

## **PURULIA ARMS DROPPING CASE**

### **Sessions Trial No.1 of June 1997**

**(Sessions Case No.1 of 1997)**

**(Arising out of CBI/SPE/SIB/Cal/RC.11/S/95)**

### **T.R. 256 of 1996**

**G.R. 969/1996**

**(Arising out of Jhalda P.S. Case No. 152 of 1995 dated 18.12.95)**

S T A T E

-Vs-

- (1) Peter James Gifran Von Kalkstein Bleach.
- (2) Alexander Klichine @ Sasha,
- (3) Igor Moskvitine @ Alexandre,
- (4) Oleg Gaidach,
- (5) Evgueni Antimenko,
- (6) Igor Timmerman and
- (7) Vinay Kumar Singh

..... Accused persons

Under sections 121A/121/122 of IPC/25(1-A)/ 25(1-B)(f)(g) of the Arms Act, 1959/9B(2) of the Explosive Act, 1884/5 of the Explosive Substances Act, 908/5(2)(1)/10/11/11A of the Aircraft Act, 1934.

#### **For the Prosecution**

1. Shri Sisir Kumar Ghosh, Spl. Counsel, C.B.I.
2. Shri P. Tapaswi, Public Prosecutor, C.B.I.

#### **For The defence**

1. For Peter James Gifran Von Kalkstein Bleach : Self.
2. For the five Latvian accused persons : Shri S. Singhvi, Advocate  
  
and  
  
Shri Shyamal Ghosh, Advocate
3. For Vinay Kumar Singh : Shri C.D. Bagchi, Advocate  
  
and  
  
Shri S.K. Thakur, Advocate.

## J U D G M E N T

Prosecution case as placed before this Court of Session bereft of verbiage is that the above named seven accused persons have been jointly arraigned and charged for dropping huge quantities of arms and ammunition along with the absconding accused persons from the aircraft in villages Khatanga, Belamu, Maramu, Beradih, Barudih etc. within Jhalda P.S. on the fateful night of 17/18.12.1995 and those accused persons have been charged u/s. 121/121A/122 of IPC/25(1-A)/25(1-B)(f)(g) of the Arms act, 1959/9B(2) of the Explosive Act, 1884/5 of the Explosive Substances Act, 1908/5(2)(1)/10/11/11A of the Aircraft Act, 1934.

Information about the said occurrence of air dropping of arms and ammunition was received from various sources by the police at Jhalda P.S. within the district of Purulia at 08-10 hours whereupon the police of Jhalda P.S. made entry about the said information in the general diary of the P.S. and O.C. Jhalda P.S. left the P.S. along with others to work out the said information. On arrival at the aforesaid villages huge quantities of arms and ammunition had been found and seized by the O.C.(P.W.1) Shri Pranab Kumar Mitra and on return to the P.S. along with those seized arms and ammunition the aforesaid O.C. (P.W.1 S.I. P.K. Mitra) suo motu registered Jhalda P.S. case no. 152/95 dated 18.12.95 u/s. 121/121A/122 and 123 of I.P.C. and u/s. 25 and 27 of the Arms Act against some unknown persons over the said incident.

On 18.12.95 in the morning some cow-boy of the locality to their utter surprise detected big size of parachutes with a number of wooden boxes and some other containers containing arms and ammunition. Initially the villagers after breaking open the wooden boxes started taking away as many arms as they could before arrival of the police and after arrival of other police forces under the leadership of Additional S.P., Purulia along with Deputy Superintendent, DNT, Deputy Superintendent DIB and O.C. Jaipur P.S. massive raid and search were conducted and wide publicity was also made to the villagers in locating the arms and ammunition forthwith by proving information regarding their exact whereabouts and

subsequently a good number of arms and ammunition could be seized as unclaimed from different places and under different seizure-lists. The wooden boxes containing the articles bore the seal of “COMMANDANT CAD RAJENDRAPUR CANTT, BANGLADESH” and different other writings. One of such wooden boxes also contained some writings “CASE NO. 34 OF 60, CONTRACT NO. 214/719/PROJECT DGDP” etc. and some writings appears to be written in Russian language. Subsequently the investigation of this case was transferred by the Government of West Bengal to the CBI and the CBI took up the investigation of this case.

In a nut shell case of the prosecution is that certain accused persons conspired together to procure a huge quantity of arms and ammunition and to traffic those arms and ammunition illegally and illicitly into Indian territory. Those arms and ammunition were purchased at a huge cost from Bulgaria and in Bulgaria two government owned factories supplied those arms and ammunition, as they were made to believe that this was a genuine transaction and such arms and ammunition were meant for Bangladesh Army. It was revealed on investigation that the aircraft responsible for the dropping could be traced and it could be identified that one AN-26 aircraft having call sign YLLDB had flown over the sky at Jhalda P.S. on the night of 17-18.12.95 at the aforesaid time while it was coming from Varanasi to Calcutta. After identification of the aircraft all the military liaison units of the airports all over the country were alerted and on 21.12.1995 Indian Air Force headquarters received an information that an aircraft having similarity with the aforesaid aircraft had been cleared by the Director General of Civil Aviation, Government of India to fly along the route to Phuket (Thailand-Karachi). By that time the said aircraft had already flown from Madras for Karachi and since the aircraft was very much within the air space of Indian Civil Air Traffic Control, Bombay Airport ordered the aircraft to land at Bombay and accordingly the said aircraft had landed at Sahar International Airport, Bombay on 22.12.1995 at 01-39 hours.

After landing of the aforesaid aircraft all the crew members viz. accused Peter Bleach and the five Latvian accused persons named above were detained by the Immigration Department of the said airport, the aircraft was searched, the aforesaid crew members were examined and arrested and some arms and ammunition which were concealed under the floor of the aircraft had been recovered. One of the associates of the accused persons Kim Peter Davy managed to escape from Sahar International Airport and at the Sahar Airport the aircraft as well as other articles including arms and ammunition, lap-top computer, global positioning system (GPS), were seized from the aircraft and the flight data recorder (FDR), cockpit voice recorder (CVR), velocity height gravity recorder (VHGR) of the said aircraft were also seized and sent to experts for their examination. On the materials collected it was further revealed that one Jitendra Malhan processed the matter relating to route permit at the request received from Base-ops Europe Limited, U.K. for obtaining DGCA route permit in favour of M/s. Carol Air Services, Hong Kong for operating a ferry flight with AN-26 type of aircraft having call sign of YLLDB with seven crew members and accused Alexander Klichine as captain and the said permit was requisitioned for flying on 17.12.95 from Karachi to Varanasi (at 07-30 hours UTC) and from Varanasi (08-30 hours UTC) to Yangoon (Myanmar) and again on 20.12.95 from Phuket (Thailand) to Calcutta at 07-30 hours UTC and from Calcutta to Varanasi and again from Varanasi to Karachi.

On the strength of the permit the aircraft had landed at Varanasi on 17.12.95 at 12-04 UTC (17-34 IST) from Karachi and after refueling the aircraft had left Varanasi for Calcutta at 16-30 UTC (22-00 IST). Investigation revealed that the aircraft was supposed to follow the approved A.T.S. route no.R-460 for coming to Calcutta from Varanasi, but it deviated from the said flight path to fly over the sky of Jhalda and after flying sometime in the deviated route over the sky of Jhalda the aircraft again followed the approved flight path. The aircraft did not land at Calcutta on the plea of poor visibility and it went towards Yangon (Myanmar). It was further ascertained by the Calcutta Airport from Yangon that the aircraft landed in Calcutta on 17.12.95 at 19-07 UTC (on 18.12.95 at 00-37 IST) and it left for Phuket on 18.12.95 at 03-34 IST. The data in the other articles like GPS, CVR, VHGR and Laptop computer were retrieved through experts and photo slides found in the brief case were analysed and in those photographs there was one photograph of a three storied white coloured building located at village Bansgarh at Jhalda PS and it was ascertained that the said building belongs to the Anandamarg Organisation and it was being used by the Anandamargis for the purpose of training of voluntary security service and also for some other purposes. Materials available on record has further indicated that on 18.8.95 a meeting was held at Copenhagen, Denmark and the said meeting was attended by accused Peter Bleach and Kim Peter Davy and two other persons and in such meeting accused Peter Bleach was asked to supply 2500 numbers of assault rifles and 15,00,000 rounds of ammunition and subsequently on 27.9.95 another meeting was held at Bangkok which was attended by accused Peter Bleach and absconding accused Kim Peter Davy and four other persons and in the said meeting the quantities of the assault rifles was reduced to 500 pieces and the aircraft was decided to be purchased for carrying arms and ammunition. It was further revealed that accused Peter Bleach went to Latvia and had purchased the above named AN-26 YLLDB aircraft at a cost of 2,50,000 \$ from Latvia Airlines. The aircraft was purchased in the name of M/s. Carol Air Services and the absconding accused Kim Peter Davy had signed the purchase documents since he had the Power of Attorney for Carol Air Services. Delivery of the aircraft was taken at Riga, Latvia and on 18.11.95 a contract was signed between accused Kim Peter Davy and the Latvian accused persons to act as crew members of the aircraft. The said Latvian accused persons were originally employees of Latvia Airlines and they had taken leave for three months to work with Carol Air Services and after purchase of the aircraft all those crew members alongwith absconding accused Kim Peter Davy visited Varanasi from 23.11.95 to 27.11.95 and left India for Karachi on 27.11.95.

The prosecution also indicated that on 10.12.95 the consignment of arms and ammunition and explosives has been loaded in the aircraft at Bourgas Airport, Bulgaria and from Bourgas they arrived at Karachi on 13.12.95. At Karachi all the crew members including accused Kim Peter Davy and Peter Bleach stayed for about four days till they left Karachi on 17.12.95 for Varanasi. It was also ascertained that another absconding accused Dayanand joined them and delivered parachutes for dropping arms and ammunition and those parachutes were delivered at Karachi. The wooden pallets were used later in course of air dropping of the arms and ammunition at Purulia for effecting the roller movement. From Karachi the aircraft landed at Varanasi on 17.12.95 and from Varanasi the aircraft took off for Calcutta after submitting the flight plan. But the general declaration which they were supposed to submit at Varanasi Airport had not been submitted by them. The materials collected by the prosecution further

indicated that while coming to Calcutta from Varanasi the aforesaid aircraft deviated from the approved ATS route and had flown over the sky of Jhalda and the dropped the aforesaid arms and ammunition.

Prosecution also indicated that the accused persons entered into a conspiracy to wage war against the State to implement new humanistic world government in terms of the Prout philosophy propounded by the founder of Anandamarg organisation and to put the conspiracy into action some establishment of the Anandamarg organisation had been searched and the motive for collection of the said arms and ammunition by the prout Universal a wing of Anandamarg, had been established. Materials collected by the prosecution indicated further that accused Vinay Kumar Singh was also a member of Anandamarg organisation and he was present at Bansgarh just prior to the dropping of arms on 17/18.12.95 and thereafter he disappeared. Some persons also found him during the night of 17.12.95 under the building in the company of two absconding accused Acharya Saileshwarananda Abadhoot and Suranjanananda Abadhoot.

Prosecution also indicated further that accused Peter Bleach along with five Latvian accused persons flew from Riga and landed at Plovdiv in Bulgaria on 21.11.95. On 22.11.95 they left Plovdiv and landed at Karachi on 23.11.95. Thereafter all of them with the aircraft arrived at Varanashi on 23.11.95. During the period from 23.11.95 to 27.11.95 they were at Varanashi for the purpose of surveillance for the purpose of arms dropping and after that they left Varanashi. Prosecution also indicated that during their stay in Hotel Karachi they were preparing themselves for final journey and on 8.12.95 they along with the absconding accused Kim Peter Davy left Karachi and the aircraft landed at Sharjah. On 9.12.95 they left Sharjah and arrived at Bourgas in Bulgaria and while in Bulgaria they had loaded the consignment of arms in the aircraft at Bourgas Airport. Prosecution also alleged further that accused Peter Bleach brought the GPS instrument from London to Bulgaria and the said instrument was installed in the aircraft in Bulgaria. The materials collected further revealed that on 10.12.95 consignment of the arms were loaded and on the same day accused Peter Bleach arrived at Bourgas from London via Sofia. On 17.12.95 the crew members had performed the flight and landed at Varanashi and they had full knowledge that the said flight permission issued by the Latvian authority expired on 5.12.95. Prosecution further indicated that on 17.12.95 accused persons along with the absconding accused Kim Peter Davy and Dayanand came to Varanashi along with the aircraft and after dropping of the arms and ammunition on the night of 17-18.12.95 the said accused persons along with the abovenamed absconding accused came to Calcutta Airport on 18.12.95.

In the morning of 18.12.95 a huge quantity of arms and ammunition, parachutes and anti-tank grenades, rocket-launchers and other related articles along with wooden boxes were found scattered in the open field in the villages, viz., Khatanga, Belamu, Beradih, Barudih etc. under the Jhalda P.S. of Purulia district following flying over of an aircraft on the previous night along with the same line of the aforesaid recovered arms and ammunition.

Shri P.K. Mitra, O.C. of Jhalda P.S. on getting such information from Subhas Tantubai (P.W.10) diarised the said fact in Jhalda P.S. G.D. entry No. 515 dated 18.12.95 at 08-10 hrs. and after taking all

informative actions left for the places of occurrence. On the same date P.W.1 first went to Ganudih (Khatanga) and then to Belamu, Maramu, Simnister, pagro dam, Beradih and Barudih and in the meantime some other police officers also arrived at the spot.

P.W.1 took, arms and ammunition and other articles found scattered in the aforesaid villages, in the custody with the co-operation of the villagers after preparing seizure list. On 18.12.95 in between 11-05 and 11-45 hours he seized 40 pieces of AK-47 rifles, one parachute, eight sealed containers of 7.62 ammunition, 700 empty pieces of magazine, seven rocket launchers, one booklet, 16 hand grenades, 1280 rounds of 9 mm pistol ammunition, two 9 mm pistols from the open field of the western side of Khatanga village. On the same day in between 13-00 and 13-15 hours P.W.1 also seized 15 AK-47 rifles, three sealed containers of 7.62 mm ammunition, 1220 rounds of 9 mm ammunition, forty canvas pouches, thirty anti-tank grenades and 12 revolver holsters from the open field of southern side of village Pagro. Again on that day in between 16-05 and 16-50 hrs. he seized 10 AK-47 rifles, three containers of 7.62 mm ammunition, 18 canvas pouches, six canvas pittu, 71 slings, 27 cleaning brushes from the open field of eastern side of village Belamu. On the same day in between 19-30 and 20-15 hours he again seized 19 AK-47 rifles, one parachute, 46 oil-pots, two olive green canvas carriers, telescopic sight, one sealed container, 13 wooden boxes (marked as 'COMMANDANT CAD RAJENDRAPUR CANTT, BANGLADESH' and NO. 34/60 CONTRACT NO. 214/719/PROJECT DGDP" from the open field of the northern side of village Barudih.

On 18.12.95 at about 23-05 hours P.W.1 returned to the P.S. after seizing the aforesaid arms and ammunition and registered a case u/s. 121, 121A, 122 and 123 IPC and u/s. 25/27 of the Arms Act suo motu against unknown persons vide Jhalda P.S. Case No. 152/95.

Sambhu Ram Dana (P.W.15) also seized three AK-47 rifles from Bardinda village on 21.12.95. On the same day at about 16-15 hours he also seized another three AK-47 rifles at village Barbinda.

Jiban Chakraborty (P.W.16) also received information about the incident on 18.12.95 at 08-10 hours and he also diarised the fact in Jaipur P.S. vide G.D. entry No. 434 dated 18.12.95 and he also took all informative actions.

Prosecution also indicated that the target place of dropping arms and ammunition was the three storied building of Anandamarg organisation situated at Bansgarh and the activities of Anandamarg organisation were done from the said building. It has also been indicated by the prosecution that no other non-schedule flight over flew Gaya at 17-15 UTC and the aircraft YLLDB informed Calcutta Airport that its Gaya time was 17-10 UTC (22-40 IST) and estimating Dhanbad at 17-38 UTC. At 17-21 UTC (22-51 IST), again at 17-22 UTC (22-52 IST) Calcutta Airport gave call to this aircraft and informed the aircraft that no call was received. You are faint, call after 10 minutes. But the aircraft was silent from 17-22 UTC to 17-38 UTI i.e. 16 minutes and it never reported about crossing of Dhanbad.

On the materials available it was further indicated by the prosecution that on 21.12.95 the aircraft

YLLDB arrived at Chennai Airport from Phuket and the said aircraft belonging to M/s. Carol Air Services received 5620 liters of fuel from IOC terminal at Chennai on 21.12.95 at 17-00 hours and the said aircraft was asked by the ATC to land on 22.12.95 at Sahar International Airport, Bombay and it landed at 1039 IST as per the direction of the MLU, Bombay.

On 22.12.95 D. Thakur arrived at Bombay Airport at 23-00 hours and he could ascertain that the suspects involved in this case have been detained there and he interrogated them on 23.12.95 and he arrested the five Latvian crew members and Peter Bleach at 12.30 hours. At the aforesaid airport accused Peter Bleach stated before him that if he is taken to the aircraft he would be able to produce some arms and ammunition which had been kept concealed inside the aircraft. Pursuant to such statement of accused Peter Bleach, D Thakur along with the witnesses and crew members went inside the aircraft. Ramaging of the aircraft was carried out and after removing panel of the floor of the aircraft as pointed out by accused Peter Bleach recoveries were effected wherefrom accused Peter Bleach took out certain arms and ammunition which were kept concealed in the aircraft. A brief case of Kim Davy was also seized from which, apart from other materials, some photo slides were seized. The GPS instrument, lap-top computer were also recovered from the aircraft. Cameras of the accused persons with exposed films were also recovered. All those seized materials which were seized were handed over later to the CBI.

In course of investigation CBI moved the Ld. Court of CMM, Calcutta for issuing letter of request to the competent authorities in several nations across the world so as to facilitate investigation in those countries. The Court was pleased to issue letter of request i.e. letter rogatory U/s 166A of Cr.P.C. and these were sent to different countries under the seal and signature of Ld. CMM, Calcutta and the execution reports from U.K., Latvia, Bulgaria and Thailand transferring the evidence were exhibited before this Court during trial. It has also been indicated by the prosecution that from the execution report of letter rogatory from U.K. it appears that the conspiracy of the illegal arms deal was made during August, 1995 and Peter Bleach one of the accused persons of this case had active participation in acquiring AN-26 aircraft from Latvia and he had also personal knowledge for procurement of arms and ammunition, their quantity, pricing, his commission etc. It was also indicated by the prosecution that the execution report of the letter rogatory from Bulgaria also revealed that the dropped arms and ammunition were purchased from Bulgaria and accused Peter Bleach of Aeroserve, U.K. was instrumental in purchase of the aforesaid arms and ammunition.

The prosecution also indicated that five Latvian accused persons alongwith accused Peter Bleach and Kim Peter Davy stayed together at Bulgaria at the time of leading of the alleged arms and ammunition in the AN-26 aircraft YLLDB.

From the execution report of the letter rogatory from Latvia, it was indicated by the prosecution that five Latvian accused persons, viz. Alexander Klichine, Igor Moskvitine, Oleg Gaidach, Evgueni Antimenko



and Igor Timmerman entered into the contract with Kim Peter Davy of Carol Air Services to fly the aircraft AN-26.

Prosecution further indicated that initially the investigation was taken up by CID, West Bengal and subsequently, it was taken up by the CBI on 28.12.1995 and PW-140 Sri P.S.Mukhopadhyay after taking up the investigation of this case as Chief I.O. drew up the formal FIR by treating the FIR of Jhalda PS Case No.152 of 1995 as FIR of this case and he also took up investigation of this case as Chief IO and in course of investigation he took assistance of several other officers like PW-139 Sri B.K.Bagchi and others and ultimately on completion of investigation he submitted chargesheet in this case against the aforesaid seven accused persons and others showing them as absconders in this case on 20.3.96. and supplementary chargesheet against accused Vinay Kumar Singh was submitted on 5.9.96 before the Court of the Ld. CMM, Calcutta, as vide order of the Hon'ble High Court the case which originally started at Purulia was transferred to the Court of CMM, Calcutta. Ultimately the case was transferred to the Court of the Ld. Metropolitan Magistrate, 9th Court, Calcutta who by his order dated 20.12.96 committed this case before this Court of Sessions and ultimately the case has been received by this Court for trial of the aforesaid seven accused persons.

My Ld. Predecessor-in-office Mr. A.K.Bisi by his order no.1 dated 6.6.97 was pleased to frame charge against the aforesaid seven accused persons U/s 121A, 121, 122 of IPC and also U/s 25(1-A), 25(1-B)(f)(g) of the Arms Act, 1959, U/s 9B(2) of the Explosive Act and U/s 5 of the Explosive Substances Act and U/s 10, 11 and 11A of the Aircraft Act and all the above mentioned charges in Court Nos.1 to 10 were read over and explained to accused Peter Bleach in English who pleaded not guilty and claimed to be tried and the charges in Court Nos.1 to 10 were also read over and explained by the interpreter, Purabi Roy to five Latvian accused persons mentioned above viz. Alexander Klichine, Igor Moskvitine, Oleg Gaidach, Evgueni Antimenko and Igor Timmerman in Russian language and each of them also pleaded not guilty and claimed to be tried. Charge in Court Nos.1 and 2 viz. U/s 121A and 121 of IPC were also read over and explained to accused Vinay Kumar Singh in English who also pleaded not guilty and claimed to be tried.

The defence case, so far as I understand from the trend of cross-examination of P.W.s and from examination of the accused persons U/s 313 of Cr.P.C. and also from the examination of defence witnesses, is a plea of not guilty and apart from the aforesaid plea from the side of the defence several technical pleas were taken alleging that the present trial is not at all maintainable against them for want of proper sanction and they being foreigners no case under the provisions of IPC for waging war can be maintained against them.

