

JUDGEMENT
OF
SPECIAL NIA CASE No. 01/2009
(RC-01/2009/NIA/DLI)

STATE (NIA)

-Vs-

PHOJENDRA HOJAI & OTHERS

Date of Judgement -23.05.2017

RESULT OF THE CASE -ALL 14 ACCUSED CONVICTED.

CIO

1. Sh. Mukesh Singh, IPS

PROSECUTORS

1. Sh. D. K Das, Spl. PP, NIA
2. Sh. J.A. Hassan, PP, NIA
3. Sh. Satyanarayana, PP, NIA

PAIRVI

1. Sh. Bularam Terang, Inspector, NIA
2. Sh. Shankar Kalita, CT, NIA

FREE CERTIFIED COPY OF JUDGMENT

IN THE COURT OF THE SPECIAL JUDGE, N.I.A., ASSAM, GUWAHATI

Special NIA Case No. 01/2009

U/S 120B, 121, 121 A IPC
&
U/S 16, 17, 18, 20 of the UA (P) Act
&
U/S 25(1)(d) of the Arms Act.



Present :- *Sri Robin Phukan*
Special Judge, NIA,
Assam, Guwahati.

National Investigation Agency (NIA)

-Versus-

1. Sh. Phojendra Hojai (A-1)
2. Sh. Babul Kemprai (A-2)
3. Sh. Mohet Hojai (A-3)
4. Sh. Redaul Hussain Khan (A-4)
5. Sh. Jewel Garlosa (A-5)
6. Sh. Ahshringdaw Warisa (A-6)
7. Sh. Vanlalchhanna (A-8)
8. Smt. Malswamkimi (A-9)
9. Sh. Niranjana Hojai (A-11)
10. Sh. Jayanta Kumar Ghosh (A-12)
11. Sh. Debashish Bhattacharjee (A-13)
12. Sh. Sandip Kumar Ghosh (A-14)
13. Sh. Karuna Saikia (A-15) Accused.



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Special Judge, N.I.A.,
Assam, Guwahati.

Advocates appeared:-

For the Prosecution : Mr. D. K. Das, Sr. Spl. PP, NIA
Mr. Z. A. Hassan, PP, NIA

For the defence : For A-1 - Mr. S. K. Jain, Advocate

For A-2 - Mr. P. Katakya, Advocate

For A-3 - Mr. Syed I. Rasul, Senior Advocate

For A-4 - Mr. L. S. Chaudhury, Advocate

Mr. N. D. Bhuyan, Advocate

For A-5

& A-6 - Mr. S. Borgohain, Advocate

For A-8 - Mr. Z. Kamar, Senior Advocate

For A-9 - Mr. D. Talukdar, Advocate

For A-11 - Mr. B. K. Mahajan, Advocate

For A-12,

A-13


&

A-14 - Mr. B. Pradhan, Senior Advocate

Mr. N. N. B. Choudhury, Advocate

For A-15 - Mr. A. Talukdar, Advocate




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Dates of recording Prosecution Evidence :

01.09.2012, 27.02.2013, 16.03.2013, 06.04.2013, 08.04.2013, 03.05.2013, 04.05.2013,
27.05.2013, 28.05.2013, 20.06.2013, 21.06.2013, 22.07.2013, 20.08.2013, 21.08.2013,
22.08.2013, 09.09.2013, 10.09.2013, 11.09.2013, 08.10.2013, 09.10.2013, 05.11.2013,
06.11.2013, 25.11.2013, 26.11.2013, 21.12.2013, 03.01.2014, 27.01.2014, 05.02.2014,
06.02.2014, 07.02.2014, 21.02.2014, 04.03.2014, 06.03.2014, 07.03.2014, 25.03.2014,
26.03.2014, 07.04.2014, 07.05.2014, 29.04.2014, 09.05.2014, 29.05.2014, 23.06.2014,
24.06.2014, 22.07.2014, 23.07.2014, 08.08.2014, 09.10.2014, 10.10.2014, 21.11.2014,
09.12.2014, 10.12.2014, 06.01.2015, 07.01.2015, 08.01.2015, 21.01.2015, 10.02.2015,
11.02.2015, 12.02.2015, 13.02.2015, 26.02.2015, 27.02.2015, 11.03.2015, 12.03.2015,
02.04.2015, 07.04.2015, 23.04.2015, 24.04.2015, 02.05.2015, 05.05.2015, 25.05.2015,
16.06.2015, 17.06.2015, 18.06.2015, 20.06.2015, 22.06.2015, 23.06.2015, 13.07.2015,
14.07.2015, 15.07.2015, 16.07.2015, 17.07.2015, 30.07.2015, 03.08.2015, 04.08.2015,
20.08.2015, 21.08.2015, 24.08.2015, 25.08.2015, 26.08.2015, 27.08.2015, 28.08.2015,
01.09.2015, 02.09.2015, 14.09.2015, 16.09.2015, 19.09.2015, 22.09.2015, 09.09.2015,
30.09.2015, 08.10.2015, 30.10.2015, 31.10.2015, 12.11.2015, 13.11.2015, 19.11.2015,
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14.12.2015, 15.12.2015, 16.12.2015, 18.12.2015, 21.12.2015, 30.12.2015, 04.01.2016,
05.01.2016, 07.01.2016, 21.01.2016, 25.01.2016, 28.01.2016, 03.02.2016, 05.02.2016,
10.02.2016, 17.02.2016, 18.02.2016, 19.02.2016, 25.04.2016, 02.03.2016, 09.03.2016,
10.03.2016, 11.03.2016, 14.03.2016, 15.03.2016, 21.03.2016, 26.04.2016, 27.04.2016,
28.04.2016, 20.05.2016, 26.05.2016, 10.06.2016, 20.06.2016, 21.06.2016, 22.06.2016,
01.09.2016, 02.09.2016, 05.09.2016, 06.09.2016, 07.09.2016, 14.09.2016, 15.09.2016,
16.09.2016, 17.09.2016, 28.09.2016, 29.09.2016, 30.09.2016, 01.10.2016, 03.10.2016 &
04.10.2016.

Date of recording Defence Evidence : 24.07.2017.

Date of Argument : 04.05.2017, 15.05.2017

Date of Judgment : 22.05.2017

Date of Sentence : 23.05.2017



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JUDGMENT :-

THE FACTUAL MATRIX :-

1. Acting on a tip off, and in pursuant to Basistha PS GDE entry No 1162, dated 01-04-09, S.I. Maijuddin Ahmed- of Basistha PS, Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu Sonar and Phojendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant, at about 12.30 P.M., on 01-04-09, at 14th Mile of G. S. Road, Guwahati. On search, they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and then they seized both the vehicle and brought to Kahilipara and the currency, on counting found to be of 1 crore and documents including 3 sheets of letter heads (blank) of DHD(Jewel) and a letter of Mohet Hojai addressing the Superintending Engineer, PWD, to issue work order in favour of Phojendra Hojai for an amount of 88 lakhs, one 7.6 mm pistol bearing No. RP 127321, with 4 live rounds, one 9 mm pistol made in China, with 5 live rounds, two arms licences- Ext.- 32 and Ext.- 33, in the name of Phojendra Hojai and one Sony Ericson mobile- M/Ext- 7, and Nokia mobile -M/Ext- 9, and seized the same vide seizure list - Ext.-A. The prosecution case is that the apprehended persons have carried the said huge sum to be delivered to the DHD (J) for procuring arms and ammunitions so as to wage war against Govt. of India. Accordingly, an FIR, being Ext. No.-37, dated 01.04.2009, has been lodged with the Basistha P.S., upon which Basistha P.S. Case No. 170/2009 has been registered and the law is set in to motion. Pending investigation of the said case, the Government of India, vide letter No. 17011/50/2009-IS-VI, dated 1st June 2009- Ext. 462, has handed over the investigation of the case to National Investigation Agency (NIA), which come into existence in the meantime, having realized the gravity of the offence.

INVESTIGATION:-

2. The NIA, having taken over the charge of the case, carried out investigation. During investigation the I.O. has visited the place of occurrence, examined the witnesses and seized some of the defalcated amount and recovered arms and ammunitions and arrested fifteen accused persons and forwarded them to the court. The I.O. also recorded voice sample of some of the accused and forwarded the same to Central Forensic Science Laboratory for


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examination and collects the report. The I.O. also forwarded the seized arms and ammunitions for examination by Experts and collects the report. Then on completion of investigation, the I.O. laid charge sheet against all the arrested fifteen accused persons to stand trial in the court under section 120-B/121/122 IPC and u/s 10/13/16/20/34 of the Unlawful Activities (Prevention) Act, and 25-A of the Arms Act.

3. The accused persons have been produced before the court from jail hazoot. Then hearing Id. Advocates of both side and considering the materials available on the record and case diary, my Id. predecessor has framed charges against the accused as under:-

1. Phojendra Hojai (A-1) :- U/S 120B/121/121A IPC, & 16/17/18/20 of UA(P) Act and 25(1)(d) of Arms Act.
2. Babul Kemprai (A-2) :- U/S 120B/121/121A IPC, & 16/17/18/20 of UA(P) Act & 25(1)(d) of the Arms Act.
3. Mohet Hojai (A-3) :- U/S 120B/121/121AIPC,&16/17/18/20 of UA (P) Act and 25(1)(d) of Arms Act.
4. Redaul Hussain Khan (A-4) :- U/S 120B IPC and Sec 17/18 of UA(P) Act.
5. Jewel Garlosa @ Mihir Barman(A-5) :- U/S 120B/121/121A IPC, & 16/17/ 18/20 of UA(P) Act and 25(1)(d) of Arms Act.
6. A. Warisa @ Partho Warisa (A-6) :- U/S 120B/121/121A IPC, Sec 16/17/18/20 of UA(P) Act and 25(1)(d) Arms Act.
7. Samir Ahmed (A-7) :- Under Section 19 of the UA(P) Act.
8. Vanlalchhana@Vantea@ Joseph Mizo (A-8) :- U/S 120B/121/121A IPC & 16/17/18/20 UA(P) Act and 25(1)(d) of Arms Act.
9. Malswmkimi (A-9) :- U/S 120B/121/121A IPC, & Sec 16/17/ 18/20 of UA(P) Act & Sec 25(1)(d) of Arms Act.
10. George Lamthanga (A-10) :- U/S 120B/121/121A IPC Sec 16/17/18/20 of the UA(P) Act & Sec 25(1)(d) of Arms Act.
11. Niranjan Hojai @ Nirmal Rai (A-11) :- U/S 120B/121/121A IPC, Sec 16/17/18/20 of the UA(P) Act & 25(1)(d) of Arms Act.



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12. Jayanta Kumar Ghosh @ :- U/S 120B IPC & Sec 17/18 of UA(P) Act.
Dhruba (A-12)
13. Debashis Bhattacharjee @ :- U/S 120B IPC & 17/18 of the UA(P) Act
Bapi (A-13)
14. Sandip Kumar Ghosh :- U/S 120B IPC & Section 17/18 of UA(P) Act
@ Sambhu Ghosh (A-14)
15. Karuna Saikia (A-15) :- U/S 120B IPC & Section 17/18 of UA(P) Act


4. When read and explained over the particulars of charges, all the accused, except accused Samir Ahmed-(A-7), pleaded not guilty and claimed to be tried. Whereas, accused Samir Ahmed (A-7) has pleaded guilty and having accepted the plea of guilt, he was convicted and sentenced to undergo R.I. for a period of three years. It is also to be mention here that during trial accused George Lawmthang (A-10) became approver and then recording his evidence he was granted pardon and released on bail.

5. To bring home the charges against the accused, the prosecution side has examined as many as 150 witnesses and exhibited as many as 464 documents and also exhibited 71 materials. After examination of the prosecution witnesses, all the accused are examined u/s 313 Cr. P.C. Mention to be made here that the questionnaires, so put to the accused, were prepared with help of Id. counsel for the prosecution and defence side. The defence case, as it appears from the trend of cross-examination, and from their statement u/s 313 Cr. P.C., is total denial. Accused Niranjan Hojai has examined one witness in defence.

6. We heard arguments of both side. It is worth mentioning here in this context that immediately after closing defence evidence, hearing of arguments started and the same continued for a period of about one month, as different sets of lawyers appointed different sets of Advocates.

THE POINT FOR DETERMINATION ARE :-

7. Now the points to be decided here in this case are :-


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(i) Whether the accused persons namely:-

Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal Rai

after forming terrorist gang DHD(J) or Black Widow in 2004 and particularly during the period of January to March, 2009, entered into an agreement with Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Ghosh to do illegal act or an act which is not illegal but by illegal means, i.e., to raise fund for the terrorist gang by siphoning off Govt. fund, convert Indian currency to US dollar, to procure arms and ammunition to wage war, caused death of innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc. ?

(II) Whether the accused persons, namely:-

Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal

after forming said terrorist gang in 2004, entered into conspiracy amongst its members, to wage war against the Government or attempts to wage war or abets the waging of such war ?



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(III) Whether the accused persons, namely:-

Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal

after forming said terrorist gang in 2004, wage war against the Government by procuring illegal arms, killing innocent persons, disrupts developmental activities such as gauge conversion, construction of four lane Highway, captured administration of NC Hills District Council by overawing elected CEM Dipolal Hojai under threat to life etc ?

(IV) Whether the accused persons namely:-

Sri Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal



being a member of Dima Halim Daogah, in short DHD (J), a terrorist gang did terrorist act by killing ten innocent truck drivers in May, 2008; seven CRPF personnel and seven Assam Police personnel in 2008, disrupted developmental works such as gauge conversion, construction of East West corridor which are essential service to the life of the citizen, kidnap and abducts persons for ransom, overawed elected CEM Dipolal Hojai of NC Hills District Council in January 2009 etc. ?


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(V) Whether the accused persons, namely:-

Sri Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal

after forming terrorist gang DHD(J) in 2004 directly or indirectly involved raising and collecting funds or attempts to collect funds by extortion, kidnapping, siphoning and defalcation of Govt. fund through Mohit Hojai and others and in committing such activities kidnapped R.S. Gandhi and realized Rs. 4.5 crore, siphoning Govt. fund with the help of Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh by paying money without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challan, money receipt etc. ?



(VI) Whether the accused persons, namely:-

Sri Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal

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after forming terrorist gang DHD(J) in 2004 conspires, attempts to commit or abets, advises, incites, directs for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US dollar to procure arms to the commission of such terrorist act ?

(VII) Whether the accused persons, namely:-

Sri Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal

being a member of Dima Halim Daogah, in short DHD (J) involved in terrorist act by killing ten innocent truck drivers in May, 2008; seven CRPF personnel and seven Assam Police personnel in 2008, disrupted developmental works such as gauge conversion, construction of East West corridor which are essential service to the life of the citizen, kidnap and abducts persons for ransom, overawed elected CEM Dipolal Hojai of NC Hills District Council in January 2009 etc. ?.

(VIII) Whether the accused persons, namely:-

Sri Phojendra Hojai
 Sri Babul Kemprai
 Sri Mohet Hojai
 Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha
 Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha
 Sri Vanlalchhanna @ Vantea @ Joseph Mizo
 Smt. Malswamkimi
 Sri George Lawmthanga
 Sri Niranjana Hojai @ Nirmal



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after forming Dima Halim Daogah, in short DHD(J), a terrorist gang, in 2004, purchases illegal arms and ammunition from the International market, particularly the Cox bazaar of Bangladesh and brings into Indian Union, in contravention of Section 11 of the Arms Act, ?

(IX) Whether the accused persons, namely:-

Sri Redaul Hussain Khan

Sri Karuna Saikia

Sri Jayanta Kumar Ghosh

Sri Debasish Bhattacharjee

Sri Sandip Ghosh

after formation of Dima Halim Daogah i.e. DHD(J) in 2004 and particularly from January to March, 2009, entered into an agreement with the members of DHD(J) to do illegal act or an act which is not illegal but by illegal means to help them in raising their funds and in order to commit said illegal acts siphoned off Govt. money allotted for development of N.C. Hills district, handed over the money to the terrorist gang DHD(J) through Mohit Hojai in raising the fund, convert Indian currency to US dollar to procure arms and ammunition to assist in continuing terrorist acts ?

(X) Whether the accused persons, namely:-

Sri Redaul Hussain Khan

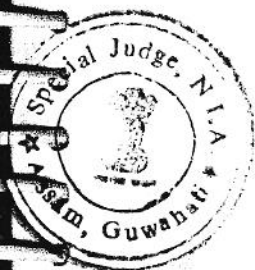
Sri Karuna Saikia

Sri Jayanta Kumar Ghosh

Sri Debasish Bhattacharjee

Sri Sandip Ghosh

after formation of Dima Halim Daogah i.e. DHD (J) in 2004 and particularly from January to March, 2009, conspires, attempts to commit or abets advises, incites, directs the terrorist gang DHD (J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act ?



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(XI) Whether the accused persons, namely:-

Sri Redaul Hussain Khan
 Sri Karuna Saikia
 Sri Jayanta Kumar Ghosh
 Sri Debasish Bhattacharjee
 Sri Sandip Ghosh

after formation of Dima Halim Daogah i.e. DHD (J) in 2004 and particularly from January to March, 2009, conspires, attempts to commit or abets advises, incites, directs the terrorist gang DHD(J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US Dollar to procure arms to the commission of such terrorist act ?

DECISION AND REASONS THEREOF:-

8. In order to discharge its burden, the prosecution side has examined altogether 150 witnesses. It has also exhibited as many as 464 documents and 71 materials. The defence side also examined one witness namely Smti. Gopa Chaudhary and exhibited as many as 15 documents. We have carefully gone through the evidence adduced by the prosecution as well as by defence side. Also gone through the prosecution as well as defence exhibits, with help of Id. Advocates of both side.

9. It is worth mentioning here in this context that all the accused have engages different sets of lawyers and cross-examined the witnesses differently and also advanced argument differently on different points and perspective. The length and breadth of the same are quite different from each other. But, some of the points so raised by all sets of accused are common, which can be dealt with together. Therefore, it is proposed deal with the common points, first.

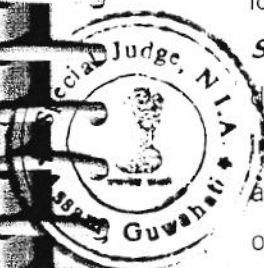
9.(I)(a). The first point of argument relates to the FIR. It is submitted that here in this case two FIRs have been recorded. First one is registered at Basistha Police Station of Kamrup (M) District, by Assam Police and the second one is registered by NIA at New Delhi, and since NIA is not a Police Station in terms of section 2(s) of the Cr. P.C., registration of


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second FIR is illegal and without authority as nowhere in the NIA Act registration of FIR by NIA is contemplated and what is contemplated in Sub-Section 4 & 5 of Section 6 NIA Act is investigation. It is also submitted that much prior to registration of both the FIRs one General Diary Entry (GDE) No.1162, was recorded at Basistha Police Station and on the basis of the same two vehicles were intercepted and accused Phajendra Hojai (A-1) and Babul Kempri (A-2) were arrested and a sum of Rs.1.00 Crore was recovered from their possession at 14th Mile, under Jorabat Police Out Post, under Basistha P.S. It is further submitted that the place of occurrence falls in the State of Meghalaya, somewhere near Barapani, which is apparent from the evidence adduced by the prosecution witnesses itself, and as such the Assam Police has no jurisdiction to investigate the case. It has relied upon the evidence two prosecution witnesses namely Shri Bunu Sonar-P.W.-64, who stated that the vehicle he was driving was intercepted near Barapani and Dipankar Deka-P.W.-113, who stated in his evidence that the vehicle he was driven was intercepted at Sumer near Barapani, Meghalaya, and also the evidence of CIO -P.W 150, who admitted the version of P.W. 64 and P.W 113. It is also submitted that there is also delay in lodging the FIR. The rival submission is that the place of occurrence falls well within the territorial limits of jurisdiction of this court and that the law is well settled as regard the FIR. It has referred one case law ***Naresh Kavarchand Khatri vs. State of Gujarat: (2008) 8 SCC 300***, in support of its submission.

9.(I)(b). This point assumes much significance, as the importance of prompt lodging FIR is overemphasized by the Hon'ble Supreme Court in the case of ***Thulia Kali Vs. State of TamilNadu AIR 1973 SC 501***. In the instant case, to our considered opinion, determination of the FIR will certainly clinch the entire issue. As understood FIR is the first information in respect of an offence, both cognizable and non cognizable. In the case in hand, admittedly two FIRs were registered. The first one, Ext. 37, is by Assam Police at Basistha P.S. on 01.04.2009 at about 4-P.M. The second one is recorded by NIA at New Delhi on 01.06.2009 at 19.06 Hrs. as per the Order of Ministry of Home Affairs dated 01.06.2009, - Ext.462. It also appears that before registration of the first FIR on 01.04.2009, at Basistha P.S. a GDE No.1162 was recorded at Basistha P.S. on 01.04.2009, based on which Rs.1.00 crore and 2 Pistols and other articles after interception of two vehicles which was carrying the above amount. Thus, it becomes apparent that investigation, in fact, commenced on the basis of the said GDE and arrest of accused and seizure both has been made. Mention to be made here that the said GDE was recorded by the O/C Basistha PS on the basis of information given by two Police Officer namely Sudhakar Singh, Addl. SP (HQ) and Shri R. Rajkhowa, Addl. SP. The said two police officers reported at the PS that some members of DHD group are going to



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deliver money to the extremist group at Jorabat area. Having received the information the O/C P.W.2 Shri Chandra Kanta Boro deputed S.I. Maizuddin Ahmed to go to Jorabat and to enquire about the information. Thereafter S.I. Maizuddin Ahmed came to Police Station and deposited Rs.1.00 crore and 2 Pistols and other articles after interception of two vehicles which was carrying the above amount and thereafter Maizuddin Ahmed has lodged the formal FIR Ext.37(30 is another copy), and on which P.W.2 has registered Basistha PS case No. 170/09.

9.(I)(c). In **Lal Kalandi Vs. State of Assam, 1997(1) GLT 543** our home High Court has held that a GDE can be treated as FIR if it is first in point of time and if investigation commence on the basis of the same. In the instant case what to be seen is - can the GDE, No.1162, be treated as FIR in terms of section 154 of the Code of Criminal Procedure and in the light of the various judgments of the Hon'ble Supreme Court.

9.(I)(d). While dealing with the issue, Hon'ble Supreme Court has, in the case of **Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1**, took the view that cryptic telephone messages could not be treated as FIRs as their object is only to get the police to the scene of offence and not to register the FIR. The said intention can also be clearly culled out from the bare reading of Section 154 of the Code which states that the information if given orally should be reduced to writing, read over to the informant, signed by the informant and a copy of the same be given to him, free of cost.

9.(I)(e). Again, Hon'ble Supreme Court in the case of **State of Andhra Pradesh v. V.V. Panduranga Rao (2009) 15 SCC 211**, observed as under: -



"10. Certain facts have been rightly noted by the High Court. Where the information is only one which required the police to move to the place of occurrence and as a matter of fact the detailed statement was recorded after going to the place of occurrence, the said statement is to be treated as FIR. But where some cryptic or anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as FIR. The mere fact that the information was the first in point of time does not by itself clothe it with the character of FIR. The matter has to be considered in the background of Sections 154 and 162 of the Code of Criminal Procedure, 1973 (in short "the Code"). A cryptic telephonic message of a cognizable offence received by the police agency would not constitute an FIR."

9.(I)(f). Again in **Yanab Sheikh @ Gagu (Appellant) Versus State of West Bengal (Respondent) CRIMINAL APPEAL NO. 905 OF 2009** Hon'ble Supreme Court

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"Thus, the purpose of telephone call by PW6, when admittedly he gave no details, leading to the recording of Entry, Ex.7, would not constitute the First Information Report as contemplated under Section 154 of the Code."

9.(I)(g). Again in the case of *Ravishwar Manjhi & Ors. v. State of Jharkhand*, (2008) 16 SCC 561, Hon'ble Court took the view that

"..we are not oblivious to the fact that a mere information received by a police officer without any details as regards the identity of the accused or the nature of the injuries caused to the victim, name of the culprits, may not be treated as FIR, but had the same been produced, the nature of the information received by the police officer would have been clear....."

9.(I)(h). Here in this case the prosecution side has not exhibited the Basistha PS GDE No. 1162 in the court. But a copy of the same is available on the record. Having tested the same on the touchstone of the principles, so laid down by the Hon'ble Supreme Court, we find that it was without any details as regard the identity of the accused and its object was only to get the police to the scene of offence and not to register the FIR. So, drawing premises from what has been discussed herein above we are inclined to hold that the Basistha PS GDE NO. 1126 cannot be treated as FIR here in this case.

9.(I)(i). It also appears that having recorded Basistha PS GDE NO. 1126 on 01.04.2009, the O/C Basistha PS, P.W.2 - Shri Chandra Kanta Boro deputed S.I. Maizuddin Ahmed to go to Jorabat and to enquire about the information and, thereafter, S.I. Maizuddin Ahmed, P.W. 10, came to the Police Station and deposited Rs.1.00 crore and 2 Pistols and other articles .after interception of two vehicles which was carrying the above amount and lodged the formal FIR- Ext.37, and on which the P.W.2 has registered Basistha PS case No. 170/09. Ext.37 has fulfilled all the requirements of section 154 of the Code of Criminal Procedure and with all force it would be the FIR here in this case. Mention to be made here that there appears to be no undue delay in lodging the FIR-Ext.37, so as to spell inveracity to the prosecution version. Having accepted Ext. 37 as the FIR we are inclined to hold that the second FIR-Ext.461, recorded by the NIA, at New Delhi, may then be hit by the proviso to section 162 of the Code.

9.(I)(j). The FIR-Ext.-37 and the Seizure list Ext.-38 and the evidence of the P.W.2- Chandra Kanta Boro, P.W. 10- Maizuddin Ahmed and P.W.26 Shri Sudhakar Singh goes a logway to show that the place, where the two vehicles of accused Phojendra Hojai and Babul Kemprai were intercepted, is 14th Mile of the G.S. Road and the same falls within


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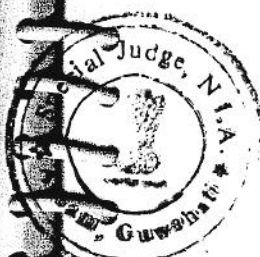
jurisdiction of Basistha P.S. The FIR - Ext. 37, where the place of interception of the vehicle is clearly mentioned, is not disputed here in this case. Rather, it is elicited in the cross-examination of the P.W. 10 that from the P.O. Basistha P.S. can be reached within 20 minutes. It is true that according to P.W. 64 and P.W. 113 the place of interception is near Barapani at Meghalaya. The prosecution side has not declared these two witnesses hostile. But, having gone through the record we find that the I.O. got the statement of both of these witnesses recorded in the court u/s 164 Cr. P.C. Ext. 263 is the statement of P.W. 64 and Ext. 388 is the statement of P.W. 113. Having gone through the same we find that these they have not deposed in the court the truth. Having taken oath to depose truthfully, they deposed in the court falsely. The reason is obvious. P.W. 64 was the driver of accused Phojendra Hojai and P.W. 113 was the driver of the vehicle where accused Babul Kemprai was travelling on the relevant date. As such they have obliged their masters faithfully. So, their evidence in respect of the place of occurrence failed to inspire confidence. Having been failed to withstand the test, and being unworthy of credence, their evidence needs to be jettisoned at the threshold and we did it accordingly. On the other hand, we find the evidence of P.W. 2, 10 and 26, are worthy of credence. All these three witnesses categorically stated that the place of occurrence is 14th Mile Jorabat. Their evidence stands in much higher pedestal than the evidence of P.W. 64 and 113 and, accordingly, the same are accepted. Consequently, we are inclined to hold that the occurrence took place at 14th Mile of G.S. Road, which is well within the jurisdiction of Baistha P.S. It is to be mentioned here that in the cross-examination of P.W. 10, it is elicited by the defence side in cross-examination that it took about 20 minutes to Baistha P.S. from the place of occurrence and in case of traffic jam it took additional 10/20 minutes. This completely negates the defence submission.

9.(I)(k). In ***Naresh Kavarchand Khatri vs. State of Gujarat: (2008) 8 SCC 300***, Hon'ble supreme court has held that :

"Whether an Officer-in Charge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178, and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any place falling within the purview of the afore mention provisions, investigation can be conducted by the concerned Officer-in-Charge of the police station which has jurisdiction to investigate in relation thereto. Sub-section (4) of section 181 of the Code of Criminal Procedure would also be relevant therefore."

9.(I)(l). In the case in hand accused Phojendra Hojai and Babul Kemprai have started their journey from Guwahati with Rs. 1.00 crore and other incriminating documents


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and articles. They have been intercepted at 14th Mile, which is also within the jurisdiction of Basistha P.S. Even for the sake of argument if it is accepted the defence submission that the vehicles have been intercepted at Barapani, can it be said that Basistha P.S. has no jurisdiction to investigate the case or that this court has no jurisdiction to try the same. In view of above observation of the Hon'ble Supreme Court in **Naresh Kavarchand Khatri (supra)** the answer is got to be emphatic no.

9.(II)(a). Next, it is also submitted that the sanction for prosecution of the accused persons as contemplated u/s 45 of the UA(P) Act is vague and nothing is mention in the order what are the documents considered by the Authority while according sanction and thereby the accused becomes prejudice.

9.(II)(b). The prosecution side has exhibited the Prosecution Sanction Order of accused Karuna Saikia as Ext. 281 and of rest of the accused as Ext.301. The prosecution side has examined two witnesses- P.W. 75 - Shri Virendra Kumar and P.W. 88 - Shri R.V.S. Mani, to prove the orders.

9.(II)(c). The evidence of P.W.75 - Sh. Virendra Kumar, Under Secretary in the Ministry of Home Affairs, New Delhi reveals that in connection with crime No.1/2009 sanction for prosecution of accused Karuna Saikia was accorded vide Ext.281 dtd. 12.10.2010 on the basis of materials as well as report collected by NIA which was sent to the authority so constituted for the purpose of making an independent review of the evidence gathered in terms of the provision of Sec.45(2) of the UA(P) Act. and the Rule, 2008 and the materials/records and sanction of the authority were placed before the authority i.e., Union Home Minister who approved the sanction.

9.(II)(d). The evidence of PW-88 - Shri R.V.S Mani, Under Secretary to the Internal Security Division, Ministry of Home Affairs- reveals that in June, 2009, as per direction of Central Govt. NIA has registered a Case as Crime Case No. 1/2009 u/s 120(B), 121 and 121(A) of IPC, Section 17, 18 and 19 of Unlawful Activities (Prevention) Act, 1967 and 25(1-B)(A) of Arms Act against the activities of Dima Halem Daogah (DHD). His evidence also reveals that the NIA presented the papers to the Ministry relating to the crime No.01/2009 and the papers were marked to him as per the procedure for examining the grant of prosecution sanction as per the laid down procedure of the Ministry. Accordingly, in compliance of the procedure, he referred the papers which inter-alia also contains the



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evidence gathered by the NIA to the review committee, consisting of one former Law Secretary to the Govt. of India and one former Judge of the High Court, for their opinion. Having received the recommendation/ opinion, he put-up the same to the competent authority, the Union Home Minister, for grant of sanction for prosecution. On receipt of approval from the Home Minister, he issued the prosecution sanction order Ext.301 for prosecution of the accused persons u/s 120(B), 121 and 121(A) of IPC, Section 16, 17, 18, 19 and 20 of Unlawful Activities (Prevention) Act, 1967 and 25(1)(d) of Arms Act. It is elicited in cross-examination of the witness that in terms of the provision of Rule 2(b) of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008a committee was constituted.

9.(II)(e). Section 45 of the UA (P) Act provides for sanction for prosecution. It read as thus: ***Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.***

9.(II)(f). Rule 3 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 provides for time limit for making a recommendation by the Authority. It read as thus - ***The Authority shall, under sub-section (2) of section 45 of the Act, make its report containing the recommendations to the Central Government³ [or, as the case may be, the State Government] within seven working days of the receipt of the evidence gathered by the investigating officer under the Code.***

9.(II)(g). And Rule 4 provides for time limit for sanction of prosecution. —It read as thus: ***The Central Government [or, as the case may be, the State Government] shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority.***

9.(II)(h). Here in this case admittedly P.W. 88 could not state of the date of appointing authority. Admittedly also he could not state the date on which the recommendation of the review authority was received. The explanation offered is that he deposed before the court after 5 years of the granting of sanction. Admittedly also it has not



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been mentioned in the Ext.301, on which date the authority has received the evidence from the Investigating officer. Admittedly also no documents were produced to show date of receipt of documents by the authority constituted u/s 45(2) of the UA(P) Act.

9.(II)(i). But, the evidence of the I/O P.W.150-Shri Mukesh Singh reveal that having completed investigation he has submitted the investigation report to ministry of Home affairs, Govt. of India for sanction for prosecution against 14 accused person on 11.11.2009. And he obtained sanction on 16.11.2009 and submitted charge sheet Ext.463 against the accused on 17.11.2009. Ext. 463 the charge sheet is also consistent with his version. His evidence also reveals that u/s 173(8) Cr. P.C. he continued investigation and found involvement of accused Karuna Saikia and he laid supplementary charge sheet Ext. 464 against him after obtaining sanction for prosecution on 03.02.2011.

9.(II)(j) In **State (N.C.T. Of Delhi) vs. Navjot Sandhu @ Afsan Guru on 4 August, 2005**, while dealing with the issue of sanction Hon'ble Supreme Court has observed that:-

"Ultimately, the test to be applied is whether relevant material that formed the basis of allegations constituting the offence was placed before the sanctioning authority and the same was perused before granting sanction."

A careful perusal of the Ext. 281 and Ext.301 and the evidence of PW-75 & PW-88 reveals that the sanctioning authority after perused all the documents provided by the Investigating Officer of NIA, and after due application of mind, has accorded sanction for prosecution. Therefore, there is no force in the contention of the Ld. defence counsel that sanction is accorded without application of mind. The sanction orders have been duly proved by PW 75 and PW 88. In a judgment of Hon'ble Delhi High Court, in case titled **Ram Chander Versus State (Govt. of NCT of Delhi) 2009 Cri.L.J. 4058**, it was observed that - once the sanctioning authority has been produced in the court, unless there is anything brought on record which may vitiate the sanction order, the sanction order has to be taken as proved. Here in this case PW 75 & PW 88 duly proved the sanction orders and therefore, to our considered opinion, the same do not suffer from any illegality and are, therefore, valid one.

9.(III)(a) It further submitted that besides, the Chief Investigating Office Shri Mukesh Singh the case was investigated by some other officers of the rank of Sub-Inspector and Inspector and the same is not contemplated by section 43 of the UA(P) Act, which


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contemplated investigation of cases under UA(P) Act by an officer not below the rank of Dy. S.P, and investigation by such unauthorized persons cases prejudice to the accused persons. The rival submission is that no breach of statutory provision is committed and no prejudice is caused to the accused. It has relied upon a decision of Hon'ble Calcutta High Court in **Kangujam Ravi Kumar Singh (Appellant) vs. Union of India (Respondent) 2014 Cri.L.J. 3103.**

9.(III)(b). Section 43 of the UA(P) Act provides for officers competent to investigate offences under Chapters IV and VI. It read as under:-

Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmadabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank, shall investigate any offence punishable under Chapter IV or Chapter VI.

9.(III)(c) Admittedly here in this case the investigation was carried out by the CIO Shri Mukesh Singh P.W.150 and several other officers of the rank of Sub-Inspector, Inspector. They were PW-56Sh. Harish Singh Karmyal (He was Inspector at the time of investigation of the case) P.W. 59 Shri Devinder Singh (He was DY.SP. at the time of investigation of the case) P.W. 74 Shri Hemen Das (He was Sub-Inspector of Police at the time of investigation of the case and attached to NIA in the same capacity), P.W.146 Swayam Prakash Pani (He was Superintendent of Police at the time of investigation of the case), P.W. 147 - Sh. Sanjay Kumar Malviya (He was Inspector of Police at the time of investigation of the case), P.W.148 - Sh. Santosh Kumar (He was Inspector of Police at the time of investigation of the case), P.W.149 - Sh. Khadak Singh Thakur (He was Dy. SP of Police at the time of investigation of the case).

9.(III)(d). Though it is submitted that due to investigation of the case by the unauthorised officers the accused are prejudiced, yet nothing has been shown as to how prejudice has been caused. Besides, it is apparent from their evidence that they have not


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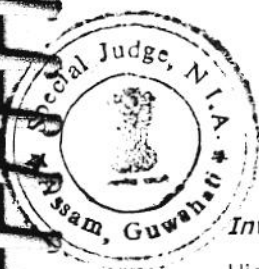
investigated the case on their own whim, they did so as per direction of the CIO Mukesh Singh-P.W.150. The evidence of P.W.56 reveals that he conducted part investigation as per verbal direction of the CIO. The evidence of P.W.147 reveals that he conducted investigation as per direction of the CIO. Similar is the version of P.W.148 also. And P.W. 74 has only verified addresses of two firms i.e. (1) M/S Barail Enterprise factory at Ulubari, Guwahati (2) M/S Loknath Trading Factory at Paltan Bazar and submitted his verification report accordingly. Besides, he also witness of preparation of one inspection memo at PHE Store at Umrangshu. Thus this witness has not carried out any substantial part of investigation. And as such the question of becoming prejudice does not arise.

9.(III)(e). Similar arguments were made before a Division bench of Hon'ble Calcutta High Court in **Kangujam Ravi Kumar Singh (Appellant) vs. Union of India (Respondent) Supra**. It was argued that the investigation has not proceeded in accordance with law as the provision of the UA(P) Act mandate that that no police officer below the rank of Assistant Commissioner of Police can investigate any offence punishable under chapter IV and VI of the Act. It was pointed out that all the statements have been recorded by an Inspector Police and this amounts to a breach of the provision of section 43 B of the Act. While dealing with this issue Hon'ble Calcutta High Court held that –

"Prima facie, in our opinion, recording of the statements by a police officer below the rank of Asstt. Police Commissioner of Police would not be barred. The investigation has been conducted under the command of the Asstt. Commissioner of Police/ Superintendent of Police, NIA, New Delhi. Therefore, in our opinion this submission is unacceptable."

9.(III).(f) In a subsequent case **Sadanala Ramakrishna and others Vs. National Investigation Agency, MANU/WB/0804/2016** also another division bench of Hon'ble Calcutta High Court has reiterated the same view.

9.(III).(g). In the present case also the Inspectors and Sub-Inspectors mentioned in the foregoing para have conducted part investigation as per direction of the CIO. Their categorical version in this regard is not disputed in their cross-examination by the defence side. Therefore, drawing premises from the decisions of the Hon'ble Calcutta High Court, it can safely be concluded that no apparent breach of section 43 of the UA (P) Act, is committed here in this case so as to cause prejudice to the accused persons.



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9.(IV)(h). The defence side also submitted that the prosecution side has cited as many as 366 witnesses in the charge sheet, including the supplementary one. But it has examined only 150 witnesses, and many vital witnesses have been withdrawn for which, according to defence side, adverse inference can be drawn against the prosecution. The rival submission is that it is the prosecution side has the discretion to decide how many witnesses will it required to prove a particular fact. It is submitted that it is not the quantity rather the quality is material. And, as such, no adverse inference is permissible against the prosecution on this score. The Id. Special P.P. has referred one case law **Mohd. Khalid Vs. State of West Bengal: (2002) 7 SCC 334**, to bolster his submission. In the said case it has been held that:-

"Normally, the prosecution's duty is to examine all the eyewitnesses selection of whom has to be made with due care, honestly and fairly. The witnesses have to be selected with a view not to suppress any honest opinion, and due care has to be taken that in selection of witnesses; no adverse inference is drawn against the prosecution. However, no general rule can be laid down that each and every witness has to be examined even though his testimony may or may not be material. The most important factor for the prosecution being that those witnesses strengthening the case of the prosecution have to be examined; the prosecution can pick and choose the witnesses who are considered to be relevant and material for the purpose of unfolding the case of the prosecution. It is not the quantity but the quality of the evidence that is important. In the case at hand, if the prosecution felt that its case has been well established though the witnesses examined, it cannot be said that non-examination of some persons rendered its version vulnerable."



9.(IV)(i). It is an admitted fact that the prosecution side had examined only 150 witnesses, out of 366 witnesses cited in the charge sheet. But in view of the observation of Hon'ble Supreme Court in the above referred case law, no fault can be found with it, for non examination of all the witnesses. It was also observed by Hon'ble Supreme Court in **Habeeb Mohammad v. State of Hyderabad, AIR (1954) SC 51** prosecution is not bound to call a witness about whom there is a reasonable ground for believing that he will not speak the truth.

9.(V). Another point raised by the Id. defence counsels is that Ext. 462, the Order No. 17011/50/2009-IS-VI, of Government of India, Ministry of Home Affairs, New Delhi, dated 1st June, 2009 is a photo copy and that the I/O, who exhibited the same is not the maker of the document and Smti. D. Diptivilasha, Joint Secretary to the Govt. of India are admittedly not made witness by the I/O here in this case and because of this the defence side could not

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came to know under what circumstances the case was handed over to NIA for investigation and thereby prejudice is caused to the defence side. The rival submission is that it a public document and prepared by a uniform process. And as such no formal proof is required.

9.(V).(i). It is true that Exhibit 462 is not the original one. It is also true that the maker of the Ext. 462 Smti. D. Diptivilasha, has also not been cited as witness here in this case. But, the fact remains that on the basis of the Ext.462, this case has been investigated by NIA and charge sheet has been submitted on conclusion of investigation. And while the prosecution side has exhibited the document as Ext.462, the defence side has not raised any objection. The submission of Id. counsel for the prosecution also cannot be ignored. Besides, the order is self speaking. Why the case been ordered to be investigated by NIA, is spelt out there in clear terms, without any ambiguity. In view of these facts the submissions of defence side is found to be bereft of merit as there arise no occasion of being prejudice. Though the maker has not been cited as witness, yet, the defence side could have avail the opportunity of calling her as witness after examination of the accused u/s 313 Cr. P.C. Not having done so, now it could not plead prejudice.

THE CHARGE OF CONSPIRACY:-

10. It is to be mention here that this charge u/s 120B IPC and also u/s 18 of the DA(P) Act have been framed against all the accused persons.

11. A criminal conspiracy is defined u/s 120-A IPC. The section provides that when two or more persons agree to commit an offence punishable with death, imprisonment for life, or imprisonment of either description for a term of two years or upwards, or to cause such an offence to be committed, the agreement is designated a criminal conspiracy. A bare perusal of the section reveals that the offence comprises of following ingredients:-

- (i) That the accused agreed to do or caused to be done an act;
- (ii) That such act was illegal or was to be done by illegal means;
- (iii) That some overt act was done by one of the accused in pursuance of the agreement.


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WHAT WAS THE CONSPIRACY:--

12. Here in this case the it is submitted by the Id. Special P.P. NIA that a conspiracy was hatched for waging war against the state and in furtherance of the said conspiracy it was also conspired to overawe the elected regime of North Cachar Hills Autonomous Council (NCHAC) led by Shri Depolal Hojai and, thereafter, to defalcate development funds meant for development of (NCHAC) and to provide the same to the DHD(J) cadres for procurements of arms for terrorist activities, so as to achieve the aforesaid goal.


WHO WERE THE CONSPIRATORS :-

13. It is submitted by the Id. Special P.P. that Shri Mohit Hojai, Govt. Servants - viz. - R.H. Khan, Karuna Saikia and contractors viz.- Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh and Niranjana Hojai, Gewel Garlosa and Ashringdao Warissa, including arms suppliers, were the conspirators.

WHERE THE CONSPIRACY TOOK PLACE:-

14. It is being submitted by the Id. Special P.P. that the conspiracy took place at Haflong, the district head quarter of Dima Hasao, the erstwhile North Cachar Hills. It is further submitted that to further the main conspiracy, part conspiracies took place at different places. One such part conspiracy that took place at Haflong, comprises of overawing the elected regime of NCHAC, led by Shri Depolal Hajai and defalcation of Govt. fund meant for development of NCHAC and committing terrorist act to terrorize the people and to wage war against the Government.

15. The second part conspiracy, as submitted by the Id. Special P.P. took place at Guwahati in the month of March 2009, where a meeting was held at Hotel Pragati Manor, between Mohit Hojai, who became the Chief Executive Member of the NCHAC, after overawing the elected regime of Depolal Hajai, and the Govt. Officers and Contractors. It is further submitted that in the said meeting decision has been taken to issue advance cheques and accordingly cheques were issued in advance without any work order and execution of work. The cheques were encashed and huge amount of the sum were withdrawn.


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16. The third part conspiracy, according to Id. Special P.P., took place at Kolkata. It is alleged that as part conspiracy, the siphoned out money were sent to Kolkata by various means, including hundi operator, to convert the same into Dollars so as to purchase arms and ammunition.

17. The fourth part conspiracy as submitted by the Id. Special P.P., took place at Aizwal where, after payment of the Dollars, arms and ammunitions were received and sent to DHD (J) to wage war against the Government.

18. Now, let it be seen how far the prosecution side has been succeeded in discharging its burden. It is to be mentioned here that all the accused have been charged under this section.

19. As mentioned in paragraph No. 9 above, all the accused have engaged different sets of lawyers who have cross-examined the witnesses differently on different points and also advanced argument on different points and aspects and cited different case laws in support of the case of the accused persons. Therefore, to deal with each point, so raised by the accused and each circumstances appearing against them separately, it is proposed to discuss the evidence, so adduced by the prosecution side, on accused wise and in respect of the role played by them in their individual capacity, even at the cost of repetition, so that no point is left unattended, in the following order:-

THE INDIVIDUAL ROLE PLAYED BY EACH OF THE ACCUSED:-

ACCUSED PHOJENDRA HOJAI (A-1) :-

BABUL KEMPRAI (A-2):-

20. The prosecution side has submitted that the overt act of accused Phojendra Hojai is found in two places, one is Guwahati and the other place is Kolkata and he played a very crucial role in the whole conspiracy and the evidence of the prosecution witnesses and the documents exhibited by it has established his role and role played by his co-accused Babul Kempri in no uncertain terms.

21. The rival submission is that the evidence adduced by the prosecution side and the documents exhibited by it quite insufficient to establish the conspiracy angle. It is further


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submitted recovery of sum of Rs. 1.00 and Letter Heads of DHD (Jewel) and Arms and Ammunitions and letter of Mohit Hojai is not proved beyond doubt. It is further submitted that the P.W. 29 is an approver and no reliance can be place upon him and there is material contradiction in his confessional statement with that of his evidence as approver before the court. It is further submitted that the documents exhibited by the prosecution side are either hit by section 65-B Evidence Act or suffers from patent illegalities and the same are quite in sufficient to establish the link of the accused with the charge of conspiracy.

22. The role played by accused Phojendra Hojai and accused Babul Kemprai are discernible mainly from the evidence of following prosecution witnesses:-

23. The evidence of PW-2 - Shri Chandra Kt. Boro reveals that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then deputed S.I. Maizudding Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.

24. His evidence stands corroborated from the evidence of Maizuddin Ahmed P.W.10 and Addl. SP. Shri Sudhakar Singh-P.W.26 and also from the Ext. 30/37- the FIR and also from the Ext.38 - the seizure list. The evidence of PW-10 - Maijuddin Ahmed- reveals that on 01-04-09, he was working as S.I. at Basistha PS. On that day Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa came and talked with O/C Chandra Kanta Boro about the unlawful activities of DHD(J). Then they proceeded to Jorabat area and from there to 14th Mile G. S. Road and at around 12.30 pm they intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu Sonar and accused Phajendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant. His evidence also reveals that on search they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and he seized both the vehicle and the articles found therein vide seizure list Ext.31. PW-26- Shri Sudhakar Singh- Addl. S.P. (HQ) Guwahati also testified the same fact.

25. The evidence of PW-10- Maijuddin Ahmed- also reveals that, thereafter, he brought the two accused to Kahilipara and the currency, on counting found to be of 1 crore.


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Thereafter he lodged the FIR-Ext-30 on the same date i.e. 01-04-09 with reference to Basistha PS GDE entry No. 1162, dated 01-04-09. His evidence further reveals that he seized the documents including 3 sheets of letter heads (blank) of DHD(Jewel) Ext.35-A, B & C, and a letter of Mohet Hojai addressing the Superintending Engineer PWD to issue work order in favour of accused Phojendra Hojai for an amount of 88 lakhs- Ext. 34, one 7.6 mm pistol bearing No. RP 127321 with 4 live rounds, one 9 mm pistol made in China with 5 live rounds, arm licence Ext-32 and Ext-33 in the name of Phojendra Hojai and seized M/Ext- 7 a Sony Ericson mobile and M/Ext- 9 a Nokia mobile and Mat. Ext. 06 is the brief case, and Mat. Ext. 10 is the Blanket.

26. The defence side has cross-examined all these three witnesses at length. But the probative value of their evidence remained unshaken throughout their cross-examination. The seizure of the articles, including the sum of Rs. 1.00 crore also not disputed. The seizure list - Ext. 38 bears the signature of Phojendra Hojai and Babul Kemprai both. It is, however, a fact that the prosecution side has not produced the seized sum before the court. The amount has been deposited at Kamrup Treasury. The amount was verified by a party at the Kamrup Treasury and after verification the amount is found to be Rs.99,95,000/-. But this would not discredit the version of P.W.2,10 and 26 in as much as seizure of Rs. 1.00 crore is not disputed by the accused from whom possession the same were recovered. The seizure list bears the signature of both this accused. And there is cogent evidence that a sum of Rs.1.00 crore was deposited in the Treasury of Kamrup.

27. P.W.64, Shri Bunu Sonar was the driver of accused Phajendra Hojai and PW-113- Dipankar Deka was the driver of the vehicle in which accused Babul Kemprai was travelling on the relevant date i.e. 01.04.2009. However, these two witnesses have not supported the version of prosecution as regard the place of occurrence. P.W.-113 was also the signatory to the seizure list-Ext. 38. But, as discussed earlier, the evidence of these two witnesses fails to inspire confidence and accordingly the same stands jettisoned at the threshold.

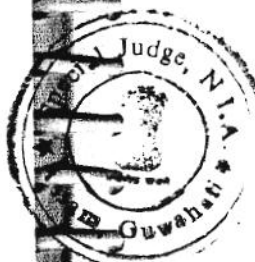
28. The evidence of PW- 122 Shri Jagyan Haflongbar reveals that during the tenure of Mohet Hojai as Chief Executive Member (CEM), he was attached as Personal Assistant (P.A.) to the CEM's office. He worked with CEM approximately for 5-6 months. All the files received in the office were placed on his table and thereafter, the said files were put up before the CEM for his signature and disposal. As such, I used to see him signing on official


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papers. He confirmed that Ext 34, a letter addressed to Superintending Engineer, PWD (R&B), NC Hills, Haflong and the said letter was signed by Mohet Hojai on 17.01.2009. He identified the Ext. 34/1 is the signature of Mohet Hojai on the letter. Thus, it becomes clear that Ext 34 was the letter of accused Mohit Hojai.

29. The evidence of PW-146-Swayam Prakash Pani also reveals that during investigation he has collected the CRDs of the mobiles phones of the accused persons from different service providers like BSNL, Airtel, following due procedures as enshrined in 65B Evidence Act, print outs of relevant transactions were taken and analyzed. Ext 425 is the scrutiny of CDR, Mobile no. 9435077481, and Ext. 398, 398/1 to 398/7 are the CDR of mobile phone of accused Phajendra Hojai. The link analysis of CDR 9957412020 belonging to accused Phojendra Hojai with the service provider Airtel. Ext 426 is the scrutiny report and Ext 427 is the Link analysis. Ext 427/1 and 427/2 are the CDR of the said mobile numbers. Similarly, Mobile no. 9957574595 of accused Phojendra Hojai with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 428 is the scrutiny Report of the said mobile and Ext 428/1 is the Link Analysis of the said mobile numbers. Ext 429 in two pages is the CDR, Ext 429/1 and 429/2 are his signatures.

30. The evidence of PW-146 also reveals that Mobile no. 9435577799 of accused Babul Kemprai with the service provider BSNL was analyzed and print outs of relevant parts taken under his signature. Ext. 430 is the scrutiny Report of the said mobile and Ext 431 is the Link Analysis of the said mobile number. Ext 399, 399/1, 399/2 and 399/3 are the CDR. His evidence also reveals that Mobile no. 9957194992 of accused Mohet Hojai (Subscriber ID as Mohet Hojai) with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 432 is the scrutiny Report of the said mobile and Ext 432/1 to 432/15 are CDR of the said mobile number. Similarly, Mobile no. 9401423618 of accused Mohet Hojai (Subscriber ID as Mohet Hojai) with the service provider BSNL was analyzed and print outs of relevant parts taken under his signature. Ext. 433 is the scrutiny Report of the said mobile and Ext 400, 400/1 to 400/10 are the CDR of the said mobile number. The evidence of P.W. 146 also reveals that Mobile no. 9903234905 of accused George Lamthang (Subscriber ID as Mohet Hojai) with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 434 is the scrutinies Report of the said mobile and Ext 434/1 and 434/2 are the CDR of the said mobile number. Ext 434/3 and 434/4 are his signatures.




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31. The evidence of PW-146-also reveals that all these mobile phone analysis led to have evidence of interlinking accused persons in pursuance of the criminal conspiracy. The detail analyses of CDRs have stated how during the seizure of the money accused persons were in touch. It also reveals international calls made to other accused based outside the country.

32. But, it appears that the CDRs as stated above are not collected from the service providers in accordance with law and no certificate u/s 65-B of the Evidence Act is appended there to. This being factual position the same cannot be relied upon in view of the judgment of the Hon'ble Supreme Court in the case of **Anvar P.V. Vs. P.K. Basheer, 2014 (10) SCC 473**, where it has been held that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements of section 65B are satisfied. The Id. Defence counsel has rightly pointed this out during argument and we find sufficient force in the same.

33. The evidence of the CIO - P.W. 150 reveals that after interception of accused Phojendra Hojai and Babul Kemprai, on their way to Shillong, they were taken to Police Station and then accused Phojendra Hojai received calls from both Niranjan Hojai and Mohit Hojai and the same was found recorded in the Mobile Phone seized from accused Phojendra Hojai. It was in Dimasa language. It was translated to English Language by P.W 132. Smti. Joyshree Khersha.

34. P.W.132 **Smti. Jayshree Khersa**, Deputy Director, Fire and Emergency Services, Guwahati testified that in the month of July, 2009, while she was working as Additional S.P., Border at Guwahati City, NIA official requested her to get some recording of Dimasa conversation in Dimasa language translated into English, as she was Dimasa by birth and knows Dimasa language. She then went to the NIA office at Guwahati and the NIA official made her to hear an audio from a CD. After listening to the said conversation in Dimasa language she made a translation of the same in to English. She had reduced into writing the English translation of the Dimasa conversation which she was made to listen and handed over the translation in English to the NIA officials. Then Mat. Ext 74, which is a CD, earlier proved in the case is allowed to be played in the Laptop in the Court at the prayer of the Id. PP, NIA, however under objection of the defence side. After listening the audio clip the witness translated the same as follows:


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"Q. Has the vehicle left?,	Ans:- Yes.
Q. Has the vehicle left?,	Ans:- Not yet.
Q. Any problem?	Ans:- No problem.
Q. Has something gone wrong?	Ans:- Somebody is following me.
Q. Who?	Ans:- Relative.
Q. Any problem?	Ans:- No problem. Today I am going to stay at Shillong."

35. She however, admitted in cross-examination that the English translation which she handed over to the NIA official has not been shown to her in the Court. She also stated that so far as her understanding goes the conversation in the audio clip was in between two persons. She also admitted that she is not a translator by profession.


36. The audio clip, which was made to listen to P.W. 132, was recorded in a CD and listening the same she was asked to translate the conversation, which was in Dimasa Language to English. She had reduced into writing the English translation of the Dimasa conversation and handed over to NIA. But the said writing is not made available in the court for which she was again made to listen the CD and asked in the court to translate and she did the same accordingly. Mention to be made here that the conversation was found recorded in the Sony Erricson Mobile of accused Phojendra Hojai from which the conversation was transferred to the CD. While doing so no certification, as required by section 65-B of the Evidence Act, is admittedly attached with the CD. But, is the said Sony Ericson Mobile has been produced in the court and exhibited as Material Exhibit 7, as primary evidence. And view of observation made by Hon'ble Supreme Court in **Anvar P.V. Vs. P.K. Basheer, 2014 (10) NSCC 473**, the prosecution side is being relieved from the duty of furnishing certification u/s 65-B Evidence Act. The relevant observation is quoted below:-

"An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied."

It continued to state

"... in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible"

It also stated,


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"The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made there from which were produced in court, without due certification.

It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act."

The part of the judgemental statements made above are significant since it makes a distinction of "Primary" and "Secondary" documents holding CDs used in the commission of offence is "Primary" evidence and "CDs produced in copies" is "Secondary". It also provided the option that Primary evidence could have been proved without Section 65B certification."

37. The evidence of the I/O and PW- 55, Shri Pankaj Kalita, a Laboratory Bearer in the office of, the Directorate of Forensic Science, Assam, Kahilipara, Guwahati, reveals that in his presence Sh. M.C. Kuli, Scientific Officer, Cyber Forensic of Directorate of Forensic Science, Assam, Kahilipara recorded voice sample of Phojendra Hojai on 04.08.2009, and 06.08.2009 were recorded at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola, Guwahati vide Ext.245 and of Accused Mohit Hojai on 05.08.2009, at District Jail, Guwahati, vide Ext. 246, and on 06.08.2009, of one Babul Kemprai vide Ext. 248 at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola. The voice sample of accused Niranjana Hojai, which was found recorded during an interview in a local T.V. Channel, was collected. The evidence of the I/O also reveals that the samples so collected were sent for analysis to IIT Guwahati for analysis.

38. P.W.60, Sh. S.R. Mahadeva Prasanna is a Professor, Deptt. of Electronics and Electrical Engineer, IIT, Guwahati. His evidence reveals that in the month of August, 2009, and as per direction of Professor Gautam Barua, Former Director, IIT, Guwahati, whom NIA has approached to get expert opinion on some voice samples. Accordingly, he took up the task on behalf of IIT, Guwahati. One Mukesh Singh, IPS came and handed over to me 2 (two) CDs, M. Ext 15 and 16, along with forwarding letter dated 15.08.2009. Ext. 260 is the said forwarding letter. By the said letter, he was asked to compare the voice samples which are



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named as A-1 to A-4 in folder, Audio with B-1 to B-4 in folder Audio-B and also C-1 to C-6 in folder Audios and was also asked to compare these samples given in another Ext-X. he then analyzed the voice samples with the help of team of human subjects working in speech processing area. His evidence also reveals that there were certain questions asked by the NIA official by Ext-260 and the answers for the questions were obtained by conducting subjective studies from the human subjects. Based on human subjects opinion, and following the procedure which is detailed in his report-Ext 261 comprising of 8 pages. His evidence also reveals that the combined subjective score is expected to be minimum of one to quantify the question of investigation. Thus any score less than one is against the question and more than are equal to one is in favour of the question.

39(i). The first question asked by the NIA team was whether the Audio samples were tampered or not. For this we conducted one subjective study and the answer was the voice samples in 11 CEM and 18 unknown are not tampered about 168 times more likely than being tampered.


39(ii). The next question was whether the voice samples in the Folder Audio-A matches with voice samples in 11 CEM. For this he conducted one more subjective study and the answer was the Audio-A samples match with one of the speaker voice sample in 11 CEM is 458 times more likely than not matching with any of them.

39(iii). Then the third question is whether the voice sample in Folder Audio-A matches with voice sample in 18 unknown. The answer for this question is Audio-A files match with one of the speaker voice samples in 18 unknown is only about .2 times more likely than not matching with any one of them.

39(iv). The fourth question was whether the voice sample in Audio-B matches with voice sample in 11 CEM. The answer was Audio-B files match with one of the speaker voice samples in 11 CEM is about 8 times more likely than not matching with any of them.

39(v). Then the fifth question was whether sample in Audio-B matches with voice sample in 18 unknown. The answer was Audio-B files match with one of the speaker voice samples in 18 unknown is only about 20 times more likely than not matching with any of them.

39(vi). The sixth question was whether the voice sample in Audio-C matches with voice sample in 11 CEM. The answer was Audio-C files match with one of the speaker voice samples in 11 CEM is about .4 times more likely than not matching with any of them.


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39(vii). The seventh question was whether voice sample in Audio-C matches with Audio-C with 18 unknown. The answer was Audio-C files match with one of the speakers voice sample in 18 unknown is only about .04 times more likely than not matching with any of them.

39(viii). The eight questions were whether the voice sample in X matches with voice sample in 11 CEM. The answer was X matches with one of the speakers voice sample in 11 CEM is about .02 times more likely than not matching with any of them.

39(ix). The ninth and the last question is whether the voice sample in X matches with voice sample in 18 unknown. The answer was X matches with one of the speaker voice sample in 18 unknown is about 63 times more likely than not matching with any of them.

39(x). The detail procedure for arriving at the scores mentioned above are given in page no. 4 to 8 of report which is exhibited as Ext 261. It is elicited in his cross-examination that he was handed over only the CDs for analysis and not the original hard disc from where those CDs were copied. No computer hardware was given to me for analysis. It is also elicited that he is not sure as to whether process of analysis of voice recording will give conclusive proof of analysis. He admitted having not seen any certificate as per Section 65B of the Evidence Act. He has examined Audio File 11 CEM and 18 Unknown in the folder EX2_IVA Sony Ericsson_K810i whether these files were tempered or not. According to the study the voice sample in 11 CEM and 18 Unknown are not tampered is about 168 times more likely than being tampered.

40. It is to be mention here that though no certificate under section 65-B of the Evidence Act is furnished, yet here in this case the Sony Ericson Mobile hand set of accused Phojendra Hojai is exhibited in the court as Material Exhibit No.7. And as such it will make some difference. As the Mobile Hand Set has been produced in the court as primary evidence the requirement of certification u/s 65-B Evidence Act is thereby relinquished as held in **Anvar P.V. Vs. P.K. Basheer, 2014 (10) SCC 473,** Perusal of the evidence of P.W.60, P.W. 132, P.W. 150 together will reveals that at the relevant time he was talking with other accused persons.

41. The evidence of the PW-146 - Swayam Prakash Pani reveals that during investigation identification memo of Phojendra Hojai, A-1 was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-119 is the identification memo. Identification memo of Phojendra Hojai, A-1 was done with the


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support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo.

42. The evidence of PW-18- Shri Kamalesh Pandey reveals that he was working as Manager Madhumilan Guest House Barabazar Kolkata. Ext-50 is Guest House Register and a SI.-3005, entry dated 02-11-08, shows that Phojendra Hojai stayed in room No. 813 from 02-11-08 to 6-11-08. Again at SI-1892 entry dt. 13-03-08 shows that Phojendra Hojai stayed in room No. 810 from 13-03-08 to 15-03-08. Ext-52 & Ext-53 are the pointing out memo prepared at Madhumilan Guest House in his presence.

43. The evidence of PW-19- Paragmoni Aditya reveals that he was Journalist working in News Live-and on 01-04-09 police intercepted vehicles and recovered huge amount of cash with arms and ammunition and they telecasted the news as carrying of 1 crore by 2 persons to Shillong. He provided the CDs- Ext 55, carrying the news to NIA on being requested.

44. PW-70 Sh. Caushiq Kashyap is the Chief Executive Officer, News Live T.V. Channel. His evidence reveals that vide his letter - Ext. 269 he forwarded a CD containing the news of arrest of Phojendra Hojai and Babul Kemprai with an amount of Rs. 1.00 crore. This news item was aired in his channel and as requested by NIA personnel, he handed over the CD after transferring the aforesaid relevant news item in the CD. His evidence also reveals that vide another letter, Ext 270 he handed over three CDs, marked as A, B and C, containing the video footage of surrendered ceremony of DHD (J) at Haflong. It is elicited in cross-examination of this witness that no hard disc was seized by NIA from his office by which the CD was written. The CD which he has given can be written only once. He admitted having not written the CDs by himself but it was done by his staffs.

45. It is to be mention here that the news item has been telecasted in the news Live Channel and it was viewed by P.W.101- Mr. Syed Mirazul Islam, who testified that he is familiar with accused Phojendra Hojai and on his request he provided one SIM card to him and on the 1st of April, 2009, he saw Phojendra Hojai in the TV that he was caught for some illegal issues which was very surprising to him. He lost contact with him and he never got his SIM back. He identified accused Phojendra Hojai in the Court; nothing could be elicited in cross-examination to shake the credibility of his version. The matter of recovery of Rs. 1.00 crore from accused Phojendra Hojai got to public domain and the same further fortified the prosecution version.

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46. The evidence of PW-115, Shri Sonam Lama reveals that in the year 2009, he was a worker of ASDC party. He knows Mohit Hojai as he was also in the same party. He became CEM on 1st January, 2009. Earlier to that Depolal Hojai was the CEM. He used to write paper statements and other press releases for Mohit Hojai. On 31st march, 2009, I was staying at Guwahati in the flat of Mohit Hojai. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he admitted to some portion and denied some portion and then the prosecution side brought on record the denial portion of statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that:-on the following morning Babul Kemprai came to his flat and when he asked him why he had not gone to Haflong to that he had replied that he had some work at Guwahati. He also denied that Babul Kemprai asked him to arrange for a vehicle to him to move around Guwahati. He also denied that he had arranged a TATA Sumo vehicle through Chandan Sarma. Chandan Sarma earlier stayed at Haflong and hence he had good relation with Mohit Hojai. He denied that Babul Kemprai took the vehicle out of Guwahati and him told him why he had taken the vehicle out of Guwahati. He admitted having not remember as to whether he had received any message from Babul Kemprai to contact Mohit Hojai his mobile No.94014-36655. He also denied that he rang up Babul Kemprai and told him that CEM Mohit Hojai was not present at the moment and he try to find him and that he rang up Mohit Hojai and found his mobile switched off and thereafter he rang up Chandan Sarma and found that Mohit Hojai was with Chandan Sarma and there he informed Mohit Hojai about calling by Babul Kemprai. He admitted that in the evening I came to know from TV news that Babul Kemprai and Phojendra Hojai were arrested.

47. However, this witness admitted that Mohit Hojai had taken a rented flat at Meghmaller Apartment, Zoo Road Tiniali, Guwahati. He knows Babul Kemprai and that he met him on 31st March, 2009 in the aforesaid flat. On that evening, he was free hence at the request of Babul Kemprai we went to Ganeshguri. It was about 3 or 4 p.m. There at Ganeshguri, Babul Kemprai bought ticket for his journey to Haflong by train. After that he came back to the flat.

48. While dealing with the evidentiary value of hostile witnesses Hon'ble Supreme Court in **Haradhan Das Vs. State of West Bengal, (2013)25CC197** held as under:-

"35. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 Code of Criminal Procedure,

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the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

- a. Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624*
- b. Prithi v. State of Haryana (2010) 8 SCC 536*
- c. Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1*
- d. Ramkrushna v. State of Maharashtra (2007) 13 SCC 525."*

49. In the case in hand, P.W.115 has admitted having meet accused Babul Kemprai in the Flat of Mohit Hojai on 31.03.2009. He also admitted having aware of in the evening from TV news that Babul Kemprai and Phojendra Hojai were arrested. Though he denied that Babul Kemprai asked him to arrange for a vehicle to him to move around Guwahati and that he had arranged a TATA Sumo vehicle through Chandan Sarma, yet the said version is confirmed through the I/O that he made such statement before him. Besides the evidence of PW-21, Shri Chandra Sarma in his evidence categorically stated that on 01-04-09 one Sonam Lama telephoned regarding taking of his vehicle on hire and accordingly he asked Dipankar Deka, the driver of Tata sumo. Around 1/2 pm his driver telephoned that he is



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proceeding with the vehicle towards Shillong. On the next day his driver's wife reported him that the vehicle was seized and lying at Basistha P.S. Then he took zimma of the same. Thus having been corroborated the hostile part of the version of P.W.115, by the evidence of P.W.21 we are of the view that the evidence of P.W.115 can be relied upon.

50. The evidence of PW-27- Shri Hiteshwar Medhi- reveals that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjan Hojai of DHD (J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjan Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons.

51. The evidence of P.W. 29, Shri George Lamthang is very crucial in respect of the role played by this accused at Kolkata. His evidence reveals that he belongs to Manipur and since 2006, settled at Kolkata. By profession he was a Travel Agent as well as commission agent and, lately, he was also doing the job of money exchange on commission basis through a money changer, viz., Tapan in Kolkata. His evidence also reveals that while doing the job of procuring of air ticket, he came to know Miss Malsawmkimi in January, 2008. Since then he used to facilitate travel tickets whenever she approached him for the same. One day in April, 2008, Malsawmkimi asked me whether he has any idea about conversion of Indian rupees to US dollar. At that time he did not have any such contact and he informed her when he gets contact. In June, 2008, he came to know with Tapan who is a money-changer and in the month of August, 2008, he informed Malsawmkimi about the same. In the same month and year Malsawmkimi brought Rs.15 lakhs from Aizwal for conversion to US Dollar. Then he contacted Tapan and converted Rupee into US Dollar with his help in 3 days. Then keeping his commission @ 15 paise per US Dollar and he returned the converted money to Malsawmkimi. In this way, she normally used to bring Rs. 15 lakhs to Rs. 20 lakhs for conversion to US Dollar from Aizwal almost once in a month. Then in Oct., 2008, Malsawmkimi brought Rs.20 lakhs for conversion to US Dollar from Aizwal. When he visit her at her hotel room at Centre Point Hotel, Kolkata to collect Indian Rupee on that occasion he saw co-accused Vanlalchana staying with Malsawmkimi at the Hotel, whom, Malsawmkimi introduced to him as Vantea of Aizwal. After collecting the money from Malsawmkimi, he left the hotel and went to my rented house with the money in Kolkata. Then he contacted Tapan and with his help converted the money to US Dollars with in 3/4 days and keeping his commission @ 15 paise per US Dollar he




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returned the converted money to Malsawmkimi. Then in Nov., 2008, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel to collect the money of Vantea (Vanlalchana) and both of them went to Madhumilan Hotel at Kolkata from where Malsawmkimi collected Rs.1 crore from Phojendra Hojai but at that time he did not know Phojendra Hojai. After Malsawmkimi collected the money both of them headed to his rented house at Kolkata and from where we counted the money in detail and we found it to be Rs.1 crore. Thereafter, he converted the money to US Dollar with the help of Tapan in 10 days. Thereafter, he handed over the US Dollar to Malsawmkimi keeping his commission.

51.(i). His evidence also reveals that in Feb., 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel at Kolkata from where she collected Rs.2 crore from Phojendra Hojai (At that time he did not know Phojendra Hojai). They counted the money at his rented house and found it to be Rs. 2 crore. Thereafter he converted the money to US Dollar with the help of Tapan in 20 days. After conversion, he handed over the US Dollar to Malsawmkimi keeping his commission. On that occasion, he saw Vantea for the second time when he visited Malsawmkimi at Centre Point Hotel to give the converted money. His evidence also reveals that again in March, 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Shalimar Hotel at Kolkata from where she collected Rs.1 crore from Phojendra Hojai. After receiving the money they headed to Central Point Hotel, Kolkata where Malsawmkimi stayed and after counting the money found it to be Rs.1.00 crore. Thereafter, he took the money to his rented house and converted the same within 10 days to US Dollars with the help of Tapan. Then he handed over the US Dollar to Malsawmkimi and in the same way keeping his commission.


51.(ii). His evidence further reveals that although, he was accompanying Malsawmkimi to the said 2 Hotels, he did not have any knowledge about Phojendra Hojai from whom Malsawmkimi collected money on 3 occasions. Even Malsawmkimi did not have any knowledge about Phojendra Hojai. He learnt from Malsawmkimi that she was collecting the money at the behest of Vanlalchana. He was simply accompanying Malsawmkimi when she said that she had money to be converted and she had to collect the money from a person in a Hotel. Thereafter, in April, 2009; May, 2009; June, 2009; July, 2009, Malsawmkimi brought Rs.15 lakhs from Aizwal from conversion into US Dollar. On each occasion he converted the money into US Dollar through Tapan and in the same way he kept his commission and gave the US Dollar to Malsawmkimi. He did not have any knowledge about her further transaction


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with the money. He learnt from Malsawmkimi on each occasion she had been sent by businessman in Aizwal and she was earning commission for her job.

51.(iii). His evidence also reveals that he was arrested on 11.8.2009 by Kolkata Police and police seized Rs.5 lakhs from his possession, which was given to him by Malsawmkimi on 7.8.2009, but she did not tell him what to do with the money and she said that she will let him know what to do with the money. He admitted that he converted Rupees to Dollar but he was not colleagues of any of the co-accused. He was only a commission agent working only to get a little commission to be able to maintain his family. His evidence further reveals that on 20.8.09, he made a statement U/S 164 Cr. P.C. before Judicial Magistrate at Guwahati. Ext.76 is the said statement. He also confirmed Ext.77, the identification memo dtd.18.8.09 by which he had pointed out Hotel Madhumilan & Hotel Shalimar from where he along with Malsawmkimi collected money for conversion from Phojendra Hojai. He also confirmed Ext.78 is the disclosure statement made by him to NIA officer disclosing that a sum of Rs.5 lakhs was kept at his residence at Kolkata. He also confirmed Ext.79 the disclosure statement made by him disclosing that he along with Malsawmkimi went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of collecting money. By Ext.52, he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai. He also confirmed Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojai. Ext.81 is the production memo by which his Passport bearing No.E1127189 and my Nokia 6300 mobile were handed over by my wife. Ext.81(2) is the passport. He identified accused Malsawmkimi, Phojendra Hojai and Vanlalchana in the court.

51.(iv). Cross-examination of this witness could elicit nothing tangible so far his evidence it relates to accused Phojendra Hojai is concerned. He, however, admitted that he is not acquainted with for what purpose the converted US Dollars were used by whom and for what purpose. It is however elicited in cross-examination that prior to the identification of the accused person first time in the Court i.e. on 25.11.2013 he was shown a photograph of the accused person by the NIA authority during investigation. Before 2008 I was not known to Phojendra Hojai. It is also stated that he never had any direct dealing with Phojendra Hojai and Phojendra Hojai had never directly entrusted any money to him for exchange and he never meet Phojendra Hojai earlier at any occasion alone.


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51.(v). The Id. Counsel for the accused Phojendra Hojai has assailed the evidence of P.W.29 being an approver and that he for the first time identified the accused Phojendra Hojai in the court. It further submitted that there is no consistency in his version before the court with that of the confessional statement where he never uttered the name of accused Phojendra Hojai, also for not conducting TIP for identification accused.

51.(vi). We have gone through the confessional statement- Ext.-79, made by P.W.29 and we find that the same substantially corroborated the version of P.W.29 before the court so far it relates to accused Phojendra Hojai (A-1) is concerned and lends unstinted support to the prosecution version. It is true that he has not uttered the name of accused Phojendra Hojai in his confessional statement. But it appears that he referred him as one person whom he has seen at Madhumilan Hotel in Nov., 2008, while he accompanied Malswamkimi to collect the money of Vantea (Vanlalchana) and Malsawmkimi collected Rs.1 crore from that person. Again in Feb., 2009, Malsawmkimi, along with him went to Madhumilan Hotel at Kolkata from where she collected Rs.2 crore from Phojendra Hojai. Then in March, 2009, Malsawmkimi along with him went to Shalimar Hotel at Kolkata from where she collected Rs.1 crore from Phojendra Hojai. Thus, the submission of Id. Defence counsel is found to be devoid of any force.

52. The evidence of PW-40- Shri Nabajeet Buragohain reveals that on 07-08-09, as directed by his superior officer, he met NIA officials and from there we went to SOU office Kahilipara, there out of many accused sitting, Vanlalchanna volunteered to disclose his association with Lady Malswamkimi. Accordingly, Vanlalchanna disclosed in Mizo which was translated into English where he said that he along with Swami and another person Thang used to convert Indian rupees into US Dollars to be supplied to DHD(J) group three times Ext-118 is the disclosure memo. His also reveals that as directed he again on 18-8-09 met NIA officials and from there they went to SOU office Kahilipara, there out of many accused sitting one lady by the name Malswamkimi identified Phojendra Hojai from whom she along with George Lamthang had collected money from Madhumilan Hotel and Shalimar Hotel of Kolkata. Ext-119 is the disclosure memo.

53. The evidence of PW-52- Shri C.P. Phookan, Executive Magistrate, Kamrup reveals that on 08-08-09, in the presence of witness, Vanlalchanna identified the photograph of Niranjana Hojai by Ext-242 and Jewel Garlosa by Ext-243. On 18-08-09 in the presence of


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witness, Malswamkimi identified Phojendra Hojai and on the same day George Lamthang identified Phojendra Hojai.

54. The evidence of PW-58- Dinesh Kr Vora- also reveals that in 2009 he was working as receptionist of Shalimar Hotel Kolkota. Ext 255 is the visitor register with entries from 01-04-08 to 20-01-09. Register is filled up by customer in their hand at Sl. No-1519 of 18-01-09 is entry of stay of accused Phojendra Hojai and his check in date is 18-01-09 and check out date is 21-01-09. Ext 255/2 is another visitor register with entries from 20-01-09 to 10-07-09. At Sl no-1615 of 03-02-09 is entry of his stay, Phojendra Hojai and his check in date is 03-02-09 and check out date is 04-02-09. On 10-03-09 Phojendra Hojai check into the Hotel. At Sl. no-1789 of 10-03-09 is his entry of his stay, and his check in date is 10-03-09 and check out date is 14-03-09. Ext-255/5, Ext-255/8, Ext-255/11 are the bills. Entry at Sl. no-1615 of Ext. 255 and entry at Sl. No-1789 of Ext. 255/2 shows stay of accused Phojendra Hojai in Hotel Shalimar and this fortified the version of P.W.29.

55.(i). The evidence of PW-59- Devinder Singh – Dy. SP NIA- reveals that on 12-08-09, at Kolkata he joined the interrogation of accused Malswamkimi and George Lal Thang and on 13-08-09, the accused volunteered to make disclosure and at the instance of Malswamiki Rs.10 Lakh was recovered from Room 113 of Shalimar Hotel Kolkata and at the instance of accused George Lalthanga sum of Rs. 5 Lakh was recovered from Room 19 A of his ancestral house, situated at Trity Bazar Street, Kolkata. His evidence further reveals that during interrogation accused Malswamkimi and George Lal Thang pointed out Madhumilan Guest House and Shalimar Hotel from where they were collecting money. Ext-257 disclosure statement of accused Malswamkimi by which she disclosed about Rs 10 lakh and vide Ext-258 Malswamkimi disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang. In cross-examination nothing could be elicited to discredit him.

56. The evidence of PW-69- Sheo Kr. Pandey - reveals that he was Manager Madhumilan Guest House Ext 50- Guest House Register from March 2008 to 15-10-08. On 13-03-09 at Sl. 1892 Phojendra Hojai occupied Room No-810. Ext-52 is the pointing out memo of George Lamthang and Ext-53 pointing out memo of Malswamkimi by which they identified the Hotel where they came to collect money from Phojendra Hojai. Thus this witness also further fortified the version of P.W. 29.

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57. PW-137- Satyendra Kr. Deka stated that he was working as Dy. Gen Manager BSNL. He received request by Ext-396 for furnishing details of BSNL No-9435077481, 9435577799, 9401423618 and CDR. Ext-397 is my reply the print copy. Ext-398 is the CDR of mobile No-9435077481, Ext-399 is the CDR of mobile No-9435577799, Ext-400 is the CDR of mobile No-9401423618, Ext-401 is another CDR and the relevant pg is 47 to 68.

58. The evidence of PW-31- Ranjit Gogoi- reveals that he is a Bank employee and was posted at zoo Road branch SBI. On 26-3-09 Debasish Bhattacharyee came for opening a current A/c in the name of MAA Trading. The Bank opened the A/c on 27-3-09 and thereafter Debasish Bhattacharyee has deposited a Cheque for Rs.84 lakhs and Rs. 57 lakhs and wanted to withdraw the amount on the same day. To ascertain the genuineness of the cheque, he visited Haflong and met PHE Engineer Mukherjee who confirmed the cheque as genuine. After credit of the Cheque amount the bank paid Rs 84 lakhs to Debasish Bhattacharyee, and thereafter on Monday Debasish Bhattacharyee also withdrew 3,50,000/from the A/C of Maa Trading. He further opened one current A/c in the name of Jeet Enterprise in the month of May -2009.

59. The evidence of P.W. 34 Shri Debasish Dutta reveals that he know one Dhruba Ghose right from his childhood and they were in the same school. One day he asked him if he know anybody who can introduce for opening a new account at Guwahati. He then referred the name of Diganta Vikram Gayan who is an architect by profession and the said person but account was opened in whose name was not known to him. His evidence further reveals that once while he was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelope was containing a cheque amounting to Rs. 1.20 Crore.

60. The evidence of PW-136- Shri Dipankar Chatterjee reveals that he worked as Employee of Hotel Shalimar. On 13-08-09 police came with a lady and a memorandum Ext-259, was prepared in his presence on that day another memorandum Ext-80 was also prepared.

61. Thus the role played by accused Phojendra Hojai becomes apparent from the evidence of the evidence of aforementioned witnesses discussed herein above. We find no ground to disbelieve their versions which are clear and cogent and able to inspire our

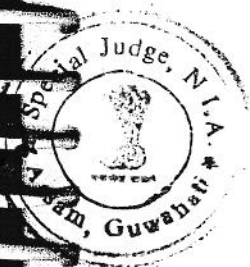

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confidence. The submission of the Id. counsel for the accused is, thus, found to be devoid of merit. The facts and circumstances transpiring against the accused Phojendra Hojai can be recapitulated as under:-

1. He was carrying a sum of Rs.1.00 crore on 01.04.2009 from Guwahati to Shillong along with Babul Kemprai and caught red handed at 14th Miles G.S. Road.
2. Two pistols were found with him, one with licence and another without licence and three blank letter heads of DHD (Jewel) and one letter of Mohit Hojai written to Supdt. Engineer, PWD (R&B), NC Hills, Haflong to award contract of Rs.88 lacs to him, also found with him.
3. He has given money on three occasions to Malswamkimi amounting to Rs. 4.00 crore, one occasion Rs.1.00 crore and on another occasion Rs.2.00 crore and on another occasion Rs.1.00 crore for conversion to U.S. Dollars.
4. The money, so converted to U.S. Dollars by Malswamkimi goes to the hand of Vanlalchanna @ Vantea.
5. He received phone call from accused Mohit Hojai and Niranjana Hojai while he was in custody and taken to Basistha P.S. and found recorded in his Mobile hand set.

62. The role played by this accused Babul Kemprai is very limited. And from the evidence of the witnesses discussed here in above, the facts and circumstances appearing against him can be recapitulated as under:-

1. He was carrying a sum of Rs.1.00 crore wrapped by a blanket, on 01.04.2009 from Guwahati to Shillong in a hired Tata Sumo vehicle along with Phojendra Hojai and caught red handed at 14th miles G.S. Road.
2. No plausible explanation has been offered by him for carrying such a huge sum in his vehicle.
3. He was seen in the flat of accused Mohit Hojai on 31.03.2009 by P.W. 115 Shri Sonam Lama.
4. He has gone out of Guwahati in Tata Sumo vehicle of Chandra Sharma on 01.04.2009 and arrested on that day and P.W.115 seen him and Phojendra Hojai in T.V. News to the evening.



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ACCUSED MOHIT HOJAI(A-3):-

63. The Id. Special P.P. has submitted that accused Mohit Hojai played the central role in the entire conspiracy. It is further submitted that the witnesses examined by the prosecution side proved his role beyond all shadow of doubt.

64. Whereas, Mr. I. Rasul, the Id. Sr. Counsel for the accused has submitted that the accused was CEM of NCHAC he is not directly associated with any of the works orders, issued much prior to his joining, but indirectly, being in charge of the council. It is further submitted that the prosecution side has failed to prove the charge of conspiracy u/s 120-B IPC as the accused has did nothing in his personal capacity.

65. The role played by this accused is discernible from the evidence of following prosecution witnesses.

66. PW 1, Shri. Arup Roy was the General Manager at Hotel Pragati Manor, Guwahati, a three Star Hotel for lodging and food, from the year 2008 to 2009. His evidence reveals that as General Manager his duties were to look after the general administration and other food and beverages, housekeeping, kitchen and production, maintenance, security etc. His evidence also reveals that for booking a room the guest has to go to and contact the front office for the booking purpose and when the front office persons will say that the room is available and if the guest is willing to take the room, then the front office give one form called Guest Registration Certification (GRC). This means the guest details, like name, contact No., address, purpose of visit etc. He confirmed Ext. 1, 2, 3, the GRCs of Pragati Manor and the guest was one Mr. Jayanta Kr. Ghose and room allotted on 21.3.09 room No.302 was allotted, vide Ext.1. He has check in on 21.3.09 at 5 p.m. and 23.3.09 at 12 noon. By Ext. 2, Jayanta Kr. Ghosh was allotted room No. 504 on 19.3.2009 and the check in time was 11.30 a.m. and check out date was 23.3.09 at 12 noon. By Ext. 3, Jayanta Kr. Ghose was allotted room No. 505 on 21.3.2009 and check in time was 11 a.m. and check out is 12 noon on 23.3.2009. In all these cards, it was shown coming from Kolkata and preceded to Kolkata and purpose is official. Ext. 4 is the identity proof given by J. K. Ghosh. Ext. 5 and Ext. 6 are the copies of guest register where on 21.3.2009 and 19.3.2009 J. K. Ghose was allotted room Nos. 302, 303, 504, 505 respectively. Ext.5/1 and 6/2 are the said relevant entries. Said guest J. K. Ghose while staying in the hotel Pragati Menor used room service and Ext.7 is the bunch of room service bills and Ext. 7/1 to Ext. 7/16 are those bills. Vide seizure memo. Ext. 8, NIA has

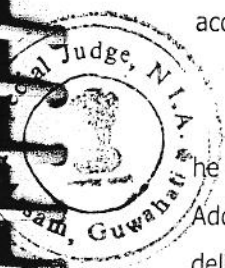

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seized all the aforesaid documents on 10.10.2009. It is elicited in cross-examination that he is not the maker of these documents exhibited by him.

67. The evidence of P.W. 1 finds support from the evidence of PW-116 Mr. Jiten Bania. His evidence reveals that in the year 2009, he was Front Office Executive in Hotel Progoti Manor, G.S. Road. At that time the General Manager of the Hotel was Sh. Arup Roy. His duty as Front Office Executive was to receive the guests and if the rooms are available provide them with room and to fill up the guest card. Ext 1 is the Guest Registration Card of Hotel Progoti Menor dated 21.03.2009 of guest Jayanta Kumar Ghosh who was provided with Room No. 302, the purpose of visit shown as business and he was coming from Kolkata and was to proceed to Kolkata. Ext. 1/1 is my signature. Ext 2 is another Guest Registration Card dated 19.03.2009 in the name of J.K. Ghosh and the room allotted was 504 and the check out date is shown as 23.03.2009. Ext 3 Guest Registration Card of Hotel Progoti Menor dated 21.03.2009 of guest Jayanta Kumar Ghosh who was provided with Room No. 505, check in date was 21.03.2009 at 11.00 AM and check out date was 23.03.2009, the purpose of visit shown as official and he was coming from Kolkata and was to proceed to Kolkata. He confirmed his signature, Ext. 3/1 on the same. It is elicited in cross-examination that he has not seen the register, where data of Guest Registration Card were preserved, is not seen before the Court today.

68. The evidence of PW-2 - Shri Chandra Kt. Boro, P.W.10 SI Maizuddin Ahmed, reveals that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then recorded a GDE and deputed S.I. Maizudding Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.

69. The evidence of PW-2 - Shri Chandra Kt. Boro reveals that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then deputed S.I. Maizudding Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.



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70. His evidence stands corroborated from the evidence of Maizuddin Ahmed P.W.10 and Addl. SP. Shri Sudhakar Singh-P.W.26, and also from the Ext. 30/37- the FIR and also from the Ext.38, the seizure list. The evidence of PW-10 - Maizuddin Ahmed- reveals that on 01-04-09, he was working as S.I. at Basistha PS. On that day Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa came and talked with O/C Chandra Kanta Boro about the unlawful activities of DHD (J). Then they proceeded to Jorabat area and from there to 14 Mile G S Road and around 12.30 pm they intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu Sonar and accused Phajendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant. His evidence also reveals that on search they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and he seized both the vehicle and the articles found therein vide seizure list Ext.31. PW-26- Shri Sudhakar Singh- Addl. S.P. (HQ) Guwahati also testified the same fact.

71. The evidence of PW-10- Maizuddin Ahmed- also reveals that, thereafter, he brought the two accused to Kahilipara and the currency, on counting found to be of 1 crore. Thereafter he lodged the FIR-Ext-30 on the same date i.e. 01-04-09 with reference to Basistha PS GDE entry No 1162 dated 01-04-09. His evidence further reveals that he seized the documents including 3 sheets of letter heads (blank) of DHD(J) Ext.35-A, B & C, and a letter of Mohet Hojai addressing the Superintending Engineer PWD to issue work order in favour of accused Phojendra Hojai for an amount of 88 lakhs- Ext. 34, one 7.6 mm pistol bearing No. RP 127321 with 4 live rounds, one 9 mm pistol made in China with 5 live rounds, arm licence Ext-32 and Ext-33 in the name of Phojendra Hojai and seized M/Ext- 7 is Sony Ericson mobile and M/Ext- 9 is Nokia mobile and Mat. Ext. 06 the brief case, and Mat. Ext. 10 is the Blanket.

