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Years Months Days

IN THE SPECIAL COURT OF NIA FOR GREATER MUMBAI

NIA SPECIAL CASE NO.477 OF 2022
(OLD NIA SPECIAL CASE NO.01 OF 2017)
(CNR NO. MHCC02-005979-2022)

The National Investigation Agency, Ministry of
Home Affairs, Government of India, Mumbai
(FIR no.RC-04/2016/NIA/MUM) arising from
Nagpada Police Station (C.R. no.271/2016), **Prosecution/
Crime Branch, Mumbai (C.R. no.59/2016) Complainant.**

Versus

Arshi Qureshi @ Arshid s/o. Asif Qureshi,
Age : 50 years, Occupation : Guest Relation
Manager, IRF, Dongri, R/o. A.N. Orchid Building,
Flat no.102, Plot no.134, Sector-50, Seawood,
Navi Mumbai. Permanent address : 54, Saudagar
Mohallah, Bhiwandi, Dist. Thane. **Accused.**

**Abdul Rashid Abdulla @ Rashi s/o. Thayyapurail
Abdulla** **Wanted accused.**

**CORAM : HIS HONOUR THE SPECIAL
JUDGE, MCOCA/POTA/TADA/NIA
AND ADDL. SESSIONS JUDGE
SHRI A.M. PATIL.**

C.R.NO. : 57.

DATE : 30.09.2022.

SPP Mr. S.D. Gonsalves for NIA/Prosecution.
Adv. Mr. T.W. Pathan and Adv. I.A. Khan for the accused.

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JUDGMENT

(DICTATED IN OPEN COURT)

1. The accused are charged for the offences punishable under Sections 13 & 39 of the Unlawful Activities (Prevention) Act, 1967.

2. It is the case of prosecution that on 10th July, 2016 at 16.00 hours Abdul Aziz Abdul Rehman r/o. Trikaripur, Dist. Kasargod, Kerala lodged a complaint at Chandera Police Station under Section 57 of Kerala Police Act about missing of his daughter Shamsiya, her husband Ashfaq and their daughter Ayesha. As per the complaint, Shamsiya and her husband left home on 25.05.2016 stating that they are going to Sri Lanka. They were in touch with family till 15.06.2016 and informed that they would return home for Ramdan Eid. However, there was no contact from Shamsiya and her husband Ashfaq since then, hence, Abdul Aziz Abdul Rehman lodged the complaint.

3. In and around same time, families of other missing youths from Kerala also lodged complaints with Chandera Police Station of Kasargod Dist, and Palakkad South Police Station and Palakkad Kasba Police Station of Palakkad Dist. It was later revealed that these youths had left the country to live in an "Islamic State" or "Dar-Ul-Islam" where they were permitted to live according to true Islamic way of life. All these youths were in touch with each other and had left the country for IS Controlled territories in Afghanistan.

4. Meanwhile, on 06.08.2016, Abdul Majeed, father of Ashfaq Majeed, one of the missing youth from Kasargod, who runs a Guest House named Plaza Guest House at Mumbai Central approached the Nagpada Police Station at Mumbai and lodged a complaint against

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Maulana Haneefa, Abdual Rashid, accused-Arshi Qureshi and Rizwan Khan alleging therein that they entered into a criminal conspiracy in furtherance of which Ashfaq Majeed was indoctrinated and recruited to the terrorist organization of Islamic State. Ashfaq Majeed was missing along with his wife Shamsiya Kuriya and his daughter Ayesha from their native place at Kasargod in Kerala. Consequently, the present Crime No.271 of 2016 was registered at Nagpada Police Station, Mumbai on 06.08.2016 under Sections 10, 13 and 38 of UA(P) Act, 1967 r/w. Section 120B of IPC.

5. The Central Government having regard to the facts and gravity of the said offence and in exercise of the power conferred under sub section (5) of Section 6 read with Section 8 of the NIA Act, 2008, su-motu directed the National Investigation Agency to take up the investigation of the case vide an order No.11011/26/2016-IS.IV dated 15.09.2016 of Shri N.S. Bisht, Under Secretary to the Government of India, Ministry of Home Affairs (Internal Security-I Division), New Delhi. Pursuant to the said order, the NIA re-numbered the case as Case no. RC No.04/2016 on 20.09.2016 and started the investigation.

6. Considering the contents of the papers of investigation and after hearing the learned advocates for the State and accused, my learned predecessor has framed charge Exh.26 against the accused for the offence punishable under sections 13 and 39 of the Unlawful Activities (Prevention) Act, 1967 and plea was recorded at Exh.27. The contents of charge were explained to the accused in vernacular to which he pleaded not guilty and claimed to be tried.

7. The prosecution, thereafter, examined Raja Sahadev Yadav (PW-

1) at Exh.32, Mohd. Afzal Abdul Gaffar Sopariwala (PW-2) at Exh.39, Mohd. Sameer Abdul Subhan Ansari (PW-3) at Exh.41, Ajnas Majid K.P (PW-4) at Exh.48, Abdul Kader K.C. (PW-5) at Exh.51, Protected Witness no.1 (PW-6) at Exh.53, Haridas Thottathil (PW-7) at Exh.55, Smt. Ayesha Majid (PW-8) at Exh.59, Milind Digambar Kolwadkar (PW-9) at Exh.67, Vijay Eknath Shinde (PW-10) at Exh.69, Changdeo Haribhau Godse (PW-11) at Exh.85, Rajesh Sampatrao Gaikwad (PW-12) at Exh.96, Rakeshchandra Prajapati (PW-13) at Exh.99, Praveen Gundopant Shekdar (PW-14) at Exh.106, Paras Nath Singh (PW-15) at Exh.111, Mr.M.S. Hari (PW-16) at Exh.115, Truncated vide order on Exh.119 (PW-17) at Exh.120, Mohammad Rehan Rashid (PW-18) at Exh.122, Sultan Mohd. Abdul Rehman Shaikh (PW-19) at Exh.123, Dr.Abdul Rafe Abdulla (PW-20) at Exh.125, Maqbool Vijiuddin Barwelkar (PW-21) at Exh.127, Abin Jacob (PW-22) at Exh.132, Yasar Moinudeen VP (PW-23) at Exh.137, Mr.Shaukat Hussain Jamati (PW-24) at Exh.139, Mohd. Mustafa Khan (PW-25) at Exh.140, Padmakar Tukaram Chavan (PW-26) at Exh.141, Tausif Rasul Mulla (PW-27) at Exh.157, Abdul Majeed (PW-28) at Exh.160, Najeeba Suleman Abubakar (PW-29) at Exh.165, Shaheed Angilath Cheriya (PW-30) at Exh.166, Name Truncated (PW-31) at Exh.169, Dr. Shameer T.K. (PW-32) at Exh.172, Sandeep Sitaram Temkar (PW-33) at Exh.173, Somnath Janardhan Sawant (PW-34) at Exh.174, Milind Madhukar Kathe (PW-35) at Exh.177, Liju Antony (PW-36) at Exh.180, Aslam Kasim Qureshi (PW-37) at Exh.182, Name truncated (PW-38) at Exh.187, Pradip Shahaji Bhale (PW-39) at Exh.189, Niraj Rai (PW-40) at Exh.195, Mangesh Dattaram Vankar (PW-41) at Exh.198, Iqbal Ibrahim Lalani (PW-42) at Exh.200, Ganesh Vasant Vyawahare (PW-43) at Exh.202, Parvez Mohammad Farukh Khan (PW-44) at Exh.205, Balsubramaniyan Shankar Narayan (PW-45) at Exh.210, Swanand Gulabrao Gorde (PW-

