

KABC010161312019



**IN THE COURT OF XLIX ADDL. CITY CIVIL AND SESSIONS
JUDGE [SPECIAL COURT FOR TRIAL OF NIA CASES],
(CCH-50) BENGALURU**

DATED : This 27th day of October, 2022

PRESENT:

**SRI GANGADHARA C.M.,
B.Com., LL.B.,
XLIX Additional City Civil & Sessions Judge,
[Special Judge for trial of NIA Cases],
(CCH-50) Bengaluru.**

Spl.CC.No.506/2019

The State of Karnataka (Banasawadi Police Station), by Assistant Commissioner of Police, CCB, SE Squad, Bengaluru. (By : Learned Spl. Public Prosecutor)	... Complainant
--	------------------------

V/s.

Sri Faiz Rashid S/o Fahim Rasheed, Aged about 20 years, R/at No.03, 8th Cross, 2nd 'A' Main, Ramaiah Layout, Anupet Clinic Building, Kacharakanahalli, Bengaluru-560084. (By : Sri Tahir Ahamed Advocate)	... Accused
---	--------------------

1.	Nature of Offence	:	U/S.153-A, 124-A, 201 of the IPC and S.13 of Unlawful Activities (Prevention) Act, 1967.
2.	Date of Commission of Offence	:	From 14.02.2019 to 15.02.2019

3.	Date of F.I.R.		17.02.2019
4.	Date of Arrest of the Accused	:	17.02.2019
5.	Name of the complainant	:	Sri K.N. Yashavantha Kumar
6.	Date of Commencement of Evidence	:	30.07.2022
7.	Date of Closure of Evidence	:	23.09.2022
8.	Date of Pronouncement of Judgment	:	27.10.2022
	Order on sentence pronounced	:	31.10.2022
9.	Result of the Case	:	Acting under Section 235(2) of the Cr.P.C., the accused is convicted for the offences punishable under Sections 153-A and 201 of the IPC and Section 13 of the Unlawful Activities (Prevention) Act, 1967.

(GANGADHARA C.M.),
 XLIX Addl. City Civil & Sessions Judge,
 (Special Judge for trial of NIA Cases),
 (CCH-50) - Bengaluru.

J U D G M E N T

The Investigating Officer Sri N.H. Ramachandraiah, Assistant Commissioner of Police, CCB (Special Enquiry), Bengaluru has submitted the charge-sheet against the accused for the offences punishable under Sections 153-A, 124-A and 201 of the Indian Penal Code 1860 (hereinafter referred to as 'IPC' for short) and Section 13 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UA (P) Act' for short).

2. The brief facts of the prosecution case are as follows :-

PW.8 - Sri K.N. Yashwanth Kumar, Inspector of Police, Bengaluru City lodged the first information statement with the Station House Officer of Bansasawadi Police Station on 17.02.2019 alleging that on 14.02.2019, the terrorists attacked on C.R.P.F. Soldiers at Pulwama District, Jammu and Kashmir State and many soldiers died in the said incident. A person who was having a Facebook account in the name of Faiz Rasheed posted comments by supporting the acts committed by the terrorists with an intention to disrupt the sovereignty and integrity of India and to promote enmity between different groups on the ground of religion as "Ek musalmaan 40 par bhaari pad gaya Kashmir ka hero", "ye tho mob lynching, ram mandir, 2002 ka chota sa badla tha.. trailer samajna kyunki picture abhi bakhi hai chutiyo" and "how's the khauf Indian army??" Based on the said first information statement, PW.6 - Sri Murali N., Police Sub-Inspector of Banasawadi Police Station registered a case in Crime No.85/2019 for the offences punishable under Sections 153-A, 124-A and 201 of IPC and Section 13 of UA (P) Act and took up the matter for investigation.

3. PW.8 - Sri K.N. Yashwanth Kumar and his team apprehended the accused on 17.02.2019 itself along with his mobile phone and produced the accused before PW.6 - Sri Murali N., through his team members. PW.6 arrested the accused and conducted the arrest procedure. He seized Samsung J-7 Gold colour mobile from the possession of the accused under a mahajar in the presence of panch witnesses. Thereafter, he handed over the investigation to CW.17 - Sri P.T. Subramanya, Assistant

Commissioner of Police, CCB (Special Enquiry), Bengaluru. He secured the panchas and drew the mahazar in respect of Facebook posts and comments made by the accused and collected the evidence against the accused. Subsequently, CW.17 handed over the further investigation to PW.9 - Sri N.H. Ramachandraiah, the Assistant Commissioner of Police, CCB (Special Enquiry), Bengaluru. CW.9 sent the mobile phone recovered from the possession of the accused to FSL, Bengaluru for analysis. He collected the CDR and other documents from PW.4 - Sri Kowshik Murugesh. He obtained the prosecution sanction order from the State Government to prosecute the accused for the offence punishable under Sections 153-A of IPC and 13 of UA (P) Act. After conclusion of the investigation, he submitted the charge-sheet before this Court.

4. Upon receipt of the charge-sheet, this Court has taken cognizance of the offences punishable under Sections 153-A, 124-A and 201 of IPC and section 13 of UA (P) Act on 20.05.2019 and furnished the charge-sheet and its enclosures to the accused in compliance with section 207 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C." for short).

5. The accused filed the application under section 227 of Cr.P.C. seeking discharge from the charges leveled against him. This Court dismissed the said application after hearing the arguments of the learned counsel for the accused and the learned Special Public Prosecutor. There were sufficient materials to proceed against the accused in the charge sheet submitted by the investigation officer and therefore, charges were framed, read over and explained to the

accused in the language known to him. The accused pleaded not guilty and claimed to be tried. Hence, the case was posted for prosecution evidence.

6. In order to prove the allegations made against the accused, the prosecution has examined nine witnesses as PW.1 to PW.9, got marked the documents as Ex.P.1 to Ex.P.15 and got identified MO.1. After conclusion of the evidence, the incriminating circumstances appeared in the prosecution evidence were read over and explained to the accused in the language known to him as required under Section 313 of Cr.P.C. on 03.10.2022. The accused denied the entire incriminating circumstances appeared in the prosecution evidence as false and he has not chosen to adduce any defence evidence on his behalf.

7. This Court has heard the arguments of the learned Special Public Prosecutor and the learned counsel for the accused at length.

8. The points that arise for Court consideration are as follows:-

1. Whether the prosecution proves beyond reasonable doubt that from 19.37 p.m. on 14.02.2019 to 23.06 p.m. on 15.02.2019, the accused made derogatory posts and comments on the suicide attack on C.R.F.P. Jawans at Pulwama on his facebook account as (1) how's the khauf Indian army?? Gand Fati?, including posted smiling emojis along with cartoons of Prime Minister and leaders of BJP and also posted as Gali Gali Chore Hai, (2) ye tho mob lynching ram mandir 2002 ka chota sa badla tha.. trailer samajna kyunki picture abhi bakhi hai chutiya,

(3) our boys are always funny and (4) Ek Musalmaan 40 per bhaari pad gaya Kashmir ka hero Allah hu Akbar within the jurisdiction of Banswawadi police station supporting the terrorist act which bring into hatred and attempted to excite disaffection towards the Government established by law in India and thereby committed the offence of sedition which is punishable ***under section 124-A of the IPC?***