72. The defence side has cross-examined all these three witnesses at length. But the probative value of their evidence remained unshaken throughout their cross-examination. The seizure of the articles, including the sum of one crore also not disputed. The seizure list- Ext. 38 bears the signature of Phojendra Hojai and Babul Kemprai both. It is, however, a fact that the prosecution side has not produced the seized sum before the court. The amount has been deposited at Kamrup Treasury. The amount was verified by a party at the Kamrup Treasury and after verification the amount is found to be Rs.99,95,000/. But this would not discredit the version of P.W.2,10 and 26 in as much as seizure of Rs. 1.00 crore is not disputed by the accused from whom possession the same were recovered.



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73. The evidence of PW- 122 Shri Jagyan Haflongbar reveals that during the tenure of Mohet Hojai as Chief Executive Member (CEM), he was attached as Personal Assistant (P.A.) to the CEM's office. He worked with CEM approximately for 5-6 months. All the files received in the office were placed on his table and thereafter, the said files were put up before the CEM for his signature and disposal. As such, I used to see him signing on official papers. He confirmed that Ext 34, a letter addressed to Supdt. Engineer, PWD (R&B), NC Hills, Haflong and the said letter was signed by Mohet Hojai on 17.01.2009. He identified Ext. 34/1, the signature of Mohet Hojai on the letter. It is elicited in cross-examination that the signature of Mohet Hojai appearing on Ext 34 was done in my presence.

74. The evidence of the I/O, PW-146-also testified that having collected CDR from different service providers like BSNL, Airtel, following due procedures as enshrined in 65B Evidence Act, print outs of relevant transactions were taken and analyzed. Ext 425 is the scrutiny of CDR, Mobile no. 9435077481, and Ext. 398, 398/1 to 398/7 are the CDR of mobile phone of accused Phajendra Hojai. The link analysis of CDR 9957412020 belonging to accused Phojendra Hojai with the service provider Airtel. Ext 426 is the scrutiny report and Ext 427 is the Link analysis. Ext 427/1 and 427/2 are the CDR of the said mobile numbers. Similarly, Mobile no. 9957574595 of accused Phojendra Hojai with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 428 is the scrutiny Report of the said mobile and Ext 428/1 is the Link Analysis of the said mobile numbers. Ext 429 in two pages is the CDR, Ext 429/1 and 429/2 are his signatures.

75. The evidence of PW-146-also reveals that Mobile no. 9435577799 of accused Babul Kemprai with the service provider BSNL was analyzed and print outs of relevant parts taken under his signature. Ext. 430 is the scrutiny Report of the said mobile and Ext 431 is the Link Analysis of the said mobile number. Ext 399, 399/1, 399/2 and 399/3 are the CDR. His evidence also reveals that Mobile no. 9957194992 of accused Mohet Hojai (Subscriber ID as Mohet Hojai) with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 432 is the scrutiny Report of the said mobile and Ext 432/1 to 432/15 is CDR of the said mobile number. Similarly, Mobile no. 9401423618 of accused Mohet Hojai (Subscriber ID as Mohet Hojai) with the service provider BSNL was analyzed and print outs of relevant parts taken under his signature. Ext. 433 is the scrutiny Report of the said mobile and Ext 400, 400/1 to 400/10 is the CDR of the said mobile number. The evidence of P.W. 146 also reveals that Mobile no. 9903234905 of accused George Lamthang (Subscriber ID as Mohet Hojai) with the service provider Airtel was analyzed and print outs of relevant

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parts taken under his signature. Ext. 434 is the scrutinise Report of the said mobile and Ext 434/1 and 434/2 are the CDR of the said mobile number. Ext 434/3 and 434/4 are his signatures.

76. The evidence of PW-146-also testified that all these mobile phone analysis led to have evidence interlinking accused persons in pursuance of the criminal conspiracy. The detail analyses of CDRs have stated how during the seizure of the money accused persons were in touch. It also reveals international calls made to other accused based outside the country.

77. But it appears that the CDRs as stated above are not collected from the service providers in accordance with law and no certificate u/s 65-B of the Evidence Act is appended there to. This being factual position the same cannot be relied upon in view of the judgment of the Hon'ble Supreme Court in the case of **Anvar P.V. vs. Basheer and Others, (2014) 10 SCC 473**. The Id. Defence counsel has rightly pointed this out during argument and we find sufficient force in the same.

78. The evidence of the CIO P.W.150 reveals that after interception of accused Phojendra Hojai and Babul Kemprai on their way to Shillong they were taken to Police Station and then accused Phojendra Hojai received calls from both Niranjana Hojai and Mohit Hojai and the same was found recorded in the Mobile Phone seized from accused Phojendra Hojai. It was in Dimasa language. It was translated to English Language by P.W 132. Smti. Joyshree Khersha.

79. P.W.132 -Smti. Jayshree Khersa, Deputy Director, Fire and Emergency Services, Guwahati, and a Dimasa by birth and knows Dimasa language, has got some recording of Dimasa conversation in Dimasa language, recorded in a CD, Mat. Ext 74, translated into English at request of NIA, in the month of July 2009. Her evidence was discussed in detail in respect of accused Phojendra Hojai. Therefore, detailed discussion is found to be not required.

80. PW- 55, Shri Pankaj Kalita is a Laboratory Bearer in the office of the Directorate of Forensic Science, Assam, Kahilipara, Guwahati. His evidence reveals that in his presence Sh. M.C. Kuli, Scientific Officer, Cyber Forensic of Directorate of Forensic Science, Assam, Kahilipara recorded voice sample of Phojendra Hojai on 04.08.2009, at NIA Camp Office at



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Flat No. 501, Block-A1, Games Village, Beltola, Guwahati vide Ext.245 and of Accused Mohit Hojai on 05.08.2009, at District Jail, Guwahati, vide Ext. 246, and on 06.08.2009, voice sample of one Phojendra Hojai at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola and on 06.08.2009, of one Babul Kemprai vide Ext. 248 at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola.

81. The evidence of the PW-146 - Swayam Prakash Pani reveals that during investigation identification memo of Phojendra Hojai, A-1 was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-119 is the identification memo. Identification memo of Phojendra Hojai, A-1 was done with the support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo.

82. PW-18- Shri Kamalesh Pandey- testified that he was working as Manager Madhumilan Guest House Barabazar Kolkata. Ext-50 is Guest House Register and a Sl.-3005, entry dated 02-11-08, shows your associate Phojendra Hojai of Haflong stayed in room No. 813 from 02-11-08 to 6-11-08. Again at Sl-1892 entry dt. 13-03-08 shows Phojendra Hojai of Haflong stayed in room No. 810 from 13-03-08 to 15-03-08. Ext-52 & Ext-53 are the pointing out memo prepared at Madhumilan Guest House in his presence.

83. The evidence of PW-19- Paragmoni Aditya, a Journalist working in News Live PW-70 Sh. Caushiq Kashyap is the Chief Executive Officer, News Live T.V -and P.W.101- Mr. Syed Mirazul Islam have already been discussed in previous paragraph of this judgment and therefore, for the cost of repetition detail discussion is avoided. What is transpired from their evidence is that on 01-04-09 police intercepted vehicles and recovered huge amount of cash with arms and ammunition and they telecasted the news as carrying of 1 crore by 2 persons to Shillong. P.W.101 has identified one of the people as accused Phojendra Hojai with whom he had acquaintance.

84. PW-21 - Chandra Sarma- testified that he knows Mohet Hojai and had family touch. He used to look as local guardian of his daughter who is studying in Guwahati. On 01-04-09 one Sonam Lama telephoned regarding taking of his vehicle on hire and accordingly he asked Dipankar Deka, the driver of Tata sumo. Around 1/2 pm his driver telephoned that he is proceeding with the vehicle towards Shillong. On the next day his driver's wife reported him that the vehicle was seized. Nothing could be elicited in cross-examination of this witness.

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85. The evidence of P.W. 29, Shri George Lamthang, which has already been discussed in details in previous paragraphs, reveals that he converted Indian Currency amounting to Rs. 4.00 Crore, to US Dollars at the behest of Malswamkimi, who collects the said Indian Currency from Phojendra Hojai on three occasions from Shalimar and Madhumilon Hotels. He also identified accused Malswamkimi and Phojendra Hojai.

86. The evidence of PW-40- Shri Nabajeet Buragohain reveals that on 07-08-09, as directed by his superior officer, he met NIA officials and from there we went to SOU office Kahilipara, there out of many accused sitting, Vanlalchanna volunteered to disclose his association with Lady Malswamkimi. Accordingly, Vanlalchanna disclosed in Mizo which was translated into English where he said that he along with Swami and another person Thang used to convert Indian rupees into US Dollars to be supplied to DHD(J) group three times Ext-118 is the disclosure memo.

87. The evidence of PW-40- Nabajeet Buragohain also reveals that as directed he again on 18-8-09 met NIA officials and from there they went to SOU office Kahilipara, there out of many accused sitting one lady by the name Malswamkimi identified Phojendra Hojai from whom she along with George Lamthang had collected money from Madhumilan Hotel and Shalimar Hotel of Kolkata. Ext-119 is the disclosure memo.

88. The evidence of PW-52- Shri C.P.Phookan, Executive Magistrate, Kamrup reveals that on 08-08-09, in the presence of witness, Vanlalchanna identified the photograph of Niranjana Hojai by Ext-242 and Jewel Garlosa by Ext-243. On 18-08-09 in the presence of witness Malswamkimi identified Phojendra Hojai and on the same day George Lam Thang identified Phojendra Hojai.

89. The evidence of PW-58- Dinesh Kr. Vora- also reveals that in 2009 he was working as receptionist of Shalimar Hotel Kolkota. Ext 255 is the visitor register with entries from 01-04-08 to 20-01-09. Register is filled up by customer in their hand at Sl. No-1519 of 18-01-09 is entry of stay of accused Phojendra Hojai and his check in date is 18-01-09 and check out date is 21-01-09. Ext 255/2 is another visitor register with entries from 20-01-09 to 10-07-09. At Sl no-1615 of 03-02-09 is entry of his stay, Phojendra Hojai and his check in date is 03-02-09 and check out date is 04-02-09. On 10-03-09 Phojendra Hojai check into the Hotel. At Sl. no-1789 of 10-03-09 is his entry of his stay, and his check in date is 10-03-09 and check out date is 14-03-09. Ext-255/5, Ext-255/8, Ext-255/11 are the bills. Entry at Sl. no-



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1615 of Ext. 255 and entry at Sl. No-1789 of Ext. 255/2 shows stay of accused Phojendra Hojai in Hotel Shalimar and this fortified the version of P.W.29.

90. The evidence of P.W.59, Shri Devinder Singh reveals that during interrogation accused Malswamkimi and George Lal Thang pointed out Madhumilan Guest House and Shalimar Hotel from where they were collecting money. Ext-257 disclosure statement of accused Malswamkimi by which she disclosed about Rs 10 lakh and vide Ext-258 Malswamkimi disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang.

91. The evidence of PW-69- Sheo Kr. Pandey - reveals that he was Manager Madhumilan Guest House Ext 50- Guest House Register from March 2008 to 15-10-08. On 13-03-09 at Sl. 1892 Phojendra Hojai occupied Room No-810. Ext-52 is the pointing out memo of George Lamthang and Ext-53 pointing out memo of Malswamkimi by which they indentified the Hotel where they came to collect money from Phojendra Hojai. Thus this witness also further fortified the version of P.W.29.

92. PW-137- Satyendra Kr. Deka stated that he was working as Dy. Gen Manager BSNL. He received request by Ext-396 for furnishing details of BSNL No-9435077481, 9435577799, 9401423618 and CDR. Ext-397 is my reply the print copy. Ext-398 is the CDR of mobile No-9435077481, Ext-399 is the CDR of mobile No-9435577799, Ext-400 is the CDR of mobile No-9401423618, Ext-401 is another CDR and the relevant pg is 47 to 68. These CDRs have been furnished by the Service providers without complying the provision of section 65B Evidence Act.

93. The evidence of PW-31- Shri Ranjit Gogoi- reveals that he is a Bank employee and was posted at zoo Road branch SBI. On 26-3-09 Debasish Bhattacharyee came for opening a current A/c in the name of MAA Trading. The Bank opened the A/c on 27-3-09 and thereafter Debasish Bhattacharyee has deposited a Cheque for Rs.84 lakhs and Rs. 57 lakhs and wanted to withdraw the amount on the same day. To ascertain the genuineness of the cheque, he visited Haflong and met PHE Engineer Mukherjee who confirmed the cheque as genuine. After credit of the Cheque amount the bank paid Rs 84 lakhs to Debasish Bhattacharyee, and thereafter on Monday Debasish Bhattacharyee also withdrew 3,50,000/from the A/C of Maa Trading. He further opened one current A/c in the name of Jeet Enterprise in the month of May -2009.


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94. The evidence of P.W. 34 Shri Debasish Dutta reveals that he know one Dhruba Ghose right from his childhood and they were in the same school. One day he asked him if he know anybody who can introduce for opening a new account at Guwahati. He then referred the name of Diganta Vikram Gayan who is an architect by profession and the said person but account was opened in whose name was not known to him. His evidence further reveals that once while he was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelope was containing a cheque amounting to Rs. 1.20 Crores. His evidence also reveals that during 2008 to 2009 he was working as OSD to CEM Deepolal Hojai NCHAC- and on 26-11-08 Deepolal Hojai suddenly called him to his office at 8- 8.30 AM and asked me to type a resignation letter citing his health ground and accordingly he did so. He went with the letter and returned back to the room and told him that typed one will not be accepted and that he has to give in his own handwriting. Next day he came to know that Deepolal Hojai has resigned and Mohit Hojai was elected as CEM of NCHAC Ext-96 is the resignation letter.

95. The evidence of PW-136- Shri Dipankar Chatterjee reveals that he worked as Employee of Hotel Shalimar. On 13-08-09 police came with a lady and a memorandum Ext-259, was prepared in his presence on that day another memorandum Ext-80 was also prepared.

96. PW-7- Shri Ajay Agarwal testified that he is the owner of a firm in the name and style -M/S,Alampurua Enterprise and doing the business of Govt. supply to PHE Deptt. And he approached Mohet Hojai CEM NC Hills regarding supply of articles to PHE Deptt., who directed him to contact Addl. Chief Engineer Karuna Saikia, who gave him the supply order to PHE Deptt. Ext-21 is the purchase bill dt 20-3-09 by which he purchased the materials from Pomoi Steels for Rs. 18, 67,486.40/- Ext. 22 is the consignment note of Maa Kali Transport. It is licited in cross-examination of this witness that he does not know whether any tender was floated by the deptt. and when he met Mohet Hojai.

97. PW-8-Chintamani Sarma, Manager Pamoi Steels testified that Ext.28 is the price list of GI Pipes w.e.f. March 09 to 8-7-09, and the firm gives 27% discounts for bulk purchase and in the case of M/S Alampurua Enterprise the firm gives 27 to 30 % discount for purchase of GI Pipes.

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98. PW-11- Prithish Kumar Chaki - a Senior Financial Adviser testified that Financial Rules is applicable to all areas including Hill areas. And, under Rule -268 the Deptt. is to prepare plan and estimate and design for initiating any civil work based on schedule of the rate and after getting approval of the competent authority, the Deptt. Has to accord formal administrative approval i.e. financial sanction to the work and thereafter it has to float tender for fixing the rate and firm for the work through open advertisement thereafter on receipt of tender the Deptt. will prepare comparative statement and from the statement the lowest bidder has to be offered the job.

98.(i). P.W. 11 also testified that as per Govt. Notification No. FEB 234/2007/01 the Executive Engineer has power up to 5 lacs, the Superintending Engineer has power up to 50 lacs, Addl. Chief Engineer has power up to 100 lacs, and Chief Engineer has power up to more than 100 lacs. And vide Ext.39 five documents were seized from him Ext. 39(2) is the Assam Financial Rules and 39(3) is the said Govt. Notification and 39(4) is the Assam Gazette containing Assam Preferential Store Purchase Act.

99. PW-14- Shri Laltanouia Sailo- Inspector of Police CID Special Branch, Mizoram, testified that in the year 2009 a NIA team came to Aizawl in search of an arms smuggler whose identity came to be known as Vantea@ Vanlalchhana of Saronveng Aizawl. Then he arrested him and on interrogation he made a disclosure about weapons which he kept in a house located at Sarong Veng. On search he recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas one telescope Bushnell and one passport in the name of Vanlalchhana. Ext-43 is the disclosure memo, Ext.44 is Passport. M/Ext 11(1) to 11(8) are M-16 Rifles with magazines, M/Ext 11(9) is 9 mm berretta pistol with magazines & 14 rounds of ammunition, M/Ext 12(1) to 12(12) wacky talky sets 12 nos. M/Ext 14 is telescope Bushnell. PW-63 Sh. Lalrinawma Traite testifies the same fact - that in month of July 2009 one armed smuggler Vanlal Chaana @ Venchema @ Vantea was apprehended and on the disclosure made by him 8 nos. of M-16 rifles, one 9 mm berretta pistol, 12 nos. of walkie-talkie and chargers and spare batteries, 6 nos. of 9mm ammunition, 1 sniper length antenna.

100. PW-15- Shri Prem Chand Agarwal- testified that he is the Proprietor of M/S Raj Hardware and on being requested by Dy. S.P. Shri K.S. Thakur he provided him with the rates of GI Pipes vide Ext.-45/2. He then given the list of rates of GI Pipes and the price list

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he quoted and manufacturer's price is same. The Vat is inclusive of the price that he quoted. And he gives 25% to 30% discount as a wholesaler.

101. PW-16- Shri Nakul Boro, -a driver by profession, testified that vide production memo - Ext-46 some documents were produced and his signature was taken over the same and Ext-47 is the letter head of Mohet Hojai.

102. PW-17- Hiranya Kumar Das an officer of Punjab & Sind bank Ext-48 is letter forwarding statement of A/c of M/S Maa Trading- Ext. 48/2 to 48/5, M/S Jeet Enterprise- Ext-48/6 to 48/9, M/S Loknath Trading- Ext 48/10 to 48/13, M/S Borail enterprise Ext.48/14 to 48/15, maintained in his Bank. And Ext-49 (in 15 pages) is the forwarding letter by which the statement of account of you -from pages 49(2) to 49(4) was forwarded to NIA by Sr. Manager.

103. PW-20- Ronsling Langthasa- testified that he was cadre of DHD of NC Hills for about 16 years. From 1996 Jewel Garlosa was the Chairman, Dilip Nunisa was the Vice Chairman and Pranab Nunisa was the Commander-in-Chief. From 01-01-2003 DHD group entered into cease fire with the Govt. After cease fire Jewel Garlosa continued with the organisation. He suddenly disappeared. Dilip Nunisa continued with the organisation and till this stage the said group worked for finalisation of the accord in Oct 2012. Jewel Garlosa group were also a party to the accord.

104. PW-23- Kulendra Daulagapu- an Executive member of DHAC, testified that he come to know about the activities of DHD (J) about demand of money and violent activities they took. During 2008 ASDC & BJP alliance was in power. During one of the meeting Depolal Hojai -CEM, cited his ill health and resigned as CEM and Mohit Hojai were elected as CEM. He went with Mohit Hojai to Kuala Lumpur in Feb/ March 2009 at Kula Lumpur he met, Niranjana Hojai. He stated that he gave statement u/s 164 and Ext-56 is the statement. Nothing is elicited in cross-examination of this witness.

105. The evidence of PW-27- Shri Hiteshwar Medhi- reveals that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjana Hojai of DHD (J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjana Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted

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on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons.

106. The evidence of PW-35- Imdad Ali reveals that he was working as contractor in NC Hills. From 2007 to 2008 Deepolal was the CEM, who resigned in 2009 and Mohit Hojai became CEM. And from 2007 to 2008 Deepolal Hojai was the CEM. For his construction work he receives payments but small amount remain with the Council which he could not recover. His evidence also reveals that when he was in N.C. Hills, he came to know Jayanta Kr. Ghosh who is also known as Dhruba Ghosh and became friendly with him. He has a Hotel at lower Haflong, Railway Station. And he had business of Railway Catering business. In 2008 he carried an amount of Rs. 15 lacs from Guwahati to Kolkata to be given to Jayanta Kr. Ghosh. And accordingly he gave this amount to J.K. Ghosh. The said amount of money was carried by J.K. Ghosh and has given it to somebody he do not know and he was along with him but he was in the car. Then he returns to Guwahati. In 2009 Deepolal Hojai resigned as CEM and Mohit Hojai became the CEM. Mohit Hojai rang him up and told him that he wants to send some heavy amount of money to Jayanta Kr. Ghosh at Kolkata and whether he could help him in sending the amount, he also told me that moneys are sent through Marwary and whether he know the procedure. As he was at my village at Hojai he told him that he do not know any such person who could help him sending money from Guwahati to Kolkata. After about some days he happens to meet one Didar Ahmed Choudhary who is known to him and he told me that Mohit Hojai has taken his help in sending about Rs. 80 Lacs. In the later part of January, 2009 Mohit Hojai again telephoned him and told him that he was to sent some money at Kolkata. He told him that as he is in Delhi in Hospital as such he will not be in a position to help him in sending such money.

106.(i). His evidence also reveals that he has given his statement before the Magistrate. Ext. 97 is the said one 164 Cr. PC statement, Ext. 97/1, 97/2, 97/3, 97/4, 97/5, 97/6 and 97/7 are his signatures in the said 164 statement. Ext. 98 is the cheque amounting to Rs. 20 Lacs which he has given it to J.K. Ghosh, and another cheque Ext. 99 for Rs. 61,45,400/- was also given to J.K. Ghosh Both these amount were withdrawn by J.K. Ghosh and Demand Draft was made for depositing at Indian Railway Catering and Tourism Corporation. He do not know whether the whole amount was used for making the Demand Draft. Ext. 100 is the statement of account of SBI, Commercial Branch, Ganeshguri, Guwahati, where different transaction are reflected. Mention to be made here that accused Mohit Hojai has not disputed the evidence of this witness during cross-examination.



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106.(ii). But it appears from his statement, Ext.97 that when Depolal Hojai became CEM after Purnendu Langthasa, he meet him and then Depolal asked for a favoure from him and asked him to hand over Rs.15,00,000/ to Joyanta Kr. Ghosh at at Kolkata in January 2008. And he did the same accordingly. Joyanta Kr. Ghosh then took him to a place and handed over a bag to a person and introduced to him as a resident of Kolkata. Then in the month of April 2009 he came across a news on TV a person with money was arrested and then he recognised that person i.e. the person whom Joyanta Kr. Ghosh handed over the bag at Kolkata in his presence, and came to know his name as Phojendra Hojai. Then in the month of January 2008 Mohit became CEM and he met him and then Mohit Hojai asked him to carry a sum of Rs. 85,00,000/ meant for Joyanta Kr. Ghosh, to a Marwari of Fancy Bazar namely Shamji but as he is not acquainted with Shyamji he brought Dider Ahmed Chaudhary, who is known to Shyamji, before Mohit Hojai and in his presence Mohit Hojai has handed over Rs.85,00,000/, to Dider Ahmed Chaudhary. After one month, Mohit Hojai told him that one Sambhu has collected the amount on behalf of Joyanta Kr. Ghosh. Shyamji is hundi operator of Fancy Bazar. In the last part of January 2009 Mohit Hojai called him to his Flat at Guwahati and told him that a sum of Rs. 60,00,000/ is to be sent to Joyanta Kr. Ghosh. And asked him to carry the amount to one Ravi Agarwal, Athgaon and then he did the same. In the month of March 2009, on being asked by Mohit Hojai he took one Chandra Sharma to the place of Ravi Agarwal wher Chandra Sharma delivered Rs.20,00,000/ in cash to Ravi Agarwal. Joyanta Kr. Ghosh barrowed a sum of Rs. 1,16,45,400/ from him and returned the same in the month of April 2009.

106.(iii). It is true that the statement u/s 164 Cr. P.C. cannot be read as evidence. It can only be used for the purpose of corroboration or contradiction. Here in this case, though Ext. 97 has not lend corroboration to the evidence of P.W.35, except, however carrying a sum of Rs. 15,00,000/ to Kolkata and handing it over to Joyanta Kr. Ghosh in January 2008, it lends corroboration to the evidence of P.W.106 -Ravi Agarwal and P.W. 21-Shri Chardra Sharma.

107. The evidence of PW-106-Shri Ravi Agarwal reveals that he was in cement business and Imdad Ali was his customer. In first part of 2009 he came to his office with a bag containing large amount of money and told him to hand over the money to one Shyamji who came and receive the money. After about a month Imdad Ali came to his office with a bag containing money and handed over the money to Shyamji and both left, he however



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admitted that to his knowledge Shyamji was a Hundi operator, so far as he remember money was sent to Kolkata the amount was fairly large amount.

108. On the other hand, the evidence of P.W.21 Shri Chandra Sharma reveals that in 2009 Mohet Hojai asked him over phone to go to AT Road and met Imdad Ali, accordingly he met Imdad Ali after talking he left. Again in the same year Mohet Hojai telephoned and told him to meet Joyanta Kr. Ghosh. Joyanta Kr. Ghosh sent a man with a packet to him and he then gave it to Joyanta Kr. Ghosh. Nothing could be elicited in cross-examination to discredit his version.

109. Thus, a conjoint reading of the evidence of P.W.35, 21, and P.W.106 and Ext.97 would show that accused Mohit Hojai has a link and transaction of money with accused Joyanta Kr. Ghosh. Mohit Hojai used to send money meant for Joyanta Kr. Ghosh at Kolkata sometimes through P.W.21 and sometimes through hundi operator.

110. PW-42 is Sh. Tomizuddin Ahmed Sr. Scientific Officer of Forensic Science Laboratory Assam. His evidence reveals that the Directorate of Forensic Science received some documents in connection with Case No. 01/2009 and 02/2009 NIA, New Delhi for comparison and opinion on 01.10.2009. On being allotted to him he examined the same. The documents were sent for examination and opinion by Mukesh Singh, Supdt. of Police, NIA, New Delhi. Ext. 127 is the said letter with Annexure-I, II and III in 13 pages, which were marked as Ext 127/1 to Ext 127/13. It is to be mention here that specimen handwriting of Mohit Hojai Ext. 207 in 14 pages were taken by the I.O. in presence of P.W. 47 Shri Tankeswar Das, at SOU P.S. Kahilipara.

111. Ext 208 is his opinion and Ext 208/1 is his signature, which was forwarded to the Supdt. of Police, NIA, New Delhi enclosing the documents which were sent for examination, vide Ext 209 by the then Director, Dr. Padmapani. Ext 210 are the reason given by him for his opinion. His evidence, so ar it relates to accused Mohit Hojai is concerned, reveals that specimen handwriting of Moheet Hojai which was marked by him as S-1 to S-14, the same is marked Ext 207/1 to Ext 207/14. And his opinion was:-

111.(i). the documents is connection with a Case No. 01 & 02/2009/NIA/New Delhi have been carefully and thoroughly examined and compared with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery



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with the necessary scientific aids available in the Directorate of Forensic Science, Assam, Kahilipara, Guwahati-19.

111.(ii). The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-14 also wrote the red enclosed writings and signatures similarly stamped and marked Q-1 and Q-2. Cross-examination of this witness could reveal noting to discredit his version.

112. P.W.50 -Shri L. Ngamlai is the Sr. Finance & Account Officer, NCHAC. His evidence reveals that that by receipt memo, Ext 217 dated 15.06.2009, he handed over 14 nos. of files belonging to PHE Department, Social Welfare Department, Transfer order and joining report of Sri S. Lienthang, Accountant (N) and files relating to Special Advance and Requisition Register 2008-09 of Cheques to various departments/ Divisions. Ext 218 is the file No. AC/ACCTTS/TS-1/2008-09, which relates to BT Bills and challans to be deposited to the Treasury PLA Account which is maintained by the Treasury Officer, N.C. District now Dima Hasao District.

112.(i). His evidence also that Ext. 219 is file No. TS30(B)/2008-09 regarding release of funds for work/maintenance to the EE, PHE, Maibong Division, at page no. 3 regarding requisition for release of funds amounting to Rs. 1,50,00,000/- has been processed and put up to him proposing release of fund mentioning the availability of provision of fund under 2215WS/S (Water Supply & Sanitation). Accordingly, he put up the file to the Principal Secretary mentioning the availability of fund provision in which he has quoted to the authority the weakness position of Personal Ledger Account (PLA), however, the then Principal Secretary recommended to the CEM (Chief Executive Member) for release of fund amounting to Rs. 50,00,000/- to Umrangso Division, PHE. But the CEM- Shri Mohit Hojai released Rs. 90,00,000/-.

112.(ii). His evidence also reveals that PLA account means that all the funds received from the Govt. Of Assam for all the departments are deposited through By Transfer Bills and challans. From the said account PLA account, the money required for other department are released. At page no. 4 of the Note sheet an amount of Rs. 4,49,11,653/- has been processed for release against implementation of Water Supply and Sanitation Programme of Maibong Division. Accordingly, after checking the proposal note of the Dealing Assistant and Accountant, he has put up to the Principal Secretary mentioning the availability of fund provision under the Concerned Head of Account 2215WS/S, and also mentioning the


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absence of financial sanction of the Council. The then Principal Secretary put up and recommended 50% of the requisition amount to the CEM. The CEM released 1.84 crore and Rs. 25,00,000/- under ARP scheme. At page no. 5 of the note sheet, the Dealing Assistant and Accountant put up the requisition to release Rs. 2,40,11,653/- mentioning release for work under 2215WS/S account, however, no action was taken. Ext 219/1 to Ext 219/5 are the relevant portion of the note sheet.

112.(iii). His evidence also reveals that - Ext 220 is the file no. TS31(B)/2008-09 regarding release of fund for maintenance to Executive Engineer, PHE, Umrangso Division. At page no. 3 of the note sheet an amount of Rs. 1,20,00,000/- only was proposed for release under 2215SW/S, and he has put up the file before the Principal Secretary mentioning the weakness position of the PLA account. The Principal Secretary recommended for Rs. 50,00,000/- and the CEM released Rs. 95,00,000/-. At page no. 4 an amount of Rs. 4,30,00,000/- only was proposed to release under 2215SW/S for procurement of GI Pipe and payment of Original Work. He put up the file mentioning the overall balance of fund against the Department. The Principal Secretary recommended for release of less than Rs. 1 crore, however, CEM-Mohit Hojai released Rs. 1.29 crore. Ext 220/1 and 220/2 are the relevant portion of the note sheet.

112.(iv). His evidence also reveals that Ext. 221 is the file no. TS29 (B)/2008-09 regarding release of fund for maintenance/works to the Executive Engineer, Haflong Division under 2215WS/S. At page no. 4 of the note sheet a proposal for Rs. 2 crore was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah mentioning the very weakness position of Personal Ledger Account. By his note he has recommended for release of Rs. 1 crore and accordingly, CEM has approved the same amount. At page no. 5 of the note sheet a proposal for Rs. 1,80,90,000 was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah. By his note he has recommended for release of Rs. 1 crore but however, CEM has released Rs. 1.52 crore. At page no. 6 of the note sheet a proposal for Rs. 1,80,90,000/- was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah mentioning that an amount of Rs. 1,42,00,000/- has already been released earlier to the Department. But the Principal Secretary by his note he has recommended for release of Rs. 50 lacs for 3 divisions and accordingly, CEM, In-Charge has approved the same amount. Ext 221/1 and 221/2, 221/3 are the relevant portion of the note sheet.



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112.(v). His evidence also reveals that Ext. 222 is the file no. AC/PHE/H/4/2008-09, regarding Water Supply Scheme, which was maintained in the Transfer Cell of Autonomous Council's Office. At page No. 1 of the note sheet, it relates to according of administrative approval under ARP Scheme for the year 2008-09, proposed for 18 nos. of selected schemes. The Deputy Secretary who is the In-Charge put up to the Principal Secretary and accordingly, the Principal Secretary recommended the proposal and which was approved by Mohit Hojai as CEM. At page no. 20, there is a order of the Deputy Secretary regarding according of administrative approval for 18 nos. of scheme amounting to Rs. 1,31,82,000/-. Ext 222/6 is the said order and Ext 222/7 is the signature of Deputy Secretary, Smt. Sabita Langthasa which he identified.

112.(vi). His evidence further reveals that Ext 223 is the file no. PHE/M/4/Pt/2008-09 regarding Water Supply Scheme (ARP), under Maibong PHE Division. At page no. 1 of the note sheet there is a proposal for according of administrative approval submitted by the Addl. Chief Engineer, PHE, Haflong for Rs. 277.19 lakhs for the year 2008-09. The Deputy Secretary recommended the same to the Principal Secretary and accordingly, the CEM has accorded the same. Ext 223/1 is the relevant portion of the note sheet.

112.(vii). His evidence further reveals that Ext 224 is the file no. AC/PHE/M/4/2008-09 regarding Water Supply Scheme. At page no. 8 of the note sheet, there is a proposal for according of administrative approval submitted by the Addl. Chief Engineer, PHE, Haflong for Rs. 55 lakhs. The Deputy Secretary recommended the same to the Principal Secretary and accordingly, the CEM has accorded the same. At page no. 9 of the note sheet there is a proposal for according of administrative approval for 7 nos. of schemes amounting to Rs. 58,34,700/-. The Deputy Secretary proposed to the Principal Secretary to consider the proposal after Lok Sabha Election and accordingly, the Principal Secretary agreed. Ext 224/1 and Ext 224/2 is the relevant portion of the note sheet.

112.(viii). His evidence also reveals that Ext 225 is the detail list of cheques issued from 1st January, 2009 to 14th May, 2009 in favour of (1) Department of Social Welfare, (2) PHE Department. In total there are 88 PLA cheques were issued. The amounts are given in the cheque in favour of the Drawing and Disbursing Officer as per the list.


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113. The evidence of PW-51- Dilip Phonglo reveals that he was introduced by Biraj Chakroborty to Karuna Saikia. Karuna Saikia gave some supply order work. On 30-1-09 Karuna Saikia told him to meet him at Haflong Bazar and there he gave a Cheque for Rs.20,99,500/-Ext-229, which was made in his name and asked him to encashed the Cheque and pay the cash to Mohit Hojai, and accordingly he withdrew and gave the amount to Mohit Hojai. On 02-02-09 Karuna Saikia rang him and asked him to meet at Haflong Bazar and there he gave a Cheque for Rs.10,50,000/-Ext-230 which was made in his name and asked him to encased the Cheque and pay the cash to Mohit Hojai, accordingly he withdrew and gave the amount to you. On 07-02-09, Sriwell Masa Cashier PHE Deptt. rang him and gave an unsigned Cheque for Rs.12,60,000/-Ext-231 asked him to ring Karuna Saikia and on his ringing Karuna Saikia asked him to meet at Lanka and on meeting he gave his signature on the Cheque and asked him to encased the Cheque and pay the cash to Mohit Hojai and accordingly he withdrew and gave the amount to Mohit Hojai. He made a 164 statement before the Magistrate Ext-234. Nothing tangible could be elicited in cross-examination to discredit his version.

114. The evidence of PW-53 Shri Uttam Phonglosa @ Munna reveals that he had a proprietary firm in the name and style of M/S Munna Phonglosa and in the year 2008 he met Biraj Chakroborty, who introduced him with Karuna Saikia of PHE Deptt. In 2008 he received supply order form the Deptt. Thereafter, in Jan., 2009 Karuna Saikia gave him 2 cheques in the name of his firm for Rs.21,45,000/- and Rs.20,55,000/-, Ext.235 & Ext.236 for a sum of Rs. Rs.21,45,000/- and Rs.20,55,000/-, respectively and asked him to withdraw the money and to hand it over to Mohit Hojai. Though, he objected yet Karuna Saikia put him under fear and then he did the same. And Ext.237 is the cheque by which he withdrawn Rs.41,00,000/- and thereafter on 2.2.09, Karuna Saikia gave him another cheque, Ext.238 for a sum of Rs.10,50,000/- and asked him to en-cash the same and hand over the amount to Mohit Hojai. He then withdrawn the amounts vide Ext.239 and gave the same to Mohit Hojai. Nothing tangible could be elicited in cross-examination of this witness also to discredit his version.

115. The evidence of P.W. 51 and 53 find support from the evidence of P.W.78 Shri Biraj Chakravarty, whose evidence reveals that in the year 2009, he was working as UDA in PHE department. In the month of January, 2009, CEM- Mohit Hojai called him to his chamber and gave him a piece of paper containing names of Munna Phonglosa and Dilip Phonglosa and asked him to take it to Sri Karuna Saikia, who was working as In-Charge, Additional Chief Engineer for placing order in favour of those persons who were in the list.


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And after some days Mohit Hojai again called him to his chamber and told him that he has some discussion with Sh. Karuna Saikia and that Karuna Saikia has handed over cheques to Munna Phonglosa and Dilip Phonglosa and as directed he had to take the boy to bank as indicated by Mohit Hojai and after encasing the cheque amount he handed over the amount to the boy who was authorized to received the amount on behalf of Mohit Hojai. Thereafter, again he was called by Mohit Hojai and directed him to take the one boy who had gone earlier to go to the house of Jibangshu Paul for collection of some money. Accordingly, he took the boy to the house of Jibangshu Paul. As scheduled, the boy went to the house of Jibangshu Paul and came out carrying a polythene bag containing something. Thereafter, the boy went away and he came to his house. His statement- Ext 289, given before the Judicial Magistrate, Kamrup, Guwahati on 10.05.2010, also consistent with his evidence.

116. P.W.60, Shri S.R. Mahadeva Prasanna, Professor, Department of Electronics and Electrical Engineer IIT-Guwahati, testified that one Mukesh Singh, IPS came and handed over to me 2 (two) CDs along with forwarding letter dated 15.08.2009, Ext. 260, to get expert opinion on voice sample and was asked to compare the voice samples which are named as A-1 to A-4 in folder, Audio with B-1 to B-4 in folder Audio-B and also C-1 to C-6 in folder Audios and was also asked to compare these samples given in another Ext-X. M. Ext 15 and 16 are the said exhibits. After receiving the said exhibits he analyzed the voice samples with the help of team of human subjects working in speech processing area. There were certain questions asked by the NIA official by Ext-260 and the answers for the questions were obtained by conducting subjective studies from the human subjects' by following standard procedures. Based on human subjects' opinion, the answers were furnished to the team. Ext 261 is his report in 8 pages.

117. PW-90- B. Ramani is the Executive Director of C-DAC (Centre for Development of Advanced Computing). His evidence reveals that he carried out the forensic imaging and ensured the authenticity of the evidence by generating Hash Values of the 7 hard discs and then did the analysis. In this analysis, they have looked at retrieval of deleted files, information in the unallocated areas hard discs, key words searching, examining text documents, PDF files etc. After the analysis they have found some deleted information, documents, PDF files, pictures etc. and they have retrieved these information and submitted their written reports along with DVD to the NIA. Ext. 305 is the forwarding letter dtd.14.10.2009. Ext.306 is the report of analysis in 25 pages with seal of C-DAC, under his signature Ext.306/1.


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117. (i). His evidence also reveals that in their report, they have concluded that they have recovered a few bills, challans, and work orders. They have also recovered some pictures; they have extracted evidence from the unallocated areas of hard discs. In the report, they have included DVD, which is organized Exhibit wise 1 to 7, these Exhibits contained Image files, Word files, PDF files. His evidence further reveals that after examining the material objects, they had prepared a report and returned the material objects along with the report.

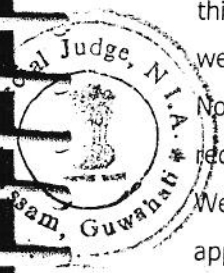
117.(ii). The Material Object no. 78, is a hard disc bearing SI. No. WMAT13626680 which was marked as Ext-02 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer and is shown to him in the Court today which is in sealed condition as sealed by them. This they had examined and submitted their report, vide Ext. 306 at page 8 and 9.

117.(iii). The Material Object no. 79, is another hard disc bearing SI. No. 6RADA5TD which was marked as Ext-03 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer. This they had examined and submitted their report, vide Ext. 306 at page 11 and 12.

117.(iv). Material Object-84 is the DVD-1 contains their marking "Copy of original" "Evidence from preliminary analysis of crime no. 01/2009/NIA". And Mat. Object-85 is another DVD containing data which were sent by them along with the report to NIA. DVD-2 contains their marking "Original" "Evidence from preliminary analysis of crime no. 01/2009/NIA".

117.(v). It is to be mention here that accused Mohit Hojai has not cross-examined of this witness. However, having played the Material Object-85 the DVD containing data which were sent by C-DAC along with the report to NIA, found to have contained one Note dated 3rd Nov.2008, in his name, addressed to Principal Secretary, N.C. Hills Autonomous Council requesting him to issue supply order of different materials, sewing machines etc. under Social Welfare and Anganwadi Materials under ICDS Project and construction works as per the approve rate of Autonomous Council, Haflong for the year 2008-2009 to the following suppliers/firms with intimation to the undersigned. Issue order accordingly. The note also accompanied by a list of suppliers/firms in separate sheets. The list of suppliers/firms amongst others contains the names of the firms of accused Debasish Bhattacharyee. It also found to have contains various orders in the name of Principal Secretary NCHAC and letters addressed to Development Commissioners, Hill Areas Department, Govt. of Assam, Dispur and various letters addressed to the Child Development Project Officers of different ICDS Projects. Money


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receipts, Bills and Challans etc. The evidence of P.W.90, since been not disputed by accused Mohit Hojai, the same has to be accepted. And the same clearly reveals a nexus with accused Mohit Hojai with that of accused R.H. Khan and accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh. Mention to be made here that the evidence of P.W.90 could not be shaken in cross-examination by accused R.H. Khan and accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh, and the same has been elaborately dealt with at appropriate stage in this judgment.

118. The evidence of PW-92 Sh. Nikhil Kanta Nath reveals that in the year 2008-09, he was working as AE & Assistant Executive Engineer, Rural Sub-Division, Haflong, in PHE Department. Ext 312 is a Bill of M/s Maa Trading, Haflong for supply of Galvanized GI Pipes dated 26.02.2009 for Rs. 14,99,780/-. On the reverse side of the bill there is verification to the effect that the Bill is verified and found correct and materials received in full and good condition. Ext 312/1 is my signature. However, the verification was given by me under pressure from K.B. Mukherjee, Executive Engineer who pressurized me to verify the bill immediately and materials may be given by the party after few days. Vide his letter dated 11.10.2009 Ext 313/1, he intimated that as per direction and assurance of CEM, Mohit Hojai, he has verified the bills without receiving the materials and that the materials will be supplied soon by Maa Trading, in response to Ext 313 a letter addressed to him by DSP, NIA on 11.10.2009 requesting me to furnish all documents relating to receipt of issue of GI pipes supplied by Maa Trading by supply order dated 26.02.2009 and relating to release of payment of Rs. 14,33,000/- vide cheque dated 27.03.2009. In response to the letter, Ext 314 dated 18.06.2009 from DSP, NIA to Executive Engineer, PHE, Haflong regarding production of records and materials in respect of supply of pipes by M/s Maa Trading, he has submitted one letter issued by K.B. Mukherjee to DSP, NIA dated 19.06.2009 wherein it was informed that Bill dated 16.03.2009 of Rs. 17,05,190/- and Rs. 49,98,800/- for supply of GI pipes had not been received by the Division. It also reflected that due to extreme pressure created by Mohit Hojai, CEM and other persons and undersign was bound to pay the amount. Ext 314/1 is the said letter and Ext 314/2 is the signature of K.B. Mukherjee which he can identify. Ext 314/3 is another letter dated 29.04.2009 addressed to Maa Trading through Sabhu Ghosh reminding supply of GI pipes. Ext 314/4 is another letter dated 18.06.2009 addressed to Maa Trading through Sabhu Ghosh reminding supply of GI pipes. Ext 314/6 is my letter to DSP, NIA dated 19.06.2009 intimating that supplier Maa Trading has not supplied the materials under reference.




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118.(i). In cross-examination he admitted that Ext 312 is the bill dated 21.06.2009 was exhibited by him wherein he wrote down "the bill verified and found correct, materials received in full and good condition recorded in MB No. 595(R) page no. 32 to 36 and taken on the side A/O for the month of February, 2009." He admitted having not filed any written complaint to any of my superior officer though he reported verbally.

119. PW-93-Sriwell Masa testified regarding issue of Cheque by Karuna Saikia and Ext-91 is the Treasury Transit Register maintained by him. Entry- Ext-91/1 dt. 12-06-09 by which Rs.40,00,000/- was released by the Council for maintenance. Entry -Ext-91/2 dt. 13-06-09 by which Rs.50,00,000/- was released by the Council for construction works. Entry -Ext-91/3 dated 12-09-09 by which Rs. 90,00,000/- was released by the Council for maintenance. Entry -Ext-91/4- dated 29-01-09 by which Rs.1,92,49,000/- was released by the Council for maintenance. Entry- Ext-91/5 dated 9-02-09 by which Rs. 1,00,00,000/- was released by the Council. Ext-86 is the Cash book of Council from 29-3-08 to 30-1-09 maintained by him. Cash book gives details of payments made to parties. However, details of payments after receipt of Rs. 1,92,49,000/- Ext-91/4 and Rs. 1,00,000/- Ext-91/5 are not mentioned in the cash book.

119.(i). PW-93-Shri Sriwell Masa testified that during that time Karuna Saikia was the authorised person to operate the said account. Ext-89 is the Cheque book of PHE which was under his custody and written under instruction of Ex. Engineer Karuna Saikia Cheques were issued under the signature of Karuna Saikia. Ext-235 is Cheque issued to M/s Munna Phanglosa on 30-1-09 for Rs. 21,45,000/-. On 30-1-09, a sum of Rs. 20,99,500/ was issued to M/s Dilip Phanglosa Vide Cheque No. 317973, Ext-128 is Cheque issued to Rajen Barman on 30-1-09 for Rs. 11,50,000/-. Ext-129 is Cheque issued to Bablu Das on 30-1-09 for Rs. 12,50,000/-. Ext-136 is Cheque issued to Munna Phonglosa on 31-1-09 for Rs. 20,55,000/-, Ext-130 is Cheque issued to Rajen Barman on 30-1-09 for Rs. 9,45,000/-. Ext-131 is Cheque issued to Jagat Jidung on 7-2-09 for Rs. 16,80,000/-. Ext.132 is the Cheque issued to Sameer Langthasa for a sum of Rs. 18,90,000/. Ext-133 is Cheque issued to Kiran Jidung on 07-2-09 for Rs. 18,90,000/-. Ext-134 is Cheque issued to Bijen Naiding on 07-2-09 for Rs. 13,65,000/-. A cheque, No. 319038 for a sum of Rs.12,60,000/ was issued to Dilip Phonglo on 07-2-09. Ext-238 is a Cheque issued to Munna Phonglosa on 02-2-09 for Rs. 10,50,000/-. And payments to the aforesaid firms don't find entry in the Cash Book.

120. PW-94 Shri Kalyan Brata Mukherjee testified that in 2009 he was Ex. Engineer with Addl. charge of Addl. Chief Engineer, during that time Mohit Hojai was the CEM


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and Mohit Hojai gave order to issue supply order in favour of M/s Maa Trading, Jeet Enterprise and Loknath Enterprise, accordingly, he issued supply order for Rs. 1.64 crore. He also testified that he received 60% of the materials, the balance 40% have not been supplied, and he has issued reminders but the supplier failed to supply the balance. On pressure from Mohit Hojai he released funds without receiving 40% materials.

121. The evidence of PW-94 also reveals that he came to Guwahati and Mohit Hojai called him to Pragoti Manor Hotel, and there he met Mohit Hojai and Joyanta Kr. Ghosh and Joyanta kr. Ghosh and Mohit Hojai directed him to issue all the cheques in favour of Maa Trading, and Mohit Hojai gave assurance that balance materials will be supplied soon by Maa Trading, and a Nepalese boy, who accompanied Mohit Hojai, threatened him on gun point to issue cheque as directed by Mohit Hojai. Being scared, he issued all the cheques. Ext-318 cheque issued in favour of Maa Trading dt 25-3-09 for Rs. 84,81,000/-. Ext-319 cheque issued, in favour of Maa Trading dt 26-3-09 for Rs. 57,98,000/-. It is elicited in cross-examination of this witness that on the relevant day some of the bills of Maa Trading were pending and as CEM of the Autonomous Council Mohet Hojai directed him in the premises of Hotel Pragati Menor to clear those bills.

122. PW-95-Maziruddin Ahmed- Asst. Engineer PHE Haflong, and in-charge of store, has deposed that on 18-6-09 verification of stores of PHE Haflong was done by NIA and he was present and Ext-324 is the verification report.

123. PW-98- Nipolal Hojai testified that in 2007 he got elected to the Council as BJP candidate, and in 2008 Deepolal Hojai was the CEM for 11 months, on health ground Deepolal Hojai resigned and you became CEM and he was given the portfolio of Social Welfare Deptt and that time R.H. Khan was the Deputy Director of the Deptt. and presently Niranjana Hojai is the CEM of the Council and he was the C-in-C of the DHD(J), and Jewel Garlosa was the Chairman of DHD(J).

124. PW-104-Jai Jendra Hojai- Office Superintendent Maibong PHE, testified that he was also entrusted with cashier work and sometimes in the month of March, 2009, K C Namasudra , in charge Executive Engineer rang him up and directed him to come to Guwahati with Cheque book and when he reached Guwahati and K.C. Namasudra took the cheque book from him. Then returning to Haflong he asked K.C. Namasudra to make the cash book up to date and form the cheque book he found that 4 cheques were issued. Ext-369 is the Cash



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book No-23 of PHE Maibong. Ext-370/1 Cheque No-873155 dt. 23-3-05 (although the chq is dt. 23-3-05. it was passed on 2-4-09) for Rs- 40,00,000/-, Ext-370/2 Cheque No-873156 dt. 23-3-09 for Rs- 45,00,000/- , Ext-370/3 Cheque No-873157 dt. 23-3-09 for Rs- 40,00,000/-, Ext-370/4 Cheque No-873158 dt. 23-3-09 for Rs- 40,00,000/-,

125. The evidence of PW-126- Depolal Hojai reveals that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CE, but he submitted resignation and Mohit Hojai became the CEM. PW-126- also testified that Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and it may be DHD(J) and Maorung Dimasa, who belong to DHD (J) and he was killed and his dead body was recovered 2/3 years back and that since his time of taking over as CEM many efficient govt officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD (J) and there was killing and kidnapping.

126. PW-128- Mukut Kemprai, is the Principal Secretary of NCHAC. His evidence reveals that vide Ext. 393 on 12-8-09 DSP NIA sought information as to whether (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee are registered in the financial year 2008-2009, there local address, contact numbers, registration numbers. Then on 13.08.2009, vide Ext. 394 he gave reply to the above queries that against all the above mentioned firm's permits were issued on 31.01.2008 under Sl. No. 384 to 391 in favour of Sri Debashish Bhattacharjee, S/o Late Sujit Bhattacharjee, Lower Haflong, NC Hills, registration is being in the department and there is no contact number and all permits were valid up to 31.03.2008 and not further renewed. The evidence of this witness is not disputed by accused Mohit Hojai.

127. The accused has cross-examined the witnesses mentioned herein above, but nothing tangible could be elicited to discredit them. On a dispassionate analysis of the above evidence the facts and circumstances appearing against accused can be recapitulated as under:-

- (i) He has written a letter to the Supdt. Engineer, PWD (R&B), NC Hills, Haflong to award contract of Rs.88.00 lacs to A-1, Shri Phojendra Hojai, which was found in

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possession of A-1 while he was carrying Rs. 1.00 crore along with Babul Kemprai on 01.04.2009 and intercepted by Police at 14th mile, Jorabat.

- (ii) He has connection with Shri Karuna Saikia A-15, and gets some cheque issued in the name of some persons viz. Dilip Phonglong and Munna Phonglong, without allotting any contract works to them and got the cheques encashed through them and collects the amounts.
- (iii) He called Kalyan Brata Mukharjee Executive Engineer PHE Haflong to Hotel Pragati Manor in the month of March 2009, and forced him to issue cheques to some firms registered in the name of Debasish Bhattacharyee without supply of any material by them.
- (iv) He compelled Nikhil Kanta Nath to verify bills of Maa Trading for payment without receiving any materials.
- (v) Despite weak position of PLA fund, and despite recommendation of the Principal Secretary, NCHAC he approved withdrawal of amount more than recommended.
- (vi) Immediately after resignation of Depolal Hojai he became CEM of NCHAC and the resignation of Depolal Hojai is a consequence of conspiracy hatched by him with other accused.
- (vii) George Lamthang, who was instrumental in converting money to US Dollars at Kolkata, possessed one Mobile no. 9903234905 and the Subscriber ID of the same was as Mohet Hojai, and the service provider was Airtel.
- (viii) He sent money to Kolkata meant for Joyanta Kr. Ghosh through witness Imdad Ali P.W. 35.
- (ix) He sent money to Kolkata on several occasion through hundi Operators namely Shyamji.
- (x) He was in touch with accused Phojendra Hojai while he was carrying a sum of Rs. 1.00 Crore on 01.04.2009 and the same was recorded in the mobile of A-1.



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- (xi) One Note dated 3rd Nov.2008, in his name, addressed to Principal Secretary, N.C. Hills Autonomous Council requesting him to issue supply order of different materials, sewing machines etc. under Social Welfare and Anganwadi Materials under ICDS Project and construction works as per the approve rate of Autonomous Council, Haflong for the year 2008-2009 to the list suppliers/firms enclosed there with, which also contains the name of the firms of accused Debasish Bhattacharyee, were recovered in the Material Object no. 78, is a hard disc bearing Sl. No. WMAT13626680 and in the Material Object no. 79, is another hard disc bearing Sl. No. 6RADA5TD, which were seized from the official computer of accused R.H. Khan thereby established his nexus with accused R.H. Khan and accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh,

SHRI R.H. KHAN (A-4) :-

128. Following prosecution witnesses and the documents exhibited will show the role played by accused R.H. Khan

129. PW-2 - Shri Chandra Kt. Boro testified that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then deputed S.I. Maizuddin Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.

130. PW-2 further testified that on 30-5-09, I/O S.I. Bikul Saikia of Basistha P.S. informed him from Haflong that one Md. Rehadul Hussain Khan also involved in the case and residing at Tarun Nagar and sought permission to pickup him for interrogation. Accordingly he along with his staff went to your residence at Tarun Nagar and on search recovered Rs. 4 lakhs of 500/ denomination from a wooden almirah and seized the same vide Seizure list Ext 9 along with one Nokia and Samsung Hand Set in presence of witness Ajmat Hussain, Amjad Hussain. It is elicited in his cross-examination that the accused stated that the amount of Rs.4 lacs belongs to his mother. Except this nothing could elicited in cross-examination of this witness. The Id. counsel for the accused during argument has submitted that the amount of Rs.4 lacs belongs to the mother of the accused who deposited the same with him after



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mortgaging her landed property and has no connection with case in hand. Whereas, the Id. Special P.P. for NIA has submitted that the amount never belongs to the mother of the accused. It is further submitted that during trial Mrs. Nurvan Khanoom @ Nurvan Khatoon, mother of the accused R.H. Khan filed one petition No. 2812/11, u/s 451 Cr.P.C. on 15.11.2011, seeking custody of the said amount and after recording evidence and full hearing this court did not accept the contention of the petitioner and was pleased to reject the same vide order dated 27.02.2013, by holding that the amount so seized is not belonging to Mrs. Nurvan Khanoom @ Nurvan Khatoon, mother of the accused R.H. Khan. Now the said order attained finality as the finding of this court has not been challenged by the accused and as such the accused cannot contend that the amount belongs to his mother. Having gone through the record we find force in the submission of the Id. Special P.P. Since the order of this court dated 27.02.2013, has been passed after due hearing of the parties and considering the materials on the record and since the order attained finality, being not challenged, and since the position has never been changed even after completion of trial, we are of the view that the contention, so made by the Id. counsel for accused has no force.

130.(i) It is further submitted by the Id. Counsel for the accused that P.W.2 has admitted during cross-examination that when he recorded the statement of R. H. Khan after his taking into custody, no such incriminating materials were found against him in any manner specially as regards to his terrorist activities or any unlawful activities and such he was wrongly arrested the date in the seizure list is overwritten as 30.05.2009. It is a fact that P.W.2 has admitted in cross-examination what the Id. Counsel has submitted. It is also a fact that while P.W.2 has recorded the statement of accused no such incriminating materials were found against him in any manner specially as regards to his terrorist activities or any unlawful activities. But the question remained is whether any accused will state before police that he has terrorist activities or any unlawful activities. Can it be expected from an accused that he will state before police that there exist material incriminating against him. The answer is got to be emphatic no. That being so, the admission, so made by P.W. 2, will have no bearing upon the veracity of the prosecution versions.

131. PW-10 - Maijuddin Ahmed- testified that on 01-04-09, he was working as S.I. of Basistha P.S. On that day Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa came and talked with O/C Chandra Kanta Boro about the unlawful activities of DHD(J). Then they proceeded to Jorabat area and from thee to 14 Mile G S Road and around 12.30 pm they intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu


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Sonar and Phojendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant. The evidence of P.W. 10 also reveals that on search, they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and both the vehicle was seized. PW-26- Shri Sudhakar Singh- Addl. S.P. (HQ) Guwahati also testified the same fact. PW-113- Dipankar Deka also stated the same fact and he further deposed that on 3-4-09 he gave statement, Ext. 388 before Magistrate. PW-117- Naimuddin Ahmed, the then SDJM (Sadar) Guwahati No-1, also confirmed recording 164 Statement of Dipankar Deka- Ext-388.

131.(i). PW-10- Maijuddin Ahmed- also testified that thereafter they were brought to Kahilipara and the currency, on counting found to be of 1 crore. Ext-30 is the FIR dated 01-04-09 with reference to Basistha PS GDE entry No 1162 dt 01-04-09, documents including 3 sheets of letter heads (blank) of DHD (J) and a letter of Mohet Hojai addressing to Superintending Engineer PWD to issue work order in favour of Phojendra Hojai your associate for an amount of 88 lakhs, one 7.6 mm pistol bearing No. RP 127321 with 4 live rounds, one 9 mm pistol made in China with 5 live rounds, arm licence Ext-32 and Ext-33 in the name of Phojendra Hojai and seized M/Ext- 7 is Sony Ericson mobile and M/Ext- 9 is Nokia mobile, were seized vide Ext.-A. Nothing is elicited in his cross-examination by accused R.H. Khan.

132. PW-11- Prithish Kumar Chaki, a Senior Financial Adviser testified that Assam Financial Rules is applicable to all areas including Hill areas. And, under Rule -268 the Deptt. is to prepare plan and estimate and design for initiating any civil work based on schedule of the rate and after getting approval of the competent authority, the Deptt. Has to accord formal administrative approval i.e. financial sanction to the work and thereafter it has to float tender for fixing the rate and firm for the work through open advertisement thereafter on receipt of tender the Deptt. has to prepare comparative statement and from the statement the lowest bidder has to be offered the job. He confirmed Ext. 39(2), the Assam Financial Service Rule, seized vide Seizure List Ext.39.

132.(i). The Id. defence counsel has submitted that in N.C. Hills, the N.C. Hills District Fund Rules, 1953 is the Financial Rule of the District, which was made by the Governor under Paragraph 7 of VI Schedule of the Constitution of India, for management of the District Fund. And the Assam Financial Rule is not applicable. The Id. Counsel has placed before the court a copy of the District Fund Rules for perusal. Having gone through the same it is found that it relates to management of the District Fund. Nowhere, it is said that except the same no

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other rule will be applicable there. Whereas, Assam Financial Rule is applicable to all over Assam and there is no exclusion clause in it and since N.C. Hill is one of the district of Assam, with all amplitude and plenitude the same will be applicable to N.C. Hill district.

133. PW-18- Shri Kamalesh Pandey- testified that he was working as Manager Madhumilan Guest House Barabazar Kolkata. Ext-50 is Guest House Register and a SI.-3005, entry dated 02-11-08, shows your associate Phojendra Hojai of Haflong stayed in room No. 813 from 02-11-08 to 6-11-08. Again at SI-1892 entry dt. 13-03-08 shows Phojendra Hojai of Haflong, stayed in room No. 810 from 13-03-08 to 15-03-08. Ext-52 & Ext-53 are the pointing out memo prepared at Madhumilan Guest House in his presence.

134. PW-19- Paragmoni Aditya testified that he was Journalist working in News Live-and on 1-4-09 police intercepted vehicles and recovered huge amount of cash with arms and ammunition and they telecasted the news as carrying of 1 crore by 2 persons. He provided the CD- Ext 55, carrying the news to NIA on being requested.

135. PW-21 – Chandra Sarma- testified that he knows Mohet Hojai and had family touch. On 01-04-09 one Sonam Lama telephoned him regarding taking of his vehicle on hire and accordingly he asked Dipankar Deka, the driver of Tata sumo. Around 1/2 pm his driver telephoned that he is proceeding with the vehicle towards Shillong. On the next day his driver's wife reported him that the vehicle was seized. In 2009 Mohet Hojai asked him over phone to go to AT Road and met Imdad Ali, accordingly he met Imdad Ali after talking he left. Again in the same year Mohet Hojai telephoned and told to meet Joyanta Kr. Ghosh and, thereafter, Joyanta Kr. Ghosh sent a man with a packet to him and he then gave it to Joyanta Kr. Ghosh .

136. PW-23- Kulendra Daulagapu- an Executive member of DHAC, testified that he come to know about the activities of DHD (J), about demand of money and violent activities they took. During 2008 ASDC & BJP alliance was in power. During one of the meeting Depolal Hojai - CEM, cited his ill health and resigned as CEM and Mohet Hojai was elected as CEM. He went with Mohet Hojai to Kuala Lumpur in Feb/ March 2009 at Kula Lumpur he met, Niranjana Hojai. He stated that he gave statement u/s 164 and Ext-56 is the statement. In cross-examination of this witness nothing tangible could be elicited by accused R.H. Khan. The Id. counsel for the accused has submitted that this witness also stated that in Dima Hasao District Fund Rule is applicable and no other Act of Parliament or State Legislature

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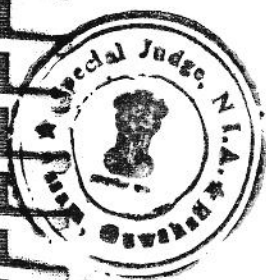
is applicable to the District Council unless the Governor by Notification does so, under the provision of VI Schedule of the Constitution of India. This controversy has authoritatively set at rest by the Hon'ble Supreme Court long back in ***Regional Provident Fund Commissioner vs. Shillong City Bus Syndicate & Anr. : 1996 AIR 1546***, where the question before the Hon'ble Supreme Court was applicability of Acts of Parliament to Khasi Hills autonomous District in the light of the provisions of the Sixth Schedule. Hon'ble Supreme Court there made reference to the Constituent Assembly Debates found in Para 12 and 14 of the report which may be usefully extracted below:- Dr. Ambedkar, during the debates in the Constituent Assembly stated in unequivocal terms that:-

"...the other binding force is this that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils. Unless the Governor thinks that they ought not to apply, in other words, the burden is upon the Governor to show why the law which is made by the Legislature of Assam or by Parliament, should not apply. Generally, the laws made by the Legislature and the laws made by Parliament will also be applicable to these areas".

136.(i). The eventual conclusion of Hon'ble Supreme Court is available in Para 16 which is quoted below with the clarification that Para 12A referred to therein pertains to the autonomous Districts or Regional Councils in the State of Meghalaya.

"16. It would, thus, be clear that, on constitution of the District or Regional Council, paragraph 19 ceases to operate and power of the Governor becomes coterminous and ceases to exist. Simultaneously, the power of the District or Regional Council becomes operational to make laws on subjects covered in paragraph 3 of the Sixth Schedule. Proprio vigore, paragraph 12-A comes into force. By operation of paragraph 12-A (b), the President has been empowered to direct by a notification that any Act of Parliament should not be made applicable or made applicable with such modifications and exceptions, as may be specified in the said notification. In other words, until such notification is published by the President, all Acts of Parliament which are not occupied by the provisions contained in paragraph 3 shall proprio vigore become operative in the area of the Autonomous Regions or Districts in the State of Meghalaya."

136.(ii) In the case in hand there is no such notification, from any quarter, to exclude the operation of Assam Financial Rules to the district of N.C. Hills. And as such by no stretch of imagination it can be said that Assam Financial Rules is not applicable to the district of N.C. Hills.



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137. PW-24- Amitav Sinha- testified that in the year 2009 he was Addl. S.P. (HQ) at N C Hills and he was responsible for maintaining law and order. There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD(J) group had resorted to firing on moving train.

138. PW-25-Mrs. Phionica Swer, Supervisor Jatinga Valley ICDS Project, Mahur and In-charge CDPO of New Sangbar ICDS Project testified that Ext. 62 - is a File No.NCH/SW/271/PT-1/2008-09, and belongs to Social Welfare Deptt. And the same contains bills and other receipts containing several signatures of R.H. Khan as Deputy Director and she is acquainted with the same. Similarly Ext. 69 is another file on the subject 'Receipt Payment Voucher' bearing No. NCH/SW 264/Pt.-V/2009 and the vouchers therein bears his signatures as Deputy Director. Ext.72 is the File on the subject Vouchers w.e.f. 01.07.2007 to 30.04.2009 and the same contains signatures of R.H. Khan on several pages. Ext. 73 is the File on the subject "Rehabilitation of BPL Persons under ICDS project Areas" bearing No. NCH/SW/347/2008-09, and the same bears several signatures of R.H. Khan as Deputy Director. And vide Seizure memo - Ext. 63 dated 19.06.2009 one File No.NCH/SW/271/PT-1/2008-09, was seized by NIA.

138.(i). Her evidence further reveals that Ext.64 is the seizure list dtd.19.6.2009 by which Western Digital make hard disc Sl. No. WM AT 13626680, MDL:WD 2500AAJS - 00B4A0, 2) Seagate make hard disc Sl. No.GRADA 5 DT, ST 3160 21 5 AS, P/N: 9CY 112-313, Firm ware 4 AAB was collected by NIA officer and she was asked to put signature as witness to the documents. Ext.64(1) is my signature.

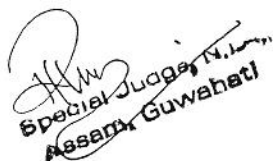
138.(ii). Her evidence further reveals that Ext. 67 is specimen/signature writing of Shri Pranesh Probosa in 12 pages and her signature Ext.67(1) to Ext.67(12) are taken as witness by the officer after taking the writing of Pranesh Parbosa. And Ext. 71 is the Cash Book No.3 of Social Welfare Department NC Hills bearing 189 signatures Ext. 71/1 to Ext.71/984 appearing at page 51 to 189, of R.H. Khan, and Ext. 72 is the File on the subject Vouchers w.e.f. 01.07.2007 to 30.04.2009 and the same bears signatures- Ext,72/1 to 72/74, of R.H. Khan. Ext.73 is the File on the subject," Rehabilitation of BPL Persons under ICDS Project Areas" bearing File No.NCH/SW/347/2008-09 of Deputy Director, Social Welfare Deptt. Ext.73(1), Ext.73(2), Ext.73(3), Ext.73(4), Ext.73(5), Ext.73(6),


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138.(iii). Cross-examination of this witness reveals that she has not handed over the Hard Discs and other materials to NIA and no witness was present at the time of signing by her and she signed on the same at the Circuit House. It is also elicited that as per the bills and receipts in the File-Ext.62, the delivery challans signed by the Supervisor concerned shows that the materials are fully received by the concerned Anganwadi centers and the work of supply order was properly executed.

138.(iv). It is also elicited that the North Cachar Hills District presently known as Dima Haso is an Autonomous Dist. under the Provision of VI Schedule of the Constitution of India and no act of Parliament or of the Legislature of the state shall apply to such area unless the Governor by public Notification so direct. As an autonomous Dist. the North Cachar Hills Autonomous Dist., there is a Dist. fund in accordance with Para-7 of the VI Schedule of the Constitution of India and Dist. fund shall be credited all money receipts respectively by the Dist. Council. There is a Dist. Fund Rule, 1953 which is applicable in Autonomous Dist. of North Cachar Hills Autonomous Dist. and this Rule is applicable regarding implementation of various works of North Cachar Hills Autonomous Council including Social Welfare Deptt. Every list of beneficiaries, of every scheme, of Social Welfare Deptt. are approved and published by the Principal Secretary of the Autonomous Council and after approval it is sent to Social Welfare Deptt. and thereafter all schemes are executed/performed by the concerned CDPO, Supervisors, Anganwadi Workers, helpers and every distribution of Deptt. Fund to the beneficiaries are done in the public meetings in the presence of Principal Secretary of the Council; CEM of Autonomous Council; EMs; local MACs, Gaonburahs, Social workers etc. and these were done from 2005 to 2009.

138.(v). It is also elicited in her cross-examination that Ext.71 is Cash Book No.-3 is a Cash Book for the scheme of Vocational Training and Rehabilitation Centre (VTRC), Maibong and TCPC (H), Haflong are under Woman Welfare Scheme. Social Welfare Deptt., Haflong maintains many Cash Books of different schemes. There is a No.-10 main Cash Book in the office of Social Welfare Deptt., Haflong and in main Cash No.-10 includes the Schemes of Dist. and subordinate schemes, Child welfare schemes, welfare of aged infirm, voluntary welfare organization, other programmes, other expenditures. And the Cash Book No.-10 is not produced before the Court. There is another cash book bearing Cash Book No.-9 for the State priority schemes and the said Cash Book is not produced before the court. For Nutrition (SNP) Schemes, a Cash book has been maintained separately which is known SNP Cash Book


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and the same is not produced before the Court. The Cash Book always reflects actual Receipt and Expenditure of a particular scheme. When the office of the Social Welfare Deptt., Haflong obtain a fund then the said office may deposit the fund in their A/c or the said office may direct the concerned Treasury and the concerned Treasury accordingly send to the bank to convert the fund into DCR (Deposit at Call Receipt) instead of depositing the fund in their A/c. But when DCR opened, it reflects in the Cash Book of the related scheme. So, the bank statement cannot reveal the actual Receipt and Expenditure of a particular scheme but the Cash Book of a concerned scheme will always reflect the actual Receipt and Expenditure.

138.(vi). It is also elicited that the office of the District Social Welfare, N.C. Hills, Haflong was upgraded on 18.6.2005 vide Letter No.SWD/129/96/Pt./75 dtd.18.6.2005 into the office of the Deputy Director, Social Welfare, N.C.Hills, Haflong. The documents/files/Cash Books which were used by the District Social Welfare, N.C.Hills, Haflong are automatically used by the office of the Deputy Director, Social Welfare, N.C.Hills, Haflong. Ext.71 Cash Book No.-3 was earlier used by the District Social Welfare, N.C. Hills, Haflong up to 19.5.2005 and after up gradation of the office of the District Social Welfare into Deputy Director, Social Welfare, N.C.Hills, Haflong, this Cash Book vide Ext.71 was automatically used by the office of the Deputy Director, Social Welfare, N.C. Hills, Haflong. And Ext.71 was used from 22.6.05 by the office of Deputy Director, Social Welfare, N.C. Hills, Haflong. It is also elicited that she has verified the contents of Cash Book and found that the Cash Book is properly maintained and there are no anomalies, irregularities in maintaining the Cash Book Ext.71 by the office of Deputy Director, Social Welfare, N.C. Hills, Haflong. I am not related with the Cash Book No.-3, so I am not acquainted with any signatures appearing in the Cash Book No.3 vide Ext.71. It is further elicited that Ext.70 is the file for Receipt and Payment vouchers for the Home for Orphan and Destitute children, Haflong. It is also elicited that there was a committee for monitoring and regulating to ensure proper and effective implementation of the schemes under Social Welfare Deptt., Haflong and all the schemes were properly implemented for the period of 2007-08 & 2008-09. And various documents and vouchers contained in File Ext.72 reveals that everything was done properly. It is also elicited that during the period 2007-2009 after verifying the related files of all the works of Schemes under Social Welfare Deptt. Haflong, it is found that the works were properly implemented as per norms and there is no any misuse of Money/Fund during the said period.

138. (vii). Her re-examination by the prosecution side shows that in 2009, she was CDPO, In-Charge of New Sangbar ICDS Project at New Sangbar. In that capacity she was supervising the official work like monthly progress report of the project, attending official


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meetings, field visits, distribution of food stuffs, official materials to Anganwadi Centres received from Head Quarter along with supervisors. Beside this she no other works.

138. (viii). Thus what is transpired from the evidence of this witness is that she was CDPO, In-Charge of New Sangbar ICDS Project at New Sangbar in the year 2009 and in that capacity she was supervising the official work like monthly progress report of the project, attending official meetings, field visits, distribution of food stuffs, official materials to Anganwadi Centres received from Head Quarter along with supervisors. Except that she has no other works. In view of this admission her evidence that during the period 2007-2009 after verifying the related files of all the works of Schemes under Social Welfare Deptt. Haflong, it is found that the works were properly implemented as per norms and there is no any misuse of Money/Fund during the said period, becomes unworthy of credence. She is not the authorized person to certify this. The manner she has deposed in her examination in chief and also in cross-examination shows that she is not a witness of wholly reliable.

139. PW-27- Shri Hiteshwar Medhi- testified that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjana Hojai of DHD (J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjana Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons.

140. PW-28- Diganta Vikram Gayan- testified that being an architect consultant- he prepared DPR for tourism projects as asked by Kulendra Daulagupu of NC Hills and he was paid money by Dhruba Ghosh and Pabitra Nunisa and as per request of Debashish Dutta he helped Dhruba Ghosh in opening of 2 new A/c in the name of 2 Firms at Guwahati at SBI to draw a cheque. A tenancy agreement of his father's property was prepared for opening A/c. And one of his friends ShriPranjal Bharali act as an introducer in the Bank and formalities were completed and a/c was opened. P.W.123 -Shri Pranjal Bharali and PW-32- Ramen Deka- also testified the same fact and P.W. 32 further testified that he got a tenancy agreement between Jeet Enterprise and P.K. Gayan and Maa Trading and P.K. Gayan, notarised from Notary Office. His evidence also reveals that thereafter, a cheque, amounting to 1.3 crore was deposited in A/c, by Debasish Bhattacharyee. And after verifying genuineness of the cheque by the Manager, the cheque was cleared and Rs. 84 lakhs was withdrawn on the same day by Shambhu Ghosh and Debashis Bhattacharjee. He received 2 lakhs against cheque of 3.5 lakhs


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handed over to him by Shambhu Ghosh. After about 1/2 days he tried to contact Debasish Bhattacharyee, Dhruva Ghosh and Shambhu Ghosh as he wanted to convey that they were supposed to get BSNL landline connection but none were available. On 24-6-09 he made a 164 statement before Magistrate Ext-74 is the statement.

141. PW-29- Shri George Lam Thang testified that at the behest of Malswamkimi he converted Indian Currency to US Dollars, on commission @ 15 paisa per Dollar, in the year 2008-2009. And he accompanied Malswamkimi while she was collecting money amounting Rs. 1.00 crore, Rs. 2.00 Crore and Rs.1.00 Crore on three different occasions from Phojendra Hojai from Hotel Shalimar and Madhumilon and he came to know from Malswamkimi that she got the money converted to US Dollars at the behest of one Vanlalchanna @ Vantea. His evidence further reveals that Malswamkimi also used to bring 15 lacs to 20 lacs for conversion to US Dollar, from Aizawl. In the month of Oct 2008 Malswamkimi brought 20 lakhs for conversion. When he visited her Hotel at Centre Point, Kolkata to collect Indian rupee he saw co accused Vanlalchaana and Malswamkimi introduced him as Vantea of Aizawl. His evidence further reveals that he was arrested on 11-8-09 by Kolkata Police seized 5 lacs from his possession which was given by Malswamkimi on 7-8-09 and on 20-8-09 he made a confessional statement -Ext-76, before the Magistrate and Ext-77 is the identification memo by which he pointed out Hotel Madhumilan & Hotel Shalimar, from where Malswamkimi used to collect money from Phojendra Hojai. Ext-78 is disclosure memo recovery of 5 lacs. Ext-52 is pointing out memo of Madhumilan Guest House where he along with Malswamkimi visited Room No-810 and collects money from Phojendra Hojai. Ext -80 is another pointing out memo of Shalimar Hotel where he along with Malswamkimi visited and collected money from Phojendra Hojai.

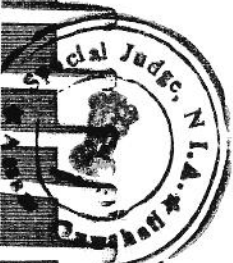
142. The evidence of P.W.30 Shri Pranesh Probosha- LDA-cum-Typist, Social Welfare-Haflong, reveals that Special Nutrition Programme (SNP) is a scheme through which new born child of the age of 0-6 years were supplied feeding. This programme is implemented through Social Welfare Deptt. Integrated Child Development Service (ICDS) is also falls under Social Welfare Deptt. From the Office of (O/o) the Deputy Director, Anganwadi materials are procured and supplied to the Integrated Child Development Service (ICDS). Dietary articles and stationery materials are procured for maintenance of Home for Orphan and Destitute Children, Haflong.

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142.(i). His evidence also reveals that Ext.62, is a file containing Bill and Challans and after delivery of materials Bill and Challans are certified by Circle Supervisor and Anganwadi workers, and thereafter, the Bills and Challans come to his table for passing for payment. When the Bills and Challans are found to be correct he put the seals pass for payment putting the amount and after putting the seal of Deputy Director he placed the bill before the Deputy Director Mr. R.H. Khan who put his signatures over the same.

142(ii). His evidence further reveals that vide her letter dated 15.09.2009 -Ext.82 Deputy Director, Mrs.L.Z.Nampui has handed over Statement of Fund for the year 2008-09 Ext.82(2), to the Inspector, NIA. And vide vide seizure memo -Ext.65 he has handed over 9 nos. of documents to the NIA officer. Ext.83 is the file on the subject Anganwadi Materials from Head Quarter bearing File No.NCH/SW/315/Pt.-II/07-08 which was dealt in their office and Ext. 83(1) to Ext. 83(119) are the signatures of Mr. R.H. Khan. The File contains Quotation Notice from the suppliers, Comparative Statements on the rates and Supply Orders. The materials are to be received by the concerned CDPO for distribution to Anganwadi Centres. His evidence also reveals that Ext.71 is the Cash Book for the office of District Social Welfare, N.C. Hills, Haflong. The entries are relating to payment of different categories for materials etc. In the cash book it contains signatures of District Social Welfare Officer and Dy. Director, Social Welfare. In Ext.73 at page 8 of the Note sheet approval for supply of blanket, mosquito net and water filter was sought for and the names of seven nos. of persons were submitted. Accordingly, the said seven persons were approved by you on 29.1.09, vide Ext.73/8. Ext. 69 is the file No. NCH/SW264PT-V/209 pertaining to receipt payment voucher in all scheme from January, 2009. At page 75 to 100 there are money receipts, challans and bills and your signatures appear in the bill only. Ext. 69/21/, 69/24, Ext. 69/27, Ext. 69/30 bill of M/s MAA TRADING, Ext. 69/33, Ext. 69/36, Ext. 69/39, Ext. 69/42, Ext. 69/45 bill of M/s LOKNATH TRADING, Ext. 69/48, Ext. 69/51 Ext. 69/54 bill of M/s BORAIL ENTERPRISE where the signatures of R.H. Khan appears. At page 122 to 141, 158 to 178, 182 to 187, 189 to 192 and 291 to 301 are the bill, money receipt and challans and the signatures of R.H. Khan appears only in bills. Ext. 69/57, Ext. 69/60 are the bill of M/s MAA TRADING and Ext. 69/63, Ext. 69/65, 69/67 bill of M/s LOKNATH TRADING and Ext. 69/69, Ext. 69/72, Ext. 69/75 are the bills of M/s H.K. ENTERPRISE and Ext. 69/78, Ext. 69/81 and Ext. 69/84 are the bills of M/s LAIBATKUNG HMAR. Ext. 69/87, Ext. 69/90, Ext. 69/93 bill of M/s KHAWBUNG ENTERPRISE, and Ext. 69/96, Ext. 69/99, Ext. 69/102 bill of M/s VASTI LALRINGUM PANGANITE and Ext. 69/105, Ext. 69/108, Ext. 69/111 bill of M/s VANROHLOU HMAR, Ext. 69/114, Ext. 69/117 bill of M/s DEBASHISH BHATTACHARJEE and Ext. 69/120, Ext. 69/123,



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Ext. 69/126, Ext. 69/129, Ext. 69/132 bill of M/s MAA TRADING and in all these bills signatures of R.H. Khan appeared.

142.(iii). His evidence further reveals that he has perused voucher file Ext. 72. At page 2 and at page 8 in the bill of M/s SHIKARI ENTERPRISE and Smti. SHYAMALA KAMPRAI, amounting to Rs. 1,00,000/- and Rs. 50,820/- the signature of Drawing and Disbursing Officer is not there. Ext. 72/75 is the bill of M/s PRASUN CHOUDHURY, Ext. 72/78 is the bill of M/s BORAIL ENTERPRISE, Ext. 72/81 is the bill of M/s LOKNATH TRADING, Ext. 72/84, Ext. 72/87 are the bill of M/s MAA TRADING, Ext. 72/90 is the bill of M/s LOKNATH TRADING, Ext. 72/92 is the bill of M/s MAA TRADING Ext. 72/95 is the bill of M/s LOKNATH TRADING, Ext. 72/98 is the bill of Sri Sita Nath Nunisa, at page 177, he find the bill for improvement and renovation of vocational and rehabilitation Centre for physically handicapped persons and Ext. 72/101 is the signature of R.H. Khan. Ext. 72/102 is the bill for construction of big boundary wall around the front area of training cum production centre for physically handicapped persons at Haflong and Ext. 72/103 is your signature. Ext. 72/104 is the bill for infrastructure development for V.T.R.C for physically handicapped persons at Haflong and Ext. 72/105 is your signature. Ext. 72/106 is the bill of M/s N.D. TRADERS for supply of stationary articles. Ext. 72/107 and 72/108 are your signatures. Ext. 72/109 is the bill of M/s J.K. TRADERS and Ext. 72/110 and 72/111 are your signatures. Ext. 72/112 is the bill of M/s N.D. TRADERS and Ext. 72/113 and 72/114 are signatures of R.H. Khan.

142.(iv). His evidence further reveals that Ext. 84 is the file relating to voucher for the year 2008-09. Ext. 84/1 is the bill of M/s BORAIL ENTERPRISE, Ext. 84/4 is the bill of M/s MAA TRADING, Ext. 84/7 is the bill of M/s LOKNATH TRADING, Ext. 84/10 is the bill of M/s VANROHLOU HMAR, Ext. 84/13 is the bill of M/s LAIBATKUNG HMAR, Ext. 84/16 is the bill of M/s VASTILALRINGUM PANGANITE, Ext. 84/19 is the bill of M/s H.K. ENTERPRISE and Ext. 84/22 is the bill of M/s KHAWBUNG ENTERPRISE, Ext. 84/25 is the bill of M/s LOKNATH TRADING, Ext. 84/28 is the bill of M/s MAA TRADING, Ext. 84/31 is the bill of M/s BORAIL ENTERPRISE where signatures of R.H. Khan appeared.

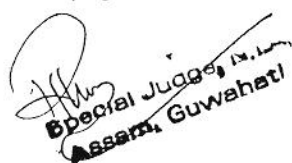
142.(v). Cross-examination of this witness reveals that bill in Ext. 62 were accompanied by a delivery challan which reveals that materials are received by Anganbadi workers and supervisor concerned and signed on the delivery challans against their name of concerned Anganbadi centre. Since he was the dealing Asstt. of the scheme of Special Nutrition Programme(SNP) in the office of the Deputy Director, Social Welfare, N.C. Hills,


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Haflong, so, he had verified the bills and delivery challans properly and found it to be correct in due procedure and, thereafter, he had written the contents of the same and by put his initial and accordingly the bill was passed for payment. Cross-examination of this witness also reveals that Ext. 62/148 and Ext. 62/149 are appearing at page 91. Ext. 62/148 and Ext. 62/149 at page 91 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/66 dated 03.09.2007. Ext. 62/150 and Ext. 62/151 at page 93 is a bill and this bill is accompanied by a delivery challan at page 94 submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/66 dated 03.09.2007

142.(vi). Ext. 62/152 and Ext. 62/153 are appearing at page 95. Ext. 62/152 and Ext. 62/153 at page 95 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/90 dated 02.1.2007. Ext. 62/154 and Ext. 62/155 are appearing at page 97. Ext. 62/154 and Ext. 62/155 at page 97 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/102 dated 03.12.2007. Ext. 62/156 and Ext. 62/157 are appearing at page 99. Ext. 62/156 and Ext. 62/157 at page 99 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/114 dated 03.01.2008. Ext. 62/158 and Ext. 62/159 are appearing at page 101. Ext. 62/158 and Ext. 62/159 at page 101 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/126 dated 02.02.2008. Ext. 62/160 and Ext. 62/161 are appearing at page 103. Ext. 62/160 and Ext. 62/161 at page 103 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279PT-IV/2007-2008/138 dated 01.03.2008.

142.(vii). Ext. 62/304 and Ext. 62/305 are appearing at page 283. Ext. 62/304 and Ext. 62/305 at page 283 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/57 dated 06.08.2007. Ext. 62/306 and Ext. 62/307 are appearing at page 285. Ext. 62/306 and Ext. 62/307 at page 285 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/45 dated 04.07.2007. Ext. 62/308 and Ext. 62/309 are appearing at page 287. Ext. 62/308 and Ext. 62/309 at page 287 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/33 dated 04.06.2007. Ext. 62/310 and Ext. 62/311 are appearing at page 289. Ext. 62/310 and Ext. 62/311 at page 289 is a bill submitted by MINARET CLUB in connection with work order no. NCH/SW/279/PT-IV/2007-2008/21 dated 05.05.2007. Ext. 62/312 and Ext. 62/313 are appearing at page 291. Ext. 62/312 and Ext. 62/313 at page 291 is a bill submitted by MINARET CLUB in connection with work order no.



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NCH/SW/279/PT-IV/2007-2008/09 dated 09.04.2007. The delivery challans are available with the bills and are signed by supervisor concerned. From the delivery challans it clears that materials are fully received by the concerned Anganbadi centres and, thereafter, the MINARET CLUB submitted the bill along with delivery challan at the office of the Deputy Director, Social Welfare, N.C. Hills, Haflong and being the dealing Asstt. of the scheme of Special Nutrition Programme(SNP) in the office of the Deputy Director, Social Welfare, N.C. Hills, Haflong, he had verified those bills and delivery challans properly and found it to be correct in due procedure and, thereafter, I had written the contents and put his initial and accordingly the bill was passed for payment.

142.(viii). It is further elicited in cross-examination that as per record vide letter no. NCH/SW/PT-1/2013-14/51 dated 21.11.2013. The office of Deputy Director, In-Charge, Social Welfare, Haflong Dima Hasao earlier N.C. Hills has issued a statement showing the total fund received scheme wise, expenditure incurred from the N.C. Hill Autonomous Council, Haflong in the year 2008-09 and the statement was given to Md. Rafikul Islam, Advocate in connection with information under RTI. And according to the statement issued by the Deputy Director, Social Welfare, Haflong as on 21.11.2013, total balance remains in the office of the Deputy Director, Social Welfare, Haflong during the year 2008-09 as on 31.05.2009 is Rs. 19,00,09,530/- (Rupees nineteen crore nine thousand five hundred thirty).

142.(ix). It is also elicited that the statement showing fund received and expenditure and fund balance 2008-09 issued earlier by I/c Deputy Director on 15.09.2009 in connection with letter no. NCH/SW/262/Part-1/2009-10/227 vide Ext 82, 82/2 is the incorrect statement.

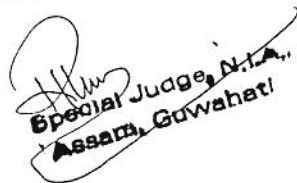
142.(x). It is elicited in his cross-examination that as per instruction and after receive the proper approval list the work order were issued in favour of 24 nos. approved supplier firm on 13.09.2007 vide Ext. 83/116 and all these supplier/ firms name, were listed in the approval list of the Principal Secretary, N.C. Hills, Autonomous Council in his letter no. AC/SW/2/2007-08/58, dated 17.08.2007. And, thereafter, vide note sheet dated 28.09.2007 vide Ext. 83/117 the office of the Deputy Director sent a letter vide Ext. 83/60 , 83/179 to the Principal Secretary, N.C. Hills, Autonomous Council for proposal of administrative approval (A/A) and financial sanction F/S. So, it is clear that note sheet, in due course of procedure, was prepared and there is no any irregularity was done by the Office of the Deputy Director, Social Welfare, Haflong.


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142.(xi). It is elicited in his cross-examination that as per instruction and after receiving the proper approval list the work order were issued in favour of 21 nos approved suppliers/firms on 23.10.2007 vide Ext. 83/118 and all these suppliers/firms name were listed in the approval list of the Principal Secretary, N.C. Hills, Autonomous Council in his letter no. AC/SW/2/2007-08/58 dated 17.08.2007. And thereafter vide note sheet dated 23.11.2007 vide Ext. 83/119 the office of the Deputy Director sent a letter which is reflected in Ext .83/135 and Ext 83/16 at page 41, 53 to the Principal Secretary, N.C. Hills, Autonomous Council for proposal of administrative approval and financial sanction in short is called A/A and F/S. So it is clear that note sheet in due course of procedure there is no any irregularity done by the Office of the Deputy Director, Social Welfare, Haflong and note sheets are in due norms.