46) at Exh.214, Smt. Kalpana Gadekar (PW-47) at Exh.219, Pramod Sudam Kumbhar (PW-48) at Exh.226, Karan Gunaji Sonkawade (PW-49) at Exh.227, Jayant Fulchand Dhandalkar (PW-50) at Exh.230, Name Truncated (PW-51) at Exh.232, Vinay Baburao Ghorpade (PW-52) at Exh.235, K. Sreejith (PW-53) at Exh.251, Narayan Singh Bisht (PW-54) at Exh.269, Smt.Namrata Ganesh Patil (PW-55) at Exh.271, Manoj Manikrao Patil (PW-56) at Exh.305 and N. Ganeshan (PW-57) at Exh.333. Thereafter, the prosecution filed evidence close pursis at Exh.338.

8. Thereafter, on 25.03.2022, the Court recorded statement of accused under Section 313 of the Code of Criminal Procedure at Exh.343. In the statement, the accused has taken defence to have implicated him in this offence falsely.

9. From the above facts, following points arise for my consideration and I have recorded my findings thereon for reasons hereinafter stated :-

Sr. no.	Points	Findings
1	Does the prosecution prove that the accused-Arshi Qureshi @ Arshid along with his associates is involved in Unlawful Activities and spread hatred against India and provided support to the Terrorist Organization ISIS by furthering its activities i.e. advocated and propagated its cause by sharing images, videos and literature related to ISIS among Ashfaq and the group of missing youths and accordingly advocated, abetted or incited the commission of unlawful activity by saying that India is	

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“Dar-ul-Kufra” means land of Kafirs, India is not a “Dar-ul-Islam” means Land where Shariya law is established and caused disaffection against India and thereby committed an offence u/s.13 of the Unlawful Activities (Prevention) Act, 1967 ?

No.

2 Does the prosecution prove that the accused-Arshi Qureshi @ Arshid along with his associates with an intention to further the activities of the Terrorist Organization ISIS invited support for that organization, by arranging, managing or assisting meetings with the knowledge that, by arranging such meetings the accused was supporting the terrorist organization and encouraging missing youths to join ISIS and thereby committed an offence u/s.39 of the Unlawful Activities (Prevention) Act, 1967 ?

No.

3 What order ?

Accused is acquitted.

REASONS

AS TO POINT NOS.1 TO 2

10. The learned SPP Advocate Mr. Gonsalves argued that accused is charged under Section 13 and 39 of the Unlawful Activities (Prevention) Act, 1967. The case is related to the indoctrination of Ashfaq Majid and his associates into extreme Jihadi ideology by group of like-minded youths from Kasargod District of Kerala and some members of the Islamic Research Foundation, Mumbai (hereinafter referred as 'IRF') who motivated and radicalized Ashfaq and his associates to join ISIS, a proscribed terrorist organization.

11. He pointed out that initially, on 13.07.2016 at 16.00 hours, Abdul Aziz Abdul Rehman resident of Trikaripur, District Kasargod, Kerala lodged complaint at Chandera Police Station about missing of his daughter Shamsiya, her husband Ashfaq and their daughter Ayesha. It was contended in the said complaint that complainant was in touch with them till 15.06.2016 and it was informed to him that they would return home for Ramzan Eid. Other families also filed same type of complaint of missing youths from Kerala. It was later revealed that these youths had left the countries to live in an 'Islamic State'. All these youths were in touch with each other and had left the countries for IS Controlled territory in Afganistan.

12. He further pointed out that meanwhile on 06.08.2016, Abdul Majeed, father of Ashfaq Majid who runs guest house named as Plaza Guest House at Mumbai Central approached Nagpada Police Station at Mumbai and lodged complaint against Maulana Hanifa, Abdul Rasheed, this accused-Arshi Qureshi and Rizwan Khan alleging that they entered into a criminal conspiracy in furtherance of which, Ashfaq Majeed was indoctrinated and recruited terrorist organization 'Islamic State' and thereby, the present crime number 271/2016 was registered.

13. He further pointed out that the Central Government suo-moto directed the National Investigation Agency (hereinafter referred to as 'NIA') to take up the investigation of the case by order dated 15.09.2016. He further pointed out that accused Maulana Hanifa had joined Adikiva Salafi Mosque, Ganeshmukku, Padane as Khateeb and Imam of the Mosque. He used to give lecture on Islam and Quran. Because of his oratory, Ashfaq and group of missing youths started following teachings of Maulana Hanifa.

14. He further pointed out that accused Abdul Rasheed Abdulla joined peace foundation Kozhikode as head of department. He used to develop curriculum trained teachers and visit peace schools. He married with Ayesha @ Sonia Sabestian whom he met during engineering college days in July 2014.

15. The learned SPP Mr.Gonsalves further pointed out that Shihass had joined peace foundation as head of the supply chain management in June-2015. Marvan joined peace schools at Trikaripur as admin assistant. Destin @ Yahiya joined as Assistant of accused-Abdul Rashid Abdulla around 2015. Shihass and accused-Abdul Rashid Abdulla used to talk against democracy. They also supported Charlie Hebdo attacked in France and to stay in ISIS for its activities.

16. The learned SPP also pointed out that accused-Abdul Rashid Abdulla used to take classes for the group of missing youths at Ashfaq's house as well as at Hamja Sagar, house of doctor Ijaz and Shihass and also used to call others to join the cause. In the year 2015, during Ramadan, Accused-Abdul Rashid Abdulla organized 10 days 'Ihtikaf' by Islamic practice of staying in mosque during Ramadan. Accused-Abdul Rashid Abdulla, Dr. Ijaz, Shihass, Destin @ Yahiya, Destin at ISA, Ashfaq, Manzar, Marwan Firoz Khan and Yasar Moinudeen (PW-23) attended 'Ihtikaf' for the complete 10 days.

17. The learned SPP further pointed out that they all used to discuss that India is not a land where the Shariya Law is established. To be a good Muslim and follow the best practices of religion one should live in the land where Shariya Law is established. The conspiracy to leave India and migrate to Dar-ul-Islam began as the group believed that

India is the land of Kafir where Shariya is not followed. Accused-Abdul Rashid Abdulla was in touch with the people from ISIS and used dark net browsers to communicate with them.

