YAKUB ABDUL RAZAK MEMON

*v.*

THE STATE OF MAHARASHTRA, THROUGH CBI, BOMBAY

PART-I

(Appeals relating to death sentence)

(Criminal Appeal No. 1728 of 2007 ETC.)

MARCH 21, 2013.

**[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]**

*TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:*

*ss. 3(3) of TADA and s. 120-B IPC r/w ss. 3(2)(i), 3(3),3(4), 5 and 6 of TADA – Serial bomb blasts in Bombay in March, 1993 – Conviction and death sentence to 11 accused-appellants by Designated Court – Held: The confessional statements of accused and co-accused as also the evidence of approver and other prosecution witnesses, the recoveries made and other evidences, establish the guilt of all accused-appellants – Their conviction affirmed – The sentence of death to first accused-appellant affirmed – Sentence of remaining ten accused-appellants commuted to rigorous imprisonment for life – Life imprisonment means the whole natural life — Therefore, subject to ss. 432 and 433 of the Code and clemency powers of President and Governor under Arts. 72 and 161 of the Constitution, the ten accused-appellants shall be imprisoned for life until their death — The executive should take due consideration of judicial reasoning before exercising the remission power – Penal Code, 1860 – ss. 120-B, 302, 307, 324, 427, 435, 436, 201 and 212 – Arms Act, 1959 – ss. 3, 7, 25 (1-A), (1-B0 – Explosives Act, 1884 – ss. 9-B (1)(a) (b), and (c)—Explosive Substances Act, 1908 – ss. 3, 4(a), 5 and 6 – Prevention of Damage to Public Property, Act, 1984 – s. 4 – Code of Criminal Procedure, 1973 – ss. 432 and 433*

– *Constitution of India, 1950 – Arts. 72 and 161.*

*PENAL CODE, 1860:*

*s. 120-B — Criminal conspiracy – Explained – Held: To bring home the charge of conspiracy within the ambit of s. 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act – Conspiracy, apart from being a substantive offence and distinct from the offence to be committed for which the conspiracy was entered into, all conspirators are liable for the acts of crime of each other which have been committed as a result of the conspiracy – Conspiracy is a continuing offence and if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continue to be the parties to the conspiracy and since part of the acts, in the instant case, were done in India, they would obviate the need to obtain the sanction of the Central Government — All of them need not be present in India – Conspiracy may be a general one and a smaller one which may develop in successive stages –Since conspiracy is hatched in secrecy, to bring home the charge of conspiracy, it is relevant to decide from the facts of the case, conclusively the object behind it which is the ultimate aim of the conspiracy – Further, many means might have been adopted to achieve this ultimate object – The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy – In order to determine whether conspiracy was hatched, the court is required to view the entire agreement and to find out as to what, in fact, the conspirators intended to do – In the instant case, a common charge of conspiracy was framed against all the co-conspirators — Court is satisfied that prosecution has placed sufficient acceptable materials to prove the charge of conspiracy beyond reasonable doubt – Evidence Act, 1872 – s. 10.*

*CONFESSION:*

*Evidentiary value of confession – Held: s. 164 of the Code speaks about recording confessions and statements, and s. 15 of TADA is a similar provision – If the confessional statement is properly recorded satisfying the mandatory provision of s. 15 of TADA and the Rules made thereunder, and if the same is found by court as having been made voluntarily and truthfully, then the said confession is sufficient to convict the maker thereof — Whether such confession requires corroboration or not is a matter for the court to consider on the basis of facts of each case — Terrorist and Disruptive Activities (Prevention) Act, 1987 – s. 15 — Code of Criminal Procedure, 1973 – s. 164.*

*Confession as against a co-accused – Held: As a matter of caution, a general corroboration should be sought for — But in cases where the court is satisfied that the probative value of confession is such that it does not require corroboration then it may record conviction on the basis of such confession of co-accused without corroboration – In the instant case, confessional statements of co-accused persons are admissible as primary and substantive evidence against appellants notwithstanding the amendment by Act 43 of 1993.*

*TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:*

*s. 15 (as amended by Amendment Act 43 of 1993) r/w s. 21 — The words "or co-accused, abettor, or conspirator" and the proviso to s. 15(1) were added by way of an amendment on 22.5.1993 – In the event of un-amended TADA as it stood prior to 22.5.1993 were to apply, there would be a presumption of guilt against appellants pursuant to un-amended s. 21, since confession of other co-accused would implicate them for the offence of conspiracy – However, the amendment of 1993 did not bring about any change as to the admissibility and applicability of confession of co-accused — Code of*

A *Criminal Procedure, 1973 – s. 164.*

*Recording of confession by Police Officer – Held: No illegality persists in recording a confession u/s 15 of TADA by an officer supervising the investigation.*

B *Transmitting of confessional statement – Held: The requirement of sub-r. (5) o r. 15 of TADA Rules, which contemplates a confessional statement being sent to Chief Metropolitan Magistrate or Chief Judicial Magistrate, who, in turn, will have to send the same to the Designated Court, is* C *not mandatory and is only directory — Terrorist and Disruptive Activities (Prevention) Rules, 1987— r. 15(5).*

*Retractions – Held: Where original confession was truthful and voluntary, court can rely upon such confession to convict* D *the accused in spite of a subsequent retraction and denial in statement u/s 313 CrPC.*

*CODE OF CRIMINAL PROCEDURE, 1973:*

*s. 306 – Grant of pardon and evidentiary value of* E *statement of approver — TADA does not preclude applicability of s. 306 – Therefore, power to grant pardon u/s 306 also applies to cases tried under TADA and there was no infirmity in the order granting pardon to approver in the facts and circumstances of the case – Further, the provisions* F *of sub-s. (4) of s. 306 have not been violated — In the light of provisions of s. 133 r/w s. 114 Illus. (b) of Evidence Act, evidence of an approver needs to be corroborated in material particulars – In the instant case, it has been so corroborated by way of primary evidence by prosecution — Terrorist and* G *Disruptive Activities (Prevention) Act, 1987 — ss. 7 and 21 – Evidence Act, 1872 – s. 133 r/w s. 114 Illus. (b).*

*Chapter XXVII — ss. 353, 354 362 and 363 – Judgment – Held: Judgment in a criminal case indicates the termination of the case by an order of conviction or acquittal of the*

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*accused and judgment is to be rendered in strict adherence to the provisions of Chapter XXVII of the Code — Every judgment must contain: (1) the points for determination; (2) the decision thereon; and (3) the reasons for such decision — A conviction order is not a "judgment" as contemplated u/s 353 and judgment is pronounced only after the award of sentence — In the case on hand, Designated Court has dealt with the issue of pronouncing the judgment u/s 353(1) (c) in detail.*

*s. 235 r/w s. 354(3) — Right of hearing to the accused on the question of sentence — There is bifurcation of trial as an accused has a right of pre-conviction hearing u/s 234 and secondly right of pre-sentence hearing u/s 235 of the Code —The occasion to apply the provisions of s. 235(2) arises only after the conviction is recorded — The court, while on the question of sentence, is in an altogether different domain where facts and factors which operate are of an entirely different order than those which come into play on the question of conviction — Where the court imposes death sentence, both s.235(2) and s. 354(3) assume signal significance and they must be harmoniously and conjointly appreciated and read — Fairness, justice and reasonableness which constitute the essence of guarantee of life and liberty epitomised in Art. 21 of the Constitution also pervades the sentencing policy in ss. 235(2) and 354(3) of the Code — These two provisions virtually assimilate the concept of "procedure established by law" within the meaning of Art. 21 of the Constitution –In the instant case, requirements of pronouncing a judgment u/s 353(1)(c) of the Code have been fully complied with — There is no illegality or irregularity in the process followed and specifically u/ss 353, 354 and 235 keeping in mind the magnitude of the task before the Designated Judge — The pronouncement of judgment was in compliance with the provisions of the Code and does not violate any of its provisions — Constitution of India, 1950 – Art. 21.*

A *SENTENCE/SENTENCNG:*

*Balancing of aggravating and mitigating circumstances – Held: After the new CrPC of 1973, imprisonment for life would be the rule and a sentence of death an exception – Amended s. 354(3) of the Code mandates that in the case* B *of sentence of death, the judgment shall state the special reasons for such sentence – The judiciary with the aid of s. 235(2) ascertained the 'special reasons' pertaining to criminals as required by s. 354(3) to impose death penalty – A careful evaluation of aggravating and mitigating* C *circumstances pertaining to both criminal and crime is the approach to ascertain the 'special reasons' for imposing the extreme penalty on a person – Thus, two cardinal factors: (i) the penalty imposed must be proportionate to the gravity of the crime and (ii) the degree of responsibility of the offender* D *must be taken into account in determining the sentence for an individual accused in addition to aggravating and mitigating circumstances – Code of Criminal Procedure, 1973 – ss. 235(2) and 354(3)—Terrorist and Disruptive Activities (Prevention) Act, 1987 – s. 3(2)(i) – Penal Code, 1860 – s.* E *302.*

*QUANTUM OF SENTENCE:*

***Complicity of first accused-appellant*** *— Sentence – Held: First accused- was in a position of authority, particularly,* F *he had played a significant role in the context of the blasts, which is important while determining the sentence – He was one of the architects of the blasts, without whom the plan would have never seen the daylight – Besides, he was also entrusted with the task of handling the explosive bags and* G *for their safe keeping – He was actively involved in hawala transactions for purpose of facilitating the blasts – Without the planning of conspirators of which first accused was a party, the explosives and ammunition required for the execution would not have entered into the country and as a* H *consequence the execution itself would not have materialized*

*– Therefore, it can be concluded that no offence might have taken place at all but for the instigation by the absconding accused and the first accused-appellant –Besides, the dominant position of first accused is an aggravating factor by itself as it gives the status of direct responsibility – Under the established jurisprudence, two factors – (i) a commanding position and (ii) a crime of 'utmost gravity' ordinarily merit the extreme penalty even accounting for the guilty plea and mitigating factors — This is the 'special reason' which warrants death penalty to first accused- appellant — Therefore, having taken into account and weighed the totality of culpability of first accused-appellant and all the particular circumstances of the case, the decision of Designated Court is concurred with and the sentence of capital punishment to first accused-appellant is confirmed.*

***Complicity of other ten co-accused-appellants*** *– Sentence — Held: The role played by the other ten accused-appellants differentiates with that of the first accused-appellant – First accused-appellant and other absconding accused were the archers whereas the rest of the accused- appellants were the arrows in their hands — Though the incident of bomb blasts is not a brainchild of these ten accused-appellants, yet they turned the conspirators' orders into action by executing the blasts and, as such, they are liable for the consequence of their acts – It is actually the masterminds strategy which was executed by these ten subservient minions, as but for the masterminds, the blasts should have never seen the daylight — This may not help in complete exoneration of their liability but the degree of punishment must necessarily reflect this difference –Keeping in view the aggravating factors and mitigating circumstances and to differentiate the degree of punishment to the fist accused-appellant and other ten accused-appellants, the ends of justice would be served if the death sentence of these ten appellants is commuted to rigorous imprisonment for life — However, the lesser sentence imposed on these appellants cannot be a precedent in other*

A *cases and every case must be decided according to its facts and circumstances.*

*Life imprisonment as rigorous imprisonment – Held: "Imprisonment for life" is to be treated as 'rigorous imprisonment for life".*

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*Life imprisonment – Duration of — Held: Life imprisonment always means the whole natural life — There is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14*

C *years or 20 years imprisonment – A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by appropriate Government u/s 432 of the Code, which in turn is subject to the procedural checks mentioned in the said provision and*

D *to further substantive check in s. 433-A of the Code— Code of Criminal Procedure, 1973 – ss. 432 and 433-A.*

*CODE OF CRIMINAL PROCEDURE, 1973:*

*ss. 432, 433 and 433-A – Power to remit/commute*

E *sentence — Held: Exercise of power by appropriate government under sub-s. (1) of s. 432 cannot be automatic or claimed as a right as this is only an enabling provision and subject to fulfilment of certain conditions mentioned in Jail Manual or in statutory rules – Decision to grant remission has*

F *to be well informed, reasonable and fair to all concerned – Constitution of India, 1950 – Arts. 72 and 161.*

*IDENTIFICATION:*

*Test identification parade – Held: s. 20 of TADA r/w s. 21*

G *of the Code permits Special Executive Magistrate to carry out such functions as are required in a TADA case and in the instant case, identification parades were conducted by Special Executive Magistrates in compliance with provisions of Criminal Manual – Terrorist and Disruptive Activities*

H *(Prevention) Act, 1987 – s.20 — Criminal Manual –*

*Government Circular, Home Department No. MIS 1054/ 84588 dated 22.4.1955 – Code of Criminal Procedure, 1973 – s. 21.* A

*INVESTIFICATION:*

*Recoveries — Panchnama – Mandatory conditions for a valid Panchnama, culled out – Circumstances when Panchnama is inadmissible – Explained — Evidentiary value of Panchnama — Held: Panchnama can be used as corroborative evidence when 'Pancha' gives evidence in court u/s 157 of Evidence Act – It can also be used as evidence of recorded transaction so as to refresh the memory of witnesses u/s 159 of Evidence Act – In the instant case, in view of the fact that prosecution has led ample corroborative evidence, Designated Court was fully justified in relying on the recoveries while accepting the prosecution case – Evidence Act, 1872 – ss. 157 and 159 – Code of Criminal Procedure, 1973 – ss. 100 and 174.* B C D

*TERRORISM:*

*'Terrorism' — Explained – Held: In spite of several international conventions and Multilateral Agreements and domestic and international legislations to counter terrorism, it is a major problem that is reoccurring over the globe in many different forms – There is a dire need to best deal with it and to make sure to take preventive actions — The Court is of the considered view that the* ***procedure/rules suggested*** *by it in the judgment must have to be adopted while dealing with the menace.* E F

*Role of Pakistan in blasts – Held: Pakistan has infringed the recognized principles of international law which obligate all states to prevent terrorist attacks emanating from their territory and inflicting injuries to other states – In the instant case, accused persons were facilitated by ISI operatives in Pakistan for training without observing any immigration* G H

A *formalities, and accused received training even from ISI officials themselves on some occasions — The events unveil the tolerance and encouragement shown by Pakistan towards terrorism – International law.*

B *Role of Police Officials – Held: The role of police officials has become more vital owing to frequent terrorist attacks occurring across the country — If police had been able to curtail the conveyance of contraband in the country at the relevant time, the occurrence could have been avoided – In the instant case, some of the police personnel themselves* C *have taken active part in smuggling and transportation of arms and explosives meant for the plan — Police.*

*Role of Customs Officials – Held: Customs officials primarily have a duty to prevent smuggling and ensure that* D *everything that enters into or goes out of the country is brought or sent is strictly in accordance with the provisions of law—It is shattering to notice that several Customs Officials played an active role as members of conspiracy and implemented the plan – A rationally structured and effective* E *customs department is needed in order to curtail illegal imports which can have frightening ramifications upon the nation's economy and citizens' security – Customs.*

*Need to improve vigilance in Indian Maritime Zone and role of Coast Guards – Held: India being a maritime nation,* F *the role of Coast Guards is very vital for shielding the coast from external attacks – Coast Guards being the strongest link in the security chain, are bound to be vigilant at sea and should be in full command of the coast – Only well strategized coast guards and high morale customs officers can prevent* G *any opportunity for terrorists to attack on our country via our maritime boundary – Coast Guards.*

**On 12.03.1993, in a span of about two hours, a series of 12 bomb explosions took place at twelve different** H **locations in Bombay, as a result of which 257 persons**

died and 713 persons were seriously injured, and properties worth about Rs. 27 crores were destroyed. The bombs planted at several other places were diffused. The investigation revealed that accused 'DI' (AA-1), a resident of Dubai, and accused 'TM' (AA-2) formulated a conspiracy to commit terrorist acts in the city of Bombay. The object of the crime was to incite communal violence and to overawe and weaken the government, disturb social harmony and to break up the social, political and economic order of the country. In conspiratorial meetings held in furtherance of the object of the crime, arrangements were made for sending some of the accused persons to Pakistan and train them in handling arms and ammunition, and after such training to bring them back to India, for smuggling of fire arms and ammunition and explosives like RDX into India and their landing and transportation. Several accused persons were involved in preparing vehicle bombs by filling explosives with time mechanisms in motor vehicles and parking of the said vehicles at targeted places. Bombs were planted and hand grenades lobbed at targeted places. The arrested accused persons made confessions and disclosure statements as a result of which a large number of incriminating articles were recovered. One of the main conspirators became approver and he was examined as PW-2. A large number of accused were involved in the conspiracy and execution thereof. Some of them absconded (described as AAs). A total number of 123 accused were prosecuted out of whom 100 were convicted by the Designated Court. The instant appeals were filed by the convicts, who were sentenced to death, namely, A-1 (the brother of accused AA-2), A-32, A-36, A-39, A-44, A-10, A-29, A-9, A-11, A-12, and A-16.