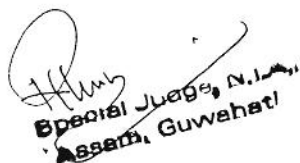
142.(xii). It is also elicited that according to the note sheet dated 27.06.2007 vide Ext. 83/115, notice inviting quotations, vide Ext. 83/112, Ext 83/113, 83/231 and 83/232 and this quotation dated 27.06.2007 vide memo no. NCH/SW/315/ Part-2/2007-08/1 was widely circulated/published. And after receiving the quotations from firm/supplier by the Deputy Director, Social Welfare, N.C. Hills, Haflong a comparative statement has been prepared and sent to Principal Secretary, NCHAC for approval of quotation for the year 2007-08 vide letter no. NCH/SW/315/pt.-II/2007-08/2 dated 13.07.2007 and requested to approve the lowest rate. So, the office of the Deputy Director, Social Welfare, N.C. Hills, Haflong follow the official formalities before issue the work order and this letter is appeared in page 201, 204 vide Ext. 83/111. In this file vide Ext. 83 at page 142/91/133 the Principal Secretary, NCHAC sent a letter to Deputy Director Social Welfare, N.C. Hills, Haflong, no. AC/SW/3/2007-08/20 dated 12.08.2007 with reference to no. NCH/SW/315/pt.-II/2007-08/2 dated 13.07.2007 by approving the quotation. So the approval of rate and approval of firms and suppliers were done by the Principal Secretary, NCHAC.

142.(xiii). His evidence also reveals that Ext. 72(78) is bill of M/s Borail Enterprise which is a approved govt. contractor and supplier and this bill is submitted against the work order no. NCH/SW/5/98/Part-III/81 dated 04.01.2009 and after receipt the articles, the Office of the Deputy Director certified that articles have been received in good condition and recorded/entered into stock register no. 36 vide page no. 4, 10, 16, 22, 28, 38, 44, 50, 74, 56, 86 and, thereafter, office of Deputy Director, Social Welfare had passed the bills and this bill was passed vide Ext 72/79 and 72/80 by the Deputy Director, Social Welfare, Haflong. And bill was passed as per due procedure and govt. norms.


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142.(xiv). He confirmed Ext. 72(81), a bill of M/s Loknath Trading which is a approved firm/contractor and supplier and this bill is submitted vide challan no. 50 dated 10.01.2009 against the work order no. NCH/SW/5/98/Part-III/80 dated 04.01.2009, Ext. 72(84) is a bill of M/s Maa Trading which is a approved govt. firm/ supplier and this bill is submitted against the work order no. NCH/SW/5/98/Part-III/79 dated 04.01.2009, Ext. 72(87) is bill of M/s Maa Trading which is a approved govt. firm/ supplier and this bill is submitted against the work order no. NCH/SW/5/98/Part-III/74 dated 04.01.2009, Ext. 72(90) is bill of M/s Loknath Trading which is a approved govt. firm/ supplier and this bill is submitted vide challan no. 53 dated 10.01.2009 against the work order no. NCH/SW/5/98/Part-III/77 dated 04.01.2009, Ext. 72(92) is bill of M/s Maa Trading which is a approved govt. firm/ supplier and this bill is submitted against the work order no. NCH/SW/5/98/Part-III/68 dated 10.07.2008, Ext. 72(95) is bill of M/s Loknath Trading which is a approved govt. firm/ supplier and this bill is submitted vide challan no. 45 dated 15.07.2008 against the work order no. NCH/SW/5/98/Part-III/61 dated 10.07.2008, Ext. 72(109) is bill of M/s J.K. Traders which is a approved govt. firm/ supplier and this bill is submitted vide challan no. 47 dated 04.09.2007 against the work order no. NCH/TCPC/5/98/Part-III/46 dated 27.08.2007, for supply of stationary articles and after receipt the articles, the Office of the Deputy Director certified that articles has been receipt in good condition and recorded/entered into stock register no. 36 and the bill were passed by the Deputy Director, Social Welfare, Haflong as per due procedure and govt. norms.

142.(xv). He also confirmed Ext. 69(21A), 69/22 and Ext 69/23 are three sets bill, original, duplicate and triplicate, of M/s Maa Trading at page no. 77, submitted against work order no. NCH/SW/9/Part-IV/2008/21 dated 27.02.2009, Ext 69/27, 69/28 and 69/29 is one set of bill in connection with work order no. NCH/SW/9/Part-IV/2008/18 dated 27.02.2009. Ext 69/30, 69/31, 69/32 is the same copy of bill Ext 69/30, 69/31, 69/32 is the same copy of bill at page no. 81, submitted by M/s Maa Trading, Ext 69/33, 69/34 and 69/35 is one set of bill in connection with work order no. NCH/SW/9/Part-IV/2008/23 dated 03.03.2009, submitted by M/s Loknath Trading Ext. 69/39, 69/40 and Ext 69/41 are another set of bill of M/s Loknath Trading at page no. 91, in connection with work order no. NCH/SW/9/Part-IV/2008/20 dated 27.02.2009, Ext 69/48, 69/49 and 69/50 is one set of bill of M/s Loknath Trading in connection with work order no. NCH/SW/9/Part-IV/2008/19 dated 27.02.2009, Ext 69/57, 69/58 and 69/59 is one set of bill in connection with work order no. NCH/SW/9/Part-IV/2008/22 dated 03.03.2009, submitted by M/s Maa Trading, Ext 69/63 and 69/64 is one set of bill in connection with work order no. NCH/SW/343/2008/11 dated 02.02.2009, submitted


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by M/s Loknath Trading, Ext 69/67 and 69/68 is one set of bill in connection with work order no. NCH/SW/343/2008/10 dated 20.12.2008 submitted by proprietor M/s Loknath Trading, Ext 69/114, 69/115 and 69/116 are one set of bill in connection with Work Order No. NO.NCH/SW/327/PT-1/2008-09/131 dated 14.11.2008 submitted by proprietor of DEBASHISH BHATTACHARJEE. Ext 69/120, 69/121 and 69/122 are one set of bill in connection with Work Order No. NO.NCH/SW/327/PT-1/2008-09/12 dated 14.11.2008, submitted by M/S Maa Trading, Ext 69/126, 69/127 and 69/128 are one set of bill in connection with Work Order No. NO.NCH/SW/347/ 2008-09/38 dated 11.11.2008, by proprietor of M/s MAA TRADING. All the bills were accompanied by a certification that the articles have been received by Store Keeper/Matron in good condition and entered in Stock Register No. 30, and it means that the execution of supply work are done properly and accordingly, the bills were passed for payment.

142.(xvi). He confirmed Ext. C is the statement showing the total fund receipt scheme wise, expenditure incurred from N.C. Hills Autonomous Council. I am acquainted with signature of T.T. Daulagupu, In-Charge Deputy Director, Social Welfare Department, Haflong. Ext C/1 is the signature of T.T. Daulagupu which I know.

142.(xvii). On 18.06.2005, the Office of the District Social Welfare Office, Haflong was upgraded as Office of the Deputy Director, Social Welfare, Haflong. The staffs who were working in the District Social Welfare Office, Haflong were retained as the staff of the Office of the Deputy Director, Social Welfare, Haflong. All the files, cash book which were earlier used in the office of District Social Welfare Office, Haflong were automatically used by the Office of the Deputy Director, Social Welfare, Haflong. The Cash Book vide Ext. 71 was earlier used by District Social Welfare Office, N.C. Hills, Haflong up to 19.05.2005 and after upgradation the office of the District Social Welfare Office into Deputy Director, Social Welfare, Haflong this cash book was automatically used by the Office of the Deputy Director, Social Welfare, Haflong.

142.(xviii). It is true that the Deputy Director, Social Welfare, Haflong has issued the supply order vide Ext 73/8 to the 7 nos. of firms/persons as per approval of the Council. This filed vide Ext 73 is not in original form, and it may be broken after seized. Ext. 73/6 is the note sheet dated 30.08.2008 and as per this note sheet, the name of the supplier's list is enclosed for approval at page nos. 36 but at page no. 36, there is only a work order.

142.(xix). Ext 84/1 is the bill of M/s Borail Enterprise and this bill is submitted on 09.01.2009 after completion of supply work in connection with work order no.


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MBG/TCPC/20/91-92/Pt-I/33 dated 07.01.2009, Ext 84/4 is the bill of M/s Maa Trading and this bill is submitted on 09.01.2009 after completion of supply work, Ext 84/7 is the bill of M/s Loknath Trading and this bill is submitted on 10.01.2009 after completion of supply work, Ext 84/19 is the bill of M/s H.K. Enterprise and this bill is submitted on 16.01.2009 after completion of supply work in connection with work order no. MBG/TCPC/20/91-92/Pt-I/47 dated 13.01.2009, Ext 84/25 is the bill of M/s Loknath Trading and this bill is submitted on 10.06.2008 after completion of supply work in connection with work order no. MBG/TCPC/20/91-92/137 dated 04.06.2008 and Ext 84/28 is the bill of M/s Maa Trading and this bill is submitted on 11.06.2008 after completion of supply work in connection with work order no. MBG/TCPC/20/91-92/136 dated 04.06.2008, Ext 84/31 is the bill of M/s BORAIL ENTERPRISE and this bill is submitted on 10.06.2008 after completion of supply work in connection with work order no. MBG/TCPC/20/91-92/138 dated 04.06.2008. In all the bills there is a certification on the bill and as per the certification, office of the Deputy Director, Social Welfare, Haflong received the articles in good condition and entered into stock register. So the work is properly executed and office of the Deputy Director passed the bills for payment so the office of the Deputy Director had done no irregularity in performing the duties and followed the norms and procedure before passing the bills which.

142.(xx). It is to be mentioned here that a quarry was put by the court to the effect that did he received article supplied to his office as Dealing Asstt., to which he replied as - No.

142.(xxi). The Id. counsel for the accused during argument submitted that this witness has cleared in his deposition with document that no fund of Social Welfare was siphoned out and the accused has no connection with DHD(J) and anti social organisation. But, in view of the admission of the witness that he has not received the articles supplied to his office has totally negate what he faithfully obliged to his onetime boss in cross-examination. There is big question mark about his reliability.


143. The evidence of P.W.-34, Shri Debashis Dutta reveals that during 2008 to 2009 he was working as OSD to CEM Deepolal Hojai NCHAC- and on 26-11-08 Deepolal Hojai suddenly called him to his office at 8- 8.30 AM and asked me to type a resignation letter citing his health ground and accordingly he did so. He went with the letter and returned back to the room and told him that typed one will not be accepted and that he has to give in his own handwriting. Next day he came to know that Deepolal Hojai has resigned and Mohet Hojai was


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elected as CEM of NCHAC Ext-96 is the resignation letter. His evidence also reveals that once when he returned by train from Kolkata he was handed over one envelope by D.Ghosh, Debasish Bhattacharyee and Sandip Ghosh to hand over to Imdad Ali. Later on, he came to know that the envelope containing a Cheque of Rs.1.20 crore. This witness is not cross-examined by accused R.H. Khan.

144. The evidence of P.W. 35 Md. Imdad Ali reveals that when he was in N.C. Hills, he came to know Jayanta Kr. Ghosh who is also known as Dhruba Ghosh, a businessman of lower Haflong, Railway Station, and he became friendly with him. In 2008 he carried an amount of Rs. 15 lacs from Guwahati to Kolkata to be given to Jayanta Kr. Ghosh, and accordingly he gave this amount to J.K. Ghosh, which was carried by J.K. Ghosh and has given it to somebody whom he do not know. His evidence also reveals that in 2009 Deepolal Hojai resigned as CEM and Mohit Hojai became the CEM. Mohit Hojai rang him up and told him that he wants to send some heavy amount of money to Jayanta Kr. Ghosh at Kolkata and whether he could help him in sending the amount, he also told that moneys are sent through Maruway and whether he know the procedure. As he was at his village at Hojai he told him that he do not know any such person who could help him sending money from Guwahati to Kolkata. After about some days he happen to meet one Didar Ahmed Choudhary who is known to him and he told him that Mohit Hojai has taken his help in sending about Rs. 80 Lacs. Hie evidence further reveals in the later part of January, 2009 Mohit Hojai again telephoned him and told him that he was to send some money at Kolkata. As he was in Delhi in Hospital as such he will not be in a position to help him in sending such money. He confirmed his statement Ext. 97 made before the Magistrate u/s 164 Cr.PC He also confirmed Ext. 98, the cheque amounting to Rs. 20 Lacs which has given it to J.K.Ghosh, another cheque Ext. 99 for Rs. 61,45,400/- was also given to J.K. Ghosh by him. He also confirmed Ext. 100, the statement of account of SBI, Commercial Branch, Ganeshguri, Guwahati, where different transaction are reflected. Mention to be made here that accused R.H. Khan has not cross-examined this witness.

145. The evidence of P.W. 37, Shri Pradip Kr. Ghosh, UDA cum Accountant reveals that he was posted at Haflong in the year 1989 to May, 2008. During that time R.H. Khan was the Deputy Director, Social Welfare. His evidence further reveals that his job as Accountant was to prepare bill, receive materials which were supplied by the supplier and the said material were distributed through supervisor and office staffs as advised by R.H. Khan. He received the materials as supplied by the suppliers in good condition but sometimes there



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were short supplies and he informed his superior R.H. Khan who advised him to receive the materials telling him that supply will be made later on. His evidence also reveals that he took transfer from Haflong to Borobazar, Bijni, ICDS Project sometime in the June, 2008 as R.H. Khan used to become angry on him. Cross-examination of this witness could elicit nothing tangible to discredit his version in chief. However, it is elicited in his cross-examination that during his period from 2003 to 2008 at Mahur, ICDS Project he prepare supply bills after receipt of materials fully from suppliers against the supply order. He also admitted that he has not seen any document before this Court today regarding receipt of materials by him from suppliers.

146. The Id. counsel for the accused has submitted that in view of admission of this witness that he prepare supply bills after receipt of materials fully from suppliers against the supply order and as such there is nothing incriminating against the accused. But, a plain reading of the two statements that "sometimes there was short supply of material and he inform his Senior R.H. Khan who advised him to receive the materials telling him that supply will be made later on" and that "he prepare supply bills after receipt of materials fully from suppliers against the supply order" the meaning and true import thereof is found to be totally different. Preparing bills after receiving articles fully and that there was short supply have two different meanings. Having viewed both the statements, from the standpoint of their meaning, we are inclined to hold that the later statement has never obliterated the force of the former one.

147. The evidence of PW-41- Shri Haripada Barman reveals he was working as Post Master at Haflong Mukhya Dak Ghar w.e.f. 1-7-09 and on 14-8-09, and he enquired about the existence of Firms- M/S MAA Trading- Haflong; M/S Loknath Trading -Haflong; M/S Jeet Enterprise- Haflong; M/S Borail Enterprise -Haflong; M/S Debojit Bhattacharjee- Haflong; and found to be not traceable. He has written a report, Ext- 121 to NIA to that effect. NIA has also sent 30 registered letters Ext-122/1 to Ext-122/30 to 30 different Firms and persons located at NC Hills and Haflong but the post man of the area could not trace the addressee and returned as not traceable.

147.(i). The Id counsel for the accused has submitted that admittedly very short time was given to this witness to cause service of the letters. And it is not possible to cause service of the same in short time. And that the post man was not examined by the

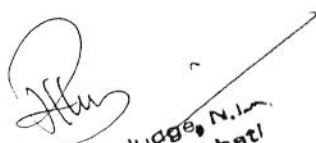

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prosecution side. The submission is found to be bereft of merit as nowhere in his evidence P.W. 41 stated that due to short time they could not locate the addresses.

148. P.W.42 -Shri Tomizuddin Ahmed, Sr. Scientific Officer, Directorate of Forensic Science Assam, testified that the Directorate of Forensic Science received some documents in connection with Case No. 01/2009 and 02/2009 NIA, New Delhi for comparison and opinion on 01.10.2009, which was endorsed to him on 01.10.2009 for examination and opinion which was forwarded by Mukesh Singh, Supdt. of Police, NIA, New Delhi, vide his letter -Ext. 127 with Annexure-I, II and III in 13 pages. Ext 127/1 to Ext 127/13 are the said pages. By the said letter by Annexure-I, the NIA requested for examination of specimen handwriting and signatures, type writer and stamp impression from Sl. No. 1 to 21 containing S-1 to S-169. Out of the said listed marking, has examined S-1 to S-100. By Annexure-II, question document numbering 1 to 49, out of the said question documents, he has examined Sl. No.-1 to Sl. No.-41 i.e. Q-1 to Q-96 (Question Documents). By Annexure-III, the office sent questionnaires from Sl. No. -1 to Sl. No.-23, out of the said numbers, he has answered question no. 1 to 6.

148.(i). His evidence also reveals that he has examined the specimen writing and signatures with the question documents as asked by the Investigating Officer and formed his opinion reduced it in writing on 06.11.2009 -Ext 208 and reasons for opinion- Ext 210, wherein he opined that:-


1. the documents is connection with a Case No. 01 & 02/2009/NIA/New Delhi have been carefully and thoroughly examined and ;compared with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery with the necessary scientific aids available in the Directorate of Forensic Science, Assam, Kahilipara, Guwahati-19.
2. The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-14 also wrote the red enclosed writings and signatures similarly stamped and marked Q-1 and Q-2.
3. The person who wrote the blue enclosed writings and signatures stamped and marked as S-15 to S-24 also wrote the red enclosed signatures similarly stamped and marked Q-39, Q-40, Q-51 and Q-53.


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4. The person who wrote the blue enclosed writings and signatures stamped and marked S-25 to S-34 also wrote the red enclosed writings and signatures similarly stamped and marked Q-29 to Q-34 and Q-37.
5. The person who wrote the blue enclosed writings and signatures stamped and marked S-35 to S-44 also wrote the red enclosed writings and signatures similarly stamped and marked Q-41 to Q-50, Q-52 and Q-54 to Q-96.
6. The person who wrote the blue enclosed writings and signatures stamped and marked S-45 to S-72 also wrote the red enclosed signatures similarly stamped and marked Q-16, Q-17, Q-20, Q-23, Q-24, Q-27 and Q-28.
7. The person who wrote the blue enclosed writings and signatures stamped and marked S-73 to S-100 also wrote the red enclosed writings and signatures similarly stamped and marked Q-3, Q-5, Q-7, Q-8, Q-11, Q-12, Q-14, Q-15, Q-18, Q-19, Q-21, Q-22, Q-25, Q-26, Q-35, Q-36 and Q-38.
8. It has not been possible to express a definite opinion on rest of the question items on the basis of comparisons with the materials of hand.

149. P.W. 43 -Shri Minendra Narayan Borah-Deputy Director in the Question Documents Division, Directorate of Forensic Science, Assam testified that on 08.10.2009, he examined certain documents from the Supdt. Of Police, NIA, New Delhi vide Memo No. 792/01 & 02/2009/NIA/New Delhi dated 23.09.2009 and expressed his opinion thereof. On verification of the documents, he found one money receipt for Rs. 14,62,000/- originally marked as 71 and one bill/quotation for same amount of money, the standard writings and signatures of Swapan Kumar Dey in 14 pages and the Standard writing and signatures of Sri Thanglai Daulagaphu in 4 sheets. After thorough and exhaustive examination of the question signatures and comparison with the standard signatures, he expressed my opinion- Ext. 170 and he assigned reasons for opinion Ext 172, as under P.W. 43 -Shri Minendra Narayan Borah recorded his opinion and reasons thereof as under- No. DFS/QDS-244/09 Date: 06.11.09

- (i) "The disputed signatures in connections with the Case No. 01/2009/NIA/New Delhi have been carefully and thoroughly examined and compared with the supplied standard signatures from their original documents in all aspects of identification of handwritings and detection of forgery with scientific aids like magnifying lenses, stereo-zoom microscope as well as oblique lighting arrangement, transmitted lighting arrangement, direct and diffused lighting arrangement, blue-green rich



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lighting arrangement-luminescence effect, ultra-violet radiation (both short and long wavelengths) under Documenter 3000, V.S.C. 5000, V.S.C. 6000 etc.

- (ii) The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-14 also wrote red enclosed signatures similarly stamped and marked Q-1 to Q-2.
- (iii) The person who wrote the blue enclosed writings and signatures stamped and marked S-15 to S-28 did not write the red enclosed signatures similarly stamped and marked Q-3 and Q-5 to Q-8.
- (iv) It has been possible to express a definite opinion regarding the authorship of the red enclosed signature marked Q-4 on the basis of comparison with the materials hand.

149.(i). The Id. counsel has submitted that this witness has given his report without any basis who admitted in cross-examination that with the passage of time there may be natural variation between signatures put by him in the year 2009 and in 2014 and that Ext. 170 has no basis and therefore, contended to reject the same. The submission is considered in the light of facts and circumstances on the record. And we find that this witness has given cogent reason for the decision he arrived at having examined the documents. Nothing tangible could be elicited to discredit him. Merely because he admission that some natural variation may occurs in putting signatures after lapse of time cannot be ground to jettison the report of an expert.

150. The evidence of PW-45-Sh.K. Hrangkhoh, UDA, Social Welfare Deptt. reveals that with regard to the procedure for purchase of materials in the Social Welfare Department, the office calls for tender/quotations from the suppliers. If tender is not called for they follow the approved rate given by the Autonomous Council. His evidence reveals that in the year 2008-09, the following schemes were taken by the Social Welfare Department. They are (1) District and Sub-Ordinate (2) 101-Welfare of handicapped, (3) 102-Child Welfare, (4) 103-Women Welfare, (5) 104-Welfare of Aged, infirm and destitute persons, (6) 107-Voluntary Welfare Organization, (7) 800-Other expenditures, (8) 200-Other Programmes, (9) NSAP (National Social Assistant Programmes), (10) State Priority Scheme, (11) Health Care for aged, (12) NPAG (National Programmes for adolescence Girls), (13) SNP (Special Nutrition Programmes and (14) ICDS (Integrated Child Development Scheme). For implementation of the above schemes, the fund required are received from the budget provision which are


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received directly from the Autonomous Council. The fund required for the schemes are sent by way of proposal by the Deputy Director of the Social Welfare Department to the N.C. Hills Autonomous Council. At that time accused R.H. Khan was the Deputy Director. After the proposal is approved, the same is sent to the Govt. of Assam by the Autonomous Council. Thereafter, the fund is released by the Government to the Council with copy intimated to the Department. In 2008-09, the tenders were not called by the department but the department followed the rate of given by the Autonomous Council. The requirements of materials are given by District Planning Board.

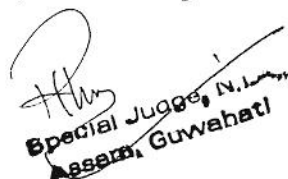
150.(i). His evidence reveals that Ext 211 is the receipt memo by which 19 nos. of documents were handed over to the NIA on 16.06.2009 at 8.30 PM. Ext 211/1 is his signature. Ext 73 is the file relating to Rehabilitation of BPL persons under ICDS Project areas. He has gone through the file and he say that he has seen the file earlier in the office and this file is related to issue of supply orders to the parties. This file was dealt by him and the supply order issued by Deputy Director, R.H. Khan. The practice followed in issue of supply order was as per approved rate and approved supplier. The rate and the list of supplier were approved by the Council. Ext. 212 is the file relating to rehabilitation infirm and destitute persons of Social Welfare Department. He has personally dealt with the file. This file is related to issue of supply order and approval of schemes. Ext. 212/1 to 212/5 are the note sheets in my writing. Ext. 212/6 to 212/12 are the signatures of accused R.H. Khan. By note no. 212/2 as desired by CEM, N.C. Hills Autonomous Council, the suppliers (1) Sharma Enterprise, (2) Projen Senguing, (3) M/s Maa Trading, (4) M/s Barail Enterprise, supply orders were directed to be issued. By note dated 14.11.2008, two firms were proposed for issue of supply order, they are M/s Maa Trading and M/s Debashish Bhattacharjee and by signature Ext 212/8 and 212/9 are of R.H. Khan approving the notes. Ext 212/13 is the supply order to Debashish Bhattacharjee dated 14.11.2008 for supply of woollen blanket 312 nos. @ Rs. 800/- each. Ext 212/14 is the supply order to M/s Maa Trading dated 14.11.2008 for supply of woollen blanket 313 nos. @ Rs. 800/- each. Ext 212/15 is the supply order to Barail Enterprise dated 11.06.2008 for supply of woollen blanket 1250 nos. @ Rs. 800/- each. Ext 212/16 is the supply order to M/s Maa Trading dated 11.06.2008 for supply of woollen blanket 1250 nos. @ Rs. 800/- each. Ext 212/17, 212/18, 212/19 and 212/20 are the signatures of accused R.H. Khan.

150.(ii). Ext. 213 is the file relating to purchase of Office Stationary/articles for 2007 to 2009. He has dealt with the file and the note sheets bears his writings-Ext 213/1 to


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213/11 and Ext 213/12 to 213/24 are the signatures of accused R.H. Khan for approving the notes. Ext. 213/25 to 213/29 are the different supply orders to M/s Maa Trading dated 27.02.2009, M/s Loknath Trading dated 27.02.2009, M/s Barail Enterprise dated 27.02.2009, M/s Maa Trading dated 27.02.2009, M/s Mugrati Printing Press dated 30.08.2009. Ext 213/30 to Ext 213/34 are the signatures of accused R.H. Khan. The rate quoted in the supply order are as per approved by the council and not by taking market rate by the department. By Ext. 213/35, the department made the rates of articles of different items and thereafter, the same was sent to council by Ext 213/36 for renewal of rate. The council by Ext 213/37 approved the rates sent by the department. Ext. 213/38 and 213/39 are the signatures of accused R.H. Khan. Ext 213/40 and 213/41 are the two supply orders issued to M/s J.K. Traders dated 12.11.2007 and M/s N. D. Traders dated 12.11.2007. Ext 213/42 and 213/43 are the signatures of accused R.H. Khan. In this case the Deputy Director has instructed him to issue the supply orders to M/s J.K. Traders and M/s N.D. Traders as per approved rate of the council in 2007.

150.(iii). Social Welfare Department under scheme of Rehabilitation of BPL families for the year 2008-09, made payments as per the bills. Ext 70/27 is the bill which is without date sent by M/s Maa Trading for Rs. 9,92,000/-. By receipt Ext. 70/28, which is without date, the amount is shown to have been received by one Dhruba. The bills Ext. 70/27 was passed by accused R.H. Khan. Ext. 70/29 and 70/30 are the signatures of accused R.H. Khan. Ext 70/31 is the bill which is without date sent by M/s Borail Enterprise for Rs. 9,96,000/-. By receipt which is without date Ext. 70/32, the amount is shown to have been received. The bill Ext 70/31 was passed by accused R.H. Khan. Ext. 70/33 and 70/34 are the signatures of accused R.H. Khan. Ext 70/35 is the bill which is without date, sent by M/s Debashish Bhattacharjee for Rs. 10,40,000/-. By receipt which is without date Ext. 70/36, the amount is shown to have been received. The bill Ext 70/35 was passed by accused R.H. Khan. Ext. 70/37 and 70/38 are the signatures of accused R.H. Khan. Ext 70/39 is the bill which is without date, sent by M/s Maa Trading for Rs. 11,20,000/-. By receipt which is without date Ext. 70/40, the amount is shown to have been received by one Dhruba. The bills Ext 70/39 was passed by accused R.H. Khan. Ext. 70/41 and 70/42 are the signatures of accused R.H. Khan. Ext 70/43 is the bill which is without date sent by M/s Maa Trading for Rs. 10,00,000/- is in two copies without date and bill number. By receipt which is without date Ext. 70/44, the amount is shown to have been received. The bills Ext 70/43 was passed by accused R.H. Khan. Ext. 70/45 and 70/46 are the signatures of accused R.H. Khan. I also find three copies of challans of M/s Maa Trading without challan number and date. The challans is for Rs. 10,00,000/-. The

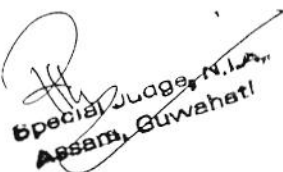

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third copy of the challans is totally blank. Ext 70/47 is one challan, Ext 70/48 is the other challan and Ext 70/49 is the blank challan. In all the three challans including the blank challan, the store keeper has put his signature on the printed words "received the above goods in good condition".


150.(iv). Ext 70/50 is the bill which is without date sent by M/s Borail Enterprise for Rs. 10,00,000/. By receipt which is without date, Ext. 70/51, the amount is shown to have been received. The bill Ext 70/50 was passed by accused R.H. Khan. Ext. 70/52 and 70/53 are the signatures of accused R.H. Khan. Ext 70/50 is in duplicate. Ext 70/54 is the challan of M/s Borail Enterprise.

150.(v). Ext 70/55 is the bill sent by M/s H.K. Enterprise for Rs. 63,00,000/- without date. By receipt Ext. 70/56, the amount is shown to have been received. The said receipt is without date. The bills Ext 70/55 was passed by accused R.H. Khan. Ext. 70/57 and 70/58 are the signatures of accused R.H. Khan. Ext 70/55 is in duplicate. He is also required to maintain cash book regarding receipt of payment from the council and payment made to parties as per their bill.

150.(vi). Cross-examination of this witness reveals that in his 161 statement before the NIA, he had not taken the name of Dhruba even once. It is also elicited that he has worked in the Social Welfare Department, Haflong for 26 years. It is also elicited that Sri R.H. Khan worked in the Social Welfare Department of NC Hills, Haflong from 18.06.1996 as District Social Welfare Officer which post was renamed as Deputy Director, Social Welfare Department till the date of his arrest. He has therefore worked under Sri R.H. Khan for more than 11 years. He admitted that in the Section 161 Cr. P.C. statement given by me to the NIA, he has stated "today I have shown one file bearing No. NCH/SW/264/Pt-IV/2008 of Social Welfare Department, Haflong. On careful perusal of the same I state that following stock certificate was either done by me or Smti. Lunkhogneing Khojol, LDA on the instruction of Md. R.H. Khan the then Deputy Director, Social Welfare Department, Haflong without either receiving the articles or checking the articles." I know one Mr. Santosh Kumar Choudhary. He works in Training cum Production Centre of the Social Welfare Department of NC Hills, Haflong. He was working in the Social Welfare Department of NC Hills, Haflong during the period 2008-09. It is correct that in the Section 161 Cr. PC statement given by me to the NIA, it is stated "In respect of above two filed, I have to state that the above bills/vouchers/receipts were given to me by Md. R.H. Khan, the then Dy. Director, Social Welfare Department of NC Hills, Haflong. He directed me and Mrs. L. Khojol, LDA to process


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the bills for payment and make the relevant entries in the office records. Neither me nor Mrs. L. Khojol, LDA physically received the articles as mentioned on the bills. On the directions of Md. R.H. Khan, Mrs. L. Khojol, LDA appended her signatures on the bills in token of having received the articles mentioned in the bills where as in fact she did not receive the articles but put her signatures on the direction of Md. R.H. Khan. Likewise I also did not receive the articles but processed the bills for payment, put my signatures on the bills and made corresponding entries in the cash book as per directions of Md. R.H. Khan." I state the above statement or statements which were written down by the NIA without me stating me so but I did not volunteer to disclose this fact before this Hon'ble Court yesterday or even today before my cross-examination. I state that the NIA has made false statement as stated by him above. Ext. 70/28, 70/32, 70/36, 70/40, 70/44, 70/51 were all prepared by him. The handwriting appearing in the said receipts are his. He prepared the receipts in the instruction of Md. R.H. Khan. It is correct that I did not mention that the handwriting appearing in above Exhibits were in his handwriting and prepared by him. These payment mentioned in the receipt were not paid vide any cheques. Neither he makes the payments nor did he see Sri R.H. Khan making payments. The receipts were given to him by Mr. R.H. Khan and he do not know who appended the signatures appearing thereon. He did not see anybody signing on those receipts. He made the statement in his examination-in-chief "by receipt Ext 70/28, which is without date, the amount is shown to have been received by one Dhruba." Merely because he saw his name in the receipt, and not because of his personal knowledge. He admitted having not received the payment vide Ext 70/32, 70/36, 70/40, 70/44, 70/51. In Ext 70/51, the portion marked Ext-D which states "(M/S Borail Enterprise) supplier" is in his handwriting and he identify the same. The signature appearing in the stamp above is not in his handwriting and he cannot identify the signature thereon. He admitted having not aware of whose signatures are appended thereon in the said receipts. He denied the defence suggestion that he has fabricated the bills, challans pertaining to M/s Maa Trading, M/s Borail Enterprise, M/s Debashish Bhattacharjee, M/s Loknath Trading in the files relating to the Social Welfare Department of the NC Hills, Haflong. He admitted that in the specimen signature taken of Debashish Bhattacharjee @ Bappi in 13 pages on 09.10.2009, he has stood as a witness and his initial/signature appear in the entire said document in sl. No. 01 as witness no. 1. Similarly in the specimen writing /signature of Sri Jayanta Kr. Ghosh @ Dhruba in 10 pages on 09.10.2009, he has stood as a witness and his initial signature appear in the entire said document in sl. No. 1 as witness no. 1. He identifies his signature thereon and the same are marked as E-14 to E-24. It is correct that when the NIA was investigating the case and had taken the specimen writing and signature of Sri Jayanta Kr. Ghosh @ Dhruba and Sri

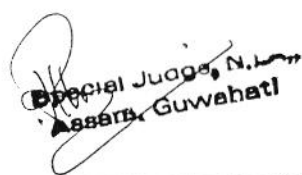

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Debashish Bhattacharjee @ Bappi, he did not think it fit to inform the NIA that the handwriting in Ext. 70/28, 70/32, 70/36, 70/40, 70/44, 70/51 and Ext-D are in fact his and not that of Sri Jayanta Kr. Ghosh @ Dhruva or of Debashish Bhattacharjee @ Bappi.

150.(vii). It is also elicited in cross-examination that R.H. Khan the office of the District Social Welfare, Haflong was upgraded vide order dated 18.06.2005 as Office of the Dy. Director, Social Welfare keeping the post of DSW in abeyance and by the order of the Governor notification No. SWD/129/96/Pt/77 dated 20th June, 2005, the accused R.H. Khan is allowed to hold the post of Dy. Director of Social Welfare, Haflong. All files, cash books which were earlier used in the Office of the District Social Welfare, Haflong were automatically used by the office of the Dy. Director, Social Welfare, Haflong. In addition to 14 schemes during the year 2008-09, the office of the Dy. Director, Social Welfare, Haflong there were another 4 schemes and these are (1) O.E. (non-Plan), (2) SNP (non-Plan) another two are the unknown plan which were known as AOP State Share. Ext-C is the statement of the office of Dy. Director, Social Welfare, Haflong showing the total fund receipt scheme wise, expenditure incurred from the NC Hills Autonomous Council, Haflong during the year 2008-09.

150.(viii). According to the statement vide Ext-C during the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 12,00,000/- in the scheme of District and Sub-Ordinate and expenditure incurred in the schemes during 2008-09 as on 31st May, 2009 is Rs. 12,00,000/-. Again during 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 55,00,000/- in the scheme of Welfare of Handicapped and the expenditure incurred in this scheme during 2008-09 as on 31st May, 2009 is Rs. 55,00,000/-. Again in the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 54,00,000/- in the scheme of Child Welfare and expenditure incurred in the scheme during the 2008-09 as on 31st May, 2009 is Rs. 54,00,000/-. Again in the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 1,34,00,000/-.

150.(ix). There is an order of Autonomous Council that the disbursement of certain amount relating to welfare/ development scheme in cash payment and in this regard the Office of the Deputy Director received an order of Principal Secretary of the Council that in pursuance to decision of NC Hills Council authority by the Executive committee of the council authority after consideration of various factors such as Poor Bank Network in the District, Immediate and timely utilization of the fund allocation and to avoid delay and hardship to the poor for inability to open bank account due to lack of documents available with the residents /beneficiaries in the interior locations, difficult road connectivity etc. and present law and


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order situation, it is hereby communicated that cash disbursement /payment for certain schemes/development projects shall be done by the DDO/Officer In-Charge concerned and this shall include scheme like NOAPS, NFBS under NSAP, Nutritional Supplement Programmes (SNP), Old age pension, healthcare scheme including ICDS and other programmes under Social Welfare Department, cash subsidy scheme for training and other incentives to cultivators /beneficiaries under agriculture/horticulture department. The DDOs are directed to implement all these schemes accordingly with immediate effect. And this order made by the Principal Secretary, NC Hills Autonomous Council on 07.05.2003. He admitted having aware of an order of Principal Secretary that disbursement of money can be made in cash under the scheme of Social Welfare and there is an order of the Council through Principal Secretary.


150.(x). He admitted having not stated before the I/O, NIA as "today I have shown one file bearing no. NCH/SW/264/Pt-IV/2008 of Social Welfare Department, Haflong. On careful perusal of the same, he state that following Stock Certification was either done by me or Smt. Lunkhohniang Khojol, LDA on the instruction of Md. R.H. Khan, the then Dy. Director, Social Welfare Department, Haflong without either receiving the articles or checking the articles." He has not stated before the I/O, NIA as "In respect of above two files, he has to state that the above bills/vouchers/receipts were given to him by Md. R.H. Khan, the then Dy. Director, Social Welfare Department, Haflong. He directed him and Mrs. L. Khojol, LDA to process the bills for payment and make the relevant entries in the office records. Neither he nor Mrs. L. Khojol, LDA physically received the articles as mentioned in the bills. On the directions of Md. R.H. Khan, Mrs. L. Khojol, LDA appended her signatures on the bills in token of having received the articles mentioned in the bills where as in fact she did not received the articles but put her signatures on the direction of Md. R.H. Khan. Likewise he also did not receive the articles but processed the bills for payment, put my signatures on the bills and made corresponding entries in the cash book as per directions of Md. R.H. Khan." He confirmed to have stated that "during investigation he told the NIA officer that once the bills are place before them they made enquiry about the receipt of good and then comply with the official procedure."

150.(xi). Ext 70/27 is the bill submitted by M/s Maa Trading in connection with the Work Order No. NCH/SW/347/2008-09/21 dated 12.08.2008, and this bill was submitted by the Proprietor of M/s Maa Trading. The bill was submitted first at Receipt Section of the Office then the bill sent to Store Keeper namely Pudaite and Pudaite gave a certification on this bill that the articles have been receipt in good condition and entered in the register No. 30 vide page no. 2 to 9, 10 to 19, 20 to 27 and thereafter, this bill was placed before me by the Store


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Keeper and thereafter, he physically verified the store and when he found it correct then he has written the contents pass for payment of Rs. 9,92,000/-. Thereafter, he placed the bill before the Dy. Director, Social Welfare and after payment of this bill, it was always recorded in the relevant Cash Book no. 10. It is true that Proprietor /Manager of the firm mentioned the total bill amount in the bill vide Ext 70/27 and in the receipt voucher vide Ext 70/28, the proprietor only sign on the revenue stamp on the receipt voucher which was enclosed with the bill when this bill comes to his table and receipt voucher was filled up by him as because the tax deduction is calculated by him as he was the Dealing Assistant of this file. It is true that before filling up the receipt voucher vide Ext 70/28, he compared the signatures of receipt voucher with the bill and when he found that the signature appearing in the bill and signature appearing in the receipt voucher are correct then he filled up the receipt voucher vide Ext 70/28. It is true that for deduction of tax in the receipt voucher filled up by him though it was signed by concerned proprietor/Manager of the firm and being the Dealing Assistant of this file, it is his duty to deduct the tax from the bill and for this reason he filled up the receipt voucher vide Ext 70/28. After deduction of the tax, the tax amount was deposited in the Govt. account by challan.

150.(xii). The same procedure is followed in respect of Ext 70/31, the bill submitted by M/s Borail Enterprise in connection with the Work Order No. NCH/SW/347/2008-09/32 dated 11.08.2008, submitted by the Proprietor of M/s Borail Enterprise, Ext. 70/35 the bill submitted by M/s Debashish Bhattacharjee in connection with the Work Order No. NCH/SW/347/2008-09/35 dated 11.08.2008, and this bill was submitted by the Proprietor of M/s Debashish Bhattacharjee, Ext 70/39, the bill submitted by M/s Maa Trading in connection with the Work Order No. NCH/SW/347/2008-09/33 dated 11.08.2008, and this bill was submitted by the Proprietor of M/s Maa Trading, Ext 70/43, the bill submitted by M/s Maa Trading in connection with the Work Order No. NCH/SW/327/Pt-I/2008-09/8 dated 11.06.2008, and this bill was submitted by the Proprietor of M/s Maa Trading, Ext 70/50, the bill submitted by M/s Borail Enterprise in connection with the Work Order No. NCH/SW/327/Pt-I/2008-09/9 dated 11.06.2008, and this bill was submitted by the Proprietor of M/s Borail Enterprise, Ext 70/55 the bill submitted by M/s H.K. Enterprise in connection with the Work Order No. NCH/SW/307/Pt-I/2007-08/11 dated 06.12.2007, and this bill was submitted by the Proprietor of M/s H.K. Enterprise. Ext 70/47, 70/48 and 70/49 are the challans only accompanied with the bills vide Ext 70/43 submitted by the Proprietor of M/s Maa Trading. Ext 70/54 is the challan which is accompanied by the bill vide Ext 70/50 submitted by proprietor of M/s Borail Enterprise. He has written Ext-D (The name of firm M/s Borail Enterprise) below the


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signature of the Proprietor as the name of the firm was not written earlier by the proprietor below his signature and when he compared the bill of M/s Borail Enterprise vide Ext 70/50 with the receipt voucher vide Ext 70/51, then he saw the name of firm and accordingly he has written the name of firm M/s Borail Enterprise vide Ext-D on the receipt voucher vide Ext 70/51.

150.(xiii). He confirmed that when bill is passed for payment, the payment is always made to the proprietor of the concerned firm and owner/proprietor received the money after a bill is passed. After payment was made finally then it is his duty to enter it into the relevant cash book and in case of voucher no. 516 vide Ext 70/28, voucher no. 515 vide Ext 70/32, voucher no. 514 vide Ext 70/36, voucher no. 513 vide Ext 70/40, voucher no. 460 vide Ext 70/44, voucher no. 459 vide Ext 70/51, voucher no. 409 vide Ext 70/56 were entered by him in the cash book no. 10 in expenditure head of the cash book. It is also

150.(xiv). The file vide Ext 212 is not in original condition. Desired by C.E.M. (Chief Executive Member) implies as approved by District Council vide Ext 212. C.E.M is the Head of the Council. Vide Ext 213; the file is not in original form. The schemes undertaken by the file vide Ext 213 and Ext 212 were properly executed.


150.(xv). In re-examination by the prosecution he stated that during the relevant period he was only working in the office as UDA and was never working as Store Keeper.

150.(xvi). In cross-examination, after re-examination by the prosecution side this witness admitted that in Ext 212/2, there is no endorsement or signature of M/s Maa Trading, M/s Borail Enterprise or M/s Debashish Bhattacharjee. He also admitted that in Ext 212/13, there is no endorsement or signature of Debashish Bhattacharjee. There is no endorsement in the said supply order that the Ext. 212/13 was received by Debashish Bhattacharjee. He further admitted that in Ext 212/15, there is no signature or endorsement of any officers of Borail Enterprise to show receipt of the same. Similarly in Ext 211/16, there is no signature or endorsement of any officer of M/s Maa Trading to show receipt of the same. He also admitted that in Ext 212/14, there is no signature or endorsement of any officer of M/s Maa Trading to show receipt of the same. He also admitted that in Ext 213/25 to Ext 213/28, there is no signature or endorsement of any of the officer of M/s Maa Trading, M/s Loknath Trading, M/s Borail Enterprise to show the receipt of the same. He also admitted that in Ext 213/26 to 213/28, the handwritten portions are in his handwriting. Similarly the Ext 212/15, 212/16, 212/14, 212/13 are all in my handwriting. It is correct that Ext 212/13 purporting to be an office copy of the said documents is a carbon copy. However, Ext 212/14 although an office


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copy is in his handwriting and contains his handwriting in pen and not in carbon copy as in the usual case. He admitted that the note sheets exhibited by him vide Ext. 213 does not contain any endorsement or signature of any officer of M/s Maa Trading, M/s Loknath Trading, M/s Borail Enterprise or Mr. Debashish Bhattacharjee. It is also admitted that the Ext 70/27 contains the date 12.08.2008 which is typed written after applying white fluid on previously written number. It is also admitted that Ext 70/32 is in his handwriting. It is also admitted that said Ext 70/32 does not contain any date. It is correct Ext 70/36 is in my handwriting and does not contain any date. It is also admitted Ext 70/40 is in my handwriting and does not contain any date. It is also admitted that Ext 70/44 is in his handwriting and does not contain any date. He do not recognize the signature contained in Ext 70/45, 70/47, 70/48, 70/49, 70/51, 70/50, 70/54, 70/28, 70/29, 70/32, 70/33, 70/34, 70/35, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/43, 70/44. He clarified that he do not know the signature in the documents Ext. 70/28, 70/29, 70/32, 70/33, 70/34, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/44, 70/43, 70/47, 70/48, 70/49, 70/51, 70/52, 70/53 since the signatory of the same did not sign the same in his presence.

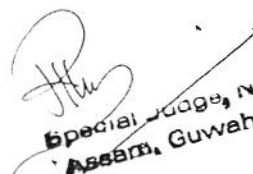
150.(xvii). What is transpired from the evidence of this witness is that though he admitted that the hand writings appeared in Ext.70/28, 70/32, Ext.70/36, Ext.70/40 Ext.70/44 and Ext.70/51 are of him yet he never deposed that the signature appearing on the said exhibits are of him. Accused Joyanta Kr. Ghosh never disputed that the bills, challans pertaining to Maa-Trading, Debasish Bhattacharyee, Loknath Trading are not the bill and challans submitted by them in the format front and size with particular design. It also appears that Ext. 70/27, the bill submitted by Maa-Trading is without any date and the amount is shown to have been received by one Dhruba and it was passed by accused R.H. Khan. Ext. 70/31 is a bill submitted by M/S Borail Enterprise without date and it was passed by accused R.H. Khan and the amount was received. Ext. 70/35 is a bill submitted by M/S Debasish Bhattacharyee without date and it was passed by accused R.H. Khan and the amount was received. Ext. 70/39 is a bill submitted by M/S Maa-Trading without date and it was passed by accused R.H. Khan and the amount was received by Dhruba @ J.K. Ghosh. Ext. 70/43 is a bill submitted by M/S Maa-Trading without date and it was passed by accused R.H. Khan and the amount was received. Ext. 70/47, Ext.70/48 and Ext. 70/49 are three copies of blank challans of M/S Maa Trading without challan number and date where in the Store Keeper has put his signature on the printed word "received the above which is in good condition.". Ext. 70/50 is the bill without date submitted by M/S Borail Enterprise and it was passed by accused R. H.


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Khan and the amount has been received. It also appears that the bills, challans pertaining to the aforementioned firms were supplied by accused J.K. Ghosh. Though the bills were admittedly filled up by P.W.45, there is nothing on the record to show that the same were not supplied by accused J.K. Ghosh. Over and above P.W. 45 clarified that he filled up the receipt vouchers for the purpose of calculation and deduction of tax, he being the dealing Asstt. Besides, Ext 47, 48, and 49 are the bank challans in the name of M/S Maa Trading without challan number and date in the office of the Social Welfare Department with an endorsement of the Store Keeper "received the above in good condition." The logical conclusion, that can be arrived at, from the above discussion is that there was nexus between accused R.H. Khan and accused J.K. Ghosh and Debasish Bhattacharyee for siphoning out of fund from the Social Welfare Deptt. without supply of materials during the year 2008-2009.

151. PW-70- Caushiq Bezbaruah, Executive Officer News Life- stated that he forwarded CD containing the news of your arrest and your co associate Babul Kemprai with an amount of Rs 1 crore. By Ext 270 another letter by which he handed over three CD containing video footage of surrendered ceremony of DHD (J).

152. P.W.85 Shri Ajit Kumar Dhar testified that on 10.11.2009, on requisition, he handed over certain documents to the NIA. Ext 293 is the said receipt memo, Ext 294 is the account opening form of M/s Moin & Brothers Construction, NC Hills, Haflong which was opened by the proprietor. Ext 294/1 is the self cheque bearing no. 034151 dated 25.04.2009 for Rs. 25 lacs. Ext 295 is the account opening form in the name of M/s Inputs Supply Syndicate opened by its proprietor. Ext 295/1 is a self cheque bearing no. 034101 dated 23.04.2009 for Rs. 10 lacs, Ext 295/2 is another self cheque bearing no. 034102 dated 25.04.2009 for Rs. 25 lacs, Ext 295/3 is another self cheque bearing no. 034103 dated 30.04.2009 for Rs. Rs. 25 lacs. P.W.85 also testified that Ext 296 is the account opening form of M/s Anee Agro Enterprise opened by its proprietor. Ext 296/1 is the self cheque bearing no. 034076 dated 23.04.2009 for Rs. 10 lacs, Ext 296/2 is another self cheque bearing no. 034077 dated 25.04.2009 for Rs. 25 lacs, Ext 296/3 is another self cheque bearing no. 034078 dated 29.04.2009 for Rs. 25 lacs. Ext 297 is the account opening form in the name of M/s Aeegee Enterprise opened by its proprietor in our bank, Ext 297/1 is the self cheque bearing no. 034176 dated 25.04.2009 for Rs. 35 lacs. Ext 298 is the account opening form of M/s Shikari Enterprise opened by its proprietor in our bank, Ext 298/1 is the self cheque bearing no. 034126 dated 25.04.2009 for Rs. 35 lacs. It is elicited in cross-examination of this witness that


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in all the accounts opening forms the introducer was A.K. Baruah, the then Principal Secretary of NC Hills, Haflong.

153. PW-90- B. Ramani is the Executive Director of C-DAC (Centre for Development of Advanced Computing). His evidence has already been discussed in details in previous paragraph of this judgment. However, his evidence is more significant so far accused R.H. Khan is concerned. Therefore it is decided to discuss the same here also. His evidence reveals that on 11.07.09, vide Ext.304, a letter addressed to the Director, C-DAC, Trivandrum by Loknath Behera, NIA for examination of material objects like Hard disc, CPUs in total 14 objects etc. The letter mentioned the nature of examination, one was to find out any deleted file that could be retrieved, and also any file which pertains to sanction of works/supply order to contractor, copies of e-mails/deleted files in the e-mails, travel documents if any, accounts both personal as well as officials, information on DHD(J), photographs/pictures/contact Nos. available, communication with Mohet Hojai, R.H. Khan, Niranjana Hojai, Daniel Dimasa, David Dimasa, Marung, Durba Ghosh @ Jayanta Kumar Ghosh, Partho Warrisa @ Ashingdaw Warrisa, Jewel Garlossa etc. and any other relevant materials.

153.(i). His evidence also reveals that they requested for a supply of 4 high capacity hard discs (of 500 GB capacity) and on receipt of the hard discs they carried out the forensic imaging and ensured the authenticity of the evidence by generating Hash Values of the 7 hard discs and then did the analysis. In this analysis, they have looked at retrieval of deleted files, information in the unallocated areas hard discs, key words searching, examining text documents, PDF files etc. After the analysis they have found some deleted information, documents, PDF files, pictures etc. and they have retrieved these information and submitted their written reports along with DVD to the NIA. Ext. 305 is the forwarding letter dtd.14.10.2009. Ext.306 is the report of analysis in 25 pages with seal of C-DAC, under his signature Ext.306/1.

153.(ii). His evidence also reveals that in their report, they have concluded that they have recovered a few bills, challans, and work orders. They have also recovered some pictures, they have extracted evidence from the unallocated areas of hard discs. In the report, they have included DVD, which is organized Exhibit wise 1 to 7, these Exhibits contained Image files, Word files, PDF files. His evidence further reveals that after examining the material objects, they had prepared a report and returned the material objects along with the report. He has seen Material Object no. 77, a DELL Laptop bearing Sl. No. 43471449784. This Laptop also contains the hard disc with Sl. No. 5RF0JN7C which was marked as Ext-01 by the


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NIA when the articles were sent to us and is shown to have been seized from Kulendra Daulagapu. This we had examined and submitted our report vide Ext 306 at page 5 and 6.

153.(iii). The Material Object no. 78, is a hard disc bearing Sl. No. WMAT13626680 which was marked as Ext-02 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer and is shown to him in the Court today which is in sealed condition as sealed by them. This they had examined and submitted their report vide Ext 306 at page 8 and 9.


153.(iv). The Material Object no. 79, is another hard disc bearing Sl. No. 6RADA5TD which was marked as Ext-03 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer. This they had examined and submitted their report vide Ext 306 at page 11 and 12.

153.(v). The Material Object no. 80 is a SONY Laptop Model No. PCG-5JBP. This Laptop also contains the hard disc with Sl. No. ST9120822AS which was marked as Ext-04 by the NIA when the articles were sent to them and is shown to have been seized from Depolal Hojai. This they had examined and submitted their report vide Ext 306 at page 14 and 15.

153.(vi). The Material Object no. 81 is a CPU HP Make bearing Sl. No. 1000N8601021-B. The hard disc of the CPU was taken out while examining and the same was sent to NIA office in sealed condition. The hard disc with Sl. No. S14KJ9CQ203463 which was marked as Ext-05 by the NIA when the CPU was sent to us and is shown to have been seized from Depolal Hojai. This they had examined and submitted their report vide Ext 306 at page 17 and 18.

153.(vii). The CPU which does not have any number because it is an assembled one. The hard disc of the CPU was taken out while examining and the same was sent to NIA office in sealed condition. The hard disc with Sl. No. RH3B7KYE which was sent to us with the CPU was marked as Ext-06 by the NIA when the CPU was sent to us and is shown to have been seized from Depolal Hojai. This they had examined and submitted their report vide Ext 306 at page 20 and 21. The hard disc is exhibited as Mat. Ext-82 bearing Sl. No. RH3B7KYE.


153.(viii). The Material Object no. 83 is a CPU Lenovo bearing Model No. 11Q with Sl. No. SS04668130/M7002BM. The hard disc bearing Model No. WD800BD of the CPU was taken out while examining and the same was sent to NIA office in sealed condition. The hard disc with Model No. WD800BD which was marked as Ext-07 by the NIA when the CPU was


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sent to them and is shown to have been seized from R.H. Khan. This they had examined and submitted their report vide Ext 306 at page 23 and 24.

153.(ix). His evidence also reveals that Mat. Object-84 is the DVD-1 contains their marking "Copy of original" "Evidence from preliminary analysis of crime no. 01/2009/NIA". And Mat. Object-85 is another DVD containing datas which were sent by them along with the report to NIA. DVD-2 contains their marking "Original" "Evidence from preliminary analysis of crime no. 01/2009/NIA".

153.(x). However, having gone through the report and played the Material Object-85 the DVD containing data which were sent by C-DAC along with the report to NIA, found to have contained one Note, Dated 3rd Nov.2008, in the name of EM Mohit Hojai addressed to the Principal Secretary, NCHAC for directing the Deputy Director, Social Welfare Department, Haflong to issue supply order of different materials, Sewing Machines, etc. under Social Welfare and Anganwadi Materials under ICDS Projects and construction works as per the approved rate of Autonomous Council, Haflong for the year 2008-09 to the suppliers list of which enclosed with the Note. Besides, two Bills in the name of Debasish Bhattacharyee for a sum of Rs. 12,46,820/ and Rs. 7,53,340/ and two Challans in the name of Shri Debasish Bhattacharyee of articles. Both the Bills were addressed to the Deputy Director, Socool Welfare, N.C. Hills, Haflong against order No. NCH/SW/Pt.-III/315/2008-09/145 dated Haflong, 9th May 2008, and against order No. NCH/SW/Pt.-III/315/2008-09/144 dated Haflong, 9th May 2008. And the Challans were addressed to the Child Development Project Officer, Jatinga Valley, ICDS Project, Mahur against order No. NCH/SW/Pt.-III/315/2008-09/145 dated Haflong, 9th May 2008 and to the Child Development Project Officer, Diyung Valley, ICDS Project, Maibong against order No. NCH/SW/Pt.-III/315/2008-09/144 dated Haflong, 9th May 2008. It is also found have contains Bills of Gracious SHG for a sum of Rs. 1,21,385/, of Standing SHG for a sum of Rs. 2,20,190/, Janali SHG for a sum of Rs. 1,12,250/, Milon SHG for a sum of 1,42,105/ , Hamassawn SHG for a sum of Rs. 1,28,230/ Ringum SHG for a sum of Rs. 1,14,550/, Green Valley SHG for a sum of Rs. 1,58,875/ Nikita SHG for a sum of Rs. 1,40,850/ Sagarika SHG for a sum of Rs. 1,65,985/, Star View SHG for a sum of Rs. 1,31,915/ Inthuruol SHG for a sum of Rs. 55,865/. It is also to be mention here that the I/O has sent letters through registered post to Green Valley SHG- vide Ext. 122/30, Nikita SHG- vide Ext, 122/19, Star View SHG vide Ext.122/9, Sagarika SHG- vide Ext. 122(20). And it appears from the evidence of PW-41- Shri Haripada Barman, that the aforementioned SHG found to be not traceable. He has written a report, Ext- 121 to NIA to that effect. Thus it is transpired that the said bills were made in the name of fictitious firms falsely and the

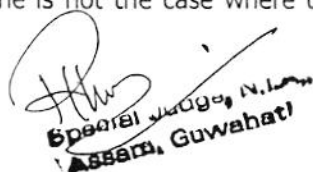

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amounts withdrawn through the same were siphoned off to raise fund for DHD(J), as alleged by the prosecution side.

153.(xi). In cross-examination he admitted that Ext. 305 is a preliminary report but not the final report. He also admitted that in the report vide Ext 306, it is not mentioned that C-DAC requested NIA for supply of four high capacity hard discs and he do not recollect the date on which we received the four high capacity hard discs from NIA. He also admitted that he determined the hash value of each of the hard disc before examination is not mentioned in my report (Ext 306). He also admitted that in their observation made in his report (Ext 306) in page no. 12 he has mentioned the materials marked by NIA as Ext 3 does not contain any images, PDF and other files related to DHD. Exhibits which were sent by NIA for examination by us were examined by Mr. Satish Kumar and he had sat with Mr. Satish Kumar and verified the report. Mr. Satish Kumar is alive but he is not with C-DAC. I have not personally prepared the DVDs. For retrieving the deleted files from the hard disc some software are generally used like Stellar Phoenix, Recovered my files etc. He also admitted having not provided any guide line along with the report as to how hard drive image can be done.

153.(xii). The Id. counsel for the accused submitted that this witness did not produce any retrieved data along with his report Ext.306. Mere report without retrieved data has no value at all. It is further submitted there is discrepancy in the date of receiving the materials for examination and the reference number. The date has been mentioned as 14.07.2007 in the report which is improbable. It is further submitted that Material Exhibits No.84 & 85 were in open condition and the certification as required u/s 65 B Evidence Act is not appended therewith making thereby it inadmissible in evidence in view of judgment of Hon'ble Supreme Court in **Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473**. Besides, there is discrepancy as to Material Exhibits No. 84 & 85, being DVD or CD.

153.(xiii). Whereas, the Id. Special P.P. has fairly admitted that Material Exhibits No.84 & 85 were in open condition while P.W.90 was deposing. The Id. Special P.P. has assigned reasons for the same. It is submitted that before the evidence of P.W.90 is recorded, the defence side has prayed for supplying a copy of the Material Exhibits No.84 & 85 and because of this the same were open and copy were furnished. It further submitted that though it was in open condition yet P.W. 90 has confirmed that the same have not been tampered with as because the generated hash value was not changed. We find the submission worth accepting and accepted it accordingly. The Id. Special P.P. further submitted that the present one is not the case where the certificate u/s 65 B is necessary as because here the


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two Hard Discs from where the data were retrieved and transferred to Material Exhibits No.84 & 85, were itself produced before the court and exhibited as Material Ext. 78 & 79. And as such, according to the Ld. Special P.P., the contention of the Id. defence counsel is a misplaced one and that was not the true import of the ratio in **Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473**.

153.(xiv). Here we deemed it apposite to have a look into the aforesaid case. **Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473**, wherein it has been held that:-

"An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied."

It continued to state

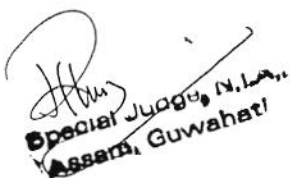
"... in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible"

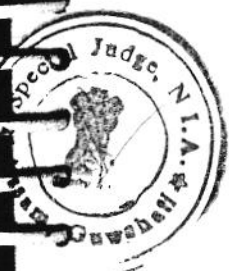
It also stated,

"The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made there from which were produced in court, without due certification."

It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act."

The part of the judgemental statements made above are significant since it makes a distinction of "Primary" and "Secondary" documents holding CDs used in the commission of offence is "Primary" evidence and "CDs produced in copies" is "Secondary". It also provided the option that Primary evidence could have been proved without Section 65B certification.


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153.(xv). This being the position the submission of the Id. Special P.P. cannot be said to be inconsistent with the law laid down in *Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473*. Accordingly, the submission is concurred with.

154. The evidence of P.W.99 -Md. Zagir Khan reveals that in the year 2009, he was working as Assistant Teacher at Moulhoi High School, Haflong. In the year 2009, he was the Secretary of Minaret Club, Haflong. The said club is a NGO working for development of sports and participate in any other sports organization and also do social work. The NGO consist of 70-80 members. The NGO used to run on the basis of membership fees received from the members and donations receive from well wishers. In this connection he met Principal Secretary of the Council, Sh. Anil Kumar Baruah with an application for financial help then he told him that there is no such scheme for financial aid however project/scheme can be allotted to them for execution and he directed him to approach Deputy Director, Social Welfare, Sh. R.H. Khan who was the holding the charge at that time. When he approached Mr. Khan with an application and approval the club had received money and he has received the same on behalf of the club. Ext 331 is a money receipt for Rs. 8,09,305/- which he has received from Social Welfare Department for Minaret Club. Ext 62 (148) is the Bill submitted by the club to the Social Welfare Department, Ext 332 is the delivery challans, Ext 62(150) is the Bill of Minaret Club, Ext 333 is the delivery challans, Ext 62(152) is the Bill of Minaret Club, Ext 334 is the delivery challans, Ext 62(154) is the Bill of Minaret Club, Ext 335 is the delivery challan, Ext 62(156) is the Bill of Minaret Club, Ext 336 is the delivery challans, Ext 62(158) is the Bill of Minaret Club, Ext 337 is the delivery challans, Ext 339 is Money receipt for Rs. 6,40,065/-, Ext 62 (160) is the Bill of Minaret Club, Ext 338 is the Delivery Challan, Ext 62(304) is the Bill of Minaret Club, Ext 340 is the Delivery Challan, Ext 62(306) is the Bill of Minaret Club, Ext 341 is the Delivery Challan, Ext 62(308) is the Bill of Minaret Club, Ext 342 is the Delivery Challan, Ext 62(310) is the Bill of Minaret Club, Ext 343 is the Delivery Challan, Ext 62(312) is the Bill of Minaret Club, and Ext 334 is the Delivery Challan.

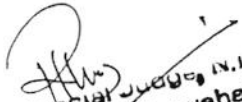
154.(i). It is to be mention here that thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.148, Shri Santosh kr. Singh, who proved that this witness stated before him that "On two occasions he gave me a cash amount of Rs. 15,000/- and Rs. 25,000/- respectively for the club. In lieu of that he got some papers signed from me in respect of the above. I state that all the signatures as above have been made by me and I


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identify the same. I want to clarify that the signatures were obtained from me on blank receipt/ Bill /Challan by Md. R.H. Khan in lieu of the financial help which he gave to their club as mentioned above."

154.(ii). This witness denied that he has only put his signatures in the Bills and receipts as stated by him in his examination-in-chief and that the Bills were not prepared by him. He denied that the Bills and Receipts "Ext 331/1 is his signature. Ext 62 (148) is the Bill submitted by the club to the Social Welfare Department and Ext 62 (374) is his signature. Ext 332 is the delivery challans and Ext 332/1 is his signature. Ext 62(150) is the Bill of Minaret Club. Ext 62 (375) is his signature. Ext 333 is the delivery challans and Ext 333/1 is his signature. Ext 62(152) is the Bill of Minaret Club. Ext 62(376) is his signature. Ext 334 is the delivery challans and Ext 334/1 is his signature. Ext 62(154) is the Bill of Minaret Club. Ext 62(377) is his signature. Ext 335 is the delivery challan and Ext 335/1 is his signature. Ext 62(156) is the Bill of Minaret Club. Ext 62(378) is his signature. Ext 336 is the delivery challans and Ext 336/1 is his signature. Ext 62(158) is the Bill of Minaret Club. Ext 62(379) is his signature. Ext 337 is the delivery challans and Ext 337/1 is his signature. Ext 339 is Money receipt for Rs. 6,40,065/-. Ext 339/1 is my signature. Ext 62 (160) is the Bill of Minaret Club and Ext 62(380) is his signature. Ext 338 is the Delivery Challan and ext 338/1 is his signature. Ext 62(304) is the Bill of Minaret Club and Ext 62(381) is his signature. Ext 340 is the Delivery Challan and Ext 340/1 is his signature. Ext 62(306) is the Bill of Minaret Club and Ext 62(382) is his signature. Ext 341 is the Delivery Challan and Ext 341/1 is his signature. Ext 62(308) is the Bill of Minaret Club and Ext 62(383) is his signature. Ext 342 is the Delivery Challan and Ext 342/1 is his signature. Ext 62(310) is the Bill of Minaret Club and Ext 62(384) is his signature. Ext 343 is the Delivery Challan and Ext 343/1 is his signature. Ext 62(312) is the Bill of Minaret Club and Ext 62(385) is his signature. Ext 334 is the Delivery Challan and Ext 334/1 is his signature, is submitted by him." He denied that he has made any statement before the Additional District Magistrate, Haflong which is marked as Ext 335. However, he admitted his signature in the statement as Ext 335/1 and Ext 335/2.

154.(iii). In cross-examination by accused R.H. Khan he stated that all the Bills which were exhibited by him vide Ext 62/148, 62/150, 62/152, 62/154, 62/156, 62/158, 62/160, 62/204, 62/306, 62/308, 62/310 and 62/312 are the Bills which were prepared and submitted by him under his signature as Secretary of Minaret Club after receipt of the goods by the respective office/circle for distribution of food stuff after the supplied food stuff/articles were received by the respective office and in respective delivery challans exhibited by him today vide ext 332, 333, 334, 335, 336, 337, 338, 340, 341, 342, 343 and 344 were also


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signed by him. After receipt of the bills by him enclosed with the copy of the delivery challans given to him by the concerned office he issued money receipt which are exhibited by him as Ext 338 and 339 after getting the required amount mentioned therein. He denied having given any statement before any Magistrate during investigation.

155. The evidence of P.W. 100 Smti. Kiran Das reveals in the year 2003, she was posted at Jatinga Valley, ICDS, Mahur and remained there till 2012. As Supervisor of ICDS Project her duty was to see Anganwadi centre regarding distribution of foods. The food articles are supplied by the Contractors and thereafter, the Anganwadi workers collect the food items from the store. While collecting the food articles a challans is prepared where amount of food, the name of the workers who collects the food and my signature as distribution of food. During that time Deputy Director of Social Welfare was Md. R.H. Khan and she worked under him. She confirmed that Ext 345, Ext 346, Ext 347, Ext 348, Ext 349, Ext 350, Ext 351, Ext 352, Ext 353, Ext 354, Ext 355, Ext 356, Ext 357, Ext 358, Ext 359, Ext 360, Ext 361, Ext 362 and Ext 363 are the delivery challans and all the challans bears her signatures as Supervisor. Her evidence also reveals that she also appeared before Additional District Magistrate on 16.09.2009 where she was asked some questions, a statement was prepared and she has signed the statement. Ext 364 is the statement and ext 364/1 and 364/2 are her signatures.

155.(i). The prosecution side, thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.148, Shri Santosh kr. Singh, who proved that this witness stated before him that "My duties as Supervisor include distribution since approximately beginning of 2007, the above procedure was not been followed as the then Deputy Director, Md. R.H. Khan has specifically told me to not to fill up the quantities of the food item given to the Anganwadi Centre and obtain their signatures on the blank challans. During that period no one in the office had the courage to refuse any orders of Md. R.H. Khan." He also confirmed that the witness stated to him that she was shown page No. 44-56, 60-79, 297-307 and 311-319 of the file bearing No. NCH/SW/271/Pt-I/2007-08 on the subject Voucher file for SNP, She identify her signature on the challan. She reiterated here that she had signed these challans without filling the quantities distributed to the Anganwadi Centre. After signing the same, she had given them back to Md. R.H. Khan and she do not know what happened thereafter. She further reiterated that the quantities mentioned in this challans are


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much more as normally the quantity given by the Supervisors to the Anganwadi Workers is up to 40 kg of Rice, 10 kg of Dal, 25 kg Chira and 5 kg of Sugar."

155.(ii). In cross-examination by accused R.H. Khan she admitted that at the time of putting his signature vide Ext 364/1 and 364/2, on Ext.364 she was not read over and explained the same. She denied having given the statement before the Addl. District Magistrate as mentioned in Ext 364. She admitted that when they used to sign the delivery challans the quantity of food stuffs used to be mentioned in the challans. Anganwadi worker used to sign the delivery challans after receiving the food stuffs and thereafter she countersigned the same. In the delivery challans from Ext 345 to 363, I put my signatures after the food stuff was received by the Anganwadi workers and their signature.

156. The evidence of PW-126- Depolal Hojai reveals that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CE, but he submitted resignation and Mohit Jojai became the CEM. His evidence also reveals that Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and it may be DHD(J) and Maorong Dimasa, who belong to DHD(J) and he was killed and his dead body was recovered 2/3 years back and that since his time of taking over as CEM many efficient govt officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD (J) and there was killing and kidnapping. In cross-examination by the prosecution side he admitted that during the period of Governor's rule R.H. Khan was working as the liaison officer of the council. This witness also is declared hostile by the prosecution side and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150, who proved what this witness stated before him.

156.(i). It is to be mention here that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident, in view of the ratio laid down by the Hon'ble Supreme Court in **Haradhan Das Vs. State of West Bengal, (supra)**. So, the evidence of P.W.99, 100 and 126, so far it supports to the prosecution versions and relates to accused R.H. Khan cannot be discarded altogether. The Id. counsel for the accused also submitted that the evidence of hostile witnesses cannot be discarded altogether. The Id. counsel relied upon two case laws:-(i) **Balu**



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Sonba Shinde vs. State of Maharastra (2002) 7SCC 543 and (ii) *State of U.P. Vs. Ramesh Prasad Mishra (1996) 10 SCC 360*. In view of law, being settled by the Hon'ble Supreme Court *Haradhan Das Vs. State of West Bengal, (supra)* further discussion on this point is found to be not necessary.

157. The evidence of PW-127- Biswajit Dewan has testified that he was Asstt. Manager SBI Haflong. Ext-294 is the a/c opening form of Moin & Brothers of a/c No 30730522660 introducer of the a/c was Principal Secretary NCHAC, and Rs 25,00,000/- was deposited vide Ext-294/3 and on 25-4-09 by cheque the amount was withdrawn and received by Rahman. Ext-295 is the a/c opening form of Input Supply Syndicate Haflong a/c No 30730523539 introducer of the a/c was Principal Secretary NCHAC, and on 8-4-09 Rs 12,00,000/- was deposited vide Ext-295/4, and on 23-4-09 by bearer cheque an amount Rs.10,00,000/- was withdrawn and received by Rahman. On 24-04-09 another amount of Rs.25,00,000/- was deposited by Ext-295/6, and on 25-04-09 by bearer cheque the amount was withdrawn and received by Rahman.

157.(i). PW-127-also testified that on 25-04-09 another amount of Rs.25,00,000/- was deposited by Ext-295/8, and on 05-05-09, by bearer cheque the amount Rs. 25,00,000/- was withdrawn and Ext-295/3 is the cheque. Ext-296 is the A/c opening form of M/S Anee Agro Enterprises Haflong of A/c No 30730520492 introducer of the A/c was Principal Secretary NCHAC, and on 8-4-09 Rs 12,00,000/- was deposited vide Ext-296/4, and on 23-4-09 by bearer chq amount Rs.10,00,000/- was withdrawn and received by Rahman. On 24-04-09 another amount of Rs.25,00,000/- was deposited by Ext-296/6, and on 25-04-09 by bearer cheque the amount of Rs.25,00,000/- was withdrawn. On 25-04-09 another amount of Rs.25,00,000/- was deposited by Ext-296/8. On 05-05-09 by bearer cheque the amount Rs. 25,00,000/- was withdrawn Ext-296/3 is the cheque.


157.(ii). PW-127- Biswajit Dewan also testified that Ext-297 is the A/c opening form of M/S AEE GEE Enterprises Haflong a/c No 30730522988 introducer of the A/c was Principal Secretary NCHAC, and on 8-4-09, Rs 12,00,000/- was deposited vide Ext-297/2 and on 24-4-09 another amount of Rs.25,00,000/- was deposited by Ext-297/3. On 25-04-09 by bearer cheque an amount Rs.35,00,000/- was withdrawn. Ext-297/1 is the cheque and the amount was received by Rahman. On the same day 25-04-09, an amount of Rs.25,00,000/- was deposited by Ext-297/5. Ext-297/6 is the statement of the said A/c.


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157.(iii). PW-127- Biswajit Dewan also testified that Ext-298 is the A/c opening form of M/S Shikari Enterprises Haflong of A/c No 30730522069 and introducer of the A/c was Principal Secretary NCHAC, and on 24-4-09, Rs 25,00,000/- was deposited vide Ext-298/2. Again on 25-4-09 another amount of Rs.25,00,000/- was deposited vide Ext-298/3. On 25-04-09 by bearer cheque an amount Rs.35,00,000/- was withdrawn and Ext-298/1 is the cheque. The amount was received by Rahman. On 30-4-09 amount of Rs.12,00,000/- was deposited vide Ext-298/5, and Ext-298/6 is the statement of A/c.

158. Shri Mukut Kemprai, was the Principal Secretary of NCHAC at the relevant time. His evidence has been discussed already in previous paragraphs in respect of other accused persons. But from the standpoint of the present sets of accused, the same bears immense importance. And, therefore, the same is reiterated again. According to this witness he gave reply to some queries of NIA about some firms viz. (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee, wherein he stated that permits were issued to the said firms on 31.01.2008, under Sl. No. 384 to 391, in favour of Sri Debashish Bhattacharjee, S/o Late Sujit Bhattacharjee, Lower Haflong, NC Hills. The registration of the same was in the department and there was no contact number. All permits were valid up to 31.03.2008, and not further renewed. Ext. 394 is the said letter. Ext 394/1 is his signature. The registrations of the contractor were done in PWD department and his office used to issue only permits and hence registration no. is not available with him. Cross-examination of this witness by accused Debashish Bhattacharjee reveals that all the firms were genuine and registered as per rules of the NC Hills Autonomous Council.

159. PW-74- Hemen Das- is S.I. of Special Task Force, Ulubari. His evidence reveals that he made an enquiry and verified the addresses of (1) M/S Barail Enterprise, factory at Ulubari, Guwahati; (2) M/S Loknath Trading factory at Paltanbazar, Guwahati; he made enquiry but could not find existence of the said two firms and on 8-8-09, he submitted his report. Ext.279 is the said report and Ext.279/1 is his signature. On 23-8-09 he was present as witness to the inspection of GI pipes received from Jeet Enterprise at Umrangso. An inspection memo and a report was prepared thereafter. Ext-273 is the inspection memo and Ext.274 is the said memo and Ext.274/3 is his signature. Nothing tangible could be elicited in cross-examination of this witness to discredit his version.


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160. The evidence of P.W.41, Shri Haripada Barman is also discussed in the previous paragraphs of this judgment. What is transpired from the evidence of this witness is that M/S MAA Trading- Haflong; M/S Loknath Trading -Haflong; M/S Jeet Enterprise- Haflong; M/S Borail Enterprise -Haflong; M/S Debasish Bhattacharjee- Haflong; were found to be not traceable. Vide his letter Ext- 121, he informed NIA about the same and Ext-122/30 to 30 are registered letters sent by NIA in the name of different Firms and persons located at NC Hills and Haflong, but the post man of the area could not trace the addressee and returned the letters sent in the name of said firms, as not traceable.

160.(i). It is elicited in cross-examination that in some of the letters PIN number is not available and in some letters the name of the addressee are wrongly spelt out. It is further elicited that he is not acquainted with the initials put by the Post man on the letters. But in re-examination by the defence side he stated that even if the Postal Index Number (PIN) is not mentioned in letters received by the Post Offices in a normal course of receiving letters, but still the delivery of such letters is possible. Even if the Post Office name is not mentioned in a particular letter, more particularly in a registered letter, the same can be delivered by the Postman if the address is proper.

160.(ii). It appears that out of the 30 letters, Ext. 122(16) was sent to Debasish Bhattacharyee, Ext.122(5) was sent to M/S Loknath Trading, Haflong, Ext. 122(15) was sent to M/S Maa-Trading, Haflong, Ext. 122(17) was sent to M/S Borail Enterprise, Haflong, Ext. 122(8) was sent to M/S J.K. Traders, Haflong, and Ext.122(9) was sent to Star View Self help Group, Haflong, Ext. 122(30) was sent to Green Valley Self Help Group, Haflong, Ext.122(19) was sent to Nikita Self Help Group, Haflong, Ext. 122(20) was sent to Sagarika Self Help Group, Haflong. But none of them could be traced out in the said addresses. This shows that the said Self help Groupd are fictitious and the same is the position in respect of the firms of Debasish Bhattacharyee. It is to be mentioned here that the said Self Help Groups have shown to have receiving material of Social Welfare Department. And the firms of Debasish Bhattacharyee also supplied material to Social Welfare Department and also to PHE Department.


161. PW-137- Satyendra Kr. Deka, Dy. General Manager BSNL testified that on request of NIA vide Ext.-396 for furnishing details of BSNL No-9435077481, 9435577799, 9401423618 and CDR. And vide Ext.-397 he submitted reply and the print copy. Ext-398 is the


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CDR of mobile No-9435077481, Ext-399 is the CDR of mobile No-9435577799, Ext-400 is the CDR of mobile No-9401423618, Ext-401 is another CDR and the relevant pg is 47 to 68.

162. The evidence of P.W. 141, Smti. Lalneizovi Nampui, Secretary, North Cachar Hills Autonomous Council, Haflong in the year 2009, she was working as Election Officer. On 18.06.2009, the Deputy Commissioner, Haflong deputed her by a written order to be present and accompany the NIA team during their inspection. Accordingly, the NIA team, she and other officials visited the office of the Executive Engineer of the PHE department, Haflong along with other officers. The NIA officers along with the staffs started verification of the stock of pipes of different types. After verification of pipes the items were kept in a store room and was sealed with the seal of the Deputy Commissioner. The seal was handed over to her and she handed over to the Deputy Commissioner for safe custody. A memo, Ext. 324, was prepared in her presence and other witnesses who were present on that day, and she put her signature Ext. 324/24 and 324/25 thereon. Her evidence also reveals that on 19.06.2009, she was deputed by the Deputy Commissioner, Haflong by a written order to be present during their inspection of offices by the NIA team and accordingly they went to the office of the Deputy Director, Social Welfare department, Haflong. During the visit of the NIA in the office of the Social Welfare Department, Haflong, other staffs of the said department were also present there. The NIA team seized two hard discs which are Mat. Ext. 78 and 79, which she has seen in the Court. She has identified those hard discs by looking at the number below the bar code of Mat. Ext. 78 and 79. Ext. 64 is the seizure memo by which the above Mat. Exhibits were seized after opening the computer machine which was in the office of the Deputy Director, Social Welfare, Haflong and from the custody of Phionica Swer, In-Charge, CDPO, New Sangbar ICDS Project, NC Hills. She confirmed her signature Ext. 64/2 thereon.

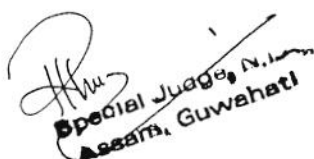
162.(i). In cross-examination she admitted that she did not herself physically count the GI pipes which were found at the store during the verification. There was a huge pile of GI pipes in the store and outside the store. In cross-examination by accused R.H. Khan she stated that the written order of the Deputy Commissioner requesting her to accompany the NIA team to the office of the Deputy Director, Social Welfare, Haflong is not available in the record of this case. It is also elicited that according to seizure memo vide Ext 64, it is true that both the hard discs have been separately wrapped by paper bearing details of the case and signed by the witness. It is true that at the time of seizure she put her signature on both the cover of the hard discs. She denied the defence suggestion that Phionica Swer was not posted in the Deputy Director office at the relevant time and that she put her signature in the seizure


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list in Circuit House, Haflong and that no hard discs were seized from the office of the Deputy Director, Social Welfare in her presence on 19.06.2009

162.(ii). The defence side has made an abortive attempt to cast a doubt upon the evidence of this witness referring the evidence of P.W.25. It is an admitted fact that both the hard discs have been separately wrapped by paper bearing details of the case and signed by the witness. And in the court P.W. 141 has not seen her signature and also the signature of witnesses. But the fact remains that after such seizure both the Hard Discs were subjected to examination of expert. And this will explain why the signatures of the witnesses are not there. It is not the case that the Hard Disc was produced before the court in the same condition as it was at the time of seizure. The evidence of this witness withstands the acid test successfully. She is a responsible Govt. Officer of the level of Secretary. Her evidence stands in higher pedestal than that of P.W.25 whose evidence we have already discussed and who faithfully obliged to all the suggestion of the accused and goes to the extent of giving a certificate that accused R.H. Khan has no connection with DHD (J) and he is a capable and sincere officer and has discharged his duties smoothly and properly during his service period as Deputy Director, Social Welfare Deptt. Haflong, ignoring her position.

162.(iii). The evidence of P.W.144 -Shri Amal Chandra Kalita, retd. Senior Scientific Officer reveals that on 12.10.2009, he received some documents in connection with 01/09/NIA/New Delhi from the Director of DFS, Assam, Guwahati for scientific examination of some disputed signatures in order to establish the fact whether they were written by the persons from whom specimen signatures were obtained and sent for the purpose of comparison, in sealed cover. The documents containing the disputed signatures were some money receipts, bills and challans. All these disputed signatures and specimen signature were initially marked by the Investigating Officer as Q-620 to Q-732 and the specimen signatures were marked as S-170 to S-197. He re-marked the Question signatures as Q-1 to Q-112, Q-98/1 and S-1 to S-37. Ext. 410 is the letter dated 12.10.2009, sent by NIA forwarding specimen handwriting/signature and question documents for comparison and opinion. Ext. 410/1 are the specimen handwriting and signatures of Debashish Bhattacharjee @ Bappi (S-170 to S-183), specimen writing/signatures of Jayanta Kumar Ghosh @ Dhruba Ghosh (S-184 to S-193) and specimen signature of Miss Vastilal Ringun Pangmte (S-196 to S-197). Ext. 410/2 in 6 pages containing the question documents. Ext. 410/3 is the questionnaire from the Dy. Supdt. of Police, NIA as to who has written specimen handwriting/signature marked as S-130, S-133 and also written question writing /signature marked Q-700 to Q-714, whether the


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person who has written specimen handwriting/signature marked as S-170 to S-183 also written question writing/signature marked Q-620 to Q-695, whether the person who has written specimen handwriting/signature marked as S-184 to S-193 has also written question writing/signature marked Q-696 to Q-699 and Q-671 to Q-673, whether the person who has written specimen handwriting/signature marked as S-194 to S-197 also written question writing/signature marked Q-715 to Q-732.

162.(iv). His evidence also reveals that first of all he examined the specimen signatures and found them as sufficient and suitable for the purpose of comparison for arriving at a definite conclusion. Then he examined the question signatures read as "D. Bhatta" and "Debashish Bhattacharjee" and he found the said signatures are product of imitation which is evident from the fact they were written with hesitation, slow and drawn, lack of freedom and rhythm, defective line quality and showing evidence of attention to the process of writings. He found basic difference between the question signatures and specimen signatures both in general and individual writing characteristics indicating they were written by two different persons.

162.(v). His evidence also reveals that he examined the specimen signature read as "Dhruba" which were written by an illiterate person who is not so familiar with the process of writings, his skill is poor having lack of muscular control and when he compare these specimen signatures with the question signatures he found the writer of the question signatures were of higher skill and when he compared them he found basic difference both in general and individual features indicating they were written by two different persons.

162. (vi). His evidence also reveals that the question signatures read as "V. L. Pangamte" are also the product of imitation which were written slowly, consciously, with defective line quality and showing evidence of attention to the process of writings. The specimen signatures, on the other hand were written speedily, unconsciously with smooth and clear cut line quality and without any evidence of attention to the process of writing. Both the sets of signatures belong to two different general class as well as in individual characteristics and I was of the opinion that they were written by two different persons.

162. (vii). His evidence also reveals that after examination he opined vide Ext. 411, that:-


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- (i) The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-23 did not write the red enclosed signatures similarly stamped and marked Q-10 to Q-18, Q-22 to Q-27, Q-38 to Q-80 and Q-100 to Q-112.
- (ii) The person who wrote the blue enclosed writings and signatures stamped and marked S-24 to S-33 did not write the red enclosed signatures similarly stamped and marked Q-1 to Q-9.
- (iii) The person who wrote the blue enclosed signatures stamped and marked S-34 to S-37 did not write the red enclosed signatures similarly stamped and marked Q-1 to Q-84 and Q-89 to Q-96.
- (iv) It has not been possible to express a definite opinion regarding authorship of the rest of the question items on the basis of comparison with the materials supplied.



162.(viii). His evidence also reveals that Ext. 413 in 14 pages are the specimen writing/signatures of Debasish Bhattacharjee @ Bappi which were originally marked as S-172 to S-183, the same were re-marked by him as S-1 to S-23 which are exhibited as Ext 413/1 to Ext 413/14. Ext. 414 in 10 pages are the specimen writing /signatures of Jayanta Kumar Ghosh which were originally marked as S-184 to S-193. The same were re-marked by him as S-24 to S-33 which are exhibited as Ext. 414/1 to 414/10.

162.(ix). Ext 415 in 4 pages are the specimen signature of Miss. Vastilal Ringun Pangmte which were originally marked S-194 to S-197 which were re-marked by him as S-34 to S-37 which are exhibited as Ext. 415/1 to Ext 415/4. Ext. 70/28, 70/27, 70/32, 70/31, 70/36, 70/35, 70/40, 70/39, 70/44 contains the question signatures marked by him as Q-1 to Q-9. Ext. 70/43, 70/47, 70/48, 70/49, 70/51, 70/50, 70/54 which contain the question signatures marked by him as Q-10 to Q-18. Ext. 84/1, 84/4, 84/7, 84/16, 84/19, 84/22, 84/25, 84/28, 84/31 which contains the question signatures marked by him as Q-23, Q-25, Q-27, Q-33, Q-35, Q-37, Q-39. Ext. 69/21, 69/24, 69/27, 69/30, 69/33, 69/36, 69/39, 69/43, 69/45, 69/48, 69/51, 69/54, 69/57, 69/60, 69/63, 69/65, 69/67, 69/69, 69/72, 69/75, 69/87, 69/90, 69/93, 69/96, 69/99, 69/102 which contains the question signatures marked by him as Q-46, Q-47, Q-49, Q-50, Q-54, Q-55, Q-59, Q-60, Q-61, Q-65, Q-66, Q-67, Q-71, Q-72, Q-75, Q-77, Q-79, Q-80, Q-82, Q-83, Q-84, Q-90, Q-91, Q-92, Q-94, Q-95.


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162.(x). His evidence also reveals that he also examined Q-11, bill of Maa Trading and Q-17, Bill of M/s Borail Enterprise which are now exhibited as Ext. 416/1, 416/2 and 416/2/a and he has given his opinion. Similarly, he has examined Q-22, Q-24, Q-26, Q-28, Q-38, Q-40, Q-42 which are now marked as Ext 416/3, 416/4, 416/5, 416/6, 416/7 and 416/8.

162.(xi). He also examined Q-44, Q-45, Q-48, Q-51, Q-52, Q-53, Q-56, Q-57, Q-58, Q-62, Q-63, Q-64, Q-68, Q-69, Q-70, Q-73, Q-74, Q-75, Q-78, Q-80, Q-100, Q-101, Q-104, Q-105, Q-108, Q-109 which are now marked as Ext 416/9, 416/10, 416/11, 416/12, 416/13, 416/14, 416/15, 416/16, 416/17, 416/18, 416/19, 416/20, 416/21, 416/22, 416/23, 416/24, 416/25, 416/26, 416/27, 416/28, 416/29, 416/30, 416/31, 416/32, 416/33, 416/34.

162.(xii). Cross-examination of this witness reveals that he has given his own numbers in all the question documents which he had examined. He admitted that he has not submitted the reason for opinion under what basis he gave his opinion vide Ext 411. In different Question Documents different pens were used. He admitted that the handwriting of a person show some variations due to the fatigue, illness, age, writing materials, writing position, physical disturbances, emotional disturbance, lack of concentration during the writing period and during influence of drugs. General characteristic of writing are those characteristic which are common to a group of people. He admitted that speed of writing is inversely proportional in pressure put by the pen.

