

High Court of Punjab and Haryana Chandigarh

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Sub-Head No. _____

File No. CRA-66-72-17-1949

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**Spare copy of judgment No. 66 of
1949**

(A7)

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IN THE HIGH COURT OF JUDICATURE FOR THE PROVINCE OF EAST
PUNJAB AT SIMLA.

CRIMINAL APPELLATE SIDE.

CRIMINAL APPEAL NO. 66 of 1949.

PRESENT:-

MR. JUSTICE BHANDARI,
MR. JUSTICE ACHHRU RAM,
AND
MR. JUSTICE KHOSLA.

Appeal from the Order of Atma Charan, Esquire, Judge,
Special Court, Red Fort, Delhi, dated the 10th February, 1949
convicting the appellant.

Nathu Ram V. Godse, ... Convict-Appellant,

Versus

Rax, ... Respondent.

Charge:- Under Section 120-B of the Indian Penal Code read with
Section 302 of the Code, under Section 19(c) of the Indian Arms
Act or in the alternative under Section 114 of the Indian Penal
Code read with Section 19(c) of the Indian Arms Act, under Section
19(f) of the Indian Arms Act, under Section 5 of the Explosive
Substances Act or in the alternative under Section 5 of the
Explosive Substances Act read with Section 6 of the Act, under
Section 4(b) of the Explosive Substances Act read with Section 6
of the Act, under Section 3 of the Explosive Substances Act read
with Section 6 of the Act, under Section 115 of the Indian Penal
Code read with Section 302 of the Code and under Section 302
of the Indian Penal Code.

(APPEAL AGAINST CONSPIRACY ONLY.)

Sentence:- (1) to two years' rigorous imprisonment under Section
19(c) of the Indian Arms Act or in the alternative under Section
114 of the Indian Penal Code read with Section 19(c) of the
Indian Arms Act;

(2) to two years' rigorous imprisonment under section
19(f) of the Indian Arms Act;

(3) to three years' rigorous imprisonment under Section
5 of the Explosive Substances Act or in the alternative under
Section 5 of the Explosive Substances Act read with Section
Section

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Section 6 of the Act;

(4) to five years' rigorous imprisonment under

Section 4(b) of the Explosive Substances Act read with

Section 6 of the Act;

(5) to seven years' rigorous imprisonment under Section

3 of the Explosive Substances Act read with Section 6

of the Act; and

(6) to death under Section 302 of the Indian Penal

Code to be hanged by the neck till dead: the sentences

of imprisonment shall run concurrently.

Appellant:- In person under Police Custody.

Respondent:- By M/S. C.K.Daphtary, Advocate-General, Bombay,

N.K.Petigara, Public Prosecutor, Bombay and

K.S.Chawla, Assistant Advocate-General, East Punjab, and Shri M.G.Vyavaharkan, Advocate, Bombay.

JUDGMENT.

Bhandari

At about 5 o'clock on the afternoon of the 30th January 1948 Mahatma Gandhi had just ascended the steps of the prayer platform when a person sprang out of the crowd and fired three shots at him at point blank range. The Mahatma sank to the ground with three pistol wounds in his chest and a cry of "Hey Ram" on his lips. He was carried hastily into his room but he was past human aid and a long life of simplicity, service and sacrifice came rapidly to a close. While the corpse of the injured innocent lay weltering in its blood the shocking and unexpected news of his assassination was broadcast to the nation and the world. The life of a great seer, saint and statesman, considered by many to be one of the greatest men of the world, had passed into history.

The assassin was secured at the spot along with

the pistol with which the fatal shots had been fired. On the following

following day the police were able to apprehend Badge and of the principal figures in this crime. The events now moved with dramatic rapidity and in a short space of time the police were able to examine some startling evidence the effect of which was to disclose the deliberate manufacture of a very cunning plot to assassinate the father of the nation. Eight persons were brought to trial

*P.2. * upon charges of murder, conspiracy to murder, abetment to murder and of offences under the Indian Arms Act and the Indian Explosives Act.

The trial opened in the historic Red Fort of Delhi on the 27th of May 1948. The recording of evidence commenced on the 24th June and continued till the 6th November. Arguments were heard from the 1st to the 30th December and orders were pronounced on the 10th January 1949. During the course of the trial the Court recorded the statements of as many as 149 witnesses covering 326 pages and of eight accused persons covering 223 pages. 638 documentary exhibits and 72 material exhibits were examined and considered. After a laborious trial of unprecedented length conducted, as I hope, with patience and fidelity, the trial Court proceeded to deliver its judgment consisting of 110 printed pages. Out of the witnesses only one, namely, Mr. Savarkar, was

there was a conspiracy to murder Mahatma Gandhi and that he was a member of the said conspiracy. The other prisoners have appealed against the findings of the learned Special Judge and the sentences awarded to them. Mr. Bannerji appeared for Apte and Madan Lal, Mr. N.D. Dange for Karkare, Mr. Inamdar for Gopal Godse and Dr. Parchure and Mr. D.N. Avasthy for Shankar Kistayya. Mr. Godse argued his own appeal. Mr. Daphtary who was assisted by Mr. M.K. Petigara, Mr. Kartar Singh Chawla, and Mr. M.G. Vyavaharkar appeared for the Crown. The cases for the appellants and the Crown were argued with conspicuous ability and I take this opportunity of expressing the gratitude of this Court for the help that has been rendered to us in the decision of this difficult case. I must also acknowledge the fair, temperate and the humane way in which Mr. Daphtary has discharged his stern, imperative but painful duty.

To trace various sequence of events which combined to bring the illustrious victim to his doom it is necessary to go back to the year 1914 * when Mahatma Gandhi returned triumphantly to his native country after a sojourn of several years in South Africa. He brought with him a very high reputation for courageous leadership of Indians in that alien soil. His simplicity of life, his selfless devotion to the cause which he had made his own, his sincerity, his selfless... his
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Muslims by the policy of divide and rule and that there was little or no chance of his leading a united host to the battle for freedom unless he was able to cement fellow feeling and common devotion to the Motherland. He accordingly made Hindu-Muslim unity the foundation stone of his politics. He promised a blank cheque to the Muslims; he backed the Khilafat movement in this country, he placed the Ali Brothers on a high pedestal. His real and genuine sympathy for the Muslims does not appear to have struck a sympathetic chord in the Muslim heart, for the Moplah Rebellion which broke out shortly afterwards showed that the Muslims were not responding to the friendly approaches that were made by the Hindu leaders. They spurned the offer of friendship and brotherhood which was extended to them and continued to demand special rights and privileges. The Government of India Act, 1919 enlarged separate electorates and continued communal representation. Mahatma Gandhi, however, did not relent. On the other hand, he lived in the hope of being able to weld the Hindus and Muslims into a single entity known as the Indian Nation. He was always prepared to concede the claims of the Muslims even at the risk of incurring the displeasure of his own followers. He agreed to the separation of Sind and to the creation of a separate Province of the North West Frontier. He went on conceding one demand after another in the hope no doubt of enlisting the support of the Muslim League in the final encounter with British Imperialism. Notwithstanding these concessions the Muslim demands continued to increase; and when the Hindu and Muslim representatives sat together at the Round Table Conference in London Mahatma Gandhi was reluctantly compelled to ask the British Prime Minister to come to their rescue. The communal award was given and the seeds of antipathy, dissention and discord were sown. Shortly after

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the second world war had broken out in the western hemisphere, Mr. Jinnah came out with his demand for the creation of Pakistan on the basis of the two nation theory which is well known to every one in this country.

7. - *At least two persons in this country were dissatisfied with the pro-Muslim policy followed by Mahatma Gandhi, for they appear to have entertained the opinion that the teachings of Ahimsa advocated by Mahatma Gandhi were likely to result in the emasculation of the Hindu community and make it incapable of bearing the stresses and strains of the modern world. These two persons were Nathuram and Apte, the two principal offenders in this case. In order to counteract this policy of appeasement they resolved to enter public life and to form a group of persons who held views similar to their own. They started a daily newspaper known as the 'Agrani' and later as the 'Hindu Rashtra'. In this paper they criticised the policies and programmes of Mahatma Gandhi and particularly the methods adopted by him for achieving his ends. They objected particularly to fasts and hunger strikes undertaken by him. At about this time Mahatma Gandhi started reciting the Woran at meetings which were attended by almost exclusively by members of the Hindu community. Apte decided to stage a peaceful demonstration with the object of registering his protest against the policy which appeared to him to be prejudicial and detrimental to the interests of the community as a whole.

*P.S.

number of such demonstrations are said to have been staged at various places such as-----

Panchgani,

Panchgani, Poona, Bombay and Delhi. These demonstrations, however, do not appear to have deflected Mahatma Gandhi from the programme which he had chalked out for himself, and the policy of Mahatma Gandhi was fully endorsed by the Congress.

On the 15th August, 1947 the sub-continent of India was split up into the two rival dominions of India and Pakistan. Independence came and brought it changes to the lives of the people. Large populations from the Punjab and Bengal were uprooted from the soil in which they had nurtured and grown. Blood flowed like water. Mass murder on a colossal scale was committed to shock humanity. It is said that despite the misery and the suffering which had been brought to the people of this country and despite the brutality of Muslims, Mahatma

Gandhi did not consider it necessary to alter his policy of appeasement. On the other hand, he continued reciting the Qoran at the prayer meetings attended by Hindus with Mr. Suhrawardy by his side. Towards the middle of January, 1948 Mahatma Gandhi decided to undertake a fast with the object of promoting Hindu-Muslim unity in the dominion of India. Nathuram and Apte were of the opinion that the real motive behind the fast was not to promote the cause of Hindu-Muslim unity but to compel the dominion Government to pay a sum of 55 crores of rupees to Pakistan. It is said that as soon as Apte heard of this fast he suggested that a strong but peaceful demonstration should be staged at one of the prayer meetings at Delhi. In the absence of a better alternative Nathuram agreed to the proposal although he was almost certain that no useful purpose was likely to be served. The prisoners state that they or some of them assembled at Delhi between the 17th and the 20th January with the object of staging a strong

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but peaceful demonstration in the presence of Mahatma Gandhi. The prosecution on the other hand allege that between the period commencing with the 1st December, 1947 and ending with the 30th January, 1948 Nathuram, Apte and some of their companions conspired among themselves to commit the murder of Mahatma Gandhi and that the same act, namely, the murder of Mahatma Gandhi was done in pursuance of the said agreement and conspiracy at Delhi on the 30th January, 1948. The trial Court was required to adjudicate upon the correctness or otherwise of these two rival versions. The trial Court has found in favour of the Crown and the question for this Court is whether the Court below has come to a correct determination in points of fact and law.

*P.10.

No points of law really arise in this case for the question whether a conspiracy to assassinate Mahatma Gandhi has or has not been established is question of fact which must be determined on the evidence on record. The points of law raised by Mr. Bannerji have been ably dealt with by my learned brother. They are so simple and straightforward that Mr. Daphtary did not consider it necessary to cite a single authority in refutation of the authorities cited by Mr. Bannerjee.

*P.11.

*The prisoners in this case belong to different places and different walks of life. Nathuram V. Godse is the Editor of Newspaper. He was born in a devotional Brahman family of the Bombay Presidency. He worked for several years in the R.S.S. and subsequently joined the Hindu Mahasabha of which Mr. Savarkar was the president.

Narayan D. Apte, aged 34, is the Manager of a newspaper. He is a graduate of the Bombay University. He worked as a teacher in the American Mission High School at Ahmednagar.

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In or about the year 1941 he came to know Nathuram as a Hindu Mahasabha worker of Poona and in or about the year 1944 both Nathuram and Apte started the Marhatti newspaper known as the daily "Agrani" with the object of propagating political views of the Hindu Mahasabha and of publishing the political programme of what is called the ideology of Hindu Sanghatan. The views which the "Agrani" and later the "Hindu Rashtra" propogated as regards the then current political problems were that India should not be divided, that the pro-Muslim policy or the policy of appeasement which was being pursued by Mahatma Gandhi and the * Congress was detrimental not only to the cause of Hindus but also to the welfare of India as a whole. The Hindu Rashtra Dal was started in or about the year 1941-42 to propogate and publicize the Hindu Sanghatan ideology. From time to time demonstrations were held at Gandhiji's prayer meetings to disseminate their feelings and to express their opposition to some of the Gandhian and Congress views which the prisoners thought were detrimental to the interests of the Hindu society.

Vishnu Ramkrishna Karkare is a businessman of Ahmednagar. He was born in a Brahman family of the Bombay Presidency in or about the year 1910. He lost his father in his childhood and was brought up by his mother. In or about the year 1935 he started a tea shop at Ahmednagar. He states that in 1937 he helped in the election of certain candidates who stood on the Hindu Mahasabha ticket, that he was elected unopposed to the Municipal Corporation at Ahmednagar in 1942 and was elected Chairman of the Sanitary Committee in the year 1944, and that in 1946 * he proceeded to Noakhali in order to render social service to the Hindus who were the victims of Muslims aggression. In December 1947 he started giving assistance to the Hindu refugees who had

flocked

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flocked to Ahmadnagar and were in need of help and shelter. In November 1947 a detention order was passed against them under the Bombay Public Security Measures Act.

Madan Lal Pahwa hails from the Montgomery district which was a part of the united Punjab at one time and which is now a part of Pakistan. He passed his Matriculation Examination in 1945. He served in the Army for two years and on release from the Army in 1947 he started preparing for the Parohakar examination. The Punjab was partitioned in the same year and communal disturbances broke out all over the province. The atrocities which were committed by the rioters spread terror and consternation all over the country and held the horrified attention of the world. Madan Lal left his native village in a caravan of 60,000 persons in circumstances of indescribable terror and hardship and touched the soil of Indian Dominion after walking day and night a distance of 65 miles. He left for Bombay in the last week of September and started working as a Congress Volunteer in the Chembur Refugee-Camp at Bombay. In due course he was introduced to Dr. Jagdish Chandar Jain, a professor of a local College, who gave him some of his own books to sell. The income which was produced by the sale of books was not sufficient to maintain his body and soul together, and he accordingly proceeded to Ahmadnagar in the hope of being able to earn a comfortable living by dealing in fruit. He took interest in the welfare of refugees many of whom had migrated from the Punjab. He came into contact with Karkare and a deep and abiding friendship sprang up between them.

Gopal V. Godse, aged 27, is a younger brother of Nathuram V. Godse. He joined ^{the} I.A.O.C. as a temporary storeman on the 28th October 1940. He was posted to the Kirkes Arsenal on the same date and was posted to Ferozepore in August 1941. He went overseas in October 1941 and came back to India on the 13th

April

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P.15. April 1944. He joined the Reinforcement Camp at Ferozepore on 2nd May 1944 and was posted to the M.T.S. Sub-Depot at Kirkee on the 10th May 1944. He was serving in the Motor Transport Spares Sub-Depot at Kirkee on the 30th January when Mahatma Gandhi was assassinated.

P.16. Shankar Kistayya is a youngman of about 20 years or 22 years of age. He was an apprentice in a carpenter's shop. Digamber R. Badge (approver) took him on in his own employment in order that he should prepare handles for the daggers that Badge wanted to sell. Shankar, however, made himself so useful that before long it was impossible for Badge to carry on without him. He was a jack of all trades. He looked after the domestic work of his employer. He dug large holes in the ground and buried arms and ammunition which needed to be kept away from the prying eyes of the police and he repeated the operation when he wanted to take out the arms and ammunition from the place of concealment when a customer was at the door. He used to carry the stuff for Badge from place to place without being found out by the officers of the law. He used to wheel his master about in a cycle rickshaw *without any extra payment and in his spare time he used to manufacture handles for his daggers and he did all this willingly and cheerfully for a paltry sum of Rs. 30/- per mensem plus food and clothing. He never grumbled or complained and never refused to do the task that was assigned to him.

Dr. Parchure, aged 49, is a medical practitioner at Gwalior. In the year 1939 he established the Gwalior Raj Hindu Sabha of which he became the Secretary and principal organiser. Six months later he established

another

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another association named Hindu Rashtra Sena which was constitutionally separate from the Hindu Sabha. Up to 1942 he was the dictator of the Hindu Rashtra Sena which was formed to regenerate the Hindu nation and of which the strength was three thousand in the year 1943. Dr. Parchure became the President of the Gwalior State Hindu Sabha three years ago and when a question arose whether the power should be transferred from the Maharaja of Gwalior to the people of Gwalior he made it clear that the Hindu Sabha should be given a share in the administration of the State. The Ruler is said to have agreed that the representatives of the Hindu Sabha should be allowed to participate in the Government of the State but later to have changed his mind and to have transferred the entire power to the Congress Party. Dr. Parchure and the organisation which he represents protested against the decision of the Maharaja and staged a demonstration on the 24th January. It is said that Dr. Parchure has been falsely implicated in this case as party in power. he was opposing the ~~party~~

*P.17.

Another central figure in this case is Daganber R. Badge a mahatta of about 30 or 40 years of age. He established a Shastar Bhandar in Poona in the year 1942 and dealt extensively in the sale of arms and ammunition which he had obtained from unauthorised sources. In the year 1943 he set out on a propaganda tour in some of the more important towns of Bombay and Madras Presidencies and sold weapons of the value of Rs. 10,000/- or more by visiting houses and shops. Nathuram and Apte were two of his numerous customers. They would take Badge about in their car, introduce him to prospective purchasers and help him to realise the price of the stuff sold by him. They paid him gratuities of Rs. 5/-, Rs. 10/-, Rs. 50/- or even Rs. 100/- at a time without demanding anything in return. He was a frequent visitor to the office of the daily

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'Argani' where he often asked for financial assistance. When the paper required him to furnish security in a sum of Rs. six thousand and a fund was started to meet such security Badge contented himself by paying a sum of Rs.4/- or Rs.5/- as his contribution. He became a member of the Hindu Rashtra Dal in 1946 or 1947 but did not attend any session of the Dal, although he sold a number of weapons to the people who had assembled at the camp place. Penny-catching meanness of mind is one of his important characteristics. Even when he set out to collect funds for the Hindu Mahasabha of which he professes to be a member he did not refrain from charging a commission on the amount that he collected. He says that he has been dealing in arms and ammunition for the benefit of the Hyderabad State Congress but there can be little doubt that these transactions could not * have been entered into for altruistic purposes alone. He used to sell the stuff to the Congress for cash and charged a sum of Rs.50/- per revolver and Rs.25/- per gun-cotton-slab over and above the price paid by him.

When he left Bombay for Poona along with Shankar in the middle of January 1948 he was confronted with the problem of having to purchase inter class tickets for himself and his servant. His active and fertile brain rose to the occasion. He purchased two platform tickets for himself and his servant, got into the train, alighted at Poona and crossed the barrier by paying a small bribe to the clerk at the gate. On the 24th November, 1946 he was arrested by the police for the contravention of a provision of the Indian Arms Act. He filed a complaint under section 420 of the Indian Penal Code against Shankar who was alleged to have taken a sum of Rs.200/- from his sister and had

run

run away out of fear. He explains that he lodged the complaint against Shankar so that he might not be blamed by the police for making Shankar run away. He had taken no steps to withdraw the case against his servant although he led no evidence whatsoever in support of the complaint. One of his brothers is stated to be an employee in the police department at Poona.

* The history of this remarkable case commences on a certain date in the month of November 1947, when Apte met Badge accidentally at Yerandawane and expressed a desire to purchase some arms and ammunition. Badge told him that he was on his way to a pilgrimage to the Bhor State but that on his return from the pilgrimage he would be in a position to supply the stuff required by him.

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In the last week of December 1947 Apte asked Badge whether the stuff was ready and on his reply in the affirmative stated that it would be collected by Karkare in 2 or 3 days' time. Apte went to Badge on the 9th January 1948 at about 6 or 6-30 p.m. and asked Badge to show the stuff to Karkare and certain other persons who were expected shortly. About two hours later Karkare and three other persons who were introduced to Badge as Madanlal, Om Parkash and Chopra arrived. Karkare asked Badge to show the stuff to them and Badge accordingly instructed his servant Shankar to fetch the stuff from the place where it had been kept. Shankar brought the stuff which consisted of gun-cotton slabs, hand-grenades, * cartridges, pistols and fuse wires. Madanlal and his companions had a look at the stuff and went away.

9.1.48.

*P.22

Apte took Badge with him to the Hindu Rashttra Office at 10 o'clock on the morning of the 10th January 1948 and asked him to supply two gun-cotton-slabs, two revolvers and five hand-grenades. Badge agreed to supply the slabs and the grenades but stated that he was not in a position

10.1.48

to

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to supply any revolvers. He further agreed to supply the stuff to them at Bombay on his return from his village Chalisgaon where he wanted to sell his house. In the meantime Nathuram who was working in a tent nearby arrived at the spot. Apte told him that Badge was willing to deliver the stuff at Bombay and that their one work was complete. Both Nathuram and Apte asked Badge to make certain that the stuff reached the Hindu Mahasabha Office at Dadar by the evening of the 14th January.

Badge left for his village the same evening i.e., on the 11th January 1948, disposed of his house on the 12th January and returned to Poona on the 13th January. He told Shankar that certain stuff had to be delivered to Nathuram and Apte * by the evening of the 14th January and asked him to keep it in readiness for being taken to Bombay. Shankar packed the stuff in a cloth bag of Khaki colour.

*P.23

Poona
13.1.48

On the same day, i.e., the 13th January Nathuram effected a nomination on his life policy in a sum of Rs.2,000/- in favour of Mrs. Champutai wife of Narain Apte and on the following day he effected a similar nomination in respect of his policy for Rs.3000/- in favour of Mrs. Sindhutai wife of Gopal Godse.

↳ Poona to Bombay
14.1.48

Bombay (Dadar)
14-1-48.

Badge and Shankar left Poona for Bombay on the afternoon of the 14th January and alighted at Dadar at about 7 o'clock the same evening. On arrival at the office they were somewhat disappointed to discover that Apte and Nathuram whom they expected were not there to meet them. Badge's enquiries

enquiries

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enquiries revealed the fact that Apte and Nathuram were expected at any moment. Badge and Shankar waited for half an hour and then left the place with the khaki bag. As they were getting down they saw Apte coming from the road. On seeing Badge, Apte said that it was good that he had come, and that arrangements would have to be * made for keeping the stuff. Badge *P.24 took the bag from the hand of Shankar and started accompanying Apte. They had covered only four or five paces when they met Nathuram on the pavement and Nathuram, Apte and Badge proceeded to the Savarkar-Sadan, Shankar having been left in the office of the Hindu Mahasabha. On reaching Savarkar-Sadan, Apte took the bag from the hands of Badge and went inside the house accompanied by Nathuram. They returned with the bag five or 10 minutes later. Nathuram, Apte and Badge went back to the Hindu Mahasabha Office, called out to Shankar and all four of them proceeded in a car brought by Apte to the house of Dixitji Maharaj at Bhuleshwar. They got down from the car at about 10 or 10-30 p.m. asked Shankar to wait inside the hall while they went into the interior of the house. Dixitji Maharaj had retired for the night and they accordingly asked one of the servants to keep the bag with him until the following morning. Badge said that the bag would be taken back by Apte, Nathuram and himself. On return to the Hindu Mahasabha Office at Dadar, Badge and Shankar were asked to get down.

Apte paid some money to Nathuram and the latter paid *P.25
**a sum of Rs.50/- to Badge stating that that was not the price of the stuff supplied but was intended to cover the travelling expenses incurred by Badge and Shankar. As soon as Badge entered the office he was greeted by Madanlal who said "Badge Kab-ae". Badge at first did not recognise him

but

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but on being reminded of the meeting at Poona on the 9th, Badge enquired after Karkare and was told by Madanlal that the latter was at Thana but was likely to return that night or the next morning.

All the preparations were now complete. Mathuram and Apte had arrived, Madanlal was already in Bombay and Karkare was expected any moment. The stuff had arrived and was deposited in the house of Dicitji Maharaj where it could not attract the attention of the police. All that needed to be done was to examine the stuff, to see that it was good and effective and capable of giving the performance that was claimed for it, and to transfer the men and the material to the capital of India where the final act was to be staged.

Apte was up early on the morning of the 15th January. at 7-20 A.M. he purchased two tickets through Air India Ltd., for journey to Delhi by air on the 17th January under the assumed names of D.N. Karmarkar and S. Marathe.

At 8.20 a. m. Apte and Nathuram went to the Hindu Mahasabha and found Badge, Shankar and Madanlal sitting with *two or three persons connected with the Hindu Mahasabha office. Badge and Shankar left the office with Apte and Nathuram as Madanlal was not dressed. When they were in the vicinity of the Agrani Printing Press otherwise known as the Shiva Ji Press they met Karkare. Apte, Nathuram, Karkare, Badge and Shankar entered the press of which Mr. G.M. Joshi is the proprietor. Shankar was asked to sit down on the planks in front of the press, while Apte, Nathuram, Karkare and Badge entered the press where they met Mr. Joshi. Badge was left in the press while the others entered the office of the press. They came out of that office after about an hour or so. Apte, Nathuram, Karkare, Badge and Shankar left for the Mahasabha office at Dadar. On reaching the office, Karkare asked Madanlal to take his bedding and put it in the car which Apte had brought. Apte, Nathuram, Karkare, Madanlal and Badge entered the taxi with

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with the bedding of Madanlal and proceeded to the house of Dixitji Maharaj at Bhuleshwar. Madanlal kept his bedding in the Hall & all of them went further into the interior of the house. They greeted Dixitji Maharaj and Badge asked for the bag that he had left there the preceding evening. After an hour or so, the bag was produced by a servant of Dixitji Maharaj. Badge opened the bag and showed the stuff contained in the bag to Apte. After the contents had been examined by Dixitji Maharaj and the other persons who were present in the room, Badge put the contents back into the bag, closed the bag and handed it over to Apte who passed it on to Karkare. Apte asked Karkare to leave for Delhi by the Frontier or the Punjab Mail along with the Madanlal. Karkare handed over the bag to Madanlal and asked him to tie it up in the bedding which was lying in the Hall. Karkare and Madanlal then left the place and went away. When these two persons had gone away, Apte told Dixitji Maharaj that they were proceeding on some important work and asked for the loan of one or two revolvers. Dixitji Maharaj stated that he had no revolver but that he had a pistol which he was unable to spare. Apte then asked Dixitji Maharaj to do all that he could to obtain a revolver for him. Apte, Nathuram and Badge came out of the house of Dixitji Maharaj and stood in the compound of the temple in which the house is situated. Apte then asked Badge if he was prepared to go with them to Delhi. Badge asked Apte to indicate the nature of the work that was to be done in Delhi and Apte replied that Tatyarao Savarkar had decided that Gandhiji, Pandit Jawahar Lal Nehru and Mr. Suhrawardy should be finished

and

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and had entrusted the work to Apte and Nathuram. He * asked Badge to accompany them to Delhi and told him that they would find funds for meeting his travelling expenses. Badge expressed his willingness to proceed to Delhi but stated that he could do so after paying a visit to Poona and after making arrangements regarding his household affairs. Nathuram thereupon said that he also wanted to go to Poona to meet his brother Gopal Godse who had undertaken to make arrangements for procuring a revolver and to bring him down to Bombay for accompanying them to Delhi. After this conversation had taken place in the compound of the temple Apte, Nathuram and Badge left the premises and entered the taxi. They proceeded to the Cotton Exchange Building where Apte and Godse wanted to transact some business. On their return after 20 or 25 minutes the party proceeded to the Hindu Mahasabha Office at Dadar. Badge got down from the taxi in front of the office and Apte asked Badge to meet him (Apte) at Bori-Bunder (Victoria Terminus) on the morning of the 17th January. Badge entered the Masabha Office and met Madanlal at about 6 or 6-30 p.m. in front of the said office. * Madanlal told Badge that he had missed the train and that Karkare was waiting with his bedding at the Victoria Terminus Railway Station. He stated further that they would be leaving the same evening for Delhi. Badge and Shankar left the Victoria Terminus Station for Poona by the night train reaching Poona at about 2 o'clock in the early hours of the 16th January. Nathuram also returned to Poona the same day.

*P.29

At about 7 or 7-30 p.m. on the 16th January 1948 Badge went to the house of Amdar Kharat, a member of the Legislative Assembly, and deposited some arms and ammunition with him in order that the latter should sell the stuff to the Hyderabad State Congress. He was anxious to sell the stuff that very day and asked Mr. Kharat to receive the money for

the

the stuff and hand it over to him. On his return from the house of Mr. Kharat, Shankar informed Badge that Nathuram had called at his house on two occasions. Badge accordingly went to the Hindu Rashtra Office to see Nathuram. Nathuram asked Badge if he was ready to go to Delhi and Badge replied in the affirmative. Nathuram then took out a small pistol and gave it to Badge asking him to exchange it for a big revolver and in case he could not get a big revolver to take the pistol with him to Bombay. Badge accordingly went to see one Sharma, a worker of Hyderabad State Congress whom he had sold a .32 revolver and gave this pistol in exchange for the revolver and some cartridges.

*P.30

Badge and Shankar left Poona for Bombay with the revolver and 4 cartridges by the 2.40 a.m. train on the 17th January, 1948, Shankar getting down at Dadar and Badge at Bori-Bunder (Victoria Terminus Station). As soon as Badge crossed the ticket barrier, he met Apte and Nathuram who had promised to meet him at the Victoria Terminus Station on the morning of the 17th January. They had travelled only a few paces when Apte suggested that they should collect some funds before proceeding to Delhi. Apte brought a taxi and the three of them, namely, Nathuram, Apte, and Badge got into it and proceeded to the Bombay Dyeing House where Badge introduced the proprietor Seth Charandas Meghji Mathuradas to Apte and Nathuram. After having a conversation with the Seth for some time Apte, Nathuram and Badge proceeded to the Hindu Mahasabha Office at Dadar in order to pick up Shankar. After Shankar had taken his seat in the car the party proceeded to Savarkar-Sadan at Shiv Ji Park to take

Poona

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Bombay

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the last darshan of Tatyaro. Shankar was asked to wait outside the compound while Apte, Nathuram and Badge entered the compound. Apte asked Badge to wait in the room on the ground floor. Nathuram and Apte went up and came down 5-10 minutes later. They were followed immediately by Tatyaro who gave them his blessings and wished them all success in their enterprise. The party then got into the taxi and proceeded to the Rula College. Apte said in the taxi that Tatyaro had predicted that Gandhiji's hundred years were over and that there was no doubt that their work would be successfully finished. They then proceeded to the house of Afjulpurkar where some discussion took place between Afjulpurkar and Apte and Nathuram about the affairs in the Hyderabad State. Afjulpurkar gave a sum of Rs. 100/- to Badge.

From Afjulpurkar's house the party proceeded to Kuria, picked up Mr. R.M. Patankar (P. W. 87) and

went

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*P.32

*went to the House of Mahadeo Ganesh Kale (P.W.86), proprietor Kale's Inks. Shankar was left behind in the taxi. Patankar introduced Nathuram and Apte to Kale and thereafter left the place. Nathuram and Apte entered into conversation in English with Kale, as a result of which Kale went upstairs and came back with a bundle of notes and handed them over to Godse. The party then proceeded to the taxi to the Bombay Dyeing works as arranged but Mr. Charandes Meghji Mathura Dass was not to be found. Nathuram told Apte that he had some work and should be taken to the taxi-stand. Nathuram and Apte went away in the taxi and Nathuram was dropped at the taxi-stand. Apte came back in the taxi shortly afterwards. The proprietor had not come till then. Apte told Badge that he and Shankar should wait at the works for some time and that he wanted to see Nathuram before 12 noon. Apte went away in the taxi and came back after about an hour or so. Mathura Das had returned by this time and Apte had a talk with him in English for a few minutes. Mathura Das gave him sum of Rs. 1000/- by way of a donation.

Apte

*P.33

* Apte, Shankar and Badge next proceeded in the taxi to the house of Dixitji Maharaj at Bhuleshwar. They got down from the taxi. Shankar sat down in the taxi while Apte and Badge went into the interior of the house and met Dixitji Maharaj. Apte asked Dixitji Maharaj for a revolver, whereupon the latter showed him a small pistol. Apte asked him for it but Dixitji Maharaj said that he was not prepared to part with it without consideration. Badge, Apte and Shankar then drove in the same taxi to the Juhu Aerodrome, from where they proceeded to Santa Cruz Aerodrome. Apte got down at Santa Cruz, handed over a sum of Rs.350/- to Badge and asked him to leave for Delhi along with Shankar the same day by the night train. Badge and Shankar then drove back from Santa Cruz in the same taxi and went to Kurla. Badge proceeded to Kurla because he wanted to see R.K.Patwardhan. Patwardhan was not at his house but was expected to return at about 4 or 4-30 p.m. Badge thereupon decided to wait for him. He discharged the taxi paid a sum of Rs.55/10/- to driver and took a receipt from him. Patwardhan did not turn up for sometime and Badge and Shankar accordingly left the Kurla Railway Station for Dadar by a local train. They again went back to the house of Patwardhan at about 3-30 p.m. and met Patwardhan, had a conversation with him and remained at his house till 9 or 9-30 p.m. because Badge wanted some money from him. Patwardhan borrowed Rs.200/- from Patankar and Rs.200/- from Acharya Master and paid it to Badge. They returned from Kurla to Dadar and slept that night at the Asra Hotel. Badge states that on the morning of the 18th January he went to the house of Dixitji Maharaj with Shankar and had a conversation with him. Badge and Shankar picked up their luggage from Dadar, proceeded to the Victoria Terminus Railway Station and left Bombay for Delhi by the Punjab Mail.

*P.34.

Karkare and Madan Lal who had left Bombay on the night

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ght of the 15th January reached Delhi at about 12.30 .m. on the 17th. A fellow passenger by the name of Angchekar (P.W.5) was also travelling with them. All three of them, namely, Karkare, Madan Lal and Angchekar drove from the Delhi Railway Station to the Hindu *Mahasabha *P.35. office where unfortunately they were unable to obtain any accommodation. So they went to the Birla Mandir where also ~~also~~ no accommodation was available. Thereupon they came back to Chandni Chowk and engaged a room in the Sharif Hotel. The hotel register shows that Karkare stayed there under the ^{assumed} name of B.M.Bias.

The same afternoon Apte and Nathuram took the plane for Delhi under the assumed names of D.N. Karmarkar and S.Marahte paying a fare of Rs.154/- per head. Apte and Godse reached Delhi the same evening.

On arrival at Delhi Nathuram and Apte proceeded to the Marina Hotel and stayed in room No.40 from the 17th to the 20th January under the assumed names of S.Deshpande and N.Deshpande.

On the afternoon of the 19th January Gopal Godse paid a visit to Karkare and Madan Lal in the Sharif Hotel.

Badge and Shankar arrived in Delhi at about 9.30 or 10 p.m. on 19th January. No one met them at the Railway Station and they accordingly took a tonga and proceeded to the Hindu Mahasabha Office at New Delhi. They went inside the office and *enquired as to where they could stay. The office boy directed them to a hall behind the office where they met Madan Lal who introduced them to Gopal.Nathuram, Apte and Karkare came there shortly afterwards. They said that they had been to the railway station to see Badge and Shankar but had not been able to find them there. They then asked Badge and Shankar

*P.36.

to

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to sleep in the hall and said that they would look them up on the following morning. Badge, Shankar, Madan Lal and Gopal slept the night in the same hall. It will be seen from the above that Karkare and Madanlal arrived in Delhi on the afternoon of the 17th January, Nathuren and Apte on the evening of the 17th, Gopal on the 18th or 19th, and Badge and Shankar on the night of the 19th.

At 8-30 a.m. on the 20th January 1948 Apte and Karkare came to the Hindu Mahasabha Office to see Badge. Karkare paid some money to Madan Lal for purchasing fuel for getting the bath-water heated. Apte and Karkare left the place stating that they would come back later. They ^{came} back after about half an hour and Apte asked Badge and Shankar to accompany him to the Birla House. Apte, Badge and Shankar took a car and stopped it in front *of the main gate of the Birla House. They got down from the car and were about to enter the main gate when the gatekeeper stopped them and asked them where they wanted to go. Apte said that he wanted to see the Secretary and the gatekeeper asked them for a chit. Apte wrote something on a piece of paper and the gatekeeper took the piece of paper and went into the bungalow. There came out of the bungalow a stoutish gentleman dressed in a black suit. Apte pointed him out and said "This is that Suhrawardy" and further said that he used to sit with Gandhiji at the time of prayers.

Badge, Apte and Shankar left the place and proceeded towards the back of the Birla House by taking the road that passes by its side. They came to a place enclosed by a red brick wall where there is a gate through which they entered. They passed the Chawl

*P. 37.

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chawl and proceeded to the place where Badge was told by Apte that prayers used to be held. Apte then pointed out a spot and said that Gandhiji and Suhrawardy used to sit there. Apte also showed Badge a window with trellis work behind that spot. Apte took measurements of the opening in the trellis work with a piece of string and said that a revolver *shot could be fired and a hand-grenade *P.38. thrown through that opening. Apte said that the window opened from a room behind. He also said that so far as possible Gandhiji and Suhrawardy should be finished and if it was not possible to finish both of them then at least one of them should be finished. Badge and Apte then came back to the chawl and came out of the gate and Apte pointed out one place on either side of the gate and at some distance therefrom and said that one gun-cotton-slab could be exploded from each place for diverting the attention of the people. Badge and Apte then entered the gate and stood in front of the chawl. Apte pointed out a room as the room in which the trellis work existed and said that it was possible to enter the room as a photographer. They did not enter the room that had been pointed out by Apte. After having surveyed the locality they left the Bipra House at about 11 or 11-30 a.m.

Badge, Shankar and Apte returned to the Hindu Mahasabha Office. Apte left the place saying that he would come back after some time. He returned after about 20 or 25 minutes and told Gopal who was in the Mahasabha building that they all should *go to the jungle to try *P.39. out the two revolvers that had been brought by Gopal and Badge. Apte, Gopal, Badge and Shankar then proceeded to the jungle behind the Hindu Mahasabha Office, one revolver being carried by Gopal and the other by Shankar. The

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The revolver of Gopal was a service revolver of .38 bore. The revolver carried by Shankar was a .22 or .32 bore revolver. On reaching the jungle Apte asked Gopal to take out his revolver and on pressing the catch it was found that the revolver-chamber did not come out. Apte thereon asked Badge to take out his revolver and Badge in his turn asked Shankar to take out the revolver. Apte loaded the revolver with four cartridges and asked Shankar to shoot at a tree with it. Shankar fired a shot which did not reach the tree but fell down in between. Apte thereon said that the revolver would be of no use and Gopal said that he would repair his own revolver. Gopal asked Shankar to go back to the Hindu Mahasabha Office and to bring a bottle of oil and a penknife from his bag which Shankar did. They then moved on a short distance and sat down and Gopal began repairing his revolver. While this was being done three Forest *Guards came out that way and Apte and his companions hid the revolvers under the shawl. The Forest Guards enquired as to what they were doing. Apte, Gopal, Badge and Shankar stood up and Gopal spoke to them in Punjabi. The explanation given by him appears to have satisfied the Guards and they went away. Apte thereafter suggested that it was no use sitting there and that they should go back to the Hindu Mahasabha Office. All of them went back to the Hindu Mahasabha Office and found Karkare and Madan Lal sitting there. Apte asked Karkare to go ahead with Madan Lal to the Marina Hotel and told him that he and the others would follow. After Karkare and Madan Lal had gone Apte asked Gopal to accompany him to the Marina Hotel with the bag containing the stuff. Apte, Gopal, Badge and Shankar left

left for the Marina Hotel, Gopal-Godse carrying the bag which had been brought by Madan Lal from Bombay and which contained the stuff supplied by Badge.

On reaching the Marina Hotel Apte, Gopal, Badge and ~~xxx~~ Shankar went up to the second floor and found Nathuran lying on a bed in a room. Badge and *Shankar went down to the first *P.41. floor to take their meals, while Apte, Karkare, Madan Lal and Gopal remained in the room with Nathuran. When they returned they found Gopal repairing a revolver. They then closed the doors of the room from inside, and Apte, Karkare, Madan Lal and Badge went into the bathroom where Nathuran and Shankar also came and stood. Apte, Karkare, Madan Lal and Badge began fixing the primers and fuse-wires in the gun-cotton slabs and detonators in the hand-grenades. Nathuran addressed Badge and said "Badge, this is our last effort--the work must be accomplished--see to it that everything is arranged properly."

After the gun-cotton slabs and the hand-grenades had been fitted properly they came back to the room, and found that Gopal had repaired his revolver. Apte then said that they should decide as to what articles should be carried by whom. Nathuran, Apte, Karkare, Madan Lal, Gopal, Badge and Shankar were all in the room at the time. Apte said that Madan Lal should have one gun-cotton slab and one hand-grenade, Shankar one gun-cotton slab and one hand-grenade, Nathuran, Gopal and Karkare should have *one hand-grenade *P.42. each and that he (Apte) and Badge should have one revolver each. Badge thereon said that one gun-cotton slab was enough to create commotion by explosion and asked as to why two gun-cotton slabs were required for the purpose. He then said that his (Badge's) suggestion was that one gun-cotton slab and one hand-grenade should be given to Madan Lal, that one hand-grenade should be given to Gopal, that

one

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one hand-grenade should be given to Karkare, that one hand-grenade and one revolver should be given to Shankar, and that one hand-grenade and one revolver should be given to Badge. He further suggested that Nathuram and Apte should remain there to give signals.

This suggestion of Badge was accepted. Karkare then suggested that as soon as Madan Lal exploded the gun-cotton slab, all of them should shoot and throw the hand-grenades on Gandhiji. Apte then said that Madan Lal should explode the gun-cotton slab near the wall and that Badge should enter the room posing as a photographer and that he should shoot and throw the hand-grenade through the trellis

*P.43.

work of the window of that room. Apte then said that he would stand and give signals to Madan Lal and that Nathuram would stand and give the signal to Badge. The others were to ~~mix~~ themselves up

with these in the prayer-ground. Apte then suggested that they should assume false names.

Nathuram assumed the name of Deshpande, Karkare that of Bias, Apte that of Karnarkar, Shankar that of Tukaram and Badge that of Bandopant. Appropriate names were also assumed by Madan Lal and Gopal.

It was also decided that they should change their clothes. Godse put on a half-sleeve shirt, shorts, stockings and shoes of khaki colour like those worn by soldiers, Apte put on a coat and trousers of dark blue colour like that worn by officers of the Air Force, Karkare put on a Nehru shirt, a dhoti and a Gandhi cap; Madan Lal put on a coat, trousers etc., Gopal put on a coat, a shirt and shorts.

Badge put on a Nehru shirt and a dhoti, and Shankar put on a white coat, a shirt, a dhoti and a cap.

Karkare

Karkare painted false moustaches and darkened his eyebrow and placed a red mark on his forehead; Apte handed over the gun-cotton slab and one-hand-grenade to Karkare to be handed over to Madan Lal; he gave one hand-grenade and one revolver to *Shankar, and one hand-grenade and one-revolver to Badge. Karkare and Gopal took one hand-grenade each. Badge put the revolver and the hand-grenades handed over to him at the Marina Hotel in the bag which Madan Lal had brought with him from Bombay. Madan Lal and Karkare then left the place for the Birla House with one grenade each. Apte, Gopal, Badge, and Shankar left the place 15 or 20 minutes later. Nathuran stayed behind stating that he would follow later. *P.44.

In the Marina Hotel conference the prisoners had spoken in Marhati. When the discussions took place as to how the stuff was to be distributed and as to how it was to be used none of them told Shankar anything, but going down from the Marina Hotel Badge suggested to Shankar as to the part that he had to play. Shankar had taken no part in fixing the detonators in the room. He was just standing there. Even on the morning of the 20th January when they went to the Birla House Badge did not issue any instructions to him. At no stage had Shankar asked Badge as to what the matter was all about. It was only when they were getting out of the Marina Hotel that Badge told *Shankar that he was to throw the hand-grenade on the person at whom he threw the hand-grenade and that he was to shoot the person at whom Badge would shoot, and that the person concerned was an old man known as Gandhiji and that he was to be finished. *P.45.

The four of them viz., Apte, Gopal, Badge and Shankar engaged a taxi near the Marina Hotel and proceeded to the Hindu Mahasabha Office. They carried two bags with them. Badge's bag contained the revolver and the hand-grenade which

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which were made over to him, while Gopal's bag contained a gun-cotton slab, some fuse wire and some cartridges. Gopal and Badge got down from the taxi and proceeded to the hall of the Hindu Mahasabha Bhawan. Gopal kept the bag that he had brought with him in the cupboard. Badge took a towel. Both of them came out, got into the taxi and went to the Birla House along with Apte and Shankar. They went to the back of the Birla House near the chawl by the same road that Apte had shown them that morning. The taxi was stopped in the circular space on the left hand side. All four got out and met Madan Lal when they had proceeded three or four paces. There were two or three persons at the place from where Madan Lal had come. All five *then proceeded towards the gate leading to the chawl. Apte then asked Madan Lal "Tayyar hai kiyas" (Are you ready). Madan Lal said that he was ready, that he had placed the slab and that it was only to be ignited. Apte thereon said that as soon as he gave the signal Madanlal was to light a match and ignite it. This conversation took place when they were proceeding towards the gate leading to the chawl. As they reached the gate Karkare came out from towards the prayer-ground side and proceeded towards the room that had been shown to Badge in the morning by Apte. He was seen talking to somebody there. He also saw Apte, Badge, Gopal, Shankar and Madan Lal and both he and Apte proceeded towards each other and met.

Karkare told Apte that much time had passed, that Mahatmajl had come and that the prayer had begun. He stated further that he had made arrangements

arrangements with the occupant of the room to allow someone to enter the room as a photographer. When Apte said this to Badge, Nathuram arrived. Badge looked towards the room and found two persons near the room. There was also a one-eyed man sitting on a cot outside the room. Badge got frightened because *he thought that if he went into the room and something *P.47. happened he would get trapped inside the room.

Nathuram told him that he should not get frightened as arrangements had been made for all of them to escape. Nathuram, Apte and Karkare went pressing on ~~possible~~ Badge to go into the room and told him that he should not get frightened. Badge told them that rather than strike from inside the room he would prefer to strike from the front. He said that he would shoot from the open opposite where Mahatmaji sat. Nathuram and Apte accepted this suggestion. Badge signalled to Shankar and Badge and Shankar then went to the taxi. Nathuram, Apte, Karkare, Madan Lal and Gopal were moving about and talking among themselves in the compound of the chawl. Badge took out his revolver and also got Shankar's revolver taken out. He wrapped the two revolvers in the towel, kept the package in the bag, and placed the bag in the taxi. Badge handed over his hand-grenade to Shankar and asked him not to do anything with the grenade unless he gave the word. They then left the taxi and went towards Nathuram and others. Badge placed both his hands in the outer *pockets of his shirt in order to show Godse and *P.48.

Apte that he was ready. When he approached Apte he asked him whether Badge was ready. He told Apte that he was ready and started proceeding towards the prayer

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prayer-ground. Shankar was with Badge. Apte placed his hand on Madan Lal's back and said 'challo'. Madan Lal proceeded towards the place where the slab had been kept. Karkare also followed them towards the prayer-ground.

There was a good gathering at the prayer meeting which was being presided over by Mahatma Gandhi. Badge took his place towards the right of Mahatmaj, Karkare stood towards the right of Badge, and Shankar took his position further towards the right of Karkare. About three or four minutes later there was a big explosion. About 5 or 6 persons ran in the direction from which the smoke was coming. Mahatmaj raised his hand signifying to the people to keep calm. Madan Lal was arrested at the spot and was led in custody towards a tent. Badge and Shankar got mixed up in the people who were leaving the prayer grounds and left by the main gate. They *engaged a tonga and reached the Hindu Mahasabha Bhawan.

*P.49.

As soon as Badge and Shankar reached the Hindu Mahasabha Office Badge asked Shankar to go into the jungle behind the office and throw away the hand-grenades that Shankar had with him. Shankar went out to throw away the hand-grenades, and Badge started tying up the bedding. At this time Nathuram and Apte also arrived. Apte asked Badge what had happened. Badge abused both of them and asked them to get out. They went away. Shankar buried the explosives and returned to the Sabha. Badge suddenly recollected that Gopal had left his bag in the cupboard and he accordingly asked Shankar to throw away that bag as well. Shankar went out with the bag and came back after emptying the bag and concealing

concealing its contents. They left the empty bag in the room, came out of the Mahasabha office with the bedding, engaged a tonga near the Birla Mandir and proceeded to the New Delhi Railway Station. Badge purchased two third class tickets to Bombay. The police were moving about and there was commotion at the station. Badge got suspicious. He took a tonga and left with Shankar for the main Railway Station at Delhi. They took train at 9-30 or *10 p.m. on the 20th and got down at the Kalyan Railway Station at 11-30 p.m. on the 22nd. They then purchased tickets for Poona and reached Poona Railway Station at about 4 or 4-30 p.m. the same day. Gopal and Karkare are said to have spent the night of the 20th January at the Frontier Hindu Hotel near ~~the~~ the Delhi Railway Station.

*P.50.

There is nothing on the record to indicate the date on or the time at or the manner in which Gopal left Delhi or the manner in which he occupied himself from the 21st to the 24th January. It is surmised that during this period he returned to Bombay for we hear of him next at the Elphinstone Hotel Annexe on the 24th at G.M.Joshi's place and at Thana on the 25th January 1948.

There is no doubt, however, in regard to the movements of Nathuram and Apte. Shortly after the explosion on the 20th they proceeded to the railway station at Delhi and purchased two first class tickets for Kanpur Central station. On reaching Kanpur, Nathuram and Apte went to retiring room No.1 at the Kanpur Railway Station and engaged it for the night after making appropriate entries in the *appropriate register.

20.1.48.

*P.51.

They left Kanpur on the 22nd January, and reached Bombay on the 23rd. They went to the Arya Pathikashram at about 9 p.m. and Apte asked for a room with two beds under the name of D.Narayan. No room with double beds was available, but they were allotted two beds in a room containing

22.1.48.

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containing eight beds. They left their luggage in the Ashram, went out of the building and returned at 1 a.m. Early next morning (at 6 a.m.) the Manager (P.W.63) asked Nathuram to register his name. The latter began looking towards Apte and Apte told the Manager that the person was his own man that he was going to leave him at the Railway Station and that he would make a full entry on his return. Apte returned at about 11-15 a.m. was given a separate room (No.30) and made the entry Ex.P.110. (The previous entry is Ex. P.109). Apte returned with a lady who stayed with Apte throughout the day on the 24th January and the night between the 24th and the 25th January. Apte and the lady left the hotel in the early morning of the 25th January while it was still dark.

Nathuram and Apte do not appear to have been satisfied with the accommodation provided for them in *the Arya Pathikashram and they accordingly went and engaged room No.6 at the Elphinstone Hotel Annexe. They stayed there from 2-15 p.m. on the 24th January to 6-30 a.m. on the 27th January. The names of the passengers as given to the Manager (H.W.61) were N.Vinayakrao and a friend. It is said that Gopal came to visit the two passengers on the 24th or 25th January 1948.

*P.52.

25.1.48.

On the 25th January 1948 Apte and Godse went to the Air-India Office in the morning and reserved two seats for Delhi on the 27th January 1948 by the viking Service under the assumed names of D.Narayan rao and N.Vinayakerao.

Nathuram, Apte, Karkare and Gopal are said to have

have

have met each other in the house of Mr.G.M.Joshi at Thana on Sunday, the 25th January.

Karkare left Thana sometime on the 26th January. 26.1.48.

*On the morning of the 26th January *P.53.

Nathuram and Apte went and saw Dixitji Maharaj and his elder brother Dada Maharaj. They repeated their request for a revolver. Dixitji Maharaj put them off by stating that he would consider the matter only if they told him the object for which the revolver was required. Dada Maharaj also asked them as to why they were so anxious to obtain a revolver. They replied that he (Dada Maharaj) would see in due course what they were about to achieve.

On the 27th January Nathuram and Apte left Bombay for Delhi by the morning plane travelling under the assumed names of D.Narayan Rao and N. Vinayaka Rao. They are said to have left Delhi the same afternoon by train and to have reached Gwalior at about 10-30 p.m. They proceeded to the house of Dr.Parchure and stayed there for the night. The prosecution allege that on the following day they told Dr. Parchure that they were "going to do some terrible feat" before the 2nd February 1948. This terrible feat was the assassination of Mahatma Gandhi at Delhi.

They showed a revolver to Dr. Parchure and asked him to get a better one for them from someone at Gwalior.

Dr.Parchure introduced them to Dandwate who brought *a pistol *P.54. belonging to one Jagdish Prasad Goel (P.W.39). The purpose of their visit to Gwalior having been accomplished they returned to Delhi by train.

At about 12 o'clock on the 29th January 29.1.48.

Nathuram appeared at the Booking Office at Delhi and engaged a retiring room at the Delhi Railway Station under the assumed name of N.Vinayak Rao. Apte and Karkare are said to have been with Nathuram at the railway station on the 29th and 30th January 1948.

At

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30.1.48.

At about 5 o'clock on the afternoon of the 30th January S. Gurbachan Singh (P.W.82) signalled to Mahatma Gandhi that it was the time for prayer. Mahatma Gandhi came out of the room and the witness told him that he was a little late that day but Gandhiji laughingly replied that those who are late receive punishment. He then began his last walk from his room upto the prayer ground with no premonition. He was resting his hands on the shoulders of two girls Avaben and Manuben of the impending doom. A big congregation was waiting at the prayer ground as this was the first day after the fast that Mahatma Gandhi was about to address a prayer meeting. Mahatma Gandhi climbed up the steps leading to the prayer ground and had gone only six or seven paces from the steps when the crowd opened up into a lane to enable him to pass through. When Mahatmajji had gone about three paces into the opening made by the crowd, Mahatmajji folded his hands to the crowd according to his usual practice. Then Nathuram stepped out of the crowd took his pistol between the palms of his two hands bowed his head before the Mahatmajji and fired thrice at point blank range. Mahatmajji uttered the words "Hay Ram" and sank to the ground with folded hands. The assassin was seized by the persons who had collected at the spot and when his pistol was snatched from his hand the smoke was still coming out of the barrel. The infuriated crowd began assaulting the assassin who received an injury on his head and started bleeding. Assistant Sub Inspector Amar Nath assisted by a Constable and Sergeant Devraj Singh took the assailant on the other side of the platform and away from the crowd. He was taken down from the platform and four

four cartridges were removed from the pistol. The assassin was removed to the Tughlak Road Police Station and a number of articles were recovered from his person.

• Efforts were made to apprehend the persons who were suspected of having had a hand in the crime. Badge was arrested at Poona on the 31st January 1948. Gopal was arrested at Uksan on the 5th February. Shankar was arrested at Bombay on the 6th February and Apte and Karkare were arrested at Bombay on the 14th February. On the 11th February Shankar took certain respectable persons to a place behind the *Hindu Mahasabha Bhawan, New Delhi, and dug out a live hand-grenade, a gun-cotton slab and twenty-five cartridges from one place and two live hand-grenades from another place. *P.56.

On the 18th February Dr. Parthure made a confession before Mr. R.B. Atal, Magistrate first class, Lashkar, in which he admitted that he was aware that the pistol was required for killing Mahatma Gandhi.

On the 26th February Apte took certain respectable persons behind the Hindu Mahasabha Bhawan where he said they had tried out a pistol. A tree with four bullet marks thereon was shown by him. The branches of the tree containing the bullet marks were cut and taken into possession. Apte also pointed out a place from where he said the pistol had been fired. An empty cartridge-case was found lying there and was taken into possession.

The Bombay Public Security Measures Act was made applicable to the Province of Delhi on the 2nd June 1947 under the provisions of the Delhi Laws Act, 1912, and came into ~~xx~~ force with effect from the 13th June 1947. A

Special

*P.57.

Special Court was constituted under sections 10 and 11 of the statute on the 4th May 1948. Charges under *sections 120-B, 109, 114 and 115 of the Indian Penal Code read with charges under section 302 of the Indian Penal Code and charges under sections 3,4,5, and 6 of the Indian Explosive Substances Act, and under section 19 of the Indian Arms Act were framed against all the prisoners as well as against Badge who was later granted a pardon. A summary of the main prosecution evidence was then supplied to the prisoners. Badge was tendered a pardon on the 21st June and evidence commenced on the 24th June.

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 *P.59.

*Such are the tragic and sordid circumstances of the crime which has led to this conviction against which the prisoners appeal; but before the Court proceeds to apply itself to the consideration of the question whether these circumstances have been established it would be desirable to set out the version given by Nathuram and Apte, the principal offenders in this case.

They state that on the 15th January they happened to go ^{to} the office of the Hindu Mahasabha at Dadar on one of their usual visits when they came across Badge who asked them what they were doing there. They told him that they wanted to stage a peaceful demonstration at one of the prayer meetings at Delhi. He enquired if he could accompany them to Delhi and join the demonstration as that would enable him

him to sell his stuff in the capital of India. Nathuram and Apte told him that they had no objection to his accompanying them to Delhi but they objected to his carrying the stuff with him as it would get them into trouble. Nathuram and Apte reached Delhi on the 17th and went to the various refugee camps with the object of enrolling volunteers for the demonstration on the 20th or the 21st January.

Badge happened to turn up at the Marina Hotel on the morning of the 20th and Apte asked him to proceed to *the Birla House that evening and meet him there *P.60 so that it might be found out if it was possible to stage a demonstration there that evening. At about 4.30 p.m. Apte left the Marina Hotel for the Birla House as arranged but Nathuram could not go as he had a slight headache. Badge and Shankar met Apte as he came out of the Birla House and he took them to the Birla House in a car. They alighted from the car at the back of the Birla House and proceeded to the prayer grounds. Unfortunately, none of the volunteers with whom they had fixed up had arrived. When the prayers began they found that loud speakers had failed. Some of the volunteers arrived thereafter but Apte thought that it was a fit occasion to stage a demonstration at the Birla House. Apte and Shankar then returned by car to the Marina Hotel. Badge arrived at the Hotel about half an hour later and saw Apte. He looked terribly frightened and said that a refugee by the name of Madan Lal ~~xxx~~ had been caught hold of at the Birla House in connection with the explosion that he had had taken place there. He further said that he had sold some stuff to the refugee and expressed regret for having brought the stuff to Delhi in spite of directions to the contrary. He then said that he was proceeding direct to Poona as it was unsafe to stay any

more

*P.61.

*More in Delhi. Apte conveyed the information to Nathuram who was still in bed and decided to leave Delhi forthwith. They thought that Madan Lal would give up the name of Badge and Badge would give up their names as the three had come to Bombay for the purpose of staging demonstration.

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*P.63.

*The prosecution story outlined above in so far as it relates to the incidents commencing with the year 1947 and ending with the 20th January 1948, is based principally on the evidence of Badge who, as I have said above, was granted a pardon on the 21st June 1948. An accomplice is a competent witness against a prisoner but as he can escape the consequences of his own acts by helping the prosecution to secure the conviction of others, a practice has come to be established that the testimony of an accomplice cannot be acted upon unless it is corroborated in material particulars. If the necessary corroboration is available and if the Court is satisfied that the story narrated by him is substantially correct, it is open to the Court to believe one part of his story as well as another. In Tidd's Trial, 33 How. St. Tr. 1483 Garrow B., charging the jury, observed as follows:-

"It may not be unfit to observe to your here that the confirmation to be derived to an accomplice is not a repetition by others of the whole story of the accomplice and a confirmation of every part of it; that

that would be either impossible or unnecessary and absurd; * * * and therefore you are to look to the circumstances to see whether there are such a number of important facts *confirmed as to give *P.64. you reason to be persuaded that the main body of the story is correct. * * * * You are, each of you, to ask yourselves this question: Now that I have heard the accomplice and have heard other circumstances which are said to confirm the story he has told, does he appear to me to be so confirmed by unimpeachable evidence, as to some of the persons affected by his story or with respect to some of the facts stated by him, as to afford me good ground to believe that he also speaks the truth with regard to other prisoners or other facts with regard to which there may be no confirmation? Do I, upon the whole, feel convinced in my conscience that his evidence is true and such as I may safely act upon ?"

The kind of corroboration required is not confirmation by independent evidence of everything the accomplice relates, as his evidence would be unnecessary if that were so. R.V. Mullins (3 Cox 526,531). What is required is some independent testimony which affects the prisoner by tending to connect him with the crime; that is, evidence, direct or circumstantial, which implicates the prisoner which confirms in some material particular not only the evidence given by the accomplice that the crime has been committed, but also the evidence that the prisoner committed it R.v. Baskerville (12 Cr.A. Reports 81). The prisoner's own evidence

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evidence may afford the necessary corroboration, as may also his conduct *in the circumstances of the case, R.v. Medraft (23 Cr.A.R.116) see also R.v. Blatherwick (6 Cr.A.R.281).

* P. 65.

Badge has given a very full and detailed account of the circumstances leading to the occurrence and the occurrence itself. Although the narration of facts covers several printed pages I have not been able to discern any obvious falsehood or a desire to suppress the true facts. He has made certain admissions which are damaging to his own character and reputation and which affect his own credibility, but he has not faltered or prevaricated as far as the facts of this case are concerned. It is his interest to tell the truth and so far as I can judge he has told it. I am of the opinion that the story narrated by him is substantially correct.

Let us now see whether the necessary amount of corroboration is available in this case.

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*It is scarcely necessary to reproduce Badge's story in regard to the incidents which took place between the 9th and 20th January, for it has been set out in detail in the preceding paragraphs which are based principally on the evidence given by Badge. He himself states that on the 9th January Karkare, Madanlal, Om Parkash and Chopra saw the stuff at his house in Poona; that on the 10th January he went to the office of the Hindu Rashtra and promised to deliver two gun-cotton-slabs and five hand-grenades to Nathuram and Apte at Bombay on the evening of the 14th January; that Badge and Shankar met Nathuram and Apte near the office of the Hindu Mahasabha on the evening of the 14th

-11-

14th and deposited the bag containing the stuff in the house of Dixitji Maharaj; that Nathuran, Apte, Karkare, Madanlal and Badge went to the house of Dixitji Maharaj on the morning of the 15th January; that they examined the stuff and told him that they were proceeding on an important mission; and that they requested him for the loan of one or two revolvers. The prisoners have challenged the correctness of this story. It is contended that even if the prosecution could not produce any independent evidence in regard to the incident of the 9th they could certainly produce Om Parkash and Chopra who actually went to see the stuff that night and who did not figure in the list of prisoners who were arraigned before the trial Court. It is said that the testimony of Badge in regard to this incident has been categorically denied by Apte, Karkare and Madanlal and that the statements of these three persons should in fairness to the prisoners be allowed to outweigh the statement of Badge. The trial Court expressed the view that the prosecution were unable to trace Om Parkash and Chopra and that even if they had appeared in Court it is somewhat doubtful if their evidence could have amounted to more than that of accomplices.

*P.68.

Again it is contended that the evidence in regard to the story that Badge was taken to the Hindu Rashtra office on the morning of the 10th January and was asked to supply certain arms and ammunition stands uncorroborated and alone.

It is contended that if that incident were true the prosecution could have had no difficulty in producing evidence in support thereof particularly as Badge paid his visit under the broad glare of the sun

and

*P.69.

* and must have been seen by a number of clerks and other employees who were working in the office of the Hindu Rashtra. Nor can it be said that the police could not have found a number of persons willing to state the truth. If the prosecution could examine persons like Mr. P.V. Godbole (P.W. 85) who was the manager of an engineering firm of which a brother of Nathuram was a proprietor and if they could produce Mr. G.V. Kale (P.W.88) a friend of Mr. Godbole they could have had no difficulty in producing some member or employee of the press or even an outsider to support the assertion that Badge did in fact visit the office of Nathuram on the morning of the 10th January.

Again, it is said that corroborative evidence is conspicuous by its absence in regard to Badge's arrival in the office of the Hindu Mahasabha on the evening of the 14th January, in regard to his meeting Nathuram and Apte on the road near the said office and in regard to the deposit of the bag containing arms and ammunition in the house of Dixitji Maharaj. It is argued that if the facts to which he deposes are true it was not beyond the resources of the State to examine witnesses from the Hindu Mahasabha or at least to produce the servant with whom the bag was left.

*P.70

*P.70

* Badge's statement to the effect that Nathuram and Apte met Badge and Shankar near the Hindu Mahasabha office at Dadar on the 14th January, that they later accompanied them to the house of Dixitji Maharaj where the bag containing the stuff was deposited and that Nathuram paid a sum of Rs.50/- to Badge on account of the travelling expenses incurred by him is said to be corroborated by two facts, namely, (a) that on the afternoon of the 14th January Nathuram and Apte travelled from Poona to Delhi and (b) that on the said date Nathuram did in fact pay a sum of Rs.50/- to Badge. The evidence of P.W. 60 Miss Shantabai B. Modak makes it quite clear that these two persons

did

did undertake the journey from Poona to Dadar on the afternoon of the 14th January, Miss. Modak who is a film actress of some repute deposes that she took the Poona Express at 3-20 or 3-30 P.m. on the 14th January and entered a second class compartment. While she was looking for a seat for herself, Apte who happened to be travelling in the same compartment stood up and offered his seat near the window to her, while he himself went * and occupied a seat opposite that of Miss Modak. In the meantime another gentleman whom the witness later identified as Nathuram arrived and took his seat by the side of Apte. Miss Modak and Apte conversed with each other on general topics. During the course of the conversation she happened to mention the fact that she was alighting at Dadar and Apte chivalrously offered to see her home. On arrival at Dadar Miss Modak told Apte that her brother had arrived with a car and offered to give a lift to the two male passengers to Shivaji Park. This offer was readily accepted. Both Nathuram and Apte admit that they travelled by train from Poona to Dadar and that Miss Modak dropped them opposite the Savarkar Sadan. The evidence of Miss Modak which is supported by the admissions of the two prisoners corroborates to an extent the statement of Badge that he was to deliver the stuff to Nathuram and Apte at Bombay and that they had travelled from Poona to Bombay to receive it.

*P.71

But can the statement of Badge to the effect that both he and Shankar, also travelled from Poona to Bombay the same day be accepted without demur? It is said that if Badge, Shankar, Nathuram and Apte travelled by the same train they must have met each other either at Poona or at Dadar or at an intermediate * station. I agree that if a number of persons travel by the same train they are almost certain to meet each other at some stage of the journey; but the circumstances of this case are somewhat different.

*P.72.

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In the first place there is nothing on the record to indicate that these two sets of passengers were travelling by the same train. It is true that both of them left Poona in the afternoon, but it has not been established that only one train left Poona for Dadar in the afternoon. Secondly, it must be remembered that we are dealing with at least one set of passengers who were particularly anxious to avoid the public gaze. Badge and Shankar were travelling with a bag containing arms and explosives and were particularly anxious to appear as inconspicuous as possible. Again, it is possible that both he and his employee stayed inside their compartment as both of them are in the habit of travelling without ticket. The allegation, therefore, that Badge and Shankar could not have undertaken the journey from Poona to Dadar on the afternoon of the 14th January cannot thus be said to carry much force.

*P.73.

The second piece of evidence which has been relied upon in support of the contention that Nathuram, * Apte and Badge met on the 14th January is an entry Ex.P.323 in a diary Ex.P.218 which was recovered from the possession of Nathuram. This entry shows that on the 14th January Nathuram paid a sum of Rs.50/- to a person of the name of Bandopant. The prosecution allege that this entry supports the statement of Badge that a sum of Rs.50/- was paid to him on account of the travelling expenses incurred by him and his servant Shankar but that the name of Bandopant has been wrongly mentioned in order that the police should be prevented from establishing a connection between Nathuram and Badge. It is significant that the payment was made out of a joint fund of Rs. 2,000/- kept by Nathuram and Apte for carrying out the purposes of the conspiracy and that the name of Bandopant was assigned to Badge at the conference which took place at the Marina Hotel on the afternoon of the 20th January, Nathuram admits having paid a sum

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of Rs.50/- to one Bandopant, but he states that this Bandopant is an employee of his and a completely different person from Badge. It is unfortunate that Nathuram did not consider it desirable to put Bandopant into the witness-box in support of his assertion. The inevitable result, therefore, is that the statement of Badge, supported as it is by that of the entry, holds the field.

* No evidence has been produced by the prosecution in support of the story narrated by Badge that Nathuram, Apte and Badge went to the house of Dixitji Maharaj at 10 o'clock on the night of the 14th January and left the bag containing the stuff with a servant of the said Dixitji Maharaj. The prisoners allege that the servant should have been produced and that the non-prosecution of a witness who was available and who was actually examined by the police entitles the Court to presume that if the said witness had come to Court his evidence would have been unfavourable to the prosecution. Prima facie there is force in this contention, but the events which took place subsequently make it quite clear that the story narrated by Badge is substantially true.

*P.74.

Let us now examine the events which took place in Bombay on the 15th January which constitutes an important land-mark in the history of this case. Badge's statement to the effect that he accompanied Nathuram, Apte, Karkare and Madanlal to the house of Dixitji Maharaj for examining the contents of the bag which had been left in his house on the preceding evening has been corroborated by P.W.77 Goswami Dixitji Maharaj who resides within the precincts of the *Mota Mandir at Bombay. This witness deposes that on the morning of the 15th January Badge came to his house accompanied by Nathuram, Apte, Karkare, and Madanlal and asked for the bag that he had left with his servant on the preceding night. The witness asked Badge the name

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of the servant with whom the bag had been left and Badge immediately pointed towards Angre as the person to whom the bag had been given. Angre was asked to bring the bag but as he took some time in coming the witness who had been ailing for a few days went to have a bath. On his return to the room 20 or 25 minutes later he saw Badge showing the contents of the bag to his companions and talking to them. Amongst the articles which were being shown were two hand-grenades and two gun-cotton-slabs. Badge was trying to explain the manner in which the grenades should be used. The witness thought that the way Badge was trying to work the grenade was wrong and he actually demonstrated to the visitors the manner in which the grenade should be worked. After the explosives had been examined by those present they were put back into the bag and three of the persons, namely, Nathuram, Karkare and Madanlal *left the room. The witness asked Badge and Apte who were still in the room as to the object of their coming to his house and exhibiting those articles in his room. They replied that they were proceeding on an important mission and asked for the loan of a revolver or a pistol. The witness asked them to tell him the nature of the mission on which they were proceeding, but they were not willing to divulge the secret at that stage. As they started to leave the room the witness asked Badge to stay on but the latter replied that he would come and see the witness after a short while. Badge came back 15 or 20 minutes later, but was still unwilling to give any further information in regard to the mission on which they were proceeding. On being further pressed Badge ultimately agreed to visit the witness that day in the evening and to throw further light on the matter which had excited the curiosity of Dixitji Maharaj. Badge saw the witness again on the evening of the 15th or the morning of the 16th January or possibly a day or two later. Badge showed a revolver to the witness and told him that he had purchased that revolver for a sum of

*P.76.

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Rs.325/-. He requested the witness that even if he was not prepared to part with the revolver*of his own he might... *A. 77.
 be good enough to pay him the price of the weapon which Nathuram, Apte and Badge had paid for the same. The witness asked Badge to tell him the object for which the revolver was required and Badge replied that they had collected arms and ammunition worth thirty or forty thousand rupees and that they were proceeding to Kashmir with the arms to help the native population against the raiders and for the purpose of sabotage. The witness, however, expressed his inability to be of any help to them. On the 17th January the witness met with an accident.

The witness was taken to an identification parade where he identified Nathuram, Apte and Madanlal. He gave a description of Karkare to the police but was unable to pick him out at the identification parade.

Our attention has been invited to a number of discrepancies between the statements in the testimony of the approver and that of Dixitji Maharaj. The first is that according to the approver he handed the bag over to Apte who gave it to Karkare who passed it on to Madanlal. Dixitji Maharaj makes no reference whatsoever to this incident, though he admits that Karkare and Madanlal had come to his house. The second contradiction is in regard to the date on which the approver saw * Dixitji Maharaj after he had paid a visit to *P.78.
 him on the morning of the 15th January. Badge states that he was in Poona on the 16th and visited the house of Dixitji Maharaj on the morning of the 18th. Dixitji Maharaj on the other hand deposes that this visit took place either on the evening of the 15th January or on the morning of the 16th although he does not rule out the possibility of there being a difference of one or two days between his visit on the morning of the 15th and his last visit. While referring to the incidents of the 26th January he states that Badge saw him 7 or 8 days before (that is on the 18th or

19th January) and showed him a revolver which he had presumably purchased in poona. He is hopelessly vague in regard to his dates and I am inclined to think that Badge is telling the truth when he states that in accordance with the arrangement that had been made between himself and Nathuram and Apte, he reached Bombay on the 17th and saw Dixitji Maharaj on the 18th. The fact that Badge showed him a revolver goes to prove that Badge must have gone to Poona as alleged by him.

*P.79

There is yet another contradiction between * the statements of Badge and Dixitji Maharaj. Badge stated that after the stuff had been shown to the conspirators and after Karkare and Madanlal had left, Apte asked Dixitji Maharaj to lend them a revolver or two as they were proceeding on an important mission. According to him, therefore, Nathuram was present when the talk about the revolvers took place. Dixitji Maharaj on the other hand states that this talk took place after Nathuram, Karkare and Madanlal had left the room.

Two other criticisms have also been made. It is said, in the first place, that the bag in which the stuff was brought from Poona to Bombay and which was later recovered from the possession of Gopal could not be identified by Dixitji Maharaj and consequently that the story about the meeting on the 15th, and the contents of the bag being shown must be characterised as false. Again, it is said that the statement of Badge to the effect that he supplied two gun-cotton-slabs and five hand-grenades to Nathuram and Apte is contradicted by Dixitji Maharaj who admits having seen only two gun-cotton-slabs and two hand-grenades. If only two gun-cotton-slabs * and two hand-grenades were shown to Dixitji Maharaj on the morning of the 15th January and if those articles alone were made over to Madanlal, it is contended that the story of Badge to the effect that a larger number of articles was supplied

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falls

falls to the ground.

The discrepancies to which our attention has been invited are of a minor character and serve only to show that Dixitji Maharaj is not repeating a story which has been taught to him but is making a correct statement of the facts which he saw with his own eyes. He is unable to remember whether Apte handed over the bag to Karkare and whether Karkare passed it on to Madanlal but this is too minor a detail to be remembered by a person who had no particular interest in the bag. He is making a mistake in regard to the precise date on which Badge is said to have visited him after 15th January, but again his failure to remember the correct date may be due either to lapse of memory or to an honest mistake. He says he saw only two slabs and two grenades with Badge but there may be others in the bag. He was not interested in the number of articles in the bag but in the manner in which a grenade should be worked. He does not remember the names of the particular persons who were in his room when Apte asked the witness for the loan of a revolver, but again, the witness may not have been able, after the lapse of so long a period, to identify the particular bag in which the articles had been brought by Badge. None of these objections appear to me to shed any doubt on the credibility of a witness who is wholly independent and disinterested, who is occupying a very prominent position in the city of Bombay and who is closely related to the head of a religious sect. He has no reason to be biased or partial to one party or the other. He has given his evidence convincingly and has not departed from the truth. His evidence furnishes very strong corroboration of the testimony of the approver.

P.81

Nathuram, Apte, Karkare and Madanlal deny having visited the house of Dixitji Maharaj on the morning of the

15th

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15th January, or having seen the stuff which is said to have been brought by Badge. Nathuram stated before us in Court that although Apte and Madanlal had previous contacts with Dixitji Maharaj, he (Nathuram) had none. He contends that although he was picked up by this witness at the identification parade that fact does not necessarily prove that he had gone to the house of the witness on the 15th * January. He had paid a visit to him on the 26th January when he went to the Mota Mandir in connection with the affairs of the Jaisalmer State and the witness had seen him there. It is accordingly contended that the witness must have identified Nathuram merely because he had seen him on the 26th January.

*P.82

I have gone carefully through the evidence of this witness and am satisfied that he is telling nothing but the truth. He has no reason for making the statement that they visited his house on the morning of the 15th January if they did not go there on that date. If he had been a tutored witness he could have made his statement conform to the statement of Badge and obviated the possibility of discrepancies occurring. It may be that he has been purchasing arms and ammunition for himself and for his friends' relations but that fact would not show that he is making this statement under the pressure of the police. His evidence establishes beyond reasonable doubt (a) that a bag containing arms and explosives was left at his house on the night of the 14th January, (b) that it was left with his servant Narayan Vithal Angre, (c) that Nathuram, Apte, Karkare, Madanlal and Badge came to his house on the morning of the 15th, (d) that Badge showed the contents of the bag to his companions, (e) that Badge told him that they were proceeding on an important mission, (f) that neither Badge nor the other visitors would disclose to him the nature of the mission; (g) that they were

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anxious

anxious to obtain one or two revolvers from him and (h) that they allowed him to live in the belief that the arms and ammunition were required either in connection with the agitation against the Hyderabad State or in connection with the trouble in the Kashmir State. There can be little doubt that the bag containing the stuff was left in the house of Dixitji Maharaj as the police were not likely to visit that place. The Hindu Mahasabha building was not regarded as safe. It is also clear that Nathuram, Apte, Karkare and Madanlal went to the house of Dixitji Maharaj on the following morning with the object of examining the stuff prior to its being sent to Delhi with Karkare and Madanlal. Badge states that Madanlal had taken his bedding from the Hindu Mahasabha office to the house of Dixitji Maharaj and that as soon as the bag containing the stuff was handed over to him he packed the bag along with the stuff into his bedding.

* This statement is fully in accord with the probabilities of the case. It is common ground that Karkare and Madanlal left Bombay for Delhi the same night.

*P.84

The story narrated by Dixitji Maharaj to the effect that Nathuram and his companions came to his house on the morning of the 15th January and examined the contents of the bag, strongly supports the statement of Badge that he had brought the stuff to Bombay as a result of the order placed with him by Nathuram and Apte. Badge states that a definite order had been placed with him by Nathuram and Apte for the delivery of two gun-cotton-slabs and five hand-grenades to them at Dadar on the evening of the 14th January. The evidence of Dixitji Maharaj substantially corroborates that statement.

It may perhaps be convenient at this stage to deal with an objection which has been taken. It is contended on behalf of the prisoners that if Angre produced the bag containing the stuff before Dixitji Maharaj on the morning of the 15th January and if he was examined by the police shortly afterwards and if he was actually taken to the identification parade where he identified the persons whom he had * seen including Karkare, and if he was available for examination before the trial Court the prosecution should have produced him before the trial Court particularly as Dixitji Maharaj did not identify Karkare at the identification parade. There is in my opinion considerable force in this argument. I am clearly of the opinion that the prosecution have failed in their duty in not examining an essential witness. This does not mean, however, that the entire story must break down merely because one of the witnesses has not been produced. Even after raising the necessary presumptions against the prosecution I am of the opinion that Badge's story to the effect that an order was placed with him for the supply of explosives and that he brought the explosives in compliance with that order has been corroborated in material particulars.

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*P.87.

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*Badge states that in accordance with the arrangement which had been arrived at between Nathuram and Apte on the one hand and Badge on the other, he arrived at the Victoria Terminus Railway Station on the morning of the 17th January. Nathuram and Apte met him outside the barrier when Apte suggested that before proceeding to Delhi they should collect some funds for the purposes of the conspiracy. They engaged taxi No.B.M.T.110 belonging

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belonging to Aitappa Kotian (P.W.80) and visited the Bombay Dyeing House where they met Seth Mathuradas (P.W.74), the Hindu Mahasabha office where they picked up Shankar, the Savarkar Sadan where Mr. Savarkar blessed their mission, the house of Afjulpurkar (P.W.73) where Mr. Afjulpurkar gave them a donation of Rs.100/-, the house of Mr. M.G. Kale (P.W.86) where Mr. Kale advanced them a loan of Rs. 1,000/- and again the Bombay Dyeing Works where Mr. Mathuradas paid Apte a sum of Rs. 1,000/- by way of a donation, the house of Dixitji Maharaj where Apte asked for a revolver and the Santa Cruz Aerodrome where Apte paid a sum of Rs.250/- to Badge and asked him to leave for Delhi the same day. Nathuram and Apte left for Delhi by air from the Santa Cruz Aerodrome. Badge and Shankar then drove back from Santa Cruz in the same taxi and went to the house of Mr. R.K. Patwardhan in Kurla. Patwardhan was not at home but Badge paid Rs.55/- to the taxi-driver and awaited the arrival of Patwardhan. The latter did not turn up and Badge and Shankar accordingly left by train from Kurla Railway Station to Dadar Railway Station. They returned to the house of Patwardhan at 3.20 p.m. and stayed with him till 9 or 9-30 p.m. Patwardhan advanced a sum of Rs.400/- by way of loan to Badge. They returned to Dadar and spent the night at Asra Hotel.

*P.88.

Bath Mathuram and Apte admit that they engaged a taxi on the morning of the 17th January for collecting funds for the Hindu Kashtra and for proceeding to Delhi. This part of Badge's story thus stands corroborated.

*P.89

* The story narrated by Badge to the effect that the prisoners had entered into an agreement to assassinate Mahatma Gandhi receives general corroboration from the fact that between the 17th and the 20th January all six prisoners namely, Nathuram, Apte, Madanlal, Karkare, Badge and Shankar happened to be in Delhi. Karkare and Madanlal left Victoria Terminus at about 9-15 p.m. on the 15th January and travelled by the Peshawar Express. Karkare and Madanlal took the 9-15 p.m. train from Delhi on the 15th January and travelled in a 3rd class compartment. P.W.5 Angchekar who happened to be travelling in the same compartment states that on the morning of the 16th he heard one of the passengers talking to another in Marhatti. Taking him to be a man of his own country the witness entered into conversation with him (Karkare). He told Karkare that he was a refugee from Karachi and was proceeding to Delhi for getting his services transferred to the Government of India. He stated further that he was anxious to leave Delhi the same day but was somewhat doubtful of his being able to do so if the train was running late. Karkare told him that he would make arrangements for his stay at the Birla Mandir in case the train reached Delhi and he was unable to finish his work in time.*When the train stopped at Delhi at 12.30 p.m. on the 17th and the passengers alighted at the platform Angchekar noticed for the first time that Madanlal had also travelled in the same compartment. Karkare, Madanlal and Angchekar engaged a tonga and proceeded to the Hindu Mahasabha office. No accommodation was available there. They then proceeded to the Birla Mandir where also no accommodation could be secured. The tongawala then took them to the Sharif Hotel in Chandni Chowk where Karkare, Madanlal and Angchekar engaged a room on the first floor. Within two hours of their arrival in the hotel, Karkare left the room saying that he was going to the Hindu Mahasabha office. Madanlal also expressed a desire to go out, for he said that he wanted

*P.90

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to see his uncle in the Chandni Chowk. Both Madanlal and the witness went to the Chandni Chowk. On the following morning i.e., the 18th January the witness accompanied Madanlal to Sabzinandi as Madanlal wanted to see a relation of his in connection with his marriage. At about midday Madanlal and the witness went to the house of Madanlal's maternal uncle. Karkare did not return to the hotel for dinner or until the witness went to bed on the night of the 18th January. He had not returned when the witness got up from his bed on the following morning. The witness left for the Transfer Bureau on the morning of the 19th. When he returned from the Bureau at about 3 or 3-30 p.m. he saw Karkare and Madanlal talking to a person whom the witness later identified as Gopal. As soon as he entered the room, Karkare told him that Madanlal and he were going

* to vacate the room as they were spending the night in the Maharashtra Niwas and were proceeding to Jullundur in connection with the wedding of Madanlal. Angchekar told Karkare that he had finished his work and was returning to Bombay the very same day. The witness asked Karkare his permanent address in Bombay but Karkare replied that it was not necessary to supply him his permanent address. Madanlal, however, appeared to be more friendly. He said that he was residing at the Chembur Refugee Camp at Bombay. Angchekar stayed in the room till about 5 p.m. except for a short period when he went to the Town Hall to receive a free ticket to Bombay. Karkare and Madanlal had not left by 5 p.m., for the clothes which they had given for washing had not arrived. The witness paid a sum of Rs.20/- to Karkare as his share of the bill which had been submitted in respect of Karkare, Madanlal and the witness. The evidence of this witness shows that Karkare and Madanlal

*P.91

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left Bombay on the 15th January and reached Delhi at about midday on the 17th; that they put up together in a room in the Sharif Hotel; that Karkare left the hotel within two hours of his arrival stating that he was going to the Hindu Mahasabha; *that he did not return to the hotel either on the night of the 18th or till after breakfast on the morning of the 19th; that when the witness returned to the hotel at about 3 o'clock on the afternoon of the 19th he found a stranger whom he later identified as Gopal sitting with Karkare and Madanlal; and that Karkare told the witness that they were leaving the room the same day, spending the night in the Maharashtar Niwas and proceeding to Jullundur the following morning in connection with the wedding of Madanlal. An effort was made on behalf of the prisoners to impugn the credibility of this witness on the ground that as he was a refugee from Sind (who had lost everything as a result of the political upheaval) he should be regarded as a man of straw whose evidence should not be accepted at its face value. A perusal of Exhibit P.12 makes it quite clear that the witness is not a person whose evidence should be viewed with suspicion. He is poor but respectable. The witness who is about 30 years of age passed the Matriculation Examination of the Bombay University in the year 1936 and was working as a Rationing Enquiry Inspector immediately before the 15th August, 1947, when Sind became a part and parcel of Pakistan. He can read, speak and write Marhatti and English and can read and speak Hindi and Gujrati. He was drawing an aggregate salary of Rs.163/- per mensem. He has no reason to be hostile either to Madanlal or to Gopal. The statement made by him does not betray any anxiety on his party to implicate Gopal. He identified Gopal in an identification parade which was held on the 30th March. Knowledge, *intelligence, quality of memory and all other attributes which constitute ability together with

those

*P.92

P.93.

those moral qualities which constitute credibility are united in this witness. His testimony is consistent with reasonable probabilities. He appears to me to be intrinsically and inherently reliable and there is no reason, therefore, why his evidence should not be accepted at its face value against Karkare, Madanlal and Gopal.

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* In the arguments addressed to us by Nathuram a good deal of emphasis was laid on the fact that there was no evidence to show that either Badge or Madanlal had stayed at the office of the Hindu Mahasabha on the night of the 19th January. Mr. Daphtary admits that he has not been able to produce any witness from the Hindu Maha Sabha or from any other place with the object of establishing that Madanlal and Badge did in fact stay in the Hindu Maha Sabha on the night in question. But he contends that the allegation made by Badge in his evidence to the effect that he had spent the night of the 19th January in the Hindu Maha Sabha was not challenged in the Court below. In that Court the prisoners appear to have proceeded on the assumption that Badge and Madanlal had in fact stayed in the Hindu Maha Sabha, for no questions whatsoever were directed to the witnesses appearing for the prosecution with the object of challenging this allegation. On the other hand the questions which were put in cross-examination make it quite clear that the presence of Badge and Madanlal in the Hindu Mahasabha on the day in question was assumed. At one place he states:-

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*P.96

"It is not a fact that on return from the *Birla House I had gone to the jungle behind the Hindu Mahasabha office to answer the call of nature when I was challenged by the forest guards."

Again at another place a question was put to Badge on behalf of one of the defence counsel. The question is as follows:-

" I put it to you that you held discussions in regard to the distribution of the 'stuff' and in regard as to how the 'stuff' was to be used in the room in which Nathuram Godse was lying ill and that Nathuram Godse asked you not to discuss things there but to go to the bath room. Is it true ? "

Then follows a note which is in the following terms:-

"The counsel at this stage after consulting Mr. Bhatkar does not press the question and withdraws it saying that this is not the sense that he intended to convey to the witness."

It may be that this question was later withdrawn but the fact remains that the question was actually put to Badge. The language of the question makes it quite clear that the prisoners were not seriously challenging the story that there was a meeting of the prisoners in the Marina Hotel on the morning of the 20th.

Again at another place Badge made the following statement in his cross-examination:-

*P. 97

* " When Madanlal, Om Parkash and Chopra along with Karkare came to see me on 9th January 1948, I knew that those were the persons who had been referred to by Apte."

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The answer appears to show that the prisoners were not seriously challenging the visit of these men to Badge on the 10th January, although they wanted to establish that these persons visited Badge with some other object.

Again, at page 113 appear certain other statements.

At lines 14 and 15 Badge states as follows:-

" It is not a fact that I had gone with Madanlal to the Gole-Market to take meals in the evening of 19th January 1948. It is not a fact that I had gone to the Gole-Market to take tea on the morning of the 20th January 1948."

These questions show that the allegation that Madanlal and Badge were together on the evening of the 19th January and the morning of the 20th January was not denied. At lines 42 to 46 of the same page appear the following :

"It is not a fact that when I reached the Hindu Mahasabha office on the night of 19th January 1948 Apte rebuked me for having come late and for not having brought with me volunteers although he had left money with me for that purpose."

This answer also goes to indicate that the prisoners admitted that Badge came to the Hindu Mahasabha on the * night of the 19th. Certain other statements appear at page 117. At lines 18 to 20 Badge stated as follows:-

*P.98

"It is not a fact that the discussion that had taken place in the room of Nathuram Godse was in regard to a demonstration that was to be held at the prayer ground. It is not a fact that the discussions were held loudly and that Nathuram Godse had asked us to shift to the bath room."

Here.

Here is a definite suggestion that a number of persons met in the room of Nathuram Godse and held a discussion. In other words these statements show that the prisoners were not challenging in the lower Court certain allegations made by the prosecution.

If Badge visited Nathuram and Apte in the Marina Hotel on the morning of the 20th it is open to the Court to presume that Nathuram and Apte must have been aware of the place at which Badge was staying. If so they could have easily asked Badge as to whether he was not in fact staying at such and such a place. No such question was put to Badge

*P.99

*Badge states that at about 11 or 11-30 a.m. on the 20th January, Apte, Gopal, Badge and Shankar went to the jungle behind Hindu Mahasabha with the object of trying out their revolvers. Gopal took out his revolver but the revolving chamber would not come out. Shankar then took out his revolver, loaded it with 4 cartridges and tried to shoot at a tree. The shot did not reach the tree but fell down in between. Apte thereupon said that that revolver was of no use. Gopal sent Shankar to the Hindu Mahasabha office to bring a bottle of oil and a penknife, but when these articles were brought and Gopal started repairing the revolver, three Forest Guards appeared on the scene, Apte and his companions hastily concealed the revolver underneath the Chaddar on which they were sitting. One of the Forest Guards came up and enquired as to what they were doing. Gopal spoke to him in Punjabi. The Forest Guards were apparently satisfied and went away. In consequence of the information given by Badge the police got into touch with the Forest Guard Mehar Singh (P.W.9) in March 1949. He was taken to identification parade held on the 24th March and identified Apte, Gopal, Badge

and

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and *Shankar as the persons whom he had seen on the morning of the 20th January. The statement of this witness cannot, in my opinion, be relied upon for it is difficult to believe that a person who sees another casually for a short time and who does not connect him with any unusual or extraordinary incident should be able to identify him after the lapse of over two months. It is possible that this witness did see four persons on or about the 20th January, but his evidence cannot be taken any further and it cannot be said that the four persons he saw were Apte, Gopal, Badge and Shankar.

A number of witnesses have come from the Marina Hotel to testify the fact that while Nathuran and Apte were staying in the said Hotel from the 17th to the 20th January a number of persons came to see them. P.W.8, Nain Singh who is a head bearer in the Marina Hotel deposes that on a certain day which he is unable to remember he served tea to Karkare and Shankar in room No. 40 of the Marina Hotel. He served two teas to start with but was later asked to supply three more. The hotel registers Exhibits P.17 and P.24 show that *three extra teas were served on the 20th January. Nain Singh's

*P.101

statement, therefore, to the effect that he served tea to the occupants of room No. 40 and in particular to Karkare and Shankar is thus

corroborated by the entries in the hotel registers relating to room No. 40. These entries are further

corroborated

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corroborated by bill No. 7859 which was issued to the occupants of this room on the 20th January

1948 and which is reproduced as Exhibit P.17.