18. The learned SPP further pointed out that one of the missing youths, Bestin Yahiya is originally from a Catholic family of Kerala, Merrin Jacob @ Marium, who was the childhood friend of Bestin and later married with him. She jointed IBM call center, Mumbai, after completion of her B.A. i.e. in May 2014. Bestin @ Yahiya was also staying there after August 2014. During that period, they both came in contact with the accused-Arshi Qureshi. They used to visit Islamic Research Foundation office at Dongri and also, at the residents of the accused-Arshi Qureshi in Vashi, Navi Mumbai. Due to accused-Arshi's influences, both Bestin and Merrin converted themselves to Islam at Jumma Masjid, Mumbai with the help of accused Rizwan Khan. They got married in Masjid at Temkar Moholla Mumbai on 12.09.2014, wherein, accused Rizwan Khan has signed as guardian of Merrin.

19. Abin Jacob, brother of Merrin came to Mumbai and stayed at rented house at Malad. During his stay, he was taken to IRF office, Dongri and at the residence of accused-Arshi Qureshi by Bestin and Merrin. Accused-Arshi Qureshi and Bestin tried to influence Abin and tried to convert him to Islam, but, he refused and returned to Kerala. During the meetings, accused-Arshi Qureshi told Abin and how the whole world needed to be Islam. Accused-Arshi Qureshi also told that non-believers of Islam would bring Anti-Christ, the Dajjal so he stayed that it was upon the Muslim of the world to eradicate the non believers i.e. to kill them and revert them to Islam.

20. The learned SPP also pointed out that the accused-Arshi Qureshi was using his official position in IRF to influence people from other religions to embrace 'Islam'. Accused-Arshi Qureshi also used to tell all the persons that 'Hijra' is the duty of every Muslim. Prophet Mohammad also shifted from Mecca to Madina, so, you should also change and leave your home. These teaching influenced Ashfaq, Bestin and Merrin to leave their home and later to join ISIS.

21. The learned SPP also pointed out that Ahmed Ziyad had created a WhatsApp group namely "Tazkiyan" (Purification of soul) and he was the administrator of this group. There were 20 to 25 members in the group including accused Maulana Haneefa, accused Abdul Rasheed Abdulla, missing youths namely Ashfaq, Doctor Ijas, Shihas, Firoz, Murshid, Hafizuddin, Marwan, Bestin, Bexen, Manzad and other members like Hanooda, Dr.Shameer etc. They used to discuss about Hadees i.e. sayings of the Prophet Mohammad and his explanations. Accused Maulana Haneefa used to send voice messages recorded in his voice regarding teachings of Prophet Mohammad in Malyalam. Investigation has revealed that Bexen elder brother of Bestin was converted to Islam at Mumbai on 09.10.2015 with the help of Rizwan Khan. Nimisha wife of Bexen also got converted to Islam.

22. The learned SPP also pointed out that Bestin and Merrin went to Sri Lanka on 04.12.2015 for religious study at Ad-dur Salafiya Negombo, Kochikode, Poruthota Sri Lanka. On 02.02.2016, accused Abdul Rasheed Abdul along with his wife Ayesha and daughter Sara left for Sri Lanka and joined Bestin at Alqama Center. Ashfaq Majeed and his wife Shamsiya also followed them and went to Sri Lanka on 28.02.2016. Later on, Bestin, accused-Abdul Rashid Abdulla and Ashfaq

started propagating ISIS ideology and their views on Jihad among the students at Alqama Center. When it was noticed by the teacher at Alqama Center, they were expelled from there and on 14.04.2016, all three families returned to India. After their return from Sri Lanka, all the group members prepared their travel plan. Accused- Abdul Rashid Abdulla purchased tickets for Hafeesuddin, Marwan and Manjar for travel from Mumbai to Tehran via Dubai. He also paid for hotel stay of Ashfaq and his wife in Mumbai and thereafter, everyone from the group left the country to join ISIS.

23. Lastly, the learned SPP submitted that the accused-Arshi Qureshi was in touch with Ashfaq, Bestin, Marrium, Bexen and Shihas as reflected in CDR. This accused also tried to influence Abin to join Islam and propagated his view that India is land of 'Kufr' and it requires a change. Accused-Arshi Qureshi radicalized youngsters about Islam and spread disaffection against India.

24. On the other hand, the learned Adv. Mr. T.W. Pathan for accused argued that the present FIR is ingeniously designed so as to implicate this accused who is the employee of Islamic Research Foundation Trust. Prior to registration of this FIR, already more than two proceedings were initiated by the competent police station, one in Chandera Police Station and second in Ernaculam Police Station about missing youths and therefore, the present FIR is afterthought and concocted at belated stage. The learned Adv. Mr. T.W. Pathan and Adv. I.A. Khan for the accused. also argued that there is no direct evidence as well as circumstantial evidence against this accused. So far as radicalization/indoctrination/ propagating Jihadi mentality amongst missing youths is concerned, there is no direct evidence or even

circumstances against this accused. No witness has deposed about the same.

25. The learned Adv. Mr. T.W. Pathan for the accused further argued that prosecution heavily relied on the testimonies of witnesses namely Abdul Kadar (PW-5), Protected Witness No.1 (PW-6), Sultan Mohd. (PW-19), Maqbool Vijiuddin (PW-21), Abin Jacob (PW-22), Shaukat Hussain (PW-24), Mohd. Mostafa (PW-25), Sandeep Temkar (PW-33), Liju Antony (PW-36), Aslam Qureshi (PW-37) and Truncated Witness (PW-51), but, their testimonies suffers from omissions, contradictions and improvements. He further argued that even if, it is taken in its full face value, but, it does not establish in evidence as to radicalization and indoctrination by this accused amongst the missing youths. He further clarified the concept of ISIS and the prosecution deliberately, misinterpreting and misguiding regarding Islamic States and trying to canvass the Islamic States as banned terrorist organization, elaborating it 'IS' to 'ISIS'. 'IS' means Islamic States (there are almost 48 recognized Islamic States including but not limited to Saudi Arabia, U.A.E., Iran, etc.) ISIS means 'Islamic States of Iraq and Syria' (which includes territories of Iraq and Syria.) a territory, piece of land. Another meaning of ISIS (which prosecution wants to establish is ISIS, a banned terrorist organization operating within the territory of Iraq and Syria).

26. The learned Adv. Mr. T.W. Pathan for the accused further argued that out of 57 prosecution witnesses, in all total 12 prosecution witnesses referred traveling of missing youths on whose testimony the prosecution is heavily relying. He pointed out that Ajnas (PW-4) deposed about moving to ISIS and would leave and settled there. Ayesha (PW-8) deposed that they went to Sri Lanka twice. Truncated

Witness (PW-17) deposed that Aznas told him that they had gone to Dar-Ul-Salam to learn about Islam and would not be coming back. Dr.Abdul Rafe (PW-20) deposed that about going to Hijra and will not be returned. Abin Jacob (PW-22) deposed about went to ISIS (through Liju). Yasar Moinudeen (PW-23) deposed that they have gone to Afganisthan for Hijra. Padmakar Chavan (PW-26) deposed that no Syria or Iraq and Dubai only. Milind Kathe (PW-35) deposed that to go to Kaliphate (Khilafat). Liju Anthony (PW-36) deposed about went to ISIS. Truncated Witness (PW-38) deposed about sending of telegram message to him that they have reached Syria. Truncated witness (PW-51) deposed that Ashfaq gone to Dar-ul-Salam and Namrata Patil (PW-55) deposed that not to Syria.