162.(xiii). The Id. defence counsel has submitted that admittedly P.W.144 has not submitted reasons for opinion on what basis he formed the opinion. According to him Expert Opinion, without reason, cannot be accepted. The Id. defence counsel has referred two case laws: (i) **Krishna Kanta Das vs. State of Assam, (2005) 1GLR 64** and (ii) **Haji Mohd. Ekramul Haq Vs. State of U.P. AIR 1969 SC 488**, in support of his submission.

162.(xiv). It is an admitted fact that P.W.144 has not given any reason for his opinion in Ext. 411. In **Krishna Kanta Das vs. State of Assam (supra)** it has been held that expert opinion is value less unless the opinion is supported by reason and data and expert opinion is not binding on courts. Same is the view expressed by Hon'ble Supreme Court in **Haji Mohd. Ekramul Haq Vs. State (supra)**. This being the factual and legal position, we record concurrence with the submission so made by the Id. counsel in respect of expert evidence.


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163. The evidence of PW-147- Sanjay Kr. Malviya reveals that he did part investigation of the case and by Ext-39 he collected 5 documents. Ext-39/5 is the Assam Financial Rules. Ext-435 is the receipt memo issued to M/s Jeet Enterprises. Ext-374 to 379 are the 6 nos. of Cheques.

164. Thus the facts and circumstances appearing against this accused, from the evidence discussed herein above, which could not be shaken in cross-examination, can be recapitulated as under:-

- (i) At the relevant time he was working as Deputy Director, Social Welfare Department, NCHAC.
- (ii) Though he was posted as Deputy Director, Social Welfare Department, NCHAC, yet he was also working as liaison officer of the council during the period of Governor's rule.
- (iii) He has allotted contract works for supply of material to some firms, registration of which were not even renewed beyond 31st March of the Financial year 2008.
- (iv) While awarding contract works the Assam Financial Rules have not been followed.
- (v) He took signatures of the Secretary Minerate Club Md. Zagir Khan on some papers after giving him Rs. 15,000/- and Rs. 25,000/- respectively for the club. In lieu of that he got some papers signed from him in respect of the above.
- (vi) While distributing the food items to Anganwadi Centre the procedure was not been followed by him and he has specifically told the Supervisors not to fill up the quantities of the food item given to the Anganwadi Centre and obtain their signatures on the blank challans.
- (vii) Some of the money receipts of the bills paid by him bears forged signature of the proprietor of the Firms who have allegedly supplied the materials to the department.
- (viii) The C-DAC has recovered a few bills, challans, and work orders from the unallocated areas of hard discs, the Material Object no. 78, bearing Sl. No. WMAT13626680 and Material Object no. 79, bearing Sl. No. 6RADA5TD which were shown to have been seized from Mrs. Phionica Swer as evident from the report vide Ext 306 at page 11 and 12.
- (ix) He failed to give any plausible explanation as to how bills, challans, and work orders finds place in the hard disc of his office computers. This shows his nexus with accused Mohit Hojai and Bedasish Bhattacharyee.


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- (x) One Note in the name of Mohit Hojai, addressed to Principal Secretary, NCHAC was retrieved from the Hard Discs of his computer. This shows his nexus with accused Mohit Hojai.
- (xi) Bills of some SHGs were recovered from the Hard Discs to which supply orders have been given and payments have been made but the SHGs could not be traced out by the Post Man, for which reasonable inference could be drawn that the bills were false.
- (xii) A sum of Rs. 4,00,000/ was recovered from his house and he failed to account for such possession.
- (xiii) There were short supply of materials by the suppliers as evident from the version of P.W.-37, and while he informed accused he advised him to receive the materials telling him that supply will be made later on.
- (xiv) He has given Ext. 70/28, 70/29, 70/32, 70/33, 70/34, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/44, 70/43, 70/47, 70/48, 70/49, 70/51, 70/52, 70/53 to P.W.45 along with the bills which were not of the proprietors of the concerned firms and payment were not made by cheque.

JEWEL GARLOSHA(A-5):-

165. The role played by this accused is clear from the evidence of following witnesses.

166. The evidence of PW-2 - Shri Chandra Kt. Boro reveals that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then deputed S.I. Maizudding Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.

167. PW-10 - Maijuddin Ahmed- also lends support to his version. His evidence reveals that on 01-04-09, he was working as S.I. of Basistha PS. On that day Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa came and talked with O/C Chandra Kanta Boro about the unlawful activities of DHD (J). Then they proceeded to Jorabat area and from there to 14 Mile G. S. Road and around 12.30 pm they intercepted two vehicles, one

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containing sophisticated weapons including AK-47, M-16 pistols, Lithod guns as well as M-21 Rifles and in connection with the same the O/C Haflong lodged FIR, upon which a Case No. 54/2010 was registered. Ext-59 is the photocopy of seizure list contains 44 nos. of weapons and 41 assorted magazines and shells.

174. PW-24- Amitav Sinha- has also testified that vide letter dated 16-07-10 -Ext-60, he sent to the SP/NIA, the FIR and seizure list and vide his letter dated 03-09-10 - Ext-61 he informed the status of Umrangsu P. S. Case No-18/2000, that both the case were charge sheeted against accused Phonen Naiding and Thangmon Hansu who are DHD cadres. And in the second case 18/2000, Anol Phanglo, Mondesh Langthasa and absconding accused Peter Langthasa, Biren Singh Langthasa, Than Janan Hafila, Asai Ram Nunisa and Ajit Thousen all are DHD cadres.

174.(i). Cross-examination of this witness could elicit nothing tangible to to discredit his version, except that he did not state before the I/O about some of the facts about the law and order situation of N C Hills. He denied the defence suggestion that the arms and ammunitions were not belonging to DHD (J). It is to be noted here that he categorically stated that he was responsible for maintaining law and order in N C Hills. being posted as Addl. S.P. (HQ). Therefore, the omission, though may amounts to contradiction, yet the same failed to cast any doubt about the veracity of his version. The law and order situation in N.C. Hills, at the relevant point of time, is apparent from the evidence of the then CEM Mr. Depolal Hojai, P.W. 126 who testified that many efficient govt. officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist, DHD and other was DHD (J) and there was killing and kidnapping.

175. PW-26- Sudhakar Singh- also testified that on 01-06-09, on information, he along with 2 Inspector flew to Bangalore on the order of G.P. Singh where Jewel Garlosa C-in-C of DHD(J), were apprehended in a Gym and Partho Warisa was apprehended in a flat along with Samir Ahmed and they were brought to Guwahati on 05-06-09. PW-38- Rukma Buragohain- and PW-124- Bhupendra Kr. Nath also testified the same facts. P.W.38 further testified that you disclosed his stay at Flat 102, 1st Floor Pankaj Residency and led them to your flat from where Partho Warisa was found staying with him and on search of the flat, among other thing, one driving licence No-KA -2509/09-10 in the name of Jewel Garlosa as Debojit Sinha having his photograph was found. And from the possession of Partho Warisa, among other thing, one HCL laptop bearing SL No-2210911600685929 which is M/Ext-29, one

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walky talky sets 12 nos. M/Ext 14 is telescope Bushnell. PW-63 Sh. Lalrinawma Traite testifies the same fact - that in month of July 2009 one armed smuggler Vanlal Chaana @ Venichema @ Ventea was apprehended and on the disclosure made by him 8 nos. of M-16 rifles, one 9 mm berretta pistol, 12 nos. of walkie-talkie and chargers and spare batteries, 6 nos. of 9mm ammunition, 1 sniper length antenna.

170. PW-16-Nakul Boro, a driver by profession testified that vide production memo - Ext-46 some documents were produced and his signature was taken over the same and Ext-47 is the letter head of Mohet Hojai.

171. PW-20- Ronsling Langthasa- testified that he was cadre of DHD of NC Hills for about 16 years. From 1996 you were the Chairman, Dilip Nunisa was the Vice Chairman and Pranab Nunisa was the Commander-in-Chief. From 01-01-2003 DHD group entered into cease fire with the Govt. After cease fire Jewel Garlosa continued with the organisation and you suddenly disappeared. Dilip Nunisa continued with the organisation and till this stage the said group worked for finalisation of the accord in Oct 2012. And his group were also a party to the accord.

172. PW-23- Kulendra Daulagapu- an Executive member of DHAC, testified that he come to know about the activities of DHD (J) about demand of money and violent activities they took. During 2008 ASDC & BJP alliance was in power. During one of the meeting Depolal Hojai - CEM, cited his ill health and resigned as CEM and Mohet Hojai was elected as CEM. He went with Mohet Hojai to Kuala Lumpur in Feb/ March 2009 at Kuala Lumpur he met, Niranjan Hojai. He stated that he gave statement u/s 164 and Ext-56 is the statement.

173. PW-24- Amitav Sinha- testified that in the year 2009 he was Addl. S.P. (HQ) at N C Hills and he was responsible for maintaining law and order. There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD (J) group had resorted to firing on moving train. His evidence further reveals that because of counter insurgency operations, laying down of arms by DHD (J) cadres in March/April, 2010 took place, but there was apprehension that all the arms and ammunition of DHD(J) were not handed over at the time of laying down of arms, and on 08-07-10, on receiving information that arms and ammunition were kept hidden in jungles, he conducted search at Disa Kish area. He was accompanied by O/C Haflong and on search they could find several gunny bags

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containing sophisticated weapons including AK-47, M-16 pistols, Lithod guns as well as M-21 Rifles and in connection with the same the O/C Haflong lodged FIR, upon which a Case No. 54/2010 was registered. Ext-59 is the photocopy of seizure list contains 44 nos. of weapons and 41 assorted magazines and shells.

174. PW-24- Amitav Sinha- has also testified that vide letter dated 16-07-10 -Ext-60, he sent to the SP/NIA, the FIR and seizure list and vide his letter dated 03-09-10 - Ext-61 he informed the status of Umrangsu P. S. Case No-18/2000, that both the case were charge sheeted against accused Phonen Naiding and Thangmon Hansu who are DHD cadres. And in the second case 18/2000, Anol Phanglo, Mondesh Langthasa and absconding accused Peter Langthasa, Biren Singh Langthasa, Than Janan Hafila, Asai Ram Nunisa and Ajit Thousen all are DHD cadres.

174.(i). Cross-examination of this witness could elicit nothing tangible to to discredit his version, except that he did not state before the I/O about some of the facts about the law and order situation of N C Hills. He denied the defence suggestion that the arms and ammunitions were not belonging to DHD (J). It is to be noted here that he categorically stated that he was responsible for maintaining law and order in N C Hills. being posted as Addl. S.P. (HQ). Therefore, the omission, though may amounts to contradiction, yet the same failed to cast any doubt about the veracity of his version. The law and order situation in N.C. Hills, at the relevant point of time, is apparent from the evidence of the then CEM Mr. Depolal Hojai, P.W. 126 who testified that many efficient govt. officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist, DHD and other was DHD (J) and there was killing and kidnapping.

175. PW-26- Sudhakar Singh- also testified that on 01-06-09, on information, he along with 2 Inspector flew to Bangalore on the order of G.P. Singh where Jewel Garlosa C-in-C of DHD(J), were apprehended in a Gym and Partho Warisa was apprehended in a flat along with Samir Ahmed and they were brought to Guwahati on 05-06-09. PW-38- Rukma Buragohain- and PW-124- Bhupendra Kr. Nath also testified the same facts. P.W.38 further testified that you disclosed his stay at Flat 102, 1st Floor Pankaj Residency and led them to your flat from where Partho Warisa was found staying with him and on search of the flat, among other thing, one driving licence No-KA -2509/09-10 in the name of Jewel Garlosa as Debojit Sinha having his photograph was found. And from the possession of Partho Warisa, among other thing, one HCL laptop bearing SL No-2210911600685929 which is M/Ext-29, one

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driving licence No. KA -2192/NCH/Pvt/02 in the name of Ashringdaw Warisa, one identity in the name of Ananda Singha of Bihara, Cachar having his photograph-M/Ext-33- and seized the same vide seizure memo Ext-104. Then searching the Flat of Samir Ahmed he found among other things, one Photocopy of driving licence of Jewel Garlosa as Debojit Singha with his photograph Ext-113, which he seized vide Seizure Memo Ext 110.

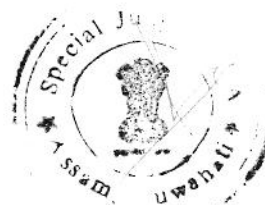
176. PW-27- Shri Hiteshwar Medhi- testified that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjan Hojai of DHD (J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjan Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons.

177. The evidence of P.W. 29, Shri George Lamthang reveals that he converted Indian Currency amounting to Rs. 4.00 Crore, to US Dollars at the behest of Malswamkimi, who collects the said Indian Courreny from Phojendra Hojai on three occasions from Salimar and Madhumilon Hotels. He also identified accused Malswamkimi and Phojendra Hojai.

178. PW-34- Debashis Dutta has testified that during 2008 to 2009 he was working as OSD to CEM Deepolal Hojai NCHAC- and on 26-11-08 Deepolal Hojai suddenly called him to his office at 8/8.30 AM and asked me to type a resignation letter citing his health ground and accordingly he did so. He went with the letter and returned back to the room and told him that typed one will not be accepted and that he has to give in his own handwriting. Next day he came to know that Deepolal Hojai has resigned and Mohet Hojai was elected as CEM of NCHAC Ext-96 is the resignation letter.

179. PW-35-Imdad Ali also testified that in 2009 Depolal Hojai resigned as CEM and Mohet Hojai became CEM and Mohet Hojai rang him up and told him that he wanted to send some heavy amount to you at Kolkata and he asked that Marwari knows the procedure. After some days he met Didar Ahmed Choudhury who told him that Mohet Hojai has taken his help in sending about 80 Lakhs. In later part of January 2009 Mohet Hojai again telephoned him and told him that he has to send money to Kolkata. He also testified that he gave his statement, Ext-97, before the Magistrate u/s 164 Cr. P.C.


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180. PW-46 Sh.Nairing Daulagopu testifies that he joined DHD (Dima Haram Daogah) a militant organization led by Jewel Garlosa, in the year 1995 and remained there till 2003 and the arms and ammunition requires for operation of the organization were purchased locally also used to get from Bangladesh. Jewel Garlosa is the Chairman and Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the C-in-C. And on 1.1.2003 the organisation declared cease fire and he and other 300 cadres shifted to the Designated camp and in Oct., 2003 Jewel Garlosa formed another militant organisation in the name DHD(J).

181. PW-62 Sh. K.D. Marak testifies that on 1.3.09 one Dara Singh Rongpu and Atten Haflong Bar were apprehended with a Tata Sumo and cash Rs. 50 lakhs and during interrogation it was revealed that the amount was belonging to DHD (J) group and which was sent for purchasing of arms at Shillong Moblai Mowbbmaidanreitei area. P.W.61 Shri Ian Onel Swer also testified the same fact.

182. PW-70- Caushiq Bezbaruah Executive Officer News Life- stated that he forwarded CD containing the news of your arrest and your co associate Babul Kemprai with an amount of Rs 1 crore. By Ext 270 another letter by which he handed over three CD containing video footage of surrendered ceremony of DHD(J).

183. The evidence of PW-72 Sh. Anurag Tankha reveals that in the month of June, 2009, he was posted as Supdt. of Police, NC Hills, Haflong, and remained there up to February, 2010. His evidence also reveals that vide my letter Ext. 271 dated 20th June, 2009 addressed to SP, NIA camping at Haflong he conveyed the list of cases with brief in which Sh. Jewel Garlosa @ Mihir Barman, Sh. Partha Warisa @ Ahshringdaw Warisa were charge sheeted along with photocopy of charge sheet, and also a list of cases pending under investigation at that point of time in which Sh. Jewel Garlosa @ Mihir Barman was involved as well as a case brief of the incident dated 14.06.2009 which occurred at NC Hills Autonomous Council office. Ext 271/2 and 271/3 are the list of cases where charge sheet against Jewel Garlosa was filed. His evidence further reveals that he also furnished a copy of the list of weapons deposited by surrendered DHD (J) cadres, vide Ext 272, to the Inspector general of Police, CID, Assam and Ext 272/2, 272/3 and 272/4 are the list of cases where arms and ammunition were snatched by extremist. Ext. 272/6 to Ext 272/8 are the list of arms, ammunitions, magazines, explosives etc. deposited by surrendered DHD (J) cadres. His evidence further reveals that the DHD (J) cadres came over from the jungles before the Civil Administration in batches and two major batched surrendered on 13th and 14th September,


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2009 and they were housed in safe locations. Subsequently a formal surrender ceremony was organized at District Head Quarter, Haflong on 2nd October, 2009 which was attended by Hon'ble Chief Minister of Assam and Senior officials of State and District Administration. He was present in the ceremony supervising the arrangement as Supdt. of Police, NC Hills. In the aforesaid ceremony Niranjana Hojai was the Sr. most DHD (J) cadres along with other cadres who led the surrendered ceremony. Nothing tangible could be elicited in cross-examination of this witness. However, he, admitted having not aware of if some cases have been dismissed by the concerned Courts. The list has been prepared by his sub-ordinate staff from the available record of weapons surrendered physically.

184. PW-89- Ram Prasad Sarma- testified that on 11.02.2009, he was driving a Scorpio of N.C. Hills allotted to Golon Daulagupu. On that day, at about 1.30 p.m. he was taking Golon Daulagupu and one Jibanshu Paul and when they reached an area called Dima Dao around 3 p.m., police stopped them and the bags carried by Jibanshu Paul & Golon Daulagupu were searched. The bag carried by Jibanshu Paul was found with Rs.32,11,000/- A seizure memo was prepared whereby the Scorpio vehicle bearing Registration No. AS-08 5133 and 2 Nokia mobile handsets were seized from G. Daulagupu. Ext.102 is the Seizure memo; Ext.102/2 is my signature. Another seizure memo regarding seizure of cash of Rs.32,11,000/-, one ash colour bag, one Orpat mobile set, one Nokia mobile set (Model No.1600) seized from Jibanshu Paul was prepared. Ext.101 is the said seizure memo.

185. PW-96- Kumud Ch. Sarma testified that he was Scientific Officer in place of M. C. Kuli, Ext-325 is the forwarding note from NIA which was received in the office on 23-06-09. Ext-326 is the forwarding letter DFS 1208/CF-11/09/425 which was accompanied by result of examination signed by late Mukul Kuli and articles were returned back to the authority. The letter was accompanied by report of examination. Ext.326/2 to 326/6 is the report Ext-327 is the forwarding letter DFS 1208/CF-11/09/ Pt-II/423 dt 13-08-09 by which articles were returned back to the authority. The letter was accompanied by report of examination. Ext-328 is the forwarding letter DFS 1208/CF-16/09/ Pt-II/437 dt 7-11-09 by which articles were returned back to the authority. Ext.328/2 to 328/4 are the report of examination and. Ext-329 is the forwarding letter DFS 1208/CF-11/09/ 436 dt 7-11-09 by which articles were returned back to the authority, which is accompanied by report of examination. The report comprises of examination of the emails ID ahshringdaw2009@rediffmail.com, dawha2009@yahoo.com, dimahasao@yahoo.com, and reberthrown@gmail.com.



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186. PW-98- Nipolal Hojai testified that in 2007 he got elected to the Council as BJP candidate, and in 2008 Deepolal Hojai was the CEM for 11 months, on health ground Deepolal Hojai resigned and Mohet Hojai became CEM and he was given the portfolio of Social Welfare Deptt and that time R.H. Khan was the Deputy Director of the Deptt. and presently Niranjana Hojai is the CEM of the Council and he was the C-in-C of the DHD(J), and you-(Jewel Garlosa) were the Chairman of DHD(J).

187. PW-126- Depolal Hojai testified that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CEM, but he submitted resignation and Mohet Hojai became the CEM.

187.(i). PW-126- also testified that Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and it may be DHD(J) and Maorong Dimasa, who belong to DHD(J) and he was killed and his dead body was recovered 2/3 years back and that since his time of taking over as CEM many efficient govt officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD(J) and there was killing and kidnapping.

188. PW-129- Dilip Nunisa testified that in 1995 he joined DHD group led by president Jewel Garlosa, whose objective was to create a separate State. He remained with the organisation till ceasefire signed on 01-01-2003 and during that time Jewel Garlosa was a member of DNSF, and in 1995 Jewel Garlosa became president of DHD. They used to receive weapons after paying money and got them in vehicles from Srimangal Tourism Sylhet (Presently Mallvi Bazar District). There are Khashi Village. From there they used to come by bus to Kaliganj border area near Badarpur "Gumrah" in Sylhet District. He stated that when he became member they struggle for their right and during that time they used to remain in jungles. They got training in camps where they were provided with dummy weapons by their leaders. At the time of ceasefire he was the vice president of DHD.

188.(i). PW-129- further testified that there was communal clash between Hmar people and Dimasa people and number of Dimasa people lost their lives and thereafter, Jewel Garlosa separated himself from the organisation and Jewel Garlosa formed group called Black widow, he also testified that one member Nairang their liaison officer was attacked and he received bullet injury. Their member Amul Phonglo who was our lieutenant was killed by



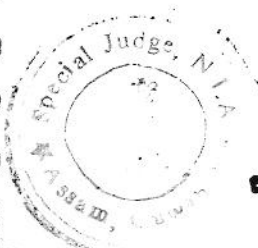
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unidentified gunman in December 2006. Another member Dijon Halfongbar was also lieutenant was killed in 2007 near Manderdisa PS. Their captain Mandras Maibongsa was attacked near Maibong Bazar in 2007 and in 2008 when the dead body of Nzikhial who was their member was taken to Diyanmukh from Halfong some miscreants attacked the escort party and 7 police men lost their lives.

189. PW-146-also testified that all these mobile phone analysis led to have evidence interlinking accused persons in pursuance of the criminal conspiracy. The detail analysis of CDRs has stated how during the seizure of the money accused persons were in touch. It also reveals international calls made to other accused based outside the country. It is to be mention here that CDR analysis could not be taken into account as because no certification u/s 65-B Evidence Act is appended with CDRs while furnishing such copy by the service providers.

Thus the role played by this accused can be recapitulated as under:-

1. DHD (Dima Halam Daogah) a militant organization led by Jewel Garlosa,
2. The arms and ammunition requires for operation of the organization were purchased locally also used to get from Bangladesh.
3. He is the Chairman and Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the C-in-C.
4. On 1.1.2003, the organisation declared cease fire and the 300 cadres were shifted to the Designated camp.
5. In Oct., 2003 he formed another militant organisation in the name DHD (J).
6. Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and accusing finger is pointed out to DHD (J) and Maorung Dimasa, who belong to DHD (J).
7. Many efficient govt. officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD (J) and there was killing and kidnapping.
8. There was spurt of violence because of DHD (J) due to which train service plying from Lumding to Badarpur was stopped, and food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD (J) group had resorted to firing on moving train.



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9. Because of counter insurgency operations, laying down of arms by DHD(J) cadres in March/April, 2010 took place but there was apprehension that all the arms and ammunition of DHD(J) were not handed over at the time of laying down of arms.
10. On 08-07-10, at Disa Kishn area search was conducted and several gunny bags containing sophisticated weapons including AK-47, M-16 pistols, Lithod guns as well as M-21 Rifles and in connection Haflong P.S. Case No. 54/2010 was registered.
11. He was apprehended in a Gym and Partho Warisa was apprehended in a flat 102, 1st Floor Pankaj Residency along with Samir Ahmed and they were brought to Guwahati on 05-06-09, and among other thing, one driving licence No-KA - 2509/09-10 in the name of Jewel Garlosa as Debojit Sinha having his photograph was found and seized.
12. E-mails sent by him to NDFB organisation were recovered from one e-mail ID "dimahasao@yahoo.com with password TOMAHAWK belonging to accused Ashringdao Warissa, on the disclosure made by accused Ashringdao Warissa.
13. Three blank letter heads of DHD (Jewel) have been recovered from the possession of Phojendra Hojai on 01.04.2009, while he was carrying Rs. 1.00 crore to Shillong.

ASHINGDAO WARISSHA@ PARTHO WARISA (A-6):-

190. The evidence of PW-26- Sudhakar Singh, PW-38- Rukma Buragohain, PW-124- Bhupendra Kr. Nath reveals that on 01-06-09, on information, they flew to Bangalore on the order of G.P. Singh where on 03.06.2009 Jewel Garlosa- C-in-C of DHD(J), was apprehended in a Gym and Ashingdao Warissha @ Partho warisa were apprehended in a flat along with Samir Ahmed and all of them were brought to Guwahati on 05-06-09. P.W.38 further testified that Jewel Garlosa disclosed his stay at Flat 102, 1st Floor Pankaj Residency and led them to your flat from where accused Ashingdao Warissha @ Partho warisa was found staying with him and on search of the flat, among other thing, one driving licence No-KA - 2509/09-10 in the name of -Debojit Sinha having his photograph was found. And from the possession of Ashingdao Warissha @ Partho warisa, among other thing, one HCL laptop bearing SL No-2210911600685929, which is M/Ext-29, one driving licence No. KA - 2192/NCH/Pvt/02 in the name of Ashingdao Warissha @ Partho warisa, one identity in the name of Ananda Singha of Bihar, Cachar having his photograph-M/Ext-33- and seized the



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same vide seizure memo Ext-104. Then searching the Flat of Samir Ahmed he found among other things, one Photocopy of driving licence of -Debojit Singha -Ext-113, which he seized vide Seizure Memo Ext 110. Mention to be made here that recovery of the aforementioned articles from the possession of this accused is not disputed by the defence side. Rather it is submitted that the recovered articles are not incriminating articles.

191. The evidence of PW- 39, Sh. Sahabuddin reveals that from the year 2005 has been working in Hotel Tropicana, Zarkot, Aizawl, Mizoram, as Manager. As a manager my duty was to talk to the guest, provide rooms to them and other needs. His evidence also reveals that one guests Ashring Wari checked in on 28.02.2009 and check in time was shown as 3.30 PM and check out date from Hotel Tropicana on 01.03.2009 at 12.00 PM. The purpose of visit shown as transit and he was coming from Shillong and going to, is shown as Kolkata and the room allotted was 310. Ext.114 is the Guest Register filled up by the guest in his own handwriting. In the signature column said Ashring Wari has put his signature in his presence. Ext 115 is photocopy of cash book register which is in his handwriting. Ext.144/1 and Ext 115/1 are the signature of owner of the Hotel Md. Ruhel Ahmed certifying the correctness of the entry made in Ext.114 and Ext 115. And Ext 115/2 is the entry for room no. 310, bill no. 006580 and the amount shown as Rs. 706/- as bill for the said room. Ext. 116 is the photocopy of daily occupancy chart of hotel Tropicana which is filled up by him as Manager of the hotel showing the room no. allotted to the guests, type of room, name of the guest, number of persons occupying the room, date of arrival, entry sl. No. and the place coming from. Ext. 116/1 is the signature of the owner of the hotel Md. Ruhel Ahmed certifying the correctness of the entries made in Ext 116. Ext. 116/2 is the relevant entry showing the name of Ashring Wari. In cross-examination he admitted having not seen the original entry book of guests, Ext 114, 115 and 116 of Hotel Tropicana, Zarkot, Aizawl. He also admitted having not seen any identity proof of the guests which are mentioned at Ext 114 from Sl. No. 6643 to 6661.

192. PW-66 Shri Nishit testified that in the year 2009, he was studying Bachelor of Computer Application at Central IT College near Ganesh Mandir, Guwahati. Accused Partha Warisa @ Ahshringdaw Warisa is my cousin brother and in the month of February, 2009, accused Partha Warisa @ Ahshringdaw Warisa told him over phone that somebody will give some cash to him and he should collect the same deposit in his account. The said person thereafter telephoned him and came to his place and handed a sum of Rs. 3 lacs, which he deposited in the account of Partha Warisa @ Ahshringdaw Warisa. Thereafter also after about



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4-5 days another person came to his house and handed over Rs. 3 lacs and accordingly, he deposited the amount in the account of Partha Warisa @ Ahshringdaw Warisa. Thereafter also after a week some other person came to his house and gave him Rs. 2 lacs or more and he deposited the said amount in the account of Partha Warisa @ Ahshringdaw Warisa. He also paid an amount of Rs. 1,60,000/- to TATA Motors as payment of loan of Partha Warisa @ Ahshringdaw Warisa. He further deposited an amount of Rs. 40,000/- in the account of Partha Warisa @ Ahshringdaw Warisa at Standard Chartered Bank at Guwahati.

192.(i). It is elicited in cross-examination that the money which has been paid to him by those persons under instruction from his cousin brother namely, Partha Warisa @ Ahshringdaw Warisa. The money belongs to stone crushing chips which were brought from his cousin brother namely, Partha Warisa @ Ahshringdaw Warisa's Stone Crushing firm. The name of the firm is Ahshringdaw Stone Crusher.

192.(ii). What is transpired from the evidence of this witness is that handing over the sums to him and depositing thereof in the account of the accused is admitted. Though it is elicited in the cross-examination of this witness that the money belongs to Partha Warisa @ Ahshringdaw Warisa's Stone Crushing firm, yet the same failed to inspire confidence in as much as the amounts were handed over by different persons on different occasions within a short period whose names were not known to him. Besides, it is also not clarified where the firm is situated. If it is in Haflong, the native place of the accused then why payments have been made at Guwahati remained unanswered.

193. PW- 48 Sh. Soumya Kanti Roy is an officer, Standard Chartered Bank Ambari, Guwahati. His evidence reveals that vide his letter, Ext. 215, dated 15.06.2009, he supplied the bank statement, Ext. 214 -in 12 sheets of Ahshringdaw Warisa, from 06.10.2007 to 15.06.2009, having his account in our bank being A/c no. 34210305304. The said account is a saving account maintained by Ahshringdaw Warisa singly. Ext. 107 is the cheque book of Standard Chartered Bank issued to account holder Ahshringdaw Warisa for his A/c no. 34210305304. M. Ext. 36 is the Debit Card/Smart Card issued by our bank to the account holder Ahshringdaw Warisa. It is elicited in cross-examination that Ext. 214 is computer generated. There is no certificate to the effect that this particular Ext. 214 bears any certificate as stipulated by law. The Id. counsel for the accused has submitted during argument that the above statement is not submitted as per section 2 of the Banker's Books of Evidence Act and such no reliance can be placed on the same. The submission is considered in the light of facts


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and circumstances on the record and we find that there is every reason to record concurrence with the said submission.

194. PW-96- Kumud Ch. Sarma testified that he was Scientific Officer in place of M. C. Kuli, Ext-325 is the forwarding note from NIA which was received in the office on 23-06-09. Ext-326 is the forwarding letter DFS 1208/CF-11/09/425 which was accompanied by result of examination signed by late Mukul Kuli and articles were returned back to the authority. The letter was accompanied by report of examination. Ext.326/2 to 326/6 is the report Ext-327 is the forwarding letter DFS 1208/CF-11/09/ Pt-II/423 dt 13-08-09 by which articles were returned back to the authority. The letter was accompanied by report of examination. Ext-328 is the forwarding letter DFS 1208/CF-16/09/ Pt-II/437 dt. 7-11-09 by which articles were returned back to the authority. Ext.328/2 to 328/4 are the report of examination and. Ext-329 is the forwarding letter DFS 1208/CF-11/09/ 436 dt. 7-11-09 by which articles were returned back to the authority, which is accompanied by report of examination. The report comprises of examination of the emails ID ahshringdaw2009@rediffmai.com, dawha2009@yahoo.com, dimahasao@yahoo.com, and reberthrown@gmail.com.

195. PW-126- Depolal Hojai was the CEM of NCHAC. His evidence has already been discussed in details in previous paragraphs of this judgment. So, at the cost of repetition detailed discussion is avoided. What is transpired from his evidence is that since his time of taking over as CEM many efficient govt officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist DHD and other was DHD (J) and there was killing and kidnapping. Till 26-11-2008 he was the CEM, but he submitted resignation and Mohet Hojai became the CEM. And Purnendu Langthasa, who was CEM till 2006, was killed by extremist in 2006 during election campaign and it may be DHD (J).

196. PW-146- Swayam Prakash Pani testified that he was assisting the CIO Mukesh Singh in the case. He prepared disclosure memo Ext-117, pertaining to Ashringdaw Warisa to his 4 mail id which are:-

- (i) dimahasao@yahoo.com with password TOMAHAWK,
- (ii) ahshringdaw2009@rediffmail.com with password RAMBOSTARO,
- (iii) dawha2009@yahoo.com with password AHSHRING# , and
- (iv) robertbrown@gmail.com with password AMBASSDO/A/R,


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in presence of witnesses on 13-07-09 and after the disclosure all the emails were attempted to be opened on 24-08-09, one email id dimahasao@yahoo.com with password TOMAHAWK could be opened and 8 email sent to NDFB2001@yahoo.com, harasorazee@yahoo.com, & ahshringdaw2009@rediffmail.com were found. Ext-421 is the recovery memo. Ext-422 in 9 pages are the print out of the emails which were taken out as per the provision of section 65-B Evidence Act. But, admittedly, he has not submitted any separate certificate u/s 65-B as held by Hon'ble Supreme Court in **Anvar P.V. vs. P.K. Basheer and Others, (2014) 10 SCC 473**. But the fact remained that on the basis of the disclosure made by him the said e-mails ID were recovered and print out were taken from the which was in custody of the I/O.

197. PW- 40, Sh. Nabajeet Buragohain is an independent witness who remained present on 13.07.2009, at Kahilipara Special Operation Unit (SOU) in the evening hours, as directed by Addl. Deputy Commissioner, Kamrup (Metro) Sri Mrinal Gogoi and witnesses the disclosure made by the accused Ashringdao Warissa about his four e-mails and put his signature on the disclosure memo Ext. 117. This witness thus lends assurance to the version of P.W.14.

198. A perusal of the e-mails reveals that one of the emails was sent to NDFB organisation by another accused Jewel Garlosa (A-5) from the e-mail ID of accused Ashringdao Warissa, which was recovered on the basis of disclosure statement made by him. The accused failed to accounts for as to how the mail was sent from his ID by accused Jewel Garlosa. This shows that they have acted together.

198.(i). The Id. Counsel for the accused, during argument, submitted that on the day of making disclosure by the accused Ashringdao Warissa i.e. on 13.07.2009, he was in judicial custody. And as such the entire exercise of preparing disclosure memo is false and fabricated. A careful perusal of the case record also shows that accused Ashringdao Warissa was in judicial custody on 13.07.2009. But the Id. Special P.P. has contested the submission that it was error on the part of the I.O. who, inadvertently mentioned the date of recording disclosure memo as 13.07.2009, but in fact the said exercise was carried out on 13.06.2009. In support of his submission the Id. Special P.P. has placed before the court the relevant case diary which reflects that it was carried out in fact on 13.06.2009. There is no doubt that some lapses are there on the part of the I.O., but it will not render the entire exercise pointless. The Id. Counsel for the accused has, referring one case law, **Mohd. Ankoos vs. Public**


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Prosecutor, (2010) 1SCC 94, submitted that case diary cannot be used to overcome the contradictions pointed out by the defence. To appreciate the submission of the Id. counsel we have gone through the case law carefully and we find that the ratio laid down the said case law is not applicable in all force to the facts here in this case. In the said case the case diary was used to discard the evidence of the I/O. In the instant case no such circumstances arose. The case diary was placed by the Id. Special P.P. only to show the chronology of events mentioned therein.


Thus the facts and circumstances appearing against this accused can be recapitulated as under:-

1. He was caught at a Flat of Bangalore on 03.06.2009, and he provided shelter to accused Jewel Garlosa, the C-in-C of DHD(J).
2. He had communication with DHD(J) and an e-Mails sent by accused Jewel Garlosa to NDFB organisation was recovered from one e-Mail ID dimahasao@yahoo.com to that effect.
3. He visited Aizawl and concealing his real identity of Ashrigdao Warissa.
4. Rs. 10,00,000/ was deposited in his bank account at Standard Chartered Bank Guwahati, within a short span of time, and there is no plausible explanation to show wherefrom the money came.

VANLALCHANNA @ VANNICHHEM @ VANTEA @ JOSHEPH MIZO (A-8):-

199. The role played by the accused is discernible from the evidence of following witnesses.

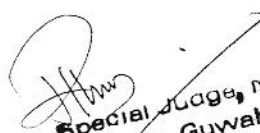
200. The evidence of P.W.13 –Shri K Lalrinthanga reveals that he was Inspector of Police Mizoram and he took up the investigation of Aizawl PS Case No. 238/09, u/s 25(1)(a),(1) (b), against accused Vanlalchama of Sarong Vang and during investigation another person namely Vanlalchanna @ Vantea who was temporarily living at Sarong Vang also suspected to have involvement in that case. Then he was arrested and taken into four days police custody and during investigation Vanlalchanna was found to be not involved in that case and therefore, he was discharged. But he suspected to have involvement in NIA case No. 1/09. He then prayed before the concerned court vide Ext.-41- (certified copy of his petition), and on the basis of said petition learned Magistrate has passed order dated 31-07-09, -Ext-42


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(certified copy of the order). It is elicited in his cross-examination that from Mr. H.S. Karmiyal he came to know about the involvement of Vanlalchana with NIA Case.

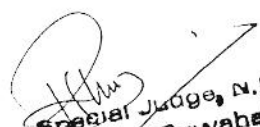
201. PW-14- Laltanouia Sailo- deposed that he was Inspector of Police CID, Special Branch Mizoram. In 2009 a NIA team came to Aizawl and they were looking for arms smuggler whose identity came to be known as Vannichem @ Vantea @ Vanlalchhana son of- Ngunkipthang of Saronveng, Aizawl. Then they arrested Vanlalchana on 30.07.2009 at around 3.30 am and taken to Awizal for interrogation and during interrogation he made a disclosure about weapons which you kept in a house located at Sarong Veng. And on search they recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas one telescope Bushnell on the disclosure statement made by accused Vanlalchana. They also recovered one passport Ext. 44, in your name. Ext-43 is the disclosure memo. M/Ext 11(1) to 11(8) M-16 Rifles with magazines, M/Ext 11(9) 9 mm berretta pistol with magazines & 14 rounds of ammunition. M/Ext 12(1) to 12(12) walky- talky sets 12 nos. M/Ext 14 telescope Bushnell. It is elicited in cross-examination of the witness that when they proceeded to recover the weapons NIA officials also accompanied them and under the supervision of NIA officials in recovering the materials Exhibits and soon after recovery of the weapons seizere list was prepared. It is also elicited when they went to recover the Materials Exhibits they found Vanlalchana in the village-Lungmuat. He was at large at that point of time when they met Vanlalchana he is nowhere connected with any case. It is also elicited that Ext. 43 was prepared by him after recovery of weapons at the behest of NIA. It is also elicited that he believe the contents of Ext.43 to be true.

202. The evidence of PW-63 Lalrinawma Traite, Dy. SP. CID (SB) Aizawl-reveals that in pursuance to some information received accused Vanlalchhana @ Vanchema @ Vantea was apprehended and on his disclosure 8 nos of M-16 Rifles, one 9 mm berretta pistol, 12communion sets with spare batteries, detachable antennas one telescope Bushnell, 6 nos. of 9 mm ammunition, one sniper lens, antenna were recovered from the residence at Saron Veng Aizawl. His evidence further reveals that after that I was detailed to go to Kolkata where one Mizo girl namely Malsawmkimi was apprehended by Kolkata police. This lady disclosed that she came by flight to Kolkata where she was apprehended by police and Rs. 10,00,000/- was seized from her possession. Ext 258/3 is my signature in the said disclosure memo. She also disclosed that she went to Shalimar Hotel and Madhumilan Guest House with one George Lamthang for collection and transaction of money. Ext 257/3 is my signature in the said disclosure memo. George Lamthang also made disclosure that he went with Malsawmkimi to


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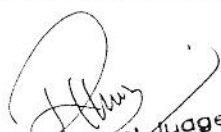
Shalimar Hotel and Madhumilan Guest House for collection and transaction of money. He stated that he can identify the person. Ext 279/3 is my signature in the said disclosure memo. It is elicited in cross-examination of this witness that recovered arms and ammunitions were not shown to him in the court.

203. The evidence of PW-56- Shri H.S. Karmyal, reveals that on 06.07.2009, he was directed by CIO to visit Aizawl and verify the visit of accused A. Warisa and develop the source information regarding the suspected accused who is supplying arms to DHD(J). Accordingly, he visited Aizawl and collected record of Hotel Tropicana where accused A. Warisa stayed in room no. 310 on 28.02.2009 to 01.03.2009. During his stay at Aizawl, it came to his knowledge through sources that one Vantea @ Vanlalchahanna a Myanmaree National living in Mizoram is actively involved in smuggling arms and supplying to DHD (J). His source also informed that he is having Indian Passport issued by RPO, Guwahati. Thereafter, he visited RPO Office and came to know that he had been issued a Passport No. G3106042. He then collected certified copy of the said Passport file from RPO Office. Ext 244/2, 244/3, 244/4, 244/5, 255/6, 244/7 are the said documents. He then handed over the investigation records to CIO and also informed the inputs about Vantea to Mizoram police. On 27.07.2009, information has been received by the CIO from Mizoram police that they have arrested one Vantea @ Vanlalchanna on 26.07.2009, who, in his interrogation revealed that he was instrumental in supplying arms to DHD (J). And as directed by CIO he visited Aizawl on 28.07.2009 and joined interrogation with CID, Mizoram team in whose police custody accused Vantea @ Vanlalchanna was. During interrogation Vantea @ Vanlalchanna has disclosed that he was dealing with DHD (J) in supplying arms in the name of Joseph and known to DHD (J), Chief Jewel Garlosa and Niranjana Hojai regarding supply of arms. On 30.07.2009, accused Vantea @ Vanlalchanna voluntarily gave his disclosure to I/O of the Mizoram Police that a consignment of arms has already dispatched from Myanmar for DHD (J) group and kept in the house at Saran Veng Area at Aizawl. On the basis of his disclosure Mizoram police obtained search warrant and he led to the recovery of arms and ammunitions from the said place. He was also the part of the said team from the search of the place led by accused Vantea @ Vanlalchanna. 8 nos. of M16 Assault rifles, one 9 mm berretta pistol with 14 live rounds, one Bushnell Telescopic sight, 12 nos. of Walki Takie set with battery, 12 nos. of battery chargers with extendible antenna were recovered from the pointing out of accused Vantea @ Vanlalchanna. All the aforesaid articles were seized vide seizure memo, Ext 250 and he also appended his signature vide Ext 250/1 as a part of team and token of its correctness. Two local witnesses namely, Lalrova and Zohn Thanga who remained present throughout the


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recovery procedure also appended their signature in my presence on the spot as a token of correctness. Ext 250/2 and 250/3 are their signature. Thereafter, CID, Mizoram Team and himself returned to CID office along with the seize articles and accused persons. During interrogation accused Vantea @ Vanlalchanna revealed that his Indian passport is kept at his residence, D-37, Saran Veng. Accordingly, a search under the Provision of 165 Cr. PC was conducted and his passport no. G3106042 was seized. The passport Ext. 44 contains the details of his travel to Thailand and Malaysia. On 31.07.2009, interrogation of Vantea @ Vanlalchanna revealed that the recovered arms have no connection with Mizoram Police Case No. 238/09 as they were meant for DHD (J) Group and NIA Case No. 01/2009 is being investigated by NIA for the same so Mizoram Police decided to file a closure report in their case. Accordingly, they filed a closure report on 31.07.2009 before the Court and he moved an application to take custody of accused Vantea @ Vanlalchanna and the seized articles. Then the Court allowed his petition and accorded two days transit remand to produce the accused person before the Spl. Judge, NIA, Guwahati. Accordingly, he effected the arrest of accused Vantea @ Vanlalchanna on 31.07.2009 after observing all the legal formality and also requested the Court to allow to keep all the arms and ammunition by Mizoram Police in their custody for security reason and Court allowed his petition. Ext. 251 is the handing and taking over note. Ext 251/1 is his signature and Ext 251/2 is the signature of C. Laldina, SP, CID (SB), Mizoram, Aizawl. All the arms and other articles so seized were deposited in the safe custody of 1st Battalion of Mizoram Police. Accordingly, on 01.08.2009, he took accused Vantea @ Vanlalchanna to Guwahati and handed over to CIO along with all investigation documents. He has seen all the seized arms and articles in the Court today which are all exhibited as M. Exhibit. Further on 09.11.2009, on the direction of CIO, he visited Aizawl and taken over all the seized articles from the Mizoram Police. Ext 252 is the handing over record of seized arms and ammunitions. Ext 254 is his petition before the CJM, Aizawl for issue of order dated 31.07.2009 and brought them to Guwahati and handed over to CIO. He has also identified the accused in the Court, who is known as Vantea @ Vanlalchanna @ Joseph. It is elicited in cross-examination that the disclosure memo of Vanlalchanna dated 30.07.2009 was prepared by Mizoram Police Officer in connection with Aizawl PS Case No. 238/09. The seizure list does not contain the signature of the accused Vanlalchanna.

203.(i). The Id. Counsel for the accused has submitted during argument that there is no independent witness to establish the charge against this accused and all the witnesses are official witness. It is further submitted that at the time of making disclosure statement the accused was not in police custody of NIA case No. 01/2009 and he was in the custody of


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Aizwal P.S. Case No. 238/2009. Besides, the disclosure statement Ext. 43 was admittedly prepared after recovery and seizure of the materials. It is further submitted that there no independent witness of seizure is examined here in this case inspite of being cited and the owner of the house from where the seized material were recovered was neither made accused nor witness. So, the seizure is doubtful so also the identity of the accused who is primarily known as Venichem, a fact which is supported by his Passport seized by NIA and a wrong person is prosecuted. It is the further submission the Id. Counsel for the accused that the NIA has failed get the seized arms and ammunitions examined by Ballistic expert and this lapses makes the prosecution case doubtful. The Id. counsel has referred one case law **Manoj Kumar Achhelal Brahman Vs. State of Gujarat, (1998) 2 SCC 354** in support of his submission, where in it has been held that –

"Where the alleged weapons recovered from the possession of the accused neither sent to the Ballistic Experts and nor tested by the police officer himself to tell whether the weapon was in working condition or not it will not be safe to proceed the footing that the weapons alleged to have been recovered from the possession of the appellant was really an arms for which either under the Arms Act or under TADA conviction was warranted and is entitled to benefit of doubt."

203. (ii). It is also submitted that the disclosure statement -Ext.43 cannot be treated as disclosure statement in the terms of section 27 of the Evidence Act and in support of his submission the Id. Counsel has referred two case laws (i) **Sangili @ Sanganathan Vs. State of Tamil Nadu (2014) 10 SCC 264**, wherein, of course, Hon'ble Supreme Court has not laid down any law instead discussed two case laws which deals with section 27 of the Evidence Act. The said two cases are reproduced as under:-

23. In *Mani v. State of Tamil Nadu, (2009) 17 SCC 273*, this Court made following pertinent observation on this very aspect: "26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

25. Likewise, in *Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724*, this Court observed as under:

"24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following


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features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185)

- "(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;
- (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) The circumstances should be of a conclusive nature and tendency;
- (iv) They should exclude every possible hypothesis except the one to be proved; and
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution."

203. (iii). The other case law referred by the Id. Defence counsel is (ii) **Aladdin @ Another vs. State of Rajasthan, 2016 CRI.L.J. 3173**. Where in it has been held that

"33. Thus an information given by the accused to a Police Officer under Section 27 of the Evidence Act would be only admissible to the extent, it distinctly leads to the discovery of an incriminating fact. The remaining portion which is confessional in nature has to be discarded as it would be hit by Sections 25 and 26 of the Evidence Act. In the case at hand, even if the testimony of PW 27 Suresh Kumar is accepted, then also, so far as the accused appellant Aladdin is concerned, in pursuance of the information given by him, the Investigating Officer Suresh Kumar simply went to the house of Aladdin, from where nothing incriminating was recovered. He also prepared the spot identification memo of the place of recovery at the instance of the appellant of which he was already having knowledge. Thus, these two information are inadmissible in evidence and are inconsequential. The Investigating Officer Bharat Kumar, prepared the spot identification memo of the place of seizure in furtherance of the information given by the accused Gopal. Again, the place of seizure was already known to the Investigating Officer because the original site inspection plan was available on the investigation file prepared way-back on 6.8.2003. The confessional part of the statement given by the accused to the Investigating Officers that they had collected and concealed poppy straw at a particular place, which they wanted to point out, would become admissible only if it had led

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recovery of the contraband or some other piece of incriminating evidence and not otherwise."

204. Thus, what is transpired from the above discussion is that apparently the accused was not in police custody of NIA case No. 01/2009, on 30.07.2009 on which he made disclosure statement Ext. 43 and, consequently, the arms and ammunitions were recovered. But he was in custody of Aizwal P.S. Case No. 238/2009, since his arrest on 26.07.2009. It was on 31.07.2009, the accused during interrogation, revealed that the recovered arms have no connection with Mizoram Police Case No. 238/09 as they were meant for DHD (J) Group. The I.O. of Aizwal P.S. Case No. 238/2009 then filed a closure report on 31.07.2009 before the concerned court and the same was allowed. Then P.W.56 moved an application to take custody of accused Vantea @ Vanlalchanna and the seized articles before the court concerned which was allowed and accorded two days transit remand to produce the accused person before the Spl. Judge, NIA, Guwahati. Accordingly, he effected the arrest of accused Vantea @ Vanlalchanna on 31.07.2009 after observing all the legal formality.

205. In the case of "**Mohmed Inayatullah v. State of Maharashtra**": AIR 1976 SC 483, the Hon'ble Supreme Court considered the object and scope of Section 27 of Evidence Act and held as below:-

10. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The Section says: "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

11. The expression "Provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Sec. 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to that fact thereby discovered is admissible.



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The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates" to the fact thereby discovered" (sic) (and?) is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which maybe indirectly or remotely related to the fact discovered.

12. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see *Sukhan v. Crown*, ILR10 Lah 283 = (AIR 1929 Lah 344) (FB); *Gangu Chandra v. Emperor*, ILR 56 Bom 172 = (AIR 1932 Bom 286). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Palukuri Kotayya v. Emperor*, 74 Ind App 65 = (AIR 1947 PC 67); (*Udai Bhan v. State of Uttar Pradesh*, 1962 Supp (2) SCR 830 = (AIR 1962 SC 1116)).

206. Again Hon'ble Supreme Court in *Suresh Chandra Bahri vs State Of Bihar: 1994 AIR 2420*, it has been held that non-recording of disclosure statement and non-examination of public witness as regards to said recovery would be of no consequence. The matter has been dealt with in Paragraphs 71 and 72 of the judgment which, for better appreciation, are quoted below:-

71. The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence, and (2) he must also be in police custody. In the present case it cannot be disputed that although these essential requirements existed on the date when Gurbachan Singh led PW 59 and others to the hillock where according to him he had thrown the dead body of Urshia but instead of the dead body the articles by which her body was wrapped were found. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given' some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles of the instruments of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the present case as discussed above the confessional statement of the disclosure made by the appellant Gurbachan Singh is confirmed by the recovery of the incriminating articles as said above and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence.


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72. In the light of the facts stated above we are afraid the two decisions mentioned above and relied on by the learned counsel for the appellants have no application to the facts of the present case and do not advance the case of the appellants challenging the discovery and seizure of the incriminating articles discussed above. In *Nari Santa AIR 1945 Patna 161* the accused of that case was charged for the theft and it is said that in the course of investigation the accused produced certain articles and thereafter made a confessional statement and it was in these facts and circumstances it was held that there * was no disclosure statement within the meaning of Section 27 as the confessional statement was made only when the articles were already discovered having been produced by the accused. Similarly the decision rendered in *Abdul Sattar AIR 1986 SC 1438* also does not help the appellants in the present case. In the case of *Abdul Sattar (supra)* recovery of wearing apparels of the deceased is said to have been made at the instance of the accused of that case more than three weeks after the occurrence from a public place accessible to the people of the locality and, therefore, no reliance was placed on the disclosure statement and recovery of the wearing apparels of the deceased. But in the present case it was soon after the arrest of appellant Gurbachan Singh that he took the Police Officer while in custody to the place where according to him he had thrown the dead body of Urshia wrapped by the incriminating articles. Those articles were not found lying on the surface of the ground but they were found after unearthing Khudgraha dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and It was unearthed by the labourers. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles.

207. Having understood the object and scope of Section 27 of Evidence Act as above, if we apply the ratios laid down in the case laws discussed above to the facts and circumstances here in this case we would find that since admittedly the disclosure statement-Ext.43, was prepared only after recovery of the arms and ammunitions the requirement of section cannot be said to be fulfilled. Consequently the same cannot be pressed into service.

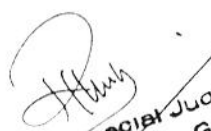
208. Although the disclosure statement-Ext.43 is inadmissible here in this case being not recorded prior to recovery of the arms and ammunitions yet the facts remains that the arms and ammunitions were recovered and seized on being led and shown by the accused from the house at Serong Vang. The arms and ammunitions so seized were duly seized and exhibited in the court as Material Ext. 11(1) to 11(8) M-16 Rifles with magazines, M/Ext 11(9) 9 mm berretta pistol with magazines & 14 rounds of ammunition. M/Ext 12(1) to 12(12) walky- talky sets 12 nos. M/Ext 14 telescope Bushnell. But this disclosure statement may be relevant as post crime conduct of the accused under second paragraph of section 8 of the Evidence Act. In doing so we derived authority from a decision of our home High Court in *Sri Mohibur Rahman vs The State of Assam on 27 July, 2000 : 2000 CriLJ 4725*.


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209. The identity of the accused as Vanichem @ Vanlalchanna @ Vantea @ Joseph is well established here in this case from various facts and circumstances on the record and also from the evidence of P.W.29-Shri George Lamthanh, notwithstanding some discrepancies in the versions of some of the witnesses. Merely because he signed on some documents as Vannichem, which may be due to an attempt to conceal his identity from being disclosed, will never stultify the prosecution version. It is to be mentioned here the accused has been facing trial here in this case since his arrest on 31.07.2009. Had he not been the real person, he could have challenged his arrest here in this case. Thus, the submission of the Id. Counsel for the accused is not well founded. The other submission of the Id. Counsel about non-examination of seizure witness is being taken care of by the observation made by the Hon'ble Supreme Court in **Suresh Chandra Bahri vs State of Bihar(supra)**

210. Admittedly, the seized arms and ammunition were neither been examined by Ballistic Experts nor by Police here in this case. But all the seized arms and ammunitions were produced before the court and exhibited as Material Ext. 11(1) to 11(8) M-16 Rifles with magazines, M/Ext 11(9) 9 mm berretta pistol with magazines & 14 rounds of ammunition. M/Ext 12(1) to 12(12) walky- talky sets 12 nos. M/Ext 14 telescope Bushnell. None of the accused also disputed in cross-examination that those Material Exhibits were not arms and ammunitions. Not a suggestion is also given that the same were not arms and ammunitions. P.W.- 13, P.W.-14, P.W.- 63 and P.W.56 -all are experienced police officers and in no uncertain terms they stated that the all the seized materials are arms and ammunitions and classified then by name and series. As such non obtaining the report of Ballistic Expert would be of no consequence.

211. The evidence of P.W. 29 Shri George Lamthang reveals that he belongs to Manipur and since 2006, settled at Kolkata. By profession he was a Travel Agent as well as commission agent and, lately, he was also doing the job of money exchange on commission basis through a money changer, viz., Tapan in Kolkata. His evidence also reveals that while doing the job of procuring of air ticket, he came to know Miss Malsawmkimi in January, 2008. Since then he used to facilitate travel tickets whenever she approached him for the same. One day in April, 2008, Malsawmkimi asked me whether he has any idea about conversion of Indian rupees to US dollar. At that time he did not have any such contact and he informed her when he gets contact. In June, 2008, he came to know with Tapan who is a money-changer and in the month of August, 2008, he informed Malsawmkimi about the same. In the same month and year Malsawmkimi brought Rs.15 lakhs from Aizwal for conversion to US Dollar.


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Then he contacted Tapan and converted Rupee into US Dollar with his help in 3 days. Then keeping his commission @ 15 paisa per US Dollar and he returned the converted money to Malsawmkimi. In this way, she normally used to bring Rs. 15 lakhs to Rs. 20 lakhs for conversion to US Dollar from Aizwal almost once in a month. Then in Oct., 2008, Malsawmkimi brought Rs.20 lakhs for conversion to US Dollar from Aizwal. When he visit her at her hotel room at Centre Point Hotel, Kolkata to collect Indian Rupee on that occasion he saw co-accused Vanlalchana staying with Malsawmkimi at the Hotel, whom, Malsawmkimi introduced to me as Vantea of Aizwal. After collecting the money from Malsawmkimi, he left the hotel and went to my rented house with the money in Kolkata. Then he contacted Tapan and with his help converted the money to US Dollars with in 3/4 days and keeping his commission @ 15 paise per US Dollar he returned the converted money to Malsawmkimi. Then in Nov., 2008, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel to collect the money of Vantea (Vanlalchana) and both of them went to Madhumilan Hotel at Kolkata from where Malsawmkimi collected Rs.1 crore from Phojendra Hojai but at that time he did not know Phojendra Hojai. After Malsawmkimi collected the money both of them headed to his rented house at Kolkata and from where we counted the money in detail and we found it to be Rs.1 crore. Thereafter, he converted the money to US Dollar with the help of Tapan in 10 days. Thereafter, he handed over the US Dollar to Malsawmkimi keeping his commission.

212.(i). His evidence also reveals that in Feb., 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel at Kolkata from where she collected Rs.2 crore from Phojendra Hojai (At that time he did not know Phojendra Hojai). They counted the money at his rented house and found it to be Rs.2 crore. Thereafter he converted the money to US Dollar with the help of Tapan in 20 days. After conversion, he handed over the US Dollar to Malsawmkimi keeping his commission. On that occasion, he saw Vantea for the second time when he visited Malsawmkimi at Centre Point Hotel to give the converted money. His evidence also reveals that again in March, 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Shalimar Hotel at Kolkata from where she collected Rs.1 crore from Phojendra Hojai. After receiving the money they headed to Central Point Hotel, Kolkata where Malsawmkimi stayed and after counting the money found it to be Rs.1crore. Thereafter, he took the money to his rented house and converted the same within 10 days to US Dollars with the help of Tapan. Then he handed over the US Dollar to Malsawmkimi and in the same way keeping his commission.


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212.(ii). His evidence further reveals that although, he was accompanying Malsawmkimi to the said 2 Hotels, he did not have any knowledge about Phojendra Hojai from whom Malsawmkimi collected money on 3 occasions. Even Malsawmkimi did not have any knowledge about Phojendra Hojai. He learnt from Malsawmkimi that she was collecting the money at the behest of Vanlalchana. He was simply accompanying Malsawmkimi when she said that she had money to be converted and she had to collect the money from a person in a hotel. Thereafter, in April, 2009; May, 2009; June, 2009; July, 2009, Malsawmkimi brought Rs.15 lakhs from Aizwal from conversion into US Dollar. On each occasion he converted the money into US Dollar through Tapan and in the same way he kept his commission and gave the US Dollar to Malsawmkimi. He did not have any knowledge about her further transaction with the money. He learnt from Malsawmkimi on each occasion she had been sent by businessman in Aizwal and she was earning commission for her job.

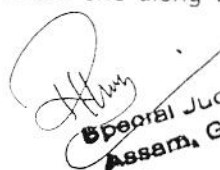
212.(iii). His evidence also reveals that he was arrested on 11.8.2009 by Kolkata Police and the police seized Rs.5 lakhs from my possession which was given to him by Malsawmkimi on 7.8.2009, but she did not tell him what to do with the money and she said that she will let him know what to do with the money. He admitted that he converted Rupees to Dollar but he was not colleagues of any of the co-accused. He was only a commission agent working only to get a little commission to be able to maintain his family. His evidence further reveals that on 20.8.09, he made a statement U/S 164 Cr. P.C. before Judicial Magistrate at Guwahati. Ext.76 is the said statement. He also confirmed Ext.77, the identification memo dtd.18.8.09 by which he had pointed out Hotel Madhumilan & Hotel Shalimar from where he along with Malsawmkimi collected money for conversion from Phojendra Hojai. He also confirmed Ext.78 is the disclosure statement made by him to NIA officer disclosing that a sum of Rs.5 lakhs was kept at his residence at Kolkata. He also confirmed Ext.79 the disclosure statement made by him disclosing that he along with Malsawmkimi went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of collecting money. By Ext.52, he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai. He also confirmed Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojai. Ext.81 is the production memo by which his Passport bearing No.E1127189 and my Nokia 6300 mobile were handed over by my wife. Ext. 81(2) is the passport. He identified accused Malsawmkimi, Phojendra Hojai and Vanlalchana in the court.


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212. (iv). We have gone through the confessional statement- Ext.79, made by P.W.29 and we find that the same substantially corroborated the version of P.W.29 before the court so far it relates to accused Malsawmkimi (A-9) is concerned and lends unstinted support to the prosecution version. Cross-examination of this witness could elicit nothing tangible so far his evidence in relation to A-9 is concerned. He, however, admitted that he is not acquainted with for what purpose the converted US Dollars were used by whom and for what purpose.

212.(v). Thus it is apparent from the evidence of P.W.29 that he meet accused Vantea two times at Kolkata. First in Oct., 2008, when Malsawmkimi brought Rs.20 lakhs for conversion to US Dollar from Aizwal and when he visit her at her hotel room at Centre Point Hotel, Kolkata to collect Indian Rupee on that occasion and, whom, Malsawmkimi introduced to him as Vantea of Aizwal. He meet him second time in the month of Feb., 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel at Kolkata from where she collected Rs.2 crore from Phojendra Hojai and after conversion, when he visited Malsawmkimi at Centre Point Hotel to give the converted money. He learnt from Malsawmkimi that she was collecting the money at the behest of Vanlalchana. Ext.79 the disclosure statement made by him disclosing that he along with Malsawmkimi went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of collecting money and Ext.52, by which he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai and Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojai also lends corroboration to his version. It is also apparent from his evidence that in Nov., 2008, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel to collect the money of Vantea (Vanlalchana) and both of them went to Madhumilan Hotel at Kolkata from where Malsawmkimi collected Rs.1 crore from Phojendra Hojai. This fact also lends corroboration to the version of the prosecution that they Indian Currency so converted to the US Dollars was the currency of accused Vanlalchanna @ Vantea, which accused Malsawmkimi get converted through P.W.29 to US Dollars.

213. The evidence of PW-40- Nabajeet Buragohain also reveals that as directed he again on 18-8-09 met NIA officials and from there they went to SOU office Kahilipara, there out of many accused sitting one lady by the name Malsawmkini identified Phojendra Hojai from whom she along with George Lamthang had collected money from Madhumilan Hotel

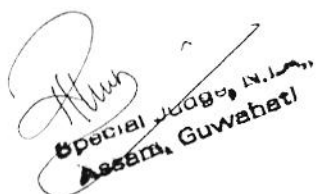

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and Shalimar Hotel of Kolkata. Ext-119 is the disclosure memo. His evidence also reveals that on 07-08-09, as directed by his superior officer, he met NIA officials and from there we went to SOU office Kahilipara, there out of many accused sitting, Vanlalchanna volunteered to disclose his association with Lady Malswamkini. Accordingly, Vanlalchanna disclosed in Mizo which was translated into English where he said that he along with Swami and another person Thang used to convert Indian rupees into US Dollars to be supplied to DHD(J) group three times Ext-118 is the disclosure memo.

214. P.W. 54 –Shri Jatin Ch. Deori is a retired Passport officer and he deposed that on 08-07-09 handed over document relating to passport application of accused Vhanlalchanna, Election ID, Ration Card, Birth Certificate, Police Verification Report in the name of Vanlalchana to H S Karmyal Inspector NIA. Ext.-244 is the production memo. Ext-44 is the passport. It is elicited in cross-examination that the accused wrote his name as Vanlalchann not as Vennichem @ Vantea @ Joseph.

215. The evidence of PW-58- Dinesh Kr Vora- also reveals that in 2009 he was working as receptionist of Shalimar Hotel Kolkata. Ext 255 is the visitor register with entries from 01-04-08 to 20-01-09. Register is filled up by customer in their hand at Sl. No-1519 of 18-01-09 is entry of stay of accused Phojendra Hojai and his check in date is 18-01-09 and check out date is 21-01-09. Ext 255/2 is another visitor register with entries from 20-01-09 to 10-07-09. At Sl no-1615 of 03-02-09 is entry of his stay, Phojendra Hojai and his check in date is 03-02-09 and check out date is 04-02-09. 10-03-09 Phojendra Hojai check into the Hotel. At Sl. no-1789 of 10-03-09 is his entry of his stay, and his check in date is 10-03-09 and check out date is 14-03-09. Ext-255/5, Ext-255/8, Ext-255/11 are the bills. Entry at Sl. no-1615 of Ext. 255 and entry at Sl. No-1789 of Ext. 255/2 shows stay of accused Phojendra Hojai in Hotel Shalimar and this fortified the version of P.W.29.

216. The evidence of PW-59- Devinder Singh – Dy. SP NIA- reveals that on 12-08-09, at Kolkata he joined the interrogation of accused Malswamkimi and George Lal Thang and on 13-08-09, the accused volunteered to make disclosure and at the instance of Malswamiki Rs.10 Lakh was recovered from Room 113 of Shalimar Hotel Kolkata and at the instance of accused George Lalthanga sum of Rs. 5 Lakh was recovered from Room 19 A of his ancestral house, situated at Trity Bazar Street, Kolkata.


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217. The evidence of P.W.59 further reveals that during interrogation accused Malswamkimi and George Lal Thang pointed out Madhumilan Guest House and Shalimar Hotel from where they were collecting money. Ext-257 disclosure statement of accused Malswamkimi by which she disclosed about Rs 10 lakh and vide Ext-258 Malswamkimi disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang.

218. The evidence of PW-69- Sheo Kr. Pandey - reveals that he was Manager Madhumilan Guest House Ext 50- Guest House Register from March 2008 to 15-10-08. On 13-03-09 at Sl. 1892 Phojendra Hojai occupied Room No-810. Ext-52 is the pointing out memo of George Lamthang and Ext-53 pointing out memo of Malswamkimi by which they indentified the Hotel where they came to collect money from Phojendra Hojai. Thus this witness also further fortified the version of P.W.29.

219. PW-105-Kamal Krishna Das was working as immigration officer at Kolkata International Airport. His evidence reveals that as per Ext.-44, the passport of Vanlalchanna, and immigration entry therein, he travelled outside India to Bangkok through Netaji Subhash Chandra Bose International Airport, Kolkata and on 19-01-08 and entered India on 29-3-08. Again on 25.03.2008 he travelled to Kathmandu. Ext.371/1, 371/2 & 371/3 are the entry in the Computer (server) output and the relevant entries are at Ext.44/4. It is elicited in cross-examination that during the entry in the computer as well as taking out the data from the server Ext 371 series, he was not working in that particular computer. The officer, who has certified Ext 371 series to be true, is not known to him personally, though he know his name but he cannot identify his signature.

220. PW-137- Satyendra Kr. Deka stated that he was working as Dy. Gen Manager BSNL. He received request by Ext-396 for furnishing details of BSNL No-9435077481, 9435577799, 9401423618 and CDR. Ext-397 is my reply the print copy. Ext-398 is the CDR of mobile No-9435077481, Ext-399 is the CDR of mobile No-9435577799, Ext-400 is the CDR of mobile No-9401423618, Ext-401 is another CDR and the relevant pg is 47 to 68. Mention to be made here that due to absence of certification u/s 65-B Evidence Act the CDRs cannot be admitted in evidence. This aspect has already been discussed in forgoing paragraphs.


221. The evidence of PW-146- Shri Swayam Prakash Pani reveals that on production memo accused Vanlalchanna's wife produced one Nokia mobile phone of N82 series, bearing no. 358082/01/058367/8 code 0551528 and one Airtel SIM bearing no.

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8991160000042989471 at SOU police station, Guwahati on 08.08.2009 at 11.30 AM. Ext 423 is the production memo. Further 7 SIM cards were produced on 17.08.2009 pertaining to accused Vanlalchhanna by Ms. Thakipcuai. Ext. 424 is the production memo. His evidence further reveals that during investigation identification memo of A-1 (Phojendra Hojai) was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-119 is the identification memo. Identification memo of Phojendra Hojai was done with the support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo. It is also reveals that during investigation identification memo of A-1 (Phojendra Hojai) was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-119 is the identification memo. Identification memo of A-1 was done with the support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo.

221.(i). His evidence further reveals that with regard to CDR analysis pertaining to different accused persons 2 official email IDs were used. They were sp1.nia@nic.in and sp3.nia@nic.in. The first one belonged to CIO, Sh. Mukesh Singh and the second one was used by him for collecting official correspondences and related matters. On these emails CDRs from different service providers like BSNL and Airtel were collected. Following due procedures as enshrined in 65B Evidence Act, print outs of relevant transactions were taken and analyzed. Ext 425 is the scrutiny of CDR, Mobile no. 9435077481. Ext. 398, 398/1 to 398/7 is the CDR of Phojendra Hojai. The link analysis of CDR 9957412020 belonging to A-1 with the service provider Airtel. Ext 426 is the scrutiny report and Ext 427 is the Link analysis. Ext 427/1 and 427/2 are the CDR of the said mobile numbers. Ext 427/3 and 427/4 are his signatures. Similarly, Mobile no. 9957574595 of accused A-1 with the service provider Airtel was analyzed and print outs of relevant parts taken under his signature. Ext. 428 (under objection) is the scrutiny Report of the said mobile and Ext 428/1 is the Link Analysis of the said mobile numbers. Ext 429 in two pages is the CDR, Ext 429/1 and 429/2 are his signatures.

221.(ii). His evidence further reveals that having obtained the CDRs analysis of the mobiles phone led to have evidence interlinking accused persons in pursuance of the criminal conspiracy. The detail analysis of CDRs has stated how during the seizure of the money accused persons were in touch. It also reveals international calls made to other accused based outside the country. In cross-examination he denied the defence suggestion that he forced the


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signatory to exhibit Ext 424 and 423 to sign on the dotted lines on apparently false record mentioned therein and Mobile phone listed in Ext 423 and 424 were not produced by the signatory. It is to be mentioned here that all the CDRs were collected without certification under section 65-B Evidence Act. And as such the same cannot be admitted as secondary evidence.


222. PW-148- Santosh Kumar has deposed that he did part investigation of the case and carried out photo identification exercise and also prepared a photo identification memo on 08.08.2009 regarding identification of Photographs of Niranjana Hojai and Jewel Garlosa by Vannechem @ Vatea @ Vanlalchanna @ Joseph. The memo was prepared in the presence of three witnesses and all concerned had signed on the photo identification memorandum. The said memo which has already been exhibited vide Ext 241 is in his handwriting and bears signatures of all concerned including himself. He also confirmed the photographs which have already been exhibited vide Ext 242 and 243 photo identification exercise of accused Vantea @ Vanlalchanna.

223. PW-52- Shri C .P. Phookan, Executive Magistrate, Kamrup is an independent witness in whose presence the exercise was carried out. His evidence reveals that on 08-08-09, in the presence of witness, Vanlalchanna identified the photograph of Niranjana Hojai by Ext-242 and Jewel Garlosa by Ext-243. On 18-08-09 in the presence of witness Malswamkimi identified Phojendra Hojai and on the same day George Lam Thang identified Phojendra Hojai.

224. The accused cross-examined all these witnesses separately but nothing tangible could be elicited to discredit their versions. Their evidence found to have contained elements of truth we find no just ground to disbelieve the same.

225. Thus the incriminating materials apparent from the evidence discussed above can be recapitulated as under:-

1. He used the service of Malswamkimi to convert money that he received from Phojendra Hojai at Kolkata, to US Dollars.
2. After conversion of money to US Dollars he received the same from Malswamkimi.
3. At his instance the arms and ammunitions recovered and seized from the house of Sarong Vang were recovered and the same was in his exclusive knowledge.

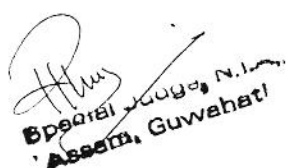

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4. He often visited Kolkata, and on two occasions he visited abroad with Indian Passport.
5. He identified the photographs of accused Niranjana Hojai and Jewel Garlosa in a photo identification exercise carried out on 08.08.2009.

MALSWAMKINI(A-9):-

226. The role played by this witness becomes apparent from the evidence of the following witnesses:-

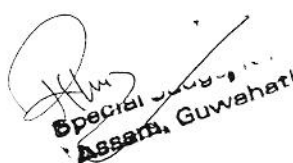
227. The evidence of PW-29- Shri George Lam Thang is very crucial in respect of the role played by this accused. It is to be mentioned here that this witness was an accused here in this case. During investigation he made a confessional statement before the Judicial Magistrate u/s 164 Cr. P.C. But during trial he turned approver and the court granted him pardon vide order dated- 06.11.2013, and examined him as witness and, thereafter, enlarged him on bail. His evidence reveals that he belongs to Manipur and since 2006, settled at Kolkata. By profession he was a Travel Agent as well as commission agent and lately he was also doing the job of money exchange on commission basis through a money changer, viz., Tapan in Kolkata. His evidence also reveals that while doing the job of procuring of air ticket, he came to know Miss Malsawmkimi in January, 2008. Since then he used to facilitate travel tickets whenever she approached him for the same. One day in April, 2008, Malsawmkimi asked me whether he has any idea about conversion of Indian rupees to US dollar. At that time he did not have any such contact and he informed her when he gets contact. In June, 2008, he came to know with Tapan who is a money-changer and in the month of August, 2008, he informed Malsawmkimi about the same. In the same month and year Malsawmkimi brought Rs.15 lakhs from Aizwal for conversion to US Dollar. Then he contacted Tapan and converted Rupee into US Dollar with his help in 3 days. Then keeping his commission @ 15 paise per US Dollar and he returned the converted money to Malsawmkimi. In this way, she normally used to bring Rs. 15 lakhs to Rs. 20 lakhs for conversion to US Dollar from Aizwal almost once in a month. Then in Oct., 2008, Malsawmkimi brought Rs.20 lakhs for conversion to US Dollar from Aizwal. When he visit her at her hotel room at Centre Point Hotel, Kolkata to collect Indian Rupee on that occasion he saw co-accused Vanlalchana staying with Malsawmkimi at the Hotel, whom, Malsawmkimi introduced to me as Vantea of Aizwal. After collecting the money from Malsawmkimi, he left the hotel and went to my rented house with


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the money in Kolkata. Then he contacted Tapan and with his help converted the money to US Dollars within 3/4 days and keeping his commission @ 15 paisa per US Dollar he returned the converted money to Malsawmkimi. Then in Nov., 2008, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel to collect the money of Vantea (Vanlalchana) and both of them went to Madhumilan Hotel at Kolkata from where Malsawmkimi collected Rs.1 crore from Phojendra Hojai but at that time he did not know Phojendra Hojai. After Malsawmkimi collected the money both of them headed to his rented house at Kolkata and from where we counted the money in detail and we found it to be Rs.1 crore. Thereafter, he converted the money to US Dollar with the help of Tapan in 10 days. Thereafter, he handed over the US Dollar to Malsawmkimi keeping his commission.

227.(i). His evidence also reveals that in Feb., 2009, Malsawmkimi came to Kolkata and asked him to accompany her to Madhumilan Hotel at Kolkata from where she collected Rs.2 crore from Phojendra Hojai (At that time he did not know Phojendra Hojai). They counted the money at his rented house and found it to be Rs.2 crore. Thereafter he converted the money to US Dollar with the help of Tapan in 20 days. After conversion, he handed over the US Dollar to Malsawmkimi keeping his commission. On that occasion, he saw Vantea for the second time when he visited Malsawmkimi at Centre Point Hotel to give the converted money. His evidence also reveals that again in March, 2009, Malsawmkimi came to Kolkata and asked me to accompany her to Shalimar Hotel at Kolkata from where she collected Rs.1 crore from Phojendra Hojai. After receiving the money they headed to Central Point Hotel, Kolkata where Malsawmkimi stayed and after counting the money found it to be Rs.1 crore. Thereafter, he took the money to his rented house and converted the same within 10 days to US Dollars with the help of Tapan. Then he handed over the US Dollar to Malsawmkimi and in the same way keeping his commission.

227.(ii). His evidence further reveals that although, he was accompanying Malsawmkimi to the said 2 Hotels, he did not have any knowledge about Phojendra Hojai from whom Malsawmkimi collected money on 3 occasions. Even Malsawmkimi did not have any knowledge about Phojendra Hojai. He learnt from Malsawmkimi that she was collecting the money at the behest of Vanlalchana. He was simply accompanying Malsawmkimi when she said that she had money to be converted and she had to collect the money from a person in a hotel. Thereafter, in April, 2009; May, 2009; June, 2009; July, 2009, Malsawmkimi brought Rs.15 lakhs from Aizwal from conversion into US Dollar. On each occasion he converted the money into US Dollar through Tapan and in the same way he kept his commission and gave the US Dollar to Malsawmkimi. He did not have any knowledge about her further transaction


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with the money. He learnt from Malsawmkimi on each occasion she had been sent by businessman in Aizwal and she was earning commission for her job.

227.(iii). His evidence also reveals that he was arrested on 11.8.2009 by Kolkata Police and the police seized Rs.5 lakhs from my possession which was given to him by Malsawmkimi on 7.8.2009, but she did not tell him what to do with the money and she said that she will let him know what to do with the money. He admitted that he converted Rupees to Dollar but he was not colleagues of any of the co-accused. He was only a commission agent working only to get a little commission to be able to maintain his family. His evidence further reveals that on 20.8.09, he made a statement U/S 164 Cr. P.C. before Judicial Magistrate at Guwahati. Ext.76 is the said statement. He also confirmed Ext.77, the identification memo dtd.18.8.09 by which he had pointed out Hotel Madhumilan & Hotel Shalimar from where he along with Malsawmkimi collected money for conversion from Phojendra Hojai. He also confirmed Ext.78 is the disclosure statement made by him to NIA officer disclosing that a sum of Rs.5 lakhs was kept at his residence at Kolkata. He also confirmed Ext.79 the disclosure statement made by him disclosing that he along with Malsawmkimi went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of collecting money. By Ext.52, he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai. He also confirmed Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojai. Ext.81 is the production memo by which his Passport bearing No.E1127189 and my Nokia 6300 mobile were handed over by my wife. Ext.81(2) is the passport. He identified accused Malsawmkimi, Phojendra Hojai and Vanlalchana in the court.

227.(iv). We have gone through the confessional statement- Ext.79 and we find that the same substantially corroborated the version of P.W.29 before the court so far it relates to accused Malswamkimi (A-9) is concerned and lends unstinted support to the prosecution version. Cross-examination of this witness could elicit nothing tangible so far his evidence in relation to A-9 is concerned. He, however, admitted that he is not acquainted with for what purpose the converted US Dollars were used by whom and for what purpose.

227.(v). The Id. Counsel for A- 9 has assailed the evidence of this witness on different counts. Firstly, it is submitted that P.W. 29 is an approver and the value of the evidence of approver is well settled by Hon'ble Supreme Court in catena of decisions. The Id.

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Counsel has referred one case law ***State of Rajasthan Vs. Balveer @ Balli and Another, (2013) 16 SCC 321***, wherein it has been held that:-

"the extent of the culpability of the accomplice in an offence is not material so long as the Magistrate tendering pardon believes that the accomplice was involved directly and indirectly in or was a privy to the offence. Section 113 of the Evidence Act provides that an accomplice shall be competent witness against an accused persons and when the pardon is tendered to an accomplice under section 306 Cr. P.C. the accomplice is removed from the category of co-accused and put into the category of witness and the evidence of such a witness as an accomplice can be the basis of conviction as provided in section 133 of the Evidence Act. "

It is further held that:-

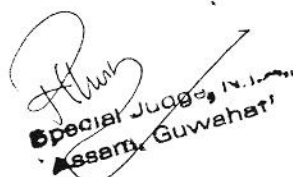
"as rule of prudence, however, as provided in Illustration (b) to section 114 of Evidence Act, the court shall presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars."

It is clarified that :-

"the corroboration need not be by direct evidence that the accused committed the crime and it is sufficient if it is merely circumstantial evidence of the connection of the accused with the crime."

Secondly, it is submitted that there is nothing on the record to corroborate his version in respect of conversion of money. Thirdly, it is submitted that one Tapan of Kolkata, who was arrested by Kolkata Police, is neither made an accused nor made an witness here in this case.


227.(vi). While the submission of the Id. Defence counsel is considered in the light of the facts and circumstances on the record it has been found that there is no substance in the same. It is, however, true that one Tapan, who converted money to US Dollars has not been made an accused nor a witness here in this case in spite of his arrest by Kolkata Police. But, there are many corroborating materials on the record to support the conversion of money. Recovery of Rs.5,00,000/ from the rented house of P.W. 29 on the strength of disclosure statement Ext.78 made by him to NIA officer is one of the corroborating fact. The said sum was given to him by accused Malsawmkimi on 07.08.2009. Besides, Ext.79- the disclosure statement made by him disclosing that he along with Malsawmkimi went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of money collection and Ext.52 by which he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai, and Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he


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along with Malsawmkimi collected money from Phojendra Hojai and recovery of a sum of Rs. Ext-257 disclosure statement made by which you disclosed about Rs 10 lakh. Ext-258, by which you disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang. Ext.76 - the confessional statement of P.W.29, which has already been discussed earlier, also lends unstinted support to the evidence of P.W.29.

228. Besides these, following are some of the witnesses, who have lends support to the version of the P.W.29. PW-18 Sh.Kamalesh Pandey Manager, Madhumilan Guest House, Barabazar, Kolkata. He confirmed that Ext.50 is the Guest House Register maintained at Madhumilan Guest House w.e.f. 19.10.08 to 16.3.2008 and the entry dtd.2.11.2008 shows one Phojendra Hojai of Haflong N.C.Hills, Assam stayed at Room No.813 from 2.11.08, 4 p.m. to 6.11.2008, 6.15 a.m. Again at Sl. No.1892, Ext. 50(2) is the entry dtd.13.3.2008 shows that Phojendra Hojai of S. Bagan, Haflong, N.C. Hills, Assam stayed at Room No.810 from 13.3.08, 6 p.m. to 15.3.2008, 9.50 a.m. Ext.51 is the production memo by which Guest House reregister Sl. No.785 dtd.5.2.08 to 2101 dtd.30.3.08 and Guest House reregister Sl. No.2866 dtd.20.10.08 to 3.3.13 dtd.22.11.08. are produced by him. Ext.52 is the pointing out cum observation memo prepared at Madhumilan Guest House in his presence. Similarly, Ext.53 is another pointing out-cum-observation memo prepared at Madhumilan Guest House in my presence. In cross-examination of this witness A-9 has elicited that Ext.50 is the loose papers and there is no signature of any customer, though there is a column. It is further elicited that he is not aware of the contents in Ext.53.

229. P.W.-40- Nabajeet Buragohain testified that on 07-08-09, as directed by his superior officials he remained present at SOU office Kahilipara, there out of many accused sitting and accused Vanlalchanna volunteered to disclose his association with Malswamkimi. Vanlalchanna disclosed in Mizo which was translated into English where he said that you along with the lady and another person Thang used to convert Indian rupees into US Dollars to be supplied to DHD (J) group three times and Ext-118 is the disclosure memo. Then again on 18-8-09 he remained present at SOU office Kahilipara, there out of many accused sitting Vanlalchanna identified Phojendra Hojai from whom Malswamkimi along with George Lamthang had collected money from Madhumilan Hotel and Shalimar Hotel of Kolkata and Ext-119 is the disclosure memo. The evidence of P.W. 40 finds support from the evidence of PW-52- C.P. Phookan, who testified that on 18-08-09, in the presence of witness, Malswamkimi identified Phojendra Hojai and on the same day George Lam Thang identified Phojendra Hojai. And Malswamkimi disclosed in Mizo which was translated into English where



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she said that she along with Swami and another person Thanga used to convert Indian rupees into US Dollars to be supplied to DHD (J) group three times Ext-118 is the disclosure memo.

230. PW-58- Dinesh Kr Vora- is a receptionist of Hotel Shalimar during the year 2009. He confirmed Ext 255 - the visitor register with entries from 01-04-08 to 20-01-09. And at Sl no-1519 of 18-01-09 is entry of stay of Phojendra Hojai and his check in date is 18-01-09 and check out date is 21-01-09. Ext 255/2 is another visitor register with entries from 20-01-09 to 10-07-09. At Sl. no-1615 of 03-02-09 is entry of Phojendra Hojai and his check in date is 03-02-09 and check out date is 04-02-09. Then on 10-03-09, Phojendra Hojai checks into the Hotel. At Sl. no-1789 of 10-03-09 is his check in date and check out date is 14-03-09. Ext-255/5, Ext-255/8, Ext-255/11 are the bills. Above documents shows his stay in Hotel Shalimar.

231. The evidence of PW-59- Devindra Singh - Dy. SP NIA- reveals that as directed he reached Kolkata on 12-08-09 and joined the interrogation of George Lal Thanga and Malswamkimi and on 13-08-09 Malswamkimi volunteered to make disclosure and at your instance a sum of Rs.10 Lakh was recovered from Room 113 of Shalimar Hotel Kolkata. His evidence also reveals that accused George Lalth has made disclosure statement and on the strength of the same he recovered Rs. 5 Lakh from Room 19 A of his ancestral house. His evidence further reveals that they pointed out Madhumilan Guest House and Shalimar Hotel from where they were collecting money. Ext-257 disclosure statement made by Malswamkimi disclosed about Rs 10 lakh. And by Ext-258, Malswamkimi disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang.

232. The evidence of PW-63 Lalrinawma Traite, Dy. SP. CID (SB) Aizawl-reveals that in pursuance to some information received accused Vanlalchhana @ Vanchema @ Vantea was apprehended and on his disclosure 8 nos of M-16 Rifles, one 9 mm berretta pistol, 12communion sets with spare batteries, detachable antennas one telescope Bushnell, 6 nos. of 9 mm ammunition, one sniper lens, antenna were recovered from the residence at Saron Veng Aizawl. His evidence further reveals that after that I was detailed to go to Kolkata where one Mizo girl namely Malsawmkimi was apprehended by Kolkata police. This lady disclosed that she came by flight to Kolkata where she was apprehended by police and Rs. 10,00,000/- was seized from her possession. Ext 258/3 is my signature in the said disclosure memo. She also disclosed that she went to Shalimar Hotel and Madhumilan Guest House with one George Lamthang for collection and transaction of money. Ext 257/3 is my signature in the said


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disclosure memo. George Lamthang also made disclosure that he went with Malsawmkimi to Shalimar Hotel and Madhumilan Guest House for collection and transaction of money. He stated that he can identify the person. Ext 279/3 is my signature in the said disclosure memo. It is elicited in cross-examination of this witness that disclosure statements - Ext. 258, 257 and 259 were recorded after arrest of the accused and except signing the same he is not aware of the fact of the case.

233. PW-69- Sheo Kr. Pandey was the Manager of Madhumilan Guest House Ext 50- Guest House Register from March 2008 to 15-10-08. On 13-03-09 at SI 1892 Phojendra Hojai occupied Room No-810. Ext-52 is the pointing out memo of George Lamthang and Ext. 53 is another pointing out memo of Malswamkimi by which Malswamkimi and George Lamthang both identified the Hotel where they came to collect money from Phojendra Hojai.

234. PW-136- Dipankar Chatterjee testified that while he was working as Employee of Hotel Shalimar on 13-08-09, police came with a lady and a memorandum was prepared in his presence and Ext-259 is the said memorandum and Ext. 80 is another memorandum.

235. PW-146- Swayam Prakash Pani deposed that during investigation identification memo of A-1 (Phojendra Hojai) was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel and Ext-119 is the identification memo. Identification memo of Phojendra Hojai was done with the support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo.

236. PW-148- Santosh Kumar has deposed that he did part investigation of the case he exhibited Ext-241 photo identification memo, Ext-118 disclosure memo made by accused Vanlalchanna,

237. The evidence of all these witnesses and the exhibits amply corroborated the version of P.W.29 and as such we find his evidence worth believing and accordingly we accept the same. In view of above discussion and finding we find that the ration laid down by the Hon'ble Supreme Court in would not help the accused any more.


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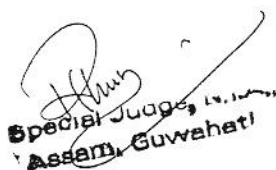
238. Thus the facts and circumstances, that have been emerged against the accused Malsawmkimi, can be recapitulated as under:-

1. She was engaged by accused Vanlalchanna for conversion of money to US Dollars.
2. She used to bring money from Aizwal to Kolkata for conversion. In the month of August, 2008, she brought Rs.15 lakhs from Aizwal for conversion to US Dollar. In Oct., 2008, she brought Rs.20 lakhs for conversion to US Dollar from Aizwal. In April, 2009; May, 2009; June, 2009; July, 2009, Malsawmkimi brought Rs.15 lakhs from Aizwal from conversion into US Dollar.
3. She was collecting the money from Phojendra Hojai to the tune of Rs. 4.00 crore, with P.W.29, at the behest of Vanlalchanna. First in Nov., 2008, from Madhumilan Hotel at Kolkata she collected Rs.1 crore from Phojendra Hojai. Thereafter in Feb., 2009, she collected Rs.2 crore from Phojendra Hojai from Madhumilan Hotel at Kolkata. Then in March, 2009, she collects Rs.1 crore from Phojendra Hojai from Shalimar Hotel at Kolkata.
4. A sum of Rs. 10,00,000/ was recovered from her possession at Shalimar Hotel Kolkata on the basis of her disclosure statement Ext-257.
5. She was earning commission for her job of conversion of money to US Dollars.