In the instant trial from the side of the prosecution as many as 140 witnesses have been examined for the purpose of bringing home the guilt of the accused persons. Of them, PW-1 Sri Pranab Kumar Mitra is the Sub-Inspector of Police who at the relevant time was posted as OC/Jhalda PS in the district of Purulia, PW-2 Suresh Chandra Kumar is a resident of Pagrotolla, Ganudih in the district of Purulia, PW-3 Narayan Chandra Hansda is a resident of Ganudih village in the district of Purulia, PW-4 Dharendra Nath



Saren is a resident of Pagro village in the district of Purulia, PW-5 Pratham Hansda is also a resident of Pagro village in the district of Purulia, PW-6 Arun Majhi is a resident of Belamu village in the district of Purulia, PW-7 Parikshit Mahato is a resident of Barudih village in the district of Purulia, PW-8 Nema Kumar is a resident of Barobinda village in the district of Purulia, PW-9 Sk. Ali Hossain was an Inspector of CID, West Bengal who at the relevant time was posted at Durgapur D.D., PW-10 Sunil Baran Mukherjee was the ASI of West Bengal Police attached to Khatanga camp within Jhalda PS in the district of Purulia at the relevant time, PW-11 Mritunjay Singha is a resident of Khatanga village, PW-12 Dasarath Saren is a resident of Pagro village, PW-13 Mohan Bahadur Singh is a resident of Khatanga village, PW-14 Srikanta Majhi is also a resident of Khatanga village, PW-15 Sambhu Ram Dana who was posted as District Directive Inspector, Assansol at the relevant time, PW-16 Jiban Chakraborty was posted as Officer-in-Charge, Jaipur PS in the district of Purulia at the relevant time, PW-17 Gunadhar Kumar is a resident of village Beradih in the district of Purulia, PW-18 Sudarshan Mahato is a resident of Hakasara village in the district of Purulia, PW-19 Kirti Bhusan Layak is ASI of Police who was posted at Jaipur PS at the relevant time, PW-20 Subhas Tantubai is a resident of Ganudih village within the district of Purulia, PW-21 Ghasiram Hansda is a resident of Pagro village under Jhalda PS in the district of Purulia, PW-22 Ramdas Hansda is also a resident of Pagro village within the district of Purulia, PW-23 Iswar Majhi is also a resident of Pagrotolla within the district of Purulia, PW-24 Debgan Tantubai is a resident of Ganudih village under Jhalda PS in the district of Purulia, PW-25 Sajid Iqbal Usmani was posted in Air Intelligence Unit of Sahar Airport as Intelligence Officer at the relevant time, PW-26 Arun Laxman Kulthe was posted as Intelligence Officer of Air Intelligence Unit at Sahar International Airport, Mumbai at the relevant time, PW-27 Janardan Guin was working as a sweeper at Sahar International Airport, Mumbai, PW-28 Rup Singh is posted as Principal Scientific Officer, Ballistics attached to Central Forensic Science Laboratory, CBI, New Delhi, PW-29 Dhaleswar Parji who was posted as Intelligence Officer in Air Intelligence Unit, Sahar International Airport, Mumbai at the relevant time, PW-30 Rajesh Kumar was also Intelligence Officer of Air Intelligence Unit at Sahar International Airport, PW-31 Gopal Krishna Gupta was posted as Aviation Officer at Hindustan Petroleum Corporation Limited, Santacruz Aviation Service Facility Station at Mumbai Airport, PW-32 is Ramlal Chopra who was then posted at Bombay Airport as Deputy Director of Aerodrome, Standardisation and Procedures Airports Authority of India, National Airports Division, PW-33 is Jayanta Sarkar who was then posted as Senior Technical Officer, Aeronautical Communication Service, Bombay Airport, PW-34 Dilkash Rizvi was receptionist at Hotel India situated at 59, Patal Nagar, Varanasi, U.P., PW-35 Ashok Kumar Puri is the General Manager, Hotel India, Varanasi, PW-36 Pradeep Singh Khanna is attached to Hotel India, Varanasi as Receptionist, PW-37 Tanmay Mondal was attached to Varanasi Airport as Aerodrome Officer, PW-38 N.C.Saha was posted as Airport Terminal Manager of Indian Oil, Varanasi, Aviation Fuel Station at the relevant time, PW-39 Shankar Mardi was posted at Varanasi Airport as Senior Aerodrome Officer at the relevant time, PW-40 R.K.Dubey was posted as Cashier-cum-Clerk, State Bank of India, Air Cargo Complex Branch, Babadpur Airport, Varanasi at the relevant time, PW-41 is Mangla Prasad a Taxi Driver of Babadpur area at Varanasi, PW-42 Denanath Singh was attached to Varanashi Airport as Controller of Aerodrome at the relevant time, PW-43 is Om Prakash who was then posted at Babadpur Airport, Varanasi as Superintendent of Customs at the relevant time, PW-44 is Ram Naresh Chowdhury who was then attached to Varanasi Airport during 1995

as Security Inspector, Anti-Hijacking Unit, PW-45 is Mihir Ranjan Dhar who was then posted as Air Traffic Control Consultant & Aerodrome Officer, Calcutta, PW-46 D.B.Chakraborty was then posted as Chief Airport Terminal Manager, Aviation Fuel Station, Indian Oil Corporation Limited at Calcutta Airport, PW-47 is Utpal Baran Mondal who was then posted as Aviation Officer in Indian Oil Corporation, Calcutta Airport, PW-48 is Prafulla Singha who was then posted in Calcutta Airport as Security Supervisor, PW-49 is D.N.Ghosh who was then posted as Deputy Director of Aerodrome (S&P), Calcutta Aerodrome, PW-50 is Jaydeb Kumar Dey who was then attached to Security Control, Calcutta Airport (Immigration) as Sub-Inspector of Police, PW-51 Siddhartha Sankar Ghosh is a resident of Dhanbad, PW-52 is Jeff Rodrickes who at the relevant time was posted at Old Airport, Santacruz as Aircraft Technician working for Air India, PW-53 is Narendra Mohan Chowdhury who was posted as Deputy Manager (Commercial), Indian Airlines at Calcutta Airport, during January, 1996, PW-54 is S.S.Sathe who was posted in Chennai Airport as Duty Officer, Briefing, PW-55 is K.Chakrapani who was then posted as Station Duty Officer at Chennai Airport, PW-56 R.K.Vasudeva was then posted as Senior Airport Terminal Manager of Indian Oil Corporation Limited at Chennai in Chennai Airport, PW-57 is Mr. S. Siddaya Chetty who was posted as Assistant Immigration Officer in International Airport at Chennai, PW-58 is Sri Pranab Sarkar who was posted in Bombay Airport as Senior Aerodrome Officer, during December, 1995, PW-59 is Shasanka Mahesh who was posted as Scientific Assistant at Dum Dum Airport during December, 1995, PW-60 is Tamil Selvan who was then posted as Duty Officer in Flight Information Centre at Chennai Airport, PW-61 is Jayanta Dasgupta who was posted as Senior Aerodrome Officer at Bombay Airport in December, 1995, PW-62 Kirtimay Mukhopadhyay is now posted as Research Officer of National Atlas & Thematic Mapping, Government of India, PW-63 is Nani Gopal Chakraborty who during February, 1996 was posted as DELRO & Settlement Officer, Purulia, PW-64 L/NK Ambuj Kumar Hajra who is a resident of Garjaipur within the district of Purulia, PW-65 is Sri Tapas Sil who was then posted as Assistant Manager, Vigilance during March, 1996, PW-66 is Somnath Mitra who is attached to Survey of India, Eastern Zonal Office as Technical Officer, PW-67 is Sri Timir Baran Roy who was then posted as Field Security Officer of Calcutta Customs at Dum Dum Airport, PW-68 is Asit Kumar Mukherji who was then posted as Officiating Complaint Inspector, Purulia Division at Purulia in the office of the Superintendent of Post offices in February, 1996, PW-69 Shew Kumar Dwivedi was then posted as Immigration Officer of the Check Post Office of Babadpur Airport, Varanasi, PW-70 is Arun Auddy attached to Great Eastern Hotel as Assistant Manager, Front Office, PW-71 is Balbir Singh who was posted as Assistant Airport Manager at Bombay Airport during December, 1995, PW-72 Jitendra Malhan is the Proprietor of Air Chartered Services India, New Delhi, PW-73 is Ram Chandra Prasad who is now posted as Assistant Metrological Officer at Babadpur Airport, Varanashi since April, 1992, P.W. 74 is M.P. Yadav who was then posted as Duty Officer at Bombay Airport in III Airforce MLU. P.W.75 is Sarad Kumar Rastogi who was posted At Bombay Airport as Watch Supervisor Officer (WSO) for looking after the ATC duties, P.W.76 is J.S. Wazar who was then posted as Deputy Director Air Transport in the Office of the Director General of Civil Aviation, New Delhi. P.W.77 is Arvind Sardana who was then posted as Assistant Director in the Air Transport Directorate at DGCA Headquarters, New Delhi, P.W.78 is Paritosh Saha Baby who is a resident of Teherbara village in the district of Purulia and who was then Pradhan of Chitmugram Panchayet, P.W.79 is Kartick Pramanick who was a resident of Garidih village within the district of Purulia, P.W.80 is

Dhiren Chandra Garai who is another resident of Garidih village, P.W.81 is Kokil Chandra Mahato who was then posted as Branch Postmaster of Baglata Post Office at Jaipur within the district of Purulia, P.W.82 is Mantu Garai who is a resident of Guridih village in the district of Purulia, P.W.83 is Brindaban Garai who is also a resident of Guridih village. P.W.84 is Biswanath Mahato who is a resident of village Urusharam within the Jhalda P.S. in the district of Purulia, P.W.85 is Baren Chandra Kumar who is a resident of Bororolla within Jhalda P.S. in the district of Purulia, P.W.86 is Jermy Simpkins who was then posted as detective constable from Metropolitan Police Service, London, P.W.87 is Stephen Elcock who is new posted as Detective Sergeant in North Yorkshire Police, Special Branch, England, P.W.88 is Rumen Dimitrov who is an independent advocate practising at Sofia city, R.W.89 is Tuskevitch Victor who is now working as Project Manager in the firm Vitos in Riga, P.W.90 is Chan Chiamaharoen who is now posted as Specialist-VIII at Phuket International Airport, P.W.91 is Paramjit Mann who is now posted in Mexico City in Embassy of India as First Secretary, P.W.92 Amarjit Singh is a resident of Premises No. WZ-72, Mohan Nagar, Pankha Road, New Delhi, P.W. 93 is Swadesh Ranjan Das who was then posted at Jhalda in the district of Purulia as BLLRO, P.W.94 is Naren Banerjee who is a photographer who had his studio at Purulia, P.W.95 is Vinod Waman Angolkar, who is now working in Air India as Assistant Manager at Bombay Airport, P.W.96 is Kirti Kumar who is a supervisor of Modi Company now posted at Kanakpur within the Jagatsinghpur, District Orissa, P.W.97 is Nilesh Arkile who was a camera man of Doordarshan at the relevant time, P.W.98 M.S. Rao who is now working as Director, Central Forensic Science Laboratory of Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, Calcutta, P.W.99 is S.K. Dutt who is now employed as Senior Captain with Aviation Research Centre under Director General, Security of Cabinet Secretariate, Government of India, P.W.100 is V. Suresh presently posted as Junior Scientific Officer in Central Forensic Science Laboratory, Hyderabad, P.W.101 is Abhijit Dey who is now posted as Senior Scientific Officer attached to Ballistics Division of CFSL, CBI, New Delhi, P.W. 102 is Subhasis Dey who is now posted in Simla as Government Examiner of Questioned Documents, P.W.103 is V.K. Khanna who is presently posted as Principal Scientific Officer in Central Forensic Science Laboratory, CBI, New Delhi, P.W.104 is Joseph Ponnoly who is now working as Softwar Consultant at Delhi, P.W.105 is Pabitra Kumar Basu who had retired from service as Deputy Superintendent of Police from CID, West Bengal, P.W.106 is N. Muruganandam who is now posted as Inspector of Police in Special Unit, CBI, Chennai, P.W.107 is Bamapada Sinha who is now posted as Inspector of Police, CID, West Bengal, now attached to Highway Crime Cell, CID, West Bengal, P.W.108 is N. Surendran who is now posted as Inspector of Police attached to Cochin Branch, CBI, P.W.109 is K.N. Singh who is now posted as DSP, CBI, SIC-IV, Lucknow, P.W.110 is H.K. Rai who is now attached to SIB, Amritsar as ACIO-I, P.W.111 is R.K. Das who is now posted as Inspector of Police, CBI, Siliguri, P.W.112 is Arijit Dey who is now posted as Inspector of Police attached to Economic Offence Wing Branch, Calcutta, P.W.114 is Manoj Kumar Sharma who is now posted as Inspector of Police, CBI, Dhanbad, P.W.115 is Sandip Ghosh now posted as Inspector of Police in CBI, Economic Offences Wing, Calcutta, P.W.116 is P.P. Suraj Vansi who is now posted as Inspector of Police now attached to CBI, EOW, Bombay, P.W.117 is C.K. Jain now posted as Senior Scientific Officer, Grade-I in Central Forensic Science Laboratory, New Delhi, P.W.118 is Haresh Lakhani who is having a colour Lab at Chembur, Bombay, P.W.119 is Debabrata Thakur who has retired from service as Deputy Superintendent of Police,

CID, P.W.120 is Pol. Maj. Wichai Suwanpnasert who is now posted as Inspector, Economic Crime Investigation Division at Bangkok, Thailand, P.W.121 is Jyoti Kumar who is now posted as Inspector, CBI, EOW-I, New Delhi, P.W.122 is P. Haldar who is now posted as Inspector of Police, CBI, SCB, Bombay, P.W.123 Srinibas Nanda is now posted as Sub Inspector of Police in SCRB, Bhubaneswar, P.W.124 is R.N. Adak who is now posted as Inspector of Police, CID, Kharagpur, P.W.125 is Asim Kumar Das now posted as Inspector of Police, SCB, CBI, Calcutta, P.W.126 is Sunil Kumar Chatterjee who is now also posted as Inspector of Police DDI, Assansol, P.W.127 is Ramji Prasad who has retired as Deputy Transport Commissioner, North Chotenagpur, Hazaribag, P.W.128 is Ms. R. Amar Jyoti who is now posted as upper division clerk at Bangalore Passport Office, P.W.130 is Samir Ranjan Bandopadhyay who is now posted as Inspector of Police now attached to CBI, Special Crime Branch, Calcutta. P.W.131 is T.R. Rao who is now posted as Chief Administrative Officer, Airforce Station Bagdogra, P.W.132 is S.P. Sinha who is now posted as Deputy Director, Intelligence at Air Headquarters, Delhi, P.W. 133 is Manish Gupta is presently posted as Chief Secretary, Government of West Bengal, P.W.134 is T.K. Burman who is presently posted as Special Secretary, Home Department, Government of West Bengal, P.W.135 is Sibaji Prasad Boral who has retired as Special Secretary, Government of West Bengal from the Home Department, P.W. 136 is C.B. Rakde who is now posted as Deputy Municipal Commissioner, Bombay, P.W.137 is Subodh Kumar Jha who is now posted as Sub Inspector of Bihar Police at Bokaro district, P.W.138 is Manaj Agarwal who is now posted as Chief Executive Officer, Siliguri Jalpaiguri Development Authority, P.W.139 is B.K. Bagchi now attached to CBI, Special Crime Branch, Calcutta as Inspector of Police and P.W. 140 is Mr. P.S. Mukhopadhyay who is the Chief I.O. of this case and who has submitted charge sheet against the accused persons.

From the side of the defence accused Peter Bleach has examined D.W. 1 Sri Amiya Kumar Joardar who is attached to 'The Statesman' a daily newspaper looking after the legal matters. Latvian accused persons have examined D.W.2 Voldemars Losans who works in a private airlines viz. Lathpass Airlines as an instructor, D.W.3 is Vladimis Yelkishev who was captain, Latavia in 1995 and D.W. 4 is Agrikoliancki Alexandre A who was Principal Vice President of the Flight Personnel Association of Russia.

Now the only question which I am called upon to decide here is as to whether the prosecution of this case has been able to bring home the guilt of the accused persons u/s 121A, 121, 122 of IPC/25(1-A)/25(1-B)(f)(g) of the Arms Act, 1959/9B(2) of the Explosive Act, 1884/5 of the Explosive Substances Act, 1908/5(2)(1)/10/11/11A of the Aircraft Act, 1934 or not.

#### Decision with reasons

In the present case there is allegation that a huge cache of lethal and sophisticated arms and ammunition were airdropped from a foreign aircraft which entered into the Indian air space, flew illegally over district of Purulia and dropped weapons etc. on the night of 17/18th December, 1995. As per the prosecution allegation the alleged crime was committed at the unusual hours of night when the world was

asleep. This is perhaps for the first time in the history of our country that the alleged crime of this nature having serious implications against our national security, both external and internal, has been committed. The alleged crime is also unique in its nature as in that very act of airdropping of arms and ammunition it has posed a serious security threat to the nation challenging the very fabric of security on the national border and also exposed porousness of the Indian air space wherein allegedly foreign aircraft stealthily moved out of the flight path and airdropped a huge consignment of arms and ammunition.

The case in hand is not a simple one under the Indian Arms Act and it is a case involving individuals from several parts of the globe where allegedly conspiracy was meticulously planned and carried out. Perhaps never in the history of this country such a crime has taken place before.

To prove the aforesaid allegations as stated above as many as 140 witnesses have been examined by the prosecution from different parts of the country viz. from the district of Purulia, Varanasi(UP), Chennai, Calcutta, Mumbai and a few witnesses were brought before this court from abroad. Now meticulously looking into the evidence as adduced from the side of the prosecution I find that in the instant case there is no direct evidence to prove the case of the prosecution relating to the charge of criminal conspiracy, for waging war and also in respect of other charges that has been leveled against the present accused persons. although prosecution has examined a good number of witnesses and produced a large number of documentary evidences. Prosecution has mainly based their claim in connection with this trial only on circumstantial evidence.

It is now quite well settled principle of law that in a case of this nature the circumstances which the prosecution is required to establish must be such as to complete the chain inevitably leading to the conclusion that it was the accused persons and the accused persons alone who have committed these offences. It is also quite well settled provisions of law that the circumstantial evidence would be such that it connects the accused persons with the crime and points instantly to the conclusion that it was the accused persons and the accused persons only who were the culprits and the evidence adduced was incompatible with their innocence. The cumulative effect of circumstances must be such as to negate the innocence of the accused and bring the offence home to him beyond any reasonable doubt.

In a case of circumstantial evidence various links in the chain of evidence should be clearly established and the chain must be such that there was no likelihood of their innocence.

With such background, I shall now prove into the merit of the prosecution case.

Before I proceed to discuss the evidence on record, both oral and documentary adduced from the side of the prosecution, in bringing home the guilt of the accused persons in connection with the present

case, I would like to take up the technical pleas relating to law points involved in connection with this trial.

Accused James Peter Bleach for the purpose of his legal argument has divided the charges into three groups which are as follows:-

(i) Charges under Chapter VI of I.P.C., (ii) Charges under the Arms Act, 1959, the Explosive Act, 1884 and the Explosive Substances Act, 1908 and (iii) Charges under the Arms Act, 1934. In this connection it has been argued by him that mens-rea being an essential ingredient of the charges covered in item No. (i) i.e. charges under Chapter VI of I.P.C. and the specified mens-rea is defined clearly in the sections 121, 121A and 122 of the I.P.C. is "the intention to wage war against the State". But in the absence of such clear prove intent, the mens rea alleged by the prosecution do not constitute crimes in terms of these sections in law, although they may well be offences under other sections of other laws, but in any event those do not come under the purview of Chapter VI of I.P.C. In this trial the prosecution has neither produced any evidence to prove the intent nor they have attempted to do so. Secondly, it has been argued that Mr. Bleach being a foreigner could not in law be charged with such offences, as it is quite established in law, not just in Indian law but also in international law, that any enemy alien cannot be dealt with by criminal Courts of any country and obviously Mr. Bleach is an alien, as he is neither an Indian citizen nor a resident of India. Again it has been submitted on behalf of Mr. Peter Bleach that this peculiarity arose within the nature of these offences and that they constitute treason and they presuppose a legally required loyalty of the accused to the State concerned and it is the breach of this loyalty and duty which in reality constitute the offence. According to him, therefore, a person can only be guilty of offences against a State if he has a duty or loyalty to that State and Mr. Bleach being a foreigner has no such duty or loyalty to India and he therefore cannot, in law, be guilty of any breach of such loyalty. So, according to him, in any event he cannot be tried for the charges under Chapter VI of I.P.C. specially u/s. 121, 121A and 122 of I.P.C.

Apart from taking above plea, it was also contended on behalf of Mr. Bleach that there was no error in framing of the charges and that various items alleged to have been dropped by air over Purulia on the night of 17th and 18th of December, 1995 has been defined in law as being different items and it has been pointed out by Mr. Bleach that certain items were first defined as 'arms and ammunition', secondly as 'explosives' and thirdly as 'explosive substances'. According to him this was not admissible in law and he has submitted that the Court before taking any final decision on the score would have to define the identity of each item allegedly dropped. It has further been argued by him that if an item is defined as 'arms and ammunition', it cannot be defined as anything else. In this connection reference has been made by Mr. Bleach that all items allegedly delivered according to the prosecution case were clearly in law defined as 'arms and ammunition' and those were clearly described in section 2 of the Arms Act, 1959. So, according to him, each of such items including hand grenades and rocket launchers complete with rockets clearly being identified and listed in the Arms Act, they could not, in law, be anything else.

Apart from the above plea some objection has been taken by Mr. Bleach with regard to absence of valid sanction and in this connection it has been alleged that the charges framed against him under the



Arms Act, explosive Act and Explosive Substance Act must fail.

From the side of the Latvian accused persons also these arguments as advanced by Mr. Bleach were adopted and it was also contended on their behalf that in the absence of valid and legal sanction the charges under the Arms Act, Explosive Act and Explosive Substances Act cannot be maintained against these accused persons also.

To meet this legal objection as advanced by Mr. Bleach and on behalf of the Latvian accused persons it has been submitted on behalf of the prosecution with regard to the charges under Chapter VI of I.P.C. that war as contained in Chapter VI of I.P.C. is not a conventional war. Earlier such type of offences as contained in Chapter VI used to be called as sedition and it is a fact that in a conventional war when war is fought between two states/two countries the concept of alien enemy, prisoner of war etc. came up. It has also been contended on behalf of the prosecution that going by the law of Lexican by P. Ramnath lyre it would be seen that an alien enemy is a person owing allegiance to an adverse belligerent state or a person owing allegiance to the country having allegiance to a country which is at war with India. This is also in accordance with the provisions of section 83 of the Code of Civil Procedure. It has further been submitted that accused Peter Bleach is undoubtedly a citizen of UK and he is also an UK passport holder and UK is not a belligerent state not it is at war with India. So. Mr. Bleach cannot be an alien enemy and as such he cannot ask for exemption to be proceeded under Chapter VI of I.P.C. On the similar logic the Latvian accused persons also cannot claim any exemption from being proceeded for charges under Chapter VI of I.P.C.

It has further been argued on behalf of the prosecution that the contention of the accused persons that the provisions of Chapter VI of I.P.C. is applicable only to Indian citizens cannot be regarded as correct. It has further been submitted that it has been clarified by the Hon'ble Supreme Court of India in a judgment reported in AIR 1957 S.C. at page 857 wherein it has been held that section 2 of IPC is an section of law that has to be looked to determine the liability and punishment of persons who have committed offences within India. The section clearly asserts that every person shall be liable for punishment under the Code for every act or omission committed within India of which he is found guilty. The code will apply to a foreigner also who has committed an offence within India. This section, therefore, recognises general principles of jurisdiction over persons with reference to the locality of the offence committed within India. Further it has been contended on behalf of the prosecution that use of the phrase 'every person' in the section as contrasted with the use of phrase 'any person' in section 3 of I.P.C. as well as section 4(2) of the I.P.C. is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code. According to the prosecution the plain meaning of the phrase 'every person' used in section 2 of I.P.C. is that it comprehends all person without limitation and irrespective of nationality, rank, status, caste, colour or creed. So, it is submitted on behalf of the prosecution that the argument advanced by Mr. Bleach and the Latvian accused persons that they being foreigners, they cannot be tried plainly for the offences under Chapter VI of IPE cannot be accepted.



Giving my anxious consideration with regard to the submissions made by the parties and looking into the provisions of the Code read with Chapter VI of IPC I find that the provisions of section of IPC covers every person who becomes liable for punishment under the Code if such an offences is committed within the jurisdiction of India territory. That being the position, the argument advanced by Mr. Bleach and the Latvian accused persons in this regard cannot at all be accepted, as I find that there is no substance in it.

Now, coming to the other arguments regarding charges under Arms Act, Explosive Act and Explosive Substances Act I find that the argument advanced in this connection cannot be regarded as a legal argument simpliciter, as it has to be decided alongwith the facts available on record with regard to grant of sanction and its legality or otherwise basing upon the evidence on record. So, for the present I leave it aside from my consideration and it will be dealt with in its proper time in course of this judgment.

Now, coming to the merit of this case I find it is the allegation of the prosecution that certain accused persons conspired to procure a huge quantity of arms and ammunition and to traffic those arms and ammunition illicitly and illegally into the Indian Territory. According to them, these arms and ammunition were purchased at a huge cost from Bulgaria and in Bulgaria two Government owned factories supplied those arms and ammunition as they were made to believe through documents that this is a genuine sale and those arms and ammunition were meant for Bangladesh Army. As per the prosecution the accused persons involved in this trial clearly manipulated and did not give hint to the Bulgarian Authorities that those arms and ammunition were actually meant for illicitly trafficking into the Indian Territory. The accused persons involved in this case went out ever for procuring a transport aircraft suitable for such air dropping and para dropping at a very low price from Latvia and some of them also planned to use this aircraft subsequently for other legal as well as illegal transport operation in various countries in South Asia. With this end in view Latvian aircraft crew members were hired to fly the aircraft for air dropping of arms and ammunition. However, due to certain errors the arms and ammunition could not be air dropped exactly at the predestined places and due to the increase in height and increase in speed the arms and ammunition airdropped from the aircraft over the sky of Purulia got scattered and the persons waiting on the ground to receive such consignment and to transport them to the place of their destination could not get hold of those arms and ammunition. On the following morning those were discovered by villagers and local Police and many arms and ammunition became useless as those were broken and became nonfunctional.