2. Whether the prosecution proves beyond reasonable doubt that on the above said dates, place and period of time the accused made derogatory posts and comments on his facebook account on the suicide attack on C.R.P.F., Jawans at Pulwama supporting the terrorist act with an intention to promote the enmity between different groups on the ground of religion which are prejudicial to the maintenance of harmony in the Country and thereby the accused committed the offence punishable ***under section 153-A of the IPC?***
3. Whether the prosecution proves beyond reasonable doubt that during the above said dates, place and period of time, the accused made derogatory posts on his facebook account on the suicide attack on C.R.P.F. Jawans at Pulwama and deleted those posts from his facebook account with an intention to cause disappearance of evidence of the offence and screening himself from legal punishment and thereby committed an offence punishable ***under section 201 of the IPC?***
4. Whether the prosecution proves beyond reasonable doubt that on the above said dates, place and period of time, the accused made derogatory posts and comments on his facebook account on the suicide attack on C.R.P.F. Jawans at Pulwama supporting the terrorist act with an intention to disrupt the

sovereignty and integrity of India and with disaffection against India and thereby committed an offence punishable ***under section 13 of Unlawful Activities (Prevention) Act, 1967?***

5. What order?

9. Findings of this Court on the above points are as follows:-

- Point No.1 : Does not survive for consideration
Point No.2 : In the affirmative
Point No.3 : In the affirmative
Point No.4 : In the affirmative
Point No.5 : As per final order, for the following :-

REASONS

10. **Point No.1** :- The allegations of the prosecution are that the accused commented on his facebook account on the suicide attack on C.R.P.F. Jawans at Pulwama District on 14.02.2016 supporting the terrorist act committed by Jaish-e-Mohammed organization through one Adil Ahammed Dar with an intention to bring into hatred and attempted to excite disaffection towards the Government established by law in India and thereby the accused committed the offence of sedition punishable under Section 124-A of IPC. In this regard, it is apposite to refer the decision of the Hon'ble Apex Court in the case of **S.G. Vombatkere vs. Union of India, in W.P.(C) No.682/2021** decided on 11.05.2022. In this decision, the constitutionality of Section 124-A of Indian Penal Code was challenged by the petitioner before the Hon'ble Apex Court. While

dealing with the constitutionality of Section 124-A of the Indian Penal Code, the Hon'ble Apex Court has held at para No.8 as follows :-

“8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Cri.)No.217/2021 along with W.P.(Cri.)No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking [Section 124A](#) of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under [Section 124A](#) of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under [Section 124A](#) of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of [Section 124A](#) of IPC.

f. The above directions may continue till further orders are passed.

11. A perusal of the aforesaid paragraph, the Hon'ble Apex Court has stayed the operation of Section 124-A of the Indian Penal Code and directed the Courts in India to keep all the pending trials, appeals and proceedings with respect to charge framed under Section 124-A of IPC in abeyance and adjudication with respect to other sections if any, could proceed if the Courts are of the opinion

that no prejudice would be caused to the accused. In this case, this Court has proceeded with the trial for the offences alleged against the accused other than section 124-A of IPC by holding no prejudice would be caused to the accused. Since the Hon'ble Apex Court has directed the Courts in India to keep the trial pending in respect of the charge framed under Section 124-A of the IPC in abeyance, this Court has no power to proceed with the trial in respect of the said offence and the same is kept in abeyance till final verdict of the Hon'ble Apex Court. Therefore, this Court has not considered the aforesaid offence on merits and no finding is given on the aforesaid allegations. Hence, no more discussion is necessary in this regard and this point does not survive for consideration. **Accordingly, point No.1 is answered.**

12. Point Nos.2 to 4: Since these points are interconnected and interrelated with each other, this court has taken these points together for common discussion to avoid repetition of facts.

13. It is the case of prosecution that there was a suicide attack on the C.R.P.F. Jawans at Pulwama District in Juammu and Khashmir on 14.02.2019 by the terrorists and more than 40 Jawans were killed in the said attack. In this regard, various news channels telecasted news on social media. The accused made comments supporting the said attack on his facebook account with an intention to promote enmity between different groups on the ground of religion which are prejudicial to the maintenance of harmony in the country and with an intention to disrupt the sovereignty and integrity of India. The PW.8-Sri K.N. Yeshawantha Kumar lodged the first information statement - Ex.P.10 with PW.6 - Sri Murali N., PSI of Banasavadi

police station and a FIR was registered in Crime No.85/2019 as per Ex.P.11. After registration of the case, PW.8 and his team apprehended the accused within the jurisdiction of Banasawadi police station and produced him before PW.6. Thereafter, PW.6 conducted arrest procedure and arrested the accused on 17.02.2019.

14. On perusal of the entire evidence available on record, the accused has not disputed the facts that a suicide attack was made on C.R.P.F. vehicle at pulwama and death of more than 40 Jawans in the said incident. The accused has also not disputed the facts that PW.8 - Sri K.N. Yeshawantha Kumar has not lodged the first information statement as per Ex.P.10 with PW.6 - Sri Murali N., PSI of Banasavadi police station and a FIR was registered in Crime No.85/2019 as per Ex.P.11. Though the fact of arrest of the accused by PW.6 is disputed during cross examination, the accused admitted that PW.8 Sri K.N. Yashwanth Kumar apprehended the accused within the jurisdiction of Banaswadi police station. There are materials on record to show that PW.6 Sri Mural N. arrested the accused on 17.02.2019. Therefore, much discussion on the said facts is not necessary.

15. It is the case of prosecution that PW.6 secured PW.1 Sri Murali M. @ Kannada Murali and CW.3 - Sri Muralidhar to Banasavadi police station and seized the Samsung-J7 mobile from the possession of the accused and Jio Company Sim Card was found in the said mobile and its mobile number is 6360345998. In order to prove the said facts, the prosecution has relied upon the oral

evidence of PW.1, PW.6 and PW.8, documentary evidence at Ex.P.1, Ex.P.8 and M.O.1.

16. PW.1 - Sri Murali M. @ Kannada Murali has deposed in his evidence that on 17.02.2019, he and CW3 - Sri Murulidhar were summoned by the Police Inspector Sri Murali to Banaswadi Police Station. They went to the police station at 5.15 p.m. on the same day. The accused was also present in the police station when they reached the police station. The police seized the golden colour Samsung mobile - M.O.1 in their presence under a mahajar.

17. PW.8 - Sri K.N. Yashwanth Kumar deposed in his evidence that on 17.02.2019, he and his team CW-11 Sri Sathish, CW-12 Sri Siddanna and CW-14 Sri Raman Gowda apprehended the accused Faiz Rasheed along with mobile in his possession. He sent the said Faiz Rasheed and the mobile phone through CW-11, 12 and 14 along with his report to produce him before the investigation officer.

18. PW.6 - Sri Murali N. deposed in his evidence that on 17.02.2019, at 5.00 p.m., CW-1 Sri K.N. Yashwanth Kumar sent the accused, a request letter and a Samsung J7 mobile through CCB police. Then, he arrested the accused and conducted the arrest procedure. On the same day, he secured CW-2 Sri Murali M. @ Kannada Murali and CW-3 Sri Muralidhar P. to the Police Station. The accused produced a Samsung J7 gold colour mobile - M.O.1 from his possession and he seized the same under Ex.P.1. There were two sim slots in the said mobile but

only one sim was inserted. It was a Jio company Sim Card and its mobile number is 6360345998.

19. PW.4 - Sri Koushik Murugesh deposed in his evidence that on 28.03.2019, the CCB police sent a notice seeking CAF, CDR and GPRS data of mobile number 6360345998 from 14.02.2019 to 15.02.2019 and furnished the aforesaid particulars to the CCB police along with certificate u/S.65B of Indian Evidence Act.

20. A perusal of Ex.P.1, the accused produced the mobile - M.O.1 from his possession in the presence of PW.1 and CW.3 and PW.6 seized the said mobile under Ex.P.1. There were two sim slots in the said mobile and a Jio company Sim Card was inserted and its mobile number is 6360345998. The mobile is produced before this court and the PW.1 identified the M.O.1 as it was seized in his presence.

