessional statements, called the maker of the confession into his chamber, on being identified by PW 80 the ACP and made it known to the maker that he was not legally bound to make the confession and on getting a positive response from him that he voluntarily made the confession without any threat or violence, the ACMM recorded the statement to that effect and drew up necessary proceedings *vide* Exts. PW-63/5 and PW-63/6. It is pointed out that the accused, having had the opportunity to protest or complain against the behaviour of the police in extracting the confession, did not say a single word denying the factum of making the confession or any other relevant circumstances impinging on the correctness or the confession. It is further pointed out that Afzal and the other accused were also got medically examined by the police and the doctor found no traces of physical violence. It is therefore submitted that the steps required to be taken under sub-sections (4) and (5) were taken. However, the learned counsel for the State could not dispute the fact that the accused Afzal was not sent to judicial custody thereafter, but, on the



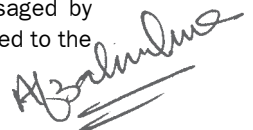
request of the IO, PW 80, the ACMM sent back Afzal to police custody. Such remand was ordered by the ACMM pursuant to an application made by PW 80 that the presence of Afzal in police custody was required for the purpose of further investigation. Thus, the last and latter part of sub-section (5) of Section 32 was undoubtedly breached. To get over this difficulty, the learned counsel for the State made two alternative submissions, both of which, in our view, cannot be sustained.

178. Firstly, it was contended that on a proper construction of the entirety of sub-section (5) of Section 32, the question of sending to judicial custody would arise only if there was any complaint of torture and the medical examination prima facie supporting such allegation. In other words, according to the learned counsel, the expression "thereafter" shall be read only in conjunction with the latter part of sub-section (5) beginning with "and if there is any complaint" and not applicable to the earlier part. In our view, such a restrictive interpretation of sub-section (5) is not at all warranted either on a plain or literal reading or by any other canon of construction including purposive construction. The other argument raised by the learned counsel is that the provision regarding judicial custody, cannot be read to be a mandatory requirement so as to apply to all situations. If the Magistrate is satisfied that the confession appears to have been made voluntarily and the person concerned was not subjected to any torture or intimidation, he need not direct judicial custody. Having regard to the circumstances of this case, there was nothing wrong in sending back Afzal to police custody. This contention cannot be sustained on deeper scrutiny.

179. The clear words of the provision do not admit of an interpretation that the judicial custody should be ordered by the Chief Judicial Magistrate only when there is a complaint from the "confession maker" and there appears to be unfair treatment of such person in custody. As already stated, the obligation to send the person whose alleged confession was recorded to judicial custody is a rule and the deviation could at best be in exceptional circumstances. In the present case, it does not appear that the AMM (PW 63) had in mind the requirement of Section 32(5) as to judicial custody. At any rate, the order passed by him on 22-12-2001 on the application filed by PW 80 does not reflect his awareness of such requirement or application of mind to the propriety of police remand in the face of Section 32(5) of POTA. Compelling circumstances to bypass the requirement of judicial custody are not apparent from the record.



180. The more important violation of the procedural safeguards lies in the breach of sub-section (2) read with sub-section (4) of Section 52. It is an undisputed fact that the appellants were not apprised of the right to consult a legal practitioner either at the time they were initially arrested or after POTA was brought into the picture. We may recall that the POTA offences were added on 19th December and as a consequence thereof , investigation was taken up by PW 80 as Assistant Commissioner or Police, who is competent to investigate the POTA offences. But, he failed to inform the persons under arrest of their right to consult a legal practitioner, nor did he afford any facility to them to contact the legal practitioner. The opportunity of meeting a legal practitioner during the course of interrogation within closed doors of the police station will not arise unless a person in custody is informed of his right and a reasonable facility of establishing contact with a lawyer is offered to him. If the person in custody is not in a position to get the services of a legal practitioner by himself, such person is very well entitled to seek free legal aid either by applying to the court through the police or the Legal Services Authority concerned, which is a statutory body. Not that the police should, in such an event, postpone investigation indefinitely till his request is processed, but which is expected of the police officer is to promptly take note of such request and initiate immediate steps to place it before the Magistrate or the Legal Services Authority so that at least at some stage of interrogation, the person in custody would be able to establish contact with a legal practitioner. But, in the instant case, the idea of apprising the persons arrested of their rights under sub-section (2) and entertaining a lawyer within the precincts of the police station did not at all figure in the mind of the investigating officer. The reason for this refrain or crucial omission could well be perceived by the argument of the learned Senior Counsel for the State that the compliance with the requirements of Section 52(2) of POTA did not arise for the simple reason that at the time of arrest, POTA was not applied. But this argument ignores the fact that as soon as POTA was added and the investigation commenced thereunder, the police officer was under a legal obligation to go through all the procedural safeguards to the extent they could be observed or implemented at that stage. The non-invocation of POTA in the first instance cannot become a lever to deny the safeguards envisaged by Section 52 when such safeguards could still be extended to the

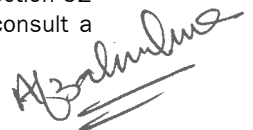


arrested person. The expression “the person arrested” does not exclude person initially arrested for the offences other than POTA and continued under arrest when POTA was invoked. The “person arrested” includes the person whose arrest continues for the investigation of offences under POTA as well. It is not possible to give a truncated interpretation to the expression “person arrested” especially when such interpretation has the effect of denying an arrested person the wholesome safeguards laid down in Section 52.

181. The importance of the provision to afford the assistance of the counsel even at the stage of custodial interrogation need not be gainsaid. The requirement is in keeping with the *Miranda* (*Miranda v. Arizona*, 384 US 436 : 16 L Ed 2d 694 (1966)) ruling and the philosophy underlying Articles 21, 20 (3) and 22(1). This right cannot be allowed to be circumvented by subtle ingenuities or innovative police strategies. The access to a lawyer at the stage of interrogation serves as a sort of counterweight to the intimidating atmosphere that surrounds the detenu and gives him certain amount of guidance as to his rights and the obligations of the police. The lawyer's presence could pave the way, to some extent, to ease himself of the mental tension and trauma. In the felicitous words of Finlay, C. J. of Ireland in *People v. Healy* ((1990) 2 IR 73):

“The undoubted right of reasonable access to a solicitor enjoyed by a person who is in detention must be interpreted as being directed towards the vital function of ensuring that such a person is aware of his rights and has the independent advice which would be appropriate in order to permit him to reach a truly free decision as to his attitude to interrogation or to making of any statement, be it exculpatory or inculpatory. The availability of advice must, in my view, be seen as a contribution, at least, towards some measure of equality in the position of the detained person and his interrogators.”

182. Parliament advisedly introduced a *Miranda* (*Miranda v. Arizona*, 384 US 436 : 16 L Ed 2d 694 (1966)) ordained safeguard which was substantially reiterated in *Nandini Satpathy* (*Nandini Satpathy v. P. L. Dani*, (1978) 2 SCC 424 : 1978 SCC (Cri) 236) by expressly enacting in sub-sections (2) and (4) of Section 52 the obligation to inform the arrestee of his right to consult a



lawyer and to permit him to meet lawyer. The avowed object of such prescription was to introduce an element of fair and humane approach to the prisoner in an otherwise stringent law with drastic consequences to the accused. These provisions are not to be treated as empty formalities. It cannot be said that the violation of these obligations under sub-sections (2) and (4) have no relation and impact on the confession. It is too much to expect that a person in custody in connection with the POTA offences is supposed to know the fasciculus of the provisions of POTA regarding the confessions and the procedural safeguards available to him. The presumption should be otherwise. The lawyer's presence and advice, apart from providing psychological support to the arrestee, would help him understand the implications of making a confessional statement before the police officer and also enable him to become aware of other rights such as the right to remain in judicial custody after being produced before the Magistrate. The very fact that he will not be under the fetters of police custody after he is produced before the CJM pursuant to Section 32(4) would make him feel free to represent to the CJM about the police conduct or the treatment meted out to him. The haunting fear of again landing himself into police custody soon after appearance before the CJM, would be an inhibiting factor against speaking anything adverse to the police. That is the reason why the judicial custody provision has been introduced in sub-section (5) of Section 32. The same objective seems to be at the back of sub-section (3) of Section 164 CrPC, though the situation contemplated therein is somewhat different.

183. The breach of the obligation of another provision, namely, sub-section (3) of Section 52 which is modeled on *D. K. Basu (D. K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92*) guidelines has compounded the difficulty in acting on the confession. Section 52(3) enjoins that the information of arrest shall be immediately communicated by the police officer to a family member or in his absence, to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested. PW 80 the IO under POTA merely stated that "near relatives of the accused were informed about their arrest as I learnt from the record". He was not aware whether any record was prepared by the police officer arresting the accused as regards, the information given to the relatives. It is the prosecution case that Afzal's relative by the name Mod. Ghulam Bohra of Baramula was informed through phone. No witness had spoken

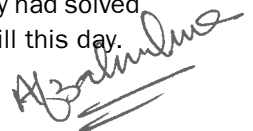
Afzal

to this effect. A perusal of the arrest memo indicates that name of Ghulam Bohra and his phone number are noted as against the column "relatives to be informed". Afzal's arrest memo seems to have been attested by Gilani's brother who according to the prosecution, was present at the police cell. But, that does not amount to compliance with sub-section (3) because he is neither family member nor relation, nor even known to be a close friend. We are pointing out this lapse for the reason that if the relations had been informed, there was every possibility of those persons arranging a meeting with the lawyer or otherwise seeking legal advice.

184. Another point which has a bearing on the voluntariness of confession is the fact that sufficient time was not given for reflection after the accused (Afzal/Shaukat) were produced before PW 60 recording the confession. He stated in the evidence that he gave only 5 to 10 minutes time to the accused for thinking/ reflection in reply to the question by the counsel fro Shaukat Hussain. It is true as contended by the learned counsel Mr. Gopal Subramaniam that there is no hard-and-fast rule regarding grant of time for reflection and the rules and guidelines applicable to a confession under Section 164 CrPC do not govern but in the present case, the time of 5 or 10 minutes is, by all standards, utterly inadequate. Granting reasonable time for reflection before recording a confession is one way of ensuring that the person concerned gets the opportunity to deliberate and introspect once again when he is brought before the prescribed authority for recording the confession. That its is one of the relevant considerations in assessing the voluntariness of the confession is laid down in *Sarwan Singh v. State of Punjab* (1957 SCR 953 : 1957 Cri LJ 1014)"

The Supreme Court finally held at Para 185 that my so called confession extracted under torture could not be treated as admissible evidence. I quote the said paragraph: "All these lapses and violations of procedural safeguards guaranteed in the statute itself impels us to hold that it is not safe to act on the alleged confessional statement of Afzal and place reliance on this item of evidence on which the prosecution places heavy reliance."

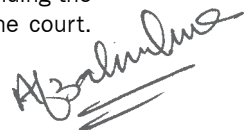
Your Excellency, this shows that the investigating agencies were trying to fabricate evidence to show the public that they had solved the crime but in fact they have not solved the crime till this day.



I was denied legal assistance not only at the stage of investigation but also at the stage of the trial. The Supreme Court has reproduced the facts from the records and I reproduce the relevant paragraphs from Para 165 to 168.

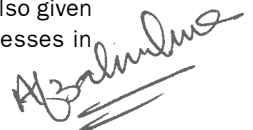
165. The first point raised by Mr. Sushil Kumar, appearing for the accused Afzal, was that he was denied proper legal aid, thereby depriving him of effective defence in the course of trial. In sum and substance, the contention is that the counsel appointed by the court as “amicus curiae” to take care of his defence was thrust on him against his will and the first amicus appointed made concessions with regard to the admission of certain documents and framing of charges without his knowledge. It is further submitted that the counsel who conducted the trial did not diligently cross-examine the witnesses. It is, therefore, contended that his valuable right of legal aid flowing from Articles 21 and 22 is violated. We find no substance in this contention. The learned trial Judge did his best to afford effective legal aid to the accused Afzal when he declined to engage a counsel on his own. We are unable to hold that the learned counsel who defended the accused at the trial was either inexperienced or ineffective or otherwise handled the case in a casual manner. The criticism against the counsel seems to be an afterthought raised at the appellate stage. It was rightly negated by the High Court.

166. Coming to the specific details, in the first instance, when Afzal along with the other accused was produced before the Special Judge, he was offered the assistance of a counsel. One Mr. Attar Alam was appointed. However, the said advocate was not willing to act as amicus. On 14-5-2002, the charge-sheet was filed in the court. On 17-5-2002, the trial Judge appointed Ms Seema Gulati who agreed to defend Afzal. She filed vakalatnama along with her junior Mr Neeraj Bansal on the same day on behalf of the accused Afzal. On 3-6-2002, the arguments on the charges were heard, Afzal was represented by Ms Seema Gulati. The counsel conceded that there was prima facie material to frame charges. The court framed charges against all the accused on 4-6-2002 and the accused pleaded not guilty. True, the appellant was without counsel till 17-5-2002 but the fact remains that till then, no proceedings except extending the remand and furnishing of documents took place in the court.



The next date which deserves mention is 5-6-2002. On that date, all the counsel appearing for the accused agreed that post-mortem reports, MLCs, documents related to recovery of guns and explosive substances at the spot should be considered as undisputed evidence without formal proof which resulted in dropping of considerable number of witnesses for the prosecution. The learned Senior Counsel for the appellant by referring to the application filed by Ms Seema Gulati on 1-7-2002 seeking her discharge from the case, highlights the fact that she took no instructions from Afzal or discussed the case with him and therefore no concession should have been made by her. The contention has no force. Assuming the counsel's statement that she took no instructions from the accused is correct, even then there is nothing wrong in the conduct of the advocate in agreeing for admission of formal documents without formal proof or in agreeing for the framing of charges. The counsel has exercised her discretion reasonably. The accused-appellant did not object to this course adopted by the amicus throughout the trial. No doubt, some of the documents admitted contained particulars of identification was independently proved by the prosecution witnesses and opportunity of cross-examination was available to the accused. In the circumstances, we cannot say that there was a reasonable possibility of prejudice on account of admission of the said documents without formal proof.

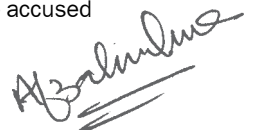
167. Coming to the next phase of development, on 1-7-2002, Ms Seema Gulati filed an application praying for her discharge from the case citing a curious reason that she had been engaged by another accused Gilani to appear on his behalf. An order was passed on 2-7-2002 releasing her from the case. Mr. Neeraj Bansal who filed the vakalatnama along with Ms Seema Gulati was then nominated as amicus to defend Afzal on that occasion. Inspection of record by the counsel was allowed on 3-7-2002 and on subsequent occasions. On 8-7-2002, the accused Afzal filed a petition stating therein that he was not satisfied with the counsel appointed by the Court and that he needed the services of a Senior Advocate. He named four advocates in the petition and requested the Court to appoint one of them. On 12th July, the trial Judge recorded that the counsel named by the accused were not willing to take up the case. Mr Neeraj Bansal was therefore continued especially in view of the fact that he had experience in dealing with TADA cases. Afzal was also given the opportunity to cross-examine the prosecution witnesses in



addition to amicus. In fact, he did avail of that opportunity now and then. On several occasions, there was common cross-examination on behalf of all the accused. No indicia of apparent prejudice is discernible from the manner in which the case was defended. Though the objection that he was not satisfied with his counsel was reiterated on 12-7-2002 after PW 15 was cross-examined, we do not think that the Court should dislodge the counsel and go on searching for some other counsel to the liking of the accused. The right to legal aid cannot be taken thus far. It is not demonstrated before us as to how the case was mishandled by the advocate appointed as amicus except pointing out stray instances pertaining to the cross-examination of one or two witnesses. The very decision relied upon by the learned counsel for the appellant, namely, *Strickland v. Washington* (466 US 668 (1984)) makes it clear that judicial scrutiny of a counsel's performance must be careful, deferential and circumspect as the ground of the ineffective assistance could be easily raised after an adverse verdict at the trial. It was observed therein:

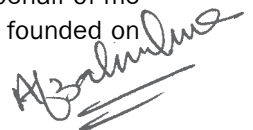
“Judicial scrutiny of the counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess the counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining the counsel's defense after it has proved unsuccessful, to conclude that a particular act of omission of the counsel was unreasonable. Cf. *Engle v. Isaac* (456 US 107 (1982) pp. 133-134). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of the counsel's challenged conduct, and to evaluate the conduct from the counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge in a strong presumption that the counsel's conduct falls within the wide range of reasonable professional assistance;...”

168. The learned Senior Counsel for the State Mr Gopal Subramaniam has furnished as table indicating the cross-examination of material prosecution witnesses by the counsel Mr Neeral Bansal as Annexure 16 to the written submissions. Taking an overall view of the assistance given by the court and the performance of the counsel, it cannot be said that the accused was denied the facility of effective defence.”



The Supreme Court observed that my objection to the lawyer was an afterthought and the judgment *Strickland v. Washington* (466 US 668 (1984)) relied upon by the Supreme Court also stated that a convict or defendant is often tempted to accuse his counsel after an adverse verdict. But the fact is that my objection was neither an afterthought nor a temptation to accuse the counsel after the adverse verdict. At the outset of evidence I had written an application to the learned judge on 8-7-2002 against the Amicus Curiae that was not satisfied with him and gave names of four lawyers and requested the judge to appoint any one of them for me. I again told the court on 12-7-02 that I was not satisfied with the counsel and, most important, counsel, Neeraj Bansal also told the court that he wanted to withdraw from the case. But the Designated Judge did not discharge the counsel and asked Mr. Neeraj Bansal to assist the court. In fact, I never signed any Vakalatnama in favour of Mr. Neeraj Bansal, the amicus curiae. Earlier I had signed Vakalatnama for Ms. Seema Gulati who was appointed as amicus and the name of Neeraj Bansal was inserted in the said Vakalatnama by Seema Gulati as her junior. When Ms. Seema Gulati sought her discharge from the case as amicus on 1-7-02, Mr. Neeraj Bansal also got automatically discharged from the case. However, the fact remains that I did not sign any Vakalatnama in favour of Mr. Neeraj Bansal who himself who himself was not willing to defend me and which fact also came on the record. Mr. Neeraj Bansal was kept under compulsion to 'assist the court' and assisting the court does not mean "defending an accused." I am annexing the order sheet of the trial court dated 12-7-02 as **Annexure C**. Thus, the Supreme Court's observation that my objection to counsel was an afterthought is totally erroneous and is against the facts on record.

The Supreme Court held that no prejudice was caused to me even though I did not have a lawyer to represent me and my lawyer at one point of time told the court that he did not wish to represent me. The Supreme Court states that it was not demonstrated by my counsel how the case was mishandled. Supreme Court was of the view that cross examination of the witnesses on behalf of me was not faulty. But the very basis of my conviction is founded on



the facts that the material witnesses were not challenged in cross examination or no suggestion was put to them to disprove their allegations against me. I would like to show that the Supreme Court's own judgment shows how the fact that I was deprived of a counsel affected me.

EVIDENCE AGAINST AFZAL

1. The first circumstance held against me was that I knew the deceased terrorists and had identified them. At Para 190 the Supreme Court states:

“The first circumstance is that Afzal knew who the deceased terrorists were. He identified the dead bodies of the deceased terrorists. PW 76 (Inspector H S Gill) deposed that Afzal was taken to the mortuary of Lady Hardinge Medical College Hospital and he identified the five terrorists and gave their names. Accordingly, PW 76 prepared the identification memo Ext PW-76/1 which was signed by Afzal. In the post-mortem reports pertaining to each of the deceased terrorists, Afzal signed against the column “identified by”. On this aspect, the evidence of PW 76 remained unshattered. In the course of his examination under section 313, Afzal merely stated that he was forced to identify by the police. There was not even a suggestion put to PW 76 touching on the genuineness of the documents relating to the identification memo. It may be recalled that all the accused, through their counsel, agreed for admission of the post-mortem reports without formal proof.”