Accused A-1 (Appellant in Crl. A. No. 1728 of 2007) was charged with offences punishable u/s 3(3) of Terrorists and Disruptive Activities (Prevention) Act, 1987

A (TADA) and s. 120-B IPC read with s. 3(2)(i), (ii), 3(3), (4), 5 and 6 of TADA read with ss. 302, 307, 326, 324, 427, 435, 436, 201 and 212 IPC and ss. 3 and 7 read with ss. 25 (1-A), (1-B)(a) of the Arms Act 1959. ss/ 9B (1) (a)(b)(c) of the Explosives Act, 1884, ss. 3, 4(a) (b), 5 and 6 of Explosive B Substances Act, 1908 and s. 4 of the Prevention of Damage to Public Property Act, 1984, for entering into criminal conspiracy in India and outside India in Dubai and Pakistan and/or being member of the said criminal conspiracy whose object was to commit terrorist acts in C India with the intent to overawe the government of India, to strike terror in the people, and to adversely affect the harmony amongst different sections of the people, by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable D substances or fire arms like AK-56 rifles and other lethal weapons in order to cause death of or injuries to persons and to damage properties and in pursuance of the said conspiracy committed the said overt acts (charge head Firstly). This was the common charge framed against all E the co-accused. Accused A-1 was also charged with other offences alleging that he advocated, abetted, advised, and facilitated the commission of terrorists acts that resulted in serial bomb blasts in Bombay and its suburbs on 12.3.1993; arranged finance and arranged air F tickets and made arrangements to enable the co-conspirators and accused to undergo weapons training in Pakistan, purchasing of vehicles and to prepare them for the purpose of bomb blasts at targeted places, facilitated smuggling and landing of arms and ammunitions by AA-2 and his associates for the said G purpose; being in possession of arms and explosives smuggled into the country for committing terrorist acts; and made arrangements for absconding of AA-2 and his associates and co-conspirators from India. A-1 was convicted of the offences charged and was sentenced to H death amongst other terms of imprisonment.

Accused A-32, A-36 and A-39 (Appellants in Crl. A. Nos. 609-610 of 2008), A-44 (appellant in Crl. A. Nos. 628-629 of 2008), A-10 and A-29 (appellants in Crl. A. Nos. 637-638), -9 (Appellant in Crl. A. No. 365 of 2008), A-11 (appellant in Crl. A. Nos. 864-865 of 2008), A-12 (appellant in Crl. A. No. 897 of 2008) and A-16 (appellant in Crl. A. Nos. 941-942 of 2008), besides having been charged with common charge of criminal conspiracy under the head Firstly, were also charged with having committed further overt acts of receiving training in handling of arms and ammunitions and explosives in Pakistan, attending conspiratorial meetings for committing terrorist acts, participating in landing and transportation of arms, ammunition and explosives like RDX, being in possession of arms and ammunition and explosives smuggled into India for committing terrorist acts; participating in preparation of vehicle bombs and parking them at targeted places, taking vans with explosive laden suitcases to targeted places, planting the bombs at targeted places, throwing hand grenades at targeted places, and thereby causing death of several persons, injuries to many others and damage to properties. These appellants were also sentenced to death. They were further sentenced to various terms of imprisonment.

It was contended for the appellant-A-1 that the impugned judgment was not a 'judgment' in terms of ss. 353, 354, 362 and 363 of the Code of Criminal Procedure, 1973 (the Code), since the reasons for conviction and sentence were not provided to him along with the order of conviction and sentence dated 12.9.2006 and 27.7.2007 respectively, and only the 'operative portion' was read out and after hearing the accused the conviction and sentence was imposed, which was impermissible. It was submitted that in the absence of the whole judgment, the sentence imposed could not be sustained; that there was no material to prove that there was a conspiracy among the accused persons and the

A prosecution failed to prove that A-1 had any knowledge of any such conspiracy and the bomb blasts on 12.3.1993; that since the prosecution case rested on the confessional statements of the accused persons and except A-97 all other had retracted their statements and, B as such, the conviction and sentence could not be sustained; that in the absence of any provision in TADA for pardoning an accused and permitting him to be approver, and PW-2 not being validly pardoned either under TADA or the Code, conviction based on his sole C testimony could not be sustained.

Disposing of the appeals, the Court,

HELD: 1.1. The word "judgment" has not been defined in IPC, nor even in TADA. The TADA contains: (a) judgment; and (b) orders. Section 2(9) of the Code of Civil D Procedure, 1908 defines "judgment" and O.20, r. 1(1)(2) of the Code of Civil Procedure (Madras amendment) refers "judgment when pronounced" and "judgment to be signed". In the light of the definition clause, namely, "judgment" though the same has not been explained in E the CrPC, the procedure to be followed both in the civil and criminal cases are all acceptable. [para 21 and 43] [113-B-E; 126-E-F]

1.2. Judgment in a criminal case indicates the termination of the case by an order of conviction or F acquittal of the accused and judgment is to be rendered in strict adherence to the provisions of Chapter XXVII of the Code of Criminal Procedure, 1973. Sections 353, 354, 362 and 363 make it clear as to how the judgment is to be in a criminal trial, language and contents and the G procedure to be followed in furnishing copy of the judgment immediately after pronouncement. [para 35 and 43] [123-E; 128-F]

*Hori Ram Singh vs. Emperor* **AIR 1939 PC 43**; and *Kuppuswami Rao vs. The King,* **AIR 1949 PC 1 – referred** H **to.**

1.3. In view of the provisions of s.354 of the Code, it is necessary that every judgment must contain: (1) the points for determination; (2) the decision thereon; and (3) the reasons for such decision. The reason for the decision is an important ingredient of a judgment. The purpose of recording reasons is to facilitate the superior court to examine the correctness of the judgment of the courts below. Compliance with the law in this regard should not be merely formal but substantial and real, for it is this part of the judgment alone which enables the higher court to appreciate the correctness of the decision, the parties to feel that the court has fully and impartially considered their respective cases and the public to realise that a genuine and sincere attempt has been made to mete out even-handed justice. Reasons form the substratum of the decision and their factual accuracy is a guarantee that the court has applied its mind to the evidence in the case. In *Bachan Singh* and *Balwant Singh* this Court has held that the judgment shall state reasons for the sentence awarded and in the case of sentence of death, the special reasons for such sentence. [para 31, 36-37] [122-B; 123-F-G; 124-A-E; 125-C-E]

*Bachan Singh* vs. *State of Punjab*, AIR 1980 SC 898; *Balwant Singh* vs. *State of Punjab* AIR 1976 SC 230 – relied on

1.4. It is clear that "judgment" is a formal intimation of the decision and its contents formally declared in a judicial way in open court. It is also clear that passing a sentence without recording the judgment would amount to illegality. Pronouncing the sentence before completing the judgment, that is, before preparing the essential part, makes the sentence illegal and vitiates the conviction. [para 42] [128-D-E]

1.5. Right of hearing to the accused on the question

A of sentence is provided u/s 235(2) of the Code. The purpose of the provision is recognition of new trend in penology and awarding of sentence taking into consideration various factors such as the prior criminal record of the offender, his age, employment, educational B background, sociological backdrop, family background, financial position, antecedents, social adjustment, emotional and mental condition and the prospects of his returning to normal path in conformity with law. It is in fact humanist principle of individualising punishment to suit C the person and his circumstances and, therefore, a hearing is required before imposition of penalty. [para 27] [117-D, F-G]

*Santa Singh* vs. *The State of Punjab* 1977 (1) SCR 229 = (1976) 4 SCC 190; *Ram Deo Chauhan @ Raj Nath* D *Chauhan vs. State of Assam* 2001 (3) SCR 669 =AIR 2001 SC 2231; *Narpal Singh & Ors. vs. State of Haryna,* 1977 (2) SCR 901 = AIR 1977 SC 1066; *Dagdu & Ors. etc. vs. State of Maharashtra,* 1977 (3) SCR 636 = AIR 1977 SC 1579; *Tarlok Singh vs. State of Punjab* 1977 (3) SCR 711 = E AIR 1977 SC 1747; and *Kamalakar Nandram Bhavsar & Ors. vs. State of Maharashtra,* AIR 2004 SC 503; *Motilal vs. State of M.P. (Now Chhatisgarh* 2004 (1) SCR 854 = (2004) 2 SCC 469 – referred to.

F *Akhtari Bi (Smt.) vs. State of M.P.* 2001 (2) SCR 626 = AIR 2001 SC 1528 – relied on.

1.6. The legislative policy discernible from s. 235(2) read with s. 354(3) is that in fixing the degree of punishment or making the choice of sentence for various G offences, including one u/s 302 of IPC, the court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal. It is for this reason that court while hearing a H convict on sentence is required to give a party an

opportunity of producing evidence or materials relating to the various factors having some bearing on the question of sentence. Therefore, there is bifurcation of trial as an accused has a right of pre-conviction hearing u/s 234 and secondly right of pre-sentence hearing u/s 235 of the Code. [para 31 and 37] [122-D-E; 124-G-H; 125-F-G] A B

*Allauddin Mian & Ors. Sharif Mian & Anr.* vs. *State of Bihar* 1989 (2) SCR 498 = AIR 1989 SC 1456 – relied on.

1.7. In ***Muniappan,*** this Court has held that the obligation to hear the accused on the question of sentence which is imposed by s.235(2) of the Code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually have a bearing on the question of sentence. The occasion to apply the provisions of s. 235(2) arises only after the conviction is recorded. The court, while on the question of sentence, is in an altogether different domain where facts and factors which operate, are of an entirely different order than those which come into play on the question of conviction. Where the court imposes death sentence, both s.235(2) and s. 354(3) assume signal significance and they must be harmoniously and conjointly appreciated and read. [para 39-40] [126-C-E, F-G; 127-B] C D E F

*Muniappan* vs. *State of T.N.*, 1981 (3) SCR 270 = AIR 1981 SC 1220; *Rameshbhai Chandubhai Rathod vs. State of Gujarat,* (2009) 5 SCC 740; and *Malkiat Singh & Ors. vs. State of Punjab* 1991 (2) SCR 256 = (1991) 4 SCC 341- referred to. G

1.8. Therefore, fairness, justice and reasonableness which constitute the essence of guarantee of life and liberty epitomised in Art. 21 of the Constitution also H

A pervades the sentencing policy in ss. 235(2) and 354(3) of the Code. These two provisions virtually assimilate the concept of "procedure established by law" within the meaning of Art. 21 of the Constitution. Thus, a strict compliance with those provisions in the way it was B interpreted in *Bachan Singh* having regard to the development of constitutional law by this Court is a must before imposing death sentence. [para 41] [128-B-C]

1.9. Section 353(1) of the Code makes it clear that it C is incumbent on the part of the Presiding Officer to deliver the whole of the judgment or by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader. [para 43] [128-D G-H]

1.10. In the instant case, on perusal of the conclusion in the judgment of the Designated Court with regard to A-1, it is very much clear that he was apprised regarding the offences for which he was found to be guilty. While E A-1 was awarded death sentence, it is clear from the conclusion that he was apprised that the sentence of death awarded to him is subject to the confirmation by the Apex Court and he was also informed that for the said purpose the Court would be making necessary reference F to Apex Court within 30 days from the date of completion of passing of final order. In the same order, the trial court has also apprised A-1 that it will take some time to complete the pronouncement of the final order of conviction and sentence of remaining accused and G completed the judgment by getting the same transcribed, corrected and signed. The court also directed the Sheristedar to handover the 'operative part' of the order passed on both the days, i.e., 12.09.2006 and 27.07.2007. [para 45] [132-G-H; 133-A-C]

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1.11. It is clear that a conviction order is not a "judgment" as contemplated u/s 353 and that a judgment is pronounced only after the award of sentence. In the case on hand, the Designated Judge pronounced the operative part of the judgment on 27.7.2007 and explained the substance of the judgment to the appellant in compliance with the requirements of s. 353(1)(c) of the Code. A perusal of the final judgment of the Designated Court shows that he has dealt with the issue of pronouncing the judgment u/s 353(1) (c) in detail. [para 47] [134-F-H]

*Rama Narang vs. Ramesh Narang & Ors.*, 1995 (1) SCR 456 = (1995) 2 SCC 513; *Lakdey Ashok vs. Government of A.P.*, (2009) 6 ALT 677 - referred to.

1.12. Section 354(1)(c) states that every judgment referred to in s. 353 shall specify the offence of which the accused is convicted and the punishment to which he is sentenced. In view of the same, the judgment u/s 353(1)(c) is to be pronounced only after the sentence in a case where conviction is determined. The process of delivery of judgment includes the determination of guilt, or otherwise, of an accused and in the event of such guilt being established, also includes the process of sentencing the accused. In the instant case, the process of delivery of judgment commenced on 12.09.2006 when the court pronounced its verdict on the guilt or otherwise of specific accused. Whilst doing so, the Designated Judge explained the offences for which the accused were being convicted and invited the accused persons to make their statements with reference to the quantum of sentence. It is evident that at this stage, the detailed reasoning may not have been finally communicated to the accused, but the determination of the court as well as the broad understanding of the operative part of the judgment was communicated. [para 52-53] [137-F-H; 138-B-D]

A 1.13. An analysis of the method followed by the Designated Judge, demonstrates that the requirements of pronouncing a judgment u/s 353(1)(c) of the Code have been fully complied with. While pronouncing the operative part of the judgment, the Designated Court B ensured that the substance of the judgment has been explained to the appellant in compliance with the requirement of s. 353. It is also relevant to point out that the said order dated 27.07.2007 was pronounced in open court and signed and dated by the Designated Judge in C compliance with the requirements of the said section. Thus, there is no illegality or irregularity in the process followed and specifically u/ss 353, 354 and 235 keeping in mind the magnitude of the task before the Designated Court. This Court, therefore, holds that the D pronouncement of the judgment was in compliance with the provisions of the Code and does not violate any of its provisions. [para 48 and 54] [136-A-C; 138-E-G]

1.14. It is also clear from the reasoning of the Designated Court that by adopting the same procedure, E the Designated Judge conveyed the conclusion with regard to various charges leveled against other accused (total convicted accused 100) and also apprised each one of them, including A-1 as well as their pleaders, the reasoning and other materials for arriving at such a F conclusion. He also apprised that because the convicted accused are 100 in number and the common judgment is running into thousands of pages, it may require some time and as soon as the full judgment will be made ready, the same will be supplied to them free of cost. It does not G mean that on the date of pronouncing the decision (decision was pronounced on various dates), the whole judgment was not ready or it was incomplete. [para 55] [138-G-H; 139-A-C]

H 1.15. Regarding the requirement of providing a copy

of the judgment in terms of s. 363 of the Code, it is significant to note that it was a joint trial of 123 accused persons. The appellant was apprised of the fact that a copy of the final judgment would be provided after completion of the order as regards sentence in respect of the remaining accused. The process of pronouncement of judgment had to be carried out for all accused and accordingly a copy of the final judgment could be provided to each of the accused only after the sentence was pronounced in respect of all the accused persons. Copy of the final judgment was provided free of cost to the appellant (A-1) after the pronouncement of the orders with respect to each of the accused by the Designated Court. [para 49-51] [136-D, F-H; 137-B-C]