The fact that this witness served tea to

Shankar who was a menial servant must have

left a deep impression on the mind of the witness.

The identification memo relating to the parade which was held on the 30th March shows that this witness

identified Karkare and Shankar along with a

wrong person as occupying room No. 40. It is

argued that ~~the~~ fact that he referred to Karkare

and Shankar as occupants of room No. 40 whereas

the real occupants were Nathuram and Apte detracts

considerably from the value of the evidence given

by him. I regret I am unable to concur in this

contention. The statement which has been

*P.102

* attributed to Nain Singh was not put to

him when he was being examined in the Court

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below and he was not confronted with the said statement. That statement cannot, therefore, be used against the witness. It has been held repeatedly that statements appearing in identification parades can at best be regarded as being memoranda of the officer who supervises an identification parade and cannot be treated on the same footing as statements made by a witness to a police officer. In any case this particular witness was not confronted with the statement which has been attributed to him and he was not afforded a reasonable opportunity of explaining the discrepancy between what he stated to the Magistrate and what he stated before the trial Court.

The next witness is Gobind Ram (P.W.11), a bearer of the Marina Hotel, whose duty is to serve drinks in the bar. He states that he saw Nathuram, Karkare, Gopal and Badge in his hotel three days before the explosion of the bomb i.e. on the 17th January. He served one peg on the first day and two pegs on the second day. He took the drinks to rooms No. 40 himself and served them to Karkare

*P-103

* on both occasions. The police came to him two months later and asked him to produce the chits signed for the drinks. He had seen the four persons mentioned above first in the hotel and then before a Magistrate in Bombay and had not seen them in between. He identified them before a Magistrate on the 30th March 1948. His evidence in this behalf is fully corroborated by the vouchers issued by the hotel and the entries in the hotel registers vide Exhibits P.17, P.18 and P.19. The principal objection which has been taken to the evidence of this witness is that he could not have seen either Gopal or Karkare or Badge three days before the explosion i.e. on the 17th January. Gopal proceeded on leave on the afternoon of the 16th and even if he caught the first train from Kirkee on the afternoon of the 16th he could not reach Delhi much before the morning of the 18th when Karkare is said to have gone to the railway station to receive him. Badge did not reach Delhi before the evening of the 19th. If, therefore, this witness states that he saw Badge and Gopal in the Marina Hotel three days* before the explosion, i.e. on the 17th January his evidence cannot be accepted as true. Mr. Dephtary contends that the statement made by Gobind Ram to the effect that he had seen the prisoners three days before the explosion ought not to be

taken

*P-104

taken too literally. The witness appears to mean that he saw the prisoners within a period of three days immediately preceding the explosion in the Birla House. This is clear from the fact that he states that on the first day he served one drink and on the second day he served two drinks. The chits which have been produced show that one drink was supplied to room No.40 on the 17th January and another two drinks on the 18th January.

Again, it was contended that as this witness is charged with the duty of serving drinks in the bar and as it is only on rare occasions that he is required to serve drinks in the rooms it is improbable that he could have remembered the faces of the prisoners or could have been able to identify them correctly after the lapse of two months and ten days. In an ordinary case this contention may perhaps carry some weight but in the present case it must be remembered that most of the prisoners had* peculiar features which could not be forgotten e.g., it was difficult for a person who saw Badge with his long flowing beard and long hair not to be able to identify him even after the lapse of a considerable period. Similarly, Gopal had distinctive features such as high cheek bones. Karkare was the person to whom drinks were actually served on two successive days. I am not surprised in the circumstances that this witness was able to identify Karkare, Badge and Gopal.

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The next criticism is that considerable delay was occasioned in getting into touch with this witness. The explosion took place on the 20th January and the police visited the Marina Hotel on the following day. Thaddous and Gobind Ram appear to have been interrogated but no question were put to Gobind Ram presumably because it was his duty to serve drinks in the bar and not in the rooms occupied by visitors. He was examined on a later date when a requisition was sent by the police to Bombay. The statement of Karkare to the effect that he is a pious Hindu and that as such he does not take liquor cannot be accepted in view of the testimony which has been led in the trial Court.

*P-106

*P.W.12 C.Pacheco, Manager of the Marina Hotel, deposes simply that at about 11 o'clock on the night of the 20th January Madanlal brought some police officers to the hotel and showed them room No.40 where his friends were stopping and which he had visited earlier in the evening.

The evidence of Nain Singh, Gobind Ram and C.Pacheco strongly supports the story of Badge that Nathuram and Apte who were staying in the Marina Hotel were being visited by Karkare, Gopal, Badge and Shankar.

P.W.13 Martin Thaddous, who is a Receptionist Clerk in the Marina Hotel, testifies

testifies to a fact which is admitted by the prisoners, namely, that Nathuram and Apte came to him at about 6 o'clock on the 20th January and asked him to prepare their bills at once.

He identified Nathuram as Mr. Deshpande who had stayed in the hotel. The statement of this witness is of some importance inasmuch as he deposes that Karkare had once come to the hotel to see Nathuram.

P.W.10 Kaliram, who is a bearer in the Marina Hotel, states that Nathuram and Apte had come to stay in the hotel three days before the bomb explosion. * Nathuram gave him some clothes for washing. The witness brought them back from the dhobi after they had been washed but both the occupants of room No. 40 had left.

*P-107

*Again, it is contended that Badge's story to the effect that immediately before proceeding to the Birla House on the afternoon of the 20th January, they went to the Hindu Mahasabha office is inherently improbable and should be disbelieved. It is said that all of the prisoners were in room No.40 of the Marina Hotel which has been adequately provided with locks and keys and consequently that if the prisoners did not want to take all the arms and ammunition with them to the Birla House, they could easily have kept it in the Marina Hotel and need not have gone to the trouble and expense of carrying it by taxi to the Mahasabha Bhawan the rooms of which were open. It is argued that in similar circumstances in Bombay, Badge deposited the bag containing the stuff at the house of Dixitji Maharaj in preference to keeping it in his possession in the Hindu Mahasabha office at Dadar. This

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argument

argument is, in my opinion, wholly devoid of force. According to the prosecution all the prisoners, namely, Nathuram, Apte, Karkare, Madanlal, Badge and Shankar had decided to go to the Birla House. They could not accordingly run the risk of leaving any incriminating articles inside room No. 40 of the Marina Hotel which is said to be a European concern. In Bombay the stuff could be left in the house of Dixitji Maharaj who is a highly respectable and respected citizen * of the place and whom nobody was likely to suspect of keeping unlicensed arms and ammunition. The Hindu Mahasabha office at Dadar on the other hand, was not a safe place for the storage of illicit arms. The position was reverse in Delhi. Here the Marina Hotel was undoubtedly provided with locks and keys and arms and ammunition could be placed there with safety, but in the event of any enquiry being made, Marina Hotel was not as safe a place as the Hindu Mahasabha office where the atmosphere was much more friendly. The prisoners appear to have thought that in the event of discovery, the atmosphere of the Hindu Mahasabha would be much more friendly than the atmosphere of the Marina Hotel. It may perhaps be mentioned in passing that according to the prisoners Shankar did not go to the scene of the outrage on the afternoon of the 20th January. If he was left behind at the Hindu Mahasabha Bhawan, it is obvious that the Bhawan was a much safer place for the keeping of the surplus arms and explosives that Badge and Gopal had brought with them. The story that the prisoners did in fact go to the Mahasabha Bhawan before proceeding to the Birla House is corroborated by the testimony of Surjit Singh in whose

*P. 110

whose taxi the prisoners are said to have travelled.

* Let us now examine the evidence in regard to a meeting which is alleged to have taken place between Nathuram, Karkare, Apte and Gopal at Thana on the 25th January 1948. P.W. 79 Vasant Gajjanan Joshi, who is a boy of about 18 years of age, states that at about 5 or 6 o'clock on the morning of Sunday, the 25th January he was sleeping outside his house when he was awakened by Karkare whom he has been knowing since the year 1943. A couple of hours later, Mr. G.M. Joshi, father of the witness wrote out a draft telegram and asked the witness in the presence of Karkare to proceed to Bombay and to despatch the telegram from there. The witness went to the Central Telegraph office at Bombay and despatched the following telegram at 11-20 a.m.:-

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" TO APTE ANANDASHRAM POONA.

BOTH COME IMMEDIATELY.

Vyas."

The cost of this telegram had been paid to the witness by his father. He was given a receipt by the Telegraph Office and he handed it over to his father. Gopal Godse arrived in Thana at 4 p.m. and Nathuram and Apte at 9 p.m. Nathuram, Apte, Karkare, and Gopal sat down with Mr. G.M. Joshi who was taking his meals and held a consultation. Nathuram and Apte left shortly afterwards while Gopal took the next train for Poona. Karkare, stayed on. Mr. Daphtary states that the only assistance he seeks to derive from the evidence of this witness is that on the 25th January there was a meeting at the house of Mr. G.M. Joshi at Thana, the suggestion being that it was probably at this meeting that the plan to assassinate Mahatma

*P-112

Gandhi

Gandhi in the manner in which he was later assassinated was finally evolved. The only criticism that has been directed against the evidence of this witness is that if the prosecution wanted to give evidence of this conference they should have produced Mr. G.M.Joshi in Court and not content themselves with the production of his son. It is contended that the only inference that may reasonably be drawn from his non production is that if that witness had come into Court his evidence would have been unfavourable to the prosecution. Mr. Daphtary contends that Mr. G.M.Joshi and Karkare have been known to each other for several years, that Joshi and Apte employed together as teachers *in a certain school at Ahmadnagar and consequently that it would have been somewhat embarrassing for Joshi to come and give evidence against his friends. In any case, it is contended that if G.M.Joshi could have contributed anything more to this case than has been contributed by his son and the prosecution failed to produce him, they are prepared to take the risk. It was not necessary for the Crown to produce every witness. The son has been put in the witness-box and he has given his evidence in Court. His evidence regarding Karkare receives substantial support from the telegram which he is said to have despatched from Bombay and the evidence given by him must therefore be deemed to be substantially correct. He has not tried to magnify the case against the prisoners and has spoken nothing but the truth. If this boy was in the hands of the police and if the police wanted to fabricate false evidence against the prisoners they could have had no difficulty in obtaining a much more damaging statement against them than has been given.

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The boy could, for example, have said that Karkare had supplied him the draft of the telegram, or if Karkare is illiterate or is unable to write the telegram he could have said that Karkare gave him the money for the telegram. No such statement has been made and it must therefore be assumed that what has been stated is nothing more than truth. The evidence of this witness makes it quite clear that Gopal stayed for several hours in the house of Mr. G.M.Joshi at Thana on the 25th January and that Nathuram, Apte, Karkare and Gopal had a conversation together. The general trend of cross-examination of this witness does not show that none of the prisoners was there. Apte admits in his statement that he went and stayed with Mr. G.M.Joshi at Thana for a few days in February. Karkare is connected with Mr. G.M.Joshi (a) because he is his publisher, (b) because he is a relation. When Badge met Madanlal at the Hindu Mahasbha on the 18th January and enquired about Karkare, Madanlal said that he had gone to Thana and was expected any minute. It is obvious from the statement of this witness that Karkare did not know that Nathuram, and Apte were in Bombay, for if he were aware of that fact he could not have despatched the telegram to Poona.

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The only other objection that was taken against the evidence of Mr. Vasant Joshi was that he was not * taken to the identification parade. This objection does not appear to me to be of much substance as no question was put to the police witnesses as to the circumstances which prevented them from taking him to an identification parade. Apte had on his own showing come to stay in the house of Mr. Joshi

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in

in February that is sometime before the identification parades were held.

This witness was not cross examined with the object of his credibility being impugned.

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* The prosecution have endeavoured to produce evidence to show that Nathuram, Apte and Karkare were in the vicinity of the crime shortly before the crime was committed. At about 12 noon on the 29th January 1948 Nathuram who represented himself as Vinayakrao appeared at the railway station of Delhi and asked the booking clerk Sundarilal (P.W.26) to reserve a retiring room for him. Sundarilal, told him that no room was vacant at the time but that if he enquired again after half an hour or so he might be in a position to offer him the necessary accommodation. Mr. Vinayakrao returned at about 1 p.m. accompanied by a person who was later identified as Apte. He showed two second class tickets, one from Gwalior to Delhi and the other from Poona to Delhi, and was allotted room No.6 for a period of 24 hours. He paid a sum of Rs 5/- for the room and was granted a receipt in respect of this sum. On the morning of the 30th January Vinayakrao and his friend (Apte) paid another visit to the booking office and asked for permission to retain the room for another day. The booking clerk was unable to accede to this request as no extension could be given without the permission of the Station Superintendent. The booking clerk did not receive the *key of the room and he accordingly went upstairs to see whether the room had in fact been vacated. Nathuram and his companion (Apte) were sitting in the room while a third person who was later identified

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by

by the booking clerk as Karkare was standing near by. The booking clerk asked Mr. Vinayakrao to vacate the room and the latter asked Karkare to tie up the bedding. The booking clerk remained in the room for ten or fifteen minutes and Vinayakrao and his companions removed the luggage to the first class waiting room on the ground floor. The statement of the booking clerk in regard to the incidents which took place on the 29th and 30th January has been corroborated by the testimony of Hari Kishan (P.W.27), bearer in charge of the retiring rooms and Jannu (P.W.28), Boot Polisher, at the Delhi Junction railway station. Hari Kishan states that on the 29th January Nathuram gave some clothes to Jannu for being washed within 24 hours. The clothes were washed within the prescribed period and Nathuram paid a sum of Rs 2/- to Hari Kishan for being paid to Jannu.

Nathuram admitted before the trial Court* that he had booked a retiring room at the Delhi main station under the assumed name of Vinayakrao on the 29th January 1948, but he denied that Apte had accompanied him at the time or that he gave any clothes to Hari Kishan for being washed or that he asked for extension of time to stay in the retiring room or that he got his shoes polished by Jannu. He stated that he had no polishable shoes with him as he was wearing canvas shoes on the dates in question. He did not see Apte or Karkare at the Delhi main railway station on the 29th or 30th January as Apte and he had parted company at Gwalior. While arguing his appeal before us Nathuram explained that he had reserved a full room for himself at the railway station of Delhi as he was on the threshold of a great venture and did

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*P-119

passengers are accommodated in a room, a sum of Rs. 2/- for every extra passenger beyond two is charged. No extra amount was charged from Godse in this case and the theory that three passengers occupied the room must be rejected.

Thirdly, it was said that two tickets were shown to the booking clerk, one from Gwalior to Delhi and the other from Poona to Delhi. The receipt however belies this allegation, for against the entry relating to tickets held appear the words "Nos. II Gwalior Station". This shows that only a ticket from Gwalior to Delhi was shown and none from Poona to Delhi. The booking clerk made no entry in regard to the ticket from Poona and may well be making a mistake when he states from his recollection that this ticket was shown to him.

*Fourthly, it was said that assuming for the sake of argument that two tickets were shown it would merely establish that two persons had occupied room No. 6. Who were these two persons? Apte had travelled from Gwalior to Delhi and could not be in possession of a ticket from Poona to Delhi. The only person to whom the ticket could relate could be Karkare but there was no evidence to show that he travelled from Poona to Delhi by train. It is certainly open to the prosecution to allege that the ticket was in respect of the journey performed by Karkare from Poona to Delhi but there is not an iota of evidence on the record to justify the conclusion that Karkare did in fact travel from Poona to Delhi. Moreover, Karkare generally travelled by third class and not by second class. No one is in

a position to state as to how and when Karkare came to Delhi and how and when Karkare left Delhi for Bombay.

Fifthly, it is said that Sundarilal stated before the trial Court that he went to the retiring room at about 1 o'clock on the afternoon of the 30th January in order to make certain that the passengers had vacated the room. This statement appears to be at variance with the statement made by him to the *police for he never stated to the police that he had paid a visit to room No.6 on the 30th January 1948. Moreover, the bearer of the room who is said to have been present when Nathuram and his companions were preparing to go does not state that Sundarilal ever came to the room on the 30th January. *P-124

Sixthly, it is said that when Sundarilal visited the retiring room on the 30th January he found two persons, namely Vinayakrao (Nathuram) and Apte, talking to a third person who was identified by him to be Karkare. As soon as he asked them to vacate the room they asked Karkare to tie up the bedding. He promptly proceeded to carry out the instructions. Instructions of this kind, it is argued, could be given only to a servant and not to a colleague. Hari Kishan bearer states that the third person (namely Karkare) who was carrying the luggage was putting on a dirty dhoti and probably a shirt or a Kurta. He was bare-headed. It is contended that this third man could not be Karkare who is stated by other witnesses to be the proprietor of a hotel in Ahmednagar and to be known popularly as a Seth.

*Seventhly, it was said that Sundarilal had seen *P-125

Apte

Apte on two occasions only, namely, one on the afternoon of the 29th January and the other on the afternoon of the 30th January. If the evidence given by Sundari Lal in regard to the visit of the 30th January is excluded from consideration on the ground that no mention was made to the police in respect of this visit and that Hari Kishan does not corroborate Sundarilal on this point, then the only occasion on which B. Sundarilal could have seen Apte was at 1 o'clock on the afternoon of the 29th January. B. Sundarilal states that on this occasion the person who called himself N. Vinayakrao was accompanied by another person. He admits further that when Mr. Vinayakrao presented himself at that hour the witness was mainly occupied in having a talk with him from behind the counter in the booking office which has been provided with a grille with brass rods. It is argued that there is always a great amount of rush at the railway station of Delhi and it is difficult to expect that in the absence of a special reason the features of the companion of Vinayakrao were so indelibly impressed on the mind of Sundarilal that he was able to pick him up in an identification parade which was held at *Bombay on the 24th March 1948. i.e., after the expiry of two months from the date on which he had seen Apte for a few moments.

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After going carefully through the judgment of the learned Special Judge and after examining the arguments which have been addressed to us I am inclined to hold that Apte was at the railway station

station at Delhi on the 29th January and the 30th January 1948, when he was seen by Sundarilal, Hari Kishan and Jannu. I am not quite certain however whether Karkare was present on either of these two dates. Sundarilal does undoubtedly testify to the fact that he was present when he (Sundarilal) went to the retiring room on the 30th but it is significant that Sundarilal made no mention in his statement to the police regarding the visit of the 30th.

*Again, it will be seen that there is no satisfactory explanation for the assignment of policies by Nathuram to the wives of Apte and Gopal . Godse **attested the deeds of assignment and must have been** aware that one of the assignments was made in favour of his wife. The question arises as to why these assignments were made. The prosecution allege that both Apte and Gopal were helping Nathuram in the assassination of Mahatma Gandhi and it thus became necessary that some provision should be made for the wives of these two men in the event of their being prosecuted upon a charge of murder. Again, it is significant that one of the assignments was made in favour of the wife of Gopal Godse. If Gopal were not to take part in the conspiracy and if his life were not in danger as a result of his participation it is unlikely that Nathuram would have made a nomination in favour of his wife rather than in favour of Gopal. Again, it is said that Nathuram has another brother. The defence have not been able to explain why the nomination was not made in favour of this other brother.

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The question of assumed names looms large on the pages of the papers books and the prosecution contend that the fact that these false names were assumed shows that the prisoners went to Delhi not with

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the object of staging a peaceful demonstration but with the object of taking the life of Mahatma Gandhi. It is said that on the 17th January Nathuram and Apte travelled by air from Bombay to Delhi under the assumed names of D.N. Karmarkar and S. Marathe; that they stayed in the Marina Hotel from the 17th to the 20th under the assumed names of M. Deshpande and S. Doshpande; that on the 23rd January Apte reserved a room in the Arya Pathik Ashram at Bombay under the assumed name of D. Narayan; that on the 24th January they reserved accommodation in the Elphinstone Hotel Annex under the name of N. Vinayakrao and a friend; that on the 25th January they booked two seats by Air India Limited from Bombay to Delhi in the names of Mr. D. Narayanrao and Mr. N. Vinayakrao; that on the 27th January they travelled by air under these assumed names and that on the 29th January Nathuram appeared at the booking office of the railway station at Delhi and reserved a retiring room in the name of *N. Vinayakrao. In his statement under section 542 of the Criminal Procedure Code Apte explains the reason for going about from place to place under false names. He states that the pitch of the editorial in the 'Agrani' and the 'Hindu-Rashtra' had been rising higher and higher before the 15th January, 1948 and Government had held out a threat that if in future any articles in the paper tended to communal strife or violence they would not rest content with demanding further security but would prosecute the Editor and the Manager. Nathuram and Apte accordingly concealed until they had staged the demonstration as they intended at Delhi. The explanation appears to me to be hollow and

*P-130

unconvincing.

unconvincing. If Nathuram or Apte were responsible for the publication of editorials which were critical of the policy of Government, they could have been dealt with while they were in Bombay where, however, they do not appear to have been going about under assumed names. There was in my opinion no danger of being harassed or arrested while they were in Delhi or in other places.

Again, it is in evidence that when Karkare reach Delhi, he occupied a room in the Sharif Hotel under the assumed name of B.M. Bias. He states that he found it necessary to take on this false name as a detention order had been passed against him by the Government of Bombay and he wanted to take every conceivable precaution against his identity being known to others. *He states that he honestly believed that there was no legal objection to that action. Again, the explanation does not appear to carry force. There is not the slightest suggestion that at any time during his stay either at Ahmednagar or at Bombay he had taken on a name other than his own. He saw Doctor Jain after the detention order had been issued against him but he was introduced to him by his correct name. He states that he was going about in the Chembur Refugee Camp and performing various duties in connection with the relief of refugees, but he did not have to take on an assumed name. It is incredible that if the Bombay Government could not locate him while he was actually going about openly in the Bombay Presidency they should have bothered to follow him to the Sharif Hotel in Delhi.

But, it is contended that the fact that some of the prisoners had taken on false names does not show that they did so with the object of carrying on the purposes

*P-132

purposes of the conspiracy. It is argued that Madanlal who stayed at the Sharif Hotel along with Karkare did not take on a false name. It must be remembered, however, that Madanlal is so common a name in the Punjab and Delhi Provinces that no person who bore only that name and nothing more could *possibly be traced. I am of the opinion that the fact that these three prisoners took on names which did not belong to them affords an indication to the intentions that they entertained vis a vis Mahatma Gandhi.

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*In order to establish association between Apte on the one hand and Madan Lal on the other the prosecution have endeavoured to show that the coat which was removed from the person of Madanlal immediately after his arrest on the afternoon of the 20th January formed part of the same suit of which a pair of trousers was recovered from the possession of Apte on the 16th April 1948. The question is whether the recovery is a genuine one or whether the learned Special Judge was justified in drawing the inference that Madan Lal and Apte were associated with each other and had formed a combination for the purpose of committing a crime.

The evidence of P.W.17 Bhur Singh, P.W.18 Mr. K.N. Sahaney and P.W.11 S. Daswanda Singh makes it quite clear that a blue coat was removed from the person of Madanlal on the 20th January. It has also been established that this coat formed part of the suit of which the pair of trousers is said to have been recovered from the possession of Apte. I have used the words "said to have been recovered" advisedly for it is contended on behalf of the prisoners that this so-called recovery has*been

*P-134

fabricated.

fabricated.

The statement of P.W.133 Mr. Nagarvala, Deputy Commissioner of Police, is most revealing. He states that as soon as he came to know that the coat recovered from the possession of Madan Lal was the property of Apte, he decided to trace the pair of trousers corresponding to the said coat and if possible to prove the association between Madanlal and Apte. He took the coat with him to Bombay and issued instructions to the police at Poona that the house of Apte should be searched at once with the object of finding the pair of trousers. The house in question was searched on the 31st January 1948 but the garment for which the police were looking was not recovered. Apte and Karkare were arrested in the Apollo Hotel at Colaba on the 14th February 1948. A very careful search of the room which was occupied by them but was unable to lay hands on the missing article. The prisoners were conveyed to the first floor of the new C.I.D. building at Bombay and guards were stationed inside the rooms in which they were kept. The door from the stairs to the western portion of the front verandah was throughout kept locked and was used only by Mr. Nagarvala himself. Every conceivable precaution was taken to prevent the members of the public from going to the first floor. No interviews were allowed to the friends or relations of Apte before the first week of April 1948. After that time the near relations were allowed to interview the prisoners but only after they had given their names, stated their business and had obtained a permit from Mr. Nagarvala. Detailed instructions had been issued to the subordinate staff that no person should be allowed to

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to carry any unauthorised or objectionable article to the prison. The clothes brought to the prison were examined with the object of ascertaining whether any objectionable article was being brought although no garment which was intended for the use of the prisoners was objected to. This statement shows that a very strict and rigorous watch was being kept by the police in regard to the persons who came to see the prisoners and in regard to the articles which were brought for their use. It may thus be assumed that it was impossible for any friend or relation of a prisoner to deliver any article to the prisoner without the matter coming immediately and directly* to the notice of Mr. Nagarvala.

*P-136

Mr. V.S. Dalvi (P.W. 106) and Mr. M.G. Kulkarni (P.W. 107) state that on the 16th April 1948 they were taken to the room of Mr. Nagarvala in the new C.I.D. building at Bombay. Mr. Nagarvala showed them a coat Exhibit 15 and directed them to ask Apte to produce the pair of trousers corresponding to the coat. On an appropriate enquiry being made Apte took out a key-ring containing two keys from inside his pocket, opened a trunk and brought out a pair of trousers (Exhibit 67) which was lying on the top. A recovery memo (Exhibit P.221) was prepared. There can thus be no doubt that the pair of trousers was in fact recovered at the instance of the prisoner.

The searches which were conducted on the 31st January, the 14th February and the 13th April 1948 show that the pair of trousers which Mr. Nagarvala was endeavouring to obtain was not in the possession of Apte. It was certainly not in his possession when he was apprehended by the police on the night of the 14th February and marched off to the new C.I.D. building on*the morning of the following day. Not a single witness has come forward to state that when Apte was arrested he was allowed to carry a box of clothes or in fact any clothes at all. If, there-

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fore,

fore, a box of clothes was found inside the room occupied by Apte, it must have been taken there either by his friends or relations or by the police. Would any friend or relation have carried the very article that the police were looking for and thereby have tied the noose tighter round the neck of the prisoner? Would any friend or relation have carried a big box of clothes through a barricade of bayonets without the fact coming immediately to the knowledge of the police? How could the bunch of keys fly into the pocket of the prisoner when a careful search was made and nothing was recovered. The Crown has not been able to make any useful contribution to the solution of this conundrum.

Apte, on the other hand, has endeavoured to explain the circumstances under which the recovery was made. He states that as soon as he was arrested by the police he was asked to carry out all the orders that were issued to him and*was *P-156 told that if he failed to comply with those orders he and the members of his family would be tortured and harassed. He admits that the suit of which the coat (Exhibit 15) and the trousers (Exhibit 67) formed a part belonged to him. He explains, however, that he gave this suit over in charity to the Chambur Refugee Camp in November or December 1947. On the 16th April 1948 the police handed over a locked trunk to him along with two keys and asked him to open that trunk with the keys when the panches came and to hand over the pair of trousers to them. The Panches came shortly afterwards and Apte complied with the instructions I am not prepared to accept the statement of Apte as Gospel truth, nor am I able to accept the story narrated by the prosecution but I am of the opinion that the explanation offered by Apte to the effect that the box was given to him by the police and that he was required to take out the pair of trousers from this box and to hand it over to the Panches appears to be corroborated by the circumstances of the case.

No reasonable explanation has been given as to the circumstances in which this pair of trousers came into the possession of Apte when no such garment

was

*was recovered from his house on the 31st January 1948, when no such garment was recovered from his possession when he was arrested in the Apollo Hotel on the 14th February, when no trunk was brought by him into the C.I.D. building and when no clothes or garments could be brought in except with the special permission of Mr. Nagarvala. It is said that no pair of trousers was recovered from his house when a search was conducted on the 13th April 1948. Mr. Daphtary has not endeavoured to support the recovery of trousers.

While there can be no doubt that mystery surrounds the recovery of the pair of trousers from Apte the fact remains that a coat which admittedly belonged to Apte was removed from the person of Madanlal. An effort has been made to state that Madanlal took this coat from the Chembur Refugee Camp to which it had been gifted, by Apte by way of charity but this explanation appears to me to be hollow and unconvincing. It would indeed be a most extraordinary coincidence that a coat sent by Apte to a camp containing thousands of refugees should fall into the hands of Madanlal and be found in his possession on the date on which the explosion*took place. I am inclined to believe the statement of Badge to the effect that after the arms and ammunition had been distributed to the conspirators at the Marina Hotel on the 20th they decided to change their clothes. It is probable that the coat belonging to Apte was put on by Madanlal and was recovered from his possession later in the afternoon.

*The statement of Badge to the effect that the prisoners were concerned in a conspiracy to take the life of Mahatma Gandhi receives corroboration from an entirely independent quarter. In October 1947 Dr. Jagdish Chand Jain (P.W.67) a Professor of Ram Narain Ruia College,

Bombay,

Bombay, was asked to help Madanlal who was introduced to him as a refugee from the Punjab. Dr. Jain was prepared to give all sympathy and help that he could. He tried to find a job for Madanlal but having failed to find one he asked him to sell his books on a handsome commission. Madanlal was a frequent visitor to the house of Dr. Jain and was punctual and prompt in the settlement of accounts. In November 1947 Madanlal told Dr. Jain that he was unable to obtain sufficient income from the sale of books and intimated his desire to proceed to Ahmadnagar for buying and selling fruit. Two or three days later Madanlal paid another visit to the house of Dr. Jain in the company of a friend known by the name of Sood and took some books from Dr. Jain for sale in Ahmednagar. Both Madanlal and Sood returned a few weeks later and told Dr. Jain that although Sood had sold his books he would not be able to pay the price until a later date. Madanlal paid another visit to Dr. Jain in the second week of December 1947 and expressed regret for the delay that had occasioned in the payment of the price and promised to pay it as soon as possible. He sent two post-cards to Dr. Jain from Ahmednagar in which he again offered his apologies for the delay and requested that any communications which might be addressed to him may be redirected to Ahmednagar care of Karkare.

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About the end of the first week of January 1948, i.e., about 10th January, Madanlal paid another visit to Dr. Jain. This time he was accompanied by a person (Karkare) who was introduced to Dr. Jain as a seth from Ahmednagar. Madanlal told Dr. Jain that he (Madanlal) owned two fruit stalls at Ahmednagar and was carrying flourishing business. Madanlal asked the seth to pay the amount due by Madanlal to Dr. Jain. Madanlal and the seth then left the house but Madanlal came back to

Dr. Jain

Dr. Jain almost immediately afterwards leaving the seth on the road and told Dr. Jain that the fruit stalls that he had spoken about actually belonged to the seth and that he (Madanlal) was only looking after them. He also said that they had driven away *all the Muslim fruit stall-holders and had a monopoly of the fruit trade at Ahmednagar.

Two or three days later, i.e., about the 12th or 13th January Madanlal went to the house of Jain at about 8 p.m. and found Dr. Jain and Sardar Angad Singh (P.W. 72) talking to each other. He joined the conversation and started narrating his exploits at Ahmednagar. He stated that he had committed an assault on Rao Sahib Patwardhan who was preaching Hindu Muslim unity in a meeting, that the police did nothing as they themselves were Hindu minded, that he had been armed with a knife when he committed the assault on Patwardhan, that he had organized a volunteer corps for the benefit of the refugees and Hindus and that some Marathi newspapers which Madanlal was carrying on his person had spoken highly of his work. After Angad Singh had left the house of Dr. Jain, Madanlal told Jain that the name of the seth whom he brought with him to his house was Karkare, that he had formed a party at Ahmednagar which was being financed by Karkare, that his party was collecting arms and ammunitions which had been dumped in a jungle, that Vir Savarkar had heard about Madanlal's exploits at Ahmednagar, had sent for him *at his house, had had a long talk with him, had patted him on the back and had said "carry on". Madanlal also told Dr. Jain that his party had plotted against the life of some great leader but when asked by Dr. Jain for the name of the leader

whose

whose life had been plotted against, he declined to supply the name saying that he did not know it. After a certain amount of pressure he mentioned the name of Mahatma Gandhi. Jain was horrified to learn this and told Madanlal not to behave like a foolish child. Madanlal then volunteered the information that he had been entrusted with the work of throwing a bomb at the prayer meeting of Gandhiji to create a confusion and that in the confusion so caused Gandhi was to be overpowered by the members of his party. Dr. Jain warned Madanlal of the perils of following so dangerous a project and dissuaded him from his wild talk and wild plan. Madanlal listened to Dr. Jain and thanked him for his advice. While leaving the house Madanlal promised to see Dr. Jain again and said that he was putting up with his associates at the Hindu Mahasabha Office at Dadar. He was in * a hurry to go back as Karkare had an eye on him and *P.145 would not allow him to move about alone. Dr. Jain did not take the story of Madanlal seriously because at that time refugees of the locality were in the habit of abusing Mahatma Gandhi and the Congress.

A day or two later, i.e., on the 13th or 14th January Angad Singh happened to visit Jain and Jain told him what Madanlal had said. He wondered whether in view of the fact that the members of Madanlal's party were collecting arms and ammunitions at Ahmednagar and the fact that Mr. Savarkar was behind the party, it was not the duty of Dr. Jain to communicate with the authorities. Angad Singh replied that it was the tall talk of a refugee and that no importance

importance should be attached to the conversation. He advised Dr. Jain not to take the matter seriously.

Madanlal went to see Jain again after a couple of days, (about the 14th January) and Jain asked him if he had thought over the advice which he had given him. Madanlal replied that he was under an obligation to Dr. Jain since he had helped him much, that he considered Dr. Jain like his father and that in case he did not listen to his advice he would be doomed. He thereafter left his place and went away.

*P.146.

*A day or two later, i.e., on or about the 15th January Madanlal went to see Dr. Jain at about 8 p.m. and said that he was leaving for Delhi as he had some work at that place. He promised to see Dr. Jain on his return to Bombay.

In spite of the assurances given by Madanlal Dr. Jain had a vague premonition of the impending doom and wanted to communicate the information given by Madanlal to responsible quarters. Two or three days after Madanlal had left, i.e., on the 17th or 18th January, Mr. Jai Parkas Narain addressed a meeting at the Poddar College, Bombay. After the meeting was over Dr. Jain tried to contact Jai Parkash Narain who was going to Delhi and to tell him what Madanlal had said as he thought that the information might be of use to the authorities at Delhi. He could not contact Jai Parkash Narain as he was surrounded by a large number of persons, but was just able to tell him that there might be a big conspiracy in Delhi. Dr. Jain intended to contact Jai Parkash Narain on the following day but was unable to do so as his child was ill and had to be taken to hospital. Thereafter Jain came to know that Jai Parkash Narain had left Bombay.

On

*On the morning of the 21st January Dr. Jain read *P.147
in the " Times of India" that a bomb had exploded at the
prayer-ground of Mahatma Gandhi and that Madanlal
had been arrested in connection with the explosion.
Angad Singh came to his house the very same day and
Dr. Jain told him that what Madanlal had been talking
about had come partially true and that the plot against
the life of Mahatma Gandhi may also turn out to be
true and that they should inform the authorities at
Bombay. They decided to contact Sardar Vallabhbhai
Patel who happened to be in Bombay at the time. Dr. Jain
tried to ring up the Sardar at his son's residence
but was unable to speak to him. He then tried to
telephone Mr. S.K. Patil, President of the Bombay
Provincial Congress Committee but with no better
results. Dr. Jain finally got into telephonic
communication with Mr. B.G. Kher, Prime Minister of
Bombay, and saw him at the Secretariat at 4 o'clock
in the afternoon in the presence of the Home Minister
Mr. Morarji Desai and told him everything that he knew
about Madanlal.

Mr. Morarji Desai (P.W.78) asked Dr. Jain as to
why he did not tell the witness all about the plan
*immediately after he had come to know of it, *P.148.
but Jain replied that he did not do so as refugees
were in the habit of talking wildly and that he
believed he had dissuaded Madanlal from doing what he
intended to do. He realized his mistake when he read
about the explosion incident in the papers and had
accordingly taken the earliest opportunity of
communicating the information to the authorities. Mr.
Desai took the matter seriously and sent for Mr.
Nagarvala, Officer in charge Intelligence Branch,
asking him to see him immediately at the Secretariat.

Unfortunately,

Unfortunately, Mr. Nagarvala was busy at the time and Mr. Desai accordingly asked him to see Mr. Desai at the railway station at about 8-15 p.m. that day. Mr. Nagarvala arrived at the appointed hour. Mr. Desai repeated what had been narrated to him by Dr. Jain and asked him to arrest Karkare, to keep a close watch on the house and movements of Mr. Savarkar and to find out the names of the persons who were involved in the plot. He did not, however, communicate the name of Dr. Jain to Mr. Nagarvala as Dr. Jain had made a particular request that his name should not be divulged having regard to the nature of the locality in which he lived and the character of the persons involved as otherwise his life would be in danger.

*P.149

Mr. Nagarvala complied with the instructions. He organized a watch over the house of Mr. Savarkar and made arrangements for arresting Karkare. He made enquiries from the Ahmednagar police to find out whether Karkare whose detention had been ordered under the Bombay Public Security Measures Act 10 or 15 days before had been arrested or not. He also issued similar instructions to the various officers under as he was giving top-most priority to this enquiry work. He also contacted various informants with the object of apprehending Karkare and his associates.

Several criticisms have been directed towards evidence of Dr. Jain. It is contended in the first place that as he was aware on or about the 12th January that a serious offence was likely to be committed and as he omitted to transmit this information to the authorities without loss of time he must be regarded as an accomplice whose statement cannot

cannot be accepted without corroboration. I regret I am unable to concur in this view. An accomplice is *prima facie a person who is concerned in the commission of a crime and the burden of proving a person to be an accomplice is on the person who alleges him to be one, namely, the prisoner. That burden has not been discharged in the present case. Dr. Jain did not agree to the commission of the crime and he did not facilitate the commission of one. On the other hand, it seems to me that he strained every nerve to prevent it. As soon as he heard that Madanlal and the members of his party were entertaining designs on the life of Mahatma Gandhi he told Madanlal not to behave like a child. He told him that he was a refugee from the Punjab, that he had gone through a terrible amount of suffering and that as a result of that suffering he was incapable of viewing the things in a true prospective. He had a long talk with Madanlal and tried to dissuade him from what he said he was going to do. He warned him of the folly of pursuing a plan which was fraught with such dangerous consequences. He endeavoured to prevail upon him to halt upon the thresh-hold of crime. Madanlal thanked Dr. Jain for his advice and gave him to understand that if he did not listen to his *advice he would be doomed. When Dr. Jain saw in the papers that a bomb had exploded in the Birla House and that Madanlal had been arrested in connection with the explosion, the seriousness of the situation dawned upon him. He lost no time in communicating with the authorities and placing his services unreservedly at their disposal for bringing the offenders to book.

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That was not the conduct of a person who had concurred in the commission of a crime. I am clearly of the opinion that Dr. Jain is not an accomplice and his statement does not need to be corroborated.

The second criticism was that the evidence of Dr. Jain cannot be accepted at its face value because he made a considerable delay in reporting the matter to the police or other appropriate authorities. The so-called extra judicial confession was made to him on or about the 12th January but he did not inform either the police or any higher authority till the 21st January, i.e., a day after the bomb had exploded at Delhi. It is true that a certain amount of delay was occasioned, but the facts and circumstances of the case make it quite clear that he had reasonable grounds for not rushing to make a report against Madanlal. In the first place Dr. Jain did not attach any importance to * statement made by Madanlal, (a) because Madanlal is given to a certain amount of bragging and (b) because great deal of loose talk was going on in those days. Secondly, Angad Singh told Dr. Jain not to attach any importance to the statement. Thirdly, Madanlal himself told him on the following day that he had thought over the advice given to him, that he was under an obligation to Dr. Jain, that he regarded him as his father and that he had no intention of pursuing the plan. Fourthly, Madanlal saw Dr. Jain immediately before leaving for Delhi and did not mention anything about the design on the life of Mahatma Gandhi. Fifthly, Dr. Jain had reason to believe that Madanlal was an honest and straight-forward person and that when he had given the assurance that he had abandoned the plan he

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would

be as good as his word and not let down a person who had been of such great help to him in his hour of need. He and his friend Sood had taken a number of books from Dr. Jain for purposes of sale. These books were sold by them but Sood failed to pay the money. Madanlal was distressed over the conduct of his friend and expressed his profound *apology to Dr. Jain in the letter which he addressed *P.153 to him from Ahmednagar. Immediately on his arrival in Bombay he went to see Dr. Jain and again apologized to him. He took Karkare along with him in the hope that the presence of Karkare would reassure Dr. Jain that his money was safe. A person who was so honest and straight-forward in his dealings with Dr. Jain and who was so deeply indebted to him could not be expected to let down his friend and benefactor. Dr. Jain was naturally reluctant to report Madanlal to the police. Indeed, Dr. Jain appears to have believed that there was nothing in the plan which had been unfolded to him.

The third criticism was that the story narrated by Madanlal is intrinsically improbable. The prosecution allege that Madanlal went to Poona on the 9th January to examine arms and ammunition and it is accordingly argued that if it is true that he went there on the 9th and if it is true that he disclosed the entire plan to Dr. Jain on the 12th or 13th he could not have omitted to inform Dr. Jain of his visit to Poona. Madanlal made no such statement to Dr. Jain and it is accordingly contended that the story narrated by Dr. Jain cannot be accepted as gospel truth. Dr. Jain was not cross-examined in regard to Madanlal's visit to Poona, but even if he *P.154 had been cross-examined and if he had said that

Madanlal

Madanlal did not refer to the visit to Poona I should have attached no importance to the omission. Madanlal had just started the story about the conspiracy when Dr. Jain interrupted him and asked him **not** to behave like a child. He did not allow Madanlal to finish the story. It is possible that if Madanlal had not been interrupted he would have given further details of the plan which he was about to execute. Again, it is argued that Madanlal could not have stated to Dr. Jain on the 12th or 13th January that he had been entrusted with the task of igniting the gun-cotton slab when the part that each particular conspirator was to play was not assigned to him till the afternoon of the 20th January. This argument does carry a certain amount of force but is it beyond the realms of probability that certain tentative decisions (which were to be finalized after the inspection of the spot) were taken early in January? The prosecution allege that as early as the 10th January Nathuram and Apte had already placed an order with Badge for *the supply of two gun-cotton slabs and five hand-grenades. This order could be placed if and only if Nathuram and Apte had evolved some sort of a plan. It is by no means improbable that the conspirators, had vaguely planned that a gun-cotton slab should be exploded and that the explosion should be caused by Madanlal. Even if no specific part was assigned to Madanlal till the 20th January he may well have thought that in view of his exploits at Ahmednagar and particularly in view of the manner in which he had handled the Muslims of that town the important task of throwing the bomb would be entrusted to him.

*P.155

The fourth objection that has been taken on behalf of the defence appears to carry much greater force. It

It is said that Dr. Jain has testified to at least two incidents before the trial Court which were not mentioned either to Sardar Angad Singh on the 13th or 14th January or to Mr. Morarji Desai on the 21st January or to the Presidency Magistrate on the 26th February. He stated before the trial Court that when Madanlal saw him on or about the 12th January he said that he had been entrusted with the work of throwing a bomb at the prayer meeting of Gandhiji to create a confusion and that in the confusion so caused Gandhiji was to be overpowered by the members of his party. *P.156.

This is the statement attributed to Madanlal in the Court of the Special Judge. The statement attributed to Madanlal before S. Angad Singh, Mr. Morarji Desai and the Presidency Magistrate was the bare statement that the party to which Madanlal belonged had plotted to do away with a great leader and that that leader was Mahatma Gandhi. No mention was made of the fact that a bomb was to be thrown to create a confusion or that in the confusion so created Mahatma Gandhi was to be overpowered or that the task of throwing the bomb had been entrusted to Madanlal. Indeed no mention was made of the precise method in which the object which the conspirators had in view was to be achieved. The second statement which is attributed to Madanlal is that he told Dr. Jain that his companions were staying at the Hindu Mahasabha Office at Dadar. No such statement was made either to S. Angad Singh or to Mr. Desai or to the Presidency Magistrate. Unfortunately neither S. Angad Singh nor Mr. Desai kept a record of the statement of Dr. Jain and may well have forgotten the details when they gave evidence in Court after the lapse of several months; *P.57.

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but even so it seems highly improbable that if the statements which are attributed to Madanlal had been made by him, these two witnesses could have forgotten them. The omission of these statements from the depositions of Dr. Jain under section 164, Criminal Procedure Code, can be readily understood. Mr. Daphtery explains that such statements, are not recorded by Magistrates in the City of Bombay and that the Magistrate who was called upon to record the statement of Dr. Jain was not conversant with the procedure which is prevalent in the Punjab. He accordingly contented himself by preparing a memorandum of the statement made by Dr. Jain and scrupulously avoided the insertion of details. This explanation is fully supported by the statement Ext. D.11 which Dr. Jain is said to have made. The statement is brief, sketchy and disjointed and contains nothing but the most important facts. It does not give even the more important details such as that Madanlal had been collecting arms and ammunition which had been dumped in a Jungle or that he had committed an assault on Rao Sahib Patwardhan or that Vir Savarkar had sent for him or that Dr. Jain had narrated the story to Angad Singh.

Dr. Jain was in a very peculiar position owing partly to the courage and integrity of his own character. He had given every possible help and encouragement to Madanlal who had lost everything in Pakistan and Madanlal on the other hand entertained a very warm regard which almost verged on adoration for Dr. Jain. Impetuous, sentimental and boastful as he was, Madanlal happened to blurt out in a moment of weakness the secret which his companions were so anxious to preserve. This was done obviously in a spirit of bravado and possibly in the hope that his statement would be received with approbation by his patron and friend. The response was completely contrary to his expectations. Approbation was replaced by reprobation and appreciation

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appreciation by condemnation. Madanlal hastened to retrace his steps but the mischief had been done. The arrow had been shot and could not be recalled. What could Madanlal do in the circumstances? He assured Dr. Jain that in view of the regard that he entertained for him he had decided to listen to his advice and to abandon the plan. Dr. Jain did not know whether to believe him or not. He was on the horns of dilemma and the prey of conflicting emotions. Could Madanlal have meant what he had said? If so, the matter must be reported. Jain tried to speak to Jai Parkash Narain but could not take courage to say anything more than that there might be a big conspiracy in Delhi. But Madanlal may not have meant what he said, or may have abandoned the plan. Would it then be desirable to report the matter to the police, make a mountain of a mole hill and expose the person whom he had always tried to help and befriend to the risk of an unnecessary prosecution? In this state of mind R. Jain allowed things to drift ^{to} not knowing what ^{to} do. When the bomb exploded in Delhi on the 20th he realised the seriousness of the mistake committed by him. He realised that the information given by Madanlal was something more than the irresponsible prattle of a refugee. He rose to the occasion. He shouldered the burden of inevitable consequences and did his duty to the Society. After the death of Mahatma Gandhi he came openly into the field and told Mr. Desai that he was prepared to help the police regardless of the consequences to himself. He had no desire to conceal his name. He has no axes of his own to grind. He is not under the influence of

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*P.159.

the police. He had no reason to think that merely because he had been helping Madanlal he was in danger of being implicated in the crime. He has been a very staunch Congressman for he was detained in custody during the movement of 1942. I have read his statement over and over again and every time I read it the conviction grows in my mind that he is telling nothing but the truth. His statement is simple and clear, the incidents he relates are probable and consistent, the story he gives fits into the story narrated by Badge like a jigsaw puzzle.* I stated in an earlier part of this judgment that the statement of Dr. Jain does not require to be corroborated. In actual fact it has been corroborated by the testimony of at least two witnesses, namely, S. Angad Singh, P.W.72, and Mr. Morarji Desai, P.W.78. Angad Singh is a neighbour and a frequent visitor to the house of Dr. Jain. He had seen Madanlal at the house of Dr. Jain on various occasions and corroborates Jain generally in regard to the statements made by Madanlal about his exploits in Ahmednagar. He saw Dr. Jain a day or two after Madanlal had been to see him and enquired about the tall talk in which the latter had indulged. Dr. Jain looked a bit worried and S. Angad Singh asked him what was weighing on his mind. Jain replied that Madanlal had told him that the party to which he belonged wanted to kill a leader, that that leader was Mahatma Gandhi, that the members of his party were collecting arms and ammunitions at Ahmednagar, that Mr. Savarkar was behind his party and that Jain had dissuaded Madanlal from engaging himself in any such activities. Angad Singh agreed that the matter should be reported to the authorities but at the same time he told Dr. Jain that

*P.161

that what Madanlal had said was the tall talk of a refugee and that no seriousness should be attached *thereto *P.162 as refugees in those days were in the habit of abusing Mahatma Gandhi and the Congress. He saw Dr. Jain again on the 21st January after the news of the explosion in Delhi had appeared in the Press. Dr. Jain told him that what Madanlal was talking about had come out partially true and further that the plot against the life of Mahatma Gandhi might also turn out to be true. Dr. Jain and Angad Singh then decided to communicate the information which was in their possession to the appropriate authorities. It was in consequence of this decision that Dr. Jain met the Premier and the Home Minister on the afternoon of the 21st January. I have no reason to view the story narrated of Sardar Angad Singh with doubt or suspicion. He is a Graduate of the Bombay University. He kept his law terms for sometime but was unable to obtain the Degree in Law as he was actively engaged in politics and could not devote sufficient time to his studies. He was a member of the Congress for seven or eight years. He was a candidate for the Bombay Provincial Congress Committee in the years 1946 and 1947, but he left the Congress the following year when the Socialists seceded from the Congress. He has knowledge of the facts to which he testifies, he is disinterested, his integrity is above question and the story narrated by him is not improbable. *His statement strongly supports the testimony of Dr. *P.163 Jain that on or about the 13th January, i.e., a week before the explosion in the Birla House, Dr. Jain had told him that Madanlal and his party were concerned in a conspiracy to take the life of Mahatma Gandhi. Dr. Jain had no motive whatever for concocting a story either

before

before or after the 20th January; much less had Angad Singh.

Similarly, Mr. Morarji Desai has given a very clear and straightforward account of the conversation which Dr. Jain had with him on the 21st January. It is true that he did not reduce the substance of this conversation into writing but he acted with the utmost promptitude. He communicated the information at once to Mr. Nagarvala. He asked Mr. Nagarvala to arrest Karkare, to keep a close watch on the house and movements of Mr. Savarkar and to find out the names of the persons who were concerned in this plot. He reached Ahmedabad on the morning of the 22nd January and gave the necessary information to Sardar Ballabhai Patel, Deputy Prime Minister of India. Nothing more could have been done by another person. It is true that he did not divulge the name of Dr. Jain to Mr. Nagarvala on the 21st January but he explains this omission by

*P.164.

*stating that Dr. Jain had made a special request to him that his name should not be disclosed, and that nothing would have been lost by not divulging it. Moreover Madanlal from whom Dr. Jain had derived his information was already in the custody of the police. The defence was unable to shake the credit of this highly independent and disinterested witness who is holding the responsible position of Home Minister in an important Province of this country.

The statements of Dr. Jain and Angad Singh make it quite clear (a) that Madanlal was in contact with Karkare at Ahmednagar; (b) that he committed an assault on a person who was preaching Hindu Muslim unity; (c) that he had formed a party at Ahmednagar which was financed by Karkare; (d) that the party which

was

enter into conspiracy on the 9th January to assassinate Mahatma Gandhi. The partition of India had been announced on the 3rd June 1947 and independence was celebrated on the 15th August 1947. Nathuram and several other persons were endeavouring to collect arms for invading Hyderabad and for destroying the Constituent Assembly of Pakistan but they had never entertained any designs on the life of Mahatma Gandhi. It is true that Mahatma Gandhi was indulging in pro-Muslim speeches in Delhi, but this conduct on his part did not constitute a departure from his previous policy. He had done the same thing in Noakhali and in Calcutta and nobody had thought of taking his life on that account. If a conspiracy came into being at all it must have come into being* after the 13th January when Mahatma Gandhi expressed his determination to undertake a fast with the object of compelling the Dominion Government to remit a sum of fifty-five crores to the Government of Pakistan. It could thus be only after the 13th January and not before that any conspiracy, if one was had could come into existence. It is accordingly suggested that in view of these facts the incident relating to the 9th and 10th January should be eliminated from consideration. I regret I am unable to concur in the submission which has been placed before us for consideration. Nathuram has admitted in his statement that he was opposed to the teachings of absolute Ahimsa as it was detrimental to the interests of the community and as long as the year 1942 he entered public life with the object of counter-acting this evil. He states further that he always criticised Gandhiji's views and had in fact made demonstrations

demonstrations at various places. He states further that there was a wide gulf between the two ideologies- the ideology of Mahatma Gandhi and the ideology of Nathuram- and it became wider and wider as concessions after concessions were being made to the Muslims culminating in the partition of the country on the 15th August 1947. After his return from Noakhali Mahatma Gandhi settled down in Delhi with the object of preaching the doctrine of universal brotherhood. The stage had now reached * when Nathuram and persons of his way of thinking could brook no delay. They had already tried the method of " peaceful demonstration" but that method had proved wholly ineffective. Madanlal states that on the 20th January he exploded a gun-cotton-slab with the object of staging a peaceful demonstration. Could he possibly have thought that Mahatma Gandhi who could not be persuaded by the Government of India to abandon his fast would have readily agreed to give up his life long policy (which was really an essential article of his creed) merely because one or two or 20 persons staged a demonstration? Nathuram and the other prisoners must be given full credit for intelligence. I am of the opinion that they must have known that no useful purpose was likely to be served by making peaceful demonstrations. If the evidence of Badge, Dixitil Maharaj and Dada Madanlal can be relied upon and if they were collecting arms and ammunition as early as 9th January it cannot be belived that Nathuram conceived the idea of the use of violence only on the 28th or 29th January.

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Mr.

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*Mr. Bamerji contends that the story to the effect that Badge and Shankar had come to Delhi

in connection with the conspiracy to assassinate

Mahatma Gandhi is wholly false, for their visit to

Delhi is susceptible of another explanation. He

contends that Badge was dealing extensively in arms

and ammunition and that he came to Delhi not with the

object of assassinating Mahatma Gandhi but with the

object of selling the arms and ammunition to the

refugees in the Punjab and to the people of the

Kashmir State. In his statement before the trial

Court, Badge admits that while he was at Poona, Shankar

used to bury the unwanted stuff under a tree. Here

also, a certain amount of stuff was buried under

ground and was recovered at the instance of Shankar.

May it not be it is contended that Badge had brought

the stuff for sale to Delhi and had buried it in the

precincts of the Mahasabha Bhawan so that it might

be taken out at leisure and when required. In his

written statement before the trial Court Madanlal

stated that he met Badge in the Refugee Camp at Delhi

and Badge told him that he had come to Delhi for the

sale of arms and explosives to the refugees. Badge

then took Madanlal to the barracks where he was put

up. He opened a huge trunk containing 20 to 25

hand-

*hand-grenades, 17 or 18 gun-cotton-slabs and an *P.172

unlimited supply of small pistols. He then handed

over a gun-cotton-slab and a hand-grenade as samples

to Madanlal for sale to the refugees. I regret I am

unable to concur in this contention. It may be that when

Badge was in Poona he used to conceal the stuff under a

tree behind his shop and that the stuff which he had brought

to Delhi was found buried near the boundary wall of the

Mahasabha Bhawan, but these facts do not, in my opinion,

throw doubt on the story narrated by the prosecution that

Badge had really come to Delhi for the purposes of carrying out

the conspiracy. Bombay was, I imagine a fairly good market for

the sale of arms and ammunition and I should be reluctant

to accept the story that Badge came all the way from Bombay to

sell hand-grenades, etc., to the refugees in the Punjab and to

the people of the Kashmir State. The Kashmir problem had certainly

arisen in those days but it has not been suggested that any

arms or ammunition were being sold in Delhi for being transmitted

to Kashmir. The Kashmir Problem was tackled by the Dominion of India

and it was the Dominion Government which was sending an army with

the necessary explosives. Nor am I prepared to accept the suggestion

that the explosives were being sold to refugees. The statement

made by Madanlal to the effect that Badge gave him a gun-cotton-slab

and a hand-grenade purely by way of a sample appears to me to be

wholly preposterous. Badge is not a person who would part with an
article

3. * article of any value without the payment of price. Moreover, the circumstances of the case indicate that these articles were not brought to Delhi for purposes of sale. A live hand-grenade was recovered from the possession of Madanlal immediately after his arrest on the afternoon of the 20th January. He could not have carried this grenade with any object other than that of making an attempt on the life of Mahatma Gandhi. Moreover, three live hand-grenades were recovered from the premises of the Mahasabha Bhawan when Shankar took a police party to the Bhawan on or about the 14th February. It is inconceivable that live hand-grenades could have been kept by Badge with himself for purposes of sale unless Badge was anxious to exterminate himself. On the other hand, the fact that these live hand-grenades were recovered corroborates the story narrated by him that they had been distributed to the several prisoners for being used at the Birla House. They were brought back by Badge after the explosion and were buried by him as they were. Badge was at the time endeavouring to flee from Delhi to the safety of his home. Nor can I see any substance in the allegation that the stuff had been buried by Shankar* on the morning of the 20th and not after the explosion had taken place on the afternoon of the said date. The fact that a live hand-grenade was found in the possession of Madanlal and that three such grenades were recovered from the premises of the Hindu Mahasabha can lead to one and only one inference namely, that the stuff which was brought from Bombay was brought in pursuance of the plan to assassinate Mahatma Gandhi.

A faint-hearted argument was addressed to this Court that the stuff which was found in Delhi was the property of Badge. It may be that legally and technically the stuff was the property of Badge but if it is shown that

that the stuff was intended to be used in pursuance of a plan to assassinate Mahatma Gandhi, the fact that the stuff belonged to Badge would not make the slightest difference as far as the culpability of the prisoners is concerned.

* There is a remarkable series of coincidences in this case. It is common ground that Apte, Nathuram, and Karkare knew each other, that Madanlal and Karkare were known to each other, that Karkare, Apte, and Nathuram were known to each other and that Gopal was not known to Badge but that Gopal was probably known to Karkare. It is said on behalf of the defence that Karkare was not known to Badge but this statement does not appear to be true. Ex.P.90 which appears at page 57 of Vol.IV is a letter which purports to have been written in Marhatti by Karkare to Badge on the 29th May 1947. This letter is in the following terms :-

" To Badge,

- The person who has come to you is a trustworthy Gentleman. I could not come yesterday due to great difficulties. I am specially sending this man. You must have received Rs.400/- sent by telegraphic money order. The copies of the 'pustak' which you have brought may be sent with that person, who has been instructed in regard to the arrangements made for the payment. Every time ten 'vastu' are to be handed over, and for each 'vastu' Rs.150/- should be charged. I will come on the 2nd and settle my account. Do not worry about *moneys. The Gentleman from Bombay must have arrived. Confusion arose because

the

*P.170

*P.170

the wire from you was received

one day late.

Yours Karkare."

Karkare did not admit as having written this letter. A handwriting expert was called and he was shown the signatures of Karkare. The trial Court, however, did not give any definite conclusion as to whether the letter was or was not written by Karkare. The evidence on the record, however, makes it quite clear that the letter was written by Karkare. At page 92 line 39 of Vol. I Badge states :-

" Ex.P.90 is a letter to me from Karkare."

At page 110 line 31 Badge states:-

" Ex.P.90 is in 5 pieces pasted on a piece of paper."

This information was elicited from Badge in cross-examination but no question was put to him with the object of challenging authorship of the letter. On the other hand the authorship is impliedly admitted. This shows that Karkare and Badge knew each other before Badge reached Delhi on the night of the 19th January.

*Reverting now to the remarkable coincidences, *P. 177

to which a reference has just been made it may be stated that all these persons with the exception of Dr. Patchure whose case stands on a different footing were in Bombay between the 10th and 15th January. Again, it is a coincidence that all of them happened to be in Delhi on the 19th and 20th January. Madanlal and Karkare left Delhi for Bombay on the evening of the 15th and reached Delhi at about midday on the 17th

17th. Nathuram and Apte left by air on the morning of the 17th January and reached Delhi at about 5-30 p.m. on the afternoon of the 17th. Badge and Shankar left Delhi on the afternoon of the 17th and reached Delhi on the night of the 19th. It will thus be seen that all these six persons arrived in three different batches. They were actuated by the same purpose. They state that they went to Delhi with the object of staging a peaceful demonstration. The prosecution allege that they went there with the object of assassinating Mahatma Gandhi. Be that as it may, the fact remains that they all went to Delhi with the object of doing something vis a vis Mahatma Gandhi.

Again, it is a coincidence that with the * exception of Nathuram all these five persons, *P.178. namely, Apte, Karkare, Madanlal, Badge and Shankar visited the Birla House on the evening of the 20th January. They state that they went there with the object of staging a demonstration but no demonstration was in fact staged. Even after the arrest of Madanlal he did not express a desire to be shown into the presence of Mahatma Gandhi. Madanlal could have brought his grievances to the notice of Mahatma Gandhi in several different ways. In the first place he could have created a scene at the meeting just as he had created a scene in the meetings at Ahmadnagar and in the meeting at Delhi where Pt. Jawahar Lal Nehru and Mr. J.P. Narain had spoken. Secondly he could have rushed to Mahatma Gandhi just before or just after the explosion and before the police had the opportunity of arresting him. If he had appeared before Mahatma Gandhi there can be little doubt that he would have made himself heard. He did not do anything of this kind. On the other hand he kept standing at the spot

*P.179.

spot. The question is why did he ~~keep~~ standing where he was. * The answer is that he kept standing there because he wanted his fellow conspirators to perform the parts which had been assigned to them. Even after he had been arrested he did not request the police to permit him to go to Mahatma Gandhi.

Again, there is another remarkable coincidence and that is that when Madanlal was arrested at the prayer ground on the afternoon of the 20th January he was found to be wearing a woollen serge coat Ex.P.15. This coat is said to be a part of the suit which admittedly belongs to Apte. It is a curious coincidence that if Madanlal was not acting in association with Apte that he should be found in possession of a coat belonging to Apte. In his statement before the trial Court Apte admitted that the suit belonged to him but he stated that he had given it away in charity to the Chambur refugee camp in November or December 1947. This coat was admittedly removed from the person of Madanlal vide statements of Bhur Singh P.W.17, K.N.Sahaney P.W.18 and Daswandha Singh S.H.O. P.W.116. The recovery memo. Ex.P.32 was prepared as soon as this coat was taken into possession vide recovery memo. Ex.P.32 at page 13 of Vol.IV. The factum of this recovery was not challenged and no question was asked* of the witnesses of the recovery as to whether the coat which is said to have been recovered was different from the coat which was actually produced in Court. Bhur Singh and K.N.Sahaney were examined before Badge was examined but they were examined after the trousers had been recovered from the possession of Apte. Apte states that those trousers were planted on him. If so it was clearly his duty to put question in cross-examination to the witnesses of recovery with the object of ascertaining whether **the**

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the coat which was recovered from Madanlal was or was not the property of Apte. In any case Daswandha Singh S.H.O. was examined on the 14th September 1948 long after Badge had come into Court and made a statement. It was within the knowledge of Apte that the coat belonged to him and that it was removed from the person of Madanlal. It was thus his duty to cross-examine this witness. In his deposition Badge states that several conspirators changed their clothes in the Marina Hotel on the afternoon of the 20th January. The word 'change' means that clothes belonging to one person were given over to another.

*Madanlal states that after his arrest he was interrogated for full five hours by several police officers. He made repeated requests to the police to take him to Mahatma Gandhi but they would not listen to him. This statement has not been substantiated by the evidence of any independent witness or even by cross-examining the persons who were present at the time of his arrest or persons who were detaining him at the time. Neither Daswandha Singh, nor Bhur Singh nor Rattan Singh nor Salochna nor any of the other witnesses who were present when Madanlal was arrested was asked in cross-examination to state whether Madanlal had not in fact asked to be taken to Mahatma Gandhi. It is significant that these prisoners were represented by several counsel. Not one of the counsel put any question to any of these witnesses with the object of ascertaining whether Madanlal had in fact made a request to speak to Mahatma Gandhi. The story therefore to the effect that Madanlal had gone to the Birla House and had ignited the slab with the object of staging a demonstration must be deemed to be an after-thought. Nor is the conduct of Madanlal consistent with the story that he went there to ~~make~~

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make a demonstration. It is somewhat unreasonable to expect that Madanlal would have carried a hand-grenade *with him on that occasion if his intention was merely to make a peaceful demonstration and to bring the grievances of refugees to the notice of Mahatma Gandhi.

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Again, the statement as to the circumstances in which he came into possession of the grenade is somewhat strange. He states:-

" On the 20th morning it was announced that Mahatma Gandhi was to attend the prayer meeting personally that evening for the first time after the fast. I thought of collecting refugees and taking them to the prayer ground in the evening to place our grievances before Mahatma Gandhi. I, therefore, went to a refugee centre where, I had come to know, a large number of middle-class Punjabi refugees were staying. On that day I happened to meet Badge. He told me that he had come to Delhi as he understood that there was a good market for selling his 'stuff' among the refugee population here. He asked me to help him in such disposal of the 'stuff' as I was a Punjabi refugee myself. He gave me a gun-cotton slab and a hand-grenade to be sold to the refugees, who were at this time attempting to occupy Muslim localities. When I got the gun-cotton-slab, I thought that I could, as a refugee, myself make sufficient noise by exploding it near-about the prayer ground and that there was no necessity of taking a large number of refugees to the Birla House. I was greatly elated by this thought. I had told Karkare about my idea of a refugee
de m onstration

demonstration, but I did not tell him about the change of plan and the idea of exploding the gun-cotton slab. I *wanted to have the sole credit of placing the point of view of my distressed countrymen before the Father of the Nation. I regarded my action as another form of Satyagraha which he had taught the Nation."

This statement, suffers from two defects. In the first place it is somewhat difficult to believe that Badge, who was a hard headed but parsimonious businessman would have readily agreed to part with a hand-grenade and a gun-cotton slab, the value of which was about Rs.500/-. Secondly, it is improbable that if Madanlal wanted to stage only a peaceful demonstration in order to bring the grievances of his refugee brethren to the notice of Mahatma Gandhi he would have taken the trouble of keeping the hand-grenade with him in his pocket all day and would have had this hand-grenade in his possession when he was arrested by the police, A hand-grenade is a somewhat heavy weapon and could not have been carried about by Madanlal except with a certain amount of inconvenience to himself. If the grenade had been given to him only as a sample he could have kept this at the place where he was residing and not have carried it with him on his way to the Birla House.

* The prisoners have been at pains to prove that the story narrated by Badge in regard to the incident which took place at the Birla House on the 20th January is a tissue of lies. They state that the story is intrinsically and inherently improbable, for if the prisoners went to the Marina Hotel on that particular afternoon with the object

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... object of assassinating Mahatma Gandhi there was nothing to prevent them from executing their plan. Mahatma Gandhi had come to the prayer ground weak and emaciated after his fast and a large congregation had collected to listen to him. With the exception of Dr. Parchure all the other conspirators were at the spot. They were equipped with all the arms and ammunition that they required. Badge and Shankar were armed with revolvers and hand-grenades while Madanlal and Karkare were armed with grenades only. Madanlal had placed the gun-cotton slab near the back gate to the prayer ground and had only to apply the match. The stage was set and only a signal had to be given. The signal was given, the match was applied and the explosion was caused. Why,

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it is asked, did the conspirators who were bent upon terminating the life of the frail person who sat in front of them, not fire a single shot or throw a single grenade? The fact that they did nothing, it is contended, proves almost conclusively that they did not mean to do anything. Could anything be simpler? The prosecution story was false from beginning to end and had been fabricated as a great man had died and he could not have died unless a large number of persons were helping and supporting the assassins.

This in brief was the argument which was addressed to this Court and was strongly pressed upon us. The explanation appears to be simple and plausible but it cannot bear a minute's scrutiny. The plot failed not because the prisoners did not have a sufficient number of men or a sufficient quantity of explosives or because the victim had not arrived or because the prisoners did not wish to do anything other than ^{create a} commotion but it failed because although it was elaborately planned it did not take notice of certain fundamental factors. The whole structure collapsed by

by reason of three serious miscalculations. The first miscalculation was that Badge was assigned the principal part. He was to pass as a photographer to enter the room of Chhotu Ram, to push the grenade from the trellis window and to fire at the person sitting in front. Judging from the point of view of the prisoners Badge was a bad choice. He is a strong believer in the motto "safety first". His *safety did not lie in entering the room and throwing the *P.187 grenade from the trellis window, for if he did what he had agreed to do, he would have been trapped inside the room and his safety was likely to be jeopardised. His companions assured him that arrangements had been made for the escape of all the conspirators but Badge had made up his mind and said that he would fire in the open. His companions had no choice and they allowed him to do what he pleased. But could he fire from the open? The danger of the situation dawned upon him. He quietly retreated to the taxi outside the gate, took the revolver from his pocket and the revolver from Shankar and put these revolvers into the bag. He told Shankar not to throw the grenade unless he gave the signal which he had no intention of giving. He then returned to the prayer ground, took up his place on the right side of Mahatma Gandhi and put his hands in his pockets to show that he was ready. Apte ^{gave} the signal, Madan Lal lighted the fuse and a loud explosion was heard. But nothing further happened.

The second miscalculation was that only one slab was used. Ever since the 10th January the plan was that two slabs were to be employed and two slabs were *in fact purchased from Badge for this purpose. In the Marina Hotel conference which took place earlier in the afternoon the plan was changed for Badge, with his

his experience of arms and explosives, suggested that one slab was enough to produce commotion. The slab was ignited and an explosion was produced but this explosion was not loud enough to create a commotion. Commotion was the corner stone of the edifice which the conspirators had proposed to erect. If there was no commotion the grenades could not be thrown for if the grenades were thrown in the presence of the congregation there was no possible escape for the conspirators. They could not mix themselves up in the crowd and they could not run away.

But there was yet another miscalculation and this miscalculation was that the intended victim would sit quiet and motionless at the spot, Mahatma Gandhi had no desire of doing so. As soon as the explosion was heard and the people started getting up, Mahatma Gandhi put out his frail hand and asked them to sit down. They obeyed in silence and even the slight commotion that was caused by the explosion subsided. Nathuram and his companions had not counted on Mahatma Gandhi acting in the way he did and the plan failed. The *plan failed not because there was no plan or that they did not wish the plan to succeed but because they omitted to take account of certain factors. Madan Lal was arrested at the spot and a live hand-grenade was recovered from his possession. Why did he consider necessary to bring this grenade if he had no intention of using it? The prisoners are now trying to make virtue of necessity, and saying that they did not intend to cause any harm.

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*The evidence which has been produced in this case makes it quite clear that Nathuram, Apte, Karkare, Madanlal and Badge had a motive to eliminate Mahatma Gandhi; that Apte and Karkare made desperate efforts to obtain revolvers from Dadaji Maharaj; that Nathuram and Apte made similar efforts to obtain revolvers from Badge,

Dixitji

Dixitji Maharaj and Gopal; that on the 13th and 14th January Nathuram assigned his policies in the names of the wife of Apte and the wife of Gopal; that on the 14th January Nathuram and Apte left Poona for Bombay possibly for delivering the stuff that had been ordered by Nathuram and Apte; that on the same date and possibly by the same train Badge and Shankar also left Poona for Bombay possibly for receiving the stuff that had been ordered; that on or about the 10th January Madanlal took Karkare to the house of Dr. Jain and introduced Karkare as a Seth from Ahmadnagar; and that on or about the 12th Madanlal told Dr. Jain that the members of his party had decided to assassinate Mahatma Gandhi. Badge testifies to a number of statements which make it quite clear that the prisoners wanted to take the life of Mahatma Gandhi. On the 10th January Apte told Nathuram that Badge was willing to deliver the stuff * at Bombay and that their one work was complete; on the 14th January Apte met Badge on the road near the Hindu Mahasabha and said that it was good that he had come and that arrangements would have to be made for keeping the stuff. On the 15th January Apte asked Badge if he was prepared to go with them to Delhi saying that Tatyarao Savarkar had decided that Gandhiji, Pandit Jawaharlal Nehru and Mr. Suhrawardy should be finished and had entrusted the work to Nathuram, and Apte. On the 17th January while Apte and others were in the taxi of Aitappa Kotian, Apte said that Tatyarao Savarkar had predicted that Gandhiji's 100 years were over and that there was no doubt that their work would be successfully finished. On the 20th January when Apte had taken Badge and Shankar with him to the Birla House Apte is reported to have said that so far as

as possible Gandhiji and Suhrawardy should be finished or if it was not possible to finish them both, at least one should be finished. Later the same day Nathuram is reported to have told to Badge in the Marina Hotel :-

"This is our last effort. The work must be accomplished. See *to it that everything is arranged properly."

*P.193.

Again it is obvious that all the prisoners in this case are connected with each other. Karkare has been knowing Badge since the middle of year 1947 and been corresponding with him. Karkare and Apte have both been purchasing stuff from Badge and had purchased stuff to the value of Rs.3,000/- or Rs.1,000/- during the period August to December 1947. Apte told Badge that some of his friends would come to see the stuff at Poona on the 9th January and amongst the persons who came to see the stuff were Karkare and Madanlal. Nathuram also knows Badge as Apte and Nathuram work in the same office and Apte admittedly knows Karkare. Again there is a connection between Apte and Karkare. Dada Maharaj (P.N.69) has stated on oath that when he went to Pandharpur in the year 1947 Apte sent Karkare to him and requested him to give him two revolvers. Karkare actually travelled in the station wagon of this witness from Pandharpur to Poona. The connection between Nathuram and Apte is admitted, for one is the editor and the other the manager of the daily 'Agrani'. They have known to each other for the last several years. They have been moving about *together, both before and after the 30th January under assumed names. Similarly the friendship between Karkare and Madanlal is an admitted fact. Both of them were carrying on trade in Ahmednagar. On or about the 12th January both of them were in Delhi paying a visit to Dr.Jain. Both of them were present in the house of Dixitji Maharaj on the morning of the 15th. Both of them left

*P.194

left Bombay for Delhi on the evening of the 15th travelling in the same compartment, reaching Delhi on the 17th January and occupying the same room in the same hotel. They were together at the Marlborough Hotel on the 20th and later at the prayer grounds on the same day.

The relationship of master and servant between Badge and Shankar cannot be denied. Shankar entered the service of Badge in 1946, and has been following him about from place to place.

Nor can there be any doubt in regard to the relationship between Nathuram and Gopal. Gopal is a younger brother of Nathuram.

Certain sums of money were paid by Nathuram and Apte to Badge which show that they wanted him to join the conspiracy and accompany them to Delhi. On the 14th January Nathuram paid a sum of Rs. 50/- to Badge out of joint funds belonging to himself and Apte and made an appropriate entry in his diary. On the 15th January Apte paid a sum of Rs. 350/- to Badge for defraying the expenses which were likely to be incurred by him in taking the journey from Bombay to Delhi.

The allegation that Apte, Karkare, Madanlal and Badge were acting in concert is supported by the fact that on the 17th January Nathuram, Apte, Badge and Shankar travelled by car from place to place with the object of collecting funds for the enterprise. They did not tell the contributors the purpose for which funds were required, but they could scarcely be expected to do so.

Another important circumstance which establishes the factum of the agreement to commit the murder of Mahatma Gandhi is that all the prisoners with the exception of Dr. Parchure left Bombay for Delhi between

between the 17th and the 19th January. The prosecution allege that they did so as they wanted to put themselves **possession of the** in opportunity of assassinating Mahatma Gandhi. They travelled in different batches. Karkare and Madanlal left Bombay by train on the night of the 15th and reached Delhi at about mid-day on the 17th; they stayed in *the Sharif Hotel. Nathuram and Apte left Bombay by air on the afternoon of the 17th and reached Delhi on the evening of the same day; they occupied a room in the Marina Hotel. Badge and Shankar left Bombay by train on the afternoon of the 18th January and reached Delhi at about 9-30 or 9 p.m. on the following day. They went to the Hindu Mahasabha office and spent the night of the 19th January in that office. It is not known as to when Gopal left Kirkee for Delhi or whether he went there by rail, road or air. It will be seen later that he was in Delhi on the 19th and 20th January.

* 126.

Again it is significant that almost all the prisoners in this case, with the exception of Dr. Parchure, were anxious to conceal their identity. Karkare and Madanlal reached Delhi at about 12-30 p.m. on the 17th January and proceeded straight to the Sharif Hotel. Karkare signed his name in the register as B.M. Bias. Madanlal appears to have given his correct name, but there was little or no danger of his being found out, for it is a matter of common **knowledge that Madan Lal is a common** name in the Province of the Punjab and Delhi. * He did not give his correct address for in the column of "address in India" he merely wrote "Bhuleshwar Fariwala" (a hawker of Bhuleshwar). Madanlal never carried on the business of a hawker in Bhuleshwar and the address given by him to the

* 127

hotel

hotel authorities must be regarded as incorrect and misleading. The mention of the word ' Bhuleshwar ' incidentally supports the statement of Badge and that of Dixitji Maharaj that Madanlal had paid a visit to the house of Dixitji Maharaj at Bhuleshwar on the morning of the 15th January immediately before leaving Bombay for Delhi. Angchekar P.W.5 deposes that on the 19th January he enquired from Karkare as to what his permanent address in Bombay was. Karkare replied that it was not necessary to furnish his address. Again it is said that when Nathuram and Apte travelled together from Delhi to Bombay on the afternoon of the 17th January, they travelled under the assumed names of D.N.Karmkar and S.Marahte. They occupied a room in the Marina Hotel under the assumed names of S. Deshpande and N. Deshpande vide hotel register. The chits signed by them were signed in these names and the bills which were issued to *them by the hotel on the conclusion of their visit were also issued in these names, vide Ex.P.17. Again, Nathuram and Apte reached Bombay on the 23rd January and booked accommodation in the Arya Pathik Ashram. Apte asked for a room with two beds under the name of D.Narain vide Exs.P.109 and 110. The address given by him in one case was Poona and in the other Poona Rabiwar Peth. The correct address of Nathuram was ' Editor, Hindu Rasutra, Shaniwar Peth ' and that of Apte ' Director H.R. Parkashan, Ltd.22, Budhwar Peth Poona. ' Nathuram and Apte shifted from the Arya Pathik Ashram and engaged room No.6 at Elphinstone Hotel Annexe at Bombay. The names of the visitors as given to the Manager were N.Vinayakrao and his friend. On the 29th

*P.198.

January

January Nathuram appeared at the railway station of Delhi and reserved a retiring room for himself under the name of N.Vinayakrao.

*P.199

The presence of all the prisoners with the exception of Dr. Parchure in the Marina Hotel has also been established. It was also been proved that the prisoners left Marina Hotel for the *Birla House in three separate batches, Karkare and Madanlal going in one batch, Apte, Badge and Gopal in another batch and Nathuram all by himself. All six of them namely, Karkare, Madanlal, Apte, Badge, Gopal and Nathuram were present at the Marina Hotel on the afternoon of the 20th January. Karkare actually endeavoured to obtain admission for Badge into the room with the trellis window. Madanlal ignited the gun cotton slab and was arrested at the spot with a live hand-grenade in his possession.

The mass of evidence that has been produced in this case leaves no doubt in my mind that all the prisoners (with the exception of Dr. Parchure and Shankar) had entered into an agreement to take the life of Mahatma Gandhi.

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The evidence against Nathuram and Apte is that they placed an order with Badge for the supply of arms and ammunition; that they examined the articles which were brought by Badge in the presence of Dixitji Maharaj; that they paid various sums of money to Badge for carrying out the purpose of conspiracy; that they travelled to Delhi and stayed in the Marina Hotel under assumed names; that they held a conference in the Marina Hotel at which various details in regard to the execution of the plan were settled; that they actually went to the Birla House on the afternoon of the

20th

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20th with the object of supervising the operations; and that when they found that the plan had failed they immediately left the Hotel and reached Bombay via Kanpur. In Bombay they stayed under assumed names. On the 27th January they again left Bombay by air under assumed names and came to Delhi from where they proceeded to Gwalior; that they obtained a pistol from Gwalior and came back to Delhi to put themselves in possession of the opportunity of assassinating Mahatma Gandhi. Nathuram admits that he went to the Birla House on the afternoon of the 30th January and fired three shots at Mahatma Gandhi. He denies, however, the existence of a conspiracy. On the other hand, he accepts the entire blame for the unfortunate incident of the 30th January and states that he alone and no one else should be *punished. He states that their object throughout was to stage a peaceful demonstration but that after the failure of the plan of the 20th January he secretly decided that the only method of stopping Mahatma Gandhi from pro-Muslim policy was to assassinate him. Once his mind was made up, he came to the Railway Station at Delhi, booked a room for himself in order to ponder over the future plans. He states that he did not take Apte into confidence and that Apte was not aware of what he was about to do. It is not in my opinion necessary to go into an elaborate examination of the witnesses who have appeared in evidence against Nathuram and Apte, for I am satisfied that there was a conspiracy to kill Mahatma Gandhi. If that conspiracy was in existence, there can be little doubt that both Nathuram and Apte were members thereof.

*P.202

*Broadly speaking the evidence against Karkare

*P.203

is

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is that on the 9th January Karkare and certain other persons saw some stuff at the shop of Badge; that on or about the 10th January Madanlal took Karkare to the house of Dr. Jagdish Chandra and introduced Karkare as a seth from Ahmadnagar; that on the 15th January Karkare accompanied Nathuram, Apte, Madanlal and Badge to the house of Dixitji Maharaj and examined some arms and ammunition which had been brought by Badge and handed over the bag containing the said arms and ammunition to Madanlal for being taken to Delhi; that on the same day Karkare and Madanlal left Bombay for Delhi by the night express; that Karkare told Angchekar that he was a worker for Hindu Mahasabha and was going to Delhi for some work of the Hindu Mahasabha; that on arrival at Delhi at 12-30 p.m. on the 17th January Karkare, Madanlal and Angchekar stayed at the Sharif Hotel in Chandni Chowk where Karkare stayed under the assumed name of B.M. Bias; that on the 18th January Karkare told Angchekar that he was going to the railway station as he expected somebody; that Gopal visited Karkare and Madanlal in the Sharif Hotel on the 19th January; that Karkare *P.204. *told Angchekar on the 19th that he and Madanlal were leaving the hotel the same day but spending the night in the Maharashtra Niwas and were leaving for Jullundur on the following morning in connection with the marriage of Madanlal; that Karkare went to Marina Hotel on various occasions between the 17th and 20th January, visited Nathuram and Apte on more than one occasion and was served with tea and alcoholic drinks at the Marina Hotel; that on the 20th January Karkare and Apte visited the Hindu Mahasabha Bhawan on more than one occasion and handed over the bag containing arms and ammunition

which

which had been brought from Bombay to Gopal for being taken to the Marina Hotel; that Karkare was present at the conference in the Marina Hotel and was given a hand-grenade for being thrown on Mahatma Gandhi; that at about 5 o'clock on the afternoon of the 20th Karkare and Madanlal reached the Birla House; that Karkare endeavoured to obtain admission into the room containing the trellis window; that on the 25th January he went to the house of Mr. G.M. Joshi at Thana and conferred with Nathuram, Apte and *Gopal; and that on the 29th and 30th he was seen *P.205. in a retiring room at the Delhi railway station along with Nathuram and Apte.

Mr. Dange, who appears for Karkare, contends that his client was involved in this case because like Mr. Savarkar, he is actively associated with the work of the Hindu Mahasabha. He contends that his client has denied that he has committed any offence, that the prosecution has failed to prove the case against him beyond reasonable doubt and that he has given a satisfactory explanation of the circumstances appearing in evidence against him. According to Mr. Dange only a few witnesses have appeared against Karkare in so far as the incidents in Delhi are concerned. These witnesses are Nain Singh P.W.8 and Gobind Ram P.W.11 who saw Karkare in the Marina Hotel on the 17th and 18th January, P.W.16 Chhotu Ram and P.W.17 Bhur Singh who saw him in the Birla House on the 20th and P.W.26 Sundari Lal, P.W.27 Hari Kishan and P.W.28 Jannu who are alleged to have seen Karkare on the railway station at Delhi on the 29th and 30th January. The case which he has set out to establish on behalf of his client is that Karkare went to Delhi in connection with the

proposed

proposed marriage of Madanlal, that while at Delhi

Madanlal induced him to give his moral support

to a demonstration which the refugees of

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Delhi were about to stage, that Karkare

*P. 207

expressed his willingness to go to the Birla House

as he was opposed to the pro-Muslim policy of

Mahatma Gandhi but that he declined to take an

active part as a detention order had been issued

against him; and that he was unable to reach Birla

House on the 20th as he was a stranger to the town

and lost his way in the confusing and bewildering

net work of streets for which Delhi is known. The

trial Court has come to the conclusion that Karkare

was present at the Birla House on the afternoon of

the 20th but that although he was present in Delhi

on the 29th and 30th January he did not go to the

Birla House on the date on which Mahatma Gandhi was

assassinated.

After going carefully through the evidence in

the case I have come to the conclusion that

Nathuram

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Nathuram, Apte, Karkare, Madanlal and Badge had

entered into an agreement to take the file of

Mahatma Gandhi and that in pursuance of this

agreement they collected arms and ammunition and

proceeded to Delhi. The evidence which has already

been commented upon shows that Karkare, Madanlal

and certain other persons examined the stuff in

*the shop of Badge at Poona on the 9th January, *P.208.

that Karkare accompanied Nathuram, Apte and others

to the house of Dixitji Maharaj where Badge had

brought the stuff for being taken to Delhi, that

Karkare took the bag containing the stuff and made

it over to Madanlal. Karkare admits that he

accompanied him to Delhi and put up in the Sharif

Hotel where the room occupied by them was shared

by Angchekar. The question which requires

consideration is whether he went there in pursuance

of the conspiracy as alleged by the prosecution

or whether he went there with the object of

facilitating the marriage of Madanlal as alleged

by him.

I have already stated in an earlier paragraph

of this judgment that I consider Angchekar to be
a highly independent and respectable witness.

This witness states that on their arrival at Delhi

on Saturday, the 17th January, they proceeded

to the Sharif Hotel where Karkare, Madanlal and

the witness booked a room for themselves, Karkare

giving his name as B.M. Bias. Some two hours later

Karkare left the hotel saying that he was going

to

*P.209.

*to the Hindu Mahasabha Bhawan. Madanlal and the witness who were left behind went to the Chandni Chowk where Madanlal wanted to see an uncle. It is not known whether Karkare returned to the hotel for the night but he was certainly back in the hotel on Sunday morning for he told Angchekar that he was proceeding to the railway station as he was expecting someone. Madanlal and the witness went to various places both on the morning and the evening of Sunday including the house of the prospective bride of Madanlal. They also went to attend a meeting which was to be addressed by Pandit Jawahar Lal Nehru and Mr. Jai Parkash Narain. Karkare does not appear to have slept the night of Sunday, the 18th January, in the hotel, for he was absent the whole day, he was absent when the witness retired for the night and he was absent when the witness left his bed on the following morning. He did not come back till after the witness had gone away in connection with his business. He appears to have returned to the hotel sometime later for when the witness returned from the Transfer Bureau at 3 p.m. on the 19th he found Karkare and Madanlal talking to a stranger (Gopal) inside the room. Karkare told the witness that both Madanlal and he were leaving the hotel at once as they had decided to spend the night in the Maharashtra Niwas and to leave for Jullundur on the following morning in connection with the marriage of Madanlal. The witness asked Karkare the latter's address in Bombay but Karkare replied that it was not necessary to furnish him with his address. The witness paid his share of the hotel bill to Karkare and left the hotel at 5 p.m. It is said that Karkare and Madanlal left the hotel two hours later after taking back the clothes which they had given away for washing.

*P.210

The evidence of this witness makes it quite clear that Karkare came to Delhi not with the object of facilitating the marriage of Madanlal but some other object which

which is stated by the prosecution to be the desire to promote the objects of the conspiracy. If Karkare had come to Delhi in connection with the marriage of Madanlal he would have done something in connection with the marriage. He does not appear to have taken the slightest interest in the matter. As stated above he left the hotel at about 4 o'clock on the afternoon of Saturday, the 17th January, and was away the whole afternoon and possibly also the evening. He did not accompany Madanlal to the house of his uncle. On the following morning Karkare intimated his intention of going to the railway station as he was expecting someone. He did not put in an appearance during the whole of Sunday, the 18th January. Madanlal and Anzchekar, however, went out to various places including the house of the prospective bride. Karkare did not return to the hotel at night and was not back in the hotel till the following morning. On the contrary, the evidence of the Marina Hotel witnesses proves beyond reasonable doubt that Karkare had been served a drink at the Marina Hotel on the 17th and two drinks at the said hotel on the 18th. This evidence shows that Karkare was in fact visiting the Marina Hotel. The prosecution allege that he actually spent the night of the 18th January in the said hotel.

*P.211.

Let us now examine the truth or falsehood of the story that Karkare and Madanlal were spending the night of the 19th in Maharashtra Niwas and were proceeding to Jullundur on the following morning in connection with the marriage of Madanlal. There is not an iota of evidence on the record to show that after Karkare and Madanlal left the Sharif Hotel at about 7 p.m. on the 19th they went to Maharashtra Niwas. On the other hand, the evidence of Badge shows that Madanlal and Gopal were in the Hindu Mahasabha Bhawan when Badge and Shankar arrived from Bombay. Badge states further

*P.212.

further

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further that Nathuram, Apte and Karkare came to the Bhawan at night and told him that they had been to the railway station but had not been able to see Badge and Shankar. Nathuram Apte and Karkare left shortly afterwards promising to call at the Bhawan on the following morning. Madanlal and Gopal spent the night of the 19th in the Mahasabha Bhawan along with Badge and Shankar. It has not been contended that Karkare and Madanlal left for Jullundur on the following morning. On the other hand, it has been proved conclusively that Madanlal was in Delhi on the 20th January for he ignited a gun-cotton slab at the Birla House at 5 o'clock in the afternoon and was immediately arrested. A live hand-grenade was recovered from his possession. The only conclusion that can be drawn from the statement of Angchekar which is fully corroborated by the other circumstances of the case is that Karkare was anxious to conceal from Angchekar the real object of their visit to Delhi. Neither he nor Madanlal had any intention of spending the night of the 19th at the Maharashtra Niwas or of proceeding to Jullundur on the following morning.

The evidence of Angchekar establishes-

- (a) that Karkare, Madanlal and Angchekar travelled in the same compartment from Bombay to Delhi;
- (b) that they occupied the same room at the Sharif Hotel;
- (c) that Karkare left the hotel two hours later as he stated that he wanted to go to the Mahasabha Bhawan;
- (d) that Karkare was served with a drink in the Marina Hotel;
- (e) that Madanlal and Angchekar went out together to various places;
- (f) that Karkare did not spend the night of the 18th in the Sharif Hotel or that if he spent the said night in the said hotel he came only at a very late hour;
- (g) that Karkare announced on the morning of the 18th Jan. that he was proceeding to the railway station to fetch a friend;
- (h) that Madanlal and Angchekar visited various places in Delhi including the house

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*P.214.

house of the bride; (i) that Madanlal and Angchekar attended a public meeting which was to be addressed by Pandit Jawahar Lal Nehru and Mr. Jai Parkash Marain; (j) that Karkare was served with two drinks in the Marina Hotel; (k) that Karkare did not return to the Sharif Hotel on the night of the 18th; (l) that Karkare made a statement which was false to his knowledge to the effect that they were spending the night of the 19th in Maharashtra Niwas and were leaving for Jullundur on the following morning; (m) that although Karkare states that he came to Delhi in connection with the marriage of Madanlal he did nothing in connection with the said marriage and (n) that throughout the period commencing with the 17th January and ending with the 19th evening he was engaged in activities which had no concern with the projected marriage. The prosecution allege that ever since

*P.215.

the minute of his arrival in Delhi Karkare was actively engaged in promoting the purposes of the conspiracy. At least three witnesses have come forward to depose that Karkare was seen in the Marina Hotel on various occasions during the period 17th January to the 20th January. P.W.11 Gobind Ram served a drink to him on the 17th and another drink to him on the 20th. P.W.8 Hain Singh served tea to Karkare and Shankar on the 20th January or is clear from the fact that a bill for three extra teas was sent to the occupants of the room.