Your Excellency, I do not know whether you have occasion to witness a criminal trial. There is no way a layman like myself could have conducted the cross examination of the prosecution witnesses. I do not have either the skill or the knowledge of the judicial process. The court atmosphere was hostile and the overbearing presence of the Special Cell made it impossible even for a man of steel to be impervious to their intimidating presence. Besides, the second lawyer appointed by the court on my behalf, Ms Seema Gulati, agreed to the admission to the post mortem reports without even taking instructions or applying her mind to the case. The Supreme Court states at para 166 quoted above that the factum of identification of deceased terrorists was

Afzal Gulati

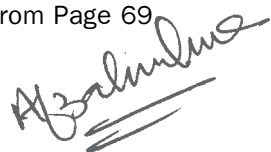
independently proved by the prosecution. That is not true. Just as the police tried to extract a false confession from me they also made me falsely identify the deceased terrorists. If Your Excellency sees the testimony of PW 67 it will show that he states that I said that deceased terrorist Mohammad was Berger, the man accused of hijacking the Indian Airlines plane to Kandahar.

I humbly submit that I do not know the identity of the dead terrorists and the prosecution never proved who they were. In fact the Designated Court held that the five men were Pakistanis only because no one in India had claimed their bodies. In its judgement dated December 16, 2002 the Judge held at Para 220 that: "All the five deceased terrorists were identified as Pakistanis by one of the co-accused. The bodies were kept in mortuary for several days. No person in India claimed their bodies that showed that they were not Indians. No valid documents of their coming to India were found on their person." Further, PW 76 coerced me into putting my signature on the post mortem reports. He himself is a corrupt officer and is himself lodged in Tihar jail on corruption charges.

The officers of the Special Cell wanted to claim that they had arrested "Berger" the hijacker so they made the claim in the media and PW 67 made me say that Mohammad had been identified as Berger. However, PW 76 told me to say he was Mohammad. The names of the others were just invented by the officers of the Special cell and I was made to do the identification.

The prosecution case rests largely on the fact that their witnesses were never challenged by my lawyer. But when my lawyer had already expressed his desire to withdraw from the case and he never took any instructions from me there was no question of him cross examining the prosecution witnesses diligently. The prosecution first claimed that they had arrested Geelani on December 15, 2001 and he had first disclosed to them the names of the deceased terrorists. Then they said that I had identified the deceased terrorists and then the Supreme Court states that the prosecution had independently established and proved the identity of the deceased terrorists.

I quote verbatim the submissions (Volume II) made by the Prosecution on identification of deceased terrorist from Page 69 to 72:

A handwritten signature in black ink, appearing to read 'Afzal', with a horizontal line underneath it.

“12.1 One of the important pieces of evidence against accused Mohammad Afzal is his identification of the deceased terrorists during the course of investigation.

12.2 Although the investigating agency had the possession of the deceased terrorists’ bodies, they had no idea who these persons were and their origin etc. It is pertinent to note that the names of the 5 deceased terrorists as being ‘Mohammad, Raja, Rana, Haider and Hamza’ were disclosed for the first time by SAR Gilani in his disclosure statement [Ex. PW 66/13, Part VI, p. 160] on 15th December 2001, which the investigating agency did not know from any other source.

12.3 Subsequently, during the course of investigation the bodies were identified by Mohammad Afzal and were in fact identified as being Mahammad, Raja, Rana, Hamza and Haider.

12.4 This aspect of the investigation is also spoken to by PW 76 [Part II, p. 413 at p. 417] in the following terms:-

“...On 17.12.2001, accused Mohammad Afzal was taken by me to the mortuary of Lady Harding Medical College, where accused identified the five terrorists and told their names as Mohammad, Haider, Hamza, etc. I prepared an identification memo, which is Ex.PW-76/1 giving the names of the terrorists as told by the accused... ...I got the dead terrorists photographed and pasted their photographs on plain paper. The same are Ex.PW-40/2 of Hamza, Ex.PW-45/1 of Raja, Ex.PW-41/5 of Rana, Ex.PW-29/5 of Mohammad and Ex.PW-45/2 of Haider...”

12.5 The Memo of Identification EX PW76/1 [Part VI. P. 173] is signed by the witness and further the aspect of identification of the deceased terrorists by the accused Mohammad Afzal is also corroborated by the evidence of the other investigating officers.

12.6 **PW2** – S. I. Sanjay Kumar, [Part II, p. 35 @ 39] has deposed to the fact of identification of “...all the five deceased terrorists, including Hamza, Raja and Rana.” There is no challenge to the testimony of this witness on the question of identification of the deceased terrorists by Mohammad Afzal by or on behalf of any of the accused persons in cross examination.

12.7 **PW3** – S. I. Rajender Singh [Part II, p. 43 at p. 45] has deposed to the identification of Haidar by Mohammad Afzal on 17.12.2001. It is also pertinent to mention that the witness

Afzal

has denied a common suggestion on behalf of the accused persons that Afzal had not identified any of the deceased terrorists.

12.8 PW4 – S. I. Yograj Dogra has testified [Part II, p. 47 at p. 51], that he had sent the dead body of the deceased terrorist whose body was found at Gate No. 1 of Parliament House building for post mortem to the Lady Hardinge Mortuary and that the “Post mortem was conducted on 17.12.01. Name of the deceased terrorist was known after identify by one of the accused.” It is pertinent to mention herein that there is no challenge to the testimony of this witness regarding identification of the deceased terrorist by any of the accused persons in cross-examination.

12.9 PW 47 – Dr. Upender Kishore has also testified [Part II, p. 225] that “On 17.12.2001 I conducted the post mortem on the dead body of Hamza aged about 27 years identified by Mohammad Afzal... ..” It is submitted that there is no cross examination of this witness in this regard.

12.10 As such, it is respectfully submitted that the prosecution has duly proved that Afzal had identified the bodies of the 5 deceased terrorists as Mohammad, Raja, Rana, Haider and Hamza. Moreover, this forms confirmatory evidence, capable of admitting under Section 27 of the Evidence Act, the disclosure made by SAR Gilani regarding the names of the deceased terrorists.”

Your Excellency, the investigating agencies were not sure how they were going to build up their case and they coerced me to make a false confession and a part of the confession was that I knew who the deceased terrorists were. If the Supreme Court did not believe the so called confession they should also not believed them that I identified the deceased terrorists. Further, the prosecution has argued that I my lawyer represented me adequately on the other hand they make their case on the basis that my lawyer did not cross examine the prosecution witnesses so their false case is proved. Is this justice?

The second circumstance against me is the evidence of phone records:

Your Excellency, there is no evidence of the contents of any of the calls either the dead terrorists made to me or I to them. In fact

Afzal

the prosecution witnesses with regard to these call records were not cross examined by my lawyer and I did not have the knowledge or skill to ask questions. The fact is that if the telephone numbers had been closely examined they would have revealed that they were to the STF camps.

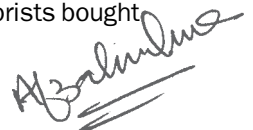
The third circumstance held against me was the evidence of the laptop:

At Para 233 the Supreme Court held that:

“We agree with the High Court that the testimony of PWs 59, 72, 73 and 79 establish beyond doubt that fake documents were created from the laptop which was evidently in the possession of the deceased terrorists and eventually recovered from Afzal/Shaukat in Srinagar. We find the evidence of these witnesses could not in any way be shattered in the cross examination. There was no cross examination of the witness PW 59 by Afzal. The limited cross-examination on behalf of Shaukat did not yield anything favourable to the accused. As regards PW 72, most of the cross-examination was in the nature of hypothetical questions. Though there was no suggestion of any tampering to this witness, the witness stated that there was no evidence of replacement of the hard disk upon a perusal of the reg file. There was no suggestion to PW 72 that the documents (printouts) taken from the laptop was not the real ones. Two different experts recorded same conclusions without knowing the reports of each other.”

The Prosecution version of my arrest was not believed by the courts therefore I should have been given the benefit of doubt and the Courts should have believed me when I told them that I was arrested at the Srinagar bus stop and not from Shaukat's truck. The laptop was according to the prosecution found inside the truck and there was nothing to connect me with the laptop. I do not know how to use computers and have never been able to afford a computer.

Further I did not have the expertise to cross examine the prosecution witnesses on the laptop and my counsel did not cross examine any of the witnesses on the contents of the laptop. The fourth circumstances against me was that I led the police to the hideouts and to the shops where the deceased terrorists bought mobiles, motorcycles and explosives:



On the hideouts the Supreme Court states at Para 207:

“207. Coming to the details of evidence relating to hideouts and recoveries, it is to be noted that the accused Afzal is alleged to have made a disclosure statement to PW 66 Inspector Mohan Chand Sharma on 16-12-2001. It is marked as Ext. PW-64/1. In the said disclosure statement, all the details of his involvement are given and it is almost similar to the confessional statement reads thus:

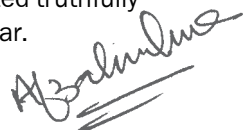
“I can come along and point out the places or shops of Delhi wherefrom I along with my other associates, who had executed the conspiracy of the terrorist attack on Parliament, had purchased the chemicals and containers for preparing IED used in the attack, the mobile phones, the SIM cards and the uniforms. I can also point out the hideouts of the terrorists in Delhi. Moreover, I can accompany you and point out the places at Karol Bagh wherefrom we had purchased the motorcycle and Ambassador car. For the time being, I have kept the said motorcycle at Lal Jyoti Apartments, Rohini with Nazeer and I can get the same recovered...”

This statement has been signed by Mohd. Afzal. In fact it is not required to be signed by virtue of the embargo in Section 162(1). The fact that the signature of the accused Afzal was obtained on the statement does not, however, detract from its admissibility to the extent it is relevant under Section 27.”

This paragraph shows that the officers of the Special Cell had made me sign on dozens of blank papers and the police wrote anything on them they liked.

My advocate did not cross examine PW 66 at all even though he was one of the most important witnesses and he had coerced me into making a disclosure statement and it was similar to the confession statement. Both of them were documents invented by the investigating agencies.

Your Excellency, I have told the court that I knew Mohammad and that I went with him to buy the white Ambassador. If you check the records of the cross examination of PW 20 I admitted truthfully in court that I had gone with Mohammad to buy the car.



I respectfully submit that the shopkeepers were all coerced into identifying me. There was no identification test carried out in order to ensure they could actually identify me. The Supreme Court just dismissed this submission at Para 226 without giving any reasons. Para 226 states:

“It is contended that the test identification should have been conducted to assure credibility of the evidence in the identification of Afzal by the shopkeepers. It is also contended that the photograph of the deceased Mohammed should have been mixed up with the other other photographs in order to impart credibility to the version of witnesses who claimed to have seen him. We find no substance in these contentions.”

Your Excellency, I have made a chart to show that of a total of 80 prosecution witnesses only 22 were cross examined by the advocate appointed to represent me and even when he cross examined he would sometimes just give one suggestion. Even though I was the most vulnerable person I had no legal assistance for no fault of mine, except that I am too poor to afford a lawyer.

Afzalindus

**Details of Cross Examination submitted by Afzal
in his petition to the President**

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
PW1 GL Mehta	SHO Parliament St PS	Nil	Nil	
PW2 Sanjiv Kumar	SI, Parliament St PS	Nil	Nil	Alleges that Afzal identified bodies of terrorists
PW3 Rajinder Singh	SI, President's House security	Nil	Nil	Alleges Afzal identifies Haider
PW4 Yog Raj Dogra	SI, IGI Airport	Nil	Nil	Recovers slips with phone numbers; mobile
PW5 ASI Jeet Ram	Security, Delhi Police	Nil	Nil	
PW6 Constable Rajesh Kumar	Photographer	Nil	Nil	Alleges to have taken 184 photos;
PW7 Jasveer	HC, Parliament Street PS	Nil	Nil	
PW8 H. S. Ashwani Kumar	HC Parliament Street PS	Nil	Nil	
PW9 Sukhbir Singh	HC Parliament Street PS	Nil	Nil	
PW10 Jagvir Singh	HC Parliament Street PS	Nil	Nil	
PW11 G. L. Meena	Deputy Secretary, Home	Nil	Nil	Court disallowed several questions; Grant of prosecution sanction
PW12 T. N. Mohan	DCP, Headquarters	Nil	Nil	Sanction for prosecution
PW13 Dushyant Singh	Deputy Chief Security Officer, Ministry of Home Affairs	Nil	Nil	Issuance of sticker
PW14 H. C. Malkit Singh	Parliament Street PS	Nil	Nil	
PW15 Mathew George	Executive, Infrastructure Leasing and Financial Services Ltd.	Nil	Nil	Original owner of white Ambassador
PW16 Dheeraj Singh Peon,	Infrastructure Leasing and Financial Services Ltd.	Nil	Nil	Buyer of the white Ambassador
PW17 Satbir Singh	Shopkeeper	Yes	Nil	Bought the white Ambassador from PW16

Afzal

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
PW18 Raghbir Singh	Motor mechanic	Yes	Nil	Buyer of the white Ambassador
PW19 Harish Chander Jaggi	Proprietor, Jaggi motors	Yes	Nil	Bought the white Ambassador from PW 18
PW20 Harpal Singh	Proprietor, Lucky motors		Afzal admits going to the shop of witness	Afzal truthfully owns up his role.
PW21 Constable Mahipal Singh	CRPF	Nil	Nil	Injured in firing
PW22 R. S. Verma	Director, SFSL, Chandigarh	Nil	Nil	
PW23 P. R. Nehra	Principle Scientific Officer, CFSL, CBI	Nil	Nil	Handwriting expert
PW24 A. Dey	Senior Scientific Officer, Asst. Chemical Examiner, CFSL, CBI	Nil	Nil	
PW25 Jasvinder Singh	Computer Centre (Xansa Webcity)	Nil	Nil	
PW26 Jibharam	Mechanic	Yes	Nil	Buyer of Yamaha motorcycle
PW27 Salim	Junk Dealer	Nil	Nil	Purchased motorcycle from PW26
PW28 Babu Khan	Barber	Nil	Nil	Purchased motorcycle from PW27
PW29 Sushil Kumar	Gupta Auto Deals	Nil	Yes (Only one suggestion given)	Important witness on purchase of motorcycle
PW30 SI Mahesh Kumar	Draftsman, Crime Branch, PHQ	Nil	Nil	
PW31 Bal Raj	Property Dealer	Yes (Inadequate)	Nil	Court allows leading question; Property Dealer in regard to Indira Vihar
PW32 Jagdish Lal	Owner of Indira Vihar house	Yes	Yes	Photos of Five terrorists
PW33 Davinder Pal Kapoor	Property Dealer	Yes	Nil	Not even a suggestion was put to the witness that

Afzal

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
				he did not get the set premises on rent for Afzal or that he was deposing falsely
PW34 Subhash Chand Malhotra	Owner of A-97 Gandhi Vihar	Yes (Inadequate)	Nil	Testimony regarding identification of Mohd. went unchallenged
PW35 Capt. P. K. Guharay	Security Manager, Airtel	Nil	Nil	
PW36 Maj. A. R. Satish	Sterling Cellular Ltd.	Nil	Nil	
PW37 Prem Chand	Hostel owner, Christian Colony	Yes (One suggestion only)	Nil	Important witness
PW38 Rajneesh Kumar	Runs STD Booth, Christian Colony	Nil	Nil	
PW39 Naresh Gulati	Landlord of SAR Geelani	Nil	Nil	Landlord was on bail at the time
PW40 Anil Kumar	Chemical Business	Yes (Inadequate)		Nil
PW41 Ajay Kumar	Salesman, Dry fruits shop	Yes	Nil	
PW42 Ramesh Adwani	Shopkeeper, Dyes and Colours	Yes (Inadequate)		Nil
PW43 Sunil Kumar Gupta	Shopkeeper, Electrical Gadgets	Yes	Nil	
PW 44 Sandeep Chaudhary	Shopkeeper, Mobile Phones	Yes	Nil	
PW45 Tejpal Kharbanda	Landlord, Shaukat (co-accused)	Nil	Nil	
PW46 Usha Kharbanda	Wife of PW45	Nil	Nil	Her testimony is not recorded
PW47 Dr. Upender Kishore	Senior Resident, Lady Harding Medical College	Nil	Nil	Conducted post-mortem on deceased terrorists; Important witness
PW48 Dr. Rajinder Singh	Expert, CFSL, CBI	Nil	Nil	
PW49 Kamal Kishore Behal	Shopkeeper, Mobile Phones	Yes	Nil	
PW50 Sanjay Mani	Manager, Admin, Xansa India Ltd.	Nil	Nil	

Afzal

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
PW51 Dharampal	Clerk, District Transport Office, Faridabad	Nil	Nil	
PW52 Charan Singh	Clerk, Registering Authority, Motor Vehicle, Faridabad	Nil	Nil	
PW53 Mahesh Chand	LDC, MLO, HQ	Nil	Nil	
PW54 Anil Ahuja	UDC, Transport Authority	Nil	Nil	
PW55 Sham Singh	Sub-Inspector, Security, Vice-President	Nil	Nil	
PW56 Constable Ranjit Kumar	Special Branch, Lodhi Road	Nil	Nil	
PW57 SI Pawan Kumar	Special Cell, Lodhi Road	Nil	Nil	Laptop was in custody of this witness
PW58 SI Neeraj Paliwal	CRPF, SDG, VVIP Security	Nil	Nil	
PW59 N. K. Aggarwal	Senior Scientific Officer, CFSL, CBI	Nil	Nil	
PW60 Ashok Chand	DCP, Special Cell	Yes	Yes	Witness states: "I am not aware if on 20/12/01 accused Afzal was produced before the media or on any other date, he was produced before media to tell media about his role in attack on Parliament".
PW61 Abdul Haq Butt	Deputy SP, SDPO, M. R. Ganj, Srinagar	Yes (Inadequate)	Nil	
PW62 HC Mohammad Akbar	Parampora PS, Srinagar	Yes (One suggestion only)	Nil	Most important witness on Afzal's arrest
PW63 V. K. Maheshwari	Addl. Chief Metropolitan Magistrate, Patiala House	Yes (Inadequate)	Nil	
PW64 SI Hardaya Bhushan	Special Cell, Lodhi Road	Yes	Nil	Contradicts PW61 and PW62 on time, place of arrest

Afzal

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
PW65 SI Sharad Kohli	Special Cell, Lodhi Road	Nil	Nil	Important witness in regard to Afzal's arrest.
PW66 Mohan Chand Sharma	Special Cell, Lodhi Road	Nil	Nil	Crucial witness not cross-examined
PW67 SI Bidrish Dutt	Special Cell, Lodhi Road	Nil	Nil	The witness stated that Afzal identified photograph of one Mohd@Bargar who was deceased terrorist and told he was hijacking of IC 814; someone objected but no cross examination
PW68 Dr. S. K. Jain	Asst. Director, CFSL, Chandigarh	Nil	Nil	
PW69 Inspector Santhosh Singh	CRPF	Nil	Nil	
PW70 SI Harinder Singh	Special Cell, Lodhi Road	Nil	Nil	
PW71 Rashid	Transporter	Nil	Nil	
PW72 Vimal Kant	Computer Engineer	Nil	Nil	On the laptop
PW73 Krishnan A. Sastri	Bureau of Police Research and Development, Ministry of Home Affairs, Hyderabad	Nil	Nil	On the laptop
PW74 Constable Shambir Singh	CRPF	Nil	Nil	
PW75 K. Satyamurthy	Officer Commanding, BDU, NSG	Nil	Nil	
PW76 Inspector H. S. Gill	Special Cell, Lodhi Road	Yes but Inadequate	Nil	Crucial witness on whose testimony Afzal given a death sentence.