1.16. As the Code mandates that the accused are entitled to full/whole judgment, unless the conclusion relating to all the convicted accused is read over and explained to them, opportunity of hearing on sentence has been provided to them or their respective counsel and incorporation of both the conclusions relating to conviction and sentence has been done, the same cannot be supplied to the accused. [para 56] [139-C-D]

1.17. Several applications were made to amend the conviction orders, which were dismissed by the Designated Court. Neither A-1, nor any of the counsel of accused persons pointed out any amendment that would attract the provisions of s. 362 of the Code. On the other hand, there is no alteration/amendment that has been made in the judgment after its pronouncement. [Para 58] [140-D-E, F-G]

1.18. From the materials placed and after verification of the decision, this Court is satisfied that the Designated Court apprised the accused about the contents of the judgment, and heard all the accused and their pleaders regarding sentence and, as such, it has complied with the

A **requirements of law; and considering the voluminous nature of work, even if there is mere procedural irregularity that would not vitiate the trial or the ultimate conclusion unless the same results in miscarriage of justice. The impugned judgment and procedure followed**
B **and adopted by the Designated Court fulfil the mandate of the Code and there is neither violation of principles of natural justice nor breach of Arti. 21 of the Constitution. [para 59] [141-A-D]**

C *Shambhu & Ors. vs. The State* **AIR 1956 All. 633;** *Baldeo. vs. Deo Narain and Ors.* **AIR 1954 All. 104;** *Surendra Singh & Ors. vs. State of Uttar Pradesh* **1954 SCR 330 = AIR 1954 SC 194;** *Ratia Mohan. vs. The State of Gujarat* **AIR 1969 Guj. 320;** *State of Orissa vs. Ram Chander Agarwala & Ors.* **1979 (1) SCR 1114 = (1979) 2 SCC 305;** *Jhari Lal vs. Emperor* **AIR**
D **1930 Pat. 148;** *State of Punjab and Ors. vs. Jagdev Singh Talwandi* **1984 (2) SCR 50 = (1984) 1 SCC 596;** *Krishna Swami* vs. *Union of India and Ors.*, **1992 (1) Suppl. SCR 53 =AIR 1993 SC 1407;** *K.V. Rami Reddi. vs. Prema* **2008 (3) SCR 83 = (2009) 17 SCC 308;** *Sarojini Ramaswami*
E *(Mrs.) vs. Union of India & Ors.* **1992 (1) Suppl. SCR 108 = (1992) 4 SCC 506;** *M. Nagaraj & Ors. vs. Union of India and Ors.* **2006 (7) Suppl. SCR 336 = (2006) 8 SCC 212;** *Confederation of ex-Servicemen Associations and Others vs. Union of India and Ors.* **2006 (4)**
F **Suppl. SCR 872 = (2006) 8 SCC 399;** *Iqbal Ismail Sodawala vs. The State of Maharashtra and Others* **1975 (1) SCR 710 = (1975) 3 SCC 140 - cited.**

Conspiracy:

G **2.1. The law on conspiracy emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act, which is not illegal, by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. In order to**
H **achieve the ultimate object, parties may adopt many**

means. Such means may constitute different offences by themselves, but so long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. An important facet of the law of conspiracy is that apart from it being a substantive offence and distinct from the offence to be committed for which the conspiracy was entered into, all conspirators are liable for the acts of crime of each other which have been committed as a result of the conspiracy. It is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise to commission of a number of acts. Each conspirator can be attributed each others' actions in a conspiracy. Theory of agency applies and this rule existed even prior to the amendment of the Penal Code. This is reflected in the rule of evidence u/s 10 of the Evidence Act. Conspiracy is punishable independent of its fruition. The principle of agency is a rule of liability and not merely a rule of evidence. It is an unlawful agreement and not its accomplishment, which is the gist/essence of the crime of conspiracy. To bring home the charge of conspiracy within the ambit of s.120B, IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. In order to determine whether the conspiracy was hatched, the court is required to view the entire agreement and to find out in fact what the conspirators intended to do. [para 61-64, 66 and 81] [142-F-G; 144-E-F; 145-D-E; 146-E-F; 151-D-E; 163-B-C, E-F]

*Major E.G. Barsay vs. State of Bombay* (1962) 2 SCR 195; *State of A.P. vs. Kandimalla Subbaiah* (1962) 1 SCR 194; *State of H.P. vs. Krishan Lal Pardhan* (1987) 2 SCC 17 – referred to

*Regina vs. Murphy* (1873) 173 ER 502; *Babulal vs. Emperor,* AIR 1938 PC 130– referred to

2.2. Section 10 of the Evidence Act further provides

A a unique and special rule of evidence to be followed in cases of conspiracy. As per s.10, the principles agreed upon unanimously are: (i) There shall be *prima facie* evidence affording a reasonable ground for the court to believe that two or more persons were part of a B conspiracy to commit a wrongful act or offence; (ii) Once this condition was fulfilled, anything said, done or written by any of its members, in reference to their common intention, will be considered as evidence against other co-conspirators; (iii) This fact would be evidence for the C purpose of existence of a conspiracy and that the persons were a part of such conspiracy. [para 78] [160-B; 161-C-F]

2.3. It is difficult to establish conspiracy by direct evidence. Since conspiracy is hatched in secrecy, to D bring home the charge of conspiracy, it is relevant to decide from the facts of the case, conclusively the object behind it, which is the ultimate aim of the conspiracy. Further, many means might have been adopted to achieve this ultimate object. The means may even constitute E different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. The conspiracy may be a general one and a smaller one which may develop in successive stages. [para 64, 65 and 81] [151-E-G; 163-E]

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*Ajay Aggarwal vs. Union of India*, 1993 (3) SCR 543 = AIR 1993 SC 1637 – referred to

2.4. A conspiracy is a continuing offence and continues to subsist and is committed wherever one of G the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it does not end with the making of the H agreement. It will continue so long as there are two or

more parties to it intending to carry into effect the design. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. [para 66 and 68] [152-G-H; 153-A-B; 154-B-C]

*Sudhir Shantilal Mehta vs. Central Bureau of Investigation,* 2009 (12) SCR 682 = (2009) 8 SCC 1); *Yash Pal Mittal vs. State of Punjab* 1978 (1) SCR 781 = AIR 1977 SC 2433– referred to

2.5. The crime of conspiracy is complete the moment there is an agreement in terms of s. 120-A of IPC. However, where the conspiracy has in fact achieved its object and resulted in overt acts, all the conspirators would be liable for all the offences committed in pursuance of the conspiracy on the basis of the principle of agency which is inherent in the agreement which constitutes the crime of conspiracy. For an offence u/s 120B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. It is also not necessary that each member of the conspiracy must know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission committed by the conspirators in pursuance of a common design. Conspiracy is a continuing offence, and if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continue to be the parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain the sanction of the Central Government. All of them need not be present in India. [para 68 and 311] [153-G-H; 154-A-B; 376-C-D]

*R.K. Dalmia vs. Delhi Administration*, 1963 SCR 253 = AIR 1962 SC 1821; *Lennart Schussler & Anr. vs. Director of*

A *Enforcement & Anr.*, **1970 (2) SCR 760 = (1970) 1 SCC 152;** *Shivanarayan Laxminarayan Joshi vs. State of Maharashtra,* **(1980) 2 SCC 465 and** *Mohammad Usman Mohammad Hussain Maniyar and Another vs. State of Maharashtra,* **1981 (3) SCR 68 = AIR 1981 SC 1062;** *Yogesh @ Sachin Jagdish*
B *Joshi vs. State of Maharashtra,* **2008 (6) SCR 1116 = (2008) 10 SCC 394;** *Nirmal Singh Kahlon vs. State of Punjab,* **1963 SCR 253 = AIR 2009 SC 984,** *Ram Lal Narang vs. State (Delhi Admn.),* **AIR 1979 SC 1791,** *K.R. Purushothaman vs. State of Kerala* **2005 (4) Suppl. SCR 498 = (2005) 12 SCC**
C **631;** *State of Maharashtra vs. Som Nath Thapa* **1996 (1) Suppl. SCR 189 = AIR 1996 SC 1744;** *Kehar Singh & Ors. vs. State (Delhi Admn.),* **1988 (2) Suppl. SCR 24 = AIR 1988 SC 1883;** *Firozuddin Basheeruddin & Ors. vs. State of Kerala,* **(2001) 7 SCC 596;** *State (NCT of Delhi) vs. Navjot Sandhu*
D *@ Afsan Guru* **2005 (2) Suppl. SCR 79 = (2005) 11 SCC 600;** *Ram Narayan Popli vs. Central Bureau of Investigation,* **2003 (1) SCR 119 = (2003) 3 SCC 641;** *Mohd. Khalid vs. State of West Bengal,* **2002 (2) Suppl. SCR 31 = (2002) 7 SCC 334 – referred to.**

E **2.6. In the case on hand, the first condition for applying s. 10 of the Evidence Act is satisfied by the evidence of PWs 1 and 2 (approvers). There are 77 confessions which are voluntary and are corroborated with other circumstances of the case. These confessions**
F **contain statements inculpating the makers as well as the co-accused. The conspiracy might have been started in Dubai but ultimately it continued in India and a part of the object was executed in India and even in the conspiratorial meetings at Dubai, the matter was**
G **discussed with respect to India and amongst Indian citizens. [para 77 and 80] [159-F-G; 162-F-G]**

**2.7. A common charge of conspiracy has been framed against all the accused persons and in order to bring**
H **home the charge, the prosecution need not necessarily**

prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. The cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. [Para 287] [344-A-C]

1.8. This Court is satisfied that the prosecution has placed sufficient acceptable materials to prove the charge of conspiracy beyond reasonable doubt. [Para 84] [164-F-G]

CONFESSION:

3.1. Section 164 of the Code speaks about recording confessions and statement and s.15 of TADA is a similar provision. The words "or co-accused, abettor or conspirator' and the proviso in s.15(1) were added by way of an amendment on 22.5.1993. The amendment was also with respect to s. 21 of TADA (Presumption as to offences u/s 3). However, the amendment of 1993 did not bring about any change as to the admissibility and applicability of the confession of the co-accused. In the event of un-amended TADA, there would be a presumption of guilt against the appellants pursuant to un-amended s. 21 since confession of other co-accused would implicate the appellants for the offence of conspiracy. [para 86, 88 and 96] [165-B; 168-E; 169-C-D; 178-C-D]

*Rabindra Kumar Pal @ Dara Singh vs. Republic of India* 2011 (1) SCR 929 = (2011) 2 SCC 490; *Kalawati & Anr. vs. State of H.P.* 1953 SCR 546 =AIR 1953 SC 131; *Dagdu & Ors. vs. State of Maharashtra* 1977 (3) SCR 636 = (1977) 3 SCC 68; *Davendra Prasad Tiwari vs. State of U.P.* (1978) 4 SCC 474; *Shivappa vs. Stae of Karnataka* 1994 (6) Suppl. SCR 171 = (1995) 2 SCC 76; *State through Superintendent of Police, CBI/SIT vs. Nalini & Ors.*, 1999 (3) SCR 1 = (1999)

A **5 SCC 253**; *State of Maharashtra vs. Damu* **2000 (3) SCR 880 = (2000) 6 SCC 269**; *Bhagwan Singh & Ors. vs. State of M.P.* **2003 (1) SCR 506 = (2003) 3 SCC 21**; *Gurjinder Singh vs. State of Punjab* **(2011) 3 SCC 530**; *Surender Koli vs. State of Uttar Pradesh & Ors.* **2011 (2)**
B **SCR 939 = (2011) 4 SCC 80**; *Kulvinder Singh & Anr. vs. State of Haryana* **2011 (4) SCR 817 = (2011) 5 SCC 258; and** *Inspector of Police, T.N. vs. John David* **2011 (7) SCR 354 = (2011) 5 SCC 509** *Ahmed Hussein Vali Mohammed Saiyed & Anr. vs. State of Gujarat* **2009 (8) SCR 719 = (2009) 7 SCC**
C **254**; *Jayawant Dattatray Suryarao vs. State of Mharashtra* **2001 (5) Suppl. SCR 54 = (2001) 10 SCC 109**; *Ravinder Singh @ Bittu vs. State of Maharashtra,* **2002 (3) SCR 622 = (2002) 9 SCC 55**; *Mohmed Amin vs. Central Bureau of Investigation* **2008 (16) SCR 155 = (2008) 15 SCC 49**;
D *Jameel Ahmed & Anr. vs. State of Rajasthan,* **(2003) 9 SCC 673 – referred to.**

*State of Rajasthan vs. Ajit Singh* **2007 (11) SCR 251 = (2008) 1 SCC 601**; *Ganesh Gogoi vs. State of Assam* **(2009) 7 SCC 404**; *State (NCT of Delhi) vs. Navjot Sandhu @ Afsan*
E *Guru* **para 101 2005 (2) Suppl. SCR 79 = (2005) 11 SCC 600**; *Harjit Singh vs. State of Punjab* **(2011) 4 SCC 441**; *Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi I* **2007 (2) SCR 289 = (2007) 9 SCC 665,** *Sanjay Dutt vs. State through CBI, Bombay* **1994 (3) Suppl.**
F **SCR 263 = (1994) 5 SCC 410,** *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.* **1994 (1) Suppl. SCR 360 = (1994) 4 SCC 602 – cited.**

*Fairey vs. Southampton County Council* **(1956) 2 ALL**
G **ER 843,** *The Colonial Sugar Refining Co. Ltd. vs. Irving* **1905 AC 369, *In Re: Athlumney* (1898) QB 547 – cited.**

**3.2. The confessional statement made by a person u/ s 15 of TADA shall be admissible in the trial of a co-accused for offence committed and tried in the same**
H **case together with the accused who makes the**

confession. Further, a voluntary and truthful confessional statement recorded u/s 15 of the TADA Act requires no corroboration. [para 368] [457-C-E]

3.3. The position of law on the evidentiary value of confession is as under:-

(i) If the confessional statement is properly recorded satisfying the mandatory provision of s.15 of TADA and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case.

(iii) With regard to the use of such confession as against a co-accused, as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of the confession is such that it does not require corroboration then it may record conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be

A on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

B

(v) The requirement of sub-r. (5) of r.15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on the facts of each case whether such direct transmission of the confessional statement creates any doubt as to the genuineness of the said confessional statement. [para 105] [184-G-H; 185-A-H; 186-A-B]

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*Nazir Khan vs. State of Delhi* 2003 (2) Suppl. SCR 884 = (2003) 8 SCC 461; *Sukhwant Singh vs. State,* (2003) 8 SCC 90; *Mohmed Amin vs. Central Bureau of Investigation* 2008 (16) SCR 155 = (2008) 15 SCC 49; *Mohd. Ayub Dar vs. State* F *of Jammu and Kashmir* 2010 (8) SCR 916 = (2010) 9 SCC 312 – referred to

3.4. It is clear that the confessions made by the appellants are truthful and voluntary and were made without any coercion. All safeguards enumerated u/s 15 G of TADA and the rules framed thereunder have been duly complied with while recording the confessions of the appellants. [para 260] [315-E-F]

3.5. The evidence on record along with the H confessions of various co-accused amply prove that the

weapons training was organized with the aid of the Government of Pakistan and also clearly shows a very deep involvement of A-1 in the organization and conduct of serial bomb blasts in question. [para 125] [205-H; 206-A]

Recording of confessions by police officers:

3.6. It has been held by this Court that no illegality persists in recording a confession u/s 15 of TADA by an officer supervising the investigation. [para 202] [266-C, E]

*S.N. Dube vs. N.B. Bhoir,* 2000 (1) SCR 200 = (2000) 2 SCC 254; *Mohd. Amin vs. CBI,* 2008 (16) SCR 155 = (2008) 15 SCC 49; and *Lal Singh vs. State of Gujarat* 2001 (1) SCR 111 = (2001) 3 SCC 221 – relied on.