Karkare's presence in the Birla House on the afternoon of the 20th January is established by the evidence of P.W.16 Ganotu Ram. On the day of the occurrence Hain Singh was sitting on a lakkhosh in front of the room through the trellis window of which the conspirators had proposed to throw the hand-grenades. He states that a car drove into the open circular

space

*P.216 space behind the Birla House and four passengers alighted therefrom. They started talking to some persons who were standing near the *gate of the Birla House. One of them (whom he later identified as Karkare) went up to the witness and asked him for permission to take a photograph through the trellis work of the window. The witness told him that no ~~real~~ purpose was likely to be served by taking a photograph from the back of Mahatma Gandhi. He offered a small bribe to the witness which the latter declined. An explosion took place a few minutes later.

Several objections have been taken to the evidence of this witness. It is said in the first place that Karkare could not have been the person who asked for permission to take the photograph because Karkare was not carrying a bag and because the man who talked to Chhotu Ram had alighted from the car and according to the prosecution Karkare did not come to the Birla House by car. It is said that the person who asked for permission to take the photograph was carrying a khaki bag. Only two khaki bags have been mentioned in the evidence before the trial. One of these bags belonged to Badge which had been brought by him from Poona to Bombay and which was later given by him to Madanlal for being taken to Delhi. This bag is said to have been returned to Badge on the 19th or 20th January and was taken by him to the Birla House on the 20th January. Shortly before the *explosion of the bomb Badge went to the taxi and placed both his own revolver and the revolver which was in possession of Shankar into this bag. The second bag belonged to Gopal Godse. That bag was left in a cupboard in the Hindu Mahasabha office before Gopal and his companions went to the Birla House. Karkare had no bag with him and it is accordingly contended that if the man who spoke to Chhotu Ram

*P.217.

Chhotu Ram had a bag it could not be Karkare. It is said that the evidence of Chhotu Ram is manifestly false as it does not fit in with the prosecution story and as no reason has been given in regard to the circumstances in which the bag came into the possession of Karkare.

The second criticism is that there is a discrepancy in the statements made by Chhotu Ram and Mt. Salochana. Mt. Salochana deposes that "one of the persons who had got down from the car had a talk with Chhotu Ram" who was sitting in front of the quarters at the time. P. 14. Surjit Singh states that he brought only four persons in his car, namely, Nathuram, Apte, Gopal Godse and Shankar. Karkare and Madanlal had reached the Birla House long before the arrival of their *companions. If Karkare *P. 218 was not in the car and if one of the persons who talked to Chhotu Ram had alighted from the car it is obvious that it could not be Karkare.

Thirdly, it is stated that when Chhotu Ram appeared at the identification parade at Delhi on the 28th February, 1948 he picked up Karkare and Apte and said that on the day of the bomb explosion in the Birla House four persons including Apte and Karkare came to the Birla House at 4-30 or 5 p.m. and one of them asked him to take the photograph of Mahatmaji from his quarter. In his statement before the trial Court on the 1st July 1948 he stated clearly that Karkare was the person who had asked for permission to take the photograph and who had offered Rs. 5/- or Rs. 10/- as a bribe. It is argued that if Chhotu Ram was not quite certain on the 28th February 1948 as to which person had spoken to him it is difficult to believe that his memory had improved so considerably by the 1st July 1948 when his evidence was recorded by the trial Court that he was able to state with confidence that Karkare

Karkare was the person who spoke to him.

*P.219

Fourthly, it is said that Chhotu Ram's memory does not appear to be reliable and consequently *that no reliance should be placed on what he has stated. Mr. Oscar Brown, Chief Presidency Magistrate, states that Chhotu Ram identified Shankar (besides two wrong persons) as the person whom he had seen near the Birla House on the day of the explosion. Chhotu Ram states that he does not remember whether he told the Magistrate as to the person who had asked his permission to take a photograph. It is contended that if he picked out two wrong persons at this identification parade it would not be safe to place implicit reliance on the evidence given by him in regard to Karkare.

The fifth criticism was that the witness identified two wrong persons on the 30th March 1948. This fact would only establish that the identification parade was not a farce and that witnesses were not allowed to see the prisoners before they were asked to identify them at the parade. I am clearly of the opinion that Chhotu Ram is telling the truth. Indeed, Chhotu Ram's statement is fully corroborated by Bhur Singh Chowkidar who also states that the man who talked to Chhotu Ram was carrying a bag.

*P.220

It is true that Badge does not state that *Karkare was carrying a bag on the 20th January 1948 but a bag could have come into his hands in any one of several ways. For example the bag which Badge was carrying could have been handed over to Karkare temporarily. Again Karkare may have brought a bag with him from Bombay in his steel trunk or he may have purchased one in Delhi. A grenade was given to Karkare at the Marina Hotel. That grenade had to be kept. Karkare may have purchased a bag from the Connaught Circus below the Marina Hotel. Chhotu Ram is positive that the man who addressed him was Karkare and that Karkare was carrying a bag. Nor can I find any serious discrepancy in

in the statement made by Mt.Salochana that one of the persons who had alighted from the car had talked to Chhotu Ram.As the persons who had alighted from the car started talking to two or three others who were waiting outside the back gate of the Birla House Mt.Salochana may well have made a mistake as to which persons got down from the car and which persons met them at the gate.It is common ground that one of these persons talked to Chhotu Ram and Chhotu Ram says that it was Karkare. Nor am I prepared to attach exaggerated importance to the statements which are attributed to this witness *at *P.221 the time of the identification parade.It is true that when the witness was invited to the parade which was held on the 28th February 1948 he picked up Karkare and Apte and said that on the day of the bomb explosion in the Birla House four persons including Karkare and Apte had come to the Birla House at 4-30 or 5 p.m. and that he stated before the trial Court on a later date that Karkare was the person who had made the request.This discrepancy does not appear to me to be of any consequence.The statement which was recorded by the Magistrate was recorded only with the object of ascertaining the particular person whom the witness was identifying.Again,the statement which has been attributed to the witness was not put to him in cross-examination and he was not confronted with it.

The next piece of evidence against Karkare is that on the morning of Sunday, the 25th January, he appeared at the house of his friend and relation Mr.G.M.Joshi at Thana and asked him to have a telegram despatched to Apte requiring Nathuram and Apte to see him in Thana. As stated in an earlier paragraph of this judgment Nathuram*and Apte arrived *P.222. in Thana in response to the telegram.Gopal also came and took part in the conference which was held at about

about 9 o'clock in the night. The nature of the conversations which took place had not been indicated but there can be little doubt that the prisoners surveyed the situation as a result of the arrest of Madanlal and completed their plans for the future.

The next piece of evidence against Karkare is that on the 28th and 29th January he was seen at the railway station of Delhi in the company of Nathuram and Apte. While discussing the evidence of Sundarilal P.W.26, Hari Kishan P.W.27 and Jannu P.W.28 I stated that there was considerable doubt in regard to the presence of this prisoner in Delhi on the 29th or 30th January.

P.223. The evidence on record satisfies me that Karkare was a member of the conspiracy to take the life of Mahatma Gandhi and that he has been rightly convicted. The case against Madanlal is that he was opposed to the pro-Muslim policy of Mahatma Gandhi; that while at Ahmednagar he came into contact with Karkare who entertained similar views; both Karkare and Madanlal went to the shop of Badge in Poona with the object of inspecting the arms and ammunition which were being offered for sale; that on or about the 12th January he made an extrajudicial confession to Dr. J. telling him that he had been entrusted with the work of throwing a bomb at the prayer meeting of Mahatmajji to create a confusion and that in the confusion so created Mahatmajji was to be overpowered by the members of his party; that on the 15th January he accompanied Nathuram, Apte, Karkare and Badge to the house of Dixitji Maharaj where Badge showed the explosives which he had brought from Poona; that the bag containing the explosives was then entrusted to him with the object of being taken to Delhi; that the same night he accompanied Karkare to Delhi; that on the 19th January he joined Karkare in making a false representation to Anglo that both Karkare and Madanlal were shifting to the Maharashtra Niwas the same evening and were leaving for

*P.224

for Jullundur on the following morning; that on the evening of the 19th January he stayed in the Hindu Mahasabha Bhawan along with Gopal, Badge and Shankar; that on the 20th January he accompanied Karkare to the Marina Hotel and joined the conference that was held there; that a gun-cotton slab and a hand-grenade were handed over to him with the direction that on a signal being given by Nathuram and Apte he was to explode the gun-cotton slab and to throw the hand-grenade; that he ignited the gun-cotton slab and was immediately arrested and that a live hand-grenade was recovered from his possession.

Madanlal denies the correctness of circumstances appearing in evidence against him. He admits having gone to Delhi with Karkare but he states that he went there in connection with his marriage. He admits that he went to the Birla House on the 20th January but did so with the object of making a peaceful demonstration. On being asked to explain the circumstances in which he came into possession of a live hand-grenade Madanlal stated that Badge had given him a gun-cotton slab and hand-grenade as samples for sale to refugees.

*P.225.

There can be no manner of doubt that Madanlal was a member of the conspiracy which was formed to take the life of Mahatma Gandhi. I have already discussed in detail the evidence which has been furnished by the prosecution in support of the testimony of the approver in regard to the incidents which took place at Delhi between the 9th and the 17th and the incidents which took place in Delhi between the 17th and the 20th. Madanlal took an active part in procuring arms and ammunition and transporting them from Bombay to Delhi. He made a confession Dr. Jain which shows almost conclusively that a conspiracy was in existence and that the conspirators had planned to assassinate Mahatma Gandhi. It is true that he did not take a prominent part in connection with the conspiracy.

on the 17th, 18th and 19th January but he took a leading part in the execution of the plans on the following day.

*P. 226. He went to the *Marina Hotel where he put on a coat belonging to Apte and later proceeded with Karkare to the prayer grounds where he ignited the gun-cotton slab. He was caught red-handed with a live hand-grenade in his pocket. If his object was merely to make a peaceful demonstration his object was fully served because he had created an explosion which was just what he desired to do. If he wanted merely to make a harmless demonstration he would doubtless have run up to Mahatma Gandhi immediately after he had lighted the fuse. Even if he did not rush towards the Mahatmaji then, he could have run to him as soon as the slab had exploded and could have ventilated the grievances which he was so keen to bring to the notice of Mahatma Gandhi. He did nothing of the kind. His conduct at the prayer ground is, in my opinion, wholly and inconsistent with the theory that he went to the prayer ground with the object only of making a demonstration. Again, the explanation given by him in regard to the recovery of a live hand-grenade is hollow and unconvincing. I have given detailed reasons in an earlier portion of the judgment for holding that he went there to throw the grenade on Mahatma Gandhi and not merely to stage a demonstration before him.

*P. 227

Mr. Bennerji, who appears for Madanlal, contends that assuming for the sake of argument that Madanlal was a member of the conspiracy he ceased to be one as soon as he was arrested by the police on the 20th January. I regret I am unable to concur in this contention. The crime of conspiracy consists in an agreement between two or more persons to do a criminal act. If, therefore, anything is done in pursuance of that agreement, all the members who are parties to the agreement are equally liable for the acts of others. In such cases every conspirator is presumed in the eye of law to be an agent of the others. But it is open to a conspirator to withdraw

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withdraw from the conspiracy and thus relieve himself from a homicide committed subsequent to the said withdrawal provided he notifies his associates of such withdrawal. It is true that Madanlal was arrested on the 20th January and that it was not possible for him to give any effective help to the co-conspirators in achieving the object of the conspiracy but it is not necessary for every member of a conspiracy to take an active interest in the execution of the common purpose. Silent partners are by no means an uncommon feature of conspiracies. If Madanlal had dissociated himself from the conspirators and had made his intention plain to his associates either by express words or by his conduct it may have been possible to argue that he was not responsible for the murder which was committed after the date of his disavowal or dissociation. But Madanlal never informed his co-conspirators that he had abandoned the common purpose. It seems to me therefore that it is impossible for him to escape liability for the criminal acts committed by his confederates which have reasonably followed in the execution of the common purpose.

The circumstances of the case leave no doubt in my mind that the charges have been brought home to Madanlal beyond reasonable doubt.

*Briefly summarised the evidence against Gopal is that on the 14th January his brother Natharam effected a nomination of his life policy in a sum of Rs. 3,000/- in favour of Mrs. Sindhu Bai wife of Gopal; that on the same date he applied for seven days' casual leave from the 15th January to the 21st Jan. for some immediate farm affairs at his village; that seven days' casual leave was granted to him with effect from the 17th Jan; that on the afternoon of the 19th Jan; he paid a visit to Karkare and Madanlal who was putting up in the Sharif Hotel; that night.

*P. 228.

*P. 229.

night of the 19th January he stayed with Madan Lal in a room of the Hindu Mahasabha Bhawan, Delhi; that on the morning of the 20th January Apte took Gopal, Badge and Shankar to the jungle behind the Mahasabha Bhawan for trying out the two revolvers which had been brought by Gopal and Badge; that after his return to the Mahasabha Bhawan he accompanied Apte, Badge and Shankar to the Marina Hotel with the khaki bag in which Badge had brought the stuff from Poona to Bombay and in which Madanlal had *brought the stuff from Bombay to Delhi together with the revolver which Gopal had brought with him from Kirkee; that on arriving in room No.40 of the Marina Hotel Gopal started repairing his revolver while Apte, Karkare, Madanlal and Badge started fixing primers in the gun-cotton slabs and detonators in the hand-grenades; that in his presence and within his hearing Nathuram told Badge that this was their last effort, that the work must be accomplished and that they should see that everything was done properly. While they were still in the room the various parts which the conspirators were to take in the Birla House were assigned to them and arms and ammunition were distributed; that a hand-grenade was given to Gopal with the object that it should be thrown at Mahatma Gandhi as soon as commotion was caused by the explosion of the slab; that Gopal accompanied Apte, Badge and Shankar in a taxi belonging to Surjit Singh from the Regal Cinema to the Hindu Mahasabha Bhawan; that Gopal got out, went inside the Bhawan and left his bag containing the ammunition in the cupboard of his room; that the party proceeded by the same taxi to the back gate of the Birla House and met Nathuram, Karkare and Madanlal; that in the presence of Gopal, Apte asked Madanlal whether he was ready; that Madanlal replied that he was ready that he had placed the gun-cotton slab and that it remained only to be ignited; that Karkare came and told

Apte

Apte that he *had made arrangements with Chhotu Ram to *P.231
allow someone to enter that room as a photographer; that
Badge refused to enter that room for fear of being trapped
inside, and intimated his desire to shoot from the open,
that after the explosion Nathuram, Apte and Gopal entered
the taxi and left immediately for the Connaught Place;
that Gopal stayed at the Frontier Hindu Hotel, Delhi under
the assumed name of Rajugopalam on the night of the 20th
and 21st January; that Karkare also stayed in the same
hotel that night under the assumed name of G.M.Joshi;
that some days after the 20th January he went to the house
of Mr.P.V.Godbole of Poona (P.W.85) and deposited a
revolver and bullets with him; that on or about the 24th
January he met Nathuram and Apte in Hotel Elphinstone
Annexe, Bombay; that at about 4 o'clock on the afternoon of
the 25th January he went to the house of Mr.G.M.Joshi at
Thana with a trunk, and met Nathuram, Apte and Karkare;
that he rejoined his post on the morning of the 27th
January that Mahatma Gandhi was assassinated on the 30th
January, 1948 by his brother Nathuram; that when he was arrested
in his native village of Uksan on *the 5th February he was found *P..
to be in possession of the bag (Ex.P.54) in which Badge had
taken the stuff from Poona to Bombay and which had been
brought by Madanlal from Bombay to Delhi; that he was
identified by Gobind Malekar on the 2nd March, Angchekar
on the 16th March, Mehar Singh and Ram Parkash on the 24th
March, Ram Lal Dutt, Surjit Singh, Shanti Parkash and Gobind
Ram on the 30th March and Bhur Singh on the 31st March.

Gopal admits that his brother Nathuram effected
a nomination in favour of his wife on the 14th January
but states that he was not aware of this nomination then;
he admits having applied for leave but he states that his
leave was spent in his native village; he denies having
visited Delhi or having been there between the 17th and

*P.233

On 23rd January; he denies having visited the house of Mr. Godbole of Poona or having visited the Elphinstone Hotel annexe or having gone to Thana; he denies that a bag was recovered from his possession when he was arrested near Uksan. He admits that he was identified by various witnesses on the dates mentioned above but complains that he was shown *to the witnesses prior to each identification. On being questioned as to why the witnesses had given evidence against him he states that the witnesses had deposed against him under the pressure of the police. No evidence was produced in defence.

*P.234

The first important piece of evidence against Gopal is that on the 14th January his brother Nathuram effected a nomination of his policy in favour of Mrs. Sindhutai wife of Gopal. I have already referred to this matter in an earlier part of the judgment. It is no crime on the part of a brother-in-law to assign a policy in favour of his sister-in-law, but it is a curious coincidence that this policy should be assigned on the 14th January; that a sum of Rs.250/- should be paid to him by his brother on the same day and that he should apply for leave on the same date. The prosecution allege that Nathuram assigned his policy in favour of the wife of Gopal in order that some provision should be made for her in the event of Nathuram and Gopal being put out of the way by the decision of a judicial tribunal and that he paid a sum of Rs.250/- to Gopal for the purchase of a revolver for the purposes of the conspiracy. It is said that Gopal applied for seven days' casual leave with *effect from the 14th January in order that he should be able to accompany Karkare and Madanlal from Bombay to Delhi on the 15th January. Gopal stated in his application that he wanted to take leave for some immediate farm affairs at his village but this explanation does not appear to be plausible. If he did proceed on leave with effect from

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from the 17th January and did actually spend that leave in his native village he could have had no difficulty in producing witnesses of his village to the effect that he was there during the whole of his leave. No evidence whatsoever has been produced and no effort has been made to establish the plea of alibi.

On the other hand, convincing evidence has been produced on behalf of the prosecution to the effect that Gopal was in fact in Delhi on the afternoon of the 19th January and during the whole of the 20th January.

*The first set of witnesses who saw Gopal in Delhi are Ram Lal Dutt P.W.2, Shanti Parkash P.W.3 and Angchekar P.W.5. The first two are partners of the Sharif Hotel while the third is a refugee from Sind. Ram Lal Dutt states that on the 19th January a person came to enquire as to the room in which Madanlal was staying. The witness had him sent to room No.2 through a servant. Shanti Parkash deposes that on the same day he prepared a bill for B.M. Bias and Karkare in respect of the charges payable to the hotel. Bias came to the office along with an outsider and asked the witness to furnish details of the account. He was given the necessary details and he paid the bill in full. Bias then came again to the office at about 2 p.m. and said that he would leave the hotel sometime later. The witness told him that he would be charged the rent of the room for another day but later reduced the rent at his request. Angchekar states that when he returned from the Transfer Bureau at about 3 o'clock on the afternoon of the *19th January and went to his room he found Karkare and Madanlal with a stranger whom he later identified as Gopal sitting in the room. As soon as he entered the room, he was told by Karkare that Madanlal and he were going to vacate the room and that they were going to the Maharashtra Niwas for the night

*P.235

*P.236

night and proceeding to Jullundur on the following morning. The witness told Karkare that he had finished his work and was going back to Bombay that very day and enquired from Karkare as to what his permanent address at Bombay was. Karkare replied that it was not necessary to furnish him with the address. Madanlal, however, had no hesitation in giving his own address for he told the witness that he was residing at the Chembur refugee camp in Bombay. According to Angchekar, Gopal kept sitting in the room in the hotel with Karkare and Madanlal for about two hours during the whole of which period with the exception of fifteen minutes Angchekar himself was also in the room. It is argued on behalf of the defence that Angchekar was a refugee from Sind, was a man of straw and consequently that his evidence should not be accepted as gospel truth. Mr. Daphtary, however, contends that Angchekar is not an unreliable witness. A perusal of Exhibit P.12 makes it quite clear that this witness, who is about thirty years of age, passed the Matriculation Examination of the Bombay University in 1936 and was working as Rationing Enquiry Inspector before the partition. He could read, speak and write Marathi and English and could read and speak Hindi and Gujrati. He was drawing a salary of Rs.105/- per mensem plus allowances, his aggregate salary inclusive of allowances being Rs.163/- per mensem. He has no reason to be hostile either to Madanlal or Gopal. If he had chosen to be hostile to either of these prisoners he could have given much stronger evidence against them. The statement actually made by him does not betray any anxiety on his part to implicate Gopal. In the identification parade which was held on the 30th March 1948 the witness picked up Gopal as the person whom he had seen in his room on the 19th January. He was, however, unable to give the name of Gopal as that name was not given to him at Delhi.

*P.237

While discussing the evidence of this witness in an
an earlier

earlier paragraph I expressed the *view that he is *P.238
intrinsically and inherently reliable and that there is
no reason why his evidence should not be accepted as
against Gopal.

I am not quite certain, however, whether the
evidence of the two partners of the Sharif Hotel is
equally trustworthy. Mr. Daphtary contends that the
allegation made against these witnesses that they are
under the thumb of the police must be discounted. In their
capacity as hotel managers it was their duty to come into
contact with a large number of persons and to remember
their faces. Memory for purposes of identification is
not a matter of education and is to some extent
dependent on a person's calling. Again, it is said that
Madanlal had brought the police to the Sharif Hotel on
the 23rd January and as they were examined on that day
the features of the person whom they had seen in the
room of Madanlal must have been impressed on their
memories. Indeed, it is stated that the allegation that
Gopal came to the hotel that day is consistent with the
probabilities of the case. Immediately on his arrival
in Delhi, Gopal *must have seen Nathuram and Apte in the *P.239
Marina Hotel. Nathuram must have asked Gopal to ask Karkare
and Madanlal to leave the hotel and not to stay with
Angchekar who was a total stranger and who might later
given evidence against them. It is said that Gopal must have
gone to the Sharif Hotel with the object of asking
Karkare and Madanlal to leave the room and shift to
another place. It was with that object that both
Karkare and Madanlal informed Angchekar as soon as he
returned from the Transfer Bureau that they were
leaving the hotel the same afternoon spending the night
in the Maharashtra Niwas and proceeding to Jullundur on
the following day. Ramlal Dutt and Shanti Parkash are
admittedly the partners of a hotel and may possibly
be

be endowed with better memories than those of persons pursuing other callings but it must be remembered that at least one of these persons namely Ram Lal Dutt started hotel business only with effect from the 11th November 1947. His memory cannot thus be said to have been so highly developed that he should remember a person whom he had seen only for a moment or so. *The police enquired from him the description of the person who had come to see Madanlal and he told him that he would be able to identify the person if produced before him. He does not remember the description he had given of the person to the police. Shanti Parkash is more precise. He states that the police enquired from him the description of the outsider and he gave the description of the outsider to the police. These persons were undoubtedly questioned on the 23rd January and the fact that they were questioned so shortly after the 19th may possibly have made them remember that a person had actually come to see Madanlal on the 19th January. It must be remembered, however, that they were not taken to Bombay till the 30th March and it is, in my opinion, extremely difficult for any person to identify another whom he had seen for a moment or so 70 days before. While I have no reason to think that these witnesses are not talking the truth. I am of the opinion that it would not be safe to accept their testimony without demur.

*P.241.

*The next witness who saw Gopal in Delhi is Surjit Singh P.W.14 who carried a certain number of passengers in his taxi from the Regal Cinema to the Birla Temple and from the Birla Temple to the Birla House and later from the Birla House to the Connaught Circus. This witness clearly identifies Gopal as one of the passengers who travelled in his car on the date in question.

It will be seen from the above that the statement of Badge to the effect that Gopal came to Delhi is corroborated by at least five witnesses, namely, Ram Lal Dutt

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Dutt P.W.2, Shanti Parkash P.W.3, Angchekar P.W.5, Surjit Singh P.W.14 and Bhur Singh P.W.17. The evidence of these witnesses is strongly supported by the fact that Gopal took leave of absence at about the same time at which the other prisoners in this case were planning an attempt on the life of Mahatma Gandhi. He has given no explanation whatsoever in regard to the place where he spent his leave. If he was in his village from the 17th to the 25th January as he states he was, he could have had no difficulty in producing a cast iron alibi. No evidence was produced by him in defence.

It has been argued on behalf of Gopal that he took no part whatsoever in the crime for the bag* containing his revolver and hand-grenade was left behind in the office of the Hindu Mahasabha and that so far as can be judged he came to Delhi with the object of spending his leave with his brother. It is somewhat difficult to believe that Gopal would take a long and expensive journey from Poona to Delhi with no other object than of seeing his brother. He did not state in his application that he wanted to visit Delhi. *P.242

The prosecution have, in my opinion, established beyond reasonable doubt that Nathuram effected a nomination of his life policy in favour of the wife of Gopal, that Gopal applied for leave on the same day, that Gopal had lunch with Nathuram at Poona on the 14th January and applied at once for casual leave, and that Nathuram paid a sum of Rs.250/- to Gopal vide entry in his diary Exhibit P.218; that Gopal was seen in Delhi is corroborated by the testimony of four witnesses including P.W.5 Angchekar, P.W.14 Surjit Singh and P.W.17 Bhur Singh whose testimony I have no reason to doubt, that Gopal has given no explanation in regard to the place where he spent his leave, and that Gopal met Nathuram, Apte and Karkare at Thana on the 25th January. These reasons satisfy me that Gopal was a member of the conspiracy which was formed to assassinate Mahatma Gandhi.

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*P.243. *The date on which Gopal left Delhi is not known, but it appears that he visited Nathuram and Apte in Elphinstone Hotel Annexe, Bombay, on or before the 24th January. P.W.64 G.V.Malkar a bearer of the Hotel states that Nathuram and Apte came to the hotel on the 24th January 1948. The witness saw them on that day as well as on the 25th January. They left the hotel on the 27th January at about 6.30 a.m. On that date he had awakened them in the morning and had served them with tea and milk. This witness states that he saw Nathuram and Apte on the 24th January when they arrived and then saw them on the 25th January 1948 at about 7 a.m. while these two passengers were staying in the hotel, one gentleman who was later identified as Gopal came to visit them. The witness stated in cross-examination that this stranger had probably come on the 25th January 1948. On the other hand Mr. Vasant Joshi P.W.79 states that Gopal was at his house, visiting his father Mr. G.M. Joshi at about 4 o'clock on the afternoon of the 25th January. Much capital was made out of the fact that Gopal could not be in Bombay and in Thana which are separated by a distance of 20 miles on one and the same day. After

*P.244. going carefully through the depositions of these two witnesses, namely, Melekar P.W.64 and Joshi P.W.79 I have no hesitation in holding that Gopal was in Thana on the 25th January and could not be in Bombay at the same hour on the same day. On the first occasion he met Nathuram and Apte and on the second Nathuram, Apte and Karkare. He rejoined his duties on the morning of the 26th January on the expiry of his leave. The news of Mahatma Gandhi's assassination was broadcast on the 30th January and Gopal was in imminent danger of losing his own life as he was known to be a brother of the assassin. Police protection was given to him and he was sent away to his native village Uksan. It appears that on the arrest of Badge on the 31st January and on Madanlal being brought to Bombay on or about the 4th the police came to know that Gopal

was

was also concerned in the crime. He was arrested on the 5th February.

It has been argued on behalf of the prisoners that Gopal could not have taken part in the crime. In the first place he is a Government servant who is perfectly settled in a Government post and who had no motives of the nature attributed to his brother Nathuram. Secondly, it is said that Nathuram could have had no object in securing the help of Gopal. He did not want to make the wife of Gopal a widow by sending her husband to the gallows. Thirdly, it is said that no revolver etc. has been traced to the possession of Gopal. Fourthly, it is alleged that Gopal was not assigned any part at the Marina Hotel conference or if he was assigned any part he did not carry it out for he left the revolver and the hand-grenade which were given to him at the Hindu Mahasabha before leaving for Birla House. It may be that he did not take a prominent part in the execution of the common plan but that fact would not exonerate him from blame and entitle him to escape from the liability which attaches to every person who agrees to commit an unlawful act conjointly with others.

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*The circumstances appearing in evidence against Shankar briefly are that while at Poona he showed the stuff belonging to his employer Badge to various persons including Karkare and Madanlal; that on the 14th January he accompanied Nathuram, Apte and Badge to Dixitji Maharaj for the purpose of leaving the bag containing the stuff; that on the 17th January he accompanied Nathuram, Apte and Badge to various places for the purpose of collecting subscriptions; that while they were travelling by taxi Apte stated that Savarkar had predicted that Gandhiji's hundred years were over and that there was no doubt that their work would be successfully accomplished; that on the 18th January Shankar accompanied Badge to Delhi;

that

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that on the morning of the 20th Badge and Shankar accompanied Apte to the Birla House and took measurements of the trellis-work to see if the hand-grenade could pass through the openings therein and inspected the places on either side of the gate from where gun-cotton slabs could be exploded; that

*P.248.

on the same day he was present in room No.40 of the Marina Hotel when the prisoners fixed primers and fuse-wires in the gun-cotton slabs and detonators in the hand-grenades and that he was present at the conference at which various parts were assigned to the several prisoners. The most important piece of evidence against him is that while getting down from the Marina Hotel Badge told Shankar that he was to throw his hand-grenade on the person on whom he threw his hand-grenade and that he was to shoot at the person at whom he shot and that the person concerned was an old man known as Gandhiji and that he was to be finished. On the same day Apte, Gopal, Badge and Shankar travelled by the taxi of Surjit Singh to the Birla House. On a signal from Badge, Shankar delivered his revolver to Badge and both the revolvers, namely, the one which was carried by Badge and the other which was carried by Shankar were put into a bag. After the explosion Shankar and Badge returned by a tonga to the Hindu Mahasabha Bhawan and Shankar went and buried three hand-grenades and certain other stuff near the boundary wall of the Mahasabha Bhawan.

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The conduct of Shankar prior to the 20th January is fully consistent with the allegation that Shankar was employed by Badge and was carrying out faithfully all the orders which were issued to him by his employer. It may be that he showed the stuff to some of the conspirators at Poona; that he carried the stuff to Bombay; that he went about with Badge to various places both at Bombay and at Delhi and that he buried the stuff at Delhi, but it must be remembered that

that whatever he did he did under the orders of Badge and in the course of his employment. Badge was carrying on an extensive trade in arms and ammunition and it may be assumed that Shankar was aware that this was being done in contravention of the law. He used to show the stuff to prospective purchasers; he used to carry it about from place to place; he used to bury it under a tree when it was not required and he used to bring it out when a prospective purchaser arrived. He accompanied Badge whenever and wherever he went for not only was he Badge's assistant but was also Badge's personal servant. It has not been alleged or proved that at any time prior *to the 20th January Shankar was aware of the dark designs which were being entertained by Badge and the other members of his party. He did accompany Badge to various places but he did so purely in his capacity as a personal servant. He never joined the inner councils of the conspirators and was never taken into confidence. On the other hand, the evidence proves almost conclusively that at every crucial moment i.e. whenever any vital decision was to be taken Shankar was deliberately kept out of the picture. Numerous instances may be cited. For example, when Nathuram, Apte and Badge went to the house of Dixitji Maharaj at Bhuleshwar on the evening of the 14th January Shankar was made to sit in the hall while his companions went into the interior of the house along with the bag containing the stuff. He was not taken to the house of Dixitji Maharaj on the morning of the 15th. He was not present when Badge was invited to join the conspiracy or when he met Nathuram and others at Delhi. When the party proceeded to the house of Mr. Savarkar on the morning of the 17th January Shankar was asked to wait outside the compound of the house. It is said that when Shankar was travelling by taxi along with Nathuram, Apte and Badge, Apte said

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said *that Mr. Savarkar had predicted that Gandhiji's hundred years were over and that there was no doubt that their work was to be successfully accomplished. Unless we proceed on the assumption that Shankar was in the know of the secret these remarks could have had little or no significance for him. Moreover, it must be remembered that almost all conversations were carried on in Marathi, a language in which Shankar is by no means proficient. It was for this reason that the learned Special Judge came to the conclusion that the first occasion on which he joined the conspiracy was on the 20th January when he was specifically told by Badge at the Marina Hotel that the purpose of their visit to the Birla House was to assassinate Mahatma Gandhi. Mr. Daphtary does not challenge the correctness of this finding. Badge stated quite clearly that Shankar knew nothing about the conspiracy at Bombay or Delhi until they got down from the Marina Hotel for going to the Birla House on the 20th January.

*P.252.

The only point for decision so far as the case against Shankar is concerned is *whether Badge did in fact tell Shankar while getting down from the steps of the Marina Hotel that he was to shoot at Mahatma Gandhi. If the reply to this question is in the affirmative and if Shankar accompanied Badge to the Birla House with the object of carrying out the instructions given to him, there can be little doubt that Shankar would be guilty of an offence to commit a criminal conspiracy.

Fortunately for Shankar the only evidence in regard to his complicity in the crime is the statement of Badge himself. Badge is admittedly an accomplice and the statement made by him cannot be accepted unless it is corroborated as to Shankar's actual participation in the crime or connection with the offence or as it is sometimes said as to the prisoner's identity with the participators. In R v. Farler 8 C & P 106 Lord Alvinger observed that a man who has been guilty of

a crime himself would always be able to relate the facts of the case and if the confirmation be only on the truth of that history, without identifying the person, that is really no corroboration at all. Badge's statement in respect of the complicity of Shankar stands uncorroborated unless it could be said that it has been corroborated by the events which took place after Shankar had been invited to join the conspiracy.

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Two circumstances alone can be taken into consideration against him. The first is that he is said to have been present at the Birla House on the afternoon of the 20th January when the gun-cotton slab was exploded by Madanlal. Surjit Singh taxi-driver in whose vehicle he is stated to have travelled from the Marina Hotel to the Birla House was unable to identify him in the parade. Chhotu Ram P.W.16, however, stated that Shankar was one of the persons who were present at the Birla House. It would, in my opinion, be wholly unsafe to convict Shankar on the testimony of a single witness, particularly when the taxi-driver Surjit Singh in whose vehicle Shankar is said to have reached the Birla House was unable to identify him. The only other evidence which has been produced against him is that on the 14th February Shankar led certain respectable persons to the grounds of the Hindu Mahasabha Bhawan at Delhi and was able to dig up two live hand-grenades from one place and one live hand-grenade from another place. The mere fact that Shankar knew of the places at which these articles were buried would not prove necessarily that he had entered into an agreement to take the life of Mahatma Gandhi.

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This is the sum total of the evidence against Shankar and it is in my opinion wholly insufficient to justify his conviction upon a charge under section 120-B read with Section 302, of the Penal Code.

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*The confession made by Dr. Farchure on the 18th February 1948 speaks for itself:-

"I know Nathuram Godse since 1941. I knew him in connection with the 'Hindu Rashtra Dal'. I had known Mr. Nathuram Godse's name since 1939. I had been to Poona and Bombay to have talks with the workers of the Hindu Rashtra Dal as regards amalgamating the organisation, namely, the Hindu Rashtra Dal and the Hindu Rashtra Sena. At Poona I met Mr. Nathuram Godse and had discussions with him on the subject. We did not come to any agreement. Since then, I was not on good terms with him. On the night of the 27th January, 1948 at about 11 at night, when I had just gone to bed my eldest son, Milkant came to my room and told me that two guests have come. I told my son to open the door and let them come in and I shall come down immediately. I came downstairs and to my surprise I found the two guests to be Mr. Nathuram Godse and Mr. Narain Rao Apte. I asked them how is it that you have come without any previous intimation. My surprise was due to the fact that I did not expect Nathuram Godse at my house. Nathuram Godse said that he has come for some special

*P.256.

purpose. On the night of the 27th January, *1948, Mr. Godse and Apte told me the purpose for which they had come to me. Mr. Godse and Apte said that we are going to do some terrible feat before the 2nd February, 1948. That terrible feat was the killing plan of Gandhiji at Delhi. Then he showed me one revolver which he had brought with him, and told me to try to get a better revolver from someone at Gwalior. The trigger of the revolver that Mr. Godse and Apte brought with them was rather hard. He had about 5-6 rounds of ammunition with him. I told him that I have one pistol with me which I cannot under any circumstances part to anyone else. I told him on the night of the 27th January, 1948 that I will try, if possible, to get one revolver or pistol tomorrow. I offered Mr. Godse and Apte tea which Godse refused and then I went and slept undisturbed.

possible, to get one revolver or pistol tomorrow. I offered Mr. Godse and Apte tea which Godse refused and then I went and slept upstairs.

On the morning of the 28th January, 1948, I told Godse and Apte that I will call one of my workers and you have a talk with him regarding your requirements. I sent my son, Nilkant Parchure, and Roopa, my body-guard, to fetch Nanna Dandvate from Chatri Bazar. They both came back and said that he is not to be found. Then I went to my patients and to my dispensary at Patankar Bazar. I returned home from my dispensary at 12 noon and I saw *Nanna Dandvate along with Godse and Apte on the ground floor of my house. I had told Godse and Apte that in case Dandvate comes to my house during my absence, they can take (talk?) to him in confidence. I had told Godse and Apte that Dandvate is a man of my confidence and he will help them in their mission. During my absence Godse and Apte had talked to Dandvate about procuring a better and reliable arm for them. When I returned home from my dispensary on the afternoon of the 28th I found all of them examining one country-made revolver. I went upstairs to take off my clothes, etc. Godse, Apte and Dandvate took a trial of the country-made revolver in the left hand compound of my house. I heard one fire only. I was not with them when they were having a trial. Godse and Apte did not approve of the country-made revolver. The revolver was not properly working. The revolver was then returned to Dandvate. Godse and Apte said that they are going by mail and a revolver should be arranged before that time. I said I do not think it is possible to arrange a *revolver and you can go if you want to, whereupon they said that they can stay on till to-day night. We all dined together. After food, we had a talk on current political development. During the talk, both of them (Godse and Apte) said that Madan Lal who had thrown a bomb at Delhi near

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near the Prarthana Hall knows you. I said that I had never met nor heard of Madan Lal.

In the evening Dandvate came to my house with a pistol with him. From where he brought the pistol I do not know. This was an automatic pistol. Dandvate brought about 11-12 rounds of automatic pistol. Godse and Apte saw this automatic pistol and approved of it. Dandvate said that the price of this automatic pistol is Rs.500/-. Nanna Apte paid Rs.300/- to Dandvate and promised to pay the rest later on. Godse and Apte examined the automatic arrangement of the pistol brought by Dandvate and approved of this pistol. At 10-30 p.m. on the 28th January, 1948, Dandvate got a tonga and Godse and Apte left my house for the railway station. After Godse and Apte had gone to the railway station, I went to my bedroom and slept. Dandvate also went to his house. Next day, i.e., on the 29th *January, 1948, I mentioned to my elder brother Krishna Rao Parchure who is an Investment Secretary, Finance Department, that two gentlemen had come to me with a plan to kill Gandhiji at Delhi. I told him that I had arranged a pistol for them to kill Gandhiji at Delhi. He was shocked to hear this and said why you have bothered yourself in this affair.

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Mr. Malhukar Kale told me on the 30th January, 1948 at 6 p.m. as I was going to my dispensary on foot that some one had told him that news on radio has come about Gandhiji's murder. I went to my dispensary and after 15 minutes I closed the dispensary and returned home. I gave one rupee to my servant Rona to bring sweets from the bazar. 10-15 members of my Sena were at my house then. I distributed the sweets to them. I don't know whether the revolver that Godse and Apte brought with them remained with Godse and Apte or was given to Dandvate.

I had a broken sten-gun with me which I had kept with a friend

friend of mine at Morar. My friend's name is Ramakant Puranik, Custom Post Gordawas, Morar.

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*P.261.

*Dr. Parchure denies the correctness of circumstances appearing in evidence against him. He admits that the signatures on the various sheets of the confession were his but he explains that Major Chhatrey came to the cell accompanied by two or three police officers and a person whom he later came to know to be Mr. R. B. Atal. After Major Chhatrey had gone away Mr. Atal took six sheets of white paper with something written on and made the prisoner to sign those sheets without his knowing as to what was written on those sheets.

Dr. Parchure explains the circumstances in which the confession is said to have been signed by him. He states that at about midnight on the night of the 2nd February certain police officials took him into custody and lodged him in a solitary cell in the Fort at Gwalior. He was orally informed that he was being detained but the grounds of detention were not indicated to him and he was not produced before any Magistrate. The police officials behaved most rudely towards him; it was intensely cold in the Fort; the cell was pitch dark. For seventeen days he lived in that stone-walled room without any human company and without any amenities. Mr. Khizar Mohammad, an official *of the Gwalior C.I.D. paid daily visits to the Fort, gave him all sorts of threats of torture in an underground cell and said that he would wreak vengeance on him for his being a leader of the Hindus of Gwalior. Within three days of his arrival in the Fort Dr. Parchure began to have an intense pain in his joints, which got swollen. He started running temperature and pleaded for medical help, which unfortunately Mr. Khizar Mohammad refused to render. After some days the Fort Medical Officer sent him

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a mixture which afforded him a slight relief.

Eight or ten days after he had been taken to the Fort the Indian Union Police officials began to visit the cell and started interrogating him. They asked all sorts of questions and made all sorts of insinuations. On the very next day an officer of the Bombay Police whom he later came to know as Mr. Deulkar started giving him alternate doses of threats and advice. One of the threats was that all the members of his family were already taken in the custody of the police and that the said members were placed in conditions similar to the prisoner's. This officer advised repeatedly that the prisoner should sign the *statement that was prepared for him. He said that an India wide conspiracy had come to light in which thousands of arrests were being made, and he suggested that the prisoner should sign the statement by stating that he was to make his position as well as the position of his associates clear. This he added would save the prisoner and serve the object of the police. When the prisoner resisted Mr. Deulkar said: "Think of your family. All of you will suffer." The prisoner told him that he was prepared to admit that Nathuram visited his house on the 28th January but Mr. Deulkar said that that would not suffice. He added that the police had taken possession of the prisoner's pistol from his son Nilkanth and that they would not hesitate to substitute the pistol for the one recovered from Nathuram. This threat completely floored the prisoner. He lay awake for the whole night with his body in pain and his mind thoroughly demoralized. He thought of his wife, his children, his brother and his mother in the inhuman atmosphere of public custody. Tragically situated as he was with a number of express and implied threats held out to him he realized the horror of his position and inability to resist. He accordingly decided to sign *the statement. He complained to the Fort Commander that he was

*P.263.

*P.264.

being

being forced to sign a false statement on the threat of harassment to himself and the members of his family but the latter laconically replied that he could deny it in Court.

*Mr. Inamdar who appears for Dr. Parchure contends that the confession which is said to have been made by his client on the 18th February was under such circumstances that it should be held that it was caused by inducement, threat or promise proceeding from a person in authority. Dr. Parchure was arrested at Gwalior on the 2nd February and was taken straight to the Fort at Gwalior where he was kept in detention not upon a charge of murder which has now been brought against him but on some charge which has not been indicated. During the period of his detention in the Fort he was subjected to all kinds of indictment to which a reference has been made in his statement before the Court on the 18th February. Mr. R.B. Atal, Magistrate 1st Class went to the Fort and asked Dr. Parchure to affix his signatures to a confession which had already been recorded. The ground having already been prepared by the police officers who had been visiting the cell of Dr. Parchure incessantly ever since the date of his detention, Dr. Parchure was in such a condition of mind that he was unable to resist any suggestion that was made. *P. 265.

It is contended that the procedure adopted by Mr. Atal in recording the confession of Dr. Parchure inside his cell in the Fort and not within the premises of the Court room is a departure from the usual practice which has occasioned a great deal of prejudice to his client. Thirdly, it is contended that Dr. Parchure has made certain allegations in regard to the treatment which was accorded to him while he was in detention. He has not produced any evidence in support of these allegations but it is impossible for any person tragically situated as Dr. Parchure was

*P. 266.

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was to have witnesses available at hand to give evidence in his favour. According to Mr. Inamdar the only conclusion that may reasonably be drawn from the circumstances of the case is that Dr. Parchure was subjected to physical force or to such mental strain as was calculated to break his will power and to get his mind into a state in which he could readily yield to any suggestions that the officers cared to make.

*P.267.

Mr. Daphtary has endeavoured to reply to these arguments. He states that Dr. Parchure was undoubtedly taken to the Fort at Gwalior but that he was taken there under the force of circumstances. He was the head of the Hindu Masabha and it was necessary for the preservation of public peace and tranquillity that he should have been kept in military custody. In regard to the suggestion that the confession should have been recorded in the Court room of Mr. Atal it is stated that the confession was recorded in the Fort for reasons of security, as the State of Gwalior was in a condition of turmoil and it was apprehended that demonstration would take place if Dr. Parchure was brought to the Court. It is true that he was taken to the police station a short time before and that he was taken from the police station to a certain place where a sten gun was found, but it is explained that Dr. Parchure was taken in a closed van which did not excite any one's curiosity. If on the other hand, Dr. Parchure had been taken to the Court room the population of the town were almost certain to come to know of this fact and to make a demonstration inside or outside the premises of the Court house.

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In regard to the statement of Dr. Parchure and particularly in regard to the allegations that he was not properly treated while he was in detention, Mr. Daphtary contends that allegations of this kind are easy to make and difficult to refute. Dr. Parchure's confession was recorded on the 18th February 1948, but he did not retract this confession till the 30th July long after the proceedings in the case had started. Dr. Parchure

Parchure was represented by counsel in Court and these counsel must have been aware that a confession had been obtained from Dr. Parchure and was likely to be used against him. Notwithstanding this knowledge Dr. Parchure chose to keep his lips shut till after the Court had started recording evidence. It is alleged that if the confession had been retracted at the earliest possible opportunity, i.e., as soon as Dr. Parchure was produced before the Court, the prosecution would have been in a position to *ascertain from the several witnesses whether the confession had or had not been made absolutely voluntarily.

*p.269

In regard to the confession itself Mr. Daphtary contends that this document was not prepared by or with the connivance of the police and presented to Dr. Parchure for his signatures. Dr. Parchure is not a timid or an ignorant person. On the other hand, he is a person of education who occupies a responsible position in the life of Gwalior. He is the President of the Gwalior State Hindu Mahasabha and must, therefore, be deemed to be a person who can defend his own legitimate rights. The words of the confession show that he wants to clear himself and to clear the other members of his party. The expression "other members of his party" does not relate to Nathuram or Apte but to persons who had been working for the Hindu Mahasabha but who had been arrested at or about the same time as he himself.

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*Again, it was contended that the inducement, threat or promise must be in relation to the charge against an accused person. There is no evidence of any inducement or promise having been made to Dr. Parchure. Assuming for the sake of argument that the police told him that they would let his friends and relations go if he confessed that would not be a confession which could be ruled out of consideration on the ground that it had been improperly obtained. The only threat which could render the confession inadmissible in evidence is the

*P.271.

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the threat that if he did not confess he would be harassed. According to Mr. Daphtary there is not an iota of evidence on the file to justify the conclusion that any inducement, threat or promise was given to Dr. Parchure and the defence have not been able to indicate the nature of the so-called inducement, threat or promise. On the other hand, a perusal of the document makes it quite clear that it tends to inculcate Dr. Parchure but tries to exculpate the others. With regard to his brother, for example, he states as follows:-

*P.272.

"Next day, i.e., on the 29th January, *1948, I mentioned to my elder brother Krishna Rao Parchure who is an Investment Secretary, Finance Department, that two gentlemen had come to me with a plan to kill Gandhiji at Delhi. I told him that I had arranged a pistol for them to kill Gandhiji at Delhi. He was shocked to hear this and said 'Why you have bothered yourself in this affair'"

This statement it is contended does not show that he wanted to implicate anyone other than himself or that the police were interested in putting his relations into prison. The confession is a plain statement of facts. It contains no embroidery and no embellishment.

*P.273.

*Mr. Inamdar appears to have given an adequate explanation for the delay which was occasioned in retracting the confession. He states that Dr. Parchure appeared in Court on the 7th May. Mr. Inamdar interviewed him and was able to elicit the information that Dr. Parchure was ill when the confession was recorded and that the confession was taken down by a Magistrate who did not exercise jurisdiction in the fort. Mr. Inamdar was not in a position on the basis of this statement to retract the confession and he wanted to make certain of the position that

that he ought to take after a perusal of the confession itself. The confession had not come in Court till the 3rd June 1948 and he asked the Reader of the Court to apprise him of its arrival as soon as it was received. On the 3rd June the case was adjourned to the 14th and on this latter date Mr. Inamdar forgot to look for the confession as the evidence of the Gwalior witnesses was placed in his hands and he spent the whole day in obtaining instructions from Dr. Parchure. On the 22nd June the accused were present before the Court and the charges were read over. Dr. Parchure pleaded not guilty, and thus denied by implication the truth and voluntariness of the confession. On the 24th June, the Court inspected the spot and on the 26th June Mr. Inamdar put in a written application for the inspection of the record. Inspection was allowed on the 1st July. Two defects manifested themselves at once, namely, (a) that there was nothing on the face of the confession to indicate that the confession was recorded in the fort, and (b) that there was nothing to show that Dr. Parchure was ill on the date on which the confession was made. He made enquiries from Gwalior and made an application on the 13th January in which the confession was formally retracted.

Ordinarily a statement made by a person against his own interest is admissible against him, but judicial experience makes it quite clear that under certain circumstances a person is likely to say that which is not true if he thinks it to his advantage to do so. Thus a person who is arrested under a capital charge may be induced to confess himself guilty of the murder he never committed if he is assured of a pardon being granted to him. *Similarly a person who is subjected to torture or to other inhuman treatment may wish to make a false acknowledgment of guilt in the hope of obtaining immediate relief

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relief from suffering which his confession may be able to procure for him. It is for this reason that the legislature has in its wisdom has enacted that a confession made by a prisoner is irrelevant. ~~is~~ the making of the confession appears to have been caused by inducement, threat or promise. A confession cannot be excluded on the ground that the admission of the confession would involve a breach of confidence or of good faith or on the ground that the person to whom it was made took on an oath of secrecy or on the ground that the method by which it was obtained ~~was~~ illegal. A confession is received in evidence or rejected according as it is or is not entitled to credit. The use of the expression "appears" in section 24 shows that the legislature does not require positive proof within the definition of section 3 of the Evidence Act of improper inducement to justify the rejection of the confession. In the well-known case of R-----Vs-----Thompson (1893, 2 Q.B.12) it was *held that in order that evidence of a confession by a prisoner may be admissible, it must be affirmatively proved that such confession was free and voluntary, that is, was not preceded by any inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed.

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A retracted confession is always a source of great anxiety to criminal Courts all over the world and particularly to criminal Courts in this country where the police administration has degraded itself by crude methods. In Queen---Vs---Thompson to which a reference has already been made, Cave J. observed as follows:—

*I would add that for my part I always suspect these confessions, which are supposed to be the offspring of penitence and remorse, and which nevertheless

nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory; but, when it is not clear and satisfactory, the prisoner is not unfrequently alleged to have been seized with the desire *born of penitence and remorse to supplement it with a confession; - a desire which vanishes as soon as he appears in a Court of justice."

*P.277

In R----Vs----Gobardhan (9 All. 528, 566) Brodharst J. made the following pertinent observations:•

"Confessions

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"Confessions made some days after arrest may also often be true, but such confessions will, I believe, in almost every instance not have been made voluntarily, but have been extorted by maltreatment, or induced by promise of pardon on being made a witness for the Crown. Confessions obtained after illegal detention by the police must be regarded with great suspicion. Confessions in this country are often obtained by undue influence, especially by the police, and this fact has been the subject of frequent judicial and public comment."

After going carefully through the arguments which have been addressed to us by the learned counsel in the present case I am in considerable doubt as to the genuineness of the confession. If the facts mentioned by Dr. Parchure in his statement before the trial Court are true, it seems to me that they are sufficient to have created the -----

impression

impression on his mind that he and the members of the family were likely to be harassed. Again, if his statement is true, the police officers *subjected him to the pressure of a procedure which is wholly unauthorised by the law of the land. The length of the time for which Dr. Parchure was detained, the place in which he was kept and the manner in which he was interrogated lead me to doubt the genuineness of the confession.

*P.278.

Even if a confession is retracted, it is open to the Court, after consideration of the whole evidence in the case, to come to the conclusion that the confession is true provided the confession is corroborated in material particulars by credible independent evidence.

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* The prosecution allege that on the 27th January Nathuram and Apte left Delhi by the Bombay-Amritsar Express and reached Gwalior at 11-50 p.m. They spent the night in the house of Dr.Parchure and held consultations with him and Dandwate, the absconding accused, and obtained a pistol which was used in the assassination of Mahatma Gandhi. As soon as Dr.Parchure heard about the death of Mahatma Gandhi he expressed his jubilation at the event by distribution of sweets and by making deprecatory remarks in regard to the murdered man.

Nathuram and Apte admit having visited Dr.Parchure at Gwalior but they state that they went there by train which reached Gwalior at 5 o'clock on the morning of the 28th and not at 11-50 p.m. on the night of the 27th.They deny having stayed in the house of Dr.Parchure but they admit that they paid two visits to his house, one at 10 o'clock in the morning and the other at 4 o'clock in the afternoon. They undertook the journey to Gwalior not with the object of enlisting the aid of Dr.Parchure in the assassination of Mahatma Gandhi or for the purpose of procuring a pistol with which the crime was to be perpetrated but with the object of obtaining volunteers from Gwalior for staging a peaceful demonstration in the presence of Mahatma Gandhi.

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Two witnesses have appeared in Court to testify to the fact that Nathuram and Apte did in fact arrive by the Grand Trunk Express reaching Gwalior at 22-38 p.m.

According to the testimony of Ghariba (P.W.43) a tonga driver of Ishkar, two or three days before the assassination of Mahatma Gandhi two passengers got down from the Bombay-Express and came out of the first and second class gate. At about 11-30 p.m. they asked the witness to take them in his tonga to the house of Dr. Parchure agreeing to pay a sum of Re.1/- by way of fare.

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The tonga had travelled only a few yards when the straps of the harness of the horse got broken, and the witness accordingly handed over the two passengers to another tongawala by the name of Jumma P.W.44. Jumma took the passengers to the house of Dr. Parchure and was paid a sum of Rs.1/2/- on account of the fare. Some eight days after the assassination of Mahatma Gandhi Inspector Mandlik happened to return from Delhi by the train which reaches Gwalior at about 5 o'clock in the morning. He engaged the tonga of Ghariba (P.W.43). He entered into conversation with the tonga-driver and was informed by him that a rumour was afloat in the town that two persons who had stayed at the house of Dr. Parchure were concerned in the assassination of Mahatma Gandhi. The tongawala stated further that the two passengers who had got down at the railway station were taken to the house of Dr. Parchure in the tonga of Jumma. Both these witnesses, namely, Ghariba and Jumma were taken to Bombay on or about the 9th April for the identification of the passengers who had been taken to the house of Dr. Parchure. Ghariba identified both Nathuram and Apte correctly while Jumma identified only Nathuram and failed to identify Apte and picked up a wrong person instead. A considerable amount of controversy raged round the particular train by which Nathuram and Apte arrived in Gwalior. The tonga drivers stated that they arrived by the Bombay Amritsar Express which reached Gwalior at 11-50 p.m. If these two prisoners arrived at 11-50 they could not have engaged the tonga at 11-30 p.m. no satisfactory explanation has been given as to why they should have kept on waiting at the railway station for an hour or so before engaging the tonga.

Both these witnesses are unanimous in stating that these two prisoners took their tongas at 11.30 p.m. and I am inclined to accept their testimony. Nathuram and Apte admit that they were in Gwalior on the 28th. The police had no object in antedating their arrival. If they had arrived at 5 o'clock on the morning of the 28th they would have produced witnesses

to

to say that they arrived at that hour. The police could have had no object in antedating their arrival. There was a full moon in the sky and they had ample opportunity of seeing the features of the passengers.

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* The story in regard to the incidents which took place at Gwalior on the 28th January and subsequent dates has been narrated by Mr.M.K.Kale (P.W.50), who is employed as a clerk in an office at Gwalior. On the 28th January 1948 he asked his official superior for permission to leave office at about 12 noon as he wanted to withdraw some money from the bank. This permission was accorded. On his way to his house he happened to pass in front of the house of Dr.Parchure at 12-33 p.m. and entered it with the object of ascertaining the steps that the Hindu Mahasabha was going to take in consequence of power having been transferred to the Congress on the 24th January 1948 in spite of the agreement arrived at between the Hindu Mahasabha and the Maharaja of Gwalior. Dr.Parchure was sitting on an easy chair in the hall of his house with three other persons, namely, Nathuram, Apte and Dandwate. Nathuram and Apte were trying the triggers of two revolvers which they had in their hands. They were unable to press the triggers and they accordingly asked Dandwate to arrange a pistol for them. Dandwate said that the revolvers were in a serviceable condition and that he could show them as to how to press the triggers. Dandwate * accordingly took these persons to the courtyard and the witness accompanied them to the courtyard. Dandwate then got a cartridge from one of those two persons, loaded a revolver and fired in the sky. Nathuram and Apte then tried to fire the revolver after reloading it but the revolver failed to function. They asked Dandwate to get them a revolver as soon as possible as their party had already left and they were to leave by the 2-30 or 3 p.m.train. Dandwate said that

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he
/could arrange a revolver by the evening and that they could leave by the night train. This conversation took place in the courtyard in the absence of Dr.Parchure. The revolvers which were being tried appeared to the witness to be country made revolvers. Nathuran, Apte, Dandwate and the witness then went to the private room of Dr.Parchure on the upper storey of the house. Dandwate suggested to Dr.Parchure that he should hand over his registered pistol to the two visitors but Dr. Parchure replied that he was not such a fool as to hand over his licensed pistol to anybody. The party then came down into the hall and discussed Gwalior politics. *In the course of this discussion Dr.Parchure wondered what steps ought to be taken by him as the Maharaja had disregarded the agreement that he had entered into between the Maharaja and the Hindu Mahasabha. He was opposed to the principles advocated by the Congress but did not carry his opposition to the point of violence. The witness left the house of Dr.Parchure at 1-40 p.m. proceeded to the bank (which is at a distance of about a mile from the house of Dr.Parchure) withdrew the money and went back to his house. On the 29th January he came to know from Nilkantha Parchure son of Dr.Parchure that the two persons who had come to the house of Dr. Parchure on the preceding day were Nathuran Vinayak and Apte. *P.285

The news of Mahatma Gandhi's assassination was broadcast to the world shortly after the perpetration of the outrage at about 5 o'clock on the afternoon of the 30th January. The conduct of Dr.Parchure on the receipt of this news aroused the suspicions of a number of persons, among others being M.K.Kale (P.W.50), M.B.Khire (P.W.51), Randayal Singh (P.W.52) and Jagannath Singh (P.W.53). Kale met Dr. Parchure at about 6 p.m. on the 30th January in front of the Naranta Boarding House. He told Dr.Parchure that it had been heard on the radio that Mahatma Gandhi had died. The latter enquired of the witness whether Mahatma Gandhi had died or had been murdered. The witness replied that the news *P.286

news received was that of his death and that it was not clear whether he had died or had been murdered. The witness then accompanied Dr. Parchure to his dispensary and while he was sitting with Dr. Parchure in the dispensary one Madhukar Khire also arrived. A rumour thereafter became afloat that Mahatma Gandhi had been assassinated. The witness asked Dr. Parchure to close his shop and the latter agreed to close it. The witness then went back to his house. On the following day the witness heard that Nathuram Vinayak was the perpetrator of the crime. Putting two and two together he told his friends that the person must be Nathuram Vinayak Godse. He narrated the entire story to his mother on the 1st February and to Gangadhar Patwardhan and Shankar Pawar on the 2nd February. Madhukar Khire also visited him at his house on the 2nd February and he narrated the entire story to him. Gangadhar Patwardhan told the witness that he knew the entire story and *pressed the witness to communicate the facts to Government. Patwardhan brought a car and took Madhukar Khire and the witness to the house of the Home Minister of the Gwalior State. The witness stated the facts and was immediately put under arrest. He was taken for purposes of identification to Bombay and he identified Nathuram and Apte in an identification.

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The statement of M.K.Kale has been corroborated to an extent by the statements of Mr. J.P. Goel (P.W.39), a clerk in the War Profits Tax Department and M.B. Khire (P.W.51) a student of the Gwalior State. Goel states that at about 9 o'clock on the morning of the 28th January one Rupa, a bodyguard of Dr. Parchure, went to the house of the witness and asked him to see Dr. Parchure in his dispensary as soon as possible. The witness went to Dr. Parchure's dispensary at 10.30 a.m and saw Nathuram and Apte sitting there. Dr. Parchure was not in the dispensary at the time and the witness who was in a hurry to get to his office left the dispensary. At about 9 o'clock the same evening Dandwate went to

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the-178- sc of the witness and told him that Nathuram was anxious to obtain a pistol and suggested that the witness could sell his pistol to *him. The witness was somewhat reluctant to part with the weapon as he had only one pistol with him at the time but he overcame his reluctance when Dandwate told him that he could get a sum of Rs.500/- for his pistol and could easily buy another for that amount. The witness handed over his pistol to Dandwate and went off to sleep. Dandwate, however, called again about an hour later, i.e. at about 10 p.m. He gave the witness a country made revolver and a sum of Rs.300/-. The witness refused to accept the revolver and the money and asked Dandwate either to pay him a sum of Rs.500/- or to give his pistol back to him. The witness met Dr.Parchure on the 2nd February 1948 after Mahatma Gandhi had been assassinated and told him that his pistol had not been put to a proper use. Dr.Parchure made no answer.

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The statement of Kale has also been corroborated by that of M.B.Khire (P.W.51). On hearing of the news of the death of Mahatma Gandhi this witness proceeded to the dispensary of Dr.Parchure and had a talk with him. He told him that on account of the death of Mahatma Gandhi *it would not be possible for them to continue opposing the principles held by him. Dr.Parchure thereon asked if the witness wanted his wife to be offered to Mahatma Gandhi. The witness asked Dr.Parchure as to who could have committed the murder of Mahatma Gandhi and Dr.Parchure replied that the person who had committed the murder must be one like themselves. The witness asked Dr.Parchure to close the dispensary and the latter closed it. Dr.Parchure and the witness then left for their respective houses. On the way he changed his mind and accompanied Dr. Parchure to the Rajput Boarding House. One of them called out to Ramdayal Singh, President of the Rajput Sewa Sangh and when Ramdayal Singh came Dr. Parchure said that he had completed his work and that

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Ramdayal

Ramdayal Singh was to complete the rest of the work. Dr. Parchure thereafter said that their movement must end in success. There was no further conversation between Dr. Parchure and Ramdayal Singh. Dr. Parchure came out of the Boarding House and both Dr. Parchure and the witness proceeded to the residence of Dr. Parchure. When they reached the house the radio was on. Some sweets were brought by Rupa in the presence of the witness and these sweets were distributed amongst *those present. The members of the family of Dr. Parchure were listening to the radio.

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The statement of Khire finds corroboration in the testimony of Ramdayal Singh P.W.52 and Jagannath Singh P.W.53.

P.W.52 Ramdayal Singh who is President of the Rajput Sewa Sang deposes that Dr. Parchure came to the Rajput Sewa Singh at about 7 or 7.30 p.m. on the 30th January while he was having a talk with his friends prior to the holding of a condolence meeting which was to be held in the Hall of the Boarding House. Dr. Parchure came along with two persons and said that a good deed has been done, that the opponent of the Hindu religion had been killed, that the Hindu religion would now remain safe, that the man who had killed Gandhi Ji was their own man, that the pistol with which the crime was committed had been sent from Gwalior and that the person had come from the South. Jagannath Singh P.W.53 who happened to be present at the time asked Dr. Parchure had gone away Ramdayal Singh told Jagannath Singh that Dr. Parchure *was in the habit of taking credit for himself for whatever had taken place. Jagannath Singh replied that there might be something in what Dr. Parchure had said for he had met Dr. Parchure in the morning when the latter had made

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made a statement to him which led him to think so.

P.W.53 Jagannath Singh a Forest Contractor and a Zamindar corroborates Randayal Singh but attributes certain statements to Dr.Parchure which are not attributed either by Khiro or Randayal Singh. He states:-

"Dr.Parchure came and said that one of his work had been completed. He further said that he (Mahtama Gandhi) was a traitor to the Hindur religion and was an 'Autar' of Aurangzeb. He further said that the assailant was his own man and had come from the South. He further said that that person had taken a pistol from there. He further said that Madan Lal who had thrown the bomb was also person from there".

It is contended on behalf of Dr.Parchure that Kale has spun out a long yarn with the object of maintaining his position as a servant of the State, of gratifying his desire for revenge, of complying with the wishes of the police, and of saving his own skin. He passed his B.A.in 1947 and got an employment in the State on 19th May 1947. He is a *petty official in the Gwalior State and cannot afford to annoy the political party in power which is antagonistic to Dr.Parchure who is the head of a rival party. As pointed out by J.P.Goyel (P.W.39) the Congress Party in Gwalior which is holding the reins of Government at present is in opposition to the **Hindu Sabha** of which Dr.Parchure is a leading member. Kale and the other members of his family are in straightened circumstances and can ill afford to incur the displeasure of the party in power. Kale's father who was a Medical Officer in the employ of the State died at the age of 45 and the State is giving a compassionate allowance to his widow and an educational allowance to his daughter who is studying in the Lady Hardinge Medical College at Delhi. The relations between Kale on the one hand and Dr.Parchure on the other

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have
 been strained for the last several years. Kale
 became a member of the Hindu Rashtra Sena of which
 Dr. Parchure is the head in the year 1941. Later, in
 the same year he entered State service and was
 immediately warned by his official superior that his
 *P.293 *allegiance to the Hindu Rashtra Sena was incompati-

ble with his allegiance to the State. In order to
 ingratiate himself with official superiors he ceased
 attending the parades of the Sena and started acting
 against the interests of the Sena. Dr. Parchure resented

this attitude on his part and as the witness

himself admits made it plain to him that his presence
 at the parades was no longer required. It seems to be

extremely improbable therefore that he would have paid

a visit to the house of Dr. Parchure on that particular

day when he had been distinctly warned by his official

superiors and by Dr. Parchure himself not to visit

Parchure's house. It is difficult to believe that

person would absent himself from office from 12 noon

onwards, with no other object than of being able to

draw money from a bank. No reason has been shown why

it became necessary for the witness to draw money

from the bank on the very same day on which Nathuram

and Apte happened to visit Gwalior.

Again, it is improbable that Dr. Parchure would

permit the witness to enter his house when he was

seriously engaged in procuring a revolver or a pistol

for the assassination of Mahatma Gandhi. It is still

more improbable that Nathuram and Apte who knew the

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*mission which had brought them to Gwalior would

have talked without restraint in the presence of

a stranger or had tried out their revolvers in the

courtyard of the house. The fact that the witness gives

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the precise hour and minute of his arrival in the house of Dr. Parchure (12.33 p.m.) and the precise hour and minute of his departure from the said house, namely, 1-40 p.m. appears to show that the story narrated by him is a fabricated one. It is difficult to believe that if this witness did actually take leave of absence from his office with the object of withdrawing money from the bank he would have spent one hour and ten minutes in the house of Dr. Parchure and thus run the risk of the bank closing down for the day. Moreover he had told his official superiors that he would not be able to return to office as he did not know how much time was likely to be taken at the bank. It must be remembered that the house of Dr. Parchure is not on the way to the Bank and that the Bank is at a distance of a mile and a half from the said house. The witness went to the house of Dr. Parchure with the ostensible *object of making an enquiry as to the action the Hindu Mahasabha were proposing to take in connection with the Maharaja's decision to ^{hand} over power to the Congress in contravention of the assurance given to the Hindu Mahasabha. If the Mahasabha had already staged a demonstration against the State on the 24th January the purpose with which this witness went to the house of Dr. Parchure cannot be easily understood. It is significant that Gangadhar Patwardhan with whom the witness is said to have had a talk is a police informer who stands to gain considerably by procuring the conviction of Dr. Parchure. The witness admits that when Gangadhar Patwardhan came to the house of the witness he indicated his belief to the witness that he, the witness knew the whole story. Again, it is significant that another witness who has been produced to support the story of this witness is M.E. Khire (P.W.51) who lives in the upper storey of the house in which

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Patwardhan resides. The witness was arrested at 2.30 a.m. on the 3rd February within a few hours of his having made a statement to the Home Minister of the Gwalior State. He was detained in custody at the Police Station of Girid from the 3rd February to the 11th March. He was taken to Bombay while he was in police custody and was kept in the Police Station at Worli under the supervision of Sub Inspector Mandalik who has played an important part in connection with this case. It is argued with a considerable amount of Justification that this witness was detained in order that he should be coerced into making a statement which the police wanted him to make.

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Apart from the fact that the story narrated by Kale is inherently improbable it seems to me that it is at variance with the story narrated by Khire. Kale states that on the evening of the 30th January he met Dr.Parchure in front of the Marahta Boarding House and accompanied him to the dispensary. It is said that while Dr.Parchure and Kale were talking to each other in the dispensary Khire also arrived. Dr.Parchure, Kale and Khire then went to the petrol pump. Kale states that Khire left at this stage. Khire, however, states that Kale left while Dr.Parchure and Khire went to the Rajput Boarding House where they had a talk with Ramdayal Singh and Jagannath Singh. If Kale was in the company of Dr.Parchure and Khire on the evening of the * 30th January and if he accompanied Dr.Parchure to his house that day he could not possibly have said that Khire left them at the petrol pump. Khire states that Dr. Parchure went to the Rajput Boarding House and had a talk with Ramdayal Singh and Jagannath Singh and he is supported in this by these two witnesses. It is obvious in the circumstances that either Kale or Khire, Ramdayal Singh

Ramdayal Singh and Jagannath Singh are making incorrect statements. Kale's name does not appear in the confession of Dr.Parchure.

The fact that Kale is a Government servant, the fact that his mother and sister are the recipients of the bounty of the State, the fact that it is improbable in view of the relations between Dr.Parchure on the one hand and Kale on the other that Kale visited the house of Dr.Parchure, the fact that he was arrested on the 3rd February and kept in detention till the 11th March and the fact that the police extorted an improper confession from Dr.Parchure throw a considerable doubt on the veracity of this witness. If his statement is eliminated from consideration there is no corroboration whatsoever of the confession so far as the incident of the 28th January is concerned.

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It is true that Kale was able to identify Nathuram and *P.298 Apte in an identification parade which was held at Bombay, but this fact alone would not show that Kale saw these two prisoners in the house of Dr.Parchure in the manner and in the circumstances alleged by him. Both Nathuram and Apte admit having gone to Gwalior and Kale may well have seen them there. The identification by this witness cannot, therefore, be regarded as a circumstance supporting the confession.

And what about the evidence of the other witnesses from Gwalior who were examined to corroborate the confession? Dandwate is said to have procured a pistol from J.F.Goyal (P.W.39) and to have given him a revolver and a sum of Rs.200/- in exchange. The revolver has not been produced in court and the explanation that has been given for its non-production is that Goyal declined to accept a revolver and the money in exchange for his pistol. The Police visited his house on 3rd February 1948, but

but he ran away by the back door and remained absconding till 11th April 1948. He remained in custody till 6th May 1948.

The fact that this witness ran away from his house as soon as the police arrived appears to indicate that there may be some truth in the story that the pistol with which Mahatma Gandhi was assassinated belonged to him and was taken away from him by Dandwate or someone else. Even if that pistol was taken away it would prove only that Nathuran and Apte came to Gwalior to look for a weapon: it would not show that they disclosed their secret to Dr. Parchure. In my opinion it was entirely unnecessary to do so. There is no evidence to show that the pistol which is said to have been taken belongs to Goyal. He does not give any identification marks of the weapon which he claims to be his own property. The charge under section 302 was hanging like a sword of Damocles over his head and could have induced him to manufacture as many falsehoods as were required for the success of the case.

When the confession made by Dr. Parchure has been found to have been induced by threat or coercion and when the statement of Kale has been found to be false and fabricated, it is scarcely necessary to make a detailed examination of the statements of Khire, Ramdayal Singh and Jagannath Singh. Khire is obviously under the thumb of the police, for he is related to Patwardhan police informer and is living in the same house as Patwardhan who was responsible for the apprehension and detention of Kale. Even if the evidence of these three witnesses, namely, Khire, Ramdayal Singh and Jagannath Singh were accepted at its face value, it would not in my opinion be sufficient to bring the guilt home to Dr. Parchure. The latter may have indulged in loose talk and may even have been gratified over the death of Mahatma Gandhi but that fact alone would not show that he had conspired to kill the Mahatma.

I am of the opinion that the confession was induced by improper means and is not admissible in evidence against Dr. Parchure. Even, if it were, I am of the opinion that it has not been corroborated in material particulars and ought not to be acted upon. The statements of Kale and the other witnesses from Gwalior are perfectly valueless.

* Towards the conclusion of his judgment the learned Special Judge has made certain observations which appear to indicate that if the police had been more **vigilant** in the discharge of their duties the tragedy which overtook Mahatma Gandhi on the 30th January may well have been averted. Mr. Daphtary contends that these observations are not warranted by the evidence on the record. *P.301

It is a fundamental legal principle that no one is to be condemned unless he has had an opportunity of being heard. Not a single question was put to any of the police officers with the object of ascertaining **whether** it was possible for them to save the life of Mahatma Gandhi and if so why the appropriate measures were not taken in this behalf. Had that question been put and had an unsatisfactory answer been returned the learned Special Judge would have been fully justified in making **the** observation that he made. That question was not put. The result therefore is that we are travelling in the realm of **conjecture**, because there is no proper evidence on the file on the basis of which it is possible to say with any degree of confidence * whether the police were or were not negligent in the discharge of their duties. *P.302

Even on merits it seems to me that the remarks are not justified. It is common ground that the very first occasion on which the authorities came to know about this particular conspiracy was at about 4 o'clock on the afternoon of the 20th January when Dr. Jain met Mr.

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Kher and Mr. Morarji Desai by appointment at the Civil Secretariat at Bombay. He told then that Madanlal who was responsible for the explosion of the 20th January was a refugee from the Punjab whom Dr. Jain had endeavoured to help; that before leaving for Delhi Madanlal had discussions with him; that Madanlal had told him that he (Madanlal) and his friends had decided to take the life of a great leader whose name he later stated to be Mahatma Gandhi; that Dr. Jain had tried to dissuade Madanlal from his wild talk and wild plan; that Madanlal had introduced to Dr. Jain a person by the name of Karkare with whom Madanlal was working in Ahmednagar and who was on friendly terms with him; that Madanlal had spoken about his exploits at Ahmednagar; that Madanlal had told him that Karkare had taken Madanlal to Savarkar; that Savarkar had a long talk with him for about two hours and that Savarkar had praised him for what he had done, had patted him on his back and had asked him to carry on; that Madanlal had said that there was a dump of arms, ammunition and explosives at Ahmednagar and that Madanlal and his companions were to proceed to Delhi to carry out the objects of the conspiracy. Mr. Desai asked Dr. Jain as to why he did not tell him all about it immediately after he had come to know of it. Jain replied that refugees were in the habit of talking wildly and he believed that he had dissuaded Madanlal from doing what he had intended to do.

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On receipt of this information Mr. Desai acted with commendable promptitude. He sent immediately for Mr. Nagarvala, Officer in charge of the Intelligence Branch. Mr. Nagarvala was unable to come at once as he was busy at the time, and Mr. Desai accordingly asked him to see Mr. Desai at the railway station as he was leaving Bombay for Ahmedabad the same night. Mr. Nagarvala came to the railway station

station at about 8-15 p.m. and Mr. Desai told him what Dr. Jain had said and asked him to take action in the matter. He asked Mr. Nagarvala to arrest Karkare, to keep a close watch on Savarkar's house and his movements and to find out the names of the persons who were involved in the plot. Mr. Desai reached Ahmedabad on the morning of the 22nd January and repeated to Sardar Vallabhbhai Patel the story that had been narrated to him by Dr. Jain. *P.304

Mr. Nagarvala complied with the instructions without loss of time. He organised an unobtrusive watch over the house of Savarkar from 5-30 p.m. that evening. He made arrangements for locating and arresting Karkare. He made enquiries from the Ahmednagar police with the object of ascertaining whether Karkare whose detention had been ordered under the Public Security Measures Act 10 or 15 days before had been arrested. He contacted various informants of his to locate and apprehend Karkare and his associates. He also issued similar instructions to the various officials under him as he was giving top most priority to this particular enquiry.

In the meantime enquiries were being made from Madanlal by the Police at Delhi. He was interrogated by the Police immediately after his arrest on the 20th, but the enquiries do not appear to have revealed any useful information except in regard to Karkare. On being questioned under section 342 of the Code of Criminal Procedure Madan Lal stated as follows:- *P.305

" The police asked me names of the co-workers of Badge who were putting up in the Marina Hotel. I told them that I did not know their names. I told them that Badge had had told me that the co-workers were staying in a corner room on the first floor of the Marina Hotel."

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The police rushed to the Marina Hotel with the object of apprehending the conspirators. When they reached there they found that the birds had flown. Enquiries were made as to the persons who were occupying the corner room on the first floor but the only information that the management of the hotel could supply to the police was that two persons who had stayed under the names of M.Deshpande and S.Deshpande had settled their bills and had left the hotel immediately after the explosion in such haste they did not even care to take their clothes with them. The Police then visited the room in the Hindu Mahasabha Bhawan which was said to have been occupied by Badge, Shankar, Madanlal and Gopal. This room was empty and deserted for Badge and Shankar had quitted the place almost immediately after the explosion. And what about Karkare and Gopal ? Enquiry was made at the Sharif Hotel but no information could be obtained as to the whereabouts of Mr.B.M.Bias who had stayed there from the 17th to the 19th January and who had left the Hotel a day before the explosion. So far as can be judged even Madanlal did not know where his confederates had gone. Gopal was in Delhi but he too made himself scarce after the explosion. He did not dare go back to the Hindu Mahasabha Office where he was staying the previous night, for he did not know that Madanlal would not denounce him to the authorities. Both Karkare and Gopal are said to have spent the night of the 20th in the Frontier Hindu Hotel under the assumed names of G.M.Joshi and Rajugopalam. On the 21st January the position was that although the police were aware of the existence of a conspiracy to assassinate Mahatma Gandhi, the only conspirators who were known to them were Badge, Karkare and Madanlal. A Deputy Superintendent and an Inspector * of Police left Delhi

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by air and reached Bombay on the 22nd. They desired the arrest of Karkare and his conspirators in connection with the bomb explosion. They stayed in Bombay till the 23rd and after their departure Mr. Nagarvala continued the search for Karkare and his associates, if any. Karkare was not known to the Bombay City Police. On certain information received by him he issued instructions for the arrest of Badge on or about the 24th January. Mr. Rana D.I.G. C.I.D. whose headquarters are in Poona came to Bombay on the 27th January and reported developments to him. On the same day Mr. Nagarvala had a telephonic conversation with the Director of Intelligence Bureau, Delhi to whom also the developments had been reported. Unfortunately Badge could not be traced till the 31st a day after the tragedy had been enacted at Birla House. The fatal shots were not fired either by Badge or by Karkare or by Madanlal and even if they had been arrested immediately after the explosion the tragedy could not be averted. The evidence on record does not show that the names of the other conspirators were known. If their names were not known the police could not very well put them under arrest.

* The movements of Karkare, Badge and Shankar during the crucial period commencing with the 20th and ending with the 30th January are not known. Karkare is said to have gone to the Frontier Hindu Hotel on the 20th January, to have spent the night of the 20th January in that hotel and to have left that hotel on the 21st. He was seen at the house of Mr. G.M. Joshi at Thana on the 25th and at the railway station at Delhi on the 29th. He was not known to the Bombay Police. He did not visit his regular haunts or if he did, his haunts were not known to

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the Bombay Police. Badge and Shankar could certainly have been arrested if they had gone back to Poona for they were well known to the police. Orders for the arrest of Badge were issued on or about the 24th and Mr. Rana came to see Mr. Nagarvala at Bombay on the 27th in connection with the arrest. It is impossible to believe that if he had been anywhere near his house he would not have been arrested. He was arrested on the 31st when he was returning from a certain temple where he was presumably concealing himself. Shankar was arrested near Bhaleshwar on the 6th February. He too was arrested at a * place where he was not expected to be.

*.P.309

The only person who could have been arrested if the police wanted to arrest him was Gopal younger brother of Nathuram. This prisoner was at the Frontier Hindu Hotel on the 20th January, in the Elphinstone Annexe Hotel for a short time on or about the 24th and in Thana on the 25th January. Neither the Elphinstone Hotel Bombay nor the house of Mr. G.M. Joshi at Thana are places which he was known to visit but in any case the police could not know that he was concerned in the crime. On the following day, i.e. on the 26th January he went and rejoined his appointment. He could obviously have been arrested on that day if the police had been aware that he was a member of this conspiracy but the police were not aware of this fact and he continued to be at large for a few days more. As soon as it was known that Mahatma Gandhi was the victim of a murderous assault furious mobs attacked the houses of persons who were said to be concerned in the crime. The house of Mr. Savarkar was attacked and was strewn with broken glasses and other missiles. The life of Gopal who was known to be a brother of the assassin *was in imminent danger and police protection had to be given to prevent him from

* P.310

from

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from being lynched. He was rushed off to his native village where prejudice against him was probably not as strong as in the neighbourhood of Poona. He was arrested near Uksan on the 5th February, his name having probably been supplied by Badge who was arrested on the 31st January or by Madanlal who was brought from Delhi to Bombay on or about the 4th February.

And what about the movements of Nathuram and Apte? Nathuram and Apte left Delhi for Kanpur by train on the night of the 20th and stayed in a retiring room at the railway station at Kanpur on the 21st. They did not supply their names to the Booking Clerk. They left Kanpur on the 22nd and reached Bombay on the 23rd. They went to the Arya Pathik Ashram at about 9 p.m. and Apte asked for a room with two beds in the name of D.Narayan. No room with two beds was available but they were allotted two beds in a room containing eight beds. They left their luggage in that room and returned to the Ashram at 1 o'clock in the night. The accommodation provided for them was not suitable and Nathuram and Apte shifted to the Elphinstone Annexe *Hotel on the 24th. They stayed there under the assumed *P.311 names of N.Vinayakrao and a friend. At about 6.30 a.m. on the 27th January, they left Delhi by air under the assumed names of D.Narayanrao and N.Vinayakrao. They left Delhi the same afternoon, reached Gwalior at night, spent the 28th January in Gwalior and returned to Delhi on the morning of the 29th. Nathuram and Apte stayed in a retiring room of the railway station at Delhi on the 29th and for a part of the 30th which had been booked by Nathuram in the name of N.Vinayakrao. On the 30th January, Nathuram went to the prayer meeting

armed

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armed with a pistol and fired at Mahatma Gandhi. It was impossible for any police officer, however capable and efficient he might have been, to have prevented Nathuram from committing the crime on which he had set his heart. He was going about from place to place under assumed names, not staying in any one place for more than a day or two and it was impossible for any police officer to catch hold of him particularly if he was not known or suspected to be a co-conspirator. Apte was going about with Nathuram all the time. He too travelled about under assumed names.

*.P.312

Even if the police were aware on the night of the 20th that Nathuram and Apte were concerned in the conspiracy it is extremely doubtful if they could have stopped them from achieving their end.

The police did all that was reasonably possible to do. Immediately after the explosion the police appear to have sent a number of persons to various

railway

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railway stations in order to prevent the suspects from escaping by train. Badge states that as soon as the tonga carrying him and his servant Shankar reached the railway station New Delhi and as soon as he had purchased 2 third class tickets from Delhi to poona he found a great commotion on the platform. The police were moving about. Sensing danger to himself he came out of the platform, got into a tonga and set off for the railway station at Delhi. He slipped through their fingers because the police do not appear to have known till that hour that he was concerned in the crime. Nor did they know anything about Nathuram or Apte. If the statement of Madanlal is correct that he did not know the names of the conspirators and did not supply them to the police it is idle to contend that the police could have prevented the tragedy notwithstanding the

reticence

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*P.313

*reticence of Madanlal. Nathuram had made up his mind and was prepared to risk his life in order to take that of Mahatma Gandhi. He took the risk of entering the premises of the Birla House armed with a pistol and he actually fired the fatal shots when he was surrounded by a large multitude of people. He did not care to run away. He had come to the Birla House with a particular object and he was determined to achieve it. He was prepared to take all risks and to abide by the inevitable consequences. Was it possible for the police to stop a person whom they did not know, or a person who was going about from place to place under false names or a person who was determined to commit this particular crime regardless of consequences to himself? The police were aware that something was afoot, but they did not know when or where or by whom the blow was to be struck. They were groping in the dark and could not find their way. We know what has happened and may be able to say that this precious life could be saved this way or that way, but it is always easy to be wise after the event.

*P.314

The evidence on record satisfies me (a) that no opportunity was afforded to the police to explain the *circumstances which prevented them from apprehending Nathuram before the 30th January and thereby saving the life of Mahatma Gandhi; (b) that Madanlal failed to supply the names of the conspirators to the police; (c) that even if those names were supplied it was extremely difficult, if not impossible, for the police to arrest Nathuram who was going about from place to place under assumed names and who was determined to assassinate Mahatma Gandhi even at the risk of losing his own life.

*P.315

*For these reasons, I am of the opinion that the prosecution

prosecution have failed to bring the charges home to Dr. Parchure beyond reasonable doubt, I would accept the appeal preferred by him, set aside the order of the learned Special Judge and direct that he be set at liberty.

The case against Shankar is also open to doubt and suspicion and I am clearly of the opinion that he was not a member of the conspiracy which was formed to take the life of Mahatma Gandhi. In addition to his conviction upon a conspiracy to murder he was convicted for a contravention of the provisions of the Indian Arms Act and the Indian Explosives Act. His employer Badge was dealing extensively in arms and explosives and it is probable that this prisoner has committed offences in connection with the two said Acts. Unfortunately for the ends of justice no independent evidence has been produced in confirmation of the testimony of Badge that Shankar was in fact guilty of the said offences. I am accordingly of the opinion that although there is a very strong suspicion that he has offended against the provisions of the appropriate enactments, no action can be taken against him. I would accordingly accept the appeal preferred by Shankar and acquit him of all the charges of which he has been convicted.

*P.316

The cases against the remaining prisoners admit of no doubt whatever. Mathuram and Aptekar were so highly dissatisfied with the policy which was being pursued by Mahatma Gandhi that they started a news paper for counter acting the said policy. They staged peaceful demonstrations with the object of dissuading Mahatma Gandhi from pursuing a course of action which according to them was suicidal to the interests of this country. When they found that neither written nor verbal protests could influence Mahatma Gandhi to alter his life long policy they

decided

decided to remove this apostle of non-violence by violent methods. The murder was premeditated, cold blooded and cruel and the only punishment that can be awarded to these two prisoners for the commission of so heinous a crime is that of death.

*P.317

Karkare and Madanlal have also been found *guilty under section 120 B/302 of the Indian Penal Code and of certain other sections of certain other provisions of law and have been sentenced to transportation for life. Karkare was imbued with the same ideas as Mathuram and Apte but the interest evinced by him in connection with this conspiracy was considerably less than that of his more experienced and more determined associates. They found a useful tool in the person of Madanlal and gave him an important part in the incident which was to take place at the Birla House on the 20th January. He lighted a gun cotton slab with the object of creating an explosion and if the other conspirators had played the parts assigned to them Mahatma Gandhi's life would have been terminated on the 20th January. He has taken an active though a secondary part in carrying out the nefarious designs of Mathuram, Apte and Karkare but the fact that he actually set light to the gun cotton slab shows that the enormity of the crime committed by him is no less than that of the crime committed by Karkare. He is a misguided young man of about 20 years of age but he appears to have little or no regard for the sanctity of human life, and I can see no reason for commending his case to the Crown for the exercise of the power of clemency.

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P.319

Just confess, however, that the case of Gopal has caused me a certain amount of anxiety. He is a young man of about 27 years of age. He was occupying a humble but respectable position in a Government

Government

Government factory and could have had no political views of his own. He probably entertained a warm regard for his brother Nathuram and his brother's friend Apte and I am inclined to think that he joined the conspiracy under the combined and powerful influence of these two men. The feelings of brotherly love and affection must have been supplemented by feelings of gratitude when Nathuram assigned his insurance policy in a sum of Rs. 3,000/ to his (Gopal's) wife. Gopal took little or no interest in procuring arms for the conspirators or in assisting them either on the 20th or 30th January. A raw and inexperienced youth as he is he appears to have fallen prey to the natural temptation of supporting his brother without realising the full implications of the position taken up by him. It is true that he reached Delhi with a revolver which did not function properly and that he attended the conference at the Marina Hotel at which a hand grenade was given to him but he did not take either the revolver or the grenade with him to the scene of the outrage. He gave his revolver to Shankar and he left the grenade in the office of the Hindu Mahasabha. The facts and circumstances of the case make it quite clear that he did not enter into the conspiracy with zest or enthusiasm. He went to the Birla House but he appears to have ^{been} somewhat of a dazed spectator who had gone there because he considered it his duty to stand by his brother. He did not play any part at the Birla House. I am strongly of the opinion that the power of clemency which vests in the Crown should be exercised in his favour.

*P.320

21.6.1949

Sd/ A.N. Bhandari,
Judge.

These appeals have arisen out of the order of Mr. Atma Charan, I.C.S., Judge of the Special Court constituted under the provisions of the Bombay Public Security Measures Act, 1947, as extended to the Province of Delhi.

Nathuram V. Godse, Narayan D. Apte, Vishnu R. Karkare, Madanlal Pahwa, Shankar Kistayya, Gopal V. Godse and Dattatraya S. Parchure appellants along with Mr. Vinayak D. Savarkar were tried by the learned Special Judge under section 120 B of the Indian Penal Code read with section 302 of the said code for having, between the 1st December 1947 and 30th January 1948, at Poona, Bombay, Delhi and other places agreed and conspired among and between themselves and Digambar R. Badge, who had been tendered a pardon, Gangadhar S. Dandwate, Gangadhar Jadhav and Suryadeo Sharma, who along with others not known were absconding, to commit the murder of Mahatma Gandhi, such murder having in fact been committed at Delhi on 30th January 1948. All the accused except Mr. Savarkar were found guilty of the charge, it being held that the conspiracy with which the accused had been charged had definitely been in existence from the first week of January 1948. Madanlal Pahwa and Shankar Kistayya were on conviction ~~also~~ under this charge sentenced to transportation for life. No sentence was, however, passed in respect of this conviction on any of the other accused who were found guilty.

*P.2

All the accused except Mr. Savarkar and Dattatraya S. Parchure were also tried:

- (A) (1) under section 19 D of the Indian Arms Act for having in pursuance of the said conspiracy

conspiracy to murder Mahatma Gandhi transported without a licence to Delhi two revolvers with cartridges in contravention of the provisions of the Indian Arms Act,

(2) under section 19-D of the Indian Arms Act read with sections 119 and 114 of the Indian Penal Code for having in pursuance of the conspiracy abetted each other in the commission of the said offence,

(B) (1) under section 19-F of the Indian Arms Act for having two revolvers without a licence in their possession and under their control at Delhi in contravention of the provisions of sections 14 and 15 of the said Act,

(2) under section 19-F of the Indian Arms Act read with section 114 of the Indian Penal Code for having abetted each other in the commission of the above offence.

None of these charges was, however, found to be proved and all the accused were acquitted of them.