Afzal

Prosecution witness	Designation	Cross examination by Neeraj Bansal	Cross examination by Afzal	Remarks
PW77 SI Lalit Mohan	Special Cell, Lodhi Road	Yes	Nil	
PW78 Manjural Kapur	Manager, Siemen, Gurgaon	Nil	Nil	
PW79 M. Krishna	Ministry of Home Affairs, Hyderabad	Nil	Nil	On laptop
PW80 ACP Rajbir Singh	Investigating Officer, Special Cell, Lodhi Road	Yes but very inadequate	Nil	It is the officer whose investigation was found to be riddled with illegalities

I am also annexing the depositions of seven prosecution witnesses: PW 2, 3, 37, 47, 62, 65, 66, 67, 76 and 80 as **Annexure D1 to D10**. If Your Excellency, reads these depositions you will see the difference in the quality of cross examination of the amicus curiae appointed by the court for me and the lawyers appearing for the other three accused.

Your Excellency, I do not know how my lawyer, Mr Colin Gonsalves, performed in the High Court but I do know that he made an argument in Court that I should be given a lethal injection and not be hanged. He made this submission in an additional affidavit which I was not shown. I have come to know he is denying that he did this but the least I would expect from him that he come and explain what he did instead of maligning those who are trying to fight for my life. It would seem he is more worried about his reputation than about my life.

In the Supreme Court I had a senior lawyer represent me but my wife told me he demanded a fee that she could hardly afford. I do not know whether that is the reason he did not finally submit any written submissions or filed a curative petition. Even in the review petition my lawyers did not place the facts with regard to the fact that I did not have a fair trial except in one sentence.

Afzal

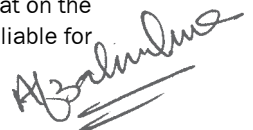
QUESTION OF PUNISHMENT

Your Excellency, the records clearly show that I was not involved in the actual attack on the Indian Parliament. I did not murder anyone and I did not injure anyone. I do not think that the attack on the Parliament served the cause of the Kashmiri people and I am genuinely sorry for the family members of those who died doing their duty. I feel no personal enmity towards the nine persons killed or the 16 injured. It is unfortunately the poor and vulnerable who suffer. Even if no one believes me I can honestly say that I do not justify or rationalize the pain of the children who lost their fathers on that day just as I feel the pain of my seven year old son who is living with the nightmare that his father may be hanged any day.

The prosecution has tried to argue that I am responsible for the action of the five deceased terrorists who actually attacked the parliament. However, the Supreme Court rejected their argument. I quote from Paragraphs 242 and 243:

“242. The stand taken by Mr. Gopal Subramaniam is that on the commission of overt criminal acts by the terrorists pursuant to the conspiracy hatched by them and the accused, even the conspirators will be liable under Sections 3(1)/3(2) of POTA. It is his contention that where overt acts take place or the object of the conspiracy is achieved, then all the conspirators are liable for the acts of each other and with the aid of Section 120-B read with Section 3(2), all the conspirators are punishable under Section 3(2). The liability of mere conspirators is coequal to the liability of the active conspirators according to him. Alternatively, it is contended that on account of the perpetration of criminal acts by the deceased terrorists pursuant to the conspiracy, the appellant is liable to be punished under Section 120-B IPC read with Section 3(1) of POTA and the punishment applicable is the one prescribed under sub-section (2) of Section 3 of POTA. According to the learned counsel, sub-section (3) of Section 3 does not come into play in the instant case because of the overt acts that have taken place in the execution of the conspiratorial design.

243. As far as the first contention of Mr Gopal Subramaniam is concerned, we have already rejected his argument that on the principle of “theory of agency”, the conspirators will be liable for



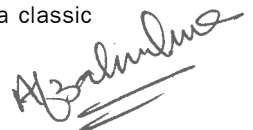
the substantive offences committed pursuant to the conspiracy. When once the application of the theory of agency is negatived, there is no scope to hold that the appellant, in spite of not having done any act or thing by using the weapons and substances set out in sub-section(1)(a), he, as a conspirator, can be brought within the sweep and ambit of sub-sections (1) and (2). The wording of clause (a) of Section 3(1) is clear that it applies to those who do any acts or things by using explosive substances, etc., with the intention referred to in clause (a), but not to the conspirators who remained in the background.”

The Supreme Court has acquitted me of charges of belonging to any terrorist organization. I quote from Para 250:

“The conviction under Section 3(2) of POTA is set aside. The conviction under Section 3(5) of POTA is also set aside because there is no evidence that he is a member of a terrorist gang or a terrorist organization, once the confessional statement is excluded. Incidentally, we may mention that even going by the confessional statement, it is doubtful whether the membership of a terrorist gang or organization is established.”

The Supreme Court had the choice of either awarding me death sentence or life imprisonment under section 302 of the IPC read with 120-B and 109 of the Indian Penal Code. They chose death sentence. I would like to quote the reasoning of the Supreme Court on why they awarded me the death sentence at paras 252 and 253:

“**252.** In the instant case, there can be no doubt that the most appropriate punishment is death sentence. That is what has been awarded by the trial court and the High Court. The present case, which has no parallel in the history of the Indian Republic, presents us in crystal-clear terms, a spectacle of the rarest of rare cases. The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperiling the safety of a multitude of peoples’ representatives, constitutional functionaries and officials of the Government of India and engaging in a combat with the security forces is a terrorist act of the gravest severity. It is a classic example of rarest of rare cases.

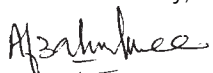


253. The gravity of the crime conceived by the conspirators with the potential of causing enormous casualties and dislocating the functioning of the Government as well as disrupting the normal life of the people of India is something which cannot be described in words. The incident, which resulted in heavy casualties, had shaken the entire nation, and the collective conscience of the society will only be satisfied if capital punishment is awarded to the offender. The challenge to the unity, integrity and sovereignty of India by these acts of terrorists and conspirators, can only be compensated by giving maximum punishment to the person who is proved to be the conspirator in this treacherous act. The appellant, who is a surrendered militant and who was bent upon repeating the acts of treason against the nation, is a menace to society and his life should become extinct. Accordingly, we uphold the death sentence."

Your Excellency, I am absolutely sure that the vast majority of Indian people would not want a man to be hanged without even hearing his story or letting him have an opportunity to defend himself. However, if by hanging me you think that Indians will feel avenged and my death will bring some solace to the children who lost their fathers and mother on December 13, 2001 then I have nothing to say. However, if you grant me clemency I can say I will pray every day that both Indian and Kashmiri people may learn to understand each other and the conflict that has divided us and claimed more than 80,000 lives in the Valley ends soon so that we can all live our lives watching our children grow up as good, kind and compassionate human beings.

Please accept my sincere gratitude for a patient listening to the voice of an unfortunate Kashmiri prisoner.

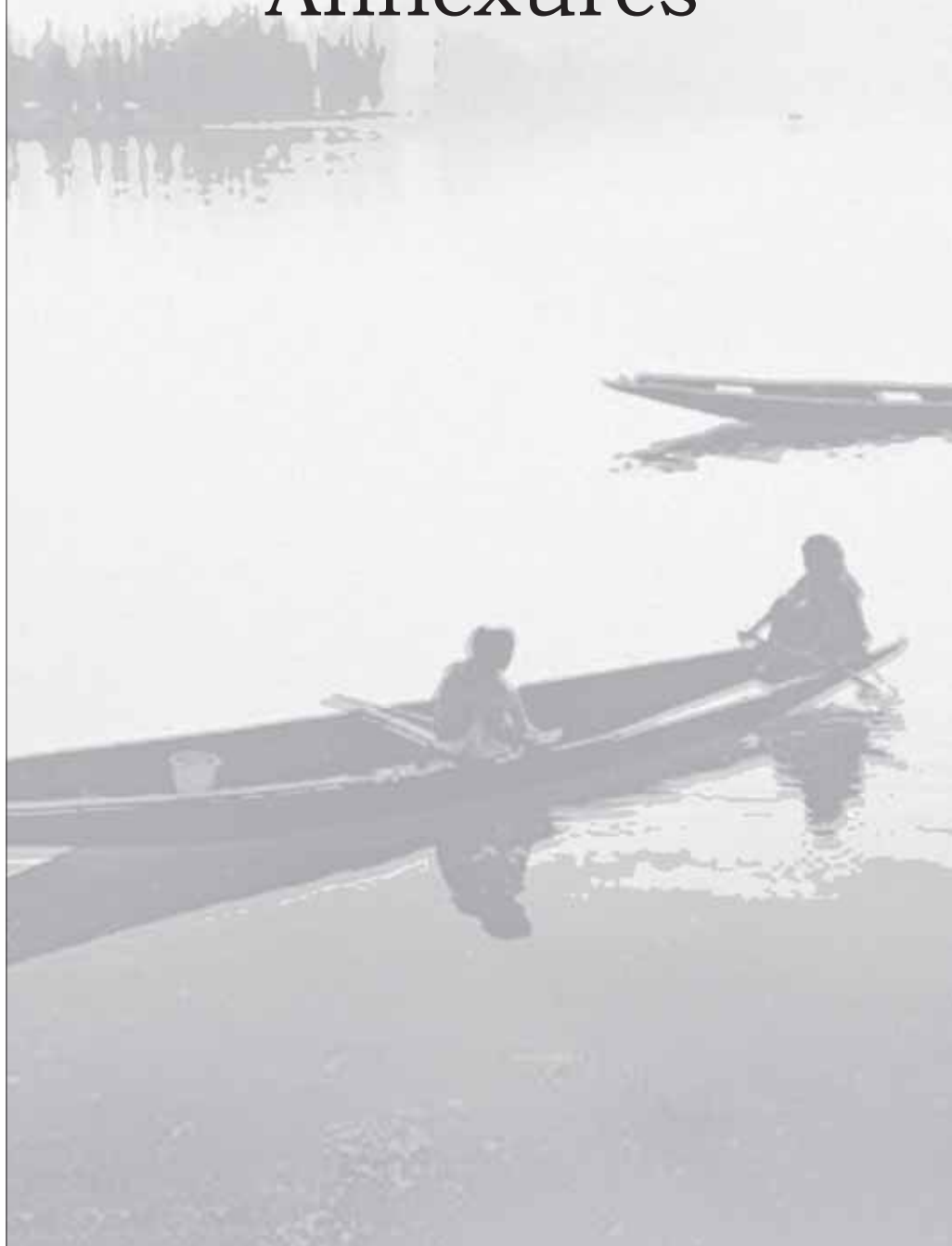
Yours sincerely,

 8/11/2006.

Mohammad Afzal Guru

Tihar Jail

Annexures



Annexure A-1

October 24, 2006, *The Times of India*

A THOUGHT FOR TODAY

Rage, rage against the dying of the light.

DYLAN THOMAS

Rights of Man

*Hanging Afzal would serve no ethical,
practical purpose*

Afzal Guru, one of those convicted in the Parliament attack case, does not deserve to die. This is not only because this newspaper is against capital punishment, but also because the legal community is divided over whether Afzal has had a fair trial. The death penalty is reserved for the rarest of the rare cases, after the individual concerned has been tried in a fair, just and reasonable manner in a court of law. The punishment being irreversible like none other, there should be no doubt that the accused obtained a fair trial. In Afzal's case, questions have been raised over the quality of legal counsel provided to him at the trial court stage. Whether these concerns are valid or not, they certainly strengthen the case against capital punishment. If the debate finally veers to the conclusion that Afzal did not have a fair trial, how does one make amends? When presented with a situation of capital punishment, the state, sadly backed by a section of society, displays a disturbing sense of certitude. The argument against the death penalty or, for that matter, against any form of extreme violence, questions this arrogance of certainties. It is not uncommon for judges to be divided on the issue of awarding a death sentence. Isn't it frightening to proceed nevertheless? A society that treats capital punishment as a topic for TV chat shows, rather than one that outlaws it altogether, betrays astonishing levels of internalised violence. Mob sentiment takes over the discourse, confusing justice with revenge. The state stokes such bloodthirst — whether it is the execution of Dhananjay or Afzal or the violence of one community against another — because that perpetuates its hegemony over individuals.

This is not to say that Afzal should be set free, or that the state has no right to frame laws and punish transgressions. The state should punish erring individuals to protect the rights of other citizens, but not to the extent of snuffing out their lives or violating their dignity. The rights of man have evolved after years of cruelty and a million agonising deaths. Should we turn the clock back? The issue is not merely one of saving an Afzal 'out there'. The president mulls over a clemency petition; his decision is meant to represent the views of a billion, with a billion ambivalences. If he turns down clemency for Afzal, that would be our decision as well: We would share with him the responsibility for taking away the life of an individual. Are we so hardened as a people as to be prepared for such a moral burden?

MATTERS OF POLICY: *Popular feeling in Kashmir is valid ground to grant Afzal pardon*

A valley scarred

HINDUSTAN TIMES
24-10-2006

BY A.G. NOORANI

'CONSTITUTIONAL LAW... is not at all a science, but applied politics, using the word in its noble sense." It was in the spirit of Justice Felix Frankfurter's aphorism that, on September 8, 1974, President Gerald Ford granted pardon to his predecessor, Richard Nixon. He acted against public opinion and in the knowledge that it would cost him the election in 1976, which it did. History has, however, vindicated him.

A nation torn apart by race riots, protests on Vietnam and partisanship could ill-afford the trauma. The US's prestige in the world would have sunk low. The Special Watergate Prosecutor, Leon Jaworski, was flooded with appeals to challenge the pardon. His memoirs, *The Right and the Power*, record agonisingly why he refused to do so.

Never before has Kashmir witnessed such intense unanimity — from Chief Minister Ghulam Nabi Azad to the separatists — as on pardon for Mohammad Afzal. What we need to ask ourselves is why do Kashmiris react as they do? The answer we shirk is that they feel oppressed and humiliated. Afzal is no popular hero, unlike Maqbool Butt. But it is their own tragic condition they lament each time. They protest thus. We must address earnestly the roots of Kashmiri alienation, not dismiss the popular clamour as some do.

"It looks to me to be narrow and pedantic, to apply the ordinary ideas of criminal justice to this great public contest. I do not know the method of drawing up an indictment against a whole people. I cannot insult and ridicule the feelings of millions of my countrymen." What Edmund Burke said in his immortal speech in Britain's House of Commons on March 22, 1775, on conciliation with the US, is true of Kashmiris as well.

Has anyone ever heard of a death sentence on a man who was undefended at his trial? This monstrous miscarriage of justice warrants re-visit. The Supreme Court has used emotional language. No PM has accused militants of "treason as it has". Medieval rulers ordered humans to "become extinct". Judges do not. It rightly calls the crime a "terrorist act" but ends up holding that it "might very well be an act of waging war". The two judges on the bench claim "to view the expression with the eyes of the people of free India"



and "dissociate ourselves from the old English and India authorities", create new law and send a man to the gallows along with some bastos of criminal jurisprudence.

Both must be saved. All constitutional tests would justify pardon on one ground alone — popular feeling in a state charged with alienation, where a peace process is underway.

B.R. Ambedkar told the Constituent Assembly on December 29, 1946: "The Home Minister who would be advising the Governor on a mercy petition... would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area." There, then, are relevant factors. They are all the more true of the Union Home Minister when advising the President *apropos* Kashmir. It is germane to the power of pardon.

Clamour for Afzal's scalp comes ill from men who have, like accused persons of the lesser breed, avoided trial for over a decade in the Babri masjid demolition case. The chief among them, L.K. Advant, shamelessly said that it was "a political case" and did not involve "moral turpitude" (December 20, 1999). What a message by the then Union Home Minister to militants all over the country.

Commenting on judicial independence, De Smith, an eminent authority on constitutional law, asked whether this implied "that judges should be entirely aloof from public sentiment and always disregard the strength of local feeling on an issue before them? If not, to what extent should judges take into account consideration of public policy, and how far can the government or its unruly supporters or opponents be permitted to determine what is the public

interest? Judges not infrequently have to determine what is in the public interest, or whether a transaction is contrary to public policy, or whether it is necessary to impose a deterrent sentence because of the prevalence of a social evil, and in coming to such decisions, they are expected to have some regard to the general sense of the community and not to rely merely on idiosyncratic opinions. Moreover, in some political contexts, the courts allow the executive or the House of Commons the first and last word".

It is preposterous to cry "violation of the rule of law". The power of pardon is an integral part of the legal process that begins with arrest and investigation and proceeds to trial and sentence. Public policy is as valid a consideration in the grant of pardon as it is in the decision to launch or withdraw a prosecution.

English texts speak of "political" in two different senses: a party political, which is motivated by expediency or party loyalty. The Supreme Court rightly struck down pardon in a case of this kind on October 11, 2006. But "political" is used in another sense also, which is synonymous with considerations of the State or the public interest.

In Britain, the Attorney General (AG) exercised for long the power to launch prosecutions for certain offences and to withdraw all prosecutions in his sole discretion. He consults ministers, if at all, if he so wishes. The Franks Committee on the Official Secrets Act, 1911, noted that he "may consult ministerial colleagues before taking his decision to prosecute. He will do this in cases where he thinks there may be important considerations of public policy or of political or international character

to be taken into account". Thus, even if there is a clear offence of breach of official secrecy, the AG will not bring a case if these considerations apply.

Two distinguished AGs have expounded the law in terms which bear directly on Afzal's case. Delivering the Sir George Bean Memorial Lecture in Manchester on October 29, 1978, Samuel Silkin said that the need to enforce the law should sometimes be balanced by political considerations. "What if their enforcement will lead inevitably to law-breaking on a scale out of all proportion to that which is penalised or to consequences so unfair or so harmful as heavily to outweigh the harm done by the breach itself?"

One consideration that had to be borne in mind, Silkin said, was the fear that minority groups, believing themselves to be unprotected if and under attack, might react. "If I make my decision on a party political basis, I deserve all the criticism which I am likely to receive. But if I ignore political considerations in the widest sense of that term, then I am failing in my responsibilities and courting disaster".

Lord Shawcross' letter to *The Times* (London) of July 29, 1984, is a *locus classicus* on the subject. It concerned the proposal to prosecute Nazi war criminals. The AG's discretion was "not to be settled by Parliament". He repeated Lord Simon's dictum that "there is no greater nonsense talked about the AG's duties in this context than the suggestion that he should prosecute because there is what the lawyers call a case". He should consider "all the relevant facts", that would include "public morale and order" and "public policy and interest in the widest sense".

If Advani's officials had succeeded in the parleys with the Hizbul Mujahideen in 2000, is there the slightest doubt that its chief, Syed Salahuddin, and his men would have received pardon? So, undoubtedly would the Naga militants if the talks with them succeeded. Conditions for pardon are common in peace accords. In the *Federalist Papers*, Hamilton supported giving this power to the executive, rather than the legislature, so that "in seasons of insurrection or rebellion" an offer of pardon is made in time instead of "letting slip the golden opportunity" for peace. That is certain to happen in Kashmir if Afzal is executed.