27. The learned Adv. Mr. T.W. Pathan for the accused argued that no authenticate document of the foreign country including Visa brought on record by the prosecution. He further pointed out that printouts of messages retrieved data from electronic devices are neither connected or concerned with the accused. He further pointed out that inconsistency in between evidence of Liju (PW-36) and PI Vinay Ghorpade (PW-52). He further argued that the sanction (Exh.270) in the case is defective and cannot be relied. Lastly, he argued that this accused is innocent and falsely implicated.

28. Evidence led by the prosecution on the above points are intermingled and therefore, they are taken together for discussion.

29. Prosecution has examined total 57 witnesses. Out of them, the testimony of 12 witnesses is important to prove the charge levelled against the accused.

30. In the evidence of Ajnas (PW-4) (brother of Ashfaq), it came on record that he is residing at Mumbai since last three years and his native place is Padnap, District Kasargod, Kerala. The name of his brother is Ashfaq Majeed. Ashfaq Majeed had completed his 12th standard education in Kerala. Thereafter, he shifted to Mumbai and joined college in the year 2011. He studied B.com. in a college at Bandra. Ashfaq was also helping his father in the business of running Plaza Guest House. Ashfaq was in Mumbai for 3 to 4 years and in vacation, he used to visit at Kerala and used to stay there for 1 to 2 months. He further deposed that Ashfaq was not much religious. But, during the time of the marriage of Ashfaq, he found changes in the behaviour of Ashfaq i.e. becoming more religious. Ashfaq married Miss Shamsiya and it was his love marriage. After marriage, Ashfaq was not comfortable in staying at Mumbai and carrying on the business. He also deposed that his maternal cousin Ejaj had completed his MBBS in China and returned to Kerala. His behaviour had also changed and became more religious. Ejaj also used to spend more time in learning 'Quran'. Ejaj started to grow the beard. After work, Ejaj used to sit with his brothers and friends and used to read 'Quran'.

31. He further deposed that Ashfaq told father that he wants to study 'Quran' and therefore, he has wish to go to Sri Lanka. Then, he went to Sri Lanka with his wife and daughter in the year 2016. After 2014, Ashfaq was changed. He did not use to listen music or anything for entertainment. He was changed in his talking and dressing style and used to follow Islamic Dressing style. Ashfaq used to sit in the mosque most of the time. Ashfaq used to spend more time in learning Islam and taking classes. His cousin Mohd. Shiya, accused-Abdul Rashid Abdulla and his brother Ashfaq used to sit together in Saifee Masjid in Padnap.

They were conducting classes on 'Quran'. Afizuddin, Yahya @ Bestin, Bexen Firoz Khan, Marwan, Mansad, Mohd. Sajeed and Ashfaq are known to him. Yahya @ Bestin and Isa @ Bexen are the friends of his cousin Mohd. Shiya. They studied together in Bangalore.

32. He further deposed that his brother had gone to Sri Lanka with his family and returned from there after almost one month. Prior to beginning of Ramzan, Ashfaq told him that he wants to go to Sri Lanka again and would come back at the time Eid. Ashfaq went to Sri Lanka but did not return.

33. He further deposed that since 2016, i.e. from the month of Ramzan, Ashfaq is missing. During the time of Eid, he talked with Ashfaq that time Ashfaq told him that he would come after Eid. But, he did not return. After some days, he had sent message to Ashfaq on WhatsApp and asked about his return. Ashfaq sent him voice message on telegram App. He heard that voice message and it was the message of his brother Ashfaq. In the message, he told him that he was not in Sri Lanka, but, he moved to ISIS and would not return back. After receiving the said message, he informed the same to his family members. He also deposed that his cousin and some friends of Ashfaq were also missing.

34. he further deposed that he had deposited his phone with Ernakulam Police. It was seized by them. It was Lenovo S-60 mobile phone and his mobile number was 9746704005.

35. In the evidence of Ayesha Majid (PW-8)(mother of Ashfaq), it came on record that she resides at Kasargod. The name of her husband is Abdul Majeed. She has three children namely son Ashfaq and Ajanas

and daughter Sajeeda. Her husband does business of running guest house at Bombay Central. She further deposed that Ashfaq completed his study in Kerala and then, went to Sri Lanka in the year 2011. Ashfaq returned from Sri Lanka after one month and then again, he went to Sri Lanka by saying that he would come within one month.

36. She further deposed that Ashfaq went to Sri Lanka along with his wife and daughter. Ashfaq did not use to go outside much and used to read 'Quran'. He generally used to wear Jeans and Trousers and had beard. She did not notice any change in his behaviour.

37. She further deposed that she received the phone call of Ashfaq. Ashfaq had gone to Sri Lanka for learning Quran.

38. In the evidence of Truncated Witness (PW-17), it came on record that Hafisuddin is her cousin and he studied in Kerala upto 8th standard and thereafter, he went to Dubai. There he completed higher secondary education and came to Mumbai for graduation. He was in Elphinston College in the year 2014 but he failed in 1st and 2nd semester and therefore, he returned to Kerala. He slowly changed belief in religion and did not use to listen the Hindi and Malyalam songs. He started to offer Namaz strictly in the Salafi Masjid in Kerala and used to force brothers and sisters to offer Namaz and prayers. He kept beard and used to wear white kurta. She further deposed that her aunt told her about the changes in Hafisuddin.

39. She further deposed that Ashfaq is her neighbourer and common friend of herself and Hafisuddin. Hafisuddin was having company of Ashfaq, Aijaj and Shihas. She knows Bexen Francis and Abin Jacob.

They are her cousin's friend and got converted to Islam. Thereafter, Bexen is called as Isa. She further deposed that in 2016, Yahiya and Merrin came to Mumbai and she witnessed their marriage. Their marriage performed as per Islamic customs. Rizwan stood as guardian of Merrin in the marriage. One Maulana from the masjid was also present. She signed the marriage form as a witness. In 2015, Ashfaq and Hafisuddin came to visit towards her at Colaba. There was lot of changes in them. They grew beard and were offering Namaz five times a day. They convinced her to perform Namaz properly. Ashfaq told her that she should attend the Islamic related classes of Islamic Research Foundation situated at Mohd. Ali Road. In February 2016, Bestin made phone call and told her that his brother Bexen and wife Fatima are coming to Mumbai and also asked her to provide them accommodation in Colaba. She arranged accommodation for them in Hotel Sea View at Colaba. They informed her that they came to Mumbai for collection of marriage certificate. After three months they again came to Mumbai, that time, she was working in Hotel Alpha Grant, Andheri (East). They were asking her for the accommodation in the hotel Sea View. But, no room was available in the said hotel, therefore, she arranged their accommodation in Hotel Ambar, Colaba. They also told her to arrange and book the flight tickets for Mumbai to Balaghat. She booked the tickets from Goibibo sites. In the year 2016, her aunt made phone call and told about the missing of Hafisuddin from Kerala. Then, she made phone call to Ajnas, brother of Ashfaq and asked having any information about Hafisuddin. Ajnas told her that he had gone to Dar-Ul-Islam to learn about Islam. Later, it was informed to the Police Station about missing of Hafisuddin. Lastly, it came in her evidence that when once she made phone call to Hafisuddin that time he was with this accused-Arshi Qureshi and his family at Vashi.