21. A perusal of Ex.P.8, it reveals that the sim card found in M.O.1 is a Jio company mobile and its mobile number is 6360345998.

22. During the cross examination of PW.1, the learned counsel for the accused has not elicited anything contrary to the chief examination of PW.1 except he was a witness to the mahajars in two or three cases. Though the suggestions were put to PW.1 that no mobile was seized from the possession of the accused and he never saw the accused, the same were denied by the PW.1 as false. The learned counsel for the accused argued before the court that PW.1 is a stock witness and his evidence cannot be believed. It is

pertinent to note that the evidence of PW.1 cannot be discarded on the ground that he was a witness to two or three mahajars unless the evidence of PW.1 is untrustworthy and unreliable. The learned counsel for the accused has not elicited anything from the mouth of PW.1 to show that his testimony is untrustworthy and unreliable. Therefore, the prosecution has proved beyond reasonable doubt that the PW.6 seized M.O.1 along with Jio Sim Card from the possession of the accused in the presence of PW.1 and CW.3 under Ex.P.1 and the mobile number of the said Sim Card is 6360345998.

23. The learned counsel for the accused argued before the court that the investigation officer has not conducted the investigation regarding ownership of the mobile seized in this case and the prosecution has not produced any evidence to connect the accused with the M.O.1. It is true that the investigation officer has not collected any receipt or bill pertaining to M.O.1 to show that the accused is the owner of M.O.1, but the accused nowhere disputed that M.O.1 does not belong to him. However, the prosecution has produced cogent evidence to show that the M.O.1 was seized from the possession of the accused. Till today, nobody has come forward before this court claiming that M.O.1 is belonged to him. Moreover, the Sim Card found in M.O.1 is standing in the name of the accused and he was using the said Sim Card. Further, this court can draw presumption under section 114 of the Indian Evidence Act that the accused is either a thief or has received the M.O.1 knowing that it is a stolen property if he denies the ownership of the said mobile. In such circumstances also, the accused is liable for the offences alleged against him. There are no materials on record to show that somebody lodged complaint stating that somebody stole his mobile

in any police station. Further, the accused has not explained during recording of his statement under section 313 of Code of Criminal Procedure that the M.O.1 does not belong to him. Hence, this court can safely come to the conclusion that the M.O.1 belongs to the accused and there is no force in the arguments advanced by the learned counsel for the accused.

24. It is the case of prosecution that the accused had a facebook account in his name 'Faiz Rasheed', his gmail ID is 'faiz435@gmail.com' and password is 'unitedstates' to open his facebook account. The accused disclosed his email ID and password to CW.17 - Sri P.T. Subramanya. Accordingly, CW.17 opened the facebook account of the accused on a computer in the presence of PW.2 - Sri Ravikumar H. and CW.5 - Sri Ravindra. In order to prove the said facts, the prosecution has placed reliance on the oral evidence of PW.2, PW.6 and documentary evidence at Ex.4 and Ex.P.17(a).

25. PW.2 - Sri Ravikumar H. has deposed in his evidence that on 20.02.2019, he and his friend Sri. K.R. Ravindra were called by CCB police to CCB office and they were requested to act as panch witnesses in this case by issuing notice as per Ex.P.2. They were taken to a room where computer system was installed in the said office. The police opened the system and the accused gave his G-mail ID and password to open his facebook account. The said G-mail ID was having the name 'faiz', digits and @gmail.com. The police opened the facebook account of the accused on the computer by using the G-mail ID

and password provided by the accused. The facebook ID and password of the accused was 'Faiz Rashid'.

26. PW.6 - Sri Murali N. deposed in his evidence that the accused produced a Samsung J7 gold colour mobile from his possession. He instructed the accused to open his Facebook account in the said mobile. Accordingly, the accused opened his Facebook account. The said Facebook account was standing in the name of Faiz Rasheed. The said Facebook account was attached to the E-mail ID faiz435@gmail.com. In the particulars of the holder of the Facebook account, the from address was shown as Mecca, Saudi Arabia. There is an information regarding the education and other particulars of the holder of the account in the said Facebook account.

27. A perusal of Ex.P.4, it is mentioned that the accused disclosed his facebook email ID as 'faiz435@gmail.com' and password as 'unitedstates'. Accordingly, the investigation officer opened the facebook account by using the email ID and password provided by the accused and a facebook account was opened in the name of Faiz Rasheed. It also reveals that the accused studied at KNS institute of Technology, Evershine High School and Narayana PU College, he lives in Bengaluru and he is from Mecca, Saudi Arabia.

28. A perusal of Ex.P.17(a) the annexure provided by the FSL Bengaluru in support of the FSL report - Ex.P.17, the accused was having a facebook account in the name of Fiaz

Rasheed and its email ID is 'faiz435@gmail.com'. It also contains that the accused was using Jio Sim Card. The annexure A1k reveals the user account details. The order sheet dated 18.02.2019 reveals that the accused submitted before this court at the time of enquiry that his father hails from Bellary District, his mother hails from Hyderabad, he was born in Saudi Arabia and he studied at JSS Public School. The information found in annexure A1k of Ex.P.17(a) and Ex.P.4 is tallied with the submissions made by the accused before this court.

29. During the cross examination of PW.2, the accused nowhere disputed that the accused did not have any facebook account in the name of Faiz Rasheed and nowhere disputed that he never provided his facebook email ID and password to the investigation officer. Nothing was elicited from the mouth of PW.2 in support of the defence of the accused during cross examination except putting suggestions that he was not present during the mahajar process and he put the signature at the instance of the police. However, the PW.2 denied the said suggestions made by the learned counsel for the accused as false.

30. The learned counsel for the accused argued before the court that PW.2 is a stock witness and he clearly admitted during cross examination that he was a witness to 13 to 14 mahajars for the last seven years. Therefore, he is not a trustworthy witness. It is true that PW.2 admitted during his

cross examination that he was a witness to 13 to 14 mahajars, but the said mahajars were drawn for the last seven years. Though the PW.2 admitted in his cross examination that he was a witness to 13 to 14 mahajars, his evidence cannot be disbelieved or his testimony cannot be discarded on that ground alone as nothing was elicited from his mouth during cross examination to show that the evidence of the PW.2 is not trustworthy.

31. It is pertinent to note that the summons was issued to CW.17 Sri P.T. Subramanya to examine him on behalf of the prosecution at the request of the learned Special Public Prosecutor, but the same was returned with shara that CW.17 was in USA on visit and he would return to India after four months. Hence, the learned Special Public Prosecutor requested this court to record the evidence of CW.17 through Video Conferencing. Then, the learned counsel for the accused submitted before the court that the mahajar prepared by CW.17 was already marked through PW.2 as Ex.P.4 and the documents relied upon by the prosecution can be marked with consent and there is no need to examine CW.17 and he may be dropped. Therefore, this court dropped the CW.17 by considering the submissions of the learned counsel for the accused. The said submission was taken on record on 23.09.2022. The CW.17 is a material witness to prove Ex.P.4 on behalf of prosecution. As discussed supra, Ex.P.4 discloses that the accused provided the gmail ID and password to open his

facebook account. The prosecution has placed independent evidence before the court to prove the said facts and the CW.17 was dropped on the submissions of the learned counsel for the accused.

32. On careful analysis of the aforesaid oral as well as documentary evidence, the prosecution has proved beyond reasonable that the accused had a facebook account in the name of Fiaz Rasheed, his facebook account email ID was 'faiz435@gmail.com' and his facebook password was 'unitedstates' with cogent and convincing evidence.