Annexure B

	Arguments for hanging Afzal	Remarks	Relevant extracts from the Judgements	Remarks
1.	He is the main accused in the Parliament attack case.	Not true. According to the charge sheet the three masterminds behind the conspiracy to attack Parliament were Masood Azhar, Tariq Ahmed and Ghazi Baba. (Proclaimed Offenders) None of the three have been arrested so far. Even if the three were extradited they would get protection from death penalty under international law of extradition.	"All the five deceased terrorists were identified as Pakistanis by one of the co-accused. The bodies were kept in mortuary for several days. No person in India claimed their bodies that showed that they were not Indians. No valid documents of their coming to India were found on their person." (Para 220, Judgement dated December 16, 2002, Designated Court)	The five people who actually attacked the Indian Parliament under the directions of the Pakistani masterminds were: Mohammad, Raja, Rana, Haider and Hamza. Their identities never established by the prosecution
2.	Afzal is convicted in an offence which falls under the 'rarest of rare' cases.	It is true that the offence for which Afzal has been accused is very serious. However, at the time of sentencing the courts must look at the actual role that each one of the conspirators played.	The Supreme Court rejected the Prosecution's argument that the liability of mere conspirators is co-equal to the liability of the active conspirators. (see Para 242 and 243) The Supreme Court also held that there is no evidence to link Afzal with the offence of participating in the preparation of explosives (see para 248).	Mohammad Afzal was not involved in the actual attack on the Parliament; he did not kill anyone or even injure anyone.
3.	Afzal is a member of a terrorist organization.	Not true. None of the 80 prosecution witnesses even alleged that Mohammad Afzal belongs to any terrorist organization or had links with any illegal outfit.	"The conviction under Section (2) of POTA is set aside. The conviction under Section 3 (5) of POTA is also set aside because there is no evidence, once the confessional statement is excluded. Incidentally, we may mention that even going by the confessional statement, it is doubtful whether the membership of a terrorist gang or organisation is established." (Para 250)	Till this date the media continues to describe Mohammad Afzal as the mastermind or as a member of Jaish-e-Mohammad.

Annexure B (Contd.)

	Arguments for hanging Afzal	Remarks	Relevant extracts from the Judgements	Remarks
4.	Hanging Afzal will send a strong message to Kashmiri terrorist and deter them from further attacks	There is no evidence to support the theory that capital punishment deters any kind of crime. That is why Europe Union forbids capital punishment even in its war against terrorism;	"Does non-granting of death sentence serves any suitable purpose and it helps in rendering a society safe as per data produced in Bachan Singh's case itself and the arguments advanced there, earlier the grant of death penalty was must and life imprisonment was only a rare thing and if the Sessions Judge was to grant life imprisonment, he had to give reasons for the same. Law gradually changed without the change of Statute due to judicial activism. Death Penalty is now granted in rarest of rare cases but the crime rate has galloped at a pace unimaginable. People now kill for trivial things. The argument that non-grant of death sentence has positive effect and grant of death sentence has a negative effect on the society, is therefore, a futile argument. It is not supported by the facts and circumstances. Death sentence has its own deterrent effect." (Designated Judge's order of sentencing dated 18-12-2002)	More than half the countries of the world have now abolished death penalty in law and many others have abolished it in practice. Death penalty is not acceptable even in cases of crimes against humanity or genocide; the International Criminal Court, the Yugoslavian and Rwanda Criminal Tribunals reject death penalty.
5.	Hanging Afzal will assuage the feelings of the victims' families and the Indian people's need for revenge.	The judicial process is a system designed to deliver justice not judicial revenge; hanging a citizen without giving him an opportunity to defend himself is not justice;	"The incident, which resulted in heavy casualties, had shaken the entire nation, and the collective conscience of the society will only be satisfied if capital punishment is awarded to the offender." (Para 253, Supreme Court Judgment).	

Annexure B (Contd.)

	Arguments for hanging Afzal	Remarks	Relevant extracts from the Judgements	Remarks
6.	Supreme Court cannot be wrong in coming to the conclusion that Afzal should be hanged. It must have given thought to the arguments against the death sentence;	The Law Commission of India in its Report on Capital Punishment, 1967, Vol. 1, Pgs. 317-18, Para 1025 had stated that: "there are many matters which may not have been considered by the Courts. The hands of the courts are tied down by the evidence placed before it. A sentence of death passed by a Court after consideration of all the materials placed before it may yet require reconsideration because of: (1) facts not placed before the courts (2) facts placed before the courts but not in proper manner (3) Acts dissolved after passing of sentence (4) Events which have developed after passing of the sentence, and other special features.	"Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of Constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgement has fixed." The power is "vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public consideration alone." (Kapadia, J in Epuru Sudhakar vs. Government of A. P. and others, 11-10-2006	

State versus Mohd. Afzal and others.

17.7.2002.

Present:- Dhri D.P. Aggarwal, Designated PP for the State.

All the accused persons produced from J.C. ^{prosecution} with their counsel except accused-Navjot Sandhu, who is exempted from personal appearance.

The case is today fixed for prosecution evidence.

After recording one witness today, accused-Mohd. Afzal states that he does not want the amicus curiae, Neeraj Bansal to act on his behalf. He earlier had given the list of four advocates, namely, R.M. Tuffail, Pt. R.K. Naseem, Mr. P.K. Dham and Ashok Aggarwal. This court had inquired from Mr. x R.M. Tuffail and Pt. R.K. Naseem, ^{who appeared} in this court in another case, but both of them expressed their inability to become amicus curiae in this case. Mr. Ashok Aggarwal had earlier appeared in this case on behalf of one of the accused and argued the bail application. Thereafter he did not appear. Accused-Mohd. Afzal states that his ~~an~~ case is entirely different from the case of other accused persons and he does not want to defend himself unless any of these lawyers, named by him above, are provided to him. I consider that if accused wants to have a lawyer of his choice, he is free to engage himself the lawyer of his choice, but if he has not engaged a lawyer of his choice and has asked the court to appoint amicus curiae, the court can appoint amicus curiae out of the panel available with it or out of the willing advocates. The court cannot compel any unwilling advocate, who says that he has no time, to become amicus curiae. Mr. Neeraj Bansal, who was appointed as amicus curiae in this case, had earlier been conducting TADA cases in this court and in this view, the court has appointed him amicus curiae in this case.

I consider that irrespective of accused saying that he does not want amicus curiae, the court has the duty to

-2-

seek the assistance of an amicus curiae in such cases where the accused is not cooperative. Mr. Neeraj Bansal has requested for withdrawal from this case, but he is requested to assist the court during trial.

Accused-Mohd. Afzal has requested to cross-examine the witnesses himself. He is given the liberty to cross-examine the witnesses.

Statement of six witnesses, who were present, were recorded. No other witness is present.

Put up on 15.7.2002 for remaining prosecution evidence.

[Signature]
Designated Judge, N.Delhi.

15.7.2002.

Present:- Shri D.P. Aggarwal, Designated PP for the State.

All the accused persons from F.C. except accused Navjot Sandhu, who is exempted from personal appearance.

Statement of five witnesses recorded.

No other witness is present.

To come up tomorrow, the date already fixed, for remaining P.E.

[Signature]
Designated Judge,
N.Delhi.

16.7.02
Pr. Designated P.P. for the State.

All the persons in a court provided from F.C. with Counsel.

Statement of five P.E. recorded. No other witness is present.

To come upon 17.7.02 for remaining P.E.

An application has been made by lock up Incharge, for permitting him to handcuff the accused while producing the accused in the Court. Copy of the application has been given to the Ad. Commls who want to file reply.

To come up for reply and arguments tomorrow.

[Signature]
Designated Judge,
N.Delhi.

Annexure D-1

-7-

P.W.2ⁱ-S.I. Sanjiv Kumar, P.S. Parliament Street on SAⁱ-

Ex.PW2/1 was handed over to me. On receiving this D.D. entry, ~~we~~ I along with one ^{Mr} Registrar Chaudhry went to Parliament House. When I reached at the Parliament House, the gate no.2 was closed and the sounds of firing could be heard by me. Our senior police officers were already there when I reached there. I had reached on gate no.2 around 11.59-11-52 A.M. After about 7-8 minutes, the sounds of firing of bullets stopped. and I entered after sometime when the gate was opened by senior police officers. When I entered I found bloods split at various places. There were chaos, empty cartridges were lying everywhere in the Parliament House. ~~W/O~~ of P.S. Parliament Street and other police officers had also come there. I along with them went to Gate no.1 Of Parliament House Building and where I found one terrorist lying dead blasted. The gate no.1 was got cordoned off by the police with the help of staff and then we went to Gate no.5 of Parliament House Building. We found one terrorist lying dead there and one AK-47 56 rifle lying alongside his side . He was also cordoned off and then we proceeded further to gate no.9 of Parliament House Building. Under the porch of gate no.9, we found three terrorists lying dead and we could see lot of arms and ammunition, plastic bags, cords (Rassi), dryfruits etc., lying nearby. I was directed by the senior officers not to disturb the dead body or to go near the dead body as there were chances of some more explosives being on their bodies and the same getting explode. All the dead bodies were got cordoned off and kept cordoned for sometime and by that time, Bomb Disposal Squad of NSG reached on the spot.

-8-

I was deputed at gate no.9 by the SHO. The BDS Team at gate no.9 checked all the dead bodies and removed explosives and electronic devices from the dead bodies and told that they would give the list of seized material and they shall defuse the seized material and they told us that we can proceed further. I got the three dead bodies of the terrorist photographed and I searched the persons of all the three dead bodies one-by-one and I seized all the material which were recovered from the three deceased terrorists as well as arms and ammunition lying around them and on their person. From the Personal search of the dead bodies, their I cards etc., telephone slips, two mobile phones, dry fruits etc., were recovered. Three AK-47 rifles, one .38 bore pistol and spare magazine s five in number of AK-47 rifle and three fitted magazine, which were double in size of the normal, were all recovered by me. Each of the deceased terrorist was found with one bag each. There were live cartridges in the bags etc. I sealed all the recovered articles (arms and ammunition and seized them vide recovery memo Ex.PW2/82 in the presence of H.C. Jagveer Singh and the memo bears my signatures at point A and the signatures of H.C. Jagveer Singh at point B. The I card seized by me from the person of terrorists are Ex.PW2/3,4 and 5. I had pasted these cards on a plain paper and I put my signatures. One hotel bill was found in the pocket of one terrorist, whose name was later on came as Hamza. The hotel bill is Ex.PW2/6. One paper slip having 7 telephone numbers written on it was recovered from deceased terrorist, whose name was later discovered as RAJA. I Pasted the same on the Plain paper and seized it. The slip is Ex.PW2/7.

-9-

One another slip having mobile telephone numbers on it was recovered from the pocket of another terrorist deceased was known as Rana and the same is Ex.PW2/8. I pasted it on a plain paper. One handwritten letter Ex.PW2/9 was also recovered from the deceased-Terrorist Rana. The same was seized by me. I had prepared sketches of all the three AK-47 rifles as well as of the pistols and the same are Ex.PW2/10 to 13. The sketch of cartridges of the pistols were prepared along with the sketch of the pistols. I had also prepared sketches of the magazines recovered and the sketches Ex.PW2/14. All the sketches bear my signatures and of H.C. Jagveer Singh. I joined investigation with Shri G.L. Mehta on 14.12.2001 and 15.12.2001. I prepared the inquest proceedings in respect of three dead terrorists, whose bodies were lying at gate no.9, and whose names were later discovered, as Hamja, Raja and Rana and sent the bodies to Lady Haring Mortuary for post mortem. The post mortem was conducted on 17.12.2001. On 17.12.2001, the doctor who conducted post mortem on the dead of Hamja, handed over to me two pieces of papers. One one piece of paper, ^{seven} ~~five~~ phone numbers were written and on second piece of paper, E-mail address of Preeti Zinta was written. I seized both these papers vide seizure memo Ex.PW2/15. The papers are Ex.PW2/16 and 17. I pasted the two papers on a plain paper and appended my signatures. On the slip, which is Ex.PW2/7, there is e-mail address of Preeti Zinta on back side. The inquest paper and the form filed by me in respect of deceased Hamja is Ex.PW2/18, inquest of Raja are Ex.PW2/19 and that of Rana is Ex.PW2/20. Accused-Mohd. Afzal present in court was taken to the Mortuary by the Officers of Special Cell and he identified all the five deceased terrorists, including Hamja, Raja and Rana.

-10-

(At this stage, the arms and ammunition recovered by the witness, are taken out from sealed parcels having the seal of CRSL). The three AK-47 rifles are Ex.P14,15 and 16 and the .38 bore pistol is Ex.P17, the cartridges are Ex.P18, Ex.P19 to 23 are the five spare magazines, three bags recovered from the three ^{dead} terrorists are Ex.P24 to 26, one mobile phone make Motorola is Ex.P27, another mobile phone make Motorola having Imei number 449269, 405, 808, 650 is Ex.P28. The empty cartridges of AK-47 recovered by me from the spot are collectively Ex.P29. The mobile ~~xxx~~ phones were recovered by me from the deceased-terrorists at the spot.


XXXXn:-by Shri K.G. ~~Kannabhan~~ with Shri Jawahar, Advocate for accused-Shoukat:-

I have seen the post mortem report Ex.PW2/BA of deceased-Hamja. In this, there is no mention of the slips by the doctor. I had checked the dead bodies thoroughly I prepared seizure memo regarding the slips recovered from the deceased on 13.12,2001. The bodies of three terrorists sent by me were kept in Mortuary, of Lady Harding, and as far as I know, Mortuary is in Cold Storage. Police guard was there around the Mortuary so long as the bodies were in the Mortuary. It is wrong to say that no slips or I cards were recovered from the person of terrorist/deceased either on 13th or 17th December, 2001.

XXXXn:- by on behalf of remaining accused persons by the counsel:-

Nil. Opportunity given.

R.O.A.C.


Designated Judge,
New Delhi.

Annexure D-2

-11-

P.W-3:-

S.I. Rajinder Singh, President House Security, on SA:-
 On 13.12.2001 I was posted at P.S. Parliament Street.
 At 11.15 A.M. I was given D.D. No.14-A (Copy of which is Ex.PW3/1). I along with H.C. Ashwani Kumar went to the Parliament House. On reaching there, SHO of our P.S. along with staff was found by me already there. I was given responsibility by the SHO of doing proceedings in respect of dead body lying at gate no.5 of the Parliament House. I found that one AK-56 rifle was in the right hand of the deceased-terrorist and I took search of the dead body. One I card was recovered from the right side pocket of the pant. The I card was having writing computer education Sanjay Kaul. Nearby the dead body, handgrenade liver was also lying there and there was one bag in the shoulder of the dead body and cash of Rs.150/- (three currency notes of Rs.50/- were in the pocket of shirt). The bag in the shoulder were having various pockets and chains. I prepared sketch of AK-56 rifle and also of the handgrenade liver. The same is Ex.PW3/2. My signatures are at point A and that of Ashwani Kumar at point B. The I card seized from the body of the deceased is ex.PW3/3 and the same was pasted on the plan paper and signed the paper at point A. I seized the rifle and sealed it with the seal of RS. I xix sealed all the articles recovered from the person of the dead body and seized vide memo ex.PW3/4, which bears my signatures at point A and that of Ashwani kumar at point B. Xh (At this stage, the seized articles are taken out of the parcels). Ex.P30 is the AK-56 rifle and P31 is the liver. The bag is Ex.P32.

-12-

I completed form no. 25 and 35 and sent the dead body for post mortem to Lady Harding Hospital. My inquest report is Ex.PW3/5 having my signatures at point A. The name of the deceased-terrorist was known as Hadar on 17.12.2001 at the identification of Mohd. Afzal. I got the post mortem of three persons of security, who had died in the attack. They were Nanak, Kamlesh Yadav and One another, whose name I do not remember now. Now I remember he was Om Parkash. The inquest report of three are Ex.PW3/6,7 and 8.

XXXXn;-on behalf of accused-Shoukat, by Shri K.G. Combarin and Shri Jawahar, Advocate;-as well as by all other advocates on behalf of the remaining accused persons:-

It is wrong to say that Afzal has not identified any of the deceased terrorist. I searched the dead body thoroughly. It is wrong to suggest that no I card was recovered, from R.O.A.C.

8.7.2002.

sel
Designated Judge,
New Delhi.

Rajendra Singh
87

Annexure D-3

-5-

P.W.37:-

Shri prem Chand son of Shri Suraj Bhan, aged 30 years, Hostel owner, r/o B-6/T, Vijayata Vihar, sector No.13, Rohini on SA:-

I am running hostel at B-41, Christian Colony where there are 32 rooms and it is named as Yamuna Hostel. On 6.11.2001, through Rajneesh S.T.D. boota, the two accused persons present in the court, Mohd. Afzal and Shoukat approached me for a room. I let out room no.5 on the ground floor to them at the monthly rent of Rs.1500/-per month. They came on 7th or 8th November, 2001 and put their luggage in the room and went away. I went to hostel on 26.11.2001 for checking in the rooms and I found one Kashmiri boy in room no.5, who told me his name as Rohail Ali Shah. I told him that he should give his particulars as I had to do police verification. He told me that he was doing Diploma in computer from Aptech, Kamla Nagar. He also showed me an I. card. I had seen Afzal and Shoukat coming to him. In between I also found room closed for sometime. On 6th or 8th December, 2001, I saw Rohail Ali Shah going out of room. When he was outside, I told him that he has not given me the particulars for verification. He should give me particulars so that I can get police verification. He told me that he would be coming back and after coming back, he would give the particulars. On 8.12.2001 I again went and checked room no.5. I found the room lying vacant. On 19.12.2001, a constable from Special Cell came to me and told me that I was required at Special Cell

-6-

I went to Special Cell where one sikh police officer was there and there ~~xxxxxx~~ there were 4-5 persons amongst them were Shoukat and Afzal. There I had identified them as the same who had come to take the room and I came to know about their involvement in the terrorist activities. The identity card which was shown to me by Ruhail Ali Shah is Ex.PW4/4. The photograph Ex.PW29/5 is that of Rohail Ali shah whom I had found in room no.5 of my hostel.

XXXXXXn;- by accused-Mohd. Afzal himself:-

Nik. Opportunity given.

XXXXXXn;- by Shri K.G. Bannariyan, Advocate on behalf of accused-Shoukat:-

I maintain register of the persons who occupy the hostel. I have not given that register to the police nor the same has been brought by me today in the court. I do not have licence for running a lodge or hostel. I get the police verification done of those whom I give the room in the hostel on rent. I also record in the register if police verification is done. I did not lodge any report with the police after Rohail Ali Shah left the hostel room on 8.12.2001. I did not suspect when Rohail Ali shah left the room because several times the students keep on changing the hostel. Shoukat and Afzal had brought table, chair etc. initially when the room was let out but when I found room vacant on 8.12.2001, everything had been taken away. I did not get verification of Shoukat and Afzal done from the police as after taking the room, they had left and it was Rohail Ali Shah, who was occupying the room.

-7-

It is wrong to say that I had not seen accused-Shoukat and Afzal at any time. It is wrong to say that I saw Shoukat and Afzal in police custody on 19.12.2001 and I at the instance of the Police, became a witness.

XXXXX;- by Shri Neeraj Bansal, Amicus Curiae:-


It is wrong to say that Mohd. Afzal had not come to take the room on rent at any time.

XXXXX;- on behalf of the remaining accused persons:-

Nil. Opportunity given.

R.O.A.C.

18.7.2002.


Designated Judge,
New Delhi.

Annexure D-4

20.7.02.

P.W 47 Dr. Upender Kishore Sr. Resident Deptt of F & M
and Toxicology, Lady Hardin, Medical College,
New Delhi

on S.A.

On 17-12-01 I conducted the post mortem on the dead body of Hamja aged about ~~27 yrs~~ identified by Mohd Afzal. There were in all 49 injuries in the body of Hamja. The injuries were mostly bullet injuries and some abrasions. My detailed post mortem report is Ext. PW 47/1 which is in my hand and bear my signature at point A. The death was due to shock and ~~trauma~~ hamarra ge produced as result of anti ⁴ mortem injuries produced by the protectials of the refilled fire arms fired from distant range and sufficient to cause death in ordinary course ~~xxx~~ 8 sealed parcels were given to the police after post mortem. The Post mortem is also signed by Dr. G.K. Sharma Head of the department at point B. There were two slips recovered from the pocket of Hamja which were handed over to the police on 17th Dec. itself. The slips recovered from the pocket of Hamja is Ext. ~~2/16~~ 2/16 and PW 2/17.