ACCUSED NIRANJAN HOJAI (A-11):-

239. PW-2 - Shri Chandra Kt. Boro testified that on 01-04-09, while he was working as the O/C-of Basistha P.S., then Addl. S.P. (HQ) Shri Sudhakar Singh and Addl. S.P., Shri R. Rajkhowa came and reported that some member of DHD group are going to deliver money to the extremist at Jorabat. He then deputed S.I. Maizudding Ahmed to go to Jorabat, who on returning, deposited Rs. 1 crore and 2 pistol and other articles after intercepting 2 vehicles and according he lodged formal FIR, upon which Basistha P.S. Case No. 170/09, was registered.

240. PW-10 - Maijuddin Ahmed- testified that on 01-04-09, he was working as S.I. of Basistha PS. On that day Addl. SP (HQ) Shri Sudhakar Singh and Addl. S.P. Shri R. Rajkhowa came and talked with O/C Chandra Kanta Boro about the unlawful activities of DHD(J). Then they proceeded to Jorabat area and from thee to 14 Mile G. S. Road and around 12.30 pm they intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu


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Sonar and Phojendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant.

240.(i). P.W. 10 also testified that on search they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and both the vehicle was seized. PW-26- Shri Sudhakar Singh- Addl. S.P. (HQ) Guwahati also testified the same fact. PW-113- Dipankar Deka also stated the same fact and he further deposed that on 3-4-09 he gave statement, Ext. 388 before Magistrate. PW-117- Naimuddin Ahmed, the then SDJM (Sadar) Guwahati No-1, also confirmed recording 164 Statement of Dipankar Deka- Ext-388.

240.(ii) PW-10- Maijuddin Ahmed- also testified that thereafter they were brought to Kahilipara and the currency, on counting found to be of 1 crore. Ext-30 is the FIR dated 01-04-09 with reference to Basistha PS GDE entry No 1162 dt 01-04-09, documents including 3 sheets of letter heads (blank) of DHD (J) and a letter of Mohet Hojai addressing to Superintending Engineer PWD to issue work order in favour of Phojendra Hojai your associate for an amount of 88 lakhs, one 7.6 mm pistol bearing No. RP 127321 with 4 live rounds, one 9 mm pistol made in China with 5 live rounds, arm licence Ext-32 and Ext-33 in the name of Phojendra Hojai and seized M/Ext- 7 is Sony Ericson mobile and M/Ext- 9 is Nokia mobile were seized vide Ext.-A.

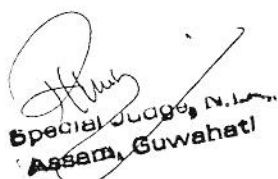
241. The evidence of P.W.13 -Shri K Lalrinthanga reveals that he was Inspector of Police Mizoram and he took up the investigation of Aizawl PS Case No. 238/09, u/s 25(1)(a),(1) (b), against accused Vanlalchama of Sarong Vang and during investigation another person namely Vanlalchanna @ Vantea who was temporarily living at Sarong Vang also suspected to have involvement in that case. Then he was arrested and taken into four days police custody and during investigation Vanlalchanna was found to be not involved in that case and therefore, he was discharged. But he suspected to have involvement in NIA case No. 1/09. He then prayed before the concerned court vide Ext.-41-(certified copy of his petition), and on the basis of said petition learned Magistrate has passed order dated 31-07-09,-Ext-42 (certified copy of the order). It is elicited in his cross-examination that from Mr. H.S. Karmiyal he came to know about the involvement of Vanlalchanna with NIA Case.

242. PW-14- Laltanouia Sailo- deposed that he was Inspector of Police CID, Special Branch Mizoram. In 2009 a NIA team came to Aizawl and they were looking for arms


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smuggler whose identity came to be known as Vannichem @ Vantea @ Vanlalchhana son of- Ngunkipthang of Saronveng, Aizawl. Then they arrested Vanlalchhana on 30.07.2009 at around 3.30 am and taken to Awizal for interrogation and during interrogation he made a disclosure about weapons which you kept in a house located at Sarong Veng. And on search they recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas one telescope Bushnell on the disclosure statement made by accused Vanlalchhana. They also recovered one passport Ext. 44, in your name. **Ext-43 is the disclosure memo.** M/Ext 11(1) to 11(8) M-16 Rifles with magazines, M/Ext 11(9) 9 mm berretta pistol with magazines & 14 rounds of ammunition. M/Ext 12(1) to 12(12) walky- talky sets 12 nos. M/Ext 14 telescope Bushnell. It is elicited in cross-examination of the witness that when they proceeded to recover the weapons NIA officials also accompanied them and under the supervision of NIA officials in recovering the materials Exhibits and soon after recovery of the weapons seizere list was prepared. It is also elicited when they went to recover the Materials Exhibits they found Vanlalchhana in the village-Lungmuat. He was at large at that point of time when they met Vanlalchhana he is nowhere connected with any case. It is also elicited that Ext. 43 was prepared by him after recovery of weapons at the behest of NIA. It is also elicited that he believe the contents of Ext.43 to be true.

243. The evidence of PW-63 Lalrinawma Traite, Dy. SP. CID (SB) Aizawl-reveals that in pursuance to some information received accused Vanlalchhana @ Vanchema @ Vantea was apprehended and on his disclosure 8 nos of M-16 Rifles, one 9 mm berretta pistol, 12communication sets with spare batteries, detachable antennas one telescope Bushnell, 6 nos. of 9 mm ammunition, one sniper lens, antenna were recovered from the residence at Saron Veng Aizawl. His evidence further reveals that after that I was detailed to go to Kolkata where one Mizo girl namely Malsawmkimi was apprehended by Kolkata police. This lady disclosed that she came by flight to Kolkata where she was apprehended by police and Rs. 10,00,000/- was seized from her possession. Ext 258/3 is my signature in the said disclosure memo. She also disclosed that she went to Shalimar Hotel and Madhumilan Guest House with one George Lamthang for collection and transaction of money. Ext 257/3 is my signature in the said disclosure memo. George Lamthang also made disclosure that he went with Malsawmkimi to Shalimar Hotel and Madhumilan Guest House for collection and transaction of money. He stated that he can identify the person. Ext 279/3 is my signature in the said disclosure memo. It is elicited in cross-examination of this witness that recovered arms and ammunicions were not shown to him in the court.


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VOLUME-II

JUDGEMENT

OF

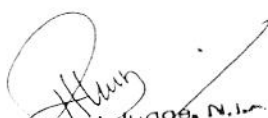
**SPECIAL NIA CASE No. 01/2009
(RC-01/2009/NIA/DLI)**

STATE(NIA)

-Vs-

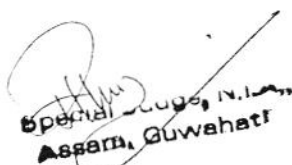
PHOJENDRA HOJAI & OTHERS

244. The evidence of PW-56- Shri H.S. Karmyal, reveals that on 06.07.2009, he was directed by CIO to visit Aizawl and verify the visit of accused A. Warisa and develop the source information regarding the suspected accused who is supplying arms to DHD (J). Accordingly, he visited Aizawl and collected record of Hotel Tropicana where accused A. Warisa stayed in room no. 310 on 28.02.2009 to 01.03.2009. During his stay at Aizawl, it came to his knowledge through sources that one Vantea @ Vanlalchahanna a Myanmar National living in Mizoram is actively involved in smuggling arms and supplying to DHD (J). His source also informed that he is having Indian Passport issued by RPO, Guwahati. Thereafter, he visited RPO Office and came to know that he had been issued a Passport No. G3106042. He then collected certified copy of the said Passport file from RPO Office. Ext 244/2, 244/3, 244/4, 244/5, 255/6, 244/7 are the said documents. He then handed over the investigation records to CIO and also informed the inputs about Vantea to Mizoram police. On 27.07.2009, information has been received by the CIO from Mizoram police that they have arrested one Vantea @ Vanlalchanna on 26.07.2009, who, in his interrogation revealed that he was instrumental in supplying arms to DHD (J). And as directed by CIO he visited Aizawl on 28.07.2009 and joined interrogation with CID, Mizoram team in whose police custody accused Vantea @ Vanlalchanna was. During interrogation Vantea @ Vanlalchanna has disclosed that he was dealing with DHD (J) in supplying arms in the name of Joseph and known to DHD (J), Chief Jewel Garlosa and Niranjan Hojai regarding supply of arms. On 30.07.2009, accused Vantea @ Vanlalchanna voluntarily gave his disclosure to I/O of the Mizoram Police that a consignment of arms has already dispatched from Myanmar for DHD (J) group and kept in the house at Saran Veng Area at Aizawl. On the basis of his disclosure Mizoram police obtained search warrant and he led to the recovery of arms and ammunitions from the said place. He was also the part of the said team from the search of the place led by accused Vantea @ Vanlalchanna. 8 nos. of M16 Assault rifles, one 9 mm beretta pistol with 14 live rounds, one Bushnell Telescopic sight, 12 nos. of Walki Takie set with battery, 12 nos. of battery chargers with extendible antenna were recovered from the pointing out of accused Vantea @ Vanlalchanna. All the aforesaid articles were seized vide seizure memo, Ext 250 and he also appended his signature vide Ext 250/1 as a part of team and token of its correctness. Two local witnesses namely, Lalrova and Zohn Thanga who remained present throughout the recovery procedure also appended their signature in my presence on the spot as a token of correctness. Ext 250/2 and 250/3 are their signature. Thereafter, CID, Mizoram Team and himself returned to CID office along with the seize articles and accused persons. During interrogation accused Vantea @ Vanlalchanna revealed that his Indian passport is kept at his residence, D-37, Saran Veng. Accordingly, a search under the Provision of 165 Cr.PC was conducted and his passport no.


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G3106042 was seized. The passport Ext. 44 contains the details of his travel to Thailand and Malaysia. On 31.07.2009, interrogation of Vantea @ Vanlalchanna revealed that the recovered arms have no connection with Mizoram Police Case No. 238/09 as they were meant for DHD (J) Group and NIA Case No. 01/2009 is being investigated by NIA for the same so Mizoram Police decided to file a closure report in their case. Accordingly, they filed a closure report on 31.07.2009 before the Court and he moved an application to take custody of accused Vantea @ Vanlalchanna and the seized articles. Then the Court allowed his petition and accorded two days transit remand to produce the accused person before the Spl. Judge, NIA, Guwahati. Accordingly, he effected the arrest of accused Vantea @ Vanlalchanna on 31.07.2009 after observing all the legal formality and also requested the Court to allow to keep all the arms and ammunition by Mizoram Police in their custody for security reason and Court allowed his petition. Ext. 251 is the handing and taking over note. Ext 251/1 is his signature and Ext 251/2 is the signature of C. Laldina, SP, CID (SB), Mizoram, Aizawl. All the arms and other articles so seized were deposited in the safe custody of 1st Battalion of Mizoram Police. Accordingly, on 01.08.2009, he took accused Vantea @ Vanlalchanna to Guwahati and handed over to CIO along with all investigation documents. He has seen all the seized arms and articles in the Court today which are all exhibited as M. Exhibit. Further on 09.11.2009, on the direction of CIO, he visited Aizawl and taken over all the seized articles from the Mizoram Police. Ext 252 is the handing over record of seized arms and ammunitions. Ext 254 is his petition before the CJM, Aizawl for issue of order dated 31.07.2009 and brought them to Guwahati and handed over to CIO. He has also identified the accused in the Court, who is known as Vantea @ Vanlalchanna @ Joseph. It is elicited in cross-examination that the disclosure memo of Vanlalchanna dated 30.07.2009 was prepared by Mizoram Police Officer in connection with Aizawl PS Case No. 238/09. The seizure list does not contain the signature of the accused Vanlalchanna.

245. The Id. counsel for the accused, in the written argument, contended that the recovery of arms at the instance of the accused becomes doubtful as independent witnesses i.e. the owner of house Lalrova, another witness Zohmingthanga have not been examined by the prosecution side. The Id. relied upon a case law **Deoraj Goala and Another vs. The State of Assam, 2010(5) GLT 450**. Referring another case law **Pradip Buragohain vs. Pranati Phukan, 2010(11) SCC 108**, it has been submitted that for the above lapses of the prosecution side adverse inference has to be drawn against it. The Id. counsel has further submitted that the accused while making the disclosure statement was not in police custody in the present case. He was in custody of Aizawl P.S. Case No. 238/09. And as such the


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disclosure, so made by the accused cannot be taken into account here in this case. There is no doubt that the submission has some force. But what needs to be seen is whether on this count alone the prosecution case can be thrown overboard. While dealing with the issue Hon'ble Supreme Court in the case of **Karamjit Singh v. State (Delhi Administration) 2003 (46) A.C.C. 876** has held that:-

"the evidence of police personnel should be treated in the same manner as testimony of any other witness. It is further held by Hon'ble Apex Court in para 8 of the report at page 880 that the ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party, which is going to arrest a criminal or is embarking upon search of some premises. As mentioned above, the appellants-accused are hardened criminals belonging to the gang of International 'DON' Chhota Rajan. No witness of public can dare to depose against such criminals even if the incident has been witnessed by him."

246. The following observations made by Hon'ble Apex Court in the case of **Krishna Mochi v. State of Bihar 2002 SCC (Cri) 1220** are also relevant regarding the effect of non-examination of independent witnesses:

"It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political economic or other powers including muscle power."

247. In the case in hand the accused hails from Mizoram. He is a dealer of arms and ammunitions. So, it quite natural that the owner of the house, from where the arms and ammunitions were recovered, did not appear to depose about the seizure. Thus, keeping in view, the aforesaid observations of Hon'ble Supreme Court, it can safely be concluded that non-examination of the independent witnesses of seizure by the prosecution side has caused no dent to its version in respect of seizure. And as regard the other submission we find that while the accused made disclosure statement he was admittedly in the police custody of Aizwal P.S. Case No. 38/09. Now what to be seen is what would be the effect of disclosure while he was not in custody of the present case. This aspect is dealt with by the Hon'ble Supreme Court in **Mohan Lal vs. State of Rajasthan, (2015) 6 SCC 222**, and in view of


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the observation made therein the submission of the Id. defence counsel is found to be devoid of force. It has been held in the said case that:-


"the word employed in section 27 does not restrict that the accused must be arrested in connection with the same offence. In fact, the emphasis is on receipt of information from a person accused of any offence. Therefore, when the accused-appellant was already in custody in connection with FIR No. 95 of 1985 and he led to the discovery of articles, the plea that it was not done in connection with FIR No. 96 of 1985 is absolutely unsustainable."

248. PW-18- Shri Kamalesh Pandey- testified that he was working as Manager Madhumilan Guest House Barabazar Kolkata. Ext-50 is Guest House Register and a Sl.-3005, entry dated 02-11-08, shows your associate Phojendra Hojai of Haflong stayed in room No. 813 from 02-11-08 to 6-11-08. Again at Sl-1892 entry dt. 13-03-08 shows Phojendra Hojai of Haflong stayed in room No. 810 from 13-03-08 to 15-03-08. Ext-52 & Ext-53 are the pointing out memo prepared at Madhumilan Guest House in his presence.

249. PW-19- Paragmoni Aditya testified that he was Journalist working in News Live-and on 1-4-09 police intercepted vehicles and recovered huge amount of cash with arms and ammunition and they telecasted the news as carrying of 1 crore by 2 persons. He provided the CD- Ext 55, carrying the news to NIA on being requested.

250. PW-21 – Chandra Sarma- testified that he knows Mohet Hojai and had family touch. He used to look as local guardian of his daughter who is studying in Guwahati. On 01-04-09 one Sonam Lama telephoned regarding taking of his vehicle on hire and accordingly he asked Dipankar Deka, the driver of Tata sumo. Around 1/2 pm his driver telephoned that he is proceeding with the vehicle towards Shillong. On the next day his driver's wife reported him that the vehicle was seized. His evidence also reveals that in 2009 Mohet Hojai asked him over phone to go to AT Road and met Imdad Ali, accordingly he met Imdad Ali after talking he left. Again in the same year Mohet Hojai telephoned and told to meet Joyanta Kr. Ghosh and, thereafter, Joyanta Kr. Ghosh sent a man with a packet to him and he then gave it to Joyanta Kr. Ghosh.

251. The evidence of PW-23- Kulendra Daulagapu, an Executive member of DHAC, reveals that he come to know about the activities of DHD(J) about demand of money and violent activities they took. During 2008 ASDC & BJP alliance was in power. During one of the meeting Depolal Hojai - CEM, cited his ill health and resigned as CEM and Mohet Hojai was



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elected as CEM. His evidence also reveals that he went with Mohet Hojai to Kuala Lumpur in Feb/ March 2009 at Kuala Lumpur he met, Niranjana Hojai. He stated that he gave statement u/s 164 and Ext-56 is the statement.

252. PW-24- Amitav Sinha- testified that in the year 2009 he was Addl. S.P. (HQ) at N C Hills and he was responsible for maintaining law and order. There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD(J) group had resorted to firing on moving train. His evidence further reveals that because of counter insurgency operations, laying down of arms by DHD(J) cadres in March/April, 2010 took place, but there was apprehension that all the arms and ammunition of DHD(J) were not handed over at the time of laying down of arms, and on 08-07-10, on receiving information that arms and ammunition were kept hidden in jungles, he conducted search at Disa Kishn area. He was accompanied by O/C Haflong and on search they could find several gunny bags containing sophisticated weapons including AK-47, M-16 pistols, Lithod guns as well as M-21 Rifles and in connection with the same the O/C Haflong lodged FIR, upon which a Case No. 54/2010 was registered. Ext-59 is the photocopy of seizure list contains 44 nos. of weapons and 41 assorted magazines and shells.

253. The Id. Counsel for the accused has submitted that recovery of above arms and ammunitions cannot be attributed to DHD(J) or accused Niranjana Hojai. And no disclosure statement also made by the accused Niranjana Hojai. There is element of truth in the submission of the Id. Counsel for the accused. There is no direct evidence that accused Niranjana Hojai has kept the said consignment of arms. But the evidence of P.W.24 is clear enough to show that the same belongs to DHD(J) as after laying down of arms by DHD(J) cadres in March/April, 2010 there was always a feeling and apprehension and some intelligence inputs as well that all arms & ammunition of DHD(J) were not handed over at the time of the laying down of arms. And on 8.7.2010, on receipt of specific information and after verifying this information he and O/C, Haflong recovered a large no. of sophisticated weapons which included AK-47s, M-16 pistols, Lithod guns as well as M-21 Rifles. We found that these were indeed highly sophisticated factory made weapons.

254. PW-24- Amitav Sinha- has also testified that vide letter dated 16-07-10 -Ext-60, he sent to the SP/NIA, the FIR and seizure list and vide his letter dated 03-09-10 - Ext-61 he informed the status of Umrangsu P. S. Case No-18/2000, that both the case were charge


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sheeted against accused Phonen Naiding and Thangmon Hansu who are DHD cadres. And in the second case 18/2000, Anol Phanglo, Mondesh Langthasa and absconding accused Peter Langthasa, Biren Singh Langthasa, Than Janan Hafila, Asai Ram Nunisa and Ajit Thousen all are DHD cadres.

254.(i). Cross-examination of this witness could elicit nothing tangible to to discredit his version, except that he did not state before the I/O about some of the facts about the law and order situation of N C Hills. He denied the defence suggestion that the arms and ammunitions were not belonging to DHD (J). It is to be noted here that he categorically stated that he was responsible for maintaining law and order in N C Hills. being posted as Addl. S.P. (HQ). Therefore, the omission, though may amounts to contradiction, yet the same failed to cast any doubt about the veracity of his version. The law and order situation in N.C. Hills, at the relevant point of time, is apparent from the evidence of the then CEM Mr. Depolal Hojai, P.W. 126 who testified that many efficient govt. officials were reluctant to be posted at NC Hills because of extremist for which developmental work suffered. There was two group of extremist, DHD and other was DHD (J) and there was killing and kidnapping.

255. It is to be mention here that Haflong P.S. Case No. 54/2010 u/s 25(1-A) Arms Act, has been returned in final report after investigation on the ground that the case is true u/s 25(1-A) Arms Act, but no clue. The defence side has examined one witness namely Smt. Gopa Choudhury, Head Asstt. in the office of the Deputy Commissioner, Dima Hasao, who proved the Final Report (certified copy) in the court as Ext. 'N' and the same was accepted vide order dated 02.01.2014, (certified copy), Ext 'O' by the JM 1st Class, Dima Hasao, Haflong. But mention to be made here that the final report has been submitted on the ground that the case is true but no clue. It is not submitted on the ground that the case is false. Therefore, returning of the case in final report and acceptance thereof will have no bearing upon the veracity of the version of P.W.26.

256. PW-26- Sudhakar Singh- also testified that on 01-06-09, on information, he along with 2 Inspector flew to Bangalore on the order of G.P. Singh where Jewel Garlosa- C-in-C of DHD (J), was apprehended in a Gym and you were apprehended in a flat along with Samir Ahmed and both of you were brought to Guwahati on 05-06-09. PW-38- Rukma Buragohain- and PW-124- Bhupendra Kr. Nath also testified the same facts. P.W.38 further testified that Jewel Garlosa disclosed his stay at Flat 102, 1st Floor Pankaj Residency and led them to your flat from where you were found staying with him and on search of the flat,



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among other thing, one driving licence No-KA -2509/09-10 in the name of -Debojit Sinha having his photograph was found. And from the possession of Jewel Garlosa, among other things, one HCL laptop bearing SL No-2210911600685929 which is M/Ext-29, one driving licence No. KA -2192/NCH/Pvt/02 in the name of you, one identity in the name of Ananda Singha of Bihara, Cachar having his photograph-M/Ext-33- was recovered and seized the same vide seizure memo Ext-104. Then searching the Flat of Samir Ahmed he found among other things, one Photocopy of driving licence of - Debojit Singha -Ext-113, which he seized vide Seizure Memo Ext 110.

257. PW-27- Shri Hiteshwar Medhi- testified that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjana Hojai of DHD(J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjana Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons.

258. The evidence of PW-28- Diganta Vikram Gayan- testified that he working as architect consultant-and he was introduced to Kulendra Daulagupu of NC Hills who asked him to prepare DPR report and on preparation he was paid money by Dhruba Ghosh and Pabitra Nunisa. Debashis Dutta requested him to help Dhurba Ghosh in opening of A/c at Guwahati at SBI to draw a cheque. Debashis Dutta along with Dhurba Ghosh and Joyanta Kr. Ghosh met him and Dhruba Ghosh express that he wanted to open 2 new A/c in the name of 2 Firms. A tenancy agreement of his father's property was prepared for opening A/c. And one of his friends ShriPranjal Bharali act as an introducer in the Bank and formalities were completed and A/c was opened. P.W.123 -Shri Pranjal Bharali, PW-32- Ramen Deka also testified the same fact. P.W.32 Shri Romen Deka further testified that on being asked he got one tenancy agreement between Jeet Enterprise and P.K. Gayan and Maa Trading and P.K. Gayan notarised from Notary Office. His evidence also reveals that thereafter, a cheque, amounting to 1.3 crore was deposited in a/c, and thereafter, Debasish Bhattacharyee deposited a high valued cheque. And after verifying genuineness of the cheque by the Manager by visiting Haflong the cheque was cleared and 84 lakhs was withdrawn on the same day by Shambhu Ghosh and Debashis Bhattacharjee. He received 2 lakhs against cheque of 3.5 lakhs handed over to him by Shambhu Ghosh. After about 1/2 days he tried to contact Debasish Bhattacharyee, Dhruba Ghosh and Shambhu Ghosh as he wanted to convey that they were



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supposed to get BSNL landline connection but none were available. On 24-6-09 he made a 164 statement before Magistrate Ext-74 is the statement.

259. The evidence of P.W. 29, Shri George Lamthang reveals that he converted Indian Currency amounting to Rs. 4.00 Crore, to US Dollars at the behest of Malswamkimi, who collects the said Indian Currency from Phojendra Hojai on three occasions from Shalimar and Madhumilon Hotels. He also identified accused Malswamkimi and Phojendra Hojai in the court. The evidence of this witness is discussed in details in foregoing paragraphs of this judgment.

260. PW-31- Ranjit Gogoi- testified that he is a Bank employee and was posted at zoo Road branch SBI. On 26-3-09 Debasish Bhattacharyee came for opening a current A/c in the name of MAA Trading. The Bank opened the A/c on 27-3-09 and thereafter Debasish Bhattacharyee has deposited a Cheque for Rs.84 lakhs and Rs. 57 lakhs and wanted to withdraw the amount on the same day. To ascertain the genuineness of the cheque, he visited Haflong and met PHE Engineer Mukherjee who confirmed the cheque as genuine. After credit of the Cheque amount the bank paid Rs 84 lakhs to Debasish Bhattacharyee, and thereafter on Monday Joyanta Kr. Ghosh also withdrew 3,50,000/ from the A/c of Maa Trading. You further opened one current A/c in the name of Jeet Enterprise in the month of May -2009.

261. PW-34- Debashis Dutta has testified that during 2008 to 2009 he was working as OSD to CEM Deepolal Hojai NCHAC- and on 26-11-08 Deepolal Hojai suddenly called him to his office at 8/8.30 AM and asked me to type a resignation letter citing his health ground and accordingly he did so. He went with the letter and returned back to the room and told him that typed one will not be accepted and that he has to give in his own handwriting. Next day he came to know that Deepolal Hojai has resigned and Mohet Hojai was elected as CEM of NCHAC Ext-96 is the resignation letter. His evidence also reveals that he knows Dhruba Ghosh and he took Dhruba Ghosh to Digant Vikram Gayan, whom Dhruba Ghosh knew prior to his introduction and he asked to help him in opening an A/c at Guwahati. His evidence further reveals that once when he returned by train from Kolkata he was handed over one envelope by D.Ghosh, Debasish Bhattacharyee and Sandip Ghosh to hand over to Imdad Ali. Later on, he came to know that the envelope containing a Cheque of Rs.1.20 crore.

262. PW-35- Imdad Ali testified that he was working as contractor in NC Hills. From 2007 to 2008 Deepolal was the CEM. He came in contact with Jayanta Ghosh, who is also



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known as Dhruva Ghosh, and he had catering business in Railway. In 2008, he carried an amount of Rs. 15 Lacs from Guwahati to Kolkata to be given to Joyanta Kr. Ghosh and accordingly he gave the amount to Joyanta Kr. Ghosh. The said amount was carried by Joyanta Kr. Ghosh and was given to somebody and he was along with him. His evidence further reveals that in 2009 Depolai Hojai resigned as CEM and Mohet Hojai became CEM and Mohet Hojai rang him up and told him that he wanted to send some heavy amount to Joyanta Kr. Ghosh at Kolkata and he asked that Marwari knows the procedure. After some days he met Didar Ahmed Choudhury who told him that Mohet Hojai has taken his help in sending about 80 Lakhs. In later part of January 2009 Mohet Hojai again telephoned him and told him that he has to send money to Kolkata. He also testified that he gave his statement, Ext-97, before the Magistrate u/s 164 Cr.P.C.

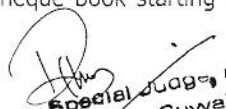
263. PW- 33 S.I. Nur Mohammad Khan testified that on 12.02.2009 he was working as Officer-in-Charge Diungmukh Police Station. On that day S.I. Ratneshwar Das of Haflong P.S. filed an FIR at Diungmukh Police Station. On receipt of the FIR he registered a case being Diungmukh P.S. Case No. 03/09 U/S 120 B/121/121A IPC dated 12.02.2009. He also came to know that in connection with the above case two accused persons were apprehended along with cash amount of Rs. 32,11,000/- and were in Haflong P.S. and he further came to know that he had received some secrete information that some members and workers of NCHAC were going to deliver a huge amount of money to the DHD (J) extremist somewhere in between Diungmukh and Haflong for the purpose of procuring arms and ammunition for promoting organization activities with a view a wage war against the State. Thereafter, immediately he along with his staff proceeded to Haflong P.S. In the mean time he found that S.I. Ratneshwar Das of Haflong P.S. has already seized the above mentioned cash amount and examined the available witnesses. He found accused Jibangshu Paul and Golon Daulagaphu in custody. He also interrogated the above two accused persons and examined the complainant S.I. Ratneshwar Das and recorded his statement. On interrogation he found the above two accused persons were involved in the above P.S. Case No. 03/09 and therefore he arrested them. He submitted a requisition to keep the accused persons at police custody for the night. On 13.02.2009 the two accused persons were forwarded to the Haflong Court with a prayer to remand 14 days Police custody. The Magistrate concerned granted 7 days police custody. They were brought to Haflong P.S. and requisition was given to the O/C Haflong P.S to keep the accused persons in the Haflong P.S. Police custody. On interrogation, accused Jibangshu Paul stated that UDA, Biraj Chakraborty of PHE Division, Haflong has brought the said seized cash amount from his house and has given it to him. Accordingly, said

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Biraj Chakraborty was brought to the Haflong Police Station for interrogation and requisition was submitted for keeping him in the police custody for the night for interrogation.

263.(i). His evidence also reveals that on 14.02.2009 Biraj Chakraborty was interrogated and arrested and forwarded to the Haflong Court and obtain 5 days Police remand for interrogation. On the said day he has examined the witness (1) Cons./396, Dipak Baruah, (2) LNK/380 Mangal Singh Tokbi and (3) Sri Ramprasad Sharma and (4) Sri Jagadish Ch. Das, APS, Dy. SP, HQ. On 15.02.2009, he along with available visited the place of occurrence and drawn up the sketch map as shown by the complainant S.I. Ratneshwar Das. On the same day he visited the BSF Camp which is located near to the place of occurrence and examined the witness namely (1) H/C 87007481 Mahesh Singh, (2) Con/9445481 Bishnu Kumar both of 145 Bn. BSF D. Coy. Camp Thajuwari. During investigation he has examined the available witnesses accused Sri Karuna Saikia, Executive Engineer, PHE, Haflong Divn. was also found involved in the case and for apprehending the said accused a WT message was sent to O/C, Dispur P.S. intimating the residence of accused at Basisthapur near Passport Office. Around 12.35 PM of 16.02.2009 he along with his staff visited the PHE Office, Haflong Divn. but he did not find any official in the office. Somehow he collected the name and phone no. of the cashier Sri S. Masa and informed him over telephone to come at Haflong P.S. for the interest of the case.

263.(ii). On 17.02.2009 he has submitted a requisition to the DTO, Haflong to examine the Scorpio vehicle bearing Registration No. AS08-5133 to examine mechanically. On the same day the Cashier Sri S. Masa, PHE Office Haflong Divn. come to Haflong P.S. as called for. He went to the PHE Office Haflong Divn. situated at Sarkari Bagan along with Cashier Sri S. Masa. After arrival at the said office he has seized (1) one cash book (2) one treasury transit register, (3) one used cheque book of SBI from cheque No. 317951 to 317975, (4) one used book of SBI from cheque no. 319001 to 319025, (5) cheque book of 25 cheque of SBI from cheque no. 319026 to 319039 as produced by the cashier Sri S. Masa. He has also examined the witnesses namely (1) Manesh Jidung (H. Asstt.), (2) Dharamraj Pandey (UDA) of PHE Haflong Divn. Ext. 85 is the seizure list by which the above items were seized and Ext. 85/1 is his signature. Ext. 86 is the cash book of the office of Executive Engineer, PHE, Haflong Divn. commencing from 29.03.2008 to 21.01.2009 page 1 to 95. Ext. 87 is the Treasury challan by which the seized amount of Rs. 32,11,000/- was deposited in the treasury. Ext 87/1 is my signature. Ext. 88 is the used cheque book no. 317951 to 317975. Ext. 89 is another cheque book starting from cheque no. 319001 to 319025. Ext. 90 is the


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cheque book no. 319026 to 319039. Ext. 91 is the treasury transit register of the office of Executive Engineer, PHE, Haflong Divn. commencing from 14.01.2008 to 09.02.2009. On 20.02.2009 accused Biraj Chakraborty was sent to Judicial custody. The seized articles vide Ext 85 was produced before the Haflong Court for seen. On examination the Magistrate has put the remark seen vide Ext 85/2. On the same day through treasury challan vide Ext 87 the seized cash amount of Rs. 32,11,000/- were deposited in the Haflong Treasury. On 21.02.2009 accused Sri Jibangshu Paul was sent back to Haflong Court. On the same day S.P., NC Hills sent S.I. Ratneshwar Das to the residence of Karuna Saikia at Guwahati (Beltola) for arresting him but Karuna Saikia was found absconding. On the same day he visited SBI, Haflong Branch for getting the copy of the statement of A/c no. 113150955724 I/C, PHE. Thereafter he could collect the statement of the said account from 2nd February, 2009 to 10th February, 2009 regarding deposit of and withdrawal of money from the said account. It was found that on 02/02/2009 there was deposit of Rs. 85,88,527/- in the said account. On 04.02.2009 Rs. 2,48,722/- and Rs. 31,35,485/- was deposited and on 09.02.2009 Rs. 1 Crore was deposited in the same account. On 03.02.2009 Rs. 10,50,000/- was withdrawn through cheque no. 319015. On the same day Rs. 11,50,000/- was withdrawn through cheque no. 317975 and on 04.02.2009 Rs. 27,76,035/- was withdrawn through cheque no. 319010. On 09.02.2009 an amount of Rs. 16,80,000/- was withdrawn in the name of Jagat Jidung through cheque no. 319035. And Rs. 13,65,000/- was withdrawn in the name of Bijen Naiding through cheque no. 319038 and Rs. 18,90,000/- was withdrawn in the name of Sahar Langthasa through cheque no. 319036 and Rs. 18,90,000/- was withdrawn in the name of Kiran Jidung through cheque no. 319039 and Rs. 12,60,000/- was paid to self cheque no. 319039. In total Rs. 80,85,000/- withdrawn on 09.02.2009. It reveals during investigation through documentary proof that the said amount was withdrawn under signature of Executive Engineer Sri Karuna Saikia of PHE Haflong Div. in the name of different persons. He tried to search the persons on whose name the cheques were issued but I could not trace the said persons. He also found that the five persons against whom the above cheques were issued were not known to the office bearers or workers except one Sri Dilip Phongro. It is also found that nobody knows the address of Dilip Phongro. On 02.03.2009 the seized articles were given in jimma to cashier Sri Sriwella Masa. Ext 92 is the jimmanama and Ext 92/1 is my signature and Ext. 92/2 is the signature of Sri Sriwella Masa. On 27.03.2009 on the direction of the Hon'ble High Court accused Sri Karuna Saikia was released on pre-arrest bail. On the same day accused Karuna Saikia was examined.


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263.(iii) He has drawn the sketch map of the place of occurrence. Ext. 93 is the said sketch map and Ext 93/1 is his signature. Ext. 94 is the jimma nama of handing over of the Scorpio vehicle bearing registration no. AS08-5133 belonging to Autonomous Council, N.C. Hills and two Nokia mobile of one Model No. is N-95 which was seized by S.I. Ratneshwar Das left in jimma to jimmadar accused Golon Daulagopu. He confirmed Ext. 95 is the FIR no. 03/09 of DMK (Diyungmukh) P.S. submitted by Ratneshwar Das on 12.02.2009.

263.(iv). On 28.03.2009 he handed over the investigation of the case to O/C, Diyungmukh P.S on being transferred to Umrangso Police Station along with case diary and relevant papers connected with the case. Later on he came to know that the case was handed over to NIA for investigation. During investigation of the NIA, he was examined and he has given my statement. He identified both the accused persons Sri Golon Daulagopu and Sri Jibangshu Paul in the Court.

263.(v). In cross-examination it is elicited that the sketch map Ext 93 was prepared by me at the place of occurrence. In Ext 93 the sketch map description of the place of occurrence is mentioned as 'kha' which at a distance of 400-500 metre distance from 145 Bn. of BSF Camp. Dihangi Police station is about 15 kms from the place of occurrence. He cannot say that place of occurrence is known as Dima Dao Wapo. After the occurrence the accused persons namely Jibangshu Paul and Golon Daulagopu were taken to BSF Camp at Thaijuwari. He cannot say how long the aforesaid accused persons were kept in the BSF Camp. The Thaijuawari BSF Camp was situated at about 30 kms from Diyungmukh Police Station


263.(vi). The FIR was lodge on the next day i.e. on 12.02.2009 at about 2.00 PM however the occurrence took place on 11.02.2009 at about 3.30 PM. The accused persons were taken from Thaijuwary BSF Camp to Haflong P.S but he cannot say at what time they were taken to the Haflong P.S. However, I took custody of the accused persons from Haflong P.S. on 12.02.2009 at about 4.00 PM and shown them arrested at about 6.00 PM. Next day i.e. 13.02.2009 the accused persons were produced before the Magistrate at Haflong Court. He admitted that while investigating the present case on 12.02.2009 he have not seized any documents regarding receipt of secrete information that some members/workers of NCHAC were going to deliver a huge amount of money to DHD (J) extremist in between Diyungmukh and Haflong for purpose of procuring arms and ammunitions. The Thaijuwary is about 30 kms


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from Diyungmukh P.S. At the time of seizure of money and other materials he was not present at the place of occurrence. It is a fact that he has not stated before NIA that on interrogation of accused Jibangshu Paul he stated that Sri Biraj Chakraborty, UDA of PHE Divn. Haflong has brought the seized cash amount from his house and has given it him. At the time of seizure of the alleged money BSF officials were also present.

264. The evidence of P.W.36 Shri Ratneswar Das reveals that he joined Diyungmukh Police Station, N.C. Hills as OC in 2009. On 11.02.2009 he received a information from source that some member of the Council of N.C. Hills carried huge amount of money to be given to the organization DHD (J) for purchase of arms and ammunitions between Haflong and Diyungmukh. Then he along with DSP, HQ Sri Jagdish Das and three PSOs we went towards Diyungmukh for checking. We checked different vehicles in between Haflong and Diyungmukh. Then we proceeded to Thijowari where around 3.15 PM one Scorpio bearing regd. No. AS-08-5133 was stopped and was checked. On checking we found one VIP bag with cash amount of Rs. 32,11,000/-. The occupant of the vehicle was one Golon Dauloguphu, MAC of NCHAC, Jibangshu Paul and two PSO of MAC. They were interrogated but as they could not give any satisfactory reply, the cash were counted and were seized. Jibangshu Paul replied that the bag and the money belongs to him. Thereafter, for safety we brought the vehicle along with cash and Golon Dauloguphu, MAC of NCHAC, Jibangshu Paul and two PSO of MAC to the Thijowari, BSF Camp. They were interrogated and were kept in the BSF Camp, Thijowari for safety for the night. Ext. 101 is the seizure memo by which Indian Currency of 1000 denomination of 14 full bundle and one bundle of Rs. 90,000/- total Rs. 14,90,000/- , and Indian currency of 500 denomination of 34 full bundle and one bundle of Rs. 21,000/- total Rs. 17,21,000/-, one blue ash colour bag which is exhibited as M. Ext. 17, one Orpat mobile set with sim which is exhibited as M. Ext. 18, one Nokia mobile with sim (Model 1600) which is exhibited as M. Ext. 19. The seizure memo was signed by three independent witnesses Ram Prasad Sharma, Dipak Baruah and Baljit Singh. Ext. 102 is the seizure memo relating to the seizure of Scorpio vehicle bearing Regd. No. AS-08-5133 and two mobile handsets with sim and one Nokia Mobile handset (model N95) with sim. The seizure memo was signed by two independent witnesses Ram Prasad Sharma, Dipak Baruah and Baljit Singh.

265. On the next day i.e. on 12.02.2009 they took all of them to Haflong Police Station and we informed the OC, Diyungmukh regarding the incident and filed an FIR. Ext. 95 is the said FIR and Ext 95/1 is his signature. On receipt of the FIR OC, Diyungmukh, PS registered a case being Diyungmukh PS Case No. 0309 U/S 120B/121/121A IPC. In the FIR


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Ext. 95/3, Golon Dauloguphu, MAC of NCHAC, Jibangshu Paul were shown as accused. On the same day he handed over my MCD to the I/O, SI, Nur Mohammad Khan along with seized articles, apprehended persons. The I/O, SI, Nur Mohammad Khan examined me regarding the incident and recorded my statement. Thereafter, said I/O, SI Nur Mohammad Khan proceeded with the investigation of the case. Thereafter, SP, N.C. Hills directed me to hand over the case to NIA. Ext. 103 is the receipt memo by which he handed over Diyungmukh PS Case No. 03/2009 along with case diary to DSP, NIA, K. S. Thakur on 15.07.2009. The seized money was later on deposited in the Treasury vide Ext. 87.

266. It is elicited in cross-examination that the occurrence took place on 11.02.2009 at about 3.30 PM. The FIR was lodged on 12.02.2009 before OC, Diyungmukh PS. In the FIR Ext 95 he has not explained the delay in lodging of the same. It is also elicited that on 12.02.2009 he was Town SI, Haflong PS. The occurrence took place near Thaijowary BSF Camp and the place is about 300-400 mts towards Dehangi PS. Since the place of occurrence is a hilly area so he cannot say the exact distance between the place of occurrence and Dehangi PS. He denied that the place where the Scorpio car was intercepted falls within the territorial jurisdiction of Dehangi PS. and he also cannot say the exact distance between the place of occurrence and Diyungmukh PS since it is hilly area. He denied that the place where the car was intercepted does not fall within the territorial jurisdiction of Diyungmukh PS.. The Ext. 102 was prepared on 11.02.2009 at about 5 PM. In the seizure list he has mentioned Haflong PS GD entry No. 283 dated 11.02.2009. However, the place where the incident took place does not fall under Haflong PS. He prepared the seizure list Ext 102 at the place of occurrence. One Baljit Singh, Sub-Inspector of 145 BSF Battalion was camped at Thaijowary was also witness to the said seizure Ext 102. It is not a fact that the Ext 102 was prepared subsequently at Haflong PS. he denied that as the place of occurrence does not fall within the territorial jurisdiction of Haflong PS, so he was not empowered under law to make search of the Scorpio vehicle and thereafter make seizure of the article found therein vide Ext 102. In cross-examination by accused Jibrangshu Paul he admitted that the accused persons could not give satisfactory reply for possession of huge amount of sum so he presumed that the aforesaid money was meant and carried to hand over the the extremist organization. Apart from source information he do not have any materials to show that the money which was seized on 11.02.2009 vide Ext 101 was meant for handing it over to the extremist organization.

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267. The evidence of PW- 40, Sh. Nabajeet Buragohain has already been discussed. His evidence reveals that on 07.08.2009, as per verbal direction of the Addl. Deputy Commissioner, Kamrup (Metro), in the evening hours he along with NIA officials remained present at Kahilipara Special Operation Unit (SOU). There, one accused by the name of Vannehchema @ Vantea @ Vanlalchhana @ Joseph of Mizoram came over and volunteered to disclose regarding his associates lady namely Sawmi. Thereafter, the said Vanlalchhana disclosed in Mizo language which was recorded in Mizo by a Mizo officer who was present and later the same was translated into English and was explained to said Vanlalchhana who on being satisfied put his signature on the disclosure memo on my presence. The English version of the disclosure reads as "I know a lady named as Swami, she stays in Aizawl, she along with another person Thanga used to convert Indian rupee to US Dollar for me to be supplied to DHD (J) Group three times. I took their help for this work. She used to go to Kolkata for this work; her telephone no. is 9436197755". Ext. 118 is the said disclosure memo, Ext. 118/1 is the signature of Vanlalchhana who put his signature in his presence. Ext. 118/2 is his signature. Ext. 118/3 is the signature of Lalsanga, who translated the Mizo version to English in his presence. Ext. 118/4 is the signature of NIA Officer, Santosh Kumar.

267.(i). His evidence further reveals that on 16.09.2009 on the verbal order of Addl. Deputy Commissioner he remained present at SOU P.Kahilipara. There, accused Niranjana Hojai, during the course of interrogation by the I/O, made a disclosure statement before the I/O in his presence and he also led the I/O for discovery of some incriminating article which was also recovered in his presence. Ext. 125 is the said disclosure memo and Ext. 125/1 is his signature. Thereafter, the accused led them to the house of Sri Milan Barman located at Ward No. 13, Ganeshpara, Guwahati at about 5.30 PM where at the instance of Niranjana Hojai a black handbag was brought out from the steel almirah from the house of Smti. Bulbul Barman containing the articles mentioned in Ext. 126 (Recovery Memo) in his presence. Ext. 126/1 Ext. 126/3 are his signatures as witness. The articles were:-

- (i) Mat. Ext. 45 is a Thai Express Orange credit card No. 770042696 in the name of Nirmal Rai.
- (ii) Mat. Ext. 46 is Marriott vacation Club Asia Pacific Card No. 8698 in the name of Nirmal Rai.
- (iii) Mat. Ext. 47 is interval international Card No. 6112472 in the name of Nirmal Rai.
- (iv) Mat. Ext. 48 is the Our Spa Membership Card.
- (v) Mat. Ext. 49 is the Thai Orchid Plus Membership Card No. GH34020 in the name of Nirmal Rai.


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- (vi) Mat. Ext. 50 is the Marriott Rewards Card No. 089094130 in the name of Nirmal Rai.
- (vii) Mat. Ext. 51 is the Entry Card (Safe Deposit)
- (viii) Mat. Ext. 52 is the Card of JW Marriott Bangkok.
- (ix) Mat. Ext. 53 is the Priority Club Rewards No. 697161738 in the name of Nirmal Rai.
- (x) Mat. Ext. 54 is the Thai Royal Orchid Plus card No. GH26237.
- (xi) Mat. Ext. 55 is the City Bank International Card No. 4568817000087844 standing in the name of Nirmal Rai.
- (xii) Mat. Ext. 56 is the Citi Bank Card No. 5889310210735344 standing in the name of Nirmal Rai.
- (xiii) Mat. Ext. 57 is the Citi Bank Account card No. 693865 in the name of Nirmal Rai.
- (xiv) Mat. Ext. 58 is the address Card in the name of Nirmal Rai with email address.
- (xv) Mat. Ext. 59 is the Laptop handbag VAIO.
- (xvi) Mat. Ext. 60 one Laptop (Sony VAIO) S.N. 28274870700104 along with Sony AC Adopter.
- (xvii) Mat. Ext. 61 is the Pen drive Sony (16 GB).
- (xviii) Mat. Ext. 62 is the Nokia Mobile, Model No. 6120C-1.
- (xix) Mat. Ext. 63 is the ERO Mobile SIM Card No. 899770208001048099.

267.(ii). His evidence also reveals that after recovery of the said articles they came back to the NIA office. At the time of recovery of the articles marked Ext 45 to Ext 63, accused Niranjana Hojai @ Nirmal Rai admitted that the articles belongs to him. Cross examination of this witness reveals that he did not know accused Vanlalchana from before. The investigating officers identified the said accused to him. In the statement in Ext 125, the accused disclosed that some articles could be recovered from the house of one Bulbul Barman. He denied the defence suggestion that accused Niranjana Hojai neither made any disclosure statement nor led the I/O to recovery of the articles and that the statement recorded in Ext 118 was not the statement of accused Vanlalchana and same was recorded by the I/O to suit the prosecution case.

267.(iii). The Id. Counsel for the accused has raised doubt about the veracity of the version of this witness on the ground that he admitted having visited NIA office on several occasions. The Id. Counsel has referred one case law: **Salim Akhtar Vs. State of Uttar Pradesh 2003(3) Supreme 305**, in support of the submission, where it has been held that Police made no efforts to get any independent public witness at the time of the alleged

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recovery was made and the only public witness examined appears to be a person was not only intimate but was also obliged to them. Having gone through the case law and taking into account the facts and circumstances on the record we find that the ratio laid down in the said case is not applicable in all force to the facts and circumstances here in this case. On the otherhand the law laid down by the Hon'ble Supreme Court **Karamjit Singh v. State (Delhi Administration)** (Supra) and **Krishna Mochi v. State of Bihar** (Supra) to our considered opinion will adequately take care of the aforesaid submission.

268. The evidence of PW 52, Sh. C.P. Phookan, Executive Magistrate at Kamrup, (Metro) reveals that on 08.08.2009, as per instruction of the Deputy Commissioner he remained present at SOU Police Station at Kahilipara in connection with preparation of photo identification memorandum sought to be prepared by NIA, where another Government Officer namely, Nabajit Buragohain also remained present. In their presence, the NIA officials showed the accused some photographs to the accused namely, Vanlalchahanna @ Vantea @ Joseph. On production of these photographs before him and his said colleague the accused could identify two photographs on the reverse of which the accused signed along with he and other officials present. Ext. 241 is the said photo identification memo, Ext 241/1 is his signature and Ext 241/2 is the signature of Nabajit Buragohain, Ext 241/3 is the signature of accused Vanlalchahanna @ Vantea @ Joseph, who put his signature in their presence and Ext 241/4 is the signature of Mr. Lalsanga, SI of Mizoram Police who worked as interpreter during the proceeding. Ext. 242 is the photograph identified as Niranjana Hojai by the accused. Ext 242/1 is his signature. Ext 242/2 is the signature of Nabajit Buragohain. Ext 242/3 is the signature of accused Vanlalchahanna @ Vantea @ Joseph and Ext 242/4 is the signature of interpreter Mr. Lalsanga, SI of Mizoram Police. Ext 243 is the photograph of Jewel Garlosa, identified by the accused. Ext 243/1 is his signature. Ext 243/2 is the signature of Nabajit Buragohain. Ext 243/3 is the signature of accused Vanlalchahanna @ Vantea @ Joseph and Ext 243/4 is the signature of interpreter Mr. Lalsanga, SI of Mizoram Police.

268.(i). It is elicited in cross-examination that the photograph of Niranjana Hojai (Ext 242) is a little blurred compared to others. NIA officials introduced him to the accused as Vanlalchahanna @ Vantea @ Joseph and at that particular time accused Vanlalchahanna @ Vantea @ Joseph was under custody of the police (NIA) as he was brought by NIA before.

268.(ii). The evidence of these two witnesses show that in their presence accused Vanlalchann @ Vantea has identified the photograph of accused Niranjana Hojai and of Jewel Garlosa and also made a disclosure statement and on translation the same read as thus "I


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know a lady named as Swami, she stays in Aizawl, she along with another person Thanga used to convert Indian rupee to US Dollar for me to be supplied to DHD (J) Group three times. I took their help for this work. She used to go to Kolkata for this work; her telephone no. is 9436197755". But to treat this as disclosure statement as per section 27 of the Evidence Act something has to be recovered consequent to same. Here in this case nothing has been recovered. Though it can be treated as extra-judicial confession, yet, since the same been made in presence of NIA official, it cannot be admitted in evidence. However, identification of photographs of both Niranjana Hojai and Gewel Garlosa by accused Vanlalchanna goes to show his acquaintance with them as member of DHD (J).

269. PW-46 Sh.Nairing Daulagupu testifies that he joined DHD (Dima Haram Daogah) a militant organization led by Jewel Garlosa, in the year 1995 and remained there till 2003 and the arms and ammunition requires for operation of the organization were purchased locally also used to get from Bangladesh. Jewel Garlosa is the Chairman and Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the C-in-C. And on 1.1.2003 the organisation declared cease fire and he and other 300 cadres shifted to the Designated camp and in Oct., 2003 Jewel Garlosa formed another militant organisation in the name DHD (J).

270. P.W. 49- Shri Darak Nath Pegu Dy. G.M. BSNL Guwahati testified that by letter dated 31.07.2010, Ext. 216, Mobile Call Data Record (CDR) in respect of Mobile No. 9401411614, 9435293933 and 9435077012 was provided to Inspector, NIA. Mobile No. 9401411614 belongs to one Jibangshu Paul, Mobile No. 9435293933 belongs to one Ruli Daulagupu, Mobile No. 9435077012 belong to Golon Daulagupu, MAC, N.C. Hills, Haflong. The CDR provided is for the period of November, 2008 to February, 2009. His evidence also reveals that Ext.227 is the CDR of Mobile No. 9401411614 from 01.01.2009 to 28.02.2009, containing 1159 rows was submitted to NIA pursuant to the letter dated 31.07.2010, Ext.226. And Ext. 228 is the CDR of Mobile No. 9435077012. It is to be mention here that the service provider here in this case has failed to furnish the certificate u/s 65-B Evidence Act and as such the CRD cannot be admitted in evidence.

271. PW-58- Dinesh Kr. Vora- testified that in 2009, he was working as receptionist at Hotel Shalimar. Ext 255 is the visitor register with entries from 01-04-08 to 20-01-09. At Sl. No.-1519 of 18-01-09 is entry of stay of Phojendra Hojai and his check in date is 18-01-09 and check out date is 21-01-09. Ext 255/2 is another visitor register with entries from 20-01-09 to 10-07-09. At sl. no-1615 of 03-02-09 is entry of Phojendra Hojai and his

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check in date is 03-02-09 and check out date is 04-02-09. On 10-03-09, your associate, Phojendra Hojai check into the Hotel. At Sl. no-1789 of 10-03-09 is his entry of his stay, and his check in date is 10-03-09 and check out date is 14-03-09. Ext-255/5, Ext-255/8, Ext-255/11 are the bills.

272. P.W.59 Shri Devinder Singh, Dy. S.P. NIA testified that On 12.08.2009, he joined in the interrogation of accused Malshawmkimi, and George Lam Thanga, and they volunteered to give disclosure statement for which the disclosure statement was recorded of both the accused. By the said disclosure statement -Ext 257 Malshawmkimi disclose to recover cash from Shalimar Hotel, Kolkata from Room No. 113. During search of the aforesaid room a sum of Rs. 10,00,000/- recovered at the instance of accused Malshawmkimi. Ext 78 is the disclosure statement made by George Lam Thanga by which he had disclosed about Rs. 5,00,000/- kept by him in Steel box kept at his ancestral house at Room no. 19A, Trity Bazar Street, Kolkata. Ext 258 is another disclosure memo of accused Malshawmkimi and Ext 79 is the disclosure statement of George Lam Thanga by which he disclosed visiting of Shalimar Hotel. Ext 259 is the pointing out memo by which accused Malshawmkimi pointed out Hotel Shalimar, where she met co-accused. Ext. 52 is the pointing out memo of George Lam Thanga by which he had pointed out Madhumilan Guest House, where he met other co-accused. Ext 53 is another pointing out memo by which accused Malshawmkimi pointed out Madhumilan Guest House, where she met other co-accused, Ext. 80 is the pointing out memo by which accused George Lam Thanga disclosed the visit to Hotel Shalimar.

273. The evidence of P.W. 61 Shri Ian Onel Swer and PW-62 Sh. K.D. Marak testifies that on 1.3.09 one Dara Singh Rongpu and AttenHaflong Bar were apprehended with a Tata Sumo and cash Rs. 50 lakhs and during interrogation it was revealed that the amount was belonging to DHD (J) group and which was sent for purchasing of arms at Shillong Moblai Mowbbmaidanreitei area. In connection with the same Case No. 77(07)/2007 u/s 25 (1)(a), 1(b) Arms Act read with Section 10/13 UA(P) Act was registered. The Id. Counsel for the accused has submitted that the any statement made before the police officer is not admissible. There is force in the submission. But the defence side has not disputed the seizure of Rs. 50 lacs from the possession of the two persons namely Dara Singh Rongpu and Atten Haflong Bar. As made before police their statement cannot be taken into account in view of the bar of section 25 of the Evidence Act.

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274. PW-69- Sheo Kr. Pandey- Manager Madhumilan Guest House testified that Ext 50- is the Guest House Register from March 2008 to 15-10-08. On 13-03-09 at Sl. No. 1892 Phojendra Hojai occupied Room No-810. Ext-52 is pointing out memo of George Lamthang and Ext.53 pointing out memo of Malswamkimi by which they pointed out that they met him there.

275. PW-70- Caushiq Bezbaruah Executive Officer News Life- stated that he forwarded CD containing the news of arrest of Phojendra Hojai and Babul Kemprai with an amount of Rs 1 crore. By Ext 270 another letter by which he handed over three CD containing video footage of surrendered ceremony of DHD (J). The Id. Counsel for the accused has submitted that the CD is inadmissible in view of the non furnishing of certificate u/s 65B Evidence Act. It is a fact the no such certificate is furnished here in this case along with the CD and this lapse makes the same inadmissible as contended by the Id. Counsel for the accused.

276. P.W.71-Shri Andreas Teron, a Jr. Assistant at D.C. Office, Haflong testified that on 12.8.09, he witnessed seizure of certain documents produced by Manoj Kr. Talukdar, Jr. Engineer vide Ext.184 and which was taken over by K.S. Thakur, Dy. SP, NIA. Similarly, in Ext.185, in Ext.186, in Ext.187, in Ext. 188, in Ext. 189, in Ext. 190, in Ext. 191, in Ext. 192 and in Ext. 193, in Ext 194 bears his and the signatures.

277. The evidence of PW-72 Sh. Anurag Tankha the then Supdt. of Police, NC Hills, Haflong, has already been discussed in detail in respect of accused Jewel Garlosa. What is transpired from his evidence is that the DHD (J) cadres came over from the jungles before the Civil Administration in batches and two major batches surrendered on 13th and 14th September, 2009 a formal surrender ceremony was organized at District Head Quarter, Haflong on 2nd October, 2009 which was attended by Hon'ble Chief Minister of Assam and he supervised the arrangement as Supdt. of Police, NC Hills. And in the aforesaid ceremony Niranjana Hojai was the Sr. most DHD (J) cadres along with other cadres who led the surrendered ceremony. He confirmed Ext. 272/6 to Ext 272/8, the list of arms, ammunitions, magazines, explosives etc. deposited by surrendered DHD (J) cadres and Ext 272/2, 272/3 and 272/4 are the list of cases where arms and ammunition were snatched by extremist which he sent to the Inspector General of Police, CID, Assam Police. Nothing tangible could be elicited in cross-examination of this witness. The list has been prepared by his sub-ordinate staff from the available record of weapons surrendered physically.


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278. The Id. Counsel for the accused submitted that since the list of arms and ammunitions were not prepared by this witness and since the person who prepared those documents have not been examined and the source record has not been exhibited in the court the same cannot be admitted in evidence. But mention to be made here that these lists have not been disputed by the defence side in cross-examination of this witness.

279. PW-89- Ram Prasad Sarma- testified that on 11.02.2009, he was driving a Scorpio of N.C. Hills allotted to Golon Daulagupu. On that day, at about 1.30 p.m. he was taking Golon Daulagupu and one Jibanshu Paul and when they reached an area called Dima Dao around 3 p.m., police stopped them and the bags carried by Jibanshu Paul & Golon Daulagupu were searched. The bag carried by Jibanshu Paul was found with Rs.32,11,000/- A seizure memo was prepared whereby the Scorpio vehicle bearing Registration No. AS-08 5133 and 2 Nokia mobile handsets were seized from G. Daulagupu. Ext.102 is the Seizure memo, Ext.102/2 is my signature. Another seizure memo regarding seizure of cash of Rs.32,11,000/-, one ash colour bag, one Orpat mobile set, one Nokia mobile set (Model No.1600) seized from Jibanshu Paul was prepared. Ext.101 is the said seizure memo.

280. PW-90- B. Ramani has deposed that he is the Executive Director C-DAC. By Ext-304 NIA sent 14 objects for examination including hard disc for examination to find out deleted files that could be retrieved, files pertain to sanction of works, supply order, copies of e mails. They carried out forensic imaging and ensured the authenticity of the evidence by generating Hash Value of the 7 hard discs and then did the analysis and submitted report- Ext.306 in 20 pages. His evidence has already been discussed in details.

281. P.W.112, Shri Hiren Singh testified that on 16.06.2009, he remained as a witness to the seizure of certain documents by NIA vide Ext. 292 and Ext. 383 are the 11 Nos. of bills of M/s Maa Trading and Ext. 384 are the 9 nos. of challans again on 18.06.2009, he was present in the preparation of Inspection of Store and verification of stock. Ext 324 is the said Inspection Memo and again on 19.06.2009, he remained present in the preparation of Deficiency Memo by the NIA officials, Ext 183 is the deficiency memo, Ext 385 is the Service Book of Niranjana Hojai, LDA in the Office of PHE, Umrangso. And again on 20.06.2009, he remained present at Nothau Lodge, Cottage No. 10, Haflong, where one Laptop, Model No. PP29L was seized from Kulendra Daulagapu. Ext 386 is the said seizure memo Mat. Ext-77 is the said Laptop, and on 16.06.2009, he remained as witness to the seizure of three


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documents from the office of Deputy Director, Social Welfare. Ext 387 is the seizure memo, and he put his signature on all the above mentioned documents.

282. PW-126- Depolal Hojai testified that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CEM, but he submitted resignation and Mohet Hojai became the CEM. On 27th November, 2008 he submitted resignation from the post of CEM on health ground because he and his wife were ill at that time. Ext. 96 is his resignation letter to the Governor of Assam dated 27.11.2008. As the council was in session Mr. Mohet Hojai was elected as CEM immediately. After resignation from the post of CEM, he along with his wife came to Guwahati for treatment. At present the CEM of the Autonomous Council of Dima Hasao is Niranjan Hojai. In 2008, said Niranjan Hojai was in jungle. He knows Jewel Garlosa who is now an elected MAC. He also contested the election in the year 2013 and was elected. He do not know where Jewel Garlosa was in 2008. He has not come to the politics during that time. During the time when he was CEM, Kulendra Daulagapu (BJP), Debojit Thousen (BJP), Kalijoy Sengyung (ASDC), Prakanta Warisa (ASDC), Mayanong Kemprai (ASDC), Bijoyendra Sinha (ASDC), Mohendra Ch. Nunisa (ASDC), Mohet Hojai (ASDC), Golon Daulagapu (ASDC), Lalhangsang Hmar (ASDC), Phoudami Zemi (ASDC), Hamjanaan Langthasa (BJP), Subrata Hojai(BJP), Nipolal Hojai (BJP), Bakul Bodo (BJP), Lalhangjuala Hmar (ASDC), Smti. Rani Langthasa(BJP), Kur Rongpi (ASDC) were the members of the Council.

282.(i). His evidence also reveals that during that time when he was the CEM, the law and order situation of the council was bad. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "On 26th November, I was in the Session of the Council. I went as a Chief Guest in a Medical programme. The EM of Medical Department Kulendra Daulagapu was also with me. At 5 PM, when I was reaching home Bijay Sengyung (EM) called me up and said that he had been trying to find me. When I asked him as to what was the matter, he replied that I have been asked to make you talk to Niranjan Hojai of the DHD(J). He also said that if I wait for some time, the phone of Niranjan Hojai will come. I then went to my bedroom and asked Bijoy to wait in the sitting room. The phone came after 15 minutes. He gave the phone to me. Niranjan was talking to me and he asked me to call for a meeting of all elected members to


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Hazarika could not get any funds at all. In a desperate move, I made RH Khan as the Liaison Officer after discussing with senior members Prakanta Warisa and Mohet Hojai. They also said that only he can manage funds for the council. RH Khan was the favourite of the Governor and as the Nodal Officer he used to move in a Helicopter to NC Hills".

"Regarding Phojendra Hojai, I have to say that he is a rogue type of element and forced me to give him work. He has a relation with Daniel of the DHD(J). Sometimes when I refused to meet him, he threatened and fought with my guards. I think he takes most of the money from the contractors and the engineers to be paid to the extremists."

"Regarding Dhruba Ghosh, I have to say that he is a big contractor and has taken a lot of works of the PWD. Once when I was travelling from Dihangi to Thajuwarii, I called him up and told him that he had not done any work on that stretch. I also took that engineer to task for not getting the work done although they had claimed that the work was completed."

282.(ii). It is worth mentioning here in this context that this witness during cross-examination by the prosecution has admitted some facts which are:- that on 26th November, there was Medical departmental programme and he was the Chief Guest. He also remembers that the EM in-Charge, Medical was Kulendra Daulagapu. He also remembers that after conducting the programme, he reached home at around 5 PM. He remembers that Bijoy Sengyung, Kulendra Daulagapu came and met me for holding the Session of the Council. And he remembers that he had fixed the Session at round 7 PM on that day. The meeting lasted for about 1 ½ to 2 hours. In the said meeting he decided to resign. The decision to take to elect the next CEM Mohet Hojai was taken on the next day. He know Purnendu Langthasa, he was the CEM till 2006. He was killed by extremists in the year 2006. He remembers he was killed during election campaign by extremists. It may be DHD (J) but he cannot say exactly. He does not know why he was killed. He remained as CEM for 11 months from January, 2008 till November, 2008. He was never threatened by anybody from the any quarter. He also admitted that he has heard of Maorong Dimasa who belongs to DHD (J) and that he has been killed and his dead body was recovered about 2-3 years back. He was in the Ceasefire Camp. He heard that there was demand for money but nobody complained to him during his tenure as CEM and nobody demanded money from him. He know R.H. Khan, he was the Deputy Director, Social Welfare. He heard that during the time of Governor's rule before he became CEM, he was also working as Liaison Officer. He knows Assistant Executive Engineer of Agriculture Sh. Dipak Hazarika. He made him Nodal officer of the Council as he used to


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procure funds from Government of Assam as he know that unless somebody pushes the funds are not released. He was there as Nodal Officer for about 3 months and they found him he was not in a position to bring funds. He do not remember exactly whether RH Khan was made Nodal officer after him. He knows Phojendra Hojai, who was a contractor. He know Deniel who was member of DHD(J). At present he is an elected member of the Council as an independent candidate. Now he has joined BJP and now he is Executive member of the Council. He do not know Dhruba Ghosh but he has heard his name.

282.(iii). He also admitted that since before his time of taking over as CEM, many efficient government officials were reluctant to be posted in NC Hills because of problem of extremists and because of this developmental works suffered to certain extent. There were two groups of extremists one was DHD and the other was DHD (J) and there was also presence of other extremists groups. It is matter of common knowledge because of extremists and extortion developmental works was suffered. There were also killing and kidnapping by the extremists details of which could be found in the police reports. After his resignation he shifted to Guwahati with my family and now also he is staying at Guwahati.

282.(iv). In cross-examination by accused Mohet Hojai it is elicited that during his tenure as CEM no extremists group interfered or dictated in their day to day business of the Council. He never said before police that Mohet Hojai had a role behind his resignation and he had a link with DHD (J). He was not taken to any Judicial Magistrate for recording my statement u/s 164 Cr.PC. He admitted that he shifted to Guwahati only for education purposes of his children and not for fear from any corner.


282. (v). It is to be mention here that the evidentiary value of hostile witnesses has already been discussed in forgoing paragraphs of this judgment. In view of the ratio laid down by the Hon'ble Supreme Court in **Haradhan Das Vs. State of West Bengal, (supra)**, the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. In the case in hand though this witness denied having resigned on the dictation of accused Niranjana Hojai and out of fear, yet, the events before his resignation, and after his resignation, speaks otherwise. Though, he stated that he resigned on health ground and other witnesses, namely Kulendu Daulagapu also stated the same, and that he left for


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Guwahati on the very next day of his resignation, along with his wife for treatment, yet, in cross-examination by defence he stated that only for education purposes of his children he shifted to Guwahati.

282.(vi). The Id. Counsel for accused Niranjan Hojai has submitted that though the prosecution side has declared P.W. 126 hostile, yet it has not declared P.W. 23 Shri Kulendru Daulagapu as hostile, in whose mobile hand set, the alleged phone call of Niranjan Hojai has come, and who deposed in his evidence before the court that Depolal Hojai has resigned citing health ground and, therefore, it is binding upon the prosecution. There is no doubt about the legal proposition so pointed out by the Id. Counsel. But the thing needs to be analysed to a little depth to find out the actual cause of resignation of Depolal Hojai.

283. It is to be mention here that the prosecution side got the statement of witness Kulendru Daulagapu recorded in the court u/s 164 Cr. P.C. The prosecution side has exhibited a xerox copy of the same as Ext.56. The original copy was exhibited as Ext. 330 through P.W. 97- Shri Romen Baruah, who has recorded the same. The witness also admitted having given a statement U/S 164 Cr. P.C. before the Magistrate. In cross-examination by the defence he denied the suggestion that his statement U/S 164 Cr. P.C., Ext.56 was made as he was asked to say that way by the NIA/the Investigating Agency. Thus, he virtually admitted the facts what he has stated in the statement u/s 164 Cr. P.C. Mention to be made here that P.W.23 in his evidence stated that "during one of the meeting, may be sometime in Nov., 2008, Dipolal Hojai cited his ill health and offered to resign from the post of CEM, NC Hills Autonomous Council." And he stated the same fact stated in his statement u/s 164 Cr.P.C. also that Depolal Hojai has resigned on the next day of meeting showing health problem. And Depolal Hojai also deposed that on 27th November, 2008 he submitted my resignation from the post of CEM on health ground. Though he and P.E.23 omitted to state the actual reason behind the resignation before the court, yet he stated in his statement u/s 164 Cr.P.C. that Niranjan Hojai asked Depolal Hojai to resign from the post since he has failed to resolve many issues. We are not oblivious of the dictum that being the statement u/s 164 Cr. P.C. cannot be read as evidence, yet a conjoint reading of the evidence of P.W.23 and Ext.330, the statement u/s 164 Cr. P.C. and the evidence of P.W.126 will transpire that the actual ground of resignation of P.W.126 is not the health ground but because of asking of Niranjan Hojai and the threat perception given by him. The events and the facts and circumstances before and after his resignation, and the other facts and circumstances on the record, when considered in totality the same further bolstered the same. Having been


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reminded to him the fate of Purnendu Langthasa, the erstwhile CEM, and out of fear of his life he resigned from the post of CEM and on the very next day he left for Guwahati and stated that for treatment of himself and his wife but on the very next moment he stated that for the purpose of education he shifted to Guwahati. The oscillation of his version show his upset mind and concealing of truth. Thus, it cannot be acceded to with the submission of the Id. defence counsel that the evidence of P.W.23 is binding upon the prosecution.

284. PW-20- Ronsling Langthasa- testified that he was cadre of DHD of NC Hills for about 16 years. From 1996 Niranjan Hojai was the Chairman, Dilip Nunisa was the Vice Chairman and Pranab Nunisa was the Commander-in-Chief. From 01-01-2003 DHD group entered into cease fire with the Govt. After cease fire Jewel Garlosa continued with the organisation and he suddenly disappeared. Dilip Nunisa continued with the organisation and till this stage the said group worked for finalisation of the accord in Oct 2012. And Jewel Garlosa's group was also a party to the accord. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "The administrative power of DHD was in the hand of Jewel Garlosa @ Mihir Barman. He used to organise the procurement of weapons and training of members of DHD. For weapons, he used to extort money from businessman, contractors and council members. In 2003 DHD declared ceasefire and Jewel Garlosa was a signatory to the ceasefire. First JMG(Joint Monitoring Group) meeting was held in March 23,2003. In that meeting Dilip Nunisa and myself joined the meeting. Jewel did not join the meeting. After the JMG, he met the IGP alone. Jewel was dominating character and did not listen to anyone. He started staying with his own cadres of 10-12 men with full arms and did not join the designated camp. If anyone wanted to meet him, he had to go to the village and not in the camp. Slowly he increased his strength and started recruitment on his own. Before this, the MHAR group killed 29 people (villagers) in which seventeen widows came into existence. On their name, he formed an organization named "Black Widow" to take revenge.. Then DHD (ceasefire) came to know that Jewel has formed a new group. They took training in Manipur with Kuki organization. When DHD ceasefire went to his (Jewel's) house, they found Arms, 26 lakhs in cash and other objectionable items present there,"....."Then Jewel ran away seeing that his secrets have been found. From that day, he started staying out. When his cadres returned from Manipur after training, they started staying in West Karbi Anglong area. He started operations from that area. The group of DHD (J) started money collection, and armed action. They firstly


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attacked three Dimasa auto drivers. The Jewel group started also operating with UPDS (group of Karbi Anglong)." The witness also stated before him as " At that time in 2005, Jewel group did not have a very big strength. At that time of last council election in 2007, they (group of Jewel) killed Purnendu Langthasa and Nindu Langthasa when they had gone for canvassing at Dihangi. In the same day, the group of Jewel Garlosa killed Ajiot Bodo at Kalachand after taking out his eye when he was alive."....."At that time Jewel had approximately 60 cadres heavily armed with AK 47 and M-16 weapons. They also kept recruiting and slowly increased their strength. After the election, Jewel announced in the election to vote for ASDC & BJP. He threatened those who would vote for congress. He entered into an agreement with Mohit Hojai regarding providing money after he wins elections. Mohit Hojai won on ASDC ticket. It is to be noted that Maurung (Dy C-IN-C) of Black Widow(Jewel) group is the cousin brother of Mohit Hojai." "After elections, Dipolal Hojai was made CEM and Mohit Hojai was made EM alongwith other EM. The Jewel group asked for money from Dipolal Hojai but could not give that amount of money. So, Mohit Hojai was made CEM in 2009. Mohit Hojai used RH Khan as the Liaison officer for the council. All the state Govt funds were siphoned with the help of RH Khan and used to go to Mohit Hojai. Niranjana Hojai and Daniel of DHD (J) group used to be in the touch with Mohit Hojai over phone and used to demand money through Mohit Hojai."

284.(i). The I/O also confirmed that this witness stated before him as "The DHD (J) group used to procure weapons from the market with the help of this money since Niranjana Hojai stays abroad quite frequently. Phojendra Hojai (contractor) does the work of courier for Niranjana Hojai. Earlier he was a labourer but after aligning with Niranjana Hojai, he became a wealthy man." "One EM Bijoy Senguing is in direct touch with Niranjana and during council sessions, he puts his mobile number on speaker and talks to Niranjana Hojai and gives directions to council members. Bijoy Senguing is called Niranjana Hojai's "HOTLINE". One Partho Waris (Ahshringdao Waris) is the right hand of Jewel. He decides the policy of Jewel. He talks to council leaders and gets money transaction through Phojendra Hojai and Babulal Kemprai (who is a second class contractor in PWD). Partho Warris is the middle man for all money transactions/negotiations from companies and contractors. He does this for Jewel Garlosa." "In April 2009 Rs 1 crore was caught by the police. Before that also some members were caught taking money for Niranjana Hojai of DHD (J) group. This one crore was also going to Niranjana Hojai with the help of RH Khan who was the Chief liaison officer with Mohit Hojai. I know Jewel Garlosa by face and also other persons namely Mohit Hojai, RH Khan, Phojendra Hojai, Babulal Kemprai, Partho (Ahshringdao) Warris. Whereas Jewel Garlosa was underground, the others namely Mohit Hojai, RH Khan, Babulal Kemprai and Phojendra Hojai


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were often seen together in various functions. The sister of Jewel Garlosa namely Protima Barman is a senior BDO in Harangajao block. She also used to siphon development funds for Jewel Garlosa."

285. Mohindra Ch. Nunisa- PW-79, testified that in the year 1996, he won election from Hajadisa council constituency and became member of the Council. In the year 2001, he again stood for election from the Wajao constituency and he won the same and became the member of the council. In the year 2007, he won the election from Hajadisa constituency and became the Executive member of the council and he was made In-Charge of PWD. In 2008, the CEM of the council was Depolal Hojai. Regarding my PWD department there are three divisions namely, Haflong Road Division, Maibong Roads Division and Mahur Road Division and the total budgeted allocation was about Rs. 12 crore. He know one R.H. Khan, he was Deputy Director of Social Welfare Department. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "In the month November, 2008, Depolal Hojai called all of us for a meeting. In the meeting BJP and ASDC, members attended. Kulendra Daulagapu, Depolal Hojai, Mohet Hojai, Debajit Thousen, Prakanta Warisa, myself, Bijoy Sengyung, Golon Daaulagapu, Subrata Hojai and some others attended. In the meeting, a phone call came in the phone of Kulendra Daulagapu. The call was from Niranjana Hojai, he told Depolal Hojai to resign. He told that he cannot do any work; neither could he work for change of nomenclature of the district. He asked for Mohet Hojai to be made the CEM. The talk continued for about 15 minutes. After that Depolal resigned on the 3rd day after the call. Mohet became CEM in January, 2009. "one R.H. Khan was made liaison officer by A.K. Baruah (Principal Secretary). A.K. Baruah wrote to official note certifying his good work, good character etc. in order to justify the making of R.H. Khan as Liaison officer. R.H. Khan was the liaison officer for all departments although he was a Deputy Director of Social Welfare. He used to manipulate budget allotment and sometimes directed funds from PWD to other departments at the time allocation."

286. P.W.150 also confirmed that the witness stated before him that "our largest contractor is Phojendra Hojai, Pabitra Nunisa, Imdad Ali and others. Imdad Ali is into a lot of bungling in the works of PWD and even I am not aware of the detail. The money which was going to DHD (J) was paid directly by contractor to Mohet Hojai and I was not kept in picture. We only release funds in the name of contractors after the work is verified."


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287. Myanan Kemprai (PW-81) testified that he won Council Election in the year 1996, 2002 and 2007 from the Diyungmukh constituency. In the year 2008, he was the Chairman of the council and used to conduct the session of the council. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that Depolal Hojai was the CEM in the present council until November, 2008 when Depolal Hojai resigned (it was probably 28th November) before that, in the evening, Depolal Hojai called for a meeting at his residence at around 8.00-8.30 PM. Around 12-15 peoples (including Subrata Hojai, Debajit Thousen, Kulendra Daulagapu, Bijay Sengyung, Golon Daulagapu Mohet Hojai, Prakanta Warisa, Kalijay Sengyung, Mahendra Nunisa and myself) were present. At around 8.30 PM, the phone of Niranjana Hojai came on the telephone of Kulendra Daulagapu. The speaker of the phone was activated by Kulendra. Niranjana told that you have not been able to fulfill the work of change of nomenclature of the district. You cannot get any work done. He told that Dipolal should resign by the next day and Mohet Hojai should be made the CEM." "Next day Dipolal resigned on health ground although he was hale and hearty. We send the resignation letter to the Governor but his resignation was accepted very late (about after 1 month). Mohet Hojai became CEM in the month of January. I continued as Chairman of the Council." The I/O also confirmed that the witness stated before him that "I knew Jewel Garlosa personally since 1984. He was decent student earlier. He was doing a business of running a printing press and was also a leader of student organization. He went to become the Chairman of DHD (J) after a fight between him and Dilip Nunisa for the post of Chairman of DHD. Niranjana Hojai was earlier an employee of PHE. I knew him well. He also joined the Jewel group in 2003-2004. He was the leader of the employee association earlier. Five months salaries were not paid to them in 2003-04, at that time when Purnendu Langthasa was the CEM (Congress Party). There they started a agitation. The CEM suspended him. After that he joined the Jewel group (DHD(J)). He killed Purnendu Langthasa later when five more constituencies were created in which 2 seats for Dimasas and 3 seats for others. Niranjana Hojai was against the increasing number of constituency. Although Purnendra had taken money for DHD (J) at langlai village (at the time of Election) in order to carrying their support for election, Niranjana and other members of DHD(J) said that they did not want the money. They killed Purnendra langthasa and killed Nindu Langthasa on the protest of creating more constituencies without their approval". "R.H. Khan was key member of the council. All the budget of the NC Hills and release of funds were being organized by

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R.H. Khan. He was a liaison officer of the council. He used to give a 10% cut for any budget allotment and allotment of additional funds for the council. Among the contractors, Pabitra Nunisa, Dhruba Ghosh and Imdad Ali and Phojendra Hojai were the main contractors. They used to pay money to different peoples."

288. Bijay Sengyung, PW-82 testified that in the year 1996, he won NC Hills Autonomous Council Election from Dihangi constituency. In the election of 2001, he lost but again in 2007, he won the election from the said constituency and he became the Executive Member of the NC Hills Autonomous Council. In the month of November, 2008, Depolal Hojai called for a meeting and along with other members he was also present. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "in the month of November, 2008, Niranjana Hojai called me up on my mobile (fro unknown number) and asked to meet the CEM, Depolal Hojai. He called up other Executive Members also and asked them to attend the meeting. I went to the residence of the CEM, Depolal Hojai. There were others namely, Debojit Thousen, Kulendra Daulagapu, Golon Daulagapu, Subro Hojai, Nipo Hojai, Mohet Hojai and others participated. Meeting took place at 7 PM. Niranjana Hojai C-in-C of DHD(J) called up on the mobile number of (probably Kulendra Daulagapu) and told all to change the CEM. He asked for the speaker of the phone to be kept on. Before this, Niranjana called me up and asked me to give my phone to Depolal Hojai. I gave him the phone and he talked to Niranjana. Then he called up Kulendra since it had a good loudspeaker. He asked all to make Mohet Hojai the CEM. He talked for 15 minutes on phone. He talked about changing the nomenclature of the NC Hills 'Dimahasaoraje'. He also said that Depolal could not do any work. After the phone, we decided that Depolal should resign and Mohet Hojai should be made the CEM. Depolal Hojai resigned on 27th November on health ground. Mohet Hojai became CEM in January". The I/O also confirmed that the witness stated before him that "in the month of January itself I got a call from Daniel of DHD (J) and he asked me to pay money otherwise he will shoot me. He asked for Rs. 50 lakhs. Then I told I cannot pay that much. I then arranged Rs. 25 lakhs and one person came home and collected it from me. I had told the CEM and one person namely, Saikia (DFO of Haflong) came and gave the money of Rs. 25 lakhs". "R.H. Khan is the Deputy Director in Social Welfare Department. He is a Liaison Officer for the Council also. He gets all the funds from the State Government and says that he has to pay 10% cut at Guwahati. He is very close to the CEM since he is the Finance Head of the Council."


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289. Subrata Hojai - PW-87 testified that he fought election for the Council from Maibong West constituency and he lost the same. Again in the year 2007, he fought the same constituency and he won the same and I became Executive Member of the Council. In the year 2008, Sri Depolal Hojai was the CEM (Chief Executive Member). In the first part of 2009, Mohet Hojai became the CEM. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that: "In the month of November, 2008, CEM, Depolal Hojai called for a meeting at CEM residence at 6-7 PM in the evening. The phone of Niranjana Hojai came on the phone of Kulendra Hojai at around 8 PM to 8.30 PM. Niranjana told Depolal to resign (probably on some money issue) and told that Mohet Hojai should be made the CEM. Then Depolal Hojai resigned on health ground and it came in the media also. Mohet Hojai became the CEM in January. After Mohet took over, he ran the show alone for the first month. Then code of conduct came. After election the council was suspended." The I/O also confirmed that the witness stated before him that "in the Council, the CEM has got financial portfolio. R.H. Khan was made the Liaison officer. He is the person who arranged for allotment of budget funds from Dispur. He pays a percentage. Funds are released by the CEM through the Principal Secretary. The Principal Secretary and Khan (R.H. Khan, Deputy Director, Social Welfare) released funds only to those departments which are capable of paying money. Sometimes tendering is done and many times work is directly allotted to the recommendation of CEM. There is a lot of bungling in all the departments. Only 20%-30% of the work is done". "I get frequent calls for demand of money from DHD (J) 5-6 months back, I got a demand for Rs. 25 lacs from DHD. I informed Additional Supdt. of Police and gave Phone number to them. I had got a sms from that number. Daniel of DHD (J) also called up once more than one year back. David also called up me after I was made EM. He told me that your department has been given money and you should pay. I did not give any money. The money is largely paid through the CEM with the help of R.H. Khan and others. Sometimes, the department also gets the demand for money." "In the year 2007, Purnendu Langthasa, CEM and Nindu Langthasa, EM were both killed by DHD (J). Nindu is my cousin. They were killed on the issue of payment of money or election (I am not sure)."

290. PW-98- Nipolal Hojai testified that in 2007 he got elected to the Council as BJP candidate, and in 2008 Deepolal Hojai was the CEM for 11 months, on health ground

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Deepolal Hojai resigned and Mohet Hojai became CEM and he was given the portfolio of Social Welfare Deptt and that time R.H. Khan was the Deputy Director of the Deptt. and presently Niranjana Hojai is the CEM of the Council and he was the C-in-C of the DHD(J), and Jewel Garlosa was the Chairman of DHD(J). Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "R.H. Khan and Mohet Hojai both used to manage funds and supply orders for the Social Welfare Department".

291. Dilip Nunisa (PW-129) testified that in the year 1990, he was student leader. In the year 1995, he has joined as a member of DHD group. The group was led by the then President Jewel Garlosa. DHD's objective was to create a separate state of Dimasas people within the territory of India. He remained with the organisation till the ceasefire was signed with the Government of India and Assam in the year 2003 w.e.f. 1st January, 2003. Their organisation DHD worked for general upliftment of the people of the locality and their educational and other rights and also for their social upliftment. He does not correctly remember that he was interrogated by NIA officials in connection with this case and he also does not correctly remember if my statement was recorded in connection with this case. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that: "Early in the 1990s, the DNSF headed by Bharat Langthasa was operating in NC Hills. Jewel Garlosa was a member of this group and his demand was that he should become the Chairman of DNSF. The house did not pass the proposal and made Jewel the Foreign Secretary. He came out of the group and started running Printing Press by the name of Hadingma Printing Press. I was only a student leader at that time. DNSF subsequently surrendered but 3 members, Bijay Naidung, Samphulal Thaosen @ Negro and one Langthasa broke away. One more group of 7-8 members led by Kanta Langthasa (Now the Home Secretary of Ceasefire group) also joined the Bijoy Naidung group. Jewel joined this group with Bijoy. By the end of 1995, Jewel was given the post of the President of the group since Bijoy was illiterate." Jewel Garlosa had killed an Executive Member of the Council from his own Carbine before I joined him." The President Jewel Garlosa used to arrange for weapons from Cox Bazar (in Chittagong Hill Tracts) in Bangladesh through NSCN (IM). The NSCN (IM) has an office in Dhaka. That time (1995) Jhon Simang


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was the Commander of NSCN (IM). He was also involved in a Jail Break incident in 1994 in Shillong. We used to receive the weapons after paying money and got them in vehicles from Srimangal Tourism Sylhet (Presently Moulvi Bazar District). There are Khasi village in Moulvi Bazar. We had a joint camp of DHD and NSCN (IM) in Khasi Village. From there we used to come by bus to Kaliganj Border area near Badarpur "Gumrah" in Sylhet District." The I/O also confirmed that "Jewel burned a Dimasa village in the year 2005, he also burned a village Dujupathar in October, 2005." There was another attack on CRPF at Thaijuwari where 7 persons were killed by Mourang of DHD(J)." In November, 2008, Niranjana Hojai (C-in-C) of DHD (J) called up during a meeting of the Council and talked to all Executive Members on phone. He asked Dipolal Hojai to resign as CEM and told that Mohet Hojai should be made the CEM. Similarly at a meeting of the DHD (J) at Sonapur (before the James group deserted) Niranjana Hojai gave a directive through mobile phone conference to kill the prominent people namely, Dipolal Hojai, Mukul Bodo, Hamjanan Langthasa, and others. It is due to this that the James group deserted them." The Jewel group has an agreement with Mohet Hojai to provide money. Phojendra Hojai is the key man for supplying money to Niranjana Hojai. He was earlier a small Contractor from Barikhai village and used to deal in second hand motorcycle. Now, because of his proximity with Niranjana Hojai of DHD (J), he has become big contractor. On the day of being caught, Phojendra Hojai openly stated before NE - TV and News Live that Mohet Hojai was sending money to Niranjana Hojai through him to be paid at Shillong."

292. It would be apposite to mention here that what would amounts omission and what would amounts to contradiction and how a contradiction has to be proved and the true import of section 161 and 162 Cr. P.C. and of section 145, 153 and 157 of the Evidence has been settled by the Hon'ble Supreme Court long back in the year 1959 in the case of **Tahsildar Singh & Another vs. State of U.P. AIR 1959 SC 1012**. The position of law in this regard is again reiterated by Hon'ble Supreme Court in the case of **V.K. Mishra v. State of Uttarakhand (2015) 9 SCC 588**. Where it has been held that:-

"16. Section 162 Cr. PC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr. PC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr. PC. The statements under Section 161 Cr. PC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:

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- (i) of contradicting such witness by an accused under Section 145 of the Evidence Act;
- (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and
- (iii) the re-examination of the witness if necessary.

17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr. PC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under: '145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination.

The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted.

If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make

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use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

292.(i). In the instant case, having gone through the procedure of declaring the aforesaid 7 witnesses and also the other witness as discussed in forgoing paragraphs, hostile, and the manner of proving the contradictions, as discussed the aforesaid case laws, it cannot be said that the prosecution side has done anything wrong or prejudicial to the interest of the defence side. Despite, an attempt has been made by the defence side to find fault with the same. It is pointed out that, the prosecution side, in the case of aforesaid witnesses, having brought on record their statement u/s 161 Cr. P.C. cannot use them to prove the charge. Referring a case law *Vijender vs. State of Delhi, (1997) 6 SCC 171*, it is further submitted that statement made before the police officer during investigation cannot be used for any purpose, except when it attracts section 27 or 32(1) of the Evidence Act. There is no scope of taking another view of the point of law so enunciated in the case law referred by the defence side. At the same time, other provisions of law, relating to same also should not eschew consideration of the court, else it would cause prejudice to the other side.

292.(ii). As discussed earlier and in view of the ratio laid down by the Hon'ble Supreme Court in *Haradhan Das Vs. State of West Bengal, (supra)*, the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. There is material on record to lend corroboration to the evidence of the aforesaid hostile witnesses, that support the prosecution version in respect of the cause of resignation of Depolal Hojai and in respect of the DHD(J) and its activities and its objectives. Therefore, the evidence of aforementioned witnesses cannot be treated as washed off the records.