All the accused excepting Mr. Savarkar and Dattatraya S. Parchure were also tried;

*P.3

A (1) under section 4-B of the Explosive Substances Act for having in pursuance of the conspiracy in their possession and under their control explosive substances, namely, two gun cotton slabs and five handgrenades with detonators and wicks with intent to endanger life by means thereof or to enable any other person to endanger life by means thereof;

(2) under section 4 B of the said Act read with

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with section 6 thereof for having, in pursuance of the conspiracy, abetted the commission of the above offence.

(B) (1) under section 5 of the Explosive Substances Act for having, in pursuance of the conspiracy, in their possession and under their control, the above mentioned explosive substances under such circumstances as to give rise to a reasonable suspicion that they did not have them in their possession or under their control for a lawful purpose

(2) under section 5 of the Act read with section 6 for having in pursuance of the conspiracy abetted the commission of the above offence.

Nathuram V. Godse, Narayan D. Apte, Vishnu R. Karkare, Madanlal Pahwa, Shankar Kistayya and Gopal V. Godse accused were convicted under section 4-B read with section 6 of the Explosive Substances Act and also *under section 5 of the said Act or section 5 read with section 6 thereof, Each one of them was sentenced to undergo rigorous imprisonment for three years in respect of the first and rigorous imprisonment for five years in respect of the second offence.

*P.4

Madanlal Pahwa was tried under section 3 of the Explosive Substances Act for having in pursuance of the conspiracy maliciously and unlawfully caused a gun cotton slab to explode which explosion was of a nature likely to endanger life and to cause serious injury to property.

Nathuram

Nathuram V. Godse, Narayan D. Apte, Vishnu R. Karkare, Shankar Kistayya and Gopal V. Godse were tried under section 3 of the aforesaid Act read with section 6 of the same for the abetment of the above offence. All of them were found guilty of the offence with which they were charged. Madanlal Pahwa was sentenced to rigorous imprisonment for ten years. All the others were sentenced to rigorous imprisonment for seven years each.

All the accused whose names are mentioned in reference to the first charge except Dr. Parchure were tried under section ³⁰² 302 read with section 115 of the Indian Penal Code for having in pursuance of the *conspiracy abetted each other to commit the murder of Mahatma Gandhi which offence was committed in consequence of the abetment. All of them except Mr. Savarkar were found guilty. Madanlal Pahwa and Shankar Kistayya were sentenced to undergo rigorous imprisonment for seven years each under this charge. No sentence was, however, passed on any of the other accused.

*P.5

Nathuram V. Godse and Narayan D. Apte were tried under section 19-C of the Indian Arms Act for having, in pursuance of the conspiracy, between the 28th and 30th January 1948 brought without licence from Gwalior to Delhi automatic pistol No. 606824 with cartridges in contravention of the provisions of section 6 of the said Act. Both the above named accused and Dattatraya S. Parchure were also tried under section 19(c) read with section 114 for having abetted the above offence. Both Godse and Apte were convicted under section 19 (c) of the Indian Arms Act or in the alternative under section 19 (c) of the said Act read with section 114 of

the

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the Indian Penal Code, Dattatraya S. Parchure

being acquitted.

*P.6

Gopal V. Godse was tried under section 19(f) of the Indian Arms Act for having in pursuance of the conspiracy at Delhi in his possession and under his control automatic pistol No. 606824 with cartridges in contravention of sections 14 and 15 of the Indian Arms Act. Narayan D. Apte and Vishnu R. Karkare were tried under section 19(f) of the Indian Arms Act read with section 114 of the Indian Penal Code for having abetted the above offence. Nathuram V. Godse was convicted under section 19(f) of the Indian Arms Act and Narayan D. Apte and Vishnu R. Karkare were convicted under section 19 (f) of the Indian Arms Act read with section 114 of the Indian Penal Code.

*P.7

Nathuram V. Godse was tried under section 302 of the Indian Penal Code for having, in pursuance of the conspiracy, on 30th January 1948 committed the murder by intentionally and knowingly causing the death of Mahatma Gandhi. Narayan D. Apte and Vishnu R. Karkare were tried under section 302 read with section 114 of the Indian Penal Code for having abetted the commission of the above offence by Nathuram V. Godse which offence was committed in their presence. All the other accused mentioned above were tried under section 302 read with section 109 of the Indian Penal Code for having abetted the commission of the offence of murder, the murder having been committed in consequence of the abetment. Nathuram V. Godse was convicted under section 302 of the Indian Penal Code and sentenced to death. Dattatraya S. Parchure, Narayan

D. Apte,

D. Apte, Vishnu R. Karkare and Gopal V. Godse were convicted under section 302 read with section 109 of the Indian Penal Code. Narayan D. Apte was sentenced to death while Dattatraya S. Parchure, Vishnu R. Karkare and Gopal V. Godse were sentenced to transportation for life. The other accused were acquitted of the offence under section 302 read with section 109 of the Indian Penal Code.

Feeling aggrieved from the judgment of the learned Special Judge the seven above named convicts have filed seven separate appeals in this Court. Of the appellants Nathuram V. Godse has not challenged his conviction under section 302 of the Indian Penal Code for the offence of the murder of Mahatma Gandhi on the 30th January 1948 nor has he appealed from the sentence of death passed on him in respect of that offence. He has confined his appeal and also his arguments at the Bar, he personally argued his appeal, I must say, with conspicuous ability evidencing a mastery of facts which would have done credit to any counsel only to the other charges which have been found proved against him. The appeals of the other appellants of course attack their conviction for all the offences of which they have been found guilty and the arguments addressed to us by their learned counsel naturally cover the entire field. This judgment shall dispose of all these appeals.

It may be noted that although in case of Nathuram V. Godse and Narayan D. Apte the sentences passed on them under section 302 and section 302 read with section 109 of the Indian Penal Code respectively were those of death, the learned Special Judge did not, as he would have to do in

any

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any case tried by him in the exercise of his ordinary powers as a Sessions Judge under the Code of Criminal Procedure, submit the record to this Court under section 374 of the said Code for confirmation of the aforesaid sentences. He was of the view, and I think rightly, that according to the provisions of the Bombay Public Security Measures Act as extended to Delhi under which the case had been tried a sentence of death passed by him was not subject to confirmation by this Court and that consequently the application of section 374 of the Code was not attracted. Section

*P.9

13 (3) of the Act clearly provides that the provisions of the Code relating to sessions trials are to apply to the proceedings of a Special Judge appointed under the Act, subject of course to the provisions of the first two sub sections, only in so far as they are not inconsistent with sections 10 to 20 of the Act. Section 16 of the Act reads as follows:-

"A Special Judge may pass any sentence authorised by law."

A comparison of the language of this section with that of section 31 of the Code should leave no doubt in one's mind as to the correctness of the interpretation placed thereon by the learned Special Judge. Section 31 of the Code runs as follows:

(1) A High Court may pass any sentence authorised by law

(2) A Sessions Judge may pass any sentence authorised by law but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court."

It

It will be observed that the language of section 16 of the Act is precisely the same as that of the first sub-section of section 31 of the Code which defines the powers of a High Court in the matter of passing a sentence. It follows, therefore, that the powers of a Special Judge appointed under the Act are, in the matter of sentence, the same as, and co-extensive with, those possessed by High Court under the Code.

*P.10

Before proceeding to deal with the facts involved in the present appeals and the questions that arise for decision therein, it may be well to narrate succinctly some facts relating to the lives of the appellants and their relations inter se because those facts are calculated, in my opinion, to conduce to a better understanding and a clearer appreciation of the events with which we have to deal. These facts have been taken from the written statements filed by the several appellants at the trial or from the statements made by them in Court in answer to questions put to them by the learned Special Judge. In the circumstances so far as the appellants are concerned their accuracy may be deemed to be beyond question.

Nathuram V. Godse is aged about 37. He is the eldest son of his parents and has three other brothers. *Although he did not succeed in passing the Matriculation Examination he is quite widely read. In arguing his appeal in this Court he displayed a very fair knowledge of the English language and a remarkable capacity for clear thinking. For quite a considerable time he has been a very staunch advocate of ideology and the programme of the Hindu Sanghatanist movement (i.e. movement for the

*P.1

consolidation

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consolidation and the organisation of the Hindus).

For some years he worked in the R.S.S. However he later dissociated himself from this organisation and, joining the Hindu Mahasabha, to use his own words, "volunteered himself to fight as a soldier under its pan Hindu flag."

Narayan D. Apte is aged 34. He is a graduate in science and also in the art of teaching. He worked as a teacher in the American High School, Ahmadnagar, for about seven years. He joined the Hindu Mahasabha in 1939 and came in contact with Nathuram V. Godse in 1941. In course of time they became very close and intimate friends. During the last War he got a commission in the I.A.F. which he, however, resigned after a year. He also worked as Assistant Technical Recruiting Officer for some time.

*P.12

*In 1944 Nathuram V. Godse and Narayan D. Apte started a daily Marhati paper named 'Agrani' with the object of, to use Apte's own language, "propagating the ideology of the Hindu Mahasabha and the Hindu Sanghatanist movement, opposing the pro-Muslim or Muslim appeasing policy of the Congress." This paper was later renamed as "Hindurashtra". The editorial charge of these two papers was throughout with Nathuram V. Godse while Narayan D. Apte looked after its management. To place the paper on a sounder footing the two friends floated a limited company called the Hindu Rashtra Parkashan Limited to take charge thereof, they both being the managing directors of the Company.

Nathuram V. Godse, in describing the reactions of himself and his friends to the atrocities committed on the Hindus in various parts of the country by Muslim instigated by the Muslim League propagandists and encouraged

encouraged by some British officers, and the supposed attitude of the Congress and Mahatma Gandhi towards some of the alleged perpetrators of these atrocities and the Muslim community generally, has stated as follows in para 35 of his written statement:

"In 1946 or thereabout the Muslim atrocities perpetrated on the Hindus under the Government patronage of Suhrawardy in Noakhali, made our blood *boil. Our shame and indignation knew no bounds, when we saw that Gandhi Ji had come forward to shield that very Suhrawardy and began to style him as 'Shahid Saheb' a Martyr Soul even in his prayer meetings. Not only that but after coming to Delhi, Gandhiji began to hold his prayer meetings in a Hindu temple in Bhangi Colony and persisted in reading passages from Quoran as a part of the prayer in that Hindu temple in spite of the protest of the Hindu worshippers there."

*P.13

So bitter indeed were the feelings of Nathuram V. Godse, Narayan D. Apte and their friends against Mahatma Gandhi and the Congress that they did not even hesitate to raise a banner of revolt against older leaders of the Hindu Mahasabha itself when they counselled co-operation with the Congress Government. The activities of Mahatma Gandhi in the matter of the restoration of communal cordiality in different parts of India had always been so utterly distasteful to them that even in 1944 ^{and 1946} Apte, evidently with the approval of his friend, had staged demonstrations at the prayer meetings in Panchgani and at Delhi respectively. That the demonstration held at the Delhi

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Delhi prayer meeting in 1946 was in any case not a wholly peaceful demonstration is abundantly clear *from the following significant statement contained in para 36 of Nathuram V. Godse's written statement:

*P. 14

"Mr. Apte with a large section of the refugees took out a procession in Delhi ~~condemning~~ Gandhiji and his Shahid Suhrawardy and rushed into his prayer meeting in the Bhangi Colony."

The tragic happenings in the West Punjab appear further to having tensified the feelings of bitterness entertained by Nathuram V. Godse and Narayan D. Apte against Mahatma Gandhi whom they considered to be responsible for what in their view was the weak kneed policy of the Congress and the Congress Government in dealing with the Muslims generally and the Muslim League particularly. They had also not taken kindly to the strong action taken by the Congress Government at the centre and in the provinces to protect the lives and the properties of the members of the minority community and against hostile attacks by the disorderly elements amongst the Hindus. Nathuram V. Godse has given expression to his sense of exasperation in the following words in para 40 of his written statement:--

"The Congress Government began to persecute, prosecute, and shoot the Hindus themselves who dared to resist the Muslim forces in Bihar, Calcutta *Punjab and other places."

*P. 15

Vishnu R. Karkare is aged about 38 and is a ki of hotelier at Ahmadnagar where he has been residing for quite a number of years. During the general elections

election, held in 1937 he took part in the election campaign carried on by the Hindu Mahasabha on behalf of the candidates who contested the elections on Hindu Mahasabha ticket. In 1938 he became an active member of the Hindu Mahasabha and in course of time was elected Secretary of the District Sabha. In 1942 he was returned to the Local Municipality on Mahasabha ticket. Quite naturally he came in contact with Narayan D. Apte while the latter was employed in Ahmadnagar and it is an admitted fact that Apte helped him in securing election to the Municipal Committee. In 1946 he went to Noakhali with a Volunteer Corps to render assistance to the victims of the Muslim mob fury in that part of the country. He also took keen and active interest in making provision for refugees from the West Punjab. He made himself a persona non grata with local Muslims who made several complaints against him to the Provincial authorities which resulted in the *police keeping him, his family and his concerns under surveillance and the search of his house and later on an order for his detention under the Provincial Security Act, though he was able successfully to evade the execution of that order. *P.16

Danlal Pahwa is a young lad of 20. He hails from some village in Pakpattan Tashil in the District of Montgomery. He passed his Matriculation Examination in 1945 and soon thereafter got employment as a wireless telegraphist in the navy. He was released from service in 1947 and since then had been residing in his village till he was evacuated therefrom with a refugee caravan. He was an eye witness to the atrocities committed by the Muslims in the West

Punjab

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Punjab on the Hindu population there and his own family appears to have suffered a lot in consequence of these atrocities. As a refugee he reached Bombay in the last of September 1947 and was lodged at the Chimbur refugee camp. In his search for employment he came in contact with one Mr. Gupta who introduced him to Dr. Jagdish Chandra Jain, a professor in the local college. Dr. Jain began to take keen interest in him. For some time Madanlal sold Dr. Jain's books on commission basis. At sometime in November 1947 he went to Ahmadnagar where he came in *close contact with Vishnu R. Karkare and soon became the special object of the latter's bounty. Karkare helped him to do some business in coconuts and regarded him as his protege.

*P.17

Gopal V. Godse aged 27 is the third brother of Nathuram V. Godse who has been in Government service for the past seven years and was for some time on active service overseas during the last World War. At the time of his arrest he was employed as a temporary civilian assistant store keeper in the Motor Transport Spares Sub Depot at Kirkee which is at a distance of about six miles from Poona. It however appears from his address noted in his service book that he resides in Poona his address as noted there being, "282 Sukharwar Peth Viyan Mandal, Poona, No. 2" (vide statement of Leslie Vernon Percival Pounds P.W. 75). He denies having ever been associated with any of the activities of his elder brother, political or otherwise, and except in reference to the present case there is no evidence or indication on the record to the contrary.

Shankar Kistayya aged about 20 is the private
servant

servant of Digambar R. Badge approver and had been in his service for some time. He used to prepare *handles for daggers manufactured by Badge, to carry arms and ammunitions to Badge's customers and to do odd jobs. *P.18

Dattatraya S. Parchure is a medical practitioner in Gwalior where his father held a very high post in the Education Department and was otherwise held in high esteem. He and his brothers reside with their families in the same house. His brothers are in State service. He was the President of the Gwalior Hindu Sabha at the time of his arrest. Some years ago he organised a volunteer corps known as Hindu Rashtra Sena with which he was very intimately connected upto the time of his arrest. In connection with their activities in the cause of the Hindu Mahasabha Nathuram V. Godse and Narayan D. Apte came in contact with Dattatraya S. Parchure and were known to each other fairly well. It is, however, suggested that for some time the relations between Dr Parchure and Nathuram V. Godse had been strained because of ^{the} later not having accepted the former's proposal for the merger of the Hindu Rashtra Sena with Hindu Rashtra Dal organised by himself, Apte and others.

Digambar R. Badge approver hails from a village of the name of Chalisgaon but had been settled in Poona since 1937 where he seems to have gone in search of employment. He says that by offering Satyagrah at the house of one *Mr. Atre, the leader of the Congress party in the local municipal board he was able to secure a post carrying Rs. 18/ or Es. 20/- per month. On being discharged from municipal service he was employed by one Mr. G.V. Kotkar for collecting funds for the Hindu *P.1

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Hindu Anath Ashram and Hindu Sangthan Nidhi. In the end of 1946 or early in 1947 he became a member of the Hindu Rashtra Dal of Narayan D. Apte and Nathuram V. Godse. In 1942 with a capital of Rs. 75/ or Rs. 100/ raised by the sale of some household goods, he started a shop for the sale of arms and weapons under the name of Shastra Bhandar. Initially he dealt only in arms and weapons to which the provisions of the Indian Arms Act did not apply and which could be possessed by any one without any licence. In course of time however he began an illicit traffic in firearms and explosives which he managed to obtain by surreptitious and clandestine methods from the Government Arsenal at Kirkee or otherwise. With the growth of Razakar menace in Hyderabad State the demand for such articles seems to have increased and Badge began to do quite a prosperous business. These articles were purchased through Badge by a number of

*P.20

*persons, some of them connected with the State Congress, for being supplied to Hindus living on the border for use in case of any on slaught by the Razakars. Apte also purchased some stuff from Badge for this purpose. Badge seems otherwise also to have received some encouragement from Apte and Nathuram V. Godse in his enterprise. He has stated that they used to give him monetary help now and then, that their monetary help generally consisted in taking him in their car, introducing him to moneyed persons requiring arms and ammunitions and helping him in realizing the price thereof from them. Some times they also used to pay him in cash sums of money ranging between Rs. 5/ and Rs. 100/.

Two of Badge's other customers figure very conspicuously in the present case, namely, Goswami Shree Krishna Jiwanee Maharaj, P.W.69 and his younger brother Goswami Dixitji ^{Maharaj} P.W.77. In the proceedings of this case as also in the judgment under appeal the former has been referred to as Dada Maharaj, his younger brother addressing him by that name. Dada Maharaj and Dixit Maharaj are the direct descendants of Shree Ballabh Acharya the founder of one of the Vaishnava sects. Dada Maharaj is the head of that sect and as such has a very large following. The property owned by the family fetches an income of over two lacs every year and both the brothers have also considerable income from their personal offerings. Dada Maharaj says that he is a member of the Congress since 1942. He has however quite unreservedly stated that he stoutly opposed, and shall always remain opposed to, what he considers to be its appeasement policy towards Pakistan. He also admits having delivered the inaugural address at the All India Hindu Convention held at Delhi on or about the 9th August 1947 which was presided by Mr. Saverker and at which he gave expression to his opposition to what he conceived to be the policy of Nehru Government. According to Dada Maharaj he felt attracted to Apte by the knowledge that he shared his own ideology in relation to Pakistan and made his acquaintance when he stopped for the night at Poona on his way to Pandharpur. He further says that on his way back from Pandharpur he again met Apte because while at Pandharpur Karkare had taken a message to him from Apte that the latter wanted to see him. At the interview some plan with regard to Pakistan and some Pakistan leaders is said to have been

*P.21

been

*P.22.

*been discussed. On one or two occasions Nathuram V. Godse is also said to have visited Dada Maharaj at Bombay in the company of Apte some time after Diwali 1947. He, at the request of Apte, presided over some function connected with the Hindu Rashtraya Parkashan, (Dada Maharaj says that it was the opening ceremony, but Nathuram V. Godse in course of his address pointed out that it was an annual function), which was also addressed by Nathuram V. Godse. At some time during this period Apte is said to have handed over either personally or through Karkare two pistols to Dada Maharaj with a request for the same being exchanged for two revolvers. Dada Maharaj says that he was unable to comply with Apte's request and returned one pistol to him. He was however unable to return the other pistol because the same had been passed on to Hyderabad State Congress people by his brother Dixit Maharaj to whom he had given both the pistols for being exchanged for revolvers. Badge was introduced to Dada Maharaj by Dixitji Maharaj with whom, as will presently appear, he had fairly extensive dealings. On the occasion of his visit to Poona to preside over the function connected with the Hindu Rashtraya Parkashan, Dada Maharaj met Badge who was specially called for the purpose and discussed with him the question of the supply of some arms and explosives for certain purposes.

*p.23

Dixitji Maharaj also professes to be a Congressite with socialist leanings. He seems to share the views of his elder brother on the question of Hindu solidarity and the need of the Hindus adopting a stiff and uncompromising attitude towards the Muslims. During the communal riots which took place in

in Bombay before the partition he supplied daggers and other arms to the Hindus for what he describes as defensive use against attacks by the members of the opposite community. It was in connection with the purchase of these arms that he came to know Badge from whom he says he started purchasing them in December 1946. After the stoppage of communal disturbances in Bombay, and when arms were no longer required for local use, he continued to purchase arms from Badge for being supplied to the Hindus residing on the border of Hyderabad State and the State Congress which had undertaken the task of arming the Hindu subjects of the State in order to enable them to combat the great Razakar menace. Dixitji Maharaj became acquainted with Apte in August 1947 when he was introduced to him by his elder brother. He however did not know either Mathuram V. Godse or Vishnu R. Karkare before the material events are said to have taken place. Madanlal Pahwa he had met once in October 1947 when he had come to his house for sale of Dr. Jain's books when Dixitji Maharaj purchased books worth Rs. 5/.

*p.24

Baba Sahib Paranjpe, Baghunath Keshav Khadikar and Parvin Chandra Sethia were some of the other persons to whom Badge is said to have been supplying arms and ammunition for use in Hyderabad. They were presumably workers of the State Congress. Dixitji Maharaj has stated that on some occasions Badge used to deposit with him stuff for being delivered to Parvin Chandra Sethia.

Mahatma Gandhi was staying at Birla House at Delhi in January 1948. He held his daily evening prayers in the open space lying behind the servants quarters. Birla House has its front gate on the Albuquerque road. As one enters this gate from the said road one has the main building consisting

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consisting of offices and living rooms on his right. The road by which one enters the front gate goes on to the lawn, the tank, the garages and other appurtenant buildings.

There is also ^agate on the back side presumably for use ^{by} servants etc., because the *servants

*P.25

quarters open towards that gate. On the back of the servants quarters there is a verandah and a slightly raised platform.

Mahatma Gandhi's prayer meetings used to be held on this platform. Mahatma Ji

himself used to sit on a takht in the verandah

just at the back of the servants quarters. As stated by Chhotu Ram P.W.16, an employee at the

Birla House, and one of the inmates of those

quarters, the prayer meetings in those days used to begin at 5 p.m. and to finish at 5.30 p.m.

According to the said witness the recitation

of the Quran and the Gita and the singing of

Mahatma Ji's favourite song named as 'Ramdhun'

used to take about 20 or 25 minutes whereafter

followed Mahatma Ji's daily discourse.

Nathuram V. Godse ^{has} annexed to his written statement a copy of the statement made by India's

Deputy Prime Minister the Hon'ble Sardar Vallabh

Bhai Patel at a Press Conference held at Delhi

on 12th January 1948 wherein he had taken up

a very stern attitude on the question of

payment of cash balances (55 Crores) to

Pakistan and had indicated that under the terms

of the agreement arrived at between the two Dominions

Pakistan could not demand the payment of those balances

unless all outstanding questions between the said

Dominions.

Dominions *including the question of Kashmir had been settled. It is significant that the same night the All India Radio announced Mahatma Gandhi's decision to undertake a fast unto death with the object of restoring amicable relations between the two major communities in Delhi and of creating conditions under which Muslims could go back and live in their houses in Delhi and have^a free use of their religious places. According to Nathuram V. Godse this decision of Mahatma Ji was the direct outcome of the Hon'ble the Deputy Prime Minister's statement of the same day and was intended to coerce the India Government into reversing its decision in the matter of the cash balances. That the decision of Mahatma Ji to go on fast was not wholly unconnected with the announcement made by the Hon'ble the Deputy Prime Minister on the question of the cash balances may reasonably be inferred from the language of the communique issued on the 15th January 1948 by the Government of India announcing their decision to pay forthwith to Pakistan the said cash balances, a copy of which communique has also been annexed by Nathuram V. Godse to his written statement. Some time after this the fast was broken on certain occasions being given by some leading Hindus

*P.27.

*present in Delhi. It is in evidence that after breaking the fast Mahatma Ji held his first prayer meeting on the 20th January 1948.

It is not disputed that on 20th January 1948 while the prayer meeting was being held inside the Birla House at the place indicated above, Madanlal Pahwa placed a gun-cotton-slab near the back gate and ignited the same so as to cause an explosion. It is also not disputed that on Madanlal being arrested on the spot a hand-grenade quite ready for use was recovered from the inside pocket of the coat he was then wearing, although the defence does not admit that Ex.P.15 was that coat. It is further not disputed that Apte, Badge and Shankar were present at the prayer meeting at the time of the explosion. Karkare according to the defence arrived at the Birla House in a tonga a little after the explosion. Of course Apte and Karkare do not admit that they had any connection with or previous knowledge of Madanlal's act and give their explanations for having gone to Birla House which will be noticed at a later stage.

*P.28

Nathuram V. Godse has admitted his presence in Delhi on the day but has denied his presence at the Birla House at the material time - he has indeed *categorically denied his having visited Birla House at any time during his sojourn of four days at Delhi, namely between 17th and 20th January 1948. It is, however, an admitted fact that on 30th January 1948, Nathuram V. Godse did fire shots at Mahatma Gandhi while he was on his way to the dais for the prayer meeting with the pistol Ex.P.39 which resulted in almost instantaneous death of Mahatma Ji. The assailant of Mahatma Ji made no attempt to escape and was arrested on the spot. He received some injury on the head as a result of an assault by someone from amongst the audience who found himself unable to control his anger at what he had witnessed.

As a result of investigations which naturally were prolonged

prol -220- d and covered a wide range the investigating authority reached the conclusion that the acts done by Madanlal Pahwa and Nathuram V. Godse on the 20th and 30th January respectively were not their isolated and individual acts but that they had been done in pursuance of a conspiracy entered into by the persons sent up for trial, the absconders, and may be some others whose identity it has not been possible to discover, for murdering Mahatma Gandhi. After the arrest of Nathuram V. Godse, Badge was arrested in Poona on 31st January 1948. Gopal V. Godse was arrested on 5th February 1948 while *on his way to village Uksan where he has his ancestral home and where presumably his parents reside. From the evidence of Mr. Leslie Vernon Perceival Ponde, P.W. 75, who is an Assistant Security Officer in the Sub Depo, in which Gopal V. Godse was employed at the time of his arrest it appears that the latter rejoined duty after the expiry of his leave on 26th January 1948. He attended office upto 30th January 1948. The office happened to be closed on 31st January and 1st February. When he attended office on 2nd February he had to be given some police protection for his safety presumably due to the hostility of the office staff by reason of his connection with the assassin of Mahatma Gandhi. He remained on leave on the 3rd February. He attended office on 4th February and it again became necessary to give him police protection. He had eventually to be given leave from the office as a safety measure in order to enable him to go to his village for the period of the popular excitement and it was when he had almost reached the village that he was arrested.

*P.29

*Shankar Kistayya was arrested at Bhuleshwar near the residence of Dixitji Maharaj and Dadaji Maharaj on the 6th February. Apte and Karkare were arrested in Pyrkas Apollo Hotel at Bombay on the 14th February.

Dattatraya

Dattatraya S. Parchure was apprehended by the Gwalior police early in the morning on the 3rd February under the maintenance of Public Order Ordinance of the Gwalior State and detained in the fort under military custody to avoid, it is suggested, demonstration. He was shown as under arrest in connection with Mahatma Gandhi murder case from the morning of the 17th February 1948. Searches were made for Gangadhar S. Dandwate, Gangadhar Jadhav and Suryadeo Sharma the alleged absconders but without any effect.

The seven appellants and Mr. Savarkar were eventually sent up for trial for the offences mentioned in an earlier part of this judgment after obtaining the sanction of the District Magistrate under section 29 of the Indian Arms Act in connection with the offences under the said Act and after obtaining the sanction of the Central Government under section 7 of the Explosive Substances Act in respect of the offences under that Act as well as under section 188 of the Code of Criminal Procedure for trial of Dattatraya S. Parchure in respect of the offence committed by him in Gwalior State.

*P. 21.

According to the prosecution case as put before the learned Special Judge all the accused except Parchure, who was stated to have joined the conspiracy on 27th January 1948 at Gwalior, entered into a conspiracy to murder Mahatma Gandhi at sometime in December 1947. In furtherance of the object of this conspiracy Badge the approver and his servant Shankar were made to carry to Bombay in the evening of the 14th January 1948 two gun-cotton slabs and five hand-grenades which were, during the night between the 14th and 15th January 1948, kept with a servant of Dixitji Maharaj at the latter's residence. Apte and Nathuram V. Godse had also arrive at Bombay the same evening and had accompanied Badge when

when he had gone to Dixitji Maharaj's house with the stuff.

Vishnu R. Karkare and Madanlal Pahwa had arrived in Bombay

earlier and were putting up in Hindu Mahasabha Bhawan

where Badge and Shanker also stayed for the night. On the

15th, Apte, Karkare, Nathuram V. Godse, Badge and Madanlal

Pahwa went to the house of Dixitji Maharaj, took the stuff

from there and made over the same to Karkare and Madanlal

who were to leave for Delhi the same day. The stuff is said

to have been tied up in the bedding and to have been carried

to Delhi. Badge and Nathuram *V. Godse returned to Poona,

the former because he wanted to make some arrangement about

his household affairs before proceeding on such a risky

venture and the latter because he wanted to fetch his

brother Gopal V. Godse who had promised also to provide a

revolver. It was agreed that they would meet at Bombay on

the morning of the 17th January. During the sojourn of a

day at Poona Badge handed over, with certain instructions

as to its disposal, to one Amdar Kharat whatever was left

with him of arms, explosives and cognate stuff which he had

secured and was keeping clandestinely and in contravention

of the law of the land and also succeeded in exchanging a

pistol given to him by Nathuram V. Godse for a revolver which

sometime before he had sold to a customer of his known as

Sharma. Badge and Shankar, who is also said to have

accompanied the former to Poona, left Poona by a late night

train and reached Bombay early on the morning of the 17th.

At Bombay they along with Apte and Nathuram V. Godse visited

several places and several men inter alia with the object

of collecting some money for expenses which they might be

required to incur for the fulfilment of their scheme.

Nathuram V. Godse and Apte left for *Delhi by plane the same

afternoon. They arrived at Delhi late in the evening and at

stayed at the Marina Hotel. Madanlal Pahwa and Karkare had arrived

at

at Delhi the same day at about 12-30 p.m. and having failed to get accommodation at the Mahasabha Bhawan were staying at the Sharif Hotel. Badge and Shankar had been asked to leave for Delhi by the night train on the 17th. They however actually left on the 18th and arrived at Delhi late in the evening on the 19th. They put up at the Hindu Mahasabha Bhawan. Gopal V. Godse who had taken casual leave for one week with effect from the 17th January had also in the meanwhile arrived at Delhi. Karkare and Madanlal had also left the Sharif Hotel that evening. Badge, Shankar, Gopal and Madanlal stayed at the Mahasabha Bhawan for the night. The suggestion about Karkare appears to have been that he spent the night at the Marina Hotel in the room occupied by Nathuram V. Godse and Apte. All the conspirators except Nathuram V. Godse, who was somewhat indisposed, met at the Mahasabha Bhawan next morning. Apte took Badge and Shankar with himself in a taxi to the Birla House and made a survey of the prayer ground on the back of the servants quarters. After they had returned to the Mahasabha Bhawan, the two revolvers, *one brought by Badge and the other by Gopal, were tried out in the jungle behind the Mahasabha Bhawan and were found to be quite unserviceable. An attempt was made by Gopal Godse to repair his revolver. Thereafter all of them met in the Marina Hotel in the room occupied by Nathuram V. Godse and Apte where behind closed doors the gun-cotton-slabs and the hand-grenades were put in order for immediate use and the plan for the evening was finalised. It was agreed that after the prayer had started Madanlal should explode one gun-cotton-slab near the back gate of Birla House so as to create a commotion and attract the attention of the people assembled at the prayer and taking advantage of the panic thus caused Badge and Shankar should fire at Mahatma Gandhi with the two
revolvers

revolvers and should also throw a hand-grenade each on him. Badge was to fire the revolver and throw his hand-grenade from the trellis work of the window of the room in the servants quarters immediately behind where Mahatma Ji used to sit at the time of the prayer. He was to enter the room posing as a photographer with the object of taking a photo of the prayer meeting. Gopal, Madanlal and Karkare were to throw the remaining hand-grenades on Mahatma Ji at the same time. They were to get mixed up with the audience and to act at the crucial time. Apte and Nathuram were to give signals to the other actors of the drama at the right moment. In pursuance of this plan one gun-cotton-slab, and one hand-grenade were given to Madanlal, one hand-grenade and one revolver to Badge, one hand-grenade and one revolver to Shankar and one hand-grenade each to Gopal and Karkare. Madanlal and Karkare were the first to leave the Marina Hotel for the Birla House. The others except Nathuram V. Godse left a little later in a taxi. Nathuram V. Godse followed them sometime afterwards. It is not known what means of conveyance he used but it was suggested that he arrived not long after the taxi of Apte and others had parked near the back gate and its occupants had alighted. On its way to Birla House the taxi had been stopped for a short while near the Mahasabha Thawan and Gopal had left the bag which was supposed to contain the spare gun-cotton-slab and some other spare materials in the cupboard. On getting to the Birla House Badge felt disinclined to do the job assigned to him in the manner originally planned because he felt that he might get entrapped into the room from the trellis work whereof he was to have fired the revolver and to have thrown the hand-grenade. He suggested to his comrades that he would much rather fire the revolver and throw the

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hand-grenade

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and-grenade on Mahatma Ji from the front. After some hesitation his comrades fell in line with his views. Dandlall did carry out the part assigned to him by igniting the gun-cotton-slab near the back gate. However the others did not carry out their respective parts and Nathuram Godse, Apte and Gopal left immediately in the taxi. Dandlall was of course arrested on the spot. Karkare, Badge and Shankar managed to get away. Apte and Nathuram Godse left the same night for Kanpur. Badge and Shankar left for Poona, Gopal and Karkare, it was suggested, spent the night at the Frontier Hotel and left next morning. Apte and Godse arrived in Bombay on the 23rd and spent the night at Aryopathikashram. On 24th Nathuram V. Godse was unable to get accommodation for the two of them at the Elphinstone Annexe Hotel. Apte spent the night at the Ashram with a lady friend of his and shifted to Elphinstone Annexe Hotel only next morning. On the 25th of January they met Karkare and Gopal at the house of G.M. Joshi at Thana at about 8 a.m. Gopal left for Kirkee the same night. Apte and Nathuram V. Godse flew to Delhi on the 27th. While at Bombay they had made an unsuccessful attempt to get a pistol from Bajji Maharaj and Dixitji Maharaj. From Delhi they proceeded to Gwalior the same day arriving at Gwalior at about 10-30 p.m. They stayed for the night and for the next day with Dr. Achure at his house. They disclosed their plan to him and with his co-operation and that of Dandwate and others whom they met at his place were able to get from one Mr. Goel a pistol Ex.P.39. They left Gwalior by a night train arriving at Delhi the next day. At Delhi they were joined by Karkare and the three spent the night in a retiring room at the railway station. Next evening Nathuram V. Godse shot Mahatma Ji with the pistol Ex.P.39 which had been brought from Gwalior at the time and in the manner already indicated.

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On behalf of the defence it was not denied that Madanlal and Karkare had left Bombay by a night train for Delhi on the 15th January and had arrived at Delhi on the 17th at about 12-30 p.m. and had put up at Sharif Hotel. It was also not denied that they had left the hotel on the 19th. It was, however, denied that they stayed at the Mahasabha Bhawan for the night of the 19th. The allegation was that Madanlal had to come to Delhi in connection with arrangements for his *marriage, that on hearing of Mahatma Gandhi's fast which he believed was intended to coerce India Government into paying to Pakistan the sum of 55 crores and into evacuating West Punjab Hindus from Muslim houses occupied by them he had also planned to lead during his stay at Delhi a deputation of refugees to Mahatma Ji to place their grievances before him and that on his request Karkare agreed to accompany him to help him in both the matters. The allegation further was that after leaving Sharif Hotel the two of them had stayed at the house of a relation of Madanlal. Apte, and Nathuram V. Godse admitted being at Bombay on the 14th and 15th January 1948 and having flown to Delhi on the 17th. They also admitted having met Shankar and Badge at Bombay on the aforesaid date and having gone with them in a taxi to certain places and having collected a sum of Rs. 1100/- from two persons. Their allegation was that they had decided to stage peaceful but otherwise a powerful demonstration at Mahatma Gandhi's prayer meeting in order to lodge a vigorous protest against his pro-Pakistan and pro-Muslim activities, that Badge and Shankar had offered to accompany them and to help them in organising the proposed demonstration and that the offer had been accepted by them. It was also admitted *that Apte and Nathuram V. Godse on their arrival at Delhi on the 17th January 1948 stayed at the

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Marina

Marina Hotel. It was, however, stoutly denied that while staying there they had any talk with Madanlal and Karkare. The alleged visit of the aforesaid persons and Badge, Gopal and Shankar to the Marina Hotel on the 20th and the alleged conference behind closed doors in the room occupied by Apte and Nathuram V. Godse were emphatically denied although Badge's having visited Apte and Nathuram V. Godse in their room in the morning was admitted, it being suggested that he had come to ascertain what the prospects of the arrangements for the proposed demonstration were. It is admitted that Apte did go to the prayer meeting in the evening on the 20th, but it is explained that he went there for seeing if there was any prospect of holding a demonstration and came away on finding it impossible to hold any demonstration on that day on account of the failure of the microphone. It is alleged that Apte came to know about the explosion after his return from Birla House from Badge who told him about the arrest of Madanlal and also about his having sold some explosive stuff to the refugees including Madanlal. According to Madanlal he had met Badge at about noon in one of the barracks made for refugees when he had shown him a trunk loaded with firearms and explosives out of which he had given him one gun-g cotton-slab and one hand-grenade by way of sample for canvassing the refugees to purchase the stuff and that he had ignited the gun-cotton-slab at a safe place after taking precautions that the explosion thereof should not harm anyone with the object of courting arrest in order to be able to bring grievances of refugees to the notice of Mahatma Gandhi. Nathuram V. Godse is alleged not to have come out of the room in the Marina Hotel due to severe headache. Karkare admits having gone to the Birla House. He says that he arrived there at 5-30 p.m.

after

after the explosion inasmuch as the driver of the tonga hired by him had in the first instance taken him by mistake to the Birla Mandir.

*P.41. Natharam Godse and Apte admit having entrained for Kanpur on the night of the 20th, having arrived at Kanpur on the 21st, and having stayed in the retiring room there till 11-20 a.m. on the 22nd when they left for Bombay. They also admit their presence in Bombay from 23rd to 27th January although they do not admit their alleged visit to G.M. Joshi's house at Thana on the 25th. They admit having flown to Delhi on the 27th January and to have left for Gwalior after their arrival at Delhi. They, however, say that they travelled by the Amritsar-Bombay Express which arrived at Gwalior at 5-30 a.m. on the 28th January. They admit having met Dr. Parbhure but deny having stayed at his house. They say that they had gone to him to get some volunteers of his Hindu Rashtra Sena for staging a demonstration at Delhi, that they reached his house at 7.30 a.m. when he was ready to go to his dispensary, that he asked them to see him in the afternoon and when they met him in the afternoon he declined to lend them any volunteers for the purpose indicated above. It is denied that they got any pistol from Jagdish Prasad Goyal at Gwalior. It is alleged that Godse and Apte parted company at Gwalior. Godse entrained for Delhi where he reached about mid-day on the 29th and Apte proceeded to Bombay. It is denied that either Apte or Karkare were at Delhi on the 29th or 30th January. It is alleged that Godse alone stayed in the retiring room at the Delhi Railway Station. It is further alleged that it was after his arrival at Delhi that Godse decided to put an end to Mahatma Gandhi's life and that he did so with the pistol Ex.P.39 which he got from some refugee at Delhi.

*P.42.

Karkare

Karkare says that he proceeded direct to the Railway Station from Birla House on the 20th in the same tonga in which he had come there and took the earliest train for Ra from where he proceeded to Bombay, at which place he stayed thereafter till his arrest on the 14th February. Karkare further says that throughout the fourth week of January he was staying at the Chambur Refugee-Camp.

Gopal Godse has of course totally denied having ever visited Delhi in the month of January 1948.

None of the accused produced any evidence to substantiate any of their allegations although Apte and Karkare did rely on some documents recovered from their respective persons at the time of their arrest in support of their pleas, that they were not and could not have been in Delhi on the 30th January.

The learned Special Judge has generally believed in the prosecution evidence and has accepted the prosecution case except in so far as their allegations as to Karkare being a party to the conspiracy and as to Gopal Godse and Badge having imported one revolver each into Ra are concerned.

The first question that arises for decision in the present appeals is whether there was any conspiracy for the murder of Mahatma Gandhi and Nathuram V. Godse appellants committed the murder on the 30th January in pursuance of a conspiracy. In case this question is answered in the affirmative, the next question for determination will be whether any of the appellants, if any, besides Nathuram V. Godse himself was or were parties to the conspiracy. On the findings of the learned Special Judge with reference to Karkare, Lal Pahwa and Shankar Kistayya and on certain observations made in the judgments addressed to us by Nathuram V. Godse in reference to the case of Gopal Godse, although Gopal Godse's counsel did

did not choose to stress the point, a question also arises if any of the appellants disassociated himself from the conspiracy before the accomplishment of its object and if so, what is the legal effect of such disassociation.

Before I proceed to examine the evidence led by the prosecution to substantiate their allegations as to Mahatmaji having been murdered in pursuance of a conspiracy to murder him to which all the appellants and some others were parties, I propose to dispose of some legal points *stressed by Mr. Bannerji, who argued the appeals of Apte and Madanlal Pahwa and by Mr. Irani, counsel for Gopal Godse and Dr. Parchure.

The first contention of Mr. Bannerji was that where the offence to which a conspiracy is alleged to have been entered into is itself said to have been committed - i.e., where the object of the alleged conspiracy is itself said to have been actually achieved - before the trial starts, the offence of conspiracy must be deemed to have merged in the substantive offence which the alleged conspirators had agreed to commit and which has in fact been committed and that in such a case the accused can be tried only for the substantive offence and not for the offence of conspiracy. He urged that Mahatma Gandhi having in the present case been actually murdered the accused could be charged and tried either under section 302, Indian Penal Code, for the offence of murder or under section 109 read with section 302 for abetment of murder but could not legally be charged under section 120-B. After giving my careful thought to the arguments addressed by the *learned counsel in support of this contention, I find myself wholly unable to accept it.

The offence of "Criminal Conspiracy" has been defined in section 120-A of the Indian Penal Code which reads

reads as follows :-

"When two or more persons agree to do, or cause to be done, -

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

The punishment for the offence is provided in section 120-B which runs as follows :-

"Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

*146.

(2) Whoever is a party to a criminal*conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

These two sections were introduced into the Code by the

the Criminal Law Amendment Act of 1913 (Government of India Act No.8 of 1913). Under the law as it existed before the coming into force of the Amending Act of 1913, the subject of conspiracy was dealt with directly only by two sections of the Penal Code, namely, by section 107 Secondly, and by section 121-A. Section 107 defined "abetment" and by the clause Secondly as occurring in that section abetment was made to include the engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act or illegal omission did take place in pursuance of that conspiracy and in order to the doing of that thing. Under section 121-A of course it was an offence to conspire to commit any of the offences made punishable by section 121, or to deprive the King of the sovereignty of British India or any part thereof, or to conspire to overawe, by means of criminal force or the show of such force, the Government of India or any Local Government. Thus, except in cases falling within the purview of section 121-A, according to the law of this country, a mere agreement to commit an offence, of however serious a nature, was not indictable unless some act or illegal omission took place in pursuance of the agreement and in order to the carrying out of such agreement. The law was, however, different and far more stringent in England. In the Queen v. Aspinall (1876, 2 Q.B.D.48) in describing the essentials of the offence of criminal conspiracy, Brett J.A. observed as follows at page 58 of the report :-

"Now, first, the crime of conspiracy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at some future time, certain things. It is not necessary in order to

complete

complete the offence that any one thing should be done beyond the agreement. The conspirators may repent or stop, or may have no opportunity, or may be prevented, or may fail. Nevertheless, the crime is complete; it was completed when they agreed."

In the Mughal Steamship Company, Limited v. McGREGOR

Gow and Company and others (57 Law Journal Q.B.544) Lord Coleridge said at page 549 :-

"It cannot be, nor indeed was it, denied that in order to found this action there must be an element of unlawfulness in the combination on which it is founded. * * * * * But whereas in an indictment it suffices if the combination exists and is unlawful, because it is the combination itself which is mischievous and which gives the public an interest to

*P.48.

*interfere by indictment, nothing need be actually done in furtherance of it.

In the Bridgewater case (unreported) referred to at the Bar, and in which

I was counsel nothing was done in fact;

yet a gentleman was convicted because he had entered into an unlawful combination,

from which, almost on the spot, he withdrew,

and withdrew altogether. No one was

harmed but the public offence was

complete. This is in accordance with

the express words of Justice Bayley

at page 76 in the King v. Berenger

(3 M & S 67)."

Similar observations were to be found in the judgment of the House of Lords in Quinn v. Lethem

(1901 A.C. 495).

The object of the amendment of 1913 was to bring the Indian Law in line with the English Law in so far as conspiracies to commit offences were concerned. In case of a conspiracy other than a conspiracy to commit an offence, section 120-A still requires some overt act to be done in pursuance of the agreement before the parties entering into the agreement can be held chargeable for the offence of criminal conspiracy. However, in cases where the agreement is to do or cause to be done, an act which is itself an offence, no overt act done by the parties to the agreement in pursuance of such agreement is required to be proved, and the crime of criminal conspiracy is complete as soon as the agreement has been formed. As observed by Sir Ashutosh Mukerjee in his judgment in Pulin Behary Das v. Emperor (16 I.C.257) at page 312, although conspiracy is usually actually bound up with the overt acts because in many cases it is only by means of the overt act that the existence of a conspiracy can be made out, yet the criminality of the conspiracy is independent of the criminality of the overt acts.

*P.49

The offence of criminal conspiracy which must be deemed to be complete the moment a number of persons agree amongst themselves to commit some offence cannot be wiped out when such offence has been committed in pursuance of the conspiracy. It may be that where the commission of the offence itself can be brought home to the conspirators and they are convicted of and sentenced for such offence, a separate conviction and sentence for the offence of conspiracy may become redundant and unnecessary. The punishment prescribed by section 120-B for being a party to the criminal conspiracy to commit

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*P.50

an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards being the same as for abetment of the offence, if, in a *case where some persons are being tried on a charge of having conspired to commit such an offence, as well as on a charge of having either actually committed the offence, or of having abetted the same, the offence being committed in consequence of such abetment, on the facts proved at the trial, the Court is able to convict such persons or any of them on the second charge, it is obvious that a separate conviction or sentence on the charge of conspiracy will be wholly unnecessary. It may, however, well be that on the facts proved the Court is unable to find the accused guilty of anything more than a mere concert to commit the offence. It may be of the opinion that the accused are not proved to have committed the actual offence, or even to have done any overt act in furtherance of such concert and for the carrying out of their common object. It may hold that although it was the accused who initially planned the offence, before they could do anything in furtherance of the plan, somebody else, of his own and without any reference to them, took the initiative and committed the offence. It is obvious that in such a case they cannot be convicted either of the offence itself or of its abetment as defined in *section

*P.51.

107 Secondly. The only offence of which they can be convicted is the one made punishable by section 120-B. In the circumstances, I do not see how it can possibly be said that trial on the charge of a conspiracy to commit an offence is not legally permissible when the prosecution also alleges that the offence itself has in the meanwhile been committed in pursuance of the conspiracy. The two offences are quite distinct offences and there is nothing

illegal

illegal in the accused being charged with both. However, the Court will exercise a wise discretion in refraining from convicting the accused on the charge of conspiracy in case they are found guilty of the offence itself and in any case will refrain from passing a separate sentence for conspiracy. The English law and practice on the subject is thus summed up at page 73 in Harrison's Law of Conspiracy :-

"If a conspiracy to commit a crime is actually carried out, the conspiracy is not merged in the crime and it is technically possible for the accused to be indicted twice, once for the conspiracy and once for the crime. (As explained by Lord Campbell in O'Connell v. Reg (1844, 11, C.L. and F. 155), but this is discouraged by the Judges as being unfair to the accused (see R v. Boulton, 1871, 12 Cox 87 .")

There is no reason to suppose that the law or *practice in this country is, or should be, different.

*P.52

Mr. Bannerji drew our attention to certain decisions, and, while conceding that none of them went to the extent of laying down the extreme proposition contended for by him, urged that the general effect of those decisions was to render trial and conviction under section 120-B for the offence of entering into a criminal conspiracy to commit an offence illegal where the accused are also charged with having committed the substantive offence or with having abetted the commission of such offence within the meaning of section 107, Indian Penal Code. After a careful consideration of those decisions, I am of the opinion that they really do not go further than lay down that a separate conviction or sentence under section 120-B is unnecessary where the accused have been convicted

convicted either of the substantive offence which they are found to have conspired to commit or of having abetted the commission of such offence.

In Punjab Singh v. King Emperor. (I.L.R.15 Lah. 84) referred to by Mr. Bannerji a separate conviction under section 120-B, where the accused had also been convicted of the offence to commit which they were found to have conspired, was upheld but it was held that a separate sentence in respect of that conviction was not necessary.

*P.53

In Harsha Nath Chatterjee v. Emperor (I.L.R.42 Cal. 1153), the other case referred to by him, Mr. Bannerji relied on some dicta of Beachcroft J. to be found at page 1168 of the report. The accused had in that case been charged with having entered into a conspiracy to manufacture arms, an offence punishable with imprisonment. It was pointed out that, in such a case, if the offence of manufacturing arms was not committed in pursuance of the conspiracy the maximum punishment awardable under section 116 would be imprisonment for one-fourth of the longest term provided for the offence, while in case of the offence being committed in pursuance of the conspiracy the conspirators could under section 109 be sentenced to the same term of imprisonment which was provided for the offence. Referring to the latter contingency Beachcroft J. observed :-

"Perhaps strictly speaking in such a case there should not be a conviction for conspiracy but for the abetment of the offence, for conspiracy followed by an act done to carry out the purpose of the conspiracy amounts to abetment."

In Jogeshwar Singh v. King Emperor (I.L.R.15 Patna 26)

the

*the third case referred to by Mr. Bannerji, the accused had been committed by the Committing Magistrate to take their trial before the Court of Session for the offences of forgery and perjury and for having abetted the said offences. On the case coming up before him for trial, the Sessions Judge framed an additional charge under section 120-B against the accused for having entered into a conspiracy to commit the offences of forgery and perjury. He convicted them not only on the charge of conspiracy but also on the charges of having committed the offences of perjury and forgery. On appeal the High Court set aside the conviction under section 120-B. In dealing with the subject Rowland J. observed :-

"Whereas section 120-A provides an extended definition of criminal conspiracy covering acts which do not amount to abetment by conspiracy within the meaning of section 107, and section 120-B provides a punishment for criminal conspiracy where no express provision is made in the Code for the punishment of such a conspiracy, therefore where a criminal conspiracy amounts to an abetment under section 107, it is unnecessary to invoke the provisions of section 120-A and 120-B because the Code has made specific provision for

*the punishment of such a conspiracy. * * *

The appellants having been convicted on the substantive charges framed were not liable to be convicted also of conspiracy."

It is true that the Bench was also of the view that
the

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the Sessions Judge ought not to have framed the additional charge and ought to have proceeded with the trial on the charges framed by the Committing Magistrate. I take this only to mean that in view of the circumstances disclosed on the record of the Committing Magistrate the framing of the additional charge was unnecessary. I do not think that the Hon'ble Judges did, or meant to, lay down that the framing of the additional charge was illegal or otherwise open to any legal objection.

A.I.R.1936 Rangoon 358 which was next relied on by Mr. Bannerji appears to me to be wholly irrelevant because all that was held there was that no one can be tried for abetment of the offence of conspiracy inasmuch as conspiracy is not an act committed which can be abetted.

In A.I.R. 1938 Mad. 130, the last case referred to by Mr. Bannerji, six persons were committed to take their trial before a Court of Session. Out of them four were committed on a charge under section 386, Indian Penal Code (Committing of extortion by putting any person in fear of death or of grievous hurt to that person or *to any other), and all six on a charge under section 120-B for having entered into a conspiracy to commit the offence under section 386. According to section 196(a)(2), Criminal Procedure Code, no Court can take cognizance of the offence of criminal conspiracy under section 120-B of the Indian Penal Code in any case where the object of the conspiracy is to commit a non-cognizable offence, unless the Local Government, or a Chief Presidency Magistrate, or District Magistrate empowered in this behalf by the Local Government, has, by order in writing, consented to the initiation of the proceedings. The offence under section 386 is a non-cognizable offence and in the particular case

no

*P.56.

no such consent to the initiation of the proceedings under section 120-B had been obtained. By means of a petition for revision presented to the High Court, the accused moved for the order of commitment being quashed on the ground of want of such consent. The learned Single Judge who heard the petition for revision declined to quash the commitment order inter alia on the ground that section 120-B had been wrongly applied to the case and that instead of being charged under that section the accused should be charged under section 386 read *with section 109.

*P.57.

As pointed out by Rowland J. in the Patna case just adverted to and as will otherwise appear on a comparison of the language of section 120-B with that of the clause Secondly in section 107, the offence of criminal conspiracy becomes the offence of abetment by conspiracy as soon as any act or illegal omission has taken place in pursuance of the conspiracy and in order to the carrying out of the object thereof. Inasmuch as direct proof can scarcely, if ever, be afforded of a conspiracy, and, as pointed out by Earle J. in the celebrated case of *Rex v. Duffield* (1851, 5 Cox C.C. 404 at page 434), "it does not happen once in a thousand times that any body comes before the jury to say :- 'I was present at the time when the parties did conspire together when they agreed to carry out their unlawful purpose', Very generally it is by means of the overt acts done by the conspirators or some of them that the existence of conspiracy can be made out. It is for this reason that it has been said by some Judges that conspiracy is usually actually bound up with the overt act done in pursuance thereof. In a very large majority of cases, therefore, where the accused are charged with

having

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P.58.

having conspired together to commit an offence, *the real offence with which they are to be tried will be found to be one of abetment by conspiracy. Inasmuch as the latter offence may sometimes be more serious and punishable with sever^{er} punishment, but is never less serious or punishable with less severe punishment, than the offence of conspiracy, pure and simple, and inasmuch as it will neither be fair nor just to punish a man twice for the same wrongful act or acts, it may sometimes be considered to be unnecessary or redundant to charge the accused under section 120-B for having conspired to commit an offence where they can properly be charged with having abetted the commission of the offence. Sometimes, it may indeed become necessary to refrain from framing a charge under section 120-B in order to avoid an awkward situation as was the case in A.I.R. 1938 Mad. 138. It cannot, however, be said as a matter of law that the offence of conspiracy to commit an offence which consists in the mere agreement to commit the offence is abrogated or wiped out when either some act or illegal omission has taken place in pursuance of that agreement so as to bring the case within the purview of clause Secondly of section 107, or the offence itself has been actually committed. *The offence of conspiracy still remains as an independent offence and the accused may quite properly be charged with and tried for it even though they are at the same time charged with and tried for the actual commission of the offence which they are alleged to have conspired to commit, or the abetment of such offence. I am accordingly unable to hold, as contended by Mr. Bannerji, that the learned Special Judge acted illegally in charging and trying the appellants under section 120-B for having conspired together to commit the murder of Mahatama Gandhi.

because

because they had also been charged under a separate count for having abetted such murder.

Mr. Bannerji next attacked the legality of the trial on the ground of the misjoinder of charges and the accused persons. He conceded that if the appellants were lawfully charged with and tried for the offence under section 120-B, no objection could legally be taken to the trial on the ground of misjoinder. In view of my decision that the indictment of the appellants for the offence of conspiracy under section 120-B was not illegal or improper, the question of misjoinder does not therefore arise. Even, however, if it could be held that they were improperly charged under section 120-B, I would have no hesitation at all in repelling the objection to the validity of the trial on the ground of misjoinder. As pointed out in section 239(d) Criminal Procedure Code, persons accused of different offences committed in the course of the same transaction may be charged and tried for all those offences. It has been repeatedly held that the word "transaction" as used in clause (d) of section 239 of the Code is not to be interpreted in any artificial or technical sense, and that, in each case, the Court has to decide with reference to the facts of the particular case whether the offences complained of were committed in the course of the same transaction, continuity of action or purpose being the main test to be applied. In I.L.R. 1944 Bom.728 it was held that ordinarily a series of acts may be said to be so connected together as to form the same transaction when they are so related to one

another

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another in point of purpose, or cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. In the present case all the acts which formed the subject matter of accusation were alleged, and have even been found, to have been done for one purpose and for one object, viz., the murder of Mahatma Gandhi. In the circumstances, there can be no reasonable doubt as to all the offences with which the accused were charged having been committed in the course of the same transaction. In this connection, it may be interesting to note that, according to the construction consistently placed by all the High Courts on the language of clause (d) of section 239 of the Criminal Procedure Code, which construction received imprimatur of their Lordships of the Privy Council quite recently in the case of Babu Lal Choukhani (I.L.R. 1938 (2) Calcutta 295 P.C), it is the accusation as laid, and not the final decision of the Court, which should determine the applicability or otherwise of the Clause. In the case which went to the Privy Council the accused had been charged with, and tried for, conspiracy to commit criminal offences and also some substantive offences said to have been committed in pursuance of the conspiracy. The High Court found the charge of conspiracy not to have been established and different accused were convicted of different substantive offences which were held to have been brought home to them. It was contended on behalf of the convicts that the charge of conspiracy having fallen through, the different offence which the different accused were found guilty of, could not be said to have been committed in the course of the same transaction, and that their joint trial for their separate individual acts was, accordingly, illegal.

Their

*P.61.

Their Lordships repelled this contention and *held that the question of the validity or otherwise of the trial had to be decided with reference to the accusation and not with reference to the actual findings.

It was next contended by Mr. Bannerji that the procedure adopted by the learned Special Judge in the trial of the case was not proper and according to law, that the case should have been tried in accordance with the manner provided by the Code for the trial of warrant cases, and that the learned Judge acted illegally in framing charges against the accused without recording any evidence and merely on the basis of the charge sheet supplied by the police. These contentions of the learned counsel are also without any force.

In an earlier portion of this judgment, I have had occasion to refer to the third sub-section of section 13 of the Bombay Public Safety Measures Act as extended to the Province of Delhi. According to that sub-section, subject to certain modifications, the provisions contained in the Code for the trial of Sessions cases are to apply to the proceedings of the Special Judge whose Court is to be deemed to be a Court of Sessions for the purposes of those provisions. One of the modifications of the provisions governing -----

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*P.63.

*Sessions trials as enacted in the aforesaid Act is that a Special Judge may take cognizance of offences without the accused being committed to his Court for trial. The procedure laid down in Chapter XXI of the Code for the trial of warrant cases applies only to proceedings before a Magistrate. The procedure for trial of cases in a Court of Session is to be found in Chapter XXIII. Unlike Chapter XXI this Chapter does not require the Judge to hold any enquiry or record any evidence before framing a charge. On the other hand, as provided in section 271, the trial in a Court of Session has to commence with the arraignment of the accused and the reading out of the charge to him. This was precisely the procedure followed in the present case and I fail to see how it can be said to be open to any legal objection.

Mr. Bannerji next objected to the form in which the charge of conspiracy had been framed by the learned Special Judge, on the ground that it did not allege or indicate what, if any, plan or design had been formed by the accused for the accomplishment of their object. This contention is equally without force. As I have pointed out above, the offence of criminal conspiracy consists merely in the agreement to commit any illegal act and is complete as soon as the agreement is reached. In order to justify conviction for the offence of criminal conspiracy it is not necessary for the prosecution to prove anything more than the agreement. If the agreement is proved the accused are liable to be punished even though they may not yet have formed or even considered any plan or design for the achievement of their common object. In the circumstances, an indictment for criminal conspiracy need not allege or indicate the plan or the design formed by the alleged conspirators for carrying out the object of the conspiracy nor need it even allege that any plan or design has been formed.

*P.64.

The question as to what an indictment for criminal conspiracy must allege or indicate was considered in the case

case "the King v. Gill and Henry" (20 R.R.407). In that case the defendants were found guilty upon an indictment which charged that "they unlawfully did conspire and combine together, by divers false pretences and subtle means and devices to obtain and acquire to themselves of and from P.D. and G.D. divers large sums of the money of the respective monies of the said P.D. and G.D." The validity of the indictment was impugned on the ground that the words used therein gave no information to *the defendants of the specific charge against which they were to defend themselves and did not state the overt acts of the conspiracy. In repelling this contention Abbot C.J. observed:-

P. 65.

"It is objected that the particular means and devices are not stated. It is, however, possible to conceive that persons might meet together, and might determine and resolve that they would by some trick and device cheat and defraud another, without having at that time fixed and settled what the particular means and devices should be. Such a meeting and resolution would nevertheless constitute an offence. If, therefore, a case may reasonably be suggested in which the matters here charged would, if there were nothing more, be an offence against the law, it is impossible, as it seems to me, to conclude that the law should require the particular means to be set forth. The offence of conspiracy may be complete, although the particular means are not settled and resolved on at the time of the conspiracy."

Bayley J. who was the other member of the Bench in dealing with the same question observed as follows:-

"When parties have once agreed to cheat a particular person of his monies, although they may not have then fixed on any means for that purpose, the offence of conspiracy

"is complete. This case appears to me not distinguishable in principle from the King v. Eccles which decided that the means need not be stated; and there Buller J. said, that the means were matter evidence to prove the charge and not the crime itself."

*P.66.

In this country the question was discussed at great length and with his characteristic lucidity and thoroughness by Sir Asutosh Mookerjee in his judgment in the case of Aprits Lal Hazra and others v. Emperor (I.L.R. 42 Cal. 957) at page 975 to 981 of the report. The accused had in that case been charged with having conspired to manufacture explosive substances. The legality of the charge was attacked at the hearing of the appeal on the ground that it did not specify the nature of the explosive substances which the accused had agreed to manufacture. The objection was overruled by the Bench and the charge as framed was held to be quite legal and proper. In dealing with this subject Sir Asutosh Mookerjee observes:-

" In the second place, it has been contended that the charge under section 120-B, Indian Penal Code, is bad, because it does not specify the explosive substance, which, it is alleged, the accused had conspired with one another and with other persons to make & keep. The substance of the argument is that to make and keep explosive substances generally is not an offence which, it is contended, means according to section 4, clause (o) of the Criminal Procedure Code, 'any act or omission made punishable by any law for the time being in force,' and according to the

*P.67.

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second paragraph of section 40, Indian Penal Code denotes, 'a thing punishable under that Code or under any special or local law,' as defined in section 41 and 42. Reference has also been made to section 10 of the Indian Evidence Act, where the expression is used, 'two or more persons have conspired together to commit an offence or an actionable wrong.' * * * *

We are unable to accept as well-founded the contention of the accused that where the illegal act, charged under section 120-B, is the unlawful and malicious possession of explosive substances, within the meaning of section 4 of the Explosive Substances Act, 1908, it is essential to specify in the charge the explosive substances which the accused have conspired to have in their possessions or under their control. It is indisputable that a person may be guilty of criminal conspiracy, even though the illegal act which he has agreed to do or cause to be done has not been done. As was observed by Cleasby B. in Reg. v. Hibbert (1875) 13 Cox 82) conspiracy differs from other charges in this respect, that in other charges the intention to do a criminal act is not a crime of itself until something is done amounting to the doing of or attempting to do some act to carry out that intention; conspiracy, on the other hand, consists simply in the agreement or

confederacy to do some act, no matter whether it is done or not. We very often get facts sufficient to establish the guilt of parties to a conspiracy other than acts which have been done in pursuance of it. Baron Cleasby then gives an example: 'there may be a conspiracy to set fire to London at different places at once, and that conspiracy may be fully proved, though no part of London has in fact been set on fire, inasmuch as the crime of conspiracy consists only in the agreement or confederacy to do an illegal

act

act by legal means or a legal act
by illegal means. * * * * *

If the contention of the accused in the case before us were well-founded, there could be no prosecution for a conspiracy to commit murders or dacoities till a murder or dacoity had been actually committed in pursuance of the conspiracy, though it might be conclusively proved that the conspiracy had been formed, even before a single overt act was done.

The gist of the offence is in the conspiracy or agreement, and if the offence goes no further, it may not be possible to say what murders or dacoities it is proposed to commit, or in a case such as that before us, what particular explosives the accused intend to obtain. * * * *

The indictment in all cases of conspiracy must, in the first place, charge the conspiracy, but that in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. * * *

We are clearly of opinion that the conspiracy charge is not open to objection on the ground that it does not specify the explosive substances for the preparation and possession whereof the alleged conspiracy was formed."

In arriving at the above conclusion Sir Asutosh Mookerjee quite exhaustively considered and reviewed a number of English authorities relevant to the subject that had been cited at the Bar.

Lastly, Mr. Bannerji sought to place on section

section 10 of the Indian Evidence Act a much narrower interpretation than its language warrants. The section runs as follows:-

"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

Under the English Law statements or acts ~~made~~*or done by one conspirator, in order to be admissible against the others, must have been made or done in furtherance of the common purpose and in pursuance of the conspiracy. However, as will appear from the wording of the section quoted above, this rule of the English Law has not been adhered to by the framers of the Indian Evidence Act. Mr. Bannerji had to admit that according to the plain language of the section a statement or act made or done by one conspirator should be admissible in evidence against the others for the purpose of proving both the existence of the conspiracy and their participation therein, if it has been made or done in reference to their common intention, and it is not necessary that it should have been made or done in furtherance of such intention. He, however, contended that in Mirza Akbar v. King Emperor (A.I.R. 1940 P.C. 176) the Privy Council had held that the scope of section 10

*P.70-

of

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of the Indian Evidence Act is not wider than that of the relevant rule of the English common law.

After a careful perusal of the Privy Council

judgment I am quite clearly of the opinion that

it does not at all support the contention of the

learned counsel. The question that arose for

*P.71.

*decision in that case was whether a statement made to a third person by an alleged conspirator about past acts

after the common intention had ceased to operate was

admissible. This question was answered in the negative

relying on the judgment of the House of Lords in

Queen v. Blake ((1844) 6 Q.B.126), their Lordships being

of the opinion that in this respect the rule of Indian

Law was not different from that of the English Common

Law as laid down in the above decision. The judgment

of the Privy Council is no authority at all for

reading into the section a sense quite different from

that clearly implicit in the words used. That in

this respect the rule embodied in the Indian Act

is much wider than the corresponding rule of English

Law has been noticed and commented upon in quite

a large number of reported cases to which it is

hardly necessary to refer in view of the most

unambiguous language used in the section.

Mr. Inandar wanted us to hold the evidence of the approver to be legally inadmissible on the ground

that the pardon tendered to him by the learned

Special Judge was illegal and in excess of the powers

conferred on him by the statute under which the Special

Court had been established. The relevant provision of

*P.72.

the statute is *contained in sub-section 2-(a) of

section 13 of the Bombay Public Safety Measures Act

of 1947 as extended to the Province of Delhi which

was

was introduced into the Act by Ordinance 14 of 1948 which was subsequently replaced by the Central Act 52 of 1948. The sub-section runs as follows:-

"A Special Judge trying an offence under this Act may, with a view to obtaining the evidence of any person, supposed to have been directly or indirectly concerned in, or privy to, the offence, tender a pardon to such person on condition of his making a full and true disclosure * * * * *

According to Mr. Inandar's way of reading the above sub-section, a Special Judge could tender pardon only while trying an offence created by the Act itself. His contention was that the words "under the Act" had been used in the sub-section to qualify the immediately preceding word "offence" and not the word "trying" occurring earlier. I find myself unable to accept the contention and have little doubt that the words "under this Act" have been used in the sub-section as qualifying the "trial" and not as qualifying the "offence". The interpretation of the sub-section suggested by Mr. Inandar seems to be wholly inconsistent with the general tenor and the language of section 13 which was *obviously enacted to provide generally for the procedure to be followed by a Special Judge in the trial of all the offences or classes of offences which he may be required by the Provincial Government to try and it appears to be wholly unreasonable to assume that, while conferring on him all the powers exercised by a Sessions Judge, in the trial of Sessions cases, with certain additions, the Legislature intended to restrict his power to tender pardon only to the two petty offences created by sections 7 and 9 of the Act.

Before proceeding to examine the evidence by which the

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the prosecution have sought to establish the existence of the conspiracy and the participation of the appellants

therein, I wish to make a few general observations as to the considerations by which, I think, we must be guided in our appraisal of the said evidence in the present case.

As I have had occasion to remark before, it is well settled that conspiracy can seldom, if ever, be proved by means of direct evidence, and has almost invariably to be inferred from circumstantial evidence consisting generally of evidence as to the conduct of the parties on certain occasions and in relation to certain matters. In R. v. Parsons ((1702) 1 WMBL 391) Lord Mansfield told the jury that there could be generally no occasion to prove the actual fact of conspiracy and that the same had to be collected from collateral circumstances. In Parnoll's case ((1881) 5 Cox C C 505) Fitzgerald J. observed:-

*P.74.

"There is no such necessity that there should be express proof of conspiracy, such as proving that parties actually met and laid their heads together and then and there actually agreed to carry out a common purpose, nor is such proof usually examined. It may be that the alleged conspirators have never seen each other and have never corresponded; one may never have heard the name of the other, and yet by the law they may be parties to the same common criminal agreement."

In the King v. Brisac and Scott (7 R.R. 551) the question which directly arose for decision was whether the offence of having conspired to cheat the Crown by fabricating false vouchers for which the Captain and purser of a man of War had been indicted could

could properly be tried within the body of any county in England or was triable only under the Admiralty Commission. In considering the question it became necessary for the Bench to consider also the question as to how the offence of conspiracy could generally be established against a set of persons indicted for such offence. Dealing with that question Grose J. made the following observations:-

* P. 75.

"Conspiracy is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them."

These observations were cited with approval by the House of Lords in their judgment in Denis Dowling v. The Queen ((1868) L.R. 3 H.L.306).

In Barindra Kumar Ghose and others v. Emperor (also known as the Maniktolla conspiracy case) (37 Cal.478) Sir Lawrence Jenkins C.J., who wrote the main judgment of the Division Bench, held that in a trial for conspiracy the agreement to do the unlawful act has generally to be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Similar observations are to be found in the judgment of the High Court of Lahore in the case of Punjab Singh v. The Crown (I.L.R.15 Lah. 84) to which a reference has already been made and the judgment of the Nagpur High Court in B.N.Mukerji and others v. King Emperor (47 Cr.L.J.69).

In all criminal trials where the guilt of the accused is sought to be proved by means of circumstantial evidence, it becomes incumbent on the Court to scrutinise such evidence with the utmost care, always bearing in mind the well settled rule that in cases dependent upon circumstantial evidence, the incriminating circumstances must, in order to justify the inference of guilt, be wholly incompatible with the innocence of

*P. 76.

of the accused and incapable of explanation upon any reasonable hypothesis other than that of his guilt. As observed by a Bench of the Chief Court of the Punjab in Gurudatt v. Emperor (136 P.L.R. 1909) there must be a chain of evidence so far complete as not to leave reasonable ground for a conclusion therefrom consistent with the innocence of the accused. While this is true of all criminal trials, a Court has to be particularly careful in dealing with the offence of conspiracy in which evidence may be given of statements said to have been made, orally or in writing, and acts alleged to have been done, by any one or more of the alleged conspirators without the knowledge of the others at places far removed from where they have ever been and even at a time when, even according to the prosecution, they were not parties to the *alleged conspiracy. In a case like this, there is always the danger of witnesses, even where they are honest and want to speak the truth, quite unconsciously and without meaning it, confusing what they actually saw or heard with inferences which they feel inclined to draw from what they did see or hear and even from what they have otherwise seen or heard. As pointed out by Sir Lawrence Jenkins C.J. in his judgment in the Maniktolla conspiracy case referred to above at page 508 of the report, in such cases conjecture or suspicion may easily take place of legal proof. The learned Chief Justice has, in his above judgment, made a very pointed reference to the following passage occurring in Baron Alderson's summing up to the jury in Reg. v. Hodge (1838, 2 dem 227):- "The mind is apt to take a pleasure in adopting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and

and the more ingenious the mind of the individual, the more likely is it, considering such matters, to over reach and mislead itself, to supply some little link that is wanting, to tie for granted some fact consistent with its previous theories and necessary to render them complete."

It is particularly necessary to keep constantly in mind the above warnings of Baron Alderson and Sir Lawrence Jenkins in weighing the evidence in the present case where the person to murder whom the accused are said to have conspired amongst themselves and with others, and who was in fact murdered, according to the prosecution, in pursuance of the alleged conspiracy, was one whom the overwhelming majority of his countrymen including, presumably most of the witnesses and those charged with the duty of investigating the case, regarded with feelings of the highest esteem and deepest affection and whose assassination by one from amongst themselves had filled them with shame and indignation.

*The events which the prosecution has sought to prove in the present case and from which we are asked to draw the inference as to the existence of the conspiracy fall under three heads viz-

(1) Events which took place up to 20th January, 1948 when a gun-cotton slab was admittedly exploded by Madanlal at the Birla House;

(2) events which took place after the above explosion up to 30th January, 1948 when Mahatma Gandhi was admittedly shot dead by Nathuram Godse with a pistol P.39; and

(3) events which took place subsequent to the aforesaid act of Nathuram Godse, these events being merely those evidence the subsequent conduct and movements of the accused up to the times of their respective arrests.

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Cr.A.66-49. -257-

The principal witness relating to the events falling under the first head is Digambar R.Badge, the approver, P.W.57. A very large part of the arguments addressed to us by Nathuram Godse and the counsel appearing on behalf of the other appellants, *quite naturally, was directed against his evidence. The learned Special Judge while dealing with his evidence has observed:-

"The examination and the cross-examination of the approver went on from 20-7-1948. till 30-7-1948. He was cross-examined for nearly seven days. There was thus an ample opportunity to observe his demeanour and the manner of his giving evidence. He gave his version of the facts in a direct and straightforward manner. He did not evade cross-examination or attempt to evade or fence with any question. It would not have been possible for anyone to have given evidence so unfalteringly stretching over such a long period and with such particularity in regard to the facts which had never taken place. It is difficult to conceive of anyone memorizing so long and so detailed a story if altogether without foundation."

It

It was pointed out by Nathuram Godse that Badgo had given his evidence in Marathi which language the learned Special Judge did not understand and that, therefore, the latter was not in a position to make any estimate of his demeanour while he was in the witness-box. I do not agree that merely because the learned Judge did not understand the language in which the witness gave his evidence and had, therefore, to make use of the services of an interpreter he was not also in a position to form an estimate as to his general demeanour while he was in the witness-box. It certainly did not require any knowledge of the language in which the evidence was given to be able to observe if the witness gave his answers to the questions put to him in cross-examination without any attempt at evasion or prevarication.

After a very careful perusal of the approver's evidence the impression left on my mind is that generally he gave his evidence in a straightforward manner and without any attempt at prevarication and without betraying an anxiety to withhold facts. Questioned about his original financial position and antecedents he quite candidly admitted that, on coming to Poona, he had been able to secure a job carrying a salary of only Rs.18/- or Rs.20/- per mensem after resorting to satyagraha at the residence of the Chairman of the Municipal Board. He also admitted that when he started the shastra bhandar in 1942 he had to dispose of his household goods in order to be able to raise a small capital of Rs.75/- or Rs.100/- for the purpose. He made no secret of his having exploited the communal troubles and the trouble in Hyderabad to enrich himself by means of illicit traffic in arms, ammunition

ammunition and explosives. He unhesitatingly admitted facts which he need not have admitted and which might be made use of against the prosecution. For instance, he admitted that Godse was suffering from headache on the 20th January.

He also admitted having been frequently visited, custody, by his brother Narayan who is a police while he was in police /employee at Poona. In

answer to questions put by the counsel for

Karkare about the latter's activities in

connection with refugee work he stated:-

"He is greatly interested in the Hindu refugee work. I know that he spends money over the Hindu refugee work. Nathuram V. Godse and Apte had told me that he was giving free board and lodging to the Hindu refugees. Karkare had been introduced to me by Apte; It was at that time that he was going to Noakhali to do the Hindu refugee work."

I do not of course suggest that his testimony should *be placed on any higher plane than that of an ordinary accomplice or that it is not necessary, in his case, to insist on all those safeguards which, according to every civilised system of jurisprudence, must be satisfied before conviction, can be based on such testimony. All that I mean is that if such safeguards are satisfied there do not exist any a priori grounds for its wholesale rejection.

In support of the plea for the wholesale rejection of the approver's evidence, our attention was drawn to a number of events narrated by him and it was pointed out that there was no independent corroboration of his testimony as regards those events. It is, however, not necessary that

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every fact deposed to by an approver should be so corroborated. The law on the subject of accomplice evidence was re-examined and re-stated by the House of Lords in 1916 in Rex v. Baskerville ((1917) 86 L.J.R.28), a Bench of five Law Lords presided over by Viscount Reading, C.J., having been specially constituted for the purpose, in view of some conflicting decisions on the subject. The following passages appearing at pages 33 and 34 of the report lay down what their Lordships considered to be the correct law applicable to the subject:-

"After examining the authorities to the present day we have come to the conclusion that the public opinion of the law upon this point is that stated in Reg. v. Stubby (25 L.J.M.C.16) by Baron Parke, namely, that the evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner. The learned Baron does not mean that there must be confirmation of all the circumstances; as we have already stated, that is unnecessary.

It is sufficient if there is confirmation as to a material circumstance of the crime and of the identity of the accused in relation to the crime. Baron Parke gave this opinion as the result of 25 years' practice. It was accepted by the other Judges, and has been much relied upon in later cases. * * * * * We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him-- that is which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

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*test applicable to determine the nature and extent of the corroboration is thus the same, whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute * * * *. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.

The corroboration need not be direct evidence that the accused committed the crime: it is sufficient if it is merely circumstantial evidence of his connection with the crime. A good instance of this indirect evidence is to be found in Reg V. Birkott (Q. Car and P. 732). Were the law otherwise, many crimes which are usually committed between accomplices in secret, such as incest, offences with females, or the present case (sodomy), could never be brought to justice.

*P-86

The counsel for one of the appellants pleaded for the outright rejection of the approver's* evidence in this case on the ground that most of the facts stated
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by him being true and he having only interposed, in a very clever and astute manner, an untruth here and an untruth there, with the object of presenting a wholly distorted picture to the Court, the ordinary rule relating to accomplice evidence, as laid down in the judgment noticed above, and now generally accepted as the rule of law by Courts in this country, should not be applied. The argument though ingenious is hardly sound. Speaking generally where the major and the material facts deposed to by an approver are either admitted or otherwise proved to be true, their truth reflects also on the other facts disclosed by his evidence, and, in a very large majority of cases, is found to render their existence so highly probable that, to use the language employed by the Legislature in the interpretation clause in the Indian Evidence Act in defining the expression "proved", a prudent man might, under the circumstances, to act on the supposition that they exist. As the discussion that is to follow will show, if the events narrated by the approver in the present case which have been corroborated by the other evidence are held to * have actually taken place, the conclusion becomes inescapable that, at most, at least, of the other incidents related by him must also be true.

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From what I have said above I should not be understood to lay down that independent corroboration of the material parts of the evidence of an accomplice imposes any obligation on the Court to accept the rest of his evidence or relieves it of the duty to scrutinise such evidence, nor is that, I imagine, the effect of the House of Lord's judgment quoted above or of the decisions of the Courts in this country in which the principles laid down in that judgment have

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have been followed. The law, as I understand it, is that while the uncorroborated testimony of an accomplice can, in no circumstances, justify conviction and, has, therefore, unless it is corroborated in the manner and to the extent indicated by their Lordships, to be completely ignored, a Court may, on such corroboration, accept even the uncorroborated part of his testimony. This of course always presupposes that the Court is satisfied that there is otherwise no ground for rejecting such testimony or any part thereof. If it finds that the whole or any part of such testimony is either inherently improbable or unnatural, or is inconsistent with other admitted or proved facts, there is nothing to prevent it from rejecting the same, and, indeed it will, be its duty to do so. I do not entirely rule out the possibility of the evidence of an accomplice being manufactured in such a manner that incontrovertible facts which are easily capable of being proved by means of other evidence are interspersed with untruth, but I also cannot rule out the possibility of the accused cleverly admitting just those out of the facts deposed to by his accomplice of which independent corroboration is available. Such a subterfuge cannot, however, destroy the effect of the corroboration of the accomplice's evidence in the manner required, and no Court can reasonably be expected to entertain the plea that in such a case the accomplice's evidence should be eliminated from consideration because the facts regarding which it has been corroborated are only those which were otherwise admitted by the accused. *

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* It was also contended that the evidence of
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the approver should be completely disregarded because his statement was recorded by the police at quite a late stage of the investigation and after recording the statements of almost all the witnesses who were produced to corroborate him, and because even in Court he was not examined till at a somewhat late stage of the trial when quite a number of the above witnesses had already given evidence. It was urged that his statement as recorded by the police was presumably concocted in the light of the other statements recorded earlier and made to fit in with them. It was further urged that at the time the witnesses whose evidence was subsequently relied on as corroborating the approver's testimony were examined the accused did not know at all what the latter was going to say, and could not, accordingly, cross-examine them on and in the light of the facts deposed to by him. It was pointed out that the least the Court should do, under the circumstances, is to disregard the evidence supposed to corroborate the approver and, in the result to reject the latter's testimony as uncorroborated. After giving due weight to all the arguments addressed to us in support of these contentions I feel no hesitation in holding that they are wholly devoid of force. Digambar R. Badge, the approver, was arrested at Poona on the 31st January, 1948. The evidence of Mr. Deulkar, Deputy Superintendent of Police, C.I.D., Poona, P.W.123, shows that on that day he was interrogated by the witness for about an hour although his statement was not regularly recorded. On the 2nd February Badge was ordered by Mr. Nagarvala,

Deputy

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Deputy Commissioner of Police, P.W.133, who eventually came to hold the principal charge of the investigation, to be brought to Bombay. In pursuance of these orders he was brought to Bombay while Mr. Deulkar flew to Delhi on 3rd February, presumably pursuant to some information received by him in the course of Badge's interrogation on the 31st January. On 4th February Madanlal was flown to Bombay by the Delhi Police. At Bombay Badge and Madanlal were interrogated after having been confronted with each other. On 5th February Badge was taken by Mr. Nagarvala and Sub Inspector Pradhan (P.W.130) to Poona. Presumably in consequence of some information furnished by him, the police *looked for Gopal V. Godse and Shankar Kistayya. Gopal was arrested the same day in the manner already indicated and Shankar on the day following. On the 8th February Badge with Shankar and Gopal was again taken to Bombay where some recoveries were made on that day and on the day following in pursuance of information supplied by him. On 9th February the statement of Dixitji Maharaj (P.W.77) was recorded by Sub Inspector Pradhan at Bombay at his residence due to his indisposition, also presumably on information supplied by Badge. On similar information Aitappa Krishna Kotian, taxi-driver, P.W.80, was also traced on the same day at Bombay. On 10th February Shankar was taken by Mr. Nagarvala in a plane to Delhi where, on the day following three handgrenades and some other stuff were dug out by him from two places in the jungle behind the Hindu Mahasabha Bhawan which purported to have been interred by Shankar at those places under the orders

*P. 91

of

of Badge on 20th January, 1948 after the explosion.

After his return to Bombay Mr. Nagarvala recorded the statements of Hon'ble Mr. Morarji Desai, Home Minister, Bombay, and Professor J.C. Jain on the

*13th and the 17th February respectively in respect of some communication said to have been made to the latter by Madan Lal during his stay

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at Bombay before he left for Delhi on 15th January. On 21st and 22nd February he recorded

the statement of Badge. I do not see any reason to suppose that there was any unreasonable delay in recording this statement. Much less is

there any reason to assume that the statement

was cooked on the basis of, and with reference to, any other statements recorded by the police

in the meanwhile. On the other hand, these statements themselves appear to have been

recorded on information received from Badge himself during the course of his interrogations.

It has to be remembered that on 21st and 22nd

February there was no indication that Badge would turn the King's evidence. In the

circumstances, there could, at the time, be no motive for the police to cook his statements

in the manner suggested with a view to call in service the persons who had already been examined

to supply the necessary corroboration.

It is true that Badge was not examined as a witness till after 56 other prosecution witnesses

*had given evidence. It was not suggested by any of the learned counsel for the appellants that

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this amounted to any illegality or irregularity affecting the validity of the trial. It was indeed

conceded

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conceded that it is ordinarily the right of the prosecution to produce their witnesses in any order they choose. The contention was that the accused had been very seriously prejudiced by reason of the witnesses whose evidence was subsequently sought to be made use of for corroborating Badge's testimony having been examined before Badge and their consequent inability to cross-examine them in the light of his deposition. A reference to the record shows that out of the 56 witnesses examined before Badge, the evidence only of Mehar Singh (P.W.9), Surjit Singh (P.W.14), Shrimati Salochana Devi (P.W.15), Chhotu Ram (P.W.16) and Baur Singh (P.W.17) is being used to corroborate his evidence with regard to two of the incidents that took place on the 20th January, 1948. The evidence in corroboration of his testimony regarding the incidents that took place before the 20th was produced after he had himself been examined. Of the five witnesses mentioned above we expressly indicated, while hearing the appellants' arguments, that, subject of course to what the learned counsel for the Crown might have to say on the subject, we did not feel inclined to attach any importance to the evidence of Mehar Singh (P.W.9). Mr. Dapitrary having said not a word touching the evidence of this witness, and having made no reference at all to the incidents sought to be proved by means of his evidence, he may be left out altogether. That leaves only four witnesses regarding the incident of the 20th evening at the Birla House. I would not rule out altogether the possibility of the accused having been handicapped, to some extent in

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the cross-examination of these witnesses by reason of their not being in a position to anticipate Badge's evidence on the subject, and would certainly keep this fact in mind when I come to consider their evidence on its merits. I, however, cannot see my way to hold that the approver's evidence should, on that account, be regarded as uncorroborated even to the extent to which corroboration is sought for it from such evidence, much less can I reject it in its entirety. (CI. 14)

* I propose to deal with the relevant events in their chronological order and to consider the evidence relating to each event separately. *P-95

I have said in an earlier part of this judgment that Badge had been previously supplying arms and ammunition to Apte. This fact was admitted by Apte in his statement before the learned Special Judge. Reference may in this connection be made to the following passage at page 70 in the second volume of the paper-book:-

"I have been knowing Badge for about four years. He did supply me some arms and ammunition for the State Congress in connection with the affairs of the Hyderabad State."

According to the evidence of Badge, he met Apte at Yerandawane while he himself was on his way to Bhor State on a pilgrimage and was told by him that they wanted him to supply some arms and ammunition to them. Badge further says that he returned to Poona about eight or ten days after this

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this and within a day or two of his arrival at Poona he was able to arrange to get the stuff required. Thereafter he went to the Hindu Rashtra Office and informed Apte who told him that the members of his party had gone out and would purchase the stuff *after their return.

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According to Badge's evidence Apte visited the Shastra Bhandar in the last week of December 1947 and told the witness that the stuff would be collected by Karkare in two or three days.

Badge goes on to say that Apte came to his place at about 6 or 6-30 p.m. on 9th January, 1948 and told him that Karkare and others would be seeing him in a short time and requested him to show the stuff to them. Some time after Apte had left, Karkare accompanied by Pahwa, Om Parkash and Chopra came to the witness's place and after introducing his three companions to him asked him to show them the stuff. Thereon Badge asked Shankar, his servant, to bring the stuff which on being brought was found to consist of gun-cotton slabs, handgrenades, cartridges, pistols and fuse wire. It was shown by Badge to Karkare and his companions who left after having looked thereat. The next day at about 10 a.m. Apte again came to Badge's place and took him to Hindu Rashtra Office where Nathuram V. Godse was doing his work in a tent pitched in the compound which was presumably being used by him as his office. Apte asked Badge to supply them with two gun-cotton slabs, five handgrenades and two *revolvers. Badge expressed his inability to supply any revolvers. He, however, expressed his readiness

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to

to supply the rest of the material asked for. Apte asked for the gun-cotton slabs and handgrenades being delivered at Bombay. Badge agreed but told Apte that he would be unable to do so immediately because he wanted to go to his village Chalisgaon to sell his house. Apte agreed and told Nathuram V. Godse who had in the meanwhile come out of the tent that Badge was willing to hand over the stuff and that their one work was over. Both Apte and Nathuram Godse then told Badge that the stuff was to reach Hindu Mahasabha Office at Dadar by the evening of the 14th January. To this Badge agreed.

On the 12th January, 1948 Badge, according to his evidence, went to his village Chalisgaon and sold the house. He returned to Poona the following day i.e., the 13th January and on his arrival at that place told his servant Shankar in the evening that they had to reach Bombay with the stuff by the evening of the next following day. The stuff was accordingly put in a khaki cloth bag. The stuff put in the bag consisted of two *gun-cotton slabs, five *P-98 handgrenades and fuse wire and detonators.

It may be observed that all the above mentioned incidents narrated by Badge were denied by the accused and that excepting the evidence of Badge himself there is no independent evidence to prove them. To what extent his evidence about these incidents can be said to receive any support from the other circumstances will be seen later. Much capital was made by

Nathuram

Nathuram Godse and the counsel for the other appellants of the prosecution having failed to produce Om Parkash and Chopra who were said to have accompanied Karkare and Madanla at the time they went to see the stuff at the place of Badge. The evidence led by the prosecution shows that every possible effort was made to trace the aforesaid persons but the prosecution found themselves unable to do so. I am in the circumstances satisfied that no inference adverse to the prosecution can possibly be drawn from their omission to produce them.

In order to prove that Karkare was not a stranger to Badge and had actually had dealings with him in relation to arms and ammunition the prosecution produced and relied on P.90 consisting of eight pieces of a torn letter pasted on a piece of paper purporting to have been written by Karkare to Badge on 29th May, 1947. The letter was in Marathi and translated in English reads as follows -

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"To Badge,

The person who has come to you is a trustworthy gentleman. I could not come yesterday due to great difficulties. I am specially sending this man. You must have received Rs. 400/- sent by telegraphic money-order. The copies of the 'pusta' which you have brought may be sent with that person, who has been instructed in regard to the arrangements made for the payment. Every time ten 'vastu' are to be handed over, and for each 'vastu' Rs. 15 should be charged. I will come on the

2nd and settle my account. Do not worry about moneys. The gentleman from Bombay must have arrived. Confusion arose because the wire from you was received one day late."