Dr. Bajesh was with me who is my junior and he had handed over these slips to the police. His signature at point B on Ext. PW 2/15. Dr. Rajesh now not working in the hospital. I identify his signature, as he has worked under me.
XXXXXXXXXX by Sh.K.G. Kannabiran advocate for Shaukat Hussa

The bodies of the terrorist were kept in mortuary of the hospital. I did not know when the bodies were deposited in mortuary which is cold storage of dead bodies.

-2-

When the body were ~~kept in the~~^{brought out} ~~exam~~ of mortuary for post mortem they were clamped. There was no exit wound present on the front of the chest near the chest. The cloths on the dead body were of blood ~~stained~~^{stained}. At page No. 2 of the Post Mortem report it is mentioned that two pieces of paper were recovered from each pocket of green pant of the ~~deceased~~^{deceased}. This is at point 'X'. I found one slip in each pocket of both the pockets of the pant. I did not note if the slips are in wet condition or in dry condition. I did not find anything else on the body of the deceased except fragment of bullets and the cloths on the body. It is wrong to say that Ext. PW 2/16 and 2/17 were not recovered. I had not signed the slips as they were handed over unsealed. Seizure memo has been signed by the jr. officer ,

XXXXX Ms. Seema Gulati for accused S.A.R Geelani

The post graduate Doctors who are affiliated to the hospital leave their record with academic section of the hospital. Dr. Rajesh address should also be available in acad. section. The handing over the slip by Dr. Rajesh to the police was done in my presence. I was wearing ~~gloves~~^(gloves) at that time so seizure memo was signed by Dr. Rajesh who was assisting me. X
XXXXX On behalf of remaining accused persons

Nil. opp. given.

RO&AC
1
2
3
4


Designated Judge
POTA, New Delhi.

Annexure D-5

-6-

P.W. No. 62:-

H.C. Mohd. Akbar, No.2758, Police station Parampura,
Sri Nagar, J & K on SA:-

At about 6 a.m. on 15.12.2001, D.S.P. PW61 came to our police station and told us to get ready. Three teams were formed by him of police officials. I was in the team of DSP and our team went to Fruit Mandi of Parampura. We had been given instructions at P.S. that we had to locate HR-38-E-6733, and trace it. This truck was found by our team in Parampura Fruit Mandi at about 8 A.M. As the morning hours is a rush hour in Fruit Mandi, we waited for about one hour for the truck to move. The truck started from fruit Mandi at about 10 A.M. We stopped the truck near the Police Station of Parampura on the road which leads to Baramula. In the truck, we found accused-Shoukat and Afzal present in the court. We asked them to get down from the truck and brought them to the Police Station and interrogated them. Ex.PW61/1 and 61/2 are the personal search memos of the accused persons, which bear my signatures at point E. The disclosure statement made by the accused persons are signed by me at point D and is Ex.PW61/3. The accused disclosed about Rs.Ten Lakhs, one mobile phone and computer lying in the truck. The truck was checked and ex.P83 laptop along with accessories and brief case, Ex.P84 mobile phone and Ex.p85 cash of Rs.10 Lakhs were recovered from the truck vide memo Ex.PW61/4 and bears my signatures at point E.

XXXXXn;.. by accused-Mohd. Afzal, accused himself:-

Nil. Opportunity.given.

-7-

XXXXn;- by Shri Neeraj Bansal, Amicus Curiae -

It is wrong to say that I am deposing falsely.

XXXXn;- by Shri K.G. Bannarian, on behalf of accused-Shoukat:-

I was not knowing accused-Mohd. Afzal or Shoukat Hussain from before. I do not know who is the owner of the truck. Only my officer would be knowing about it. It is wrong to say that the accused-Shoukat and Afzal were brought to the P.S. first and truck came at the P.S. lateron. My statement was recorded by the IO of this case. It is wrong to say that accused-Mohd. Afzal and Shoukat were arrested first and then truck was brought. (ol:- They were apprehended with truck). It is wrong to say that Rs.10 Lakhs, laptop and mobile phone were not recovered from the truck.

XXXXn;- On behalf of the rest of the accused persons :-

Nil. Opportunity given.

R.O.A.C.

24.7.2002.


Designated Judge,
New Delhi.



-8-

Annexure D-6

P.W.65:-

S.I. Sharad Kohli, Special Cell, Lodhi Colony, New Delhi
on SA:-

On 15.12.2001, I along with S.I. Hardaya Bhushan and other staff went to Srinagar by special aircraft and we reached there by 1 PM. DSP of J.K. Police, Shri Abdul Haq Bhatt handed over to us accused-Mohd. Afzal and Soukat Hussain along with Ex.P83, P84 and P85 and documents prepared by JK Police. My colleague-Hardaya Bhushan along with accused persons and the case property and the documents left for Delhi and I along with S.I. Jai Kishan and H.C. Vikram remained in Sri Nagar as a truck had also been seized. We went to P.S. Parampara, Sri Nagar, where truck no.HR-38-E-6733 was handed to me by DSP-Abdul Haq Bhatt. I recorded statement of DSP- Abdul Haq Bhatt, H.C. Mohd. Akbar and H.C. Mohd. Shafi. I stayed in Srinagar along with above police officials on 16 and 17.12.2001 also in order to have further information about Tariq and Ghazi Baba, who were suspects in this case. On 18.12.2001, at about 1 p.m. I started from P.S. Parampara along with truck and J.K. police escorts. The escorts left us upto Jammu and from Jammu, we came by the same truck to Delhi and reached Special Cell. I reached Delhi on 19.12.2001 at about 9 p.m. along with truck and other Police officials. DCP-Rajbir Singh made endorsement on the seizure memo at point X on Ex.PW65/1, which is signed by him at point A and I was directed to deposit the truck at P.S. Parliament Street. I took the truck on the same night to P.S. Parliament Street and deposited it with the Malkhana.

-9-

On 20.2.2002, I, as per the directions of the IO, had taken exhibits for DNA examination of the five terrorists to CFSL Chandigarh from MHCM, P.S. Parliament Street. Dr. Biswas had refused to receive the same on the ground that there was no ~~xxx~~ attestation of the autopsy surgeon. However, ~~xxx~~ on my request, Dr. Biswas preserved the samples in the Laboratory as they were of perishable nature. On 1.3.2002, I went to CFSL Chandigarh along with attested seal of the Surgeon and thereafter the samples were deposited in the CFSL for examination. I brought road certificate duly received and gave it to MHCM. So long as the samples remained in my custody, they were not tampered with.

XXXXXn:- by Shri K.G. Bannarian, counsel for accused-Shoukat:-

The registered owner of the truck is Afsan Guru, who is wife of accused SShoukat Hasan Guru. I did not seize the documents regarding ownership. It is wrong to say that the truck brought by me to Delhi from Sri Nagar, did not belong to Afsan Guru.

XXXXXn:- by accused-Mohd. Afzal:-

Nil. Opportunity given.

XXXXXn:- by Shri Neeraj Bansal, Amicus Curiae:-

Nil. Opportunity given.

XXXXXn:- by the counsel for the rest of the accused persons:-

Nil. Opportunity given.

R.O.A.C.

25.7.2002.


Designated Judge,
New Delhi.

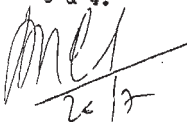
Annexure D-7

State versus Mohd. Afzal & others.
p.W.661-

Inspector Mohan Chand Sharma, Operation Cell, Lodhi Road,
New Delhi on SA:-

On 13.12.2001, I was posted in Operation Cell. At about 12 noon, I got the news that attack has been done on Parliament House and I was given direction that I should reach there with my team of officials. I along with my team and my senior officer ACP-Rajbir Singh reached at Parliament House. On reaching there I found a SHO of P.S. Parliament Street and other senior officers present on the spot. After reaching there, I learnt that terrorists had attacked Parliament and some police persons and some public persons had been killed in that attack. Five terrorists who had made suicidal attack, were also got killed at Parliament House. I and senior officers inspected the spot. There was ~~was~~ dead body of one terrorist at gate no.1, another dead body at gate no.9 and three dead bodies at gate no.5, and one ~~in~~ ambassador car used by the terrorists was at gate no.11. NSG BDS was deactivating the handgrenade found on the spot and after deactivation was done at gate no.1, we reached there. We searched the militants lying dead at gate no.1 and from his person, one mobile phone was recovered, one leather purse was in the pocket of the body containing three I. Cards, one slip on which some mobile numbers were written and another slip on which Dubai mobile numbers were written. My senior officers gave me directions to do investigation about the mobile numbers which were found written on the slips. The slips which were recovered are Ex.PW4/6 and 7. The I Cards which were recovered from the purse of terrorist are Ex.PW4/2,

3 & 4.


26/12

-2-

The mobile phone which was recovered from the terrorist was switched off by me and I took out the sim card to find out sim card number. I also noted the instrument number. From the purse of terrorist, three more sim cards were recovered and I also noted their sim card numbers. Two cards were of Magic Air Tel and another was of Speed Essar. I wrote down request letter for both the companies for finding out the call details and whatever details of the sim cards could be obtained and prints out of the call details and sent my S.I. for obtaining these details from the two companies. After sending my S.I. I went to my office and gave instructions to S.I. to reach office. I left S.I. Sanjay Dutt and other staff on the spot. The responsibility of investigation about mobile numbers was given to me. My staff was to inform me about information received by them about mobile numbers. When I reached office, S.I. to whom I sent for collecting details, also came to the office along with the documents and details. The document Ex.PW35/1 gives at point A, B and C details of the three sim cards of Air Tel. The corresponding mobile number no. of the sim card at point A is 9810511085, The corresponding mobile number of the sim card at point B is 9810693456 and the corresponding mobile card number at point C is 9810565284. The mobile numbers are at point D, E and F. The sim card no. corresponding to mobile no. 9810693456 was found to have been used in six instruments i.e. cell phones as is indicated from Ex.PW35/5. On the I. Card which was recovered from the pocket of the terrorist there was one mobile phone no. 9811489429. The print out of this mobile number was also obtained, which is Ex.PW36/xx3. The instrument which was used by this mobile number was also found to be used by the terrorist-Mohd. who was killed in the attack and whose photo is Ex.PW29/5.

me
28/12

- 3 -

The last call which was made by mobile no.9810693456, was made to mobile no.9811489429 at 11.25 A.M. The call details show that on mobile no.9810693456, which was found on the person of the militant, had received calls from 8821651150059, which is a GSM-cum-satellite phone and only incoming calls could be received through this phone as outgoing calls cannot be made from mobile phone to GSM-cum-satellite phone. There were several outgoing calls ~~received~~ from this telephone to Germany. The German number was 491722290100. The calls on mobile no.9811489429 were also found to have been received from GSM-satellite number and have been made to ~~Germany~~ ^{Thuraya phone} number. The sim cards were also recovered from other militants and the details collected about them also shows that the same six instruments were used by the militants using different sim cards. The instrument which was used on phone no.9811489429, was used by the militant frequently and was again used by the above number as per the details received about these phone numbers. The calls were made to Pakistan and Dubai as is evident from document Ex.PW35/4. The Pakistan number is at point P and Dubai number is at point D, on Ex.PW35/4. The cell phone no.9811489429 was found to have been in constant conversation with the phones which were found on the/terrorist ^{person of} although he himself was not around the Parliament House. The calls details show that he was providing aid to them from outside. I found that phone no.9811489429 was further in contact and constantly in touch with no.9811573506 and 9810081228. Since ^s who had attacked Parliament the militant had already dead, my investigation was now confined to three mobile numbers, 98114,89429, 9811573506 and 9810081228. The two numbers were of Essar and were of Cash card. The third number i.e. 9810081228 was regular card in the name of S.A.R. Galani and was of Air Tel.

M. G.
28/2

-4-

The address as per record was 535, Dr. Mukerjee Nagar, near Batra Cinema of the holder of this mobile number. We put our staff to keep a watch around this house, on the night of 13.12.2001 in the late hours. Since no movement was found in the premises, the senior officers told us to withdraw the watch. On 14.12.2001, in the morning, again the premises was kept under surveillance. The house owner of this house living at the ground loor and we took him on confidence and he told that Mr. S.A.R. Jalani was a professor and was a tenant in the premises and was not at home. I had also obtained interception order of above three mobile numbers on 13.12.2001 itself and these mobile numbers were kept under interception. The orders of interception of Pakistan numbers and Dubai numbers were also obtained on 13th December, 2001 and they were kept under interception. S.I. Harinder Singh was put on the duty of interception of telephone and he was given direction that the moment any call is observed on these phone numbers, he will immediately inform me. On 14.12.2001, a call being made was observed on 9810081228 during the day in Kashmiri language. S.I. Harinder told me that the conversation was going on Kashmiri language. I gave him directions that he should get it translated in Hindi and tell me the gist of conversation. On the evening of 14.12.2001, a call was found on second number 9811573506 and I was told that in this case, one woman was talking in fearfully and was talking to some Shoukat. After coming back to office in the night, I seized both the cassettes vide memo Ex.PW66/1 and 2. I went through the conversation and informed my senior officers that these persons were having knowledge about the attack on Parliament. The Hindi translation and conversation in Hindi are Ex.PW66/3

and 4.

M. D. / 26/12

-5-

Memos Ex.PW66/1 & 2 bear my signatures at point A and that of Harinder Singh at point B.

(At this stage, a sealed parcel having the court seal is opened and contents are taken out. Ex.P80 is the cassette mark C-1 and Ex.P86 is the cassette mark C-2, which were seized by me. From the intercepted calls on a cell phone no.9811573506 we learnt that the person was in Sri Nagar and the call was being made from Sri Nagar. We found out from Essar Company the number from which the call was made. The calling number was 0194492610, which is Y-6 on Ex.PW36/2. I briefed my senior officers that from the intercepted call, it was evident that one Shoukat and one Chottu, two persons were in Sri Nagar, who were connected with this case and this number was given to Sri Nagar Police, Central Agency for keeping watch. We started surveillance of house of S.A.R. Jalani on 15.12.2001 again. At about 10 A.M. Mr. S.A.R. Jalani entered his house and he was got identified from the landlord and he was apprehended. He was carrying mobile phone in his hand having mobile no. 9810081228. We seized that mobile phone also. I inquired from him about the numbers which were appearing in the chart of his phone number. He told that mobile number 9811489429 belongs to Afzal and 9811573506 belongs to shoukat. (Objected to). He told that he was not aware of the residential address of Afzal as he used to keep his residence changing. However he knows the address of shoukat, who lives nearby. (Objected to). The mobile phone which was seized by me from S.A.R. Jalani, was sealed with the seal of MCS and was taken into possession vide memo Ex.PW66/5, which bears my signatures at point A and of S.I. Gobind Sharma at point B and of S.I. Badrish Dutt at point C.



-6-

(At this stage, a sealed parcel having the seal of MCS is opened and contents are taken out, and mobile phone is taken out and it is the same mobile phone, which was recovered by me and is marked as Ex.P87. The personal search of S.A.R. Jalani was taken out and the same is Ex.PW66/6). ~~Thereafter, Mr. Jagan took out us to one house of Shoukat in Mukerjee Nagar at house no 102, first floor, where Afsan Guru accused opened the door. She was having mobile phone, which I seized and its number was 9811573506 I checked the incoming and outgoing number from the memory of the phone and found that the number/ the conversation of which was taped, was in the memory. I inquired from Afsan Guru about the persons calling and she told that they ran away out of fear. (Objected to). I seized the mobile phone along with the sim card and after sealing the same with the seal of MCS vide seizure memo Ex.PW66/7.~~

(At this stage, one sealed parcel having the seal of MCS is opened and contents are taken out). Mobile phone taken out is the same which I seized from Afsan Guru. The mobile phone is Ex.P88. I mentioned the details of telephone numbers in the memory of the telephone, in the seizure memo. We took search of house of Afsan Guru and we found photographs of Afsan Guru, her husband Shoukat and Afzal. The photographs recovered from the house of Afsan Guru are Ex.PW66/8 and 9 and I signed the photographs at point A. I seized these photographs vide seizure memo Ex.PW66/10. One ~~is~~ another cell phone instrument and one another sim card were recovered from the house search of Afsan Guru and the same were seized by me vide seizure memo Ex.PW66/11. I had sealed the cell phone and sim card in a sealed parcel with the seal of MCS.

(At this stage, one sealed parcel having the seal of MCS is opened and contents are taken out).

ndy
h
r

-7-

It is the same cell phone which was recovered from the house of Afsan Guru. The same is Ex.P89.

(At this stage, another sealed parcel of seal of MCS is opened and sim card is taken out. It is the same which was recovered from the house of Afsan Guru. The same is Ex.P90.)

I arrested accused-Afsan Guru and the personal search of Afsan Guru was taken by lady S.I. Jaishree, and the same is Ex.PW66/12. (The personal appearance of accused-Afsan Guru is exempted and her identity is not disputed). The sim card which was recovered from house of Afsan Guru, was checked and its mobile number was found to be ~~981046375~~ 9810446375. This number was the same, which was found from the chart to have been called by Thuraya phone. The number appears at Ex.PW35/7 on third page at mark-X. I brought both Afsan Guru and S.A.R. Jalani to Operation Cell, Lodhi Colony. One team of police officials had been sent to Sri Nagar also. After bringing the accused persons, I recorded the disclosure statement of S.A.R. Jalani and Afsan Guru. The same are Ex.PW66/13 and 14 (Objected to). I recorded the disclosure statements in the presence of S.I. Gobind Sharma and S.I. Badrish. The disclosure memos bear my signatures at point A, that of accused at point B and that of witnesses at point C and D, (Objected to). S.I. Hardaya Bhushan who was sent to Sri Nagar with the team, came back to Delhi with accused-Afzal and Shoukat at about 6 p.m. (Accused-Afzal and Shoukat are present in the court). S.I. Hardaya Bhushan handed over to me both the accused Persons, few documents and laptop, Rs.10 Lakhs and other articles recovered from the accused persons. The articles included one Nokia phone. The documents handed over to me are Ex.PW61/1 to 6. The articles with accessories and briefcase which were handed over to me, are laptop/Ex.P83, Ex.P84 (Nokia mobile phone and Ex.P85 (Cash of Rs.10 Lakhs).

-8-

The laptop was retained in the office for further study, as to what were its contents and rest of the articles were deposited in the Malkhana. I recorded the disclosure statement of accused-Mohd. Afzal and Shoukat Hussain, which are Ex.PW64/1 and 2 (Objected to). The disclosure bear my signatures at point A, B, of accused at point C and of S.I. Sanjay Dutt at point D. (Objected to). The Nokia phone which was recovered from accused-Mohd. Afzal and Shoukat was the same instrument on which last call was generated on 13.12.2001 ~~at~~ 11.32.40 A.M. as mentioepd at point Y1 in Ex.PW36/3. On next day i.e. 16.12.2002, all the accused persons were produced before the court, and their police remand was taken. For examination of the laptop and the data stored in it, we approached Oriancon vergence. Several agencies were working in this case including CBI and ~~CBI~~ gave us four photographs to ask the accused persons if they knew any one of them. The photographs given by CBI to us are collectively are Ex.PW66/15 and Ex.PW66/16. ~~Accused Mohd. Afzal identified photograph Ex. PW66/16 as the person, the militant which was lying dead at gate no. 1. I seized the photographs vide seizure memo Ex. PW66/17 and on the seizure memo, the identification of photograph is recorded. The I cards which were recovered from the deceased terrorists having the name of S Xansa Wabcity I. Cards, the owner of this company inquired from him. He told us that these cards were not issued by him. (It is object/by the counsel that the IO cannot depose in the court as to what inquiries he made and what was stated by the witnesses as a result of his inquiry ~~it is objected~~ Counsel stated that objection be recorded in the word of the counsel. Let the counsel state her objection in her own words.~~

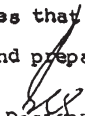
-9-

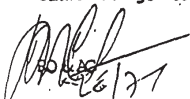
(^{obj.} The I.O. cannot be allowed to de. about the contents of any statement made to him by any witness during the course of investigation.) The counsel relied upon Section 162 Cr. P.C and read the same, There is no bar under Section 162 Cr.P.C on the I.O. to tell the court what were the answers given to his enquiry ~~by~~^{by} the witness. Counsel seeks time to produce judgment and argu on this question. The counsel at liberty to argue the objection at the time of final arguments).