3.7. PW-189 functioned as DCP for Zone X up till August, 1994. He recorded the confessional statement of 96 accused persons in the case. The recorded confessions were sealed and sent to Chief Metropolitan Magistrate. He asserted that he had followed the procedures mentioned in the Rules and instructions while making the record of confession of all the accused whose confession were recorded by him. PW-193 was posted as DCP in Bombay from April, 1992, up till December, 1995. He stated that by following the elaborate procedure, he recorded the confessional statements of A-77, A-10, A-14, A-26,A-57, A-96, A-15, A-117 and PW-2. A perusal of the evidence of both the officers clearly show that they were aware of the procedure to be followed before recording the confession of the accused and how the same is to be recorded. The Designated Court was fully justified in relying upon the evidence of PW-189 and PW-193. [para 195-197, 198-200 and 205] [263-E, G; 265-E-F; 273-F-G; 274-C]

Retractions:

A **4.1. Where the original confession was truthful and voluntary, the Court can rely upon such confession to convict the accused in spite of a subsequent retraction and its denial in statement u/s 313, CrPC. A confessional statement given u/s 15 shall not be discarded merely for**
B **the reason that the same has been retracted. [para 134 and 368] [209-D-E; 457-D]**

*S.N. Dube vs. N.B. Bhoir* **2000 (1) SCR 200 = (2000) 2 SCC 254;** *Manjit Singh vs. CBI,* **2011 (1) SCR 997 = (2011) 11 SCC 578;** *State of Tamil Nadu vs. Kutty* **2001 (11) Suppl. SCR 433 = AIR 2001 SC 2778;** Mohd. Amin v. CBI, **2008 (16) SCR 155 = (2008) 15 SCC 49;** *Jameel Ahmed vs. State of Rajasthan,* **(2003) 9 SCC 673;** *State of Maharashtra vs. Bharat Chaganlal Raghani,* **2001 (3) SCR 840 = (2001) 9 SCC 1; and** *Balbir Singh vs. State of Punjab,* **AIR 1957 SC 216 – relied on**

*Kalawati vs. State of Himachal* **1953 SCR 546 = AIR 1953 SC 131;** *Parmananda Pegu vs. State of Assam,* **2004 (4) Suppl. SCR 1 = AIR 2004 SC 4197,** *Pyare Lal Bhargava* E *vs. State of Rajasthan* **1963 Suppl. SCR 689 = AIR 1963 SC 1094,** *Kehar Singh & Ors. vs. State* **1988 (2) Suppl. SCR 24 =AIR 1988 SC 1883,** *Babubhai Udesinh Parmar vs. State of Gujarat* **(2006) 12 SCC 268;** *Wariyam Singh vs. State of U.P.,* **1995 (3) Suppl. SCR 807 = (1995) 6 SCC 458;** *Lal* F *Singh vs. State of Gujarat,* **2001 (1) SCR 111 = (2001) 3 SCC 221;** *Devender Pal Singh vs. State of NCT of Delhi,* **2002 (2) SCR 767 = (2002) 5 SCC 234;** *Ravinder Singh vs. State of Maharashtra,* **2002 (3) SCR 622 = (2002) 9 SCC 55;** *Jameel Ahmed vs. State of Rajasthan,* **(2003) 9 SCC 673– referred to**
G

**4.2. Further, it is evident that in the instant matters, retractions were not made at the first available opportunity by the accused persons. After arrest, the accused persons were produced before the court**
H **number of times in 1993 and 1994. While the confessions**

were recorded in April and May 1993, retractions were made only in May, 1994, i.e. after a gap of 1 year. [para 261] [315-H; 316-A]

4.3. In the instant matters, the Designated Court rightly relied upon the original confession and discarded the subsequent retraction. [para 291] [347-D]

Grant of Pardon u/s 306 of the Code to approver (PW-2):

5.1. The provisions in TADA clearly show that the Code of Criminal Procedure, 1973 would apply to all cases. Section 4(2) of the Code makes it clear that all the offences under any other law shall be investigated, inquired into, tried and dealt with according to the provisions of the Code but subject to specific clause/ reference of the Special Act. It is also clear from s. 5 of the Code that in the absence of specific provisions in any enactment, the provisions of the Code shall govern for the purpose of investigation, enquiry etc. Section 7(3) of TADA makes it clear that the provisions of the Code shall, so far as may be and subject to such modification made in the Act, apply to the exercise of powers by the officer under sub-s. (1). [para 190] [253-G; 254-D-E]

5.2. Section 20 of TADA makes it clear that certain provisions of the Code are automatically applicable and the Designated Court is free to apply those provisions for due adjudication of the cases under the Act. Thus, no provision of TADA is inconsistent with the provisions of the Code of Criminal Procedure, 1973, for grant of pardon as envisaged u/ss 306 to 308. Further, TADA does not preclude the applicability of s. 306 of the Code. Section 306(2)(b) is specifically applicable where the offence for which an accused is being tried is punishable with imprisonment extending to seven years or more. In the instant case, the approver was accused of offences

A **which carried the maximum punishment as capital punishment. [para 190] [256-G-H; 257-A, E]**

*Harshad S. Mehta & Ors. vs. State of Maharashtra* **2001 (2) Suppl. SCR 577 = (2001) 8 SCC 257 ;** *Lt. Commander Pascal Fernandes vs. State of Maharashtra & Ors.* **(1968) 1** B **SCR 695 – relied on**

**5.3. The object of s. 306 is to tender pardon in cases where a grave offence is alleged to have been committed by several persons so that the offence could be brought** C **home with the aid of evidence of the person pardoned. The legislative intent of this provision is, therefore, to secure the evidence of an accomplice in relation to the whole of circumstances, within his knowledge, related to the offence and every other person concerned. This** D **Court, therefore, holds that the power to grant pardon u/ s 306 of the Code also applies to the cases tried under the provisions of TADA and there was no infirmity in the order granting pardon to the approver (PW-2) in the facts and circumstances of the case. Further, the provisions** E **of sub-s. (4) of s. 306 have not been violated and there is no illegality in not having examined the approver twice by the Designated Court. [para 191 and 194] [257-F-H; 258-A; 261-A]**

F *Sardar Iqbal Singh vs. State (Delhi Admn.)* **1978 (2) SCR 174 = (1977) 4 SCC 536- relied on**

<u>Deposition of approver (PW2):</u>

**5.4. PW-2, who turned approver admitted that he** G **took training in handling of weapons and RDX in Pakistan for a period of 10 days along with others. He admitted that he knew AA-2 and A-1. It was further stated that all the persons including A-1 were involved in planning, conspiracy, training, landing and planting of** H **bombs. In the cross-examination, he admitted that he**

was involved in the case from the stage of conspiracy till planting of bombs and is responsible for the explosions. He also admitted that he participated in all the stages of conspiracy till the achievement of the object. [para 148 and 161] [218-F, G-H; 219-A-C; 227-E-F]

5.5. A perusal of the entire evidence of PW-2 clearly shows that at no point of time he acted under pressure to become an approver. He withstood the lengthy cross-examination. His testimony runs into hundreds of pages and he covered all the aspects starting from initial conspiracy and ending with execution of blasts at various places in Bombay on 12.03.1993. This Court is also satisfied that his confessional statement before the Deputy Commissioner of Police and his statement before the Designated Court are not borne out of fear but due to his conscience and repentance. On the whole, his testimony is reliable and acceptable and the Designated Court rightly relied on his entire statement in support of the prosecution case. [para 176] [235-D-G]

5.6. In the light of the provisions of s.133 read with s.114 Illus (b) of the Evidence Act, the evidence of an approver needs to be corroborated in material particulars. In the instant case, the evidence of the approver has been corroborated in material particulars by way of primary evidence by the prosecution. [para 181] [237-G-H]

Appointment of Special Executive Magistrates

6.1. Special Executive Magistrates (SEMs) are appointed by the State Government u/s 21 of the Code for particular functions on such terms and conditions as it may deem fit. They can exercise powers so conferred upon them by the State as are exercisable by an Executive Magistrate. The Criminal Manual and the Government Circular, Home Department, No. MIS.1054/ 84588 dated 22nd April, 1955 in clear terms requires that

A **non-judicial Magistrates or Honorary Magistrates such as a Special Executive Magistrate should preferably conduct an identification parade and, accordingly, identification parades in the instant case were conducted by Special Executive Magistrates in compliance with the provisions**
B **of the Criminal Manual. [para 207-211] [276-G-H; 277-A, C, E; 278-A-B]**

*State of Maharashtra vs. Mohd. Salim Khan* **1990 (3) Suppl. SCR 340 = (1991) 1 SCC 550 – relied on.**

C **6.2. Section 20 of TADA read with s. 21 of the Code permits a Special Executive Magistrate to carry out such functions as are required in a TADA case and accordingly in the instant case Special Executive Magistrates, *inter alia*, conducted identification parades of the accused**
D **persons. The constitutional validity of s. 20 of TADA has been upheld by this Court in *Kartar Singh** wherein this Court held that Special Executive Magistrates appointed u/s 21 of the Code can record confessional statements for offences committed under TADA and perform such**
E **other functions as directed. [para 213-214] [280-B-D]**

**Kartar Singh vs. State of Punjab* **1994 (2) SCR 375 = (1994) 3 SCC 569 – relied on**

**Recoveries:**

F **Panchnama (Salient features):**

**7.1 The primary intention behind the Panchnama is to guard against possible unfair dealings on the part of the officers entrusted with execution of search and also**
G **to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. The legislative intent was to control and to check these malpractices of the officers, by making the presence of independent and respectable**
H

persons compulsory for search of a place and seizure of article. Panchnama is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime and of anywhere else which may be related to the crime/offence and from where incriminating evidence is likely to be collected. The document so prepared needs to be signed by the investigating officer who prepares the same and at least by two independent and impartial witnesses called 'Panchas', as also by the party concerned. The witnesses are required to be not only impartial but also 'respectable', i.e. a person who is not dis-reputed. [paras 218] [281-G-H; 282-A-D]

Evidentiary value of Panchnama:

7.2. Panchnama can be used as corroborative evidence in the court when the 'Pancha' gives evidence in court of law u/s 157 of the Evidence Act. It can also be used as evidence of the recorded transaction by seeing it so as to refresh the memory of the witnesses u/s 159 of Evidence Act. [para 218-219] [282-B, F]

Provisions relating to Panchnama in the Code:

7.3. The word 'Panchnama' is nowhere stated in the Code, but it can be construed from the language of certain provisions under the Code. Sections 100 and 174 of the Code mandate the presence of respectable persons as witnesses at the time of search and investigation respectively. Section 174 of the Code enumerates the list of instances where the police officers are empowered to hold inquests, the proviso to this section mandates the inquest to be conducted in the presence of two or more respectable inhabitants of the neighbourhood. Clauses (4) to (8) of s.100 stipulate the procedure with regard to search in the presence of two or more respectable and independent persons preferably

A from the same locality. The following mandatory conditions can be culled out from s. 100 of the Code for a valid Panchnama:

i. All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

ii. Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

iii. All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

iv. The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

v. Place, name of the police station, Officer rank (I.O), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

vi. The panchnama should be attested by the panch witnesses as well as by the concerned IO.

vii. Any overwriting, corrections, and errors in the

**Panchnama should be attested by the witnesses.**

viii. **If a search is conducted without warrant of court u/s 165 of the Code, the I.O. must record reasons and a search memo should be issued. [para 220-222] [282-G-H; 285-B-H; 286-A-C]**

*Circumstances when the Panchnama is inadmissible:*

7.4. The Panchnama will be inadmissible in the court of law in the following circumstances:

i. The Panchnama recorded by the I.O. under his supervision should not be hit by s.162 of the Code. The procedure requires the I.O. to record the search proceedings as if they were written by the panch witness himself and the same should not be recorded in the form of examining witnesses as laid down u/s 161 of the Code.

ii. The Panchnama must be attested by the panch witnesses for it to be valid in the eyes of law. In case of a literate panch witness, he must declare that he has gone through the contents of Panchnama and it is in tune with what he has seen in the places searched, whereas for illiterate panch witness, the contents should be read over to him for his understanding and then the signature should be appended. If the above said declaration is not recorded, then the panchnama document will be hit by s.162 of the Code. [para 223] [286-D-H; 287-A]

7.5. On any deviation from the procedure, the entire panchanama cannot be discarded and the proceedings are not vitiated. If any deviation from the procedure occurs due to a practical impossibility then that should

A be recorded by the I.O. in his file so as to enable him to answer during the time of his examination as a witness in court. Where there is no availability of panch witnesses, the I.O will conduct a search and seize the articles without panchas and draw a report of the entire B such proceedings which is called as a 'Special Report'. [para 224] [287-B-C]

*Pradeep Narayan Madgaonkar and Ors. vs. State of Maharashtra* (1995) 4 SCC 255; *Mohd. Hussain Babamiyan Ramzan vs. State Of Maharashtra*, (1994) Cri.L.J. 1020, and C *Pannalal Damodar vs. State of Maharashtra* (1979) 4 SCC 526, *M. Prabhulal vs. The Assistant Director, Directorate of Revenue Intelligence* 2003 (3) Suppl. SCR 958 = (2003) 8 SCC 449 and *Ravindra Shantram Sawan vs. State of Maharashtra* 2002 (3) SCR 881 = (2002) 5 SCC 604; D *Rameshbhai Mohanbhai Koli and Ors. vs. State of Gujarat* 2010 (14) SCR 1 = (2011) 11 SCC 111 – referred to.

7.6. In the instant case, A-67 in his confessional statement narrated about various incriminating articles E and also identified the articles used for preparation of bomb. PW-282 identified the accused (A-67), who had given him two suit cases, which he handed over to police. The said suit case contained hand grenades and bundles of wire. PW-541, P.I. DCBCID Unit, deposed about taking F charge of the incriminating suit cases, AK-56 rifles, ammunition and hand grenades and keeping the same in strong room of DCB, CID. [para 229, 232 233 and 237] [288-D; 290-F; 291-C; 293-G]

7.7 From the statements of various accused, G particularly, A-10 and the evidence of PW-282 as well as PW-541 coupled with the affidavit sworn by PW-541 and in the light of the principles to be followed for a valid panchnama, this Court is satisfied that though minor discrepancies are there, on this ground the entire H

prosecution case cannot be destroyed. In view of the fact that the prosecution has led ample corroborative evidence, the Designated Court was fully justified in relying on those recoveries while accepting the prosecution case. [para 240] [296-H; 297-A-B]

COMPLICITY OF ACCUSED PERSONS:

Appellant-accused A-1 (Crl A. No. 1728 of 2007):

8.1. The evidence in respect of A-1 is in the nature of the confessions made by the co-accused persons, the testimony of prosecution witnesses, the documentary evidence on record and the recoveries made. Apart from the evidence of PW-2, several accused persons in their confessional statements and other witnesses examined on the side of the prosecution clearly implicate A-1 and his involvement in all the events. [Para 80 and 83] [162-H; 163-A; 164-C]

8.2. The prosecution heavily relied on the confessional statements of co-accused persons, namely, A-10, A-11, A-46, A-67 and A-97, which are admissible as primary and substantive evidence against the appellant (A-1) notwithstanding the amendment by Act 43 of 1993. [para 98 and 104] [179-B; 184-F]

8.3. The fact that A-1 was constantly present at Al-Hussaini building, where the major part of the plans have been made and executed, is established, and his active involvement has also emerged from the confessional statement of A-67 and other evidence on record as to how he was dealing with the so called men of 'AA-2, managing his ill gotten money, booking air tickets and actively working for confirming them for the conspirators. Further, there is enough evidence of his meeting with co-accused and actively working in furtherance of the conspiracy. Accused 'A-1' need not be present at each

A and every meeting for being held to be a part of the conspiracy. [para 77] [159-G-H; 160-A-B]