293. The evidence of PW-146-also testified that having collected CDR from different service providers like BSNL, Airtel, following due procedures as enshrined in 65B Evidence Act, print outs of relevant transactions were taken and analyzed. But it appears that the CDRs as stated above are not collected from the service providers in accordance with law and no certificate u/s 65-B of the Evidence Act is appended there to. This being factual position the same cannot be relied upon in view of the judgment of the Hon'ble Supreme Court in the case of *Anvar P.V. vs. Basheer and Others, (2014) 10 SCC 473*. The Id.

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defence counsel has rightly pointed this out during argument and we find the same bears sufficient force.

294. The evidence of the CIO P.W.150 reveals that after interception of accused Phojendra Hojai and Babul Kemprai on their way to Shillong they were taken to Police Station and then accused Phojendra Hojai received calls from both Niranjan Hojai and Mohit Hojai and the same was found recorded in the Mobile Phone seized from accused Phojendra Hojai. It was in Dimasa language. It was translated to English Language by P.W 132. Smti. Joyshree Khersha. This aspect also been discussed herein above. So, detailed discussion is avoided.

295. PW- 55, Shri Pankaj Kalita is a Laboratory Bearer in the office of the Directorate of Forensic Science, Assam, Kahilipara, Guwahati. His evidence reveals that in his presence Sh. M.C. Kuli, Scientific Officer, Cyber Forensic of Directorate of Forensic Science, Assam, Kahilipara recorded voice sample of Phojendra Hojai on 04.08.2009, at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola, Guwahati vide Ext.245 and of Accused Mohit Hojai on 05.08.2009, at District Jail, Guwahati, vide Ext. 246, and on 06.08.2009, voice sample of one Phojendra Hojai at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola and on 06.08.2009, of one Babul Kemprai vide Ext. 248 at NIA Camp Office at Flat No. 501, Block-A1, Games Village, Beltola.

296. P.W.60, Shri S.R. Mahadeva Prasanna, Professor, Department of Electronics and Electrical Engineer, IIT- Guwahati, testified that one Mukesh Singh, IPS came and handed over to me 2 (two) CDs along with forwarding letter dated 15.08.2009, Ext. 260, to get expert opinion on voice sample and was asked to compare the voice samples which are named as A-1 to A-4 in folder, Audio with B-1 to B-4 in folder Audio-B and also C-1 to C-6 in folder Audios and was also asked to compare these samples given in another Ext-X. M. Ext 15 and 16 are the said exhibits. After receiving the said exhibits he analyzed the voice samples with the help of team of human subjects working in speech processing area. There were certain questions asked by the NIA official by Ext-260 and the answers for the questions were obtained by conducting subjective studies from the human subjects' by following standard procedures. Based on human subjects' opinion, the answers were furnished to the team. Ext 261 is his report in 8 pages.

296.(i). The evidence of P.W.60 and the report and the evidence P.W. 132 and of the I/O P.W. 150, if perused together would reveal that he accused Niranjan Hojai was


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in touch with accused Phojendra Hojai on 01.04.2009 while the later was carrying a sum of 1.00 crore to Shillong.

297. The Id. counsel for the accused in the memorandum of argument stated that no voice sample of accused Niranjana Hojai has been taken by the I/O P.W.150, rather he has collected voice sample has from a T.V. Channal to whom Niranjana Hojai allegedly given an interview. It is further submitted that P.W.60 has admittedly received the CDs for analysis and not the original hard disc from where those CDs were copied. Referring one case law, ***Sanjaysinh Ramrao Chavan, 2015 (3) SCC 123***, it is submitted that the evidence of P.W.60 cannot be relied upon. It is to be mentioned here that in the referred case law it has been held that ***"As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version, without source there is no authenticity on the translated version,"*** It is further submitted that as admittedly no certificate as per Section 65B of the evidence Act has been appended with the report no reliance can also be placed upon the same. The Id. Counsel has referred one case law ***Anvar P.V. Vs. Basheer and Others (supra)***, where it has been held that ***an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements of section 65-B are satisfied.***

298. Apparently there is substance in the submission so advanced by the Id. Counsel for the accused. But here in this case the prosecution side has produced the Sony Ericson mobile hand set seized from the possession of accused Phojendra Hojai and exhibited the same as Material Ext.7 and the CD prepared from the same as Material Exhibit 74. So, production of the mobile hand set as primary evidence makes the position a bit difference from the factual position in those cases. In view of the observation of Hon'ble Supreme Court in ***Anvar P.V. Vs. Basheer and Others (supra)***, we are unable to record concurrence with the submission and to discard the evidence.

299. P.W. 138 Shri Sumanta Das, Cluster Branch Manager of ICIC Bank, G.S. Road testified that vide his letter -Ext.402 dated 13.07.2010, he has furnished statement of the Account No. 634301504290 for the period from 01.04.2006 to 13.07.2010, containing two pages, standing in the name of Niranjana Hojai. The giving address of the account is C/o Sri Mohanlal Barman, F-11-D-43, Bhaskar Nagar, Tiniali, Near Fatasil Amabari, Guwahati. Contact no. 9435193009/03673-238278.


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300. PW-146- Swayam Prakash Pani has deposed that during investigation identification memo of A-1 (Phojendra Hojai) was done with the support of Malswamkimi and George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-119 is the identification memo. Identification memo of A-1 was done with the support of George Lamthang as they visited Madhumilan Hotel and Shalimar Hotel Ext-77 is the identification memo.

301. PW-148- Santosh Kumar has deposed that he conducted part investigation of NIA 1/09 and during investigation he examined the witnesses seized documents and interrogated accused Mohet Hojai, Babul Kemprai, Karuna Saikia, Jibangshu Paul, J.K. Ghosh, Sandip Ghosh, Debashish Bhattacharjee and others and also conducted searches u/s 165 Cr.PC at the house of Mohet Hojai at Guwahati and Pabitra Nunisa at Games Village, Guwahati and search memo was submitted to the I/O. On 10.06.2009, as per the instruction of I/O, he obtained specimen handwritings and signatures of Sri Mohet Hojai, son of late Tanmoy Hojai in the presence of two independent witnesses namely, Bijay Kr. Goswami and Tankeswar Das which is exhibited as Ext 207. Ext. 207/29 to 207/42 are my signatures. Ext. 207/43 to 207/56 are the signatures of Mohet Hojai which were put in my presence. On 12.06.2009, he collected mobile phone pertaining to Sri Mohet Hojai from his wife Smti. Rekha Hojai. The Samsung Mobile model No. SGH-4880E in the presence of witness Om Prakash Sarma, which is exhibited as Ext 392. Ext 392/3 is my signature. On 15.06.2009, he had collected documents from Sri L. Ngamlai, Assam Financial Services, Sr. FAO, NC Hills obtained specimen handwritings of the accused hand send the same for examination.

302. The Id. counsel for the accused also raised several points in the memorandum of argument apart from what has been discussed above. Some of them are already discussed in foregoing paragraphs and at the cost of repetition re discussion is avoided.

303. Thus the facts and circumstances appearing against the accused from the evidence discussed above, and which the prosecution side has been able to prove, can be recapitulated as under:-

- (i) In Oct., 2003 Jewel Garlosa formed one militant organisation in the name DHD (J).

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- (ii) He (Niranjan Hojai) was the C-in-C of the DHD (J), and Jewel Garlosa was the Chairman of DHD(J).
- (iii) On 2nd October, 2009 DHD (J) cadres surrendered formally and in the aforesaid ceremony Niranjan Hojai was the Sr. most DHD (J) cadres along with other cadres who led the surrendered ceremony.
- (iv) There was spurt of violence because of DHD(J) due to which train service plying from Lumding to Badarpur was stopped, thus food grain going to Barak Valley, Mizoram, Tripura & Manipur was stopped. DHD(J) group had resorted to firing on moving train.
- (v) On the disclosure made by Vanlalchanna, an identification memo was prepared in which he identified the photographs of Niranjan Hojai & Jewel Garlosa. This shows his familiarity with Vanlalchann, the arms supplier.
- (vi) He was at Kualampur in February 2009, and P.W. Kulendra Daulagapu meets him there.
- (vii) Various documents, bank A/c including City Bank A/c, Royal Thai orchid A/c and credit card, Marriott club card etc. which he was carrying in the name of Nirmal Rai while staying at Nepal, concealing his real identity.
- (viii) It was he, under whose dictation Depolal Hojai has submitted resignation from the post of CEM of NCHDAC.
- (ix) He has connection with Mohit Hojai the then CEM of NCHAC, at whose instance the Govt. funds meant for development of NCHAC were defalcated and channelized to the DHD(J) through the Govt. servants and contractors.

ACCUSED JOYANTA GHOSH(A-12):-

ACCUSED DEBASISH BHATTACHARYEE@ BAPI (A-13):-

ACCUSED SANDIP GHOSH(A-14):-

304. The Id. Special P.P. NIA has submitted that these three accused involved in siphoning of funds of two Govt. Departments, i.e. PHE Deptt. and of Social Welfare Department and facilitate funding to DHD(J). It is further submitted that all the three accused acted together and played a key role in the conspiracy. It is also submitted that the firms in the name of which they have done contract works were registered in the name of Debasish Bhattacharyee, permits of which were valid till March 2008 only. They never participated in the tender process and yet they got the supply orders in the name of the said firms and they

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submitted bills without doing supply works and received the amount. It is further submitted that the materials against them are clear and cogent enough to prove the charges against them.

305. On the other hand the Id. counsel for the accused persons has submitted synopsis of argument where in the entire version of the prosecution witnesses are challenged. Some part is also supplemented by oral argument and in both it is contended to disbelieve the prosecution version.

306. The role played by these three accused are almost common, barring few instances, and would be possible to culled out the same from the evidence of following prosecution witnesses:-

307. PW-128- Shri Mukut Kemprai, was the Principal Secretary of NCHAC at the relevant time. His evidence has been discussed already in previous paragraphs in respect of other accused persons. But from the standpoint of the present sets of accused, the same bears immense importance. And, therefore, the same is reiterated again. According to this witness he gave reply to some queries of NIA about some firms viz. (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee, wherein he stated that permits were issued to the said firms on 31.01.2008, under Sl. No. 384 to 391, in favour of Sri Debashish Bhattacharjee, S/o Late Sujit Bhattacharjee, Lower Haflong, NC Hills. The registration of the same was in the department and there was no contact number. All permits were valid upto 31.03.2008, and not further renewed. Ext. 394 is the said letter. Ext 394/1 is his signature. The registrations of the contractor were done in PWD department and his office used to issue only permits and hence registration no. is not available with him. Cross-examination of this witness by accused Debashish Bhattacharjee reveals that all the firms were genuine and registered as per rules of the NC Hills Autonomous Council.

308. PW-74- Hemen Das- is S.I. of Special Task Force, Ulubari. His evidence reveals that he made an enquiry and verified the addresses of (1) M/S Barail Enterprise, factory at Ulubari, Guwahati; (2) M/S Loknath Trading factory at Paltanbazar, Guwahati; he made enquiry but could not find existence of the said two firms and on 8-8-09, he submitted his report. Ext.279 is the said report and Ext.279/1 is his signature. On 23-8-09 he was present as witness to the inspection of GI pipes received from Jeet Enterprise at Umrangso.


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An inspection memo and a report was prepared thereafter. Ext-273 is the inspection memo and Ext.274 is the said memo and Ext.274/3 is his signature. Nothing tangible could be elicited in cross-examination of this witness to discredit his version.

309. The evidence of P.W.41, Shri Haripada Barman is also discussed in the previous paragraphs of this judgment. What is transpired from the evidence of this witness is that M/S MAA Trading- Haflong; M/S Loknath Trading -Haflong; M/S Jeet Enterprise- Haflong; M/S Borail Enterprise -Haflong; M/S Debasish Bhattacharjee- Haflong; were found to be not traceable. Vide his letter Ext- 121, he informed NIA about the same and Ext-122/30 to 30 are registered letters sent by NIA in the name of different Firms and persons located at NC Hills and Haflong, but the post man of the area could not trace the addressee and returned the letters sent in the name of said firms, as not traceable.

309.(i). It is elicited in cross-examination that in some of the letters PIN number is not available and in some letters the name of the addressee are wrongly spelt out. It is further elicited that he is not acquainted with the initials put by the Post man on the letters. But in re-examination by the defence side he stated that even if the Postal Index Number (PIN) is not mentioned in letters received by the Post Offices in a normal course of receiving letters, but still the delivery of such letters is possible. Even if the Post Office name is not mentioned in a particular letter, more particularly in a registered letter, the same can be delivered by the Postman if the address is proper.


309.(ii). It appears that out of the 30 letters, Ext. 122(16) was sent to Debasish Bhattacharyee, Ext.122(5) was sent to M/S Loknath Trading, Haflong, Ext. 122(15) was sent to M/S Maa-Trading, Haflong, Ext. 122(17) was sent to M/S Borail Enterprise, Haflong, Ext. 122(8) was sent to M/S J.K. Traders, Haflong. But none of them could be traced out in the said addresses. This shows that the said firms of accused Debasish Bhattacharyee are not in existence in the addresses. It is to be mentioned here that the firms of Debasish Bhattacharyee have supplied material to Social Welfare Department and also to PHE Department.

310. The evidence of PW 1, Sh. Arup Roy reveals that was working as General Manager at Hotel Pragati Manor, Guwahati, a 3 Star hotel and is for lodging and food, from the year 2008 to 2009. As General Manager his duties were to look after the general administration and other food and beverages, housekeeping, kitchen and production,


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maintenance, security etc. For booking a room the guest has to go to and contact the front office for the booking purpose and when the front offices persons will say that the room is available and if the guest is willing to take the room, then the front office give one form called GRC (Guest Registration Certification). This means the guest details, like name, contact No., address, purpose of visit etc. He confirmed Ext. 1, 2, 3, the guest registration cards of Pragati Maner and the guest was one Mr. Jayanta Kr. Ghose and room allotted on 21.3.09 room No.302 was allotted, vide Ext.1. He has check in on 21.3.09 at 5 p.m. and 23.3.09 at 12 noon. By Ext. 2, Jayanta Kr. Ghosh was allotted room No. 504 on 19.3.2009 and the check in time was 11.30 a.m. and check out date was 23.3.09 at 12 noon. By Ext. 3, Jayanta Kr. Ghose was allotted room No. 505 on 21.3.2009 and check in time was 11 a.m. and check out is 12 noon on 23.3.2009. In all these cards, he was shown coming from Kolkata and proceed to Kolkata and purpose is official. Ext. 4 is the identity proof given by J. K. Ghosh. Ext. 5 and Ext. 6 are the copies of guest register where on 21.3.2009 and 19.3.2009 J. K. Ghose was allotted room Nos. 302, 303, 504, 505 respectively. Ext.5/1 and 6/2 are the said relevant entries. Said guest J. K. Ghosh while staying in the hotel Pragati Manor used room service and Ext.7 is the bunch of room service bills and Ext. 7/1 to Ext. 7/16 are those bills. Vide seizure memo. Ext. 8, NIA has seized all the aforesaid documents on 10.10.2009. It is elicited in cross-examination that he is not the maker of these documents exhibited by him.

311. The evidence of P.W. 1 finds support from the evidence of PW-116 Mr. Jiten Bania, whose evidence reveals that in the year 2009 he was Front Office Executive in Hotel Progoti Menor, G.S. Road. At that time the General Manager of the Hotel was Sh. Arup Roy. His duty as Front Office Executive was to receive the guests and if the rooms are available provide them with room and to fill up the guest card. Ext 1 is the Guest Registration Card of Hotel Progoti Manor dated 21.03.2009 of guest Jayanta Kumar Ghosh who was provided with Room No. 302, the purpose of visit shown as business and he was coming from Kolkata and was to proceed to Kolkata. Ext. 1/1 is my signature. Ext 2 is another Guest Registration Card dated 19.03.2009 in the name of J.K. Ghosh and the room allotted was 504 and the check out date is shown as 23.03.2009. Ext 3 Guest Registration Card of Hotel Progoti Manor dated 21.03.2009 of guest Jayanta Kumar Ghosh who was provided with Room No. 505, check in date was 21.03.2009 at 11.00 AM and check out date was 23.03.2009, the purpose of visit shown as official and he was coming from Kolkata and was to proceed to Kolkata. He confirmed his signature, Ext. 3/1 on the same. It is elicited in cross-examination that he has not seen the register where data of Guest Registration Card were preserved are not seen before the Court today.


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312. The Id. counsel for the accused, during argument, and also in the synopsis of written argument pointed out that P.W.1 is not the maker of the Ext.1 to 8 and that Ext. 1,2 and 3 are purported loose Guest Registration Card and Ext 5 & 6 are purported loose Guest Register and some manipulation are there rendering thereby inadmissible in evidence. But, a conjoint reading of evidence of P.W. 1 and 116 left no manner of doubt about the genuineness of the same. It is, of course, true that Ext. 5 & 6 are loose sheets and as such the requirement of section 34 of the Evidence Act cannot be said to be satisfied. But, even for the sake of argument if we discard Ext. 5 & 6 yet rest of the evidence on the record are sufficient to establish the presence of accused Joyanta Kr. Ghosh in Hotel Pragati Manor on the dates mentioned earlier. P,W. 94 is another witness who confirmed the presence of accused Dhruba Ghosh @ Joyanta Kr. Ghosh, Debasish Bhattacharyee, Mohit Hojai and one Nepali boy in the Hotel Pragati Manor on the relevant date.

313. It is also submitted by the Id. defence counsel that P.W.94 has admitted in his cross-examination that he has not taken station leave permission w.e.f. 1st March to 31st march 2009 and this belied the occurrence at Pragati manor. It is further submitted that P.W.94 has admitted in cross-examination that his statement of being threatened by a Nepali Boy at gun point is a false statement and the he issued two cheques Ext.318 on 25.03.2009 and Ext.319 on 25.03.2009 cannot be believed as contemporaneous documents reveals a different story. It is pointed out that P.W.94 joined at Haflong on 26.02.2009 and on the same date in Ext. 312, a bill of Maa-Treading there is endorsement of P.W. 92, who in his evidence stated that he did so under the pressure from P.W.94. it is also pointed out that P.W.94 had admittedly given requisition of funds amounting to Rs. 1.77 crore on 07.03.2009 and for another amount of Rs. 1,80,90,000/ for purchase of G.I. Pipes and this shows that prior to the incident of Pragati Manor P.W.94 was an active participant and pursuant to which he issued Ext.319. And as such P.W.92 has demolished the version of P.W.94.

314. For appreciation of above submission of the Id. counsel, the evidence of P.W.94 and P.W. 92 Shri Nikhil Kanta Nath needs to be discussed in detail though it has been discussed earlier. The evidence of PW-94, Shri Kalyan Brata Mukherjee reveals that in 2009 he was Ex. Engineer with Addl. charge of Addl. Chief Engineer, during that time Mohet Hojai was the CEM. Sh. Mohet Hojai had given him an order to issue supply order in favour of Maa Trading, Jeet Enterprise and Loknath Enterprise. Accordingly, he had issued supply order of approximately Rs. 1.64 crore. He received 60% of the materials approximately, the balance

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40% materials not supplied by the supplier. He has given several reminders to deliver the balance materials but the supplier failed to supply the balance materials. At that time the CEM, Sh. Mohet Hojai had given him pressure to release all the fund without further delay. After getting serious warning from CEM, he had compelled to release the complete fund without receiving the balance 40% materials. His evidence also reveals that he came to Guwahati after taking verbal permission from Principal Secretary due to his wife's illness. After that the CEM, Mohet Hojai called him at Hotel Pragati Manor, GS Road and he met Dhruba Ghosh, Debashish Bhattacharjee, after that executive Engineer of Maibong Division, Sh. Kuton Ch. Namasudra came to the Hotel and at that time CEM, Sh. Mohet Hojai directed him to issue all the cheques in favour of Maa Trading. He also has given assurance that the balance materials will be supplied very soon by Maa Trading. After that one Nepalese boy who accompanied Mohet Hojai also threatened me to issue the cheques as directed by the CEM and accordingly he had issued the cheques in favour of Maa Trading. The boy who was accompanying Mr. Mohet Hojai threatened on gun point and told him to issue the cheques. After being threatened he got scared of his life and future and he went back to Haflong and issued all the cheques. For making up the short supply of the materials Maa Trading issued cheques of certain amounts to the supplier/dealer but since in the meantime the account was seized by the NIA, those cheques could not be encashed and materials also were not received by him. Ext 318 is the cheque issued in favour of Maa Trading dated 25.03.2009 for Rs. 84,81,000/- and Ext. 319 is another cheque in favour of Maa Trading for Rs. 57,98,000/- dated 26.03.2009. Ext 182 is the supply order no. 1032 dated 26.02.2009 for supply of GI pipes issued in favour of Maa Trading. Ext 314 is the letter dated 18.06.2009 received from DSP, NIA requesting to furnish information regarding receipt of materials from Maa Trading. Ext 314/1 is his letter dated 19.06.2009, addressed to DSP, NIA regarding non-receipt of materials from M/s Maa Trading. Ext 314/4 is the letter addressed to Maa Trading requesting supply of balance quantity of GI pipes.

315. In cross-examination by accused Joyanta kr. Ghosh and Debasish Bhattacharyee he admitted having not given any supply order in favour of Jeet Enterprise and Loknath Trading. The total material supplied by Maa Trading as per the supply orders as calculated by him through his statement in examination-in-chief that 60% of the materials have been supplied comes to Rs. 98.4 lakhs. He confirmed that Ext. 314/4 addressed to Maa Trading is in the original and that Ext 314/3 is a photocopy. He denied that his statement in examination-in-chief "after that one napeles boy who accompanied Mohet Hojai also threatened me to issue the cheques as directed by the CEM and accordingly he had issued the


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cheques in favour of Maa Trading. The boy, who accompanying Mr. Mohet Hojai threatened on gun point and told him to issue the cheques. After being threatened he got scared of my life and future and he went back to Haflong and issued all the cheques." is a false statement". He admitted having not given any report regarding him being threatened on gun point to any authority or police station till date. He admitted that the fact about him being threatened on gun point for the first time after alleged incident on Court on 30.09.2015. He also admitted that his statement in examination-in-chief that he was threatened on gun point is a false statement. He admitted that he has not taken station leave permission w.e.f. 1st March to 31st March 2009. He also admitted that the supply order issued by my in favour of Maa Trading is as per the revised rate for supply of GI pipes as approved by NC Hills Autonomous Council.

316. PW-92- Nikhil Kanta Nath has testified that Ext.-312 is the Bill of Maa Trading dated 26-2-09 for supply of pipes for Rs. 14,99,780/- and on the reverse side of the bill there is verification to the effect that the bill is verified and found correct and materials received in full and good condition and he gave on being pressurised by K B Mukherjee. He also testified that he pursuant to the request made by NIA vide Ext 313 in respect of all documents relating to receipt of issue of GI pipes supplied by Maa Trading by supply order dated 26.02.2009 and relating to release of payment of Rs. 14,33,000/- vide cheque dated 27.03.2009, he intimated vide Ext.313/1 that as per direction and assurance of CEM, Mohet Hojai, he has verified the bills without receiving the materials and that the materials will be supplied soon by Maa Trading.

317. PW-92- further testified that pursuant to another letter -Ext 314 of NIA regarding production of records and materials in respect of supply of pipes by M/s Maa Trading, he has submitted one letter-Ext 314/1, issued by K.B. Mukherjee to DSP, NIA dated 19.06.2009 wherein it was informed that Bill dated 16.03.2009 of Rs. 17,05,190/- and Rs. 49,98,800/- for supply of GI pipes had not been received by the Division. It also reflected that due to extreme pressure created by Mohet Hojai, CEM and other persons and undersign was bound to pay the amount and Ext 314/3 is another letter dated 29.04.2009 addressed to Maa Trading through Sambhu Ghosh reminding supply of GI pipes. Ext 314/4 is another letter dated 18.06.2009 addressed to Maa Trading through Sabhu Ghosh reminding supply of GI pipes. He further testified that Ext 314/6 is his letter to DSP, NIA dated 19.06.2009 intimating that supplier Maa Trading has not supplied the materials under reference.


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318. What is transpired from the evidence of these two witnesses are that in 2009 CEM Mohet Hojai had given him an order to issue supply order in favour of Maa Trading, Jeet Enterprise and Loknath Enterprise. Accordingly, he had issued supply order of approximately Rs. 1.64 crore. He received 60% of the materials approximately, the balance 40% materials not supplied by the supplier. He has given several reminders to deliver the balance materials but the supplier failed to supply the balance materials. Thereafter, he came to Guwahati after taking verbal permission from Principal Secretary due to his wife's illness. After that the CEM, Mohet Hojai called him at Hotel Pragati Manor, G.S. Road and he met Dhruba Ghosh, Debashish Bhattacharjee, after that executive Engineer of Maibong Division, Sh. Kuton Ch. Namasudra came to the Hotel and at that time CEM, Sh, Mohet Hojai directed him to issue all the cheques in favour of Maa Trading. He also has given assurance that the balance materials will be supplied very soon by Maa Trading. After being threatened he got scared of his life and future and he went back to Haflong and issued all the cheques. This part of evidence stands corroborated from the version of P.W. 92. Who stated that under pressure from K.B. Mukharjee he the Bill of Maa Trading, Ext.-312 dated 26-2-09 for supply of pipes for Rs. 14,99,780/- and on the reverse side of the bill there is verification to the effect that the bill is verified and found correct and materials received in full and good condition. And K.B. Mukharjee pressurised him because of the pressure exerted on him by CEM Mohit Hojai. He also intimated NIA vide Ext.313/1 that as per direction and assurance of CEM, Mohet Hojai, he has verified the bills without receiving the materials and that the materials will be supplied soon by Maa Trading. The above evidence of P.W.94 and P.W.92 both remained unshaken in cross-examination.

319. Reference in this context may be made to the evidence of Sushil Chandra Das, P.W.103. The evidence of PW-103 reveals that he was working as in-charge of store at PHE Maibong and he confirmed Ext.-203 the Supply order no. 958 dt. 7-2-09 placed in favour of M/S Loknath Trading, Ext.-204 -Supply orders no 962 dt. 7-2-09 placed in favour of M/S Jeet Enterprises, he also testified that no materials were supplied in February/09, and in the month of March /09 –and Ex. Engineer K. C. Namasudra told him to verify the bills without receipt of the materials as he has already delivered the cheque for the entire amount under pressure and ultimately in April/09 materials started to come and he was asked to put signature on back date of the challan under pressure. In Ext-366 bill of M/s Loknath Trading and Ext-366/2 to Ext 366/9 are challans in the name of M/S Jeet Enterprises and Loknath Trading were filled by him under pressure of K C Namasudra. Ext-367 is another bill of M/S Jeet Enterprises where verification is done by him under pressure without receipt of materials.

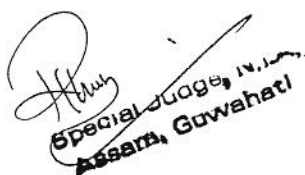

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It is to be mention here that as evident from the version of P.W.94 that K.C. Namashudra was also present at Hotel Pragati Manor on the relevant date on which he was pressurised by Mohit Hojai to issue all the cheques of Maa-Trading. And as per the version of this witness in the month of March /09 –and Ex. Engineer K. C. Namusudra told him to verify the bills without receipt of the materials as he has already delivered the cheque for the entire amount under pressure. Not only this, he was put under pressure to put signature on back date of the challan. Nothing could be elicited in cross-examination of this witness. He has painted a clear picture about the entire episode. It is also apparent from his evidence that supply of material becomes surplus. But this has happened only after arrest of accused Phojendra Hojai on 01.04.2009. The cheques were issued much prior to execution of work i.e. in the month of February. Violation of all norms and rules thus becomes crystal clear.

320. While the submission of the Id. defence counsel is considered in the light of above facts and circumstances on the record the same is found to be bereft of merit. It is however true that P.W 94, during cross-examination, first denied the defence suggestion that he has falsely stated that he was threatened by a Nepali boy on gun point to issue cheques in favoure of Maa-Trading. But subsequently, he admitted that his statement of threatening by a Nepali boy is a false statement. Now, the question is what will be the impact of such suggestion which, at first point of time denied, and admitted subsequently? .

321. The Id. Special P.P. has submitted that the examination in chief of witness Kalyan Brata Mukharjee was recorded on 30.09.2015, but on filing of a petition by the accused his cross-examination was deferred till 08.10.2015. Referring one case law- **Akil @Javed vs. State(NCT) Delhi: (2013) 7 SCC 125**, where it has been held by the Hon'ble Supreme Court that:- "there is dire need for the courts dealing with cases involving serious offences to proceed with the trial on day to day basis in de die in diem until the trial is concluded. The trial court dealing with serious cases must ensure that the well settled procedures laid down under Cr.P.C as regard the manner in which the trial should be conducted in sessions cases are strictly complied with, in order to ensure dispensation of justice without providing any scope for unscrupulous element to meddle with the course of justice to achieve some unlawful advantage.....", the Id. special P.P. has submitted that in between many thing can happen and nothing can be ruled out.


322. The rival submission is that the accused filed a petition u/s 231(2) Cr.P.C. on 30.09.2015 for examination of all the witnesses relating PHE Maibong so that they can be


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cross-examined together otherwise their defence will be disclosed. And, the said petition was allowed by the court and because of this cross-examination is deferred only for one week not for two month as in the case referred by the Id. Special P.P. it is further submitted that when a witness has spoken untruth on all vital points, their testimony cannot be accepted. It is further submitted that there is vital contradiction in the evidence of P.W.94 and besides he admitted having deposed falsely before the court that he one Nepali boy has threaten him on gun point, and as such no reliance can be placed upon his evidence. The Id. counsel has referred several case laws in support of his submission amongst them are **Ram Asrey Pandey Vs. State of Bihar: 1977 SCC (Cri) 374, Mohinder Singh and another Vs. State of Punjab and others (2004) 12 SCC 311, Premananda Namasudra Vs. State of Tripura Criminal Appeal No. 31 and 45 of 2005.**

323. There is no ambiguity on the point that cross-examination of P.W.94 was deferred at the instance of the accused. While his examination in chief was recorded on 30.09.2015, his cross-examination was deferred till 08.10.2015. The ground assigned for such adjournment and the mandatory nature of section 309 Cr. P.C and its effect (overriding ?) on section 231(2) Cr.P.C. is no doubt a matter to be looked into seriously. It is true that in the instant case the duration of adjournment is 8 days, where as in the case of **Akil @Javed vs. State(NCT) Delhi** (Supra) the duration of adjournment was two months. Now can it be said that because of shorter duration, the law laid down in the said case is not applicable to the present case. Can it be ruled out that nothing could be happened within 8 days or even in one day also. Our considered opinion is that it may happen even in a moment also. Having found so, we are not impressed by the submission of the Id. counsel for the accused. We have gone through the case laws referred by the Id. counsel and we find that same proceeds on its own facts and not applicable in all force to the facts here in this case.

324. Now, let it be seen under what circumstances P.W. 94 denied one suggestion in cross-examination by the defence and admitted subsequently after a moment. For better appreciation it is reproduced here "It is not a fact that my statement in examination-in-chief "after that one Napales boy who accompanied Mohet Hojai also threatened me to issue the cheques as directed by the CEM and accordingly I had issued the cheques in favour of Maa Trading. The boy, who accompanying Mr. Mohet Hojai threatened on gun point and told me to issue the cheques. After being threatened I got scared of my life and future and I went back to Haflong and issued all the cheques." is a false statement. It is correct that in my statement u/s 161 Cr. P.C before the NIA, I did not mention about me being threatened me on gun


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point. It is correct that I did not give any report regarding me being threatened on gun point to any authority or police station till date. There is no complaint or FIR regarding the alleged incident. There is no reporting of the incident to any of my superior officer also. It is true that I have stated about me being threatened on gun point for the first time after alleged incident on Court on 30.09.2015. It is correct that my statement in examination-in-chief that I was threatened on gun point is a false statement.

325. A dispassionate analysis of the above evidence reveals that the same suggestion was asked twice. While in the first time, the witness denied the suggestion, in second time, he admitted that his statement in examination-in-chief that he was threatened on gun point is a false statement. Having stood embedded absolutely firmly in his examination in chief and also in cross-examination at first, he admitted late that his statement of threatening on gun point is a false statement. Now, the question that creeps in mind is why the same suggestion was given twice and was it permissible to repeat the same suggestion twice? Was it to get a favourable answer? There is no plausible answer to this. The witness is not a rustic person. He is an Executive Engineer of PHE Department. Absence of plausible answer has further deepened the doubt, so expressed by the Id. Special P.P. that anything can happen in the meantime. Drawing attention of the court to the history of the case the Id. Special P.P. has submitted that the first charge sheet was submitted on 17.11.09 and supplementary charge sheet was filed on 09.02.2011. The charges were framed on 10.08.2012. Evidence completed on 04.10.2016. It is further submitted that in the whole trial the defence side has taken lots of adjournment for this or that reason, and it took more than four years to examine 150 witnesses.

326. The Id. Special P.P., during argument, drawn attention of the court to the evidence of P.W. 144 Shri Amal Ch. Kalita, who deposed that he received summon to appear on 27.04.2016 for giving evidence. Accordingly, he was ready to come to the Court. However, on 26.04.2016, at about 11.20 to 11.30 AM, he received a call from mobile no. 26533-21559 in his mobile no. 96784-09562 asking him not to come to the Court on 27.04.2016. On 27.04.2016, at about 9.30 AM, Mr. Sankar Kalita of NIA telephoned him to ascertain at what time he will be coming to the Court for testifying in the Court. Then he told him that he was informed on the previous day not to come however, he told him that he is coming on 28.04.2016. The Id. Special P.P. has cited this as an instance to show how attempts were made to influence the witnesses. The Id. Special P.P. also pointed out that large number of

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witnesses here in this case turned hostile in spite of their statement being recorded in the court u/s 164 Cr. P.C.

327. There is substance in the submission of the Id. Special P.P. and the case record supported the same. For examination of only 150 witnesses more than four years consumed. Hon'ble Supreme Court has elucidated the necessity of expeditious trial in **Krishnan & Anr vs Krishnaveni & Anr(1997) 4SCC 241** in following words:

"The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted."

328. In view of what has been discussed above, we are unable to record concurrence with the submission of the Id. defence counsel in as much as the factual matrix is quite different from the cases referred by him. Having assessed the evidence of P.W.94, in its entirety, with the yardstick of probabilities and its intrinsic worth and the animus of the witness, we find the same worth believing, after discarding the contradictory part, which he did not state before the I/O. The grain in his case is separable from the chaff and accordingly the same stands separated. In doing so we derived authority from a decision of Hon'ble Supreme Court in the case of **Dalbir Singh v. State of Haryana [(2008) 11 SCC 425]**, where it has been held as under:

"51. ... It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'.


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329. The evidence of PW-2 - Shri Chandra Kt. Boro, P.W. 10 - S.I. Maizuddin Ahmed and of P.W. 26- then Addl. S.P. (HQ) Shri Sudhakar Singh has already been discussed in detailed in the previous paragraph of this judgment. Therefore, for the sake of brevity repetition is avoided. What is transpired from their evidence is that with reference to Basistha PS GDE entry No 1162 dt 01-04-09, at 14 Mile G S Road and around 12.30 pm they intercepted two vehicles, one Scorpio No. AS-01/AH-1422, driven by one Bunu Sonar and Phojendra Hojai was the occupant and one Tata Sumo AS-01/E-0609 driven by Dipankar Deka and Babul Kemprai was the occupant. On search they found 2 pistols in a brief case and other papers in the Scorpio and one air bag containing huge amount of Indian currency in the Tata Sumo and both the vehicle was seized. The currency, on counting found to be of 1 crore. Ext-30 is the FIR dated 01-04-09 with reference to Basistha PS GDE entry No 1162 dt 01-04-09, documents including 3 sheets of letter heads (blank) of DHD (J) and a letter of Mohet Hojai addressing to Superintending Engineer PWD to issue work order in favour of Phojendra Hojai your associate for an amount of 88 lakhs, one 7.6 mm pistol bearing No. RP 127321 with 4 live rounds, one 9 mm pistol made in China with 5 live rounds, arm licence Ext-32 and Ext-33 in the name of Phojendra Hojai and seized M/Ext- 7 is Sony Ericson mobile and M/Ext- 9 is Nokia mobile were seized vide Ext.-A. PW-113- Dipankar Deka also stated the same fact and he further deposed that on 3-4-09 he gave statement, Ext. 388 before Magistrate. PW-117- Naimuddin Ahmed, the then SDJM (Sadar) Guwahati No-1, also confirmed recording 164 Statement of Dipankar Deka- Ext-388. In cross-examination of these witnesses nothing could be elicited to shake their credibility.

330. The evidence of PW-3, Shri Rakesh Pareek- an agent of LIC Agent reveals that his father-Shyam Sunder Pareek was looking after the accounts of Ranbir Singh Gandhi, and Prakanta Warisa was their client, along with him Joyanta Kr. Ghosh, Debasish Bhattacharyee, and Sandeep Ghosh came to his office. His evidence further reveals that on 12-02-09, R.S. Gandhi asked him to pay 50 lakhs to Joyanta Kr. Ghosh, and that Joyanta Kr. Ghosh will come to collect the amount, and that one Pramod Mahoto, staff of R.S. Gandhi, came and gave 25 lacs in cash, and Joyanta Kr. Ghosh, with his associate Debasish Bhattacharyee came and took away the cash. Again on 13-02-09 Sandeep Ghosh, came and took 25 lacs, which was also sent by R.S.Gandhi. His evidence further reveals that on 24-02-09 Joyanta Kr. Ghosh, and his associate Debasish Bhattacharyee, came and gave him 50 lacs and after about 15/20 minutes Promod Mahoto came and collected the amount from him, and again on 28-03-09 at around 5/5-30 pm Joyanta Kr. Ghosh, and his associate Debasish Bhattacharyee, came and gave him 70 lakhs and after about 5/10 min Promod Mahoto came

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an collects the amount. Though the prosecution side has failed to get it connected to the present charges, yet it shows the shady deals made the accused.

331. PW-7- Shri Ajay Agarwal testified that he is the owner of a firm in the name and style -M/S Alampurua Enterprise and doing the business of Govt. supply to PHE Deptt. And he approached Mohet Hojai CEM NC Hills regarding supply of articles to PHE Deptt., who directed him to contact Addl. Chief Engineer Karuna Saikia, who gave him the supply order to PHE Deptt. Ext-21 is the purchase bill dt 20-3-09 by which he purchased the materials from Pomoi Steels for Rs. 18,67,486.40/- Ext. 22 is the consignment note of Maa Kali Transport. Ext. 23 is the receipt copy of materials given by the deptt. on receipt of the materials. Similarly, Ext. 24 is another consignment note of Maa Kali Transport agency for sending of GI pipes to PHE Deptt., N. C. Hills. Ext. 25 is another receipt copy given by PHE deptt. acknowledging receipt of the materials. Ext. 26 is the copy of bill given by Maa Kali Transport agency raised on his firm for transport of goods to PHE Deptt., N. C. Hills. He has yet to receive the payment of the aforesaid material supply from the PHE Deptt. It is elicited by accused Debasish Bhattacharyee in cross-examination that the supply order was received on 7.2.2009, as per Ext. 22, Ext. 24 and Ext.25 he has supplied the goods on 1.4.09, 4.4.09 and 9.4.09 respectively. Nothing could be elicited in cross-examination of this witness. Thus what is apparent from this witness is that he supplied the material only after the apprehension of A-1 and A-2.

332. The evidence of PW-8-Chintamani Sarma, Manager Pamoi Steels reveals that Ext.28 is the price list of GI Pipes w.e.f. March 09 to 8-7-09, and the firm gives 27% discounts for bulk purchase and in the case of M/S Alampurua Enterprise the firm gives 27 to 30 % discount for purchase of GI Pipes.

333. The evidence of PW-15- Shri Prem Chand Agarwal reveals that he is the Proprietor of M/S Raj Hardware and on being requested by Dy. S.P. Shri K.S. Thakur he provided him with the rates of GI Pipes vide Ext.-45/2. He then given the list of rates of GI Pipes and the price list he quoted and manufacturer's price is same. The Vat is inclusive of the price that he quoted. And he gives 25% to 30% discount as a wholesaler.

334. The evidence of PW-17, Shri Hiranya Kumar Das, an officer of Punjab & Sind Bank reveals that Ext-48 is the letter forwarding statement of A/c of M/S Maa Trading- Ext.

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48/2 to 48/5, M/S Jeet Enterprise- Ext-48/6 to 48/9, M/S Loknath Trading- Ext 48/10 to 48/13, M/S Borail enterprise Ext.48/14 to 48/15, maintained in his Bank. And Ext-49 (in 15 pages) is the forwarding letter by which the statement of account of the accused from pages 49(2) to 49(4) was forwarded to NIA by Sr. Manager. It is to be mention here that Ext. 48/2 to 48/5, Ext. 48/6 to 48/9, Ext. 48/10 to 48/13 and Ext. 48/14 to 48/15 were admittedly not issued as per Bankers' Books of Evidence Act. The Id. counsel for the accused persons submitted that no reliance can be placed on the said Exhibits. There is substance in the said submission. It is accepted accordingly.

335. PW-18- Shri Kamalesh Pandey- testified that he was working as Manager Madhumilan Guest House Barabazar Kolkata. Ext-50 is Guest House Register and a SI.-3005, entry dated 02-11-08, shows your associate Phojendra Hojai of Haflong stayed in room No. 813 from 02-11-08 to 6-11-08. Again at SI-1892 entry dt. 13-03-08 shows Phojendra Hojai of Haflong stayed in room No. 810 from 13-03-08 to 15-03-08. Ext-52 & Ext-53 are the pointing out memo prepared at Madhumilan Guest House in his presence.

336. PW-19- Paragmoni Aditya testified that he was Journalist working in News Live-and on 1-4-09 police intercepted vehicles and recovered huge amount of cash with arms and ammunition and they telecasted the news as carrying of 1 crore by 2 persons. He provided the CD- Ext 55, carrying the news to NIA on being requested.

337. PW-27- Shri Hiteshwar Medhi- testified that he was working as consulting editor of NE TV. In the year 2008 NE News telecast a story on Niranjana Hojai of DHD(J) Chief, a video clipping was supplied to NIA. Material Ext-15 is the said CD containing the voice of Niranjana Hojai. Again news of Phojendra Hojai and Babul Kemprai was telecasted on 02-04-09, a CD of which was supplied to NIA. M/Ext 16 is the CD containing the news item regarding the recovery of 1 crore and other articles from the said two persons. The value of evidence of P.W. 19 & 20 has already been discussed.

338. PW-23- Kulendra Daulagapu- an Executive member of NCHAC. His evidence has already been in previous paragraph of this judgment. He testified that he come to know about the activities of DHD (J) about demand of money and violent activities they took. His evidence reveals that during 2008 ASDC & BJP alliance was in power. During one of the meeting Depolal Hojai -CEM, cited his ill health and resigned as CEM and Mohet Hojai was


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elected as CEM. He went with Mohet Hojai to Kuala Lumpur in Feb/ March 2009 at Kulalumpur he met, Niranjan Hojai.

339. PW-28- Diganta Vikram Gayan- testified that he working as architect consultant-and he was introduced to Kulendra Daulagupu of NC Hills who asked him to prepare DPR report and on preparation he was paid money by Dhruba Ghosh and Pabitra Nunisa. Debashis Dutta requested him to help Dhurba Ghosh in opening of a/c at Guwahati at SBI to draw a cheque. Debashis Dutta along with Dhurba Ghosh and you met him and Dhruba Ghosh express that he wanted to open 2 new a/c in the name of 2 Firms. A tenancy agreement of his father's property was prepared for opening a/c. And one of his friends Shri Pranjal Bharali act as an introducer in the Bank and formalities were completed and a/c was opened. P.W.123 -Shri Pranjal Bharali also testified the same fact. The evidence of PW-28 further reveals that thereafter, a cheque, amounting to 1.3 crore was deposited in a/c, and thereafter, Debasish Bhattacharyee deposited a high value cheque. And after verifying genuineness of the cheque by the Manager by visiting Haflong the cheque was cleared and 84 lakhs was withdrawn on the same day by Shambhu Ghosh and Debashis Bhattacharjee. He received 2 lakhs against cheque of 3.5 lakhs handed over to him by Shambhu Ghosh. After about 1/2 days he tried to contact Debasish Bhattacharyee, Dhruba Ghosh and Shambhu Ghosh as he wanted to convey that they were supposed to get BSNL landline connection but none were available. On 24-6-09, he made a 164 statement before Magistrate Ext-74 is the statement, which also lends support to his versions. Nothing could be elicited in cross-examination of this witness.

340. The evidence of P.W. 28 finds support from the evidence of PW-31- Ranjit Gogoi in respect of opening of accounts by the accused and depositing of cheques and withdrawal of money thereof. His evidence reveals that he is a Bank employee and was posted at zoo Road branch SBI. On 26-3-09 Debasish Bhattacharyee came for opening a current A/c in the name of MAA Trading. The Bank opened the A/c on 27-3-09 and thereafter Debasish Bhattacharyee has deposited a Cheque for Rs.84 lakhs and Rs. 57 lakhs and wanted to withdraw the amount on the same day. To ascertain the genuineness of the cheque, he visited Haflong and met PHE Engineer Mukherjee who confirmed the cheque as genuine. After credit of the Cheque amount the bank paid Rs 84 lakhs to Debasish Bhattacharyee, and thereafter, on Monday Debasish Bhattacharyee has also withdrew a sum of Rs. 3,50,000/from the A/C of Maa Trading. His evidence further reveals that Debasish Bhattacharyee has opened one current A/c in the name of Jeet Enterprise in the month of May -2009.


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341. The evidence of PW-32- Ramen Deka- reveals that he is working in a firm and on 26-3-09 Debashis Dutta, Dhruba Ghosh, Shambhu Ghosh came to his firm and met Diganta Vikram Gayan and he was asked to get notarised a tenancy agreement between Jeet Enterprise and P.K. Gayan and Maa Trading and P.K. Gayan from Notary Office. On 27-3-09 when he came to office all the three persons left to SBI Zoo Road branch. On 30-3-09, when he came to office all the three persons had gone with Diganta Vikram Gayan and around 2-3 pm he was called to SBI Branch by Diganta Vikram Gayan where Diganta Vikram Gayan took 2 lakhs as loan from them. Thus this witness also lends support to the version of P.W. 28.

342. PW-34- Debashis Dutta has testified that during 2008 to 2009 he was working as OSD to CEM Deepolal Hojai NCHAC- and on 26-11-08 Deepolal Hojai has resigned and Mohet Hojai was elected as CEM of NCHAC. Ext-96 is the resignation letter of Deepolal Hojai. His evidence also reveals that he knows Dhruba Ghosh and he took Dhruba Ghosh to Digant Vikram Gayan, whom Dhruba Ghosh knew prior to his introduction and he asked to help him in opening an A/c at Guwahati. His evidence further reveals that once, when he returned by train from Kolkata he was handed over one envelope by D.Ghosh, Debasish Bhattacharyee and Sandip Ghosh to hand over to Imdad Ali. Later on, he came to know that the envelope containing a Cheque of Rs.1.20 crore.

343. The evidence of PW-35- Imdad Ali, P.W.106 - Mr. Ravi Agarwal and P.W.21 - Shri Chandra Sharma also discussed in the previous paragraph of this judgment. The outcome of the said discussion is that accused Mohit Hojai with the help of P.W.35 and also with the help of hundi operators has sent money to Kolkata meant for accused Joyanta Kr. Ghosh. Nothing tangible could be elicited in their cross-examination by the defence side.

344. The evidence of P.W. 29, Shri George Lamthang is also discussed in detailed in the previous paragraphs of this judgment. His evidence reveals that he converted Indian Currency, amounting to Rs. 4.00 Cröre, to US Dollars at the behest of Malswamkimi, who collects the said Indian Currency from accused Phojendra Hojai on three occasions from Shalimar and Madhumilon Hotels, Kolkata. He also identified accused Malswamkimi and Phojendra Hojai in the court. Nothing could be elicited in cross-examination of this witness also.

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345. The evidence of P.W.42 -Shri Tomizuddin Ahmed, Sr. Scientific Officer, Directorate of Forensic Science Assam, also discussed in details in previous paragraphs of this judgment. What is transpired from the evidence of this witness is that he examined some documents sent by NIA vide letter -Ext. 127 with Annexure-I, II and III in 13 pages. He then examined the specimen writing and signatures with the question documents as asked by the Investigating Officer and formed his opinion reduced it in writing on 06.11.2009 -Ext 208 and reasons for opinion- Ext 210, wherein he opined that:-

1. the documents is connection with a Case No. 01 & 02/2009/NIA/New Delhi have been carefully and thoroughly examined and ;compared with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery with the necessary scientific aids available in the Directorate of Forensic Science, Assam, Kahilipara, Guwahati-19.
2. The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-14 also wrote the red enclosed writings and signatures similarly stamped and marked Q-1 and Q-2.
3. The person who wrote the blue enclosed writings and signatures stamped and marked as S-15 to S-24 also wrote the red enclosed signatures similarly stamped and marked Q-39, Q-40, Q-51 and Q-53.
4. The person who wrote the blue enclosed writings and signatures stamped and marked S-25 to S-34 also wrote the red enclosed writings and signatures similarly stamped and marked Q-29 to Q-34 and Q-37.
5. The person who wrote the blue enclosed writings and signatures stamped and marked S-35 to S-44 also wrote the red enclosed writings and signatures similarly stamped and marked Q-41 to Q-50, Q-52 and Q-54 to Q-96.
6. The person who wrote the blue enclosed writings and signatures stamped and marked S-45 to S-72 also wrote the red enclosed signatures similarly stamped and marked Q-16, Q-17, Q-20, Q-23, Q-24, Q-27 and Q-28.
7. The person who wrote the blue enclosed writings and signatures stamped and marked S-73 to S-100 also wrote the red enclosed writings and signatures similarly stamped and marled Q-3, Q-5, Q-7, Q-8, Q-11, Q-12, Q-14, Q-15, Q-18, Q-19, Q-21, Q-22, Q-25, Q-26, Q-35, Q-36 and Q-38.
8. It has not been possible to express a definite opinion on rest of the question items on the basis of comparisons with the materials of hand.


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346. The evidence of PW-44, Shri Monoj Kr. Talukdar reveals that he worked as Junior Engineer PHE Office. In last part of the 2006 Karuna Saikia joined as Addl. Chief Engineer and continued till 25-2-09 and in his presence nine numbers of documents were vide seizure memo No. 173 and Ext. 174 is the letter dated 08.05.2008 received by his office from Deputy Secretary, N.C. Hills Autonomous Council regarding acceptance of the rate of G.I. pipes quoted by Smti. Salota Thousan who was the lowest bidder and Ext.175 is the letter dated 27.05.2008, putting the approval letter of G.I. pipes sent from the office of the Addl. Chief Engineer to all the three PHE divisions i.e. Haflong, Maibong and Umragsa, Ext.176, 177, and 178 are the supply order to Maa Tradding, Haflong, regarding supply of G.I. pipes, signed by K.B. Mukharjee and Karuna Saikia. His evidence further reveals that vide Ext. 180 quotations were invited for the fixation of G.I. pipes and Ext.181 is the receipt memo of handing over of documents to NIA and Ext.182 is the supply order to M/s Maa Trading, and 183 is the deficiency memo regarding the receipt of G.I. pipes in the office of the Executive Engineer, PHE Haflong Division, and Ext 184 is the receipt memo regarding handing over of supply order and Ext.185, 186 are the supply order to M/s Jeet Enterprise for supply of G.I. pipes and 187 is the supply order to Manoj Garlosa, and Ext. 188 is the supply order to M/s M & B Associates for supply of HD pipes, Ext.189 is the supply order to Hajar Naiding for supply of GI pipes, Ext.190 is a supply order to M/S Jeet Enterprise for supply of GI pipes, and Ext.191 is the supply order to M/S Loknath Enterprise for supply of GI pipes and Ext.192, Ext.193 & Ext.194 is the supply order to M/S Alampurua Enterprise for supply of GI pipes. His evidence further reveals that Ext.195 is the letter written by him to NIA regarding sending of certain supply orders and Ext.196 is the supply order to M/S Munna Phunglosa for supply of GI pipes and Ext.197 is the supply order to Sh. Jibrangshu Paul for supply of GI pipes and Ext.198 is the supply order to Gyan Das for supply of GI pipes and Ext.199 & Ext.200 is the supply order to M/s Jeet Enterprise for supply of GI pipes and Ext.201 is the supply order to Dinen Kemprai Umrangshu for supply of GI pipes Ext.202 is the supply order for supply of GI pipes to Joybesh Warrisa for supply of GI pipes Ext.203 is the supply order to M/S Loknath Trading for supply of GI pipes and Ext.204 is the supply order to M/S Jeet Enterprise and Ext.205 is the letter dtd.10.2.2009 relating to submission of 57 nos. of estimates under ARP under Maibong PHE Div. sent from his office to the Principal Secretary, NC Hills Autonomous Council. The estimate amounted to Rs.277.1 lakhs and Ext.206 is another letter dtd.17.3.09 relating to submission of 7 nos. of estimates under ARP Maibong PHE Div. Sent to the Principal Secretary, NCHAC. The estimated amounted to Rs.58,34,700/-. Ext 206/1 is the signature of accused K.B. Mukherjee, Additional Chief Engineer, PHE (officiating) and Ext 206/2 is my

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signature. The estimates were prepared by the Division and he has prepared the letter relating to sending the estimate to the Council authority for obtaining administrative approval.

346.(i). The evidence of this witness further reveals that he prepared comparative chart of market rates in Ext.139 on the basis of rates given by 4 nos. of contractors but the Addl. Chief Engineer, Sh.Karuna Saikia directed him to prepare the comparative statement in double the rates of prevailing market rates as submitted by the contractor and he did so having been pressurised by Karuna Saikia. He also testifies that he requested Karuna Saikia to prepare new comparative statement for fixation of rates of GI pipes as the rates fixed by the council authority is objectionable but Karuna Saikia did not agree. His evidence also reveals that in the first week of February, 2009 Karuna Saikia called him to Guwahati for preparation of supply order of M/S Jeet Enterprise, M/S Loknath Trading, M/S Alompuria Enterprise, Jibrangshu Paul, Gyan Das, M/S Maa Trading, Monoj Garlosa, M/S M & B Associates, Hazar Niding and accordingly, he came and prepared the supply order and accused Karuna Saikia signed the same. And thereafter, Karuna Saikia took the supply order of the contractor and gave him the office copy.

346.(ii). The defence side could not shake the credibility of the version of P.W. 44 in his cross-examination. Rather it is elicited that Maa Trading, Jeet Enterprise or Loknath Trading, were not the bidders in the said tender. His evidence paints a clear picture as to how all the official rules and norms were flouted in preparing comparative chart and awarding supply order. It appears that one Salota Thousan was the lowest bidder. But no works have been allotted to her. Rather, works have been allotted to the Maa Trading, Jeet Enterprise or Loknath Trading, in spite being not the bidders in the said tender.

347. The evidence of P.W.50 Shri L. Ngamlai reveals that by receipt memo, Ext 217 dated 15.06.2009, he handed over 14 nos. of files belonging to PHE Department, Social Welfare Department, Transfer order and joining report of Sri S. Lienthang, Accountant (N) and files relating to Special Advance and Requisition Register 2008-09 of Cheques to various departments/ Divisions. Ext 218 is the file No. AC/ACCTTS/TS-1/2008-09, which relates to BT Bills and challians to be deposited to the Treasury PLA Account which is maintained by the Treasury Officer, N.C. District now Dima Hasao District. His evidence also reveals that Ext. 219 is file no. TS30(B)/2008-09 regarding release of funds for work/maintenance to the EE, PHE, Maibong Division, at page no. 3 regarding requisition for release of funds amounting to Rs. 1,50,00,000/- has been processed and put up to him proposing release of fund mentioning the


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availability of provision of fund under 2215WS/S (Water Supply & Sanitation). Accordingly, he put up the file to the Principal Secretary mentioning the availability of fund provision in which he has quoted to the authority the weakness position of Personal Ledger Account (PLA), however, the then Principal Secretary recommended to the Hon'ble CEM (Chief Executive Member) for release of fund amounting to Rs. 50,00,000/- to Umrangcho Division, PHE. Thus the Hon'ble CEM released Rs. 90,00,000/-. At the relevant time Sh. Mohet Hojai was the CEM.

347.(i). His evidence further reveals that PLA account means that all the funds received from the Govt. Of Assam for all the departments are deposited through By Transfer Bills and challans. From the said account PLA account, the money required for other department are released. At page no. 4 of the note sheet an amount of Rs. 4,49,11,653/- has been processed for release against implementation of Water Supply and Sanitation Programme of Maibong Division. Accordingly, after checking the proposal note of the Dealing Assistant and Accountant, he has put up to the Principal Secretary mentioning the availability of fund provision under the Concerned Head of Account 2215WS/S and also mentioning the absence of financial sanction of the Council. The then Principal Secretary put up and recommended 50% of the requisition amount to the Hon'ble CEM. The Hon'ble CEM released 1.84 crore and Rs. 25,00,000/- under ARP scheme. At page no. 5 of the note sheet, the Dealing Assistant and Accountant put up the requisition to release Rs. 2,40,11,653/- mentioning release for work under 2215WS/S account, however, no action was taken. Ext 219/1 to Ext 219/5 are the relevant portion of the note sheet.

347.(ii). His evidence further reveals that Ext 220 is the file no. TS31(B)/2008-09 regarding release of fund for maintenance to Executive Engineer, PHE, Umrangso Division. At page no. 3 of the note sheet an amount of Rs. 1,20,00,000/- only was proposed for release under 2215SW/S, he has put up the file before the Principal Secretary mentioning the weakness position of the PLA account. The Principal Secretary recommended for Rs. 50,00,000/- and the CEM released Rs. 95,00,000/-. At page no. 4 an amount of Rs. 4,30,00,000/- only was proposed to release under 2215SW/S for procurement of GI Pipe and payment of Original Work. He put up the file mentioning the overall balance of fund against the Department. The Principal Secretary recommended for release of less than Rs. 1 crore, however, the CEM, Sh. Mohet Hojai released Rs. 1.29 crore. Ext 220/1 and 220/2 are the relevant portion of the note sheet. Further his evidence reveals that Ext. 221 is the file no. TS29(B)/2008-09 regarding release of fund for maintenance/works to the Executive Engineer, Haflong Division under 2215WS/S. At page no. 4 of the note sheet a proposal for Rs. 2 crore

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was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah mentioning the very weakness position of Personal Ledger Account. By his note he has recommended for release of Rs. 1 crore and accordingly, Hon'ble CEM has approved the same amount. At page no. 5 of the note sheet a proposal for Rs. 1,80,90,000 was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah. By his note he has recommended for release of Rs. 1 crore but however, Hon'ble CEM has released Rs. 1.52 crore. At page no. 6 of the note sheet a proposal for Rs. 1,80,90,000/- was received from the department and accordingly, the same was put up to the then Principal Secretary, Sh. A.K. Baruah mentioning that an amount of Rs. 1,42,00,000/- has already been released earlier to the Department. But the Principal Secretary by his note he has recommended for release of Rs. 50 lacs for 3 divisions and accordingly, Hon'ble CEM, In-Charge has approved the same amount. Ext 221/1 and 221/2, 221/3 are the relevant portion of the note sheet.

347.(iii). His evidence also reveals that Ext. 222 is the file no. AC/PHE/H/4/2008-09, regarding Water Supply Scheme, which was maintained in the Transfer Cell of Autonomous Council Office. At page no. 1 of the note sheet, it relates to according of administrative approval under ARP Scheme for the year 2008-09, proposed for 18 nos. of selected schemes. The Deputy Secretary who is the In-Charge put up to the Principal Secretary and accordingly, the Principal Secretary recommended the proposal and which was approved by Hon'ble CEM, Sh. Mohet Hojai. Ext. 222/1 is the relevant portion of note sheet. Ext 222/2 is the note of Deputy Secretary, Smt. Sabita Langthasa. Ext 222/3 is her signature which he has identified. Ext 222/4 is the signature of Sh. A.K. Baruah, the then Principal Secretary, Ext 222/5 is the signature of CEM, Sh. Mohet Hojai which he identified. At page no. 20, there is a order of the Deputy Secretary regarding according of administrative approval for 18 nos. of scheme amounting to Rs. 1,31,82,000/-. Ext 222/6 is the said order and Ext 222/7 is the signature of Deputy Secretary, Smt. Sabita Langthasa which he identified. Further his evidence reveals that Ext 223 is the file no. PHE/M/4/Pt/2008-09 regarding Water Supply Scheme (ARP) under Maibong PHE Division. At page no. 1 of the note sheet there is a proposal for according of administrative approval submitted by the Addl. Chief Engineer, PHE, Haflong for Rs. 277.19 lakhs for the year 2008-09. The Deputy Secretary recommended the same to the Principal Secretary and accordingly, the Chief Executive Member has accorded the same. Ext 223/1 is the relevant portion of the note sheet. Further his evidence reveals that Ext 224 is the file no. AC/PHE/M/4/2008-09 regarding Water Supply Scheme. At page no. 8 of the note sheet, there is a proposal for according of administrative approval submitted by the

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Addl. Chief Engineer, PHE, Haflong for Rs. 55 lakhs. The Deputy Secretary recommended the same to the Principal Secretary and accordingly, the Hon'ble Chief Executive Member has accorded the same. At page no. 9 of the note sheet there is a proposal for according of administrative approval for 7 nos. of schemes amounting to Rs. 58,34,700/-. The Deputy Secretary proposed to the Principal Secretary to consider the proposal after Lok Sabha Election and accordingly, the Principal Secretary agreed. Ext 224/1 and Ext 224/2 is the relevant portion of the note sheet. His evidence further reveals that Ext 225 is the detail list of cheques issued from 1st January, 2009 to 14th May, 2009 in favour of (1) Department of Social Welfare, (2) PHE Department. In total there are 88 PLA cheques were issued. The amounts are given in the cheque in favour of the Drawing and Disbursing Officer as per the list.

348. PW-95-Maziruddin Ahmed- Asst. Engineer PHE Haflong, and In-charge of store has deposed that his duty was to maintain stores and verify bills, and thereafter materials are to be issued to different sites, and in February 2009, K.B. Mukherjee took over the charge of Haflong PHE Division, prior to that Karuna Saikia was there. On 18-6-09 verification of stores of PHE Haflong was done by NIA and he was present and Ext-324 is the verification report.

349. The evidence of PW-104, Shri Jai Jendra Hojai, Office Superintendent Maibong PHE, reveals that he was also entrusted with cashier work and sometimes in the month of March, 2009, K C Namasudra, in charge Executive Engineer rang him up and directed him to come to Guwahati with Cheque book and when he reached Guwahati and K.C. Namasudra took the cheque book from him. Then returning to Haflong he asked K.C. Namasudra to make the cash book up to date and from the cheque book he found that 4 cheques were issued. Ext-369 is the Cash book No-23 of PHE Maibong. Ext-370/1 Chq no- 873155 dt 23-3-05 (although the chq is dt 23-3-05 it was passed on 2-4-09) for Rs- 40,00,000/-, Ext-370/2 Chq no-873156 dt 23-3-09 for Rs- 45,00,000/- , Ext-370/3 Chq no- 873157 dt 23-3-09 for Rs- 40,00,000/-, Ext-370/4 Chq no-873158 dt 23-3-09 for Rs- 40,00,000/-,

349.(i). It is elicited in cross-examination of this witness that Ext 370/1 being Cheque no. 873155 dated 23.03.2005 for Rs. 40 lacs and Ext 370/2 being Cheque no. 873156 dated 23.03.2009 for Rs. 45 lacs was transferred to the M/s Jeet Enterprise's Bank account only on 2nd April, 2009. It is also elicited that Ext 370/3 being Cheque no. 873157 dated 23.03.2009 for Rs. 40 lacs was transferred to the M/s Loknath Trading's Bank account only on

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4th April, 2009. It is also elicited that Ext 370/4 being Cheque no. 873158 dated 23.03.2009 for Rs. 40 lacs was transferred to the M/s Loknath Trading's Bank account only on 2nd April, 2009.

350. PW-68, Shri Bimal Kumar Agarwal testifies that in the year 2009, he was working at Sani Steel Pvt. Ltd, Guwahati and they purchased GI pipes from the manufacturers at Discount of 35% including the vat and they used to sell the same to the dealer keeping a margin of 3% to 4 % in average and on 14.4.09, they sold GI pipes 50 mm, medium make Banchal a@ Rs.329 per metre less discount 34.61 % plus vat 4 % to Shyam Hardwarre, Fancy Bazar, Guwahati. And again on 30.3.2009 they sold GI pipes 40mm medium make bunchal @ 233 less 34.61 % plus 4 % vat and GI pipe 25 mm medium make bunchal @ 163 less 34.61 % plus 4 % vat. And 20 mm GI pipe medium make bunchal @ 106 less 34.61 % plus 4 % vat and Jindal GI pipe 25 mm medium @ Rs.160 less 32.69 plus vat 4% to Shyam Hardware, Fancy Bazar, Guwahati. Ext.266 is the letter addressed to DSP, KS Thakur enclosing the price list of Non-Tata GI pipes.

351. PW-73 Bhupen Ch. Das testifies that on 23.8.09, on being requested by O/C Umrangshu P.S. he and Jadu Saikia went to PHE office, Umrangshu and as asked they counted the no. of GI pipes received from Jeet Enterprise and accordingly they counted the no. and gave the same to the O/c and Ext.273 is the Inspection memo of PHE store containing the no. of GI pipes and Ext.274 is the deficiency memo prepared by them and put the signatures and on the same day another receipt memo Ext.275 was prepared by which used cheque books, advice slip, cash book, bill of Jeet Enterprise, challans of Jeet Enterprise, supply orders were taken over by KS Thakur DSP, NIA and Extr.276 & 277 are the bills of Jeet Enterprise and 278/4 are the challans of Jeet Enterprise.

352. PW-76- Shyam Ajitsaria testifies that on 30.3.09, he supplied GI pipes of various size to M/S Maa Trading Haflong after receiving a cash of Rs.15 lakhs from Mr. Sandip and Mr. Ghosh vide Ext.280/1 and again 3.4.09 he supplied goods to Jeet Enterprise by bill No.15, Ext.282/2 for a sum of Rs.7,44,010/- and again on 10.4.09, he supplied goods to M/S Jeet Enterprise by bill no.53- Ext.282/3 for Rs.10,10,430/- and to Maa Enterprise vide bill no. 54- Ext.282/4 for a sum of Rs.2,89,300/- and vide bill no. 55- Ext.282/5 on 11.4.09 for a sum of Rs.9,66,370/-. On 14.4.09, he supplied goods for a sum of Rs.10,79,955/- vide bill no. 56 - Ext.282/6. Thereafter, on 18.4.09, amount of Rs. 8,11,330/- by Ext 282/7, by Bill No. 75 dated 20.04.2009 amount of Rs. 8,06,195/- by Ext 282/8, to Jeet Enterprise by Bill No. 83 dated

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21.04.2009 for amount of Rs. 8,33,474/- by Ext 282/9, again to Maa Trading by Bill No. 95 dated 25.04.2009 for an amount of Rs. 8,33,235/- by Ext 282/10, again to Maa Trading by bill No. 117 dated 02.05.2009 for an amount of Rs. 9,24,300/- by Ext 282/11, by bill No. 146 dated 09.05.2009 for an amount of Rs. 8,96,571/- by Ext 282/12, by bill No. 147 dated 09.05.2009 for an amount of Rs. 9,38,250/- by Ext 282/13, to Jeet Enterprise by Bill No. 148 dated 09.05.2009 for an amount of Rs. 9,17,075/- by Ext 282/14 by Bill No. 308 dated 09.06.2009 for an amount of Rs. 12,49,699/- by Ext 282/15.

352.(i). His evidence further reveals that he was receiving payment at regular intervals in the form of cheque and cash and at last he received the cheque of Rs. 15,00,000/- from Jeet Enterprise dated 06.06.2009 vide Ext 282/16, and he deposited the cheque in the bank and it was dishonoured saying that the payment has been stopped by the Investigating Agency vide Ext 282/17. My balance due was around Rs. 6,00,000/- so, he contacted Mr. Sandip saying that his balance is due, he told me that he is sending me a cheque of Rs. 15,00,000/- and also required some more materials but the cheque was dishonoured. Ext 282/18 are the Tax Invoice in 10 nos. of various firms showing the materials he has purchased locally. Ext 282/19 are the Tax Invoice in 14 nos. showing the materials he has purchased from Kolkata.

352.(i). His evidence further reveals that on 10.07.2009, he produced all the documents before the Investigating Agency and the same were seized vide Ext 283. Ext 284 is another production memo dated 12.07.2009 by which he handed over photocopies of statements of accounts of his account at Vijaya Bank, Fancy Bazar showing the entries where he has deposited all the cheques received from Maa Trading and Jeet Enterprise. By Ext 285 dated 08.08.2009, he handed over Tax Invoice of M/s Sani Steel Pvt. Ltd. dated 14.04.2009 and 30.03.2009. By Ext 286 dated 28.08.2009, he submitted the price list of GI Pipe with effect from December, 2008 to May, 2009 to SP, NIA. Ext 286/1 is the price list.

353. The evidence of P.W. 83 Shri Saibal Kanti Roy reveals that on 24.08.2009, in pursuance to quarry made by NIA vide letter No. 01/2009/NIA/ND dated 24.08.2009, he wrote a letter Ext- 290, to NIA indicating the transactions in Current Account No. 11472697160 standing in the name of Executive Engineer, PHE, Umrangso and 11472697669 standing in the name of Executive Engineer, PHE, Umrangso respectively. By the aforesaid letter he has intimated that 6 cheques indicated in the letter were paid from SBI, Zoo Road Branch. He has also submitted the print copy of transaction enquiry, Ext. 291. Then payment of the 6 cheques


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are reflected in page No. 23 and 24 and mentioned in Sl. No. 274, 275, 276, 277, 287 and 288. All these cheques were paid from SBI", Zoo Road Branch. Ext 291(a) to 291(f) are the transactions.

354. The evidence of PW-108-N.G.Upendra Singh reveals that he was Asstt. Ex. Engineer PHE Haflong, and that regarding supply of GI pipes and placed in the name of M/s Jeet Enterprise but the same was not received by him during his tenure as In-Charge, Executive Engineer. And during the tenure of the then Executive Engineer, Sri Altaf Mazid, the sub division store received GI pipes in the form of part supply with respect to the orders, which he received along with the supply bills submitted by the party but the bills could not be verified or checked measured in the respective Measurement Book in accordance with the supply order because of the none submission of vital documents such as Test Certificate from the manufacturer and warranty certificate. Accordingly, bills without verification were handed over to the Executive Engineer. His evidence further reveals that he came to know that the payments were made in different instalments to the supplier by Executive Engineer. Ext. 273 is the Inspection Memo whereby inspection was made by NIA regarding the receipt of GI pipes which were procured vide Challan No. dated 09.05.2009, 10.04.2009, 11.04.2009 and 14.04.2009. Ext 274 is the Deficiency Memo prepared on 23.08.2009 in his presence regarding the calculation made therein. Ext 275 is the seizure list. Nothing tangible could be elicited in cross-examination of this witness.

355. PW-109- Brojolal Das stated that he was Senior Asst. PHE Division, Umrangso, in the month of Feb/March/09, Altaf Mazid telephoned him to come to Guwahati carrying cheque book, accordingly with cheque book he came to Guwahati and handed over to him. After 15-20 days Mazid told him to make entry in cash book regarding payment made to Jeet Enterprises. Ext-380 is Cash book Ext-380/1 is the entry of four cheques made to M/S Jeet Enterprises Cheques no- 741451, 741452, 741453, 741454,

356. The evidence of PW-110-Altaf Mazid reveals that he was Ex. Engineer PHE, Umrangso. In 2009 supply order were placed to M/S Jeet Enterprises for GI pipes, and one Mr. Ghosh representative of M/s Jeet Enterprise, supplied the materials and on the basis of materials received, bills were submitted and he started making payments vide following cheques No. Ext-374 is chq 741457 dt. 12-05-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/- , Ext-375 is chq 741456 dt. 11-05-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-376 is chq 741452 dt. 18-04-09 issued to M/S Jeet Enterprises for Rs.


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18,00,000/-, Ext-377 is chq 741451 dt. 13-04-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-378 is chq 741453 dt. 21-04-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-379 is chq 741454 dt. 27-04-09 issued to M/S Jeet Enterprises for Rs. 17,08,991/-. He further testified that he did not receive complete materials pertaining to the last cheque. Accordingly, I issued reminder to the party to complete the supply process according to the last cheque but the party did not respond and accordingly the matter got reflected in the registers.

357. The evidence of PW-111-Himangshu Barman shows that he was Junior Engineer, PHE, Umrangso and in the year 2009 he was Store In-Charge and Ext-382 is stock register of PHE Umrangso Div. maintain by him in there are which four entries in the year 2009 and Ext-382/1 is the four entries of supply of materials by M/S Jeet Enterprises.

358. The evidence of P.W.112, Shri Hiren Singh shows that on 16.06.2009, he remained as a witness to the seizure of certain documents by NIA vide Ext. 292 and Ext. 383 are the 11 Nos. of bills of M/s Maa Trading and Ext. 384 are the 9 nos. of challans again on 18.06.2009, he was present in the preparation of Inspection of Store and verification of stock. Ext 324 is the said Inspection Memo and again on 19.06.2009, he remained present in the preparation of Deficiency Memo by the NIA officials, Ext 183 is the deficiency memo, Ext 385 is the Service Book of Niranjana Hojai, LDA in the Office of PHE, Umrangso. And again on 20.06.2009, he remained present at Nothau Lodge, Cottage No. 10, Haflong, where one Laptop, Model No. PP29L was seized from Kulendra Daulagapu. Ext 386 is the said seizure memo Mat. Ext-77 is the said Laptop, and on 16.06.2009, he remained as witness to the seizure of three documents from the office of Deputy Director, Social Welfare. Ext 387 is the seizure memo, and he put his signature on all the above mentioned documents.

359. P.W.133 Shri Rakesh Rakesh Lohar testified that he is contractor in view of Notice of Addl. Chief Engineer, PHE- Haflong inviting Quotation, he collects the Quotation and rates of GI pipes- Ext. 286/1, from Shyam Hardware, Chai Gali, Guwahati, gave it to one Mr. Talukdar, Junior Engineer of Office of the Additional Chief Engineer, PHE, Haflong.

360. The evidence of PW-25-Mrs. Phionica Swer, Supervisor Jatinga Velly ICDS Project, Mahur and In-charge CDPO of New Sangbar ICDS Project, has already been discussed in detail in the foregoing paragraphs of this judgment. Her evidence relates to seizure of some filed of Social Welfare Department by NIA and two hard discs of the office of accused R.H.



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Khan vide seizure memo Ext. 64, nine numbers of documents were seized by NIA vide seizure memo Ext. 65, and the Cash Book No.3 of Social Welfare Department vide Ext.71, containing the pages therein bearing the signature of R.H. Khan. She, of course, in cross-examination stated that the hard discs were not seized in her presence and that her signature on the seizure list was taken at the Circuit House. But another seizure witness Smti. Lalneizovi Nampui, the then Election Officer, Haflong (PW-141) belied her version. She is found to be not wholly witness.

361. PW-141- Smt Lalneizovi Nampui, the then Election Officer, Haflong testified that NIA team visited the office of Executive Engineer of PHE Deptt. and after verification of stock of pipes of different types kept in a store, sealed the same in her presence with the seal of Dy. Commissioner and handed over the seal to her and she handed over to the DC, and Ext-324 is the seizure memo and on 19-6-09 NIA team seized two hard disc from Social Welfare Deptt. And M/Ext-78 & 79 are the said hard discs. and Ext-64 is the seizure memo. Nothing could be elicited in cross-examination of this witness. She categorically stated that on 19-6-09 NIA team seized two hard disc. from Social Welfare Deptt. in her and in presence of Phionica Swer.

362. PW-30 Sh. Pranesh Parbosa is LDA-cum-Typist of Dist. Social Welfare Office at Haflong. His evidence also already been discussed in details in case of accused R.H. Khan. It is to be mention here that the present sets of accused have not cross-examined this witness. It is to be mention here that to a query made by the court to the effect that if had received article supplied to his office as Dealing Asstt., he replied in negative.

363. The evidence of PW-45, Sh. K. Hrangkhoh, UDA, Social Welfare Deptt. reveals that vide Ext.211, 19 nos. of documents were handed over to NIA. Ext.73 is the file relating to Rehabilitation of BPL persons under ICDS Project areas which relates to supply order issued by Deputy Director, R.H. Khan. Ext.212 is the file relating to Rehabilitation of Infirm and Destitute persons and by note no.212/2 as desired by CEM, NCHAC supply orders were issued to suppliers one Sarma Enterprise, Projen Senguing, Maa Trading, M/S Borail Enterprise and M/S Maa Trading and M/S Debashish Bhattacharjee and Ext.122/13 is the supply order to Debasish Bhattacharjee dtd.14.11.2008 for supply of woollen blankets 312 nos. and 212/14 is the supply order to M/S Maa Trading for supply of 313 Nos. of blankets and Ext.212/15 is the supply order to M/s Borail Enterprise for supply of woollen blankets 1050 nos. and Ext.212/16 is the supply order to M/S Maa Trading for supply of woollen blankets 1250


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nos., and all at the rate of Rs.800. he also deposed that Ext.213 is the file relating to purchase of office stationery for 2007-09 and Ext.213/25 to 213/29 are the different supply orders to M/S Maa Trading and M/S Loknath Trading and M/S Borail Trading and M/S Mugrati Printing Press and the rate quoted in the supply order are as per approved by the council and not by taking market rate by the Deptt.

363.(i). His evidence further reveals that Ext.213/40 and 213/41 are two supply orders issued to M/S JK Traders and M/S N.D. Traders. Ext.70/27 is the bill submitted by M/S Maa Trading for 9,92,000/- and Ext.70/28 is the receipt without date by which the amount was received by one Dhruba and Ext.70/31 is the bill submitted by one Borail Enterprise for Rs.9,96,000/- and 70/32 is the receipt for the same. Ext.70/35 is the bill submitted by M/S Debashish Bhattacharjee for Rs.10,40,000 and 70/36 is the receipt and Ext.70/39 is the bill submitted by M/S Maa Trading for Rs.11,20,000/- 70/40 is the receipt by which one Dhruba received the amount. Ext.70/43 is the bill submitted by M/S Maa Trading for Rs.10,00,000/- and 70/44 is the receipt receiving the said amount and he found 3 copies of challans of Maa Trading without challan No. and date and 70/47 & 48 are the 2 challans and 70/49 is the blank challan and store keeper has put his signature on the printed words received the above in good conditions. Ext.70/50 is the bill submitted by Borail Enterprise for R.10 lakh and 70/51 is the receipt of the said amount. Ext.70/55 is the bill submitted by M/S HK Enterprise for Rs.63 lakhs and 70/56 is the receipt of the said amount.

363.(iii). Accused Joyanta Ghosh has elicited in cross-examination of this witness that NIA has written more than he had informed them in the two statements recorded by them. He admitted that in his 161 statement before the NIA, he had not taken the name of Dhruba even once. He admitted that there is no mention of the fact that M/s Maa Trading, M/s Loknath Trading, M/s Borail Enterprise and M/s Debashish Bhattacharjee or Dhruba had received the money before the NIA, but he stated that in fact he stated this to NIA. He also admitted having worked under Sri R.H. Khan for more than 11 years. He admitted that during the course of investigation of the present case the officers of the NIA did not take his handwriting or signature samples. He also admitted that in all the documents exhibited by him in my examination-in-chief, he was never once questioned by the NIA as to whether the signatures and handwriting appearing in the said exhibits were of him. He also admitted that during his 26 years of service tenure in the Social Welfare Department of NC Hills, Haflong, he had long associations with the officers of the Social Welfare Department of NC Hills, Haflong and due to this fact he was fully aware of the handwritings and signatures of various officers



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of the department. He admitted that Ext. 70/28, 70/32, 70/36, 70/40, 70/44, 70/51 were all prepared by him. The handwriting appearing in the said receipts are of him. He prepared the receipts in the instruction of Md. R.H. Khan. These payment mentioned in the receipt were not paid vide any cheques. He did not make the payments nor did he see Sri R.H. Khan making payments. The receipts were given to him by Mr. R.H. Khan and I do not know who appended the signatures appearing thereon. He did not see anybody signing on those receipts. He made the statement in his examination-in-chief yesterday "by receipt Ext 70/28, which is without date, the amount is shown to have been received by one Dhruba." Merely because he saw his name in the receipt and not because of my personal knowledge. He do not know who received the payment vide Ext 70/32, 70/36, 70/40, 70/44, 70/51. In Ext 70/51, the portion marked Ext-D which states "(M/S Borail Enterprise) supplier" is in his handwriting and he identify the same. The signature appearing in the stamp above is not in his handwriting and he cannot identify the signature thereon. He also stated that he do not know whose signatures are appended thereon in the said receipts.

363.(iv). Ext-C is the statement of the office of Dy. Director, Social Welfare, Haflong showing the total fund receipt scheme wise, expenditure incurred from the NC Hills Autonomous Council, Haflong during the year 2008-09.

363.(v). According to the statement vide Ext-C during the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 12,00,000/- in the scheme of District and Sub-Ordinate and expenditure incurred in the schemes during 2008-09 as on 31st May, 2009 is Rs. 12,00,000/-. Again during 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 55,00,000/- in the scheme of Welfare of Handicapped and the expenditure incurred in this scheme during 2008-09 as on 31st May, 2009 is Rs. 55,00,000/-. Again in the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 54,00,000/- in the scheme of Child Welfare and expenditure incurred in the scheme during the 2008-09 as on 31st May, 2009 is Rs. 54,00,000/-. Again in the year 2008-09, the office of Dy. Director, Social Welfare, Haflong received Rs. 1,34,00,000/-.

363.(vi). It is also elicited that the bills were submitted by the proprietors of the firms being the Dealing Assistant of this file, it is his duty to deduct the tax from the bill and for this reason he filled up the receipt vouchers. After deduction of the tax, the tax amount was deposited in the Govt. account by challan. It is true that when bill is passed for payment, the payment is always made to the proprietor of the concerned firm and owner/proprietor received the money after a bill is passed.


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363.(vii). After payment was made finally then it is his duty to enter it into the relevant cash book. In re-examination by the prosecution side he stated that during the relevant period he was only working in the office as UDA and was never working as Store Keeper.

363.(viii). He admitted that in Ext 212/2, there is no endorsement or signature of M/s Maa Trading, M/s Borail Enterprise or M/s Debashish Bhattacharjee. It is correct that in Ext 212/13, there is no endorsement or signature of Debashish Bhattacharjee. There is no endorsement in the said supply order that the Ext. 212/13 was received by Debashish Bhattacharjee. He also admitted that in Ext 212/15, there is no signature or endorsement of any officers of Borail Enterprise to show receipt of the same. Similarly in Ext 211/16, there is no signature or endorsement of any officer of M/s Maa Trading to show receipt of the same. He admitted that in Ext 212/14, there is no signature or endorsement of any officer of M/s Maa Trading to show receipt of the same. He admitted that in Ext 213/25 to Ext 213/28, there is no signature or endorsement of any of the officer of M/s Maa Trading, M/s Loknath Trading, M/s Borail Enterprise to show the receipt of the same. It is correct that in Ext 213/26 to 213/28, the handwritten portions are in his handwriting. Similarly the Ext 212/15, 212/16, 212/14, 212/13 are all in his handwriting. He admitted that he could not recognize the signature contained in Ext 70/45, 70/47, 70/48, 70/49, 70/51, 70/50, 70/54, 70/28, 70/29, 70/32, 70/33, 70/34, 70/35, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/43, 70/44, the witness volunteers to say that I do not know the signature in the documents Ext. 70/28, 70/29, 70/32, 70/33, 70/34, 70/36, 70/37, 70/38, 70/40, 70/41, 70/42, 70/44, 70/43, 70/47, 70/48, 70/49, 70/51, 70/52, 70/53 since the signatory of the same did not sign the same in his presence.

364. What is transpired from the evidence of this witness is that though his hand writings appeared in Ext. 70/28, 70/32, 70/36, 70/40, 70/44, 70/51 yet he did it at the instance of R.H. Khan, and the signatures appearing on the receipt over the revenue stamps are not of him. It is also transpired that the bills, challans, pertaining to Maa-Trading, Debasish Bhattacharyee, Loknath Trading are submitted by accused Joyanta Kr. Ghosh. This goes to show possible nexus between accused Joyanta Kr. Ghosh and accused R.H. Khan.

365. The evidence of PW-58- Dinesh Kr. Vora- reveals that in 2009, while he was working as receptionist at Hotel Shalimar Shri Phojendra Hojai check in the Hotel on 18-01-09 and check out date is 21-01-09. He again checks in the Hotel on 03-02-09 and check out date is 04-02-09. On 10-03-09, he again checked in and his check out date is 14-03-09.


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366. PW-69- Sheo Kr. Pandey- Manager Madhumilan Guest House testified that Ext 50- is the Guest House Register from March 2008 to 15-10-08. On 13-03-09 at Sl. No. 1892 Phojendra Hojai occupied Room No-810. Ext-52 is pointing out memo of George Lamthang and Ext.53 pointing out memo of Malswamkimi by which they pointed out that they met him there.

367. PW-70- Caushiq Bezbaruah Executive Officer News Life- stated that he forwarded CD containing the news of your arrest and your co associate Babul Kemprai with an amount of Rs 1 crore. By Ext 270 another letter by which he handed over three CD containing video footage of surrendered ceremony of DHD(J).

368. P.W.71-Shri Andreas Teron, a Jr. Assistant at D.C. Office, Haflong testified that on 12.8.09, he witnessed seizure of certain documents produced by Manoj Kr. Talukdar, Jr. Engineer vide Ext.184 and which was taken over by K.S. Thakur, Dy. SP, NIA. Similarly, in Ext.185, in Ext.186, in Ext.187, in Ext. 188, in Ext. 189, in Ext. 190, in Ext. 191, in Ext. 192 and in Ext. 193, in Ext 194 bears his and the signatures.

369. P.W. 85 Shri Ajit Kumar Dhar testified that on 10.11.2009, on requisition, he handed over certain documents to the NIA. Ext 293 is the said receipt memo, Ext 294 is the account opening form of M/s Moin & Brothers Construction, NC Hills, Haflong which was opened by the proprietor. Ext 294/1 is the self cheque bearing no. 034151 dated 25.04.2009 for Rs. 25 lacs. Ext 295 is the account opening form in the name of M/s Inputs Supply Syndicate opened by its proprietor. Ext 295/1 is a self cheque bearing no. 034101 dated 23.04.2009 for Rs. 10 lacs, Ext 295/2 is another self cheque bearing no. 034102 dated 25.04.2009 for Rs. 25 lacs, Ext 295/3 is another self cheque bearing no. 034103 dated 30.04.2009 for Rs. Rs. 25 lacs.

370. PW-90- B. Ramani is the Executive Director of C-DAC (Centre for Development of Advanced Computing). His evidence has already been discussed in detailed in foregoing paragraph of this judgment while discussing the evidence in respect of accused R.H. Khan (A-4). The relevant part of his evidence in respect of present accused is discussed below. It appears that he carried out the forensic imaging and ensured the authenticity of the evidence by generating Hash Values of the 7 hard discs and then did the analysis. In this analysis, they have looked at retrieval of deleted files, information in the unallocated areas


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hard discs, key words searching, examining text documents, PDF files etc. After the analysis they have found some deleted information, documents, PDF files, pictures etc. and they have retrieved these information and submitted their written reports along with DVD to the NIA. Ext. 305 is the forwarding letter dtd.14.10.2009. Ext.306 is the report of analysis in 25 pages with seal of C-DAC, under his signature Ext.306/1.

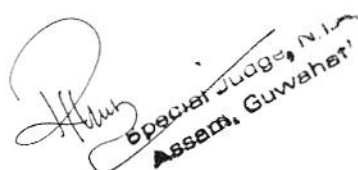
(i) His evidence also reveals that in their report, they have concluded that they have recovered a few bills, challans, and work orders. They have also recovered some pictures, they have extracted evidence from the unallocated areas of hard discs. In the report, they have included DVD, which is organized Exhibit wise 1 to 7, these Exhibits contained Image files, Word files, PDF files. His evidence further reveals that after examining the material objects, they had prepared a report and returned the material objects along with the report.

(ii) The Material Object no. 78 is a hard disc bearing SI. No. WMAT13626680 which was marked as Ext-02 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer and is shown to him in the Court today which is in sealed condition as sealed by them. This they had examined and submitted their report vide Ext 306 at page 8 and 9.

(iii) The Material Object no. 79, is another hard disc bearing SI. No. 6RADA5TD which was marked as Ext-03 by the NIA when the articles were sent to them and is shown to have been seized from Mrs. Phionica Swer. This they had examined and submitted their report vide Ext 306 at page 11 and 12.

(iv) Material Object-84 is the DVD-1 contains their marking "Copy of original" "Evidence from preliminary analysis of crime no. 01/2009/NIA". And Mat. Object-85 is another DVD containing data which were sent by them along with the report to NIA. DVD-2 contains their marking "Original" "Evidence from preliminary analysis of crime no. 01/2009/NIA".