40. In the evidence of Dr.Abdul Rafe Abdulla (PW-20),it came on record that the name of his elder brother is accused-Abdul Rashid Abdulla. His father is working in Dubai. His brother i.e. accused-Abdul Rashid Abdulla performed marriage with Sonia Sebastian. Thereafter, he wanted to work with Islamic based institution and thereafter, they both joined peace foundation at Calicut. As the day passed, they got more and more religious. He further deposed that accused-Abdul Rashid Abdulla wanted to learn Quran in Arebic at Madina, but, he could not get admission. Then, he went to Sri Lanka to learn Arebic along with his wife and child in early 2016. They came after three months. Yahiya was a friend of accused-Abdul Rashid Abdulla who was Christian and then he converted to Islam.

41. He further deposed that in May 2016, he dropped Abdul Rashid and his wife Sonia to Payyannur to go to Mumbai. He used to chat on WhatsApp. At the end of Ramzan, accused Abdul Rashid told him to download and installed Telegram App. He installed Telegram App. Accused-Abdul Rashid Abdulla posted message to him that he along with his wife and daughter going to Hijra and will not be returned. Thereafter, the message was disappeared. He informed this fact to his parents. He used to post text message to him on WhatsApp and then, accused-Abdul Rashid Abdulla used to give reply that he does not want to come back and thereafter, his father gave complaint to Chandera Police Station.

42. In the evidence of Abin Jacob (PW-22), it came on record that Merrin Jacob is his sister. He knows Bestin Vincent through his sister. There was love affair between them and therefore he convinced his

parents for their marriage. He also knows Liju. He was classmate of his sister and Bestin. After graduation, Merrin went to Bombay and started working in the Call Center. Bestin used to visit his sister at Bombay. She was staying in a flat at Malad. At that time, she was disturbed because she found many changes in the Bestin like growing of beard wearing white dress and cap. Bestin used to talk about Islam. He further deposed that she disclosed this fact to him. Bestin wanted to convert her to Islam. Afterwards, Merrin ended relationship with the Bestin and went back to Kochi. Thereafter, Bestin came to Kochi. Abin surprised by seeing his physical appearance. Bestin was talking about the Islam. Bestin gave Quran to Merrin. She started to go through it to find fault and bring it back to the Bestin. In August 2016, Abin went to Mumbai to study Scuba Diving Course. After reaching at Mumbai, he found changes in his sister. After two days, he met Bestin. At that time, Bestin was accompanied with his brother Bexen. They both were following Islam. He further deposed that Bestin used to talk with him about Islam. Abin had so many doubts, so, he, Bexen and his sister met with the accused-Arshi Qureshi at Vashi. Accused-Arshi Qureshi talked with him about his belief and said that those are wrongs. Accused compared 'Bible' with 'Quran' and thereby Abin got confused. Again, after having some discussion with his sister and Bestin, Abin went to accused-Arshi Qureshi to clarify the doubts. One day, accused-Arshi Qureshi took him and Bestin to Islamic Research Foundation. Accused-Arshi Qureshi took him near the Mosque and told him to offer Namaz. After Namaz, he used to gather with Ashfaq and Hafisuddin. He visited to the house of accused-Arshi Qureshi for 7 to 8 times. Afterwards, Bestin and his sister performed Nikah. He disclosed this fact to his parents. Parents called back his sister to Kochi, but, her behaviour was completely changed. He further deposed that his mother tried to change her mind, but, Merrin

did not respond. He further deposed that her sister Merrin told his mother that she would protect her Muslim brothers and sisters and she would take arms to protect them. He further deposed that thereafter, Bestin and his sister went to Kasargod, Kochi and Pallakkad. One day his father received phone call from Indian Embassy that Merrin is going to Sri Lanka and asked his opinion. His father gave consent telephonically. In January-2016, Merrin became pregnant. After few months, he came to know that his sister along with Bestin and Bexen went to ISIS and received the confirmation message from Bestin through Liju's phone. He further deposed that accused-Arshi Qureshi influenced his sister and Bestin for joining ISIS.

43. In the evidence of Yasar (PW-23), it came on record that he was working with Peace Foundation at Calicut from the year 2011 to 2016. In 2014, he became head of the department of the Islamic Studies. He knows Abdul Rashid as he was working with him. He also knows his wife namely Ayesha. He also knows Shihas, who joined Peace Foundation in the year 2015 as supply chain management. He was from Kasargod. He also knows Ijas, brother of Shihas. He also knows Bestin @ Yahiya and his wife Merrin. In early 2015, he met with Rashid's friend namely Shihas, Yahiya, Ijas and Hafisuddin at Mosque at Kasargod in 10 days class session regarding Islam. At one night, they were discussing about the ISIS. They were discussing to migrate to Syria and Iraq. Rashid suggested him to watch video of leader of ISIS namely Abu Bakar-Al-Bagdadi available on the net. He watched part of said videos. Those videos were in Arabic language. Even, during farming work, he used to discuss about ISIS and Islam along with his wife, Rashid, his wife, Isa, his wife, Marvan and Manzar. Thereafter, Rashid went to Sri Lanka.

44. He further deposed that in July-2016, he received message from Rashid on telegram App that they have left India on his mobile no.9895883622. Rashid also told him that he has gone to Torabora at Afganistan.

45. In the evidence of Padmakar (PW-26), it came on record that in 2016, he was ACP D-1, Special Crime Branch, Mumbai. Crime No.59 of 2016 was registered with his Crime Branch. Originally, it was registered with Nagpada Police Station by Crime No.271/2016 and as per order of Joint C.P, it was transferred to Crime Branch. He received investigation in the said Crime on 09.08.2016. During cross-examination, his witness admitted that he issued letters to Emirates Airlines and Spice Jets. He also admitted that during investigation, it did not transpired that the missing youths went to Syria or Iraq. He only found that they travelled upto Dubai only. Even, he did not find their present location.

46. In the evidence of Milind (PW-35), it came on record that since 2016 to 2019, he was attached to NIA, Mumbai as Police Inspector. He was Assistant Investigating Officer to Addl. S.P. Smt.Namrata Patil. He had recorded the statement of one Mr.Bansod who had embraced Islam. He also deposed that accused-Arshi Qureshi radicalized youths and insisted them to go to reside to Califath (खिलाफत).