The eight pieces of the torn letter were recovered from the possession of Badge's wife on 23rd May, 1948 by Sub Inspector Pradhan (P.W.130). The aforesaid witness has stated that he had been asked by Mr. Nagarvala to see that she did not carry *any papers or articles with her when she ~~went~~ *P to have an interview with her husband and that on finding her carrying these pieces he seized them and had a panchnama or recovery list prepared after sending for the panches or the witnesses to the recovery, P.229 being the recovery list. Badge in his evidence stated that the letter had been written by Karkare to him and that the words "pustak" and "vastu" i.e. books and articles as used therein connoted in fact bombs. In explaining the circumstances under which his wife carried on her person the torn pieces of the letter when they were seized on 23rd May, 1948 Badge has stated that when his wife came to see him sometime in May 1948 he had asked her to go back to Poona and to bring the Promissory-notes and ~~the letters that~~ she found to be important ~~ones~~ and that she had again come to see him 15 or 16 days later. He was unable to tell whether she had actually brought the pieces of the letter which now make up P.90 with her on this occasion and in pursuance of the said request for promissory

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promissory-notes and letters being brought. Badge's wife from whose person the said pieces of the letter are said to have been recovered has not been examined and there is no other *evidence to explain the circumstances under which these pieces happened to come into her possession and were brought by her with herself when she went to see her husband. Excepting these pieces no other letter or pronote is said to have been recovered from her on that occasion or on any other occasion. Although Badge has said that the letter was written by Karkare, he does not profess to be acquainted with his handwriting and does not even say that he identifies the writing as that of Karkare. A handwriting expert was examined before the learned Special Judge who after comparing P.90 with some specimen writings of Karkare obtained by the police from him while he was in custody deposed that the writing in P. 90 was that of Karkare. The learned Special Judge, however, rejected this evidence and did not choose to place any reliance on P.90. The learned Advocate-General did not, in his address to us, seek to place any reliance on the evidence of the handwriting expert. He, however, drew our attention to the following passage in the statement of Badge made in answer to questions put to him in cross-examination by the counsel for Karkare:-

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"Exhibit P.90 is in eight pieces pasted on a piece of paper. The *pieces have not been pasted on the paper under my instructions. It is not true that the price

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of Rs. 150/- per article as given in the letter refers to the price of steel waist-coats. Had it referred to steel waist-coats, then it would have been mentioned so in so many words with impunity. It is true that the T.M.O. for a sum of Rs. 400/- was not sent to me direct."

It was suggested by the learned counsel that the statement was made in answer to questions containing a suggestion that the word "vastu" as used in P.90 connoted a steel waist-coat and also a suggestion that the telegraphic money-order of Rs 400/- mentioned therein had not been sent to Badge direct, but to some one else. It was urged that these suggestions must be taken as implied admissions of the letter being in the handwriting of Karkare. Our attention was also drawn to an application made by the counsel for Karkare on 29th July, 1948 i.e., on the day following that on which Badge was cross-examined by him with reference to P.90, which is to be found printed at page 59 in the 6th volume of the paper-book. It was contended that in the second part of the application objection was taken to the admissibility of P.90 on the ground that it was a torn document and as such a document which did not exist according to law and could not be considered as a valid and legal piece of evidence, but there was no denial of its being in the handwriting of Karkare. I must confess that there is considerable force in these contentions of the learned Advocate-General. However after giving my very careful thought to the question I find myself unable to hold P.90 to have been proved satisfactorily to be in the hand of Karkare. The questions in cross-examination in answer to which the above quoted statement was made by Badge might

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might have been intended to imply no more than this that the word "vastu" as used in the letter by whomsoever it was written need not necessarily have meant a bomb but could have been used in an altogether different sense and that no telegraphic money-order of Rs.400/- was ever received by Badge from the writer of the letter whoever he was. Similarly it might be that at the time of making the application dated 29th July, 1948 the counsel wanted to give only the ground on which, he thought he could ask for the absolute exclusion of P.90 from the record.*The question whether P.90 was in the handwriting of Karkare was a different question which had to be decided on a consideration of the relevant evidence. The counsel could evidently not ask for the total exclusion of P.90 from the record as being no evidence in the eyes of law on the ground of its not being in the hand of Karkare because that matter could not be decided except after a consideration of the evidence and therefore not before the conclusion of the trial. In these circumstances and in view of the circumstances under which P.90 purports to have been seized I would not treat it as any evidence of any previous dealings between Badge and Karkare in illicit arms.

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On 13th January, 1948 Nathuram V. Godse assigned in favour of Mrs. Champutai Narayan Apte wife of Narayan D. Apte his life policy for Rs.2,000/- which he held in the Oriental Government Security Life Assurance Company, Limited, by means of an endorsement which was attested by Apte himself, vide P.129. On the next following day i.e., on the 14th January, 1948 Nathuram assigned his other life policy for Rs.3,000/- in the same Company in favour of Mrs. Sindhutai Gopal Godse, wife of Gopal Godse, by means of a similar endorsement which was also attested by Narayan D. Apte, vide P.128.

*P-105

On the same day Gopal V. Godse made an application for leave for seven days, from 15th January, 1948 to 21st January, 1948, it being stated in the application that the leave was needed for some immediate farm affairs at his village. P.132

is the original application. This application was forwarded by the applicant's immediate officer with a recommendation for its being granted. It, however, appears that when it came before the final sanctioning authority it was discovered that the applicant had to appear before some Board on the 16th January. The final order passed on the application accordingly was that the applicant could avail of the leave after the 17th January.

On the same day i.e., 14th January, 1948 Gopal V. Godse was admittedly paid a sum of Rs. 250/- by his brother Nathuram Godse. There is an entry to that effect in Nathuram's diary Exhibit P.218. In his statement in Court Nathuram has said that the aforesaid sum was paid by him to Gopal on that*day when he came to have his lunch with him, it being a Maghar shakrant day, inasmuch as Gopal had asked for it. The significance of the entry in the diary lies in this that the sum of Rs 250/- paid to Gopal seems to form a part of the fund of Rs. 2,000/- which evidently was earmarked by Apte and Nathuram for some purpose, which after some disbursements on the 14th January was divided into two lots, and out of which admittedly the sum required for booking air accommodation for the two from Bombay to Delhi was spent. The precise implications of this will be considered later.

Nathuram Godse and Apte left Poona for Bombay by the Poona Express which started from Poona at 3-20 or 3-30 p.m. They travelled in a 2nd class compartment. This fact is proved by Miss Shantabai B. Modak, a film actress, P.W. 60, who was their co-passenger in the same compartment and whose brother, who had come to receive her at Dadar railway station, gave them a lift in his jeep carrup to Savarkar Sadan from the said railway station. These facts deposed to by Miss Shantabai are admitted by both Nathuram and Apte. Miss Shantabai also gave evidence with regard to the conversation which the aforesaid

Nathuram/

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Mathuram and Apte had with her brother in the car. According to her on her brother saying that he was thinking of disposing of the car they said that they might purchase it adding that for a few days they were not going to be at Bombay, Poona or round about and that they would see to the matter on return. She admitted that she had not stated this fact in her statement to the Magistrate recorded under section 164, Criminal Procedure Code. She explained this omission by saying that she did not consider the matter to be of importance for the case. Mathuram and Apte on being questioned by the learned Special Judge admitted having travelled from Poona to Bombay by the train mentioned by Miss Modak and in the same compartment with her and also admitted having been given a lift by her brother from Dadar railway station to Varkar Sadan. Neither of them was questioned about the conversation which according to Miss Modak they had with her brother en route. In their lengthy written statements they did not make any reference at all to their having travelled with Miss Modak or to their having been given a lift by her brother. However both of them stated that they *had come to Bombay with the avowed object of proceeding to Delhi in order to stage a demonstration by way of protest against the fast undertaken by Mahatma Gandhi which they believed to be intended to coerce the Government of India into paying the sum of fifty-five crores of rupees to the Pakistan Government and may, therefore, well have told Miss Modak's brother that they were not likely to be in Bombay or Poona or near about in the next few days. The incident is otherwise of little importance.

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importance and it is scarcely necessary to lay any emphasis on it. It is, however, important to note that according to Nathuram although he did agree to Apte's suggestion about staging a peaceful demonstration at Mahatma's prayer meeting he was all the while conscious that such demonstration was not likely to prove fruitful. Reference may in this connection be made to the following passage occurring at the end of para 16 of his written statement :-

"Apte suggested the same old method to stage a strong but peaceful demonstration at the prayer meetings of Gandhiji. I consented to this half-heartedly, because I could easily see its futility. *However I agreed to join him as no alternative plan was as yet fixed in my mind."

*P.102

The implications of this part of Nathuram's statement will be considered later.

According to Badge's evidence he and Shankar also left Poona for Bombay by the evening train on the 14th taking with themselves the bag containing the stuff mentioned above which Badge had undertaken to deliver to Apte and Nathuram at Bombay the same evening.

Nathuram Godse stressed two points in connection with the alleged journey of Badge from Poona to Bombay. He urged in the first place that if he had undertaken the journey as stated by him in pursuance of an agreement between himself and Nathuram and Apte, he could not have started from Poona without contacting the aforesaid two persons after his return from Chalisgaon and

reassuring

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reassuring himself that they would meet him as agreed at Bombay that evening. It was next urged by him that it was rather queer that although he and Shankar travelled by the same train by which he himself and Apte travelled, Badge did not care or choose to contact *them at any place en route. I, however, can see no force in either of these contentions. In the absence of any communication from Apte or Nathuram which could be taken to modify the previous agreement and in the absence of any other indication that they had changed their minds there was no necessity for Badge to entertain any doubt about Nathuram and Apte being in Bombay at the proper time as already agreed or to seek further assurance that they were still ready and willing to perform their part of the agreement. The second contention presupposes that Badge and Shankar travelled by the same train by which Apte and Nathuram had travelled, namely, the Poona Express, although there is no evidence at all on the record to that effect. Badge undoubtedly says that he and Shankar left by an evening train but there may be other trains leaving Poona in the evening than the Poona Express. Be that as it may, even if they did travel by the same train, undoubtedly Badge and Shankar did not travel by the 2nd class. They would, therefore, be in different compartments separated from each other by some distance. In any case, Badge, who was carrying with himself very objectionable stuff, could not be expected to come *out of his compartment at any way-side station in order to try to make a wholly

unnecessary

unnecessary contact with Nathuram and Apte, even assuming that he knew that they were also travelling by the same train and had not left earlier.

According to Badge, he and Shankar got down at Dadar railway station and immediately proceeded to the Hindu Mahasabha Office. On getting there they did not find Apte or Nathuram Godse there. Badge on making an enquiry was told that they would be arriving in a short time. He waited for them for about half an hour whereafter he and Shankar left the office to take some tea. While going out they met Apte who told Badge that arrangements had to be made for keeping the stuff and asked him to come with him. Badge, according to his evidence, took the bag from Shankar who was asked to stay at the office. After Badge and Apte had gone four or five paces they met Nathuram on the pavement. The three then proceeded to Savarkar Sadan. On getting there Nathuram and Apte went upstairs with the bag while Badge stayed downstairs. Apte and Nathuram came back after a few minutes. All three then returned to the Mahasabha Office and then left with Shankar in a *car which had been brought by Apte. They *P.112. drove to Dixitji Maharaj's house in Bhuleshwar and finding him asleep (it being already 10 or 10-30 p.m.) the bag was left with a servant. As stated by Badge, when they reached Dixitji's house Shankar was asked to sit in the hall while the ~~three~~ of them went into the house. They asked the servant of Dixitji Maharaj to keep the bag in the house and told him that they would take the bag back next morning. Badge says that he had said to the servant that the bag would be taken back by himself. Apte and Nathuram. The servant to whom the bag

containing

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containing the stuff is said to have been made over had been, according to Dixitji Maharaj, in his service for about 12 or 13 months. Badge says that he knew that servant before and that the latter was fully aware of his dealings with Dixitji Maharaj. Badge further says that he used to deliver stuff to Parwin Chandar Sethia at Dixitji's place and had so delivered stuff worth thousands of rupees. This is also admitted by Dixitji Maharaj.

113.

Badge has not given any indication as to the person or persons from whom he made enquiries about Nathuram and Apte after his arrival at the *Mahasabha Office. As we proceed with the consideration of the rest of his evidence we will find further references to incidents which are said to have taken place at that place and when we come to his evidence about the events said to have taken place at Delhi we will come across a number of quite important incidents connected with the Delhi Hindu Mahasabha Bhawan. No evidence has been produced by the prosecution either from the Bombay Mahasabha Office or from the Delhi Mahasabha Bhawan to corroborate Badge's evidence about these incidents. On behalf of the appellants much capital has been made of this fact and it has been contended that the court should draw therefrom an inference adverse to the prosecution. It has been very strenuously urged that in any case the uncorroborated testimony of the approver regarding these incidents should be rejected because corroboration of the testimony was available and yet not availed of.

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After giving to this argument all the weight which it deserves I have unhesitatingly reached the conclusion that in the circumstances of this case it will be wholly unjustifiable to draw any inference adverse to the prosecution from their omission to produce any evidence either from the Mahasabha Office at Bombay or from the Mahasabha Bhawan in Delhi in corroboration of the approver's evidence as regards the incidents which, according to him, occurred at these two places. We have it in the statements of both Nathuram and Apte that whenever they happened to be at Bombay they invariably visited the Mahasabha Office at Dadar. Naturally their relations with the people running the office or otherwise connected therewith would be quite intimate. Both of them profess to have been, and presumably were, quite well known workers of the Hindu Mahasabha and claimed to have played a very important role during the deliberations of the meetings of the working committee of the All India Hindu Mahasabha and of the All India Hindu Convention, both of which were held at Delhi on 9th and 10th August, 1947, when, they say, they and their friends strove very hard to make the Mahasabha adopt a fighting resolution. In the circumstances, it would not be unreasonable to suppose that they had made contacts even in the Mahasabha Bhawan at Delhi. Indeed, while arguing his case, Nathuram himself referred to these contacts in trying to support the statement of Apte as to their having had a private car at their disposal during their sojourn there from 17th to 20th January. Besides, as appears from the statements of some of the police officers examined in this case, immediately after the assassination of

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of Mahatma Gandhi quite a number of people connected with the Hindu Mahasabha at Delhi and other places were placed under arrest. Mr. Savarkar, the foremost leader of the Mahasabha in the country, and the idol of the Maharashtra Hindus, about whom even Badge has said in his evidence that he still regards him not merely as a great Hindu leader but as a devta (God), himself was arrested on 5th February, 1948. Although initially the order for his arrest purported to have been passed under the Bombay Public Security Measures Act, and he was shown as under arrest in connection with Mahatma Gandhi murder case only from 11th March, 1948 it was commonly believed that he had been arrested on account of his supposed complicity in the murder. In these circumstances it would be to put too much strain on human nature to expect any person connected with the Mahasabha to furnish any information to, or otherwise cooperate with, *officers charged with the duty of investigating the case, and it is not at all surprising that they were not able to get any clue from the two Mahasabha Offices with which we are concerned in the present case or to produce any evidence from there in respect of the relevant incidents.

The position is, however, quite different with regard to the other incident of the 14th night deposed to by Badge i.e., the incident about the bag containing the stuff having been handed over to Dixitji Maharaj's servant. Narayan Vithal Angre is said to be the name of this servant. His statement was recorded by Sub Inspector Pradhan of the Bombay Police as early as the

*P.116.

16th February, 1948. He was cited as a witness for the prosecution and it is undeniable that he actually came down to Delhi to give evidence. He, however, was sent back without being examined. The explanation given by Mr. Nagarvala for having done so is that he had been advised by the prosecution counsel that his evidence was superfluous, having regard to the evidence already on record of the case. I must confess that I am not in the least impressed by this explanation. The evidence of Dixitji, to which a reference will presently be made, no doubt does establish that a bag containing some stuff comprising *gun-cotton slabs and handgrenades had been left with Angre at sometime in the night on the 14th January. There is, however, no evidence, except that of Badge himself, that he was, at the time he left the bag with the aforesaid Angre, accompanied by Nathuram and Apte, or, for the matter of that, by anyone. It is true that at the identification parade held on 2nd March, 1948 Angre was not able to identify either Apte or Nathuram and could identify only Badge. He could, however, certainly have given evidence as to whether Badge whom he admittedly knew before had come alone or was accompanied by any other person or persons when he handed over the bag to him. Had he said that there were two other persons with him at the time, in view of the admission of Nathuram and Apte in Bombay at the time, and in view of his master's evidence about their having come with Badge for the stuff next morning, his evidence would have furnished corroboration of no mean importance for the evidence of Badge regarding the particular incident. In the circumstances, the appellants can, in my judgment, quite legitimately

*.P.117

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*P.118.

legitimately claim that from the fact of the non-production of Angre an inference should at least be drawn that, had *he been produced he would not have supported Badge's statement as to two other persons being with him when he came to Dixitji Maharaj's house on the night of the 14th and handed over the bag to him.

*P.119.

*According to Badge's evidence, from Dixitji Maharaj's place, he, Shankar, Apte and Nathuram Godse went back in the taxi to the Hindu Mahasabha office where he and Shankar were asked to get down and he was paid a sum of Rs.50/- on account of his travelling expenses by Godse to whom the same had been handed over by Apte. In corroboration of his evidence regarding this last incident reliance was placed on Ex. P.323, an entry in Nathuram Godse's diary Ex. P.218, in which there is a note as regards the payment of a sum of Rs.50/- to one Bandopant on 14th January, the suggestion being that Bandopant was a fictitious name for Badge. In the absence of any evidence to show that by the name Bandopant, Badge was intended to be referred to the learned Special Judge declined to accept this entry as a corroboration of Badge's evidence and I myself see no reason to take a different view.

*P.120.

Badge goes on to say that on entering the Mahasabha premises he was accosted by Madan Lal who enquired from him when he had arrived. According to Badge, he could not recognise Madanlal till the latter reminded him of their interview of the 9th January at Poona. Badge further says that on an *enquiry by him as to where Karkare was he was told by Madanlal that he was at

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There is of course no independent corroboration of this part of Badge's testimony. Mr. Daphtary sought to find corroboration in the following sentence to be found in the statement of Badge made during the course of his cross-examination by Madanlal's counsel:-

"It is not a fact that Madanlal told me on 14th January 1948 that Om Parkash and Chopra were at Bombay and had come to do refugee work at Chembur."

From the above statement it can, of course, be inferred, and legitimately, that the cross-examining counsel was not denying that the witness and Madanlal had met each other on the 14th January. I cannot, however, read into the question, in answer where to the above statement was presumably made, that they had met at the Mahasabha office and at the time and in the manner deposed to by Badge. Madanlal has in his statement admitted his presence in Bombay from 12th to 15th January, but has stated that he was, during the above period, staying not at the Mahasabha office but at the Chembur Camp. It may well be that the question was put by the counsel in order to *elicit, if possible, from the witness an answer in support of this part of Madanlal's statement and to show that the latter and his companions had come to Bombay to do refugee work and not for any other purpose. *P.121.

In narrating the events of the 15th January Badge says that at about 8-30 a.m. Godse and Apte came to the Hindu Mahasabha office. Both the witness and Shankar left with them, Madanlal not yet being ready, not having

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having dressed up, was left behind. The four met Karkare somewhere near the Agrani Printing Press. They all entered the press premises. Shankar was asked by Apte to sit down on the planks lying in front of the press. Apte, Godse, Karkare and Badge met G.M.Joshi, the proprietor of the press. Badge was asked to wait outside the office while others went inside. They came out after about an hour. Thereafter all of them excepting G.M.Joshi went back to the Mahasabha office. On reaching there Karkare asked Madanlal to take his bedding and go with them. In the meanwhile Apte had brought a car. All of them excepting Shankar *who was left behind got into the car. Madanlal took his bedding also with himself. They drove to the house of Dixitji Maharaj. Madanlal kept his bedding in the hall. All of them then went in further into the interior of the house where they found Dixitji Maharaj. Badge asked Dixitji Maharaj for the bag that he had left there the previous evening. After about an hour or so the bag was produced and was opened by Badge who showed the contents to Apte. Thereafter the bag was closed and was handed over to Apte who in turn handed it over to Karkare and asked him to leave for Delhi that evening by the Frontier or the Punjab Mail along with Madanlal. Karkare then handed over the bag to Madanlal and asked him to tie it up in the bedding. Karkare and Madanlal then left the place and went away. After they had left Apte told Dixitji Maharaj that they were proceeding on some important work and asked him to give him a revolver or two. Dixitji Maharaj stated that he had no revolvers and that the pistol which he had he could not give. Apte then requested

*P.122.

requested Dixitji Maharaj to do all that was possible to obtain a revolver for him. *Dixitji Maharaj promised *P.123. to do so. After this the three came out of the house of Dixitji Maharaj.

This part of Badge's evidence is very substantially corroborated by the testimony of Dixitji Maharaj who was examined as P.W.77. As has been pointed out in an earlier part of this judgment, indisputably Badge and Apte were quite well-known to Dixitji Maharaj from before. Madanlal was also known to him by face, although, as he says, he did not know his name till he read the same in the newspapers and learnt about it more definitely at the identification parade held on the 2nd March 1948 when he identified him as the Punjabi boy who had visited him for the sale of some books, and who was one of the five persons who had come to his residence on the morning of the 15th January. The three others out of the five whom he identified at the said parade were Nathuram V. Godse, Apte and Badge. In his evidence in Court he has stated that the name of the fifth visitor whom, however, he was unable to identify at the said parade, had been given by Badge at the time of the visit as Karkare.

*It may be noted that according to the witness, *P. 24. Karkare and Nathuram Godse had come to his place for the first time on the 15th January. Of them, as will presently be seen, Nathuram Godse admittedly met him twice again on the 26th January, once in the morning and a second time in the afternoon at a meeting held at their place under the auspices of Dada Maharaj to consider the situation created by certain inroads

committed

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committed by the Pakistan Forces into the territories of Jaisalmer State. Both Nathuram Godse and Apte admit having attended this meeting and also the presence of Dixitji Maharaj there. The witness says that when on hearing the name of Godse mentioned as the assassin of Mahatma of Gandhi, he had enquired from Dada Maharaj who Godse was he had been told that he was the same person who had, with Apte, attended the aforesaid meeting. Having met Nathuram Godse thrice, and having heard, within four days of the last interview, about his association with the great national tragedy that had been enacted at Delhi, he, quite naturally, was able to retain a vivid recollection of his features in his memory and identified *him at the identification parade. Karkar, met only once i.e., on the 15th January. Although Karkar is said to have been in his presence for about forty-five minutes it has to be remembered that Dixitji Maharaj was not too well on that day and was bed-ridden by reason of suffering from scabies. Therefore, he found himself unable to identify him.

The evidence of Dixitji Maharaj is to the effect that on the morning of the 15th January, five persons came to his room on the first floor of his house where he was lying bed-ridden as he was suffering from scabies. Badge asked the witness to produce the bag which he had left at the latter's place with his servant the night before. The witness asked him to give him the description of the particular servant because he himself did not know anything about the matter

matter. While Badge was describing the servant to whom he said he had handed over the bag, the witness's servant named Narayan Vithal Angre, also called Narayan or Angre or Agre, happened to drop in whereon Badge at once pointed him out as the servant concerned. The witness thereon asked Angre to bring the bag, if any, handed over to him by Badge. It took Angre about half, or *three-quarters of, an hour to fetch the bag. During this interval the witness asked Madanlal if he was the Punjabi boy who had been to him some time before to sell some books and got a reply in the affirmative. He also enquired from Badge as to who the fifth man with them was and was told that he was Karkareji. Thereafter the witness left and went to the bathroom, which was situate at a distance of about 30 feet from the door of his room, in order to have his bath. It took him about 25 or 30 minutes to walk to the bathroom, have his bath, and walk back. When he entered his room he saw Badge showing the contents of the bag to his four companions and found the five talking amongst themselves although he could not hear their talk. Amongst the articles that he saw were two hand-grenades and two white bricks. He then saw Badge trying to explain to his companions the method of using a hand-grenade. Discovering that Badge was not doing so correctly, the witness himself explained to them the correct method

*P.126.

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method, telling them that the spring was to be kept tightly held down and then the pin was to be pulled out with the teeth. After this the contents which had been taken out of the bag were placed* back into it. Thereafter Nathuram Godse, Karkare and Madanlal left the room, Badge and Apte remaining behind. The witness asked Badge the object of their visit to his house that morning and of exhibiting those things in his room. The curiosity of the witness had been excited, and the question had been prompted, by the fact that although his contact with them till then had been in regard to the affairs of the Hyderabad State, and he had at first thought that that visit also was in the same connection, none of them had at the time said anything about those affairs. Both of them told him that they were going on an important mission and asked for a revolver or a pistol. The witness enquired from them the nature of the important mission and told them that he would consider the question of handing over to them a revolver or a pistol on getting the information asked for. However, they both expressed their unwillingness to divulge the nature of their mission to the witness at that stage. As they started to leave the room the witness asked Badge to stay on. Badge, however, did leave promising to come back later. He did come back after about 15/ or 20 minutes and on the witness *pressing him again for information about the nature of their mission, at first tried to put

him

*P.127.

*P.128.

him off by telling him that Karkarji was from Ahmednagar and that the Punjabi boy who had come with him was a trustworthy person, and he eventually told him that he could not give him the information asked for. On the witness appealing to him in the name of their previous relations, however, he promised to come to his place the same evening and tell him the nature of the mission on which they were proceeding. According to the witness, Badge did come to his place in pursuance of this promise although he is not quite sure whether it was the same evening or one or two days thereafter. On the occasion of this second visit Badge is said to have asked the witness first to pay the money due to himself from Parvin Chandra Sethia and then to have shown him a revolver telling him that by reason of his not having given them a revolver on their asking for the same a day or two earlier they had to purchase that revolver for Rs. 325/- and that he ought at least to pay them the aforesaid sum. On the witness' replying that he would consider the matter only after he had been told the object for

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*P.189.

* which the revolver was wanted by them, Badge told him that they had collected arms and ammunition worth about Rs. 30,000/- or Rs. 40,000/- and were proceeding to Kashmir to use those things against the raiders and to do sabotage.

At this stage I propose to confine my attention only to that part of the evidence of Dixitji Maharaj which relates to the incident of the 15th January. I will deal with the rest of his evidence when I discuss the incidents of the 18th January because, according to Badge, his visit to Dixitji's place to which this evidence relates took place on the aforesaid date .

In explaining how he has been able to remember the precise date of Badge and his companions' visit to his place, the witness has stated that an astrologer had prophesied that he would meet with an accident on 17th January, that on the aforesaid date he had a fall as a result whereof he injured himself very badly and that he remembered that Badge and others had visited him two days before the incident. On being asked about the white bricks which he saw Badge showing to the others, the witness ~~said~~ that he did not know, and therefore could not tell, what they were used for,.

*P.189.

The evidence of Dixitji Maharaj as regards the incidents of the 15th January was subjected to a very vigorous attack by Nathuram V. Godse as well as by the counsel for the other appellants. It was pointed out that according to this witness Nathuram Godse had left with Madan Lal and Karkare and only Apte and Badge had been left in his room when the former requested him for a revolver, whereas according

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to Badge only Madan Lal and Karkare had left and besides himself and Apte, Nathuram Godse was also in the room when Apte made a request for the revolver. Stress was also laid on a further discrepancy between the statements of Badge and the witness as regards what happened after all had left the witness's room. According to the witness Badge alone came back to his room 15 or 20 minutes thereafter when there was some further conversation between the two, while Badge is quite definite that he did not go back at all to the witness's room after having left the same. Attention was also drawn to the facts that the witness did not depose to having seen more than two hand-grenades and that he did not support Badge's statement as to Apte having asked Karkare to leave with Madan Lal and as to the bag having been made over to Karkare. The witness when asked who had carried the bag from his room and answered that he did not remember. It was urged that in view of the witness's professed anxiety to know what the stuff contained in the bag was meant for, and also in view of his great interest in the Hyderabad movement, he could not have failed to take particular notice of the disposal of the bag. The alleged persistence of Apte and Badge in not disclosing to the witness the object for which they needed the revolver was described as unnatural and inconsistent with their previous relations with him and his brother and their knowledge about the extremely pro-Hindu sympathies of the two brothers. Lastly, emphasis was laid on the witness's inability to identify Karkare and it was pointed out that no significance at all could be attached to his identification of Nathuram Godse whom he had certainly seen twice on the 26th January.

In attempting to explain the witness's motive for

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*P. 132.

for giving false evidence it was suggested that by reason of his activities in the matter of collection and distribution of illicit arms and ammunition he was in the grip of the police and that it was quite likely that he had given evidence just to save his own skin.

I have given my most careful consideration to all these contentions. They have, however, wholly failed to impress me and I have not been able to discover any reasonable ground for rejecting the testimony of this witness as untrustworthy. Indeed, the more closely I have looked at, and scanned, his evidence, the more convinced have I felt of his being an honest and truthful witness. The evidence given by him appears to me very natural, and the considerations that have been urged in support of the plea for its rejection seem to me really to furnish very reliable indications of its general truth. Had he been giving evidence to order, as was suggested, there was nothing easier for him than to say that the two white bricks he saw Badge showing his companions were gun-cotton slabs, that there were altogether five hand-grenades in the bag, and that the bag was handed over, to his knowledge and in his presence, to Karkare. Like Badge, who had already given his evidence, he could have said that Madan Lal and Karkare left his room together, leaving the other three behind, and that those three also went away after the conversation about the revolver. He need not have stated that Badge came back alone, in pursuance of a request by himself, 15 or 20 minutes after having left with Apte. It is to be remembered that this statement was made by him in examination-in-chief and it is not that it was elicited in cross-examination. The witness could naturally not be interested in all the details of what passed between Badge and his companions while they were in his room, and therefore, remembers only the main incidents. On the bag being brought

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*P. 133.

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by Angre, it was quite natural for Badge to show its contents to the others. The witness, on his return from the bathroom saw him doing ~~xxx~~ so. He appears to have noticed only two slabs and two hand-grenades. The remaining three hand-grenades had either not been taken out of the bag or had been put back by the time the witness arrived. Badge was trying to explain to the others the method of using the hand-grenade and ~~in~~ it would, accordingly, not be necessary to keep all the ~~the~~ grenades out of the bag. The witness was very well acquainted with hand-grenades and even knew the method of using them and so, on finding Badge unable to do so properly, he himself proceeded to explain to the latter's companions the method of using them. He does not seem to have seen gun-cotton slabs before and did not know their use and so described them just as white bricks. As soon as he saw the hand-grenades and noticed that those present were anxious to learn how to use them, he became curious to find out with what object the grenades had been brought and for what purpose they were intended to be used, ----- whether they were meant for the object nearest to his own heart, namely, the defence of Hyderabad Hindus against the Razakar menace or for some other purpose. Naturally therefore, the ascertainment of the purpose for which

*P. 108.

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the grenades were meant became his obsession and he lost all interest in other details concerning them.

I have already dealt with the matter of the witness's failure to identify Karkare and his identification of Nathuram Gode. I want here only to refer to one other circumstance in this connection which seems to me* to furnish a very clear indication of the witness's general honesty in giving evidence. During his cross-examination his attention was drawn to his statement recorded by the Magistrate under section 164, Criminal Procedure Code. In that statement he had expressly said that he was not sure if he would be able to identify anyone except Apte, Badge and the Punjabi boy. At that time he was not even sure of his ability to identify Nathuram Godse, although he had seen him twice even after the 15th January and although at the parade he was actually able to identify him. As regards Karkare, though the witness could not identify him at the parade, he does appear not only to have mentioned his name but also to have given his description in his statement recorded by the police as early as the 9th February. In his cross-examination on behalf of Nathuram Godse and Karkare a distinct question seems to have been put to him on the subject in reply to which he stated:-

" It is a fact that I had given a description of Karkareji that I remembered at the time to the police"

*It is not denied that copies of the police statements of all the witnesses had been furnished to the defence. Accordingly it may be legitimately assumed that when the counsel asked the question to which he

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got the above reply, he must have had the copy of the witness's police statement in front of him. The fact that he did not pursue the matter any further is clearly indicative of the fact that the witness had given Karkare's description and that too a substantially correct description in his police statement. This I consider to be almost conclusive proof of the witness having actually seen Karkare at his place on the 15th.

As regards the persistent refusal of Badge and Apte to disclose the nature of their mission to the witness in spite of his pressing them to do so on that day and subsequently, I see nothing to be surprised at in this conduct of theirs, assuming that Badge himself was cognizant thereof at the time he and the others met the witness on the 15th, because, according to Badge's evidence which will be referred to presently, it was after having come out of the witness's room that the object of the mission *was disclosed to him by Nathuram Godse and Apte. *P.137

Indeed, I would have been surprised if they had acted differently. Both the witness and his elder brother had been associated with the Congress. Although they, at the time, strongly differed from it and Mahatma Gandhi's policy vis-a-vis the Muslims and Pakistan and were out to do their utmost to consolidate the Hindu community, they could not reasonably be expected to receive the news about any contemplated attempt on the life of Mahatmaji with anything except feelings of utmost horror.

Dada Maharaj has expressly stated that they did not want anything untoward to happen within the Dominion of India and that all that they desired was to arm the Hindus for defensive purposes.

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The so-called discrepancies between the statements of the witness and Badge as to whether it was only the latter and Apte or both of them and Nathuram Godse who were left in the former's room after Madanlal and Markare had left and as to whether Badge alone returned to his room 15 or 20 minutes after having left the same with Apte appear to me to be of no moment at all. They seem to connote

*P.138.

*nothing more than a mere lapse of memory or some kind of confusion of thought on the part of the one party or the other. When I look at the statements of the two witnesses I feel more inclined to regard it as a case of lapse of memory on the part of Badge. In his obsession to find out the precise nature of the mission mentioned by Apte and considering it to be far easier to draw out Badge by reason of his previous relations and dealings with him, Dixitji Maharaj probably did ask the latter to see him alone, and it is quite obvious that Badge could not and would not turn down any such request proceeding from Dixitji Maharaj.

While on this subject I may note in passing that the existence of this so-called discrepancy is wholly inconsistent with another contention of the appellants, which I have already examined at some length, viz., the contention that the police statement of Badge was recorded later in order to be able to cook it up on the basis of and with reference to the statements of other witnesses whose evidence was eventually to be used as corroborative of the approver's testimony and who had been examined much earlier. Dixitji Maharaj's statement was recorded by the police eleven days before recording

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the statement of Badge and had the insinuation contained in the above contention any force there would be nothing easier than make Badge say precisely what Dixitji Maharaj had already stated on the subject. We have heard a lot at the Bar about Badge's wonderful capacity for memorising faked stories and coining apparently plausible statements, and I do not think he would have found any difficulty in making his statement to the police fit in with the statement already made by Dixitji Maharaj.

As regards the suggested motive of Dixitji Maharaj for giving false evidence I consider it to be wholly fantastic. It is quite a notorious fact that collection and distribution of illicit arms and ammunition during the transitional period preceding and immediately following the partition of the country has, in view of the very special circumstances then existing, been generally condoned. The supply of arms and ammunition to the Hindus living on both sides of the border of Hyderabad State in order to arm them for purposes of defence against the daily increasing Razakar atrocities has also been considered in the same light. Quite naturally the authorities concerned did not, and could not be expected to, overlook the stern realities of the situation and enforce the letter of the law against activities, though unlawful in a strictly legalistic and technical sense, indulged in with the sole object of suppressing lawlessness and restoring law and order in the real sense of the expression. I cannot believe, therefore, that Dixitji Maharaj in fact found himself in the grip of the police at any time and that a

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religious and spiritual leader of his position could stoop so low as to perjure himself in a case involving very serious consequences to a number of persons merely to shield himself from legal action for having done what quite a large number of other highly placed persons had also done with perfect impunity.

For the foregoing reasons I feel no hesitation in believing the evidence of Dixitji Maharaj in its entirety, with the result that I hold the following facts deposed to by Badge to have also been otherwise proved by means of independent evidence: -

*P.141

* (1) During the night of 14th January Badge handed over to Angre, a servant of Dixitji Maharaj, a bag containing some explosive material consisting of hand-grenades and gun-cotton slabs;

(2) In the morning of the 15th January Badge accompanied by Apte, Nathuram Godse, Madanlal and Karkare went to Dixitji Maharaj's place to fetch the bag;

(3) On being asked to do so, Dixitji Maharaj's servant produced the bag and handed it over to Badge who opened it and showed the contents to his companions. He also tried to explain to them the method of using the grenades. Dixitji Maharaj finding him incapable of doing so, himself explained the method;

(4) The bag containing the stuff was taken away by someone of those present; and

(5) Karkare and Madanlal at least left the place before Badge and Apte.

Before proceeding further it seems well to notice another point which was stressed by Nathuram Godse, viz.,

...

viz., the extreme improbability of five persons having been driven in one taxi to Dixitji Maharaj's house which is situate in the heart of the town, the maximum number of passengers permitted in a taxi being four.

*Excepting a statement made at the Bar by Nathuram *P.142 Godse there is no evidence that no taxi plying for hire in Bombay can carry more than four passengers. Mr. Daphtary, Advocate-General, Bombay stated at the Bar that there were taxis plying in the city of Bombay which could lawfully carry more than four passengers. Badge who deposed to five men having driven in the taxi was never questioned on the subject. I accordingly cannot attach any weight to this contention. Be that as it may, if Dixitji Maharaj's evidence as to five persons having arrived at his place on 15th January in the morning is believed, the question whether they went by taxi or otherwise loses all significance. Even if Badge is assumed to have lied in this matter, it is of little consequence. What is material is the presence of five persons at Dixitji Maharaj's house and not the means of conveyance used by them in getting there. On the first point we have got the sworn testimony of Dixitji Maharaj which I consider to be wholly unimpeachable and quite trustworthy.

Some stress was also laid on the extremely mercenary character of Badge and it was argued that *it was highly improbable that a man like him should *p.143 undertake to travel as far as Bombay for the delivery of stuff which he himself priced at Rs.1,150/- without not only satisfying himself that the price would be paid to him at Bombay but without even settling the price. It was, further, argued that it was still

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more improbable that he handed over the stuff to Apte at Dixitji Maharaj's place when the latter handed it over to Karkare without even asking for the price.

In view of the previous dealings and relations between the parties I can see no force in this argument. It is admitted that Badge had supplied arms to Apte before this and had been duly paid for them. Badge says with regard to the previous dealings that he used to be paid whatever he demanded. He was otherwise also beholden to ~~beholden~~ to Nathuram Godse and Apte for the monetary and other help he had been receiving from them. It would, in the circumstances, be unreasonable to expect him to be very rigid in this transaction and to ask for the payment or the settlement of the price before agreeing to leave or actually leaving for Bombay. From the evidence of Dixitji Maharaj it *appears that Badge had been delivering the stuff on credit to others also e.g., Sethia and Dixitji Maharaj himself. It may be that in transactions like these delivery cannot always be made for cash and some mutual accommodation is inevitable. Till Apte got the stuff at Dixitji Maharaj's place and handed it over to Karkare there was indeed no occasion for Badge to expect or demand payment because till then the stuff was under his own control. He naturally could not expect to be paid in the presence of Dixitji Maharaj. On leaving his room, as will appear from Badge's evidence, presently to be adverted to, and assuming that evidence to be true, he himself agreed to become a party to the venture and thereafter the question of demanding payment could naturally not arise. The matter was put to Badge and he

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gave the same explanation.

Badge goes on to say that on coming out of the house of Dixitji Maharaj and while standing in the compound of the temple, Apte asked him if he was prepared to go to Delhi. On being asked the nature of the errand on which they were going to Delhi Apte told the witness that Tatyerao Savarkar had decided that *Nehru, Gandhiji and Suhrawardy should be finished *P.145 and had entrusted the work to them. Apte asked him to accompany them for the purpose and promised to meet his travelling expenses. He agreed but added that he could not go immediately and would have to go to Poona in order to make arrangements for some household affairs. On this Nathuram Godse said that he also wanted to go to Poona to fetch Gopal who had promised to secure revolvers. After this the three came out of the temple and got into the taxi. Apte and Nathuram Godse stopped in the Cotton Exchange Building for about 15 or 20 minutes and then dropped Badge and Shankar at the Mahasabha office. In the evening Madanlal met Badge in front of the Mahasabha office and told the latter that they had missed the evening train, that Karkare was on the railway station with the bedding, that he himself had come on account of some work and that they would be leaving for Delhi by the night train. Badge himself left with Shankar for Poona the same night.

There is no independent corroboration of any of the incidents mentioned in the above paragraph * and desposed to by Badge. Of the talk which is *P.146. said to have taken place between the latter and

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the other two in the compound of the temple there could naturally be no corroboration because such delicate and confidential talk could not possibly take place within the hearing of any third party. The learned Special Judge has eliminated this incident altogether from consideration. My own view is that if eventually, on a consideration of the evidence as a whole, it is found that Apte and Nathuram Godse, and may be any other person or persons, had, before coming to Bombay agreed to murder Mahatma Gandhi, had decided to proceed to Delhi, and had ordered the stuff from Badge for that purpose, this part of the evidence of Badge will become so highly probable that it may quite reasonably be held to be true. If Badge's cooperation in the undertaking had to be enlisted, quite naturally, he would, at sometime, have to be told the object thereof, and to be taken into complete confidence. That could have been done either at Poona before leaving for Bombay or at Bombay before leaving for Delhi. If it was done at all, I consider it far more probable that it was done at Bombay and just after taking over the stuff. The view I am inclined to take about the activities of Badge on the 16th January which will be considered later will appear very considerably to heighten such probability.

*F.147.

Nathuram Godse and Apte admit, in their written statements, having met Badge at the Hindu Mahasabha Bhawan at Bombay on the morning of the 15th January. They also admit that it was agreed between them and Badge that the latter would go to Delhi and join them there.

They

They, however, add that he was to go to Delhi to join them in the proposed demonstration. They further say that it was Badge himself who, on being told by Apte the object of their visit to Bombay, had offered to come to Delhi and join them ^{that} and they had accepted the offer because they wanted men to back them and to shout slogans. These facts are also mentioned in the oral statement of Apte in Court.

It is not disputed that Nathuram Godse and Apte had, before meeting Badge on the 15th January, already booked their passage in the Air-India plane which was* to leave for Delhi at 2 p.m. on the 17th January. It is also an admitted fact that they had booked their passage under false and assumed names, namely, under the names of Mr. D.N.Karmarkar and Mr. S.Marathé. Exs. P.260 and P.261 are the passenger tickets purporting to have been issued in the above names on the 15th January 1948. Ex.P.262 is the Reservation Slip for two seats booked for the above-named two passengers, also issued on the same date. The residence of the passengers is given in the slip as "Room No.6 Sea Green Hotel". It is admitted that Nathuram Godse and Apte stayed at the aforesaid hotel during their sojourn at Bombay. Apte, in his oral statement, first tried to explain away the assumption of false names by saying that on going to the Air-India Office sometime on 14th January to reserve two seats for Delhi for 17th January he had met a person who had two tickets for the aforesaid date which he wanted to get cancelled and that he had purchased from him the said two tickets tickets which

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which were in the names of D.N.Karmarkar and S.Marathe. He, however, appears to have at once realized the futility of this explanation in view of the date of issue as noted in the passenger tickets and the Reservation Slip, as also in view of the residence of the *passengers mentioned in the Reservation Slip. He, accordingly, admitted that even if he had purchased the tickets direct from the Booking Office he would have purchased them under assumed names, and offered the following explanation for this:-

*P.149.

" The pitch of the editorials in the Agrani (Hindu Rashtra) had been rising higher and higher before 15th January 1948. The Government had held out a threat that if in future any articles in the paper tended to communal strifes or violence they would not rest content with demanding further security but would prosecute us. We have got a letter to the effect in writing with us. Nathuram Godse and I accordingly wanted to keep our identity concealed till we had staged the demonstration as we intended at Delhi."

I find myself wholly unable to accept this explanation. The letter alleged to have been received from the Government containing a threat of Criminal prosecution has not been produced. The prosecution had called one Prabhakar Laxman Aphale, a Clerk in the District Magistrate's office at Poona, whose duty it was to attend to press matters and declarations, to produce the records relating to the declarations filed from time to time by Nathuram Godse in respect of * Shri Shivaji

*P.150.

Shivaji Printing Works and the "Daily Agraní"
and to give evidence regarding orders demanding
or forfeiting securities in respect of the said paper.

He was examined as P.W.83. Not a single question was
put to him about the warning alleged to have been given
by the Government in respect of the editorials appearing
in the Agraní. On the other hand, it appears from the
evidence of this witness that the security deposits
aggregating to Rs.16,000/- that had been forfeited had
been returned as a gesture of good-will after 15th August
1947. Assuming, however, that a warning of the kind alleged
had actually been received by Nathuram Godse and Apte, or
either of them, before 15th January, I would still have no
hesitation in rejecting the explanation as wholly
unsatisfactory and unconvincing. No proceedings had
yet been started against them. The proposed demonstration
could possibly not take more than a few days. There
could be no reasonable danger of Nathuram Godse and
Apte being followed to Delhi and arrested before they
could give effect to their intention to stage a
demonstration, even if a prosecution had been
launched against them on or about the 15th January.

Both

*P.151.

*Both Nathuram Godse and Apte have stated that they told Badge, on his offering to go to Delhi and join them in their proposed peaceful demonstration, that they were to leave Bombay on the 17th January. According to the statement of Nathuram Godse, Badge told Apte that he had to give some stuff to Pravin Chandra Sethia and that he would do so in a day or two and see them on the 17th January 1948. Apte's own statement on the subject is more detailed. He says that when he and Nathuram Godse told Badge that they would leave for Delhi on or about the 17th January, the latter told them that he had come down to Bombay with some stuff for Pravin Chandra Sethia which he had kept at the place of Dixitji Maharaj; but that in view of his decision to go to Delhi he would prefer to take it there for sale to refugees or others inclined in that way and thus make much larger profits. Apte says that he told him in reply that they would not allow him to take any stuff with himself and that in case he intended to take any such stuff also with him they would rather not take him as a volunteer and Badge is said to have promised not to take any *stuff to Delhi and to have requested Nathuram Godse and Apte to meet him at the Victoria Terminus Railway Station in the morning on the 17th January, the day on which the latter proposed to fly to Delhi.

*P.152.

Nathuram Godse and Apte of course deny having accompanied Badge to the house of Dixitji Maharaj either on the night of the 14th or at any time on the 15th January.

It is an admitted fact that Madan Lal Pahwa and Karkare were at Bombay on the 14th and the 15th January and left for Delhi by the Peshawar Express at

9-30 p.m. on the 15th January. They, however, deny having met Badge, Nathuram Godse or Apte either on the 14th or on the 15th January, and to have accompanied them to the house of Dixitji Maharaj on the 15th. According to them Madan Lal Pahwa had to go to Delhi in connection with the arrangements for his marriage and also with the object of leading a deputation of the refugees to Mahatma Gandhi and place before him their grievances. Karkare is said to have agreed to accompany Madan Lal to help him in both the matters. According to Karkare's written statement he was staying at the Chembur Refugee Camp since the beginning of the second week of *January and it was there that Madanlal had met him and had requested him to accompany him to Delhi. Madan Lal's statement is that he arrived at Bombay on the 12th January and stayed at the refugee camp till the 15th when he with Karkare left for Delhi.

*P.153.

I will presently show that Madan Lal and Karkare had been at Bombay since before the 12th January. Although excepting the evidence of Badge there is no other independent evidence to prove that they stayed at Hindu Mahasabha Bhawan, the probabilities of the case do seem to point to that conclusion. We will presently see that an order for the arrest and detention of Karkare had been passed by the Home Government, Bombay, on or about the 9th January 1948. We will also presently see that after that Karkare had been doing everything possible to keep his identity concealed. *In the circumstances it is highly improbable that he would stay at a more or less public place like the refugee camp. It is true that by reason of his association with refugee work the atmosphere at the camp could not be assumed to be hostile to him. Still all kinds of people would be coming to the camp and it would

*P.154.

would be scarcely a place for a person hiding himself from the law to stay at. There would be more privacy in the Hindu Mahasabha office and greater chances for the concealment of his identity by Karkare. Whenever, however, they came to Bombay, and wherever they had been staying, and whether or not Nathuram Godse and Apte met Badge on the night of the 14th and accompanied him in a taxi to Dixitji Maharaj's place for depositing the stuff there, as held by me above, Karkare and Madan Lal, as also Apte and Nathuram Godse did accompany Badge to the house of Dixitji Maharaj on the morning of the 15th when the bag containing gun-cotton slabs and hand-grenades which Badge either alone or accompanied by Apte and Nathuram Godse had left with Dixitji Maharaj's servant the night before was taken back.

*P. 155.

*Professor J.C. Jain P.W. 67 to whom reference has already been made in an earlier part of this judgment, and Angad Singh P.W. 72, a friend of the aforesaid Professor Jain, have given some evidence with regard to some of the activities of Madanlal during the period of his sojourn at Bombay.

Professor Jain has also given evidence in respect of a visit paid to him by Karkare in the company of Madanlal. The Hon'ble Mr. Morarji Desai, Home Minister, Bombay Government P.W. 78 has given evidence in respect of some information conveyed to him by Professor Jain on the 21st January regarding some communication made to him by Madanlal a few days earlier. I consider the present to be a proper stage for the consideration of the evidence of these three gentlemen.

Professor Jain is an M.A. of the Benaras University and Ph.D of the Bombay University and, at the material time,

time, was professor of Hindi and Ardhamagadhi in the Ram Narain Ruia College, at Bombay. The college is situated at Matunga quite close to Dadar. Angad Singh, a graduate and a textile broker seems to be a very intimate friend of Professor Jain. He lives at Lady Dhanesh Ji Road, his house being only about two minutes *walk from that of Professor Jain.

*P. 156

Angad Singh has been a congressman and according to him he first came into contact with Professor Jain in connection with his electioneering campaign when he sought election to the Provincial Congress Committee. Being a socialist, he left the Congress when his party decided to secede therefrom. Reference has already been made to the circumstances under which Madanlal came into contact with Professor Jain and also to the connections existing between the two. Angad Singh also met and came to know Madanlal at the house of Professor Jain who on one occasion had asked him to help the former in getting a job.

It seems that when Madanlal first left Bombay for Ahmednagar, he took with himself some books of Professor Jain. One Mr. Sood, also a refugee, was associated with Madanlal in the sale of these books. Some money, according to Professor Jain Rs.40/-, out of the sale proceeds of the books sold at Ahmednagar still remained with Madanlal and Sood and had not been paid to the Professor. On 9th December, 1947 Madanlal wrote to the Professor a post-card from Ahmednagar (Exhibit P.121) wherein he stated that his work was progressing well and enquired if Sood had paid him a sum of Rs.30/-. He also wrote that he would himself pay the money in case Sood did not pay it and expressed great regret for its not having been paid till then. In this post-card Madanlal gave his address as care of Karkare Sahib, *Deccan Guest House, Ahmednagar.

*P. 157

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On 21st December, 1947 Madanlal sent another post-card to Professor Jain, Exhibit P.122, in which, after acknowledging the latter's reply to his first post-card he expressed regret for Sood's having neither paid the money nor written to the Professor. He indicated that he was expecting a money order from his house. He wrote further that after doing an urgent piece of work he would return to Bombay and asked the Professor not to worry. The address of Madanlal as given in this post-card was the same as given in the previous one.

According to the evidence given by Professor Jain (P.W.67), Madanlal saw him at his house about the end of the first week of January, 1948 when he was accompanied also by another man whom he introduced to the witness as a Seth from Ahmednagar. Madanlal then went to tell the witness that he himself owned two fruit stalls at Ahmednagar and was otherwise doing very well. Madanlal then asked his companion whom he had described as Seth to arrange for the payment of the witness' money. Thereafter, the two left the witness' house. Madanlal, however, came back leaving his *companion on the road and told the witness that the two fruit stalls mentioned by him earlier belonged to the Seth and not to himself and that he was only looking after them. He also told the witness that they had driven away all the Muslim stall-holders and held the sole monopoly of the business. After that Madanlal left promising to see the witness later. Two or three days thereafter, Madanlal met the witness near the Plaza Cinema which is very near his house and, saying that he had been to his house and wanted to have a talk with him, he

*P.158.

walked

walked with the witness to the latter's house. When they reached their destination, the witness asked Madanlal to come later as he felt tired at the time. Madanlal then turned up at 8 p.m. the same evening when Angad Singh also happened to be at the witness' place. Madanlal narrated his exploits in Ahmednagar in front of the two starting with an account of an assault which he claimed to have made, armed with a knife, on Rao Sahib Patwardhan at a meeting where the latter was preaching Hindu-Muslim unity, the police having not interfered with him at all by reason of their being Hindu-minded. He next said that he organised a volunteer corps for the benefit of the refugees and the Hindus and, producing a Marhatti newspaper, asked the witness to read the same and see how his work had been praised therein. According to the witness, Angad Singh left at that stage. After that Madanlal told the witness that the Seth *who had accompanied him on the occasion of his previous visit was named Karkare and was financing him. He went on to say that he had formed a party at Ahmednagar which was being financed by Karkare, and that the said party had been collecting arms and ammunition which had been dumped in a jungle. Next he told the witness that Vir Savarkar of the Hindu Mahasabha had, on hearing of his exploits at Ahmednagar, sent for him, had a long talk with him lasting for two hours, and, patting him on the back had asked him to carry on. Then he told the witness that his party had plotted against the life of some leader. On the witness' asking him the name of that leader, Madanlal after considerable reluctance and after having at first professed ignorance of the name at last yielded to the witness' pressure and told him that it was Mahatma Gandhi. The witness asked Madanlal not

*P.160.

not to behave like a foolish child. Madanlal then said that he had been entrusted with the work of throwing a bomb at the prayer meeting of Mahatma Jee to create a confusion and that in the confusion so caused the latter was to be overpowered by the members of his party. On hearing this the witness had a long talk with Madanlal, trying to dissuade him from carrying out his design. Madanlal then left the witness' house promising to see him again and telling him that he with his associates was putting up at the Hindu Mahasabha Office at Dadar. He also told the witness that Karkare had an eye on him and would not allow him to move about alone. The witness has an impression that on this occasion Madanlal had paid him a sum of Rs.15/- out of his dues.

Professor Jain says that he did not take the story as given by Madanlal very seriously because at the time the refugees of the locality used generally to abuse Mahatma Jee and the Congress. He met Angad Singh a day or two later and told him what he had heard from Madanlal. Angad Singh also advised the witness not to take the thing seriously. Madanlal again came to the witness after a couple of days and on the latter asking him if he had thought over his advice told him that he considered him like his father and that he knew that he would be doomed in case he did not listen to his advice.

A day or two later, Madanlal again saw the witness at about 8 p.m. and told him that he was proceeding to Delhi. On being asked the object of his going to Delhi he told the witness that he had some work there. He then left the witness' place promising to see him again on his return from Delhi.

*P.161.

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The witness says that he was present at a meeting which was organised by the Poddar College which is managed by the same institution as his own College and was held in the Xaviers College Hall two or three days after Madanlal had left for Delhi and which was addressed by Shri Jai Prakash Narain leader of the Socialist Party. He intended to contact Shri Jai Prakash Narain and tell him what he had heard from Madanlal because he thought that the information might be of some use to the authorities at Delhi. By reason of his being surrounded by a large number of people he was only able to tell Shri Jai Prakash Narain that there might be a big conspiracy at Delhi but was unable to convey to him any further details. He intended to contact Shri Jai Prakash Narain next day for the purpose but was unable to do so because of the illness of his child who had to be taken to a hospital. Thereafter he learnt that the gentleman had left for Delhi.

*On the morning of the 21st January, on reading in the newspapers the news item about a bomb having been exploded at Mahatma Jee's prayer meeting the day before, and about Madanlal having been arrested in connection therewith, the witness, in consultation with Angad Singh who had come to his house that morning, decided to contact the Hon'ble Sardar Vallabh Bhai Patel and to tell him whatever he knew about the facts of the case. The witness attempted to ring up Sardar Jee at the house of his son but did not succeed. He then tried to contact Shree S.K.Patil, the President of the Bombay Provincial Congress Committee on the phone but could not get him. He then rang up the Premier of Bombay, Shree B.G.Khar, and by appointment got him at his office at 4 p.m., the Home Minister Shree Morarji Desai also being present there. The witness told
then

then all he knew about Madanlal.

On cross-examination by the counsel for Mr. Savarkar the witness stated inter alia that he had told the Premier and the Home Minister that he was prepared to assist them in unearthing the conspiracy and that he was told by the Home Minister that they would be making an investigation and would inform him in case his services were required in that connection. He also stated that he had told A.B. Yajnik of his college about the plot disclosed by Madanlal before the explosion at Delhi. (This A.B. Yajnik has not, however, been produced).

*P. 155

*On cross-examination by the counsel for Madanlal the witness stated that he did enquire from the latter the names of his associates but that he did not give him those names. In one of the questions it appears to have been suggested to the witness that Madanlal had given the names of his associates who were staying at the Mahasabha Office as Jogendra Singh Chopra, Om Prakash and Ved Prakash. The witness, however, repudiated the suggestion. The other suggestions that seem to have been put to the witness by Madanlal's counsel were that Madanlal had introduced Karkare to him as a worker for the refugees at Ahmednagar and that Madanlal was going to Delhi to see his father in connection with his marriage. Both these suggestions were also repudiated by the witness. The witness further stated that he had been asked by the Home Minister why he had not reported the matter to the authorities concerned earlier and that he had replied that in view of the surrounding circumstances of the case he had not taken the matter seriously.

*P. 156

*Angad Singh P.W. 72's evidence is to the effect that

that he had gone to Doctor Jain's house at about 7 or 8 p.m. on 10th or 11th January, the day of the week being either Saturday or Sunday. Sometime after the arrival of the witness, Madanlal also turned up and began to talk to Doctor Jain of his exploits at Ahmednagar, the gist of the talk being that they had formed a party at Ahmednagar which was financed by Seth Karkare and which had been creating trouble for the Muslims with the object that no Muslims should be left in the town. Madanlal is said also to have told Doctor Jain that they had driven away all the Muslim fruit and vegetable stall-holders and that the stalls so vacated had been taken over by Seth Karkare and himself. Madanlal also said that on seeing Rao Sahib Patwardhan deliver a speech wherein he asked Hindus and Mohammedans to live like brothers he rushed up to the speaker, whipped out his knife, caught hold of the speaker's collar, and asked him if he dared repeat those words, and that the police had thereon intervened but had eventually allowed him to go. Madanlal had also produced a Marhatti newspaper and had asked Doctor Jain to read the same and see that it was full of praises for him. At this stage the witness left Doctor Jain's house.

According to the witness, he again met Doctor Jain a day or two later, very probably a day later, although he is not quite sure about it. On this occasion he had a long conversation with Doctor Jain who, during the course of the conversation, told him that according to Madanlal the party to which he belonged had plotted to kill a leader, that leader being Mahatma Gandhi. Doctor Jain also told the witness that he had been informed by Madanlal that the members of the latter's party had been collecting arms and ammunition at Ahmednagar and that Barrister Savarkar

was

was behind the party. This talk, according to what Doctor Jain told the witness, had taken place between himself and Madanlal the day before. Doctor Jain further told the witness that he had dissuaded Madanlal from engaging in such activities and also suggested that inasmuch as according to Madanlal, Savarkar was behind the plot and, therefore, there was the possibility of its coming out true, information regarding the same might be given to the authorities. The witness told Doctor Jain that it was a tall talk of a refugee, that no importance should be attached to it inasmuch as *the refugees in those days used generally to abuse Mahatma Gandhi and the others but that he agreed that the authorities should be informed about the talk. The witness, thereafter, saw Doctor Jain on the 21st January in the morning when the latter told him that what Madanlal had been talking about had proved to be partially true and that the story about the plot against Mahatma Jee's life might also turn out to be true. The two friends then decided to inform the Bombay authorities. The witness goes on to say that Doctor Jain, after unsuccessful attempts to contact Sardar Patel and Shree S.K.Patil on the phone at last succeeded in contacting Premier Kher and secured an appointment for 4 p.m. at the Secretariat. The witness could not accompany Doctor Jain on the occasion inasmuch as he had to appear in a personal case of his before a Magistrate that day and could not return from there in time.

*P.166.

In cross-examination the witness stated that he had not taken the facts about the plot as stated by Doctor Jain seriously and that during the time he himself was present at the house of Doctor Jain on the relevant date

date

date he had shown total lack of interest in the conversation because he thought that Madanlal was just bluffing.

The account given by the Hon'ble Shree Morarji Desai

P.W.78 of the interview Doctor Jain had with him on the 21st January in the afternoon at the Secretariat may be summed up as follows.*Doctor Jain told the witness that Madanlal who had been arrested in connection with the explosion at the Birla House was known to him. He explained to the witness the circumstances under which he had come in contact with Madanlal. He then told him that, before leaving for Delhi, Madanlal had discussions with him during the course whereof he disclosed that he and his friends had decided to take the life of a great leader, the name of the leader having been given, after very considerable pressure had been exercised by him, as Mahatma Gandhi. Doctor Jain also told the witness that he had tried to dissuade Madanlal. The latter was stated also to have introduced to Doctor Jain a friend of his, with whom he was working at Ahmednagar, as Karkare who had taken him to Savarkar who had in turn, had a talk with him for about two hours, had praised him for what he had done, had patted him on the back and had asked him to carry on his work. Doctor Jain further told the witness that Madanlal had narrated to him his own exploits at *Ahmednagar and recapitulated some of the details about such exploits as he had got them from the aforesaid Madanlal. The Doctor also informed the witness that he had been told by Madanlal that there was a dump of arms, ammunition and explosives at Ahmednagar, and if the witness' recollection was correct some explosives were also said to have been stored at Poona. On being asked by the witness the reason for his not having conveyed the information to him earlier, the Doctor said that refugees were in the habit

*P.157

*P.103

of

of talking wildly, that he believed that he had succeeded in dissuading Madanlal from doing what he had said he intended to do and that he came to realise his mistake only on reading about the explosion incident in the newspapers. The witness, after having heard all this, summoned the officer in charge of the Intelligence Branch, Mr. Nagarvala, who, however, was unable to come by reason of otherwise being extremely busy and who met him on the railway station at 8 p.m. that night when the witness went there to catch a train for Ahmedabad. The witness narrated to Mr. Nagarvala what he had heard from Doctor Jain and asked him to take action in the matter, to arrest Karkare, to keep a close watch on Savarkar's house and movements and to find out who were the other persons involved in the plot. The witness, however, did not disclose to Mr. Nagarvala the name of his informant who had told him *that, in view of the locality in which he lived and the persons involved, he would not like his name to be divulged for fear of danger to his own life, but had otherwise expressed his readiness to render, if required, all the help he was capable of in connection with the investigation. The witness had a second interview with Doctor Jain on the 24th January and a third one on the 3rd February. At this last mentioned interview the Doctor told the witness that in view of the tragedy that had taken place he would no more mind any personal danger and was quite willing to help the police openly. The witness thereon put him in touch with Mr. Nagarvala. The witness did not at any stage reduce to writing the information conveyed to him and did not direct Mr. Nagarvala to interrogate Mr. Savarkar and to find out from him if the story

*P.169.

given

given by Professor Jain was true. The witness does not recollect Doctor Jain having made any reference to Angad Singh in the course of his talks with him. About the end of the first week of January, 1943 the witness learnt that one Karkare of Ahmednagar had been instigating the refugees to create trouble and passed an order for the arrest of the aforesaid Karkare about 10 or 12 days before 21st January. He admits that he issued no direct instructions to the Ahmednagar police to make any investigations. He also admits that under his orders security had been demanded from the daily 'Agrani' and the 'Hindu Rashtra' of which he knew Nathuram Godse to be the Editor, and forfeited, although he could not tell how many times, on account of the Editor's preaching hatred against the Muslims and encouraging violence. He stated that so far as he could recollect a petition had been filed in the High Court against the order forfeiting the security but the same had been rejected. He added that all the securities forfeited had been returned on 15th August, 1947 as a gesture of good-will with an appeal for a better behaviour in the future. He admits that on the first occasion when security was demanded from the 'Agrani', by sheer oversight, the matter had not been referred to the Press Advisory Committee, that being the first or the second case of its kind under the present Government, but adds that on all subsequent occasions the matter had in the first instance *been referred to the said committee.

Mr. Nagarvala (P.W.133) has stated that after having seen Mr. Desai at the railway station on the 21st January, and in pursuance of instructions

received

received from him, he organised an unobtrusive watch over the house of Mr. Savarkar and made arrangements for locating and arresting Karkare in which connection he made enquiries from the Ahmednagar police as to whether Karkare whose detention had already been ordered had or had not been detained. On 24th January, he also issued orders for the arrest of Digambar R. Badge.

It is in evidence that Doctor Jain was first contacted by Mr. Nagarvala on 4th or 5th February, 1948. The statement of Doctor Jain was recorded by him on 17th February, that of Shree Morarji Desai having already been recorded four days earlier, i.e., on 13th February. Angad Singh's statement was recorded on 23rd February. At the identification parade held on 2nd March, 1948, Doctor Jain identified both Karkare and Madanlal.

*P.172.

* Mr. Brown, Chief Presidency Magistrate of Bombay recorded the statement of Doctor Jain under section 164, Criminal Procedure Code, on 26th February. This statement was duly put to him and is duly exhibited as Exhibit D.11. Inasmuch as a good deal

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of argument has been based on the discrepancies alleged to exist between this statement and the evidence given by Doctor Jain in Court, I propose to reproduce here the said statement verbatim:-

"I am a Professor of Arahamagdi and Hindi, at the Ramnarain Ruia College Matunga. In October, 1947 I met Madanlal. He was a refugee from the Punjab. He was introduced to me by Mr. Gupta of Anir Manzil Mahin. Madanlal was looking for a job and for a short time sold my books. He said he was doing some fruit business with Ahmednagar. He told me that through the generosity of a Gujrati lady he also had an interest in doing cracker business. Madanlal introduced me to one Sood. Madanlal told me of a meeting which he attended at Ahmednagar and in which he opposed Rao Sahib Patwardhan who had spoken of Hindus and Muslims living peacefully together. Madanlal told me that the person who accompanied him was one Karkare, a big Seth of Ahmednagar. Madanlal said that a group had been formed at Ahmednagar and that Karkare was financing the Group. Madanlal stated that the party to which he belonged had plotted to do away with some great leader. Madanlal mentioned the name of Mahatna Gandhi. I was horrified at such a suggestion and tried to dissuade him. I tried to dissuade him for about 2 hours and said that he was making unnecessary trouble for himself and for others. I reminded him of all the repercussions and said that he was an intelligent young man and was merely being made a scapegoat by his party. Madanlal listened to me and thanked me for

my

*P.173

my advice, Madanlal met me on the following day. He said he was proceeding to Delhi and would return in a few days. I wanted to bring this to the notice of Jai Prakash Narain but merely told him that there would be a great conspiracy in Delhi but as he was in a great hurry to leave I could not tell him the details. On 21st January 1948 after reading the news of the explosion of a bomb at the prayer meeting of Gandhiji I tried to contact Vallabhbai Patel. I failed to do so as he had already left for the Aerodrome on his way to Delhi. I also tried to contact Mr. S.K. Patel. He also had accompanied the Sardar. I rang up the Premier Mr. B.G.Kher. He gave me an appointment for 4 p.m. at the Secretariat. Mr. Morarji Desai, Home Minister was present. I gave the Prime Minister the whole statement as set out above. I also offered my services to unearth this conspiracy. I requested them to take such action as they considered necessary. I will be able to identify Madanlal. I think I shall be able to identify Karkare also."

The evidence of Professor Jain, Angad Singh and Mr. Desai was subjected to very severe criticism by

Nathuram and the counsel for the other appellants

*P.174

particularly Mr. Bannerji * counsel for Madanlal

and Apte and Mr. Dange counsel for Karkare. Nathuram

described the entire evidence given by the three

as pure fabrication. He urged that all three, of whom Professor Jain and Mr. Desai were admittedly staunch congressmen, and Angad Singh had been a very staunch congressman and had only recently seceded from the Congress along with his party because they felt that the Congress was not prepared to go far enough with them in the execution of their socialistic programme, had combined together, out of political motives, in order to crush their political opponents particularly Mr. Savarkar, the leader of the Hindu Mahasabha. He drew our attention to what he described as the most hostile attitude of Mr. Desai towards his journals the 'Daily Agrani' and the 'Hindu Rashtra' as disclosed by the fact that theirs was almost the solitary case in which he had decided to take action under the Press Emergency Powers Act without reference to the Press Advisory Committee and the further fact that within a very short time the security deposits of the above-named journals aggregating to Rs.16,000/- had been forfeited. He laid very great stress on the failure of Mr. Desai to take proper action on the alleged receipt of information by him from Professor Jain on the 21st January. He pointed out that even on his own showing Mr. Desai did nothing more than * direct Mr. Nagarvala to arrest Karkare and keep a watch over Mr. Savarkar and does not even purport to have disclosed the name of his informant to him in order to enable him to contact the former although he himself has stated that Dr. Jain had expressed his readiness to give every possible help in unearthing the conspiracy. As regards the statement of Mr. Desai that he had refrained from divulging the name of his informant to Mr. Nagarvala by reason of an express request

to

to that effect having been made by the former, attention was drawn to the fact that Professor Jain himself had not said that he had made any such request to Mr. Desai, but that he had, on the other hand, deposed that he had expressed his readiness to give all possible assistance in unearthing the conspiracy. Attention was also drawn to the fact that beyond passing an order for the arrest of Karkare, an order for whose detention under the Provincial Security Act had already been passed as far back as about the 9th or 10th * January, and placing an unobtrusive watch on the house of Mr. Savarkar, Mr. Nagarvala, admittedly, did absolutely nothing; did not take any steps to trace the alleged dump of arms, ammunitions and explosives at Ahmednagar and Poona; did not direct that enquiries should be made at Ahmednagar as to the activities of Madanlal and his associates at the place; and did not even care to make any enquiries from the Hindu Mahasabha Office at Dadar as to who were the persons who had stayed there between the 11th and 15th January although, according to Professor Jain, Madanlal had distinctly told the later that his associates were staying at that place. It was urged that the conduct of Messrs. Desai and Nagarvala was hardly consistent with their being in possession of any information whatsoever as to Madanlal and his associates having a design on the life of Mahatma Gandhi and could not but lead to the conclusion that the whole story as to such information having been conveyed by Doctor Jain to Mr. Desai on the 21st January, and by the latter to Mr. Nagarvala the same evening, is faked, and that, not only Professor Jain, but also the two above-named officials, had lied.

*P.176

Mr. Bannerji and the other counsel did not go to this

this extent and did not suggest that Mr. Desai had given false evidence. Their contention was that the conduct of Mr. Desai and Mr. Nagarvala showed that they had not taken the story told by Professor Jain to the former seriously at all * and did not regard it as anything more than a yarn.

Nathuram also urged that even if there had been a conspiracy it was exceedingly improbable that Madanlal would divulge the same to Professor Jain. He laid stress on the discrepancies between the evidence given by Professor Jain in the Court below and the statement made by him before the Chief Presidency Magistrate under section 164, Criminal Procedure Code, much earlier, and also on the discrepancies between that evidence and the evidence of Angad Singh and Mr. Desai, and contended that Professor Jain appeared to be a wholly unscrupulous witness, who presumably in order to carry favour with the Congress Government, or, it may be to ward off a possible suspicions against himself by reason of his admitted association with Madanlal, had cooked up an entirely false story, and that Angad Singh had only come to his rescue as an obliging friend. The suggestion was that having heard from Madanlal that he and some of his friends had adopted a somewhat aggressive * attitude towards the Muslims in Ahmednagar, and that they had formed a volunteer corps at that place for helping Hindu refugees which corps was being financed or otherwise encouraged by Karkare, Professor Jain had, on reading in the newspapers the account of the explosion caused by Madanlal and the suggestion that the said act of Madanlal had probably been done in pursuance of some conspiracy, quite unconsciously allowed his imagination to work, and had rushed to

the

the Home Minister with the story that Madanlal had actually told him about such a conspiracy being in existence, the object of contacting the Home Minister being to save himself from the possible consequences of his own connections with Madanlal.

The evidence of Angad Singh as to what he heard from his friend Professor Jain as to the talk the latter had with Madanlal after he had himself left his house, and the evidence of Mr. Desai as to the communication alleged to have been made to him by the Professor, have been admitted in evidence under section 157 of the Indian Evidence Act. While no objection was taken to the admissibility of Angad Singh's evidence under the afore-said section it was very strenuously contended by Mr. Bannerji that the section had no application to the evidence of Mr. Desai and that the same ought, according to him, to be regarded as wholly inadmissible.

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* Before proceeding to examine the arguments regarding the merits of the evidence of the above-named three witnesses, of which I have attempted to give as complete a resume as possible, I should like to dispose of the objection as to the admissibility of the evidence of Mr. Desai. Section 157 under which that evidence has been admitted reads as follows:-

"157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

It is common ground that the alleged statement of Professor Jain to Mr. Desai, made admittedly more than

than a week after his alleged talk with Madanlal and the disclosures alleged to have been made to him by the latter, cannot be regarded as having been made at or about the time when the talk took place and the disclosures were made, and cannot, accordingly, be said to fall within the first part of the section quoted above. The learned Special Judge has, however, * held that Mr. Desai being an authority legally competent to investigate the truth or untruth of the disclosures said to have been made by Madanlal to the Professor, the case did fall within the purview of the latter part of the section, and that, accordingly, the statement made by the Professor to him was legally admissible in evidence. After giving due consideration to the arguments of Mr. Bannerji, I have not been able to see any reason to differ from this view of the learned Special Judge. As very clearly stated by Mr. Desai, the police, crimes and the investigation of crimes fall within the portfolio of 'Home'. Accordingly, as a Home Minister of the Province, he was legally competent to investigate, i.e., to enquire into the truth or untruth of, the disclosures, if any, made by Madanlal to him. There can, in the circumstances, be no doubt at all that the statement said to have been made to him by the Professor about those disclosures has been rightly admitted in evidence.

*P.180

I consider the contention as to the three witnesses having combined to give false evidence out of political motives to be wholly fantastic. There does not appear to be any truth at all in the suggestion that Nathuram or the papers edited by him were the special targets of the Home Minister's wrath. It is quite true that, * as admitted by Mr. Desai, an order had been made demanding security under the Press Emergency Powers Act from the 'Agrani'

*P.181

without

without previous reference to the Press Advisory Committee, while in almost all other cases in which action was taken under the said Act, this was done after reference to the said committee. I, however, consider the explanation given by the witness for this to be quite satisfactory. As pointed out by him, this was the first or the second case of its kind since the assumption of office by the present Government and one can easily understand that the department followed, as a matter of routine, the procedure in vogue in the time of the old bureaucratic Government. The new administration could hardly have yet had time to formulate their policy on the subject in the light of their professedly democratic ideals. Mr. Desai has said that it was a case of sheer oversight. When a kind of general amnesty was granted by the Provincial Government to the press, and a decision was taken to refund all security deposits that had been forfeited, the Minister did not make any discrimination against * the 'Argani' and the 'Hindu Rashtra' and it is not denied that the latter were refunded a sum of Rs.16,000/- which was the aggregate amount of their security deposits forfeited.

*P.182

There is no reason at all to suppose that either Mr. Desai or the two other witnesses had any animus against any of the accused. None of the accused even suggested to have ever come in any kind of conflict with them and there does not seem to be anything common between Professor Jain and Angad Singh on one side and Mr. Desai on the other. It seems to me to be a wholly ridiculous suggestion that the three had combined together to give false evidence against the accused simply on account of the difference in their political ideologies. I also cannot take seriously the suggestion that the

combination

combination was for the purpose of roping in Mr. Savarkar. The case against the latter failed for want of adequate evidence and not by reason of the evidence against him having been disbelieved by the Court. The only evidence against him was the statement of the approver that on 17th January when Apte and Nathuram went to have his darshan before leaving for Delhi he came to the ground floor of his house to bid them good-bye and while doing so used words which meant "Be successful and come back." The three witnesses we are dealing with at the present moment did not seek to prove anything * against him *P.183. except an alleged statement of Madanlal that he had expressed approval of the latter's activities at Ahmednagar in turning out the Muslim fruit and vegetable vendors and had encouraged him to continue such activities. Surely, if the three witnesses had combined together to commit perjury in order to implicate Mr. Savarkar, they could have made their evidence against him much more effective. They could at least have put into Madanlal's mouth some words showing that Mr. Savarkar had encouraged or blessed the plot against the life of Mahatma Gandhi. The combination of these three evidently intelligent and shrewd persons could not, if they had decided to stoop so low as not to mind perjuring themselves for the achievement of their object, have given their evidence in such a lukewarm and half-hearted manner, if, as is suggested, they were laying for such high stakes as the removal of Mr. Savarkar from the political arena.

I do not regard the conduct of Mr. Desai or of Mr. Nagarvala as in any manner inconsistent with the former having received on 21st January from Professor Jain the information which he has deposed he did * receive and *P.184 which he says he had communicated to Mr. Nagarvala

with

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with the necessary directions. The following extract from the statement of Mr. Desai which contains a full account, as given by him, of the conversation which took place between him and Professor Jain on the occasion fully bears this out:-

"Professor Jain then spoke and told us his story. By the word 'story' I mean his narrative. He told us that he had read about the explosion incident in the newspapers dated 21st January, 1948 as also the name of the person who had been arrested and that he had personal knowledge of the various matters relating to that person which he wanted to narrate to us. He said that he knew that person Madanlal, who had come in contact with him as a refugee and whom he had helped monetarily. He also said that he had given him his books to sell so that he might earn some money and that he had been keeping in contact with him. He said that Madanlal had left Bombay for Delhi only about 3-4 days before the explosion incident. I am not sure about how many days Jain had mentioned. He said that before leaving for Delhi, Madanlal had discussions with him. He then said that Madanlal had told him that he (Madanlal) and his friends had decided to take the life of a great leader. He (Jain) then pressed him to give the name of that leader. Madanlal then gave the name of Mahatma Gandhi. Professor Jain then told us that he had tried to dissuade Madanlal from his wild talk and wild plan. He also told us that a friend of Madanlal with whom Madanlal was working at Ahmednagar had also been introduced by Madanlal to him

as

"as Karkare. Professor Jain also told us that Madanlal had told him about his exploits at Ahmednagar, and gave us some details about them as narrated to him by Madanlal. He then told us that Madanlal had told him that * Karkare had taken him (Madanlal) to Savarkar, that Savarkar had a talk with him for about two hours and that Savarkar had praised him for what he had done, had patted him on his back and had asked him to carry on his work. Professor Jain had said that Madanlal had told him that there was a dump of arms, ammunition and explosives at Ahmednagar. If I remember right, Professor Jain had also said that Madanlal had told him that some explosives were stored also at Poona. Professor Jain had said that Madanlal had told him that he and his companions were to go to Delhi to achieve their object. I asked Jain as to why he did not tell me all about it immediately after he had come to know of it. He said that refugees were in the habit of talking wildly and that he believed he had dissuaded Madanlal from doing what he intended to do."

*P.185.

In the circumstances, I do not see how Mr. Desai as the Home Minister of a professedly democratic Government could have done anything more than what he actually did in this case. Madanlal was under arrest at Delhi and not available for interrogation at Bombay. Professor Jain did not furnish any clue about his associates or coadjutors except Karkare and for the latter's arrest directions were at once given by Mr. Desai to Mr. Nagarvala who * also immediately set about locating him for the purpose of giving effect to those directions. We will presently see that Karkare was, in the meanwhile, striving hard as possible to keep his identity concealed and it could

*P.186

not

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not, therefore, be an easy task actually to locate him. It is true that Professor Jain has stated in his evidence that he had been told by Madanlal, at the time the latter disclosed to him the plot against the life of Mahatma Jee, that he with his associates was putting up in the Hindu Mahasabha Office at Dadar, but as the above extract from Mr. Desai's evidence would show he does not seem to have communicated this information to the Home Minister. Even Angad Singh to whom Professor Jain is said to have narrated what he had been told by Madanlal within a day or two does not profess to have received any information from him on the subject. Whether this omission was accidental or deliberate, or whether it should, and if so, to what extent, affect the weight to be attached to the Professor's own evidence are questions which need not worry us at this stage and which will properly arise for consideration only at the time of the appraisal of the Professor's evidence. It is, however, quite clear that, on the information in his possession, Mr. Desai could not reasonably be expected to direct any enquiry from or at the Hindu Mahasabha Office nor could Mr. Nagarvala be expected to make such enquiry on his own. As regards Mr. Savarkar's connection with Madanlal the only * information then in the possession of Mr. Desai was that when Karkare took Madanlal to his house he had a long talk with him, praised him for what he had done, patted him on his back and asked him to carry on. I do not think this information could reasonably be deemed to warrant any severer or more drastic action against Mr. Savarkar than that actually taken by Mr. Nagarvala, viz., an unobtrusive watch on his residence. Indeed, any severer action would have savoured of vindictiveness and might have been displayed as an attempt

on

*P.187

on the part of the Congress Government to stifle all political opposition. Much stress was laid by Nathuram on the inaction of Mr. Nagarvala in relation to the arms, ammunition and explosives which, according to Mr. Desai, Madanlal had told Professor Jain, had been dumped at Ahmednagar and the explosives which had been stored at Poona. At first sight, in the circumstances, the omission of the Home Minister or the police chief, to take immediate steps to trace and seize the dumps * of arms, *P.188
ammunitions and explosives at Ahmednagar and the store of explosives at Poona does appear to be astounding, and to lay both open to a charge of gross, even criminal, negligence. However, on a closer and more careful consideration of the situation, it seems to me that, in the absence of some clue^{as} to where to look for the objectionable stuff, a precipitate action in this matter would have been imprudent and might have proved disastrous. Ahmednagar and Poona are not far removed from the Hyderabad border, and, on getting scent of a possible police raid, the parties concerned could easily have got rid of such stuff, if there was any, across the border or otherwise placed it beyond the reach of the police.

For the foregoing reasons, I am unable to see my way to reject the testimony of Mr. Desai as untrustworthy on the ground of his own conduct and that of Mr. Nagarvala, who was acting under his instructions, being incompatible with his being in possession of the information which he claims to have received from Professor Jain on the 21st January.

It was next urged by Nathuram that there were some obvious untruths in the evidence of Mr. Desai in view whereof he could not be regarded as generally a truthful witness. The only two such untruths of the witness to which our attention was drawn were :-

1. The statement as to the appeal from the order passed under the press Emergency Powers Act for forfeiture of the security of the 'Hindu Rashtra' having been dismissed by the High Court and

2. the statement as to the witness having had no knowledge of the distribution of arms and ammunition by Dada Maharaj to the members of the Socialist Party till he read the account of the evidence given by the latter in the present case as reported in the press.

In so far as the first statement is concerned, it was admitted by Nathuram that there was no evidence on the record to justify the assertion as to its being untrue. It was, however, asserted by him that the appeal had in fact been admitted by the High Court. He challenged the learned Advocate General to deny the correctness of his assertion. Mr. Daphtary found himself unable to make any statement one way or the other. The correct position as I * gather from certain remarks made by Nathuram in his final reply seems to be that although the appeal was admitted by the High Court in the first instance, it became infructuous when on 15th August, 1947 the amount of the forfeited security was refunded under Government orders, and was dismissed on that ground. In the circumstances, it cannot be said that Mr. Desai did not speak the truth when he made the impugned statement.

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As regards the second statement, the contention of Nathuram was that it must be held to be false inasmuch as Dada Maharaj's evidence clearly showed that Mr. Desai was

was

was fully acquainted with his activities in the matter of collection and distribution of arms and ammunition long before the report of his evidence in the case appeared in the press.

The relevant portion of the evidence of Dada Maharaj P.W.69 which was recorded on 10th August, 1948 reads as follows:-

"It is true that I had gone to a high Government Officer and had told him that I would not help anyone whose intentions were to injure the Muslims in the Dominion of India. That Government Officer was the Hon'ble Mr. Morarji Desai. I had heard that the Hon'ble Home Minister had some misunderstandings about my activities. I accordingly went and saw him to get those misunderstandings about me removed. It * was on the Janamashtmi day in 1947. There was also *P.191 a talk with the Hon'ble Home Minister about my activities in regard to the collection of arms and ammunition."

The relevant portion of the evidence of Mr. Desai, which was recorded about a fortnight later on 24th August runs as follows:-

"I know both Dada Maharaj and Dixit Maharaj. I had heard some rumours in 1947 that Dada Maharaj was concerned in the collection and smuggling of arms and ammunition. I did not know that Dada Maharaj was distributing arms and ammunition to the members of the Socialist Party. I came to know of it when I read the evidence of Dada Maharaj given in this Court in a newspaper."

Both the statements quoted above were made in answer to questions put in cross-examination by the counsel for Mr. Savarkar. I fail to see any discrepancy at all between the statements, much less am I able to discover any indication of Mr. Desai not having stated the truth in making the above statement. According to Mr. Desai's statement, Dada Maharaj saw him once in 1947 when he heard rumours * as to his *P.192

being

being concerned in the collection and smuggling of arms. According to Dada Maharaj he heard about Janamashtmi of 1947 that the Home Minister had some misunderstandings about his activities, that he went to see him to remove those misunderstandings, and that on that occasion there was a talk about his activities in regard to the collection and distribution of arms and ammunition. I can see no material difference between the versions given by the two witnesses with regard to the circumstances under which they met and the subject discussed between them on the occasion. Dada Maharaj did not say that there was any talk at that time about his distributing arms and ammunition to the members of the Socialist Party. It cannot, therefore, be said that Mr. Desai lied when he said that before reading the press report of Dada Maharaj's evidence he did not know that the latter had been distributing arms and ammunition to the members of the Socialist Party. In fact, Dada Maharaj never said that he had distributed arms and ammunition to the members of the said party. It was his brother Dixit Maharaj who while giving evidence in this case made the following statement on 21st August, 1948:-

"I had supplied revolvers, pistols, guns, carbines, rifles, hand-grenades, detonators, etc., to the Socialist Party."

*P.193

It seems that it was the report of Dixit Maharaj's evidence that Mr. Desai had read in the press but that he confused it with that of Dada Maharaj, or, it may be, that the form in which the cross-examining counsel put the question misled him into the belief that it was Dada Maharaj who had stated in Court that he had been distributing arms and ammunition to the members of the Socialist Party. Be that as it may, a comparison of the relevant portion of Dada Maharaj's evidence completely demolishes the entire fabric

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on which Nathuram based this part of his argument.

After giving my most careful thought to all that was urged at the Bar against the evidence of Mr. Desai, I can find no reason to hold that he was not a witness of truth.

I come now to the evidence of Professor Jain himself and that of his friend Angad Singh.

A lot of argument against the evidence of Professor Jain was based on the dates mentioned by him and an attempt was made to show that if the witness' evidence as regards the dates on which Madanlal met him is accepted, it will completely demolish the evidence of the approver as to his having gone to his place, along with Karkare, at some time in the night on the 9th January, in order to see the stuff which he had collected at Apte's request. There is undoubtedly some confusion in Professor Jain's evidence in the matter of dates. He originally said that Madanlal had seen him first in the end of the first week of January. Then he corrected himself by saying that Madanlal saw him about the end of the first week of January. On a question being put in cross-examination he said that he would consider the 6th or the 7th January as the end of the first week of the month. A closer examination of the evidence, however, would show that the confusion is more apparent than real and that there is in reality no conflict between the evidence of this witness and that of the approver. According to the witness, Madanlal saw him on four occasions, once when he came to him with Karkare, a second time when he told him about the plot against the life of Mahatma Gandhi, a third time when he assured him that he had accepted his advice, and a fourth time when he told him that he was leaving that night for Delhi. The fourth visit of Madanlal must, in the circumstances, have taken place, assuming of course that the witness is telling the truth, on 15th January. The witness puts the third visit as one

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*P.195.

* or two days before the last visit. He puts the second visit two days before the third and the first visit at two or three days before the second. Thus, according to him, the third visit of Madanlal was either on the 14th or 13th January, the second either on the 12th or 11th, and the first either on the 9th or 10th. In these circumstances, it cannot be said that the Professors's evidence is necessarily inconsistent with Madanlal and Karkare having visited Badge at his house at sometime on the 9th January. They could easily have reported what they had seen at Badge's house to Apte immediately and could have got some train for Bombay the same night or early next morning so as to be in Bombay on 10th January.

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P. 196.

From the statement made by Madan Lal before the learned Special Judge, his written statement, the statements, written as well as oral, of his friend Karkare, and other material, to be found on the record, the impression left upon my mind about Madan Lal is that he is an impetuous, reckless and rash youth, impressionable in a very high degree, having a lot of bravado combined with a passion for notoriety, and one who would respond to the slightest favour shown to him with utmost gratitude. A helpless, homeless, refugee that he was, Professor Jain had received him kindly when he was introduced to him, had tried to get a job for him, and had otherwise evinced some interest in him, had given him his books for sale on commission basis without insisting on any kind of security for the payment of sale proceeds and had shown no impatience even when about Rs.30/- or Rs.40/- out of the sale proceeds of books at Ahmednagar had not been

been paid to him for a considerable time. In the circumstances, it was quite natural for a youth of the temperament and disposition of Madanlal to begin to regard him with feelings of uncommon affection and gratitude. How Madanlal did feel towards the Professor can be gathered from the language of his two post-cards which have been referred to above. In both of them he called the Professor's wife as his mother and his children as his brothers and sisters.

On going to Ahmednagar, Madanlal seems to have received particular kindness and consideration at the hands of Karkare and this fact, along with the solicitude shown by the latter generally for the refugees, appears to have drawn him very close to Karkare. I can find no difficulty in believing that, while he was in Bombay with his Ahmednagar patron and benefactor, he, anxious as he was to remove from his first benefactor's mind any unfavourable impression that might have been created by the withholding of sale proceeds of his books, went, on the day of his arrival at Bombay, with Karkare to Professor Jain's house, introduced the former to the latter as a big Seth and a great worker in the refugee cause, and told him that he would also pay the amount due to him from himself on account of the sale proceeds of the books. The Professor identified Karkare at the first identification parade held at Bombay as the person who had come to his house with Madanlal. This identification parade was held on 2nd March. Karkare was arrested as late as 15th February and was taken to Delhi on the 25th February. He was flown back to Bombay

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P.197.

on the 1st March, i.e., just one day before the parade. In the circumstances, the genuineness of the identification cannot reasonably be doubted.

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P.198.

I see also no difficulty in believing that Madanlal saw Professor Jain again and narrated to him his exploits at Ahmednagar. He would be bursting with them and would avail himself of the earliest opportunity to communicate them to this benefactor, possibly with considerable exaggeration, and I find nothing unnatural or improbable in his, in his desire to impress Professor Jain with his own importance and that of his new associates, having blurted out that they had a design on the life of a leader, and, on being hard pressed by his benefactor to do so, having disclosed the name of that leader, even though he may subsequently have repented. From the evidence of Doctor Jain with regard to his third interview with Madanlal it appears that he did in fact repent and regret his impetuosity and tried to convince Professor Jain that the project previously disclosed to him had been abandoned.

Much stress was laid on the fact that Madanlal could not, assuming there was a conspiracy of the nature alleged, possibly have disclosed the fact to Professor Jain whom he must have known to be a congressman and who had gone to jail in 1942 in connection with the 'Quit India' movement launched by Mahatma Gandhi. This argument, however, ignores human nature and overlooks the fact that an impetuous and impulsive youth, in a moment of excitement and exultation, is generally apt to throw all prudence and foresight to the winds.

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The only motive suggested for Professor Jain having concocted a false story was a desire for self-preservation. It was suggested that on reading, on the morning of the 21st January, in the newspapers the news item about the explosion at the Birla House the previous evening and the arrest of Madanlal in connection therewith, Professor Jain became nervous and, fearing that, by reason of his association and contacts with Madanlal, he might get into trouble and might be suspected of complicity in the crime, rushed to the Home and the Prime Ministers with a cock and bull story. The suggestion seems to be simply fantastic. With his antecedents, being a person who had actually served a long term of detention in connection with the 'Quit India' movement of Mahatma Gandhi, Professor Jain could not have the slightest apprehension of his being suspected of any complicity with Madanlal.

* P.199.

Lengthy arguments were addressed to us with reference to the conduct of Professor Jain after the alleged communication had been made to him by Madanlal. His inaction and his failure to give information to the authorities were described as wholly unnatural and it was contended that they were wholly irreconcilable with the Professor being in possession of such important information.

* P.200.