8.4. It has clearly come in the confession of A-67, as corroborated by A-37 and A-46 as also PWs 37, 282 and
B 506 that A-1 delivered bags and suit cases to A-67 which contained handgrenades and electronic detonators and subsequently two suit cases were recovered at the instance of A-67 which contained 105 hand grenades and 150 electronic detonators. In the light of the evidence on
C record, it is clear that A-1 was in possession of handgrenades and electronic detonators which were concealed in the jeep and which were delivered to A-67 in three suitcases by A-1 through A-46. [para 118-120] [197-F; 198-A-C; 199-A-B]

D 8.5. The deposition of PW-2 (approver) reveals several incriminating circumstances against the appellant (A-1). PW-2 stated that the tickets were given by the appellant to a co-conspirator which fact has been corroborated by A-10 in his confessional statement. This
E evidence considered along with the fact that the tickets were arranged by the appellant (A-1) and he was present in the meeting of the co-conspirators, i.e., in the meeting of AA-2 including PW-2 and A-10, clearly establishes his unity with the object of the conspiracy. [para 177-178]
F [237-A-D]

8.6. The prosecution has established by evidence that arranging the tickets to Dubai was one of the responsibilities of A-1. It is very clear that the deposition of PW-2 to the extent that when PW-2 and other
G conspirators were called by AA-2, A-1was also present there, who on being asked by the former, handed over the tickets to a co-conspirator which clearly establishes the active participation of A-1 in the conspiracy. The fact that the co-conspirators were called for the meeting in the
H presence of A-1 and were being given instructions by AA-

2 about the conspiracy clearly establish the active participation of A-1 in the conspiracy. [para 179] [237-A-D]

8.7. Evidence of PW-2 makes it clear that though he did not mention about the participation of A-1 in all the meetings, however, he identified A-1 in court and asserted that he is the brother of AA-2 and it was he who assisted his brother at the Al-Hussaini Building for all preparations, viz., purchasing tickets, getting visas, making arrangements for the persons who were sent to Pakistan via Dubai for training in handling and throwing bombs, filling RDX in vehicles etc., their stay at Dubai and return of such persons from Pakistan to Bombay, payments to various persons who underwent training, which clearly prove the involvement of A-1 in the conspiracy as well as in subsequent events and actions along with his brother and other accused. [para 152] [233-A-C]

8.8. Apart from the categorical statement of co-accused, the prosecution has also examined the independent witnesses from the travel agencies and other authorities. Besides, there is ample evidence to show that A-1 was incharge of all money transactions and monitoring the activities of all the persons concerned in the movement. The prosecution has also established that A-1 owned a blue Maruti Car which was used for carrying explosives and detonators one day before the blast took place on 12.03.1993. A-1 left for Dubai on 11.03.1993 with the Indian Passport and thereafter he entered Pakistan with Pakistani Passport. Though he was not one among the persons who carried arms and ammunitions used for the blast but it was he who stood behind them from starting till the end, viz., conspiracy, planning and making all the arrangements for sending certain persons to Pakistan for training in handling of arms *and* ammunitions. [para 249] [302-E-G]

A 8.9. A perusal of the Confessions by the co-conspirators would show that the appellant (A-1) was playing a key role in furtherance of the conspiracy. The evidence along with further material relied on by the prosecution show that A-1 also played an active role in B generation and management of funds for achieving the object behind the conspiracy and in all subsequent events. [para 250] [303-B]

8.10. This Court is satisfied that the prosecution has established all the charges leveled against A-1 and the C Designated Court, after analysing all the materials including oral and documentary evidence and the independent witnesses, rightly convicted him. [para 249] [302-H; 303-A]

D OTHER APPELLANTS-ACCUSED PERSONS:

9. The evidence against all other accused-appellants is in the form of: (i) their own confessions; (ii) confessions made by other co-conspirators (co-E accused); (iii) testimonies of prosecution witnesses including eye-witnesses; and (iv) documentary evidence. [para 286] [343-F-H]

Appellants A-32, A-36 and A-39 (Criminal Appeal Nos. 609-610 of 2008):

F

10.1 The evidence on record, namely, the confessional statements of appellants-A-32 and A-39, the confessional statements of co-accused A-13, A-23, A-29, A49, A-52, A-57, A-64, A-94, A-98 and A-100, prosecution G witnesses, namely PW-2 (approver), PW-5, PW-6 and PW-13 (eye-witnesses) other witnesses of investigation, recoveri s, FSL reports, evidence with regard to injured victims a d deceased persons, it has been sufficiently established that each of the appellants, namely, A-32, A-36 and A-39 were actively H involved in the conspiracy of causing blasts in Bombay in a

much as they attended conspiratorial meetings and in furtherance of the conspiracy they received weapons training in Pakistan; in the night of 11/12.03.1993, they participated in filling of RDX in vehicles at the Al-Hussaini building and; and on 12.03.1993, they threw hand grenades towards the Fishermen's colony which resulted in death of 3 persons and injuring 6 others. [para 258-263, 274 and 279] [310-D; 312-D; 313-F; 316-C; 334-D-H; 335-A-B]

10.2. A perusal of all the materials clearly shows that the prosecution has established all the charges and the Designated Court rightly convicted them of the same. [para 281] [337-D]

Appellant-accused A-44: (Criminal Appeal Nos. 628-629 of 2008)

11.1. The confession of the appellant (A-44) establishes the charges framed against him in the trial. The fact that he knowingly committed the overt act of planting the bomb at Hotel Centaur, Juhu, is evident from his own confession. [para 290] [346-G]

11.2. The confessional statements of all the co-accused, viz., A-9, A-10 A-12 and A-15 clearly corroborate the confessional statement of the appellant (A-44) and establish that he went along with 'A' (AA) and A-10 in a Maruti Van; he witnessed the insertion of pencil detonators in the suitcases filled with RDX; he planted the suitcase filled with RDX in Hotel Centaur Juhu; and that he proceeded to park the scooter filled with RDX at Zaveri Bazaar. [para 293] [350-C-G]

11.3. From the perusal of the testimony of PW-17 and PW-18, the staff of Hotel Centaur Juhe, it is clear that the witnesses established the identity of the person, who planted the suitcase in the hotel, as the appellant.

A **Further, the prosecution has produced sufficient evidence against the appellant (A-44) to bring home the charges framed against him. [para 295 and 305] [352-F-G; 369-B]**

B **Appellant-accused A-10 and A-29 (Criminal Appeal Nos. 637-638 of 2008)**

**12.1. From the confessional statement of A-10 and A-29, it is evident that both the accused apart from implicating themselves in various activities along with** C **other accused persons, corroborate with each other. It is also clear that both the appellants were present at the residence of 'AA-2' and went in a red coloured Maruti van which was loaded with explosive substances and parked it in the compound of the Plaza Cinema which later** D **exploded killing 10 persons and injuring 36 others. [para 313] [384-F-G]**

**12.2. Confessional statements of co-accused viz., A-32, A-46, A-57, A-64, A-100, A-9, A-12, A-15, A-17, A-44, A-**E **96, A-97, A-16, A-23, A-24, A-36, A-39, A-49, A-52, A-77, A-94 and A-98 substantiate the fact that the appellants, viz., A-10 and A-29 were fully aware of the conspiracy and wilfully participated in performing the conspiratorial acts. Further, the confessions of these co-accused** F **corroborate the confessional statements of the appellants (A-10 and A-29) in material particulars. [para 315] [396-C-E]**

**12.3. PW-2, in his deposition, implicates the appellants. He duly corroborates the confessions of the** G **co-accused and the confessions of the appellants themselves. The deposition of PW-2 has also been corroborated in material particulars. [para 318] [397-D, H; 398-A]**

H **12.4. PWs-3 and 4, who were the Security Guards on**

duty at Plaza Cinema at the relevant time, and had witnessed the incident, sufficiently prove involvement of the appellants. Their depositions also provide corroboration with the confessional statements of A-10 and A-29 that they parked the Maruti van laden with explosives in Plaza Cinema compound which caused the said explosions causing death of 10 persons and injuries to 36 people. [para 319 and 322] [398-G; 400-G-H]

12.5. Other Witnesses namely, PW-449, PW-447, PW-455, PW-448 and PW-450 proved the injuries sustained by them during the explosion. PW-646, the doctor who issued certificates regarding treatment of PW-449 and PW-407 sufficiently corroborates the fact of injury suffered by the victims. [para 323] [401-A-B]

12.6. In view of the confessional statements of the appellants (A-10 and A-29), the confessional statements of the other co-accused persons, deposition of prosecution witnesses, as also the eye-witnesses, viz., PWs-3 and 4 along with other witnesses duly examined by the prosecution, the charges framed against the appellants have been duly proved. [para 331] [404-A-B]

Appellant-accused A-9 (Criminal Appeal No.365 of 2008):

13.1. Appellant (A-9) confessed to have facilitated AA-2 fleeing from India in the morning of 12.3.1993. In the night of 11.3.1993 he was present when RDX was being filled into vehicles and was being kept in suit cases by other co-accused. He went along with A-10 to drop co-accused A-12, A-44 and AA who went for planting bombs in Hotel Sea Rock, Hotel Centaur, Juhu and Hotel Centaur Airport. He planted a scooter laden with RDX in Zaveri Bazar. The appellant consciously joined the conspiracy and committed overt acts in furtherance of the conspiracy. From a perusal of the entire confession, it is established that the appellant was fully aware and

A conscious of the overt acts committed by him. The guilt of the appellant (A-9) is proved from his confession and it is established that he knew that his actions were wrong and illegal. [para 338 and 339] [412-C; 413-A-C, H; 414-A, C]

B

13.2. The involvement of the appellant (A-9) has also been disclosed in the confessional statements of co-accused namely A-10, A-11, A-12, A-15 and A-44. Besides, the prosecution has relied upon the evidence of prosecution witnesses namely, PW-29, PW-36, PW 469,
C PW 556, PW2, PWs 51, 82, 452, 299, 651, 81, 554 to establish the involvement of the appellant (A-9) in the conspiracy and the consequential acts including the purchase of scooters used in blasts. The recoveries made and the FSL Report have been proved. Further the injured
D witnesses and relatives of deceased, namely, PWs 394, 424, 578, 395 and 396 have also deposed. [para 340, 344 and 348] [414-E; 419-F; 425-C-D]

13.3. In view of the confessional statement of the
E appellant (A-9), the confessional statements of other co-accused persons as also the eye-witnesses PWs-29 and 36, along with other witnesses duly examined by the prosecution, the charges framed against the appellant (A-9) have been duly proved. [para 351] [430-B-C]

F Appellant-accused A-11 (Criminal Appeal Nos. 864-865 of 2008):

14.1. From the confessional statement of the appellant (A-11), it is clear that he was a close associate
G of 'AA-2' . He had full knowledge of all the facets of the conspiracy and played an active part in the landing and transportation of RDX and other explosives and making of suitcase and vehicle bombs. He planted a jeep containing a bomb at Century Bazaar. He was involved
H in all the stages of conspiratorial design. It is thus

established from his own confession that he played an important and active role in the conspiracy. [para 359] [441-F-G]

14.2. The other co-accused, namely A-9, A-10, A-12, A-13, A-15, A-17, A-18, A-23, A-24, A-28, A-29, A-46, A-57, A-64, A-73 and A-100 in their confessions u/s 15 of TADA, have also discussed the role played by the appellant (A-11) in the conspiracy. [para 365] [445-G]

14.3. Further, evidence of the approver (PW-2), the eye-witness (PW-15), experts and others clearly implicate A-11 to the actual scene of the crime at Century Bazaar along with linking him to taking part in the entire conspiracy. The confession made by A-11 himself and the confessions of the various co-accussed are in consonance with the other available evidence. It is, therefore, established that the appellant (A-11) was an active member of the conspiracy which led to the blasts at various places in Bombay and caused many deaths, injuries and loss to property. The involvement of the appellant in the entire conspiracy was of great importance as he was himself involved in the landing of arms and ammunitions and even planted the jeep with a bomb which exploded in Century Bazaar. [para 376-377] [476-B-F]

14.4. This Court, therefore, holds that the prosecution has produced sufficient evidence to bring home the charges framed against the appellant (A-11). [para 378] [477-B]

Appellant-accused A-12 (Criminal Appeal No. 897 of 2008):

15.1. Confessional statement of A-12 established that he was a trusted confidant of AA-2 since he was assisting him in the crime relating to Hawala transaction and was

well acquainted with other co-conspirators; he participated in the landing, transportation and storage of arms and ammunitions and explosives that was used in the bomb blasts; he participated in filling of RDX in the vehicles parked in the garage of Al-Hussaini building; he planted the suitcase in Hotel Sea Rock knowing that it contains RDX and is fitted with time pencil detonator; and that he parked the scooter laden with black chemical and fitted with time pencil detonator at Katha Bazaar. [para 386] [491-E-H; 492-A-C]

15.2. The involvement of the appellant has also been disclosed in the confessional statements of the co-accused A-9, A-10, A-11, A-14 amd A-15. It is clear from the confession of the appellant (A-12) and the confessions of other co-accused that the work of filling of RDX in vehicles and suitcases was carried out in the garage of the Al-Hussaini Building. This Court is also satisfied that sufficient evidence is available on record to substantiate the fact that the appellant (A-12) participated in filling RDX in vehicles in the night intervening 11/12 - 31993. [para 388 and 396] [492-F; 510-F-G]

15.3. On perusal of the depositions of PWs-8 and 9, it is clearly established that on 12.03.1993, the appellant parked the scooter at Katha Bazaar, opposite to Matruchhaya Building which later exploded. The depositions also sufficiently corroborate the confessional statement made by the appellant that he parked a scooter laden with explosives at Katha Bazaar. From the evidence of PW-386 and PW-75, it is clearly discernible that the scooter was booked in the fake name. [para 392] [498-F-G; 503-E]

15.4. The evidence of PWs 23, 462, 28 and 46 establishes the fact that the appellant (A-12) entered into the Room No. 1840 of Hotel Sea Rock along with the luggage and after leaving the same in the said room, he

went out of the hotel. Thereafter, a big explosion took place in the said room. Both PWs-23 and 28 have identified the appellant (A-12). [para 394] [506-E-F]

15.5. In view of the confessional statement of the appellant (A-12), the confessional statements of other co-accused persons, as also the eye-witnesses along with other witnesses duly examined by the prosecution and recoveries made, the charges framed against the appellant have been duly proved. [para 400] [512-C-D]

Criminal Appeal Nos. 941-942 of 2008(A-16)

16.1. The appellant-accused A-16, in his confessional statement, has given details about his involvement in the conspiracy. He has given the description of the meetings that he attended. He also described about the training that took place in Pakistan and other relevant details about his own involvement as well as that of the other accused. [para 407] [522-H; 523-A]

16.2. A perusal of the confession by the accused shows that the appellant was playing a key role in furtherance of the conspiracy. The other co-accused namely, A-10, A-29, A-32, A-36, A-39, A-49, A-52, A-57 A-64, A-94, A-98 and A-100, in their confessions u/s 15 of TADA have also discussed the role played by A-16 in the conspiracy. [para 409] [526-H; 527-A]

16.3. The evidence of approver (PW-2) and the confessional statement of A-64 show that A-16 participated in the landing and transportation of arms and ammunitions and explosives which were smuggled into India in February, 1993. PW2 further stated that A-16 visited Pakistan via Dubai for receiving training in handling of arms and ammunitions and explosives from the agents of ISI to commit terrorist acts in India. He attended conspiratorial meetings during the month of March 1993 at the residence of 'B' and A-96 for making

A plans to commit terrorist act. He also participated along with other co-conspirators in loading the explosives like RDX fitted with time device detonators in various vehicles during preparation of vehicle bombs in the intervening night between 11/12-3-1993. He surveyed and conducted B reconaissence of the Stock Exchange Building and Air India Building on 10.03.1993 for causing explosions there. Therefore, it is established that the appellant was well aware of the conspiracy right from the inception and also of the consequences of his acts. [para 409, 413-414] C [533-F; 540-E-H; 541-A]