47. In the evidence of Liju Antony (PW-36), it came on record that Bestin is his friend and hails from Pallakkad. He is also known to Merrin and Abin. In March-2014, Bestin started following 'Muslim Ideologies'. He used to tell his views about Muslim religion to him. He also knows Shihas and Firoz since they were living in the same house at Bangalore.

He further deposed that in September-2014, Bestin went to Sri Lanka to learn about Muslim religion. Merrin and Bestin's brother namely Bexen also went to Sri Lanka along with Bestin. He further deposed that in June-2016, he came to know from the news that Bestin along with his brother and wife went to join ISIS. One day, he received a message from mobile number starting from digits like 8111. He sent a message on that number whether it is of Bestin. He received a reply 'Yes'. Then, he sent a text message that he heard you guise went to join ISIS and if it is true then do not follow that path. Bestin replied that he is following 'Allah'. This conversation was started from the June or July-2016 upto August-2016. Bestin confirmed that he went to ISIS with his wife and brothers. He further deposed that once he received a text message that accused-Arshi Qureshi got arrested, but, he did no crime. Whole world is lying about everything.

48. In the evidence of Truncated Witness (PW-38), it came on record that he learnt from newspaper that Yahiya, Rashid and Ashfaq went to Syria along with 21 peoples. During that time, Yahiya sent a telegram message to him that they reached to Syria. Yahiya also invited to him to Syria and to join them.

49. In the evidence of Truncated Witness (PW-51), it came on record that in May-2016, he learnt that Ashfaq, Shihas and Ijas are missing. He was told that they have gone to Sri Lanka to study Islam. He contacted Ajnas i.e. the brother of Ashfaq on WhatsApp and learnt that Ashfaq has gone to Dar-Ul-Salam.

50. Apart from these witnesses, as per prosecution, the evidence of Abdul Kadar (PW-5), Protected Witness (PW-6), Sultan Mohd. (PW-19),

Maqbool Vajiuddin (PW-21), Shaukat Hussain (PW-24), Mohd. Mustafa (PW-25), Abdul Majeed (PW-28), Truncated Witness (PW-31), Sandeep Temkar (PW-33), Niraj Rai (PW-40), Swanand Gorde (PW-46), Truncated Witness (PW-51) is also important in this matter. Out of those witnesses, PW-5, PW-6, PW-19, PW-21, PW-24, PW-25 and PW-33 are examined to prove the conduct, work, nature of accused-Arshi Qureshi. They are also examined to prove the fact that accused-Arshi Qureshi was the employee of IRF.

51. The most important witness in this case is Abdul Majeed (PW-28). He did not support to the case of the prosecution and therefore, the learned SPP asked him question in the nature of cross-examination. During his examination-in-chief, he deposed that he had lodged report to Chandera Police Station, Kerala about missing of his son Ashfaq. At Mumbai, he had taken to Byculla and Nagpada Police Station where a complaint was written by the Police and he was asked to sign. He identified his signature on the complaint without identifying contents of it. He denied to have stated the contents of portion marked in his report/complaint.

52. The most significant aspect of evidence on the record is that it should be appreciated in the proper way and therefore, it is also important to see the cross-examination of the witnesses. Whether the witnesses are credible or not.

53. Upon perusal of the testimonies of the witnesses i.e. Ajnas Majid (PW-4), Ayesha Majid (PW-8) and Abdul Majeed (PW-28), it is seen that Abdul Majeed is the informant. He lodged the report to the police. He is the father of missing Ashfaq. Ajnas Majid (PW-4) is the brother and

Ayesha (PW-8) is the mother of the Ashfaq. Prosecution examined them as their witnesses. But, father and mother of the Ashfaq did not support to the prosecution's case as described in the earlier paragraph. Now so far as the testimony of the Ajnas Majid (PW-4) is concerned, he did not disclose anything about the unlawful activities, hatred against India and support to the terrorist organization ISIS of accused-Arshi Qureshi and his relation with the Ashfaq. Even his testimony did not disclose whether Ashfaq was influenced by the accused-Arshi Qureshi.

54. Now, so far as testimony of the Ajnas Majid (PW-4) that Ashfaq had sent him voice message and he told him that he was not in Srilanka and now he moved to ISIS is concerned, during cross-examination he admitted that his mobile phone was seized by the Ernakulam Police alongwith voice messages in it. He also deposed that ATS officers returned his mobile phone immediately. He also deposed that NIA did not seize his mobile phone. Then, simple question arose why NIA did not feel it necessary to seize the mobile phone alongwith voice message. Why the best evidence is been withheld by the NIA and therefore it is compelled to draw adverse inference against the prosecution. On the other hand the evidence of father, mother and brother of Ashfaq was very material to the case of prosecution, but, because of this situation it creates doubt on the case of prosecution.

55. Prosecution examined Protected witness (PW-6) and Sandeep Temker (PW-33) to prove the work of accused-Arshi Qureshi as radicalization. Both the witnesses converted themselves into the Islam. They deposed all about how they got impressed by the Islam and story about their conversion in the Islam religion. Now whether that testimony is sufficient to prove the charges against accused-Arshi

Qureshi. For that purpose, it is necessary to see the cross-examination of these witnesses. In the cross examination of Protected Witness(PW-6) it came on record that he contacted IRF on his own as he wanted to know more about Islam. Nobody contacted him from IRF. He also admitted that at that time accused-Arshi Qureshi was working as Guest Relation Manager in the IRF. He also admitted that after completing formalities of conversion, he recited “Kalama” in presence of the witness. He followed all the procedure on his own without any coercion or pressure. He also admitted that he did not feel anything objectionable and therefore he did not lodge any complaint to police.

56. Even in the evidence of Sandeep (PW-33) it came on record that he had gone to IRF on his own and met with the accused-Arshi Qureshi and told that he has to adopt Islam religion. Then he started offering Namaj five times in a day and went under circumcision. He further deposed that even his wife got converted in the Islam and thereafter they performed Nikah. Even today also they are following Islam. Thereafter, he was declared hostile as per request of prosecution. During cross examination he admitted that he adopted Islam religion on his own will and nobody pressurized him and accused-Arshi Qureshi never expressed any objectionable thing or statement to him.

57. Prosecution witnesses i.e. Sultan Mohd. (PW-19), Maqbool Vajiuddin (PW-21), Shaukat Hussain (PW-24) and Mohd. Mustafa (PW-25) are the witnesses who are in contact with the IRF as its official or member. They deposed that they know accused-Arshi Qureshi as the official of the IRF. They also admitted in the cross-examination that accused-Arshi Qureshi is well educated, cultured and mannered person. He follows Islam in its true nature and spirit. They also admitted that

accused-Arshi Qureshi knows basic knowledge of Islam and by referring books he clarifies the doubts of the visitors.