Now, to probe into the merit of this case we are now to start from the fact that undoubtedly a good number of arms and ammunition were found lying scattered on the ground at different villages in Purulia in the morning of 18th December, 1995 and those included arms and ammunition, parachutes, anti-tank grenades, rocket launchers and other related articles alongwith wooden packing boxes which were found scattered on the open fields at the villages viz. Khatanga, Belamu, Beradih, Maramu, Barudih etc. under Uhalda P.S. of Purliu district within West Bengal. It has now to be ascertained how and where from such huge quantity of arms and ammunition were brought in and who actually brought those in that place

and what was the specific purpose.

To prove the aforesaid fact prosecution has examined a good number of witnesses and those witnesses are mostly from Purulia district and besides those witnesses some other witnesses from Benaras and other places have also been examined by the prosecution.

Now, turning to the evidence of PW-1 Sri P.K.Mitra, Officer-in-Charge of Jhalda P.S. I find that this witness has stated in his evidence that on getting information from Subhas Tantubai he entered the fact in Jhalda P.S. G.D. entry No.515 dated 18.12.95 at 08-10 hours and after taking all informative actions he left for the places of occurrence. From his evidence it has come out that he first went to Ganudih (Khatanga) and then to Belamu, Maramu, Simnitar, Pagro Dam, Beradih and Barudih and in the meantime, other senior police officers also arrived at the spot. As per the evidence of Sri Mitra he took the arms and ammunition and other articles found scattered at the aforesaid villages in his custody with the cooperation of the villagers after preparing seizure lists and on 18.12.95 in between 11-05 to 11-45 hours he seized 40 pieces AK-47 rifles, one parachute, 8 sealed containers of 7.62 mm ammunition, 700 empty pieces of magazines, 7 rocket launchers, one booklet, 16 hand grenades, 280 rounds of 9 mm pistol ammunition, two 9 mm pistols from the open field of western field of Khatanga village. He has further stated that on the same date in between 13-00 and 13-50 hours he seized 15 AK-47 rifles, 3 sealed containers of 7.62 mm ammunition, 1220 rounds of 9 mm ammunition, 40 canvas pouches, 30 anti-tank grenades and 12 revolver holsters from the open field of Southern side of village Pagro. Again, on that day in between 16-05 to 16-50 hours he also seized 10 AK-47 rifles, 3 containers of 7.62 mm ammunition, 18 canvas pouches, 6 canvas pittu, 71 slings, 27 cleaning brushes from the open field of eastern side of village Belamu. On the same day in between 19-30 and 20-15 hours he again seized 19 AK-47 rifles, one parachute, 46 oil-pots, two olive green canvas carriers, telescopic sight, one sealed container, 13 wooden boxes (marked as "COMMANDANT CAD RAJENDRAPUR CANTT." and with "No.34/60 Contract No.214/719/Project DGDP") from the open field of the northern side of the village Barudih. The witness in course of his examination identified some of the above mentioned seized articles and PW-2 Suresh Chandra Kumar, PW-3 Narayan Chandra Hansda, PW-4 Dhirendra Nath Saren, PW-5 Pratham Hansda, PW-6 Arjun Majhi and PW-7 Parikshit Mahato in course of their evidence have proved seizure of the aforesaid articles. PW-15 Sambhu Ram Dana in course of his evidence has also stated that he seized 3 AK-47 rifles from Barbinda village on 21.12.95 and he also identified one seized rifle in course of his evidence. He has further stated that on the same date i.e. on 21.12.95 he seized another three AK-47 rifles at village Barbinda and he further seized 18 AK-47 rifles, five oil-pots, five pull-throughs, three rocket launcher grenades, 7.62 mm ammunition, two canvas pittu bags, 15 canvas pouches, 38 pieces of magazines, one parachute, 8 pieces of slings from the open field of southern side of village Beradih. This witness has further stated that on the same date in between 17-00 hours and 18-00 hours he also seized 20 AK-47 rifles, three 9 mm pistols, one telescopic sight, 20 pieces of empty magazines, four canvas pouches, 2 cleaning rods, 2 pull-throughs, 7.62 mm ammunition, one broken wooden box, blank form of sight FGO etc. from a bush on the eastern side of village Khatanga. This witness has further stated that on 24.12.95 in between 16 and 17 hours he also seized 3 AK-47 rifles, 3 anti-tank

grenades, 7 pistols, one rocket launcher, one DBM, 2 hand grenades, 8 pieces of slings, 3 canvas pouches, 700 rounds of 7.62 mm ammunition, 2 pieces of telescopic instrument, 8 pieces of small parts of arms from the bank of the Pagro dam. The witness in course of his evidence has also identified some of those seized articles and this witness has further stated that on 23.12.95 in between 11-00 to 12-00 hours he also seized 24 AK-47 rifles, 20 pieces of empty magazines, 2 pieces of leather holsters, 8 pull-throughs, 3 pieces of empty oil-pots, 2 canvas pouches, 4 slings, 20 hand grenades, 2 DVM Dibba, 18 leather belts, 1280 rounds of 9 mm ammunition, 7 rounds of 7.62 mm ammunition. This witness has further stated that on 25.12.95 at 13-05 hours he also seized 2 AK-47 rifles, 2 telescopes, 2 canvas bags, one oil-pot, one canvas pittu, 2 books of blank from sight PGO VIIB and one round of ammunition from the bush of southern side of Pagro village in presence of witnesses. This witness has further identified some of the seized articles in course of his evidence. PW-8 Nemai Kumar, PW-9 Sk. Ali Hossain, PW-10 Sunil Baran Mukherjee, PW-11 Mritunjay Singha, PW-12 Dasarath Saren and PW-18 Sudarshan Mahato in course of their evidence have also testified the seizure of the aforesaid arms and ammunition in their presence. In course of cross-examination of those seizure list witnesses, nothing specific could be suggested so as to disbelieve the seizure in respect of those articles seized by seizure lists Exts. 1,2,3,4,7,13,14,15,16 and 17. Witness Jiban Chakraborty (PW-16), OC, Jaipur PS in his evidence has stated that on receiving information about the incident on 18.12.95 at 18-10 hours he made entry in Jaipur PS GD vide no.434 dated 18.12.95 and took all informative actions. In course of his evidence this witness has stated that he also seized some arms and ammunition and other articles from different places by virtue of seizure lists Exts. 29 and 30 and this witness also identified some of those seized materials. This witness Jiban Chakraborty also handed over some arms and ammunition and other articles seized in this connection by virtue of Ext.28 to the IO Sunil Chatterjee (PW-126). He also identified some of those seized articles and witness PW-19 Kiriti Bhusan Layak, PW-17 Gunadhar Kumar have also authenticated the seizures. In course of cross-examination of the aforesaid witnesses nothing specific could be taken out so as to disbelieve the seizure of the aforesaid articles and as such, there is no doubt about the authenticity of the above seizures and all such seizure lists have been marked as exhibits without any specific objection from the side of the defence.

It is also the prosecution allegation that a flying aircraft came over the village during the night of 17/18.12.95 and dropped a huge quantity of arms and ammunition and by missing its real target it fell in different villages of Purulia around the target area.

To prove that aspect of the matter the prosecution has examined several witnesses who tried to confirm the time of coming of the aircraft over the villages Khatanga, Belamu, Beradih, Maramu and Barudih on the night of 17.12.95. PW-2 Suresh Chandra Kumar, PW-4 Dhirendra Nath Saren, PW-6 Arun Majhi, PW-20 Subhas Tantubai, PW-21 Ghasiram Hansda, PW-22 Ramdas Hansda, PW-23 Iswar Majhi and PW-24 Debghan Tantubai are those witnesses who have stated that they heard a great sound of moving aircraft and also heard big sound of falling some substance. Particularly PW-2 Suresh Chandra Kumar in his evidence has stated that he also heard a loud sound of moving of aircraft across their village

and he also heard sound of dropping of boxes. Similarly, PW-4 in course of his evidence has also stated that in the night on 17.12.95 he also heard sound of aircraft and dropping of something heavy. PW-6 Arun Majhi also in his evidence has stated that he heard loud sound of aircraft moving downwards at high speed. PW-20 Subhas Tantubai in his deposition has stated that he heard a great sound of moving of aircraft and then he heard a big sound like the sound of explosion of bombs or sound of use of fire arms. PW-21 Ghasiram Hansda in course of his evidence stated that on the night on 17.12.95 following a motor accident he was detained for guard duty at Khatanga and in between 10 to 11 p.m. he could see an aircraft to fly/move from the western side. PW-22 Ramdas Hansda who was also on guard duty alongwith Hasiram Hansda has stated in his evidence that he found on that night one helicopter was moving in the sky from west to east and he has also heard about a great sound of falling of something. P.W.23 Iswar Majhi in course of his evidence has also stated that on the night of 17.12.95 when he was in his house at Pagrotolla Ganudih he heard sound of moving of aircraft from west to east and on the next morning he went to the spot and could see that villagers breaking the boxes and taking away the rifles, arms and other ammunition. The witness P.W.24 Debghan Tantubai has also stated in his evidence that when he was in his house at Ganudih then on 17.12.95 at about 11 p.m. he heard some sound which he thought to be of moving aircraft and he also heard a sound like sound of explosion of bomb and in the next morning he rushed to the place of occurrence and found big boxes and one big parachute. Although during cross-examination of the above witness nothing specific could be suggested from the side of the accused persons, specially by Mr. Bleach and the Latvian accused persons, yet referring to the above witnesses it has been submitted on their behalf that the above witnesses examined on behalf of the prosecution did not say actually which aircraft dropped those articles, rather some of them has said that it was a helicopter and some said it was then hovering, but this type of plane, as it has been submitted on behalf of Mr. Bleach, cannot hover and as such, according to him, the evidence adduced by those witnesses does not come to any aid of the prosecution in establishing the fact that in fact some articles were dropped like arms and ammunition in the night of 17th December, 1995 which were subsequently recovered from various places falling within the jurisdiction of Jhalda and Jaipur P.S.

From the side of the defence it has further been contended that on scrutiny of the evidence of the above witnesses it is clear that none of the witnesses, as is expected from a person of normal human conduct, enquired about the fact as to what had fallen and what had actually happened.

Referring to the evidence of P.W.6 Arun Majhi and P.W.21 Ghasiram Hansda it was submitted on behalf of the defence that time of dropping as per the aforesaid witnesses was around 11/1.30 p.m. But as per the evidence of P.W.49 D.N. Ghosh who was then Director of Aerodrome SNP, Calcutta aerodrome and who was also in charge of the Air Traffic Control on the relevant date it had come out in course of evidence in cross-exam. that the aircraft YLLDB was over Calcutta at 11-45 in the night and this witness has further admitted that it crossed Dhanbad at 23.11 GMT. Referring to the above two times it has been submitted that it is, therefore, clear from little arithmetical calculation that the above aircraft reached Calcutta within 34 minutes and over all scrutiny of the evidence of P.W.49 makes it clear that the aircraft

came to Calcutta six minutes earlier. Referring to the evidence of PW.37 Tanmay Mondal it has also been contended on behalf of the defence, specially by Mr. Bleach, that at 10 p.m. this aircraft was at Varanashi. So, it was not possible for the aircraft to drop articles as alleged over the district of Purulia around the time as deposed by the other witnesses, specially by P.W.6 Arun Majhi and P.W.21 Chasiram Hansda. So, it has been submitted on their behalf that the prosecution allegation that the arms were dropped around 11/11.30 in the night of 17.12.95 cannot at all be accepted.

From the side of the prosecution referring to the witnesses as mentioned above examined from Purulia it has been contended that true it is that P.W.22 in course of his evidence in chief has stated that on that date in the night one helicopter was moving in the sky from west to east. But from the cross-examination of the aforesaid witness by accused Peter Bleach it has come out clearly that the witness could not see the moving article personally, as he has clearly stated that the aircraft was not visible during the darkness of the night, but simply saw flashing of the aircraft. So, his personal knowledge is limited only to the flashing light. so, from such evidence it cannot be said with certainty that what he saw was a helicopter and not an aircraft, as in course of his cross-examination he was referring to an aircraft and not a helicopter. It has also been contended on behalf of the prosecution that no exception should be taken with regard to the behaviour of the rustic villagers for not coming out of their houses even hearing loud sound of explosion or blasting of bombs caused by airdropping of heavy consignment. It has also come out from the evidence of P.W.79 Kartick Chandra Pramanick who also turned unfavourable to the prosecution and was cross-examined by the prosecution that they were afraid of Anandamarg people, as they also used to move with arms and ammunition. So, it is quite natural that no villager rushed to the police station in the cold winter night to lodge any complaint and even out of fear no person came out of his house in the dead of night to witness or enquire what had actually happened and such conduct appears to be quite normal and without positive proof nothing adverse should be inferred from that. On scrutiny of the evidence adduced by the aforesaid witnesses and balancing the argument advanced by the parties, I find much force in the argument advanced by the prosecution.

Now turning to the other aspect of the matter I find from the evidence of P.W. 42 Denonath Singh that he was posted at the relevant time at Varanashi as Controller of Aerodromes. From the evidence of aforesaid witness it has come out clearly that the aircraft left Varanashi at 16.30 UTC (i.e 10 p.m. IST). As per the procedure the pilot of the concerned aircraft filed a flight plan (Ext.73) which has been proved by P.W. 37 viz. Tanmay Mondal. As per the flight plan the speed which was mentioned by the pilot was 220 nautical miles per hour (408 kilometers per hour) and the speed of the aircraft at flight level 150 (15000 ft.). As per the procedure the detail of the flight plan filed in the ATC of one airport is immediately communicated to the next destined airport. So, definitely in this case the pilot filed the flight plan with the next destined airport as Calcutta and there was no mention of going to Yangoon in the flight plan and it has also come out in the evidence that the aforesaid aircraft had no permission for landing at Yangoon. Further it has been contended on behalf of the prosecution that as per the general practice the moment the flight plan is filed ATC, Calcutta was to compute the estimated arrival time of the aircraft purely on the

basis of the flight plan and there is no other system available other than the flight plan and the radio transmission from the aircraft to the ATC, Calcutta to Calcutta ETA at Calcutta Airport. As per the aforesaid flight plan the first airport of landing was Calcutta (VECC), first alternative airport at Dacca (VGZR) and the second alternative was Yangoon (VYYY). Ext.74 proved by P.W.37 Tanmay Mondal shows that a departure message sent by Varanashi ATC in respect of the aircraft AN 26 having registration No.YLLDB at 17-16 UTC to Calcutta, Dacca and Yangoon informing that the aircraft had departed from Varanashi at 16-30 UTC from Calcutta dated 17th December, 1995. In the said flight plan flight speed has been shown as 220 nautas. So as per the aforesaid flight plan and together with the evidence of P.W.37 it is clear that the aircraft AN 26 having registration No.YLLDB arrived at Varanashi from Karachi on 17th December, 1995 at 12.00 UTC and left Varanashi on the same date i.e. on 17th December, 1995 at 16-30 UTC for Calcutta with two alternative airports at Dacca and Yangoon. The general declaration forms Exts.115 and 116 proved by P.W.67 Timir Baran Ray disclose that in the said flight there was in all eight crew members viz. Kim Davy, Peter Bleach, Dayanand, A. Klichine, Antimenko, Timmerman, Moskvitine and Gaidach who were all cited as crew members. It has further been contended on behalf of the prosecution that to prove the alleged deviation from route no. R-460 Varanashi to Calcutta which was the scheduled route for the aforesaid aircraft on 17th December, 1995 one has to look into the flight plan Ext.73 wherein it has been mentioned that speed of 220 nautical at flight level 150 (i.e. 15000 ft.). The same read with Jeppeson Map Mat.Ext. CLII goes to indicate that at route R-460 the distance from Varanashi to Calcutta is 323 nautical miles (Varanashi to Gaya 121 + Gaya to Dhanbad 99 + Dhanbad to Calcutta 103 = 323 nautical miles). It is, therefore, clear that at the given speed i.e. 220 nautical miles the aircraft was expected to take 1 hour 28 minutes to reach over Calcutta as per simple mathematical calculation i.e.  $\frac{220}{323} \times 60 = 88$  minutes i.e. 1 hour 28 minutes and the

said time could have even been reduced due to favourable tail-wind. It has been submitted on behalf of the prosecution that deceptively keeping in mind that they had to take a deviation, the pilot of the concerned plane, calculated flight time to be of 1.55 minutes i.e. 27 minutes more than the required time and the same was communicated to the ATC, Calcutta. It may be pointed out that as per the information supplied from the aircraft ATC also took it granted that the flight time would be 1.55 minutes and the strips were prepared at ATC accordingly. It has also been submitted on behalf of the prosecution that it has come out in the evidence that at the relevant time there was no surveillance radar at Calcutta to know the exact point of time and therefore ATC staff had no other option but to believe that the pilot of the aforesaid aircraft said. This was also confirmed by P.W.49 D.N. Ghosh. Therefore, ATC staff had no other option but to believe what the pilot of the aforesaid aircraft said.

As per the materials available the aircraft took off from Varanashi at 16-30 UTC i.e. at 10 p.m. While taking off it informed Varanashi ATC to reach Gaya at estimated 17-20 UTC i.e. 10-50 p.m. But it reported that it reached Gaya at 17-15 UTC i.e. 10-45 p.m. i.e. (-5) minutes earlier than the estimated time as stated by the prosecution. It has come out from the prosecution evidence that at 17-17 UTC the aircraft came in contact with the Calcutta Airport and at 17-19 UTC this aircraft informed Calcutta Airport that its actual time was 17-10 UTC and estimating Dhanbad at 17-38 UTC. As per the materials available



the said aircraft was in constant touch with the Calcutta Airport in between 17-17 and 17-21 UTC. Subsequently, the aircraft was not in contact with the Calcutta Airport in between 17-22 to 17-38 UTC i.e. for 16 minutes.

1 Pointing out to the above evidence it has been submitted on behalf of the prosecution that during the period of 16 minutes when the aircraft lost contact with the Calcutta Airport the aforesaid aircraft dropped the arms and ammunition in Purulia after deviating from route R-460. P.W.49 D.N. Ghosh has given probable reasons for the loss of communication and besides other reasons the reason that 'if the aircraft goes below a particular height, then there may not be two way communication.' It has been suggested from the side of the prosecution that this should be actual reason in view of the available circumstances and other evidence adduced by the prosecution in connection with this case. So, they sought to suggest that it can be well inferred that this aircraft deviated from its route and in between 17-22 UTC to 17-38 UTC it flew over Purulia and dropped the arms and ammunition. In this connection they have made a reference to the evidence given by P.W.42 Denonath Singh, who was then posted at Varanashi Airport as Controller of Airport during the year 1995 when this witness in course of his cross-examination by accused Peter Bleach categorically stated that he had the personal knowledge with regard to the deviation from the route by the aforesaid aircraft on 17th December, 1995 and he has also explained that it was from the time of the aircraft reported over Gaya and then reported over Calcutta and this witness emphasised that he said so from his experience that the aircraft deviated from the original route.

From the side of the accused it was argued that as per the evidence available the aircraft came over Calcutta six minutes ahead its schedule time. So, in any event, it cannot be presumed that there has been any deviation as alleged by the prosecution.

But taking into consideration the respective arguments advanced by both the parties and taking into further consideration the flight plan and calculating the distance between Varanashi and Calcutta being 323 nautical miles it was ascertained that the aircraft should only take 1 hour 28 minutes to reach over Calcutta as per simple arithmetical calculation. But in the flight plan expected time of arrival at Calcutta has been mentioned by the pilot as 1 hour 55 minutes i.e. 27 minutes extra. So, taking the same into account and taking into consideration the evidence of P.W.49 that there was no two-way communication with the aircraft between 17-22 UTC and 17-38 UTC and it was only restored again at 17-38 UTC and the aircraft informed Calcutta Airport that its Gaya time was 17-10 UTC and estimated Dhanbad at 17-38 UTC and on the fact of such evidence the suggestion from the prosecution that the dropping was made in between 17-22 to 17-38 UTC i.e. between 10-50 p.m. and 11-08 p.m. cannot at all be ruled out and the same, as I find, has been supported by the evidence of local people at Purulia viz. P.Ws. 21, 23, 24 and others. As per the materials available it travelled towards Calcutta and flew over Calcutta at 18-11 UTC i.e. 11-41 p.m. In a situation like this the contention of the prosecution that deliberately the pilot while filing the flight plan at Varanashi gave the estimated time of arrival at Calcutta 27 minutes more than the actual



time to cover up their deals cannot at all be ruled out.

Another argument has been advanced by Mr. Bleach that as per the materials available the fuel capacity of the aircraft in question is 5500 kgs. as per flight manual and when it was known to them that the aircraft would deviate from its route and would come to a low altitude which should consume more fuel, then, why they had taken less fuel, as it had come into evidence that at the time of taking off from Varanashi the aircraft had a total of 4004 kgs. of fuel. It was, therefore, interpreted by Mr. Bleach that less fuel was taken at Varanashi to economise fuel consumption. But as per the aircraft manual Mt. Ext. CLXXXXIII the maximum all up weight for take off is only 24000 kts. As per the aforesaid aircraft manual the aircraft already had a total weight of 24599 kgs. and as such all up weight was already in excess by 599 kgs. and the same was against the instruction in the manual. It was submitted on behalf of the prosecution that this was the reason for which only less than the full tank fuel was taken, whereas in Calcutta full tank fuel was taken and it has also been pointed out that with 4004 kgs. of fuel the aircraft could easily reach Calcutta and also reach Yangon. So, according to the prosecution the fuel calculation was also done with precision by the accused pilot.

Now of course in course of trial no specific evidence was adduced by the prosecution nor it was taken up by the defence in course of cross-examination. Argument has been advanced by accused Peter Bleach that had there been any deviation, in that event, it could have consumed more fuel and even after its arrival at Calcutta the aircraft could not have such amount of fuel in its tank, but this cannot be a ground for accepting the contention of Mr. Bleach that the above fact will surely suggest that there has been no deviation. Similarly, from such materials nothing positive could also be inferred, as suggested by the prosecution that there has been deviation of the aircraft. In such a situation the argument that prosecution did not get an expert report on fuel consumption for which some adverse presumption u/s. 114(g) of the Evidence Act should be taken against them cannot also be accepted, because it may be noted that the fuel consumption data cannot explain the deviation in the given circumstances as many other factors like temperature, pressure in the atmosphere, speed, height etc. have also got some direct bearing in the matter of consumption of fuel. But from the discussion as above, it has clearly come out that the full tank capacity of the aircraft was 5500 liters as per the flight manual and it is also clear that the aircraft did not take the full tank fuel while leaving Varanashi. It has also come out in the evidence from the testimonies of witnesses D.B. Chakraborty (P.W.46) and Utpal Baran Mandal (P.W.47) that the aircraft AN-26 YLLDB of M/s. Carol Air Services and its pilot viz. Alexander Klichine (one of the accused persons of this case) landed at Calcutta Airport on 18.12.95 and after landing took 5030 liters of fuel against payment of 1390 US dollars. I have discussed earlier that the aforesaid aircraft did not take full tank fuel while leaving from Varanashi and it has been proved in this court that while taking off from Varanashi it had a total 4004 kgs. of fuel. The only plausible explanation for not taking full tank fuel at the time of leaving Varanashi would certainly be that taking into account that all up weight as per the flight manual (i.e. 24000 kgs.) had it taken the full tank fuel, the weight of the concerned aircraft with five crew members and huge load of arms and ammunition could have exceeded the all up weight which might have been very much detrimental to the flight. So, the aforesaid fact instead of supporting the defence lends a strong

support to the prosecution case.

From the evidence adduced in connection with this case it has come out that the aircraft AC-26 having call sign YLLDB landed at Varanashi Airport on two occasions - firstly on 23rd November, 1995 and secondly on 17th December, 1995 and the same has been proved by Om Prakash (P.W.43) and Tanmay Mondal (P.W.37) who was the Aerodrome Officer at Varanashi Airport during the relevant period. From the evidence of Sri Mondal it has been proved that the flight plan (Ext.59) and the message (Ext.59/1) was received by Varanashi Airport through the teleprinter that the aircraft YLLDB departed at Karachi at 10-42 UTC on 23rd November, 1995. From the Ext.67 flight plan of aircraft YLLDB it is evidence that the said aircraft YLLDB submitted flight plan for Karachi on 27.11.95 and the aircraft took off for Karachi from Varanashi on 27.11.95 after staying there for five days.