33. It is the case of prosecution that the accused made the comments on his facebook account on 14.02.2019 and 15.02.2019 on the suicide attack on C.R.P.F. Jawans at Pulwama as 'Ek musalman 40 par bhaari pad gaya Kashmir ka hero', 'ye tho mob lynching, ram mandir 2002, ka chota sa badla tha.. trailer samajna kyunki picture abhi bakhi hai chutiyo', and 'how is the khauf Indian army??' and so on. In order to prove the said facts, the prosecution has placed reliance on the oral evidence of PW.2, 3, 5 and 9 and documentary evidence at Ex.P.4, 7, 17, 17(a).

34. PW.2 - Sri Ravikumar H. deposed in his evidence that the police opened the facebook page of the accused. There was no post made by the accused on his facebook account in respect of Pulwama attack posted on 14.02.2019. There were notifications on his facebook account in respect of the deletion

of the posts. The accused also replied to the comments made by others on his posts and also expressed his opinion. The accused used smiling-crying emojis and the said message was in English writings with Hindi and Urdu mixed language. The police had taken more than 70 screenshots on the computer from the facebook account of the accused. The police prepared two CDs in respect of the said screenshots. One CD was packed and sealed in our presence and obtained his signature on the said CD.

35. PW.3 - Sri Niranjan K. Rao deposed in his evidence that on 15.02.2019, while he was watching the facebook, he noticed that one Faiz Rasheed made a comment on Pulwama attack as “how is the khauf Indian army? Gand” with smiling face emojis. Upon seeing the said comment, he became angry and commented on the said comment of Faiz Rasheed by posting angry face emoji. On 26.03.2019, he visited CCB office, Chamarajpet and he was shown the screenshots relating to comment made by him and the accused on the facebook regarding Pulwama attack.

36. PW.5 - Sri Shabareesh deposed in his evidence that on 15.02.2019, while he was watching the facebook, he noticed that one Syed Rasheed made a comment on Pulwama attack as “kaise hein gand fati Indian army?”. Upon seeing the said comment, he commented as “wait for the fuck” and “they make fun with their family members, they never change”. He tagged the said post to his friend Girish Baradwaj to take any legal

action against Syed Rasheed. On 27.03.2019, he visited the CCB office and he was shown the screenshots relating to comment made by him and the accused on the facebook regarding Pulwama attack.

37. A meticulous reading of Ex.P.4, it is mentioned in the notification section at page No.4 that the accused made the comments as “how’s the khauf indian army ?? gand...” with smiling emojis and the PW.3 made the comment on the said comment of the accused. The comments made by the PW.5 on the comment of the accused is mentioned in page 56 and 57 of the said document. It further reveals the following comments made by the accused on the posts made by others. They are as follows;

Sl. No.	Posts of others	Comments of the accused	Date of comment	Time of the comment	Page No. in Ex.P.4
1.	The Times of India	“ek musalman 40 par bhaari pad gaya Kashmir ka hero” with smiling emojis by posting the picture of suicide attacker who holding a rifle in his hand.	15.02.2019	23.06 p.m.	11 and 12
2.	The Quint	“ek musalman 40 par bhaari pad gaya Kashmir ka hero” with smiling emojis by posting the picture of suicide attacker who holding a rifle in his hand.	15.02.2019	22.52 p.m.	13 and 14

3.	The Logical Indian.com	"ek musalman 40 par bhaari pad gaya" with smiling emojis	15.02.2019		15
4.	India times	"ek musulmaan 40 par bhaari pad gaya Kashmir ka hero" with smiling emojis	15.02.2019	22.41 p.m.	16 and 17
5.	The Times of India	"ek musulmaan 40 par bhaari pad gaya Kashmir ka hero" by posting the suicide attacker's photo with smiling emojis	15.02.2019	22.41 p. m.	18
6.	The Times of India	"ek musulmaan 40 par bhaari pad gaya Kashmir ka hero" by posting the suicide attacker's photo with smiling emojis	15.02.2019	22.38 p.m.	19 and 20
7.	The Times of India	"ek musulmaan 40 par bhaari pad gaya Kashmir ka hero Alla Hu Akbar" by posting the suicide attacker's photo with smiling emojis	15.02.2019	22.22 p.m.	20 and 21
8.	Hindu- stan Times	"our boys are always funny" with smiling emojis by posting the suicide attacker's photo	15.02.2019	20.50 p.m.	23 and 24
9.	The Times of India	"our boys are always funny" with smiling emojis	15.02.2019	20.31 p.m.	25

10.	The Times of India	"ye tho mob lynching, ram mandir, 2002 ka chota sa badla tha.. trailor samajna kyunki picture abhi bakhi hai chutiyo" with smiling emojis.	15.02.2019	15.00 p.m.	32
11.	The Times of India and three posts of News 18	"ye tho mob lynching, ram mandir, 2002 ka chota sa badla tha.. trailor samajna kyunki picture abhi bakhi hai chutiyo" with smiling emojis	15.02.2019	14.53 p.m.	33 to 35
12.	Tharki World Ka Siyappa	"ye tho mob lynching, ram mandir, 2002 ka chota sa badla tha.. trailor samajna kyunki picture abhi bakhi hai chutiyo" with smiling emojis	15.02.2019	14.50 p.m.	36 and 37
13.	Being Indian	The accused likes this post	15.02.2019		40
14.	The Quint	"how's the khauf Indian army" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders beneath the the said comment with words 'GALI GALI CHOR HAI'	14.02.2019	22.28 p.m.	48 and 49
15.	Hindustan Times	"how's the khauf Indian army?? gand Fati?" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders.	14.02.2019	21.28 p.m.	53 and 54

16.	The Times of India and Aravind Limbavali	"how's the khauf Indian army?? gand Fati?" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders beneath the the said comment with words 'GALI GALI CHOR HAI'	14.02.2019	21.27 p.m	54 to 56
17.	India TV	"how's the khauf Indian army?? gand Fati?" with smiling emojis	14.02.2019	21.24 p.m.	57 to 59
18.	The Quint	"how's the khauf Indian army?? gand Fati?" with smiling emojis	14.02.2019	21.24 p.m.	57 to 59
19.	Hindu- stan Times	"how's the khauf Indian army?? gand Fati?" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders.	14.02.2019	21.21 p.m.	62 and 63
20.	Ghanta Sarcasm	"how's the khauf Indian army?? gand Fati?" with smiling emojis	14.02.2019	21.19 p.m.	63 and 64
21.	The Quint	"how's the khauf Indian army??" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders beneath the said comment with words 'GALI GALI CHOR HAI'	14.02.2019		70 and 71

22.	Dekhlo	Posted the photos of the Hon'ble Prime Minister and other BJP leaders with words 'GALI GALI CHOR HAI'	14.02.2019	21.06 p.m.	74 and 75
23.	Aliya V/S Pappu Jokes	Posted the photos of the Hon'ble Prime Minister and other BJP leaders with words 'GALI GALI CHOR HAI'	14.02.2019	19.39 p.m.	76 and 77
24.	Hindu- stan Times	Posted the photos of the Hon'ble Prime Minister and other BJP leaders with words 'GALI GALI CHOR HAI'	14.02.2019	19.37 p.m.	78 and 79

38. The prosecution has produced the GPRS Data, I.P. address and Cell Site address to show that the accused made the aforesaid comments. A perusal of Ex.P.7, the accused used the internet on the aforesaid timings when the accused made comments on the posts of others by using mobile number 6360345998.

39. During the cross examination of PW.3 and 5, the learned counsel for the accused has not elicited anything contrary to the chief examination of the said witnesses. PW.3 and 5 have consistently deposed that the accused made the comments on the suicide attack on the C.R.P.F. Jawans at Pulwama as 'how's the Khauf Indian army? gand" and they made comments on the said comments of the accused.