58. To prove the connection between Bestin, Bexen and merrin with the accused-Arshi Qureshi, the prosecution examined Abin Jacob (PW-22). His examination in chief is discussed in the earlier paragraph. The most important testimony in his evidence is that accused-Arshi Qureshi influenced his sister and Bestin to join ISIS. But upon perusal of his examination-in-chief very meticulously, it is seen that after few months he came to know that his sister along with Bestin and Bexen went to ISIS. Here that source of his knowledge is absent. Even there is no any corroborating evidence on record to inspire confidence on this testimony. Moreover, in the cross examination he deposed that he does not know about the background of the Ashfaq. He also admitted that his sister and Bestin embraced the Islam on their own and because of efforts of Bestin his sister converted to the Islam. He also admitted that Bestin offered him to follow Islam. He further admitted that during meeting with the accused-Arshi Qureshi he never found anything uncultured, objectionable or illegal in him.

59. The prosecution has examined two witnesses from Peace Education Foundation Calicut i.e. Yasar (PW-23) and Truncated witness (PW-31). They have deposed against the Rashid. In spite of that, their testimony in the cross-examination, is important to enlighten those things which are necessary to follow the religion. Yasar (PW-23) deposed that he is having the basic knowledge about Islamic beliefs. Hadis and Quran Sharif are two major sources of Islamic teachings. There are six authenticated books of Hadis i.e. Bukhari Sharif, Muslim Sharif, Tirmizi Sharif, Ibn-E-maza, Abudawood-sharif and Nisar-E-

Sharif. All these books does not encourage, teach and preach violence. It teaches about forgiveness and peace. He knows the Darul Harab and Darul Islam. Dar-Ul-Islam is the land where the sharia or Islamic laws are enforced. Hijra means migrating from one place to a other better place to live. He further deposed that Rashid was well educated, well cultured and highly intellectual person. He and Rashid used to exchange thoughts on various topics. Rashid is a true Muslim and wanted to follow Islam in its true meaning and he was not having any criminal record. He also deposed that the ideologies of the ISIS is against the Islamic principle. He had not shown any message to the police about going of Rashid to Islamic states. The same things have come in the cross-examination of the truncated witness (PW-31). Therefore their evidence is not much useful to the prosecution to prove the charges against the accused-Arshi Qureshi.

60. So far as testimony of Liju (PW-36) is concerned, it came on record that Bestin confirmed from text message that he went to ISIS alongwith his wife and brother. This message is concerned, in the evidence of Mr. Ghorpade (PW-52) it came on record that he went to Kerala again on 19.08.2016 and extracted the chats from the mobile phone of Liju in his presence and by his consent. He took screen shots and also obtained signature of Liju on it. But in the cross-examination of the Liju it came on record that his mobile phone was already seized by Kerala Police by officer namely 'Lalji' and had informed this fact to the Mumbai police. If it so then, how Mr. Ghorpade directly extracted the chats from the mobile phone of Liju without the help/intervention of Kerala Police. It creates doubt on the testimony of either Liju or Mr. Ghorpade and it goes to roots of the case.

61. It is also seen from the record that investigating agency could have brought documents on record about foreign country including visa etc. There is no evidence on the record to show that missing youth more particularly Ashfaq, crossed the borders of the other sovereign countries. Neither there is complaint of any country about the illegal stay of Indian nationals and his unlawful activities. As per the allegation, if Ashfaq has gone to the ISIS then why he is not made accused in this case. On the other hand Investigating officer Namrata Patil (PW-55) herself admitted in the cross-examination that during investigation she did not find that the missing youth have gone to Syria. This testimony also goes to the roots of the case.

62. The learned SPP Mr.S.D. Gonsalves for NIA/Prosecution relied on various citations of the Hon'ble Supreme Court and the Hon'ble High Courts. They are discussed as under.

63. He relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Raju Yadav and another etc. Vs. State of UP** reported in **2022(1) Crimes 353(SC)** to contend that evidence under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. What is required for Court to decipher is existence of a fact and its proof by degree of probability, through logical influences. He also argued that evidence recorded in this case must be appreciated on the basis of this formula. In this citation, the principle of law in the Evidence Act has been discussed. It is settled law that the every evidence must be appreciated through its logical inference to existence of a fact.

64. He further relied on the judgment of the Hon'ble Supreme Court

in the matter of **Union of India Vs. Yasmeen Mohammad Zahid alias Yasmeen** reported in **2019 Cri.L.J. 4222** to contend that any thing which is recovered from the accused relating to the propagating ISIS ideology and war against non Muslims, then accused is liable to be convicted. But in the present case in hand Investigating agency did not seize any material which connects the accused for propagating the ISIS ideology.

65. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Sudru Vs. State of Chhattisgarh** reported in **2019(4) Crimes 497(SC)** to contend that though the witness is turned hostile, but, his testimony which is found to be credible could be taken into consideration and it is not necessary to discard entire evidence. In the present case in hand testimony of PW-4, PW-8 and PW-28 is important. Out of them father and mother of the Ashfaq turned hostile. Their testimony in the cross examination does not also support to the case of prosecution and hence their testimony is of no use to the case of prosecution.

66. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **N.Somashekar (Dead) by Lrs. Vs. State of Karnataka** reported in **2004(2) Crimes 366 (SC)** to contend that merely because statement of witnesses was recorded under Section 164 of the Cr.P.C. that does not automatically dilute worth of his substantive evidence before the Court. It is the principle of law and does not have any relation in the present case in hand.

67. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **State Govt. of NCT of Delhi Vs. Sunil and another** reported in **2001 Cri.L.J. 504** to contend that when a police

officer gives evidence in court that a certain article was recovered by him on the strength of a statement made by the accused it is opened to the Court to believe the version to be correct. If it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other material, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in particular case. This ratio is not much helpful to the prosecution in the present case.

68. He further relied on the judgment of the Hon'ble Madhya Pradesh High Court (Indore Bench) in the matter of **Dr.Navinkumar Sav Vs. State of Madhya Pradesh** reported in **2007 Cri.L.J. 2110** to contend that when there is independent witness and no omission, contradictions or improvements are brought on record by the defence counsel in his court statement as compared with the statement recorded under Section 164 of the Code, he cannot be disbelieved by the Court.

69. On the other hand, the learned Advocate Mr.Pathan for the accused also relied on the various judgments of the Hon'ble Supreme Court and the Hon'ble High Courts. They are discussed as under.

70. He relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Sharad Birdhichand Sarda Vs. State of Maharashtra MANU/SC/0111/1984** to contend that when two views are possible on evidence on record, one pointing to guilt of accused and other his innocence, accused is entitled to have benefit of one which is favourable to him.

71. He further relied on the judgment of our Hon'ble High Court in

the matter of **Jyoti Babasaheb Chorge Vs. State of Maharashtra** reported in **MANU/MH/1637/2012** to contend that there must be some material to establish any nexus with the accused who is indulging into various violent activities and crimes. Mere finding of some literature or for having sympathy for those who propagate 'Maoist philosophy'.

72. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Indra Das Vs. State of Assam** reported in **MANU/SC/0106/2011** to contend that mere membership of banned organization cannot incriminate a person unless he is proved to have resorted to act of violence or incited people to imminent violence, or does an act intended to create disorder or disturbance of public peace by resort to imminent violence.

73. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Anvar P.V. Vs. P.K. Basheer and others** in **AIR 2015 Supreme Court 180** and **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and ors.** in **AIR 2020 SC 4908** to contend that the other electronic evidence cannot be considered which is not related the accused in the case.

74. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Tomaso Bruno Vs. State of U.P.** reported in **MANU/SC/0057/2015** to contend that non collection of call records and SIM details of mobile phones seized from accused cannot be said to be mere instances of faulty investigation, but, amount to withholding of best evidence like the CDs in the present case in hand.

75. He further relied on the judgment of the Hon'ble Supreme Court

of India in the matter of **Anand Ramachandra Chougule and ors Vs. Sidarai Laxman Chougala and ors.** in **Criminal Appeal Nos.1006 and 1007 of 2010 decided on 06.08.2019** to contend that a fair criminal trial encompasses a fair investigation at the pretrial stage, a fair trial where the prosecution does not conceal anything from the court and discharges its obligation in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice concluding with a fairness in sentencing also.

76. In the above backdrop it is important here to reproduce the provisions of law under which the accused-Arshi Qureshi has been charged i.e. Sections 13 and 39 of the Unlawful Activities (Prevention) Act, 1967. The Prosecution is required to and expected to establish all the ingredients of Section 13 and 39 of the Unlawful Activities (Prevention) Act, 1967, such as :

Section 13- Punishment for unlawful Activities-

(1) Whoever

- (a) takes part in or commits, or
- (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to **Seven** years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to **Five** years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorized in this behalf by the Government of India.

The entire section 13 of Unlawful Activities Prevention Act, is based on the only and essential ingredient of "**Unlawful Activity**", therefore it is necessary to analyze the definition of Unlawful Activity which is defined Under Section 2(o) of Unlawful Activities Prevention Act, which is read as under :

2. Definition

- (1)
- (a)
- to
- (n)
- (o) "**unlawful activity**", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-
- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity **or/of** India; or
- (iii) which causes or is intended to cause disaffection against India;

77. Now, let us go through section 39 of Unlawful Activities Prevention Act, 1967 ;

Section 39-

Offences relating to support given to a terrorist organization -

- (1) A person commits the offence relating to support given to a terrorist organization -
- (a) Who, with intention to further the activity of a terrorist organization -

... 34 ...

- (i) Invites support for the terrorist organization, and
 - (ii) The support is not or is not restricted to provide money or other property within the meaning of section 40; or
- (b) Who, with intention to further the activity of a terrorist organization, arranges, manages or assists in arranging or managing a meeting which he knows is -
- (i) To support the terrorist organization, or
 - (ii) To further the activity of the terrorist organization, or
 - (iii) To be addressed by a person who associates or professes to be associated with the terrorist organization; or
- (c) Who, with intention to further the activity of a terrorist organization, addresses a meeting or the purpose of encouraging support for the terrorist organization or to further its activity.
- (2) A person, who commits the offence relating to support given to a terrorist organization under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

78. Upon perusal of the above provisions of the law alongwith the facts, circumstance and evidence in the present case, it revealed that it was for the prosecution to prove the ingredients of the above section by way of leading evidence. Mere submission does not take place of the proof. Arguments and story of the prosecution may be attractive but it must be proved by the cogent evidence. In absence of evidence it can not be said that prosecution has succeeded in proving the case.

79. In sum and substance, the most important testimony of the witnesses who are the father, mother and brother of missing Ashfaq is silent about the Unlawful Act and support given to the Terrorist

Organization by the accused-Arshi Qureshi. So far as message given by Ashfaq to his brother Ajans Majid (PW-4) in respect of his stay in ISIS is concerned, the serious doubt has been created on the testimony of this witness because his mobile phone was not seized by the NIA along with voice message. The theory of conversion of Protected Witness (PW-6) and Sandeep Temkar (PW-33) to Islam by the accused-Arshi Qureshi is also come under the shadow of doubt because of testimony of these witnesses in their cross-examination. They categorically deposed in the cross-examination that accused-Arshi Qureshi did not express any objectionable things or statement to them. They have no any complaints against the accused-Arshi Qureshi. Even the witnesses claimed to be a official and member of the IRF also admitted in their cross-examination that accused-Arshi Qureshi is well educated, cultured and mannered person and he follows Islam in its true nature and spirit. Even, the evidence of Abin Jacob (PW-22) is not sufficient to prove charges levelled against the accused-Arshi Qureshi. Moreover, in the evidence of Liju (PW-36), he deposed that his mobile phone was seized by Kerala Police then the question arose how Mr.Ghorpade (PW-52) extracted the chats from the mobile phone of Liju without the intervention of Kerala Police. In these circumstances, it can be inferred that prosecution has failed to prove the charges against the accused-Arshi Qureshi and therefore, he is entitled to be acquitted. The all seized Muddemal in this case along with articles given to the other documents is necessary to be preserved for the trial against the wanted accused. Those muddemal and articles cannot be disposed off unless it is completed. Hence, I answer point nos. 1 and 2 in the negative and in answer to point no.3 pass the following order :-

... 36 ...

ORDER

1. Accused-Arshi Qureshi @ Arshid s/o. Asif Qureshi is acquitted of the offences punishable under Sections 13 & 39 of the Unlawful Activities (Prevention) Act, 1967 vide section 235 of the Code of Criminal Procedure.
2. Accused-Arshi Qureshi @ Arshid s/o. Asif Qureshi is a under trial prisoner. He be released forthwith, if not required in any crime or case.
3. Accused-Arshi Qureshi @ Arshid s/o. Asif Qureshi shall execute PR. Bond of Rs.30,000/- (Rupees Thirty Thousands only) with one surety in the like amount to appear before the Appellate Court as and when notice is issued within six months, as per the provisions of section 437-A of Code of Criminal Procedure.
4. The muddemal property, so also, R. and P. be preserved as the accused Abdul Rashid Abdulla @ Rashi s/o. Thayyalpurail Abdulla is wanted.

DATE : 30.09.2022



(A.M. PATIL)
SPECIAL JUDGE
MCOCA/POTA/TADA/NIA
AND ADDL. SESSIONS JUDGE
GREATER MUMBAI.

Dictated and typed on : 23.08.2022, 21.09.2022 & 30.09.2022.

Signed on : 30.09.2022.

... 37 ...

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER"

DATE : 30.09.2022, AT 04:00 P.M. MAHESH KESHAV SAKHARKAR
STENOGRAPHER GRADE-I

UPLOAD DATE AND TIME NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI A.M. PATIL. C.R.NO.57.

Date of pronouncement of judgment/order : 30.09.2022.

Judgment/order signed by the P.O. on : 30.09.2022.

Judgment/order uploaded on : 30.09.2022, AT 04:00 P.M.