16.4. It is evidently clear from the participation of A-16 in all the important events and his presence in the conspiratorial meetings that he was an integral part of the conspiracy and knew everything about it. It was not the D case that he was merely following the instructions. The testimony of the approver corroborates the confession of the accused as well as confessions of other co-accused in all material particulars. The approver was one of the conspirators and he was a party to all the landings, E meetings, training and also went to plant the explosives laden vehicle at the Shiv Sena Bhawan. The account of the conspiratorial meetings, training and other events is reliable and fits in to the chain of events which has already been established by the confessions of various F accused. [para 415] [541-B-D]

16.5. The evidence of the approver (PW 2), the eye-witnesses (PW 11, PW 12 and PW 445), the , experts and other witnesses, namely, PW 363, PW 329, PW 445 clearly G establish the involvement of A-16 in the explosions that took place at the Stock Exchange building, Air India building and the Shiv Sena Bhawan. It is established that A-16 was an active member of the conspiracy which led to the blasts at various places in Bombay and caused many deaths, injuries and loss to property. The H

involvement of the appellant in the entire conspiracy establishes the critical role played by him in the blast. [para 430-431] [560-A-B, D]

16.6. In view of the confessional statement of the appellant (A-16), the confessional statements of other co-accused persons, the statement of approver (PW-12) as also the eye-witnesses along with other witnesses duly examined, the prosecution has produced sufficient evidence against the appellant to bring home the charges framed against him. [para 432] [560-E]

17. After meticulous examination of confessional statements of the accused and the co-accused, the recoveries made, and other evidences it establishes undoubtedly the guilt of all the death convicts. [para 474] [588-A-B]

QUANTUM OF SENTENCE:

18.1. It is manifest from the bare reading of judgments on death penalty from 1950 till date that the judiciary has always exercised its discretion in awarding this extreme penalty with great circumspection, caution and restraint. The dictum in *Bachan Singh* paraphrases that the duty cast upon the judges in deciding the appropriate sentence is a matter of judiciousness and not of law. [para 476] [588-E-F; 589-A]

*Bachan Singh vs. State of Punjab* AIR 1980 SC 898 – relied on

18.2. Section 3(2)(i) of TADA prescribes death or life imprisonment in alternative as the penalty for a terrorist act. It is noticeable from the transformation in the sentencing policy that the courts were required to look into each and every case on its own merits, to determine the appropriate sentence for the offender. [para 477] [589-D-E]

A 18.3. The changes, which the Code has undergone in the last few decades, clearly indicate that Parliament is taking note of contemporary criminological thought and movement. After the new Code of Criminal Procedure, 1973 which came into force with effect from B 1st April, 1974, imprisonment for life would be the rule and a sentence of death an exception. Though TADA is a special Act, the application of the Code of Criminal Procedure is permissible to the extent of its consistency with the Act. [para 478-479] [589-E-F; 590-D]

C *Mithu vs. State of Punjab* 1983 (2) SCR 690 = (1983) 2 SCC 277; *Jagmohan Singh vs. State of U.P* 1973 (2) SCR 541 = (1973) 1 SCC 20 – referred to.

18.4. Amended s. 354(3) of the Code mandates that D when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such E sentence. As an outcome, the discretion to impose the sentence of death has been curbed to the extent of stating the 'special reasons' and judges are left with the task of discovering the 'special reasons'. [para 479] [590-E-F, G]

F *Dalbir Singh and Ors. vs. State of Punjab* 1979 (3) SCR 1059 = (1979) 3 SCC 745 – relied on

*Bishnu Deo Shaw vs. State of West Bengal* 1979 (3) SCR 355 = (1979) 3 SCC 714; *Rajendra Prasad vs. State* G *of UP* 1979 (3) SCR 78 = (1979) 3 SCC 646 – referred to.

18.5. Enactment of sub-s.(2) of s. 235 CrPC is an act of affirming the new trend in penology, which mandates the courts to consider various factors such as the prior H criminal record of the offender, his age, employment,

educational background, home life, sobriety and social adjustment, emotional and mental condition, and the prospects of his returning to normal path of conformity with the law etc. in deciding the quantum of sentence. In this background of standards, the judiciary with the aid of s. 235(2) ascertained the *'special reasons'* pertaining to the criminals as required by s.354(3) of the Code to impose death penalty. The majority view in *Bachan Singh,* gave a wider interpretation to the term "special reasons" by embracing within its ambit both the circumstances connected with the particular crime and the criminal. Upshot of this interpretation is that the 'special reasons' required for confirming the death sentence u/s 302 or in the context of this case in s.3(2)(i) of TADA will have to be identified by balancing the aggravating and mitigating or extenuating circumstances. [para 485, 486 and 490] [594-D-F; 597-C-D]

18.6. While determining the aggravating circumstances, relative weight ought to be given to both criminal and the crime and an identical approach must be adhered to for ascertaining the mitigating circumstances. Since these two aspects are interwoven, it is difficult to segregate the two to state that all circumstances relating to crime will be aggravating, likewise that all circumstances relating to criminal are mitigating. The aggravating circumstances pertaining to both crime and criminal are the reasons, which can be against the accused; likewise the mitigating circumstances marshalled from both crime and criminal can be the reasons in favour of the accused. A careful evaluation of aggravating and mitigating circumstances pertaining to both criminal and crime is the approach to ascertain the special reasons for imposing the extreme penalty on a person. Thus, the two cardinal factors, viz., one, the penalty imposed must be proportionate to the gravity of the crime and second, the degree of responsibility of the

A offender must be taken into account in determining the sentence for an individual accused in addition to aggravating and mitigating circumstances. [para 491-493] [597-E-G, H; 598-A-C]

B Capital sentence to appellant-accused A-1:

18.7. The appellant-accused A-1 is the younger brother of 'AA-2', who is one of the masterminds behind the blasts. A-1 was in a position of authority, particularly, he had played a significant role in the context of the C blasts which is important while determining the sentence. The confessional statements of co-accused establish the dominating position of A-1 in comparison with other 10 accused-appellants. The following conduct of A-1 along to the co-conspirator family members may be relevant:-

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a. The confessional statements of various co-accused made a mention that 'AA-2' had instructed them to stay in touch with A-1 for further instructions. Thus, A-1 assumed the role of 'AA-2' in India during his absence. As an outcome, 'AA-2' gave the commands to A-1, who in turn passed them to other accused thereby signifying the trusted position that A-1 obtained from 'AA-2', apart from being just a younger brother.

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b. A-1's role was not limited only to the extent of correspondence between the masterminds and all other accused but he was also entrusted with task of handling the explosive G bags and for their safe keeping.

c. Furthermore, he was actively involved in hawala transactions for the purpose of facilitating the blasts on 12.3.1993.

H d. Besides, he acquired tickets both for Dubai

and Pakistan for transporting the other accused-appellants to the respective places for the purpose of training and coaching them in envisaging their participation for the blasts in Bombay.[para 496 and 498] [598-G-H; 599-A, B-D]

18.8. Essentially, A-1's deeds can't be viewed distinct from the act of 'AA-2'. Therefore, both owe an equivalent responsibility for the blasts. They were the architects of the blasts, without whom the plan would have never seen the daylight. From this conduct, A-1 was one of the 'driving sprit' behind the plan of the 1993 blasts, whereas the other appellants played a far lesser role and thus a lesser contribution to the crimes resulting from this plan. To be clearer on the dominant position, the blasts on 12-3-1993 was at the discretion of the masterminds, as they had the effective control over the incident. It is this effective control over the incident, which is absent in the role played by rest of the appellants. [para 499] [600-A-C]

16.9. It is true that there is no direct act attributed to A-1 as far as parking of the explosives filled vehicles in different localities are concerned. But without the planning of conspirators for which A-1 was a party too, the explosives and ammunition required for the execution wouldn't have entered into the country and as a consequence the execution itself wouldn't have materialized. Furthermore, it is not conceivable to envisage that these principal perpetrators will take the execution in their hands. So they targeted the meek souls who were underprivileged and easily impressible to accomplish their ulterior motive. It is also a proved fact that the family members of AA-2 including A-1 fled the country anticipating detention for their illegal acts. Thus, it can safely be concluded that no offence might have

A taken place at all but for the instigation by the absconding accused and A-1. Therefore, the dominant position of the accused is an aggravating factor by itself, as it gives the status of direct responsibility. [para 501-502] [600-G-H; 601-A-C]

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18.10. Following aggravating circumstances emerge against A-1:

i. A-1 was one of the brains behind the hatching of larger conspiracy for the Bombay Bomb
C Blasts in 1993.

ii. The dominant position and significant role played by A-1 is a factor that may aggravate his punishment.

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iii. The "vulnerability of the victims" and "the depravity of the crimes" constitute additional aggravating circumstances.

iv. Crime of terrorism is in itself an aggravating
E circumstance as it carries a "special stigmatization" due to the deliberate form of inhuman treatment it represents and the severity of the pain and suffering inflicted.

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v. A-1 was part of the deliberate choosing of localities like Century Bazaar, Zaveri Bazaar, Katha Bazaar, Stock Exchange Building etc. where there was more prospect of public gathering. The manner of its execution and its
G design would put it at the level of extreme atrocity and cruelty.[para 503] [601-C-H; 602-A]

18.11. Following mitigating circumstances were pleaded on behalf of A-1:

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i. He is a Chartered Accountant by profession and a respectable person in the society before the occurrence of this incident.

ii. There is no overt act committed by the accused himself. In fact, the act of A-1 returning to India unlike other absconders is in itself a mitigating circumstance in his favour.

iii. No criminal antecedent.

iv. He suffers from depression since 1996.

v. He had served more than 19 years in jail. [para 504] [602-B-F]

18.12. In the considered opinion, of this Court, the lack of prior criminal record is a mitigating factor; other mitigating circumstances are not at the higher pedestal to bargain for reduction of sentence. [para 505] [602-F-G]

18.13. Under the established jurisprudence, the two factors— a commanding position and a crime of 'utmost gravity' ordinarily — merit the extreme penalty even accounting for the guilty plea and mitigating factors. This is the special reason, which warrants death penalty to the accused. Therefore, having taken into account and weighed the totality of A-1's culpability and all the particular circumstances of the case, this Court concurs with the decision of the Designated Court and confirms the sentence of capital punishment to A-1. [para 506 and 507] [603-A-C]

LIFE SENTENCE to other appellants-accused A-32, A-36, A-39, A-44, A-10, A-29, A-9, A-11, A-12 and A-16:

18.14. There is a significant difference in the role

A played by A-1 and the rest of the appellants. A-1 as well as other absconders were the real conspirators who hatched the scheme for such a tragic act; whereas the other 10 appellants i.e A-32, A-36, A-39, A-44, A-10, A-29, A-9, A-11, A-12 and A-16 were mere subservient
B subordinates whose knowledge and acquaintance might have been restricted to their counterparts. Thus, A-1 and all the absconding accused were the archers whereas rest of the appellants were the arrows in their hands. [para 500] [600-D-F]

C 18.15. These 10 accused-appellants have traded the freedom of choice for the freedom to commit atrocities. Though the incident of bomb blasts is not a brainchild of these appellants, yet they turned the conspirators' orders into action by executing the blasts for which they
D are liable for the consequence of their acts. Every person is responsible for his or her actions and he/she can't evade the accountability by placing the responsibility on another person. At the same time, our legal system mandates that the sentence shall reflect the relative
E significance of the accused's role. [para 509] [603-D-F]

18.16. The following aggravating circumstances remain the same in respect of the 10 accused-appellants:

F 1. These 10 accused-appellants underwent special training in Pakistan for the purpose of executing the blasts in India.

2. These accused persons/individuals parked the vehicles with explosives at different spots as
G directed by their masterminds for the explosion of bombs.

3. Crime of terrorism is in itself an aggravating circumstance as it carries a "special stigmatization" due to the deliberate form of
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inhuman treatment it represents and the severity of the pain and suffering inflicted. A

4. The "vulnerability of the victims" and "the depravity of the crimes" constitute additional aggravating circumstances. B

5. The manner of execution of crime and its design is at a level of extreme atrocity and cruelty. [para 510] [603-H; 604-A-D]

18.16. The mitigating circumstance of these appellants differ from individual to individual. The mitigating circumstances can be classified into seven heads, namely, (i) age, (ii) act of remorse, (iii) no prior criminal antecedents, (iv) co-operation with the investigation, (v) family circumstances, (vi) ill health and (vii) delay in execution. The first five aspects have been accepted as mitigating circumstances by the established practices of this Court. As far as 'ill health' is concerned, it is not a mitigating but a special circumstance which may aid in reduction of sentence. The vital distinction between the 'special circumstance' and 'mitigating circumstance' appears to lie in the fact that the reduction in penalty is given not owing to any merit earned on the part of the accused, but because of compelling 'reasons of humanity', illustrating a humane approach to sentencing in this context. [para 510 and 512] [604-E; 612-F-H; 613-A] C D E F

18.17. Another vital factor stated as mitigating circumstance in all these appeals is that they have all been imprisoned for around 20 years and they *continue* to be in jail. Nevertheless, as has been held by the Constitution Bench in *Triveniben**, the sentence can't be commuted merely on the ground of delay alone. It was further observed that no absolute or unqualified rule can be laid down that in every case in which there is a long G H

A delay in the execution of death sentence, the sentence must be substituted by life imprisonment. Thus, no accused can claim as a matter of right to commute his/her death sentence on the ground of delay in the judicial process. However, noting the lengthy incarceration
B suffered by the accused over a period of two decades, as an exceptional scenario, this Court is inclined to consider the long delay as a mitigating circumstance but less significance will be attached to it in comparison with other six circumstances.[para 513] [613-B-E]

C **Triveniben vs. State of Gujarat* 1989 (1) SCR 509 = (1989) 1 SCC 678 – referred to

18.18. Furthermore, all these 10 accused-appellants belong to the lower strata of society, most of whom don't
D even have any regular job for their livelihood. Their personal life was relatively moderate before this incident. These appellants have fallen prey to the ulterior motive of the conspirators for accomplishing their hidden motives, which was to spread terror among the people.
E Such evidence can in no way exonerate or excuse them for their participation in the commission of crime. However, it provides a somewhat nuanced picture and may imply that their participation in the massacres resulted from misguided notions rather than extremism.
F Technically, it is these 10 appellants who parked the explosive filled vehicles in the respective destinations. However, it is actually the masterminds' strategy, which was executed by the subservient minions i.e these 10 appellants. This may not help in complete exoneration of
G the liability of these 10 appellants but the degree of punishment must necessarily reflect this difference. It is vital to remember that '*but for*' the masterminds, this blast should have never seen the daylight. [para 514-516] [613-E-G; 614-B-C]

H 18.19. Therefore, to differentiate the degree of

punishment to A-1 and other 10 appellants, the ends of justice would be served if the death sentence of these ten appellants be commuted to imprisonment for life. [para 517] [614-D]

18.20. With a note of caution, it is reiterated that it is ordinarily expected that two accused convicted of similar crimes in similar circumstances should not in practice receive very different sentences, often the differences are more significant than the similarities, and the mitigating and aggravating factors dictate different results. Therefore, the lesser sentence imposed on these 10 appellants cannot be a precedent in other cases and every case must be decided according to its facts and circumstances. [para 518] [614-D-F]

*State of U.P. vs. Sanjay Kumar* (2012) 8 SCC 537 – referred to.

Life Imprisonment is Rigorous Imprisonment:

19.1. There was a misperception that life imprisonment is distinct from the punishment of rigorous or simple imprisonment shown in clause (4) of s. 53 of the Code of Criminal Procedure. This issue was clarified in ***Md. Munna***. Therefore, "imprisonment for life" is to be treated as "rigorous imprisonment for life". [para 520] [617-F-G; 618-A]

*Md. Munna vs. UOI and Ors./Kartick Biswas vs. State of West Bengal and Ors.* 2005 (3) Suppl. SCR 233 = (2005) 7 SCC 417 – referred to.