I had called Mr. Sanjay Mawani, Manager Admn. at the office I showed him I, Card Ext. PW 4/2, P.W 4/4, Ext. PW 3/3, PW 2/3 to PW 2/5. He denied that these card were issued by their company. He produced one original card of his company which is Ext. PW 50/1 which was stappled by me on a paper which ~~is xxxxxxxx~~ bears my signature at point A. I seized the original card vide seizure memo Ext. PW 50/2.

~~On 18th Dec. the investigation was handed over by me to A.C.R. Rajbir Singh as provision of POTO were added against the accused persons. Ext P 37 is the mobile phone which was received from deceased terrorist Mohd. The photographs Ext. PW 40/2, is of deceased terrorist Hamja, Ext. PW 46/1 is of deceased terrorist Raja. P.W 41/5 is of deceased terroriwt Rana, PW 29/5 is of deceased terrorist Mohd, and PW 45/2 is of deceased terrorist Haider. I recorded the statement of the witnesses upto 18th Dec. 2001.~~

XXXXXXXXXX deferred at the request of the counsel for accused persons as the counsel states that they need some time to go through the statement and prepare questions.


Designated Judge
New Delhi 26-7-02.


26/7

State versus Mohd. Afzal & others.

P.h 66:-

Inspector Mohan Chand Sharma recalled for cross-examination on SA:-

XXXXN;-by Shri K.G. Bannarian, learned counsel for accused-Shoukat Hussain:-

Q. Beyond the three telephone instruments, you did not investigate with reference to other instruments used?

Ans. It is wrong to say that I investigated only about three instruments. As already stated, I investigated ^{about} ~~all the six~~ instruments that appeared in the chart of ~~9810693456~~ and about other telephone numbers.

~~Examinee~~ It is correct that the mobile phone instrument number which was recovered from the house of Afsan Guru, was not found in the chart of the phone numbers and instrument numbers received from telephone companies. (Vol:-^The instrument which was found in the hand of Afsan Guru when he entered in the house, was very much ~~not~~ found in the list of instrument numbers supplied by the two companies). ^The instrument no. of the telephone instrument recovered from Afsan Guru from her hand, figures in chart Ex.Pw36/1 at entries A to A except two telephones at point X. (Vol:-The telephone instrument number is 15 digit, but the chart reflects first 14 digit. The fifteenth digit can be any from 0 to 9. He had ^{sought} explanation from Nokia Company and they had informed us so.). The instrument in this case is of Sony and the rule of 15 digit applies to all instruments, which may be purchased from any company. It is wrong to say that the first 14 digit are not reflected in ~~all~~ respect of all instruments purchased from different companies. I do not remember the telephone numbers on which the conversation was diverted for interception. They may be given in case diary.

-2-

he sim card of telephone no 9810693456 was recovered from deceased-Mohd. by the SA SHO in my presence. It may be around 1.30 p.m. on 13.12.2001 when the recovery was made. The attack commenced on the Parliament at about 11.40 or 11.45 ~~PM~~^{A.M.} but I received the news in my office at around 12.15 noon.

The numbers mentioned in seizure memo Ex.PW66/7 were taken from the redial list of the telephone instrument and is so mentioned in the memo. (Court observation:- In a mobile set, the redial list is exhibited on the screen which gives the numbers called or received from the memory of the telephone. Every telephone has different memory figures. Some telephone gives memory upto 200 and some gives upto limited memory). I have mentioned in my case diary about my ordering interception of telephones.

When I handed over the investigation to ACP-Rajbir Singh, I completed the part of investigation assigned to me and arrest thereafter. ACP-Rajbir Singh had initially assigned me to work on telephones and this part of investigation. Mr. Rajbir Singh had also ordered me for interception with the permission of Central Agency. It is wrong to say that all recoveries done under my supervision were false recoveries.

XXXXXX:- by Ms. Nitya Ramakrishna, Advocate on behalf of accused-Afsan Guru:-

It is correct that I consider the attack on Parliament as terrorist offence. I had noted the telephone numbers on the person of dead terrorist on 13.12.2001. There is no witness to the fact of my noting down the numbers from the slips and telephone of dead terrorist recovered on the spot. ~~It is correct that no details of the substance of conversation between the dead terrorist and the person using phone number 9811489429 is available.~~

-3-

It is correct that the telephone in our department to which the calls were diverted for intercepted, were not sealed or seized or exhibited. It is correct that ~~calls at various times and to the Ex.PW66/77 find no mention in the computerised data obtained from the phone companies.~~ (VOL:- They can be missed calls or dialed calls, which did not mature). It is correct that no public witness was associated at the time of house search or arrest of Afsan Guru. I left the house of Afsan Guru after completing my work there at 1 P.M. on 15.12.2001. ~~I cannot say I got the attack on Parliament on 13.12.2001 or the attack on Kashmiri Muslims in Delhi on 13.12.2001 or the attack on the family of the accused.~~ The sim card of phone no. 9810693456 was not the sim card which I took out from the instrument. ^{corresponding} The/sim card was recovered from the pocket of the terrorist. It is correct that phone instrument corresponding to IMEI number 449341100637300 was never recovered. It is wrong to say that I did not arrest accused-Afsan Guru on 15.12.2001. It is wrong to say that I arrested her on 14.12.2001. It is wrong to say that I did not search her house or did not recover any telephone from her or from her house. It is wrong to say that I subject her to tortured and obtained her signatures on blank papers. It is wrong to say that my investigation about telephones was without any thoroughness. It is wrong to say that the last digit of IMEI number is equally important and matters XXXXX;- by Ms. Seema Gulati on behalf of accused-S.A.R. Jalani:-

It is correct that as per the computerised list in respect of telephone no.9811489429, Ex.PW36/3, the last call made to telephone no.9810081228 is on 9.12.2001 and after 9.12.2001, there is no call made to this telephone number.

-4-

It is correct that there is no call made on 8th December and then there is two calls made on 7th December, and the calls on 7th December made at 14.32.20 is a two second call. (Vol:-The next call made on the same day is of 122 seconds, which was made after six seconds of the first call). Between ~~17.11.01~~ 17.11.2001 and 7.12.2001, there is no call made to phone no.9810081228. The call is on 17.11.2001. (Vol:-Telephone of Mohd. Afzal remain-ed closed/shut off between ~~19.11.2001~~ 19.11.2001 from 7.12 p.m. to 21.11.2001, 4.30 p.m. After making one call on 21.11.2001, the phone was again closed and it was used on 23.11.2001 at 1.50 p.m. and thereafter one more call was made on that day and the telephone was again closed till 26.11.2001 upto 11.37 A.M. The phone again closed on 29.11.2001 at 2.50 p.m. and then it was made operative on 7.12.2001 and the first incoming call ~~is~~ was of Mr. Jalani). I am saying that telephone remained closed because no telephone calls were received or made from the telephone. It is not abnormal for a person not to make call or not to receive calls for long period. Prior to ~~17.11.2001~~ 17.11.2001 there ~~is~~ are three calls on 12.11.2001. The card of Mr. Mohd. Afzal ~~not~~ activated on 6.11.2001 and the first call received from S.A.R. Jalani is on 12.11.2001.

The police of local Police Station was not informed when the surveillance was ~~put~~ mounted on the house of S.A.R. Jalani on 13.12.2001. It started at 9/9.30 p.m. It is wrong to say that Mr. Gilani was very much in the house on 13.12.2001. I do not know about the family of Mr. Jalani whether the same was in the house or not. It is wrong to say that Mr. Jalani had come to his house on 13.12.2001 at about 9.30 p.m. after ~~his~~ taking his classes at the college.

-5-

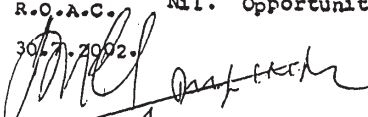
I did not join any public witness at the time of arrest of S.A.R. Jalani. I did not visit ^{Evening} College of Mr. Jalani to find out if he was in college. The interception of telephones was started around 5 p.m. on 13.12.2001. I do not know how many calls were made ^{or received} from the telephone of Mr. Jalani after 5 p.m. on 13.12.2001. S.I. Harinder had been informing me on receipt of each call, and had been informing me of the gist. Three or four calls were received in Kashmiri language. I was not informed the gist of calls in Kashmiri. I was only told that the call was made in Kashmiri language. Neither I nor Harinder were knowing Kashmiri language. Outside help was being sought in respect of Kashmiri language. For the first time I was told at about 2 p.m. on 14.12.2001 about the relevant calls, which was in Kashmiri language. I had heard that call. I do not remember the duration of that call. I had only heard the relevant call of 14.12.2001 and had not heard the other Kashmiri calls. I was provided the translation of Kashmiri calls. I did not cross-check the translation provided to me from some one else except the person employed by us for translation. I do not know if there are large number of Kashmiri officers in Delhi Police and some of them are holding senior position ^{in Kashmiri}. No transcript of that telephone call received/ was prepared. Only translation was made. The cassette Ex.C1 was handed over to me by S.I. Harinder at 10 p.m. I had deposited the sealed cassette at about 11.30 p.m. I did not reopen the seal of the cassette after that. Shah Fazal, who made calls from Srinagar to S.A.R. Jalani was also interrogated, only once. He has not been cited as a witness nor he has been made as an accused. It is correct that the intercepted cassette Ex.C1 which I heard, was having lot of inter-ferrring noise and it was not very clear. I do not remember if there were any English words in that cassette.


-6-

It is correct that as per the print out of the telephone of Mr. S.A.R. Jalani, the last call is of ~~13.03~~ 13.03 on 14.12.2001. It is wrong to say that accused-S.A.R. Jalani was picked from outside Khalsa College on 14.12.2001 at about 1.15 p.m. and was made to sit in the car, which was being driven by me. It is wrong to say that accused-S.A.R. Jalani was whisked away to a Farm House in blindfolds and he was beaten and tortured at Farm House or it is wrong to say that ACP-Rajbir Singh was ~~was~~ accompanying me. It is further wrong to say that nothing incriminating was found against S.A.R. Jalani in the alleged intercepted conversation. It is wrong to say that S.A.R. Jalani was falsely implicated because he was in injured condition after he was tortured and out of fear of prosecution by S.A.R. Jalani for wrongful confinement. It is wrong to say that the translation Ex.PW66/4 is the incorrect translation of the interception. XXXXXn:- by accused-Mohd. Afzal himself:-

It is wrong to say that cassette Ex.C2 is an interpolated and fabricated
~~XXXXXXn:-~~ on behalf of Amicus Curiae:-
 R.O.A.C. Nil. Opportunity given.

30.7.2002.


 30/7/02


 Designated Judge,
 New Delhi

Annexure D-8

-10-

P W 67 S.I. Bisharish Dutt, Special Cell, Lodhi Road,
New Delhi

on S.A.

On 15th Dec. 2001 I was posted at Special Cell New Delhi. On that day with Insp. Mohan Chand Sharma, Purnan Sharma and other staff I went to 535 Mukherjee Nagar, to keep watch on this house. At about 10 a.m. in the morning accused S.A.R. Geelani present in the court entered the house and he was apprehended by Insp. Mohan Chand Sharma. Mr. Geelani informed that mobile phone No. 9811489429 belong to Mohd Afzal and other phone No. 98-115-73506 belong to accused Shaukat. (objected to), and that they were involved in the Parliament Attack case (objected to) One mobile phone make Alcatel having Airtel sim card were seized from the possession of accused S.A.R Geelani by Mohan Chand Sharma and he seized it vide seizure memo Ext. PW 66/5 after sealing it. Memo bears my signature at point C. ~~Phone is~~ Ext. P 87. The accused was arrested and his personal search was taken. The same is Ext. PW 66/6 which bear my signature at point A. At the instance of accused S.A.R Geelani we reached house No. 1021 Mukherjee Nagar, first floor, where Afsan Guru wife of Shaukat met us and one mobile phone make Sony having Essar Sim Card was recovered from her. The ~~re-dial~~ list of the mobile phone contain several number which were mentioned in the seizure memo. The mobile phone was sealed with the seal of MCS and was seized vide memo Ext. PW 66/7/^{which}bears my signature at point A. The mobile phone recovered from Afsan Guru is ext. P88.

-11-

At the instance of Afsan Guru two photographs containing picture of Afsan Guru, Shaukat and Mohd Afsal were recovered from her and photographs are Ext. PW 66/8 and 9 and the same was seized vide seizure memo ext. PW 66/10, which bears my signature at point A. One mobile phone of Errison made and one sim card which are Ext. PW89 and P 90 were recovered from the house of Afsan Guru and were seized vide seizure memo ext. PW66/11. They were sealed with the seal of MCS. The accused Afsan Guru was formally arrested and her personal search was taken by Women S.I. After that we came along with both the accused persons to special cell, where Insp. M.C. Sharma recorded the disclosure statement of A.R. Geelani, the same is Ext. PW 66/13 and bears my signature at point B. He also recorded disclosure statement of Afsan Guru Ext. PW 66/14 which bears my signature at point B (objected to).

On 17-12-2001 accused Mohd Afsal identified photograph of one Mohd @ Bargar who was deceased terrorist and told that he was involved in the hijacking of IC 814 (objected to).

advocate
XXXXXXXXMs. Seema Gulati for accused SAR Geelani.

I was there at Parliament House on 13th Dec. Also but I was associated on 15th Dec, 2001, in the investigation. I accompanied Mohan Chand Sharma to Parliament Street on 13th Dec, as his team member. I had made statement to the police which was recorded by Mr. Mohan Chand Sharma. I do not remember if in my statement made to M.C. Sharma I have told that SAR Geelani was apprehended when he entered the house.

-12-

Q You have stated in your statement that SAR Geelani was apprehended from near his house.

Ans. Yes. He was arrested when he was about to enter the house and his house was at second floor I was at ground floor

~~Q~~ On whose pointing out accused SAR Geelani was apprehended.

Ans. It was Insp. M.C.Sharma who was having the idea as to who was to be apprehended. Vol. It was he who apprehended.

No disclosure of accused SAR Geelani was recorded when he was apprehended near his house. His disclosure was recorded in the office. I do not remember if I had stated in my statement to Ins p. Sharma that SAR Geelani told that Afsal and S haukat was involved in Parliament Attack. I have seen the statement Ext. Rw. 67/DA where it is not so recorded. There are houses on both sides of house of accused Geelani but there are no houses on front side. I did notice from people in the other floor of the house. On the road which is in front of house of Mr. Geelani people do move. I do not remember if at that time people were moving on the road or not I did not notice. No public person was made a witness at the time of arrest of Mr. Geelani and at the time of seizure of phone. I do not know if any information as given to the family members of Geelani about his arrest as I was only one member of the team. Insp. Mohan Chand Sharma was talking to SAR Geelani I do not know if Mr. Geelani was told

-13-

that he has a right to talk to a lawyer and ~~XXXX~~
~~inform~~ his relatives were to be
 informed about his arrest. ~~XXXX~~
~~XXXX~~

Q. In your statement U/s 161 Cr. P.C you had stated that Mr. Geelani was apprehended near his house, a mobile phone make Alcatel was seized and made into a parcel and taken into possession. Accused Geelani was arrested, his personal search was taken and thereafter at ~~his~~ instance of accused a raid was conducted at the house of Shaukat Hussain.

Ans. It is correct.

Q. Was any pointing out memo prepared at the instance of SAR Geelani.

Ans. No pointing out memo was prepared.

Q. Was Geelani made to sign any document of recovery or otherwise at the house of Shaukat.

Ans. To my knowledge No.

The house of Mr. Geelani was not raided or searched when he was apprehended. I have no knowledge if house of Geelani was raided thereafter, I donot remember if any arrest memo of SAR Geelani was prepared apart from personal search memo. It is wrong to say that accused SAR Geelani was picked up on 14th Dec. outside Khalsa College Delhi University ~~and~~ or that he was not apprehended on 15th Dec. in the manner stated by me. It is wrong to say that I signed all the documents ~~XXXX~~ sitting in

-14-

operation cell. It is wrong that signature of Mr. Geelani were obtained under duress on all the documents as well as on blank papers. It is wrong to say that Mr. Geelani was taken away to a farm house and badly beaten. It is wrong to say that Geelani did not point out house of Shaukat.
 xxxxxBy Ms. N. Ramakrishna for accused Afsan Guru,
 @ Navjot Sandhu.

From the house of Mr. Geelani we went straight to house of Afsan Guru and did not stop inbetween at some place. We reached house of Afsan Guru around 10-45 a.m. I do not remember in whose hand statement under section 161 is, however it was at the direction of Mohan Chand Sharma, that it was recorded. I do not know if there is any record of calling of any public witness at the time of search of house of Afsan Guru or her arrest. I was there at the time of arrest. I cannot tell the exact distance between house of Geelani and Afsan Guru ~~ix~~ but it took ~~xx~~ us about 10 minutes in reaching the house of Afsan Guru from the house of Geelani. It is correct that in my statement U/s 161 Cr. P C memos were signed by myself, S.I. Gobind Sharma and WSI Jai Shree. Ext. PW66/8 and PW 66/7 PW 66/11 do not bear the signature of WSI Jai Shree. The signature of WSI Jai Shree are on personal search memo.

Q. Your statement U/s 161 to the extent that signature of Jai Shree were there on different memo. It is contrary to record.

Ans. Many seizure memos were prepared

-15

and personal search memo was prepared. In my statement U/s 161 I wanted to tell that Jai Shree was also a witness.

I did not say in my statement U/s 161 that Jai Shree had accompanied the team. Vol. She was called later on. I have no idea as to who were the neighbours of Afsan Guru for I can say how many inhabitants were there in the neighbourhood. I noticed two rooms in the house of Afsan Guru. I did not see any other female family member in the house of Afsan Guru. My statement U/s 161 Cr.PC was recorded in the office. It is wrong to say that Ms. Navjot Shandhu was not arrested from her house on that day. It is wrong to say that she was picked up from her house at about 6 or 6.30 a.m. in the morning ~~from~~ and was manhandled and treated by the male police persons. It is wrong to say that no female officer was present at the time of her apprehension/arrest, or at the time of her keeping at operation cell. It is wrong to say that she was interrogated only by male police officials. It is ~~xx~~ wrong to say that she was made to sign only blank papers.

XXXXXX on acc sed Mohd Afsal.

Nil. opp. given.

XXXXXX BY A.C. N eraj Bansal Advocate.

Nil. opp. given.

XXXXXX by accused Shaukat Hussain

Nil. opp. given.