I must say, however, that it is Professor Jain's evidence as to how he behaved after the communication of the news to him by Madanlal which has impressed me most. I consider it so natural, and it makes the rest of his evidence look so probable, that I cannot help being driven

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to the conclusion that the evidence given by the witness is at least substantially true. A young lad, in whom he had been taking some interest, who was the object of his sympathy and, may be also of his affection, who, though impetuous and rash, had some good attributes, had told him of a secret design formed by himself and his friends against the life of Mahatma Gandhi. As was natural, he tried his utmost to dissuade the boy from having anything to do with such design. After the boy had left, promising to see him again, his mind was naturally torn up by conflicting feelings. He wished very much that there was no truth at all in what he had been told and that the boy had been merely bluffing. With his knowledge of the temperament of Madanlal, and with his knowledge of the bragging generally indulged in by the refugees, he felt very much inclined to believe that it was so. He could not, however, at the same time absolutely exclude the possibility of there being some truth in what he had been told. He naturally felt chary of taking any immediate action for fear of unnecessarily involving Madanlal in trouble in case in fact there was no truth in what the latter had told him. In the circumstances, he adopted the most natural course of confining the matter to, and seeking the advice of, an intimate friend like Anand Singh. The latter had agreed with him that what Madanlal had told him was no more than a tall talk of a refugee and should not be taken seriously at all. But, it was further agreed between the two friends that no risks should be taken and that the matter should be reported to the authorities. However, either the same or the following night,

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I. 201.

night, Madanlal again saw Professor Jain and assured him that he had accepted his advice. Otherwise being very strongly inclined to think that the story told him earlier about the plot against Mahatma Gandhi's life was no more than a bluff, and being anxious not to involve Madanlal in unnecessary trouble, Professor Jain naturally readily accepted this assurance as quite genuine and refrained from carrying out the decision taken by him conjointly with Angad Singh about informing the authorities. Element of doubt still, however, and quite naturally, lurked in his mind and he tried to satisfy his conscience by conveying some warning to the authorities in Delhi. With that end in view, he tried to contact Mr. Jain Prakash Narain but due to unavoidable causes did not succeed. All this is so natural, and its description as given by Professor Jain has such a ring of sincerity about it, that I feel no hesitation at all in accepting it.

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P.201.

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Great stress was laid on the fact that while according to Professor Jain, Angad Singh had left his house after Madan Lal had recounted his own exploits at Ahmednagar and before he had said anything about the Seth who had accompanied him at the time of his previous visit and the party organised by himself and financed by the Seth, according to Angad Singh the talk about the Seth and his financing the party organised by Madan Lal had also taken place before he left. I do not consider that this discrepancy can be taken to throw any doubt on the veracity of either of

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P.203.

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the two witnesses. It only shows that Professor Jain's recollection as to the precise moment at which Angad Singh left his house is not quite accurate. His impression seems to be that the latter left a minute or two - or say five minutes-- earlier than he actually did. Of course Angad Singh is in a far better position than Professor Jain to say at what stage of the conversation between the latter and Madan Lal he did leave. Rather than cast any doubt on the truthfulness of either of the two witnesses, this so-called discrepancy seems to me only to show that neither of them is a tutored witness and that, in spite of being so intimate with each other, they did not compare notes or discuss between themselves the evidence which each of them was going to give or had given. It is to be observed that this so-called discrepancy is to be found in the statements made by the witnesses in their examinations-in-chief and there was an interval of four days between the dates on which they gave their evidence. Both are intelligent and educated men and if they had, during this interval, talked between themselves about the events regarding which one had already given, and the other was to give, evidence, this discrepancy could have been very easily avoided.

The other discrepancies pointed out between the evidence of Professor Jain and that of Angad Singh, and between the evidence of the former and that of Mr. Desai, may be summed up as follows:-

(1) Professor Jain did not say that

Madan Lal had told him that

Mr. Savarkar

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Mr. Savarkar was behind his party while, according to Angad Singh, in narrating to the latter the account of what Madan Lal had told him, Professor Jain did make a statement to that effect. Indeed, according to Angad Singh this was the reason why the Professor felt worried and inclined to think that after all what Madan Lal had told him might not be pure bluff;

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P.205.

(2) Professor Jain has stated that Madan Lal had told him that he had been entrusted with the task of exploding a bomb at the prayer-meeting of Mahatma Gandhi when his companions would, in the commotion so caused, overpower the latter, and that he and his associates were putting up at the Hindu Mahasabha office at Dadar. There is, however, no reference at all to any of these matters in the evidence of Angad Singh and Mr. Desai who do not appear to have been told by Professor Jain that any such statement had been made to him by Madan Lal;

(3) Mr. Desai has stated that he had been told by Professor Jain that according to what he had heard from Madan Lal the latter had been taken to Mr. Savarkar by Karkare, while in the evidence given by Professor Jain in Court as to what Madan Lal had stated to him there is not a word about his having been taken to Savarkar by Karkare, nor

does

does Angad Singh say that this fact was mentioned by Professor Jain to him.

(4) According to Mr. Desai, Professor Jain told him that Madan Lal had informed him not only about arms, ammunition and explosives having been dumped by his party at Ahmednagar but also about explosives having been stored by them in Poona, while no such statement has been ascribed to Madan Lal in the evidence given by Professor Jain, nor does Angad Singh say that it was mentioned by the former while reporting to him the conversation which Madan Lal had with him.

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The third discrepancy is capable of very easy explanation and in fact is no discrepancy at all. Professor Jain says that he was told by Madan Lal that on hearing about his exploits at Ahmednagar Mr. Savarkar had sent for him. It may reasonably be assumed, although the Professor did not say that in so many words, that the person, if any, who spoke to Mr. Savarkar about the exploits of Madan Lal at Ahmednagar and through whom the latter was, if at all, sent for, could be no other than Karkare. The latter is quite a prominent worker of the Hindu Mahasabha, was returned to the local Municipality on the Mahasabha ticket, held an important office in the District Mahasabha organisation, and took a leading part in the relief of the victims of the Muslim atrocities in the East Punjab and East Bengal. I cannot believe that a man like him was not known to Mr. Desai. It is not possible to think of any other person who had access to Mr. Savarkar and who not only knew Madan Lal but was fully conversant with all

to Mr. Savarkar or had no access to him. It is not possible to think of any other person who had an access to Mr. Savarkar and also not only knew Mr. Madan Lal but was fully conversant with and admired his exploits at Ahmednagar.

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P.207.

The other three discrepancies are certainly real. However, for the reasons given in discussing another discrepancy between the evidence of Professor Jain and Angad Singh, I am not prepared to regard them as discrepancies of falsehood; or to hold that they cast any suspicions on the veracity of the witnesses concerned, and would regard them as almost sure indices of the witnesses having given their evidence according to the best of their respective recollections and without any previous consultation or discussion. Like the discrepancy referred to earlier, all these discrepancies are also to be found in the statements made in examination-in-chief and it is not the case that they were elicited in cross-examination. They could, therefore, have been easily avoided if the witnesses had been only repeating statements put into their mouths by some outside agency or had even met together before giving evidence.

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P.208.

While I would not, on account of the above discrepancies, hold that the witnesses are not witnesses of truth, or reject their evidence as untrustworthy, I can certainly not overlook them in giving my finding as to what communication or statement Madan Lal did in fact

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make to Professor Jain at the material time. I consider the present to be pre-eminently a case in which the warning given, in the course of his summing up to the jury, by Baron Alderson in Reg v. Hodge which has been quoted in extenso in an earlier part of this judgment, must constantly be borne in mind. The case had quite naturally, attracted public attention in a measure and to an extent rarely heard of in the history of judicial administration in this country; the proceedings were being very extensively reported in the press, not always very accurately, and were widely read and presumably freely commented upon and discussed; and therefore need for caution, in the appraisal of evidence, is much greater in this case than ever. We have just noticed an instance in which a press report as to the evidence given by Dixitji Maharaj was assumed by Mr. Desai to be the report of the evidence given by Dada Maharaj and, on that assumption, he made a statement which furnished the appellants an apparently convenient handle to attack the whole of his evidence. In the circumstances, and keeping in view the possibility, in such circumstances, of even the most ^{honest} and straightforward witness confusing that he had read somewhere or heard from one source with what he was told by another source, I consider it safest, in so far as the evidence of this set of three witnesses is concerned, to accept only what is to be found in the evidence of the three of them. Thus I would eliminate from consideration the part of Professor Jain's evidence

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P.209.

in which he has said that he had been told by Madan Lal that he and his associates, of whom he did not disclose the names, were putting at the Hindu Mahasabha office, that he had been entrusted with the task of throwing a bomb at the prayer meeting of Gandhiji to create a confusion and that in the confusion so caused Gandhiji was to be overpowered by the members of his party. I would also eliminate the part of the evidence of Angad Singh in which he says that he had been told by Professor Jain as to his having heard from Madan Lal that Barrister Mr. Savarkar was behind his party. I would, also, eliminate the part of Mr. Desai's evidence in which he says that Professor Jain had told him that he had also heard from Madan Lal that they had stored explosives at Poona. If Eadge's evidence with regard to the incidents of the 9th and the 10th January is believed, it is quite conceivable that when, on receiving a report from Karkare and Madan Lal as to the nature of the stuff available, a decision was taken to get from him two gun-cotton slabs besides five hand-grenades, it was also decided that the slabs were to be exploded for creating a confusion at the prayer-ground (they are incapable of being used for any other purpose except causing some slight damage to property), and in the confusion thus caused Mahatma Gandhi was to be overpowered. It is also conceivable that either Madan Lal was actually told

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told that the task of exploding the slab would be assigned to him or he simply assumed that such a task would be assigned only to a young man with his daring and bravado. I, therefore, do not entirely exclude the possibility of Madan Lal having actually told Professor Jain that he had been entrusted with the task of exploding a bomb and the Professor having just omitted to mention it to either Angad Singh or to Mr. Desai. I, however, consider this highly improbable because I cannot imagine that an intelligent man like Professor Jain would fail to realize the importance of this information and would not care to mention it either to his friend or to the Home Minister although he was otherwise anxious to tell them whatever he had heard from Madan Lal. He could almost certainly not have omitted to convey this information as also the information as to Madan Lal and his associates having stayed at the Mahasabha office before leaving for Delhi to the Home Minister whom he met after the explosion, because he could not be unaware of the importance of both these matters for unearthing the conspiracy for which he himself professes to have expressed so much anxiety. I cannot also overlook the fact that there is no reference to Madan Lal having told the Professor about the former having been entrusted with the work of exploding a bomb at the prayer meeting in the statement recorded by the Chief Presidency Magistrate under section 164, Criminal Procedure Code, Ex.D.11. I do not attach any importance at all to the omission from the said statement of the incidents relating to the assault

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P.212.

on Rao Sahib Patwardhan and the interview given and the encouragement held out to Madan Lal by Mr. Savarkar. So far as these incidents are concerned, the explanation given by Professor Jain for their omission may easily be accepted. Mr. Daphtary stated at the Bar that the practice of recording statements under section 164, Criminal Procedure Code, was not in vogue in Bombay Presidency and this statement surely receives ample support from the extremely slipshod, incoherent and unsatisfactory manner in which the statement Ex.D.11 appears to have been recorded by the Chief Presidency Magistrate. In his evidence in Court the latter has stated that in recording statements under section 164, Criminal Procedure Code, he had not taken down what he considered to be irrelevant for the purposes of the case. Even after making all reasonable allowance for all these things, however, I find it difficult to believe that either Professor Jain considered the statement of Madan Lal as to the particular part assigned to him to be so unimportant that he did not care to mention it when his statement was being recorded by the Chief Presidency Magistrate, or that the latter considered it to be irrelevant for the purpose of the case. I am, accordingly, of the view that the only

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P.213.

safe and reasonable course open to me is to ignore this part of Professor Jain's evidence.

Similarly, while I do not entirely rule out the possibility of Madan Lal having told Professor Jain that Mr. Savarkar was behind his party and that they had also stored explosives at Poona, and of the Professor having lost recollection thereof after having told Angad Singh about the first matter and Mr. Desai about the second. I, however, can also not rule out the possibility of Angad Singh having in fact himself drawn an inference as to Mr. Savarkar being behind the party organised by Madan Lal from the facts stated to him by Professor Jain as to Madan Lal having been called, granted a long interview, and been encouraged in his activities by the said gentleman, and having quite unconsciously begun to imagine that he had heard from Professor Jain that according to Madan Lal, Barrister Savarkar was behind his party.

In the case of Mr. Desai, it cannot be said to be quite unlikely that, although he had been actually told by Professor Jain only that Madan Lal had said to him that they had collected and dumped arms, ammunition and explosives at Ahmednagar, yet after having read the press report of Badge's evidence about his having collected explosives, at the instance of Apte, and about his having shown the same to Karkare and Madan Lal, he quite unconsciously began to imagine that Dr. Jain had also told him about the storage of explosives at Poona. It may be noted that Badge had given his evidence about these explosives a little over a month before Mr. Desai's evidence came to be recorded.

recorded. It has further to be noted that Mr. Desai has himself taken care to qualify this part of his statement by the addition of the words "If I remember right". This shows that he himself was not quite sure whether Professor Jain had also told him that he had heard from Madan Lal about explosives having been stored at Peona.

Without holding, therefore, that any of these witnesses has knowingly or consciously told any untruth, on grounds of prudence and to be absolutely on the safe side, I would rely only upon that portion of the evidence of Professor Jain as to what Madan Lal had told him on the occasion of his second visit to his place which is corroborated by the evidence of both Angad Singh and Mr. Desai.

In the result of the above discussion, I would hold it proved that Madan Lal first visited Professor Jain on or about the 15th January 1948 and that on that occasion he was accompanied also by Kerkar. I would also hold it proved that after about a couple of days Madan Lal again paid a visit to the house of Professor Jain and had a talk with him. For a short while during this talk Angad Singh was also present. While Angad Singh was there Madan Lal recounted to the Professor his exploits at Ahmednagar and also said that he had organised a party which was being financed by the person who had come with him to the Professor's place a day or two earlier, whose name was Kerkar, and who was a friend of Ahmednagar. I further hold it proved that, after Angad Singh had told Professor Jain that he had seen Mr. Savarkar's photograph and had had a long talk with him, had been patted on the back by him for his achievements at Ahmednagar and had been encouraged to continue his activities, and had later said that his party, which had collected and dumped arms, ammunition and explosives at Peona, had decided to start the life of a leader, the name of the leader having been disclosed with considerable hesitation, as Mahatma Gandhi. I also hold it proved that Professor Jain tried his utmost to dissuade Madan Lal from his all too nefarious desire and that a day or two later Madan Lal again saw him and assured him that he had accepted his advice.

Having done with the events upto the 15th January 1948 I now pass on to the events of the next ----- following.

Following day.

According to the evidence of Badge, having left Bombay by a night train on the 15th, he along with Shankar arrived at Poona at 2 a.m. on the 16th. According to him the object of his visit to Poona was to make some arrangements for the disposal of the arms, ammunition, explosives and other cognate stuff that he had left behind. He says that at about 7 p.m. he went with that stuff to the house of Amdar Kharat (Shri Ganpat Sambhaji Kharat, M.L.A. P.W.81), and entrusted the stuff to him with a request to pass the same on to the Hyderabad State Congress people and to pay him the price on receipt thereof from them.

Shri Ganpat Sambhaji Kharat P.W.81 says that he had been seeing Badge for five or six years and had been knowing him for a year or a year and a half. He was examined by the police on the 8th February 1948, evidently on information furnished by Badge. The witness mentions 9th February as the date. That, however, appears to be incorrect because we have in the evidence of both Mr. Nagarvala and Sub Inspector Pradhan that they had gone with Badge to Poona and had contacted the witness on 8th February. According to the evidence given by this witness, Badge went to his house about three weeks before the date on which he was examined by the police at about 9 p.m. with two bundles containing certain articles which the witness was told were meant for, and were to be handed over to, Baba Sahib Paranjpe and Lavhane, workers of the Hyderabad State Congress. The witness was also a sympathiser of the Hyderabad State Congress and thought that that was the reason why the articles had been brought to him. After Badge had left, Nagmode P.W.119 and Shelar P.W.120 happened to come to the witness's place and he handed over one bundle to each of them asking them

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to keep the same till he asked for their return. He did not know what the contents of the two bundles were. When the police accompanied by Badge came to his place in connection with these bundles he took them to the house of the aforesaid witnesses from where the bundles which were, on being opened, found to contain some arms, ammunition and explosives were recovered.

*Wandev Tayappa Nagmode P.W. 119 says that he is on visiting terms with Ganpat Sambhaji Kharat and that on his happening to go to the latter's house one night in January 1948, at about 9-30 or 10 p.m., he had handed over to him a bundle with instructions to keep the same till it was wanted by himself. The witness kept this bundle in the temple opposite his house and produced the same when the police came to his place with Ganpat Sambhaji Kharat. Substantially to the same effect is the evidence of Honaji Ganpat Shelar P.W. 120.

Ex. P. 219 is the Panchnama or the recovery memo dated 9th February 1948 in respect of articles found to be contained in the bundle recovered from the possession of P.W. 120. Amongst the articles contained in this bundle were two completely fitted hand-grenades, two detonators, a large number of cartridges and some articles resembling pistols though in fact not pistols.

Ex. P. 252 is the Panchnama or recovery memo dated 8th February 1948 respecting articles contained in the bundle recovered from the temple called the Maruti temple at the instance of P.W. 119. Amongst the articles so recovered

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were:-

1. A tin box with a ring and a screw top on the lid and with papers pasted on both sides containing certain writings, the writing on one side being the receipt according to which the gun-cotton slab or slabs, of which the box was presumably the receptacle, had been manufactured, the year of manufacture being stated to be 1942, while the writing on the other side was the number of the Test, presumably intended to indicate the method by which the slab or the slabs had been tested after manufacture;
2. Thirty-four explosive sticks manufactured in Glasgow;
3. Three white slabs;
4. Quite a number of cartridges;
5. Several coils of fuse wire;
6. Fourteen detonators.

There has been some controversy during the course of arguments before us as to whether the bundles containing the above-mentioned articles were handed over by Badge to P.W.81 on the 16th January as deposed to by himself or on the 18th as suggested by Nathuram Godse. I will advert to this controversy a little later. It has, however, not been disputed, nor indeed, could it reasonably be disputed, that the bags containing these * articles were left by Badge with the aforesaid witness after he had decided to accompany Apte and Nathuram Godse to Delhi, and that one main reason for his having returned to Poona before leaving

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for Bhabhi was his anxiety to make suitable arrangements for the safe custody of these articles. They were articles of very considerable value, secured presumably with effort and at very great personal risk both to the party supplying and Bhabhi, and the latter, being already in bad odour with the police and the Executive authority, could naturally not think of joining in any venture which would necessitate his absence from home for some days without taking adequate steps, for the safe custody of these articles.

These recoveries along with the evidence of I.W.31 to furnish very important corroborative evidence of the approver's testimony in more respects than one and this quite irrespective of whether they were left with the aforesaid witness on the 16th or the 18th January.

In the first place, they show that Badge had in his possession quite a lot of arms, ammunition and explosives of various sorts, including gun-cotton slabs, hand-grenades, and some pistol-like things, which were in fact not pistols- presumably they were some country-made contrivances intended to be used as pistols. If his evidence is otherwise found to be believable this will explain why, when asked by Apte to supply, besides two gun-cotton slabs and five hand-grenades, two revolvers, he expressed his inability to do so. If it is true that Karkare and Madan Lal were, on the 9th January, shown, at the instance of Apte, the entire stuff in possession of Badge, they

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would naturally have noticed that he had got, besides gun-cotton slabs, hand-grenades and other articles, quite a number of weapons resembling pistols or revolvers and would convey the information to Apte, and the latter, in the circumstances would naturally be under the impression that Badge was in a position to supply two revolvers.

*P. 223.

They, next, go a long way to support Badge's story as to his having travelled to Bombay on the 14th with the sole object of delivering the stuff that he had taken with himself, and that it was at Bombay* that the use to which the stuff was intended to be put was disclosed to him and his cooperation was asked for. If he had any inkling of that before leaving Poona he would have left after making suitable arrangements for the custody of the remaining stuff. They also render improbable the suggestion of the defence that Badge had taken some stuff to Bombay for Sethia for use in connection with the Hyderabad State Congress movement, and that on deciding to go with Apte and Nathuram Godse to Delhi to help them in staging a peaceful demonstration at the prayer-meeting, he took that stuff with himself, without the knowledge of his companions, in the hope of being able to make larger profits by sale thereof to refugees or some other persons. If he was taking the stuff to Bombay for the Hyderabad State Congress, he would have taken the whole stuff collected by him and not only a part thereof, because his subsequent conduct as disclosed by the evidence furnished by the recoveries and the testimony of P.W. 81 apply shows that what had been left behind was "certainly meant for the State Congress. Then again, if he changed his mind with regard to the stuff which he had taken to Bombay for the State Congress and decided to take it to Delhi for sale in the hope of getting a much higher price, it is

*P. 224.

not

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not understandable why, on his return to Poona, he did not also take the remaining stuff to Delhi for the same purpose and why, instead he left it with P.W.81.

According to Badge on his return from the house of P.W.81, on being told by Shankar that Nathuram Godse had called in his absence he went to the latter's place and on being asked by him if he was ready told him that he was. Nathuram Godse then gave him a pistol and asked him to exchange it for a revolver. The witness had, some time before that, sold a revolver to one Sharma and succeeded in making the latter agree to give him that revolver in exchange for Nathuram Godse's pistol.

The above incident is of course denied by Nathuram Godse who says that he was not at Poona at all on the 16th January and whose ~~wrong~~ contention is that even Badge was not there on that date. According to him Badge returned to Poona not in the evening of the 15th but at sometime on the 17th and deposited the bundles containing the articles mentioned above with P.W.81 either that night or early next morning. Of course, excepting Badge's there is no direct evidence as to either Badge or Nathuram Godse being at Poona on the 16th. As has already been noticed, P.W.81 whom Badge undoubtedly saw on his return to Poona, is unable to fix the date with any degree of precision. Sharma, another person whom Badge claims to have met at Poona for the purpose of exchanging Nathuram Godse's pistol for a revolver, has not been produced. Mr. Nagarvala has deposed that he was unable to trace this man in spite of his best efforts. However, the statements made by Apte and Nathuram Godse themselves

*P.225.

themselves in Court seem almost conclusively to show that Badge was at Poona on the 16th January. Both of them say that when they parted company with him on the 15th January, after they had accepted his offer to follow them to Delhi and join them in their proposed demonstration, the arrangement was that they would meet him in the morning of the 17th at the Victoria Terminus Railway Station. They also say that they did actually pick him * up from the aforesaid railway station as arranged. This obviously seems to pre-suppose that Badge had gone somewhere from where he returned by some train arriving at the Victoria Terminus Railway Station in the morning on the 17th January. It is not even suggested that he went or could have gone to some other place than Poona.

*P.226

The explanation offered by Nathuram Godse for the arrangement mentioned above, in the course of his arguments, although it did not find any place either in his or in Apte's statements, was that the Victoria Terminus Railway Station was fixed as the meeting place for the 17th morning because it was much nearer to the Sea Green Hotel where he and Apte were putting up than the Hindu Mahasabha office, and that consequently it was more convenient to them that Badge should travel by some local train from Dadar to the aforesaid station and be picked up there. Reliance was placed in support of this explanation on the circumstances that Badge had arrived at the Victoria Terminus Railway Station alone on the 17th without Shankar and without his luggage. The explanation though having all the

* P.227 apperances of plausibility cannot bear examination. If Badge was not ^{to} go out of Bombay for the 16th, why was it that he was asked to meet Nathuram Godse and Apte on the 17th and not on the 16th? They were to leave Bombay for Delhi

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by about midday on the 17th. Whatever was intended to be done by them and Badge at Bombay in concert or consultation with each other before leaving for Delhi could have been done more conveniently and with greater leisure on the 16th January, why was it then put off to 17th? It is not suggested that either Nathuram Godse and Apte or Badge had any other, and more important, engagement for the 16th. Again, it will be seen, when we come to the incidents of the 17th January, that most of the time was spent by the three on that day in going about the various places in the city including the Mahasabha office itself. I cannot understand what particular difficulty or inconvenience would have been experienced by Nathuram Godse and Apte in picking up Badge from the Mahasabha office, of which they admittedly were quite frequent visitors and to which *they had gone on the 15th without any apparent purpose. From the circumstances disclosed on the record it appears that Apte was quite fond of moving about in a taxi and would engage one on the slightest provocation, and it would certainly have been for more convenient for all concerned, and would have saved a lot of time, if rather than ask Badge to come all the way from Dadar to the Victoria Terminus Railway Station, Nathuram Godse and Apte had themselves driven to the Mahasabha office and picked him up from there. It has to be remembered that even to pick him up from Victoria Terminus they had to go a distance of not less than a mile and a half from the Sea Green Hotel. According to the statement of Nathuram Godse himself (vide page 3 line 25 of Volume II of the paper book) Hindu Mahasabha office
at

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at Dadar was the second place to which they drover after leaving the Victoria Terminus Railway Station, the first place being the Bombay Dyeing Mills. Badge stated that they had gone to the Mahasabha office to pick up Shankar. If they had to go to the Mahasabha office, and that also within a very short time of picking up Badge from the railway station, I can see no sense * at all in asking Badge to come to the Victoria Terminus Railway Station from Dadar and in Apte and Nathuram themselves having gone all the way from the hotel to the railway station. Aitappa Krishna Kotian, P.W.80, taxi driver, to whose evidence more detailed reference will presently be made and whose taxi was engaged by Apte, Nathuram Gose and Badge on the railway station has stated that he picked up the three from the railway station at 7-30 a.m. which was the time of the arrival of a train from Poona. For all these reasons I feel convinced that when it was arranged that Nathuram Godse and Apte would pick up Badge from the Victoria Terminus Railway Station in the morning on the 17th it was understood that he was to be away from Bombay on the 16th and was to arrive there by a morning train on the 17th. As for Badge being without Shankar when he got down at the Victoria Terminus he has given quite a satisfactory explanation for that when he says that he made Shankar get down at ^{Dadar} / and asked him to go *straight to the Mahasabha office. It is not true, as suggested by Nathuram Godse, that Badge had no luggage when he arrived at the Victoria Terminus Railway Station. The evidence of the above-named taxi-driver clearly shows that when he picked up the three at the railway station they had a bedding with them. That bedding could, quite obviously be only that of Badge.

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A good deal of stress was laid by Nathuram Godse on the evidence of Dixitji Maharaj about the visit paid to him by Badge alone after the meeting of the 15th morning and it was urged that that evidence excluded the possibility of Badge being at Poona on the 16th January. I, however, find myself unable to agree with this contention. In the first place, as I have had occasion to observe before, Dixitji Maharaj's evidence on the subject, in the matter of the date, is much too vague and wholly inconclusive. He first tried to fix the ~~the date of the visit~~ date of the visit with reference to the date on which Apte and Nathuram Godse had visited him at his house and had also attended a meeting held at their place in connection with the Jaiselmer State. The date of this meeting was *indisputably 26th January.

*P. 21

Dixitji Maharaj said that on that date Apte had shown him a revolver which he had already seen with Badge seven or eight days before, when the latter had paid him a visit in accordance with the promise of the 13th morning. This should fix the date of the visit as 18th or 19th January. He then said that Badge had visited him and shown him the revolver either in the evening of the 15th or next morning or it might be a day or two later.

In the circumstances, I find it impossible to hold, as contended by Nathuram Godse, that according to Dixitji Maharaj's evidence Badge saw, or could have seen, him only on the 16th January. On the other

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hand, I find it clearly implicit in that evidence that, whatever the date, Badge could not have met him except after having gone to and come back from Poona. According to the witness, Badge had a revolver with him at the time when he went to his place. If the witness is to be believed, and I have already held that he should be believed, Badge or his companions had no revolver when they saw him on the 15th *January and made pressing requests to him to get them one. Quite obviously the revolver which Badge showed him at the time the second visit must have been secured by him in the meanwhile. It is difficult to imagine that he had the means of securing one at Bombay. In the circumstances the probabilities are that, as deposed to by himself, he secured it at Poona which was the centre of his clandestine activities. It will thus appear that the evidence of Dixitji Maharaj, so far from excluding the possibility of Badge being at Poona on the 16th, in reality lends very considerable support to his own testimony on the subject.

In corroboration of Badge's evidence as to Nathuram Godse's presence at Poona on the 16th January, Mr. Daphtery relied on certain entries in his diary Ex.P.218. The English translation of the relevant entries in the diary is exhibited as P.323 and P.324, Exs. P.323-A and 324-A being photo enlargements thereof. According to one of these entries a sum of Rs.50/- was paid to one Krishenji Pant at Poona for going to Bombay. A line seems to have been drawn across this entry. There is another entry, purporting * to have been made in the afternoon of the 16th, in which the words "Bombay...Poone and again Bombay" are written against an item of Rs.20/-. This entry is followed by another entry in which the words "Taxi in Poona and other things" appear against an item of Rs.30/-. It was urged by Mr. Daphtary that

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that the above entry conclusively proved that Nathuram Godse had returned to Poona at sometime on the 15th January; that on arrival at that place he had paid a sum of Rs.50/- to some person of the name of Kirshenji Pant; that he was at Poona on the 16th where he had to spend Rs.30/- on taxi and other things; and that he returned to Bombay by some afternoon train on that day and made a consolidated entry in his diary about the expenditure incurred in the two journeys, namely, from Bombay to Poona on the 15th and back on the 16th.

At the time of the examination of Nathuram Godse the learned Special Judge drew his attention to, and asked him to explain, only one entry in the diary, viz., that about the payment of a sum of Rs.50/- to one Pandopant, Nathuram Godse in his answer to the question did offer some explanation for the items of Rs.30/- and Rs.20/- as well. As regards the item of Rs.30/- the explanation given was that it represented expenditure incurred at Poona on 13th and 14th January before leaving for Bombay, entry regarding which, however, had not been made on those days but was made later. As regards the item of Rs.20/- the explanation given was that it had been paid to some correspondent of the "Hindu Rashtra" at Bombay who had to be sent to Poona with certain instructions, for his travelling expenses from Bombay to Poona and

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As regards the entry relating to the payment to Krishenji Pant no explanation was given.

In view of the fact that Nathuram Godse was not questioned about the last mentioned entry which also appears to have been crossed after it had been made, I would consider it unsafe to place any reliance on it. The entry regarding Rs.20/- is quite inconclusive and, as it stands, cannot be said, with reasonable certainty, to relate to a journey undertaken by Nathuram Godse from Bombay to Poona and back.*The explanation of Nathuram Godse as regards the entry relating to Rs.30/- is certainly not quite satisfactory or convincing. However, the diary not being a regular account book, the possibility of an expenditure incurred actually on 13th or 14th January having been noted therein two or three days later cannot be wholly excluded.

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It was pointed out by Mr. Daphtary that the tenor of the entries showed that, on 14th January, Apte and Nathuram Godse had taken a sum of Rs.2,000/- out of some fund, out of which Rs.342/- were spent on 14th January, leaving a balance of Rs. 1,658/- which was divided by them into two at the end of the day, Rs.829/- appearing to represent the share of each. It was argued that if the sum of Rs.30/- had, as suggested by Nathuram Godse, been spent on 13th or 14th January, it would have been noted and taken into account on the 14th at the latest when the account was made up, and after deducting the entire amount spent up to that day, the balance was divided into two. The argument is not without force. However, on looking at the entries

generally

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*generally. I hesitate to accept it as conclusive.

*P. 236

Although at the end of the 14th January a balance appears to have been struck and divided into two, we find the expenditure, evidently incurred on both Nathuram Godse and Apte on the 15th, entered under the above date. As an example may be mentioned the sum of Rs. 308/- spent on purchase of two aeroplane tickets from Bombay to Delhi. The figures appearing to have been worked out and the division purporting to have been made of the balance on the 14th need not, therefore, necessarily evidence a formal and proper adjustment of the account upto that day. Then we find a line drawn underneath the words which have been translated as "Date: 16, afternoon" in Ex. P. 324 and above the entry relating to Rs. 30/-.

In the entries relating to 14th and 15th the date is noted at the top of the items of expenditure for the day. The entry relating to Rs. 20/- was, according to Mr. Laphtary himself, made in the afternoon of the 16th, although only Rs. 10/- being the railway fare for Poona to Bombay, had been spent at the time, the remaining Rs. 10/- having been spent on the 15th on railway fare for Bombay to Poona. It was suggested that a consolidated entry * regarding an expenditure of Rs. 20/- was made in the afternoon of the 16th. If the words "Date: 16, afternoon" refer to the entry above, and the entry regarding Rs. 30/- has been made after drawing a line below

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the above-quoted words, it may well be that the expenditure of Rs.30/- was incurred not on the 16th but on some previous date. Be that as it may, after giving due weight to all that Mr. Daphtery had to say on the subject, I do not feel inclined to accept the entries in the diary Ex.P.218 as necessarily proving the presence of Nathuram Godse at Poona on the 16th January.

We have already seen that on an application for casual leave for a week from 15th January 1948 to 21st January 1948, made by Gopal Godse on the 14th January, the final orders passed were that he could not be granted leave for 15th and 16th inasmuch as he had to appear before some Board on the last-mentioned date. On 16th January Gopal Godse made a fresh application for leave from 17th to 23rd January and this application was granted (vide Ex.P.133). If after a consideration of the whole of the evidence led at the trial I am able to come to the conclusion that Gopal Godse asked for leave on the 14th January and then again on the 16th January, with the object of going to Delhi, I will be inclined to regard the application

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application made by him on the 16th as affording some corroboration at least of the approver's evidence as to Nathuram Godse having told him on the 15th January that he also intended to go to Poona for a day to fetch his brother Gopal. As we have already seen, Nathuram Godse left Poona by 3-30 p.m. train on the 14th January and may reasonably be assumed to have left his place at about 2-30 p.m. Gopal's application made on that day for leave from 15th had been recommended by his immediate officer. The final order rejecting it was presumably passed at about the close of the working hours and after Nathuram Godse had left. There being no apparent reason to anticipate rejection of the application, if the leave was intended for going to Delhi to join him in his venture, whatever its nature, Nathuram Godse would naturally expect Gopal at Bombay early in the morning on the 15th and finding that he did not arrive he might reasonably

---* reasonably be expected to think of going back to Poona to find out why he had not come and, if possible, to arrange to fetch him.

According to Badge, he and Shankar left Poona for Bombay by 2-40 a.m. train on 17th January. Shankar was made to get down at Dadar Railway Station from where he was to proceed to the Hindu Mahasabha Office. Badge himself got down at the Victoria Terminus Railway Station where the train arrived at about 7-30 a.m. Badge says, and Apte and Nathuram Godse admit, that the last-mentioned two persons met him on the railway station about that time. It is also not disputed that they engaged a taxi which was certainly kept on till Apte was dropped at the aerodrome and which according to Badge was discharged after he and Shankar had arrived at the place of one Mr. Patwardhan at Kurla.

Aitappa **Krishna** Kotian P.W. 80, driver of the taxi bearing No. B.M.T. 110 who was traced by the police on 9th February 1948, presumably pursuant to information received from Badge and who identified Apte, Nathuram Godse*, Badge and Shankar at the first identification parade held at Bombay viz., on the 2nd March 1948, has given evidence that it was his taxi which was engaged by Apte, Nathuram Godse and Badge at about 7-30 a.m. on the 17th January and that they had also a bedding with them at the time. Shankar, according to him, was picked up later from Lady Jamshedji Road which, as we have already seen while dealing with the evidence of Professor Jain, is quite close to Dadar. Neither Nathuram Godse nor the learned counsel for any of the other appellants made any attempt to show that P.W. 80's was not the taxi engaged, and the evidence given by the witness is otherwise so natural and so convincing that I feel no hesitation in agreeing with the learned Special Judge in accepting it.

The evidence given by Badge as to their itinerary on that day is, except as to the incident of a visit to Savarkar

Govindkar Sadan with a view to have the last darshan of Mr. Govarkar, and perhaps that of a visit to Dixitji Maharaj's house, is fully corroborated by the evidence of Aitappa Krishna Kotian P.W.80, Charandas Meghji Mathuradas P.W.74, Ganpatrao Bhimrao Afjulpurkar P.W.73 and R.M.Patankar P.W.87 and Mahadeo Ganesh Kale P.W.86, and *to a very large extent is *P.241 admitted by Apte and Nathuram Godse to be correct.

According to Badge, Apte suggested, when he and Nathuram Godse met him at the Victoria Terminus Railway Station, and before the taxi had been engaged, that they should collect some money for the expenses of their expedition at Delhi, and that for that purpose they visited P.W.74, P.W.73 and P.W.86. P.W.74 is the proprietor of the Bombay Dyeing Mills. P.W.73 is a retired employee of the Telegraph Department. P.W.86, an M.A of the Bombay University is the manufacturer of the Lotus Ink. His residence is in a bungalow at Kurla. Of these P.W.74 and P.W.73 did not know Apte and Nathuram Godse before. They were, however, acquainted with Badge who had been visiting them for collection of funds for the Hindu Mahasabha. To P.W.73 he had also sold a steel waistcoat some time before which the afor said witness had purchased for his son who is a medical practitioner and as such had to go to all parts of the city including the disturbed areas. P.W.86* knew only Badge and Apte, the *P.242 former having visited him on several occasions in connection with collection of funds for the Hindu Mahasabha, on the latter having put up with him about two or three years earlier when he had visited the locality in order to deliver a lecture at the Brahmin Seva Sangh, Kurla. Although he had never met Nathuram Godse before, he evidently had contacts with the concern known as Udyam Engineering Works Limited at Poona in which Nathuram Godse's brother Dattatraya Godse had quite a large interest, the witness' nephew and partner Vaman C. Kale being the Chairman of the Board

Board of Directors of Udyam Engineerings Works and Kale's Sales Association, Limited, the Sale Agent of the Lotus Ink, being also the Managing Agents of Udyam Engineering Works Limited. Badge says that he introduced Apte and Nathuram Godse to the first two witnesses.

*P.243 P.W.74 identified Apte and Badge at the identification parade held on 2nd March 1948. In place of Nathuram Godse he identified Karkare. That, however, is wholly immaterial inasmuch as Nathuram and Apte do admit having gone to the Bombay Dyeing Mills, and Apte, in para.28 of his written statement, also admits having seen the witness, although they do not admit having received any money from him. According to the witness, after Badge had introduced his two companions to him, Apte began to talk to him of a contemplated attack on Hyderabad and told him that he would hear of a miracle in eight days. The witness felt very much impressed by the talk of Apte, inasmuch as the latter told him that they had two flame-throwers with ample refills, and that they could overcome the State Forces as the raiders had done in Kashmir. On Apte asking for a contribution of Rs.5,000/- from the witness, the latter requested him to come later inasmuch as he had to attend a meeting and would also like to consult friends. On coming to his place for lunch at about midday, he found Apte waiting. He told the latter that he had failed to secure help from friends. Then Apte asked the witness for a loan of Rs.5,000/-. On the witness telling him that it was not the practice of his factory to advance loans, Apte implored him to give him some money at least. The witness thereon paid a sum of Rs.1,000/- by way of donation.

P.244 According to P.W.73, Apte and Nathuram Godse, on being introduced to him by Badge, said that they were members of the Hindu Mahasabha and were proceeding to Hyderabad to offer Satyagrah and, on their saying so a discussion on the Hyderabad situation ensued. The witness eventually told them

them that he was not interested in the Satyagrah which they were going to offer. However, on Badge asking him for help for conducting the Satyagrah, the witness gave him a sum of Rs.100/-.

According to P.W.86 there was a general talk between him and Apte and Nathuram Godse about the "Agrani" and the "Hindu Rashtra" and the orders passed by the Government demanding security from the printers of the said papers. Apte told him that they wanted to put "Hindu Rashtra Prakashan" on a sound footing and had been selling shares. Apte and Nathuram Godse asked for a loan of Rs.3,000/- from him for the purchase of printing material. The witness advanced them a sum of Rs.1,000/- by way of loan.

*Both Apte and Nathuram Godse admit having received *P.245 Rs.100/- from P.W.73 and Rs.1,000/- from P.W.86. Apte explains in his written statement that Rs.100/- were received from P.W.73 towards the affairs of the Hyderabad State and that P.W.86 paid Rs.1,000/- for purchasing shares in the Hindu Rashtra Prakashan, Limited.

In his statement under section 342, Criminal Procedure Code, Apte admitted that the taxi had been engaged inter alia for the purpose of collecting money. He, however, added that the money was to be collected for the Hindu Rashtra. He also stated that Badge wanted to collect money due to himself from some people. In explaining the reason for setting out to collect money that morning Apte stated in para.28 of his written statement that as they feared that they might be arrested at Delhi while on after making the demonstration they wanted to dispose of some of their work relating to Hyderabad Movement and also relating to Hindu Rashtra Prakashan. He further stated in the *same paragraph *P.246 that the object of the visit to P.W.74 at the Bombay Dyeing Mills was that Badge wanted to collect from him some money for himself.

Although Apte and Nathuram Godse have quite vehemently

vehemently denied having received any money from P.W.74, I feel no hesitation in believing his evidence as to his having paid them a sum of Rs.1,000/- by way of donation and as to his having been assured that the money was needed for a contemplated attack on Hyderabad. The witness is quite a respectable businessman and there is obviously no reason to suppose that he is giving false evidence. In the lengthy arguments addressed to us by Nathuram Godse and the counsel for the appellants, not a word was said against his evidence. It is a very notorious fact that the minds of the people in the Indian Dominion, and particularly those residing in territories on the borders of Hyderabad, were very much exercised over the Hyderabad affair and they were growing more and more impatient of the apparent inaction of the Indian Government while the Razakar leader was holding out threats of marching on Delhi. There was accordingly nothing strange about this witness who felt considerably impressed with the talk of Apte as regards their proposed action, paying him a donation of Rs.1,000/-.

*P.247

I have also no reasonable doubt in my mind that the collections, although professedly made in connection with the Hyderabad State affairs, and for purchase of printing materials, were not in fact meant for these purposes but for an entirely different purpose which was connected with their proposed visit to Delhi and which of course they could not disclose to the witnesses. I can possibly not see what occasion there was on that particular day for Apte and Nathuram to think of making any collections for the purposes alleged. The matter nearest to their minds, on which their attention might, for the time being, reasonably be expected to be concentrated, was their contemplated expedition to Delhi, whether for the purpose of staging a demonstration as suggested by themselves or for the purpose of putting an end to Mahatma Gandhi's life as alleged by
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the prosecution. Apte and Nathuram Godse were to leave for Delhi in a few hours' time *and I cannot imagine that they *P.248 would, during the short period at their disposal, think of anything else except the adventure which was taking them to Delhi. In case they were anxious to sell the shares of the Hindu Rashtira Prakashan Limited, they would have done so on the 15th and 16th when they had much more leisure and would not have put it off till the last few hours of their stay in Bombay.

There is then no explanation for their having carried the money they were able to collect with themselves to Delhi. It is indeed strange that although according to Apte the idea of raising some funds for the Hindu Rashtira by sale of shares of the Hindu Rashtira Prakashan Limited occurred to him in view of his and Nathuram Godse's apprehended arrest at Delhi, he did not mind the money so raised being actually on their persons at the time of their expected arrests. P.W. 86 does not say that he paid Rs. 1,000/- for the purchase of shares in the Hindu Rashtira Prakashan Limited. If the money had in fact been received for that purpose, Apte and Nathuram Godse should have, in the ordinary course of things, and particularly in view of their possible arrest at Delhi, remitted *the money to Poona before *P.249 leaving for Delhi with instructions for complying with the necessary formalities for allotment of shares to the witness.

For all these reasons I am clearly of the opinion that collections were made at Bombay not for the purposes for which they purport to have been made but for the purpose of meeting any unforeseen contingency at Delhi in connection with their contemplated venture at that place. Of course, the fact of having collected a sum of Rs. 2,100/- for the purpose is bound also to have an important bearing on the question whether that adventure was merely the staging

staging of a peaceful demonstration or something much more serious because mere staging of a demonstration could in no circumstances be expected to be a particularly expensive affair.

*P.250 The evidence given by Badge as to the visit paid to Savarkar Sadan on a suggestion made by Nathuram Godse that they should before leaving for Delhi have the last darshan of Tatyarao, and as to the incidents that took place there, need not be referred to or considered because, for want of any independent corroboration of that particular part of the approver's evidence, the learned Special Judge has held the charge of conspiracy not proved against Mr.Savarkar and has acquitted him of all the offences for which he had been indicted.

*P.251 According to Badge when he himself, Apte and Shankar left the Bombay Dyeing Mills, after their second visit to that place (Nathuram Godse had before that left for the Sea Green Hotel in another taxi), they proceeded in the taxi to the house of Dixitji Maharaj at Bhuleshwar. Leaving Shankar in the hall the witness and Apte went in and met Dixitji Maharaj. On Apte asking Dixitji Maharaj for a revolver, the latter showed him a small pistol but declined to part with it unless he had been paid for it, in spite of the former telling him that Dada Maharaj had promised him a revolver. The witness says that after leaving Dixitji Maharaj's house they proceeded to the aerodrome. They first went to the Juhu Aerodrome but, Apte having found, on making enquiries at the said Aerodrome, that planes for Delhi took off from the Santa Cruz Aerodrome, They drove to that place. While getting down from the taxi at the said Aerodrome, Apte paid the witness a sum of Rs.350/- and asked him to leave with Shankar for Delhi the same night.

Dixitji Maharaj has neither mentioned, nor been questioned about, any visit to his place by Apte and Badge on the 17th

January. His evidence, on the other hand, seems to exclude any such visit, because, according to him, after the 15th January, Apte saw him only on the 26th January in the company of Nathuram Godse, and, during the interval between the two dates, he was only once visited by Badge alone.

The evidence of Aitappa Krishna Kotian P.11.80 does appear to lend some support to this part of Badge's evidence. It may be noted that although there is substantial agreement between the evidence of Badge and that of Kotian as regards the main events of the day, there is considerable divergence between their statements as to the order in which these events took place. Such divergence was, perhaps, natural in view of the fact that the witnesses were required to give evidence quite a considerable time after the events deposed to by them had taken place. According to Kotian, after the first visit to the Bombay Dyeing Mills, Nathuram Godse took another taxi and the other three passengers were driven to Bhuleshwar. They wanted the witness to take the taxi down the third Bhoiwada Lane (where the house of Dixitji Maharaj is said to be situated), but he could not comply with their wishes because of there being a board at the entrance of the lane bearing the words "No entry". The taxi was accordingly stopped at the corner and the three passengers got down and went into the lane. Apte, however, came back shortly afterwards and asked to be driven to the Sea Green Hotel from where he picked up Nathuram Godse with some luggage, dropped him and the luggage at the Air-India Office, and, after he had visited some other places, to which it is not necessary to refer, was driven back to Bhuleshwar where, going down the lane, he fetched his two other co-passengers and the three were driven to the Dyeing Mills. Of course, from this evidence no necessary inference can be drawn that the passengers

*P.252.

*P.253.

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on going down the Bhoiwada Lane did go into Dixitji Maharaj's house and two of them, viz., Apte and Badge, met the gentleman, although it is somewhat difficult to imagine what other object they could have in view in going down the lane. In one respect certainly the evidence of Kotian does not fit in with that of Badge. According to the former, Apte came back a short time after going down the lane and Badge and Shankar were left alone, wherever they had gone inside the lane, for quite a long time, while according to Badge, he and Apte went to the house of Dixitji Maharaj, met him, and left, together. I feel that in the circumstances the only safe and reasonable course to adopt is to ignore altogether the evidence of Badge as to his and Apte's having visited Dixitji Maharaj on the 17th and as to Apte having again requested him for a revolver.* Although Badge had been asked by Apte, at the time of parting, to leave with Shankar the same night, he did not, and the explanation given by him for this is that he was delayed at the house of R.K.

P.254
(Blank.)

P.255.

Patwardhan to whom he had gone for the purpose of getting some money. Although he had proceeded from the aerodrome straight to the house of Patwardhan in the taxi which he had discharged on arriving there after payment of Rs.55/10/- to the driver on account of hire, he did not find him at his house and could not meet him earlier than 3.30 p.m. The suggestion is that even when the witness did meet Patwardhan, the latter was not just then in a position to comply with his request inasmuch as he had not got ready cash with himself at the time and had to borrow Rs.200/- from his neighbour R.M.Patankar P.W.87 who was not expected to return from his office till very late in the evening and the balance possibly from one Acharya Master. P.W.87 says that his house is separated from that of Patwardhan by only one other house, that on coming back from his office at 8.30 p.m. on the 17th January, he was informed that he

he was wanted by Patwardhan, that on going to the latter's *P.256 house at about 9 p.m. he found Badge whom he had known for two or three years, also present with Patwardhan who asked from him for a loan of Rs.200/-, that when he fetched the aforesaid sum from his house he found Acharya Master also with Patwardhan and some money in the latter's hand and that on receipt of the sum of Rs.200/- from him, Patwardhan paid the entire sum, i.e., the money already in his hand and the Rs.200/- received from him to Badge who left after about five minutes. It is suggested by Badge that he was anxious to have this money in order to provide against any possible mishap at Delhi which might leave him stranded. Of course, except his explanation for his not having left Bombay that night as desired by the police, this evidence has no bearing on the case.

According to Badge, he, accompanied by Shankar, went to the house of Dixit Maharaj next morning at about 10 or 10.30 a.m. On meeting the latter, the witness asked for payment of a sum of Rs.750/- which according to him was due to him from Dixit Maharaj but did not succeed in getting any money out of him. The witness showed Dixit Maharaj the revolver which he had got in exchange for a pistol given to him by Nathuram Godse on the 16th night, and, representing that he had purchased it for Rs.350/-, Badge, of course, asked him to pay him at least the aforesaid sum in case he was unable to supply him with a revolver. *In this also he did not succeed. This evidence *P.257 is substantially corroborated by Dixit Maharaj, except perhaps in the matter of date about which as has already been noticed the latter has said that he cannot be sure. Dixit Maharaj says that the sum of Rs.750/- which he was asked by Badge to pay was due really not from him but from Sethia to whom stuff had been supplied by the former through him and that it was on this ground that he had refused to comply with the request of Badge for the payment of the aforesaid sum.

sum. As regards the price which Badge said he had paid for the revolver which he showed to Dixit Maharaj, there is some little difference between the statements of the two. According to Dixit Maharaj, he was told by Badge that he had purchased the revolver for Rs.325/- and that was the sum which he himself was expected to pay him. Dixit Maharaj also says something more about what took place at the time he was paid a visit by Badge which is not to be found in the latter's evidence. He says that on Badge asking for either a revolver or the price of the revolver he had already purchased he had told him that he could consider his request only in case he was informed of the purpose for which the revolver was needed. He goes on to say that Badge thereon disclosed to him that they had collected arms and ammunition worth about Rs.30,000/- or Rs.40,000/- and were proceeding to Kashmir to use those things against the raiders and do the sabotage. Of course, even on getting this information Dixit Maharaj did not see his way to comply with the request of Badge and put him off with the excuse that he was unwell and, therefore, unable to do anything.

I have already held that generally speaking, Dixit Maharaj is a truthful witness. I can discover no ground at all for assuming that in giving evidence with regard to the above mentioned visit to him by Badge he was not speaking the truth or had any motive for telling a lie. I can see no reason for rejecting this part of his testimony. I have already dealt with the suggestion put forward by Nathuram Godse about the meeting between Badge and Dixit Maharaj having taken place on the 16th January and have definitely rejected it, finding that Badge was not at Bombay but was at Poona on that day. The suggestion was pressed evidently with the object of excluding the possibility of Badge having shown any revolver to Dixit Maharaj because admittedly he had no revolver with him while he was
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at Bombay and he purported to have secured one only after
going to Poona. In* view of my finding that he was actually
at Poona on the 16th and returned to Bombay on the
morning of the 17th, it is really immaterial whether
he visited Dixit Maharaj on the 17th or on the
18th because in either case the possibility of
his having a revolver in his possession and
showing the same to Dixit Maharaj cannot be
excluded.

Badge and Shankar left Bombay for
Delhi by the Bombay Mail in the afternoon of the
18th January and arrived at Delhi at about
9.30 or 10 p.m. next day.

As has been seen before, Madanlal and
Karkare left Bombay for Delhi by the Peshawar
Express at about 9.15 p.m. on the 15th
January. Shantaram Angchekar P.W.5, a marhatta of
Sawantwadi State in Bombay Presidency who,
before partition of the country, was employed,
in Karachi and, after the partition had to

leave

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leave that place as a refugee, and who was going to Delhi to get his name registered in the Transfer Bureau with a view to have his services transferred to the Indian Dominion, happened also to travel

*P.260.

by the same train and *in the same compartment,

In the morning on the 17th January, the witness, on hearing one of the passengers speak in marhatti language which was also his own mother tongue, felt encouraged to accost him. As the train was running late, the witness had begun to feel worried that he might not be able to finish his work by the evening so as to be able to return the same day. He accordingly spoke to the person whom he had heard talking in marhatti. After telling him the object of his own visit to Delhi, he enquired from him if it would be possible for him to get any accommodation

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at any place in Delhi in case he had to stay there for the night. The passenger whom the witness had accosted told the latter that his own name was Vishnu R.Karkare, that he was a worker of the Hindu Mahasabha and that he was on his way to Delhi in connection with the work of the Mahasabha. He also promised to arrange accommodation for the witness at Birla Mandir. The witness did see Madanlal in the compartment but did not notice that the latter and Karkare were travelling together as companions until the time when the three of them got down at the railway station where the train arrived at 12.30 p.m. They hired a tonga for travelling to the city. Madanlal and Karkare had, between themselves, a bedding and a steel trunk. The three went first to the Hindu Mahasabha Office but found

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*P.261.

*found that no accommodation was available there. They then proceeded to the Birla Mandir where also they failed to get any accommodation. The tonga driver was thereon asked to take them to some hotel in the Chandni Chowk. He took them to the Sharif Hotel where all three were accommodated in room No.2. They stayed in that room of the hotel till the evening of the 19th. The above facts, deposed to by P.W.5, are admitted by Madanlal and Karkare except the visit to the Hindu Mahasabha Office and the Birla Mandir.

Exhibit P.2 is the relevant entry in the Visitors' Register of the hotel. It shows that P.W.5, Madanlal and Karkare occupied room No.2 at 2 p.m. on the 17th January, 1948 and vacated the same on leaving the hotel at 7.15 p.m. on the 19th. Karkare did not disclose his true name but gave it out as 'B.M.Byas' and signed the entry in the Visitors' Register in Hindi in that name. Madanlal did not conceal his name but gave his address in India as 'Bhuleshwar'. B.M.Byas' address in India was given as 'Bombay'.

*P.262.

Karkare admits having stayed at the *hotel under an assumed name. The explanation given on his behalf for having done so was that a detention order having been passed against him, he feared that the Bombay Police might be pursuing him and might arrest him which he wanted to avoid. In view of the statement of the Home Minister of Bombay, to which a reference has already been made, about an order for the arrest and detention of Karkare having been passed before he left Bombay the explanation, at first sight, does not appear to be quite unreasonable. Mr.Daphtary, however, drew our attention to the written statement of Karkare wherein he had said that he was doing refugee work in the Chembur Camp in Bombay when he got information as to a detention order

having

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having been passed against him, that he continued his work at the camp till he decided to accompany Madanlal to Delhi on the 15th January and that after his return from Delhi, and even after the 30th January, he continued to do refugee work at the aforesaid camp.

The learned counsel pointed out that there was no suggestion that Karkare had stayed at the camp and had been doing refugee work there under any assumed name and that he, on his own showing being quite well-known to the refugees could not otherwise expect his identity to remain concealed while he was there. It was urged that if in a place so close to Bombay, Karkare could stay and work without any attempt at

*P.263.

of being able to conceal, his identity, in spite of the detention order, the assumption of a false name during the course of just a flying visit to a distant place like Delhi could not reasonably be ascribed merely to a desire to evade the execution of that order. There is quite a lot of force in this contention. Nathuram Godse in his final reply tried to meet it by emphasizing that, at the refugee camp, Karkare, by reason of his well-known interest in the refugees generally, was in the midst of friends who would not betray him and that the police generally refrained from going to or interfering with the camp. I, however, do not feel impressed by this argument at all. If, as stated by Karkare, he had so closely identified himself with refugee relief work that he considered the Chembur Refugee Camp as his own home and invariably

stayed

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stayed there whenever he happened to visit Bombay, it cannot reasonably be assumed that these facts would not be known to the police and that they would not look

*P.254.

*for him in that camp when he was wanted by them. It is again too much to assume that besides the friendly refugees nobody else would see or notice him in the camp. Naturally, quite a number of outsiders must have been visiting the camp every day, some of them in connection with the relief work and some for various other reasons. Apart from that it is not suggested that while doing refugee work, Karkare always remained inside the camp and never moved out of it. It will be seen at a later stage that Karkare's case really is that while he was doing refugee relief work at the Chembur Camp he had quite frequently to travel in the suburbs of Bombay by local trains. In the circumstances, I, very much hesitate to accept the suggested explanation for assumption of a false name by Karkare at the hotel.

Madanlal did not assume a false name but he certainly did give a false address. It is significant that he described himself as a hawker in Bhuleshwar. It may well be that he gave out Bhuleshwar as the locality where he was residing by reason of the name being uppermost in his mind on account of his visit to Dixit Maharaj's place in that locality on the day he left Bombay.

According to the evidence of P.W.5, about two hours after their arrival at the hotel, Karkare went out saying that he had to go to the Hindu Mahasabha Office. The witness *himself and Madanlal also left because the latter wanted to see his maternal uncle. He was residing in the Chandni Chowk. The witness did not state at what time Karkare came back to

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the hotel that night. According to his evidence, however, he disappeared early next morning saying that he had to meet someone at the railway station, and remained away the whole of the day and the whole of the night. He had not returned even on the 19th up to the time the witness left for the Transfer Bureau and it was at 3 p.m. on that date on his return from the Bureau that he saw Lia in their room in the hotel where he found him sitting on a charpai along with a stranger while Madanlal was sitting on another charpai.

P.W.5 has given a detailed account of the itinerary of himself and Madanlal from the time Karkare left the hotel in the morning on the 18th up to the time he himself left for the Transfer Bureau in the morning of the 19th. Some of the facts deposed to by him in this connection were stated by him in his examination-in-chief while others were elicited *in cross-examination by Madanlal's counsel. The importance of these facts lies in this that they seem almost completely to demolish the story that Karkare had accompanied Madanlal to Delhi, principally with the object of helping him in the arrangements for his marriage. According to the witness, after Karkare had left saying that he had to meet someone at the railway station, he himself and Madanlal went to Subzi Mandi. Madanlal wanted to see a relation of his in connection with his marriage and also the girl who was his prospective bride. They looked for a particular house in Subzi Mandi and were unable to locate it, but Madanlal did not come in at that time. At about midday the witness accompanied Madanlal to his uncle's house. In the afternoon, both of them went again to the Subzi Mandi and went into

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the house just opposite the one which had been located by them in the morning. They stayed there for about an hour during which period Madanlal had some talk with the inmates of the house. In the evening they were treated to tea when a number of ladies came to see Madanlal. A refugee gentleman came to the hotel with Madanlal at about 7 or 7.30 p.m., dined there, and slept in the room that night. It is very interesting indeed that while this acquaintance of a day was going about with Madanlal to all the places in connection with talks and negotiations concerning the latter's marriage, Karkare *who professes to have accompanied him from Bombay to Delhi, expressly for that purpose, had suddenly disappeared quite early in the morning on the 18th and was nowhere to be seen throughout the day, so much so, that he did not even come back to the hotel in the night and evidently slept somewhere else. The indications further appear to be that Madanlal knew, when Karkare left in the morning, that he was not coming back to the hotel even at night because it was presumably on that assumption that he invited a refugee relation of his to spend the night with him in room No.2.

Apte and Nathuram Godse, having left Bombay by plane at 2 p.m. on the 17th January, arrived at the Palam aerodrome at about 7.30 p.m. This fact is not disputed and it is, accordingly, not necessary to refer to the evidence led to prove it. It is also not disputed that they stayed at the Marina Hotel under assumed names, viz., under the names 'S.Deshpande' and 'M.Deshpande' in room No. 40. According to the entries in the Visitors' Register, they arrived at the hotel at 8.30 p.m. The explanation given for having stayed *at the hotel under assumed name is

identical

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identical with the one offered for having booked accommodation in the aeroplane under false names, and, for the reasons given by me while examining that explanation I would unhesitatingly reject it.

There is evidence which I consider to be quite convincing that, after having left the Sharif Hotel in the evening of the 17th January, Karkare met Nathuram Godse and Apte at the Marina Hotel after the latter's arrival there, and that he also met them next day. Gobindram P.W.11 is a bearer in the Marina Hotel whose duty it is to serve drinks. He says that on the day Nathuram Godse and Apte arrived at the hotel, which was three days before the explosion at the Birla House, he was asked to serve one peg of whisky in room No.40, and that he served the required drink to Karkare. He further says that on the next following day he served two pegs of whisky to the same persons in the same room. The witness identified Karkare at the identification parade held at Bombay on 30th March, 1948. In their written statements as well as in their statements in Court, the accused made general allegations against the several identification parades held at Delhi and Bombay, and lengthy arguments were addressed to us on the subject by Nathuram Godse. I propose to deal with the subject generally at a later stage. For the present, I want to say only this much that although I am not satisfied that there is any substance in the suggestion made by the defence in the Court below, and re-iterated here quite vehemently in appeal, that the accused were actually shown to the identifying witnesses before the identification parades were held, I do think

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*P.269.

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that identification of the accused by witnesses who had been taken from Delhi to Bombay for the purpose should be received with caution. It is admitted that about 20 or 22 of these witnesses travelled together accompanied by S. Jaswant Singh, Deputy Superintendent of Police and possibly some other police officers or constables as well on 21st March, 1948. It is quite possible that during the journey of about two days the witnesses and the police officers or the policemen who were travelling together discussed among themselves the various incidents that were said or commonly believed to have taken place in connection with the crime which was the subject-matter of investigation and even the features of the persons suspected of being connected with the crime or any of the incidents. In the circumstances, though there can be no reason to suspect any foul play, common prudence requires *that evidence about identification by these witnesses be scrutinized with care. Approaching the consideration of the evidence of P.W.11 from this point of view, and after exercising all necessary caution, however, I feel quite satisfied that the aforesaid witness is speaking the truth in so far as Karkare is concerned. If he did serve to him one peg of whisky one night and two pegs the next day, he may reasonably be expected to have seen him for a sufficiently long time to be able to identify him after 2½ months. The evidence of the witness, further, finds very considerable support from the day-sheets of the hotel Exhibits P.21 and P.22. According to the former, one peg of whisky was served in room No.40 on 17th January and two pegs in the same room on 18th January. On the latter day, one tea and one plate of meat also seem to have been served extra in the said room. There is, however, nothing on the record to connect these
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with Karkare and I would accordingly ignore them. Exhibits P.18 and 19 are the vouchers relating to these drinks. The signature on Exhibit P.19 is not legible but P.18 obviously purports to have been signed by Deshpande. Of course, in the absence of any evidence to prove that it in fact bears the signature of Nathuram Godse or Apte, I can take no judicial account of this fact. However, it is indisputable that the price of these three pags of whisky was included in the bill *of which Exhibit P.17 is the carbon copy, which was presented to Nathuram Godse at 6 p.m. on the 20th January and of which he made payment at that time. Reference may, in this connection, be made to the evidence of Martin Thaddeus P.W.13, Receptionist Clerk in the hotel. It may further be noted that this witness also has deposed to having seen Karkare when the latter came to see Nathuram Godse in the hotel. He identified Karkare at the identification parade which was held at Delhi on 21st February. In his case, therefore, the considerations mentioned by me above in relation to the evidence about identification by Delhi witnesses at the Bombay identification parades do not apply.

*p.271.

The evidence of Gobindram P.W.11 was attacked chiefly on the ground that he had also deposed to having seen Badge and Gopal Godse (whom also he identified at the identification parade held at Bombay on 30th March, 1948), three days before the explosion when indisputably neither of the two could have been at Delhi, Badge having admittedly arrived there in the night on the 19th, and Gopal Godse also being admittedly at Kirkee *in his office till 4 p.m. on the 16th January. This witness was contacted by the police two months after the explosion. If he saw Gopal and Badge in the hotel at

*P.272.

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at all, he could have seen them only casually. To Karkare he remembered having served a drink on the night Nathuram Godse and Apte arrived and also the next day. Nathuram Godse and Apte having arrived three days before the explosion and having left on the day the explosion took place, he is able to fix the date of the first visit of Karkare and of the first peg of whisky served to him with some precision. It is quite conceivable that, just by confusion of thought, he assumed that the other two visitors of the occupants of the room whom he had only casually seen but whom he could not possibly connect with any particular incident had also come the same day as the latter and Karkare. While this confused statement about Badge and Gopal may be a sufficient ground for the Court to decline to use his evidence against them, it can by no means be taken as an indication of his being otherwise than a truthful witness and cannot warrant the rejection of his testimony even as regards Karkare which is quite clear in itself and is otherwise corroborated.

*P.273.

I accordingly find that Karkare did contact Nathuram Godse *and Apte within quite a short time of their arrival at Delhi and also met them the next day.

Reference has already been made to the evidence of P.W.5 to the effect that when he returned from the Transfer Bureau to the Sharif Hotel at about 3 p.m. on the 19th, he found Karkare sitting in their room on the same charpai with a stranger. This stranger was identified by the witness as Gopal Godse at the identification parade held at Bombay on 16th March, 1948.

As will appear from the evidence of Mr.Nagarwala, there was some difficulty, and consequently some delay, in tracing this

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this witness. He did not give his home address in the entry in the Visitors' Register of the Sharif Hotel. In his application to the Transfer Bureau Exhibit P.12 he gave his address as "C/O Rama G. Bhaip, Clerk, Inland Money Order Department, G.P.O. Bombay? After enquiries from the last-mentioned source, the police appears to have begun to look for some (Angachari). It may be that either the source misdescribed his surname or the police officer concerned misunderstood the description. It was only on the 4th March 1948 that the witness was traced in Sawantwadi State. He was brought to Bombay on 8th March and his statement was recorded by the police on that date. The first identification parade after that date was held on the 16th March when, as stated above, he identified Gopal. As will be presently seen, if the witness tells the truth, he was in the same room with Gopal for well nigh two hours and, therefore, was naturally in a position to identify him. *P.274.

According to this witness, when he arrived at the hotel, he was told by Karkare that the latter and Madanlal were going to vacate the room, that they were both going to Jullundur the next morning in connection with Madanlal's marriage and that for the intervening period they proposed to stay at the 'Maharashtra Niwas'. The witness told Karkare that he had also finished his work and was returning to Bombay the same evening. On his enquiring from Karkare his permanent address, the witness was told that it was not necessary but Madanlal did give him his address as "Chembur Refugee Camp". The witness left the hotel at 5 p.m. after paying to Madanlal Rs. 20/- as his share of the bill. Karkare, Madanlal and Gopal

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Gopal were still in the hotel when the witness left for the railway station.

*P.275.

*The evidence of this witness was, quite naturally, subjected to very severe criticism by Nathuram Godse as well as by the counsel for Gopal Godse, while the counsel for Madanlal and Karkare contended that the fact that the aforesaid appellants offered to share, and did in fact share, a room with the witness was conclusive proof of the fact that they had not come to Delhi with any sinister design and could not have been carrying any objectionable stuff.

It was pointed out by Nathuram Godse and the learned counsel for Gopal Godse that it was wholly incredible that the witness was in the same room with Gopal for well nigh two hours and yet not only did not exchange any words with him but did not even enquire his name nor was introduced to him by Karkare or Madanlal. It was urged that, in the circumstances, the evidence given by him about the presence of Gopal in the hotel was a pure myth and liable to be rejected as such. I must, however, confess that I am not in the least impressed by this argument. If Gopal had come to Delhi for the purpose for which he is alleged by the prosecution to have come, Karkare and Madanlal could not possibly be expected to introduce him to the witness and would, on the other hand, do all that was possible to keep his identity and all particulars about him concealed. They would also refrain as far as possible from indulging in any conversation while he was there. I can also see nothing unnatural or incredible in the witness not displaying unnecessary inquisitiveness by making any enquiries as regards, or attempting to draw into conversation,

*P.276.

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conversation, the stranger whom Karkare and Madanlal did not choose to introduce to him and who himself had adopted an attitude of studied reserve towards him. He might indeed have felt particularly discouraged to make any enquiries from Karkare regarding his companion on getting such a curt reply to his query about the latter's own address. Not only I can not find anything unnatural or incredible in this part of the witness' evidence but I, in fact, consider it to be very natural and very probable.

It was urged that the witness was a mere refugee, a person of no status and almost impecunious, and that, in the circumstances, he could easily be made to give false evidence for a very slight inducement. I find myself wholly unable to accept this contention. Although a refugee now, it appears from Exhibit P.12 that the witness held quite a decent and respectable appointment in Sind before partition. The general tenor of his evidence does not manifest the slightest anxiety or desire to help the prosecution. Had he any inclination that way, or had he been a suborned or a tutored witness, he could have very easily said many things about Madanlal and Karkare, their talk with each other, their talk with Gopal, which, even though it might not have positively incriminated them could have proved very embarrassing to them and very helpful to the prosecution. He could for instance be made to say that he saw a cloth bag in the bedding or the steel trunk they had with them although he did not see its contents. Except to the bare presence of Gopal he does not say anything of any

*P.277.

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*P.273.

use to the prosecution. On the other hand, he says a good many things which may be useful to the defence. For example, he says that Madanlal had suggested on their arrival at Delhi that they might stay at the house of his uncle. The evidence that he has given with regard to the itinerary and the activities of Madanlal on the 18th January is *obviously of great use to Madanlal so far as his defence that he had come to Delhi to arrange for his marriage is concerned. Indeed, in view of the evidence given by him it is impossible to escape at least the conclusion that even if Madanlal had come to Delhi for some different purpose he was genuinely anxious to avail himself of the opportunity also to arrange for his marriage. I must say that the more I have read the evidence of this witness the more convinced have I felt of his sincerity and truthfulness, and, even in the absence of any other evidence, should have held, relying on his testimony alone that Gopal Godse was in Delhi on the 19th January and was at the Sharif Hotel with Madanlal and Karkare at least from 3 to 5 p.m. There is, however, other evidence also, which I consider to be quite unimpeachable, which very strongly supports the above conclusion.

Ramlal, P.W.2, the manager of the Sharif Hotel says that a person came to the Sharif Hotel on the 19th January and enquired which room Madanlal was occupying. According to the witness, the occupants of the room were to have vacated it before 2 p.m. (their occupation having commenced at 2 p.m. on the 17th), but by reason of the arrival of the aforesaid visitor, Madanlal informed him that they would not be able to leave by 2 p.m. Exhibits P.5 to P.7 are entries in

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the account book relating to the account of Madanlal, Karkare and Shantaram Angchekar P.W.5, according

to which Rs.55/9/- were due from the three up to *the midday of the 19th. This included rent of the room for two days at the rate of Rs.7/- per day.

*P.279.

Exhibit P.9 is the counterfoil of the bill which was prepared evidently on the understanding that the room was going to be vacated by 2 p.m. Shanti Prakash P.W.3, a partner in the hotel says that B.M.Byas (i.e., Karkare) came to the office accompanied by an outsider, and wanted to know the details of

the accounts on which the original of Exhibit P.9 was based, and after having been furnished the requisite details paid the amount of the bill. At about 2 p.m.,

he again came to the witness and told him that they would not be able to leave till after some time.

In case of having to stay after 2 p.m. they were to become liable for the rent for the full day. However, the witness agreed to give them a concession of Re.1/- and prepared a supplementary bill of which Exhibit P.10 is the counterfoil in which Rs.6/- were included

on account of rent. The amount was of course duly paid.

*Both P.W.2 and P.W.3 identified Gopal Godse at the identification parade held at Bombay on 30th March, 1948. P.W.2 deposed in Court that Gopal Godse was the person who had come to the hotel on the 19th January and enquired about Madanlal, and on account of whose arrival Karkare and Madanlal had to stay after 2 p.m. for which they had to be charged rent though at a somewhat reduced rate. P.W.3 deposed that Gopal Godse was the stranger who had come to the office with Byas (i.e., Karkare).

*P.280.

It

Cr.A.66-49.

It has to be observed with regard to both these witnesses that they were contacted by the police quite early, i.e., on the 23rd January, 1948. There are reasonable grounds for presuming that when they made their statements to the police they were asked to give, and did in fact give, description of the stranger who had come to the hotel, and enquired about Madanlal, and who had later visited the office in the company of Karkare. Both the witnesses were cross-examined by the counsel for Gopal Godse on the subject. In answer to the questions put to him P.W.2 stated:-

"The police enquired from me the description of the person who had come to see Madanlal K. Pahwa. I told them that I might be able to identify if produced before me. I do not remember now as to what description I had given of the person to the police."

P.W.3 stated in replying to the questions that were

*P.281.

*put to him:-

"The police enquired from me the description of the outsider. I gave the description of the outsider to the police."

As has already been pointed out, it is not disputed that complete copies of the police statements of all the witnesses had been furnished by the prosecution to the counsel for all the accused. Mr. Petigara who appeared on behalf of the respondent along with Mr. Daphtary, and who was also assisting Mr. Daphtary in the Court of the learned Special Judge, stated at the Bar that in addition to copies of original police statements of the witnesses, copies of the English translation of those statements had also been supplied to the counsel for the accused, and this statement was not challenged by any of the counsel present in Court.

In

-: 402:-

In my view, from the fact that after the above statements had been made by the witnesses the matter was not pursued in case of either of the two, and it was not suggested that the description given by either or both was not correct or did not fit in with that of Gopal, an inference may, quite fairly and legitimately be drawn, that the description given by both was accurate and did tally with that of Gopal. In the circumstances, the identification of the latter by them at the identification parade cannot be regarded as otherwise than genuine. *P.282.

Reverting to the evidence of P.W.5, I do not agree that the circumstance of Karkare having offered to share, and having in fact shared, the room with him necessarily disproves his and Madanlal's having come to Delhi with some sinister design and with some objectionable stuff in their possession. The steel trunk which the witness saw with them appears to have been purchased during the interval between the time when they left Dixit Maharaj's place and the time when they actually entrained for Delhi, and in all probability, the bag containing the gun-cotton-slabs and the hand-grenades which, according to Badge, had originally been tied in the bedding was transferred to the trunk, evidently on considerations of safety. This may possibly explain, why, as deposed to by the witness, the trunk was never opened during the time the three were together. With the bag safely deposited in the trunk, there could be no reasonable risk of the witness' being able to discover during the short period that he was likely to stay with them, that his companions were carrying any objectionable stuff with them. It has to be remembered that P.W.5 had never intended to stay

in

*P. 283

* in Delhi longer than was necessary for having his name registered in the Transfer Bureau. In fact, he had originally hoped to return to Bombay in the evening of the 17th January. However, the accident of the train having arrived at Delhi late and the next following day being a Sunday upset the original programme and he had to stay till Monday. It has further to be remembered that initially, when Karkare offered to arrange for the witness accommodation at Delhi in case he had to stay for the night, there was no idea of the three sharing or having to share accommodation. He offered to arrange accommodation for him at the Birla Mandir while he himself and Madanlal, according to Badge's evidence, had left Bombay with the intention of putting up at the Hindu Mahasabha Office. According to P.W.5 they did in fact first go to the Hindu Mahasabha Office. No accommodation being available there, and none having been found for the witness at the Birla Mandir, they had, of necessity, to stay at the Sharif Hotel. Due to the fast, Mahatma Jee's prayer meetings were suspended. While those meetings remained suspended, Karkare and Madanlal's sharing the room with the witness could not possibly interfere with their programme * and they had every reasonable expectation of the witness departing before the time giving for effect to that programme arrived. After breaking the fast, Mahatma Jee held his first prayer meeting, presumably on the 19th, and that possibly explains the desperate anxiety of Madanlal and Karkare to leave the hotel and part company with P.W.6 as early as possible that day. They did not even wait for the latter's return from the Transfer Bureau. They decided to leave the hotel before 2 p.m. and even paid the bill. It was only the accident of Gopal Godse having come in the meanwhile that delayed their departure.

*P. 284

Madanlal,

Cr. A. 56/49.

Vid. 111

Madanlal, Karkare and Gopal left the Sharif Hotel at 7-15 p.m. The suggestion on behalf of the prosecution is that they shifted to the Hindu Mahasabha Office where Gopal and Madanlal stayed for the night, while Karkare spent the night very probably with Nathuram Godse and Apte in their room in the Marina Hotel. Of course, of this last fact there is no evidence. As regards Gopal Godse and Madanlal having stayed at the Mahasabha Office, we have the evidence of Badge who with Shankar arrived at Delhi, as already noticed, at about 9.30 or 10 p.m. the same night and proceeded to the Mahasabha Office in a tonga.

According to Badge's evidence, when he and Shankar arrived at the Mahasabha Office they were directed to the Hall where they were met by Madanlal and Gopal. The latter was not known to * the witness before and was introduced to him by Madanlal.

*P. 285

Commenting on this part of Badge's evidence, Nathuram Godse drew our attention to another passage in the said evidence wherein the witness had deposed to his having very close and intimate relations with Nathuram Godse himself, and urged that the two statements could not be reconciled. I can, however, see no reason why both the statements cannot be correct and why ~~they should be regarded to be irreconcilable.~~ ~~they should be regarded to be irreconcilable.~~ they should be regarded to be irreconcilable.

Nathuram Godse himself, in another part of his argument, laid very considerable stress on the circumstance of Gopal living at Kirkee at a distance of 7 miles from Poona, being in Government service for the past 4 years, and

having

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having never been associated with any of his own political or other activities. In these circumstances, one need not be surprised at all if someone who has had quite close associations with Nathuram Godse himself and some of his activities has never met Gopal Godse.

P. 286

According to Badge, Apte, Nathuram Godse Karkare arrived at the Mahasabha Bhawan within a short time of his arrival there but went back soon, promising to return next morning. The witness goes on to say that Apte and Karkare did come back to the Mahasabha Office at about 8.30 a.m. next morning, when Karkare gave some money to Madanlal for getting fuel for heating water. Both of them went away but returned in about half an hour's time.

Although there is no evidence other than that of Badge as to Apte, Nathuram Godse and Karkare having visited the Mahasabha Office in the night on the 19th after the witness's arrival there, or as to Madanlal and Gopal having stayed there for the night, there were some tell-tale questions asked of the witness in the course of cross-examination by the counsel for Madanlal which quite clearly seem to imply that at least Apte did visit the Mahasabha Office in the night on the 19th and that Madanlal at least was there that night and the next morning. We find the following statements in the witness's evidence given on such cross-examination:-

"It is not a fact that I had gone with Madanlal to the Gol Market to take meals in the evening of 19th January, 1948. It is not a fact that I had gone to the Gol Market with Madan Lal to take tea on the morning of 20th January.....

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Dr. 56/44.

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It is not a fact that when I reached the Hindu Mahasabha Office on the night of the 19th January, 1948 Apte rebuked me for having come late and for not having brought with me volunteers although he had left money with me for that purpose."

* When a question is put to a witness in cross-examination containing a certain suggestion as to question of fact and he is asked either to admit or deny the suggestion, an inference may not unreasonably be drawn, and has generally been drawn, that the party on whose behalf the question has been put does accept the suggestion. Such suggestion is generally taken to contain in itself that party's case on the subject. I am aware that sometimes random questions are put by counsel who have not very clear ideas about the grave responsibility of a cross-examining counsel, without realising the precise implications of the questions. The questions to which the above answers were returned, however, do not appear to be random questions at all. They seem to me to indicate most clearly and unambiguously that at the stage they were put Madanlal at least had no intention of denying his presence at the Mahasabha Office on the night of the 19th and the morning of the 20th, although he did want to contend that he was there, and Badge also came with the object of staging a demonstration for which the latter was expected by Apte to bring * some volunteers. In the circumstances, I should have no difficulty at all in holding that Madanlal, after leaving the Sharif Hotel

went

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went to and put up at the Mahasabha Office.

Badge goes on to say that after Apte and Karkare had come back to the Mahasabha Office, the former took himself and Shankar in a car to the Birla House. If otherwise Badge is telling the truth, it is understandable why he and Shankar alone were selected for the purpose of being taken to Birla House for the purpose, as will presently appear, of reconnoitring. They too were new arrivals. All others except Gopal had been in Delhi since the 17th and Gopal was also in Delhi quite surely since the morning of the 19th, and might have in fact been there since the day before. If Birla House was to play any part at all in their plans, they may quite reasonably be expected to have been there before. Badge and Shankar having, however, arrived quite late the previous night had yet to see it and, therefore, were quite naturally taken there by Apte. According to Badge, the car was stopped in front of the main gate and they all got down from it. Apte told the gatekeeper that he wanted to see the Secretary and gave the latter a chit with which he proceeded to the bungalow. In the meanwhile, a stoutish gentleman dressed in black emerged out of the bungalow and was pointed out as Suhrawardy by Apte to the witness. The three * then left the place, proceeded to the back of the House, and, entering the gate and passing the Chawl went to the place where prayers used to be held. Apte pointed out to the witness a spot where, he was told, Gandhi Jee and Suhrawardy used to sit at the time of the prayers. He also showed him a window with trellis work behind that spot and, after taking measurements of the openings in the trellis work with a piece of string, told him that through the openings a revolver could be fired

*P. 289

and

and a hand-grenade thrown, the distance between the window and the place where Mahatma Gandhi used to sit being only four or five paces. Apte then told the witness that both (Gandhi Jee and Sharawardy) and in any case, one, must be finished. He also pointed out to the witness a room behind the trellis-work and said that one could enter the same as a photographer. He also pointed out the places at the gate where gun-cotton-slabs were to be placed. According to the witness, they were unable to enter room No. 3 and to reconnoitre the situation of the * trellis-work from within, or to form any idea as to the height of the window from the floor inside the room because a one-eyed man was found sitting there. The height of the trellis window from the outer floor was found to be $4\frac{1}{2}$ or 5 feet. The trellis-work, according to the witness, consisted of crosses, made of some red material like that of a brick and Apte took measurements of two or three openings and told the witness that the cross section of the opening that had been measured was equal to the diameter of a hand-grenade so that hand-grenade could pass through it. According to the witness, the idea was to pull out the pin, hold the hand-grenade against the opening in the trellis-work, and then to push it through the opening with the barrel end of a revolver. According to the witness, they left Birla House at about 11.30 a.m. *P290

There is no evidence except that of Badge as to the visit to the Birla House, although certain questions put to the aforesaid witness in cross-examination by the counsel representing both Apte and Gopal in the Court of the learned

Special

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Special Judge, appear quite clearly to suggest that at that stage at least there was no intention of denying altogether the fact of Birla House having been visited by the witness in the company of Apte in the morning of the 20th. I am referring to the questions in answer to which the following *statements were made by the witness which are to be found at page 116 of the first volume of the paper book:-

*P.291.

" It is not a fact that I had a Bhagwa surban on when I went to the Birla House in the morning of the 20th January.....
 It is not a fact that on return from the Birla House I had gone to the Jungle to answer the call of nature when I was challenged by the forest-guards."

We had in Court models of the trellis-work and also the hand-grenades recovered from Madanlal's pocket and the jungle behind the Mahasabha Office and we satisfied ourselves that a hand-grenade could pass through the openings in the trellis-work in the manner deposed to by Badge.

A suggestion was made by some of the counsel appearing for the appellants that probably the original trellis-work had been replaced by a new one after the 20th January in order to make the openings fit in with the approver's evidence. The suggestion-seems to me to be quite fantastic. Support was sought for the suggestion from the statement of Badge as to the trellis-work having been made of crosses whereas the trellis-work as it now exists and as is represented by the model in Court cannot be said to consist of crosses. In all probability, the witness had no clear idea as to what a cross actually connotes and used the

*P.292.

expression

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expression loosely. The architect of the Birla House who has been examined by the prosecution has sworn that there has been no change in the trellis-work since it was originally constructed.

Mr. Emphasis was laid on the fact that the height of the lowest point of the window from within is such that a man standing on the floor could not possibly either fire a revolver or throw a hand-grenade through one of the openings in the trellis-work, and it was urged that, in the circumstances, it was impossible for Apte and Budge to plan to fire the revolver and throw the hand-grenade through it. As stated by Budge, they had not been able to observe the height of the trellis-work from within and formed their plans only with reference to what they could see from outside. To me the evidence seems to be very natural. Indeed, I am of the opinion that the fact that in view

of the height of the window from within a revolver could not have been fired and a hand-grenade could not have been thrown by a man standing on the floor through the trellis-work of that

Cr. 202.

* window can be taken as a very reasonable indication that the evidence of Budge with regard to the incidents of the morning of the 20th as referring to the Birla house could not have been a fabrication. Apte and Budge, at the time they are said

to have been forming the plan, could be, but any person concocting the story for the purpose of the case itself and tutoring the witness approver to repeat that story, could not be unaware of the height of the window from within. While,

therefore, Apte and Budge could have formed their plans

without taking into account the practical impossibility of

effect being given to them, the person concocting the

story

story, if he is to be credited with any amount of intelligence, could not ignore this inherent defect in the story.

Much stress was laid by Nathuram Godse and the counsel for the other appellants on the absence of any corroboration by any inmate of the Birla House of the evidence of Badge with regard to the morning incident. It was urged that quite a number of servants and attendants resided in the servants quarters, that otherwise Birla House is not a * deserted place; that during the stay of Mahatma Gandhi there quite a number of visitors might be expected to be coming to and going from the Birla House at all hours of that day, and that in the circumstances, it was inconceivable that nobody saw or noticed Apte, Badge and Shankar reconnoitring the back side of the Birla House which must have taken them a considerable time and which according to the evidence of Badge took no less than 15 or 20 minutes. It was also urged that inasmuch as Apte and others could not have reconnoitred the place in the manner deposed to by Badge without attracting attention of the people at the Birla House and particularly the police guard that had been posted there during Mahatma Gandhi's stay, it was very unlikely for Apte to have undertaken the venture. I fail to find any force in either of the two contentions.

*P.294

It has to be remembered that if Badge is telling the truth that they went to the Birla House at about 11 a.m., at that time the servants and the dependents of the Birla House would be busy with their usual avocations and could not be expected to loiter about. The fact that during Mahatma Gandhi's stay quite a number of visitors might be coming to and departing from the premises at all hours of the day

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day by itself would prevent particular attention being drawn to two or three persons loitering about the place where Mahatma Jee's prayer meetings used to be held.

*P.295

According to Badge, after leaving the Birla House, Apte, himself and Shankar went back to the Mahasabha Office. On arriving there Apte left but returned after about 20 or 25 minutes. Then on a suggestion emanating from Apte, the witness, Gopal Godse, Shankar and Apte himself went to the jungle behind the Mahasabha Office to try out the two revolvers, viz., the one brought by Gopal and the other by the witness himself. When Gopal tried to fire with his revolver it was discovered that its revolving chamber did not work. Thereupon Apte took the revolver that had been fetched by the witness and which was with Shankar from the latter, put four cartridges in it and asked Shankar to fire with it on a tree. Inasmuch as, the shot fired by Shankar from the revolver did not reach the tree, Apte declared that revolver also to be of no use. Gopal on this said that he would be able to repair his revolver. He asked Shankar to bring a bottle of oil and a pen knife from his bag which was lying inside the Mahasabha Office. Shankar complied with Gopal's request. All of * them then sat down and Gopal began to repair the revolver. At that time three forest guards were sighted by the witness and his companions. On seeing the forest guards the two revolvers were hidden under the shawl that had been spread out on the ground to sit on. All of them stood up, and on being challenged by the forest guards, Gopal spoke to them in Punjab and they left satisfied.

*P.296

In corroboration of this part of Badge's testimony, the prosecution examined Mehr Singh P.W.9

who

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who was said to be one of the forest guards who had happened to come to the Jungle at the material time. It appears from the evidence of P.W. 117 that this witness was contacted by the police for the first time in March, 1948. He identified Apte, Gopal, Shankar and Bedge as persons seen by him in the jungle behind the Birla Mandir at the identification parade held on 24th March, 1948. He was unable, however, to give any special reason as to how he was able to identify the four persons mentioned above, whom on his own showing he had seen only casually and that for a very short time and whom he could not possibly connect with any unusual or extraordinary incident, at such a distance of time, except that he had noted the fact at the time of seeing them that the persons concerned were not Punjabis but some outsiders. I, however, consider this explanation for his having been able to remember the features of all the four persons whom he happened to meet in the jungle as somewhat fantastic. The witness admits that he had not connected the persons whom he had met in the forest with the explosion which took place in the evening in the Birla House. He has also admitted that on that particular day he had covered about 2 or 2½ miles on his beat and had met quite a number of other persons. I have already given my reasons for looking at the identification by the Delhi witnesses at the identification parades held at Bombay with caution, and, in view of the general tenor of the statement of this witness, I would not consider it to be safe at all to rely on his evidence, merely because of his having been able to identify the above-mentioned four persons at one of those parades. I may note that during the course of the appellants' arguments we indicated that, subject to what Mr. Daphtary might be able to say to on the subjects we were not disposed to attach any importance to the evidence of this witness and Mr. Daphtary, while arguing the case, made no attempt at all to support the

learned

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*P.298.

learned * Special Judge's appreciation of the evidence of the said witness.

That, however, does not mean that I reject the testimony of the approver himself on the subject. All I mean to say is that his evidence in respect of this incident must be regarded as without any independent corroboration.

Badge goes on to say that after the forest guards had departed on Apte's suggestion all of them went back to the Hindu Mahasabha Office where they found Madanlal and Karkare to be present. Apte asked them both to leave for the Marina Hotel and they immediately left the Mahasabha Office for the said Hotel. Badge further says that before leaving, Madanlal handed over the bag which was tied in his bedding to Karkare, who in his turn handed over the same to Gopal asking him to carry that bag as well as his own to the Marina Hotel. Some time after the departure of Madanlal and Karkare, Apte asked those who had been left behind also to proceed to the Marina Hotel which they did carrying the bag containing the stuff with them.

*P.299.

The witness goes on to say that when he and his companions arrived in room No. 40 of the Marina Hotel, they found Nathuram Godse lying on a bed and were told that he was suffering from ^a bad headache. Gopal Godse kept the bag containing the stuff, which he had brought from the Mahasabha Office, in the room. The witness and Shankar went to the restaurant to take their food. On their return to room No. 40 they found Gopal Godse repairing his revolver, the door of the room being closed from inside. Of course, the door ~~was~~ had been opened to let them in and was bolted again. Apte, Madan Lal, Karkare and the witness then went into the bath room and Shankar and Nathuram followed them. Apte, Karkare, Madan Lal and the witness fixed the primers and fuse wires in the slabs and detonators in the hand-

grenades.

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grenades. Nathuram then said addressing the witness that it was their last effort and that he should see that every thing was arranged properly. Discussion then ensued as to the plan of action to be followed that evening at the Birla House. After some discussion the proposal of the witness that one gun cotton slab need only be exploded in order to create confusion was accepted. At the witness' suggestion it was also agreed that Madan Lal should be given one cotton slab for the purpose and also one hand-grenade * to be thrown on Mahatma Gandhi in the confusion to be caused by the explosion of the slab. The witness himself was given one hand-grenade and one revolver, the idea being that he would shoot at Mahatma Gandhi with the revolver and also throw the hand-grenade on him. Shankar was also given one revolver and one hand-grenade with the same object. Gopal and Karkare were given one hand-grenade each and it was understood that they were to throw their respective hand-grenades on Mahatma Gandhi. The arrangement was that all hand-grenades were to be thrown simultaneously. Apte and Nathuram were only to give ~~any~~ signals. It was also agreed that the persons who were to take part in the drama that was to be enacted that evening at the Birla House should change their clothes to minimise the possibility of identification and should also assume fictitious names by which in case of need they might address each other. Accordingly Nathuram put on a ~~half~~ ^{half} sleeve shirt, shorts and stockings, all of khaki ~~ex~~ colour, like those used in the Military department. He was to be addressed as Deshpande. Apte put on a coat and trousers of dark blue colour like that in vogue in the Air Force and was to be addressed as Karmakar. ~~Kark~~ Karkare put on a Nehru shirt, a dhoti and a Gandhi cap. He also painted false moustaches, darkened his eyebrows

and

*P.300.