Looking into the evidence of Dilkash Rizvi (P.W.34) Ashok Kumar Puri (P.W.35) and Pradeep Singh Khanna (P.W.36) who were the officers of Hotel India it has also been established through Exts. 52 to 54 and Mat. Exts z to z/3 that Kim Davy, Moskvitine, Alexander Lookins, Gaidach, Klichine, A. Antimenko, Vladimar Evanov and Timmerman were staying in Hotel India in room No. 204, 206, 209, 210 and 212 from 23rd November, 1995 till 27th November, 1995 and at the relevant time Peter Bleach was not with them. Further, from the evidence of Tanmay Mondal (P.W.37) it has also come out that the aircraft having call sign as TLLDB submitted their flight plan for going to Dacca, but since they had not permission for landing at Dacca they had to go back to Karachi from Varanashi after staying there for almost five days. From the passports of the crew members it could also be seen that there was no visa given by the Indian authorities to stay in India for five days and during their stay they tried to obtain landing permission at Dacca which was not granted. From the aforesaid act, as has been described by the prosecution, it can be logically inferred that by staying in Varanashi for five days the aforesaid accused persons tried to gather experience about the airport which might be proved handy on their second visit on 17th December, 1995.

from the evidence of Tanmay Mondal (P.W.37), coupled with the documents (Exts.69 and 70), it was established that the teleprinter message was received at Varanashi ATC regarding the non-schedule aircraft having call sign YLLDB, AN-26 for allowing permission for landing of the aircraft on 17th December, 1995. Ext.71 was the message from Karachi dated 17th November, 1995 regarding the departure of the aforesaid aircraft from Karachi to Varanashi and the same has been also proved by Tanmay Mondal (P.W.37). This flight plan shows that the first airport landing was Calcutta (VECC), the first alternative airport was Dacca (VGZR) and the second alternative was Yangoon (VYYY). Ext.74 the teleprinter message which was proved by Tanmay Mondal also shows that a departure message sent by Varanashi ATC in respect of the aforesaid aircraft at 17-16 UTC to Calcutta Dacca and Yangoon informing that the aircraft had departed from Varanasi at 16-30 UTC and in the said flight plan the flying speed has been shown as 220 nauts. From the general declarations (Exts.115 and 116), it has also come out that in the said flight eight crew members viz. Kim Davy, Peter Bleach, Dayananda, A. Klichine,

Antimenko, Timmerman, Moskvitin, Gaidach were cited as crew members.

From the aforesaid materials and in view of my discussions, as made in the foregoing paragraphs, it has been established clearly that the aircraft YLLDB AN-26 came in Varanasi on 23rd of November, 1995 and also on 17th December, 1995 and it has also been established that the aforesaid aircraft left Varanasi on 17th December, 1995 for Calcutta with two alternative airports i.e. Dacca and Yangoon by following the route R-460. From the evidence of PW-49 D.N.Ghosh who was Deputy Director of Aerodrome, Calcutta Airport during December, 1995 it has also come out in the evidence that they had no other information to show that except that particular aircraft i.e. YLLDB AN-26 of M/s. Carol Air Services no other non-scheduled flight over flew Gaya at 17-15 UTC and the movement of the aircraft YLLDB on the night of 17th/18th can only be had from the recorded tape strips which shows that there was no contact between the Calcutta Airport and the aforesaid aircraft between 17-22 UTC (22-52 IST) and 17-38 UTC (23-08 IST). According to the prosecution this period of silence was a very much crucial period and during that period, as they assert, there has been deviation from route no. R-460 by this aircraft and the aircraft has done this mischief by way of dropping arms over the district of Purulia and again it took the route R-460 and ultimately tried to over fly Calcutta but since they had no landing permission at Yangoon, they were forced to land in Calcutta. It is also suggested by the prosecution that there is overwhelming evidence on record that arms and ammunition were dropped in Purulia from the aircraft AN-26 registration no.YLLDB and at the time of dropping it has been proved that accused Kim Davy, Peter Bleach, Antimenko, Alexander Klichine, Igor Moskvitin, Oleg Gaidach, Dayanand and Igor Timmerman were in the board of the aircraft AN-26 YLLDB.

On over all scrutiny of the aforesaid evidence as discussed above, both oral and documentary, I find that the materials available therein clearly suggest that there has been deviation from the route no.R-460 by the aforesaid aircraft AN-26 YLLDB on 17.12.1995 and on board of such aircraft there were Kim Davy, Peter Bleach, Dayanand, Alexander Klichine, Igor Moskvitin, Oleg Gaidach, E. Antimenko and Igor Timmerman and the materials available as discussed above also established the fact that arms and ammunition were dropped from the aforesaid aircraft on that fateful night. It has also been established from the materials on record that after the dropping of the arms and ammunition in Purulia the aforesaid persons on board of the aforesaid aircraft wanted to go to Yangoon, rather than going to Dacca the first alternative airport as per the declaration of the flight plan and as the Yangoon air field did not permit the aircraft, they were bound to land at Calcutta on 18.12.95 and as per fresh flight plan Ext. 86 which was submitted in Calcutta Airport that destination aerodrome was VDSP (Phuket), alternative aerodrome (VTSB, Surathani, Thailand) and second alternative aerodrome was VTBU (Utaphao, Thailand).

From the side of the defence several objections have been taken that no FIR was lodged in the night and there was no eye witness who had seen the air dropping and there is no evidence to prove falling of things from an aircraft and nobody went out to see anything in the night. Apart from the above, it has also been contended on behalf of the defence that the FIR of this case could not have been recorded at 08-10 hours and it must have been recorded earlier. But, as per the evidence of PW-1 Pranab Kumar Mitra and PW-16 Jiban Chakraborty it has come out that they got information and made G.D. entries in

their respective Police Stations of Jhalda and Jaipur at 08-10 hours and proceeded to the spot to verify the extraordinary informations and then recovered the arms. But, pointing out to the evidence of L/N Hazra, PW-64 it has been contended on behalf of the defence that this witness went to Jaipur PS and he did not see the OC at the so-called 6-30 a.m. It is quite possible that the OC might have left his quarter during the relevant time after hearing about this extraordinary incident and it is quite natural conduct of human being and that too for a police officer to immediately rush to the place to check up and see things on his own and then to come back to the police station to keep it on records and take formal action because at that moment his prime concern would be to trace out the truth in the incident. So, for such type of discrepancy in connection with such a sensitive incident I think that there is nothing so serious which should be taken into consideration. Moreover, it has come out in the evidence that the place where the arms and ammunition were found, were mostly within Jhalda PS and the case was also registered at Jhalda PS after duly informing the superior officers. OC Jaipur and OC Jhalda, as it has come out in evidence, both of them work under the same C.I., Baglata and by the time FIR was registered a number of police officers even from the principal headquarter at Calcutta had arrived there and it might be that they decided to register the case at Jhalda Police Station. So, for such type of discrepancy I find no inference should be taken with regard to the falsity of the prosecution case.

So, from the above discussions it has been established clearly that on 17th and 18th night there had been air dropping of arms through the aircraft AN-26 YLLDB over Purulia which was subsequently seized by PW-1 and PW-16 and others by virtue of a number of seizure lists.

Now a question arises as to whether the arms recovered in Purulia and the arms already recovered from the aircraft are the same and identical in nature or not.

In this connection much comments have been made from the side of the defence that no forensic evidence could be linked up to show that the items of arms and ammunition allegedly recovered in Purulia and the arms and ammunition allegedly recovered from the aircraft were of the same and identical nature. It has also been contended on behalf of the defence that the places allegedly found inside the aircraft and the terms as 'hidden place' by the prosecution is not such hidden place, but those are the places for keeping the articles including the personal articles of the crew members while flying. Furthermore, no step has taken by the prosecution to show that those arms have been illegally retained in the aircraft, as it is permissible for the aircraft crew members to keep certain arms for their personal safety and the other items such as night vision telescope, night vision binoculars etc. are not the items as binoculars in assisting the pilot at the time of flying but those are used with sniper rifle for using it in night time and in any event those cannot be regarded as an item for waging war but those are generally used by the poachers.

From the flight plan (Ext.102) and general declarations (Exts.103 and 104) submitted by the operator of the aircraft YLLDB at Madras it appears that there was no passenger or any cargo. There

was altogether seven crew members as per general declarations proved by P.W.54 Mr. S.S. Sathe and they were Klichine, Gaidach, Moskvitin, Timmerman, Antimenko, Kim Peter Davy and Peter Bleach. From Ext. 102 flight plan and through the evidence of P.W.76 J.S. Wazar it has been established that the aircraft in question was not following the authorities route and the aircraft YLLDB left for Karachi from Chennai on 21.12.95 at 17-00 hours as per Ext.102. It has also come out in the evidence that the aircraft YLLDB AN-26 was asked by the ATC to land on 22.12.95 at Sahar International Airport and it landed at 1-39 IST on the direction of the MLU, Bombay. P.W.74 Shri P.M. Yadav in his evidence has stated that he gave direction to the aforesaid aircraft for landing at Bombay for two reasons - firstly for the reason that the aircraft was not following the authorised route i.e. from Phuket to Calcutta, Calcutta to Varanashi and Varanashi to Karachi as per authority No. 338 and the second reason was that this aircraft had flown from Varanashi to Calcutta without air defence clearance. He has proved a document marked Ext.128 which was given by him to Sarak Kumar Rastogi (P.W.75) to Bombay Airport directing the aircraft YLLDB for landing at Bombay Airport. From the evidence of P.W.119 D. Thakur, who arrived at Bombay on 22.12.95 at 23-00 hours, it is seen that he could learn that the suspected persons involved in this case had been detained and he interrogated them on 23.12.95. After interrogation he seized six passports from the accused persons at the time of formal arrest. Shri Thakur examined accused Peter Bleach while he was in police custody and recorded his statement on 23.12.95. Accused Peter Bleach in his statement before the I.O. while he was in custody of the police, stated that if he was taken to the aircraft, he would be able to produce some arms and ammunition which have been kept concealed inside the aircraft.

Much comments have been made by accused Peter Bleach by taking me through the corss-examination of Shri D. Thakur alleging that the remand petition kept with the record shows that accused persons were produced before the Bombay Court on 24.12.95 and on 23.12.95 as per the evidence of Shri Thakur he simply interrogated and seized certain materials by virtue of Exts.291 and 292 from the office of S.B.II, CID, Sahar International Airport Branch, Bombay. So, the alleged seizure by virtue of Ext.32 pursuant to the statement as per the provisions of section 27 of the Evidence Act is not available to the prosecution and seizure of the personal effects of the accused persons by virtue of Ext.295 goes to suggest that the actual arrest of the accused persons were made on 24.12.95 which is reflected in Ext.295. So, the seizure of article pursuant to the statement of Peter Bleach by virtue of Ext.32 cannot at all be accepted.

In reply to that it has been submitted on behalf of the prosecution that true it is that one of the essential ingredients of Section 27 of the Evidence Act should be interpreted in wide terms and should not be restricted only to a custody after formal arrest. It has also been contended by them that custody does not mean physical custody. It may be that when a persons who is not in custody of a police officer and offers to give an explanation leading to discovery of fact having a bearing on the charge it may be made against him he may properly be deemed to be in custody of the police officer within the meaning of Section 27 of the Evidence Act, and such term 'custody' also includes such state of affairs in which the accused can be said to have come into the hands of the police officer or can be said to have under some sort of surveillance of restriction. In this connection they have placed their reliance on a decision reported

in AIR 1960 Supreme Court at page 1125.

Now from the materials available it appears that Mr. Thakur arrived at Bombay and he interrogated the accused persons on 23.12.95 in between 11.45 to 15.00 hours. The seizure as per seizure list Ext.32 was made on 23.12.95 between 16.30 and 19.30 hours which includes some paper packets containing pistol with one extra magazine, bullets of rifles, empty magazine, small cleaning rods, rifle slings, rifle barrels, wrapped with torn clothes, night vision telescope etc. and these were recovered when brought out from the hidden places from underneath the floor of the aircraft by accused James Peter Bleach. On scrutiny of the materials available on record, it is also found that from the time of the landing of the aircraft at 01.39 hours on 22.12.95 till the time of his arrest Mr. Bleach was definitely detained for investigation and he was surely under some sort of surveillance and as per the materials on record on 23.12.95 accused persons including Mr. Bleach should be deemed to be in the custody of Mr. Thakur which has also been supported from the evidence in cross-examination of P.W.119 Shri Thakur when he has stated that he has interrogated and recorded the statement of Mr. Bleach alone, whereas due to language problem he could not do the same for the Latvians. In view of the above position when this seizure list Ext.32 has been proved duly and no suggestion was given at the initial stage that it was falsely made, there is no point in rejecting the same so as to hold that the aircraft in question has not been seized properly or that no arms and ammunition were seized pursuant to the statement made by accused Peter Bleach from the aircraft in question.

Accused Peter Bleach has argued that D. Thakur (P.W.119) deposed falsely and besides claiming that Ext.32 is a false document he has also urged that the Panchanama Ext.98 and 99 prepared by the Customs Department are also fabricated. In this connection it has also been submitted by him that the aircraft was not seized nor the crew members were arrested on 23rd December, 1995 by Mr. Thakur as the key of the aircraft was till available with Timmerman and on 24th when the Customs officers went inside the aircraft and the aircraft was opened by Mr. Timmerman.

From the materials available on record it is found that there are in fact two cases - one by the West Bengal Police relating to Purulia Armsdrop case and the other by the Customs Department for violation of Customs Act for bringing certain items prohibited by law. Materials available on record also disclose that on 23rd December, 1995 Mr. Thakur has shown these accused persons as arrested formally and after the arrest he has recovered the arms and ammunition following due procedure of law and Ext.32, the seizure list for the purpose has been duly prepared with the signature of as many as four witnesses who are independent witnesses. At the initial stage of the marking of the document as exhibit, no objection was raised on behalf of the defence. The customs authority started one case under the Customs Act for bringing arms and ammunition and other articles illegally and smuggled into Indian Territory and the same is well within their rights and in this connection the aircraft was for the second time shown as seized and putting up of signature of Mr. Thakur in the said Panchanama of the Customs is nothing unusual and on examining meticulously the aforesaid two documents (Ext.98 and 99), I find that inside the documents there is reference of Mr. Thakur and the presence of other officers of CID, West Bengal in those two documents. So, the objection taken on behalf of accused Mr. Bleach and the Latvian accused persons



over putting up of signatures by Mr. Thakur in Ext.98 and 99 cannot be said to be at all doubtful.

Regarding presence of CBI prior to the authorisation of this case to them, it is a known fact that the CBI is the premier investigation agency of the country, it may be that on the direction of the Government of India senior officers of CBI from Bombay and Delhi were assisting West Bengal Police during the initial stage of investigation and in connection with the present case CBI took over the investigation after a due notification by the Government of India. So, the apprehension by Mr. Bleach and the other Latvian accused persons that the CBI was interfering with the case from the beginning of this case with ulterior motive remains unfounded and such proposition cannot all be accepted.

With regard to Ext.98 and 88, both the seizure lists prepared by the Customs, I find that those were duly proved by the witness Jeff Redricks (P.W.52) and in course of cross-examination nothing specific could be taken out so as to disbelieve these two documents and moreover no suggestion was given to this witness that these documents were forged documents and as such I find no force in the argument made by the accused persons.

Mr. Bleach has also contended that Mr. Thakur has lied about detection of the plane over Purulia on 17th / 18th of December, 1995, through the radar at Calcutta is not also correct. It is on record that Mr. Thakur is one of the investigating officers and he is not the natural witness and he has deposed before this court on the basis of the materials noted in the case diary and in course of cross-examination by Mr. Bleach he has stated that it was reported to him by the persons that from radar reading they have ascertained that the said aircraft passed over Purulia. So, at best this evidence is a hear-say evidence and even if it is stated by this witness, this cannot be regarded as a false evidence. As I.O. of the case, if asked, he can say something about his impression and no Court of law gives any importance on such hear-say evidence. Moreover, the concerned officer of the ATC, as it appears, has clearly stated in this case that no surveillance radar was working on that date to detect the plane over Purulia. So, acceptance of the above evidence of P.W.119 in this regard does not at all arise. But since one part of the evidence of P.W.119 is not acceptable to the Court that does not mean automatically that his entire evidence has to be thrown out because as per pronouncement of the Supreme Court there is general tendency of the witnesses in our country to exaggerate but it is the duty of the Court to take out the grain from the chaffs. So, Court has to assess the evidence of witnesses in the above line unless it has been established otherwise by the defence.

From the evidence of P.W.119 it has come out that while Mr. Bleach was in police custody his statement was recorded by him and accused Peter Bleach stated before him that if he is taken to the aircraft he would be able to produce some arms and ammunition which have been kept concealed inside the aircraft. Such evidence has also been corroborated by Sajid Iqbal Usmani (P.W.25) and by virtue of Ext.32 recovery was effected wherein accused Peter Bleach found out certain arms and ammunition which were kept concealed in the aircraft. Those articles were marked as Mat. exhibits in this case and those include two Dragonov sniper rifles, three pistols, ammunition, telescopic instrument, night vision equipment etc. and the witness Sajid Iqbal Usmani has also identified those articles in course of his



evidence. The arms and ammunition recovered from the aircraft tallies with the packing list Ect.133 and invoices of KAS, Bulgaria Ext.173 and those documents bear the details of arms and ammunition which were loaded in the aircraft.

From the evidence of Pranab Sarkar (P.W.58) it is also seen that on 21st December, 1995 at night the aircraft YLLDB was asked to land at Bombay when the aircraft wanted to over fly the Bombay Airport and from the tape transcripts of ATC pool No.39 which has been proved by witness Jayanta Sarkar (P.W.33) it has also been proved that the aircraft again and again wanted to go to Karachi over flying Bombay. Materials available on record also shows that after landing of the airport at Bombay Airport on 22.12.95 at 01-29 hours Kim Davy the prime accused of this case could manage to escape from the airport leaving crew members viz. Alexander Klichine, Moskvitine, Gaidach, Timmerman, Antimenko along with Peter Bleach. It is really an unfortunate situation and I am really at a loss to observe as to how Kim Davy could make his way from such place after the landing of the aircraft at Bombay Airport. This shows the extent of extreme callousness on the part of certain agencies of the Government who were responsible for security arrangement and this Court only expects and hopes that in future proper care and attention should be taken so that there may not be any recurrence of such type of incident in future and even today no trace of Kim Davy could be made in connection with the trial.

As per the evidence available other items like broker pieces, chit paper pieces, collected from inside the aircraft were sent to Forensic Experts for examination and I find that similar type of items were also seized from purulia.

GPS instrument, lap-top computer of Kim Davy were also recovered from the aircraft. Cameras of the accused persons with exposed films were also recovered from the aircraft. A brief case of Kim Davy was also seized from which apart from other materials photo slides were seized. The Panchanamas prepared by the Customs Authority by virtue of Exts.98 and 99 also show that important items like GPS, lap-top computer, night vision equipments were seized which were later handed over to CBI by the Customs.

From the materials available, specially from the evidence of P.W.98 Mr. M.S. Rao, it has come that Dr. Rao (P.W.98) Director of Central Forensic Science Laboratory, Calcutta, along with

team of experts visited Purulia and conducted the preliminary examination of the seized arms and ammunition. This witness Dr. Rao conducted test firing of the arms and ammunition and gave his findings in the form of a report marked Ext.267. As per this witness those AK-47 rifles examined by him are of Bulgarian origin and the pistols were used by Warsaw pact Countries. One Mr. Rup Singh (P.W.28) Principal Scientific Officer, collected samples from the wooden pieces and pieces of paper from inside the aircraft which were seized by Mr. Thakur (P.W.119) by virtue of seizure list Ext.293. Those samples were accepted and marked before this Court and those samples seized from the aircraft were marked as A

series for the purpose of comparison by the experts.

The abovementioned samples seized from the aircraft were sent to the expert C.K. Jain (P.W.11&) along with the wooden pieces and paper pieces recovered from the place of dropping i.e. Purulia and those were marked as B series for comparison and those seizure have been proved through the seizure lists Exts. 23, 24, 25, 26 and 27 and at the time marking no objection was raised from the side of the defence. From the evidence of C.K. Jain (P.W.117) it has come out that the paint samples marked as Ext. B/1, B/3, B/4, B/5, B/6, B/8, B/10, B14, B15 and B16 are similar to the paint samples of wooden chip marked as Ext.A4 and this witness has further proved that the pieces of paper marked as Exts. B3 and B4 are also similar to the piece of paper marked as Ext.A1 in respect of colour, thickness and other general physical characteristics.

9mm pistol bearing No. BE342622 (Mat.Ext.CXXI) was one of the three 9mm pistols recovered from the aircraft (YLLDB AN-26) at Mumbai Airport and 9mm pistols bearing Nos. BE34223 BA341811 and BE341762 were recovered from the place of dropping in Purulia and those were proved by Jiban Chakraborty (P.W.16), Pranab Kumar Mitra (P.W.1) and other witnesses. Out of those seized 9mm pistols the abovementioned four number of 9 mm pistols were sent to CFSL for comparison.

As per the evidence of Mr. C.K. Jain (P.W.117) Senior Scientific Officer on physical examination of the pistols marked as W2, W3, W4 and W5 revealed that they are similar in their shape, size and design and the numbers on those parcels are all similar in their shape, size and general physical characteristics.

So, referring to the aforesaid evidence prosecution wanted to establish that the arms and ammunition which were dropped in Purulia and subsequently recovered from the place of dropping were dropped from the aircraft AN-26 having registration No. YLLDB and which was asked to land at Bombay Airport.

Serious objection has been taken from the side of the defence alleging that prosecution did not take any steps to show that those arms were illegally retained in the aircraft. It has also been contended from their side that where is that forensic evidence to show that the arms and ammunition allegedly recovered from Purulia were one and same which were allegedly recovered from the aircraft. According to them no forensic evidence has been produced before this Court which would have been the best possible evidence to show that the arms allegedly recovered from Purulia and subsequently recovered from the aircraft were same.

In reply to that it has been contended on behalf of the prosecution that in English and as per the plain dictionary meaning word 'similar' may not be the same, but in all forensic examination report 'similar' is used to qualify that it is the same and apart from that these pistols recovered from the aircraft carry similar numbers (BE34225, BE 342622, BE 342816) engraved on the body of the pistols and on those

recovered from the ground (BE 34087, BE 341762, BE 341024) the similarity in the numbers, therefore, clearly shows that they are from the same batch or same source. Moreover, it has been submitted on behalf of them that Macarov pistols are not commonly used in India and those are made in Bulgaria and those, found in the aircraft and on the ground at Purulia, have been termed as 'similar' as per experts' report. So, according to the prosecution the report is sufficient enough to link articles recovered from the aircraft with the things recovered from the ground at Purulia. True it is that report submitted by the experts viz. P.W.117 and P.W.98 in categorical term have not said on comparison that the things and articles examined by them are same, but they have used the term 'similar'. It is our common experience that in such types of experts' report the word 'similar' is used instead of same to qualify the articles and its nature and description and in this case also such has been the evidence of the experts and I find also no plausible reason to discuss their evidence and to throw it out completely for using the word 'similar' instead of same and no over all scrutiny of the evidence I am satisfied to accept the contention of the prosecution that arms recovered from AN-26 YLLDB at Bombay are of similar types with these recovered from the ground in Purulia having identify in all respect. Accordingly, in drawing conclusion in this regard, I hold that arms found in aircraft and in the ground at Purulia are identical.

Prosecution has tried to establish from the GPS which was seized from the aircraft AN-26 registration No. YLLDB that the co-ordinates of 'Target' at serial No.42 of the report ext. 305 is 23.28.45 N and 86.01.56 E and group captain T.R.Rao R.W.131 in his evidence has categorically stated that under his supervision data from GPS were retrieved and he himself has proves the GPS and the report. From his evidence it has come out that the GPS has the details of 31 00 VORs and 6000 NDBs and 12100 public use and military air force in its permanent memory and it has also been stated that the user could feed the details of 100 selected way points as per his requirement and it has come out in his evidence that in this particular GPS Mat.Ext. CXXII the user had fed in the data of 49 way points and those were numbered werially and given a name each.