Therefore, the prosecution has proved with cogent and convincing evidence that the accused made comments on the suicide attack made by the terrorists on the C.R.P.F. Jawans at Pulawama.

40. It is pertinent to note that during the cross examination of PW.3, the learned counsel for the accused put the suggestion to PW3 at para No.7, line No.2 and 3 as follows;

“It is true to suggest that I saw many abusive replies for the comment of the accused.” (In the deposition it is wrongly typed as “for the comment” instead of “to the comment”)

41. The learned counsel for the accused put the suggestions to PW.5 during the cross examination at para No.6 and 7 as follows;

“6. It is true to suggest that I did not observe any derogatory post made by the accused against any particular religion. It is true to suggest that I did not see any person made any comments or reply supporting the comment made by the accused. It is true to suggest that several persons made abusive replies to the comment made by the accused. I did not see any reply by the accused to the abusive replies made by the public.

7. It is true to suggest that I sent an abusive reply to the comment made by the accused. I used the word 'they' in my comment and it refers to the persons who degrading our Indian army. It is false to suggest that I referred the word 'they' in my comment to the religious community to which the accused belongs. In a second comment, I used the words “just wait” and the said words refers to that the police will take legal action against him. It is false to suggest that I have the habit of making abusive reply on social media.”

42. On perusal of the aforesaid cross examination, the accused has not seriously disputed that he was not having facebook account in the name of 'Faiz Razeed', the email ID provided to the said facebook account was not 'faiz435@gmail.com' and he never posted any posts or made any comments to the posts of others. He has indirectly admitted that he had facebook account in the name of 'Faiz Razeed', the email ID provided to the said facebook account was 'faiz435@gmail.com' and he commented on the suicide attack on C.R.P.F. Jawans at Pulwama.

43. The learned counsel for the accused argued that the suggestions made by the accused cannot be used to prove the case of prosecution and it is the duty of the prosecution to prove the charges leveled against the accused beyond reasonable doubt. Hence, the suggestion made during the cross examination of the witnesses cannot be taken into consideration. As discusses supra, the prosecution has adduced cogent and convincing evidence before the court to prove its case beyond reasonable doubt. This court has not come to the conclusion that the prosecution proved its case beyond reasonable doubt based on the suggestions made by the accused during cross examination of the prosecution witnesses. But the admissions made by the accused during the cross examination further strengthen the case of the prosecution. With this available evidence, this court proceeds to

examine whether the said evidence satisfy the ingredients of the offences alleged against the accused by the prosecution.

44. It is the allegations of the prosecution that the accused made derogatory comments on his facebook account on the suicide attack made on C.R.P.F. Jawans at Pulwama and thereby committed the offence punishable under section 153A of IPC. Therefore, it is apposite to extract section 153A of IPC for better appreciation of the facts. Section 153A of IPC reads as follows;

“153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony:-

(1) Whoever--

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or illwill between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason

whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.--Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

45. A plain reading of the aforesaid section, the prosecution has to prove before this court that the accused by words, either spoken or written, or by signs or by visible representations or otherwise, promoted or attempted to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racials, language or regional groups or castes or communities, or committed any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility, or organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the

participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community or the accused committed the above said acts in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies with cogent and convincing evidence to convict the accused under section 153A of IPC. In this background, this court proceeds to examine the evidence adduced by the prosecution to prove the ingredients of the said offence.

46. As discussed supra, the prosecution has adduced cogent and convincing evidence that the accused commented on his facebook account on the suicide attack made on the Indian C.R.P.F. Jawans at Pulwama in writing as well as by sings. He commented on the posts made by various news channels on facebook regarding Pulwama attack by words and by signs as 'Ek musalman 40 par bhaari pad gaya Kashmir ka hero Allah Hu Akbar', 'ye tho mob lynching, ram mandir 2002, ka chota sa badla tha.. trailer samajna kyunki picture abhi bakhi hai chutiyo', 'how is the khauf Indian army??', "our boys are always funny" "how's the khauf Indian army?? gand Fati?" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders with words 'GALI GALI CHOR

HAI” and also posted the photo of the suicide attacker who holding a rifle in his hand. The accused took the issue of Ram Mandir, took the words one muslim is equal to 40 Jawans Alla Hu Akba and our boys are always funny. The aforesaid comments clearly go to show that the accused made the said derogatory comments with an intention to promote enmity between different groups on the ground of religion and committed an act which is prejudicial to the maintenance of harmony between different groups which was likely to disturb the public tranquility. The prosecution has also adduced evidence to show that many Hindu community people became angry and commented on the comments of the accused and also made derogatory comments and the same can be seen in Ex.P.4. Even the learned counsel for the accused suggested PW.5 that PW.5 made derogatory comments on the comments made by the accused. The prosecution has also adduced evidence to show that some muslim community people supported the comments made by the accused and the same can also be seen in Ex.P.4. Therefore, the aforesaid acts of the accused clearly attract the ingredients of the offence punishable under section 153A of IPC.

47. The learned counsel for the accused argued before the court that there must be two groups to attract the ingredients of the offence under section 153A of IPC. In this case, the witnesses have admitted that the accused has not commented against any religion. Therefore, the prosecution has

not proved the ingredients of the said offence with cogent and convincing evidence. In this regard, he has placed reliance on the decision of the Hon'ble Apex Court in **Patricia Mukhim Vs. State of Meghalaya and others, (2021) AIR (SC) 1632.**

48. This court has gone through the aforesaid decision meticulously. The Hon'ble Apex Court quashed the case against the appellant on the ground that there was no intention on the part of the appellant to promote class/community hatred, as there is no attempt made by the appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under section 153A and 505(1) of IPC have not been made out. But the facts involved in this case are totally different from the facts of the said case. In the opinion of the court, there is no merit in the submissions of the learned counsel for the accused. As discussed supra, the accused has taken the issue of Rama Mandir in his comments which instigates the religious feelings of Hindu community. He has also commented as one Muslim is equal to 40 persons and Muslim boys are always funny. Further there is evidence to show that the Hindu community people made derogatory comments by engraving the comments made by the accused. The said comments clearly attract the ingredients of offence under section 153A of IPC and this court has declined to accept the arguments of the learned counsel for the accused.

49. The next allegation of the prosecution is that the accused made derogatory comments on his facebook account on the suicide attack made on C.R.P.F. Jawans at Pulwama and deleted those comments with an intention to cause disappearance of the evidence and thereby committed the offence punishable under section 201 of IPC. Therefore, it is apposite to extract section 201 of IPC for better appreciation of the facts. Section 201 of IPC reads as follows;

“201. Causing disappearance of evidence of offence, or giving false information to screen offender;- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; r believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be

punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.— and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.”

50. A bare reading of the aforesaid section, the prosecution has to prove before this court that the accused knowing that an offence has been committed, caused the evidence of the commission of that offence to disappear, with the intention of screening himself from legal punishment to convict the accused for the aforesaid offence. In this regard, this court has perused the evidence adduced by the prosecution to prove the ingredients of the aforesaid offence.

51. The PW.6 Sri Murali N. deposed in his chief examination that the accused produced a Samsung J7 gold colour mobile from his possession. He instructed the accused to open his Facebook account in the said mobile. Accordingly, the accused opened his facebook account. The said Facebook account was standing in the name of Faiz Rasheed. There were no posts regarding comment on Pulwama attack on the said

Facebook account. The accused stated that he deleted the said posts and comments with the apprehension of his arrest by the police.

52. The PW.2 Sri Ravikumar H. deposed in his chief examination that the police opened the facebook page of the accused and there was no post made by the accused on his facebook account in respect of the suicide attack on C.R.P.F. Jawans at Pulwama on 14.02.2019. There were notifications on his facebook account in respect of deletion of the posts. When the accused was enquired in this regard, he informed that he deleted the posts due to fear of his arrest by the police.