Meaning of Life Imprisonment:

19.2. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life. This Court in *Sangeet** has observed that there is misconception that

A a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years or 20 years imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate B Government u/s 432 of the Code, which in turn is subject to the procedural checks mentioned in the said provision and to further substantive check in s. 433-A of the Code. This Court has always clarified that the punishment of a fixed term of imprisonment so awarded would be subject C to any order passed in exercise of clemency powers of the President of India or the Governor of the State, or remission and commutation guaranteed u/s 432 of the Code, as the case may be. Further, the power to grant remissions and to commute sentences is coupled with a D duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code. [para 521, 522 and 524] [618-B-C, F; 619-B-D]

*Sangeet and Anr. vs. State of Haryana*, 2012 (11) Scale 140; and *State of U.P. vs. Sanjay Kumar* (2012) 8 SCC 537 E – referred to.

19.3. In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-ss. (2) to (5) of s.432 of the Code lay down basic procedure for making F an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. This Court is of the view that exercise of power by the appropriate Government under sub-s. (1) of s.432 of the Code cannot be automatic or claimed as a right for the simple reason, G that this is only an enabling provision and the same would be possible subject to fulfilment of certain conditions. Those conditions are mentioned either in the Jail Manual or in statutory rules. This Court, in various decisions, has held that the power of remission cannot H

be exercised arbitrarily. The decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in s. 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government. [para 523] [618-F-H; 619-A]

19.4. Therefore, subject to ss. 432 and 433 of the Code and clemency powers of President and Governor, as vested by the Constitution under Arts. 72 and 161, respectively, the appellants- accused A-32, A-36, A-39, A-44, A-10, A-29, A-9, A-11, A-12 and A-16 shall be imprisoned for life until their death. The executive should take due consideration of judicial reasoning before excising the remission power. [para 525] [619-D-E]

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19.5. The death reference with regard to A-1 is confirmed; and for rest of the appellants convicted under this part, the death sentence is commuted into life imprisonment. [para 527] [619-H]

TERRORISM:

20.1. The quantity of RDX that was used in blasts clearly shows and establishes the fact that the blasts were intended to tear the economic, moral and social fabric of the nation and to induce communal tensions. The planning, timing and the intensity of the blasts establish that the blasts were synchronised so as to cause maximum damage to life and property. [para 377 and 431] [476-F-H; 560-C-D]

20.2. The term "terrorism" is a concept that is commonly and widely used in everyday parlance. There is no particular form of terror and, as such, anything intended to create terror in the minds of general public

A in order to endanger their lives and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building B explosions, mailing of dangerous materials, computer-based attacks and the use of chemical, biological, and nuclear weapons — weapons of mass destruction (WMD). Another trend common to both national and international terrorism is the emergence of terrorist C groups motivated by religious fanaticism, though terrorism is abhorred and condemned by all the religions of the world. Terrorists conduct planned and coordinated attacks targeting innocent civilians with a view to infuse terror in the minds of people. India, particularly, has been D a victim on several occasions. [para 433-434 and 442] [560-F-G; 561-B; 564-F-H]

20.3. In spite of several international conventions and Multilateral Agreements and domestic and international legislations to counter terrorism, it is a major problem that E is reoccurring over the globe in many different forms. It is a plague for a nation or society that should be eradicated. There is a dire need to best deal with it and to make sure to take preventive actions. In the considered view of this Court, the following procedures/ F rules must have to be adopted while dealing with it:-

(i) Better governance and law enforcement is the real need of the hour.

(ii) We must formulate long term as well as short G term strategies to combat terrorism.

(iii) More advanced technologies must be used for communication among law enforcement agencies.

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(iv) **Fighting terrorism would require a long term planning and sustained multi-dimensional action.**

(v) **There should be proper coordination between all the agencies with high level of motivation and a quick response system must be established to tackle the menace immediately.**

(vi) **Rule of Law must always be upheld and it is the duty of the constitutional authority to defend the life and limb of its subjects. [para 435, 439 and 451] [561-D; 563-D; 576-C-H]**

*Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.* **1994 (1) Suppl. SCR 360 = (1994) 4 SCC 602;** *Girdhari Parmanand Vadhava vs. State of Maharashtra,* **1996(6) Suppl. SCR 631 = (1996) 11 SCC 179;** *State through Superintendent of Police, CBI/SIT vs. Nalini & Ors.,* **1999 (3) SCR 1 = (1999) 5 SCC 253;** *Mohd. Khalid vs. State of West Bengal* **2002 (2) Suppl. SCR 31 = (2002) 7 SCC 334;** *Nazir Khan & Ors. vs. State of Delhi* **2003 (2) Suppl. SCR 884 = (2003) 8 SCC 461;** *Madan Singh vs. State of Bihar* **2004 (3) SCR 692 = (2004) 4 SCC 622;** *People's Union for Civil Liberties and Anr. vs. Union of India* **2003 (6) Suppl. SCR 860 = (2004) 9 SCC 580 - referred to**

*Black's law dictionary; The 1937 Convention for the Prevention and Punishment of Terrorism; The International Convention for the Suppression of Terrorist Bombings, 1997; The United Nations Security Council* ***2004 Resolution; League of Nations Convention (1937); and UNSC Resolution No. 1373 adopted under Chapter VII of the UN Charter*** **– referred to.**

Role of Pakistan in the Blasts:

20.4. It is devastating to state that Pakistan ***being a member of the United Nations***, whose primary object is

A to maintain international peace and security, has infringed the recognized principles under international law which obligate all states to prevent terrorist attacks emanating from their territory and inflicting injuries to other states. As per Para 2 of UNSC Resolution No. 1373 B adopted under Chapter VII of the UN Charter, every State has the obligations to perform as mentioned in the judgment. A hoste-State that has the capability to prevent a terrorist attack but fails to do so will inherently fail in fulfilling its duty under Article 2(4) since terrorism C amounts to force by definition. [para 452 and 455] [577-C, E; 578-B]

20.5. In the relevant scenario, the accused persons were facilitated by ISI operatives in Pakistan for training without observing any immigration formalities, which D means, they had a green channel entry and exit in Pakistan. Their confessions reveal that the accused received training from the ISI officials themselves on some occasions. A large number of convicted accused and absconders have received training in making of E bombs by using RDX and other explosives, handling of sophisticated automatic weapons like AK-56 Rifles and handling of hand grenades in Pakistan. These events unveil the tolerance and encouragement shown by Pakistan towards terrorism. The training received in F Pakistan materialized in the unfortunate serial blasts in Bombay on 12.3.1993. A responsible State owes an obligation not only to another state but also to the international community as a whole. It is sincerely hoped that every State will strive towards the same. [para 453, G 456 and 457] [577-F-G; 579-C-D; 580-G]

Role of Police Officers:

20.6. The role of police officials has become more vital in the present century owing to the frequent terror H attacks occurring across the country. It is important to

take note of increasing use of explosive devices by the terrorists not only because of their high damage potential but also due to their easy mobility. Thus, the police have a specific and special role, a duty and a responsibility, to curb the conveyance of explosives by vigilant patrolling and search and seizure, if required. Section 20 of the Arms Act, 1959 empowers them to arrest persons conveying any arms or ammunitions under suspicious circumstances. If the Mumbai police officials had been able to curtail the conveyance of the contraband in January and February 1993, the occurrence of 12th March 1993 could have been avoided. [para 459 and 461] [581-C-E, G]

20.7. In the instant case, some of the police personnel themselves have taken active part in smuggling and transportation of arms and explosives into Bombay with the help and assistance of a Customs Officer. Bribe money changed hands in this connection and substantial amounts were seized from some of the police personnel during investigation. [para 462] [582-A-G]

Role of Customs Officers:

20.8. The Customs officials primarily have a duty to prevent smuggling and ensure that everything that enters into or goes out of the country is brought or sent strictly in accordance with the provisions of the law. It is shattering to notice that several customs officers, including the Commissioners of Customs, played an active role as members of conspiracy and implemented the plan. Every kind of smuggling activity is devastating to the economy, but the smuggling of dangerous arms and ammunitions causes wreckage not only to the economy but also to people's lives. The occurrence of Bombay Bomb Blasts is an evidence that such incidents take place along the Indian coastline due to the lack of

A moral ethics and misconduct on the part of the officials. [para 464-466] [583-C-D, E-G]

20.9. From the evidence on record, it is evident that without the help of the customs officials, the accused B would not be in a position to smuggle the weapons required for the said blasts. A rationally structured and effective customs department is the need of the hour in order to curtail illegal imports which can have frightening ramifications upon the nation's economy and citizens' C security. [para 468] [587-E-F]

Need to improve vigilance in the Indian Maritime Zone and role of Coast Guards:

20.10. India being a maritime nation, the role of Coast D Guards is very vital for shielding the coast from external attacks. The coastal belt is surveyed by three teams of officers firstly, the Indian Navy, which is responsible for overall seaward security of long coastline. Secondly, the Coast Guards who guard the Exclusive Economic Zone E (EEZ) in order to prevent poaching, smuggling and other illegal activities in the EEZ. Lastly, the customs officials, who scrutinize and monitor every commodity which enters the Indian boundaries. The occurrence of Bombay bomb blasts on 12.3.1993 discloses a deficient performance of the officials. Coast Guards being the F strongest link in the security chain are bound to be vigilant at sea and should be in full command of the coast. The role of the coast guards is as important as any military troops. Only well strategized coast guards and high morale customs officers can prevent any G opportunity for the terrorists to attack on our country via our maritime boundary. [para 469, 471 and 473] [586-H; 587-A-B,C,E. G-H]

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| 1994 (3) Suppl. SCR 263 | cited | para 102 |
| 1994 (1) Suppl. SCR 360 | cited | para 102 |
| (1956) 2 ALL ER 843 | cited | para 102 |
| 1905 AC 369 | cited | para 102 |
| (1898) QB 547 | cited | para 102 |
| 2011 (1) SCR 997 | relied on | para 128 |
| 1953 SCR 546 | relied on | para 131 |
| 2001 (11) Suppl. SCR 433 | relied on | para 132 |
| 2004 (4) Suppl. SCR 1 | relied on | para 133 |
| 1963 Suppl. SCR 689 | referred to | para 133 |
| 1988 (2) Suppl. SCR 24 | referred to | para 133 |
| 1995 (3) Suppl. SCR 807 | referred to | para 136 |
| 2000 (1) SCR 200 | relied on | para 137 |
| 2001 (1) SCR 111 | referred to | para 138 |
| 2001 (3) SCR 840 | referred to | para 139 |
| 2002 (2) SCR 767 | referred to | para 140 |

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| A | 2002 (3) SCR 622 | referred to | para 141 |
| | 2010 (8) SCR 916 | referred to | para 146 |
| | 2001 (2) Suppl. SCR 577 | relied on | para 146 |
| | (1968) 1 SCR 695 | relied on | para 189 |
| B | 1978 (2) SCR 174 | relied on | para 192 |
| | 2000 (1) SCR 200 | relied on | para 202 |
| | 2001 (1) SCR 111 | relied on | para 204 |
| | 1990 (3) Suppl. SCR 340 | relied on | para 211 |
| C | 1994 (2) SCR 375 | relied on | para 213 |
| | (1995) 4 SCC 255 | referred to | para 225 |
| | (1994) Cri.L.J. 1020 | referred to | para 226 |
| D | (1979) 4 SCC 526 | referred to | para 226 |
| | 2003 (3) Suppl. SCR 958 | referred to | para 227 |
| | 2002 (3) SCR 881 | referred to | para 227 |
| | 2010 (14) SCR 1 | referred to | para 228 |
| E | 1994 (1) Suppl. SCR 360 | referred to | para 444 |
| | 1996 (6) Suppl. SCR 631 | referred to | para 445 |
| | 1999 (3) SCR 1 | referred to | para 447 |
| | 2002 (2) Suppl. SCR 31 | referred to | para 447 |
| F | 2003 (2) Suppl. SCR 884 | referred to | para 448 |
| | 2004 (3) SCR 692 | referred to | para 449 |
| | 2003 (6) Suppl. SCR 860 | referred to | para 450 |
| | 1983 (2) SCR 690 | referred to | para 477 |
| G | 1973 (2) SCR 541 | referred to | para 479 |
| | 1979 (3) SCR 355 | referred to | para 480 |
| | 1979 (3) SCR 78 | referred to | para 481 |
| | 1979 (3) SCR 1059 | relied on | para 482 |
| H | | | |

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|---|---|---|
| **1989 (1) SCR 509** | **referred to** | **para 513** |
| **(2012) 8 SCC 537** | **referred to** | **para 519** |
| **2005 (3) Suppl. SCR 233** | **referred to** | **para 520** |
| **2012 (11) Scale 140** | **referred to** | **para 524** |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1728 of 2007.

From the Judgment & Order dated 25.10.2007 of the Presiding Officer of the Designated Court, under TADA (P) Act, 1987 of Bombay Blast Cases,Greater Bombay in Bombay Blast Case No.1 of 1993.

WITH

Crl. A. No. 609-610/2008, 628-629/2008, 637-638/2008, 365/2008, 864-865/2008, 897/2008, 941-942/2008 and Death Ref. Case (Crl.) No. 1/2011.

Faisal Farook, Shubail Farook, Rauf Rahim, Priya Puri, Farhana Shah, Satbir Pilania, Dr. Sushil Balwada for the Appellant.

Mukul Gupta, Satyakam, Anubhav Kumar, Anando Mukherjee, Harsh N. Parekh for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** Criminal Appeal No. 1728 of 2007.

1. This appeal and the connected matters have been directed against the final orders and judgments of conviction and sentence passed on various dates by the Presiding Officer of the Designated Court under Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'the TADA') for Bombay Bomb Blast Case, Greater Bombay in BBC No. 1 of 1993. These appeals have been filed under Section 19 of the TADA by the accused against their conviction and sentence and by the CBI

for confirmation of the death sentence and against the acquittal of some of the accused persons.

2. **Brief facts**:

**The case of the prosecution is as follows:**

(a) Babri Masjid at Ayodhya was demolished on 06.12.1992. After its demolition, violence broke out throughout the country. In order to take revenge of the said demolition, Tiger Memon (AA) and Dawood Ibrahim, a resident of Dubai, formulated a conspiracy to commit a terrorist act in the city of Bombay. In pursuance of the said object, Dawood Ibrahim agreed to send arms and ammunitions from abroad. Tiger Memon, in association with his men, particularly, the accused persons, received those arms and ammunitions through sea-coasts of Bombay. In continuation of the said conspiracy, Tiger Memon sent some of the accused persons to Dubai and from there to Pakistan for training and handling in arms and ammunitions.

(b) On 12.03.1993, the commercial hub of the country, the city of Bombay, witnessed an unprecedented terrorist act sending shock waves throughout the world. In a span of about two hours i.e., between 13:33 to 15:40 hours, a series of 12 bomb explosions took place one after the other at the following twelve places in Bombay, namely, Bombay Stock Exchange, Katha Bazaar, Sena Bhavan, Century Bazaar, Mahim Causeway, Air India Building, Zaveri Bazaar, Hotel Sea Rock, Plaza Theatre, Juhu Centaur Hotel, Air Port Bay-54 and Air Port Centaur Hotel. In the abovesaid incident of serial bombings, 257 human lives were lost, 713 persons were seriously injured and properties worth about Rs. 27 crores were destroyed. This was the first ever terrorist attack in the world where RDX (Research Department Explosive) was used on a large scale basis after the World War II.

(c) The aforesaid calculated act of terror was carried out

with utter disregard to human life and dignity. The object of the crime was to incite communal violence and to overawe and weaken the government, disturb social harmony and to break up the social, political and economic order of the country. This overt act of violence not only caused physical and mental damage but also left a psychological impact on society as a whole as the lives of several citizens were completely destroyed.