GPS is basically a receiver of three satellites, the meeting place of three satellite's direction and this explains the feeding of accurate height which an aircraft wanted to fly at the intended height over the places. As per the prosecution evidence the way point 42 in the Ext.305 has been created on 15.12.95 at 05-50-18 UTC. This indicates that the user wanted the GPS to indicate this place when the aircraft is 1500 ft above the corresponding place and the geographical mention of the place whose co-ordinates are 23-28 minutes and 45 seconds (N) and 86-01 minutes 56 seconds East which was fed in the GPS has also been claimed to be Bansgarh in Purulia district in the evidence of Shri Somnath Mitra (P.W.66) through his report Ext.303. From the evidence of P.W.131 Mr. T.R. Rao it has also come out that the way point No.42 - 'Target' was worthy due to (1) it is not reporting point and does not come in the airtraffic route, (2) the height planned was very low and (3) the same is ideally suitable for airdropping. According to the evidence adduced by him a civil aircraft is not permitted to descent to such a low level. The height planned was very low and civil aircraft are not permitted to descent to such low level and he has further stated that it may be indicative that the user wanted that GPS to indicate this place at a height of 1500 ft.

and as reference point for other purpose other than routine flying in the airtraffic route. Referring to the cross-examination of this witness it has been contended by the defence that in course of corss-examination referring to para and subpara (A) and sub-para (ii) it was suggested by Mr. Peter Bleach that those report cannot be true because this GPS cannot tell the height from the ground level and this witness has answered that because this analysis report was made by a team of technical specialists officer and on the basis of their recommendation such report was given by him and as such he is not in a position to give reply on that score. Again referring to the answer given by this witness when he was asked that how these appendixes were prepared - it was answered by this witness that these appendixes were prepared by a group of experts working in different departments and thereafter it was compiled and it was sent as per the queries and again this witness has candidly admitted that he did not personally check those routes as given by the group of experts as per their analysis. Referring to the above evidence of this witness it was suggested from the side of the defence that it is quite unsafe to have reliance on such report with 'Taget', as mentioned in way point No.42, was fixed in the GPS for the purpose that it was ideally suitable for airdropping. True it is that on over all scrutiny of the evidence of this witness it is rather risky to accept that the 'Taget' as per the GPS was ideally suitable for airdropping, but as per the available materials through the coordinates and by the evidence of other witnesses like Somnath Mitra (P.W.66) and Gulab Chowehury (P.W.129) geographical location of the place has been well proved to be Bansgarh in Purulia district.

It has come out in the evidence of Shri B.K. Bagchi (P.W.139) that he went to Bansgarh along with a photographer named Naren Bangerjee and through the help of the photographer he took photographs of the alleged three storied VSS building of Anandamargis situated at Bansgarh from different angles in order to compare those with five photo slides (Mat. Ext.CCXIX) recovered from the Kim Davy's suitcase found from the aircraft YLLDB, AN.26. The photographs Exts. 265 to 265/22 were compared with the slides through a projector and four view points of the photographs marked Ext.265 exactly tallied with the slides marked as Mat. Ext. CCXIX/1. The photograph marked as Ext.265/18 exactly tallied with the slide marked as Mat. Ext. CCXIX/2, the photograph marked Ext.265/15 exactly tallied with the slide marked as Mat. Ext. CCXIX/3 and the photograph marked as Ext.265/20 exactly tallied with the slide marked as Mat. Ext.CCXIX/4 when those were displayed in open court through a projector and this has been amply corroborated and proved from the evidence of Naren Bangerjee through Ext.263, 264 ;and 265. It has also come out in the evidence that after locating the three storied white building at Bansgarh on 02.01.96 P.S. Mukhopadhyay, the Chief I.O. along with P.W.97 and other conducted search in the said building immediately after its identification. P.S. Mukhopadhyay P.W.140 has proved the seizure of a trunk Mat. Ext. CLXXXVII containing wearing apparels of safron colour, attendance register, some gun powder like substance (marked as Ext. CCLXV) wrapped in newspaper and polythene paper and one piece of paper in the name of one Mr. P.R. Sarkar published by Anandamarg Universal Relief Team, one polythene bag containing one hard plastic hollow pipe, one plug with PVC cover, one sickle and slippers etc. Needless to say that P.W. 97 in course of his evidence has also corroborated the search and seizure of the above articles. P.W.1000 V. Suresh explosive expert has proved that on chemical analysis in their laboratory he could identify or detect Potassium Nitrate Sulpher, Alluminium power and iron powder and those are

ingredients of explosive substances and come under the purview of the Explosive Substances Act. As per his report Ext.269.

Details about Bansgarh have been well proved through the evidence of P.S. 139 B.K. Bagchi and supported by P.W.93 Swadesh Ranjan Das through Exts.261 and 262. From those exhibits it has come out that the area of Mouza Bansgarh is 452.68 Acres, (2) there are only five buildings in Mouza Bansgarh, (3) the owner of the three storied building at Mouza Bansgarh which is used for VSS training centre of Anandamargies was different persons of Anandamarg Pracharak Sanga at different times, and (4) as per record Sarbatmunda Abadhoot the Secretary of Anandamarg Pracharak Sanga at the relevant time was handling the landed property of the said institution.

Referring to the aforesaid materials it has been contended from the side of the prosecution that the aforesaid place wherein only five buildings are there which are controlled and owned by Ananda Marg Pracharak Sangha is a remotely located place and located at a remote and lonely area. The said fact taken together with reference to the GPS Mat. Ext.CXXII and its report EXt.305 and the photographs Ext.265, 265/18, 265/15 and 265/20 taken together with the slides (Mat. Exts. CCXIX/1 CCXIX/2, CCXIX/3 and CCXIX/4) it should be taken to have been well established that the arms and ammunition were brought to be delivered through airdropping to some persons of Anandamarg Pracharak Sangha at a targeted place at Bansgarh.

To link up the present matter and to establish the fact that the recipients of the arms were the Anandamargis prosecution has examined good number of witnesses such as P.W.78 Paritosh Saha Babu, P.W.79 Kartick Pramanick, P.W.80 Dhiren Chandra Garai, P.W.84 Biswanath Mahato, P.W.85 Barun Chandra Kumar, P.W.96 Kiriti Kumar, besides examining official witnesses such as P.W.63 Nani Gopal Chakraborty and P.W.93 Swadesh Ranjan Das who were posted as DLLRO and BLLRO respectively. Prosecution also tried to establish that accused persons like Kim Davy, Acharya Surajnanada Abadhoot, Acharya Jagodishwarananda Abadhoot, Acharya Tadbhavananda Abadhoot, Acharya Saileshwarananda Abadhoot and B. Rameshan were involved in the present deal and those persons have been chargesheeted and they are absconding. But no sufficient evidence could be adduced from the side of the prosecution to link up the Anandamarg organisation as a whole with regard to the present matter and on such evidence so adduced before this Court it will be too much to hold that all the members of Anandamarg were involved in the commission of the offence. May be that persons linked up with the present process may have nexus with Anandamarg organisation, but that does not mean as a whole to implicate the institution itself and in the present case, as per the materials available I hold that it has been established from the materials on record that the places where the arms were targeted to be dropped were of Anandamargies and precisely three storied white building was the target point and at that target point the arms were tried to be dropped from a flying aircraft and the aircraft has been pin pointed as per the evidence and materials on record to be YLLDB, AN.26.

Precisely the entire arms dropping matter can be divided into three parts and they are as follows :-  
(1) purchase of the arms and ammunition, (2) those arms and ammunition were required to be airdropped

and (3) aircraft was required to be purchased.

From the evidence and materials collected so far it has come out that Mr. Bleach, one of the prime accused persons of this case, was proprietor of Aeroserve, UK and the said company was dealing with the arms and ammunition and it has also come out that the aforesaid organisation Aeroserve had previous dealing with Bangladesh.

To prove these aspects of the matter prosecution had taken steps and moved the Ld. CMM, Calcutta for issuing letter of requests to the competent authorities in several nations across the world so as to facilitate investigation in these countries. On being moved by the CBI the Ld. CMM, Calcutta. The execution report from UK Latvia, Bulgaria, Thailand etc. transpiring the evidence were produced the exhibited before this Court during trial. A good number of documents and materials have been marked as Exts. 132 to 252 from UK, Ext. 255 from Latvia, Ext. 259 from Bulgaria, and Exts. 256 and 257 from Thailand. Besides the above exhibits some other Mat. Exhibits have also been marked in connection with this case.

From the side of the defence both by Mr. Bleach and Mr. Singhvi the Ld. Advocate representing the Latvian accused persons challenge has been made agitating that the testimonies of the witnesses and the documents, collected from each of the abovenoted countries by the competent judicial authority, cannot be made admissible because the respective witnesses have not been examined in Court and the authors of those documents have not proved these documents before this Court. In fact, excepting few witnesses such as P.W.86 Jermy Simpkins, P.W.87 Stephen Elcock, P.W.88 Tymen Dimitrov, P.W.89 Tuskevitch Victor, P.W.90 Chan Chiandharoen, P.W.91 Paramjit Mann and P.W. 120 Pol. Maj. Wichai Suwanphasert, Bagkok no other witness has been examined and in fact the persons making statements in abroad have not been examined by the prosecution.

It has been contended on behalf of the prosecution that Section 166A of Cr.P.C. has been introduced purposefully by the law makers for collecting evidence in a formal way from a foreign country and this section cannot be compared with sections like 161 and 164 of Cr.P.C. as contended by the defence. It has also been contended on their behalf that the investigating officer in invoking section 166A of Cr.P.C. does not send any request to foreign country for collection of evidence and it is only a competent judicial court in India which sends the request to competent judicial authority in any foreign country requesting to collect evidence as per the law prevalent there and pursuant to such request evidences are being collected from abroad by the competent judicial authority according to law of that abroad country. It is for the competent judicial Court in India which has to be satisfied upon a prayer by the I.O. to send such a letter of request to the foreign Courts and the entire discretion lies with the judicial Court in India either to send a request or not to send such request. In this connection it has further been contended that it is not the whims, fancies or designed intention of the investigating officer, but the considerate view of the Court is that deciding factor to send any letter of request. Accordingly it has been



consented on their behalf that section 166A and B of Cr.P.C. are exceptions to all other sections in Chapter XII of Cr.P.C. It has also been contended on behalf of the prosecution that the materials collected through 166A of Cr.P.C. can be straightway treated as evidence in judicial proceeding in India for the following reasons :-

Firstly the statements are got recorded by the judicial authority in that country and bears proof of seal or signature for its authentication and the genuineness of those statements is made out from the mode of recording by the judicial authority. Secondly, the said documents can be made admissible by invoking section 82 of the Evidence Act which make them applicable in India and the same presumption which are recognised in England with regard to certain documents are declared to be admissible in India in the same manner as in England. Thirdly, section 80 of the Evidence Act deals with the acceptance of deposition of witnesses and confession of prisoners and accused persons. This section deals not with the relevancy but with proof and does not render admissible any particular kind of evidence but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law, raising with the regard to the documents taken in course of judicial proceeding, the presumption that all acts done in respect thereof have been rightly and legally done and that is (a) that the documents purporting to be recorded of evidence or statements or confessions are genuine, (b) the statements as to the circumstances under which they were taken made by the officer who affixed his signature are true and (c) that the evidence and statements or confession duly taken under this section, the law allows certain presumption as to certain documents and on the strength of these presumptions dispenses with the necessity of proof by direct evidence. So, it has been submitted on behalf of the prosecution that all the materials collected through Letters Rogatories have been properly proved by the prosecution in accordance with law and these are clearly admissible in evidence.

Further it has been contended on behalf of the prosecution that when those documents collected in terms of the Letters Rogatories were exhibited in Court and those were marked as Court exhibits the defence did not raise any objection except the part of the documents collected in terms of the Letters Rogatories of Thailand on two general declarations. It is now quite well settled principle of law and specially in view of the judgment of the Hon'ble Supreme Court reported in AIR 1972 Supreme Court 60B and 1995 Criminal Law Journal 1623 that once a document is properly admitted the contents of the documents would also stand admitted in evidence and if no objection has been raised with regard to its mode of proof at the state of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or even in appeal. But in connection with this case, as it has been submitted by the prosecution, at times they have also relied on those documents and testimonies. Further it has been contended that in connection with the materials collected through Letters Rogatories of UK the testimonies and the documents both have been marked as exhibits before the Bow Street Magistrate's Court before their transfer to the Court of India. Those testimonies and documents once again were marked as exhibits in this Court through P.W.87 (Stephen Elcock) and P.W. 86 Jermy Simpkins and at that stage no objection having been taken by the defence they can straightway go into evidence of P.W.140 the Chief I.O. of this case who became conversant with the handwriting and

signature. It has, therefore, been submitted on behalf of the prosecution that the objection taken on behalf of the defence in this regard are all baseless and as such cannot at all be accepted.

Now having heard the submissions made by the parties in connection with the present matter and specially looking into the relevant provisions of section 166A Cr.P.C. and reading the same together with the provisions of section 80 of the Indian Evidence Act and 82 of the Indian Evidence Act I am satisfied to hold that the submissions made on behalf of the prosecution in this regard should be accepted as at the initial stage of tendering those documents in evidence no objection was taken from the side of the defence. Consequently, I find no legal impediment to look into the materials collected through execution of letter Rogatory and tendered in evidence before this Court.

Prosecution in placing their reliance upon the letter by Fax marked Ext.139 and Ext. 167 (which are copies of the same Fax message) sent by accused Peter Bleach, has submitted that the aforesaid document discloses that Mr. Bleach was invited to discuss the final details with the buyers who were acting on behalf of the end user which turns out to be an illicit deal and the end user to be an insurgent group in India and during that meeting accused Peter Bleach was asked for suggestion for final delivery and the said Fax is under signature of accused Peter Bleach written to Mr. Collin Allkins and the Fax is dated 18.08.95 which was sent to him on 21.08.95. The aforesaid fact has also been confirmed by the witness Collin Allkins in his testimony which is marked as Ext. No.16 before the Bow Street Magistrate and the same has been marked as Ext.144 before this Court. The said witness in his testimony has stated that on 18th September, 1995 he received a telephone call from a man, who identified himself as Peter Bleach and informed him that he was an Ex-service businessman and that he had been approached to supply a quantity of automatic rifles to some Indians and that he wanted to discuss the implication of those with Collin Allkins. The Collin Allkins suggested him to put the details of the deal on paper and subsequently he received this Fax message which has been proved and marked as Ext.139.

Prosecution has also placed its reliance on the letter of Peter Bleach marked as Ext.134 which was recovered from the residence of Peter Bleach's girl friend at 24, Parl Road, UK by British police to show that a meeting was held at Copenhagen in the month of August and Peter Bleach attended the meeting where the alleged illegal deal to supply the arms in India was discussed. From the aforesaid letter it is seen that it was written by accused Peter Bleach that "from the beginning Davy said that the guns were for use against the Communists in West Bengal". Referring to the aforesaid letters and to some other letter such as Ext. 132, 133, 139, 166, 168, 170, 172, 173, 174, 195, 197, 201, 202, and 226 it was contended on behalf of the prosecution that from the aforesaid letters it will be evident that the conspiracy of this illegal deal of arms was made during August, 1995 and from such letter it will also be proved beyond all reasonable doubt that Peter Bleach had full knowledge about the purpose of the said illegal arms deal and he attended the meeting with different persons. It has also been contended that from the aforesaid letter it will also be borne out that those arms and ammunition were procured for the purpose of waging a war against a democratically elected government and the so-called end user were asking Peter Bleach to supply arms etc.

Special reference has been made to letters Ext.139 and Ext.167 i.e. the Fax advice written by Peter Bleach under his signature to Collin Allkins dated 18.08.95. From such Fax advice it is seen that it has been mentioned there in that delivery of the goods (arms and ammunition) would require an aircraft file, a commercial flight plane though Indian air space and passing directly over the area in question. The aircraft would then make a non-schedule landing on a rough airstrip in an area controlled by the insurgents, unload its cargo and continue on its way. It would be probably on the ground for less than five minutes and it is most unlikely that this activity would be noticed by the Indian authorities. A Russian built aircraft requiring only a very short landing strip would be used.

From the aforesaid Fax advice it is further seen that Peter Bleach has further said that he has not yet declined to supply these goods and he told the buyers that he would ;need more time to calculate the additional costs of a clandestine delivery and that he would respond in a couple of days. Now referring to the aforesaid letter it has been contended that his intention was very clear from the very option made in the said Fax advice in which he has mentioned that the Indians could be advised of the situation and the deal could be allowed to run. If the delivery is to be made into the heart of the insurgent area then he feels that it may be of necessity to establish precisely where this location is. Shipment is certain to be made by a very large number of insurgent persons including some of their leaders. The problem could no doubt be dealt with by the Indian Air Force whilst the delivery ;was taking place. Referring to the above it has been contended that the aforesaid Fax advice indicates good intention of Peter Bleach and his desire that the insurgents and traffickers are caught, but the subsequent conduct through Indian Air space and passing directly over the area in question. The aircraft would then make a non-scheduled landing on a rough airstrip in an area controlled by the insurgents, unload its cargo and continue on its way. It would be probably on the ground for less than five minutes and it is most unlikely that this activity would be noticed by the Indian authorities. A Russian built aircraft, requiring only a very short landing strip would be used.

From the aforesaid FAX advice it is further seen that Peter Bleach has further said that he has not yet declined to supply these goods and he told the buyers that he would need more time to calculate the additional costs of a clandestine delivery and that he would respond in a couple of days. Now, referring to the aforesaid letter it has been contended that his intention was very clear from the very option made in the said FAX advice in which he has mentioned that the Indians could be advised of the situation and the deal could be allowed to run. If the delivery is to be made into the heart of the insurgent area then he feels that it may be of necessity to establish precisely where this location is. Shipment is certain to be made by a very large number of insurgent persons including some of their leaders. The problem could no doubt be dealt with by the Indian Air Force whilst the delivery was taking place. Referring to the above, it has been contended that the aforesaid FAX advice indicates good intention of Peter Bleach and his desire that the insurgents and traffickers are caught, but the subsequent conduct, as is evident from the other materials available on record, proves his ill intention and suggests that those were only designs and maneuvering undertaken by Bleach to camouflage his conspiratorial activities. It has further been contended that from the aforesaid documents involvement of Mr. Bleach in the planning and conspiracy is explicit.

Materials produced before this Court through the execution report received in response to the letter rogatory sent to UK suggest that on 13.9.95 one contract for the sale of goods was made between Aeroserve, UK Howdalefirm, Flying Dales, North Yorkshire, United Kingdom as the seller and Howerstoke Trading Limited, Suite 4006 40/F, Pregrine tower WPPO Centre-89, Hongkong as the buyer. Accused Peter Bleach signed as a seller and Kim Davy signed as a buyer of the said contract. The aforesaid contract contains supply of items (1) AK-47 rifles (assault rifles) 2500 quantity for a total FOB price US\$ 135000. All these documents were seized by Jeremy Simpkins (PW-86) from 24, Pearl Road, London, E-17 and those were produced by him before the Ld. Magistrate at Bow Street and those were marked as Court Ext.2 and those correspondences are marked as Ext.132 collectively before this Court. It has been suggested by the prosecution that from the aforesaid contract it was clearly proved that accused Peter Bleach and Kim Davy entered into a contract on 13.9.95 to collect arms and ammunition and they had full knowledge about inspection of those arms some where near Calcutta and the FAX message and the contract also establish the fact that Peter Bleach and Kim Davy only in collusion with each other wanted to procure huge quantity of arms and ammunition to be delivered to some Indians inside India to be used against the Government of West Bengal.

Referring to Ext. 173 it has been contended on behalf of the prosecution that this will prove ad establish that on 30th November, 1995 an invoice was prepared by BTI in the name of M/s. Aeroserve, UK in respect of supply of some RPG-7 launcher - 10 (2) Anti/personal mine PM 79 nil, (3) 7.62 mm AKS-47, MI-300, (4) 9 mm Macro (Pistols - 25, sniper rifle with day scope dragunov-2, (6) night vision bins - 2, (7) night vision rifle sight-2, (8) grenades offensive - 00, (9) 7.62 mm x 39 ball - 23800 (ammunition for AK), (10) 7.62 mm x 54 ball - 880 (ammunition for Dragnov (11) 9mm x 18 balls - 6000 and (12) PG - 7VA/TK grenade - 100. It also appear from the materials that this was also proved by P.W. 87 (Stephen Elcock). Stephen Elcock also proved another letter of BTI dated 26.11.95 addressed to Aeroserve and the said letter shows that BTI asked Peter for a FAX from Bangladesh DGDP in support of the end user certificate wording to be the effect that "We hereby give authority to Border Technicality Innovations Limited to conclude contract No. 214/719/PROJECT/DGDP/ORD/P-4. Referring to another letter of BTI marked as Ext. 173 it has been contended on behalf of the prosecution that the markings on the boxes will be "214/719/PROJECT/DEDP/ORD/ P-4/CANTT/CAD - RAJENDRAPUR CANTT. Bangladesh". Two secret letters under the head of Government of People's Republic of Bangladesh, Prime Minister's Office, Arms Force, Division, Dacca Cantonment dated Nil November, 1995, the end user certificate and another under the head of Director General, Defence Purchase, Ministry of Defence, New Airport Road, Tejgaon, Dacca-1215, Bangladesh dated 25.11.95 were the authorities to conclude the contract and those were recovered during search of Peter Bleach's estate in UK and proved by P.W.87 (Stephen Elcock) and had close relation to the procurement of the aforesaid arms and ammunition and another letter Ext.168 which was also recovered from the said premises in UK will clearly establish that Peter Bleach has used illegally the contract number. Referring to the aforesaid documents it has been contended on behalf of the prosecution that those letters and the documents will clearly prove beyond doubt that Peter Bleach managed to collect the end user certificate as well as the authority in the name of Bangladesh Government and use those letters/authority for procurement to alleged arms and ammunition from KAS

Company, Bulgaria to be delivered inside India.

Of course serious objection has been raised on behalf of accused Peter Bleach regarding recording of statement by P.W. 86 Jermy Simpkins and regarding procurement of number of documents which were produce before the Court and according to Mr. Bleach all those cannot go in evidence because Mr. Simpkins has not followed the procedure under the Prevention of Terrorism At. It has also been stated that the search warrant was not produce by which the searches were conducted and during the statements made by witnesses before Mr. Simpkins will clearly be barred by section 162 of Cr.P.C. and therefore those are clearly not admissible and produce for seizure being not followed the search and seizure will also become null and void. But I am unable to accept the aforesaid contention because of the fact that all those documents and testimonies were collected by Mr. Simpkins in accordance with the law prescribed in UK and those were collected in terms of the Letter Rogatory sent by Ld. CMM, Calcutta U/s. 166A of Cr.P.C. and those were after collection produce before the court of Bow Street Magistrate, London where those documents were marked as exhibits and Mr. Simpkins has sworn an affidavit about the investigation and details of the investigation and after that those were sent to the Court in India by the Court in UK as copies of those were supplied to the accused persons and when prosecution marked those testimonies and documents as exhibits before this court it was never opposed and as such presently no objection be taken in this regard and the objection taken by Mr. Bleach and other Latvian accused persons are not tenable in law. Furthermore, in course of the argument one of the documents, FAX sent to Deso (Ext.139) has been admitted by Mr. Bleach and reference has been made by him in course of his argument whereas he does not admit the other documents. In any event, such double stand is not at all desirable and admissible with regard to same set of documents. So, from the side of the prosecution it has been contended that the documents received from UK through Letter Rogatory clearly prove Mr. Bleach's culpability in clear terms with regard to the present matter, specially his presence at Copenhagen to discuss the deal of arms supply and he had full knowledge that the deal was illegal one and regarding using of contract number obtained by him from Bangladesh Government for marking the consignment of arms and ammunition which was loaded in the Aircraft YLLDB and air dropped later and regarding his personal knowledge of the flight plan of the plane, YLLDB, the code and the total price of the arms and ammunition as quoted by BTI and he had noted all the booking list of the entire arms and ammunition and this will also prove that Peter Bleach had the knowledge of dealing of arms etc. of BTI with KAS and the proposed markings on the wooden boxes and from such document it was also seen that Peter Bleach also suggested to BTI to mark the wooden cases containing arms and ammunition as aircraft spares, but BTI did not comply and marked those as technical equipments. Ext.197 also goes to suggest that Peter Bleach had the personal knowledge of inspection of the aircraft at Riga and the refitting of the aircraft before delivery. It further suggests that Peter Bleach had the knowledge of the contract of purchase of the YLLDB aircraft and also the specific features of the aircraft which inter alia includes that this aircraft is capable of handling palates, goods, etc. Ext.202 also suggest that Mr. Bleach was instrumental in purchase of AN-26 Transport Aircraft and he was also in search of parachutes to facilitate air dropping of the cargo by way of parachutes from the aforesaid aircraft. So, closely examining the aforesaid materials, evidence collected through Letter Rogatory through UK agreeing with the

prosecution, I hold that Mr. Bleach's involvement and his full knowledge about the said illegal arms deal has been well established and it has also come out clearly through Ext.226 that accused Peter Bleach was advised in no uncertain terms by British authorities that he should withdraw from his proposed deals for delivery of arms to suspected Indian insurgent group and that was also corroborated by the evidence given by PW-87 Stephen Elcock. But, unfortunately although Bleach wanted to establish that he had all good intentions and desire that insurgents and traffickers are caught but the subsequent conduct, as is evident in this case from the materials discussed above, prove his ill intention and establish that those were only designs and maneuvering undertaken by Bleach to camouflage his conspiratorial activities.