AB
RO&AC

[Signature]
Designated Judge
New Delhi 26-7-02

Annexure D-9

-3-

P.W.76:-

Inspector H.S. Gill, Operation Cell, Lodhi Colony, New Delhi on SA:-

I was posted at Special Cell, Lodhi Colony on 13.12.2001. At about 12.15 p.m., we received information about firing at Parliament House. So I along with ^{other} officers of Special Cell reached Parliament House. On reaching there, we learnt that lot of police persons and other had become injured and some of the security persons had killed. Since the incident was terrorist related, senior police officers constituted of team of police personnels and I was also deputed in a team. I was head of my team consisting S.I. Gurdev Singh and S.I. Amar Singh and S.I. Ziley Singh and we verified ^{and} the facts about the incident. On 14.12.2001, SHO of P.S. Parliament Street handed over the case file of this case to me as the investigation was handed over to Special Cell. I recorded the statements of witnesses. On 15.12.2001, I learnt that Inspector-Mohan Chand Sharma had arrested the accused persons. On 16.12.2001, the police remand of the accused persons was taken and I was told by Inspector-Mohan Chand Sharma that two of the accused persons, namely, Mohd. Afzal and Shoukat Hussain had made disclosure statement of hideouts provided to the terrorists and the places from where the goods and articles were purchased. I took custody of both accused-Mohd. Afzal and Shoukat Hussain, accused present in the court. Then both the accused persons took us to A-97, Gandhi Vihar and they pointed out the second floor of the house as the place which was used as a hideout. I associated house owner, Subhash Malhotra in the investigation and we went to the second floor of the house. The house was found locked and there was no key available.

-4-

Lukhash Malhotra told that Mohd. Azal was the tenant and Shoukat used to visit the place. The lock of the house on the second floor was broken, and the premises was checked and on checking, lot of chemicals were found on the shelf of the room. The chemicals were found to be Ammonium Nitrate, silver powder, Sulphur for TCL, The electronic detonators numbering three were also found there. On the floor of the room, a plastic bucket containing explosive full upto half, was found lying with gloves and spoon. Lot of papers were also found on the floor of the room. One paper contained address of A-97, Gandhi Vihar, written in hand and a map of Chankaya Puri made by hand, a map of Delhi, one black I. Card were found along with other papers. The police uniform, parrot cap and also articles relating to police uniform were found. All the papers and police uniform were sealed and seized. One Sujata grinder with three jars was also found, which was also seized and sealed. Samples were taken out from the chemicals and rest of the chemicals were seized and sealed. From the bucket, a sample of 10 gram of explosive material was taken and the bucket with rest of the explosive and spoon were seized and sealed. The broken Harrison lock was also seized and sealed. All the articles, which were seized and sealed from the room, were sealed with the seal of HSG. Owner-Subhash Malhotra also told that motorcycle of the accused was standing downstairs. I seized the same. The registration number was HR51-E-5768. The Memos Ex.PW34/1, Ex.PW34/2, Ex.PW34/3 and 4 are in respect of seizure of above articles, which were prepared by me at the spot at the time of the seizure of articles. The memos are signed by Subhash Malhotra at point A, by accused-Afzal at point B, Shoukat at point C and by me at point D. I recorded statement of house-owner of Subhash Malhotra. Thereafter both the accused persons led us to 281, Indra Vihar where also second floor of the house was taken on rent by them from Jagdish Lal house owner

-5-

On reaching there, I called Jagdish Lal to join investigation. Jagdish Lal identified Mohd. Afzal-accused as his tenant and told us that Shoukat used to come to meet him and used to visit the premises. (Objected to). Accused took us to second floor, where the premises was found locked. As the key was not available, the lock was broken and we checked the premises. In the inner room of the premises, in a built-in-almirah, I found three electronic detonators, six pressure detonators and Ammonium Nitrate and Silver Powder and Sulphur for TCL. I took out samples from Silver Powder, Ammonium Nitrate and Sulphur for TCL and seized the samples separately and rest of the chemicals separately and sealed them and I also seized and sealed the electronic and pressure detonators. The seal used was of HSG. I also seized household articles lying in the premises. Owner Jagdish Lal told that one motorcycle of the accused persons was parked downstairs. I seized motorcycle, number of which ^{was} B122. The seizure memo and pointing memo ~~is~~ recovered from the articles is Ex.PW32/1. The lock of the room which was broken was seized and sealed. The seizure memo of the motorcycle is Ex.PW32/2. Both the memos bear the signatures of Jagdish Lal at point A, that of Afzal at point B and that of Shoukat at C and my signatures at point D. After seizing the articles and sealing them, I recorded the statement of Jagdish Lal and other witnesses of recovery.

On 17.12.2001, accused-Mohd. Afzal was taken by me to the mortuary of Lady Harding Medical College, where accused identified the five terrorists and told their names as Mohammed, Haider, Hamza etc. I prepared an identification memo, which is Ex.PW76/1 giving the names of the terrorists as told by the accused. The memo bears my signatures at point A, that of Afzal at point B.

-6-

I got dead terrorists photographed and pasted their photographs on plain papers. The same are Ex.PW40/2 of Hamza, Ex.PW45/1 of Raja, Ex.PW41/5 of Rana, Ex.PW29/5 of Mohammed and Ex.PW45/2 of Haider and all the papers bear my signatures at point A. The articles seized from the above two premises were taken to the office of Special Cell and thereafter they were deposited with MCHM of Parliament Street.

Accused-Mohd. Afzal took us to different places wherefrom chemicals and other things were purchased by him. (Ld. APP asked whether he was alone in purchases. The witness stated that as per disclosure he and Shoukat had purchased). The shop of Anil Kumar where accused had purchased Ammonium Nitrate. Then he took us RND Store wherefrom silver powder was purchased. Then he took us to Sawan Dry Fruits shop wherefrom 7-8kg of dry fruits were purchased. He then took us to a shop at Fateh Puri, which was of electrical items and wherefrom Sujata Mixer Grinder ~~xxxxxx~~ had been purchased. He then took us to Hamilton Road, Kasumere Gate, wherefrom red light for the car had been purchased. Pointing out memos of all the places were prepared by me as and when they were pointed and I recorded statements of shopkeepers. Ex.PW40/1, Ex.PW41/1, Ex.PW42/1, Ex.PW76/2 and Ex.PW76/3 are the pointing out memos prepared by me, and bear my signatures at point X on each memos. The signatures of PW-Anil Kumar on Ex.PW40/1 are at point A and of Afzal at point B. The signatures of Ajay Singh, shopkeeper on Ex.PW41/1 are at point A and of accused-Afzal at point B. On Ex.PW42/1, the signatures of Ramesh Advani are at point A and of accused-Mohd. Afzal at point B. On Ex.PW76/2, signatures of Sunil Kumars at point A and of accused-Mohd. Afzal at point B.

-7-

On 18.12.2001, accused-took us to Gupta Auto Deals, Maiwala Karol Bagh, where motorcycle had been purchased. The pointing out memo is Ex.PW29/1. The signatures of PW-Sushil Kumar are at point A, that of accused-Mohd. Afzal are at point B and that of mine at point C. I recorded the statement of the shopkeeper-Sushil Kumar. The accused then took me to Ghaffar Market wherefrom Sony mobile cellular was prepared. I prepared pointing out memo Ex.PW44/1, which bear the signatures of the shop ^{owner} ~~XXXXXX~~ at point A, of accused at point B and that of mine at point C. The accused then took us to Harpal Singh's shop, at Joshi Road, Karol Bagh, wherefrom ambassador car was purchased. The pointing out memo was prepared. It is Ex.PW20/9 which was signed by Harpal Singh at point A, by accused Afzal at point B and I signed the same at point C.

On 19.12.2001, the accused took us to Model Town from where he had purchased ~~xxxxxxx~~ Motorola mobile phone. The pointing out memo was prepared and the same is Ex.PW49/1. The signatures of shopkeeper-Kamal Kishore at point ^A~~A~~, accused at point B and that of mine at point C. I seized bill book and commission book of the motorcycle on 19.12.2001. They were seized from Kamal Kishore ^{Ex.PW29/4} vide memo ~~Ex.PW29/4~~. I also seized ~~the~~ bill book of the shopkeeper who sold mobile phone-Motorola, which is Ex.PW49/2. On 19.12.2001 the provisions of PoTa were also added against the accused persons, and the investigation was taken over by ACP-Rajbir Singh.

On 15.1.2002, I took back the ramanants from BDU, NSG vide memo Ex.PW76/4.

The articles recovered from House no.A-97, Gandhi Vihar are as follows:-

(At this stage, sealed parcels having court seal, ~~is~~ opened and contents are taken out and shown to the witness).

- i) Three electronic detonators are Ex.P7/1 to 3.
- ii) Two silver powder packets are Ex.2)P60/1.
- iii) Plastic bucket is Ex.P62.

-8-

- ~~ix~~ and the contents of the same are Ex.P63.
- ix) Two packets of Sulpher for TCL are Ex.P64 and P65.
- v) Two cartons are Ex.P66 and P67.
- vi) 38 plastic containers containing ammonium nitrate purified are Ex.P68/1 to 38.
- viii) Another carton is Ex.P69 and the twenty empty jars are Ex.P70/1 to 20.
- ix) ~~Exp~~ Broken lock make Harrison is Ex.P71.
- x) One T.V. make ~~Sony~~ Panasonic is Ex.P77.
- xi) Sujata Mixing is Ex.P72.
- xii) Police Uniform collectively is Ex.P73.
- xiii) Transistor, battery etc., are collectively Ex.P74.
- xiv) Voltmeter is Ex.P75
- xv) Documents/~~apers~~ recovered from the house/^{pasted} on plain papers are collectively Ex.P79.
- xvi) Map of Delhi is Ex.P78, xvii) Motorcycle no.HK-51-9768 is Ex.P76.

The articles recovered from the second floor of house No.281, Indira vihar are as follows:-

(At this stage, parcel having the court seal are opened and contents are taken out and shown to the witness).

Three electronic detonators are Ex.P47 to Ex.P49. Six pressur detonators are Ex.P50/1 to 6, two silver powder packets are Ex.P51. Two boxes of sulpher for TCL are Ex.P52 and Ex.P53. One carton is Ex.P55, 24 plastic Jars containing ammonium nitrate are Ex.P54/1 to 24, the broken lock is Ex.P56 and the household articles are collectively Ex.P59. The motorcycle bearing no.DL-~~kg~~ 1SK-3122 is Ex.P57. The bill book is Ex.P82. The delivery receipt is Ex.PW29/2 and the commission receipt is Ex.PW29/3 are the same which were produced by sushil kumar.

-9-

~~XXXX~~ by accused-Mohd. Afzal himself:-

Nil. Opportunity given.

~~XXXX~~:- by Ms. Nitya Rama Krishana, Advocate for accused-Shoukat and Afsan Guru:-

I had recorded the statement of gushil Kumar at my office. The statement under section 161 Cr.P.C. is not in my hand but in the hand of S.I. I had been asking questions and S.I. had been writing. It was recorded on 18.12.2001. It is correct that I recorded in the statement of Sushil Kumar that delivery receipt and commission book had been seized by me vide seizure which bore Sushil Kumar's signatures. The date on the seizure memo is 19.12.2001. There is no other statement of Sushil Kumar recorded by me. I reached Special Cell after effecting recovery from Gandhi Vihar and Indira with accused and the seized articles around 5-6 p.m. The owner of Gupta Automobile was present there when I reached there. I did not record the statement of owner. I had told Sushil Kumar on the shop itself to come to Special Cell Office in the evening. I had accused-Mohd. Afzal to Mortuary at around ~~10 A.M.~~ 10 A.M. It took about 30 to 45 minutes in the Mortuary for identification proceedings. I carried on the investigation of the case at the instructions of DCP and ACP in my office. I do not remember how many copies of the photographs of the ^{deceased} terrorists were prepared, but sufficient numbers were prepared. It is wrong to suggest that the accused persons did not lead me to Indira Vihar, Gandhi Vihar or to different shops. It is wrong to say that they had not pointed out any place and that no recovery was effected from any of the places ~~at~~ stated by me. After reaching at the shop of Kamal Kishore in Model Town, Kamal Kishore recognised Mohd. Afzal and I only asked him if he had sold Motorola phone to him or not.

-10-

I was aware that since March, 2001, there is a government notification that the shopkeepers selling simcards or accessories of mobile phone or mobile phone, had to note down the identity of the person to whom it is sold. I had not asked any other public person except the ~~land~~ house owners, mentioned in the memos, and in my statement to join the investigation at the time of.

Q. Apart from the persons mentioned in my examination-in-chief, is there any other person, whom you had requisitioned to come to the Police Station to be questioned in connection with this case?

Ans. No.

XXXXXX;- by Shri Neeraj Bansal, Amicus Curiae:-

Accused-Afzal was handed over to my custody on 16.12.2001 around 8 or 9 A.M. No document concerning handing over of the custody was prepared. I correctly recorded the statement of Subhash Malhotra, as told by him. It is correct that in the pointing out memos of the shops, wherefrom dryfruits, silver powder, redlight, mixer grinder etc., are not mentioned the price of the articles or the quantity of the articles. The same pointing out is my reply with respect to the/memos of the shop wherefrom Motorola cellphone and motorcycle were purchased. The articles seized by me on different dates were deposited with MCM of P.S. Parliament Street on the same day when they were seized. The mention of depositing of the articles used to be made in the arrival entry, which used to be recorded in the Special Cell. It is wrong to say that all pointing memos and recovery memos we prepared ~~xxx~~ at the office of Spl.Cell and norecovery was

....10..

- 1 1 -

affected from the accused persons.

xxxxx By Sh. SAR Gilani accused.

Nil (opp. given)

RO&AC


Designated Judge

1.8.02

-2-

SI Hirdey Bhushan left SI Shardad Kohli in Srinagar to bring ~~the~~ the truck recovered from accused persons by road to Delhi. Insp. Mohan Chand Sharma produced all four accused in court and ~~obtained~~ ^{sought} their police custody remand, which was granted by court. During police custody remand of accused persons, further investigation was done. Different hide-outs were raided and recovery of incriminating material was effected. For exmn. of laptop, experts were called, who examined the laptop, recovered from accused. Accused persons were thoroughly interrogated and on 19.12.01, the Sr. officers reviewed the ^{investigation} situation and it was decided that provisions of POTA should be added in the case and they were accordingly added and investigation of case was handed over to me.

By that time, SI Sharad Kohli had brought truck No. HR38D6733 from Srinagar and same was deposited in the malkhana of PS Parliament Street, vide my endost. Ex. PW.65/1, which bears my signatures at point A. On 20.12.01, I again thoroughly interrogated Mohd. Afzal accused and I recorded his suppl. disclosure stt., which is Ex. PW.64/B, which bears my signatures at point B. (objected to). Accused Mohd. Afzal, Shaukat Hussain Guru and SAR Gilani expressed their desire to make stt. before

-3-

DCP. On 20.12.01, I made an app. before DCP-Spl.Cell accordingly Ex.PW.60/1 for recording confessionals stt. of these three accused persons. DCP passed an order, giving directions that I should produce these 3 accused persons at GOS. Mess, Alipur Road, Delhi on 21.12.01 at 11 a.m. vide his endst. Ex.PW.60/2. On 21.12.01, at about 11.30 a.m. I produced SAR Gilani accused before DCP at the place, he had told. DCP recorded his sttt. and thereafter sent accused SAR Gilani with me. There after, I produced accused Shaukat Hussain Guru before DCP, when his stt. was recorded by DCP, I thereafter, produced accused Mohd. Afzal before him. I thereafter made an app. for supplying me copies of statements of accused persons recorded by him to me, my application is Ex.PW.80/1, my app. was allowed by DCP. DCP gave the confessionals stts. of these accused persons in a sealed envelope to me and directed me to produce the three accused persons before ACMM on 22.12.01. On 21.12.01, itself, I had sent accused Mohd. Afzal with Insp. R.S. Bhasin to portrait building section for preparing portrait of Gazi Baba and Tariq at the descriptions to be given by accused.4...

-4-

Portraits were prepared and same are Ex.PW.80/2 and 3. same bear my signatures at point A. On 22.12.01, I produced above three accused persons before ACMM along with confessional stts. recorded by DCP, as given to me in sealed covers, and I moved an app. before ACMM which is Ex.PW.63/1. ACMM called each accused individually inside his chamber and I was called in three times for identification of each accused. I identified accused Shaukat Hussain vide my endst. Ex.PW.80/4, and identified accused Mohd. Afzal vide endst. Ex.PW.80/5 and identified accused SAR Gilani vide my endst. Ex.PW.80/6. All endsts. bear my signatures at point A. I made application before Id.ACMM for taking copy of proceedings conducted by him, application was allowed. My app. is Ex.PW.63/9 and I obtained copies. Police custody rem of accused Mohd. Afzal was extended further at my request and other three accused persons in this case were sent on 22.12.01 itself.

On 29.12.01, expert, who had been instructed to examine laptop had completed the examination and report was given to me on 29.12.01. Expert had taken out the hard copies of certain files stored in laptop, like photographs of children, prints of I.cards etc. and I seized these hard copies vide Report of the expert, which is Ex.PW.72/1. Hard copies were made part of the report.

...5...

-5-

The stickers and I.Card, hard copies as given by expert from laptop are Ex.PW.59/1 to Ex.PW.59/7. Above documents bear my signatures at point A. The hard copies of photographs, as prepared by Expert from files of laptop are Ex.PW.80/7 to 14.

In the incident of Attack on Parliament, apart from terrorists, 9 security persons, ^{more killed} and 16 others were injured, I obtained their post-mortem reports and MLCs. All the exhibits, which were recovered in this case by different police officers and the material which was recovered from hide-outs, were sent ~~by~~ me to CFSL through SI Lalit Mohan, all these exhibits were in Malkhana of PS Parliament Street, as same had been deposited there. I also obtained report about destruction of grenades and other explosive materials, which were assigned to them for this purpose after NSG was called on spot. Some of the material was given back after destruction, which I seized vide S.Memo Ex.PW.80/15 which bears my signatures at point A. I also obtained report of from MHA regarding sticker of Ministry of MHA, report is Ex.PW.13/2., along with ^{/original} sample of MHA sticker, which is Ex.PW.13/1. In order to further thoroughly find-out contents of laptop, it was sent to BPE&D office Hyderabad and report from Hyderabad was obtained which is Ex.PW.73/1.

-6-

During investigation, it was learnt that conspiracy for attack on parliament was hatched-up in Pakistan and the other persons involved in conspiracy were Maulana Masood Azhar, Gazi Baba and Tariq Ahmed. Mohd. Azhar is chief of Jaish-e-Mohd. and Gazi Baba is their operation commandant. We learnt that terrorists training camp was being run in the areas of Pehlgam, so our team ^{to that area} to that area in search of Gazi Baba and other conspirators, but without success. The above three persons could not be arrested, they were got declared POs. Reports from CFSL about exmn. of exhibits sent there were got collected and were made part of the investigation record. Report from CFSL Chandigarh was also collected regarding voice sample and its comparison. I obtained sanction from the concerned authority u/s 50 of POTA, u/s 7 of Explosive Substances Act and 196 Cr.P.C.

I recorded stts. of witnesses, as and when required. Post mortem report of Jagdish Pd. Yadav is EX.PW.80/16, Avdesh Raj Ex.PW.80/17, of Nanak Chand Ex.PW.80/18 Rampal -80/19, Ghansham - 80/20, of Om Parkash - 80/21, of Kamlesh Ex.PW.80/22, Mahatbar Singh Negi-Ex.PW.80/23, Vijendar Singh - EX.PW.80/24, . MLC, of vikram is Ex.PW.80/25, MLC of Arjun Ram Ex.PW.80/26, of Kamah Singh Ex.PW.8/27, Y.B.Thapa Ex.PW.80/28, Virendar Ex.PW.80/29, Rakesh Ex.PW.80/30, MS Nayar Ex.PW.80/31, Hans Raj

-7-

Ex.PW.80/32, Mahipal Ex.PW.80/32, Purshootam Pandey
 Ex.PW.80/34, Samar Singh Ex.PW.80/35, Sanju Ex.PW.80/36,
 Rajat Bihhat Ex.PW.~~30/32~~^{80/37}, Parshotam Singh 80/38,
 Jeet Ram Ex.PW.80/39 and Anand Jha Ex.PW.80/40.