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*P.201.

*and made a red mark on his forehead. He was to be addressed as Bias. Madan Lal put on a coat and trousers.

The witness was not able to recollect the name by which he was to be addressed. Gopal Godse put on a coat, a shirt and shorts, but the witness was unable to recollect the name that was given to him. Shankar put on a white coats, a shirt, a dhoti and the cap which he was found to be wearing at the time the witness was giving his evidence and was given the name of Tukaram. The witness put on a Nehru shirt and a dhoti, which was also the dress which he was wearing at the time of giving his evidence, and was called Bandopant. After these decisions had been taken and given effect to as far as was possible and necessary at that time, Madan Lal and Karkare first left for the Birla House. Apte, Gopal Godse, Shankar and the witness followed them in a taxi which was engaged from some place near the Hotel. Gopal had put the one spare gun cotton slab and the remaining stuff which was not used, namely, the spare fuse wire, etc., in his bag and carried the same with himself in the taxi. Nathuram was to follow 15 or 20 ~~minutes~~ minutes later.

*P.202.

There could of course be no independent corroboration of Badge's evidence as to the deliberations held and the decision taken inside the room in the Marina Hotel or as to the plan evolved by him and his companions. Some evidence was, however, produced to prove that the persons mentioned above had actually met in room No.40 in the Hotel. This evidence is quite meagre and consists only of the statement of Nain Singh P.W.8, a bearer in the Hotel, and certain entries in the Hotel Registers. The evidence of P.W.8 is simply to the effect that he had seen Shankar and Karkare taking tea in room No. 40, that he had in the first instance served two teas to the occupants of that room, and that

that he was later asked to supply three extra teas which he did, the suggestion presumably being that these extra teas were consumed by the aforesaid two accused. The witness did not mention either the date on which or the time at which he had served extra teas and had seen Shankar and Karkare consume them. In order to fix the date reliance is placed on Ex.P.24 according to which a sum of Rs. 3/- was debited to M/s S.&M. Desphandes occupants of room No. 40 on account of three extra teas ordered by them on 20th January 1948.

Main Singh was examined by the police as late as 18th March 1948 . He identified Shankar and Karkare in the identification parade held at Bombay on 30th March 1948. It is somewhat significant that as *deposed to by Mr. Brown, Chief Presidency Magistrate, Bombay-----the Magistrate under whose supervision the identification parade had taken place - he identified them at the parade along with a wrong person as the persons who had been occupying room No. 40. Apte and Nathuram were also present among the suspects at this identification parade whom this witness does not seem to have been able to identify. I am not in the circumstances inclined to attach any particular importance to the identification by him of Shankar and Karkare, nor am I prepared to hold on his evidence that the extra teas that were ordered by the occupants of room No. 40 on the 20th had been in fact consumed by them. I must accordingly hold that not only the evidence of the approver as to the actual decisions taken and the plans formulated at the meeting said to have been held in the Marina Hotel is not corroborated by any independent testimony but also that the fact of the accused or any of them excepting Apte and Nathuram having met in room No. 40 of the Hotel is not corroborated by

*P.203.

by any direct testimony, although I am of the opinion that there is sufficient circumstantial evidence to prove that the accused and Badge did in fact meet in the aforesaid room at some time on the 20th January before proceeding to the Birla House.

*P.304.

In the first place, it has to be remembered that if the accused and Badge had come to Delhi with a common object and a common plan, whether that common object and common plan was the staging of a demonstration at Mahatma Gandhi's prayer meetings or something more serious, they may reasonably be expected to meet at some place to finalise their plans and to settle the course of action which they proposed to adopt, and no place could be more suitable for the purpose than the room occupied by Nathuram and Apte in the Marina Hotel. Whether they intended only to stage a demonstration or do something much more serious, secrecy was of the very essence for the success of their plan. They could not reasonably expect to find the requisite amount of privacy at the Hindu Maha Sabha Office where, in view of the nature of the premises and the kind of people who could have an access thereto, it would not be reasonably possible to assure the necessary secrecy for their plans. Inside the room in the Marina Hotel they could quite reasonably hope not to be interrupted by any outsider. The more serious the plan they had in view the greater need there would be for * privacy and secrecy.

*P.305.

That some kind of meeting did in fact take place in Nathuram and Apte's room in the Marina Hotel appears to have been practically admitted at one stage of the trial. Badge was cross-examined by Mr. Inamdar, counsel for Gopal Godse and ^{Dr.} P. K. Parchure, on the 30th July 1948. In the course of cross-examination he put the following question to the witness which was taken down in extenso by the learned Special Judge and is to be found printed at

at page 117 of the first volume of the paper book. It runs as follows:-

"I put it to you that you held discussions in regard to the distribution of the stuff and in regard as to how the stuff was to be used in the room in which Nathuram Godse was lying ill and that Nathuram Godse asked you not to discuss things there but to go to the bath-room. Is it true?"

There is a note added by the learned Special Judge after this question which reads as follows:-

"The counsel at this stage after consulting Mr. Bhopatkar does not press the question and withdraws it saying that this is not the sense that he intended to convey to the witness."

The answer to the question which was subsequently put to the witness in consultation with Mr. Bhopatkar who was counsel for Mr. Savarkar but who it was stated by Mr. Daphtary at the Bar was generally treated as the chief defence counsel at the trial runs as follows:-

"It is not a fact that the discussion that had taken place in the room of Nathuram Godse was in regard to a demonstration that was to be held in the prayer-ground. It is not a fact that the discussions were held loudly and that Nathuram Godse had asked us to shift to the bath-room."

The suggestion that was implicit in the questions to which the above answers were returned by the witness clearly was that discussions had taken place in the room of Nathuram Godse in regard to a demonstration that was to be held at the prayer-ground loudly and

Nathu Ram

Nathuram had asked the persons participating in the discussions to shift to the bath-room, presumably on account of his indisposition. It must be remembered that the questions were put after withdrawing the original question which perhaps was considered to be very compromising to the defence and a-fter consultations between the cross-examining counsel and the Senior most counsel appearing in the case on behalf of the most important accused, and in the circumstances it may be assumed that they were *put after due deliberation and with a proper appreciation of their implications. In the circumstances, I do not think it will be by any means unfair to draw an inference from the form in which the questions were put that the fact of some of the persons concerned having actually met in room No. 40 in the Marina Hotel for the purpose of holding discussions with reference to what was proposed to be done at the Biala House that evening was admitted certainly till 30th July 1942 and that the position later taken up that there were no discussions in that room on that day is merely an after-thought and incorrect. I may note that Edge having visited Nathuram and Apte's room in the Marina Hotel on the 20th was admitted even in their written statements by Apte and Nathuram, although they stated that the visit had taken place in the morning and not in the afternoon.

Edge stated in cross-examination, though he did not say so in his examination-in-chief, that while he ~~was~~ and Shankar were coming down from the first floor of the Marina Hotel where Nathuram and Apte's room was situate he had told Shankar that the latter was to shoot the person whom the witness himself would shoot and that he was to throw the hand-grenade on the person on whom the witness would throw the hand-grenade and that that person was

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*P.308. *was an old man named Gandhiji.

Badge goes on to say that he carried the revolver and the hand-grenade that had been ~~carried~~ handed over to him in the bag which he had brought from Poona on the 14th and which at that time contained the entire stuff brought by him.

According to the evidence of Badge, the taxi was first taken to the Hindu Maha Sabha office where the witness himself and Gopal Godse got down. The latter kept the bag which he was carrying and which contained the spare stuff in a cupboard

The witness took a towel from his things lying in the hall.

After this both he and Gopal went back to the taxi which was driven to the back of the Birla House. The taxi was parked there

On getting down from the taxi the witness and his companions met

Madan Lal after having gone three or four paces from the

circular space which was on the left hand side. Apte asked

Madan Lal if he was ready and on receiving a reply in the

affirmative told him that he was to ignite the slab on getting a

sign from himself. When they arrived at the gate the witness

saw Karkare coming from towards the prayer-ground side and

proceeding towards the room which had been shown to him by Apte

*P.309. in the morning and talking to some one there. *Karkare then

saw the witness and the others and came to their side. They also

proceeded to the side from which Karkare was seen coming till

they

they met each other, when Karkare told Apte that much time had passed, that Gandhiji had come, that the prayer had started, and that he had made arrangements with the occupants of the room to allow some one to enter as a Photographer. On this Apte asked the witness to go into the room posing as a Photographer. The witness says that it had not been decided in the morning which of them was to go inside the room for the purpose of firing the revolver and throwing the hand-grenade from the openings in the trellis-work and that he had no reason to believe till he was asked by Apte to do so, that he would be required to go into the room. By the time Apte requested the witness to do so, Nathuram also had arrived on the scene. The witness, on looking towards the room found two men standing and a one-eyed man sitting on a cot in front thereof. He got frightened and thought that he might be trapped inside the room. Nathuram told him that there was no reason to be frightened, inasmuch as arrangements had been made for all of them to escape. The witness, however, was not willing to accept the suggestion and said that he would rather shoot at Gandhiji from the front. Nathuram, Apte and Karkare pressed him for some time to agree to shoot and throw the hand-grenade through the trellis work in the room but seeing that he was not prepared to agree to their suggestion they eventually fell in line with his views and agreed that he should shoot from the front that is to say, from the open opposite where Gandhiji was sitting. Thereupon the witness with Shankar went to the taxi while

Nathuram

Nathuran, Apte, Karkare, Madanlal and Gopal began to move about and talk amongst themselves in the compound of the Chawl. On getting to the taxi the witness wrapped the two revolvers which he and Shankar were carrying in the towel which he had brought from the Maha Sabha office and putting the towel with the revolvers wrapped in it in the bag placed that bag in the taxi. In explaining the reason for doing so the witness has stated that a revolver remains in the hand after it has been fired but after throwing a hand-grenade nothing incriminating remains with the person throwing it. It follows from this part of his evidence that before he deposited the bag containing the revolvers in the taxi he had finally decided not to use any revolver and not to shoot at Mahatma Gandhi although he had given his companions the impression that he would do so. The witness then handed over his hand-grenade also to Shankar telling him that he was not to do anything unless he gave him the sign. The two then left the taxi and proceeded towards where Nathuran and others were. The witness placed both hands in the outer pockets of his shirt in order to indicate his readiness to act. On being asked by Apte if he was ready the witness told him that he was. Apte thereupon placed his hand on the back of Madan Lal and said "Chalo". After Apte had said so Madan Lal was seen by the witness proceeding towards where the gun-cotton slab had been placed. The witness then went in and stood towards the right side of Mahatma Gandhi, Karkare standing towards his right and Shankar further towards the right of Karkare. About three or four minutes later a big explosion was heard and smoke was seen coming from the left side. Five or six persons were seen running towards that side. The others, however, kept to their seats.

*P.311.

seats. Five or six minutes later, the witness saw Madan Lal being led towards the tent pitched in front of the main gate of the Birla House in police custody. Some time after that the witness saw three or four persons coming from the tent, and, suspecting that Madan Lal was with them and would point him out as one of his accomplices, he turned to the other side to conceal himself. Finding later that he was mistaken and finding also some man leaving the prayer ground the witness signalled to Shankar. Both of them then got mixed up with the people *who were leaving the prayer ground, left the main gate, engaged a tonga and drove to the Hindu Maha Sabha office. On reaching the Maha Sabha office the witness asked Shankar to throw away the hand-grenades which were with him in the jungle behind the office. Remembering that Gopal had also left his bag in the cupboard the witness asked Shankar to throw the contents thereof also in the jungle which he did. The witness adds that the stuff being worth about Rs.500/- he had asked Shankar not to throw it in the open but to keep it somewhere. According to the witness, Nathuram and Apte turned up soon after this and on their asking him as to what had happened he abused them and asked them to quit. After they had left, the witness and Shankar went out with the bedding, engaged a tonga, went to the Railway Station and took the train for Poona at 9-30 or 10 p.m., arriving at Kalyan Railway Station on the 22nd January 1948, reaching Poona the same day at 4.30 p.m.

*P.312

The prosecution have examined Surjit Singh P.W.14, Sh. Salochana Devi P.W.15, Chhotu Ram P.W.16 and Bhur Singh P.W.17 in corroboration of Lodge's evidence as to the incidents which according to him took place from the time he, Apte, Gopal and Shankar

left

*P.313.

left the Marina Hotel up to the time of the explosion
*of the gun cotton slab and the arrest of Madan Lal.

Surjit Singh P.W.14 is a taxi driver whose taxi according to the prosecution was engaged by Apte and others when they went to the Birla House from the Marina Hotel. The number of the car which this witness was plying was P.B.F.671. It was of Mongia colour with a luggage carrier at its top. According to the evidence given by this witness, he picked up four passengers near the Regal Cinema at about 4 or 4-15 p.m. on the day the explosion at the Birla House took place. One of the four persons according to him was a bearded man. At the identification parade held at Delhi on the 28th February 1948 the witness identified Apte as the person who had engaged his taxi in order to go to the Birla House. At the identification parade held at Bombay on 30th March 1948 he identified Gopal and Badge as the other two out of the three persons who had engaged his taxi on 20th January 1948 at 4.30 p.m. He could not identify Shankar although he was present at the parade. He had already identified, on 7th February 1948, Nathuran as the person who had replaced one of the men who had originally gone in the taxi to the Birla House, on the return journey from that place.

*P.314.

According to the witness, Apte fixed up with him
*a sum of Rs.12/- having been settled as the hire for taking the passengers to the Birla House and back from there to the Connaught Place. Badge sat on the front seat along with himself, while the other three sat on the back. The taxi was asked to be driven first to the Birla Mandir where all the four occupants got down and returned after about 15 or 20 minutes. It may be noticed that

that the Birla Mandir and the Hindu-Mahm. Sabha office are situate quite close to each other. In this respect therefore this witness need not be taken as contradicting Badge. However, there is apparently a discrepancy between his statement and that of Badge as to the persons who had actually got down from the car when it was parked, whether at the Maha Sabha Office or at the Birla Mandir.

The witness goes on to say that after leaving the Birla Mandir the car was driven to the back of the Birla House where it was parked in accordance with the directions given by Apte. The four passengers got down and proceeded to the servants' quarters. They talked to two or three persons. The witness then went towards the prayer platform but came back 15 or 20 minutes later because of his inability to hear anything due to the failure of the loud speakers. Soon after his return, *the passengers excepting the one who had sat on the front seat came back and in place of the aforesaid passenger came Nathuram. They got into the car and Nathuram asked him to start the same. He heard the sound of explosion some time but found himself unable to tell whether he heard it before or after starting the car. He took the passengers to the Connaught Place where he was discharged on payment of the hire agreed upon.

*P.315.

This witness the police was able to trace just by an accident on 4th February 1948. Sardar J. swant Singh, Deputy Superintendent of Police, P.W.117 has deposed that he needed a taxi on that date and on his ordering for one the taxi of Surjit Singh was brought to his office. Finding that it was of Mongia colour and had a jungla on its top which was the description of

the

the taxi that had parked near the back gate of the Birla House on the date of the explosion, he enquired from the driver if he had gone to that place on 20th January 1948. On his replying in the affirmative the witness proceeded to record his statement.

Mt. Salochana Devi P.W. 15 is the wife of a motor driver. The house in which she resides with her husband and children is situate at a distance of 200 or 300 *paces from the Birla House. She herself happened to be at a distance of 13 or 14 paces from the place where the gun cotton slab was exploded at the time of the explosion. She had gone to the circular place to fetch her child who was playing there when she noticed a Mongia coloured car come from one of the three roads coming to the circular place, i.e., that which passes by the side of the Birla House. She saw the car stop on the other side of the servants' quarters and noticed four passengers getting down. They met two or three other persons. She saw all of them enter the gate, talking among themselves, going to and coming back from the prayer ground. She then saw one of the persons who had got down from the car having a talk with Chhotu Ram who was sitting in front of his quarters. She then saw one of the persons go to the place where the explosion took place later. She was not sure whether he was one of the persons who had alighted from the car. She, however, saw him placing a bomb at the place where the explosion eventually took place and then lighting a match stick and applying to the bomb. The man then proceeded towards the witness's quarters.

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*P.317.

The witness saw the person who had applied the match stick standing at a distance of four or five paces

from

from where she was when the bomb exploded. A number of persons then came from the prayer ground. Three out of them including Bhur Singh P.W. were the first to come by jumping over the wall. On an enquiry by them she pointed out the man who had applied the match stick to the bomb.

According to the evidence of Mr. Kishan Chand Magistrate P.W.92 the witness identified at the identification parade held on 7th February 1948 Nathuran as the person who had come out of the Mongia coloured car with another person who had exploded the bomb. According to the evidence of the same Magistrate at the identification parade held on 28th February 1948 she picked out Apte as one of the four persons who had alighted from the car. At the identification parade held at Bombay on 30th March 1948 she identified Badge as the person seen by her at the Birla House on 20th January 1948 (Vide the evidence of Mr. Brown P.W.114). She also identified the car of Surjit Singh as the one she had seen being parked at the back of the Birla House at the material time.

Chhotu Ram P.W.16 was originally a car cleaner and on the date at which he gave evidence a car driver at the Birla House having been in service there for about eleven years. He resided in room No.3 in the servants' quarters, i.e., in the room through the trellis work whereof, according to the evidence given by Badge, it had been decided in the morning of the 20th that a revolver should be fired on Mahatma Gandhi and a hand-grenade should be thrown on him. The witness says that a Mongia coloured car with a jugla on its top was seen by him stopping at the back of the Birla House. He noticed four persons coming out of the car and meeting three or four other persons.

*P.318.

persons. He also saw them talking among themselves. They passed in front of his quarters in groups of two or three to the prayer ground and made two or three rounds. Then a man with a bag in his hand which appeared to contain something heavy came to him and wanted to be allowed to take a photograph of Mahatma Gandhi from his room. The witness told him that it would be useless because only the back of Mahatma Gandhi would be photographed. The man then offered him a sum of Rs.5/- or Rs.10/- as a reward for being permitted to go into his room for the purpose of taking the photograph. The witness told him that he did not need any money and also asked him where his camera was. The man replied that he would get *the camera from the car and after saying so went out of the gate. His companions were standing at the gate. All those persons then advanced towards the open circular, one of them turning towards the place where the explosion later on took place. When the bomb exploded the persons standing at the gate proceeded towards the car. This witness identified Nathuram in the identification parade held at Delhi on the 7th February. It is in the evidence of Mr. Kishan Chand P.W.92, the Magistrate who conducted the identification, that Nathuram was identified by this witness as the individual seen with Madanlal while alighting from the car. He identified Apte and Karkare in the identification parade held at Delhi on the 28th February and the evidence of P.W.92 shows that he identified them as two out of the four persons who had come to Birl House at 4-30 or 5 p.m. At the identification parade held at Bombay on 30th March, 1948, when Gopal, Badge and Shankar mixed up with

*P.319.

seventeen others were put up for identification, he, according to the evidence of P.W.114 the presiding Magistrate, identified Shankar and two wrong persons. He was unable to identify either Gopal or Badge. In Court he pointed out Karkare as the person who had talked to him and wanted to be allowed to *take a photo of Mahatmaji from within his room.

*P.320

Bhur Singh P.W.17 is a watchman at the Birla House and has been in service as such for 2 or 2½ years. He resided in room No.1 in the servants' quarters at the material time. His evidence is to the effect that before the prayer started, he was standing in front of his room and Chhotu Ram P.W.16 was sitting on a takht two or three paces away from him when he saw a car with a jangla at its top coming towards the open circular space. He thought that the car was going to enter the compound through the back gate and that he would stop it. The car, however, actually stopped outside the gate and three or four persons were noticed by the witness as getting down therefrom. Two or three persons were already standing in the circular space and they and the persons who had got down from the car began to talk amongst themselves. They then passed in front of the witness, passing him at a distance of about four or five paces, and went to the prayer ground. About five or six minutes later those persons came back, three or four of them coming first, and two or three coming *after them. All of them excepting one proceeded to the gate. The one who remained behind accosted Chhotu Ram and asked to be allowed to take a photograph of Mahatmaji from inside his room. Chhotu Ram told him that he could not allow him to do so as the members of his family

*P.321.

family

family were living with him. It will be observed that this is not the explanation given by Chhotu Ram himself for having not acceded to the request made to him. It may be that either the aforesaid witness had lost recollection at the time he gave his evidence about his having used any such words or it may be that knowing that Chhotu Ram's family resided in the room this witness is only imagining that such an explanation must have been given by Chhotu Ram. The discrepancy if any between the statements of the two witnesses on the subject is however of no importance and may easily be ignored. According to the witness the person concerned offered to pay to Chhotu Ram Rs.4/- or Rs.5/- in case his request was granted whereupon the latter asked him where his camera was.

*P.322.

That person, who had a *cloth bag of khaki colour in his hand, then went away towards where his companions had gone. In cross-examination the witness admitted having stated to the police that the person who had talked to Chhotu Ram was a thin built man and had a wheatish colour. The witness then went into his room to put on his uniform as he had to be on duty at 6 p.m. On coming out of his room he did not notice any of the persons whom he had seen before. After about four or five minutes, on hearing the sound of an explosion, he, along with two others, jumped over the boundary wall. On Shrinati Salochana Devi P.W.15 pointing out the man who, according to her, had placed something where the explosion had taken place and had ignited that thing, they seized him. In the meanwhile, Mr. Sahaney, a Punjab Magistrate, having arrived, that man was taken to the police tent at the main gate of the Birla House.

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The witness was present when the person of that man was searched and a bomb was recovered from the inside right pocket of the coat he was then wearing. The witness proved his attestation of the recovery memo P.32 which was prepared after the search, and identified, amongst other things recovered *from the person of Madanlal at the time of the search, the hand-grenade Exhibit 14 and the surge coat Exhibit 15. This witness identified Apte and Karkare at the identification parade held at Delhi on the 28th February. He identified Badge, Nathuram, Gopal and Madanlal at the identification parade held at Bombay on the 31st March 1948. In Court he pointed out Nathuram, Apte, Karkare, Madanlal, Gopal and Badge as the persons whom he had seen on the 20th evening strolling in front of his quarters and talking among themselves. Pointing towards Karkare the witness said that he was wearing a Gandhi cap, a waistcoat and a white shirt at the time. The explanation given for his not attending the identification parade held on the 7th February was that he had proceeded on leave to his home village in Jaipur State two or three days after the assassination of Mahatma Gandhi, and had returned after ten days i.e., after the date on which the parade was held.

*P.323.

The evidence of Surjit Singh P.W.14, if believed, does certainly corroborate the *evidence of Badge as to his, Apte, Gopal and Shankar having gone in a taxi to the Birla House after 4-30 p.m. on the 20th January and having got down therefrom near the back gate. It is true that the witness did not identify Shankar. However he did identify Badge and if Badge was one of the passengers who were driven

*P.324.

in

in the witness's taxi to the Birla House, it may quite reasonably be inferred that Shankar was also with him. Ordinarily Shankar did, and perhaps had to, follow his master wherever the latter went. The witness is quite clear that in the journey from the motor-stand near the Regal Cinema where his taxi was engaged, to the Birla House, he carried four passengers although he was able to identify only three of them. His inability to identify Shankar may well be due to his not having taken particular notice of him by reason of his subordinate position as a mere servant. Another reason for his having identified Apte, Gopal and Badge, and not having identified Shankar, may be that both Apte and Gopal also travelled back in the taxi from the Birla House to Connaught Place the same evening, and Apte first settled and then *paid to him the taxi hire, while Badge by reason of his beard and long hair had a very remarkable appearance and had also sat on the front seat just close to the witness.

*P.325.

By proving Nathuram's presence at the Birla House at the material time, the evidence of P.W.14 also corroborates the testimony of Badge as to Nathuram having followed them to the Birla House.

The evidence of this witness was attacked on the appellants' behalf on quite a number of grounds.

Emphasis was laid, in the first instance, on the fact that he was traced after considerable delay, i.e., about a fortnight after the occurrence, and that also by sheer accident. The reason for this delay one has not got to go far to seek. All that was known definitely about the car on the day the occurrence took place

place was its colour and the fact of its having a luggage carrier or jangla at its top. Its number was not known. The name of the owner or driver was not known. It was registered not as a taxi but as a private car and we cannot be *sure whether it was registered at Delhi at all. It could not, in the circumstances, be quite easy to find a clue to it or to trace it in the city of Delhi at any time. In the months of January and February 1948 it should have been still more difficult on account of the great influx of refugees who had not yet had time to settle down. With the refugees must have come quite a number of private cars and taxis. It further appears from P.35 and the evidence of Mr. Sahaney P.W.18 that due to mistaken information given by a child the police must have, in the first instance, been put on a wholly wrong track in the matter of tracing the taxi. Had it not been for the coincidence of some subordinate of his having requisitioned the particular taxi for S.Jaswant Singh, Deputy Superintendent of Police, P.W.117 on the 4th February when the latter needed one, there might have been even further delay in tracing it. I see no reason to disbelieve the evidence of P.W.117 as to the manner and the circumstances in and under which he discovered the taxi and came in contact with P.W.14.

*P.326.

Emphasis was also laid on the circumstance that the car though registered as a private car was

being

*being plied by P.W.14 as a taxi with impunity, that even after the discovery of this fact no action had been taken against the witness, and that it was by reason of his being in the grip and under the obligation of the police that he had come forward to give false evidence. I do not find any substance in this contention as well. The witness was a refugee from the West Punjab where the car appears to have been originally registered. He seems to have begun to ply it as a taxi on coming to Delhi in order to make out a living. Although when he began to do so he had not got the licence required for plying the car as a taxi, he does appear to have applied for one, whether before or after he had started actually plying it as such it is not possible to tell on the present record. In explaining why no action was taken against the witness for plying the taxi without a licence, P.W.117 has stated that he was not prosecuted because he was a refugee and had also applied for a licence. In the very *nature of things, some latitude and laxity had to be shown in dealing with persons who had suddenly found themselves displaced from their homes and hearths in the West and had to fly for their ^{very} lives to different places in this part of the Dominion.

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Attention was, next, drawn to the fact that the witness had stated that all the passengers whom he had taken to the Birla House came back to the taxi except the bearded man who had sat on the front seat, that in place of the latter the man identified by him at the identification parade held on 7th February at Delhi (Nathuram V. Godse) came and occupied the front seat

seat, and that when he started the car four passengers were sitting in it. It was pointed out that the testimony of this witness was inconsistent with the testimony of Badgo as to Shankar, who, according to him was the fourth passenger when they had been driven to the Birla House, having left that place with him in a tonga. In dealing with this contention, it has to be remembered that the witness was unable to identify Shankar at the identification parade. As has been observed before, this may quite legitimately be *taken to indicate, provided the witness is otherwise telling the truth, that he had not taken as particular notice of that passenger as of the others. It is, therefore, understandable that, when two out of the three passengers whom he did particularly remember, and a new one in place of the third, came, occupied their seats, and hurriedly asked him to start the car, he assumed that all the previous passengers excepting the bearded man who had been replaced by the new comer had come back. It is quite significant that although in the first breath he did say that four persons had sat down in the car when he was asked to start it, within a few minutes he added that on his way back to the Connaught Place there were either three or four passengers in his car. This shows that he was really not quite sure about the exact number. His failure to identify Shankar and his failure to notice that it was more than one of his original passengers who had not come back to the taxi appear to be quite in keeping with each other, and the statement of the *witness, about this subject,

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*P-330

road

read as a whole, seems to be so natural as to furnish, by itself, a very good ground for holding him to be a witness of truth.

The evidence of the witness was, next, attacked on the ground of his having lied in saying that Nathuram was one of the passengers whom he had driven from the Birla House to Connaught Place, it being urged that Nathuram had not come and could not possibly have come to the Birla House. Reference was, in this connection, made to the statement of Badge that Nathuram was not well and was suffering from headache. Stress was laid on the circumstance that even on Badge's own showing he had not left the hotel with them. It was pointed out that if he had any intention of going to the Birla House at all, he would have, by reason of his admitted indisposition, preferred to go with the party which intended to travel by a taxi, and that it was highly improbable that he would remain behind and follow them later on foot or possibly in a tonga, because no other taxi is even alleged to have been seen by any one anywhere near the back gate of Birla House. The identification of Nathuram by the witness was attacked on the ground that the former, while confined in the Tughlak Road police station lock-up, had been *shown to the latter at the time his statement was recorded by the police at that place, and, further, on the ground that Nathuram was quite conspicuous at the parade by reason of his having a bandage on his head and therefore capable of being very easily spotted.

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After

After giving the most careful thought to the above contentions, I feel no hesitation in rejecting them. Apte has said in his statement recorded by the learned Special Judge that he and Nathuram had spent their time from 17th January, 1948 till 20th January, 1948 in going to various refugee camps to enlist volunteers for staging a demonstration at the Birla House on 20th January 1948 or 21st January 1948; that some twenty or twenty-five refugees had offered themselves to act as volunteers; and that on Badge coming to see him at the Marina Hotel on the morning of 20th January he had asked the latter to proceed to the Birla House that evening and meet him there so that it might be found out if it was possible to stage a demonstration there that evening. He *has also said that he did go to the Birla House at about 4-30 p.m on the 20th January in a car___a private car___taking also with himself Badge and Shonkar whom he had met as he had come out of the Marina Hotel, but that on going to the prayer ground he found that none of the volunteers with whom he had fixed up had arrived, and that by reason of the loud speakers having gone out of order it was not otherwise possible to stage a demonstration on that day. Even assuming that the plan designed for the evening of the 20th January by Nathuram and Apte was no more serious than that disclosed by the above statement of Apte, I cannot believe that mere headache, however, severe, could have kept back Nathuram. They had both come all the way from Poona to Delhi for the purpose of staging a demonstration

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demonstration at the prayer meeting, had incurred so much expenditure, had spent so much time in enlisting volunteers for the purpose, and had actually fixed up with those volunteers that the proposed demonstration would be staged that particular evening. I refuse to take seriously at all the suggestion that, in spite of all this, Nathuram agreed to Apte being left alone to see through the whole thing and himself stayed behind simply because he was suffering from headache. We have seen quite enough of Nathuram during the period of more than five weeks while we were hearing these appeals and particularly during the eight or nine days while he was arguing his own case, and I cannot imagine that a man of his calibre could have even entertained the idea.

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As for the evidence of Badge as to Nathuram having been left behind while the four of them left in a taxi, I can see nothing surprising or unnatural about it. After Madanlal and Karkare had gone, there were five men left behind. Of these only four could go in one taxi and for the fifth man some other arrangement would be necessary. None out of Badge, Shridhar and Gopal could be left to shift for himself. It had to be either Apte or Nathuram. By reason of Nathuram being not too well, it was quite natural for Apte to have chosen to go ahead to complete all the arrangements, the former being left to follow and to arrive at the crucial time for action, whether their objective was merely the staging of a demonstration or something far more serious.

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As

As regards the identification of Nathuram by the witness, it was not contended that if, as deposed to by the latter, the former had travelled by his taxi from the Birla House to the Connaught Place in the evening on the 20th January, the witness could not reasonably be expected to identify him. The contention was that Nathuram did not in fact so travel, and that the so-called identification of him by the witness could not, for the reasons already stated, be taken to furnish any evidence of his having done so.

Our attention was drawn to the site plan of the Tughlak Road police station and it was pointed out that there are two prison cells there on the two sides, the door of each opening sideways into the passage. One cell is on the side on which there are residential quarters for the officers posted in the police station. The cell is on the side on which the office is situated. Nathuram was admittedly confined in one of these cells up to the 6th February although it is not known in which cell. Surjit Singh's statement was recorded *at this police station on the 4th February 1948. The suggestion of Nathuram was that the statement was recorded at a place in the courtyard from where his cell was visible and therefore he could easily have been seen by the witness. He sought to support this suggestion of his by reference to a certain passage in the evidence of Mr. N.Y. Deulkar, Deputy Superintendent of Police, C.I.D., Poona P.W.123 who was at Delhi and in police station Tughlak Road on the 4th February. That passage is to be found in the statement
made

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made by the witness on cross-examination by Nathuram's counsel and reads as follows:-

"There is an open space by the side of the cell in which Nathuram V. Godse had been kept at the police station Tughlak Road. There is a verandah in front of the cell. The officers used to sit then in the open space adjoining the office-room. From this portion of the open space the door of the cell in which Nathuram V. Godse was kept is visible."

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The witness, however, added on re-examination that the occupant of the cell could not be* seen as there was a grey-coloured blanket hung in front of the door. S. Jaswant Singh P.W.117 who actually recorded the statement of Surjit Singh definitely says that the cell in which Nathuram V. Godse had been kept was not visible from the place where he had recorded the statement of the said witness. He also says that whenever an accused was lodged in a lock-up, a blanket was invariably hung in front of the cell. Nathuram said in his statement, made before the learned Special Judge, that he had seen Surjit Singh twice or thrice at the police station, and that, on one occasion, on seeing him near his cell gazing towards him, he had actually enquired what he wanted to which the reply given was "nothing." He, however, admitted that he had not brought this fact to the notice of the Magistrate at the parade, his explanation for this omission being that he was going to confess the crime. However even when Surjit Singh gave his evidence at the trial no question was put to him on the subject in cross-examination

examination. I am quite clear, therefore, that there is no substance at all in the contention that Nathuram had been shown to, or seen by, the witness before the identification parade was held.

*As regards Nathuram being conspicuous at the identification parade by reason of his having a bandage on his head, we have the definite evidence of S.Daswanda Singh, Inspector of Police, P.W.116, and S.Jaswant Singh, Deputy Superintendent of Police, P.W.117, that the bandage had been removed on the 6th February after having consulted a private medical practitioner. It is true that this medical practitioner though cited as a witness was not produced. I do not, however, feel inclined to attach any importance to this omission in view of the very clear statement of the Magistrate who held the parade, i.e., Mr. Kishan Chand P.W.92, that Nathuram had no bandage at all at the time. To the same effect is the evidence of P.W.12, P.W.14 and P.W.15 who had also attended the identification parade. As against all this evidence reliance was placed by Nathuram on the following statement to be found in the evidence of P.W.13:-

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"He had his head bandaged. I think he had a bandage."

The Magistrate and the other witnesses who attended the parade have said that Nathuram had a *towel tied round his head. This witness in all probability mistook the towel for a bandage. It is in evidence that quite a number of persons with whom Nathuram had been mixed up at the parade had also towels tied round their heads. Nathuram

*P-338

tied

tied a towel round his head, in all probability, to screen scratches or other marks on his head resulting from the injuries received by him on the 30th January.

I cannot, in the circumstances, see any reason to regard the identification of Nathuram by the witness as otherwise than genuine.

Some stress was also laid on the discrepancy between the evidence of this witness and that of Badge which has already been noticed, viz. the conflicting statements made by the two as to who had got down when the taxi was stopped near the Birla Mandar which, of course, is quite close to the Hindu Mahasabha Office. This discrepancy I consider to be too minor and unimportant to be taken any notice of.

Having read the evidence of the witness as a whole quite carefully, and after having considered all that was urged against that evidence on the appellants' behalf, I am quite satisfied that he *has told the truth and that his evidence should be believed in its entirety. I accordingly hold it proved that Apte, Badge and Gopal and another who was presumably Shankar did go to the Birla House at about 4-30 or 5 p.m on the 20th in Surjit Singh's taxi and that shortly afterwards Apte, Nathuram and Gopal returned by the same taxi and were dropped at the Connaught Place.

The presence of Shrimati Salochana P.W.15 on the spot at the material time has not been denied and has in fact been admitted by Madanlal. Her evidence was attacked mainly on two grounds, viz, (1) that quite contrary to the rest of the evidence on

the

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the subject she has stated that the person who had a talk with Chhotu Ram was one of the persons who had got down from the car; and (2) that she pointed out Nathuram as one of the persons who had come by car.

It does appear that this witness has not a very clear idea as to who had come by the car and who was there already, and a good deal of confusion of thought is discernible in her description of the details. Being admittedly on the spot and therefore quite a natural * witness she must * P-340 have seen the car and the persons whom she has identified. She also did see Madanlal ignite the gun-cotton slab. To this extent her evidence may safely be believed. So far as other details deposed to by her are concerned, I would consider it unsafe to rely on her testimony. I would, therefore, hold that this witness saw some passengers come to the back of the Birla House in a taxi which was parked there and which was the same as P.W.14 claims to have driven, that she also saw Madanlal, Karkare, Nathuram, Apte and Badge at or near the Birla House that evening and that she also saw Madanlal ignite the gun-cotton slab.

The main attack levelled against the evidence of Chhotu Ram was that, according to him, Karkare, when he came to him and had a talk with him, had a bag which appeared to have something heavy in it. It was pointed out that Badge in his evidence about the events which are said to have taken place at the Mahasabha Office and at the Marina

Hotel

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Hotel had mentioned only two bags, ~~xxx~~ viz. his own which with its contents was handed over to Karkare and Madanlal at Bombay on the 15th *January, which came back into his possession at the Marina Hotel after the stuff contained therein had been distributed for use that evening, and which he had left in the taxi with the two revolvers wrapped in a towel put in it; and the other that of Gopal which the latter had left in the cupboard in the Mahasabha Office; and that no reference had at any stage been made to any other bag being with Karkare which he could be carrying when he met Chhotu Ram. It was accordingly urged that the latter's evidence should be rejected as wholly untrustworthy and concocted.

I do not at all feel impressed with the above argument. The fact that Badge has made no mention of any bag other than his own and that of Gopal, or had not referred to Karkare having ~~any~~ any other bag, does not necessarily lead to the inference that Karkare did not or could not have a bag when he went to Birla House. His own and Gopal's bag were mentioned by Badge because of their association with some stuff which otherwise figures very prominently in his evidence, Karkare may have had an empty bag with him when he went *to the Marina Hotel, and Badge may not have mentioned it because of its not being connected with any incident regarding which he was giving evidence. He may not even have noticed it, or it may be that Karkare had no bag in the Marina Hotel but purchased one while on his way to Birla House. After all the bag which according to the witness was with

*P.341.

*P.342.

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with him was an ordinary khaki cloth bag which has become so very common now and which is generally found to be on sale almost anywhere and everywhere. The heavy thing appearing to be contained in it might have been the hand-grenade which according to Badge, had been made over to Karkare, and, for ought one knows, the bag might have been purchased just for the purpose of carrying the grenade, in it. Be that as it may, I cannot consider this so-called discrepancy between the approver's testimony and that of Chhotu Ram any sufficient ground for rejecting the latter's evidence or for holding him to be a liar.

It was faintly suggested that Chhotu Ram, and also Bhur Singh, should not be believed because of their being interested witnesses, they being the employees of Birla family. I cannot possibly imagine that the aforesaid family has any personal interest in the case or that they would stoop to asking their employees, either directly or indirectly, to give false evidence to get innocent people convicted even, though it be of the offence of conspiracy to murder Mahatma Gandhi.

As has been noticed above, the witness identified Mathuram on the 7th February and Apte and Karkare on the 28th February at Delhi. I see no reason to doubt the genuineness of these identifications. I am, however, doubtful if it will be at all safe to attach any weight to the result of his identification at the parade held at Bombay on the 30th March 1948 when he identified Shankar and two wrong persons and could not identify even Badge with his long hair and long beard. No doubt it is possible to regard this as an indication of the witness's honesty. It is, however, equally possible that

that by reason of lapse of time the witness had lost all recollection of the features of the persons whom he had actually seen on the 20th January and picked out Shankar only due to some description heard by him en route having stuck in his memory. Be that as it may, to be on absolutely the safe side*I would ignore the identification by this witness of Shankar at the Bombay parade and would only hold that the presence of Nathuram, Apte and Karkare at the Birla House at the material time, and also the fact of Karkare having approached him with a request for being allowed to take Mahatmaji's photo from inside his room is duly proved by the evidence of this witness.

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Nothing in particular was urged against the evidence of Bhur Singh except that the description that he had given in his statement, made to the police on the day the explosion had taken place, of the person who had talked to Chhotu Ram and had asked to be allowed to take a photo from inside his room, did not tally with that of Karkare. This appears to be correct. That, however, only shows that the witness had no clear idea as to the person who had made such a request to Chhotu Ram. Either he was confusing him with some one of the others whom he had seen loitering about in front of their quarters or, it may be, he himself had not actually seen the men and having heard Chhotu Ram talk about such a request having been made to him by one of the persons who had been seen moving about in front of the servants' quarters, just connected the incident with some one out of those.*Be that as it may, in the circumstances I would accept his testimony only so far as it proves the presence of some of the persons concerned at the Birla House at the material time. As has

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has already been noticed he identified Apt. and Karkare at Delhi on the 28th February and Badge, Nathuram, Gopal and Madanlal at the identification parade held at Bombay on 31st March, 1948. I have not been able to discover any reason for not accepting the several identifications by him as genuine. Madanlal he could not possibly forget because he was one of the persons who had actually seized him. It is difficult to imagine that he was able to identify four persons whom he had never seen before, without making any mistake, merely by reason of the accounts of their respective descriptions which he might have heard from some of his co-passengers or police-men accompanying them while on their way to Bombay by train. Being a watchman he may be expected to have some aptitude for closer observation and retaining recollection of the faces of persons seen by him at Birla House. I would, *therefore, *P-346 hold the presence of all the persons identified by this witness at the Birla House at the material time proved.

It is, of course, not denied that Madanlal did explode a gun-cotton slab near the back gate of the Birla House and it is also not denied that a live hand-grenade, immediately ready for use, was recovered from the right hand inside pocket of the coat which he was wearing at the time. It is also not denied that the gun-cotton slab so exploded and the hand-grenade so recovered had come from Badge. Madanlal stated in his statement before the learned Special Judge that he was given one gun-cotton slab and one hand-grenade fully assembled and ready for action by Badge in the morning of the 20th January when he had met him in the refugee camp where he had gone to contact some people who were known to have been doing propaganda for staging a demonstration at

at Mahatma Gandhi's prayer meeting. Badge told him that he had come to Delhi for sale of arms, ammunition and explosives to the refugees, and, showing him a trunk containing quite a large quantity of such stuff, gave the above mentioned articles to him as samples for sale to the refugees.*He further stated that, on getting the above articles, it struck him that it would be better to explode a gun-cotton slab at a safe distance from Mahatma Gandhi and to court arrest thereafter to be able to bring to his notice the grievances of the refugees.

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This explanation given by Madanlal as to how he came in possession of the gun-cotton slab and the hand-grenade is obviously most fantastic. It is in the first instance inconceivable that a shrewd man like Badge would involve himself in unnecessary risk by venturing to bring such stuff for sale all the way from Poona to Delhi. It was hardly necessary for him to do so, seeing that he had quite ample market in Poona for all the stuff that he could manage to secure. It is no less inconceivable that he would part with one hand-grenade and one gun-cotton slab to Madanlal gratis merely with the object of enlisting his help in canvassing purchase of the stuff by refugees. It is equally inconceivable that he would keep a trunk-load of such stuff in an open place like a barrack in a refugee camp. It is still more inconceivable that he would keep the hand-grenades fully assembled and immediately ready for action.

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Far

Far more inconceivable it is that Madanlal himself would carry such a hand-grenade in the pocket of his coat the whole day and even while going to the Birla House to do a very desperate act. On his own showing he wanted to court arrest by exploding the gun-cotton slab. He could not but have known____even the most stupid man could not but know____that if such a dangerous explosive, fully assembled and ready for action, were to be found on his person at the time of his contemplated arrest no sane man would be prepared to accept his protestations as to his having come there with an innocent intention and merely with the object of being able to place the grievances of the refugees before Mahatmaji. I have, accordingly, not the slightest hesitation in rejecting the explanation of Madanlal as to how he had come in possession of the slab and the grenade.

It is also not now denied that the coat Exhibit 15 which, according to the prosecution, Madanlal was wearing at the time of his arrest and from which the hand-grenade was recovered, is Apte's coat. Although Madanlal denied that being the coat which was recovered from his person at the time of the search on the 20th, this*denial seems evidently to be merely an afterthought. At the time evidence was
being

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being led to prove that Exhibit 15 was that coat no such suggestion was put forward either on Madanlal's or on Apte's behalf. S.Daswanda Singh, Inspector of Police, P.W. 117, who had conducted the search, Mr. Sahaney, a Punjab Magistrate, P.W.18, and Bhur Singh P.W.17, witnesses to the search who had attested the recovery memo Exh.P.32, expressly stated that Exhibit 15 was the coat recovered from Madanlal's person at the time and not a single question was put to any of them to indicate that this part of their statements was being or was intended to be challenged. It seems that up to the time Dabke P.W.105, the tailor who had prepared the suit including the coat Exhibit 15, was examined as a witness and proved beyond doubt that the aforesaid coat was Apte's, and particularly in view of the fact that even Badge, while giving evidence as to change of dress by Madanlal and others at the Marina Hotel before leaving for Birla House, had not stated that Madanlal had put on Apte's coat, the precise implications of the coat Exhibit 15 having been recovered from Madanlal's person

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person had not been realised. It was, after the evidence of P.W.105 that such implications did come to be realised, and, to meet the situation, first Apte said in his statement in Court that he had given the suit to the Chambur refugee camp, the suggestion presumably being that Madanlal who did go to and stay at that refugee camp about that time might have got it from there. Madanlal, in his turn, denied outright Exhibit 15 being the coat recovered from his person.

It is quite true that the evidence led by the prosecution to prove the recovery of the trousers Exh.67, the counter part of the coat Exhibit 15, from the possession of Apte on 16th April 1948, while he was detained in the new C.I.D. buildings at Bombay, is exceedingly unsatisfactory and suspicious. Apte was arrested on 14th February 1948 and admittedly all the articles recovered from his person or from the room in the hotel wherefrom he was arrested are to be found mentioned in the relevant recovery memos Exhs. P.117, P.125 and P.227. The coat Exhibit 15 was taken to Bombay by Mr. C.A. Pinto, Inspector of Police, C.I.D., P.W.135, on 9th April 1948. Mr. Nagarwala says

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says that he had sent a party to Poona in order to trace the trousers corresponding to the coat Exhibit 15 but without any success. The house of Apte at Poona was searched twice under instructions from Mr. Nagarvala, once on the 31st January and a second time in the first week of April, 1948 and nothing of importance, certainly not the trousers in question, was recovered. The story as to the sudden and the dramatic recovery of the trousers Exhibit 67 on 16th April 1948 is thus told by Vinayak Shankerrao Dalvi P.W.106, one of the witnesses to the recovery :-

" I had been called to act as a Panch. It was on 16th April 1948. I was first taken to the room of Mr. Nagarvala. There were two more persons there also to act as ' Panches'. Mr. Nagarvala showed us a coat. The coat is before the Court, and is Exhibit 15. The coat bears my initials and the initials of the other two panches as well. It bears the signatures and not the initials. Mr. Nagarvala showed us the coat. He then asked me to ascertain the name of a certain individual. Mr. Nagarvala then took us to another room. I saw a person sitting in that room. He is present in Court (pointed towards Narayan Dattatraya Apte). The coat was also taken to that room. I first asked that individual as to what his name was. He said that

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that his name was Narayan Dattatraya Apte. I asked him as to where was the pair of trousers corresponding to the coat: Exhibit 15. Apte thereon took out a key-ring containing two keys from inside his pocket. He opened a trunk therewith and took out a pair of trousers. Ext: 67 is the pair of trousers. It bears my signature

and also the signatures of the other two panches. A Panchnama was prepared thereafter. It was signed by me and also by the other two panches.

Exhibit P.221 is the panchnama

It would indeed be to draw too much on the credulity of the Court to expect it to swallow the story that all of a sudden, one fine morning, the trousers, which had so far quite successfully defied all the efforts of the police to trace it, were found lying at the top in a trunk which had quite mysteriously found its way into the room, and the keys whereof equally mysteriously found their way into Apte's pocket. No attempt was made to explain how and when the trunk reached Apte's room. The suggestion appears to have been that some time after the first week of April 1948 when relations of the accused were allowed to interview *them in the new C.I.D. buildings, some relations of Apte must have brought or smuggled this trunk-load of clothes containing the trousers. He must indeed be a very wise and prudent relation of Apte, and also genuine well-wisher of his, who brought the trousers which was so badly needed by the police and which they had failed to discover till then, and put it at the top of everything else contained

*P.353

in

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in the trunk. This seems to be the most suspicious--
 I would not use a stronger word---spot in the
 investigation in this case which otherwise appears to
 to
 me have been conducted with conspicuous fairness, and
 Mr. Daphtary, quite properly, made no attempt
 whatsoever to support the evidence regarding this
 recovery.

However suspicious the circumstances
 about the recovery of the trousers may appear
 be, I find myself unable to accept the contention
 that, on that ground alone, it should be held that
 the coat Exhibit 15 had not been recovered from
 Madanlal at the time of his arrest. The evidence as
 to such recovery is on its face quite satisfactory and
 remained wholly unchallenged in cross-examination.

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In this connection it has to be remembered
 that if it is to be assumed that the coat Exhibit 15
 has been substituted for the one originally recovered
 from Madanlal, it must also be assumed that the
 substitution had taken place long before Badge was
 examined. Why did not then the prosecution make the
 latter say that Apte's coat had been put on by
 Madanlal at the time they decided to change their
 clothes and that Exhibit 15 was that coat? Such
 a statement could, if the prosecution were at all
 anxious to fabricate evidence, quite easily have
 been put into the approver's mouth and would
 otherwise have amply fitted in with the other
 evidence given by him on the subject.

Corroboration of Badge's evidence as to Shankar
 having under his instructions kept somewhere in the
 jungle behind the Hindu Mahasabha Office first the
 two hand-grenades which were in his own pocket, the
 one intended to be thrown by Badge and the other by
 himself,

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himself, and then the contents of Gopal's bag left in the cupboard in the Mahasabha Office, is furnished by the recoveries made from that jungle on 12th February 1948 by Shankar.

D. Daswanda Singh, Police Inspector, New Delhi,

P.W. 116 has deposed that on 11th February 1948

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Shankar Kistayya took him and some other police officers including Mr. Nagarvala along with two search witnesses to the back of the Hindu

Mahasabha building and certain articles were recovered from behind the said building, the

articles recovered being three hand-grenades,

one gun-cotton slab, twenty-five cartridges and

one detonator. The witness has further stated

that these articles had been recovered from two

different places and that Exhibits P.41 and P.42

are the two recovery memos in regard to the

recovery of the said articles. The witness proved

his signatures on the recovery memos. Chaman Lal

Grover who attested the two recovery memos was

also examined as a witness for the prosecution

and supported the evidence given by S. Daswanda

Singh on the subject.

According to Exhibit P.41 after removal of some sand and pebbles the following articles were recovered from one place :-

(1) One live hand-grenade with pin;

(2) a rectangular white gun-cotton slab;

(3) a fuse with a gun powder stick on one side in black colour; and

* (4) 25 revolver cartridges of .38 bore wrapped up in two pieces of paper. *P.356

According to Exhibit P.42 two live hand-grenades with pin

intact

intact were recovered from another place after removal of four big stones from the eastern bank of the ravine and from underneath those stones. The recoveries mentioned in Exhibit P.41 evidently represent the contents of Gopal's bag, who it appears, without the knowledge of his comrades, and surreptitiously, left the hand-grenades allotted to him in the bag, which before that, as deposed to by Badge, contained the spare stuff namely the spare fuse wire, the spare gun-cotton slab which it was decided was not to be used and some cartridges. The rest of the stuff mentioned in P.41 is clearly that spare stuff.

The two hand-grenades mentioned in P.42 are evidently the two grenades which according to the evidence of Badge were in the pocket of Shaukar when he himself and the latter stood near the place where the prayer meetings were being held on the right side of Mahatma Gandhi.

One thing very remarkable about the three hand-grenades recovered from the jungle is that all three of them were, like the one recovered from Madanlal's pocket, like grenades fully assembled and ready for use. This wholly eliminates the suggestion of the defence that possibly this stuff, brought for sale, had been buried by Badge or under his instructions as was his practice at Poona. Had that been so the hand-grenades and the detonators would have been separately buried to eliminate the danger of automatic explosion. With these may be compared the stuff recovered from P.W. 120 to whom the bundle containing the same had been made over by Ganpat Sambhaji Khatat P.W. 81 on 16th January 1948 after the same had been entrusted to the latter by Badge

before

before leaving Poona. The details of the stuff are to be found in P.219, the relevant recovery memo. It will appear from a reference to the above-mentioned document that the bundle recovered from the possession of P.W.120 contained two hand-grenades, of course, completely fitted but without detonators fixed in them and two detonators in two separate packets each of which also contained a fuse.

The present seems to be the proper stage for dealing with the two contentions which were raised before the learned Special Judge *P.358 and which were also stressed in this Court by Nathuram as well as by some of the counsel for the other appellants. It was urged, in the first instance that the story of the approver as to it having been decided at the conference held at the Marina Hotel that two revolvers should be fired and five hand-grenades should be thrown at Mahatma Gandhi was too fantastic to be true, that it was not at all necessary to use all the seven missiles to take the life of only one man, that the five hand-grenades on exploding would have killed, not only Mahatma Gandhi but every one present at the meeting, including the assailants themselves, and that it was extremely improbable that the appellants conceived a plan which would have necessarily involved so much loss of life and would have jeopardized their own safety. The next contention was that assuming that Madanlal and all others who had gone to the prayer ground were acting in concert with each other, the fact that no hand-grenade was actually thrown by anyone on Mahatma Gandhi and no revolver was fired at him showed that they had not gone there with the object of committing murder but only with the object of staging some kind of demonstration.

*P.359.

*demonstration. It was suggested that the fact of Madanlal having made no attempt, after having ignited the gun-cotton slab, to rush into the prayer ground in order to do the next part assigned to him, namely, throw the hand-grenade on Mahatma Gandhi, was consistent only with his having exploded the slab not as a preliminary to a more drastic action that was proposed to be taken but only with the object alleged by him.

In dealing with the first contention the learned special Judge observed that his general impression was that it was not really the intention of Apte, Nathuram and Karkare that anybody excepting Badge and perhaps his servant Shankar and Madanlal should do anything, that it was not intended that any of the others should throw any hand-grenade on Mahatma Gandhi and that the others were in fact anxious to keep themselves wholly in the background to save their own skins and wanted to make a scapegoat of Badge and Madanlal. To the observations made by the learned Judge

*P.360

very strong exception was taken, especially by Nathuram who quite vehemently urged that he was * constitutionally incapable of such perfidy to his comrades. I must say that I myself am not impressed with the view expressed by the learned Special Judge, although it does appear to find some support from the fact of Gopal having left his hand-grenade in the bag which he kept in the cupboard at the Mahasabha Office. My own view is that all the missiles were in fact intended to be used as planned at the Marina Hotel and that Gopal had left the hand-grenade in the bag without the knowledge of the others

others by reason of his having become funky, just as Badge according to his own testimony left the revolvers in the taxi. The underlying idea of the plan as originally conceived was to ensure the escape of all the participants. It was expected that on hearing the sound of the explosion of the gun-cotton slab almost everybody excepting Mahatmaji himself would quit the prayer ground, and in panic, rush to the place from where the sound came. In the interval of about a minute or 1½ minutes which according to the evidence given in the case by the explosive experts must take place between the ignition and the actual explosion Madanlal was to rush in and join his co-adjutors and all of them were to throw the hand-grenades on Mahatma Gandhi left alone *and were themselves, taking advantage of the *P.361 interval which though exceedingly short according to the evidence of the experts must invariably precede the explosion, to make good their escape. All the hand-grenades were presumably intended to be thrown partially because the authors of the plan did not want to take any chances-- wanted to provide against the possibility of one or more hand-grenades actually not exploding or not hitting Gandhiji, but chiefly because it was believed that the simultaneous explosion of so many grenades would cause too much panic and confusion for anyone to take notice of the perpetrators of the crime or to pursue them because everybody present near the prayer ground where the hand-grenades were to explode would become anxious for his own personal safety, and would hesitate to go anywhere near where the explosion

did

did take place. It may be that the plan as conceived was not quite realistic and that, if given effect to, would not have had the desired result and would not have ensured the escape of the prospective assailants from arrest or personal harm. But then we must remember that *the originators of the plan do not appear to have had any previous experience in similar matters and therefore may well have erred and miscalculated.

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As for the fact that no hand-grenade or hand-grenades were in fact thrown as originally planned, one reason for this seems to have been that the confusion amongst the audience at the prayer meeting which was presumably intended to be the sine qua non of the execution of the rest of the plan, and which was expected to ensue on the explosion of the gun-cotton slab, did not in fact so ensue. The evidence shows that not more than six or seven persons moved from the prayer ground on hearing the sound of the explosion. Mahataji, of course, was not expected to, and in fact did not stir. He raised his hand presumably with the object of asking the audience not to be upset by what they had heard and to keep to their places. His signal seems to have had the desired effect, and, as stated by Mr.K.N.Sahaney P.W.18 the prayer continued even after the explosion and there was no commotion at all except at the edge of the crowd, and that also almost negligible. The expected commotion and confusion under the cover whereof the rest of the plan was presumably

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intended to be executed* having not taken place, no further attempt was, quite naturally, made to put it through. Madanlal, inexperienced youth that he was, appears to have become non-plussed by what he had done and could not probably avail himself of the very short interval between the ignition and the explosion of the slab to rush

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in to do the rest of the job assigned to him, and in the meanwhile had been seized by persons who had, in order to get to the scene of occurrence without any unnecessary loss of time, jumped over the boundary wall.

Another reason for the non-execution of the plan, apart from the nonfulfilment of what was intended to be a condition precedent for its execution, appears to have been implicit in the plan itself. Nathuram and Apte, perhaps the most determined amongst the actors in the plan, the real originators of the plan, had no weapons, and had been assigned a part, which though very important in itself and almost vital, could achieve nothing unless others cooperated. Gopal appears to have become funky almost the moment he left the Marina Hotel and at the prayer ground was not in possession of any hand-grenade. He had a used Badge who was perhaps most vociferous at the Marina Hotel conference and seems to have throughout pretended to be the most enthusiastic of all who are said to have been in the plot, and had insisted on the most important jobs being assigned to him and his servant, appears to be essentially a coward and a very mercenary man for whom his personal safety and his own pecuniary gain are primary considerations in all matters. It is quite obvious from his own evidence, if it is read between the lines, that he had, when he left the revolvers in the taxi and made over his hand-grenades to Shankar, decided not to do anything at all. Madanlal, as we have already seen, had probably lost the slight chance that he had of getting in and reaching the prayer ground. That left only Karkare who perhaps

waited

waited for Badge to take the initiative and was probably also otherwise unnerved.

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*For the foregoing reasons, I am unable to see anything in the conduct either of Madanlal or the rest of the persons concerned which may reasonably be deemed to be inconsistent with those persons having gone to the Birla House with the intention and object ascribed to them by the prosecution.

Having dealt with the events up to the 20th January, 1948, I come now to the events which took place after that.

It is not disputed that after the explosion at the Birla House Apte and Nathuram left hurriedly for Kanpur by the night Express travelling by first class, and that on arriving at Kanpur they stayed in the retiring room at the Railway Station up to 11-20 a.m. on 22nd January. It is accordingly not necessary to refer to the evidence of P.W.45, P.W.46, P.W.47 and P.W.134 on the subject.

Some evidence was led in the Court below by the prosecution to Prove that Karkare and Gopal stayed for the night at the Frontier Hotel which is situate quite close to the Railway Station and left at 8 a.m. next morning. The learned Special Judge seems to have rejected this evidence, and it has not been relied on by Mr. Daphtary in arguing the appeal. Neither party having, before us, taken up the position that the two had spent the night at the Frontier Hotel, it does not appear to be necessary to deal with that evidence or to express any opinion regarding thereto.

*P.366

Some evidence was also led to show that Gopal was at Poona on the 22nd January and that, while here, he made over a revolver to one Pandurang Vinayak Godbole P.W.85, an employee of the Udyam Engineering Company Limited who in turn handed it over to Govind Vishnu Kale

P.W.88,

P.W.88, a friend of his, the latter having thrown away the revolver on some road. The learned Special Judge declined to rely on this evidence. I see nothing wrong or improbable in the evidence of these witnesses and do not feel inclined to agree with the learned Special Judge's appreciation thereof.

In view, however, of the fact that the learned Special Judge has acquitted all the accused of the charges of having transported to Delhi, and of being in possession of, while at Delhi, a revolver or revolvers, as well as of the abetment of the one or the other or both of the above offences, and the Crown has not chosen to appeal from that acquittal, it is scarcely necessary for me to express any final opinion on the subject, because I feel that, in the circumstances, we have to proceed on the assumption that possession by Gopal at Delhi of a revolver had not been proved and the evidence of the *above mentioned witnesses appears simply to have been *P.367 intended to explain the disposal by Gopal of the revolver of which he was alleged to have been in possession at Delhi.

It is also not disputed that Apte and Nathuram stayed at the Arya Pathik Ashram at Bombay on the 23rd January, Apte having secured accommodation under the assumed name of D.Narayan for himself and a friend, whose name or identity was, however, not disclosed. It is again not disputed that on the 24th January Nathuram secured accommodation for himself and Apte at the Elphinstone Annexe Hotel under the assumed name of N. Vanayak Rao, Apte's name not having been disclosed at all. Apte, however, admittedly spent the night of the 24th with a lady friend of his at the Arya Pathik Ashram and shifted to the Elphinstone Annexe Hotel in the morning on the 25th January.

Some evidence was led by the prosecution to prove that

that Gopal visited Nathuram and Apte during their stay at the above-mentioned Hotel. Evidence to this effect was given by G.V.Malekar P.W.64, a bearer in the aforesaid Hotel, who identified Gopal at the identification parade held at Bombay on the 2nd March 1948. According to his *witness, Gopal had come to visit the two passengers staying in room No.6. The witness further deposed that a lady had also visited the said passengers. These passengers were identified by the witness as Nathuram and Apte. In cross-examination the witness expressed his inability to say on which date or dates the male and the lady visitors had come but he was quite sure that they had not come the same day and that the lady had come the day after Gopal's visit. He, however, added that the male visitor had most probably come at 9 p.m. on the 25th January and the lady visitor on the day next following. We will presently see that the prosecution has led other evidence to show that Gopal was at Thana at the house of G.M.Joshi at the aforesaid time on the aforesaid date, had in fact been there since 4 p.m. on that date and left for Poona from there after 10 p.m. the same night. In view of that evidence the suggestion of the prosecution was that Gopal must have visited the Elphinstone Annexe Hotel at 9 p.m. on the 24th January and not the 25th January. Having regard, however, to another part of the evidence of the witness it seems to me to be impossible to accept the suggestion. In his examination-in-chief, the witness made the following statement:-

*P.368

*P.369

* " On 24th January 1948 I saw those two passengers when they arrived at the Hotel. I then saw them on 25th January 1948 at about 7 a.m."

According to the entry in the Visitors' Register
Ex.

Ex.P.104 the passengers had arrived at the Hotel at 2.15 p.m. on the 24th January. From the above statement of the witness it seems to be quite clear that he did not see the passengers, or go into their room, at any time between 2.15 p.m. on the 24th January and 7 a.m. on the 25th January. This should exclude the possibility of his having seen Gopal in their room at 9 p.m. on the 24th January. Mr. Daphtary urged that the word "then" in the above statement had been unnecessarily introduced by the learned Special Judge, not to convey the sense which its use should ordinarily connote but because the learned Judge had developed the habit of using it more or less as a matter of routine. I am afraid I cannot accept this suggestion of Mr. Daphtary. In any case, he himself could not possibly have missed the obvious implication of the use of the word in this context and he ought to have clarified the matter by re-examination. I have no alternative, in the circumstances, but to reject the evidence given by this witness as to Gopal having visited his brother and Apte in the Elphinstone Annexe Hotel.

There is, however, evidence which shows that Nathuram Apte, Karkare and Gopal met at Thana on 25th January, although it is not known and naturally could not be known which actually took place, was discussed, or decided when they met. The evidence on the subject has been given by Vasant Gajjanan Joshi P.W.79 who is admitted by Karkare to be related to him and who is the son of G.M. Joshi, the proprietor of the Shivaji Printing Press who was at Ahmadnagar for several years employed as a teacher in the same school in which Apte was a teacher of

Mathematics.

*P.370

Mathematics. According to Vasant Joshi, Karkare arrived at their house at some time between 5 and 6 a.m. on the 25th January and after some talk with G.M. Joshi the witness himself was sent to Bombay for the purpose of despatching a telegram. The telegram that he was expected to despatch from Bombay was, according to him, written out on a piece of paper by his father. It being a Sunday probably there was some difficulty in sending a telegram from the local Telegraph Office and it was presumably on that account that the witness was deputed to despatch the telegram from the Central Telegraph Office at Bombay. The witness went to Bombay by train and it took him about an hour and a quarter to reach the Telegraph Office. He copied the message written out by his father on a telegraph form and handed in the same to the Telegraph clerk for being *transmitted to the destination. He identified Ex.P.134 as the telegraph form as filled in by him. A reference to Ex.P.134 shows that it was an Express telegram addressed to Apte, Anandashram Poona, and purported to have been sent by Vyas. It recited :- "Both come immediately." The telegram bears date 25th January 1948 and there does not appear to be any reason to doubt the truth of at least this part of the evidence of Vasant Joshi, corroborated as it is by Ex.P.134. It seems that when Karkare arrived at the house of G.M. Joshi, he did not know the whereabouts of Nathuram and Apte and was under the impression that they had in all probability proceeded to Poona. It was for this reason apparently that the telegram was sent to Apte's Poona address asking both him and Nathuram to reach Bombay immediately.

*P.371

The witness goes on to say that Gopal Godse, the brother of Nathuram Godse, arrived at their house at

4. p.m.

4 p.m. the same afternoon when he had a trunk with himself; that at 9 p.m. Nathuram and Apte also arrived; and that the four, namely, Nathuram, Apte, Karkare and Gopal had some talk amongst themselves. According to the witness, Apte and Nathuram left about half an hour later and Gopal left for Poona at some time after 10 p.m. the same night. Karkare according to the witness left their house in the morning on the 26th January. *P.372

The witness admitted having seen Nathuram and Gopal for the first time on the 25th. Karkare and Apte he of course knew before.

The evidence of this witness was attacked mainly on two grounds. It was urged, in the first place, that his father G.M. Joshi, although cited as a witness and actually present at Delhi, was not produced, the explanation given by Mr. Nagrvala for not producing him being simply that he had been advised by the Crown counsel that his evidence would be unnecessary and superfluous in view of the other evidence already produced. It was next contended that he was not made to attend any of the identification parades although according to him Gopal and Nathuram were not known to him before. It was urged that in the absence of identification of the aforesaid two persons by the witness at any of the identification parades his evidence with regard to their presence at their house on the 25th January 1948 should not be accepted. I am, however, unable to see any force in either of these contentions.

The failure of the prosecution to examine G.M. Joshi, the father of the witness, although he was

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present

*P.373.

present in Delhi, and presumably had also attended the Court; cannot necessarily give rise to the inference that the witness is not telling the truth. As observed before, the witness is admittedly related to Karkare and his father was on fairly intimate terms at least with Apte. He could possibly have no motive to give false evidence against them and there is otherwise no reasonable ground for assuming that he is not speaking the truth. As has already been seen, his evidence regarding Karkare's visit to their house receives very strong support from the telegram Ex.P.134 for which no explanation at all was suggested either by Nathuram or by the learned counsel for the appellants beyond drawing out attention to the witness's statement that the money for despatching the telegram had been paid to him by his father and not by Karkare. I for one fail to see how that circumstance can possibly detract from the weight otherwise due to Ex.P.134. The telegram although paid for by G.M.Joshi was not sent on the latter's behalf or in his name but on behalf and in the name of Vyas which was Karkare's assumed name. It may be that Karkare had no ready money at that time, or otherwise requested G.M.Joshi to pay for the telegram.

telegram.

*There is evidence that Nathuram and Apte had *P.374

been visiting G.M.Joshi before and I do not find any-

thing unusual, unnatural or strange about their having

visited his house on the 25th January. After the

frustration of their plan at Delhi on the 20th and

after having hurriedly left that place they must

naturally have been anxious to know something regarding

the whereabouts of Karkare, and they presumably

knew that the best place in Bombay or in the suburbs

thereof where to look for Karkare or for his whereabouts

was G.M.Joshi's house at Thana. Gopal also when in

Bombay would naturally be on the look-out for his

brother and Apte and could reasonably expect to get some

information about them from G.M.Joshi's place. It,

therefore, seems to me to be quite natural for Gopal,

Nathuram and Apte to have gone to Joshi's house at Thana.

It being a Sunday his Press in Bombay could possibly be

not working and therefore in order to contact him they

had to go down to Thana.

As for the omission to make Vasant Joshi attend any of the identification parades the matter does not appear to have been put to Mr. Nagarvala or any other investigating officer who gave evidence in this case. In the circumstances, it is not possible to find out what the reason for this omission on the part of the police was,

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*P.375

* It may be that on account of G.M.Joshi's relationship with Karkare and admitted intimate relations with Apte it was assumed that his son was well acquainted with not only Karkare and Apte but also with Nathuram and Gopal and that it was therefore unnecessary, superfluous and redundant to make him attend an identification parade for the purpose of identifying any of them. Be that as it may, I do not consider that to be a sufficient ground for rejecting the evidence of this witness. I accordingly hold that Karkare, Apte, Nathuram and Gopal did actually meet at the house of G.M.Joshi at Thana on the 25th January 1948.

It is not disputed that at some time on the 25th January 1948 Nathuram and Apte reserved two seats for them at the Air India Office in the plane that was to leave for Delhi in the morning of the 27th January under the names D.Narayan Rao and N.Vinayaka Rao. Ex.P.264 is the reservation slip and Exhs. P.265 and P.266 are the original tickets purchased by them on the occasion.

It is not disputed that both Nathuram and Apte visited Dada Maharaj and Dixit Maharaj in the morning on the 26th January and also attended a meeting held at their place the same evening in order to consider the situation created by the incursion of some Pakistan forces into the Jaiselmir territory. According to both Dada Maharaj and Dixit Maharaj they asked for a revolver in the morning and according to Dixit Maharaj a request for a revolver was also repeated in the evening. Nathuram and Apte, of course, while admitting the fact of having met both of them in the morning as well as in the evening, denied having made any request for a revolver to either of them at any time.

*P.376.

Dada Maharaj, or to be more accurate ~~Govind Chao~~ Krishna Jiwanjee Maharaj P.W.69 says that when ~~meeting him~~ at his house on the morning of the 26th January 1948 Nathuram and Apte ~~requested~~ requested

requested him for a revolver, he asked them as to why they particularly wanted a revolver and was told in reply that he would see what they were going to do with it. He says that having lost his confidence in Apte by reason of his having discovered that he talked a lot and did nothing he did not give him any revolver.

Dixit Maharaj F.W.77 says that when Apte and Nathuram met him in the evening after the conclusion of the meeting held at their place in connection with the Jaisalmer State he enquired from them how having proceeded to Kashmir they had managed to come back so soon. He was told by them that they had purchased arms and ammunition worth Rs.30,000/- and Rs.40,000/- for sending to Kashmir, that they had been able to despatch half the stuff beyond Delhi and had come back to make arrangements for the despatch of the remaining half, and that they wanted a revolver as it would be unsafe to travel without one beyond Delhi. The witness expressed his inability to help them on account of his ill health. They, however, insisted on the witness doing something to get them a revolver by that evening. According to the witness Apte showed him a revolver which appeared to be the same as had been shown to him by Badge some seven or eight days earlier, told him that the same had been purchased for Rs.325/- and said that they wanted one more revolver.

It has been seen in an earlier part of this judgment that Dada Maharaj or Dixit Maharaj owed one revolver or one pistol to Apte who had handed over two pistols to Dada Maharaj some time before for having them exchanged for two revolvers. One of these pistols Dixit Maharaj had disposed of, while the other had been returned by Dada Maharaj to Apte. It seems that this fact of one pistol belonging to Apte having been disposed of by Dixit Maharaj and no pistol or revolver having been given to him in exchange therefor was really the background of repeated requests made by Apte to

*P.378.

to *both the brothers for a revolver or a pistol, although by reason of their position and status in society Apte appears to have refrained from adopting an aggressive attitude, and, instead of demanding a revolver or a pistol as of right, he used more polite and more courteous language and asked for one as a favour. In view of the fact that a revolver or a pistol was actually due to Apte from the two brothers, I consider it very likely that, whenever he met them, in one form or another he requested them or whichever of them happened to meet to let him have the revolver. I accordingly see no reason to disbelieve the evidence of Dada Maharaj or of Dixit Maharaj as to the request for a revolver having been made that day to Dada Maharaj in the morning and Dixit Maharaj in the evening by Apte and Nathuram.

It is admitted that both Nathuram and Apte left Bombay for Delhi by plane which took off at 9 a.m. It is accordingly not necessary to refer to the evidence of P.W.71 and P.W.125 on the subject. The plane arrived at Palam Aerodrome at 12-40 p.m. vide Ex.P.259, the Watch Log kept at the aforesaid Aerodrome.

*P.379.

*It is the prosecution case that having arrived at Delhi at 12-40 p.m. on the 27th January, the two left for ~~Gwalior~~ by the G.T.Express which, according to the evidence of Madhusudan Gopal Golvalkar P.W.84, the Booking Clerk of ~~Gwalior~~ Railway Station, would have left Delhi at 3.20 p.m. and which according to the same witness reached ~~Gwalior~~ at 10.38 p.m. though it was scheduled to arrive there at 9.56 p.m. Both Nathuram and Apte admitted having left for Gwalior on the 27th but their case was that they left not by G.T.Express but by some night train and arrived at ~~Gwalior~~ at about 5 a.m. on the 28th January. I must say that on this subject the prosecution story seems to me to be far more probable. If before arriving at Delhi, and in fact even before, or at least while, leaving Bombay, they had decided, as they say they had to go to ~~Gwalior~~, there was

was no reason for them to wait, on arriving at Delhi, till night, when a train was due to leave for ~~Gwalior~~ in about three hours time after their plane had landed at the aerodrome. It is not suggested that they had any thing particular to do at Delhi that evening or that they in fact did anything at that place.

The prosecution relies on the testimony of two tonga drivers Ghariba P.W.43 and Jumma P.W.44, in support of their case on the above subject. According to the testimony of Ghariba, two or three days before the assassination of Mahatma Gandhi two passengers whom he had identified at the identification parade held at Bombay on 3th April 1948 as Apte and Nathuram, got down from Bombay Express and engaged his tonga at about 11.30 p.m. The passengers wanted to go to Dr. Parchure's house. The straps of the harness of the witness's tonga having got broken after going a few paces he handed over the passengers to Jumma P.W.44 for the purpose of taking them to their destination. *P.380

Jumma P.W.44 has given evidence to the effect that he actually carried the passengers who had been handed over to him by Ghariba in the circumstances deposed to by him to the house of Dr. Parchure. This witness was able to identify, at the identification parade mentioned above, Nathuram as one of the persons whom he had taken to Dr. Parchure's house, but he identified a wrong person as his companion on the occasion.

P.W.44 made some conflicting statements as to the time when the two passengers were handed over to him by Chariba. He first said that he had come to know of Mahatma Gandhi's assassination four days after the tragedy and that the passengers had been handed over to him by Ghariba three days before he heard about the assassination. According to this statement, the passengers *P.381

passengers must have been handed over to him by Ghariba on the day following that on which Mahatmaji was assassinated. A little later he stated that he had taken these passengers to Dr. Parchure's house three days after the assassination.

In answers to questions put in cross-examination he, however, stated that he had taken these passengers to Dr. Parchure's house three days before the assassination.

Much capital was sought to be made by Nathuram as well as by the counsel for the other appellants of the fact that according to Ghariba the passengers whom he had picked up from the Railway Station had got down from the Bombay Express. It was urged that in view of this statement, Apte and Nathuram could not have been the passengers referred to by Ghariba, that it must have been some different persons who had come from Bombay side by the Bombay-Amritsar Express which according to P.W.84 arrived at Gwalior at 11.50 p.m. that night; and that the witness was confusing them with Nathuram and Apte. As pointed out by P.W.84 there is only one platform at Gwalior where trains from all sides halt. The possibility accordingly of the witness having erroneously assumed that the two passengers who had engaged his tonga had got down from the Bombay-Amritsar Express which arrived at the Railway Station a little over an hour after the arrival of the G.T. Express from Delhi by which Nathuram and Apte are alleged to have travelled cannot be excluded. It is undoubtedly true that according to the witness his tonga was engaged at 11.30 p.m., i.e., about 50 minutes after the arrival of the G.T. Express but the time given by him does not also fit in with the time of the arrival of the Bombay-Amritsar Express which obviously arrived at the Railway Station 20 minutes after the time mentioned by him. The witnesses cannot be assumed to have a very accurate idea about times and I do not feel disposed to attach much importance to the statement made by him as to
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the train from which the passengers picked up by him had got down, at the time at which his tonga was engaged. The fact remains that he quite clearly identified Apte and Nathuram as the passengers whom he had picked up and I can see no reasonable ground for assuming the identification of them by him to be otherwise than genuine.

This witness was contacted by Shanker Rao Rangrao Mandlik, Inspector of Police, Gwalior P.W. 131 on 6th February 1948. P.W. 131 had returned to Gwalior from Delhi, where he had gone in search of Dandwate, Jadhav and Suryadev Sharma two days earlier, by the Amritsar Express which reached Gwalior Railway Station at 6 a.m., being late by about one hour, and engaged the witness's tonga for carrying him from the Railway Station to his house. It was at that time that he told P.W. 131 that two passengers had got down at the Railway Station whom he had arranged to be taken to Dr. Parchure's house in Jumma's lane. It was on receipt of this information from the witness that his statement was recorded two hours later by P.W. 131.

*P.383.

The night between 27th and 28th January 1948 was a full moon night and if the witness did actually pick up Apte and Nathuram on the Railway Station that night, he may reasonably be expected to remember their features well enough to be able to identify them. The accident that happened to the harness as a result whereof he had to find another conveyance for the passengers and to transfer them to another tonga may have afforded him a further opportunity of observing their features. I can obviously see no reason not to believe the testimony of this witness that it was Nathuram and Apte whom he had picked up from the Gwalior Railway Station in the night of the 27th January. Similarly, I see no reason to doubt the

*P.384

testimony of Jumma as to his having carried Nathuram and

and another person who accompanied him to Dr. Parchure's house. Although the earlier part of his evidence did show some amount of confusion on his part as to the day on which the incident had taken place, yet it was elicited by the counsel for one of the accused in cross-examination that it was really three days before the assassination of Mahatma Gandhi that the incident did in fact take place.

Be that as it may, I do not consider this confusion about the days displayed by the witness to be of any consequence, in view of the fact that he definitely stated that the passengers had been handed over to him by Ghariba and the latter is quite clear as to the date on which the incident took place.

Having regard to the probabilities of the case and in view of the evidence of the above witnesses, I have no hesitation in holding that Apte and Nathuram did arrive at Gwalior in the night on the 27th January and spent the night most probably at Dr. Parchure's house.

Two witnesses, namely, Jagdish Parshad Goel P.W.39 and M.K. Kale P.W.50 have given evidence as regards some of the activities of Apte and Nathuram while they were at Gwalior.

*P.385.

*Jagdish Parshad Goel P.W.39 is a member of Dr. Parchure's Hindu Rashtraya Sena. He says that he became acquainted with the doctor in 1941 when on one occasion he had to call him professionally. Some time thereafter he joined the Sena at the Doctor's instance, the doctor being the principal officer of the Sena. The witness is a clerk in the War Profits Tax Department.

According to the evidence given by this witness, he knew Apte and Nathuram. The former had come to Gwalior in 1941 for propaganda work in the company of Damle, Secretary to Mr. Savarkar. The witness saw Nathuram two years earlier at Dr. Parchure's dispensary and came to know him as the Editor of the "Agrani". It may be noted that

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on this part of his statement the witness was not cross-examined by any of the defence counsel.

The witness further goes on to say that on the 28th January, Rupa, servant of Dr. Parchure, came to him at about 9 a.m. and asked him to go immediately to the Doctor's place. The witness, however, found himself unable to comply with this request because he had to get himself ready for his office. He went to Dr. Parchure's dispensary at 10.30 a.m. He did not find the Doctor there but saw Nathuram and Apte. He, however, did not wait for the Doctor and left for his office.

*At 9 p.m. the same day Dandwate of Gwalior who was known to the witness went to his residence, told him that a pistol was required by Nathuram, and requested him to sell his own pistol to the latter. On the witness's expressing his unwillingness to dispose of his pistol he was told by Dandwate that he would get Rs.500/- for the same and could buy another with that money. On hearing this the witness handed over the pistol to Dandwate with seven rounds of ammunition which he had. The witness identified Ex.P.39 the pistol, with which Nathuram had admittedly shot Mahatma Gandhi dead, as the pistol which he had given to Dandwate. According to the witness, Dandwate came back at about 10 p.m. the same night and gave him a country-made revolver and Rs.350/- in cash. The witness refused to accept the same and protested that he should be either paid Rs.500/- or his pistol should be returned to him. The witness admitted that his pistol had not been registered in accordance with the regulations in force in Gwalior State and that he had been keeping the same without the knowledge of the police. The witness also admits that the police came to his place on 3rd February 1948 *and that on seeing them

*P.386.

*P.387

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come he ran away from his residence by a back door and remained absconding till 11th April 1948. He was arrested on that day and kept in custody till 6th May 1948. He admitted that he was kept in Bombay till 16th June 1948 and had been staying in the Red Fort at Delhi since 18th June 1948. Although he did not admit that he was in custody after 6th May 1948 yet he did admit that no orders for his release had been passed up to the date on which he gave his evidence.

Madhukar Keshav Kale P.W. 50 was connected with the Hindu Rashtarya Sona since 1941. He passed his B.A. in 1947 and got an exempt employment in the State on 19th May 1947. He has said that he was a frequent visitor to Dr. Parchure's house till he got service, i.e., prior to May 1947. He, however, discontinued going to him as from the date on which he got the employment. He explains that he had received instructions from his officer at the time of being employed that he should not be a member of any political organisation and that he had also been told by Dr. Parchure himself to discontinue visiting him, he having accepted Government service.

According to the evidence of this witness, on the 23th January 1948 at 12 a.m. he got permission to leave his office to go to Krishanram Baldev Bank to get some money. The bank is situate at a distance of 1½ miles from Dr. Parchure's house. At about 12.33 p.m., on his way to the Bank, the witness passed in front of Dr. Parchure's house and entered it in order to find out what action the Hindu Maha Sabha proposed to take in view of the fact that power had been handed over to the Congress by the ruler on 24th January 1948 notwithstanding an agreement with

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*P.388.

Cr. A. 66/49.

the Maha Sabha to the contrary. He found Dr. Parbhure sitting on an easy chair in the Hall and he also noticed three other persons in the Hall, namely, Dandwate, Apte and Nathuram. He found Nathuram and Apte with two country-made revolvers in their hands. They tried unsuccessfully to pull the triggers of these revolvers. They accordingly asked Dandwate to arrange a pistol for them. Dandwate told them that the revolvers were quite serviceable and took them to the courtyard, the witness following them. Dandwate fired one of the revolvers in the sky. Apte and Nathuram thereafter reloaded the revolvers and tried them out but did not succeed in firing. They, therefore, again requested Dandwate to arrange a pistol for them. They told him that they wanted to leave by 8-30 or 9 p.m. train. Dandwate told them that he could arrange for a pistol in the evening and that they ought to leave by the night train. Thereafter all of them including the witness himself went to Dr. Parbhure's room where Dandwate suggested to Dr. Parbhure that the latter might give his own licensed and registered pistol to Nathuram and Apte but the Doctor declined to do so, saying that he was not such a fool. Thereafter the witness left Dr. Parbhure's house at about 1.40 p.m. and proceeded to the Bank from where he withdrew the money and returned to his house.

I feel little hesitation in rejecting the testimony of P.W. 50 straightaway.

He having completely disassociated himself from Dr. Parbhure's Hindu Rashtarya Sena from the 19th May 1947 and having been distinctly told by his officer that he was not to have anything to do with any political organisation and having also been enjoined by Dr. Parbhure himself to refrain from visiting him I find it difficult to believe that on the particular day and at the particular time he all of a sudden decided to

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*P.390.

go into the Doctor's house, forgetting all the warnings given to him by his officer and by the Doctor. It is again ~~quite~~ difficult to believe that having *obtained permission from his office for the purpose of going to the Bank to withdraw some money he ran the risk of becoming too late for the withdrawal of the money. The object with which he is said to have gone to Dr. Parbhure's house was to find out what action the Hindu Mahasabha were proposing to take in connection with the handing over of the power by the Ruler to the Congress to the exclusion of the Mahasabha contrary to a previous assurance. We have it in evidence that the Hindu Mahasabha had actually staged a demonstration against this act of the Ruler on 24th January 1948. I cannot see what occasion there was for the witness to go to Dr. Parbhure on the 23th January to ascertain from him what action was proposed in the matter. It has to be noted that, as admitted by the witness, ~~the~~ the road which goes to the Bank does not actually pass in front of the Doctor's house and that the said house is at a distance of about 35 paces from the place where one has to take a turning to the right in order to go to the bank.

*P.391.

It is also inconceivable that, after what had happened between them in May 1947, and after having given clear instructions to the witness not to visit his house, Dr. Parbhure did not object to his walking ~~in~~ into the house at a time when he was busy with his guests. It is still more inconceivable that *Dr. Parbhure, Dandwate, Nathuram and Apte did not mind the witness's presence and continued their conversations and activities in spite of him.

The witness admits that his sister is studying in Lady Hardinge Medical College at State expense, that his father was a state servant, ^{and} ~~and~~ that he and his mother got compassionate allowance from the State after his father's death. He seems to be on very intimate terms

with

with Mahbubkar Balkrishna Khire P.W. 51 who is related to one Patwardhan who according to the witness was a police informer. He says that he narrated the whole story to the aforesaid Patwardhan on 2nd February 1948. He had been in contact with Patwardhan for six or seven years. After he had narrated the story to Patwardhan the latter took him in a car to the Home Minister. The witness was placed under arrest on 3rd February 1948 and was kept in custody at Girid police station till 11th March 1948. He was taken to Bombay while he was yet in the police custody and was kept in the police building at Worli with Sub Inspector Mandlik. He no doubt identified Apte and Nathuram at the identification parade. In view, however, of all the circumstances indicated above, I do not propose to attach any importance at all to such identification.

*P. 302.

While, for the reasons already given, I feel no hesitation in rejecting the evidence of P.W. 50 I do not see any reason to disbelieve the testimony of Jaedish Parshad Goel P.W. 88 at least to the extent that the pistol Ex.P. 39 with which Nathuram shot Mahatma Gandhi dead was supplied by him. It may be that he is not stating correctly the other details narrated by him or is suppressing something. However, it seems to be reasonably clear that the pistol had in fact been supplied by him; otherwise there appears to be no explanation why the police should seek to arrest him and why he should abscond and remain absconding for quite a long time. His conduct can only be explained on the ground that finding that his pistol had actually been used in killing Mahatma Gandhi he became nervous and got frightened that lest he might himself be hauled up for complicity in the crime.

It may be noted in this connection that Nathuram has stated in his statement before the Lower Court that he had got the pistol from a refugee at

Delhi.

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Delhi. There is no evidence in support of this allegation and it does not seem to be otherwise credible.

*I am, therefore, of the opinion that having failed to get a really good and ~~any~~ serviceable pistol elsewhere Nathuram and Apte, in their desperation, went to Gwalior to see if they could get one from there. Knowing as they well must have known that Dr. Parchure shared their own sentiments and feelings towards Mahatma Gandhi and the Congress, and possibly having heard or read of his attitude of very strong resentment against the Congress by reason of their having successfully manoeuvred to deprive him of the expected share in the power in the State, they might quite reasonably expect that they could depend on his support. The only alternative explanation for their having gone to Gwalior as suggested by Apte and Nathuram is that they had gone there in order to induce Dr. Parchure to lend them his Hindu Rashtra Sene volunteers for the purpose of being used in connection with the staging of a demonstration at Mahatma Gandhi's prayer meeting which was still the obsession of Apte, though Nathuram, as stated by himself, had fully begun to realise its utter futility and had gone with Apte just not to let him have the impression that he was being let down by his friend. I must confess that I consider the suggestion to be wholly fantastic. I refuse to believe that with such a large number of refugees in Delhi, most of whom must have been nursing actual or supposed grievances against the Congress for having brought so much misery on them, and amongst whom there could not be any dearth of irresponsible young men whose emotional and impulsive temperaments and ~~in feeling~~ feeling of having suffered so much due to what they supposed to be the indiscreet and unwise action of the Congress in accepting the partition it would not be at all difficult for any one to exploit or

play

*P.293.

*P.394

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play upon, they could not get volunteers in Delhi for staging a peaceful demonstration and felt it necessary to go all the way to Gwalior for the purpose.

P.395.

*It is not disputed that Nathuram and Apte left Gwalior in the night of the 28th January. According to the prosecution, both of them left for Delhi while, according to Nathuram and Apte, the latter left for Bombay and the former alone for Delhi. The prosecution case is that Nathuram and Apte arrived at Delhi in the morning of the 29th January and were met by Karkare at some time before 1 p.m., the latter having come presumably from Poona, and that the three stayed from 1 p.m. that day till the same hour next day in retiring-room No.6 at the railway station, in whereafter, on being required to vacate that room, they shifted their luggage to the First Class Waiting Room. While Nathuram does admit having stayed in the aforesaid retiring-room during the period mentioned above, and also having removed his luggage to the waiting-room after

1 p.m.

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1 p.m. on the 30th January, he, Apte and Karkare deny the latter two having shared the room with him and in fact their being at Delhi at all.

The prosecution case about the presence of Apte and Karkare at Delhi on the 29th and the 30th January rests on the evidence of three witnesses, vis., Sundarilal P.W. 26, Hari Kishan P.W. 27 and Jannu P.W. 28. *Of these P.W. 26 is a Booking Clerk at the Delhi railway station; P.W. 27 is the bearer of the retiring room at the station; and P.W. 28 is a boot-polish there. The evidence of P.W. 26 is to the effect that on the 29th and 30th January 1948, he was on duty from 8 a.m. to 4 p.m., that at 12 a.m. on the 29th January one Venaik Rao came to him and wanted a retiring room, that there ~~was~~ was no such room available at that time, but one was likely to fall vacant in

about

*P. 396.

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about half an hour's time, that he told the aforesaid Venaik Rao to enquire later, and that on the latter coming to him at 1. p.m. he booked room No. 6 for him on receipt of the usual rent of Rs. 5/- for 24 hours.

According to the witness, he had been shown two tickets, one from Gwalior to Delhi and the other from Poona to Delhi. At the time Venaik Rao came to him he had a companion

with him who stood at a distance of five or seven paces from the former. Next day

Venaik Rao and his companion came again and the former asked for extension of time.

The witness expressed his inability to extend time except with the permission of the Station Superintendent. Not having received back the key of the room, the witness went to see

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*P.397.

*if the same had been vacated. He found Vanaik Rao and his companion seated and a third person standing. He asked Vanaik Rao to vacate the room whereupon the latter asked the person who was standing to tie up the bedding. The witness stayed in the room for about 10 or 15 minutes to see the luggage of the passengers removed and the room vacated. At the identification parade held at Bombay on the 24th March this witness identified Nathuram as the person who had described himself as N. Vanaik Rao and had booked the room and Apte as the person who had come with him. He identified Karkare as the person whom Nathuram had asked to tie up the bedding and who had done so.