53. A perusal of the Ex.P.4, there are three notifications about removal of posts from the facebook account of the accused. The said notifications can be seen in page No.3 of Ex.P.4.

54. The aforesaid oral evidence of PW.2 and 6 is in corroboration with the documentary evidence Ex.P.4. The evidence adduced by the prosecution clearly goes to show that the accused made comments on the suicide attack made on the C.R.P.F. Jawans at Pulwama and deleted the said posts with an intention to cause the disappearance of the evidence of the offence and screening himself from legal punishment. Even the accused has not made any explanation in this regard at the time of recording his statement under section 313 of Cr.P.C. Hence,

the evidence adduced by the prosecution has satisfied the ingredients of the offence punishable under section 201 of IPC.

55. The next allegation of the prosecution is that the accused made derogatory comments on his facebook account about the suicide attack made on C.R.P.F. Jawans at Pulwama supporting the unlawful activities committed by the terrorists and thereby committed the offence punishable under section 13 of UA (P) Act. Therefore, it is apposite to extract section 13 of UA (P) Act for better appreciation of the facts. Section 13 of UA (P) Act reads as follows;

“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 therefor carried on by any person authorised in this behalf by the Government of India.”

56. A bare reading of the aforesaid section, the prosecution has to prove before this court that the accused took part in or committed, or advocated, abetted, advised or incited the commission of, any unlawful activity or in any way, assisted any unlawful activity of any association, declared unlawful under section 3 of the UA (P) Act. In order to know the meaning of unlawful activity, it is apposite the extract section 2(o) of the UA(P) Act which reads as follows;

“2(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 of India; or

(iii) which causes or is intended to cause disaffection against India;

57. On perusal of the definition of unlawful activity, the prosecution has to prove before the court that the accused made the comments which are intended, or supported 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 which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or which causes or is intended to cause disaffection against India.

58. The learned counsel for the accused argued before the court that the allegations made in the charge sheet do not attract the ingredients of the aforesaid offence. The prosecution has not proved that the accused was disaffection against India and failed to prove the charges leveled against the accused beyond reasonable doubt. Hence, the accused is entitled for acquittal.

59. As discussed supra, the prosecution has adduced evidence to show that the accused made the derogatory posts on his facebook account about the suicide attack made on Indian Army at Pulwama and also commented on the posts made by various news channels on facebook as 'Ek musalman 40 par bhaari pad gaya Kashmir ka hero Allah Hu Akbar', 'ye tho mob lynching, ram mandir 2002, ka chota sa badla tha.. trailer samajna kyunki picture abhi bakhi hai chutiyo', 'how is the khauf Indian army??, "our boys are always funny" "how's the khauf Indian army?? gand Fati?" with smiling emojis by posting the photos of the Hon'ble Prime Minister and other BJP leaders with words 'GALI GALI CHOR HAI" and also posted the photo of the suicide attacker who holding a rifle in his hand". The

aforesaid posts and comments made by the accused clearly go to show that he supported or advocated the terrorist act committed by the terrorists against the Indian Army with an intention to disrupt the sovereignty and integrity of India and with an intention to cause disaffection against India. Therefore, the prosecution has adduced the evidence to prove the ingredients of unlawful activity as defined under section 2(o) of the UA (P) Act and the offence punishable under section 13 of UA(P) Act. Hence, there is no force in the arguments advanced by the learned counsel for the accused.

60. The learned counsel for the accused argued before the court that PW.8 Sri K.N. Yashwanth Kumar lodged a false complaint before the PW.6 Sri Murali N. He further argued that PW.8 admitted that he was the in-charge of Cyber Police Station at the time of lodging the first information statement. If any complaint is filed alleging commission of any offence by using any electronic device before Cyber Police Station, the in-charge of the police station has to verify and ascertain the veracity of the allegations made in the first information statement. In order to avoid the said procedure, the PW.8 lodged a false case at the instigation of the political leaders and the accused has been falsely implicated in this case.

61. It appears from the evidence of PW.8 that when he was in the jurisdiction of Banasawadi police station, he saw the comments made by the accused on the suicide attack on

C.R.P.F. Jawans at Pulwama and therefore, he sets the criminal law into motion by lodging Ex.P.10. A careful perusal of the evidence available on record, the ingredients of the offences punishable under Information Technology Act are not attracted. Even PW.8 clearly deposed that the ingredients of offences punishable under the provisions of the Information Technology Act were not attracted to register a case in Cyber Police Station. Therefore, there is no question of registration of a case in Cyber police station after verifying the veracity of the allegations as argued by the learned counsel for the accused and there is no substance in the arguments advanced by the learned counsel for the accused.

62. The learned counsel for the accused argued before the court that the certificates produced by the prosecution in support of the electronic evidence adduced before this court do not contain the ingredients of section 65B of the Indian evidence Act and they are defective in nature. Therefore, the electronic evidence produced before this court cannot be looked into and the prosecution has not produced any materials to connect the accused to the alleged comments. In this regard, this court has perused the records. The prosecution has produced the Ex.P.4, 6 to 8 and Ex.P.16 to show that the accused commented on the suicide attack made on C.R.P.F. Jawans on his facebook account by using his samsung mobile. A perusal of the certificates submitted before this court, there is no defect in the said certificates and it is clearly mentioned that

the CDRs, mahajar and other computer outputs were taken from the office computer. For the sake of discussion, it is assumed for a while that the Ex.P9 and Ex.P16 are defective in nature, this court would have summoned the concerned witnesses to provide proper certificate in view of the law laid down by the Hon'ble Apex Court in **Arjun Pandith Rao's** case during the trial. It is pertinent to note that the accused himself admitted during the cross examination of prosecution witnesses that he himself made the comments on his facebook account as discussed in preceding paragraphs. Therefore, even there is any defect in the certificates produced by the prosecution, the same is not come to the aid of the accused. Hence, there is no substance in the arguments advanced by the learned counsel for the accused.

63. The learned counsel for the accused argued before the court that the person who registers a case under the provisions of U A (P) Act has to inform the same to the state government immediately. Thereafter, the state government has to forward the said report to the central government. The central government, after considering the report submitted by the state government, has to issue sanction for prosecution of the accused as per section 6 of the National Investigation Act since the offences under U A (P) Act are scheduled offences under the said Act. But in this case, the investigation officer has not submitted any report after registration of the case and the central government has not given any sanction to prosecute the

accused under the provisions of U A (P) Act. Therefore, the accused is entitled for acquittal on this ground.

64. A perusal of the evidence of PW.6, he clearly deposed during his cross examination that he sent a report to the state government about registration of the case under the provisions of U A (P) Act. A plain reading of section 6 of National Investigation Act, it does not deal with issuance of sanction to prosecute the accused as argued by the learned counsel for the accused. PW.7 has deposed before this court that the central government has issued a notification authorising the state government to issue prosecution sanction order to prosecute the accused under the provisions of U A (P) Act and there is a notification by the central government in this regard. Therefore, there is no merits in the arguments advanced by the learned counsel for the accused.