(v) It is to be mention here that accused Joyanta Kr. Ghosh has not cross-examined this witness. However, having perused the report and played the Material Object-85 the DVD containing data which were sent by C-DAC along with the report to NIA, it has been found to have contained two Bills in the name of Debasish Bhattacharyee for a sum of Rs. 12,46,820/ and Rs. 7,53,340/ and two Challans in the name of Shri Debasish Bhattacharyee for supply of articles. Both the Bills were addressed to the Deputy Director, Socool Welfare, N.C. Hills, Haflong against order No. NCH/SW/Pt.-III/315/2008-09/145 dated Haflong, 9th May 2008, and


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against order No. NCH/SW/Pt.-III/315/2008-09/144 dated Haflong, 9th May 2008. And the Challans were addressed to the Child Development Project Officer, Jatinga Valley, ICDS Project, Mahur against order No. NCH/SW/Pt.-III/315/2008-09/145 dated Haflong, 9th May 2008 and to the Child Development Project Officer, Diyung Valley, ICDS Project, Maibong against order No. NCH/SW/Pt.-III/315/2008-09/144 dated Haflong, 9th May 2008. Besides, one challan in the name of M/s J.K. Traders, addressed to Deputy Director Social Welfare, N.C. Hills, Haflong, one bill of M/S Borail Enterprise for a sum of Rs. 7,84,970/, one challan of M/S Borail Enterprise, one bill of Rs. 13,95,000/ in the name of M/S J.K. Traders, another challan of M/S J.K. Traders were also found in the Hard Disc of the computer of R.H. Khan.

370.(i). These undisputed facts which also remained un-explained during trial, established the nexus between accused R.H. Khan with that of accused Joyanta Kr. Ghosh, Debasish Bhattacharyee and Sandip Ghosh beyond any shadow of doubt.

371. The evidence of PW-106 Shri Ravi Agarwal reveals that he was in cement business and Imdad Ali was his customer. In first part of 2009 he came to his office with a bag containing large amount of money and told him to hand over the money to one Shyamji who came and receive the money. After about a month, Imdad Ali came to his office with a bag containing money and handed over the money to Shyamji and both left. Mention to be made here that the prosecution side declared this witness hostile and cross-examined him wherein he admitted that to his knowledge Shyamji was a Hundi operator, so far as he remember money was sent to Kolkata the amount was fairly large amount.

372. The evidence of PW-107-Nepal Ranjan Dutta reveals that he was Senior Acct. Asst. Treasury Office Haflong and witnesses the seizure at Additional Chief Engineer PHE, Haflong. Ext-373/1 to 373/14 are the seized papers.

373. PW-142 -Shri Gorgeswar Mahilary testified that on 18.06.2009, SDO (Civil), T.T. Daulagapu on verbal order took him to the office of the Executive Engineer, PHE, Maibang Division and collected the documents and put in a trunk and locked the same and carried it to the Maibang Police Station and kept it there. On the next day, when the NIA officer came and SDO, T.T. Daulagapu handed over the trunk containing the documents seized on the previous day and Ext. 409 is the receipt memo, and on 18.06.2009, the documents were taken out from the trunk at Maibang Police Station, and Ext. 203 is a supply order of M/s Loknath Trading and Ext. 204 is the Supply Order of M/s Jeet Enterprise and Ext


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369 is a Cash Book of PHE department, Maibang Division, and Ext 366, is the Bill of M/s Loknath Trading and Ext. 367 is the Bill of M/s Jeet Enterprise and Ext 366/2 to 366/5 are the challans of M/s Jeet Enterprise and Ext. 366/6 to 366/9 are the challans of M/s Loknath Trading and he and T.T. Daulagapu has signed over the same as witness.

374. The evidence of P.W.144 -Shri Amal Chandra Kalita, retd. Senior Scientific Officer has already been discussed in details in forgoing paragraphs of the judgment in respect of accused R.H. Khan (A-4). Therefore, detailed discussion of his entire evidence is avoided for the sake of brevity. Having examined the documents sent to him he opined vide Ext. 411, that:-

(i) The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-23 did not write the red enclosed signatures similarly stamped and marked Q-10 to Q-18, Q-22 to Q-27, Q-38 to Q-80 and Q-100 to Q-112.

(ii) The person who wrote the blue enclosed writings and signatures stamped and marked S-24 to S-33 did not write the red enclosed signatures similarly stamped and marked Q-1 to Q-9.

(iii) The person who wrote the blue enclosed signatures stamped and marked S-34 to S-37 did not write the red enclosed signatures similarly stamped and marked Q-1 to Q-84 and Q-89 to Q-96.

(iv) It has not been possible to express a definite opinion regarding authorship of the rest of the question items on the basis of comparison with the materials supplied.


375. P.W. 137 Shri Satyendra Kr. Deka and PW-146- Shri Swyan Prakash Pani testified about CRDs of of mobile phones of accused persons collected from different service providers like BSNL, Airtel, following due procedures. PW-146- also testified that he analyzed and all these mobile phone analysis led to have evidence interlinking accused persons in pursuance of the criminal conspiracy. The detail analysis of CDRs has stated how during the seizure of the money accused persons were in touch. It also reveals international calls made to other accused based outside the country. But it appears that their evidence cannot be taken into account due to want of certification u/s 65-B Evidence Act, from the service providers. This aspect has already been discussed earlier.


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376. PW-147- Sanjay Kr Malviya testified that he did part investigation of the case and by Ext-39 he collected 5 documents. Ext-39/5 is the Assam Financial Rules. Ext-435 is the receipt memo issued to M/s Jeet Enterprises. Ext-374 to 379 are the 6 nos. of Cheques. Cross-examination of these witnesses could not demolish their version and they withstand the test.

377. Thus, the evidence discussed above, it becomes apparent that how Govt. funds, means for development of Diam Hasao, the erstwhile N.C. Hill District were siphoned off from the Social Welfare Department and PHE Department. The evidence also shows the modus operandi adopted by the three accused persons in siphoning out the funds. Having considered the facts and circumstances, in the totality, it can safely be concluded that the prosecution side has succeeded in establishing the complicity and the role played by the three accused persons in the conspiracy, beyond all reasonable doubt. The Id. counsels of the accused, however, pointed out different infirmities in their evidence and questioned their credibility in the light of the same during argument. We have given our thoughtful consideration to the same and we find that on that count their evidence cannot be discarded to hold that prosecution has failed to discharge its burden. Though the Id. defence counsel has pointed out that the prosecution side has failed to prove the charge of conspiracy against the accused persons, notwithstanding, we find the facts and circumstances brought on record are sufficient to prove the same, when considered in entirety.

378. There, of course, remains no doubt that some commission or omission on the part of the investigating agency. It has not investigated the other offences, i.e. defalcation of funds of NCHAC, connected to the schedule offence, and handed over the task to CBI. The Id. defence counsel has rightly pointed this out in his argument. It is also pointed out that the prosecution side has brought on record the inadmissible evidences. There is substance in the said submission also. As for instance, the prosecution side has collected the CDRs of the mobile phones of the accused persons without certification under section 65-B Evidence Act. But the facts remain that that was the law at that point of time after the case of *The State (N.C.T. Of Delhi) vs. Navjot Sandhu @ Afsan Guru (supra)*. The I/O in his evidence categorically stated the same in his evidence. The law relating to secondary evidence in the form of CDRs has changed only after the judgment of Hon'ble Supreme Court in *Anvar P.V. vs P.K. Basheer's* (supra) case in the year 2014. Despite, such commission and omission, the facts and circumstances so brought on record and proved are found to be sufficient to establish their complicity.


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379. From the evidence discussed above the role, so played by the three accused persons are recapitulated as under:-

Joyanta Kr. Ghosh:-

- (i) He used to do contract works in name of five firms registered in the name of Debasish Bhattacharyee viz.(1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debashish Bhattacharjee, permits of which were valid upto 31.03.2008 only.
- (ii) He has nexus with accused Mohit Hojai who was the CEM of NCHAC at the relevant time.
- (iii) He remained present at Hotel Pragati Manor in the month of March 2009, where accused Mohit Hojai and the Executive Engineer PHE, Haflong K.B. Mukherjee and Executive Engineer of Maibong Division, Sh. Kuton Namasudra also remained present and at that time CEM, Sh. Mohit Hojai directed Executive Engineers to issue all the cheques in favour of Maa Trading, a firm of accused Joyanta Kr. Ghosh registered in the name of Accused Debasish Bhattacharyee.
- (iv) Having received the cheques he got two accounts opened at SBI Zoo Road Branch in the name of two firms proprietor of which were Mr. Debasish Bhattacharyee on 27.03.2009 and deposited a high value cheque of Rs. 1.3 crore and withdrawn a huge amount Rs. 84,00,000/ after two days.
- (v) He had nexus with accused Mohit Hojai and Mohit Hojai told P.W.21 - Shri Chandra Sharma to meet him (accused Joyanta Ghosh) and sent one man with a packet and having received the same he handed it over to him (Joyanta Kr. Ghosh).
- (vi) He had nexus with Imdad Ali who carried mony of accused Mohit Hojai on several occasions to Kolkata.
- (vii) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs. 1.20 Crore
- (viii) He has nexus with accused R.H. Khan (A-4) and some challans and bills of supplying material in the name of a firm Debasish Bhattacharyee, were recovered in the Hard Discs, which were seized from of the official computer of R.H. Khan.

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- (ix) No satisfactory explanation has been offered as to how the bills and challans of the firm, under which he was doing contract, finds place in the hard disc of the computer of accused R.H. Khan.
- (x) There were excessive supply of material after arrest of accused Phojendra Hojai on 01.04.2009 and prior to that there was no supply of material, as evident from the evidence of P.W.103, Shri Sushil Chandra Das.
- (xi) P.W.103, Shri Sushil Chandra Das was compelled to show receipt of material at back date and to verify the bills of M/s Loknath Trading, and M/s Jeet Enterprise. Material were started to send in April 2009.
- (xii) Payment to the firms, from where material was purchased were made in the months of April as evident from P.W.17.
- (xiii) Admittedly the accused did not participated in tender process as bidder, notwithstanding, M/s Jeet Enterprise, M/s Loknath Trading, M/s Maa Trading, received supply order of G.I. Pipes for a huge sum. (Para No.106 of Written Argument)
- (xiv) Blank challans Ext. 70/47, 70/48 and 70/49 of Maa Trading, without challan number and date, wherein store keeper has put his signature on the printed words "receipt the above which is in good condition" are supplied by J.K. Ghosh shows existence of nexus between him and R.H. Khan and clearing of Ext.70/43, bill of Maa Trading and 70/50, bill of Barail Enterprise, which are without date were cleared by R.H. Khan further fortified the unholy nexus.
- (xv) Ext.279 shows that the firms - Borail Enterprise and Loknath Trading had no existence at Guwahati and also had no entry in the Guwahati Municipal Corporation Register for the year 2009.
- (xvi) Accused Mohit Hojai exerted extreme pressure to the officers of PHE department to issue cheques Ext.318 and Ext.319, even without supply of any materials.
- (xvii) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghosh, D. Bhattacharjee and Sandip Ghosh to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs. 1.20 Crore

Debasish Bhattacharyee:-

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- (i) He had five firms registered in his name viz. (1) M/s Maa Trading, (2) M/s Loknath Trading, (3) M/s Jeet Enterprise, (4) M/s Borail Enterprise and (5) M/s Debasish Bhattacharjee, permits of which were valid upto 31.03.2008, and through the said firms accused Joyanta Kr. Ghosh used to do contract works in NCHAC.
- (ii) He remained present at Hotel Pragati Manor in the month of March 2009, where accused Mohit Hojai and the Executive Engineer PHE, Haflong K.B. Mukherjee and Executive Engineer of Maibong Division, Sh. Kuton Namasudra also remained present and at that time CEM, Sh. Mohet Hojai directed Executive Engineer to issue all the cheques in favour of Maa Trading a firm of accused Joyanta Kr. Ghosh registered in his name.
- (iii) Having received the cheques he got two accounts opened at SBI Zoo Road Branch in the name of his firms Maa Trading, on 27.03.2009 and deposited a high value cheque of Rs. 1.3 crore and withdrawn a huge amount Rs. 84,00,000/ after two days.
- (iv) His associates Joyanta Kr. Ghosh is known to accused Mohit Hojai and witness Imdad Ali, and Mohit Hojai sent money on different occasions to his associate Joyanta Ghosh sometimes through Imdad Ali and sometimes through hundi operator
- (v) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghose, D. Bhattacharjee and Sandip Ghose to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelop was containing a cheque amounting to Rs. 1.20 Crore
- (vi) He has nexus with accused R.H. Khan (A-4) and some challans and bills of supplying material in the name of his firm Debasish Bhattacharyee, were recovered in the Hard Discs, which were seized from of the official computer of R.H. Khan.
- (vii) No satisfactory explanation has been offered how the bills and challans of the firm under which he is doing contract, finds place in the hard disc of the computer of accused R.H. Khan.
- (viii) There were excessive supply of material after arrest of accused Phojendra Hojai on 01.04.2009 and prior to that there was no supply of material, as evident from the evidence of P.W.103, Shri Sushil Chandra Das.


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- (ix) P.W.103, Shri Sushil Chandra Das was compelled to show receipt of material at back date and to verify the bills of M/s Loknath Trading, and M/s Jeet Enterprise. Material were started to send in April 2009.
- (x) Payment to the firms, from where the materials were purchased, were made in the months of April as evident from P.W.17.
- (xi) Without participating in tender process as bidder, M/s Jeet Enterprise, M/s Loknath Trading, M/s Maa Trading, received supply order of G.I. Pipes for a huge sum.
- (xii) Blank challans Ext. 70/47, 70/48 and 70/49 of Maa Trading, without challan number and date, wherein store keeper has put his signature on the printed words "receipt the above which is in good condition" are supplied by J.K. Ghosh shows existence of nexus between him and R.H. Khan and clearing of Ext.70/43, bill of Maa Trading and 70/50, bill of Barail Enterprise, which are without date were cleared by R.H. Khan further fortified the unholy nexus.
- (xiii) Ext.279 shows that the firms - Borail Enterprise and Loknath Trading had no existence at Guwahati and also had no entry in the Guwahati Municipal Corporation Register for the year 2009.
- (xiv) Accused Mohit Hojai exerted extreme pressure to the officers of PHE department to issue cheques Ext.318 and Ext.319, even without supply of any materials.

Sandip Ghosh :-

- (i) He is the close associate of accused Joyanta Kr. Ghosh @ Dhruba and Debasish Bhattacharyee.
- (ii) He accompanied accused Joyanta Kr. Ghosh @ Dhruba and Debasish Bhattacharyee to open accounts at SBI Zoo Road Branch in the name of a firms Maa Trading, of Debasish Bhattacharyee on 26.03.2009 and after opening of account accused Debasish Bhattacharyee has deposited a high value cheque of Rs. 1.3 crore on 27.03.2009 and he and Debasish Bhattacharyee has withdrawn a huge amount Rs. 84,00,000/ after two days.
- (iii) After withdrawing the amount he and Debasish Bhattacharyee has left the bank on Maruti Alto Vehicle with commercial registration.
- (iv) He lent a son of Rs. 2,00,000/ to P.W.28 Shri Diganta Vikram Gayan-P.W.28 who helped them in opening the accounts.
- (v) He delivered Rs.15,00,000/ to Shri Shyam Ajitsaria, P.W. 76 on 30.03.2009 on receipt of which Shri Ajitsaria has supplied G.I. Pipes to Maa Tradings and he told


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Shri Ajitsar that they want the material urgently. He also represents Jeet Enterprise.

- (vi) Once while P.W.34 Mr. Debasish Bhattacharyee was returning from Kolkata by train he was handed over a sealed envelope by D. Ghosh, D. Bhattacharjee and Sandip Ghosh to hand it over to one of their common friend Imdad Ali. Accordingly, he handed it over to Mr. Ali. Later on he came to know the envelope was containing a cheque amounting to Rs. 1.20 Crore
- (vii) Since he is the close associate of accused Joyanta Kr. Ghosh @ Dhruba and Debasish Bhattacharyee, the acts of these two accused are attributable to him also.

ACCUSED KARUNA SAIKIA(A-15):-

380. The role played by this accused is discernible from the evidence of following witnesses.

381. The evidence of PW 7 Sh. Ajay Agarwal reveals that he has a firm in the name and style of M/s Alampur Enterprise at Paltan Bazar, Manipuri Basti. In the year 2009, He has approached Mohet Hojai, CEM, N. C. Hills regarding supply of PHE articles and at his advice he approached Karuna Saikia who gave me supply order for supply of PHE materials and accordingly he purchased the articles from the market and supplied it to the PHE Deptt., NC Hills. Ext. 18 to Ext. 20 are the 3 supply orders given to his firm M/s Alampur Enterprise for supply of pipes giving the quantities therein. He has received the said orders by hand from Karuna Saikia. Ext. 21 is the purchase bill dtd. 20.3.09 by which he has purchased the materials from the firm Pomoi Steels for Rs. 18,67,486.40/-. Ext. 22 is the road consignment note of Maa Kali Transport agency through which he has sent the materials to PHE, Deptt., N.C. Hills. Ext. 23 is the receipt copy of materials given by the deptt. on receipt of the materials. Similarly, Ext. 24 is another consignment note of Maa Kali Transport agency for sending of GI pipes to PHE Deptt., N. C. Hills. Ext. 25 is another receipt copy given by PHE deptt. acknowledging receipt of the materials. Ext. 26 is the copy of bill given by Maa Kali Transport agency raised on my firm for transport of goods to PHE Deptt., N. C. Hills. He is yet to receive the payment of the aforesaid material supply from the PHE Deptt. In cross-examination he admitted having not aware of whether any tender was floated by the deptt. when he met Mohet Hojai. He also admitted having not aware of whether Mohet Hojai has any influence in obtaining the supply order from the deptt. which he got genuinely.

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382. The evidence of P.W-8.- Chintamani Sarma- reveals that he has been working as Manager in Pamoi Steels. Ext.28 is the price list of GI Pipes w.e.f March 09 to 08-07-2009, which he forwarded to NIA vide his letter Ext. 27. The firm gives 27% discounts for bulk purchase and in the case of M/S Alampur Enterprise the firm gives 27 to 30 % discount for purchase of GI Pipes. The evidence of this witness remained undisputed in cross-examination.

383. PW-15- is shri Prem Chand Agarwal. He is the Proprietor of M/S Raj Hardware. His evidence reveals that as per request of Dy. SP K.S.Thakur he gave the rates of GI Pipes vide Ext-45/4 to 45/12 he had given the list of rates of GI Pipes The price list we quoted and manufacture price is same. The Vat is inclusive of the price that he quoted and they give 25% to 30% discount as a wholesaler. Nothing could be elicited in cro-examination of this witness.

384. The evidence of P.W. 33 S.I. Nur Mohammad Khan and P.W. 36 S.I. Ratneswar Das have already been discussed in details in for going paragraph in respect of accused Niranjana Hojai. Their reveals that on 12.02.2009, S.I. Ratneshwar Das of Haflong P.S. filed an FIR at Diungmukh Police Station. On receipt of the FIR he came to know that he had received some secrete information that some members and workers of NCHAC were going to deliver a huge amount of money to the DHD (J) extremist somewhere in between Diungmukh and Haflong for the purpose of procuring arms and ammunition for promoting organization activities with a view a wage war against the State. Thereafter he (P.W.33) registered a case being Diungmukh P.S. Case No. 03/09 U/S 120 B/121/121A IPC dated 12.02.2009.

384.(i). His evidence also reveals that in connection with the above case, two accused persons were apprehended along with cash amount of Rs. 32,11,000/- and were in Haflong P.S. Thereafter immediately he along with my staff proceeded to Haflong P.S. In the mean time I found that S.I. Ratneshwar Das of Haflong P.S. has already seized the above mentioned cash amount and examined the available witnesses. He found two accused persons of the case being Jibangshu Paul and Golon Daulagaphu were in custody. He also interrogated the above two accused persons and examined the complainant S.I. Ratneshwar Das and recorded his statement. On interrogation he found the above two accused persons were involved in the above P.S. Case No. 03/09 and, therefore, he arrested them and taken them in


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police custody. During interrogation, accused Jibangshu Paul stated that UDA, Biraj Chakraborty of PHE Division, Haflong has brought the said seized cash amount from his house and has given it to him. Accordingly, said Biraj Chakraborty was arrested on 14.02.2009, and during interrogation and examination of available witnesses accused Sri Karuna Saikia, Executive Engineer, PHE, Haflong Divn. was also found involved in the case and for apprehending the said accused a WT message was sent to O/C, Dispur P.S. intimating the residence of accused at Basisthapur near Passport Office.

384.(ii). His evidence also reveals that on 17.02.2009, he has seized (1) one cash book (2) one treasury transit register, (3) one used cheque book of SBI from cheque No. 317951 to 317975, (4) one used book of SBI from cheque no. 319001 to 319025, (5) cheque book of 25 cheque of SBI from cheque no. 319026 to 319039 as produced by the cashier Sri S. Masa. Ext. 85 is the seizure list by which the above items were seized. Ext. 86 is the cash book of the office of Executive Engineer, PHE, Haflong Divn. commencing from 29.03.2008 to 21.01.2009 page 1 to 95. Ext. 87 is the Treasury challan by which the seized amount of Rs. 32,11,000/- was deposited in the treasury.. Ext. 88 is the used cheque book no. 317951 to 317975. Ext. 89 is another cheque book starting from cheque no. 319001 to 319025. Ext. 90 is the cheque book no. 319026 to 319039. Ext. 91 is the treasury transit register of the office of Executive Engineer, PHE, Haflong Divn. commencing from 14.01.2008 to 09.02.2009. On 20.02.2009, through treasury challan vide Ext 87, the seized cash amount of Rs. 32,11,000/- were deposited in the Haflong Treasury. On the same day S.P., NC Hills sent S.I. Ratneshwar Das to the residence of Karuna Saikia at Guwahati (Beltola) for arresting him but Karuna Saikia was found absconding.

384.(iii). His evidence further reveals that on the same day he visited SBI, Haflong Branch for getting the copy of the statement of A/c no. 113150955724 I/C, PHE. Thereafter he could collect the statement of the said account from 2nd February, 2009 to 10th February, 2009 regarding deposit of and withdrawal of money from the said account. It was found that on 02/02/2009 there was deposit of Rs. 85,88,527/- in the said account. On 04.02.2009 Rs. 2,48,722/- and Rs. 31,35,485/- was deposited and on 09.02.2009 Rs. 1 Crore was deposited in the same account. On 03.02.2009 Rs. 10,50,000/- was withdrawn through cheque no. 319015. On the same day Rs. 11,50,000/- was withdrawn through cheque no. 317975 and on 04.02.2009 Rs. 27,76,035/- was withdrawn through cheque no. 319010. On 09.02.2009 an amount of Rs. 16,80,000/- was withdrawn in the name of Jagat Jidung through cheque no. 319035. And Rs. 13,65,000/- was withdrawn in the name of Bijen Naiding through cheque no.


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319038 and Rs. 18,90,000/- was withdrawn in the name of Sahar Langthasa through cheque no. 319036 and Rs. 18,90,000/- was withdrawn in the name of Kiran Jidung through cheque no. 319039 and Rs. 12,60,000/- was paid to self cheque no. 319039. In total Rs. 80,85,000/- withdrawn on 09.02.2009.

384.(iv). His evidence further reveals during investigation through documentary proof it was found that the said amount was withdrawn under signature of Executive Engineer Sri Karuna Saikia of PHE Haflong Div. in the name of different persons. He tried to search the persons on whose name the cheques were issued but could not trace the said persons. He also found that the five persons against whom the above cheques were issued were not known to the office bearers or workers except one Sri Dilip Phonglo. It is also found that nobody knows the address of Dilip Phonglo.

384.(v). He had drawn the sketch map of the place of occurrence. Ext. 93 is the said sketch map. Ext. 95 is the FIR no. 03/09 of DMK (Diyungmukh) P.S. submitted by Ratneshwar Das on 12.02.2009. Ext. 95/1 is the signature of Ratneshwar Das. Ext. 95/2 is his signature with the endorsement received and register Diyungmukh P.S Case No 03/09 U/S 120B/121/121A IPC. Ext 95/3 is the FIR format in two pages where named accused were Sri Golon Daulagopu and Sri Jibangshu Paul. Ext. 95/4 is his signature.

384.(vi). On 28.03.2009 he handed over the investigation of the case to O/C, Diyungmukh P.S on being transferred to Umrangso Police Station along with case diary and relevant papers connected with the case. Later on he came to know that the case was handed over to NIA for investigation. During investigation of the NIA, he was examined him. Nothing tangible could be elicited in cross-examination of this witness. He denied the suggestion that being Executive Engineer cum DDO Sri Karuna Saikia signed the cheques in question in discharge of his official duties and hence he has not committed any offence in connection with the case.


385. PW-42, Sh. Tomizuddin Ahmed is the Sr. Scientific Officer Forensic Science Laboratory, Assam. His evidence also reveals that he examined the cases related with documents, and applied the procedure, principles of Handwriting identification and detection of forgery with the necessary scientific instrument which are available in the Directorate of Forensic Science, Assam.


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385.(i). The Directorate of Forensic Science received some documents in connection with Case No. 01/2009 and 02/2009 NIA, New Delhi for comparison and opinion on 01.10.2009. The case was forwarded by Mukesh Singh, Supdt. of Police, NIA, New Delhi vide his letter-Ext. 127 with Annexure-I, II and III in 13 pages. Ext 127/1 to Ext 127/13 are the said pages. On receipt of the said letter requesting for comparison of documents and opinion, he was allotted by the In-Charge of the Documents Division for examination and opinion on 01.10.2009 for examination of specimen handwriting and signature of Sl. No. 1 to 6 in Annexure-I, Ext 127/1.

385.(ii). By the said letter by Annexure-I, the NIA requested for examination of specimen handwriting and signatures, type writer and stamp impression from Sl. No. 1 to 21 containing S-1 to S-169. Out of the said listed marking, he examined S-1 to S-100. By Annexure-II, question document numbering 1 to 49, out of the said question documents, he has examined Sl. No.-1 to Sl. No.-41 i.e. Q-1 to Q-96 (Question Documents). By Annexure-III, the office sent questionnaires from Sl. No. -1 to Sl. No.-23, out of the said numbers, he answered question no. 1 to 6.


385.(iii) His evidence also reveals that Ext. 47 contains Q-1 and Q-2. Q-1 and Q-2 are now marked as Ext. 47/2 and Ext 47/3. Ext. 128 is a cheque contains Q-3, Q-4, Q-5 and Q-6. The questions are now marked as Ext 128/1, 128/2, 128/3 and 128/4. Ext. 129 is a cheque contains Q-7 to Q-10. The questions are now marked as Ext 129/1, 129/2, 129/3, 129/4. Ext. 130 is cheque contains Q-11 to Q-13. The questions are now marked as Ext 130/1, 130/2 and 130/3. Ext. 131 is a cheque contains Q-14 to Q-17. The questions are now marked as Ext 131/1, 131/2, 131/3 and 131/4. Ext. 132 is a cheque contains Q-18 to Q-20. The questions are now marked as Ext 132/1, 132/2 and 132/3. Ext. 133 is a cheque contains Q-21 to Q-24. The questions are now marked as Ext 133/1, 133/2, 133/3 and 133/4. Ext. 134 is a cheque contains Q-25 to Q-28. The questions are now marked as Ext 134/1, 134/2, 134/3 and 134/4. Q-29 is specification of GI pipes of different diameter against N.I.O. no. 01 of 2008-2009 which is marked as Ext 135. Q-30 is specification of GI pipes of different diameter against N.I.O. no. 01 of 2008-2009 which is marked as Ext 136. Q-31 is specification of GI pipes of different diameter against N.I.O. no. 01 of 2008-2009 which is marked as Ext 137. Q-32 is specification of GI pipes of different diameter against N.I.O. no. 01 of 2008-2009 which is marked as Ext 138. Q-33 to Q-36 is in note sheets containing comparative chart which is marked as Ext. 139. Q-37 and Q-38 are the comparative statement which is marked as Ext 140. Q-39 is in bill of M/s Loknath Trading which is marked as Ext 141. On the back side of


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Ext 141 are questions Q-40 to Q-42 which I have examined. Q-43 and Q-44 are in challan of M/s Loknath Trading which is marked as Ext 142. Q-45 and Q-46 are in challan of M/s Loknath Trading which is marked as Ext 143. Q-47 and Q-48 are in challan of M/s Loknath Trading which is marked as Ext 144. Q-49 and Q-50 are in challan of M/s Loknath Trading which is marked as Ext 145. Q-51 is in bill of M/s Jeet Enterprise which is marked as Ext 146 which I have examined. On the back side of Ext 146 are Q-52 to Q-54. Q-55 and Q-56 is challan of M/s Jeet Enterprise marked as Ext 147 which I have examined. Q-57 and Q-58 is challan of M/s Jeet Enterprise marked as Ext 148 which I have examined. Q-59 and Q-60 is challan of M/s Jeet Enterprise marked as Ext 149 which I have examined. Q-61 and Q-62 is challan of M/s Jeet Enterprise marked as Ext 150 which I have examined. Q-63 and Q-64 is challan of M/s Alampur Enterprise marked as Ext 151 which I have examined. Q-65 and Q-66 is challan of M/s Jeet Enterprise marked as Ext 152 which I have examined. Q-67 and Q-68 is challan of M/s Alampur Enterprise marked as Ext 153 which I have examined. Q-69 and Q-70 is challan of M/s Maa Trading marked as Ext 154 which I have examined. Q-71 and Q-72 is challan of M/s Maa Trading marked as Ext 155 which I have examined. Q-73 and Q-74 is challan of M/s Maa Trading marked as Ext 156 which I have examined. Q-75 and Q-76 is challan of M/s Maa Trading marked as Ext 157 which I have examined. Q-77 and Q-78 is challan of M/s Maa Trading marked as Ext 158 which I have examined. Q-79 and Q-80 is challan of M/s Maa Trading marked as Ext 159 which I have examined. Q-81 and Q-82 is challan of M/s Shyam Hardware marked as Ext 160 which he has examined. His evidence also reveals that specimen handwriting of Moheet Hojai which is marked by me as S-1 to S-14, the same is marked Ext 207/1 to Ext 207/14. Ext. 124 in 28 pages is specimen writing of one Jibangshu Paul which is marked by me as S-45 to S-72, the same is marked as Ext 124/85 to Ext 124/113. Ext 123 is the specimen writing/signature of one Karuna Saikia in 28 pages which is marked by him as S-73 to S-100, the same is marked as Ext 123/113 to Ext 123/140.

385. (iv). He then examined the specimen writing and signatures with the question documents as asked by the Investigating Officer and found his opinion and thereafter, he reduced it to writing on 06.11.2009 as under:-

1. the documents in connection with a Case No. 01 & 02/2009/NIA/New Delhi have been carefully and thoroughly examined and compared with the supplied standard writings and signatures in all aspects of handwriting identification and detection of forgery with the necessary scientific aids available in the Directorate of Forensic Science, Assam, Kahilipara, Guwahati-19.


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2. The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-14 also wrote the red enclosed writings and signatures similarly stamped and marked Q-1 and Q-2.

3. The person who wrote the blue enclosed writings and signatures stamped and marked as S-15 to S-24 also wrote the red enclosed signatures similarly stamped and marked Q-39, Q-40, Q-51 and Q-53.

4. The person who wrote the blue enclosed writings and signatures stamped and marked S-25 to S-34 also wrote the red enclosed writings and signatures similarly stamped and marked Q-29 to Q-34 and Q-37.

5. The person who wrote the blue enclosed writings and signatures stamped and marked S-35 to S-44 also wrote the red enclosed writings and signatures similarly stamped and marked Q-41 to Q-50, Q-52 and Q-54 to Q-96.


6. The person who wrote the blue enclosed writings and signatures stamped and marked S-45 to S-72 also wrote the red enclosed signatures similarly stamped and marked Q-16, Q-17, Q-20, Q-23, Q-24, Q-27 and Q-28.

7. The person who wrote the blue enclosed writings and signatures stamped and marked S-73 to S-100 also wrote the red enclosed writings and signatures similarly stamped and marked Q-3, Q-5, Q-7, Q-8, Q-11, Q-12, Q-14, Q-15, Q-18, Q-19, Q-21, Q-22, Q-25, Q-26, Q-35, Q-36 and Q-38.

8. It has not been possible to express a definite opinion on rest of the question items on the basis of comparisons with the materials of hand.

385.(v). Ext 208 is the opinion and Ext 210 are the reasons for opinion while examining the documents. Thus it transpires that Ext.128, 129,130,131,132,133,134 bears the signature of Accused Karuna Saikia besides bearing the same on Ext. 139 and 140 the note sheets, containing the comparative charts.

386. PW- 44- Sh. Monoj Kumar Talukdar was a Jr. Engineer, PHE till 28th February, 2011 in the office of the Additional Chief Engineer, PHE, Haflong. His evidence reveals that in the last part of the year 2006, Sri Karuna Saikia joined as officiating Additional Chief Engineer, PHE, Haflong and continued his office till 25th February, 2009. During that time Sh. Hamjanon Langthasa was the Executive Member, In-Charge, PHE, the then N.C. Hills Autonomous Council. His evidence also reveals that the materials required in the PHE department are


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purchased from the open market as per approved rate of Autonomous Council. The materials are supplied by the concerned suppliers who should be a registered contractor. The Financial power of Asstt. Executive Engineer is limited up to Rs. 1,00,000/-, for Executive Engineer it is limited up to Rs. 5,00,000/-.

386.(i). His evidence also reveals that Ext. 173 is the seizure memo by which 9 nos. of documents were seized from the Office of the Additional Chief Engineer, PHE, Haflong, N.C. Hills, which bears his signature Ext 173/1 and Ext 173/2. Ext. 174 is the letter dated 08.05.2008 received by his office from Deputy Secretary, N.C. Hills Autonomous Council regarding acceptance of the rate of GI pipe quoted by Smti. Salota Thousen who was the lowest bidder. Ext. 174/1 is the signature of Smti. Sabita Langthasa which he identify as he has done several correspondence with the office. Ext 175 is the letter dated 27.05.2008 putting the approved rates of GI pipes sent from the Office of the Additional Chief Engineer to all three PHE Divisions namely Haflong Division, Maibang Division and Umrangso Division for information with a copy to the then Hon'ble Executive member, which bears his signatures, Ext. 175/1 and Ext 175/2 for Additional Chief Engineer, PHE, N.C. Hills as he was not present at Haflong. Ext 176 is the supply order to M/s Maa Trading, Haflong regarding supply of GI pipe. Ext 176/1 and Ext 176/2 is the signatures of K.B. Mukherjee which he identify as heworked under him and the same bears his signatures, Ext 176/3 and Ext 176/4. Ext 177 is another supply order to M/s Maa Trading, Haflong regarding supply of GI pipe. Ext 177/1 and Ext 177/2 is the signatures of K.B. Mukherjee. Ext 178 is the supply order to M/s Maa Trading, Haflong regarding supply of GI pipe. Ext 178/1, Ext 178/2 and Ext 178/3 are the signatures of accused Karuna Saikia which he could identify as he worked under him. Ext 179 is the letter dated 03.05.2008 addressed to the Principal Secretary, N.C. Hills for the fixation of rate of GI pipes sent by Additional Chief Engineer, accused Sri Karuna Saikia. Ext 179/1 and Ext 179/2 are the signatures of accused Karuna Saikia. Ext. 180 is a notice inviting quotation (NIQ) for the fixation of GI pipes. Ext 180/1 and Ext 180/2 are the signatures of accused Karuna Saikia. Ext 181 is receipt memo dated 19.06.2009 regarding handover of documents to NIA. Ext 182 is the supply order to M/s Maa Trading, Haflong regarding supply of GI pipes. Ext 182/1 and Ext 182/2 are the signatures of K.B. Mukherjee, Additional Chief Engineer (Officiating). Ext 183 is the deficiency memo regarding the receipt of GI pipe in the Office of the Executive Engineer, PHE, Haflong Division, which bears his signatures Ext. 183/1 and 183/2 as witness. Ext. 183/3 is the signature of K.B. Mukherjee, EE (PHE), Haflong. Ext 184 is the receipt memo regarding handing over of supply orders. Ext 184/1 is his signature. Ext 185 is the supply order to M/s Jeet Enterprise for supply of GI pipe. Ext 185/1, Ext 185/2 and Ext 185/3 are the


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signatures of accused Karuna Saikia. Ext 186 is the supply order to M/s Jeet Enterprise for supply of GI pipe. Ext 186/1, Ext 186/2 and Ext 186/3 are the signatures of accused Karuna Saikia. Ext 187 is the supply order to Monoj Gorlosa, Haflong, N.C. Hills for supply of H.D. pipe. Ext 187/1 and Ext 187/2 are the signatures of accused Karuna Saikia. Ext 188 is the supply order to M/s M B Associates for supply of HD pipe. Ext 188/1 and Ext 188/2 are the signatures of accused Karuna Saikia. Ext 189 is the supply order Hazar Naiding, Umrangso for supply of GI pipe. Ext 189/1 and Ext 189/2 are the signatures of accused Karuna Saikia. Ext 190 is the supply order M/s Jeet Enterprise for supply of GI pipe. Ext 190/1, 190/2 and Ext 190/3 are the signatures of accused Karuna Saikia. Ext 191 is the supply order M/s Loknath Enterprise for supply of GI pipe. Ext 191/1, Ext 191/2 and ext 191/3 are the signatures of accused Karuna Saikia. Ext 192,193,194 are the supply orders to M/s Alampur Enterprise for supply of GI pipe, issued by accused Karuna Saikia under his signatures. Ext 192/1, Ext 192/2, Ext 193/1, Ext 193/2, Ext 194/1 and Ext 194/2 are the signatures of accused Karuna Saikia. Ext. 195 is the letter written by me to the NIA officer regarding sending of certain supply order as detailed in Annexure attached. Ext 196 is the supply order to M/s Munna Phonglosa for supply of GI pipe. Ext 196/1, Ext 196/2 and Ext 196/3 are the signatures of accused Karuna Saikia. Ext 197 is the supply order to Sri Jibangshu Paul for supply of GI pipe. Ext 197/1 and Ext 197/2 are the signatures of accused Karuna Saikia. Ext 198 is the supply order to Sri Gyan Das for supply of GI pipe. Ext 198/1 and Ext 198/2 are the signatures of accused Karuna Saikia.

386.(i). Ext 199 and Ext.200 are the supply order to M/s Jeet Enterprise for supply of GI pipe and Ext 199/1, Ext 199/2, Ext 200/1 and Ext 200/2 are the signatures of accused Karuna Saikia. Ext 201 is the supply order to Sri Dinan Kemprai, Umrangso for supply of GI pipe. Ext 201/1 and Ext 201/2 are the signatures of accused Karuna Saikia. Ext 202 is the supply order to Sri Joybesh Warisa for supply of GI pipe. Ext 202/1 and Ext 202/2 are the signatures of accused Karuna Saikia. Ext 203 is the supply order to M/s Loknath Trading for supply of GI pipe. Ext 203/1 is the signatures of accused Karuna Saikia. Ext 204 is the supply order to M/s Jeet Enterprise for supply of GI pipe. Ext 204/1 is the signatures of accused Karuna Saikia. Ext. 205 is letter dated 10.02.2009, relating to submission of 57 nos. of estimates under ARP under Maibang PHE Division sent from his office to the Principal Secretary, N.C. Hills Autonomous Council. The estimate amounted to Rs. 277.19 lacs. Ext 205/1 is the signature of accused Karuna Saikia. The estimates were prepared by the Division and he has prepared the letter relating to sending the estimate to the Council authority for obtaining administrative approval.


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386.(iii). Ext. 206 is another letter dated 17.03.2009, relating to submission of 7 nos. of estimates under ARP under Maibang PHE Division sent from our office to the Principal Secretary, N.C. Hills Autonomous Council. The estimate amounted to Rs. 58,34,700.00/-. Ext 206/1 is the signature of accused K.B. Mukherjee, Additional Chief Engineer, PHE (officiating). The estimates were prepared by the Division and he has prepared the letter relating to sending the estimate to the Council authority for obtaining administrative approval.


386.(iv). The comparative chart of market rates in Ext 139 is prepared by him on the basis of the rates given by 4 nos. of contractors. The Additional Chief Engineer, Shri Karuna Saikia directed me to prepare the comparative statement in double the rate of prevailing market rate as submitted by the contractors. Though he objected to the preparation of double the rate but on being pressurized by Karuna Saikia as he being my senior officer, he prepared the comparative statements and highlighted it in the note sheet. In the column price high in percentage the percentage of increase rate is shown. Thereafter, the same was prepared in a form of a letter and it was sent to Council for getting administrative approval. Ext 139/1 is his signature in the comparative chart. Ext 139/2 is the signature of Karuna Saikia. After getting the administrative approval in 2008 from the council, he again requested accused Karuna Saikia to prepare a new comparative statement for the fixation of rate of GI pipe as the rate as approved by the council authority is objectionable. But accused Karuna Saikia insisted that he would make payment to the suppliers/contractors as approved rate of council. Again he requested accused Karuna Saikia for preparation for fresh comparative statement according to the prevailing market rate but accused Karuna Saikia did not agree and ultimately he persuaded him to go to meet Executive Member, In-Charge, PHE. Accordingly, he and Karuna Saikia both met the EM in his Govt. residence where the EM agreed to revise the rate and accordingly, he prepared a statement according to market rate and the EM has approved, put his signature with seal. After few days EM called him and accused Karuna Saikia to meet him with the comparative statement which he has approved earlier. Accordingly, they met him and he instructed accused Karuna Saikia to cancel the comparative statement as he approved earlier then accused Karuna Saikia cancelled it. In the first week of February, 2009, he was call to Guwahati by accused Karuna Saikia for the preparation of supply order of M/s Jeet Enterprise, M/s Loknath Trading, M/s Alampur Enterprise, Jibangshu Paul, Gyan Das, M/s Maa Trading, Monoj Gorlosa, M/s M & B Associates, Hajar Naiding, accordingly, he stayed at PCS Hotel, Paltan Bazar, Guwahati. Accused Karuna Saikia asked me to prepare the supply order against above mentioned suppliers. Although, he resisted and asked for written direction but accused Karuna Saikia forced him to make the


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supply orders against the above mentioned suppliers. After being prepared of the supply orders, accused Karuna Saikia came to the Hotel and signed the supply orders. Thereafter, he took the supply order of the contractors and gave him the office copy of the supply orders. He identified accused Karuna Saikia in the Court.

387. PW-51- Dilip Phonglo has deposed that he was introduced by Biraj Chakroborty to Karuna Saikia. Karuna Saikia gave some supply order for Rs. 3,000/- to supply of nut bolts etc. to the PHE Department. Thereafter, on 30-1-09 Karuna Saikia told him to meet him at Haflong Bazar and there he gave a Cheque-Ext-229, of Rs.20,99,500/- which was made in his name and asked him to encased the Cheque and pay the cash to Mohet Hojai. Accordingly, he withdrew and gave the amount to Mohet Hojai. On 2-2-09 Karuna Saikia rang him and asked him to meet at Haflong Bazar and there he gave a Cheque- Ext-230 for Rs.10,50,000/- which was made in his name and asked him to encased the Cheque and pay the cash to Mohet Hojai and accordingly he withdrew and gave the amount to Mohet hojai. On 7-2-09 Sriwell Masa Cashier PHE Deptt. rang him and gave an unsigned Cheque-Ext-231 for Rs.12,60,000/- and asked him to ring Karuna Saikia and on his ringing Karuna Saikia asked him to meet at Lanka and on meeting he gave his signature on the Cheque and asked him to encased the Cheque and pay the cash to Mohet Hojai and accordingly he withdrew and gave the amount to Mohet Hojai. He also confirmed Ext.232, the his account opening form which was opened on 23.03.2007 and Ext.233 is the seizure memo vide which his PAN Card and Photo Copy of the Caste Certificate was seized from him. He also confirmed his statement Ext-234, u/s 164 Cr.P.C. before the Magistrate. It is elicited in his cross-examination that he was never a contractor of PHE nor he has any registration. He denied having some personal link with Sriwell Massa. He denied the defence suggestion that under the instruction of Mohit Hojai he has been working as contractor in PHE for many years. Thus the evidence of this witness remained unshaken in his cross-examination.

387.(i). His evidence finds support from the evidence of P.W. 78 - Sh. Biraj Chakraborty, whose evidence reveals that in the year 2009, he was working as UDA in PHE department. For the release of fund etc. from government to the PHE department, I had to come to Guwahati and get the work done. In the month of January, 2009, Sri Mohet Hojai, CEM called him to his chamber and gave me a piece of paper containing the name of Munna Phonglosa and Dilip Phonglosa and asked me to take it to Sri Karuna Saikia, who was working as In-Charge, Additional Chief Engineer for placing order in favour of those persons who were in the list.


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387.(ii). His evidence also reveals that after some days Sh. Mohet Hojai again called him to his chamber and told him that he has some discussion with Sh. Karuna Saikia and that Karuna Saikia has handed over cheques to Munna Phonglosa and Dilip Phonglosa and as directed he had to take the boy to bank as indicated by CEM, Sh. Mohet Hojai and after encashing the cheque, the amount to be hand over to the boy who was authorized to received the amount on behalf of Sh. Mohet Hojai. Thereafter, again he was called by Mohet Hojai and directed him to take the same boy who had gone earlier to go to the house of Jibangshu Paul for collection of some money. Accordingly, he took the boy to the house of Jibangshu Paul. As schedule the boy went to the house of Jibangshu Paul and came out carrying a polythene bag containing something. Thereafter, the boy went away and he came to his house.

387.(iii). Sometimes thereafter, Karuna Saikia talked to him over phone and asked me whether Dilip Phonglo has met Mohet Hojai or not. Thereafter, he met Dilip Phonglo near the Bus Stand and asked him whether he has met Mohet Hojai or not and he told him that he met Mohet Hojai. Ext 289, his statement u/s 164 Cr.PC recorded by Judicial Magistrate, Kamrup, Guwahati on 10.05.2010, also lends corroboration to his version. Cross-examination of this witness could elicit nothing tangible to discredit his version. However, he admitted that he heard that Karuna Saikia has handed over cheques to Munna Phanglosa and Dilip Phonglo.

388. PW- 53 is Sh. Uttam Phonglosa @ Munna Phonglosa. His evidence reveals that he has been working as UDA in District Library, Haflong. In the year 1991, he opened a firm by the name of M/s Munna Phanglosa. It was a proprietary firm and he was managing it. In the year 2008, he met Biraj Chakraborty, who was working in PHE department of Haflong. He introduced him to one Karuna Saikia, who was an Engineer working in the PHE department. He requested him to give him some supply order to maintain his family. Accordingly, he received small supply order from the department in the year 2008.

388.(i). In the month of January, 2009, Karuna Saikia gave him two cheques in the name of my firm M/s Munna Phanglosa for Rs. 21,45,000/- dated 30.01.2009. Ext. 235 is the said cheque Ext 235/1 is his signature on the reverse side of the cheque and another cheque for Rs. 20,55,000/- dated 31.01.2009, Ext 236 is the said cheque, Ext 236/1 is his signature on the reverse side and asked him to deposit the said cheques in his account and withdraw the money and give it to CEM, Mohet Hojai. Initially he objected to it but he was put to fear by Karuna Saikia that he will filed complaint against him. Then he agreed and went to


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bank and encash the cheques from his account. Ext 237 is the said cheque by which he withdraw Rs. 41,00,000/- on 31.01.2009. Ext 237/1 is his signature, Ext 237/2 is another signature on the reverse side of the cheque and after coming out of the bank he met Biraj Chakraborty and another person whom he did not know. Biraj Chakraborty told him that, that person is a man of Mohet Hojai and then he hand over the money to Biraj Chakraborty and that person. Then he met Karuna Saikia and told about the handing over of the money.

388.(ii). On 02.02.2009, Karuna Saikia gave him another cheque for Rs. 10,50,000/- in the name of M/s Munna Phanglosa which is exhibited as Ext. 238. Ext 238/1 is his signature on the reverse side. Karuna Saikia told him to encash the said cheque and hand over the money to CEM, Mohet Hojai and accordingly, the next date he deposited the above cheque in his account and withdrew Rs. 10,49,000/- on the same date through cheque Ext. 239. Ext 239/1 is his signature on the reverse side and Ext 239/2 is his another signature on the reverse side of the cheque. After withdrawing the amount he took the cash and went to the residence of CEM, Mohet Hojai and handed over the money to him.

388.(iii). Ext 240 is the production memo by which I have produced (1) Professional Tax Clearance Certificate, (2) Office Order no. 21 of 2008-09, (3) Permission to work as contractor, (4) Supply orders. Ext 240/1 is his signature. Ext. 240/2 is the Professional Tax Clearance Certificate. Ext 240/3 is the Office order no. 21 of 2008-09. Ext 240/4 is the Permission to work as contractor. Ext 240/5 are the 11 supply orders of different dates issued in the name of M/s Munna Phanglosa. He can identified accused Mohet Hojai and Karuna Saikia.

388.(iv). It is elicited in his cross-examination that he opened the firm prior to his joining the service in the year 1984. It is also elicited that he know Karuna Saikia since 2008, who used to issued 6-7 supply orders to him in the year 2008. Accordingly, he supplied materials against those supply orders. He used to receive payment in cheque against those supply orders. Signatures of Karuna Saikia were also there in those cheques. My firm is not a registered firm. It is also elicited that he handed over the amount against Cheques, Ext. 235 and 236 to Biraj Chakraborty and one boy. He does not know the name of that boy. Thus it appears that the evidence of this witness also remained un rebutted in cross-examination.

389. PW-68 Sh. Bimal Kumar Agarwal testified that in the year 2009, he was working at Sani Steel Pvt. Ltd., a private company, AT Road, Guwahati, which generally deals with sanitary ware, hardware fittings, tiles etc. His evidence reveals that in the case of GI pipes they purchase the articles from the manufacturer at a discount of about 33% including

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VAT, and they sell the said to the dealers after keeping a margin of 3% to 4% on average. On 14.04.2009, they sold GI pipes 50 mm medium make Bansal @ Rs. 329 per meter less discount 34.61% plus VAT 4% to Shyam Hardware, Fancy Bazar, Guwahati. Again by another invoice dated 30.03.2009, they sold GI pipe 40mm Medium make Bansal @ Rs. 233/- less 34.61 plus 4% VAT. GI pipe 25mm Medium make Bansal @ Rs. 163/- less 34.61 plus 4% VAT. GI pipe 20mm Medium make Bansal @ Rs. 106/- less 34.61 plus 4% VAT and Jindal GI pipe 25mm medium @ Rs. 163/- less 32.69 plus VAT 4% to Shyam Hardware, Fancy Bazar, Guwahati. Vide his letter Ext. 266 addressed to DSP, KS Thakur he enclosed the price list of non-TATA for the period 14.05.2008 to 18.12.2008 enclosing 7 copies of details price list of GI pipe. Ext 267 is the Tax Invoice for sale of GI pipe to Shyam Hardware dated 14.04.2009. Ext 268 is another Tax Invoice for sale of GI pipe to Sham hardware dated 30.03.2009. Ext 268/1 is his signature. He admitted having not remembered whether any purchaser from NC Hills, Assam purchased GI pipes from them. He also admitted that the price list which he has exhibited was supplied to him by the manufacturer. The price list of the GI Pipes were prepared by North Eastern tubes Limited and supplied to them where he put his signatures for authentication

390. P/W,93 Shri Sriwell Massa testified that during the year 2008-09, Sri Karuna Saikia was the Executive Engineer, PHE, Haflong. He was also holding the Additional charge of Additional Chief Engineer. He know K.B. Mukherjee who later joined as Executive Engineer, Haflong. From the year 1995, he was holding the charge of Cashier in PHE Department in Haflong. Ext 315 is a receipt memo dated 14.08.2009 by which 5 nos. of documents were handed over to NIA. Ext 315/1 is my signature. By Ext 85, 5 nos. of documents were handed over to the Police. Ext 85/3 is my signature. Ext 92 is the Zimmanama by which 5 nos. of documents were taken over by him as Zimmaradar. Ext 92/2 is his signature. Ext 91 is the Treasury Transit Register which is maintained by him under hand. Entry dated 12.06.2008 by which Rs. 40,00,000/- was released by Council for maintenance. Ext 91/1 is the said entry. Entry dated 13.06.2008 by which Rs. 50,00,000/- was released by Council for construction of works and maintenance under ARP scheme. Ext 91/2 is the said entry. Entry dated 12.09.2008 by which Rs. 90,00,000/- was released by Council for maintenance. Ext 91/3 is the said entry. Entry dated 29.01.2009 by which Rs. 1,92,49,000/- was released by Council for maintenance. Ext 91/4 is the said entry. Entry dated 09.02.2009 by which Rs. 1,00,00,000/- was released by Council. Ext 91/5 is the said entry. All the above entries were made by him.

390.(i). His evidence also reveals that Ext 86 is the Cash Book of Council Sector from 29.03.2008 to 30.01.2009. The same was maintained by him under his hand and entries

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are made by him. The Cash Book gives the details of payment made to parties. Ext 86 contains details of payment upto 28.01.2009, however, the details of payments made after receipt of Rs. 1,92,49,000/- (Ext 91/4) and Rs. 1,00,00,000/- (Ext 91/5) are not mentioned in the Cash Book. The payment to various parties are made by cheque through the Account maintained by the Executive Engineer of the PHE Department and during that time Executive Engineer Karuna Saikia was the authorized person to operate the said account. Ext 89 is the cheque book of the PHE department which was under his custody and the same was written under instruction of the executive Engineer, Karuna Saikia at the relevant time. The cheques were issued under signature of the then Executive Engineer, Karuna Saikia. On 30.01.2009, a cheque was issued in the name of M/s Munna Phanglosa for Rs. 21,45,000/- vide cheque no. 317972 (Ext 235). On 30.01.2009, a cheque was issued to Dilip Phonglo for Rs. 20,99,500/- vide cheque no. 317973, On 30.01.2009, a cheque was issued to Rajen Barman for Rs. 11,50,000/- vide cheque no. 317975 (Ext 128), On 30.01.2009, a cheque was issued to Bablu Das for Rs. 12,50,000/- vide cheque no. 319001 (Ext 129), On 31.01.2009, a cheque was issued to Munna Phonglosa for Rs. 20,55,000/- vide cheque no. 319003 (Ext 136), On 30.01.2009, a cheque was issued to Rajen Barman for Rs. 9,45,000/- vide cheque no. 319004 (Ext 130), On 07.02.2009, a cheque was issued to Jagat Jidung for Rs. 16,80,000/- vide cheque no. 319035 (Ext 131), On 07.02.2009, a cheque was issued to Samer Langthasa for Rs. 18,90,000/- vide cheque no. 319036 (Ext 132), On 07.02.2009, a cheque was issued to Kiran Jidung for Rs. 18,90,000/- vide cheque no. 319037 (Ext 133), On 07.02.2009, a cheque was issued to Bijen Naiding for Rs. 13,65,000/- vide cheque no. 319038 (Ext 134), On 07.02.2009, a cheque was issued to Dilip Phonglo for Rs. 12,60,000/- vide cheque no. 319039, On 02.02.2009, a cheque was issued to Munna Phongloso for Rs. 10,50,000/- vide cheque no. 319015 (Ext 238). The payment to the above firms and persons do not find entry in the Cash Book. All the cheques were signed by Karuna Saikia as Executive Engineer. He know one Jibangsgu Paul who is also a contractor of Haflong. Karuna Saikia had good relation with Jibangshu Paul and while issuing the above cheques, Karuna Saikia sat in the house of Jibangshu Paul and signed the above cheques. Karuna Saikia instructed him to write the cheques and told him that the connected bills and papers will be placed later on. But he did not receive any bills so he could not make any entry in the Cash Book (Ext 86). Ext. 316 is another Cash Book for the period from 07/03/2009 to 21/05/2009, the same was maintained by him. In this Cash Book also the above cheques issued by Karuna Saikia are not reflected. Ext 317 is the seizure memo by which he had handed over 6 nos. of documents. Ext 317/1 is his signature.


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390.(ii). It is elicited in his cross-examination that his office comes under Autonomous Council, NC Hills (Presently Dima Hasao District). The said Engineering department comes under the control of Chief Executive Member. He admitted having not aware of whether the works under the council has taken place under the direction of the CEM, Autonomous Council. He admitted that by seeing the cheques he cannot say whether the cheques are final, running or advance. He also admitted having not aware of whether there was approval from Autonomous Council to prepare the cheques and also he do not know whether there was any direction to prepare the cheques by the Site Engineers. He cannot definitely say whether Karuna Saikia had made payments in due discharge of official duty.

391. The evidence of PW-11- Prithish Kumar Chaki- has already been discussed in details herein above. According to this witness Assam Financial Rules is applicable to all areas including Hill areas. Under Rule 268 the deptt. is prepare plan and estimate. As per Govt. notification No. FEB 234/2007/01(U/0) the Executive Eng has power up to 5 laks, the SE has power up to 50 Lakhs, Addl. CE has power up to 100 lakhs, and CE has power up to more than 100 lakhs. As per Store Purchase Act & as per Assam Financial Rules items are to be purchased by inviting quotations and the rates will be place in comparative statements.

392. PW-41- Haripada Barman has deposed that he was working as Post master at Halflong Mukhya Dak Ghar w.e.f 1-7-09 On 14-8-09 he have written my report to NIA that firm M/S MAA Trading Haflong; M/S Loknath Trading Haflong; M/S Jeet Enterprise Haflong; M/S Borail Enterprise Haflong; M/S Debojit Bhattacharjee Haflong; on enquiry are not traceable. Ext- 121 is my letter. NIA has also sent 30 registered letters Ext-122/1 to Ext-122/30 to 30 different firms and persons located at NC Hills and Haflong but the post man of the area could not trace the addressee and returned as not traceable.


393. PW-74- Hemen Das- SI Police Special Task Force Ulubari- attached to NIA in the same capacity. He verified the address of (1) M/S Barail Enterprise factory at Ulubari, Guwahati; (2) M/S Loknath Trading factory at Paltanbazar, Guwahati; He made enquiry but could not find and on 8-8-09 submitted his report. On 23-8-09 he was witness to the inspection of GI pipes received from Jeet Enterprise at Umrangso. Ext-273 is the inspection memo. Evidence of both P.W.41 and 74 has been discussed here in above. Nothing tangible could be elicited in their cross-examination.


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394. PW-92- Nikhil Kanta Nath has deposed regarding supply of GI pipes by Maa Trading, Ext-312 Bill of Maa Trading dt 26-2-09 for supply of pipes for Rs. 14,99,780/- which are received, he deposed that he gave certificate on the pressure from K B Mukherjee. He informed the NIA by his letter that as per decision taken by you he verified the bills. He submitted one letter issued by K B Mukherjee to DSP/ NIA wherein it was informed that bill dt 16-3-09 for Rs. 17,05,190/- and Rs. 49,98,800/- for supply of GI Pipes , materials has not been received by the Division. Ext-314/3 letter dt 29-04-09 addressed to Maa Trading addressed through Sambhu Ghosh for supply of remaining GI Pipes.

395. PW-94—Kalyan Brata Mukherjee has already been discussed here in above. So detail discussion is skipped. However, it appears from his evidence that Mohet Hojai gave order to issue supply order in favour of M/s Maa Trading, Jeet Enterprise and Loknath Enterprise, accordingly he issued supply order for Rs. 1.64 crore. He stated that he received 60% of the materials, the balance 40% not supplied, He has issued reminders but the supplier failed to supply the balance. On pressure from Mohit Hojai he release fund without receiving 40% materials. He came to Guwahati and you called him to Pragoti Manor Hotel, there he met Dhruba Ghosh Debashish Bhattacharjee and Executive Engineer of Mibong Division Shri K.C. Namasudra. And Mohit Hojai directed him to issue all the cheques in favour of Maa Trading, and Mohet Hojai gave assurance that balance materials will be supplied soon by Maa Trading. He stated that a Nepalee boy who accompanied Mohet Hojai threatened him to issue cheque as directed by Mohet Hojai. The boy threatened him on gun point. He got scared and after reaching Haflong issued all the chq. Ext-318 cheque issued in favour of Maa Trading dt 25-3-09 for Rs. 84,81,000/-. Ext-319 cheque issued in favour of Maa Trading dt 26-3-09 for Rs. 57,98,000/- . The defence side contended to disbelieve him one account of discrepancy in his evidence. Nevertheless his evidence is found to be believable in view of the facts and circumstances on the record.

396. PW-95-Maziruddin Ahmed- Asst Engineer PHE Haflong in charge of store has deposed that his duty was to maintain stores and verify bills, and thereafter materials are to be issued to different sites. On Feb 2009, K. B. Mukherjee took over the charge of Haflong PHE Division, prior to that Karuna Saikia was there. On 18-6-09 verification of stores of PHE Haflong was done by NIA and he was present. Ext-324 is the verification report. His evidence remained unshaken in cross-examination.


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397. PW-103-Sushil Ch Das a Retd. Govt officer, he was working as in-charge of store at PHE Maibong. Ext-203 Supply order no 958 dt 7-2-09 placed in favour of M/S Loknath Trading. Ext-204 Supply order no 962 dt 7-2-09 placed in favour of M/S Jeet Enterprises. No materials were supplied in February /09. In March /09 Ex Engineer K C Namasudra told him to verify the bills without receipt of the materials as he has already delivered the chq for the entire amount under pressure. Ultimately in April /09 materials started to come and he was asked to put signature on back date of the challan under pressure. In Ext-366 bill of M/s Loknath Trading is my signature Ext-366/1. Challans which is exhibited as Ext-366/2 to Ext 366/9 in the name of M/S Jeet Enterprises and Loknath Trading were filled by me under pressure of K C Namasudra. Ext-367 is another bill of M/S Jeet Enterprises where verification is done by him under pressure without receipt of materials. The defence side could elicit nothing tangible to discredit his version, who lends assurance to the prosecution version.

398. PW-104-Jai Jendra Hojai- Office Superintendent Maibong PHE, he was also entrusted with cashier work K. C. Namasudra rang him and directed me to come to Guwahati with Cheque book, where at Guwahati K. C. Namasudra took the cheque book. He came to Haflong and while entering in the cash book he found that 4 cheque were issued. Ext-369 is the Cash book No-23 of PHE Maibong. Ext-370/1 Chq no-873155 dt 23-3-05 (although the chq is dt 23-3-05 it was passed on 2-4-09) for Rs- 40,00,000/-, Ext-370/2 Chq no-873156 dt 23-3-09 for Rs- 45,00,000/-, Ext-370/3 Chq no-873157 dt 23-3-09 for Rs- 40,00,000/-, Ext-370/4 Chq no-873158 dt 23-3-09 for Rs- 40,00,000/-,

399. PW-108-N.G.Upendra Singh stated that he was Asst Ex Engineer PHE Haflong, The supply of GI pipes by M/S Jeet Enterprise the materials were not received during the time he was in office. During the time of Altaf Mazid stores received part supply but could not be verified because of non submission of test certificate and warranty certificate. Ext-273 is inspection memo. Ext-274 is the deficiency memo.

400. PW-109- Brojolal Das stated that he was Senior Asst PHE Division Umrangso, In the month of Feb/March/ 09 Altaf Mazzid telephoned him to come to Guwahati carrying chq book, accordingly with chq book he came to Guwahati and handed over to him. After 15-20 days Mazzid told him to make entry in cash book regarding payment made to Jeet Enterprises. Ext-380 is Cash book Ext-380/1 is the entry of four cheque made to M/S Jeet Enterprises Chq no- 741451, 741452, 741453, 741454,


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401. PW-110-Altaf Mazid stated that he was Ex Engineer PHE, Umrangso. In 2009 supply order were placed to M/S Jeet Enterprises for GI pipes, he said that you introduced to be the representatives of M/S Jeet Enterprises. Ext-374 is chq 741457 dt 12-05-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/- , Ext-375 is chq 741456 dt. 11-05-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-376 is chq 741452 dt. 18-04-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-377 is chq 741451 dt. 13-04-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-378 is chq 741453 dt 21-04-09 issued to M/S Jeet Enterprises for Rs. 18,00,000/-, Ext-379 is chq 741454 dt. 27-04-09 issued to M/S Jeet Enterprises for Rs. 17,08,991/-.

402. PW-111-Himangshu Barman he was Junior Eng Haflong, Ext-382 is stock register of PHE Umrangso Div. He stated that Ext-382/1 is four entries of supply of materials by M/S Jeet Enterprises.

403. PW-128- Mukut Kemprai is the Principal Secy (N) NCHAC. By Ext 393 on 12-8-09 DSP NIA sought information as to whether (1) M/S Maa Trading (2) M/S Loknath Trading (3) M/S Jeet Enterprises (4) M/S Borail Enterprises (5) M/S Debashis Bhattacharjee are registered in the financial year 2008-09. On 13-08-09 he replied by Ext-394 that permits were issued on 31-01-08 in favour of Sri Debashis Bhattacharjee and valid up to 31-03-08.

404. PW-147- Sanjay Kr Malviya has deposed that he did part investigation of the case and by Ext-39 he collected 5 documents. Ext-39/5 is the Assam Financial Rules. Ext-435 is the receipt memo issued to M/s Jeet Enterprises. Ext-374 to 379 are the 6 nos. of Cheques.


405. The evidence of the I.O. PW-149- Sh. Khadak Singh Thakur reveals that on 22.07.2009, he had collected letter issued by accused Mohet Hojai on 19.01.2009 addressed to Chief Engineer, PHE, NC Hills, Haflong issuing direction therein to allot supply work to M/s Maa Trading for Rs. 1.25 crore, M/s Loknath Enterprises for Rs. 1.25 crore, M/s Jeet Enterprise for Rs. 2.70 crore and M/s Alumpuria Enterprises, Hojai, Nagaon for Rs. 1 crore, signed by Mohet Hojai on 13.01.2009. The same taken over through production memo from Karuna Saikia, the then executive Engineer PHE, Haflong in the presence of witness Nakul Boro and a copy of the production memo was given to Sri Karuna Saikia under acknowledgment. Ext. 46 is the said production memo. Ext 46/2 is his signature. Ext. 46/3 is the signature Karuna Saikia receiving the copy. Ext. 47 is the letter issued by Mohet Hojai. On 08.08.2009, he issued letter to M/s Syam Hardware to obtain rates of GI pipes during the


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period April, 2008 to April, 2009 as circulated by the manufacturer. Ext. 285 is the said letter. Ext 285/2 is his signature.

406. Mention to be made here that in cross-examination of the aforementioned witnesses, nothing tangible could be elicited to cast doubt the veracity of their version. Their evidence and the evidence of expert witness established following facts and circumstances, against the accused Karuna Saikia :-

1. He has connection with the accused Mohit Hojai, who was the CEM of NCHAC.
2. As per direction of Mohit Hojai he has issued work orders in the neme of fictitious firms and also issued cheques without doing any work by the said firms and gets the cheque amounts collected from the persons in whose name the cheques were issued and handed over to the men of Mohit Hojai.
3. Assam Financial Rules has not been followed while awarding the contracts. A quotation has been invited for fixation of the rate of G.I. Pipes. He forced PW- 44 Sh. Monoj Kumar Talukdar, a Jr. Engineer, PHE to prepare the comparative statement in double the rate of prevailing market rate as submitted by the contractors, despite his objections.
4. The lowest bidder Smti. Salota Thousan has not been allotted the works, instead he called P.W.44 to Guwahati in February, 2009, for the preparation of supply order of M/s Jeet Enterprise, M/s Loknath Trading, M/s Alampurua Enterprise, Jibangshu Paul, Gyan Das, M/s Maa Trading, Monoj Gorlosa, M/s M & B Associates, Hajar Naiding, without participation as bidder in the tender process, and after preparation he taken away the same from him.
5. He had good relation with Jibangsgu Paul who is also a contractor of Haflong and while signing and issuing the cheques, he was sitting in the house of Jibangshu Paul who was arrested by police at Thijuary at around 3.15 PM, on 11.02.2009, in one Scorpio vehicle bearing regd. No. AS-08-5133., carrying cash amount of Rs. 32,11,000/-.
6. This shows nexus between him and contractors in siphoning out the govt. funds.
7. the details of payments made after receipt of Rs. 1,92,49,000/- (Ext 91/4) and Rs. 1,00,00,000/- (Ext 91/5) are not mentioned in the Cash Book Ext.86


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ANALYSIS:-

407. While dealing with criminal conspiracies, Hon'ble Apex Court in case titled **K.R. Purushothaman vs. State of Kerala, AIR 2006 SC 35** observed that:-

"to constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by an illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the accused is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine qua non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy."

408. Again in **Shivnarayan Laxminarayan Joshi vs. State of Maharashtra 1980 SCC (Cri.) 493**, the Hon'ble Supreme Court has also observed that:-

"it is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design which has been amply proved by the prosecution as found as a fact by the High Court."

409. Again in **P.K. Narayan Vs. State of Kerala (1995) 1 SCC 142** it was observed that:-

"the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. The circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also

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with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case."


410. Same is the view expressed in case of *State of Kerala Vs. P. Sugathan and Another (2000) 8 SCC 203* and *Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao (2012) 9 SCC 512*.

411. In *State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru MAU/SC/0465/2005* it was observed that:-

"those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy, but the non-participant conspirators cannot be found guilty of the offence committed by the other conspirators."

412. Keeping the above principle of law in mind, if we analyse each of the facts and circumstances on the record, that have been culled out against each of the accused, we will find that there are elements of truth in the prosecution version that after forming terrorist gang DHD(J) or Black Widow in 2004, and particularly during the period of January to March, 2009, accused Sri Phojendra Hojai, Sri Babul Kemprai, Sri Mohet Hojai, Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha, Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Sri Vanlalchhanna @ Vantea @ Joseph Mizo, Smt. Malswamkimi, Sri George Lawmthanga, Sri Niranjan Hojai @ Nirmal Rai, entered into agreement, with Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Ghosh, to do illegal act or an act which is not illegal but by illegal means, i.e., to raise fund for the terrorist gang by siphoning Govt. fund, converting Indian currency to US dollar, to procure arms and ammunition to wage war, caused death of innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc.

413. If we analyze the series of events, past, contemporaneous and after the episode of 01.04.2009, that can be culled out from the facts and circumstances brought on the record and proved by the prosecution side, in chronological manner, we will find that - Depolal Hojai was elected as Member of Autonomous Council (MAC) and took over as Chief Executive member (CEM) of N.C. Hills Autonomous Council (NCHAC) in January 2008. He continued till 26.11.2008, and he was asked to resign on 26.11.2008, in a meeting held in his


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These accused persons, concealing their identity at Bangalore and they controlled the affairs of the DHD(J), from there.

416. To further the conspiracy, part conspiracy, which is third in number, took place at Kolkata. The money, so transmitted to Kolkata by different means were were received by Malswamkimi. Malswamkimi got the money converted to US Dollars with the help of George Lamthang. The process began for the first time in the month of August 2008 with conversion of Rs. 15,00,000/ and the same continued till 11.08.2009 on which George Lamthang was arrested by Kolkata police. Thereafter, Malswamkimi was arrested and a sum of Rs. 10,00,000/ was recovered from her possession and from the possession of George Lamthang a sum of Rs. 5,00,000/ given by Malswamkimi was recovered from the possession of George Lamthang. Malswamkimi reported to George Lamthang that he collected money from Phojendra Hojai whom George has meet twice at the Hotel when he accompanied Malswamkimi to collect money and she also reported to him that she was collecting money at the behest of Vanlalchanna @ Vantea.

417. Thereafter, Vanlalchanna @ Vantea was arrested by Mizoram Police 26.07.2009, in connection with Aizwal P.S. Case No. 238/09, u/s 25(1)(a),(1)(b) Arms Act. During custody period on 30.07.2009 he made disclosure statement to police and on the basis of the said disclosure huge consignment of Arms and communication equipments were recovered from a house of Sarang Vang. During interrogation, it was found that he is not involved in Aizwal P.S. case No. 238/09, but involved in NIA case No.01/2009. This is another part conspiracy that took place at Aizwal where arms and ammunitions were received and sent to DHD(J). Thereafter, P.W.56 took custody of him and taken to Guwahati where he identified accused Niranjana Hojai and Jewel Garlosa in a photo identification process.

418. All the events, so mentioned above, clearly established that there was an agreement to do an illegal act i.e. to raise fund for DHD(J) a terrorist gang, and that too by illegal means, by siphoning govt. funds, converting Indian currency to US Dollars, to procure arms and ammunitions, to wage war, cause death of innocent persons, terrorize the people and extort money, disrupted works of gauge conversion and construction of East West Corridor of four lane National Highway, and there by establishing all the basic ingredients of the charge of conspiracy which are:-

- (i) That the accused agreed to do or caused to be done an act;

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- (ii) That such act was illegal or was to be done by illegal means;
- (iii) That some overt act was done by one of the accused in pursuance of the agreement

419. These facts and circumstances, if arranged in-seriatum, the same form a chain so complete to show complicity of all the above accused persons with the charge of conspiracy. To illustrate - Accused Mohit Hojai (A-3) and Joyanta Ghosh (A-12) and Debasish Bhattacharyee (A-13) remained present at Hotel Pragati Manor in the month of March, 2009 and compelled two Executive Engineers of PHE Department NCHAC to issue cheques in favor of Maa-Trading, a firm registered in the name Debasish Bhattacharyee(A-13) in the name of which accused Joyanta Kr. Ghosh (A-12) Debasish Bhattacharyee (A-13) and Sandip Kr. Ghosh (A-14) used to do business. The cheques issued consequent to the episode of Pragati Manor were encashed on 29.03.2009, by opening one account in the name of the firm Maa-Trading at SBI Zoo Road Branch and a sum of Rs. 84,00,000/ was withdrawn. Accused (A-1) and (A-2) Shri Phojendra Hojai and Babul Kemprai were arrested on 01.04.2009 at 14th mile Jorabat by Assam Police. From their possession Rs. 1.00 crore, two Pistol one with licence and the other without licence and three letter heads of DHD(Jewel) and one Letter of CEM Mohit Hojai addressed to Superintending Engineer, P.W.D and R & B, for awarding of contract of Rs. 87 lacs to Phojendra Hojai, were recovered. But there is no direct evidence to show that the sum carried by A-1 and A-2 were the sum encashed by accused Debasish Bhattacharyee in the last part of the month of March, 2009. Before his arrest also accused Phojendra Hojai carries a sum of Rs. 1.00 crore and Rs.2.00 crore and Rs. 1.00 crore on three occasions to Kolkata and handed over to Malswamkimi (A-9), who converted the same to US Dollars with the help of George Lamthang (A-10) and handed over to Vanlalchanna @ Vantea (A-8) who is an arms smuggler. At the direction of accused Mohit Hojai(A-3) Addl. Chief Engineer - Shri Karuna Saikia(A-15) has issued cheques to Dilip Phonglo @ Dilip Barman and Uttam Phonglosa @ Munna Phonglosa, who have handed over the cheque amount, after encashing the same to Mohit Hojai (A-3), who transmitted the same to Kolkata to be received by accused Joyanta Kr. Ghosh. Accused R.H. Khan (A-4) has awarded contracts to the firms registered in the name of Debasish Bhattacharyee in contravention of all norms and procedures and thereby facilitates siphoning of Govt. fund of Social Welfare Department to the DHD (J). Again, official notes in the name of accused Mohit Hojai (A-3) addresses to Principal Secretary, NC Hills Autonomous Council, and Bills and Challans in the name of the firm of accused Debasish Bhattacharyee (A-13), and challans and bills in the name of some Self Help Groups, whose existence were not found by the staffs of Postal Deptt., were retrieved from the Hard Discs of official computer of



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accused R.H. Khan (A-4). Accused Mohit Hojai (A-3) became CEM after resignation of Depolal Hojai at the instance of accused Niranjana Hojai (A-11) who is the C-in-C of DHD (J). Mohit Hojai has visited Kualampur along with one Kulendu Daulagapu who met Niranjana Hojai there. Accused Gewel Garlosa (A-5) is the Chairman of DHD (J) and he was found concealing in the Flat of accused Ashringdao Warissa (A-6) at Bangalore with the help of accused Samir Ahmed (A-7). In e-mail of Ashringdao Warissa one e-mail of Jewel Garlossa, addressed to NDFB soliciting logistic supports to the cadres of DHD(J) was found. Thus, all the accused are interlinked with the facts and circumstances discussed herein above. It is, however, true that there is no direct evidence to show that from accused Vanlachanna (A-8), where the US Dollars have gone. But it stands proved that he is an arm smuggler and at his instance huge quantity of Arms and Communication equipments were recovered. Though, there is absence of legal evidence to established that he procured Arms and Communication Equipments and supplied the same to DHD(J) yet he is acquainted with accused Niranjana Hojai (A-11), the C-in-C of DHD(J) and accused Gewel Garlosa (A-5), the Chairman of DHD(J) and identified their photographs in a photo identification process in presence of independent witnesses. Thus, as held by Hon'ble Supreme Court in **K.R. Purushothaman vs. State of Kerala, (supra)** the agreement amongst the conspirators can be inferred by necessary implications. It is to be noted here that all the above incriminating circumstances were put to the accused persons during their examination u/s 313 Cr. P.C. But none of them have been able to accounts for the same, satisfactorily.

420. In the case of **Harivadan Babubhai Patel v. State of Gujarat (2013) 7 SCC 45**, Hon'ble Supreme Court has held that:-

28. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused has been put to him, yet he chose not to give any explanation under Section 313 of the Code of Criminal Procedure except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances... In the case at hand, though a number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.

421. Since here in this case also the accused persons have failed to accounts for satisfactorily about the inculpating circumstances, it is also circumstance that militates against


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them and provides missing link for building the chain of circumstances, as discussed herein above.


FINDINGS:-

422. Here in this case, we have appreciated all the evidences led by the prosecution side, in support of the charges so framed, with the aid of all the circumsppection at our command. We have also considered the defence version and give much needed credence as it deserves. We adopt realistic approach in the matter of acquiescence of evidence, and in doing so we have not allowed hyper technicalities and figment of imagination to override the realistic and genuine approach. We have also keep in mind the observation of Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra: 1984 Cri.L.J 1738**, in respect of circumstantial evidence , where it has been held that

" The onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;*
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) the circumstances should be of a conclusive nature and tendency;*
- (4) they should exclude every possible hypothesis except the one to be proved; and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

423. And having considered all the material particulars we find that the prosecution side has succeeded in bringing home the charge of conspiracy u/s 120-B against all the accused persons beyond all reasonable doubt. It is to be mentioned here that accused George Lamthang has turned approver and granted pardon and accused Samir Ahmed has pleaded guilty and convicted already. The prosecution side has been able to establish beyond


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all reasonable doubt that the accused persons namely Redaul Hussain Khan (A-4), Karuna Saikia (A-15), Joyanta Kr. Ghosh (A-12), Debasish Bhattacharyee (A- 13) and Sandip Ghosh (A-14) have entered into an agreement with the members of some members of DHD(J) to do an illegal act, which is not illegal but by illegal means to help them in raising funds and in order to commit such act siphoned of Govt. funds meant for development of N.C.Hills district and handed over the money to terrorist gang DHD (J), through Mohit Hojai (A-3), to procure arms and ammunitions to assist in continuing terrorist act.


423.(i). The prosecution side has also been able to prove beyond all reasonable doubt that accused Sri Phojendra Hojai (A-1) Sri Babul Kemprai (A-2), Sri Mohet Hojai (A-3) Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha (A-5) Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha (A-6) Sri Vanlalchhanna @ Vantea @ Joseph Mizo (A-8), Smt. Malswamkimi (A-9), Sri Niranjana Hojai @ Nirmal (A-11), after forming terrorist gang DHD(J) in 2004 entered in to agreement with Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh to do an illegal act i.e to raise fund for the terrorist gang by siphoning Govt. funds, converts Indian currency to US Dollars, to procure arms and ammunitions to wage war, cause death of innocent persons, terrorize people and extort money disrupt works of gauze conversion and construction of East West Corridor. It is of course true that the prosecution side has failed to establish kidnapping for ransom here in this case. Notwithstanding, failing to establish this, the other parts have been proved by the prosecution side beyond any shadow of doubt and the same unerringly points out the guilt of the accused and except that no other hypothesis is possible on the facts and circumstances on the record. Accordingly, the accused persons named here in above are convicted u/s 120-B IPC.

424. Now, coming to the charge u/s 17 and 18 of the Unlawful Activities (Prevention) Act, we find from the above discussion and findings that the accused Redaul Hussain Khan (A-4), Karuna Saikia (A-15), Joyanta Kr. Ghosh (A-12), Debasish Bhattacharyee (A- 13) and Sandip Ghosh (A-14) have either directly or indirectly, conspired to raise fund, for DHD(J) and we find from the evidence on the record that involved in raising and collecting funds for DHD(J) and they did so by siphoning off and defalcation of Govt. fund allotted for development of N.C. Hills district and in doing so they made payment without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challans, money receipts, etc. and provides to terrorist gang DHD (J) to procure arms and ammunitions to assist in continuing terrorist act.


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425. The prosecution side also been able to prove beyond all reasonable doubt that Sri Phojendra Hojai (A-1) Sri Babul Kemprai (A-2), Sri Mohet Hojai (A-3) Sri Jewel Garlosa @ Mihir Barman @ Debojit Singha (A-5) Sri Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha (A-6) Sri Vanlalchhanna @ Vantea @ Joseph Mizo (A-8), Smt. Malswamkimi (A-9), Sri Niranjana Hojai @ Nirmal (A-10), after forming terrorist gang DHD(J) in 2004, directly or indirectly involved raising and collecting funds or attempts to collect funds by extortion, kidnapping, siphoning and defalcation of Govt. fund through Mohit Hojai and others and in committing such activities, kidnapped R.S. Gandhi and realized Rs. 4.5 crore from him, siphoning Govt. fund with the help of Redaul Hussain Khan, Karuna Saikia, Jayanta Kumar Ghosh, Debasish Bhattacharjee and Sandip Ghosh by paying money without supply or short supply of articles, making the rate of supplied articles more than double of market rate, by preparing false bills, vouchers, delivery challan, money receipt etc. it has of course failed to prove kidnapping of R.S. Gandhi and realizing Rs. 4.5 crore from him. It has not examined said R.S. Gandhi as witness. Notwithstanding it has been able to establish other parts beyond all reasonable doubt.

426. It is, however, correct that mere raising and collecting funds will not satisfy all the ingredients of the charges u/s 17 and 18 of the Unlawful Activities (Prevention) Act. One more requirement i.e knowledge is also necessary. But, having considered all the facts and circumstances, which the prosecution side has proved against them in totality, it cannot be said that all commissions or omissions have happened without their knowledge. The transaction amounts were always very high. The said amounts were defalcated from the Govt. fund meant for development of NCHAC. The same were withdrawn with utter disregard to the official norms and rules and channelized to Kolkata. Under the above facts and circumstances, can it be said that all these happened without their knowledge. To our considered opinion the answer is no. It happened with their connivance and knowledge. The Government Officers A-15 of PHE Department and A-4 of Social Welfare Department made payments to the contractors without supply of materials making the rate of supply more than double the market rate, by preparing false bills and vouchers, delivery challans and money receipt. Can it be said that it happened without their knowledge. The contractors have withdrawn huge sum of money from the banks on a given day. Can it be said that they it happened without their knowledge. Huge sum of money were converted to US Dollars, can it be said that it was a normal business. Huge cache of sophisticated arms and communication equipments were recovered at the instance of the accused, can it be said to be a normal circumstance. The


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answer to all these circumstances is emphatic no. Therefore, we are inclined to hold that the accused persons have the knowledge that those funds likely to be used by such persons to purchase arms and ammunitions to commit terrorist act.

427. It is of course argued by the defence side that no knowledge could be attributed to the accused persons. The submission is considered in the light of facts and circumstances on the record. But considering the materials on the record in its entirety, the submission is found to be bereft of merit. In the result we find and hold that the prosecution side has been able to establish all the basic ingredients of the charge u/s 17 of the Unlawful Activities (Prevention) Act against all the accused persons beyond all reasonable doubt and accordingly, they are convicted under the said sections of law.

428. However, on the facts and circumstances we already find and hold that the conspiracy u/s 120-B IPC stand proved against all the accused persons. But on the same facts and circumstances the offence u/s 18 of the Unlawful Activities (Prevention) Act stand made out. Since we have already held the accused guilty u/s 120 B IPC, for the charge of conspiracy, we are of the view that their conviction and sentence u/s 18 of the Unlawful Activities (Prevention) Act is unwarranted. *Accordingly they are acquitted of the same.*

429. Now coming to the charge u/s 121A IPC and u/s 121 IPC we find that the prosecution side has alleged that accused Phojendra Hojai, Babul Kemprai, Mohit Hojat, Jewel Garlossa, Ashringdao Warissa, vanlalchanna, Smti. Malswamkimi, George Lamthag, and Niranjana Hojai, after forming terrorist gang DHD(J) or Black Widow in 2004, entered into conspiracy amongst its members to wage war against Government or attempt to wage war or abate the waging of such war.

430. A bare perusal of the section reveals that the offence comprises of following ingredients:-

- (i) Conspiring within or without India to commit any of the offences punishable by section 121
- (ii) Conspiracy to overawe by means of criminal force, or the show of criminal force the Government.

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431. It is to be mention here that following are the ingredients of section 121 IPC.


- (i) Accused must wage war, or
- (ii) Attempt to wage such war, or
- (iii) Abate the waging of such war, or
- (iv) Against the Government of India.

432. Now, let us understand what the word 'waging of war' means. The expression waging of war means and can only mean waging of war in the manner usual in war. The word 'waging of war' import the same idea as 'levying war' used in English Law. There must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature. This aspect received a details discussion of Hon'ble Supreme Court in the case of **State (NCT of Delhi) vs. Navjot Sandhu @ Afzal Guru, (2005) 11 SCC 600**. In the said case it has been held that

"the most important is the intention or purpose behind the defiance or raising against the Government. In other words the intention and purpose of the war like operations directed against the government machinery is an important criterion. If the object and purpose is to strike at the sovereign authority of the Ruler or the Government to achieve a public and general purpose in contradistinction to a private and a particular purpose, that is an important indicia of waging war. Of course, the purpose must be intended to be achieved by use of force and arms and by defiance of Government troops or armed personnel deployed to maintain public tranquillity. Though the modus operandi of preparing for the offensive against the Government may be quite akin to the preparation in a regular war, it is often said that the number of force, the manner in which they are arrayed, armed or equipped is immaterial. Even a limited number of persons who carry powerful explosives and missiles without regard to their own safety can cause more devastating damage than a large group of persons armed with ordinary weapons or fire arms. Then, the other settled proposition is that there need not be the pomp and pageantry usually associated with war such as the offenders forming themselves in battle-line and arraying in a war like manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war."

It is further held that:-


"The Court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless and violent acts resulting in destruction of public properties etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of general public


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nature or has a political hue, the offensive violent acts targeted against armed forces and public officials should not be branded as acts of waging war. The expression 'waging war' should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government. A balanced and realistic approach is called for in construing the expression 'waging war' irrespective of how it was viewed in the long long past. An organized movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war. We doubt whether such construction is in tune with the modern day perspectives and standards. Another aspect on which a clarification is called for is in regard to the observation made in the old decisions that "neither the number engaged nor the force employed, nor the species of weapons with which they may be armed" is really material to prove the offence of levying/waging war. This was said by Lord President Hope in R Vs. Hardie in 1820 and the same statement finds its echo in many other English cases and in the case of Maganlal Radha Krishan Vs. Emperor [AIR 1946 Nagpur 173 at page 186]. But, in our view, these are not irrelevant factors. They will certainly help the Court in forming an idea whether the intention and design to wage war against the established Government exists or the offence falls short of it. For instance, the fire power or the devastating potential of the arms and explosives that may be carried by a group of persons may be large or small, as in the present case, and the scale of violence that follows may at times become useful indicators of the nature and dimension of the action resorted to. These, coupled with the other factors, may give rise to an inference of waging war."

433. Having understood the meaning of 'waging war' now let it be seen how far the prosecution side has been able to discharge its burden. The Id. Special P.P. has submitted that P.W. 20 - Shri Ronsling Langthasa, P.W.23 - Shri Kulendra Daulagopu, P.W. 24 -Shri Amitav Sinha the then Addl.S.P. Law & Order, N.C. Hills and P.W. 46 Nairing Daulagapu, P.W 72 Shri Anurag Tankha, P.W. 87 Shri Subrata Hojai, P.W. 98 Shri Nipolal Hojai and P.W. 126- Shri Depolal Hojai, P.W. 129 Dilip Nunisa, have established the above two charges against the accused persons. However, the defence side has submitted that the material so brought on record are insufficient to prove the charge u/s 121/121A IPC and consequently they are entitled to acquittal of the same.