Referring to the documents Exts. 253 and 254 together with the evidence of PW-88 Rumen Dimitrov it has been contended on behalf of the prosecution that it would be evident from the aforesaid materials and evidence on record that the dropped arms and ammunition were purchased from Bulgaria and accused Peter Bleach of Aeroserve, UK was instrumental in purchasing the arms and ammunition.

Of course, much comments have also been made on behalf of accused Peter Bleach and other Latvian accused persons for non-examination of the persons who gave their statements and submitted that these documents brought before this Court through Letter Rogatory from Bulgaria cannot be used in this trial, although those have been marked exhibits in this case. But, for the similar reason, as stated earlier, in respect of materials collected through Letters Rogatory from UK, I am unable to accept the contention of the defence in this regard although I find that the witness PW-88 could not enlighten us much with regard to the materials collected from Bulgaria in his evidence because these were not collected by him personally and those were simply collected through the system prevalent in that country. But, from the documents and materials produced before this Court i.e. Exts.253 and 254 and 255 together with Ext.247 and other documents it was established that accused Peter Bleach contacted Robin Peter Campbell, company Director of BTI to quote for a quantity of AK-47 and sometime in last October, 1995 he again received a telephone call from Bleach by which he requested a quote for RPGS and land mines and subsequently RP Campbell provided a quote and Bleach stated that the same was acceptable and payment could be made quickly. Campbell then requested an end user certificate and subsequently Campbell received a transfer of money from the Hongkong and Shanghai Bank in Hongkong for 85000 US dollars to be paid into BTI's account in Union Bank of Switzerland being A/c No.734-076, 60K. Referring to Ext.247 it was further stated that in the month of November, 1995 Bleach requested for inspection of the goods and the same was arranged in Bulgaria and at that time Peter Bleach and the representative of KAS were present and the goods were inspected and crates were marked as Contract No.214/719/PROJECTS/ DGDP/ORD/P-4/COMMANDANT CAD RAJENDRAPUR CANTT. Bangladesh and it was further stated by this witness that Mr. Bleach went to Bulgaria to complete loading of the aircraft. The aforesaid statement of Robin Peter Campbell of BTI regarding purchase of arms and ammunition has been fully corroborated by Rusy Houbanov Russev, the Executive Director of KAS Company, Republic of Bulgaria whose statement was recorded in terms of the Letter Rogatory sent to Bulgaria. In such statement it has been stated that the aforesaid deal of arms and ammunition has been realised on the basis of the correspondences between BTI, London and his company. It was further stated



by this witness that deal started in letter dated 8.11.95 of BTI addressed to KAS which was in fact all articles for supply of items like RPG 7, AK-47 M 9mm Macarov Pistols and other arms and ammunition. The aforesaid statement of Rusy Houbanov Russev contains the full details regarding the deal of arms and ammunition among BTI, KAS and Peter Bleach and also regarding the loading of those arms and ammunition in the aircraft in question. The letters collected through Letters Rogatory also disclose that the aircraft YLLDB under flight No.CAS-101 landed at Bourgas Airport on 10.12.95 and after loading it took off with flight plan No.LTL-2333 on 12.12.95 at 13-55 hours to Republic of Bangladesh, Dacca Airport. The document Ext.253 and 254 exhibited and proved before this court also proves the additional facts that the crew members consisted of Russian speaking persons and Peter Davy. Other document specially statement of Yordan, V. Karai Vanov also prove that the goods were loaded by their own technical teams at Bourgas Airport and after loading was over two documents were prepared which certify that the aircraft was loaded with 60 wooden cases wherein 3860 kgs. (technical goods) in accordance with contract no.214/719/PROJECT/DGDP/ORD/P-4/COMMANDANT/CAD and sender of this load is Company Arsenal Limited down of Kazanlak and final recipient Republic of Bangladesh, Dacca Airport and those documents were loading documents. The other document was also a loading document regarding 17 pieces of wooden cases weighing 561 kgs. containing technical goods in implementation of the same contract as mentioned in the first loading document from company VMZ. The aircraft AN-26 as per the document flight plan of Bourgas Airport had arrived on 10.12.95 from Airport Ryad at 00-40 hours and departed on 12.12.95 from Bourgas Airport to Airport GZT and that was for technical landing for final destination i.e. Republic of Bangladesh, Dacca Airport. Referring to the aforesaid documents it has been contended that from the aforesaid documents it will be proved that the alleged arms and ammunition was loaded in the aircraft AN-26, registration No.YLLDB and departed from Bourgas Airport to Dacca Airport, Bangladesh.

From the other materials available through Letter Rogatory sent to Bulgaria specially from the testimony of Debrinka Atanosova Dimova it was well established that Kim Davy was in Hotel Kosmos, Bourgas with E. Antimenko, Oleg Gaidach, Igor Timmerman, Igor Moskvitin and Mr. Alexander Klichine also arrived on 9.12.95 and Mr. Peter Bleach also arrived on 10.12.95 and they were there upto 12.12.95.

It has been suggested by the prosecution that from the aforesaid fact it was established that five Latvian accused persons alongwith Peter Bleach and Kim Davy stayed together in Bulgaria at the time of loading of the alleged arms and ammunition in the aircraft AN-26, YLLDB. It was contended on behalf of the prosecution that from the testimony of Alexander Lukins together with Exts. 253 and 254 it was established that on 13th December, 1995 Kim Davy alongwith the aforesaid crew members came from Bulgaria to Karachi and boarded at Pearl Continental Hotel and the aircraft YLLDB AN-26 went to Varanasi from Karachi on 17th December, 1995 alongwith Kim Davy, Peter Bleach, Dayanand and five Latvian crew members leaving behind Lukins and Evanov at Karachi. So, referring to the aforesaid evidence it has been contended on behalf of the prosecution that the involvement, knowledge and participation of the five Latvian accused persons and Peter Bleach together with Kim Peter Davy in transporting the same through YLLDB AN-26 has become evident and that has also been established

from the aforesaid documents and evidence available on record.

Of course, from the side of the Latvian accused persons it was contended that they being the crew members they could not have any knowledge with regard to the materials loaded in the aircraft as because there were mention as technical equipments in those consignments and those were loaded in the aircraft not by them but by the man of the company. But, the evidence discussed above which was collected through Letter Rogatory from Bulgaria and from oral evidence by the witnesses who deposed before this Court, it has come out clearly that at the time of loading of the consignment in the aircraft in question presence of Latvian accused persons alongwith Peter Bleach at Hotel Cosmos, Bourgas leads me to conclude by accepting the contention of the prosecution that certainly they had knowledge with regard to the aforesaid consignment of the arms and ammunition by camouflaging those in the name of technical equipments.

Prosecution has submitted that letter of request U/s 166A of Cr.P.Code which was also sent to Latvia by the Ld. CMM, Calcutta and execution of report of which was exhibited as Ext.255 in bunch by the PW-89 Tuskevitch Victor. Referring to the aforesaid documents it has been contended on behalf of the prosecution that it was established from the execution report of Letter Rogatory that one purchase contract in respect of aircraft No.AN-26, registration No.YLLDB was signed at Riga on 15th November, 1995 between Latvian represented by its General JLY Enterprises Corporation USA as seller and Carol Air Services Limited Post Box 107, Oceanic House, Duke Street, Grand Turk, Turks and Caicos, represented by Kim Peter Davy as buyer and it was purchased for a sum of US \$ 180000. Prosecution has further pointed out that it was established from the testimony of Victor Masagutov which was recorded in course of execution of Letter Rogatory at Latvia to the competent authority that during September, 1995 Peter Bleach phoned Masagutov introducing himself as representative of Aeroserve Co. and wanted to buy a cargo aircraft and subsequently he wanted to meet in Latvia Hotel. From the aforesaid letter it has also been established that Bleach and his associates examined the aircraft and one of two available aircrafts was chosen.

Referring to Ext.277 it has been contended on behalf of the prosecution that similar copies of contract has been recovered from the Davy's laptop computer seized from the aircraft AN-26 and exhibited by PW-104 Joseph Ponoly and the said purchase contract has also been recovered from the aircraft which was exhibited by P.S.Bose, PW-113 vide Ext. No.280. Referring to the above documents it has been contended on behalf of the prosecution that it has been established from the aforesaid documents that Peter Bleach took active part to purchase the aircraft in question alongwith Kim Peter Davy and which was finally purchased by Kim Peter Davy on behalf of Carol Air Services.

From Ext. 255 it was seen that during November,1995 Victor Masagutov introduced him with two Englishmen both peter Bleach and Peter Davy who were acting to buy the aircraft from Latvia. From the aforesaid statement it further transpired that Peter asked him whether it was possible to find a team of crew at Latvia to ferry the sold AN-26 to Bangladesh and work there for three months transporting humanitarian aid and accordingly name of Captain Klichine was chosen. From the aforesaid documents it

was further found that a contract was made between crew of AN-26 and Carol Air Services for the three months for the purpose of flying the aircraft AN-26 and accused Alexander Klichine, Oleg Gaidach, Igor Moskvitin, Igor Timmerman and E. Antimenko signed as executor and Kim Peter Davy signed as the customers of the aforesaid contract. Witness P.W.113 P.S. Bose has exhibited similar copy of such contract Ext.280 and the witness V.K. Khanna (P.W.103) confirmed the specimen signatures of Alexander Klichine, Oleg Gaidach, Igor Moskvitin, Igor Timmerman, E. Antimenko which were sent for general examination to the GEQD. So, referring to the evidence collected through Letter rogatory it was contended on behalf of the prosecution that from the aforesaid materials so far collected it was established beyond all reasonable doubt that five Latvian accused persons viz. Alexander Klichine, Oleg Gaidach, Igor Moskvitin, Igor Timmerman, E. Antimenko entered into contract with Kim Peter Davy of Carol Air Services to fly the aircraft AN-26 and further it was proved that the aircraft YLLDB, AN-26 was purchased to be stationed at the permanent base at Dacca, Bangladesh and special flight permission for Riga to Bangladesh was obtained after deregistration of the aircraft YLLDB, AN-26 from the Transport Ministry, Aviation Department, Republic of Latvia.

Objection has been taken on behalf of the accused persons, specially by Mr. Bleach, with regard to the introduction of the aforesaid evidence obtained from the execution report of Letter Rogatory from Latvia on the self-same ground, as taken earlier. But for the similar reasons, discussed earlier, I am unable to accept the contention of the accused persons, specially of Mr. Bleach, and on scrutiny of the aforesaid materials obtained from the execution report of Letter Rogatory from Latvia I find and hold that prosecution has been able to establish that purchase of the YLLDB aircraft was made by way of purchase contract dated 15.11.95 signed at Riga and accused Peter Bleach was instrumental in negotiating the purchase of this particular aircraft and Mr. Bleach, Kim Davy and others were present at the time of inspection of the aircraft. From those materials it has also been established that the Latvian accused persons were engaged as crew members in this particular aircraft YLLDB by way of contract dated 18.11.95 and this has also been proved that special flight permission for YLLDB aircraft on 5.12.95 which clearly indicates that after 5.12.95 YLLDB did not have any flight permission as it was not registered anywhere.

Letter Rogatory was also sent to Thailand as per the letter of request sent by the Ld. CMM, Calcutta U/s. 166A of Cr.P.C. and the same was proved by Pol. Maj. Wichai Suwanpnasert (P.W.120). From the aforesaid execution report of Letter Rogatory in Thailand, marked as Exts. 256 and 257, prosecution tried to prove that the aircraft of Carol Air Services having registration No. YLLDB landed at Phuket Airport, Thailand as per General declaration (Ext.256) from Calcutta Airport on 18th December, 1995 with its crew members viz. Captain Klichine, Gaidach, Moskvitin, Igor Timmerman, Antimenko E., Kim Peter Davy, Peter K. Bleach and the passenger by the name Dayanand. From Ext. 257 prosecution tried to establish that on 21st December, 1995 the said aircraft with seven crew members took off from Phuket Airport to Madras (India) leaving behind the passenger Dayanand who had boarded the aircraft at Karachi on 17.12.95 along with other seven accused persons. As per the permission issued by the DGCA the aforesaid aircraft YLLDB was supposed to return to Karachi via. Calcutta and Varanashi. But the said

aircraft YLLDB did not follow the authorised air route not they took any fresh permission from DGCA, India as per Rules as was stated by P.W.76 (J.S. Wizar) who at the relevant time was posted as Deputy Director, Air Transport in the office of the Director General of Civil Aviation, New Delhi. Prosecution also tried to establish through the hotel bills of Karon Villa, Phuket, which were recovered from the aircraft AN-26, YLLDB that from 18.12.95 to 21.12.95 Mr. and Mrs. Igor Timmerman, Klichine, Alexander, Peter Bleach, Antimenko E., Oleg Gaidach and Moskvitin Igor were staying in the aforesaid hotel which has been further confirmed from the execution report of the Letter Rogatory sent to Thailand, specially through Ext. 296 and 297 and the Mat. Exhibits which has been proved by P.W.120 Pol.Maj. Wichai Suwanpnasert).

With regard to admissibility of the aforesaid documents similar objection has been taken on behalf of accused persons, but for the same reasons assigned earlier, I am unable to accept their contention and, therefore, on scrutiny of the materials available through the execution report of the Letter Rogatory from Thailand I find that it has been established that the aircraft YLLDB arrived at Phuket on 18.12.95 from Calcutta along with accused crew members and accused Peter Bleach and absconding accused Kim Peter Davy and Dayanand. It has also been established that the aforesaid aircraft departed Phuket for Madras on 21.12.95 along with all the crew members, absconding accused Kim Peter Davy but except Dayanand. It was also established from the entries in the passport of Peter Bleach that Peter Bleach was in Bangkok on those days and Ext.101 also proved and confirm that accused Satyendra Narayan Singh @ Randy @n Satya Narayan Gowda was in Bangkok on 27.9.95 and 28.9.95. From such materials it was also established that the business centre of hotel was hired by Kim Davy in the evening on 27.9.95 and Kim Davy stayed in Bangkok at Felix Arnoma Hotel from 26th to 28.9.95 and Peter Bleach and Peter Haestrap stayed there from 27.9.95 to 28.9.95. So, from the aforesaid materials it was established that there was another meeting at Bangkok and accused crew members had enjoyed Phuket after commission of the crime with Kim Peter Davy the absconding accused.

Although Letter Rogatory was sent to Pakistan to collect formal evidence in this case, but nothing has been received from Pakistan but even then some materials have been collected from other places relating to Pakistan. The documents recovered from the aircraft AN.26, YLLDB, have been marked and proved from the evidence of P.W. 139 B.K. Bagchi through Ext. 298. Mat Ext. CLII also proved and established the presence of Oleg Gaidach, Moskvitin Igor, Antimenko, Timmerman, Evanov, Lookin Alexander, Peter Bleach, Kim Peter Davy and Klichine Alexander at Quaid-e-azam International Airport, Karachi on 13th December and the presence of AN.26 YLLDB at Karachi on 22.11.95 is also proved from Ext. CLII. The signatures appearing in the said receipt were sent to the expert for comparison and Sri V.K. Khanna (P.W.103). Government Examiner of Questioned Documents confirmed the signature appearing in the said airport delivery receipt to be of accused Timmerman. Staying at Pearl Continental Hotel Karachi have also been proved by Ext.255 and Lookin Alexander and Vladimin Evanov also accompanied the accused persons in Pakistan. Referring to the above evidence it was suggested by the prosecution that conspiracy with regard to the present matter was hatched up in several places, plan of actions were

developed in several other places and accordingly the aircraft was purchased in Latvia and thereafter the aircraft was flown to Bulgaria where the arms were loaded. Further the aircraft transited through several places and countries and before it came to Karachi and halted for few days and from Karachi it came to Varanashi and thereafter came over Purulia and airdropped the arms and ammunition and other materials and thereafter the aforesaid aircraft along with the present accused persons (five Latvian accused persons and Peter Bleach) managed to get out of the country and finally landed in Phuket. It has been contended on behalf of the prosecution that in doing so prosecution had to take steps for interrogation of the alien persons speaking in different languages followed by identification of unknown accused persons establishing the identity of Davy, sending of Letters Rogatory issued under the seal and signature of Ld. CMM, Calcutta to the competent authorities of several countries and specially for establishing the identity of Randy and establishing the identity of Davy through network of international cooperation by way of careful and systematic scrutiny of voluminous documents and in course of such investigation the contents of lap-top computer belonging to Kim Peter Davy could be retrieved through expertise by Joseph Ponnoly (P.W. 104) and his team of computer experts and out of such retrievals some of them has been exhibited as documents (Ext.277, 278 and 279). It was also noticed that before absconding hard disc of computer was formatted making it very difficult to know whether such hard disc had contained any data or not. But from these retrievals, as it has come out in the evidence, many important things about Kim Davy and his conspiracy with accused persons could be gathered.

Defence has objected to the admissibility of the aforesaid documents recovered from the lap-top computer of Kim Davy and retrieval of those materials but the same cannot be accepted because of the fact that during marking of the exhibit of the reports of Joseph Ponoly (P.W.104) Exts. 277, 278 and 279 no objection was made by the defence to mark those as exhibits. Some of the retrieved documents also appeared to be identical to the documents recovered from the red file of Peter Bleach and also those recovered from UK through Letter Rogatory.

On the same logic that the defence also argued that as GPS is also computer based the retrieval cannot be admitted into evidence. But I am unable to accept that contention also on the same logic as advanced earlier in relation to the retrieval of the materials from the lap-top computer. Furthermore, from the side of the defence during cross examination of the witness T.R. Rao (P.W. 131) no challenge was also made. So, I find no reason to discard the evidence which has been brought in from the retrieval of the GPS.

Prosecution with a view to prove their case has examined witness J.S. Wazar (P.W. 76) who has proved the documentary evidence Ext. 130(b) which is the authority for the flight on 17th December, 1995 and return flight on 20th December, 1995 and the authority number was YA 338/12/160430. P.W. 77 Arvind Sardana in his evidence has corroborated the evidence of P.W. 76 in respect of Ext.130 regarding the permission. P.W. 72 (Jitendra Malhan) proprietor of Air Chatered Service, New Delhi has stated in his evidence that he arranged for DGCA permission on behalf of Carol Air Service as requested by the Base-Ops, Gatwick, London for the purpose of flying of the aircraft in question from Karachi to Varanashi and Varanashi onwards and its return from Phuket to Calcutta to Varanashi and Karachi. In course of his

evidence he has proved this teleprinter messages which have been collectively marked as Mat. Ext. CLXV. From the aforesaid documents it is seen that YLLDB with Alexander Klichine as pilot got permission for landing at Varanashi and Calcutta for both inward and outward journeys. From the evidence of the Letter Rogatory from Latvia it was made available that the Civil Aviation Administration of the Republic at Latvia granted a special flight permission to the aircraft AN.26B, registration No.YLLDB or a flight with a route Riga, Dacca (Bangladesh) to use and fly as permanent base airport for which permit was valid till 5th December, 1995 as issued by Civil Aviation Administration, Ministry of Transport of the Republic of Latvia dated 21.11.95 and the same was proved by Tuskevitch Victor (P.W.89) and marked as Ext.255 collectively. From the aforesaid materials prosecution tried to prove that the aircraft AN.26 ;having registration No. YLLDB belong to Carol Air Services and its owner was Kim Peter Davy. On scrutiny of the materials available I find no reason to disbelieve the evidence as produced by the prosecution in connection with this matter.

From the side of the defence serious objection has been taken that prosecution although placed much reliance on the retrieval of the G.P.S. but they did not show how this GPS was in the aircraft and VHGR had not also been placed before this Court which records the details of movement of the particular airport and P.W. 131 (Mr. T.R. Rao) being an officer of Airforce Station could have checked the records of November, 1995 with air defence radar recording. But he has failed to check it for the second visit between 17th and 18th of December, 1995. For non-production of the aforesaid articles and for not taking such steps adverse presumption should be taken against the prosecution. U/s 114(g) of the Evidence Act.

In reply to that it has been contended on behalf of the prosecution that there are documents and materials available from the Letter Rogatory and from the evidence adduced in this case through P.W.52 Jeff Rodrickes, it is clear that GPS was recovered from the aircraft when it was landing at Mumbai Airport and the seizure witness identified the items and proved the seizure of the GPS from the aircraft which indicates that GPS was very much with the accused persons who are facing trial. So, the contention of the defence in this regard cannot at all be accepted and as such there is no plausible reason for discarding the materials retrieved from the GPS. I find much force in this contention and accordingly the contention of the defence, without putting it during cross-examination to the witnesses, that data can be altered and changed in the GPS and that GPS was planted in the aircraft cannot at all be believed. Prosecution in proving their case has not relied on the analysis report of the FDR and CVR and VHGR. So, non-production of those items before this court will not indicate anything conclusively so as to find anything favourably in favour of the defence.

Objection has been taken on behalf of the defence that prosecution has not taken steps to prove that the black colour brief case belonged to Kim Davy. It has also been mentioned on their behalf that were from it was seized that had not been mentioned. But from the materials available on record it appears that the aforesaid materials including the brief case was seized by virtue of Ext. 32, seizure list by Mr. D. Thakur, Deputy Superintendent of Police on 23.12.95 on being produced by Peter Bleach one of the accused persons along with other items. In course of admitting those into evidence and the items found inside the brief case no objection was taken during cross examination of Mr. Thakur as P.W. 119.



Looking into the materials available inside the brief case it was clear and established in the uncertain terms that flight coupons, passengers' ticket, approved agreement, driving licence etc. belonged to Kim Peter Davy. The articles found inside the brief case including the photo slides were also found in the aforesaid brief case and that has been proved by P.W.105 (Sri Pabitra Kumar Basu) and through Ext. 280. From the side of the defence no objection was raised at the time of evidence of the witnesses regarding availability of these articles from this brief case and as such I find no reason to accept their contention that these were not properly proved and that those were not inside the brief case of Mr. Kim Davy.

Objection was also taken with regard to five slides that the contents of those should have been proved by an independent witness, but those slides are primary evidence because those are in negative form and these have been properly marked and exhibited in the court with the help of projector.

From the side of the defence also strong objection has been made with regard to the evidence of P.W. 140(P.S. Mukhopadhyay) the Chief Investigating Officer of this case. But Sri Mukhopadhyay, as it appears, did not depose in this Court as an expert, but as chief I.O. he quoted the expert's opinion and his impression in this regard and I find nothing objectionable in this. But the evidentiary value of such evidence has to be seen by the Court.