P.W.27's evidence is to the effect that on 29th and 30th January 1948 three persons had stayed in room No.6; that one of them (who on being pointed out by the witness was found to be Nathuram) had given him some clothes for getting them washed; that he gave them to P.W.28 for the purpose; that a sum of Rs.2/- was paid to the latter as washing charges through the witness; that one only out of the three had luggage; and that the room was vacated at 1.30 p.m. on the 30th January when the luggage was put in the first class waiting room. The witness says that he had asked the passengers to vacate the room, telling them that the time was up, that on being *asked if time could be extended he had replied that it was difficult, and that after getting this reply they had removed the luggage and vacated the room in his presence. At the identification parade held at Bombay on the 24th March 1948 this witness identified Nathuram and Karkare as the occupants of the room and pointed out a wrong person as their companion. In Court he stated that the third person who had stayed in the room was not present in the Court Room at the time he was giving

*P.398.

giving evidence.

The evidence of P.W.28 is to the effect that a day before Mahatma Gandhi's assassination three Babus had stayed in room No.6; that one of them (the witness pointed towards Nathuram) had got his boots polished by the witness and had also given him five clothes for being washed, to be returned by next morning; and that he had been paid Rs.2/- as washing charges by P.W.27 who had received the same from the aforesaid Babu. This witness identified both Apte and Karkare at the identification parade held at Delhi on 28th February. He identified Nathuram at the identification parade held at Bompay on 31st March 1948.

*Some stress was laid, on the appellants' behalf, on the fact that P.W.26 and P.W.27 did not attend the identification parade held at Delhi on the 28th February. So far as P.W.27 is concerned the evidence of Bhojaram P.W.139 is to the effect that he was on leave on 28th February, 29th February and 1st March 1948. The explanation for his not having been called to the identification parade held on the 28th February is simple enough and quite satisfactory. As regards P.W.26 also, our attention was drawn to the evidence of the same witness, i.e., P.W.139, that he was off duty from 8 a.m. on the 27th till 4 p.m. on the 28th February, the suggestion being that he was not in the office till 4 p.m. on the 28th February and therefore it was not possible to secure his attendance at the identification parade held on that day. This explanation I do not find it easy to accept. The witness was in Delhi and his address at that place could not be unknown to his office. I do not see why there should have been any difficulty in tracing him and in asking him to attend the parade.

*P.399.

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parade.

The evidence of P.W.26 is to the effect that he saw Karkare only on going to Room No.6 at 1.30 p.m. on the 30th January when he had gone there to find out why the key had not yet been handed over to him and had found *him standing in the room while the other two were seated. He, however, had to admit that in his statement recorded by the police on the 8th February he had not mentioned these facts and he offered no explanation for this omission. He also admitted that an extra payment of Rs.2/- would have to be made in case a third passenger is accommodated in a retiring room meant for two. There is no explanation why he did not ask for such extra payment if he had in fact noticed a third passenger in Room No.6. In any case, he ought to have made some enquiry whether the third man seen by him had not spent the night in the room. If he had only cared to enquire from the bearer P.W.27, he would have, according to the evidence given by the latter in Court, been informed by him that the room had been in the occupation of three passengers. In the circumstances, I consider it at best doubtful that the witness had in fact gone into Room No.6 on the 30th January and had seen Karkare there. It is noteworthy that according to P.W.27 the three passengers removed their luggage and vacated the room at his bidding and in his presence. But the aforesaid witness does not make any reference at all to the presence of P.W.26 in the room at that time. It is true that P.W.26 did identify *Karkare at the identification parade but, as I have said before, I do not feel disposed to attach excessive importance to the identifications by the Delhi witnesses taken to Bombay by the police for the purpose unless I find the

*P.400.

*P.401.

the evidence to be otherwise satisfactory and convincing. If I find any reasonable ground for suspecting that a witness is not telling the truth, or is exaggerating, or suppressing some essential fact, the mere circumstance of his having identified this or that person at one of these identification parades would not stand in my way of rejecting that part of his testimony which otherwise appears to be not free from doubt. I would not, therefore, hold Karkare's presence at the Delhi Railway Station proved on the strength of the testimony of this witness despite his identification of him at the said parade. That, however, does not mean that I am branding the witness as a liar. It may well be that his statement as to his having gone into the room to see if it had been vacated by the occupants was in fact correct and it was only by an accident that he had forgotten to mention the fact in his statement to the police, and P.W.27 may not also have mentioned his presence at the time when the room was vacated because he was not asked about it. All I do hold is that in view of the circumstances already indicated I do not consider it safe to base a finding as to Karkare's presence at the Railway station and in the *retiring room on his testimony. I see, however, no reason not to accept his evidence about his having seen Apte in the company of Nathuram on two occasions when the latter came to see him.

*P.402.

P.W.27 being the bearer of the retiring room is quite a natural witness and I do not see any reason not to believe his evidence in so far as he has deposed to having seen three men occupying the room on the 29th and 30th January.

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I would, however, certainly hesitate to accept his testimony as to the identity of those persons. At the identification parade, he identified a wrong person in place of Apte, and in Court he did not merely express his inability to identify the third occupant of the room but definitely declared that he was not present in the Court at all.

The evidence of P.W.28, however, in spite of his being a person of a comparatively lower status than P.W.26 and P.W.27 seems to me to stand on quite a different footing. He identified both Apte and Karkare at the identification parade held at Delhi on the 28th February. The two had been arrested at Bombay on the 14th February and were not brought to Delhi earlier than the 25th February. I do not find any substance in the suggestion that they were seen by or shown to the witness when they were taken to a certain refreshment room on the Railway Station during the course of investigation. No question was put to the witness in this connection and no suggestion appears to have been made at the identification parade as to the witness having either seen or been shown any of the suspects. During the short period of a couple of days Apte and Karkare were at Delhi before the parade was held, the police were busy in interrogating them and in pursuing some matters on such information as they could get out of them. On the 27th February Apte had to be taken to Gwalior. I do not think there could be, during this very short interval, much of an opportunity for the witness having either seen or been shown either of the two suspects. It has further to be observed that, before this witness gave his evidence in Court, at the instance of the counsel for the defence, the accused were made to change their places and Karkare was made to put on a pair of glasses, which he had not

*P.403.

not put on before, and yet the witness was able to spot all the three accused without any difficulty. The evidence that the witness has given about his contacts with the *occupants of the room at the material time appears otherwise to be quite natural. In the circumstances, I do not feel any hesitation in accepting his testimony in its entirety.

*P.404.

The net result of the above discussion is that the presence of Apte, Karkare and Nathuram at the Delhi Railway Station on the 29th and the 30th **January** 1948 must be held proved.

Reliance was placed by Mr.Dange on the recovery of the railway ticket Ex.D.9 from the possession of Karkare and railway ticket Ex.D.6 from the possession of Apte at the time of their arrest. Indeed, quite a number of such tickets were recovered from the possession of the two at the time they were arrested. Out of those recovered from Apte Ex.D.5 dated 30th January 1948 and Ex.D.6 dated 31st January 1948 had been relied on, at the trial, as evidencing his presence at Bombay on both the above mentioned dates, while out of the tickets recovered from the possession of Karkare Exhs.D.8 and D.9 both dated 31st January 1948 had been relied on in proof of his presence at the same place on those dates. About Ex.D.5 and Ex.D.8 the prosecution led evidence which proved conclusively that they had been actually collected at their respective destinations. Mr. Dange accepted that evidence and also the conclusion reached by the learned Special Judge on the strength of that *evidence. He, however, contended that Exhs. D.6 and D.9, both bearing consecutive numbers viz., 4490 and 4489, both dated 31st January 1948 and both from Matunga to Sion, had not been proved to have been collected at the destination, and that

*P.405.

from

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from Apte and Karkare being in possession of these tickets at the time of their arrest an inference could reasonably be drawn that both of them had travelled together on 31st January from Matunga to Sion, and that consequently neither of the two could have been at Delhi on the 30th January. In the absence of any other evidence, I can see not the slightest justification for this contention of the learned counsel. It is quite obvious that Apte and Karkare had succeeded in collecting a number of Railway tickets dated 30th and 31st January and were carrying them on their respective persons in anticipation of their arrests, for the purpose of using them, as evidence of their alibi. We have seen that out of the tickets found in the possession of each, one at least is now practically admitted to have been collected at the destination. If they had enough resources to be able to get hold of those tickets from the custody of the Railway officials, they could as well have got those tickets in a similar manner. It must be remembered that the onus probandi of the plea of alibi, when raised, is always on the accused. In the absence of any evidence to show that the two appellants had purchased the relevant tickets or had travelled on them, the mere possession of those tickets by them some days later could not, at any time, be accepted as evidence of the fact that they were actually present at either the station of origin, or that of destination on the material date. In the present case, however, it seems to be quite obvious that these tickets had been designedly collected with the deliberate object of creating evidence of alibi.

On Apte's behalf reliance was also placed on Exh.D.115, Ex.D.116 and Ex.D.117 in support of his plea of alibi. Ex. D.

D.115 is in the hand-writing of Nathuram and purports to be a letter written by the latter to Apte on the 30th January before the fateful act was done by him on that day, explaining his reason for having decided to take the desperate step. Ex.D.116 is the envelope on which the following address is to be found:-

"Daily Hindu Rashtra,

P.O. Box No.503,

Laxmi Road,

Poona 2."

It bears the post mark of Delhi dated 30th January 1948. Ex.

D.117 is a photo of Nathuram. The case *for the defence was

*P.407.

that Nathuram on the 30th January, had himself photographed by a street photographer, D.117 being the photograph, wrote the letter Ex.D.115, and enclosed the said letter and the photograph in the envelope Ex. D.116, the letter being intended as an explanation for the desperate crime he had decided to commit and the photograph being intended to be a sort of remembrance. To P.W.136, Balkrishna Rajaram Raje, Chief Police Photographer, Bombay, Ex.D.117 was put in cross-examination by the counsel for Nathuram for getting his expert opinion as to whether it had been taken by a street photographer and that it was about two or three years old. In the circumstances, there can be little truth in the suggestion that it was taken by a street photographer on the 30th January.

The learned Special Judge had expressed the view, regarding the letter Ex.D.115, that Nathuram had probably written some business letter to his office on the 30th January, possibly containing his last instructions to them, which was posted after having been enclosed in the envelope Ex.D.116, and that Ex.D.115 appeared to have been got written by Nathuram during the

pendency

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pendency of the trial and substituted for the letter originally written by Nathuram and sent in the said envelope. This view of the learned Judge was very

*P.408.

*vehemently attacked by Nathuram. It was urged that the learned Judge was wholly wrong in assuming that while in custody the accused could have an opportunity of doing so. It was pointed out that although paper and writing materials were supplied to the accused, all the papers supplied to them were signed or initialled on every page by the presiding officer of the Court and it was, in the circumstances, not possible to use any such paper for the purpose of writing Ex.D.115. I do not consider that there could be much difficulty in the accused cutting a piece out of a sheet of paper which did not have on it any signature or initials. The address on Ex.D.116, the fact that these documents did not see the light of the day till at a very late stage of the trial, and the fact that the friend with whom Apte says he had left them before his arrest and who is alleged to have passed them on to his counsel has not been produced to support Apte's statement on the subject, do appear to lend a good deal of support to the view taken by the learned Special Judge. I am, however, of the opinion that there is a greater probability of Ex.D.115 having been written on the date on which it purports to have been written with the express purpose of

*P.409.

being used as *evidence of Apte's alibi. On the 30th, Nathuram could scarcely be expected to be in a fit state of mind for writing business letters. If he had any instructions to give relating to the Press or the Paper he had been editing he could easily have given them verbally to Apte if the latter was with him on that day. The envelope in which the letter was enclosed seems to have been addressed to the Hindu Rashtra because at the time it could

could not be known when Apte would arrive at Poona.

Reliance was also placed on behalf of Apte on Ex.D.7, a Telegraph Department receipt proving the despatch of a telegram at Bombay for Delhi on the 31st January. According to the statement of Apte in the Court of the learned Special Judge he happened to meet his friend Miss Salvi near the Grand Road Telegraph Office on the aforesaid date and told her to despatch a telegram to the Secretary of the Hindu Sabha, Delhi, on his behalf, saying that he was arriving to arrange Godse's defence. Miss Salvi is said to have written the telegram, to have despatched it in Apte's presence and then to have handed over the receipt Ex.D.7 to him. In the absence of the evidence of Miss Salvi, or, for the matter of that, any other evidence in support of Apte's statement, the receipt *Ex. D.7 cannot be taken to prove anything at all.

*P.4

It is interesting to note that Apte in his statement has mentioned his having interviewed Mr. Jamna Das Mehta on the 31st January after having first telephoned to him and also some other lawyer, to seek their advice as to the action he could, consistently with his own safety, take in the matter of the defence of Nathuram. Mr. Mehta, or the other lawyer, who are said to have been consulted on that day have not been produced in support of this statement. Mr. Jamna Das Mehta was appearing as a counsel on behalf of the accused at the original trial and it is significant that not only he was not examined as a witness in support of Apte's assertion but did not even care to make a statement at the Bar as to the correctness of that assertion.

*Having held, as I have done, that Nathuram and Apte had gone to Gwalior for the purpose of fetching, if possible, a pistol

*P.411.

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pistol and that they did succeed in securing one, I would find it exceedingly difficult to believe that Apte parted company with Nathuram at Gwalior and proceeded to Bombay leaving the latter alone to go to Delhi to do the desperate act for doing which they had been so anxiously trying to secure and had at last succeeded in securing a pistol.

It is not denied that in the afternoon on the 30th January Nathuram shot Mahatma Gandhi dead with the pistol Exhibit 39, while the latter was on his way to the prayer platform.

This finishes the review of the evidence as regards the events which are said to have taken place up to the 30th January. I reserve the discussion of the evidence regarding subsequent events to the time when I would deal with the cases of the individual accused. As I have pointed out in an earlier part of this judgment, where accused are being tried on a charge of conspiracy and there is reasonable ground for believing that they had entered into a conspiracy to commit an offence evidence as to any act done or statement made, whether oral or in writing, by any one of the accused while the conspiracy lasts is evidence against all of them. However after the conspiracy has terminated for example by the accomplishment of its object, any act done or statement made by any of the alleged conspirators can be regarded as evidence against himself alone and not against any of his alleged co-conspirators.

In regard to the events up to the 30th January 1948 I have in the foregoing part of my judgment given the following findings.

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In so far as the events up to the 20th January 1948 are concerned, these findings have been arrived at after taking into consideration only such facts as have either been admitted by the defence or have been proved by means of unimpeachable and independent evidence, quite apart from the approver's testimony, facts regarding which that testimony has not been corroborated having, for the moment, been completely overlooked.

(1) On 13th and 14th January 1948, Nathuram nominated the wives of Apte and Gopal as persons entitled to receive the sums of Rs.2,000/- and Rs.3,000/- *respectively, under two life policies held by him in the Oriental Life Assurance Company Limited. No explanation for doing so on those particular dates, and on the eve of his departure for Bombay on route to Delhi, has been offered. On 14th January Nathuram and Apte left Poona for Bombay by an evening train. *P.413.

(2) On 14th January 1948 Badge left for Bombay with Shankar carrying with himself a bag containing two gun-cotton slabs and a number of hand-grenades which according to other proved facts could not be less than four. The bag was left at the place of Dixitji Maharaj with his servant Narayan Angre by name at sometime in the night of the 14th January. .SH

(3) On 15th January Nathuram and Apte met Badge in the morning at the Hindu Mahasabha Office where Badge had stayed for the night of the 14th. (This fact, it may be noted, was admitted by both Nathuram and Apte.).

(4) Madanlal and Karkare were also at Bombay on the 14th and the 15th January. According to *the evidence of Professor Jain and Angad Singh they had been there since the 10th of January *P.414.

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Whatever the date on which they actually arrived at Bombay the fact remains that both of them paid one visit to Professor Jain and thereafter Madanlal paid him three more visits at the first of which Angad Singh was also present for a short time. When Madanlal visited Professor Jain alone for the first time, after having on a previous day visited him in the company of Karkare, he told the Professor that he had formed a party at Ahmadnagar which was financed by Karkare and which had been collecting arms, ammunition and explosives which were dumped in the jungle. He also disclosed to the Professor the fact that his party had plotted to take the life of a leader and on being pressed by the Professor to divulge the name of that leader told him that the leader against whose life his party had plotted was Mahatma Gandhi. Professor Jain tried to his utmost to dissuade him from doing anything of the kind. He visited the Professor two days later and assured him that he had accepted his advice and would refrain from doing anything objectionable. The last time Madanlal met the Professor at about 8 p.m. on the 15th January.

*P.415.

(5) On the morning of the 15th January, Apte, Karkare, Madanlal, Badge and Nathuram met Dixitji Maharaj in his room at his house. On Badge asking for the bag which he had left the night before with his servant, and on his pointing out Narayan Angre as that servant, Dixitji Maharaj asked the latter to fetch the bag. After the bag had been fetched it was opened by Badge, and Dixitji Maharaj who had, in the meanwhile, gone to the bath room to take his bath, on his return saw him showing two gun-cotton slabs and two hand-grenades out of the contents of the bag to his companions and explaining to them the method of the use of the

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the hand-grenades. Dixit Maharaj, finding that he was not doing so properly, himself explained to them the correct method of using the explosive. After Madanlal and Karkare had left the room of Dixit Maharaj, Apte requested the latter to give him a revolver and told him that they were going on an important mission for which the revolver was needed. Dixit Maharaj put off the request for the revolver.

(6) Madanlal and Karkare left Bombay for Delhi *by a night train on the 15th January. They arrived at Delhi on the 17th January. A short time before the arrival of the train at Delhi Shantaram Angchekar, a Maratha of Sawantwadi State in Bombay Presidency who was in Government service in Sind before partition and who was travelling by the same train and in the same compartment, to Delhi for the purpose of getting his name registered in the Transfer Bureau for transfer of his services to the Dominion of India, accosted Karkare. On his enquiring from Karkare whether it would be possible for him to get any accommodation at Delhi in case he had to stay there for the night, he was told that arrangements could and would be made for his staying at the Birla Mandar. From the railway station Madanlal, Karkare and Angchekar went in the same tonga in the first place to the Hindu Mahasabha Office and thereafter to Birla Mandar but having failed to get accommodation at either of the two places they stayed at the Sharif Hotel in the Chandni Chowk where they arrived at 2 p.m. Karkare stayed in the hotel under an assumed name. I have held that the assumption of a false name could not possibly have been

*P.416.

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with an innocent motive. Madanlal did not conceal his name but he gave a wrong address when signing an entry in the visitors' register.

(7) Badge and his servant Shankar returned to Poona *by a night train on the 15th January. On the 16th January Badge deposited a considerable quantity of arms, ammunition and explosives which he had left behind when going to Bombay with the bag of explosives already referred to on the 14th with Ganpat Sambhaji Kharat P.W.81, a sympathiser of the Hyderabad State Congress, with instructions for the stuff being conveyed to certain workers of the State Congress. The stuff was contained in two separate bags. Kharat handed over, the same night, one bag to P.W.119 and the other to P.W.120 for safe custody till such time as he might ask for the same.

(8) On the morning of the 17th January, Apte and Nathuram met Badge at the Victoria Terminus railway station in pursuance of a previous appointment made on the 15th January. They engaged

*P.417.

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engaged a taxi and started on a campaign for collection of funds. They collected Rs.2,100/- from P.Ws. 74, 73 and 86. The ostensible object for which money was obtained from P.W.74 and P.W.73 was the Hyderabad movement, and a sum of Rs.1,000/- was obtained from P.W.86 for the ostensible

*purpose of purchasing printing material for the Hindu Rashtra Parkashan. In fact, however, the sum of Rs.2,100/- was collected in connection with the expedition, whatever its nature, on which they were proceeding to Delhi, it having already been decided on the 15th between Apte and Nathuram on one side and Badge on the other that the latter and his servant would follow them to Delhi and would join them in their venture. *P.418.

(9) Apte and Nathuram left for Delhi by plane on the 17th January at about mid-day. They travelled under assumed names. The explanation given by them for the assumption of such names is wholly unsatisfactory. The assumption of names could not have been with any innocent motive. They arrived at Delhi late in the evening and put up at the Marina Hotel.

(10) Karkare met Apte and Nathuram at the Marina Hotel a short time after their arrival there on the 17th January. He slept for the night at the Sharif Hotel but left early next morning telling his companions that he had to meet somebody on the railway station. He remained absent from the hotel during the whole of the day as well as the whole of the night, but returned-----
at

*P.419.

*at sometime on the 19th January. He undoubtedly met Apte and Nathuram at the Marina Hotel sometime during the course of the day. Madanlal was busy on the 18th in going about to his relations in the company of Angchekar in connection with his marriage but Karkare took no interest in any of these activities of Madanlal although professedly he had accompanied him to Delhi for the purpose of helping him to arrange for his marriage.

(11) Badge and Shankar left Bombay for Delhi by some train on the 18th January. Before leaving for Delhi Badge, paid a visit to Dixit Maharaj.

(12) Gopal, brother of Nathuram, who had applied for one week's casual leave in the first instance on the 14th January and who had applied for leave for the same period a second time on the 16th January arrived at Delhi either on the 18th or on the 19th January. He was in Sharif Hotel with Madanlal and Karkare in their room from 1 p.m. to 7 p.m. on the 19th January.

*P.420.

(13) Madanlal and Karkare left the Sharif Hotel at about 7 p.m. on the 19th and shifted somewhere else. They had told Angchekar, who had left the hotel at 5 p.m. the same evening, that they were shifting to the Maharashtra Office for the night and proposed to proceed to Jullundur the next morning in connection with the arrangements for Madanlal's marriage. Madanlal spent the night of the 19th at the Hindu Mahasabha Office where Badge and Shankar also arrived at sometime between 9 and 10 p.m.

(14) Badge's visit to the Marina Hotel on the 20th January is admitted. Some others are also proved to have visited room No.40 and held discussions there although

excepting

excepting the evidence of Badge there is no other evidence to show which of the others had gone there.

(15) All the persons mentioned above, namely Apte, Nathuram, Karkare, Madanlal, Gopal, Badge and Shankar were present at the Birla House in the evening on the 20th January at the time of the prayer meeting. Madanlal was at that time wearing Apte's coat Exhibit 15. He had with him a gun-cotton slab which he placed somewhere near the back gate of Birla House and ignited, with the result that there was a big explosion. He was arrested and a hand-grenade fully assembled and ready for action was discovered from the inside pocket of the coat which he was wearing. This hand-grenade and the gun-cotton slab admittedly came out of Badge's stock of explosives. The explanation given by Madanlal as to the circumstances in which and the purpose for which he had got the slab and the grenade from Badge has been definitely rejected and so also his explanation as to the purpose for which the gun-cotton slab had been exploded by him. Apte, Badge, Shankar and Gopal went to the Birla House in Surjit Singh G. W.'s taxi. On the return journey Apte, Nathuram and Gopal alone travelled in this taxi and were dropped at the Connaught Place. While at the Birla House all these persons excepting Madanlal were loitering about in front of the servants quarters and Karkare had a talk with Chhotu Ram, an employee at the Birla House and in occupation of room No.3 in the servants quarters, during the course whereof the former requested the latter to let him go in his room for the purpose of taking a photograph of Mahatma Gandhi. Chhotu Ram's room has a window with trellis-work and the place where Mahatma Gandhi used to sit at the time of the prayer meeting was

*P.421.

*P.422.

at

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at a distance of a few paces from that window?

(16) Three hand-grenades fully assembled and ready for use and one gun-cotton slab as well as a spare fuse wire were concealed by Shankar at two places in the jungle behind the Hindu Mahasabha Office at sometime on the 20th January very probably after the explosion of the gun-cotton slab at the Birla House. The condition in which the hand-grenades were at the time definitely excludes the possibility of their being intended for sale and having been interred only for the purpose of safe custody.

(17) All except Madanlal who was under arrest left Delhi in a hurry on the night of the 20th or early next morning. Apte and Nathuram travelled to Kanpur where they spent two days in the retiring room on the railway station. Karkare says that he went to Mattra. Badge and Shankar proceeded to Poona. After leaving Kanpur, Apte and Nathuram arrived at Bombay on the 23rd January and stayed at Arya Pathik Ashram and later at the Elphinstone Annexe Hotel under assumed names.

*P.423.

*(18) Karkare arrived at the house of G.M. Joshi, the proprietor of Shivaji Printing Press at Thana early in the morning of the 25th January. He had a telegram sent to Apte at the latter's Poona address asking him and Nathuram to come at once to Bombay, presumably not being aware at the time that the two persons were ready in Bombay. The telegram was sent in the name of Bias which was the name assumed by Karkare during the course of his stay at the Sharif Hotel at Delhi. Gopal arrived at Joshi's house at 4 p.m. Apte and Nathuram also turned up at 9 p.m. The four talked amongst themselves. Nathuram and Apte left in about half an hour's time. Gopal left for Poona by a night train and Karkare left next morning.

(19)

(19) On 26th January 1948 Nathuram and Apte visited the house of Dada Maharaj and Dixit Maharaj in the morning, and on meeting the former, requested him to supply them with a revolver but apparently did not get a favourable response. In the afternoon both of them attended a meeting held at the place of Dada Maharaj and Dixit Maharaj in connection with certain matters relating to Jaisalmer State. At the end of the meeting they requested Dixit Maharaj to let them have a pistol but did not succeed in persuading him to accede to their request. *P.424.

(20) On the 27th February, Apte and Nathuram left for Delhi by plane under assumed names.

(21) After their arrival at Delhi, Nathuram and Apte left for Gwalior by the G.T. Express and arrived there at about 10-30 p.m. They were driven to the house of Dr. Parchure in a tonga where they stayed for the night. While at Gwalior they succeeded in getting the pistol Ex.P.39 from J.P.Goel P.W.39.

(22) Having left Gwalior by some train in the night of the 28th January Apte and Nathuram arrived in Delhi in the morning of the 29th January. Karkare also joined them at some time during the day. The three stayed in a retiring room on the railway station from 1. p.m. on that day till about 1-30 p.m. the next following day.

(23) In the afternoon on the 30th Nathuram shot Mahatma Gandhi dead by means of the pistol Ex.P.39 which had been brought from Gwalior.

There are some facts deposed to by the approver of which there is no direct corroboration but which seem almost inevitably to follow from some other facts which I have held proved, quite independently of the approver's testimony, and which otherwise seem to be exceedingly

*P.425.

probable

his statement as to his having got the revolver in exchange for the pistol passed on to him by Nathuram in the night on the 16th January seems to be exceedingly probable.

As I have already had occasion to observe Badge could possibly have had no intention of proceeding to Delhi when he left for Bombay on the 14th, otherwise it would have made arrangements for the remaining material before leaving and it would not have been necessary for him to return to Poona in order to make suitable arrangements for the safe custody of the stuff which he had left behind. In fact as has been noticed before, it was admitted by both Apte and Nathuram that it was on the 15th January at Bombay that it was agreed between them and Badge that the latter and his servant would join them at Delhi. According to them the agreement was that they were to join them in staging a peaceful demonstration. However the above findings definitely exclude the possibility of Apte and Nathuram having decided to leave for Delhi for the purpose of staging such a demonstration and almost conclusively show that the real object with which they were proceeding to Delhi was far more serious. It may, therefore, be taken that it was that real object which was communicated by them to Badge on the 15th and in carrying which out Badge agreed to join them and co-operate with them.

*P.427.

Apte, Nathuram and Karkare could not have allowed the stuff, which had been brought by Badge from Poona, to remain with him, if, as the above findings must necessarily indicate, that stuff was intended to be used for the purpose of carrying out their common object

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at Delhi. At the time Badge must have been asked to supply the stuff he knew nothing about the object for which the same was required. It is quite obvious that at that time it must have been contemplated that the stuff would be taken over from Badge at Bombay. Presumably no change would be considered to be necessary in the original plan about the method in which the stuff was to be carried to Delhi even on Badge having himself agreed to join the venture. Moreover, Badge had indicated that he had to go back to Poona to make some necessary arrangements before proceeding to Delhi. One could not be sure whether he would adhere to his agreement or would change his mind on going to Poona. In the circumstances the stuff could not have been left with him. Otherwise too, he having once brought it to Bombay it would not be considered safe or desirable for Badge to take it back with him to Poona and then again to bring it down to Bombay and take it from there to Delhi. The indications are that it was in pursuance of a common plan that Karkare and Madanlal had left in advance of the rest of the party and, therefore, it seems to be exceedingly probable that they carried the stuff with them.

Having held, believing the evidence of Chootu Ram, that Karkare had in fact approached the latter with a request for being allowed to take a photograph of Mahatma Gandhi from inside his room, I consider the conclusion to be wholly inescapable that at sometime before that somebody must have reconnoitred the whole place and formed the plan in pursuance whereof the above request was made by Karkare to Chootu Ram. *Karkare, Nathuran and Apte were in Delhi on the 18th as well as

*P.422.

*P.429.

on

On the 19th and Gopal was also there at least on the 19th. They might have been to the Birla House on one of these dates and studied the situation for themselves. Badge and Shankar, however, arrived late in the night on the 19th and inasmuch as there are clear indications that both of them were expected to play an important role in the entire scheme it is highly probable that Apte did take them to the Birla House in the morning of the 20th in order to reconnoitre the place in their presence and to explain the plan to them.

The facts enumerated above do clearly indicate that there was some kind of plan behind the activities of Madanlal, Apte, Nathuram, Gopal, Karkare and Badge in the evening of the 20th. It may naturally be presumed that before going to the Birla House they must have met somewhere and as I have already pointed out there could be no place more suitable for the purpose than the Marina Hotel.

*If the above facts are taken into consideration collectively, as they ought to be, the conclusion seems to me to be wholly inescapable that there did exist a conspiracy for murdering Mahatma Gandhi in pursuance and in furtherance whereof the different acts enumerated above were done by the various parties at different times and at different places. One can clearly discern in those acts several steps being taken by the persons concerned tending towards one obvious purpose, namely, the murder of Mahatma Gandhi. I must confess that in the published reports of cases relating to criminal conspiracy I have rarely come across such a formidable array of facts pointing to a common concerted plan.

*P.430.

Some of the acts enumerated above which the various parties appear to have done at different times may, taken individually, appear to be quite innocent. Such for example

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example may appear to be the nomination by Nathuram on 13th and 14th of January 1948 of the wives of his brother and friend as heirs to the sums due under his life policies. However when all these acts are taken collectively and cumulatively no doubt can be left in one's mind as to the object behind every one of them. It is to be observed that, by the stress of circumstances and in view of the most incontestable evidence produced by the prosecution, the accused felt constrained to admit some of the facts alleged by the prosecution. For example they found it impossible to deny the fact of all the appellants excepting Gopal and Parchure being in Delhi on the 20th January. They also found it impossible to deny the presence of most of them at the Birla House at the material time. Some of them could not deny their having travelled and moved about under assumed names. Various explanations were suggested for some of these acts. The explanation given for Madanlal and Karkare, Apte and Nathuram and Badge and Shankar having proceeded to Delhi was that quite independently of each other the two groups one consisting of Madanlal and Karkare and the other consisting of the remaining four persons had decided to stage peaceful demonstrations at the prayer meeting of Mahatma Gandhi in order to protest against the fast undertaken by him in the interests of Pakistan and the Muslim community. Both groups, it was suggested, had been separately canvassing support for their respective plans amongst the refugees in the refugee camps. They had even obtained promises from some of the refugees to join in the demonstrations. The trip to Gwalior by Apte and Nathuram was also explained as being intended for the purpose of getting volunteers

from

*P.431.

from there for the same purpose. In order to *explain the *P.432.
 sudden departure of Madanlal and Karkare from the Sharif
 Hotel it was suggested that they had spent the night and
 the following day at the house of Madanlal's maternal uncle
 in connection with arrangements for Madanlal's marriage.
 No attempt was, however, made to substantiate any of these
 explanations by means of evidence. Madanlal's maternal
 uncle was not examined as a witness. No refugee was
 produced to prove that either Madanlal or Karkare or
 Nathuram and Apte had approached any of them for the
 purpose of canvassing their support for the proposed
 peaceful demonstrations. Whenever during the course of the
 arguments of this appeal the attention of the counsel for
 the appellants was drawn to these lacuna, the reply
 invariably given was that it was not the duty of the
 accused to produce any evidence in support of any of
 their allegations and that quite independently of the
 accused's failure to prove his allegations it is the
 duty of the prosecution in every case to prove their own
 case. This is quite true. However it has to be remembered
 that where prosecution does produce evidence which seems to
 make out a very strong prima facie case against the accused
 and the facts established to almost conclusively point
 towards their guilt the accused cannot effectively
 meet the case and ask for a verdict of acquittal merely
 *by making suggestions which, if proved, might have *P.433.
 demolished the prosecution case but which no attempt
 has been made to prove and which do not appear to
 follow from any of the facts actually proved on the
 record. In this connection we must bear in mind the
 following observations of Tindal C.J. in Regina Vs.
Frost (1839) 9 C and P. 129 :-

"On

"On the part of the prisoner the learned counsel who appear for him state, and I think they are justified in so stating, that he is not bound to show what was the object or purpose or intent of the acts that were undoubtedly done by the prisoner at the Bar. His counsel say the offence charged against him must be proved by those who made the charge, that he stands only to hear the evidence that is given against him, and therefore he is not bound to show at all or in any way whatever, what his real object or design was. Undoubtedly the proof of the case against the prisoner must depend for its support not upon the absence or want of any explanation on the part of the prisoner himself, but upon the positive affirmative evidence of his guilt that is given by the Crown. It is, however, not an unreasonable thing, and it daily occurs in investigations, both civil and criminal, that if there is a certain appearance made out against a party, if he is involved by evidence in a state of considerable suspicion he is called upon, for his own sake and his own safety, to state and to bring forward the circumstances, whatever they may be, which might reconcile such suspicious appearances with perfect innocence."

*P.434.

From the facts found above it seems to me to be clear beyond the possibility of reasonable doubt that Nathuram and Apte had taken very important and serious decision at sometime before the 13th January. The decision taken seems to have been so serious as to necessitate Nathuram making an immediate nomination of

of his life policies. The selection of the personnel for the purpose of nomination is again very significant and in the light of the subsequent events one can reasonably infer that the wives of Apte and Gopal were selected for the purpose, because Nathuram had reason to apprehend that in consequence of the decision taken Apte and Gopal might find themselves involved in trouble. Nominations in favour of their wives were made with the object of making some provision for them in case something happened to their husbands.

Badge took only some gun-cotton-slabs and some hand-grenades out of the stuff which he was in possession of on the day he left for Bombay. It may very reasonably be inferred that the selection must have been made by him in pursuance of instructions received. The events at the house of Dixit Maharaj on the 15th also seem to point unmistakably to this conclusion. The collection of funds amounting to over Rs. 2,000/- on the eve of Nathuram and Apte's departure from Bombay is another significant pointer to something particularly big being in their contemplation. Badge and Shankar, Nathuram and Madanlal, Karkare and Gopal travelled separately but all of them met and contacted each other at Delhi and on the 20th all of them were at the Birla House. One of them actually exploded a gun-cotton-slab and had a live hand-grenade immediately ready for action in his pocket. There are indications that there were at least three, and possibly four hand-grenades which were also intended to be used at the prayer meeting but were not in fact used. The plan as originally evolved, which was to be given effect to on the 20th, having failed Nathuram and Apte appear to have realised and appreciated the inherent defects in that plan which were the cause of its frustration. They seem to have

*P.435.

realised

realised that it would be easier to achieve their object by a simpler process and that it was a mistake to have such an elaborate plan as the one originally designed. Accordingly after they had *succeeded in securing a pistol of the right sort, one of them, the most determined of all, who had, at least from a domestic point of view, no commitments, undertook to do the final act and suffer for the same, trying, if possible, to screen his comrades and co-adjutors.

*P.436.

For the reasons already given I find myself in full and complete agreement with the decision of the learned Special Judge about the existence of the conspiracy.

Before dealing with individual cases I should like to consider some general arguments addressed to us by Nathuram against the finding of the learned Special Judge on the question of the existence of the conspiracy.

It was urged in the first place that on the 9th or 10th January there could be no occasion for a conspiracy being entered into for the murder of Mahatma Gandhi. It was pointed out that till 12th January 1948 there was nothing new or unusual in the activities of Mahatma Gandhi in relation to Pakistan or to Muslim community and that it was on the 12th January that the All India Radio announced his decision to go on fast from the next following day, apparently for the purpose of securing to *the Muslims of Delhi their mosques and places of worship which had been occupied by the

*P.437.

refugees from the West Punjab for purposes of their residence, but in reality with the object of coercing the India Government to pay to the Pakistan Government the cash balances amounting to Rupees fifty-five crores.

It was stressed that the story put forward by the prosecution as to a conspiracy having been formed at some

time

time before the 9th January was wholly improbable and in fact untrue, and that the prosecution having come into Court with a manifestly false case the Court should decline to hold the existence of the alleged conspiracy proved. Nathuram also drew our attention to the dates of the nominations on his life policies and stressed the fact that those dates clearly showed that if any important decision was taken by him at all it could only have been taken on the 13th January.

In the first place even if it is assumed that no conspiracy for the murder of Mahatma Gandhi could conceivably have been entered into before the 12th or the 13th January 1948, and assuming, as suggested by Nathuram, that any important decision that was taken must have been taken after the 13th of January *I do not see how that can demolish the prosecution case. If there was a

*P.438.

conspiracy to murder Mahatma Gandhi it is wholly immaterial whether the conspiracy had been entered

into

into before the 9th January or on the 13th January.

Even if the prosecution be deemed to have failed to prove the existence of a conspiracy prior to the 13th

January, if the facts actually proved establish the existence of a conspiracy on or after the 13th

January, the prosecution cannot fail on that ground

alone. It will be noticed that, except, perhaps,

for the communication said to have been made by

Madanlal to Professor Jain about the design on the

life of Mahatma Gandhi, all the other facts found

on which the finding as to the existence of conspiracy

has been based by me took place on or after the 13th

January 1943. Even if I have to eliminate the evidence

with regard to the communication made to Professor

Jain by Madanlal I should have no hesitation at all

in holding a conspiracy proved on the other findings

given by me.

However it is not correct to say that before the

12th or the 13th January Nathuram and Apte and perhaps

Karkare, with whom the idea of the conspiracy seems to

have

have originated could have no motive for conceiving a plan for putting an end to the life of Mahatma Gandhi.

A reference to the written statement of Nathuram seems

*to show that his plans were formed not as the result

*P.439.

of any sudden or immediate provocation; that the minds of

himself and Apte had been working for a considerable time

in a certain line; and that they had realised much earlier

than 12th January 1948 that they must do something drastic

to protect the Hindu community and India from what they

believed to be the most harmful activities of Mahatma Gandhi.

* Reference has already been made, in an earlier part of *P.440.

this judgment, to the relevant passages in that written

statement of which a careful perusal will clearly show that

Nathuram and his friends were not only dis-satisfied with the

way in which the Congress Government was succumbing to the

influence of Mahatma Gandhi but also felt very much irritated

at the lukewarm attitude adopted by the Hindu Mahasabhaite

leaders of the older school. He and his friends' resentment

and anger against Mahatma Gandhi had only increased and not

decreased since the staging of the demonstrations in

Bhangi Colony. They must have felt further incensed

and

*P.441 . *and frustrated by the attitude adopted by their own leaders towards the demonstrations. In their case, therefore, it did not require the announcement about the fast which Mahatma Gandhi undertook as from the 13th January to induce them to take a decision to do whatever was possible to make Mahatma Gandhi disappear from the public life of the country.

Much capital was made of the fact that although Madanlal had been arrested on the 20th January 1948, and may reasonably be expected to have disclosed to the police the names of his co-conspirators, if any, no attempt was made to arrest any of the alleged co-conspirators excepting Karkare. It was pointed out that if Madanlal could have disclosed the name of Karkare who had done so much for him he could possibly have no scruples against disclosing the names of the others. It was urged that the fact that no other names were presumably disclosed by Madanlal after his arrest very strongly pointed to the conclusion that he had never been in fact associating with anyone of the accused excepting Karkare and that what he did on the 20th was really his own individual act and could certainly not be assumed to have been done in *association with anyone except perhaps Karkare.

*P.442.

From the evidence of Mr. Nagarvala it appears that when Sardar Jaswant Singh, D.S.P of Delhi, accompanied by an Inspector, arrived at Bombay on 22nd January 1948, he desired the witness to arrest Karkare and his co-conspirators, if any. On 24th January 1948 orders had actually been issued by Mr. Nagarvala for the arrest of Badge on the strength of the information then in his possession. From this part of Mr. Nagarvala's evidence an inference may reasonably be drawn that the interrogation of Madanlal, subsequent to his arrest on the 20th January, had been conducted in such a manner that the names of other conspirators had been

the 20th January, had resulted in the disclosure of the names of Karkare and Badge only and that no other names had been disclosed although other conspirators had been mentioned. The reason for the non-disclosure of other names may well have been that the names of others and necessary particulars about them were not in fact known to Madanlal. The contacts between Madanlal and others appear to have been very few and it is quite possible that, in view of his impetuous and impulsive nature, he was not taken into full confidence, although he was intended to be used as a very useful instrument in carrying out the object of the conspiracy. A very significant statement seems to have been made by Madanlal himself to Professor Jain when he told the latter that Karkare was keeping an eye on *him. The only contacts between Madanlal and the accused other than Karkare of which we have any indication on the record are:-

*P.443

(1) On 14th January, while he was at Bombay in the Hindu Mahasabha Bhawan, in the night and after the arrival of Badge and Shankar, Apte and Nathuram came and took Badge with themselves, first to Savarkar-Sadan and then to Dixit Maharaj's house.

(2) On the 15th January Madanlal accompanied Nathuram, Apte, Badge and Karkare to the house of Dixit Maharaj.

(3) At the Hindu Mahasabha Bhawan at Delhi he spent the night of the 19th with Gopal and Badge and next morning Apte and Nathuram paid a visit to the Hindu Mahasabha Bhawan.

(4) The conference at the Marina Hotel in the afternoon of the 20th.

There is nothing to indicate that all necessary particulars about Apte, Nathuram or Gopal were at any time made known, or otherwise became known, to Madanlal.

It

It is interesting to note that on the evening of the 17th Karkare alone went to the Marina Hotel to meet Nathuram and Apte and did not take Madanlal with him. The next day and night Karkare spent away from the Sharif Hotel. *Madanlal was going his own way at this time meeting his relations and contacting people in connection with his proposed marriage. It, therefore, appears to me exceedingly probable that designedly Madanlal was kept in the dark about the names etc. of Apte, Nathuram and possible also Gopal. He had met Badge at his house when he, accompanied by Karkare and some others, had gone there to see the explosives, and had also otherwise had opportunities of knowing him when they stayed together at the Mahasabha office at Bombay and then at Delhi. It, however, does appear from the evidence of Inspector Daswandra Singh and Sardar Jaswant Singh that on the day of his arrest Madanlal did know something about room No.40 in the Marina Hotel in which Nathuram and Apte had resided from 17th January to 20th January, because the same evening he had led the police officers to the hotel and to that room.

Some stress was also laid, on the appellants' behalf, on the recovery said to have been made at the instance of Apte on the 26th February 1948 from a place behind the Hindu Mahasabha Bhawan, New Delhi, and the recovery made from the house of Dr.Purchure at Gwalior, also at the instance of Apte. On 26th February 1948 a tree with four bullet marks thereon purports to have been shown by Apte to the police.

*P.445.

It was urged that according to Badge's evidence when
revolvers

revolvers were tried out in the jungle behind the Hindu Mahasabha Bhawan on the 20th January 1948, none of the bullets had hit the tree. It was urged that recovery of the tree with four bullet marks thereon evidenced an attempt on the part of the prosecution to fabricate false evidence. Similarly it was urged that the bullet marks found on the wall of Purghure's house and the spent bullet recovered from there also indicated an attempt by the prosecution to fabricate false evidence, because according to the evidence of Kale when revolver was tried out in the courtyard of Purghure it had been fired in the sky and not on the wall. The learned Special Judge rejected the evidence with regard to both these recoveries as inadmissible. It is important to note in this connection that while leading evidence the prosecution did not make any attempt whatsoever to connect these recoveries with any of the relevant events. In the circumstances, the fact of these recoveries, which no attempt was made to make use of for the purposes of the case, cannot possibly be taken to indicate that the prosecution had been attempting to fabricate false evidence. It would *have been different if any evidence had been led by *P.446 the prosecution to connect these recoveries with any of the material events or some use had been sought to be made of these recoveries. Apte at whose instance the recoveries are said to have been made alone could know how and when the bullet marks pointed out by him had come into existence.

Having held the existence of the conspiracy proved the next question that arises for determination is which of the appellants have been proved to be parties to that conspiracy.

*The cases of Nathuram v. Gode and Narayan D. Apte *P.447 may quite properly be dealt with together, because both of them have generally been very closely associated with each other in most of the incidents which have been sought to be proved by the prosecution.

Having

Having found that a conspiracy to murder Mahatma Gandhi did exist and that the explosion of the gun, cotton slab at the Birla House on the 20th January and the shooting of Mahatma Gandhi with the pistol Ex. P.39 on the 30th January were acts done in furtherance of the objects of ^{the} conspiracy, I can ^{have} little difficulty in holding that both these appellants were certainly parties to the conspiracy - indeed the very originators of the conspiracy.

I have, even in dealing with the question of the existence of the conspiracy, based my conclusions generally only on those incidents which have been proved by means of independent evidence and have not taken into consideration at all those parts of the approver's testimony of which there is no independent corroboration, except where the fact deposed *to by him seemed so clearly to follow from some other fact proved by independent evidence that the two could be regarded as almost inseparable from each other. I may note that I have done so not because the law requires that there should be independent corroboration of each fact deposed to by an approver, but, in view of the special nature of the case, merely on grounds of prudence, and completely to eliminate even the remotest possibility of any miscarriage of justice. In dealing with the individual cases, as pointed out already, in reference to the judgment of the House of Lords in Rex v. Baskerville, the Court has got to be satisfied that the complicity of the particular accused has been proved by means of independent evidence and cannot base the conviction merely on the approver's testimony even though it has otherwise been corroborated in material particulars.

In In

In the case of N. thuran V. Godse and N. rayan

D. Apte appellants, we have first the fact of the nomination effected by the former on his two life policies of Rs. 2,000/- or Rs. 3,000/- in favour of the latter's wife and the wife of his own brother Gopal V. Godse respectively on the 13th and 14th January, the endorsements of nominations in both cases being attested by Narayan D. Apte.

We have next the evidence of Dixit Maharaj *P.W. 77 as to the presence of both the appellants at his residence on the 15th January along with Madan Lal, Vishnu R. Karkare and Digambar R. Badge when the bag containing gun cotton slabs and hand-grenades deposited by the latter with the witness's servant the night before was produced. The contents of the bag were shown by Digambar Badge to his companions and the method of using the hand-grenades explained by the witness himself to those present. As regards Narayan D. Apte, this witness has also given evidence that he asked him to supply him with a revolver saying that they were proceeding on an important mission.

*P. 449.

We have next the evidence as to the collection of funds by the two appellants accompanied by Digambar R. Badge on 17th January 1948. The funds were collected ostensibly for different purposes, but, as I have held, they were really meant for expenses that might have to be incurred in carrying out their common design.

We have then the facts, both admitted and adequately proved, of the two having travelled from Bombay to Delhi on 17th January by Air under assumed names and of their having stayed at the Marina Hotel from 17th January to 20th January under different assumed names.

We have next the fact, admitted in the case of Apte *and amply proved by the evidence of P.W. 14, P.W. 15 and others in the case of both, of their presence at Birla House in the evening on the 20th and also that of their hurried departure from that place in the taxi as proved by P.W. 14.

*P. 450.

There

There is then the fact of the hurried departure of the two appellants from Delhi in the night of the 20th January. They stayed at Kanpur till the 22nd and then left for Bombay. These facts are admitted and have also been independently proved.

It is admitted as well as proved by adequate evidence that both of them stayed in the Arya Pathak Ashram at Bombay on the 23rd January in a room booked by Narayan D. Apte under the assumed name of D. Narayanrao for himself and for a friend whose identity was not disclosed. The next day Nathuram V. Godse was able to secure accommodation for the two of them in the Elphinstone Annexe Hotel under the assumed name of N. Vinayakrao, without disclosing the identity of his companion.

We have next the evidence of Vasant Joshi P.W. 79 as to the two having visited the house of his father at Thana at about 9 p.m. on the 25th January and having had some talk with Vishnu R. Karkare who was at their place since early morning and Gopal V. Godse who had been there since 4 p.m.

There is next the evidence of Dada Maharaj P.W. 69 and Dixit Maharaj P.W. 77 as to the two having visited the former at his residence in the morning on the 26th January when they asked for a revolver or a pistol from him and as to their having met the latter in the evening when they made a similar request to him.

We have next the fact, admitted as well as proved, of the two having travelled to Delhi by Air on the 27th January again under assumed names. From Delhi both proceeded to Gwalior. This ^{fact} is also admitted as well as proved.

There

There is then the evidence, which I have believed, as to the presence of both the appellants at Delhi Railway Station on the 29th and the 30th January.

There is then the admitted fact of Nathuran V. Godse having shot Mahatma Gandhi dead on the 30th with pistol Ex.P.39.

There is the evidence of Jagdish Parshad Goel P.W.39 which I have believed, that the pistol Ex.P.39 was taken from him by Dandwate absconder on 28th January on the representation that the same was needed by Nathuran V. Godse. Both evidently travelled back from Gwalior to Delhi with *this pistol. *P.452.

In case of Apte there is also the additional fact that it was his coat Ex.P.15 which Madan Lal was wearing at the time he was arrested and the hand-grenade which was recovered from him was in the pocket of that coat.

In Apte's case there is also evidence that from 3rd February to the date of their arrest he and Vishnu R. Karkare were keeping themselves almost in hiding. The evidence of I.W.61, the proprietor of the Hotel, shows that from 3rd February to 5th February 1948 they stayed at the Elphinstone Annex Hotel with room booked by Narayan D. Apte under the assumed name of D. Narayanrao. Both P.W.61 and P.W.64 the bearer of the Hotel give evidence to the effect that on hearing that some enquiries were being made by the police as to who had occupied room No.6 in the Hotel on 24th January, the two left suddenly within five minutes of the arrival of the police. It may be noted that it was room No.6 which had been booked by Nathuran Godse for himself and for Narayan D. Apte on 24th January 1948.

The evidence of Vasant Joshi P.W.79 is to the effect that both Vishnu R. Karkare and Narayan D. Apte stayed at their house in Thana from 5th to 13th February. On 13th February they shifted to Pyrcos Apollo Hotel *from where both were arrested on the 14th February. *P.453.
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In their written statements the two above named appellants have made no secret at all of their innermost feelings towards Mahatma Gandhi. They detested his ideology which they considered to be most detrimental to the interests of the Hindu community. They hated him personally for his supposed abject servility to the Muslims and his supposed callous indifference to the sufferings of the Hindu victims of Muslim atrocities. They held him responsible for the partition of the country and for the untold sufferings that had followed in its wake. They attributed to him also the responsibility for what they believed to be the intensely pro-Muslim policy of the Indian Government which was supposed to have resulted in the wholly unwarranted persecution of the Hindus for the sake of appeasing and placating the Muslims in the Indian Dominion. They took very particular exception to the Mahatma persisting in having recitations from the Quran at his prayer meetings and also to the trend of the speeches generally delivered by him at those meetings. Anyone reading their statements closely and carefully cannot help reaching the conclusion that these two appellants considered Mahatma Gandhi a very serious and grave menace to the cause of Hindu India. Their acts and conduct from the 13th *January up to the 30th January detailed above, considered with the background of their feelings towards Mahatma Gandhi, as disclosed by their own written statements, especially that of Nathuram V. Godse, conclusively establish that they were not only parties to the conspiracy to murder the Mahatma but that they were in fact the first to conceive the idea and thereafter the chief organisers of the plan.

*p. 454

Vishnu

Vishnu R. Karkare has indisputably been on quite intimate terms with Narayan D. Apte for quite a number of years and admits having been helped by the latter in his election to the Ahmednager Municipal Committee. In view of the very close relations existing between Nathuram V. Godse and Narayan D. Apte, he must quite naturally have come in frequent contact with the former. Otherwise too there appears to have been very close ideological affinity between him and both of them. Like the latter, he also is a zealous worker of the Hindu Maha Sabha and a devout follower of Mr. Savarkar. For some time he had been taking very keen interest in the work for the relief of the victims of Muslim atrocities in East Bengal and the Western Pakistan. Of all the others he seems first to have fallen in line with the views of Nathuram V. Godse and Narayan D. Apte and to have placed at their disposal his willing co-operation in the carrying out of their design. There is evidence which appears quite conclusively to prove his being not merely a party to the conspiracy but also an organiser of the plan next only to the two above named appellants in importance. With his protege Madan Lal, in whom he and his friends appear to have discovered a very useful and serviceable instrument for the carrying out of their common object, he proceeded to Bombay ahead of all others. In the company of Madan Lal, he met Professor Jain. Two days later Madan Lal alone met the Professor and told him about the plot against the life of Mahatma Gandhi with which Vishnu R. Karkare was said to be associated. According to the evidence of Dixit Maharaj P.W. 77 this appellant was also at the latter's place on the 15th January when the incident already mentioned relating to the bag of explosives brought by Digambar R. Badge from Poona took place. With Madan Lal he left for Delhi by some night train on the 15th January. On arrival at Delhi he along with Madan Lal and Shantaram Angchekar P.W. 5 stayed in one room in the Sharif Hotel.

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*p.456

He stayed at this Hotel under an assumed name and also gave a wrong address. This fact was admitted but was sought to be explained on a *ground which, after due-consideration, I have rejected. In this connection, we have also the evidence of P.W.5 that when, while parting, he asked for the appellants permanent address, the latter declined to give it. By itself this last fact may be quite insignificant but it does show how careful the appellant was in keeping his identity concealed.

There is then the evidence, which I have believed, that the appellant visited Nathuram V. Godse and Narayan D. Apte at the Marina Hotel in the evening of the 17th January soon after their arrival and then again some time the next following day.

*P.457.

We have then the direct evidence, which has already been discussed, as to this appellants presence at the Birla House in the evening on the 20th January. I have held not only his presence there at the material time proved but have also held, excepting the evidence of Chhotu Ram on the subject, that he did speak to the latter and did request to be allowed to go inside his room (Room No.3 in the servants' quarters) to take a photograph of Mahatma Gandhi. We have next the admitted fact of the appellants *hurried departure from Delhi in the night of the 20th January. The prosecution case was that he had stayed at the Frontier Hotel under an assumed name and left early next morning. The learned Special Judge, however, did not choose to accept the evidence led to prove that fact, and I have agreed with him, but the appellant himself has stated that he caught a train for Muttra that night from where he proceeded to Bombay.

We

We have then the evidence of Vasant Joshi P.W.79 as to the letter having despatched, at the instance of the appellant and on his behalf, he being described by his assumed name of Vyas, the telegram Ex.P.134 to the Poona address of Narayan D.Apte, requesting both, which presumably meant the latter and Nathuran V.Godse, to come immediately. This happened on the 25th January 1948. The aforesaid witness has also given evidence, which I have believed, about the appellant having met Gopal V.Godse, Nathuran V.Godse and Narayan D.Apte at his father's house at Thane that night.

We have next the evidence of Jannu P.W.28, which I have believed, as to the appellants' presence with Nathuran V.Godse and Narayan D.Apte at the Delhi Railway Station on the 29th and the 30th January 1948.

There is then the evidence, which has already been referred to, as regards the conduct of the appellant and Narayan D.Apte after the fateful 30th January 1948. *P.458.

The above facts taken together seem to me most clearly to establish that the appellant was a party, and quite a conspicuous and active party, to the conspiracy, and has been rightly convicted of that offence.

I come next to the case of Madan Lal Pahwa. This young man had suffered a lot as a result of the partition of the Punjab, and having travelled from his native village with a refugee caravan had seen with his own eyes the sufferings and the indignities inflicted by the Muslims en route on those who had found themselves compelled to leave their homes and hearths for no fault of their own. It is no wonder therefore that he developed an attitude of utmost hostility towards the Muslims. Wandering as a refugee he arrived ultimately at Ahmednagar where he came in contact with Vishnu R. Karkare

Karkare who had very closely identified himself with the refugee relief work at that place and soon seems to have become his ^{special} ~~favorite~~ favourite with his highly impressionable mind, so full of the tales of woes suffered by his co-religionists at the hands of the Muslims, and particularly the atrocities committed on their women-folk, he could not take kindly to the Gandhian creed and his written statement bears clear evidence of the fact that he utterly disliked the efforts of Mahatan Gandhi to help and protect the Muslims, residing in the Indian Dominion. Much persuasion would, therefore, not be required to make him fall in line with the views of his friend and benefactor and join in any plan for the purpose of putting an end to the Mahatma's supposed pro-Muslim and ante-Hindu activities. The evidence clearly shows that he was a member and a really very enthusiastic member of the conspiracy that had been formed for the achievement of that object.

Against him we have first the evidence of Professor Jain as to the disclosure made by this appellant to him during his stay at Bombay. We have ^{next} the evidence of Dixit Maharaj P.W.77 about his presence at his house along with Nathuram V. Godse and others on the morning of the 15th January. Then we have the most important fact of ^{not} his ~~only~~ being present at the Birla House on the 20th January evening but having actually exploded a gun cotton slab there. When arrested, he had a live hand-grenade in the inner pocket of the coat that he was wearing, which coat he must have

*have got from Narayan D. Apte because it admittedly *P.460 belonged to the latter. There can, therefore, be no reasonable doubt as to the appellant having been rightly convicted of the offence of conspiracy.

I come next to the case of Gopal V. Godse.

It is true that this appellant has not been proved to have had any political or other motive for joining the conspiracy. However, the evidence to prove that he was actually a party to the conspiracy, is so overwhelming and convincing, that the absence of evidence of motive cannot reasonably be given much weight.

The evidence of P.W.5, P.W.2 and P.W.3, which has already been discussed at length, quite clearly and unambiguously proves the presence of the appellant at Delhi on the 19th January 1948. There is then the evidence of Surjit Singh P.W.14 as to his having gone to Birla House in the evening on the 20th with Narayan D. Apte and Digambar R. Budge and another and having hurriedly come back from there with his brother and Narayan D. Apte. If he did come to Delhi and did go to the Birla House at the material time, it is difficult to conceive with what other object he did all this, if he had nothing to do with the conspiracy and the plan to give effect to which the four appellants whose cases have already been dealt with had come to Delhi *and had gone to the *P.461. Birla House. It was suggested, somewhat half-heartedly, by Nathuram, and also by Mr. Inamdar, that the appellant might have come to Delhi at the request of his brother who without disclosing the

the object of his own visit to Delhi might have just asked him to come in the hope that he would be able to help him in case of there being any mishap. I refuse to believe that the appellant would have come all the way to Delhi without finding out with that precise object his brother and others were proceeding there. In any case, it is impossible to believe that he went to the Birla House with Narayan D.Apte and Diganbar R.Badge in the taxi and did not know the purpose of their visit to that place.

that

We have then the fact/in his application for leave he gave quite a false ground for asking for leave. If to his knowledge, there was nothing sinister or wrong about his proposed visit to Delhi, why should he have, while applying for leave, made any attempt to conceal the fact?

We have then the fact of his brother having, on the day he was to leave Poona, effected a nomination in favour of his wife in respect of his life policy of Rs.3,000/-. Although there is no direct evidence that the appellant knew

of this fact, the probabilities are that the *nomination must have been effected with his knowledge and presumably to assure him that a provision had been made for his wife in case of any mishap taking place to himself.

We

of the fact
 P.462.
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We have it in the statement of Nathuram V. Godse that the appellant did meet on the 14th January and in fact had his lunch with him. We have also the additional fact that, as evidenced by Nathuram's Diary Ex.P.218, and as also admitted by him, a sum of Rs.250/- had been paid by him that day to the appellant.

In the circumstances, the conclusion seems to be inevitable that the appellant had followed his brother and his co-conspirators to Delhi in pursuance of a preconceived plan with full knowledge of the purpose for which they were all proceeding there.

We have also to consider the fact of his hurried departure from Delhi and his presence on the 25th January at the house of G.M. Joshi at Thana where he first met V.R. Karkare and later his brother and Narayan D. Apte.

From the above facts, the conclusion seems to be wholly inescapable that the appellant was a party to the conspiracy, although it may well be that he was not quite an enthusiastic party and had joined it only under the influence of his brother. The fact of his having secretly left the hand-grenade allotted to him for use.

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P.463.

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at the Birla House in the bag which he kept in the cupboard at the Hindu Maha Sabha office does appear to point in that direction. Be that as it may, however, his conviction by the learned Special Judge on the charge of conspiracy seems to me to be quite justified and not open to any reasonable objection.

In the case of Shankar Kistayya, however, I am clearly of the opinion that there are not enough materials to justify his conviction on the charge of conspiracy. The learned Special Judge has found and Mr. Daphtary expressly conceded, that this appellant was not a party to the conspiracy till the time when, on 20th January, while getting down from the first floor of the Marina Hotel, and on their way to Birla House, Digambar R.Badge told him that he was to fire the revolver and throw the hand-grenade on the person on whom he himself would fire his revolver and throw his hand-grenade, and that that person was an old man named Gandhiji. In view of the finding of the learned Special Judge and the admission of Mr. Daphtary so far as this appellant is concerned the evidence with regard to the previous incidents must be ignored.

Now, there is no independent corroboration at all of the approver's evidence as to the communication said to have been made by him to the appellant on their way down the first floor of the Marina Hotel. Except the fact of his having been seen at the Birla House, nothing else has been proved against him by any evidence other than that of the approver. The learned Special Judge having acquitted all the accused, including this appellant, on the charge of being in possession of a revolver, it is manifest that the evidence of the approver as to the

possession

* P. 464.

possession of a revolver by the appellant when the latter went to the Biria House must be completely ignored. Even if his uncorroborated testimony as to at first one and later two hand-grenades being with the appellant is accepted, there is no evidence at all to exclude the possibility of the hand-grenade or the hand-grenades being with him, to his knowledge at least, in the same way as he used to carry similar stuff for his master on previous occasions. In the absence of any independent corroboration of the approver's testimony, about his complicity in the crime, I do not find it possible to uphold this appellant's conviction on the charge of conspiracy and am of the opinion that so far as his conviction on this charge is concerned his appeal must be allowed.

*
I am also of the view that the conviction of Dr. Dattatraya S. Parchure on the charge of conspiracy cannot be sustained and his appeal must also succeed.

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P.465.

In convicting this appellant the learned Special Judge has relied on his retracted confession and the evidence of Madhukar Keshav Kale P.W.50, Madhukar B. Krishna Khire P.W.51, Ram Dayal Singh P.W.52 and Jgannath Singh P.W.53.

The confession Ex.P.86 was recorded by Mr.B.R. Atal P.W.56, a first class Magistrate in Gwalior State, on 18th February 1948.

Dr. Parchure was arrested at 2 a.m. on the 3rd February 1948 under the Local Safety Ordinance and was detained under Military custody in the Fort.

Fort. He

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He seems to have been one of them about 40 workers of the Hindu Maha Sabha who were arrested during the night between the 2nd and the 3rd February. His house was searched twice, once on the 3rd and a second time on the 13th February. On 14th February Messrs N.Y. Deulkar P.W. 123 and Dada of the Bombay police and Mr. Balkrishan of Delhi police arrived at Gwalior and had a conference with some high officers of the State police. On 15th February Milkanth Parchure, the son of Dr. Parchure, was interrogated and immediately after his interrogation * placed under detention. On the 16th February Shri K.R. Parchure, the eldest brother of Dr. Parchure, and presumably the head of the joint Hindu family, who held a very high appointment in the State service was also interrogated and subsequently detained. On the same day, the wives of Dr. Parchure and Shri K.R. Parchure were also interrogated. It may be noted that Milkanth Parchure was kept in detention ~~xxx~~ till 27th March 1948 and Shri K.R. Parchure was not released till the first week of June 1948.

The same day, i.e. on 16th February at 6 p.m. P.W. 123 went to the Fort to interrogate the appellant, Dr. Parchure, and did interrogate him in the dispensary. Next Morning, this witness rang up Mr. Nagarwala and asked him for the appellant being shown as under arrest under section 302 in connection with Mahatma Gandhi's murder case. On the same day, an application was made which, according to P.W. 123, had been dictated him by Mr. Balkrishan of the Delhi C.I.D. ~~xxx~~ police to the Superintendent of Police Lashkar wherein it was stated that Dr. Parchure was willing to confess

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to confess his crime and a request was made for legal steps being taken to get his confession recorded. The application was forwarded by the Superintendent of Police to Mr. Atal with an endorsement asking the Magistrate to do the needful. The Magistrate recorded an order on this application at 6 p.m. that the confession would be recorded next day. On the 18th Mr. Atal proceeded to the Fort, was taken to the cell of Dr. Parchure and recorded the confession in the verandah adjoining the cell.

It may also be noted at this stage that on the 17th February 1948 with the permission of the Commander of the Fort Dr. Parchure had been taken by Mr. V.S. Dalvi P.W. 106 to Murar Police station from where he was taken by the aforesaid witness to some place from where a sten gun was recovered and a case under section 110 of the Gwalior Communal Disturbances Prevention Ordinance was registered against him.

Dr. Parchure seems to have been produced before a local Magistrate on 20th February 1948 and 21st February 1948 in connection with extradition proceedings. He was transferred to Delhi on 24th May 1948. The case in the Court of the Special Judge started on 22nd June 1948. An application on behalf of Dr. Parchure was presented on 13th July 1948 retracting the confession. Besides some legal objections to the admissibility of the confession and the competency of Mr. Atal to record the same it was recited in this application that Dr. Parchure had a high temperature at the

time

time when the so-called confession was made and was not in a fit condition of body and mind to understand the nature and the legal effect of what he was doing and saying. It was also stated that after his arrest he had been placed in such conditions as to leave him no choice but to do what the police dictated to him, and that the so-called confession had been obtained from him after threatening him with dire consequences to the life, liberty and property of himself and of his relatives. In his statement made in Court Dr. Parchure went much further and stated that the confession had been brought to him ready written, and, under threat of very dire consequences to himself and to the other members of his family and particularly to his aged mother, he was made to sign the ready written confession without having even read the same.

Mr. Daphtary addressed very lengthy and elaborate arguments to us to show that the retraction of the confession was belated and not bona fide; that the statement made by Dr. Parchure in Court as to the confession having been brought ready written to him was an after-thought; and that neither the grounds stated in the application dated 13th July 1948 ~~xxxx~~ nor those contained in the statement made in Court had been made out or had any real foundation.

In explaining the possible motive of Dr. Parchure in coming out with an offer to confess his guilt the very first day that he was interrogated, the learned counsel drew our attention to a statement contained in the confession itself to the effect that Dr. Parchure had made the confession in order

to make

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to make the position of himself and his associates clear. The suggestion of the learned counsel was that Dr. Parchure had made the confession in order to save about 40 co-workers of his in the Hindu Maha Sabha who had been arrested along with himself from being sought to be implicated.

While I have no hesitation in rejecting the statement made by Dr. Parchure in court as to his having been made to sign a ready written confession, and also he can find no ^{reason} ~~ground~~ to accept his statement as to any actual threats having been held out to him, either at the time of the interrogation or subsequently, in order to extort a confession from him, I am nevertheless of the opinion that the surrounding circumstances at the time the confession is said to have been made were such as cannot but create very reasonable doubt in one's mind as to its voluntary character.

*P.470.

It has to be remembered that at the time Dr. Parchure was interrogated on the 16th February 1948 he and his co-workers of the Hindu Maha Sabha were under detention only under the provisions of the Gwalior Communal Disturbances Prevention Ordinance. There does not appear to have been any suggestion at that stage of their or any of them being suspected of complicity in the murder of Mahatma Gandhi. I, therefore, find myself unable to understand how at that time Dr. Parchure could possibly think that by making the confession he could make the position of his co-workers clear or save them from being unnecessarily harassed in connection with the murder of Mahatma Gandhi.

Dr. Parchure

Dr. Parchure was admittedly confined in a solitary cell in the Fort, while all his co-workers were presumably being detained in the judicial lock-up or may be in the jail. There does not appear to be any good reason for having isolated, Dr. Parchure. The only reason suggested was that he was detailed in the Fort in order to avoid demonstrations by his sympathisers. Forty prominent workers of the Hindu Maha Sabha who in all probability were all the known workers of the said Sabha in the locality, being already under detention I do not see there could be any reasonable danger of any demonstration being staged by anybody. Nor can I see how the mere detention of Dr. Parchure in the Fort could by itself obviate the possibility of a demonstration being staged.

*P.471.

As has already been seen, the Officers of the Bombay and the Delhi Police arrived at Gwalior on the 14th February. On the next following day, the son of Dr. Parchure was arrested and placed under detention. On the day following that, his elder brother, the head of the family and a very highly placed State official, was similarly arrested and placed under detention. These events as well as the interrogation of his own wife and his brother's wife which immediately preceded his own interrogation in the evening on the 16th February could not but have affected Dr. Parchure's balance of mind. He had been under detention since the 3rd February 1948. His house had been searched twice and nothing incriminating had been found. There does not otherwise appear to have been any suspicion against his son and his brother, for otherwise the State authorities

*P.472.

authorities would have taken action against them when they did take against the doctor and his co-workers. Although there is no evidence of any direct threat or inducement having been held out to Dr. Parchure at any time during the course of his interrogation or thereafter, and before his confession was recorded, the possibility of his mind having been influenced by the events of the 15th and the 16th February in regard to the other members of his family and his having offered to make the confession in the hope of saving his family from unnecessary harassment cannot, in the circumstances, be reasonably excluded. I am not impressed at all by the argument about the retraction of the confession being belated. The application by which the confession was retracted appears to have been presented on the day on which the first witness from Gwalior, namely Syed Manzur Ali P.W. 49 was examined and it was anticipated that the ^{evidence} ~~confession~~ with regard to the confession was about to be produced. Mr. Inamdar, the learned counsel for Dr. Parchure, who argued his case with remarkable fairness made a statement at the Bar which I do not see any reason not to accept that the confession became available to him for inspection after considerable delay and that after the inspection of the aforesaid document he lost no time in getting necessary instructions from his client and making the application by which the confession was retracted.

It has been repeatedly ~~held~~ held that although as against

*P.473.

against the maker retracted confession may constitute a sufficient basis for conviction provided it is true and voluntary, even in such a case it is much safer to insist on independent corroboration, and it is very unusual to base a conviction on an unconfirmed retracted confession. I consider the need for confirmation to be much greater in the present case where there are indications that the confession was probably not voluntary. I would, therefore, find it impossible to uphold the conviction of this appellant unless I can find that the other evidence which is relied on by the prosecution in corroboration of the confession is trustworthy.

I have already dealt with the evidence of Madhukar Keshav Kale P.W. 50 about the incident which, according to him, took place at ^{the} ~~his~~ house of Dr. Parchure at about 12.30 p.m. on the 28th January, and quite unhesitatingly rejected it as wholly untrustworthy.

*P.474.

Madhukar Balkrishna Khire P.W. 51 is a student, aged about twenty years. He says that he used to attend the parade of the Hindu Rashtriya Sena of which Dr. Parchure was the head and also used to visit him at his house. The evidence given by him is to the effect that on hearing the news of Mahatma Gandhi's death he proceeded to the doctor's dispensary and met him there. On the witness telling him that after Mahatma's death they could not oppose his principles the doctor showed his resentment of the observation made by the witness.

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On the witness asking the doctor as to who could have committed the murder, he got the reply

"someone like us". At the request of the witness, the doctor closed the dispensary. The two having left the dispensary, the witness instead of going to his house accompanied the doctor to the Rajput Boarding House where one of the two called Ram Dayal Singh. When Ram Dayal Singh came, Dr. Parchure told him that he had completed his work and that it was then for Ram Dayal Singh to complete the rest of the work. The doctor further said that their movement must end in success. After this conversation, according to the witness, both of them left the Rajput Boarding House. The witness accompanied the doctor to his residence where Rupa, the member of the Sena, who always went about with the doctor brought some sweets which were distributed.

Ram Dayal Singh P.W. 52 is the President of the Rajput Sewa ^{Sang} ~~Tag~~ and a Zamindar. His evidence is to the effect that he heard the news of Mahatmaji's assassination when he was in the Rajput Boarding House, and that they made arrangements for holding a condolence meeting in the said Boarding House. At about 7 or 7.30 p.m. Dr. Parchure whom he had known for four or five years, came to the Boarding House when he himself was at flag ~~post~~ and was having a talk with some friends, including Jagannath Singh P.W. 53, and some students. According to the witness Dr. Parchure as soon as he arrived there, blurted out that a good deed had been done and added that the opponent of Hindu religion had been killed and that the Hindu religion would now remain quite safe. The doctor, according to the witness, also stated that the man who

who had killed Gandhiji was their own man and that the person who had exploded a bomb a few days back was also their own man. The doctor then went on to say that the pistol had been sent from there and that the person who had used the pistol x had also gone from there, having come from south and having gone via Gwalior. The witness kept quiet but Jagannath Singh asked the doctor to keep quiet and go away.

Jagannath Singh P.W. 53 is a forest contractor and A Zamindar. He is also a member of the Rajput Sang. His evidence is to the effect that he had gone to Dr. Panchure's house in the company of one Lal Singh at about 11 a.m. on the 30th January 1948 in order to discuss with him the desirability of making a ~~xxx~~ joint demand on behalf of the Rajput Sang and the Hindu Maha Sabha for a share in the Ministry. According to the witness, Dr. Panchure told him that something was going to be accomplished in a day or two, that something more would be accomplished in an other week, and that he would thereafter discuss with them what steps were to be taken to get a share in the Ministry. The witness and his companion left the doctor's place after some time. At 7 p.m. the same day the witness had gone to the Rajput Boarding House to attend the condolence meeting which was going to be held there. x The doctor came there and said that one work of his had been completed, that the deceased was a traitor to the Hindu religion and Autar of Aurangzeb, that the assailant was his own man who had come from the South and had taken

*P. 476.

*P.477.

a pistol from Gwalior, and that Madan Lal who had thrown the bomb a few days earlier was also a person from there. The witness thereupon asked the doctor to go back from the Boarding House. Ran Dayal Singh P.W. 52 told the witness that the doctor was bragging but the witness said to him *that there might be some truth in what the doctor had been saying and related to him what had taken place in the morning. The witness says that he came away without attending the meeting because there was yet some delay in the meeting being held. He further says that he sent information about what he had heard from Dr. Parchure to the Congress.

The evidence of P.W. 51 does not really prove anything against the doctor except the distribution of sweets by him which by itself cannot be taken as any evidence of his complicity in the crime. The witness, it has further to be observed, lives in the same house with Patwardhan. While discussing the evidence of P.W. 50 in an earlier part of this Judgment I had occasion to point out that Patwardhan was admitted by P.W. 50 to be a police informer. This witness does not expressly admit this fact but does admit that besides his ostensible pursuits the said Patwardhan was also doing something else which he did not remember. The witness further admits that he and Patwardhan not only live in the same house but treat each other as if they were ~~xxx~~ relations, It is admitted that Patwardhan took the witness as well as P.W. 50 to the Home Minister's place on the 2nd February where they made certain statements and were eventually

*P.478. eventually placed under arrest. For the reasons given in discussing the evidence of P.W. 50 in connection with the incident of the 28th January I would also decline to place any reliance on the testimony of this witness.

The evidence of P.W. 52 and P.W. 53 seems to be so improbable and unnatural that even though there is no ostensible ground why the witnesses should make false statements I would very much hesitate to rely on it. It is not suggested that there was any community of interest or political ideology between Dr. Parchure and these witnesses. On the other hand, the very fact that they were going to hold a condolence meeting to mourn the death of Mahatma Gandhi shows that there could be nothing common between them and the appellant. The latter is not a raw and inexperienced youth, but seems to be an experienced man of the world whose family has been holding a conspicuous position in the State and who himself is a medical practitioner of standing there. I really find it exceedingly difficult to believe that, after closing his dispensary, instead of going to his house he went out of his way to go to the Rajput Boarding House and there blurted out the words that have been put into his mouth by the two witnesses. The evidence of P.W. 53 when he says that the doctor had called Mahatma Gandhi an Autar of Aurangzeb and a traitor is a distinct improvement on that of P.W. 52. P.W. 51 who claims to have been with the appellant when the latter went to the Rajput Boarding House does not depose to his having

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*P.479.

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used the words which have been ascribed to him by P.W. 52 and P.W. 53.

In this connection, it has also to be observed that P.W. 50 has given evidence to the effect that he had gone to Dr. Panchure's dispensary at 6 p.m. on the 30th after hearing of Mahatmaji's assassination when P.W. 51 also had turned up. According to this witness after Dr. Panchure had closed the dispensary both he and the doctor proceeded to their respective houses, P.W. 51 having already left them and gone to his own house. If this part of P.W. 50's evidence is believed, that by itself will be sufficient to demolish the evidence given by the other three witnesses and would eliminate the possibility of the doctor having gone to the Rajput Boarding House.

I consider the evidence of all the above mentioned witnesses to be exceedingly unsatisfactory, convincing and unreliable, and must, accordingly, hold that barring the retracted & confession, there is no other evidence of the Appellant's complicity in the crime. As I have already pointed out, I do not consider it safe, in view of the circumstances of the case, to convict the Appellant merely on the strength of that confession. I would ~~xxxx~~ give him the benefit of the doubt and would hold that the offence of having joined the conspiracy to murder Mahatmaji has not been brought home to him.

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There are two more questions left for consideration.

One of these questions relates to the sentence passed on Apte. The learned counsel for Apte urged that in any case the extreme penalty of death should not be imposed on him and that even if his conviction for the offence of being a party to the conspiracy to murder Mahatma Gandhi, and for having abetted the murder of the Mahatma by Nathuram V. Godse, is upheld, it would meet the ends of justice if he is given the lesser penalty of transportation for life.

After having given my most anxious and careful thought to the question, I have been unable to see any ground at all for treating the case of Apte with any leniency. As pointed out by the learned Special Judge, he was really the brain behind the conspiracy. The entire plan originated with him and Nathuram V. Godse, and they throughout remained its chief organisers. He accompanied Nathuram to Gwalior from where they fetched the pistol Ex.P.39 with which the death of Mahatma Gandhi was actually caused. He was present in Delhi on the date of the occurrence, presumably to lend his moral support to the person who was to perform the actual act. At no stage of the trial did he show any signs of compunction. Having regard to all the circumstances of the case, I am clearly of the opinion that the sentence of death passed on him by the learned Special Judge is fully justified.

The other question arises on the findings given by the learned Special Judge in the case of Madan Lal Pahwa. The learned Special Judge has held that the later became disassociated from the conspiracy as from the 20th January 1948. I am of the opinion that, if this finding of the learned Special Judge could be upheld, the sentence of transportation for life passed on Madan Lal by the learned Special Judge would not be justified. Section 120-B

which

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which provides punishment for the offence of being party to a criminal conspiracy to commit an offence lays down that where the conspiracy is one to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, the person convicted shall, where no express provision is made in the Code for the Punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

There is no express provision made in the Code for the punishment of a ~~conspiracy~~ conspiracy to commit a murder. A person convicted of being party to such a conspiracy has therefore to be punished in the same manner as if he had abetted the offence. As provided by section 115 where the offence abetted is one punishable with death or transportation for life but the offence has not been committed in consequence of the abetment the maximum punishment that can be awarded to a person found guilty of having abetted that offence is imprisonment of either description for seven years. Where the offence has been committed in consequence of the abetment the abettor is, as provided in Section 109, liable to the same punishment as is provided for the offence itself. It seems to me to follow from the above provisions of the law that where a person is charged with having joined a conspiracy to commit a murder, the punishment to be inflicted

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inflicted on him must vary according as the murder itself has been committed in pursuance of the conspiracy or not. Although, as has been pointed out in an earlier part of this judgment, the offence of conspiracy is complete as soon as an agreement has been reached between the conspirators to do any illegal act or to commit an offence and it is not necessary in order to hold a person guilty of the offence of conspiracy that any overt act should have been done in pursuance of the agreement, yet, the punishment to be awarded would vary according as the substantive offence contemplated by the conspirators has or has not been committed. If any person disassociates himself from the conspiracy before the actual commission of the offence to which the conspiracy had been formed, it seems to me that, although he is still liable to be tried for the offence of conspiracy, the punishment to be inflicted on him cannot be the same as that inflicted on a person who remains in the conspiracy up to the time the substantive offence is committed. This I consider to be the effect of the following passage in Sir Robert Wright's "Monograph on criminal conspiracy" quoted by Sir Asutosh Mookerji in his judgment in Pullan Behary Das's case (16 I.C. 257:-)

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"There can be no doubt but that a person may involve himself in the guilt of a conspiracy by his mere assent to, and encouragement of, the design, although nothing may have been assigned or intended to be executed by him personally. If he joins a conspiracy already formed he cannot in general be affected by what has been already done, except in so far as this

*P.484

may,

may, in conjunction with more specific proof, indicate the nature of the purpose in which he joined; though a different rule may apply in treason, and perhaps in a conspiracy in pursuance of which a felony has been committed. If he quits a conspiracy, there is no reason to suppose that he is in general affected by any act done after he has severed himself from it, except in so far as that act may have been done in execution of the design as it stood when he was a party to it."

At page 153 in Harrison's Law of Conspiracy we find a similar rule laid down in the following passage:-

"Similarly, if he leaves a conspiracy there is no reason to suppose that he is affected by any act done after that day by his former conspirators, except in so far as it is done in execution of the design as at the time when he was a party to it."

I take it that the word "design" in the above passages connotes a particular plan for the achievement of the common object of the conspirators. For anything done in execution of a design already formed, a person cannot escape liability by merely quitting the conspiracy. For example, even if any of the appellants had chosen to quit the conspiracy after the formulation of the plan for Mahatmaji being murdered by throwing one or more handgrenades on him or firing a revolver on him, after a gun cotton slab had been exploded outside the Birla House in order to attract attention, he could not have escaped liability for anything done in execution of that plan. If, however, on the

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*frustration of failure of that plan but before the formulation of another plan for carrying out the object of the conspiracy he quitted the conspiracy, he could not be held liable for anything done by any of the conspirators subsequent to his having quitted. The word "design" in these passages appears to have been used in contradistinction to the words "illegal act" in defining the offence of criminal conspiracy. One of the meanings of the word "design" as given in Webster Dictionary is "a mental project or scheme in which means to an end are laid down". In the above passages, the word "design" seems to have been used in this sense - as connoting a particular project or scheme devised as the means for doing the illegal act which is the ultimate object of the agreement or the conspiracy.

However, I find myself unable to agree with view of the learned Special Judge as to Madan Lal having become disassociated from the conspiracy on his arrest. It is well settled that a person who becomes a party to the conspiracy must share responsibility for any action done by any of the co-conspirators in pursuance and in furtherance of the conspiracy, even though he himself has no knowledge of the act having been done and has not even ever come in contact with the person who has done the act. Madan Lal having once become a party to the

*P. 486.

*agreement to murder Mahatma Gandhi could not become disassociated from the agreement and could not therefore cease to be a party to the conspiracy merely by reason of being placed in a situation which rendered it impossible for him to offer any kind of co-operation or otherwise assist in the achievement of the object of the conspiracy. I am, therefore, of the opinion that Madan Lal was a party

to

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to the conspiracy even on the 30th January when the offence of murder was committed by Nathuram V. Godse. In the circumstances under section 120-B he was liable to the same punishment to which he would have been liable if he had otherwise abetted the offence and the offence had been committed in consequence of the abetment. The sentence of transportation for life passed on him in the circumstances was the minimum sentence that could be passed.

An attempt was made by Nathuram V. Godse in the course of his argument to show that Gopal V. Godse even if he had become a party to the conspiracy must be deemed to have quitted it as from the 20th January. The learned counsel for Gopal V. Godse was, however, unable to support this contention which otherwise appears to be wholly untenable.

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As set out in the commencement of this judgment, besides having been convicted, under the first charge, under section 120-B read with section 302 of the Indian Penal Code, of the offence of having joined the conspiracy for the murder of Mahatma Gandhi, in pursuance of which conspiracy the latter had actually been murdered, Dr. Panchure was also convicted, by the learned Special Judge, under the seventh and the last charge, under section 302 read with section 109, Indian Penal Code, of the offence of having abetted the murder of Mahatma Gandhi by Nathuram V. Godse in consequence of which abetment the murder was actually committed by the latter on the 30th January 1948. Although the form of the charge does not show that, it is quite obvious from the judgment of the learned Special Judge that Dr. Panchure was convicted of this last-mentioned offence merely because of his having joined the conspiracy. No other act, on his part, independently of his having joined the conspiracy, has been held proved or has in fact been proved which may, in law, be deemed to amount to abetment. On the 6th

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6th charge which referred to Dr. Parchure *having abetted Nathuram V. Godse and Narain D. Apte in bringing, without a licence, from Gwalior to Delhi the pistol Ex. 39 with cartridges, the learned Special Judge acquitted him and this acquittal was not challenged before us on behalf of the Crown by way of appeal or otherwise. The ground given by the learned Special Judge for acquitting Dr. Parchure on this charge is that whatever the latter did in the matter had been done by him at Gwalior to which place the Indian Arms Act did not apply. The learned Judge having believed the evidence of Ramdayal Singh and Jagannath Singh P.Ws. as to Dr. Parchure's having confessed his having helped the assassin of Mahatma Gandhi in getting a pistol from Gwalior, could not, of course, go further than that. I have definitely rejected the above evidence and also the confession said to have been made by Dr. Parchure before the Magistrate on 18th February 1948. It is, therefore, obvious that if he is acquitted on the charge of conspiracy, there is no evidence on which his conviction on the seventh charge can be sustained. The result of the quashment of his conviction must therefore necessarily be the quashment of his *conviction also on the seventh charge.

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Shankar Kistayya, in addition to being convicted under the first charge for the offence of having joined the conspiracy was also convicted under the third, the fourth and the fifth charges. Under the third charge he was convicted under section 4 (b) of the Explosive Substances Act read with section (6) of the same Act in respect of the hand grenade recovered from Madan Lal, and under section 5 or , in the alternative, under section 5 read with section 6, in respect of the remaining

explosives

explosives. The offences which formed the subject-matter of this charge were:-

(1) Being in possession or having under control, in pursuance of the conspiracy, between 10th January and 20th January, 1948, explosive substances with intent to endanger life by means thereof or enable any other person to endanger life by means thereof, or the abetment of the above act;

(2) Being in possession or having under control, in pursuance of the conspiracy, explosive substances under such circumstances as to give rise to a reasonable suspicion that he did not have them in his possession or under his *control for a lawful object, or the abetment of the above act.

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Under the fourth charge he was convicted under section 3 of the Explosive Substances Act read with section 6 of the same Act for having abetted, in pursuance of the conspiracy, Madan Lal in unlawfully and maliciously causing the gun-cotton slab to explode, the explosion being of a nature likely to endanger life and to cause serious injury to property.

Under the fifth charge he was convicted under section 302 read with section 115, Indian Penal Code, of having, in pursuance of the conspiracy, abetted the murder of Mahatma Gandhi, the murder having, however, not been committed in consequence of abetment by him.

The form of the charges, as well as the general tenor of the judgment of the * learned Special Judge in dealing with them, show that Shankar Kistayya was tried for these offences, and convicted of them, by reason of his having joined the conspiracy in furtherance whereof the acts constituting the offences had been done. it seems

seems to be reasonably clear to me that the learned Special Judge would not have convicted him of any of these offences had he not found that he did join the conspiracy on the 20th January.

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*Independently of the conspiracy, it does not even otherwise appear to be possible to sustain his conviction on any of the charges. Except the statement of the approver there is no evidence at all that he handled the explosives even as the former's servant, much less is there any evidence of his having ever had them otherwise in his possession or under his control. According to the approver's evidence, he himself deposited the bag containing the explosives with Dixitji Maharaj's servant in the night of the 14th. After the bag had been handed over to Madan Lal and Karkare at Dixitji Maharaj's house, the explosives did not remain even in the possession or under the control of Badge. Except the evidence of the latter, there is no other evidence that any hand-grenade or any other explosive was at any time in the possession or under the control of Shankar Kistayya even on the 20th January. The recovery of some explosives by him from the jungle behind the Hindu Mahasabha can neither be taken to prove his possession of, or control over them nor can it be quite safely regarded as an independent corroboration of Badge's evidence that it was he who had, of course under his orders, interred the stuff in the ground. It has been repeatedly held that the recovery of incriminating articles by an accused person, or pursuant to information furnished by him, from a place which is not in his exclusive possession, cannot be taken to establish his possession of the articles or even the fact that it was he who had deposited those articles there, because the possibility of his having

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come to know somehow that the articles had been deposited there by someone else cannot be said to have been reasonably excluded. In the present case, although very likely it must have been not Badge but his servant who interred the staff, it cannot be said that there was no possibility of Badge himself having done it. In the circumstances it appears to me that if the finding of the learned Special Judge as to Shankar Kistayya having joined the conspiracy is not upheld, and his conviction on the first charge is set aside, his conviction on any of the other charges cannot be sustained. On Badge's uncorroborated testimony, it should be altogether unsafe to hold that the explosives or any of them had at any time been in his actual possession or under his control. Apart from his being a party to the conspiracy no other act seems to have been ascribed to him even by the prosecution which may in law be deemed to amount to an abetment of the offence or offences committed by any of the other accused in relation to the explosives. In my opinion, therefore, the automatic effect of his acquittal on the first charge must be his acquittal also on the other charges on which he has been found guilty.

In the result of the findings given above, I would accept the appeals of Dr. Dattatrya S. Parchure and Shankar Kistayya and setting aside their convictions on all the charges would acquit them. I would dismiss all the remaining appeals and would uphold the convictions of all the other appellants and the sentences passed on them.

I do, however, want to commend the cases of Gopal V. Godse and Madan Lal Pahwa to the Government for consideration of the desirability of commuting the sentences of transportation for life passed on them. Both are quite young and in the bloom of their lives. Both seem to have succumbed to influences ----- exercised

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*P.496.

exercised over them by stronger and more determined persons. Gopal V. Godse's case seems to deserve particular consideration by reason of the fact that before going to the Birla House on the 20th he seems to have left the hand-grenade allotted to him at the Hindu Maha-sabha office which fact shows that he had, even before getting to the place, definitely decided that he was not going to play any active part in the execution of the plan for that evening & was, in any case, not going to throw the hand-grenade.

Before concluding I want to advert to some remarks made by the learned Special Judge as to the slackness shown in the investigation during the period between the 20th and the 30th January 1948 but for which, in the view of the learned Judge, the tragedy could have been prevented. I must say that I have not been able to discover any justification at all for these remarks which in my judgment were wholly uncalled for.

21st June 1949.

Sd/ Achhru Ram,
Judge.Dasgupta J.

I concur with the conclusions arrived at by my learned brothers Bhandari and Achhru Ram JJ. I would accept the appeals of Dattatraya S. Parchure and Shankar Kistayya and set aside their convictions upon all the charges. I would dismiss all the remaining appeals and uphold the convictions and sentences awarded to Nathuram V. Godse, Narayan D. Apte, Gopal V. Godse, Madanlal Pahwa and Vishnu R. Karkare. I wish, however, to dissociate myself from the recommendation for mercy made by my learned brother Achhru Ram J. in favour of Madanlal Pahwa. Pahwa took a very prominent part in the plan of conspiracy originally conceived. The success of the original plan depended to a great measure on the number of persons

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in the conspiracy, each one of whom was assigned a specific role. Madanlal did not hesitate to play the part assigned to him and he did this with full consciousness of the consequences that might have followed. The fact that the plan of the 20th January miscarried does not, in my opinion, extenuate Panna's guilt. I am not, therefore, prepared to recommend that the sentence awarded to him should be commuted.

Sd/ G.D.Khosla,
Judge.

21st June 1949.

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