65. The learned counsel for the accused argued before the court that no preliminary enquiry was conducted by the sanctioning authority before according sanction to prosecute the accused for any of the offences. Therefore, the sanctioning authority has not complied section 196(3) of Cr.P.C. He further argued that PW.7 admitted during his cross examination that there is no reference regarding sending of the records to Director of Prosecution. Hence, the sanction produced by the prosecution before this court is a defective one and the accused is entitled for acquittal on this ground. In support of his

arguments, the learned counsel for the accused has placed reliance on para No.10 of the decision of the Hon'ble High Court of Karnataka in **P. Venkataraghavan and others Vs. Habeeb Khan, (2015) ILR (Karnataka) 1945** which reads as follows;

“10. Referring to the facts, in this particular case, as rightly argued by the Learned Counsel, there is absolutely no sanction order obtained by the complainant to seek the indulgence of the Court for taking cognizance on the basis of his protest petition and calling upon the accused persons to answer the charges against them. One more thing to be noted here that as per Section 196(3) of Cr. P.C., the Central Government or the State Government has to refer the matter to the jurisdictional Police for investigation. In this particular case, it is pertinent to observe here that the jurisdictional Police have already investigated the case and submitted 'B' Final Report on the FIR lodged by the complainant. Therefore, at any stretch of imagination, it cannot be said that the complaint by way of protest petition is maintainable before the jurisdictional Magistrate.”

66. A careful reading of the aforesaid judgment, the complaint lodged before the learned Magistrate alleging that the petitioners published an illustration depicting the virtues of one “Mohammed” hurting the sentiments of the Muslim brethren and prayed for taking action against one Kehsava. After completion of investigation, the police submitted 'B' report before the court. The complainant challenged the said report by filing a protest petition. After examination of the complainant before the court as PW.1, the learned Magistrate took the cognizance of the alleged offence based on the materials available on record and issued process to the accused. The same was challenged before the Hon'ble High

Court. The Hon'ble High Court quashed the case on the ground that the investigation officer of the case submitted 'B' report to the court and no sanction was obtained by the complainant to prosecute the petitioners under section 153A of IPC. In this background, the Hon'ble High Court observed that the state government or central government has to refer the matter to the jurisdictional police for investigation as per section 196(3) of Cr.P.C. In this case, the investigation officer submitted the draft charge sheet before the sanctioning authority, the state government forwarded the said report to the independent review committee and after receipt of the report from the independent review committee issued the sanction order as deposed by the PW.7. Therefore, the facts of both cases are distinguishable. With great respect to the Hon'ble High Court, the said decision is not aptly applicable to the facts and circumstances of this case. Hence, this court does not find any merit in the arguments advanced by the learned counsel for the accused.

67. On careful analysis of the oral as well as documentary evidence adduced by the prosecution, it has adduced the evidence to show that the accused was having the Samsung J7 mobile and he was having facebook account in his name as 'Fiaz Rasheed'. It has produced the evidence to show that the accused made the derogatory posts on his facebook account by supporting the suicide attack made on C.R.P.F. Jawans at Pulwama with an intention to promote enmity

between different groups on grounds of religion which is prejudicial to the maintenance of harmony between different religions which was likely to disturb the public tranquility. It has also adduced evidence to show that the accused made the posts and comments with an intention to disrupt the sovereignty and integrity of India and the comments made by the accused clearly go to show that he was felt happy with the incident attack on C.R.P.F. Jawans at Pulwama by terrorists which caused disaffection against India. It has also adduced evidence to show that the accused deleted the posts made on his facebook account with an intention to cause disappearance of the evidence and screening himself from legal punishment. The prosecution has proved beyond all reasonable doubt that the accused has committed the offences punishable under section 153A and 201 of IPC and section 13 of U A (P) Act with cogent and convincing evidence. Accordingly, this court has answered **point No.2 to 4 in the affirmative.**

68. Point No.5 :- As per the detail discussion on point No.1 to 4, this court has come to the conclusion that the prosecution has proved beyond reasonable doubt that the accused committed the offences punishable under section 153A and 201 of IPC and section 13 of U A (P) Act with cogent and convincing evidence. This court has also come to the conclusion that the Hon'ble Apex Court directed all the courts in India to keep trial of the offence under section 124A of IPC in abeyance till final verdict of the Hon'ble Apex Court. Hence, this court has not conducted

trial for the offence under section 124A of IPC and the same is kept in abeyance. In view of the discussions made supra, this court proceeds to pass the following;

ORDER

This court has not conducted trial for the offence punishable under section 124A of IPC and the same is kept in abeyance in view of the directions issued by the Hon'ble Apex Court in S.G. Vombatkere Versus Union of India, Writ Petition (C) No.682/221, decided on 11.05.2022.

The accused - Sri Faiz Rashid is found guilty of the offences punishable under sections 153A and 201 of IPC and section 13 of U A (P) Act. Hence, acting under Section 235(2) of the Cr.P.C., the accused is convicted for the offences punishable under Sections 153-A and 201 of the IPC and Section 13 of the Unlawful Activities (Prevention) Act, 1967.

(Partly dictated to the Judgment Writer, transcription thereof computerized by him, partly typed by me in my laptop as well as in the computer allotted to my chamber, corrected and then pronounced by me, in the open Court on this 27th day of October, 2022)

(GANGADHARA C.M.),
XLIX Addl. City Civil & Sessions Judge,
(Special Judge for trial of NIA Cases),
(CCH-50) - Bengaluru.

ORDER ON SENTENCE

The accused is produced from Central Prison, Bengaluru through Video Conferencing.

2. This court has heard the accused, his counsel and the learned Special Public Prosecutor on the award of the sentence.

3. The accused submitted that he has aged parents and there is nobody to take care of his aged parents. He is the only earning member in his family. He has further submitted that he was a good student and he intends to continue his education. He has been in jail for more than three and half years. He has realized his mistakes and he will mend his behaviour in future. Hence, he prayed to take lenient view while awarding the sentence.

4. The learned counsel for the accused submitted that the accused has not done anything except posting derogatory posts and comments on his facebook account. At the time of commission of the offence, the accused was aged 19 years. His age made him abuse the social media to commit the offence. The accused is the only one son to his parents and he has to take care of his parents. He further argued that there are no bad antecedents against the accused and he is the first time offender. He further argued that the accused was below 21 years of age at the time of commission of the offence, the

offences under section 153A and 201 of Indian Penal Code and section 13 of Unlawful Activities (Prevention) Act are punishable with below seven years. The sentence cannot be imposed as revenge for the commission of the offence. Hence, he prayed to release the accused from custody on probation of good conduct. In this regard, he has placed reliance on the following decisions;

- i) Surendra Kumar Vs. State of Rajasthan, (1979) AIR (SC) 1048
- ii) Ved Prakash Vs. State of Haryana, (1981) AIR (SC) 643
- iii) Chiranjeevi Vs. State of Karnataka, (2022) 2 KCCR 1635
- iv) State of Panjab Vs. Prem Sagar and others (2008) 68 AIC 70
- v) Lakhanlal @ Lakhan Singh Vs. State of Madhya Pradesh, (2019) 3 Crimes 95
- vi) Mohammad Giasuddin Vs. State of Andhra Pradesh, (1977) AIR (SC) 1926

5. The learned Special Public Prosecutor argued that the accused committed the offence against the nation and the provisions of section 3 and 4 of Probation of Offenders Act and section 360 of Code of Criminal Procedure are not applicable to the present case. Hence, he prayed to award maximum punishment to the accused.

6. This court has gone through the aforesaid decisions. It is settled principle of law that while deciding the quantum of punishment, it is required that the court should

strike a balance between the aggravating and mitigating circumstances. It is also well settled principle of law that the punishment must be proportionate to the crime. Therefore, it is the duty of the court to impose adequate sentence and it should be proportionate to the crime.

7. It appears from the records that the accused was 19 years old at the time of commission of the offence i.e., below 21 years and the offences proved against him are punishable with below seven years. The prosecution has also not produced any materials before this court to show that the accused was previously convicted in any other case. If the aforesaid conditions are satisfied, the court has to release the offender on probation of good conduct, otherwise the court has to assign reasons for imposing sentence of imprisonment on such accused. The same principles are laid down in the aforesaid decisions. Keeping in mind the aforesaid statutory and salutary principles, this court proceeds to examine the facts of this case.