In connection with this case dispute has been raised by the defence that no ammunition for the Dragonov rifle i.e. 7.62 mm x 54 R was recovered and according to them it was injected by the CBI deliberately. In meeting this objection it has been submitted on behalf of the prosecution that as per the order of the Ld.CMM, Purulia a random test check of the arms and ammunition, recovered so far, was conducted at Purulia by Ballistic Expert Shri Abhijit Kumar Dey (P.W.101) and that test check was conducted at Purulia on 7.1.96. The report of such test firing has been submitted by P.W.101 vide Ect.270. There is, however, no question of testing the Dragonov rifle with all 7.62 x 54 ammunition in Purulia at the time as because Dragonov rifle was recovered from the aircraft in Bombay and those were received by the CBI from the CID, West Bengal on 29.12.95 and were lying in their Malkhana in Calcutta. It has also been contended on behalf of the prosecution that on 13.3.96 the arms and ammunition mostly recovered from the aircraft were sent for Ballistic examination to the CFSL, New Delhi wherein no. 7.62 ammunition either 39 or 54R was sent. Those were sent in order to ascertain whether those were live ones or not and also for matching of the pistol recovered from the aircraft and the pistols recovered from the ground etc. and as such testing of the Dragonov rifle by any ammunition of 8.62 does not arise and in course of cross examination Abhijit Kumar Dey (P.W.101) was right in saying that the Dragonov rifles were tested by the ammunition of CFSL in Delhi and in the report Ext.273 he opined that the Dragonov rifles are fire arms and in working order. Moreover, the 7.62 ammunition which were lying in Purulia were already test fired on 7.1.96 and the report received mentioning that those ammunition were live ones and as such there was no necessity to send any 7.62 ammunition to CFSL further for ascertaining the same question. I find much force in the contention and accordingly the objection taken by the defence in this regard is rejected.

It has come out in the evidence that Director, CFSL Calcutta was requested to depute a team to Purulia to examine those articles. Pursuant to such request a team of CFSL experts led by Dr. Rao had been to Purulia and conducted preliminary examination on 23.2.96 and on 24.2.96 their report to that effect was received vide report dated 28.2.96 vide Ext.267. In such report the Director, CFSL requested to send some AK-47 rifle with all kinds of ammunition 100 rounds each to CFSL for further examination. But instead of sending those ammunition to CFSL the macarov rifles and other articles were sent to New Delhi by a letter dated 13.3.96. In view of the aforesaid fact the connection that 7.62 x 54 R ammunition was produced by CBI, P.S.II to prove that the arms and ammunition were from Bulgaria is misleading and false and Dr. Rao in fact derived the source of origin from examination of AK-47 to be of Bulgarian origin and no where he has stated that 7.62 and 54 are ammunition and are from Bulgaria. So, accepting the contention of the prosecution I find no illegality in such matter.

In summing up the case on behalf of the prosecution Ld. Special Public Prosecutor taking me through the voluminous oral evidence adduced in connection with this case and placing his reliance on the evidence brought in before this Court through the execution report of the Letter Rogatories from different countries and placing his further reliance upon the evidence and report of the experts examined and prove before this Court has submitted before me that prosecution in this case has been able to bring home the chain of circumstances to prove and establish that it was a case of arms smuggling involving present accused persons from several countries being a part of a concerted design to create havoc within out country. He has further contended that the chain of circumstances established from the evidence, as aforesaid, proved beyond reasonable shadow of doubt that a conspiracy was hatched in different places, plan of action were developed in several other places and pursuant to that the impugned aircraft was purchased in Latvia and thereafter the said aircraft was flown to Bulgaria where sophisticated lethal arms and ammunition were loaded in the aircraft and further the aircraft transited through several places in countries before it came to Karachi and halted for few days and from Karachi it again came to Varanashi halted for some time and thereafter came over Purulia and airdropped the arms and ammunition and other materials and thereafter managed to get out of the country and finally landed in Phuket. He has further submitted that it is a case where an organised group had participated in the sky dropping of a massive consignment of deadly lethal weapons with all the necessary accessories which will certainly establish that it was meant only for waging war against the authority of the State represented by the constitutionally elected governments and the materials and evidence on record have also established a long drawn and extensive conspiracy resulting in its culmination in this airdropping of arms in the district of Purulia. It has also been contended by him that the evidence which has been led before this Court clearly shows that the huge cache of arms and ammunition which were airdropped in Purulia by alien aircraft declaring itself as a ferry flight even when the aircraft declaring itself as a ferry flight even when the aircraft was fully loaded with deadly weapons and according to the prosecution the airdropping of those arms and ammunition was the result of an international conspiracy and the conspirators conspired to bring down the democratically elected government of this country. Therefore, it amounts to nothing but waging war against the government. So, according to him charge U/s. 121, 121A and 122 of I.P.C. have been proved and established against at least six accused persons viz. Peter Bleach, Alexander Klichine, Igor

Moskvitin, Oleg Gaidach, E. Antimenko and Igor Timmerman who committed such crime with the aid of other absconding accused persons like Kim Peter Davy.

Taking me through the reports Ext.267 submitted by Dr. M.S. Rao (P.W.98) and the reports proved and marked as Exts. 270, 271 and 272 and 273 by P.W. 101, A. Dey, it has been contended that the aforesaid evidence and documents clearly establish that the arms and ammunition, grenades and detonators which were recovered from the place of occurrence as well as from the aircraft are arms and ammunition and explosives within the meaning of Arms Act, 1959 and Explosive substances Act, 1908 and the charges U/s. 25(1-A)/25(1-B)(f)(g) of the Arms Act and also U/s. 5 of the Explosive Substances Act, 1908 and U/s. 9b(2) of the Explosive Act have also been established against all the above named six persons. Relying on the materials and evidence collected in connection with this case it has also been contended on behalf of the prosecution that Rule 8 and Rule 26 of the Aircraft Rules have been violated by the aforesaid accused persons and as such they are also liable to be held guilty U/s. 10 of the aircraft Act as also U/s. 11, 11A of the Aircraft Act.

In opposing the claim of the prosecution it has been contended on behalf of the accused persons that the security of the materials on record will certainly suggest that the ingredients necessary for punishing the accused persons U/s. 121, 121A and 122 of I.P.C. have not at all been contended on behalf of the accused persons that there is no iota of cogent materials or the evidence on record to show that there was agreement or meeting of minds between the conspirators and others which is a sine-qua-non to establish the charge of conspiracy. In this connection they have made reference to a decision reported in AIR 1999 Supreme Court at page 2604. Placing reliance on the aforesaid decision it has been contended further that association of one accused with one of the main accused or even his knowledge about the conspiracy would not make him conspirator and it was found in the aforesaid case that accused husband harboured main accused persons after coming to know about their involvement as assassination and that itself is not sufficient to infer that he was a member of conspiracy and it was further held that the wife cannot be charged for harbouring merely because she was living the house with her husband. Placing reliance on the aforesaid decision it has also been contended that mere association with main accused conspirator would not make accused a member of the conspiracy as alleged against him or them and the failure of prosecution to produce evidence to show that accused knowledge of the conspiracy will not be regarded as knowledge as their knowledge about assassination acquired only after the act was accomplished. Taking me through the relevant portion of the aforesaid decision it has also been contended that even mere fact that main accused conspirator sent message about arrest of the accused persons will not be regarded as sufficient to draw inference of conspiracy against them. In this connection it has been contended on behalf of the Ld. Advocate appearing for the Latvian accused persons that taking ratio of the aforesaid decision it should be held that in the present case prosecution has signally failed to prove that there was agreement or meeting of mind between the conspirators and others involved in this case which is the sine-qua-non evidence of conspiracy and judging this case on the light of the decision of the aforesaid case as reported in AIR 1999 2640, it should be held that these

accused persons are not at all guilty of the offence either U/s. 121, 121A or U/s. 122 of I.P.C.

It has also been contended on behalf of the accused persons specially on behalf of the Latvian accused persons that they had no idea as to what materials were loaded inside the aircraft and as such charge of conspiracy is not at all established against them. Further it has been contended on behalf of these accused persons that sanction U/s. 196 Cr.P.C. for offences U/s. 121, 121A etc. as also Arms Act and Explosive Substances Act are not proper and in this connection placing their reliance on a decision reported in 1979 Criminal Law Journal page 633 and 52 CWN page 325 it has been contended on behalf of the defence that any case instituted without proper sanction must fail because this being a manifest defect in the prosecution the entire proceedings are rendered void ab initio and the sanction must disclose on the fact of the sanction itself the facts constituting the offences charged and the existence of a valid sanction confers jurisdiction on the court to try the offences and therefore, if the sanction is invalid, the invalidity cannot be cured subsequently.

To meet this contention it has been contended on behalf of the prosecution that the case reported in AIR 1999 Supreme Court 2640 is distinguishable on the following points: According to prosecution the present case is not restricted only to the association and/or knowledge of commission of the crime by the Latvian accused persons and the case of the prosecution in the present trial is the active participation of the Latvian accused persons and Mr. Bleach in the commission of crime which can be established in the following ways:-

(a) Accused Latvian crew members took the flight from Latvia in spite of the fact that the special flight permission granted by the Latvian Authority had expired, (b) the crew members flew the flight contrary to the conditions in the special flight granted by the Latvian Authority which, inter alia, states that the flight to be taken to the Base Airport at Dacca for further registration, (c) the accused crew members flew the flight knowing fully well that it contained cargo which is in contravention of the permission issued by DGCA Government of India which says that the flight should be a ferry flight thereby meaning that it should be empty, (d) finally the accused crew members definitely participated in the clandestine drop of the consignment within the Indian territory knowing fully well from the weigh bill that the consignment needs to be unloaded in Bangladesh and in this particular case the prosecution has proved that unless the accused crew members agreed for clandestine drop it would not have been possible to airdrop the consignments within the Indian territory. Further it has been contended that the present case in hand is different from that of the Rajib Gandhi case and this case does not speak of Harboursing of any accused. But in this case allegation is that the accused persons not only joined in the action as conspirators but also took active part in the commission of the crime and in the present case also it cannot be a fact that the Latvian crew members came to know about the dropping of the arms after it has been dropped. But in the present case allegation is that they had the knowledge of dropping of arms clandestinely and they had actively participated in such an action and therefore, it cannot be said that they came to know about dropping of the arms only after it has been dropped. Furthermore, the present case is on the allegation that Latvian

crew members entered into a signed contract with the main accused to act on behalf of him and finally they actively joined with the main accused in the commission of offence by way of clandestinely dropping arms consignment from the aircraft within the territory of India knowing well that the consignment was meant for Bangladesh. So, it has been submitted that in the Rajib Gandhi case since the accused persons were not found responsible in the conspiracy because there was not overt act on their part in respect of the commission of crime, but in the present case, where all the accused have done some act in pursuance of the conspiracy, therefore, they should be held responsible for the entire acts committed in pursuance of the conspiracy. So, it has been submitted on behalf of the prosecution that the case reported in AIR 1999 at page 2640 does not support the defence as claimed by them.

Now having heard the submission of both sides and going through the relevant provisions enunciated by the Apex Court in connection with the aforesaid decision reported in AIR 1999 Supreme Court at page 2640, I hold that the present case in hand is distinguishable from the aforesaid decision, since overt act has been pleaded and proved in the instant case against the Latvian accused persons and Mr. Peter Bleach where all of them have done some acts in pursuance of the conspiracy and therefore, the aforesaid decision does not come to any aid to the defence in any event.

Apart from distinguishing the aforesaid decision reported in AIR 1999 Supreme Court at page 2640 it has been submitted on behalf of the prosecution that a plea has been taken by the Latvian accused persons and Mr. Bleach that they had no idea as to what materials were loaded in the aircraft at Bourgas Airport. But even in that case also in proving the charge of conspiracy it is not necessary that all the conspirators must know each and every details of the conspiracy and in this connection reference to a decision reported AIR 1977 page 2433 has been made by prosecution wherein it has been held that even if some steps are restored to by one or two of the conspirators without the knowledge of the other, it will not affect the culpability of the other when they are associated with the object of conspiracy, and it has also been submitted by the prosecution that it is sufficient to prove that the charge of conspiracy till the prosecution has established the acts and the illegal means committed by the conspirators because the offence of conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same and the offence can only be proved from the inference drawn by the Ld. Court. In this connection, they have reference to the decision reported in AIR 1980 Supreme Court at page 439. With reference to AIR 1993 Supreme Court at page 1637 it has also been submitted on behalf of the prosecution that it has also been clarified by the Supreme Court that if an agreement is not an agreement to commit an offence it does not amount to conspiracy unless it is followed by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Placing reliance on a judgment reported in 1995 Criminal Law Journal at page 1445 (E.K. Chandra Senan /Vs-State of Kerala) it has been contended by the prosecution that the Hon'ble Supreme Court observed that the conspiracy can be proved even by circumstantial evidence and it is really this type of evidence which is normally

available to prove this conspiracy. Referring to another decision reported in AIR 1996 Supreme Court at page 1744 (State of Maharashtra etc. -Vs- Somnath Thapa etc. It has been contended that the Hon'ble Supreme Court observed that when the ultimate offence consists of a chain of action it would not be necessary for the prosecution to establish to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long it is known that the collaborator would put the goods or service to an unlawful use. Further, place their reliance on a decision reported in AIR 1995 Supreme Court at page 785 (State of West Bengal and Ors. -Vs- Md. Khalid & Ors.) it has been stated that it was held by the Hon'ble Supreme Court that mere existence of 26 live bombs is a clean indication of conspiracy. So placing reliance on the ratio of decision by the Hon'ble Supreme Court in the above mentioned cases it has been submitted that in this case to prove conspiracy it would be regarded as enough if the prosecution could establish a case on the basis of circumstantial evidence alone and as per their claim that has clearly been established in this case as per the evidence which have been led before this Court. So, according to the prosecution that act of airdropping of arms and ammunition is an act of extreme depravity carried out in execution of international conspiracy and in the present case proprietor of the crime Kim Davy (absconding accused person) procured lethal arms and ammunition on behalf of certain sections of Anandmargis by using deceitful services of accused Peter Bleach and Latvian accused persons and which were intended to be used for unlawful activities. So, it has been submitted on behalf of the prosecution that the charge of conspiracy in relation to the above crime has been established in this case. I find much force in this connection and accordingly, accepting the same, I find and hold that accused Peter Bleach and five Latvian crew members were involved in international conspiracy in connection with the present matter.

Now coming to the question regarding objection taken by the defence with regard to the sanction accorded in connection with this case it has been contended on behalf of the prosecution that by examining P.W.133 Shri Manish Gupta the present Chief Secretary who was then Home Secretary, Government of West Bengal, the prosecution has proved that this sanction order Ext.132 was issued by Shri Gupta on 19th of March, 1996 on the basis of the materials placed before him. It has also been contended on behalf of the prosecution that by examining P.W.134 (T.K. Burman), P.W.135 Sibaji Prasad Borah and P.W.136 C.B. Rokde and P.W.138 Manoj Agarwal the sanction orders U/s. 7 of the Explosive Act (Ext.304) sanction order (Ext.316) and sanction order under Arms Act and the Explosive Substances Act (Ext.317) have been proved. It has been contended that in course of their cross examination nothing specific was suggested to these witnesses regarding their application of mind or otherwise.

As per the decision of the Apex Court it is now well settled legal position that the order of sanction is only an administrative act and not quasi-judicial one nor a lis is involved. Therefore, the order of sanction need not contain detail reason and it has further been contended on behalf of the prosecution that it is also quite well settled position of law that the sanctioning authority while granting sanction is neither supposed nor expected to weigh or examine the evidences collected during the investigation meticulously or to record reasons based on legal evidence and in this connection they have placed their reliance on the decision reported in State of Bihar -Vs- P.P. Sharma in Criminal Law Journal 1991 at page 1438 and also



reported in 1999 Criminal Law Journal at page 4111.

Further it has been contended on behalf of the prosecution that section 7 of the Explosive Substances Act, 1908 envisages that no court shall proceed with the trial of any person for an offence under this Act except with the consent of the Central Government and a bare reading of the aforesaid provision clearly speaks that sanction of the Central Government is a condition precedent of trial of an offence under this Act, but the above provision does not preclude the Court to take cognizance of the offence without sanction and the above power conferred with the Central Government can be delegated to the State Government by the President under Clause (1) of Article 258(1) of the Constitution of India and by virtue of said power vested with the President of India, the president of India delegated the State Government to function on behalf of the Central Government u/s 7 of the Explosive Substances Act, 1908 and the statutory functions of the State Government rests with the Governor of the State and the State Government is not a personal body and it can only function through a condified machinery. It has further been contended on behalf of the prosecution that in connection with this case before submitting the chargesheet sanction for prosecution under various sections of IPC as well as under the Arms Act, Explosive Act and Explosive Substances Act were obtained and chargesheet was filed on 20.03.96 and subsequently cognizance of this case was taken. It has also been contended that the sanction at the first instance was obtained from ADM, Purulia and later on for the sake of more safeguard another sanction was also obtained from the Special Secretary, Home Department, Government of West Bengal. In any case the said previous sanction received from ADM, Purulia cannot be regarded as bad in law and in this case second sanction was taken to avoid any technical problem in any later stage. It has also been contended by the prosecution that nothing was suppressed before this Court and prosecution examined Special Secretary and Additional District Magistrate both as P.Ws. who proved their respective sanction in Court and during their cross-examination these points were not raised. So, according to the prosecution the sanctions granted in connection with this case are all valid and defence at this stage is not entitled to take any such plea as taken by them at this stage.

Now having heard the contentions of both sides and pursuing the decisions cited above by both the parties and looking into the evidence on record as adduced by P.Ws. 133 (Manish Gupta), 134 (T.K. Burman), 135 (Sibaji Prasad Boral), P.W. 136 (C.B. Rakde and P.W. 138 (Manaj Agarwal) I find that defence during their corss-examination did not raise all those points and those witnesses in course of their evidence have clearly stated that on perusal of the materials placed before them they granted the respective sanctions. So, agreeing with the contention of the prosecution I find no illegality in the sanction orders.

Now coming to the plea taken by Peter Bleach that all items allegedly delivered according to the prosecution case were clearly in law defined as arms and ammunition and those are clearly described in section (2) of the Arms Act and according to him each of such items including hand grenades and roket launchers complete with rockets were clearly being identified and listed in the Arms Act, they could not in

law be anything else. In reply to that it has been contended on behalf of the prosecution that the object of the Arms Act is to preserve the public security and secure maintenance of the public order. Section 2(b) of the Arms Act defines only ammunition which means ammunition for any fire arms and include rockets, arms, grenades, cells and other materials and other specified items. The expression 'fire arms' has been defined in Section 2(e) of the Arms Act which means arms of any description, design or adopted to discharge a projectile of any kind by the action for any explosive or other forms of energy and includes artillery hand grenades, riot pistols or weapons of any kind designed or detected for the discharge of any noxious liquid gas of other such things and also includes accessories and part of such fire arms.

It has also been contended that the object of the Explosive Act is to prove law regulating manufacture, keeping, sale, conveyance and importation of explosive throughout India and this act is a separate and independent act from that of the Arms Act and vide its schedule (1) it has classified explosives and as per Schedule (1) class (6) 'ammunition' means explosive of any of the foregoing classes when the same includes in any case and contrivance or is otherwise adopted or prepared so as to form (a) cartridge or charge for small arms, cannon or any other weapon or (b) safety or other fuse for blasting or for sales or (c) a tube for firing explosive or (d) a precision cap, detonator, fog signal, cell, war rockt or any other contrivance other than fire weapon. It has also been contended that the Explosive Substances Act is an independent Act by itself and the violation of the provisions of this Act is also punishable independently because as per the definition under this Act it includes any apparatus, machine, implement or actual use or intended to be used or adopted for causing or aiding in causing any explosion in or with any explosive substances also in part of any such apparatus, machine or implement. In this connection reference has also been made in respect of a decision reported in 1981 Criminal Law Journal page 1912 (Gandoor Singh -Vs- State of Punjab) and in this connection it has been submitted that in connection with the above case the hand grenades recovered from the possession of the petitioner would be explosive substance within the meaning of definition despite the fact that in order to explode them, ignite set hand to be fitted to such type and therefore the definition of explosive substance is very wide and the term 'explosive substance' includes any part of any apparatus, machine or implement intended to be used or adopted for causing or aiding in causing any specific substance. It is, therefore, submitted on their behalf that the explosive and ammunition and some apparatus for use of those explosive seized in connection with this case are rather coming within the purview of definition of explosive substances and the accused persons are liable to be punished independently under the provisions of Explosive Substances Act and they are equally liable for punishment under the Arms Act as also the Explosive Act.

Now giving my anxious consideration with regard to the submissions made by the parties in relation to the above matter and looking into the materials, specially the reports Exts.270, 271, 272 and 273 proved by P.W.101 A.Dey I find that four 7.62 assault rifles have been classified as fire arms as defined in the Arms Act, 1959 and those have been reported to be in working order and the twenty 7.62 assault rifles cartridges have been classified as ammunition as defined in the Arms Act, 1959 and were reported to be live ones and the 9 mm pistol has been classified as fire arms as defined in the Arms Act, 1959 and also reported to be in working order. Further it has come out from the report of Dr. M.S.Rao Ext.267 and

it was opined in the report that the origin of these rifles were traced to be of Bulgarian origin and all were AK-47 rifles and physical appearance and physical parameters of the seized pistols indicated them to be 9 mm caliber Macarov self loaded pistols of former USSR origin and which was used by Warsaw Pact Countries and from such report it is also found that they also conducted test firing of those rifles as well as pistols which was test fired successfully. The report Ext.271 proved by A. Dey (P.W.101) also classified hand-grenades along with detonator sets as explosive substances and report (Ext.272). Proved by A.Dey (P.W.101) also classified three 7.62 assault rifles as fire arms and the 1000, 7.62 mm assault rifle cartridges were classified as ammunition as defined in the Arms Act, 1959. Similarly report Ext.273 proved by A. Dey (P.W.101) also classified five 9 mm pistols and 7.62 mm sniper rifles to be fire arms as defined in the Arms Act and those also found to be in working order and the 192 9mm pistols cartridges were classified as ammunition in the said report as defined in the Arms Act,1959 and those were also reported to be live ones. So, taking into consideration the statements made by the prosecution witnesses together with the above materials as available from the above reports I find and hold that the aforesaid arms and ammunition, grenades and detonators which were recovered from the place of occurrence and also from the aircraft are arms and ammunition, explosive substances within the meaning of the Arms Act,1959, Explosive Act, 1884 and Explosive Substances Act 1908. In view of the above, the objection taken by the accused persons specially by Peter Bleach in this regard is not sustainable in law. So, I hold that the materials placed before this Court through evidence by the prosecution successfully covers the provisions of the Arms Act, Explosive Act and Explosive Substances Act. From the discussions in the foregoing paragraphs it has been clearly established that Peter Bleach took out some arms and ammunition from the hidden place of the aircraft. Ld. Advocate appearing for Latvian accused persons submitted that even giving fullest premium to the aforesaid contention of the prosecution it will at least be held that either Peter Bleach himself concealed the arms or he might have seen somebody concealing or he might have some knowledge of concealment by some persons. But in any event that cannot cover the Latvian accused persons holding them guilty for having knowledge about the concealment of the arms and ammunition in the aircraft. But in view of my findings, made in the preceding paragraphs, it has come out clearly that the Latvian accused persons including Mr. Peter Bleach were in the aircraft from the point of loading till it was airdropped. So, in any event they cannot also avoid their responsibility regarding having knowledge of concealing the arms and ammunition inside the aircraft which were ultimately airdropped in the district of Purulia, as it has come out clearly that all the Latvian accused persons and Peter Bleach were in conscious and controlled possession of those arms and ammunition. In this connection reference of the civil rules and Aircraft Manual may also be made when the pilot of the aircraft is regarded to be in over all charge of all the properties etc. kept in the aircraft.