434. The evidence of P.W.20 reveals that he was a cadre of DHD of N.C.Hills for about 16 years. From the year 1996 Jewel Garlosa was the Chairman, Dilip Nunisa was the Vice-Chairman and Pranab Nunisa was the Commander-in-chief. From 1.1.2003, DHD group entered into cease fire with the Govt. After cease fire Jewel Garlosa continued with the organization. He suddenly disappeared. They do not know where Jewel Garlosa went thereafter. They, thereafter, made Dilip Nunisa as their Chairman to continue our organization


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and till this stage the said group worked and finalized the Accord in October, 2012. Jewel Garlosa group also were the party to sign the Accord along with them. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O who proved that this witness stated before him that:- "The administrative power of DHD was in the hands of Jewel Garlosa @ Mihir Barman, he used to organize the procurement of weapons, and training of the members of the DHD. For weapons he used to extract money from businessman, contractors etc. It is correct that after cease fire, Jewel Garlosa has formed his own group by the name DHD(J). The I/O also confirmed that this witness has stated to him that " the statement that Jewel Garlosa did not join the Joint Monitoring Committee and met the IGP alone. He did not listen to anyone he started staying with his own cadres of 10/12 men with full arms and did not join the designated camp and if anyone wanted to meet him he had to go to village and not in the camp and slowly he increased his strength and started recruitment of his own, before this the HMAR group (SPCD) massacred 29 people(villagers) in which 17 widows came into existence. On their names he formed an organization named 'Black Widow' to take revenge. Then DHD (cease fire) came to know that Jewel had formed a new group. They took training in Manipur with Kuki organization. When DHD cease fired went to his (Jewel's house), they found arms, 26 lakhs in cash and other objectionable items present there." The I/O also confirmed that this witness has stated to him "Then Jewel ran away seeing that his secrets have been found. From that day, he started staying out when his cadres returned from Manipur after training, they started staying in west Karbi Anglong area (Giriginding). I also further deny that he started operations from that area. The group of DHD(J) started money collection, and arm action. They first attacked 3 Dimasa auto drivers of Manjah. The Jewel group also started operating with UPDS (Group of Karbi Anglong). " At that time in 2005, Jewel Group did not have a very big strength. At the time of last Council election in 2007, they (Group of Jewel) killed Purnendu Langthasa and Nindu Langthasa when they have gone for canvassing at Dihangi. In the same day the Group of Jewel Garlosa killed Ajit Bodo at Kalachang after taking out his eye when he was alive. At that time Jewel had approximately 60 cadres heavily armed with AK-47 & M-16 weapons. They also kept recruiting and slowly increased their strength. After the election, Jewel announced in the constitution to vote for ASDC & BJP. He threatened those who vote for Congress. He entered into an agreement with Mohet Hojai regarding providing money after he wins Election. Mohet Hojai won on ASDC ticket. It is to be noted that Mourung (Deputy C-in-C) of Black Widow (Jewel) group is a cousin brother of Mohet Hojai. After election, Dipolal Hojai was met CEM and Mohet Hojai


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was met EM along with other EMs. The Jewel group asked for money from Dipolal Hojai but could not give that amount of money. So he was removed and Mohet Hojai was made CEM in 2009. Mohet Hojai used R.H. Khan as Liaison Officer for the council. All the state govt. funds were siphoned with the help of R.H. Khan and used to go to Mohet Hojai. Niranjana Hojai and Daniel of DHD (J) group used to be in touch with Mohet Hojai over phone and used to demand money through Mohet Hojai. The DHD(J) group used to procure weapons from market with the help of money since Niranjana stays abroad quite frequently. Phojendra Hojai (Contractor) does the work of courier for Niranjana Hojai. Earlier he was a labourer but after aligning with Niranjana Hojai he became a wealthy man. One, EM Bijoy Senguing is in direct touch with Niranjana and during council session, he put his mobile No. on speaker and talked to Niranjana Hojai and he gives direction to Council members. Bijoy Senguing is called Niranjana Hojai's 'HOT LINE'. One Partha Warris (Ashringdao Warris) is the right hand of Jewel. He decides the policy of Jewel. He talks to the Council leaders and gets money transactions through Phojendra Hojai & Babul Kemprai (who is a second class contractor of PWD). Partha Warris is the middleman for all money transactions/negotiations from company and contractors. He does these for Jewel Garlosa. In April, 2009, Rs.1 crore was caught by the police. Before that also some members were caught for taking money from Niranjana Hojai of DHD (J) group. This 1 crore also going to Niranjana Hojai with the help of R.H.Khan who was Chief Liaison officer with Mohet Hojai. I know Jewel Garlosa by face and also other person viz., Mohet Hojai, R.H. Khan, Phojendra Hojai, Babul Kemprai, Partha (Ashringdao) Warrisa. Whereas Jewel Garlosa was underground, the others viz., Mohet Hojai, R.H.Khan, Phojendra Hojai, Babul Kemprai were often seen together in various functions. The sister of Jewel Garlosa viz., Pratima Barman is a Sr. B.D.O. in Hrangajao Block. She also used to siphon development fund for Jewel Garlosa." In cross-examination by defence side it is elicited that he cannot say whether Jewel Garlosa was the Chairman or the President of the organization. It is not a fact that Jewel Garlosa was not associated with DHD.

435. P.W. 23 Shri Kulendu Daulagapu testified that as it was reported in various newspapers and media, it is also come to the knowledge about the activities of the DHD(J), they were demanding more autonomy to the Autonomous Council. They took the violent means to achieve their objectives as it was reported in various media. In the year 2009 as he came to know Niranjana Hojai was the C-in-C of DHD(J). During he admitted in cross-examination by defence that NIA officials neither seized the tickets, nor the passport. Regarding the activities of DHD (J) he do not have any personal knowledge and my knowledge is confined to media as well as people.


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436. P.W. 24 Shri Amitav Sinha is another witness who deposed about the activities of DHD(J). His evidence reveals that he joined in March, 2009 as Addl.S.P.(Head Quarter), at NC Hills and continued till December, 2010. At NC Hills, he was responsible for maintenance of Law and Order and crime detection in the area. Immediately after my joining there was spurt in violence because of DHD(J), there was Naga and Dimasa ethnic clashes, DHD(J), has stopped the train services plying from Lumding to Badarpur, thus virtually stopping the food grains not only to Barak Valley but also to states like Mizoram, Tripura & Manipur. DHD(J) would resort to firing on the moving train from the hills on both sides of the more than 120 k.m. Railway track. This was the situation when he joined. Because of counter insurgency (CI) operation lots of additional forces were deployed, things gradually improved. Finally leading to the laying down of arms by DHD(J) cadres in March/April, 2010 but there was always a feeling and apprehension and some intelligence inputs as well that all arms & ammunition of DHD(J) were not handed over at the time of the laying down of arms.

437. His evidence also reveals that on 8.7.2010, he received a specific information that a consignment of arms & ammunition were kept hidden in a jungle. After verifying this information that there was some authenticity in the input that he received he on the instruction of the S.P., Dima Hasao, conducted a search at Disa Kishn area. He was accompanied by O/C, Haflong a large no. of forces. Thereafter, on search we could find several gunny bags, some behind rocks and some concealed with earth and on opening the sacks we found a large no. of sophisticated factory made weapons which included AK-47s, M-16 pistols, Lithod guns as well as M-21 Rifles. There was no question of witnesses as there was no habitation in the area and it was a dense jungle, but in presence of police witnesses the arms were seized. Thereafter, he informed the S.P., about the recovery and he was instructed to take all the weapons back to the Head Quarter. Thereafter, the Officer-in-Charge, Haflong P.S. lodged the FIR and a case was registered as 54/2010. He confirmed Ext. 57, the photocopy of the format of the FIR No.54 dtd.9.7.2010. Ext.58 is the photocopy of the FIR and Ext.59 photocopy of the seizure list containing 44 nos. of weapons and 41 assorted magazines and shells

438. The defence side, however, elicited in cross-examination that he has not before the I/O, NIA about the situation of law and order in Dima Hasao. It is also elicited that there was no any local people at the time of seizure that is why police personnel were made seizure witnesses. The distance between Haflong and Disa Kishn is 20 k.m. (Approx). At the time of seizure there was darkness. He has not seen any arms and ammunition the court


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which were seized. He denied the defence suggestion that the alleged search and seizure of arms and ammunition do not belong to DHD(J).

439. The evidence of P.W. 46 -Sh. Nairing Daulaguphu reveals that he joined DHD (Dima Haram Daoga) in 1995. DHD is a militant organization led by Jewel Garlosa who was the Chairman of the group. He remained with the organization from 1995 to 2003. This militant organization was operating in Karbi Anglong and N.C. Hills now Dima Hasao. The arms and ammunition required for the operation of the organization were purchased locally and also they used to get it from Bangladesh. In the year 1995, he went to Bangladesh as he was directed by the organization DHD, he remained in Bangladesh for about 3 months. He went there to set up a base for the organization but could not set up the base because of financial problem and so he returned. He do not know the source of Bangladesh. In the organization Chairman was Jewel Garlosa, Vice Chairman was Dilip Nunisa, C-in-C was Pranab Nunisa. Our militant camps were always on mobile and the cadres used to move so the arms and ammunition were received at different places.

440. His evidence also reveals that on 1st January 2003, ceasefire was declared between the militant and the government and around 300 cadres including him on signing of the ceasefire agreement, they were shifted to the designated camp. In October, 2003 the organization were separated and Jewel Garlosa went and formed another militant organization by the name of DHD (J). In the year 2006, when he came to Liaison Office, Dibrari, Haflong to meet Dilip Nunisa and on my return to his camp at Harangajao, on his way he was attacked by Daku Singh @ Athen Haflongbar and another person belonging to the group of DHD(J). On this attack he received six bullets injury from AK 47 rifle. He was badly injured, thereafter, he was air lifted to Hospital and admitted to GMCH, Guwahati. He remained in the Hospital under treatment for 3 months. This witness identified accused Jewel Garlosa in the Court. It is to be mention here that what has been stated by this witness remained unshaken in cross-examination.

441. The evidence of P.W.72 Shri Anurag Tankha, the then S.P. N.C. Hilld reveals that the DHD (J) cadres came over from the jungles before the Civil Administration in batches and two major batched surrendered on 13th and 14th September, 2009 and they were housed in safe locations. Subsequently a formal surrender ceremony was organized at District Head Quarter, Haflong on 2nd October, 2009 which was attended by Hon'ble Chief Minister of Assam and Senior Officials of State and District Administration. He was present in the ceremony supervising the arrangement as Supdt. of Police, NC Hills. In the aforesaid ceremony Niranjana


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Hojai was the Sr. most DHD (J) cadres along with other cadres who led the surrendered ceremony. Nothing is elicited in cross-examination by defence side that discredit the his above version.

442. P.W. 87 Shri Subrata Hojai testified that he fought election for the Council from Maibong West constituency and he lost the same. Again in the year 2007, he fought the same constituency and he won the same and he became Executive Member of the Council. In the year 2008, Sri Depolal Hojai was the CEM (Chief Executive Member). In the first part of 2009, Mohet Hojai became the CEM. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that:-"In the month of November, 2008, CEM, Depolal Hojai called for a meeting at CEM residence at 6-7 PM in the evening. The phone of Nirranjan Hojai came on the phone of Kulendra Hojai at around 8 PM to 8.30 PM. Nirranjan told Depolal to resign (probably on some money issue) and told that Mohet Hojai should be made the CEM. Then Depolal Hojai resigned on health ground and it came in the media also. Mohet Hojai became the CEM in January. After Mohet took over, he ran the show alone for the first month. Then code of conduct came. After election the council was suspended." The I/O also confirmed that the witness stated before him that "in the Council, the CEM has got financial portfolio. R.H. Khan was made the Liaison officer. He is the person who arranged for allotment of budget funds from Dispur. He pays a percentage. Funds are released by the CEM through the Principal Secretary. The Principal Secretary and Khan (R.H. Khan, Deputy Director, Social Welfare) released funds only to those departments which are capable of paying money. Sometimes tendering is done and many times work is directly allotted to the recommendation of CEM. There is a lot of bundling in all the departments. Only 20%-30% of the work is done" "I get frequent calls for demand of money from DHD(J) 5-6 months back, I got a demand for Rs. 25 lacs from DHD. I informed Additional Supdt. of Police and gave Phone number to them . I had got a sms from that number. Daniel of DHD(J) also called up once more than one year back. David also called up me after I was made EM. He told me that your department has been given money and you should pay. I did not give any money. The money is largely paid through the CEM with the help of R.H. Khan and others. Sometimes, the department also gets the demand for money." "in the year 2007, Purnendu Langthasa, CEM and Nindu Langthasa, EM were both killed by DHD(J). Nindu is my cousin. They were killed on the issue of payment of money or election (I am not sure)."


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443. But in cross-examination by prosecution side this witness has admitted that he was present in the said meeting but he came late and beside him the Bijoy Sangyung, Kulendra Daulagapu, Mayanon Kemprai, Debojit Thousen, Prasanta Warisa, Bakul Bodo, Depolal Hojai and others were present in the meeting. It is correct that the meeting started somewhere between 6.30 to 7 PM and ended somewhere about 9 PM. He also admitted that he was In-Charge of Soil Conservation and Water Resource and that CEM, Mohet Hojai was holding the charge of Finance portfolio. He further admitted that during 2008 and earlier to that extremist of N.C. Hills used to demand extortion money from the department as well as from individual persons. Even during that time some extremist threw bomb at his house resulting in partial damage of my residence. The incident of grenade throwing was after the surrendered of DHD(J). The incident of bomb throw was due to not giving of extortion money, however he cannot say exactly who demanded the money because there were many extremist groups. He also admitted that Nindu Langthasa is his cousin brother and that he was killed along with Purnendu Langthasa by extremist. However, he denied the defence suggestion that both were killed by DHD(J), for not giving of extortion money. The defence side elicited in cross-examination of this witness that Depolal Hojai resigned from the post of CEM on health ground. It is correct that in NC Hills district, NSCN(IM), NSCN(K), Kuki liberation Front and Hmar Liberation Army used to be active at that point of time.

444. P.W.98 Shri Nipolal Hojai testified that, in the year 2007, he was elected to the Member of Autonomous Council (MAC) from No. 8 Daotuhaja as BJP candidate. In the year 2008, Sh. Depolal Hojai was the Chief Executive Member (CEM). At that time Sh. Mohet Hojai was the Executive Member (EM). Depolal Hojai remained as CEM for about 11 months. On the ground of health reasons Depolal Hojai resigned as CEM and thereafter, Mohet Hojai became CEM. After Mohet Hojai became CEM, he was made Executive Member and he was given the portfolio of Social Welfare Department. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that:-" R.H. Khan and Mohet Hojai both used to manage funds and supply orders for the Social Welfare Department". This witness, however admitted in cross-examination by the prosecution that earlier Niranjana Hojai was the Commander-in-Chief of DHD(J). And Jewel Garlosa was the Chairman of DHD(J).

445. P.W.-126 Shri Depolal Hojai is another witness upon whom the prosecution side has relied upon. His evidence reveals that while he was CEM the law and order situation

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of the council was very bad. Though the prosecution side has declared this hostile, yet, in cross-examination he admitted that before the time of taking over as CEM, many efficient government officials were reluctant to be posted in NC Hills because of problem of extremist and because of this developmental works suffered to certain extent. There were two groups of extremists, one was DHD and the other was DHD (J) and there was also presence of other extremists groups. It is matter of common knowledge because of extremists and extortion developmental works was suffered. There were also killing and kidnapping by the extremists details of which could be found in the police reports.

446. Another witness is P.W. 129 Shri Dilip Nunisa. He is an ex cadre of DHD. His evidence reveals that in the year 1995, he has joined as a member of DHD group. The group was led by the then President Jewel Garlosa. DHD's objective was to create a separate state of Dimasa people within the territory of India. He remained with the organisation till the ceasefire was signed with the Government of India and Assam in the year 2003 w.e.f. 1st January, 2003. Their organisation DHD worked for general up liftment of the people of the locality and their educational and other rights and also for their social up liftment. He does not correctly remember that he was interrogated by NIA officials in connection with this case and he also do not correctly remember if his statement was recorded in connection with this case. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that:-"Early in the 1990s, the DNSF headed by Bharat Langthasa was operating in NC Hills. Jewel Garlosa was a member of this group and his demand was that he should become the Chairman of DNSF. The house did not pass the proposal and made Jewel the Foreign Secretary. He came out of the group and started running Printing Press by the name of Hadingma Printing Press. I was only a student leader at that time. DNSF subsequently surrendered but 3 members, Bijay Naidung, Samphulal Thaosen @ Negro and one Langthasa broke away. One more group of 7-8 members led by Kanta Langthasa (Now the Home Secretary of Ceasefire group) also joined the Bijoy Naidung group. Jewel joined this group with Bijoy. By the end of 1995, Jewel was given the post of the President of the group since Bijoy was illiterate. Jewel Garlosa had killed an Executive Member of the Council from his own Carbine before I joined him. The President Jewel Garlosa used to arrange for weapons from Cox Bazar (in Chittagong Hill Trades) in Bangladesh through NSCN(IM). The NSCN(IM) has an office in Dhaka. That time (1995) Jhon Simang was the Commander of NSCN(IN). He was also involved in a Jail Break incident in 1994 in Shillong. We

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used to receive the weapons after paying money and got them in vehicles from Srimangal Tourism Sylhet (Presently Moulvi Bazar District). There are Khasi village in Moulvi Bazar. We had a joint camp of DHD and NSCN (IM) in Khasi Village. From there we used to come by bus to Kaliganj Border area near Badarpur "Gumrah" in Sylhet District." "Jewel burned a Dimasa village in the year 2005, he also burned a village Dujupathar in October, 2005." "There was another attack on CRPF at Thajuwari where 7 persons were killed by Mourang of DHD(J)." "in November, 2008, Niranjana Hojai (C-in-C) of DHD(J) called up during a meeting of the Council and talked to all Executive Members on phone. He asked Dipolal Hojai to resign as CEM and told that Mohet Hojai should be made the CEM. Similarly at a meeting of the DHD(J) at Sonapur (before the James group deserted) Niranjana Hojai gave a directive through mobile phone conference to kill the prominent people namely, Dipolal Hojai, Mukul Bodo, Hamjanan Langthasa, and others. It is due to this that the James group deserted them." "The Jewel group has an agreement with Mohet Hojai to provide money. Phojendra Hojai is the key man for supplying money to Niranjana Hojai. He was earlier a small Contractor from Barikhai village and used to deal in second hand motorcycle. Now, because of his proximity with Niranjana Hojai of DHD(J), he has become big contractor. On the day of being caught, Phojendra Hojai openly stated before NE TV and News Live that Mohet Hojai was sending money to Niranjana Hojai through him to be paid at Shillong."

447. This witness admitted in cross-examination by the prosecution side that during that time Jewel Garlosa was a member of DNSF. In the year 1995, Jewel Garlosa becomes the President of DHD, when he joined the organisation. When he became the member we struggle for our right and during that time he used to remain in different jungles within our district. They got their training in camps where they were provided by their leaders dummy weapons made of woods. At the time of ceasefire, in the year 2003, he was the Vice President of DHD and he participated in the ceasefire ceremony. He also admitted that there was a communal clash between Hmar people and Dimasa people. A number of Dimasa people lost their life during that clash. Jewel Garlosa separated himself from their organisation. It is known to everyone that after the clash between the Hmar and Dimasa peoples, Jewel Garlosa formed the group called Black Widow. He admitted that one member Nairang their Liaison officer was attacked and he received bullet injury. He cannot definitely say whether it was done by Jewel Garlosa or any other group. He cannot definitely say when the group DHD(J) came into existence but he can say that group existed. This DHD(J) group is led by Jewel Garlosa. The fact was known to him and people at large through media. There was a member by the name Amul Phonglo, who was our Lieutenant in the group. He was killed by


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unidentified gunman at Umrangso sometime in December, 2006. Another member Dijon Haflongbar who was also a lieutenant of our group and was killed in the year 2007 near Manderdisa Police Station. Their Captain by the name Mandras Maibongsa was also attacked near Maibong Bazar in 2007. In the year 2004, there was a joint meeting between Government of India, Govt. of Assam and our organisation. In that meeting he was present and he remember that from the government side Mr. B.K. Gohain and Rajib Agarwala were also present. He remember that Jewel Garlosa was not present in that meeting. Sometime in 2008, when the dead body of Naikhlai who was also their member was taken to Diyangmukh from Haflong some miscreants attacked the escort party and 7 police men lost their life during the attack. He came to know Niranjana Hojai only after his surrender and lay down of arms as C-in-C of DHD(J). He knows Dipolal Hojai but he cannot say why he had resigned from the post of CEM. He knows one Hamjanan Langthasa who was Executive Member earlier. It is correct that after lay down of arms Niranjana Hojai contested election and he was also CEM of the Council.

448. The defence side during cross-examination elicited that his knowledge about certain incident like killing of police personnel were gathered from media, and in regard to killing of other persons from our group I do not know who killed them. So long I remained in DHD I did not see and violent activities or terrorist activities done by DHD. Many extremist organisations are operating in NC Hills.

449. Now the question is whether the evidence of these nine witnesses are sufficient to establish the charge u/s 121/121(A) IPC against the Phojendra Hojai, Babul Kempri, Mohit Hojat,, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, George Lamthag, and Niranjana Hojai ?

450. The answer is got to be emphatic no. There is no doubt that the conduct of the accused, as apparent from the evidence discussed above are subversive as well as heinous in nature. There was some killing, extortion of money and throwing of grenade which took place at Dima Hasao. But the aforesaid five five prosecution witnesses failed to give the actual account of the incidents and also there is no documentary proof in support of the same. The documents exhibited by P.W. 24, being Photostat copy cannot be taken into account. But having tested the evidence of nine prosecution witnesses, on the touchstone of the parameters laid down by the Hon'ble Supreme Court in **State (NCT of Delhi) vs. Navjot Sandhu @ Afzal Guru** (supra) it can safely be concluded that their evidences are quite insufficient to establish the ingredients of the charges u/s 121/121A IPC against the said


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accused persons. As held by Hon'ble Supreme Court, in the above referred case law, all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government, as the DHD's objective was to create a separate state of Dimasa people within the territory of India and it worked for general up liftment of the people of the locality and their educational and other rights and also for their social up liftment as evident from P.W. 129 Shri Dilip Nunisa, who is an ex cadre of DHD. True this witness is declared hostile by the prosecution side. But the value of hostile witnesses has already been discussed in foregoing paragraphs of this judgment.

451. The outcome of above discussion and finding is that the prosecution side has failed to bring home the charges u/s 121/121(A) IPC against the accused Phojendra Hojai, Babul Kempri, Mohit Hojat,, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi and Niranjan Hojai beyond all reasonable doubt and accordingly they acquitted of the same.

452. Now let it discussed how far the prosecution side has been able to bring home the charges under the Unlawful Activities (Prevention) Act, against the accused persons. It is to be mentioned here that accused Phojendra Hojai, Babul Kempri, Mohit Hojat, Jewel Garlossa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, and Niranjan Hojai are charged u/s 16 and 20 of the Unlawful Activities (Prevention) Act, besides u/s 17 and 18 of the said Act. But for the sake of convenience it is proposed to discuss the charge u/s 16 and 20 of the Unlawful Activities (Prevention) Act.

453. The Id. Special P.P. during argument submitted that the evidence on the record are sufficient to establish this two charges against the accused persons beyond all reasonable doubt. The Id. Special P.P. further submitted that the act of extortion and killing of innocent persons and the other subversive activities, to which the accused persons resorted to, are sufficient to constitute 'terrorist act' as defined u/s 15 of the U.A.(P) Act besides being member of the said DHD(J) a terrorist organization. The Id. Special P.P. has drawn our attention to an observation made by the Hon'ble Supreme Court in **Redaul Hussain Khan vs. NIA: (2010) 1 SCC (Cri) 822** in respect of terrorist activities, so indulged in, by the DHD(J). Therefore, it is contended to accept the prosecution version.

454. The rival submission is that while the case was registered, DHD(J) was not declared as an unlawful association and that there is no evidence to show that the accused

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persons did any terrorist act within meaning of section 15 of the U.A.(P) Act nor there is any evidence to suggest that they were member of a terrorist organization. Therefore, it contended to acquit them of the same.

455. To appreciate the rival submission of the Id. Advocates of both side let us first understand what "terrorist act" means. Section 2(k) of the UA(P) provides that "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly. Section 15 of the Act provides that:- "Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
 - (i) death of, or injuries to, any person or persons; or
 - (ii) loss of, or damage to, or destruction of, property; or
 - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
 - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

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Explanation:- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.

456. To establish this 'terrorist act' the prosecution side has relied upon P.W. 20-Shri Ronsling Langthasa, P.W.23-Shri Kulendra Daulagopu, P.W. 24 -Shri Amitav Sinha, P.W. 46 - Shri Nairing Daulaguphu, P.W. 126 Depolal Hojai, P.W. 129 Shri Dilip Nunisa. We have already discussed their evidence in details.

457. We find from the evidence of P.W. 24 that in the year 2009, while he joined as Addl. S.P.(Head Quarter), at NC Hills and was responsible for maintenance of Law and Order and crime detection in the area, there was spurt in violence because of DHD(J), there was Naga and Dimasa ethnic clashes, DHD(J), has stopped the train services plying from Lumding to Badarpur, thus virtually stopping the food grains not only to Barak Valley but also to states like Mizoram, Tripura & Manipur. DHD(J) would resort to firing on the moving train from the hills on both sides of the more than 120 k.m. Railway track. After counter insurgency operation things gradually improved and finally leading to the laying down of arms by DHD(J) cadres in March/April, 2010. but there was always a feeling and apprehension and some intelligence inputs as well that all arms & ammunition of DHD(J) were not handed over at the time of surrender and a huge consignment were recovered from Disa Kisan area. It is true that he has admittedly not stated before before the I/O. Now the question is can the evidence of this witness be discarded on this count alone. Can it be said that he has imported a complete new thing, so as to demonstrate that the two statements cannot co-exist together. If his evidence is perused in totality then it would be clear that his evidence is very much consistent. He has not imported any new things except that of law and order which is nothing but a collateral issue with that of recovery of huge cache of arms. There is nothing on the record to show that he has animosity with the accused and on that score he deposed falsely. He is a responsible police officer of the Rank of Addl. S.P. and he was responsible for maintain law order and found to have been deposed ostensibly. It is to be mention here that the defence side has not disputed his posting at N.C. Hills during the year 2009 and that he was responsible for maintain law and oeder. Therefore, we are inclined to believe his version.

458. Not only the evidence of P.W. 24 but also the evidence of P.W. 46 -Sh. Nairing Daulaguphu also reveals that he joined DHD (Dima Halam Daoga) DHD, a militant

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organization led by Jewel Garlosa who was the Chairman of the group, in 1995. The arms and ammunition required for the operation of the organization were purchased locally and also they used to get it from Bangladesh. Their militant camps were always on mobile and the cadres used to move so the arms and ammunition were received at different places. In the year 2006, when he came to Liaison Office, Dibrari, Haflong to meet Dilip Nunisa and on my return to his camp at Harangajao, on his way he was attacked by Daku Singh @ Athen Haflongbar and another person belonging to the group of DHD(J).

459. What can be deduced from above discussion is that DHD(J) is a ^{'terrorist gang'} militant organisation and earlier Niranjana Hojai was the Commander-in-Chief of DHD(J). And Jewel Garlosa was the Chairman of DHD(J). And the activities of the organisation, ^{as discussed here in above.} to our considered opinion falls in the category of 'terrorist act', as is apparent from the prosecution evidence discussed above. It is true that at the time of registration of this case DHD(J) was not declared as unlawful association. The defence side has rightly pointed this out during argument. But in view of the observation made by the Hon'ble Supreme Court in **Redaul Hussain Khan vs. NIA: (2010) 1 SCC (Cri) 822** this submission of the defence side is found to be devoid of force. And being the Commander -in -Chief and Chairman of the organisation, and being member of the same, both of them are culpable for the charge. So, they are attributed to the charge u/s 16 and 20 of the U.A.(P) Act. The evidence on the record are, however, falling short of to establish the charge against rest of the accused namely, Phojendra Hojai, Babul Kemprai, Mohit Hojat, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi and accordingly they are entitled to acquittal and they are acquitted accordingly.

460. Accused Phojendra Hojai, Babul Kemprai, Mohit Hojat, Jewel Garlosa, Ashringdao Warissa, Vanlalchanna, Smti. Malswamkimi, and Niranjana Hojai, have also been charged u/s 25(1)(d) of the Arms Act. Section 25(1) (d) provides punishment for bringing into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11, which provides that the Central Government may, by notification in the Official Gazette, prohibit the bringing into, or the taking out of, India, arms and ammunitions of such classes and descriptions as may be specific in the notification.

461. The charge against them is that after forming Dima Halim Daogah, DHD(J) a terrorist gang, in 2004, purchased illegal arms and ammunitions from the international market, particularly the Cox Bazar of Bangladesh and brings into Indian Union in contravention of section 11 of the Arms Act.

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462. The prosecution side has relied upon following witnesses to establish this charge. P.W. P.W.13-Shri K.Lalnithanga, P.W.14- Laltanpuia Sailu, P.W.20- Ronsling Langthasa, P.W. 24 - Shri Amitava Sinha, P.W.- 46 Nairing Daulagapu, P.W.- 56 Shri Harish Singh Karmyal, P.W.62- K.D. Marak, P.W. 63- Lalrinawma Traite, P.W. 72 -Anurag Tankha, and P.W. 129- Dilip Nunisa.


463. The evidence of all the witnesses has already been discussed in details. We find from the evidence of P.W.-24 Shri Amitava Sinha that - while he joined at Dima Hasao as Addl. S.P. in the year 2009, there was spurt in violence because of DHD(J), there was Naga and Dimasa ethnic clashes, DHD(J), has stopped the train services plying from Lumding to Badarpur, thus virtually stopping the food grains not only to Barak Valley but also to states like Mizoram, Tripura & Manipur. DHD(J) would resort to firing on the moving train from the hills on both sides of the more than 120 k.m. Railway track. Then counter insurgency operation was launched which ultimately lead to laying down of arms by DHD(J) cadres in March/April, 2010. But it was found that DHD(J) has not handed over all the arms & ammunition at the time of the laying down of arms. Then on 8.7.2010, on specific information search was conducted at Disa Kisan area and they could find several gunny bags, some behind rocks and some concealed with earth and on opening the sacks we found a large no. of sophisticated factory made weapons which included AK-47s, M-16 pistols, Lithod guns as well as M-21 Rifles, all total 44 in numbers and 41 assorted magazine as mentioned in list - Ext. 59. In connection with the same, Haflong P.S. case No. 54/2010 registered. P.W. 72 is Anurag Tankha, the then S.P. Dima Hasao who testified that DHD(J) surrendered before the Civil Administration in batches and two major batches surrendered before the Civil Administration on 13th and 14th September, 2009 and he arranged surrendering ceremony of DHD(J) at Haflong on 2nd October, 2009 which was attended by Hon'ble Chief Minister of Assam and Senior Officials of State and District Administration. He was present in the ceremony supervising the arrangement as Supdt. of Police, NC Hills. In the aforesaid ceremony Niranjana Hojai was the Sr. most DHD (J) cadres along with other cadres who led the surrender ceremony. He confirmed Ext. 272/6 to Ext 272/8 the lists of arms, ammunitions, magazines, explosives etc. deposited by surrendered DHD (J) cadres. It is to be mention here that these list have not been disputed by the defence side.

464. What is transpired from the evidence of these two witnesses are that there were arms with DHD(J) and they surrendered in batches from March/April 2009 and two


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major batches surrendered before the Civil Administration in batches and two major batches surrendered on 13th and 14th September, 2009 and they have deposited some of them with the administration while surrendering. They concealed some of them at Disa Kish area which were recovered on 08.07.2009. Though there is no direct evidence to link that the arms recovered from the Disa Kish are belongs to the DHD(J) yet the evidence of P.W.24 is clear that DHD(J) has not handed over all the arms and on specific information and verification of the same, the said arms were recovered. Now it is to be seen from where the DHD(J) brought the arms and ammunitions. In this regard the evidence of P.W.46 Shri Nairing Daulagapu is material. He was a cadre of DHD(J). His evidence reveals that the arms and ammunition required for the operation of the organization were purchased locally and also they used to get it from Bangladesh. The arms and ammunition were received at different places since their militant camps were always on mobile and the cadres used to move so. P.W. 20 is another cadre of DHD(J). His evidence also reveals that DHD(J) started money collection, and arms. Jewel had approximately 60 cadres and they were heavily armed with AK-47 & M-16 weapons. The DHD(J) group used to procure weapons from market with the help of money they have collected. P.W. 129 is another cadre of DHD(J). This witness also been declared hostile and the I/O confirmed that he stated before him that "The President Jewel Garlosa used to arrange for weapons from Cox Bazar (in Chittagong Hill Trades) in Bangladesh through NSCN(IM). They used to receive the weapons after paying money and got them in vehicles from Srimangal Tourism Sylhet (Presently Moulvi Bazar District)."

465. It also appears from the evidence of P.W.13, P.W. 14 P.W. 56 and P.W.63 that in connection with Aizwal P.S. case No. 238/09, u/s 25(1) (a) (1)(b) accused Vanlalchanna @ Vantea was arrested on 26.07.09. Later, on 30.7.09, during police custody he made a disclosure about weapons which he kept in a house located at Saronveng, Aizwal. The name of the house owner was Lalrova. The search team conducted the search and recovered 8 nos. of M-16 Rifles, one 9 mm berretta pistol, 12 communication sets with spare batteries, detachable antennas, one telescope Bushnell. Ext.43 is the disclosure memo dtd.30.7.09 prepared on the spot on the disclosure made by Vanlalchanna. The recovered arms and ammunitions were seized vide seizure list Ext.250. As it was found during interrogation that the arms and ammunitions were not related to Aizwal P.S. Case No. 238/09, the said case was closed and found involved in NIA Case No.01/09 as the arms were meant for DHD(J) according to accused Vanlalchanna @Vantea the same were handed over to P.W.56 and P.W. 56 taken custody of the accused.


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466. It is to be mention here that except the version of the accused that the arms were meant for DHD(J) there is no direct evidence to link the recovered arms with DHD(J). And being made before the police his statement cannot be taken into account legally. But, there is evidence to show that accused Vanlalchanna @ Vantea received US Dollars from accused Malswamkimi, who converted Indian currency at instance of P.W.29 Shri George Lamthang after receiving the same from accused Phojendra Hojai (Rs. 4.00 Crore) at Kolkata. What he did with the US Dollars was in his exclusive knowledge and as such he is bound to explain it. But in his examination u/s 313 Cr.P.C he failed to give any plausible explanation for the same. This being the position this court is entitled to draw an inference u/s 106 of the Evidence Act that with the said US Dollars he purchased the seized arms for the DHD(J). In holding so we derived authority from a decision of Hon'ble Supreme Court in ***The State of West Bengal Vs. Md. Omar and another (2000)8 SCC 323***, where it has been held that:-

"Section (106 Evidence Act) is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."

It is further observed that:-

"The pristine rule that burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious cases would be major beneficiaries and the society would be causality."

467. The inference of this court is further fortified by recovery and seizure of Rs, 1.00 crore and three blank letter head of DHD (Jewel) and one letter of Mohit Hojai from accused Phojendra Hojai on 01.04.2009 at 14th mile Jorabat. This fact makes the picture very clear. Besides, accused Vanlalchanna has identified the photographs of accused Niranjan Hojai and Gewel Garlossa in a photo identification sessions in presence of independent witness. This establish his familiarity with accused Niranjan Hojai the C-in-C of DHD(J) and Jewel Garlossa the Chairman of DHD(J).



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468. The evidence of P.W. 62 shows that in connection with Case No. 77(07)/2007 u/s 25 (1)(a), 1(b) Arms Act read with Section 10/13 UA(P) Act, two accused namely Dara Sing Rongpu and Aten Haflongbar were arrested and as per their statement he came to know that cash of Rs. 50,00,000/-, belonging to DHD(J) group which was sent for purchase of arms at Shillong, Mowblai Madanriting area and as there was difficulty in identifying the arms dealer, so there was delay in the deal and during that time the Police intercepted and arrested the accused. It is elicited in cross-examination that as per the disclosure made by the accuse the money being used by the DHD (J) for purchase of arms. It is true that this is a statement made before police by the accused person. Being hit by section 25 of the Evidence Act, this statement is not legally admissible. But the factum of recovery of Rs. 50,00,000/ cannot be ignored being not disputed by the defence side.

469. Thus, what can be deduced from the evidence of the prosecution witnesses discussed here in above, it can safely be concluded that DHD(J) purchased arms and ammunitions from international market and bring into India. Since they brought the arms and ammunitions in contravention of Section 11 of the Arms Act then the culpability can be fasten upon them u/s 25(1) (d) of the Arms Act.

470. It is, however, submitted by the Id. counsel for the accused Vanlalchanna @ Vantea that prosecution sanction from District Magistrate u/s 39 of the Arms Act is not obtained by the prosecution side here in this case. But the Id. Special P.P. NIA has submitted that the sanction u/s 39 of the Arms Act was not obtained as not mandated by any of the provision of the Arms Act. It is submitted that sanction u/s 39 is necessary in respect of offence u/s 3 of the said Act only. Having gone through the relevant provision of law we find force in the submission of the Id. Special P.P. NIA and accordingly concurrence is recorded with the same.


471. Now, it has to be seen against whom the prosecution side has been able to establish the charge u/s 25(1) (d) Arms Act. As is evident accused Vanlalchanna @ Vantea and being C-in-C and Chairman of DHD(J) accused Niranjan Hojai and Jewel Garlosa are the person against whom the prosecution side has been able to bring home the charge. The evidence on the record are falling short of to bring home the charge against rest of the accused namely Phojendra Hojai, Babul Kemprai, Mohit Hojat, Ashringdao Warissa, and Smti. Malswamkimi, and they are entitled to acquittal of the same and acquitted accordingly.


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472. In the result we find and hold that the prosecution side has been able to bring home the charges against the accused shown in the list below beyond all reasonable doubt and they are convicted accordingly under the sections law as shown against their name.

Sl. No.	Name of the accused	Sections of law under which they found guilty				
		IPC	UA (P) Act			Arms Act
1.	Phojendra Hojai (A-1)	120-B	17			
2.	Babul Kemprai (A-2)	120-B	17			
3.	Mohit Hojai (A-3)	120-B	17			
4.	R.H. Khan (A-4)	120-B	17			
5.	Jewel Garlosa(A-5)	120-B	17	16	20	25(1)(d)
6.	Ashringdao Warissa (A-6)	120-B	17			
7.	Vanlalchanna (A-8)	120-B	17			25(1)(d)
8.	Malswamkimi (A-9)	120-B	17			
9.	Niranjan Hojai (A-11)	120-B	17	16	20	25(1)(d)
10.	Joyanta Kr. Ghosh (A-12)	120-B	17			
11.	Debasish Bhattacharyee(A-13)	120-B	17			
12.	Sandip Ghosh (A-14)	120-B	17			
13.	Karuna Saikia (A-15)	120-B	17			

473. We have heard the accused persons on the point of sentence u/s 235(2) Cr. P.C. Their pleas are recorded as under:-


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1. Phojendra Hojai (A-1) :-

This accused stated that he is behind the bar for last seven years. He is the sole earning member of his family comprising of his wife and six children one of whom are minor, and as such he has the burden of looking after them.

2. Babul Kemprai (A-2) :-

This accused stated that he has the burden of looking after his aged and ailing parents and his wife and two minor daughters. The accused also stated that he is the sole earning member of his family.

3. Mohet Hojai (A-3) :-

The accused stated that he has been languishing in jail hazoot for last eight years and in his absence his family members will suffer a lot. He also stated that his wife is suffering from different ailments and he has to look after three children two of whom are minor, therefore, he prayed for taking a lenient view.

5. Redaul Hussain Khan (A-4) :-

The accused stated that he has the burden of looking after his ailing mother and 2 minor children and the family members of his 2 deceased brothers. The accused therefore prayed for taking a lenient view.

5. Jewel Garlosa @ Mihir Barman(A-5) :-

The accused stated that he is the elected member of NC Hills District Autonomous Council and in the event of his imprisonment first he will be lost his constituency. The accused also stated that he has ailing wife and one son of 12 years old and being the bread earner of his family he has to look after them, besides, the members of his constituency will suffer in his absence. The accused therefore prayed for taking a lenient view.

6. A. Warisa @ Partho Warisa (A-6):-

The accused stated that in the event of his imprisonment for a longer period, his family members will suffer a lot and therefore he prayed for taking a lenient view. The accused also stated that his brother is also not doing well. The accused therefore prayed for taking a lenient view.

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7. Vanlalchhana@Vantea@ Joseph Mizo (A-8):-

The accused stated that he is behind the bars for the last eight years. He has the burden of looking after his parents and wife and his absence they have been suffering a lot and therefore prayed for taking a lenient view. The accused therefore prayed for taking a lenient view.

8. Malswmkimi (A-9) :-

The accused stated that she has to look after her ailing mother, her ailing husband and 2 minor children. It is also stated that her mother is suffering from cancer. The accused prayed for taking a lenient view.

9. Niranjana Hojai @ Nirmal Rai (A-11) :-

The accused stated that in the event of his imprisonment, developmental work of his constituency will suffer. The accused also stated that he is the Chairman of Memorandum of Settlement (MOS), Implementation Committee and in every six months he has to attend meeting of the Ministry of Home Affairs, Govt. of India in Delhi and in the event of his imprisonment he will not be able to attend that. The accused also stated that he has the burden of looking after his wife and 2 minor children. The accused therefore prayed for taking a lenient view.

10. Jayanta Kumar Ghosh @ Dhruva (A-12) :-

The accused stated that he is also earning member of his family comprising of 11 members besides his elder brother is suffering from paralysis and his elder son is suffering from asthma and also he has the burden of his widowed sister and his wife has been suffering from problem of backbone therefore prayed for taking a lenient view. The accused therefore prayed for taking a lenient view.

11. Debashis Bhattacharjee @ Bapi (A-13):-

The accused stated that he is languishing in jail for last 8 years and he has the burden of looking after his elder brother and recently his sister in law has ousted his brother from his house premises and his brother is taking shelter in footpath and there is none to look after him therefore praying for taking a lenient view. The accused therefore prayed for taking a lenient view.


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12. Sandip Kumar Ghosh @ Sambhu Ghosh (A-14) :-

The accused stated that he is the sole bread winner of his family comprising of his wife and minor daughter. Besides, his wife is suffering from a tumour in brain. The accused therefore prayed for taking a lenient view.

13. Karuna Saikia (A-15) :-

The accused stated that he has been languishing in jail since Nov., 2010. He has the burden of looking after his son and daughter and he is the sole earning member of his family and because of financial hardship his son and daughter could not pursue their studies and his wife died six months ago due to want of proper treatment. The accused prayed for taking a lenient view.

474. Now coming to the point of sentence we find that we find following aggravating as well as mitigating factors discernible from the evidence on the record.

1. Phojendra Hojai (A-1) :-

Aggravating Factors:-

1. The accused is a mature and contractor by profession.
2. He is caught red handed while he along with Babul Kemprai were carrying a sum of Rs.1 Crore to Shillong.
3. Two pistols were found in his possession one of which is without a licence.
4. He handed over a sum of Rs.4 Crores to Malswamkimi who converted the same to US Dollar with the help of George Lamthang and the said dollars are received by Vantea who is a arms dealer.

Mitigating Factors:-

1. He is behind the bar from 01.04.2009 to 16.05.2017 and from 27.12.2011 to till date.
2. He is the sole earning member of his family comprising of his wife and 6 children some of whom are minor.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal activities.


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2. Babul Kemprai (A-2) :-**Aggravating Factors:-**

1. He was caught red handed while he carrying a sum of Rs. 1 Crore to Shillong along with accused Phojendra Hojai.
2. He has nexus with Mohet Hojai.

Mitigating Factors:-


1. He is behind the bar from 01.04.2009 to 16.05.2017 and from 27.12.2011 till date.
2. He is the sole bread winner of his family comprising of his aged and ailing parents and his wife two minor daughters.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal acitivits.

3. Mohet Hojai (A-3) :-**Aggravating Factors:-**

1. He is main kingpin in the entire conspiracy.
2. He was the CEM of the N.C. Hills Autonomous Council.
3. He misused his official position and facilitate defalcation of public fund meant for development of N.C. Hills along with public servants and chanalised the same to DHD(J).
4. He compelled Depolal Hojai to resign from the post of CEM with the help of DHD(J).
5. He also compelled Executive Engineers of PHE department to issue cheque without supply of materials.

Mitigating Factors:-

1. He is behind the bar since 30.05.2009.
2. He has look after his ailing wife and 3 children 2 of whom are minor.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal acitivits.


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4. Redaul Hussain Khan (A-4) :-

Aggravating Factors:-

1. He was the Liason Officer of N.C. Hills Autonomous Council and had control over on all the departmentrs of N.C. Hills Autonomouc Council.
2. He defalcated the funds of Social Welfare department meant for development of N.C. Hills Autonomous Council.
3. Being public servant he violated the rules and procedure in discharging his official duties.
4. He issued supply orders to many firms which were found to be fictitious and shown receiving of articles by some self help group which were also found to be fictitious.

Mitigating Factors:-

1. He is behind the bar since 30.05.2009.
2. He has the burden of looking after his ailing mother and two minor children and also he has the burden of looking after the family members of his two deceased brothers.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal acitivits.

5. Jewel Garlosa @

:-


Mihir Barman(A-5)

Aggravating Factors:-

1. Being Chairman of DHD(J) he controlled the affairs of the DHD(J).
2. As Chairman his culpable for the various subversive activities of the DHD(J).
3. The range of activities of DHD(J) are depreaved and diabolic in nature and being Chairman he is responsible for the same.
4. He concealed his identity and controlled its affairs from Bangalore.
5. He has antecedent of criminal activities.

Mitigating Factors:-

1. He is behind the bar since 03.06.2009 till 23.08.2011.
2. He is sole bread earned of his family consisting of ailing wife and a minor son.


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3. No previous conviction is proved against him by the prosecution side.
4. In the event of he being punished he will lost his consitituecy for which the members of his constituency will suffer.

6. A. Warisa @ :-

Partho Warisa (A-6)

Aggravating Factors:-

1. He offered helping hand to the members of DHD(J) and to its Chairman Jewel Garlosa.
2. He also acted as middle man in various transaction of DHD(J).

Mitigating Factors:-

1. He is behind the bar since 03.06.2009.
2. In the event of he being punished for longer period, his family members including his ailing brother will suffer a lot.
3. No previous conviction is proved against him by the prosecution side.

7. Vanlalchhana@Vantea@ :-

Joseph Mizo (A-8)

Aggravating Factors:-

1. He is the arm smuggler.
2. He received US dollar from Malswamkimi who converted Indian currency to US dollar at Kolkata.
3. At his instance huge cache of arms and communication equipments were recovered.

Mitigating Factors:-

1. He is behind the bar since 30.07.2009.
2. He has the burden of looking after his parents and wife.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal acitivits.

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8. Malswmkimi (A-9) :-**Aggravating Factors:-**

1. She acted as a carrier of Indian currency to Kolkata and got the same converted at Kolkata to US dollar and handed over to Vantea the arms smuggler.
2. From her position a sum of Rs.10 lakhs was recovered from a hotel at Kolkata.

Mitigating Factors:-

1. She is behind the bar since 11.08.2009.
2. She has to look after her ailing mother suffering from cancer, ailing husband and two minor children.
3. No previous conviction is proved against him by the prosecution side.
4. She has no antecedent of criminal activities.

9. Niranjan Hojai @ :-**Nirmal Rai (A-11)****Aggravating Factors:-**

1. He is the C-in-C of DHD(J) an Unlawful Organisation.
2. At his instance Depolal Hojai resign and Mohet Hojai became CEM.
3. Being C-in-C he is responsible for the subversive activities of DHD(J).
4. He surrendered with arms and ammunition before the District Administration, Dima Hasao.
5. He has antecedent of criminal activities.

Mitigating Factors:-

1. He is behind the bar since 01.07.2010 till 23.08.2011.
2. He has the burden of looking after his wife and two minor children.
3. No previous conviction is proved against him by the prosecution side.
4. In the event of he being punished the developmental work of his constituency will suffer.
5. He is also the Chairman of Memorandum of Settlement Implementation Committee.


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10. Jayanta Kumar Ghosh @ :-**Dhruba (A-12)****Aggravating Factors:-**

1. He used to do contract in the name of some firms registered in the name of Debashish Bhattacharjee.
2. He has nexus with Mohet Hojai and with R.H.Khan and obtained supply orders and other contract works without participating in bidding process.
3. He acted as a carrier of Indian currency to Kolkata.
4. He has many shady deals of money with various persons.

Mitigating Factors:-

1. He is behind the bar since 31.10.2009.
2. He is the sole earning member of his family comprising of 11 members.
3. No previous conviction is proved against him by the prosecution side.
4. He has no antecedent of criminal activities.
5. His elder brother is suffering from paralysis, his elder son is suffering from asthma and his wife is suffering from backbone problem.
6. He has also the burden of his widowed sister.

11. Debashis Bhattacharjee @ :-**Bapi (A-13)****Aggravating Factors:-**

1. He is a contractor by profession and the owner of several firms.
2. He has nexus with Mohet Hojai and with R.H.Khan and obtained supply orders and other contract works without participating in bidding process.
3. He has many shady deals of money with various persons.

Mitigating Factors:-

1. He is behind the bar since 31.10.2009.
2. He has the burden of looking after his elder brother who is now taking shelter in footpath.
3. No previous conviction is proved against him by the prosecution side.


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4. He has no antecedent of criminal activities.

12. Sandip Kumar Ghosh :-

@ Sambhu Ghosh (A-14)

Aggravating Factors:-

1. He is a co-contractor with Debashish Bhattacharjee and Jayanta Ghosh.
2. He has nexus with Mohet Hojai and with R.H.Khan and obtained supply orders and other contract works without participating in bidding process.
3. He has many shady deals of money with various persons.

Mitigating Factors:-

1. He is behind the bar since 31.10.2009.
2. He is sole bread winner of his family comprising of his wife and minor daughter.
3. His wife is suffering from tumour in brain.
4. No previous conviction is proved against him by the prosecution side.
5. He has no antecedent of criminal activities.

13. Karuna Saikia (A-15)

Aggravating Factors:-

1. He was the Executive Engineer of PHE department of N.C.Hills District Autonomous Council.
2. He has nexus with Moht Hojai at whose instance he issued cheques in the name of several persons without doing any work and handed over the amount to Moht Hojai.
3. He compelled the staff of PHE department to prepare comparative chart of articles in double the market rate.
4. Being public servant he violated the rules and procedure in discharging his official duties.

Mitigating Factors:-

1. No previous conviction is proved against him by the prosecution side.
2. He has no antecedent of criminal activities.


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3. He is the sole bread winner of the family and they have the burden of looking after their children and parents and other relatives.

SENTENCE:-

475. It is to be mentioned here that having heard all the accused person u/s 235(2) Cr. P.C. Id. Advocates of both the parties have been heard on the quantum of sentence to be imposed upon the accused. The Special P.P. has submitted that in view of the enormity of the offence and its impact upon the society maximum punishment provided under the sections shall be imposed. The Id. Special P.P. has referred one case law ***State of Madhya Pradesh vs. Bablu: (2014) 9 SCC 281***, in this regard. In the said case law it has been held that:-


"It is well settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the Court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and as a result of the same society suffers."

476. On the other hand the counsels for accused also referred following two case laws (i) ***Som Praksh Rekhi vs. Union of India and others (1981) 1 SCC 449***. Where it has been held that:-

"The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if S. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant."

and (ii) ***In Allauddin Mian and Others vs. State of Bihar (1989) 3 SCC 5***, where it has been held that:-

"However, in order that the sentences may be properly graded to fit the degree of gravity of each case, it is necessary that the maximum sentence prescribed by law should, as observed in Bachan Singh's case (supra), be


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reserved for 'the rarest of rare' cases which are of an exceptional nature. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a three-fold purpose (i) punitive (ii) deterrent and (iii) protective. That is why this Court in Bachan Singh's case observed that when the question of choice of sentence is under consideration the Court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime, on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily impose the lessor punishment and not the extreme punishment of death which should be reserved for exceptional cases only.

and in view if the principles pronounced therein contended to determine the quantum of punishment by taking a lenient view in favor of the accused, who are behind the bar for last eight years.

477. While focusing on the gravity of the crime and the concept of proportionality as regards the punishment, Hon'ble Supreme Court in Hon'ble Supreme Court in Gopal Singh v. State of Uttrakhand (2013) 7 SCC 545, had observed that :-

"Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside.

The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect--propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to


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weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

478. Again in **Sumer Singh Vs. Surajbhan Singh and Ors.** (2014) 7 SCC 323, Hon'ble Supreme Court, in paragraph No. 32, held as under:-

"....32. Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded; the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation."

479. Again in **Raj Bala Vs. State of Haryana and Ors.** AIR 2015 SC 3142, Hon'ble Supreme Court has held that :-

"A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamount to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said

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hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective."

480. The factual matrix of the case in hand has to be tested on the touchstone of aforesaid principles. Accordingly, we placed the aggravating and mitigating factors in juxtaposition and we find that the aggravating factors outweighed the mitigating factors. We have considered their age, their antecedent, and their social background and also the circumstances under which the crime was committed. We have also taken into account their degree of involvement in the conspiracy. Taking in to account all the factors the accused are sentenced as shown in the chart below. We are of the view that the punishment so imposed as under will meet the end of justice as the same will not only be punitive but also deterrent and protective. It is being clarified that it is not uniform in case of all the accused because of their varying degree of involvement and their age and antecedent. Sentence on all count will run concurrently. They will entitle to get set off the previous hazooti period from the total period of conviction.

Sl. No.	Name of the accused	Sections of law under which they found guilty	Sentence
1.	Phojendra Hoja (A-1)	120-B IPC	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17 UA (P) Act	RI for 12 years with fine of Rs.25,000/- i/d to further SI for 6 months.
2.	Babul Kemprai (A-2)	120-B	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17 UA (P) Act	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
3.	Mohit Hojai (A-3)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for Life with fine of Rs.25,000/- i/d to further SI for 6 months.
4.	R.H. Khan (A-4)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 12 years with fine of Rs.25,000/- i/d to further SI for 6 months.
5.	Jewel Garlosa	120-B	RI for 10 years with fine of Rs.25,000/-

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	(A-5)		i/d to further SI for 6 months.
		17	RI for Life with fine of Rs.25,000/- i/d to further SI for 6 months.
		16	RI for Life with fine of Rs.25,000/- i/d to further SI for 6 months.
		20	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		25(1)(d)	RI for 5 years with fine of Rs.25,000/- i/d to further SI for 6 months.
6.	Ashringdao Warissa (A-6)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 12 years with fine of Rs.25,000/- i/d to further SI for 6 months.
7.	Vanlalchanna (A-8)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		25(1)(d)	RI for 5 years with fine of Rs.25,000/- i/d to further SI for 6 months.
8.	Malswamkimi (A-9)	120-B	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
9.	Niranjan Hojai (A-11)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for Life with fine of Rs.25,000/- i/d to further SI for 6 months.
		16	RI for Life with fine of Rs.25,000/- i/d to further SI for 6 months.
		20	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		25(1)(d)	RI for 5 years with fine of Rs.25,000/- i/d to further SI for 6 months.
10.	Joyanta Kr. Ghosh (A-12)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
11.	Debasish Bhattacha ryee (A-13)	120-B	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 10 years with fine of Rs.25,000/- i/d to further SI for 6 months.
12.	Sandip Ghosh (A-14)	120-B	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
13.	Karuna Saikia (A-15)	120-B	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.
		17	RI for 8 years with fine of Rs.25,000/- i/d to further SI for 6 months.


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Forfeiture of property

481. The I/O also seized Rs.1.00 crore from Phojendra Hojai and Babul Kemprai and Rs. 10,00,000/ from accused Malswamkimi and Rs.5,00,000/ from George Lamthang and Rs. 4,00,000/ from accused R.H. Khan and Mobile hand sets of all the accused, besides, the Laptops of accused R.H. Khan and Mohit Hojai, Niranjana Hojai and accused Ashingdao Warissa and the two Hard Discs of the Official computer of accused R.H. Khan accused Ashingdao Warissa during investigation. The same be forfeited to the State Govt. Besides the two arms seized from accused Phojendra Hojai also be forfeited to the state. All the accused mentioned here in above are prosecuted under chapter IV. In view of section 33(2) UA(P) Act the above properties stands forfeited to the State Government.

Impounding of passport and arms licence

482. Here in this case the I/O has seized arms licence of accused Phojendra Hojai and one passport of accused Vanlalchanna and of witness George Lamthang who was also an accused of this case before being approver, during investigation. In view of section 51 UA(P) Act the same stands impounded since accused Phojendra Hojai and Vanlalchanna have been found guilty u/s 17/18 of the U.A.(P) Act.

Notice of showcause u/s 344 Cr.P.C :-

483. The record reveals that here in this case statements U/S 164 Cr.P.C. of three prosecution witnesses namely Ravi Agarwalla P.W.-106, Kiran Das P.W.-100 and Zagir Khan P.W.-99 were recorded during investigation. But in court they have given false evidence with the required intention and knowledge that such evidence should be used in such proceeding. So, issue notice to them asking to show cause as to why they should not be punished for giving false evidence fixing 05.06.2017.

484. Furnish free certified copy of judgment to the accused persons.

Given under my hand and seal of this court on this 23rd day of May 2017.



[Signature]
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23-05-2017.

APPENDIX

SPL. NIA CASE NO. 01/2009

NATIONAL INVESTIGATION AGENCY (NIA)

-Vs-

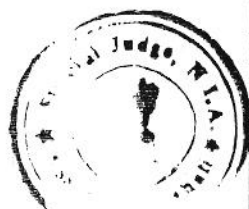
Phojendra Hojai & Ors

1. List of Prosecution Witnesses

Sl. No.	Witness No.	Name of the Witness
1.	PW-1	Sh. Arup Roy
2.	PW-2	Sh. Chandra Kt. Boro
3.	PW-3	Sh. Rakesh Pareek
4.	PW-4	Sh. Girija Kanta Kalita
5.	PW-5	Sh. Manoranjan Talukdar
6.	PW-6	Sh. Likh Raj Sarma
7.	PW-7	Sh. Ajay Agarwal
8.	PW-8	Sh. Chintamani Sarma
9.	PW-9	Sh. Balen Pathak
10.	PW-10	Sh. Maijuddin Ahmed
11.	PW-11	Sh. Prithwish Kumar Chaki
12.	PW-12	Md. Saliya
13.	PW-13	Sh. K. Lalnithanga
14.	PW-14	Sh. Laltanpuia Sailo
15.	PW-15	Sh. Prem Chand Agarwal
16.	PW-16	Sh. Nakul Boro
17.	PW-17	Sh. Hiranya Kumar Das
18.	PW-18	Sh. Kamalesh Pandey
19.	PW-19	Sh. Paragmoni Aditya
20.	PW-20	Sh. Ronsling Langthasa
21.	PW-21	Sh. Chandra Sarmah
22.	PW-22	Sh. Hemanjoy Jidung
23.	PW-23	Sh. Kulendra Daulagopu
24.	PW-24	Sh. Amitava Sinha
25.	PW-25	Mrs. Phonica Swer
26.	PW-26	Sh. Sudhakar Singh
27.	PW-27	Sh. Hiteswar Medhi
28.	PW-28	Sh. Diganta Vikram Gayan
29.	PW-29	Sh. George Lam Thang
30.	PW-30	Sh. Pranesh Parbosa
31.	PW-31	Sh. Ranjit Gogoi
32.	PW-32	Sh. Ramen Deka
33.	PW-33	S.I. Nur Mohammad Khan
34.	PW-34	Sh. Debashis Dutta
35.	PW-35	Md. Imdad Ali

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36	PW-36	Sh. Ratneswar Das
37	PW-37	Sh. Pradip Kr. Ghosh
38	PW-38	Sh. Rukma Buragohain
39	PW-39	Sh. Sahabuddin
40	PW-40	Sh. Nabajit Buragohain
41	PW-41	Sh. Haripada Barman
42	PW-42	Sh. Tomizuddin Ahmed
43	PW-43	Sh. Minendra Narayan Borah
44	PW-44	Sh. Manoj Kumar Talukdar
45	PW-45	Sh. K. Hrangkhoh
46	PW-46	Sh. Nairing Daulagopu
47	PW-47	Sh. Tankeswar Das
48	PW-48	Sh. Soumya Kanti Roy
49	PW-49	Sh. Daruka Nath Pegu
50	PW-50	Sh. L. Ngamlai
51	PW-51	Sh. Dilip Phonglo @ Dilip Barman
52	PW-52	Sh. C. P. Phookan
53	PW-53	Sh. Uttam Phonglosa @ Munna Phonglosa
54	PW-54	Sh. Jatin Chandra Deori
55	PW-55	Sh. Pankaj Kalita
56	PW-56	Sh. Harish Singh Karmyal
57	PW-57	Mr. Lalsanga
58	PW-58	Sh. Dinesh Vohra
59	PW-59	Sh. Devinder Singh
60	PW-60	Sh. S. R. Mahadev Prasanna
61	PW-61	Sh. Ian Onel Swer
62	PW-62	Sh. K. D. Marak
63	PW-63	Sh. Lalrinawma Traite
64	PW-64	Sh. Bunu Sonar
65	PW-65	Sh. Sangkha Swargiary
66	PW-66	Sh. Nishit Barman
67	PW-67	Sh. Jagadish Das
68	PW-68	Sh. Bimal Kumar Agarwal
69	PW-69	Sh. Sheo Kumar Pandey
70	PW-70	Sh. Caushiq Kashyap Bezbaruah
71	PW-71	Sh. Andreas Teron
72	PW-72	Sh. Anurag Tankha
73	PW-73	Sh. Bhupen Ch. Das
74	PW-74	Sh. Hemen Das
75	PW-75	Sh. Virendra Kumar
76	PW-76	Sh. Shyam Ajitsaria
77	PW-77	Sh. Satinath Dibragete
78	PW-78	Sh. Biraj Chakraborty
79	PW-79	Sh. Mohindra Ch. Nunisa
80	PW-80	Sh. Fatik Chutia



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81	PW-81	Sh. Mayanong Kemprai
82	PW-82	Sh. Bijoy Sengyung
83	PW-83	Sh. Saibal Kanti Roy
84	PW-84	Sh. Lalkhunlien Pakhumate
85	PW-85	Sh. Ajit Kumar Dhar
86	PW-86	Sh. Ramenjit Das
87	PW-87	Sh. Subrata Hojai
88	PW-88	Sh. R.V.S. Mani
89	PW-89	Sh. Ram Prasad Sarma
90	PW-90	Sh. B. Ramani
91	PW-91	Sh. Rajender Singh Panwar
92	PW-92	Sh. Nikhil Kanta Nath
93	PW-93	Sh. Sriwell Masa
94	PW-94	Sh. Kalyan Brata Mukherjee
95	PW-95	Sh. Maziruddin Ahmed
96	PW-96	Sh. Kumud Chandra Sarma
97	PW-97	Sh. Romen Baruah
98	PW-98	Sh. Nipolal Hojai
99	PW-99	Sh. Zagir Khan
100	PW-100	Mrs. Kiran Das
101	PW-101	Mr. Syed Mirazul Islam
102	PW-102	Mr. Kungdinga Nampui
103	PW-103	Mr. Sushil Chandra Das
104	PW-104	Mr. Jai Jendra Hojai
105	PW-105	Mr. Kamal Krishna Das
106	PW-106	Mr. Ravi Agarwal
107	PW-107	Mr. Nepal Ranjan Dutta
108	PW-108	Mr. N. G. Upendra Singh
109	PW-109	Mr. Brojolal Das
110	PW-110	Mr. Altaf Mazid
111	PW-111	Mr. Himangshu Barman
112	PW-112	Mr. Hiren Singh
113	PW-113	Mr. Dipankar Deka
114	PW-114	Mr. Tarun Chandra Basumotary
115	PW-115	Mr. Sonam Lama
116	PW-116	Mr. Jiten Bania
117	PW-117	Mr. Naim Uddin Ahmed
118	PW-118	Mr. Banibrata Mukherjee
119	PW-119	Smt. Lalzarlawm Khobong
120	PW-120	Sh. Rajen Khera
121	PW-121	Sh. Om Prasad Sharma
122	PW-122	Sh. Jogyan Haflongbar
123	PW-123	Sh. Pranjal Kumar Bhoralee
124	PW-124	Sh. Bhupendra Kumar Nath
125	PW-125	Sh. Raju Sunar
126	PW-126	Sh. Depolal Hojai
127	PW-127	Sh. Biswajit Dewan
128	PW-128	Sh. Mukut Kemprai



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129	PW-129	Sh. Dilip Nunisa
130	PW-130	Sh. Subrata RoyChoudhury
131	PW-131	Sh. Sodromon Kemprai
132	PW-132	Smti. Jayshree Khersa
133	PW-133	Sh. Rakesh Lohar
134	PW-134	Sh. Bidyut Langthasa
135	PW-135	Sh. Nishikanta Saikia
136	PW-136	Sh. Dipankar Chatterjee
137	PW-137	Sh. Satyendra Kumar Deka
138	PW-138	Sh. Sumanta Das
139	PW-139	Sh. Vishal Sharma
140	PW-140	Sh. Laltuolien Hmar
141	PW-141	Sh. Lalneizovi Nampui
142	PW-142	Sh. Gorgeswar Mahilary
143	PW-143	Sh. Amarendra Barua
144	PW-144	Sh. Amal Chnadra Kalita
145	PW-145	Sh. Bikul Saikia
146	PW-146	Sh. Swayam Prakash Pani
147	PW-147	Sh. Sanjay Kumar Malviya
148	PW-148	Sh. Santosh Kumar
149	PW-149	Sh. Khadak Singh Thakur
150	PW-150	Sh. Mukesh Singh



2. List of Defence witness:-

(a) Smti. Gopa Chaudhury.

3. List of Prosecution Exhibits :

Sl. No.	Exhibit No.	Nature of Documents
1	Ext. 1	Guest Registration card.
2	Ext. 2	Guest Registration card.
3	Ext. 3	Guest Registration card.
4	Ext. 4	Identity proof of J K Ghosh.
5	Ext. 5 & Ext.6	Two Sheets of Guest Register.
6	Ext. 7 to Ext.7/16	Bunch of room service bills.
7	Ext.8	Seizure memo.
8	Ext. 9	Seizure memo.
9	Ext. 10	Letter dtd.02.09.09.
10	Ext. 11	Letter with tabulation registration copy.
11	Ext. 12	Fake marks sheet of Debojit Singha.
12	Ext. 13	Ballistic report.
13	Ext. 14	Forwarding letter.

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14	Ext. 15	Report of the Armourer.
15	Ext. 16	Forwarding letter.
16	Ext. 17	Document handing over memo.
17	Exts. 18 to 20	Supply orders.
18	Ext. 21	Purchase bill dt 20-3-09 for Rs. 18,67,486.40.
19	Ext. 22	Road Consignment Note.
20	Ext. 23	Receipt copy.
21	Ext. 24	Consignment Note.
22	Ext. 25	Receipt copy.
23	Ext. 26	Copy of Bill of Maa Trading.
24	Ext. 27	Letter.
25	Ext. 28	Price list of GI Pipes.
26	Ext. 29	Report.
27	Ext. 30	FIR of Basistha PS GDE entry 1162 dtd.1.4.09.
28	Ext. 31	FIR format.
29	Ext. 32	Arms licence in the name of Phojendra Hojai.
30	Ext. 33	Arms licence in the name of Phojendra Hojai.
31	Ext. 34	Letter written to Mohet Hojai.
32	Ext. 35(A), (B) & (C)	Three blank DHD(J) letterhead.
33	Ext. 36	Original FIR format of PS Case No. 170/09.
34	Ext. 37	FIR of PS Case No.170/09.
35	Ext. 38	Seizure list.
36	Ext. 39	Seizure memo.
37	Ext. 39/2	Assam Financial Rules.
38	Ext. 39/3	Notification No.FEB.234/2007/01(U/O).
39	Ext. 39/4	Assam Gazette containing APSP Act 1989.
40	Ext. 40	Production memo.
41	Exts.40/2 & 40/6	Forms of Motor Driving School in respect of Debajit Singha.
42	Exts. 40/4 & 40/7	Forms of Motor Driving School in respect of Debajit Singha.
43	Ext. 41	Certified copy of petition.
44	Ext. 42	Certified copy of the order dtd. 31-7-09.
45	Ext. 43	Disclosure memo made by Vanlalchhana.
46	Ext. 44	Passport in the name of Vanlalchanna
47	Ext. 45	Letter dtd.19.09.09.
48	Exts. 45/4 to 45/12	Rates of GI Pipes.
49	Ext. 46	Production memo.
50	Ext. 47	Letterhead of Mohet Hojai.

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51	Ext. 48	Letter forwarding of statement of account.
52	Ext. 49	Statement of account of Jayanta Kr Ghosh.
53	Ext. 50	Guest house Register.
54	Ext. 51	Production memo.
55	Ext. 52	Pointing out-cum-Observation memo.
56	Ext. 53	Pointing out-cum-Observation memo.
57	Ext. 54	Letter written by Caushiq Bezbaruah.
58	Ext. 55	C.D.
59	Ext. 56	164 Cr.P.C.Statement of Kulendra Daulagapu.
60	Ext. 57	Format of FIR No.54 dtd.9.7.2010.
61	Ext. 58	FIR.
62	Ext. 59	Seizure list.
63	Ext. 60	Letter dt 16-07-10.
64	Ext. 61	Letter dt 03-09-10.
65	Ext. 62	File No NCH/SW 271/PT-I/2007-08.
66	Exts. 63 to 65	Seizure memos.
67	Ext. 66	Letter.
68	Ext. 67	Specimen signature of Pronesh Parbosa.
69	Ext. 68	Specimen impression manual Type writer.
70	Ext. 69	File NCH/SW 264/Pt-V/2009.
71	Ext. 70	File NCH/SW 264/Pt-II/2005.
72	Ext. 71	Cash book No-3 of Social Welfare Department.
73	Ext. 72	File on the subject "voucher".
74	Ext. 73	File No.NCH/SW/347/2008-09.
75	Ext. 74	164 Cr.P.C. statement of Diganta Vikram Gayan.
76	Ext. 75	Production Memo.
77	Ext. 76	164 Cr.P.C. Statement of George Lamthang.
78	Ext. 77	Identification memo dtd.18.8.09.
79	Exts. 78 & 79	Disclosure Statement made by G. Lamthang.
80	Ext. 80	Pointing out memo.
81	Ext. 81	Production memo.
82	Ext. 82	Letter dtd 15-9-09.
83	Ext. 83	File No.NCH/SW/315/Pt-II/07-08.
84	Ext. 84	File relating to vouchers.
85	Ext. 85	Seizure list.
86	Ext. 86	Cash book.
87	Ext. 87	Treasury Challan.
88	Ext. 88	Used Cheque book No.317951 to 317975.
89	Ext. 89	Cheque book No.319001 to 319025.
90	Ext. 90	Cheque book No. 319026 to 319039.

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91	Ext. 91	Treasury Transit Register.
92	Ext. 92	Zimmanama.
93	Ext. 93	Sketch map.
94	Ext. 94	Zimmanama.
95	Ext. 95	FIR No. 03/09 of Diyngmukh PS.
96	Ext. 96	Resignation letter of Depolal Hojai.
97	Ext. 97	164 Cr.Pc. Statement of Imdad Ali.
98	Ext. 98	Cheque for Rs.20 lakh.
99	Ext. 99	Cheque for Rs.61,45,400/-.
100	Ext. 100	Statement of account.
101	Ext. 101	Seizure memo.
102	Ext. 102	Seizure memo.
103	Ext. 103	Receipt memo.
104	Ext. 104	Search & Seizure memo.
105	Exts. 105/1 to 105/7	Deposit slips.
106	Ext. 106	Cheque.
107	Ext. 107	Cheque book.
108	Ext. 108	Cheque book.
109	Ext. 109	Pass book.
110	Ext. 110	Search & Seizure memo.
111	Ext. 111	Copy of Rental agreement.
112	Ext. 112	Copy of Rental agreement.
113	Ext. 113	Copy of driving licence.
114	Ext. 114	Photocopy of Entry register.
115	Ext. 115	Photocopy of Cash book register.
116	Ext. 116	Photocopy of daily occupancy chart.
117	Ext. 117	Disclosure memo.
118	Ext. 118	Disclosure memo.
119	Ext. 119	Identification memo.
120	Ext. 120	Letter dated 13.08.2009.
121	Ext. 121	Letter in reply dated 14.08.2009.
122	Exts. 122/1 to 122/30	30 different registered letters.
123	Ext. 123	Specimen writings of Karuna Saikia.
124	Ext. 124	Specimen writing of Jibangsu Paul.
125	Ext. 125	Disclosure memo.
126	Ext. 126	Recovery memo.
127	Ext. 127	Letter.
128	Exts. 128 to 134	Cheques.
129	Exts. 135 to 138	Specification of GI Pipes.
130	Ext. 139	Note-sheet.
131	Ext. 140	Comparative Statement.
132	Ext. 141	Bill of M/S Loknath Trading.
133	Exts.142 to 145	Challans of M/S Loknath Trading.
134	Ext. 146	Bill of M/S Jeet Enterprise.
135	Exts. 147 to	Challans of M/S Jeet Enterprise.

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136	Ext. 151	Challan of M/S Alampur Enterprise.
137	Ext. 152	Challan of M/S Jeet Enterprise.
138	Ext. 153	Challan of M/S Alampur Enterprise.
139	Exts. 154 to 159	Challans of M/S Maa Trading.
140	Ext. 160	Challan of M/S Shyam Hardware.
141	Ext. 161	Money Receipt.
142	Ext. 162	Bill/quotation.
143	Ext. 163	Standard writing of Swapan Kumar Dey.
144	Ext. 164	Money receipt.
145	Ext. 165	Bill.
146	Exts. 166 to 168	Challans.
147	Ext. 169	Standard writing of Thanglai Daulagaphu.
148	Ext. 170	Opinion of Forensic Science.
149	Ext. 171	Letter.
150	Ext. 172	Reasons for opinion.
151	Ext. 173	Seizure Memo.
152	Ext. 174	Letter dated 08.05.2008.
153	Ext. 175	Letter dated 27.05.2008.
154	Exts. 176 to 178	Supply Orders.
155	Ext. 179	Letter dated 03.05.2008
156	Ext. 180	Notice inviting quotation.
157	Ext. 181	Receipt memo.
158	Ext. 182	Supply order.
159	Ext. 183	Deficiency memo.
160	Ext. 184	Receipt memo.
161	Exts. 185 to 194	Supply orders.
162	Ext. 195	Letter.
163	Exts. 196 to 198	Supply orders.
164	Exts. 199 to 204	Supply orders.
165	Ext. 205	Letter dated 10.02.2009.
166	Ext. 206	Letter dated 17.03.2009.
167	Exts. 207/1 to 207/14	Specimen writings of Mohet Hojai.
168	Ext. 208	Opinion of Scientific Officer.
169	Ext. 209	Letter dated 07.11.2009.
170	Ext. 210	Reasons for opinion.
171	Ext. 211	Receipt memo.
172	Ext. 212	File of Social Welfare Department.
173	Ext. 213	File relating of purchase of stationary articles.
174	Ext. 214	Statement of Account.

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 Special Judge, N.I.
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175	Ext. 215	Letter.
176	Ext. 216	Letter dated 31.07.2010.
177	Ext. 217	Receipt Memo.
178	Ext. 218	File.
179	Ext. 219	File No. TS 30(B)/2008-09.
180	Ext. 220	File No. TS 31(B)/2008-09.
181	Ext. 221	File No. TS 29(B)/2008-09.
182	Ext. 222	File No. AC/PHE/H/4/2008-09.
183	Ext. 223	File No. PHE/M/4/Pt/2008-09.
184	Ext. 224	File No. AC/PHE/M/4/2008-09.
185	Ext. 225	Detail list of cheques.
186	Ext. 226	Letter dated 31.07.2010.
187	Ext. 227	CDR of M. No. 9401411614.
188	Ext. 228	CDR of M. No. 9435077012.
189	Exts. 229 to 231	Cheques.
190	Ext. 232	Account Opening Form.
191	Ext. 233	Seizure Memo.
192	Ext. 234	164 Cr. P.C. Statement of Dilip Phonglo.
193	Exts. 235 to 239	Cheques.
194	Ext. 240	Production Memo.
195	Ext. 241	Photo identification memo.
196	Ext. 242	Photograph of Niranjana Hojai.
197	Ext. 243	Photograph of Jewel Garlosa.
198	Ext. 244	Production cum Seizure Memo.
199	Exts. 245 to 248	Voice Sample recording memorandums.
200	Ext. 249	Forwarding letter.
201	Ext. 250	Seizure Memo.
202	Ext. 251	Handing & taking over memo.
203	Ext. 252	Handing over memorandum.
204	Ext. 253	Written voucher.
205	Ext. 254	Petition filed before the CJM, Aizawl.
206	Ext. 255	Visitor register of Hotel Shalimar.
207	Ext. 256	Production memo.
208	Exts. 257 & 258	Disclosure statements of Malswamkimi.
209	Ext. 259	Pointing out memo.
210	Ext. 260	Forwarding letter dated 15.08.2009.
211	Ext. 261	Report of voice sample.
212	Ext. 262	Letter.
213	Ext. 263	164 Cr. P.C. Statement of Bunu Sonar.
214	Exts. 264 & 265	Seizure lists.
215	Ext. 266	Letter.
216	Exts. 267 & 268	Tax invoices.

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217	Exts. 269 & 270	Letters of News Live channel.
218	Ext. 271	letter dated 20.06.2009.
219	Ext. 272	Letter dated 28.10.2009.
220	Exts. 272/6 to 272/8	List of arms, ammunitions, magazines etc.
221	Ext. 273	Inspection memo.
222	Ext. 274	Deficiency memo.
223	Ext. 275	Receipt Memo.
224	Exts. 276 & 277	Bills of M/S Jeet Enterprise.
225	Ext. 278/1 to 278/4	Challans of M/S Jeet Enterprise.
226	Ext. 279	Verification report dated 08.08.2009.
227	Ext. 280	Sanction for prosecution.
228	Ext. 281	sanction for prosecution.
229	Exts. 282/1 to 282/19	Bills/invoices.
230	Ext. 283	Seizure memo.
231	Ext. 284	Production memo.
232	Ext. 285	Forwarding letter dated 08.08.2009.
233	Ext. 286	Price list of GI pipes.
234	Ext. 287	Letter dated 17.02.2009.
235	Ext. 288	Vehicle examination report.
236	Ext. 289	164 Cr. P.C. statement of Biraj Chakraborty.
237	Ext. 290	Letter dated 24.08.2009.
238	Ext. 291	Print out copy of transaction of cheques.
239	Ext. 292	Seizure memo.
240	Ext. 293	Receipt memo.
241	Exts. 294 to 298	Account opening forms.
242	Ext. 299	Letter dated 14.07.2010.
243	Ext. 300	Certified copy of Sale Deed.
244	Ext. 301	Prosecution sanction order.
245	Ext. 304	Letter dated 11.07.2009.
246	Ext. 305	Forwarding letter dated 14.10.2009.
247	Ext. 306	Report of analysis of C-DAC.
248	Ext. 307	Letter dated 20.08.2009.
249	Exts. 308 to 311	References to National Central Bureau.
250	Ext. 312	Bill of M/S Maa Trading.
252	Ext. 313	Letter dated 11.10.2009.
253	Ext. 314	Letter dated 18-6-09.
254	Ext. 315	Receipt memo dated 14-8-09.
255	Ext. 316	Cash book.
256	Ext. 317	Seizure memo.
257	Exts. 318 & 319	Cheques.

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258	Exts. 320 to 323	Letters.
259	Ext. 324	Verification report.
260	Ext. 325	Forwarding Note.
261	Ext. 326	Forwarding report.
262	Exts. 327 to 329	Forwarding letters.
263	Ext. 330	164 statement of Kulendra Daulagapu.
264	Ext. 331	Money receipt.
265	Exts. 332 to 338	Delivery challans.
266	Ext. 339	Money receipt.
267	Exts. 340 to 363	Delivery challans.
268	Ext. 364	Statement of Mrs. Kiran Das.
269	Ext. 365	Statement of account.
270	Ext. 366	Bill of M/s Loknath Trading.
271	Ext. 367	Bill of M/S Jeet Enterprises.
272	Ext. 368	Production memo.
273	Ext. 369	Cash book No-23 of PHE Maibong Division.
274	Exts. 370/1 to 370/4	Cheques.
275	Ext. 371	Computer output record of Vanlalchanna's travel
276	Ext. 372	Information regarding travel of Vanlalchanna.
277	Exts. 373/1 to 373/14	Seized documents.
278	Exts. 374 to 379	Cheques.
279	Ext. 380	Cash book.
280	Ext. 381	Certificate given on the Cash Book.
281	Ext. 382	Stock register of PHE.
282	Ext. 383	Bills of M/S Maa Trading.
283	Ext. 384	Challans.
284	Ext. 385	Service book of Niranjana Hojai.
285	Exts. 386 & 387	Seizure memos.
286	Ext. 388	164 Cr. P.C. statement of Dipankar Deka.
287	Ext. 389	Statement of account.
288	Ext. 390	Forwarding letter.
289	Ext. 391	Information given to Inspector, NIA.
290	Ext. 392	Production memo.
291	Ext. 393	Letter dated 12.08.2-2009.
292	Ext. 394	Reply letter dated 13.08.2009.
293	Ext. 395	Letter dated 15.6.2009.
294	Ext. 396	Print copy of email.
295	Ext. 397	Reply given to NIA through email.

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296	Ext. 398	CDR of mobile No-9435077481.
297	Ext. 399	CDR of mobile No-9435577799.
298	Ext. 400	CDR of mobile No-9401423618.
299	Ext. 401	CDR.
300	Ext. 402	Letter dated 13.07.2010.
301	Ext. 403	Letter dated 14.09.2010.
302	Ext. 404	Email.
303	Ext. 405	Reply given to NIA by Vodafone.
304	Ext. 406	Letter dated 11.08.2009.
305	Ext. 407	Letter issued by Principal Secretary.
306	Ext. 408	Letter of Supdt. Of Taxes.
307	Ext. 409	Receipt memo.
308	Ext. 410	Letter dated 12.10.2009.
309	Ext. 411	Opinion of Sr. Scientific Officer.
310	Ext. 412	Forwarding Letter dated 12.11.2009.
311	Exts. 413 to 415	Specimen writings/signatures.
278	Ext.416 (series)	Bills containing question marks.
279	Ext. 417	Handing over memo.
280	Ext. 418	Receipt memo.
281	Ext. 419	Letter dated 2.5.2009.
282	Ext. 420	List of exhibits sent for examination.
283	Ext. 421	Recovery memo.
284	Ext. 422	Print out of the emails.
285	Exts. 423 & 424	Production memos.
286	Ext. 425	Scrutiny of the CDR of mobile No-9435077481.
287	Ext. 426	Scrutiny report.
288	Ext. 427	Link analysis of Mobile No.9957412020.
289	Ext. 428	Scrutiny report of Mobile No. 995754595.
290	Ext. 429	CDR.
291	Ext. 430	Scrutiny report of Mobile No. 9435577799.
292	Ext. 431	Link analysis of Mobile No. 9435577799.
293	Ext. 432	Scrutiny report of Mobile no - 9957194992.
294	Ext. 433	Scrutiny report of Mobile No. 9401423618.
295	Ext. 434	Scrutiny report of Mobile No. 9903234905.
296	Ext. 435	Receipt memo
297	Exts. 436 & 437	Bills of M/s Maa Trading.
298	Ext. 438	Letter dated 08.08.2009.
299	Ext. 439	Letter dated 12.08.09.
300	Ext. 440	Letter dated 11.08.2009

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 Special Judge, P.T.
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301	Ext. 441	Receipt memo.
302	Ext. 442	letter dated 28.08.2009.
303	Ext. 443	Letter dated 10.09.2009.
304	Ext. 444	Reply Letter dated 10.09.2009.
305	Ext. 445	Cheque in the name of M/S Maa Trading.
306	Ext. 446	Letter dated 08.10.2010.
307	Ext. 447	FIR of Diyungmukh PS Case No. 3/2009.
308	Exts. 448 & 449	Receipt Memos.
309	Ext. 450	Letter issued by Punjab & Sind Bank.
310	Ext. 451	Account details of M/S Loknath Trading.
311	Ext. 452	Account details of M/S Jeet Enterprises.
312	Ext. 453	Account details of M/S Maa Trading.
313	Ext. 454	Account details of M/S Borail Enterprise.
314	Ext. 455	Statement of Account of M/S Maa Trading.
315	Ext. 456	Statement of Account of M/S Borail Enterprise.
316	Ext. 457	Statement of Account of M/S Jeet Enterprises.
317	Ext. 458	Statement of Account of M/S Loknath Trading.
318	Ext. 459	Letter dated 03.09.2010.
319	Ext. 460	Charge sheet of NIA Case No.02/09.
320	Ext. 461	FIR.
321	Ext. 462	MHA order.
322	Ext. 463	Charge sheet of NIA Case No. 01/09.
323	Ext. 464	Supplementary charge sheet of NIA Case No.1/09.

4. List of Defence Exhibits :

Sl. No.	Exhibit No.	Nature of Documents
1	Ext. A	Seizure Memo.
2	Ext. B	Observation Memo.
3	Ext. C	Statement of T. Daulagupu.
4	Ext. D	Handwriting of K. Hrangkhoh.
5.	Exts. E-1 to E-24	Signatures of K. Hrangkhoh.
6.	Ext. F	Handwriting of K. Hrangkhoh.
7.	Exts. G to J	Challans.
8.	Ext. K	Forwarding letter.

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9.	Ext. L	Certified copy of Issue Register.
10.	Ext. M	F.I.R.
11.	Ext. N	Final Report.
12.	Ext. O	Acceptance Order.

5. List of Material Exhibits of prosecution:-

Sl. No.	Exhibit No.	Nature of Documents
1	Mat. Ext. 1	Sealed Box.
2	Mat. Exts. 2 & 3	Pistols.
3	Mat. Exts. 4 & 5	Pistol cartridges.
4	Mat. Ext. 6	Brief case.
5	Mat. Ext. 7	Sony Ericson mobile phone.
6	Mat. Ext. 8	Air bag.
7	Mat. Ext. 9	Nokia mobile phone.
8	Mat. Ext. 10	Blanket.
9	Mat. Exts. M/11(1) to M/11(8)	M-16 Rifles with magazines.
10	Mat. Ext. M/12(1) to M/12(12)	12 walkie-talkie sets.
11	Mat. Ext. M/13(1) to M/13(12)	12 nos. of walkie-talkie chargers.
12	Mat. Ext. M/14	Telescope Bushnell.
13	Mat. Exts. M/15 & 16	CD containing the voice of Niranjana Hojai
14	Mat. Ext. M/17	Bag.
15	Mat. Ext. M/18	Orpat mobile phone.
16	Mat. Ext. M/19	Nokia mobile phone.
17	Mat. Exts. M/20(1) to M/20(26)	Passport photographs.
18	Mat. Ext. M/21	Driving Licence.
19	Mat. Exts. M/22 & M/23	Identity cards.
20	Mat. Ext. M/24	Mobile Phones.
21	Mat. Ext. M/25	Cash of Rs.21,000/-.
22	Mat. Ext. M/26	Note book.
23	Mat. Exts. M/27(1) to M/27(60)	Photographs.
24	Mat. Ext. M/28	Shopping card.
25	Mat. Ext. M/29	HCL laptop.
26	Mat. Ext. M/30	Data Card.
27	Mat. Ext. M/31	Pen drive.
28	Mat. Ext. M/32	Driving Licence.
29	Mat. Ext. M/33	Identity card.
30	Mat. Exts. M/34(1) to M/34(21)	C.D.s
31	Mat. Ext. M/35	ATM Card.

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32	Mat. Ext. M/36	Smart Card.
33	Mat. Ext. M/37	PAN Card.
34	Mat. Ext. M/38	Wallet containing Rs.9175/-.
35	Mat. Exts. M/39 to M/44	Mobile Phones.
36	Mat. Ext. M/45	Credit Card.
37	Mat. Ext. M/46	Asia Pacific Card.
38	Mat. Ext. M/47	International Card.
39	Mat. Exts. M/48 to M/49	Membership Cards.
40	Mat. Ext. M/50	Rewards Card.
41	Mat. Ext. M/51	Entry Card.
42	Mat. Ext. M/52	Card of JW.
43	Mat. Ext. M/53	Club Rewards.
44	Mat. Ext. M/54	Orchid Plus Card.
45	Mat. Exts. M/55 & M/57	City bank Card.
46	Mat. Ext. M/58	Address Card.
47	Mat. Ext. M/59	Laptop Handbag.
48	Mat. Ext. M/60	Laptop.
49	Mat. Ext. M/61	Pen drive.
50	Mat. Ext. M/62	Nokia mobile phone.
51	Mat. Ext. M/63	ERO mobile sim card.
52	Mat. Ext. M/64	Laptop.
53	Mat. Ext. M/65	CPU.
54	Mat. Ext. M/66	Brief case.
55	Mat. Ext. M/67	Nokia mobile phone.
56	Mat. Ext. M/68	Video cassette.
57	Mat. Ext. M/69	Laptop.
58	Mat. Ext. M/70	Printer.
59	Mat. Ext. M/71	Laptop.
60	Mat. Ext. M/72	Mouse.
61	Mat. Ext. M/73	Laptop bag.
62	Mat. Exts. M/74 to M/76	CDs.
63	Mat. Ext. M/77	Laptop.
64	Mat. Exts. M/78 & M/79	Hard discs.
65	Mat. Ext. M/80	Laptop.
66	Mat. Ext. M/81	CPU.
67	Mat. Ext. M/82	Hard disc.
68	Mat. Ext. M/83	CPU.
69	Mat. Exts. M/84 to M/85	DVDs.
70	Mat. Ext. M/86	ATM Card.
71	Mat. Exts. M/87 & M/88	Mini cassettes.



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23-05-2017