8. In this case, 14.02.2019 is the Black Day in the history of India. A banned terrorist organisation Jaish-e-Mohammed made a suicide attack on the Indian C.R.P.F. Jawans at Pulwama through the suicide attacker Adil Ahammed Dar. In the said incident, more than 40 Jawans sacrificed their lives for the nation. Due to the said incident, the whole nation was immersed in an ocean of sorrow. In this situation, the accused celebrated the death of more than 40 Indian Jawans

who sacrificed their lives to protect the lives of the citizens of this country and to protect this great nation which has given every citizen of this county including the accused the fundamental rights such as right to equality, freedom of speech and expression, right to life and personal liberty, right against exploitation, right to freedom of religion, cultural and educational rights and constitutional remedies in case of any violation of fundamental rights guaranteed under part-III of the constitution. The accused has not made derogatory comments one or two times. He made the comments to all the posts made by all the news channels on facebook. Moreover, he was not an illiterate or ordinary man. He was a engineering student at the time of commission of the offence and he made the posts and comments intentionally on his facebook account. He felt happy about killing of the great souls and celebrated the death of the great souls as he was not an Indian. Therefore, the offence committed by the accused is against this great nation and heinous in nature. Therefore, this is not a fit case to release the accused either under section 360 of Cr.P.C. or under any provisions of Probation of Offenders Act.

9. The aggravating circumstance in this case is that the accused has committed heinous offence against the nation. He celebrated the death of more than 40 Jawans who sacrificed their lives to this great nation and supported the terrorist act committed by the terrorists. The mitigating circumstance is that the accused is aged about 22 to 23 years. There are no

materials to show that the parents of the accused are aged persons except the oral submissions of the accused and his counsel. The maximum punishment prescribed for the offences under section 153A and 201 of IPC is three years. This court can award sentence up to seven years for the offence punishable under section 13 of U A (P) Act. As discussed supra, the punishment must be proportionate to the crime committed by the accused. The punishment should neither be so harsh nor so negligible, but it should be proportionate to the crime. In this case, the accused has not committed any violence except posting the comments on his facebook account, but he made the comments on every post made by news channels on facebook. He commented for more than 24 times and he celebrated the death of the great souls as he is not an Indian. Therefore, in the opinion of the court, if three years imprisonment is imposed for the offence punishable under section 153A and 201 of IPC respectively and five years imprisonment is imposed for the offence punishable under section 13 of UA (P) Act, it is proportionate to the crime committed by the accused.

10. As regards imposition of fine, admittedly the accused was studying in college at the time of commission of the offence. He has no independent source of income. No contra materials have been produced before the court by the prosecution to show his financial capacity to pay huge amount of fine. Therefore, this court by considering his financial

capacity and his family background, this court would propose to impose a reasonable fine amount of Rs.10,000/- for the offence under section 153A, Rs.5,000/- for the offence under section 201 of IPC and Rs.10,000/- for the offence under section 13 of UA (P) Act. Hence, this court proceeds to pass the following:

ORDER

The accused is sentenced to undergo simple imprisonment for a period of three (03) years and liable to pay a fine of Rs.10,000/- for the offence punishable under Section 153-A of the IPC. In default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.

The accused is sentenced to undergo simple imprisonment for a period of three (03) years and liable to pay a fine of Rs.5,000/- for the offence punishable under Section 201 of the IPC. In default of payment of fine, he shall undergo simple imprisonment for a period of three months.

The accused is sentenced to undergo simple imprisonment for a period of five (05) years and liable to pay a fine of Rs.10,000/- for the offence punishable under Section 13 of the Unlawful Activities (Prevention) Act, 1967. In default of payment of fine, he shall undergo simple imprisonment for a period of six months.

Substantial sentences in respect of all the above offences shall run concurrently.

The period of detention undergone by the accused in judicial custody shall be set-off against the term of imprisonment imposed on him as provided under section 428 of Cr.P.C.

Since M.O.1 is a valuable property, it is ordered to be confiscated to the state after completion of appeal period.

The whole fine recovered to be applied in defraying the expenses incurred in the prosecution.

The office is directed to supply free copy of this judgment to the accused forthwith through email and send the hard copy of the judgment through post since the presence of the accused is secured through Video Conferencing.

Further, the office is hereby directed to issue warrant of conviction against the accused accordingly.

(Typed by me in my Laptop, corrected and then pronounced by me, in the open Court on this 31st day of October, 2022)

(GANGADHARA C.M.),
XLIX Addl. City Civil & Sessions Judge,
(Special Judge for trial of NIA Cases),
(CCH-50) - Bengaluru.

ANNEXURES

List of witnesses examined on behalf of prosecution :-

PW1 / CW2	Sri Muruli M @ Kannada Muruli
PW2 / CW4	Sri Ravikumar H
PW3 / CW6	Sri Niranjan K Rao
PW4 / CW8	Sri Koushik Murugesh

PW5 / CW7	Sri Shabareesh
PW6 / CW15	Sri Murali.N
PW7 / CW16	Sri B.S. Srinivas
PW8 / CW1	Sri K.N. Yeshwantha Kumar
PW9 / CW18	Sri N.H. Ramachandraiah

List of documents marked on behalf of prosecution :-

Ex.P.1	Mahazar dated 17.02.2019, prepared for the seizure of golden colour Samsung mobile from the accused.
Ex.P.1(a)	Signature of PW-1.
Ex.P.1(b)	Signature of PW-6
Ex.P.2	The notice served on PW-2 on 20.02.2019.
Ex.P.2(a)	Signature of PW-2.
Ex.P.3	CD containing the screenshots.
Ex.P.3(a)	Signature of PW-2.
Ex.P.4	The mahazar dated 20.02.2019 along with printouts of screenshots.
Ex.P.4(a)	Signature of PW-2.
Ex.P.5	The notice issued to Reliance Jio seeking CAF, CDR & GPRS data of mobile No.6360345998.
Ex.P.5(a)	Signature of PW-4.
Ex.P.5(b)	Signature of PW-9.
Ex.P.6	The CDR of mobile No.6360345998.
Ex.P.6(a)	Signature of PW-4.
Ex.P.7	The GPRS data.
Ex.P.7(a)	Signature of PW-4.
Ex.P.8	The CAF.
Ex.P.8(a)	Signature of PW-4.
Ex.P.9	The certificate u/S. 65B of Indian Evidence Act issued by PW-4.
Ex.P.9(a)	Signature of PW-9.

Ex.P.10	The First Information Statement.
Ex.P.10(a)	Signature of PW-6.
Ex.P.10(b)	Signature of PW-8
Ex.P.11	The First Information Report.
Ex.P.11(a)	Signature of PW-6.
Ex.P.12	Prosecution Sanction Order issued by PW-7.
Ex.P.12(a)	Signature of PW-7.
Ex.P.12(b)	Signature of PW-9.
Ex.P.13	The report submitted by PW-8 to the S.H.O. of Banaswadi P.S.
Ex.P.13(a)	Signature of PW-8.
Ex.P.14	Letter sent to FSL by PW-9
Ex.P.14(a)	Signature of PW-9.
Ex.P.15	The acknowledgement issued by FSL.
Ex.P.15(a)	Signature of PW-9.

List of MOs. Marked on behalf of the prosecution :-

M.O.1	Golden colour Samsung mobile.
M.O.1(a)	Signature of PW-6

List of witnesses examined on behalf of the defence :-

NIL

List of documents and MOs. Marked on behalf of the defence :-

NIL

(**GANGADHARA C.M.**),
XLIX Addl. City Civil & Sessions Judge,
(Special Judge for trial of NIA Cases),
(CCH-50) - Bengaluru.