From the side of the defence by examining D.W.2 Voldemars Losans, D.W.3 Vladimis Yelkisev and D.W.4 Agrikoliani Alexandre A the defence specially the Latvian accused persons tried to prove and establish that AN-26 aircraft is not capable of paratropping and certain extra was required to be fitted such as rollers etc. to facilitate airdropping from the aforesaid aircraft AN-26. But I have gone through the

evidence adduced by the aforesaid witnesses meticulously. from the nature of the evidence adduced in connection with this case I find these witnesses were not all along attached with the concerned aircraft itself. So, what actually happened at different stages that was not possible for them to say before this Court. But from my discussions in connection with the evidence brought in before this Court through execution of Letter Rogatory from abroad it has come out that there has been refitting at Riga before delivery and it has also come out from the evidence and materials available that the dropping from the aforesaid aircraft was a risky operation and it has also come out from the evidence in cross-examination of D.W.4 Agrikolianski Alexandre A that without the knowledge of the crew members it is not possible to open the rear door when it is in flight, but the crew members will notice it. So, when it has been the specific finding of the Court that certain arms and ammunition were airdropped from the aircraft AN-26, YLLDB, then the evidence of the witnesses examined on behalf of the defence does not come to any aid to the defence in any way. Rather, it has been established that the Latvian accused persons even knowing it perfectly well that airdropping of arms and ammunition at that place was not safe, airdropped from the aforesaid aircraft taking great risk and that establishes their active involvement in connection with the present matter of airdropping of arms and ammunition through the aircraft AN-26, YLLDB. My above view gets its ample support from the application filed on 14.12.98 by the Latvian accused persons in Court wherefrom it is seen that these Latvian accused persons have also made clear admission with regard to airdropping of arms and ammunition on 17.12.95 over the district of Purulia, obviously after deviation from the route of aircraft AN-26, YLLDB and that admission has been made by them quite voluntarily without being persuaded by any authority whatsoever and such application was forwarded to this Court from the jail being counter signed by the Superintendent of Presidency Jail. So, it cannot be said by any stretch of imagination that they were induced to make such admission before this Court and such admission has not been withdrawn as yet by those Latvian accused persons.

Taking view from the observations and findings, made above in the preceding paragraphs, I take this liberty to hold with assertion that prosecution in this case by examining as many as 140 witnesses and by bringing in evidence and materials through execution of Letters Rogatory u/s. 166A of Cr.P.C. has proved and established the link chain circumstances which are as follows :-

1. Prosecution has proved that Peter Bleach, proprietor of Aeroserve, UK was dealing with arms and ammunition, defence equipments and was having business link with BTI.
2. Prosecution has also proved that Peter Bleach went to Copenhagen where he could know that the deal was to supply arms to some insurgents in India and the deal was ultimately finalised.
3. Prosecution has also proved that purchase of aircraft by way of purchase contract signed at Riga and Peter Bleach was instrumental in negotiating the purchase deal of this particular aircraft and Mr. Bleach being accompanied with Kim Davy and others inspected the aircraft.
4. Prosecution has also proved that the Latvian accused persons were engaged as crew members in respect of the particular aircraft YLLDB with a special flight permission for a flight from Riga to Dacca

which was valid up to 5.12.95.

5. Prosecution has also proved that five Latvian accused persons along with Peter Bleach and Kim Peter Davy stayed together in Bulgaria at the time of loading of the arms and ammunition in the AN-26 aircraft having registration no. YLLDB.

6. Prosecution has further proved the contract number obtained by Peter Bleach from Bangladesh Government was used deceitfully and illegally.

7. Prosecution has further proved that accused persons had knowledge with regard to the arms and ammunition loaded in the aircraft at Bourgas Airport camouflaging those in the name of technical equipments.

8. Prosecution through materials collected from UK has been able to prove Peter Bleach's involvement and his full knowledge about the illegal arms deal.

9. Prosecution has also established that the aforesaid aircraft YLLDB, AN-26 landed at Varanasi Airport on 23rd November, 1995 and all the five Latvian crew members and some other persons stayed there up to 27.11.95 and tried to gather experience about the airport which might be proved handy on their second visit on 17th December, 1995.

10. Prosecution has also proved that the aforesaid six accused persons were at Karachi Pearl Continental Hotel on 15.12.95.

11. Prosecution has further proved that accused Kim Davy (absconding accused), Peter Bleach, Alexander Klichine @Sasha, Igor Moskvitine @Alexandre, Oleg Gaidach, Evgueni Antimenko and Igor Timmerman were on board of the aircraft AN-26, YLLDB and there has been air dropping of arms from the said aircraft over Purulia by way of deviating from the normal route no.R-460 near Dhanbad while coming to Calcutta from Varanasi via Dhanbad on 17/18.12.95, which were subsequently seized through seizure lists.

12. Prosecution has also proved that huge quantity of sophisticated arms and ammunition were dropped from the aircraft AN-26, YLLDB on the night of 17th December, 1995 during unusual hours and the target place of such dropping was near the three storied building of Anandamarga Pracharak Sangha at Bansgarh.

13. Prosecution has also proved that the aircraft YLLDB arrived at Phuket on 18.12.95 from Calcutta and all the accused crew members and accused Peter Bleach stayed in Karon Villa Hotel from 18.12.95 to 21.12.95.

14. Prosecution has also established and proved that this particular aircraft was not following the authorised route from Phuket to Calcutta, Calcutta to Varanasi and Varanasi to Karachi and had flown

from Varanasi to Calcutta without air defence clearance.

15. Prosecution has proved that on 21.12.95 the aircraft arrived at Chennai Airport.

16. Prosecution has also proved that the aircraft YLLDB, AN-26 landed at 1-39 IST at Sahar International Airport, Bombay on 22.12.95 and prosecution has also proved that on 23.12.95 arms and ammunition were recovered from the aforesaid aircraft as per showing of accused Peter Bleach.

17. Prosecution has also established that accused Peter Bleach brought out certain arms and ammunition from the hidden places of the aircraft at Sahar International Airport, Bombay.

18. Prosecution has also established that arms found in the aircraft and in the ground at Purulia were identical.

19. Prosecution has also proved that the aircraft AN-26, YLLDB belong to Carol Air Services and Kim P. Davy was its owner.

Considering the facts, circumstances, evidence and materials on record and in consideration of the link chain circumstances as has been established and discussed above in the preceding paragraphs, I hold with certainty that prosecution in this case has been successful in proving and establishing an international conspiracy for procurement of lethal arms and ammunition etc. on behalf of certain insurgent group in India with a view to helping them in over throwing and to over awe the duly elected Government in West Bengal. I hold with assertion further that the prosecution in this case has been able to prove and establish a case of arms smuggling involving six accused persons viz. Peter Bleach, Alexander Klichine, Igor Moskvitin, Oleg Gaidach, Evgueni Antimenko, Igor Timmerman and others from several countries being a part of concerted design to wreck havoc within the Indian Territory. Prosecution has also established from the aforesaid link chain circumstances, that the conspiracy was hatched in several places, plan of actions was developed and accordingly aircraft was purchased in Latvia and the aircraft was flown to Bulgaria where the arms were loaded and the aircraft was transited through several places and countries before it came to Karachi and halted for few days and from Karachi it came to Varanasi, halted for some time and thereafter, came over Purulia and airdropped huge quantity of arms and ammunition deviating from the air route no.R-460 and thereafter, managed to get out of the country, finally landed in Phuket and after successful air dropping accused persons enjoyed at Phuket and on their return journey the aircraft landed at Sahar International Airport as per the direction of the MLU.

In view of what I have stated above, I hold that it has also been established beyond reasonable shadow of doubt that accused Peter Bleach played a vital role in purchasing the aircraft, engaging the Latvian crew members and using the contract number of Bangladesh and arms were loaded in the aircraft mentioning those as technical equipments and those were thereafter, smuggled into Indian Territory with active connivance of the Latvian accused persons. Prosecution has therefore, established beyond reasonable shadow of doubt that Bleach actively participated in the conspiratorial activities with active



connivance of Latvian crew members.

But, in this case prosecution could not, however, adduce any convincing evidence with regard to the involvement of accused Vinay Kumar Singh with regard to the present matter even if some evidence has been adduced on behalf of the prosecution that he was also associated with Anandamarg organisation, and the Ld. Special PP appearing for the State also in his usual frankness has conceded before me that there is no cogent evidence and materials on record to prove involvement of accused Vinay Kumar Singh with the concerned crime. Now, to conclude in this regard I hold that prosecution in this case has leveled charges U/s 121, 121A and 122 of IPC against the six accused persons (five Latvian accused persons and Peter Bleach) and prosecution has also leveled charges U/s 121 and 121A of IPC against accused Vinay Kumar Singh. But, from the aforesaid discussions and findings, made above, I hold with assertion that prosecution in this case has only been successful in establishing the guilt of the accused persons (excepting accused Vinay Kumar Singh) with regard to the offence U/s 121A of IPC by satisfying the ingredients necessary for establishing such offence and those are as follows :-

1. Accused persons entered into a conspiracy.
2. that the conspiracy was to wage war or attempt to wage war,
3. to overawe the Central or State Government and
4. by using of criminal force or by show of force.

From the nature and the quantity of the arms and ammunition involved in this case it can be said with certainty that quantity, nature and magnitude of the weapons etc. involved in this case are adequate enough to create utmost misery to public by disturbing the public order and tranquillity as well as the very safety and security of the country and in this case it has also been established from the evidence on record that the arms and ammunition of such magnitude smuggled into Indian Territory to help some insurgent group in over throwing the State Govt. Prosecution, however has not been successful in bringing home the guilt of the accused persons U/s 121 of IPC and U/s 122 of IPC by proving their necessary ingredients. So, I find and hold in conclusion that accused Peter Bleach, Igor Moskvitin, E. Antimenko, Igor Timmerman, Oleg Gaidach and Alexander Klichine are found guilty of the offence U/s 121A of IPC. They are, however, found not guilty of the offence U/s 121 and 122 of IPC.

In view of my discussions in relation to the provisions of the Arms Act, Explosive Act and Explosive Substances Act. I also hold in conclusion that all the abovenamed six accused persons are also found guilty of the provisions of section 25(1-A)/25(1-B) (f) & (g) of the Arms Act, 1959 and they are also found guilty of the offence u/s. 9B(2) of the Explosive Act, 1884 and u/s. 5 of the Explosive Substances Act, 1908.

Materials available on record have also proved that there has been violation of Rule 8 of the Aircraft Rules, 1937 in carrying within or over India any ammunition of war, implements of war, explosives, high inflammable articles, arms and ammunition etc. and there has also been violation of Rule 26 of the aforesaid Aircraft Rules and as such they are also found to be guilty and punishable u/s. 10(1) of the Aircraft Act as also u/s. 11 of 11A of the Aircraft Act, as the crew members with active participation of Mr. Bleach were engaged in dropping arms and ammunition in huge quantity over some villages within the district of Purulia from low altitude which amounts to causing danger to the inmates of the villages of Purulia and the aforesaid aircraft AN-26, YLLDB has also deviated from normal air route R-460 and as such they are also liable to be punished u/s. 11A of the Aircraft Act. So, all the six accused persons are also found guilty u/s. 10(1), 11 and 11A of the Aircraft Act, 1934.

Pointing out to the charge framed against these accused persons u/s. 5(2)(1) of the Aircraft Act it has been contended that there is no such provisions u/s. 5(2)(1) and as such no punishment can be awarded against these accused persons on the charge of which there is no existence in any law. But looking into the materials available on record I find that in the charge itself specification of the charges were made and the gist of the charges were duly explained and the evidence were adduced during trial which were defenced by the accused persons. So, in any way the accused persons have not been prejudiced for introducing that section i.e. 5(2)(1) of the Aircraft Act, 1934 instead of section 5(2)(L).

Now to conclude finally I hold and find that accused Peter Bleach, Evgueni Antimenko, Alexander Klichine, Igor Moskvitin, Igor Timmerman, Oleg Gaidach are found guilty of the offence u/s. 121A of I.P.C. They are also found guilty of the offences u/s. 25(1-A)/25(1-B) (f) and (g) of the Arms Act, 1959. They are also found guilty of the offences u/s. 9B(2) of the Explosive Act, 1884. These six accused persons are also found guilty of the offences u/s. 10, 11 and 11A of the Aircraft Act, 1934. All of them are accordingly convicted under the aforesaid sections of law. Those avobenamed six accused persons, however, are found not guilty of the offences u/s. 121/122 of I.P.C. and they are, therefore, acquitted from the aforesaid charges. Accused Vinay Kumar Singh is, however, found not guilty of the offences u/s. 121 and 121A of the I.P.C. and he is, therefore, acquitted from this case.

Accordingly it is

### Ordered

That the accused persons viz. Peter James Gifran Von Kalkstein Bleach, Evgueni Antimenko, Alexander Klichine @ Sasha, Igor Moskvitine @ Alexandre, Igor Timmerman and Oleg Gaidach are found guilty of the offence u/s. 121A of I.P.C. and they are convicted thereunder accordingly.

They are also found guilty of the offences u/s. 25(1-A)/25(1-B)(f)(g) of the Arms Act, 1959 and they are also convicted thereunder accordingly.

They are also found guilty of the offences u/s. 9B(2) of the explosive Act, 1884 and also u/s. 5 of the Explosive Substances Act, 1908 and they are also convicted thereunder accordingly.

The abovenamed six accused persons are also found guilty of the offences u/s. 10, 11 and 11A of the Aircraft Act, 1934 and all of them are accordingly convicted thereunder.

Those abovenamed six accused persons, however, are found not guilty of the offences u/s. 121/122 of I.P.C. and they are, therefore, acquitted from the aforesaid charges.

The abovenamed six accused persons viz. Peter James Gifran Von Kalkstein Bleach, Alexander Klichine @ Sasha, Igor Moskvitin @ Alexandre, Oleg Gaidach, Evgueni Antimenko, Igor Timmerman are already in custody. They be produced on 2.2.2000 for hearing on the point of sentence.

Accused Vinoy Kumar Singh is, however, found not guilty of the offences u/s. 121 and 121A of the I.P.C. and he is, therefore, acquitted from the case. He be set at liberty at once, if not wanted in any other case.

Dicted and corrected by me :

Sd/- 31.1.2000

Sd/- 31.1.2000

Sessions Judge Ivth Bench      Sessions Judge, IVth Bench,      City Sessions Court, Calcutta  
City Sessions Court, Calcutta

Convicted accused persons viz. Peter James Gifran Von Kalkstein Bleach, Alexander Klichine @ Sasha, Igor Moskvitine @ Alexandre, Oleg Gaidach, Evgueni Antimenko and Igor Timmerman are produced from J.C. They are individually heard on the point of sentence.

Convict accused Peter Bleach has submitted before this Court that he is very much thankful for not finding him guilty for the offences u/s 121 and 122 of I.P.C. and he has never committed any offence and still considers himself to be not guilty of the offences and as such he leaves the entire matter on Court with regard to the question of punishment to be inflicted on him in this case.

The Latvian convict accused persons were also individually heard on the point of sentence through the help of free-lance interpreter Smt. Kuheli Chakraborty.

Firstly it has been submitted by convict E. Entimenko that since his school days he had always deep respect for India. In case of any catastrophe due to natural calamity in India, he always reacted and was always quite friendly with the people of India. At the present moment in his home he has his mother. His children are growing up without their father. His wife is also unemployed and all the members of his family as aforesaid are his dependents. He also submitted that he was never inimical towards India. For the last four years his health has broken down and he had two heart attacks. At present also he is

suffering from heart diseases. His teeth are broken and his nervous system has also broken down. It has also been stated by him that his health is now in such a condition that he requires good medical attention by qualified medical experts and lastly it has been submitted by him that he does not consider himself to be guilty.

It has been submitted by convict accused Alexander Klichine in his turn, on being asked by the Court on the point of sentence, that he was born and grown up in Soviet Union. He was always friendly towards India. He never imagined to commit any crime against India. There are his dependents in his family and they are his wife, son and daughter who are facing extreme financial stringency. He has also submitted that his wife is unemployed so she had to sell her properties to meet her both ends. Besides that he has his old mother and he has not met his mother for quite a long time. Like before he still have the same friendly attitude towards India.

Igor Moskvitine in his turn has submitted that he still considers himself to be not guilty and he is not in any way guilty for law. It is also added that he is very seriously ill. During the prison period he has been attacked with serious ailment like T.B. So, any sentence that would be passed on him would certainly be a death for him. It has also been submitted by him that his treatment is going on for the last few years and he is not all right at present. In case of any punishment his family and relatives are going to suffer. when he left home his daughter was very small and now she is in 2nd year in the school and he apprehends that his daughter does not know him even. He also submitted that he always respected India and loved India, he had never any inimical feelings towards India and he does not think that he will be given any punishment. He has also submitted that he has been making all these submissions with due respect to this Court.

Convict Igor Timmerman in his turn submitted before this Court that first of all he wants to say that he does not consider himself to be guilty and he has not violated any Indian law. He also submitted that they never had any inimical attitude towards India, nor they had any inimical intention towards India and there have been no reasons for it. Their people was always friendly towards India. All the convicts also extended their help and cooperation during investigation in his case and the same was also acknowledged officially by the management of the CBI in the presence of representatives of Foreign Ministry. He has already spent more than four years in prison. He was also contacted with several diseases while in prison. His health has also broken down. He also submitted that he and his companions have also lost their profession and if he receives any punishment that will be a more punishment for his family members. In Riga his aged mother is there who is 70 years old and she is also ailing and she has no means of her livelihood without the earning of this convict accused. He also submitted that he wants to repeat that he has not violated any law against India and as such he does not consider himself to be guilty and he hopes that this Court will take into consideration all the facts.

Convict Oleg Gaidach in his turn has submitted before this Court that he does not consider himself to be guilty under all these section as pronounced by the Court. He also submitted that he never felt any bad intention and so he could not have committed this crime. He also added that it is an acknowledged

fact that crime is the result of bad intention and he never had even the slightest bad intention against India, being in detention his family has undergone immense sufferings, he has already spent four years in prison and his ribs were broken for no reason during that period. He hopes that this Court will take into consideration all these aspects of the case. He hopes for the best and further hopes that he will return home and will be able to see his relatives.

It has been submitted on behalf of the prosecution that in consideration of the nature and gravity of the case an exemplary punishment should be awarded to these accused persons.

In awarding punishment, apart from taking into consideration the question of gravity and nature of the offence, the Court has certain discretion in awarding such punishment. But such discretion must be exercised judicially taking into consideration all the relevant aspects of the concerned matter.

The object of punishment, as it appears, has, however, double effect. Firstly, to prevent the person or persons from repeating the act and secondly to prevent others from committing similar types of crime. So, normally to meet the ends of justice imposition of deterrent punishment is necessary, unless having regard to the nature and circumstances of the case, a sympathetic treatment is called for.

In connection with the present case, I find from the materials on record that these convicted accused persons were involved in international conspiracy for procurement of huge cache of lethal arms and ammunition etc. on behalf of certain insurgent group in India with a view to helping them in overthrowing and to overthrow the duly elected Government of West Bengal and it has also been established against them that the conspiracy was hatched in several places, plan of actions was developed and the aircraft was purchased in Latvia and the aircraft was flown to Bulgaria where the arms were loaded in the aircraft, transited through several places and countries before it came to Karachi and halted for few days and from Karachi it came to Varanasi, halted for sometime and thereafter, came over Purulia and air dropped huge quantity of arms and ammunition deviating from the air route and thereafter, managed to get out of the country. This is for the first time in the history of our country that a crime of this nature having serious implication against our national security, both external and internal, has been committed and it has also revealed a part of concerted design to wreak havoc within the Indian Territory and the arms and ammunition of this enormity and daunting magnitude are adequate enough to create untold misery to the members of the public by disturbing the public order and tranquillity as well as the very safety and security of the country. So, the act and actions of the convicted accused persons which have been established from the materials on record do not deserve any sympathy and no leniency should be shown to these convicted accused persons in awarding punishment, as it was a clear case wherein the question of security and safety of the nation are involved and were at stake.

As per the modern criminology the anxiety of the judiciary must be reflected through the sentence to prevent heinous and serious crime. A common man also in a crime of such serious type understands and appreciates the language of deterrence more than the reformatory jargon. But, the modern criminology does not encourage the imposition of severe sentence against the criminals basing upon the theory that

none is born criminal. So, in awarding such capital punishment it has to be considered whether the case in hand is the rarest of the rare cases.

The case in hand, as it appears, must be first of its kind in the history of our country where a crime of this nature having serious implications on our national security, both external and internal, has been committed and this act of airdropping of arms and ammunition poses a serious threat to the security of the national border and to the nation as well. So, in any event the act of these convict accused persons, as I find from the materials on record, cannot be sheltered with any kind of mercy. True it is that no instance of bad conduct or ill behaviour of the convict accused persons came to the light during this trial and even then that cannot be considered to be a special circumstances to take a lenient view in awarding punishment in this case, as the nature and magnitude of the offences committed by the convict accused persons against the nation as a whole deserve exemplary punishment. In such a case, law and justice certainly permit extreme penalty. In a situation like this, upon consideration of the facts, circumstances and materials on record, I think that the crime in the present case is one of the rarest of rare cases and therefore deterrent punishment should be awarded to these convict accused persons.

Taking into consideration all such matters involved in this case, I think that the ends of justice will be sub-served if these convict accused persons be sentenced imprisonment for life each and to pay a fine of Rs.25,000/- each for the offence U/s 121A of IPC and I think that with a fine of Rs.15,000/- each are awarded to these accused persons for the offence U/s 5 of the Explosive Substance Act, 1908, seven years R.I. each with fine of Rs.10,000/- each are awarded to these convict accused persons for the offence U/s 25(1-A), and two years R.I. each with fine of Rs.5,000/- each for the offence U/s 25(1-B)(f)(g) of the Arms Act, 1959. I am of the further opinion that justice will be sub-served if sentence of 2 years each is awarded to the convict accused persons U/s 9B(2) of the Explosives Act, 1884, one year each with fine of Rs.3,000/- each U/s 10 of the Aircraft Act and R.I. for three months each for an offence U/s 11 of the Aircraft Act and R.I. for three months each for the offence U/s 11A of the Aircraft Act, 1934 and it will be just and proper if it is ordered that all these sentences passed in connection with this case are allowed to run concurrently.

Accordingly it is

### O r d e r e d

that the convict accused persons viz. Peter James Gifran Von Kalkstein Bleach, Alexander Klichine @Sasha, Igor Moskvitine @Alexandre, Oleg Gaidach, Evgueni Antimenko and Igor Timmerman are sentenced to undergo R.I. for life and to pay a fine of Rs.25,000/- each, I.D. to suffer further R.I. for 2 years each for the offence U/s 121A of IPC.

Aforesaid convict accused persons are also sentenced to suffer R.I. for 10 years each with a fine of Rs.10,000/- each I.D. to suffer further R.I. for 1 year each for the offence U/s 5 of the Explosive



Substances Act, 1908.

Aforesaid convict accused persons are also sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.10,000/- each, I.D. to suffer R.I. for six months more for the offence U/s 25(1-A) of the Arms Act, 1959.

The aforesaid convict accused persons are also sentenced to suffer R.I. for 2 years each with a fine of Rs.5,000/- each I.D. to suffer R.I. for four months more for the offence U/s 25(1-B)(f)(g) of the Arms Act, 1959.

The aforesaid convict accused persons are also sentenced to suffer R.I. for 2 years each for the offence U/s 9B(2) of the Explosives Act, 1884.

The convict accused persons are also sentenced to suffer R.I. for one year each with a fine of Rs.3,000/- each, I.D. to suffer R.I. for 3 months more for the offence U/s 10 of the Aircraft Act, 1934.

The convict accused persons are also sentenced to suffer R.I. for 3 months each for the offence u/s. 11 of the Aircraft Act, 1934.

The aforesaid convict accused persons are also sentenced to suffer R.I. for 3 months each for the offence u/s. 11A of the Aircraft Act, 1934.

The sentences, so awarded shall run concurrently.

The period of sentence undergone by these accused persons in detention be set of u/s. 428 of Cr. P. Code.

The alams of this case including the aircraft be confiscated to the State after the statutory period of appeal is over. But let it be made clear that the authority concerned should take note that the Alams so confiscated, if necessary, shall have to be produced in Court as and when occasion arises, as a good number of accused persons are still at large and are yet to face the trial.

Dictated & corrected by me :

Sd/- 2.2.2000

Sd/- 2.2.2000

Sessions Judge, IVth Bench,

Sessions Judge, IVth Bench

City Sessions Court

City Sessions Court

Calcutta

Calcutta.