I also obtained post-mortem reports of terrorists, who had been killed during attack on Parliament and same are Ex.PW.87/1 of deceased Hamza and Ex.PW.80/41 to 44 of other four terrorists. After completion of investigation, I prepared charge sheet and filed in court. The accused persons SAR Gilani, Mohd. Afzal and Shaukat Hussain Guru are present in court. Fourth has been exempted, who is Navjot Sandhu and I also identify her.

xxxxx By Ms. Seema Gilati on behalf of accused SAR GILANI.

Mr. Mohan Chand Sharma and HS Gill are my subordinates in Spl. Cell. It is true that both of them were investigating as per my directions and were reporting to me about progress of the investigation. It is wrong to say that ~~prior~~^{prior} to 13.12.01, the offences regd. under POTO were being investigating exclusively by Spl. Cell. Vol.. no case had been regd. under POTO prior to this incident/case.

....8..

8-

MC
Mr. Sharma and Sh. AS Gill were reporting to me daily.

Q. Did you hand over any authorisation given by Central Intelligence Agency regarding interception of telephones?

Ans. Yes.

I did not write any letter to competent authority for authorising interception nor I received orders of any Review Committee regarding interception. I did not file alongwith the challan any letter written to Cell-Phone Cos. or authorisation granted for interception of telephones. Vol... it was later on that I filed an order of Joint Director of Central Intelligence Bureau as well as order of Home Secy.

~~XXXXXXXXXXXXXX~~

Q. Is it correct that above mentioned documents were filed before Court in reply to app. and after app. of accused persons for eschewing the evidence regarding interception had been filed and time had been sought by prosecution to file the same? Court: (This matter is of judicial record, all questions pertaining to judl. record may not be asked from the witness.)

It is correct that in my report u/s 173 CrPC, I have not mentioned about authorisation received for interception. No written orders were given to

-9-

On 19.12.01 about adding provisions of PoTA in the case. I was briefing my Sr. Officers about the developments, which were taking place in the investigation, on day to day basis. It is correct that from the documents prepared and stts. recorded on 13.12.01, it was evident that it was a terrorist attack on Parliament. I have not mentioned in 173 report that on removal of evidence on 19.12.01, decision was taken to add provisions of POTa.

On 19.12.01, after investigation was taken over by me, accused persons were also handed over to me. and they were being kept in the lock-up of operation Cell, Lodhi Colony, vol. we do not have any lock-up in operation cell, we were keeping the accused persons in the office of Spl. Cell, Lodhi Colony. On 19.12.01, it was only in late hours in evening that I was asked to take-over investigation and thereafter, I took over the same. It is correct that on 20.12.01, accused Mohd. Afzal was interviewed by reports of ND TV and Aaj Tak in office of Spl. Cell, Lodhi Road, most probably in the afternoon. It is incorrect to say that in that interview, Afzal accused had stated that accused SAR Gilani was not involved in the conspiracy. ...10...

-10-

It is correct that Ex.PW.60/1 is not addressed to any particular police officer. It is correct that there are no signatures of accused persons on Ex.PW.60/1.

It is correct that I did not attach any written willingness given by accused persons for making confessional stts. with Ex.PW.60/1. Accused persons did not give any written willingness, they had only told me orally about their willingness for making confessional stts. On 20.12.01, I did not produce accused persons before DCP. All accused persons were not produced before DCP on 21.12.01 at 11 a.m. in the morning. It is not so that I produced one accused before DCP in the morning and then after his stt. was recorded and he was taken back and then other accused was brought and so on. Accused SAR Gilani was taken by me at about 11.30 a.m. before DCP, at that time, other two accused persons Mohd. Afzal and Shaukat Hussain had been taken by other police officers for preparation of portraits of other conspirators and raiding some hide-outs respectively. After Gilani's stt. was over at GSO Mess, Alipur Road, he was sent back to Spl. Cell - Lodhi Road. Thereafter, accused Shaukat was produced before DCP at 3.30 p.m.

...1...

-11-

It is wrong to say that after SAR Gilani refused to make conf.stt. before DCP, I pressurised other two accused persons, whose conf.stts. were yet to be recorded to name SAR Gilani, so as to have some evidence against him. It is incorrect to say that accused Gilani never showed his willingness to make any confessional stt. ~~xxxxxxx~~ before DCP. It is wrong to say that accused persons were not produced before ICP and their signs were obtained on documents without any proceedings being carried before DCP.

Accused persons remained in my custody upto 22.12.01, however, after 22.12.01, only Afzal remained in police custody. After 22.12.01, I had taken accused Mohd. Afzal to Kashmir in search of Gazi Baba, Tariq and their training camp. Accused was taken in an army helicopter to Pehlgam area and there was snowfall in that area and it was not possible to carry out any operation there at that time, so no document of pointing-out of places of terrorist camp etc. were prepared.

Questions about which the witness had not done the search etc., and witness is being asked whether search etc. was done to his knowledge, are disallowed. Question has been asked, whether house search of accused Gilani was done and ~~xxxxxx~~ any incriminating evidence was recovered.

-12-

Witness states that same are on judicial file.

All questions, which are matter of record and which have been on record and to which witness is not a party or privy, should not be asked.

After 19.12.01, after taking over investigation by me, house of Gilani was not searched under my instructions. After I took over the investigation, I went through the transcripts of tape conversation between Gilani and his step-brother. I did not hear the tape. There was no occasion for me to doubt the translation, as available, therefore, I did not get it verified from any Sr. Kashmiri police officer or Kashmiri IAS officer or any person of standing knowing kashmiri language or from expert of kashmiri language. The conversation was recorded in Spl. Cell between SAR Gilani and his step brother was sent to CPJL Delhi in Jan.02, I do not remember the date. Challan was filed by me on 12.5.02, as far as I remember. It is correct that tape was sent to Chandigarh in June, 2002, again for subsequent opinion. I did not seek any permission from the court for sending tape to Chandigarh, as I had mentioned it in report u/s 173 Cr.P.C. that investigation of case is still going-on.

-18-

I had called Shah Faizal, step brother of accused Gilani for interrogation. I did not record his stt. u/s 161 Cr.PC as he was an interested person nor I mentioned his name in list of witnesses. I did not make him accused, as I found nothing against him. It is wrong to say that I did not make Shah Faizal as a witness, as he was telling me that conversation between him and Gilani SAR had nothing to do with attack on parliament. It is wrong to say that Shah Faizal had told me that the question 'what has been done in Delhi', referred to a family dispute ~~about~~ between Gilani and his wife and their cancellation of programme for going to Kashmir for Id.

It is wrong to say that accused SAR Gilani was picked-up by me outside Khajuraho College on 14.12.01 at about 1.15 p.m. ~~and was taken away~~ ^{It is wrong to say that he} in a car, which was driven by Sh.M.C.Sharma, to a farm-house after putting blind-fold on his eyes. It is wrong to say that SAR Gilani was tortured and beaten by me and other police officials at the farm-house. It is also wrong that since he received injuries during this beating and torture, in order to get out of it and so that, he may not make a complaint against police officials, we tampered the tape to falsely implicate him.

.....14..

-14-

It is wrong to say that SAR Gilani was not produced before ACMM on 22.12.01, and no proceedings were carried on that date or that accused SAR Gilani was made to sign proceedings later on, while he was kept sitting in the jail van outside court premises and that accused was just shown to ACMM and ACMM had not made any inquiry from him. It is wrong to say that all 3 accused persons namely SAR Gilani, Shaukat Hussain Guru and Mohd. Afzal were taken together to ACMM's chamber and were made to stand outside. It is ~~wrong~~^{very} to say that I did not identify accused persons, as earlier stated by me or that I identified them together when they were standing outside chamber of ACMM. It is correct that I did not send any authorisation letter or order to any cell comp on 20th Dec, 01. The counsel wants to put photocopy the witness says that he cannot say on photocopy. The request for def. of crscc for calling the original letter from DCP office is disallowed since the witness is neither the author of the letter nor letter was ~~not~~ originated from his office. I cannot say if I had received any letter from Mr. K.K. Paul Spl. Commissioner of Police being letter No. 2066-9C/Z/SE/ dated 21st June 2002 I do not have any record with me now to ~~check~~ whether this letter was received by me or not.

~~15~~ 15 -

The record of the letter received from senior officer is kept in the office. (The question about checking of record ~~about~~ in the office of witness about this letter is disallowed as the accused can prove this letter independently by calling the witness who is author of the letter). It is wrong to suggest that I am deposing falsely and I am falsely implicated the accused S.A.R Geelani.

XXXXXXXX By Ms. Nitya Ramakrishna on behalf of accused Shaukat Hussain Guru and Afsan Guru, for herself and for Sh. K.G. Kannan ~~xxxx~~ ~~xxxx~~biran.

Insp. Mohan Chand Sharma had ^{been} dealing with investigation concerning mobile phone. After 19-12-2001 I did not sent mobile phone seized to any expert. (Inspector Mohan Chand had already been examined as witness and question pertaining to the investigation done by him have to be asked to him and not to this witness). After taking over investigation of this case on 19th Dec. 2001 I did review the investigation already done. No physical examination of the mobile phone by any expert has been carried. I had not physically examined the tapes of inter-cepted conversation since the tapes have already been sealed. When I took over investigation on 19th Dec. the accused persons had already been arrested by other police officials. I did not tell the accused persons about the fact that they can engage a counsel to defend them or to be present during interrogation. The near relatives of the accused persons were informed about their arrest as I learnt from the record. I am not competent to answer the question whether the respective police official who arrested the accused person prepared any record under their signature about information given to their relatives. I did not get list of distributor of Sim care of Airtel or Essar.

-16-

Nor I obtained list of distributors of telephone instruments from respective companies. I am not aware of notification of the Govt. that sim card retailers are to keep the record of the customers. I did not obtain voice sample of the accused persons under court supervision nor made any application for this purpose. I did not make any application for TIP of the accused persons. I allowed media to interview accused Afzal in my office under the consent of my senior officer/ ^{namely D.C.P.} No order in writing was given to me. I did watch the telecast made by media of the interview. I did not write any letter to media company about the inaccuracy about the telecast as the T.V. channel always give edited version of the interview. I cannot operate a computer. I did go through the telephone record ^{as} ~~xxxx~~ supplied by telephone company about mobile number when I prepared charge sheet. I have already stated in my examination in chief and the memos prepared by me and the ^{statement of witnesses} documents seized by me/rest was done by other police officials. Lap-top was seised when it was deposited in the Malkhana perhaps on 16th Jan 2002. It is wrong to say that I am deposing falsely on this count. It is wrong to say that lap top was illegally ~~xxxxxx~~ access in Dec. 2001 and Jan 2002. I have not ~~interrogated or~~ investigated any other person who had made call on telephone No. 98 115-73506 except what I have already stated.

-17-

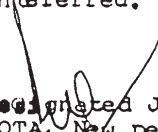
I have not produced any document to show how instrument identification is to be traced. I did not examine any expert before filing of the charge sheet on tracing of instruments identify number. I do not know what is ~~de~~-code table in computer terms. In the letter ~~xxxxxx~~ filed before this court dated 29th July 2002 there is mentioning the decoding table by me, this I had written on the basis of the expert advise as the computer experts are available in our department. I am not in a position to tell about the investigation done concerning laptop since this part was done by Insp. Mohan Chand Sharma. It was not part of my investigation to find out whether it was part of the business of Shaukat to travel in and out of Delhi concerning fruit business. We informed Central Intl. Agency about Shaukat and Afsal being in Sri Nagar. I do not know by what means (telephone telegram, letter or any other means) they communicated with their counter part in Sri Nagar. I did not interrogate ~~Bakr~~ Hilal, Ahbul Hamid and Firdoze in my office. It is wrong to say that I interrogated above three person or that they told me that Shaukat was not in Sri Nagar, on the date of his arrest. It is wrong to say that Afsan Guru was picked up from her house on 14th Dec. 2001 to my knowledge. I was incharge

-18-

of Red Fort shoot out case. It is wrong to say that one ~~XXXX~~ Abu Samal who was killed in Red Fort shoot out case was not a Pakistani as claimed by me. Vol. He was definitely a Pakistani and the same is born out ~~fxs~~ by the record. There was a complaint made to NHRC and after enquiry NHRC filed that complaint and the allegation made in the complaint was false and baseless and it was made by some interest persons. Commissioner of Police had never communicated to me directly any thing concerning this case.

Remaining cross examination deferred.

RO&AC


Designated Judge,
POTA, New Delhi.
29-8-02.

State Vs. Mohd Afzal.

P.W 80 A.C.P. Rajbir Singh recalled for further
cross examination

on S.A.

XXXXXXX By Mr. Neeraj Bansal Amics Curise

I recorded disclosure statement of accused Mohd Afzal on 20-12-2001 at special cell. It is correct that a computer print out of the disclosure has been made. S.I. Pawn Kumar in our office knows computer operation and it was got typed on computer through him. S.I. Pawan Kumar is not a witness. It is correct that neither accused nor my signature are obtained, page No.1 of disclosure ~~xxxx~~ statement dated 20-12-2001. There is no date under the signature as date is mentioned in the document itself. It is wrong to say that accused Mohd Afzal made no disclosure. It is wrong to say that accused Mohd Afzal was not produced before A.C.M.M. at any time.

XXXXXXX By Ms. RamaKrishna for accused Afsan Guru and
Shaukat Hussain Guru

I have not raided any shop or house any Kashmiri or Muslim after 13th Dec. 2001. ~~nor~~ I am aware if any one else had raided houses and shops. I have no knowledge if several Kashmiri Muslim were detained without record after 13th Dec. 2001. I am not aware of any raid conducted on any house, shop or hideout conducted by other than those which have been mentioned in the record of this case. ~~XXXXXXXXXXXXXXXX~~

-2-

Q Is there any letter written by you to Siemens, asking them to appear as witness or suggesting the name of anybody to appear as witness.

Ans. I did not write any letter to Siemens directly but I made a request to Essar people for to explain IMEI number and they suggested me to call a person from Siemens.

Q Are you aware of ESN/MIN Number?

Ans. I am not aware .

Not I am aware of Cloning of mobile phones.

I have not examined any expert on the possibility of fraudulent telephone calls made on mobile phones. I had applied to NDTV and Aajtak for providing me copy of interview taken by them of accused Mohd Afzal, but I do not remember the date. I did not receive any copy from them. Accused Mohd Afzal was in handcuffed when he was interviewed by media. I have not yet received any response from Interpol of the calls details of international mobile number reflected in the print out of the accused persons. Accused persons were first produced near Gole Market before C.M.M. Delhi on 16th Dec. 2001 at residence/in the morning hours. ~~xxxx~~

-3-

On 22nd Dec. after the accused persons were produced before A.C.M.M three of them were handed over to lockup Incharge Patiala House Court and P.C remand of Mohd Afzal and he was taken by me. I produced accused persons before the A.C.M.M before Lunch, and simultaneously I handed over the confessional statement in sealed cover to the A.C.M.M. D.C.P. office is not in the same complex where I sit. ~~Since~~

Q. Is it correct that the confessional statement allegedly recorded by the D.C.P. of accused Shaukat Hussain it was never shown to accused Shaukat Hussain by anybody, until filing of the charge sheet.

Ans.

The statement was recorded by the D.C.P. and immediately after recording it was sealed. I have not shown the statement recorded by D.C.P. to accused Shaukat Hussain.

Since making of copies of types C-1 C 2 and S1 and S2 was done by Insp. Mohan Chand Sharma I cannot say when this was done. It is wrong to say that accused Shaukat Hussain has not shown any willingness to make statement before the D.C.P. and I told that whatever he wanted to say he would say before the Court. D.C.P. did not enter my room when media persons were interviewing Afzal. Whenever accused was taken out of special cell D.D. entry was lodged. It is correct that same has not been filed. Except the material which is on record no other paper or material is there showing connection of accused persons with Jaishe-mohd or Lakshrey Th-bia. It is wrong to say that

-4-

material placed by me on record does not connect accused persons with Lakshare tubia or Jasie-e-mohd. Insp. Mohan Chand Sharma was keeping me inform of the process of interception. Interception was terminated and seized immediately after arrest of the accused persons. It is wrong to say that the date of arrest of accused persons as 15th Dec. 2001 is false. It is wrong to say that accused Shaukat Hussain was kept in a form house and was ~~xxxxxx~~ tortured by me or other police persons or was made to sign blank papers. It is wrong to say that accused Asfsan Kx Guru was kept solely in the custody of male police officials and was subjected to verbal and physical abuses. It is wrong to say that that no medical aid was provided to her though she was pregenant. Vol. She got medically examined as and when required. It is wrong to say that tap top was extensively access and interpolated and filed were changed and edited in order to create evidence against the accused persons. It is wrong to say that interview of accused Afzal was deliberately xxx allowed to Media with the object of inferencing the trial. It is wrong to say that although there was much more in the attack of the Parliament but I deliberately chose not to investigate the other ~~xxx~~ aspect the attack in order to falsely implicate the accused persons. It is wrong to say that no recoveries were made at the instance of accused

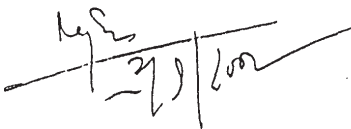
-5-

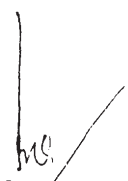
Shaukat Hussain and Afsan Guru. I was not present when Vimal Kant Arora was accessing the lap top at any point of time. It is wrong to say that Mr. Geelani had told me that his acquaintance with Shaukat and Afzal was because they belong to same District in Kashmir. It is wrong to say that he told that he was not aware of the any of the activities of the Shaukat and Afzal. It is wrong to say that accused Shaukat had told me that he was knowing accused Mohd Afzal only because of he being his cousin or that he was not aware of any of the activities of accused Mohd Afzal. I did not know as to what Afzal has stated to Media persons nor I reported the same to my D.C.P. It is wrong to say that I have deposed falsely.

XXXXXX By accused Mohd Afzal himself.

Nil. opp. given.

RO&AC




Designated Judge: POTA
New Delhi 2-9-2002

Acknowledgements

Champa, The Amiya & B.G. Roa Foundation was set up in June 1996 in memory of Amiya and B.G. Rao and to keep alive the principles they stood for. The foundations aims are to support struggle for justice, human rights and civil liberties; to promote public accountability and freedom of information.

The foundation would like to thank Afzal Guru for his trust in us: N.D. Pancholi and Nandita Haksar, human rights lawyers who have been in the forefront of the campaign for justice to the accused in the Parliament Attack Case; to Uma Chakravarty and Amrit Wilson for their enthusiastic support in bringing out this publication. Last but not least to Ashok Butani and his team, especially Tarun Beri for bringing out this book at such short notice.

Much controversy has been generated by the death sentence awarded to Mohammad Afzal Guru, convicted in the Parliament attack case. Unfortunately much of it has generated more heat than light. The real political and human rights issues have got lost.

Here for the first time the people can read Afzal's petition to the President of India. The Annexures to the petition consist of court records, submissions made by the prosecution and extensive quotes from the Supreme Court Judgment. A reading of the Afzal Petition will reveal the shocking fact the Afzal was awarded a death sentence not on legal grounds but on political grounds, to "satisfy the collective conscience of the society."

The Afzal Petition raises the disturbing question whether the collective conscience of any people can ever be satisfied if a fellow citizen is hanged without being given an opportunity to defend himself.

PROMILLA & CO., PUBLISHERS

in association with

BIBLIOPHILE SOUTH ASIA

NEW DELHI & CHICAGO

C-127 Sarvodaya Enclave, New Delhi 110 017, India

and

CHAMPA

THE AMIYA & B.G. RAO FOUNDATION

NEW DELHI

25 Nizamuddin East, New Delhi 110 013 India

Rs. 250.00

ISBN 978-81-85002-83-5



9 788185 002835

www.biblioasia.com