(d) The conspiratorial acts leading to one of the aforesaid object began on or before 06.01.1993 at a meeting in Hotel Persian Darbar, Panvel, wherein the following accused persons, viz., Md. Ahmed Dosa (AA), Md. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134), Md. Kasam Lajpuria (A-136), Ranjitkumar Singh Baleshwar Prasad (A-102) and Md. Sultan Sayyed (A-90) met and organized the landing of fire arms and ammunitions and hand grenades which was to take place on the coast of Dighi Jetty in Raigad District of State of Maharashtra on 09.01.1993. On the said date, Md. Dossa (AA) smuggled and sent a consignment of arms and ammunitions at Dighi Jetty, Raigad in connivance with Md. Sultan Sayeed (A-90), who received illegal gratification for the same. The following persons were also involved in the landing at Dighi Jetty, namely, Uttam Shantaram Poddar (A-30), Abdulla Ibrahim Surti (A-66), Ashok Narayan Muneshwar (A-70), Faki Ali Faki Ahmed Subedar (A-74), Janardhan Pandurang Gambas (A-81), Jaywant Keshav Gurav (A-82), Krishna Sadanand Mokal (A-83), Krishna Tukaram Pingle (A-84), Manohar Mahadeo More (A-87), Md. Sultan Sayyed (A-90), Pandharinath Madhukar Mahadik (A-99), Ramesh Dattatray Mali (A-101), Ranjitkumar Singh Baleshwar Prasad (A-102), Sayed @ Mujju Ismail Ibrahim Kadri (A-104), Sayed Ismail Sayed Ali Kadri (A-105), Srikrishna Yeshwant Pashilkar (A-110), Somnath Kakaram Thapa (A-112), Sudhanwa Sadashiv Talwadekar (A-113), Vijay Krishnaji Patil (A-116), Jamir Sayyed Ismail Kadri (A-133), Md. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134) and Md. Kasam Lajpuria (A-136). The said meeting dated 06.01.1993

A was not a sudden meeting but was pre-arranged and pre-planned.

(e) On 19.01.1993, another meeting was held at Dubai wherein Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14), Dawood Ibrahim and Tiger Memon (both absconding) were present and detailed discussions were held whereafter Tiger Memon agreed to arrange for landing of arms and ammunitions and explosives which were to be sent to India by sea route for the purpose of committing the aforesaid terrorist act. Pursuant to the above, between 02-08.02.1993, two more such landings of arms and ammunitions, detonators, hand grenades and explosives like RDX took place at Shekhadi Coast under Taluka Shrivardhan in Raigad District through landing agent A-14, Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) (deceased) and Rahim Abbas Karambelkar @ Rahim Laundrywala. In the said landing, the following persons also played an active role, namely, Md. Shoaib Mohammed Kasam Ghansar (A-9), Asgar Yusuf Mukadam (A-10), Abdul Gani Ismail Turk (A-11), Parvez Nazir Ahmed Shaikh (A-12), Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14), Imtiyaz Yunusmiya Ghavte (A-15), Md. Farooq Mohammed Yusuf Pawale (A-16), Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), Suleman Mohammed Kasam Ghavate (A-18), Yeshwant Nago Bhoinkar (A-19), Munna @ Mohammed Ali Khan @ Manojkumar Bhavarlal Gupta (A-24), Muzammil Umar Kadri (A-25), Raju Laxmichand Jain @ Raju Kodi (A-26), Rashid Umar Alware (A-27), Sayyed Abdul Rehman Shaikh (A-28), Shahnawaz Abdul Kadar Qureshi (A-29), Abdul Aziz Haji Gharatkar (A-34), Ashfaq Kasim Havaldar (A-38), Khalil Ahmed Sayed Ali Nasir (A-42), Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46), Sardar Shahwali Khan (A-54), Sarfaraz Dawood Phanse (A-55), Shahjahan Ibrahim Shaikhdare (A-56), Shaikh Ali Shaikh Umar (A-57), Shaikh Mohammed Ethesham Haji Gulam Rasool Shaikh (A-58), Sharif Khan Abbas Adhikar (A-60), Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61), Tulsiram Dhondu Surve (A-62), Abu Asim

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Azmi (A-63), Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64), Gulam Hafiz Shaikh @ Baba (A-73), Jaywant Keshave Gurav (A-82), Liyakat Ali Habib Khan (A-85), Mohmmed Sultan Sayyed (A-90), Parvez Mohammed Parvez Zulfikar Qureshi (A-100), Ranjitkumar Singh Baleshwar Prasad (A-102), Somnath Kakaram Thapa (A-112), Sudhanwa Sadashiv Talwadekar (A-113), Shahnawaz Khan s/o Faiz Mohammed Khan (A-128), Mujib Sharif Parkar (A-131), Mohammed Shahid Nizamuddin Quresh (A-135) and Eijaz Mohammed Sharif @ Eijaz Pathan @ Sayyed Zakir (A-137).

(f) Between February to March 1993, the following persons were sent to Pakistan via Dubai by Tiger Memon (AA) and Dawood Ibrahim (AA) for receiving training in handling of fire arms. use of rocket launchers and explosives, in particular, RDX for achieving the common object of the conspiracy, namely, Farooq Mohammed Yusuf Pawale (A-16), Shahnawaz Abdul Kadar Qureshi (A-29), Zakir Hussain Noor Mohammed Shaikh (A-32), Abdul Khan @ Yakub Khan Akhtar Khan (A-36), Firoz @ Akram Amani Malik (A-39), Nasim Ashraf Shaikh Ali Barmare (A-49), Salim Rahim Shaikh (A-52), Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64), Salim Bismilla Khan @ Salim Kurla (Dead) (A-65), Faroow Iliyas Motorwala (A-75), Fazal Rehman Abdul Khan (A-76), Gul Mohammed @ Gullu Noor Mohammed Shaikh (A-77), Mohammed Hanif Mohammed Usman Shaikh (A-92), Mohammed Rafiq Usman Shaikh (A-94), Mohammed Sayeed Mohammed Issaq (A-95), Niyaz Mohammed @ Islam Iqbal Ahmed Shaikh (A-98), Parvez Mohammed Parvez Zulfikar Qureshi (A-100), Shaikh Ibrahim Shaikh Hussain (A-108), Sayed Ismail Sayed Ali Kadri (A-105) and Usman Man Khan Shaikh (A-115). All the above said accused persons were received at Dubai Airport by Ayub Abdul Razak Memon (AA) and Tahir Mohammed Merchant @ Tahir Taklya (recently deported to India and arrested by the CBI in the case being No. RC 1(s)/1993).

(g) Another batch, comprising of the following accused

persons, namely, Shaikh Mohammed Ethesham Haji Gulam Rasool Shaikh (A-58), Manzoor Ahmed Mohammed Qureshi (A-88), Shaikh Kasam @ Babulal Ismail Shaikh (A-109), Sultan-E-Rome Sardar Ali Gul (A-114), Abdul Aziz Abdul Kader (A-126), Mohammed Iqbal Ibrahim s/o Shaikh Ibrahim (A-127), Shahnawaz Khan s/o Fair Mohammed Khan (A-128), Murad Ibrahim Khan (A-130) and Mohammed Shahid Nizammudin Qureshi (A-135) went to Pakistan for a similar training, however, the said training programme was aborted and they had to return from Dubai.

(h) In March 1993, a weapons training programme was also conducted at Sandheri and Borghat at the behest of Tiger Memon (AA). In the said camp, training was imparted by Tiger Memon (AA), Anwar Theba (AA) and Javed Tailor @ Javed Chikna (AA) to the following persons, namely, Abdul Gani Ismail Turk (A-11), Parvez Nazir Ahmed Shaikh (A-12), Bashir Ahmed Usman Gani Khairulla (A-13), Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), Suleman Mohammed Kasam Ghavate (A-18), Mohammed Iqbal Mohammed Yusuf Shaikh (A-23), Munna @ Mohammed Ali Khan @ Manojkumar Bhavarlal Gupta (A-24), Mohammed Moin Faridulla Qureshi (A-43), Sardar Shahwali Khan (A-54), Shaikh Ali Shaikh Umar (A-57), Issaq Mohammed Hajwani (A-79), Shahnawaz @ Shahjahan Dadamiya Hajwani (A-106) and Sikander Issaq Hajwani (A-111). After completing the said training programme, A-17 and A-79 attempted to destroy the evidence by disposing off the hand grenades in the Sandheri creek on or about 8th March 1993 to aid and abet the above offenders.

(i) On 04.03.1993, Tiger Memon called for a preparatory meeting at the Taj Mahal Hotel which was attended by Javed Chikna (AA), Mohammed Mushtaq Moosa Tarani (A-44), Sardar Shahwali Khan (A-54), Shaikh Ali Shaikh Umar (A-57), Niyaz Mohammed @ Islam Iqbal Ahmed Shaikh (A-98) and Mohammed Usman Jan Khan (PW-2) (Approver). They conducted reconnaissance of some of the targets on 04.03.1993 as well as on 05.03.1993.

(j) In order to achieve the said object, vehicles were purchased for planting explosives by Tiger Memon, Mohammed Shafi Zariwala and Munaf Halari (all three absconding). Three scooters were purchased through Munaf Halari (AA) who was a close friend of Tiger Memon (AA). Three Commander jeeps were also purchased through Mohammed Shafi Zariwala (AA) and he also bought two Maruti Vans and one Ambassador Car. Mohammed Shafi Zariwala arranged all these vehicles through Suleman Mohammed Lakdawala (PW-365). Two Maruti vans of Blue and Red colour were also purchased through PW-365.

(k) On 07.03.1993, another meeting was held at the house of Shafi where Tiger Memon formed separate groups for reconnaissance of the targets. PW-2, A-64 and A-100 were in one group which was assigned the task to survey Shiv Sena Bhawan and Sahar Airport.

(l) On 08.03.1993, another meeting was held at the residence of Babloo where Tiger Memon called Javed Chikna, Irfan Chougule, Salim Mujahid, Bashir Khan, Babloo and PW-2 in the flat and selected the following places as targets, namely, Air India Building, Nariman Point, Bharat Petroleum Refinery, Chembur, Share Market near Fountain, Zaveri Bazaar near Mohammed Ali Road and Pydhonie, Five Star Hotels, Cinema Theatres, Shiv Sena Bhavan, Shivaji Park, Dadar, Bombay Municipal Corporation Building, V.T., Sahar Airport, Passport Office, Worli, Mantralaya and others places.

(m) Again, on 10.03.1993, a meeting was held at the house of Mobina @ Bayamoosa Bhiwandiwala (A-96) where PW-2 met Tiger Memon, Javed Chikna, Salim Rahim Shaikh (A-52), Bashir Khan, Zakir Hussain Noor Mohammed Shaikh (A-32), Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64), Parvez Mohammed Parvez Zulfikar Qureshi (A-100), Mohammed Moin Faridulla Qureshi (A-43), Mohammed Iqbal Mohammed Yusuf Shaikh (A-23), Sardar Shahwali Khan (A-54), Bashir Ahmed Usman Gani Khairulla (A-13) and Nasim Ashraf Shaikh Ali Barmare (A-49). In the second meeting, Tiger

A Memon distributed Rs. 5,000/- to each one of them and again formed the groups. PW-2 also told Tiger Memon about the survey of Chembur Refinery. The following persons also participated in the said meeting, namely, Yakub Abdul Razak Memon (A-1), Essa @ Anjum Abdul Razak Memon (A-3), Yusuf
B Abdul Razak Memon (A-4), Abdul Razak Suleman Memon (dead) (A-5), Hanifa Abdul Razak Memon (A-6), Rahin Yakub Memon (A-7), Rubeena Sulerman @ Arif Memon (A-8), Mohammed Shoaib Mohammed Kasam Ghansar (A-9), Asgar Yusuf Mukadam (A-10), Abdul Gani Ismail Turk (A-11), Parvez
C Nazir Ahmed Shaikh (A-12), Bashir Ahmed Usman Gani Khairulla (A-13), Md. Farooq Mohammed Yusuf Pawale (A-16), Mohammed Iqbal Mohammed Yusuf Shaikh (A-23), Shahnawaz Abdul Kadar Qureshi (A-29), Zakir Hussain Noor Mohammed Shaikh (A-32), Firoz @ Akram Amani Malik (A-39), Mohammed
D Moin Faridulla Qureshi (A-43), Nasim Ashraf Shaikh Ali Barmare (A-49), Sardar Shahwali Khan (A-54), Shaikh Ali Shaikh Umar (A-57), Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64), Mohammed Rafiq Usman Shaikh (A-94), Mobina @ Bayamoosa Bhiwandiwala (A-96), Niyaz Mohammed @ Islam
E Iqbal Ahmed Shaikh (A-98) and Parvez Mohammed Parvez Zulfikar Qureshi (A-100).

(n) Another meeting had taken place in the intervening night between 11/12.03.1993 at Al-Hussaini Building, Dargah Street, Mahim, in which a final touch to the proposed plan of serial
F bomb blasts was given. The co-conspirators stored explosives like RDX and fire arms in the garages owned by the Memons' and their relatives at Al-Hussaini Building and utilized these garages and open places outside the same for making bombs during the said night. The following persons were also present
G there at that time and had actively participated in the work of filling of RDX in the vehicles and suitcases for the said purpose, namely, A-9, A-10, A-11, A-12, A-13, A-16, A-23, A-32, A-36, A-43, A-49, A-52, A-54, A-57, A-64 and A-100.

H (o) On 12.03.1993, bombs and other explosive substances

were planted at various places by the following persons in the following sequence:

**Firstly,** Mohammed Farooq Mohammed Yusuf Pawale (A-16), Mohammed Tainur Phansopkar (AA) and Irfan Chougule planted bomb and caused explosion at Bombay Stock Exchange at 13:30 hrs. wherein 84 persons were killed and 218 persons were injured;

**Secondly,** Parvez Nazir Ahmed Shaikh (A-12) planted bomb and caused explosion at Katha Bazaar at 14:15 hrs. wherein 4 persons were killed and 21 persons were injured;

**Thirdly,** Mohammed Usman Jan Khan (PW-2) and Mohammed Farooq Mohammed Yusuf Pawale (A-16) planted bomb and caused explosion at Lucky Petrol Pump near Shiv Sena Bhavan wherein 4 persons were killed and 50 persons were injured;

**Fourthly,** Abdul Gani Ismail Turk (A-11) planted bomb and caused explosion at Century Bazaar at 14:45 hrs wherein 88 persons were killed and 160 persons were injured;

**Fifthly,** Bashir Ahmed Usman Gani Khairulla (A-13), Zakir Hussain Noor Mohammed Shaikh (A-32), Abdul Khan @ Yakub Khan Akhtar Khan (A-36), Firoz @ Akram Amani Malik (A-39), Mohammed Moin Faridulla Qureshi (A-43), Salim Rahim Shaikh (A-52) and Ehsan Mohammed Tufel Mohammed Qureshi (A-122) threw hand grenades and caused explosions at Fishermen's colony at Mahim at 14:45 hrs. wherein 3 persons were killed and 6 persons were injured;

**Sixthly,** Mohammed Farooq Mohammed Yusuf Pawale (A-16), Mohammed Tainur (AA) and Irfan Chougule planted bomb and caused explosion at Air India Building at 15:00 hrs wherein 20 persons were killed and 84 persons were injured;

**Seventhly,** Md. Shoaib Mohammed Kasam Ghansar (A-9) planted bomb and caused explosion at Zaveri Bazaar at

A 15:05 hrs. wherein 17 persons were killed and 57 were injured;

**Eighthly,** Parvez Nazir Ahmed Shaikh (A-12) planted bomb and caused explosion at Hotel Sea Rock at 15:10 hrs.

**Ninthly,** Asgar Yusuf Mukadam (A-10) and Shahnawaz
B Abdul Kadar Qureshi (A-29) planted explosives and caused explosion at 15:13 hrs at Plaza Cinema wherein 10 persons were killed and 37 were injured;

**Tenthly,** Mohammed Mustaq Moosa Tarani (A-44) planted
C bomb and caused explosion at Hotel Centaur, Juhu at 15:20 hrs. which resulted in injury to three persons.

**Eleventhly**, Mohammed Iqbal Mohammed Yusuf Sheikh (A-23) and Nasim Ashraf Shaikh Ali Barmare (A-49) planted bomb and caused explosion at Sahar Airport at 15:30 hrs and;
D

**Twelfthly**, Anwar Theba (AA) caused explosion at 15:40 hrs at Centaur Hotel, Airport wherein 2 persons were killed and 8 persons were injured.

E In addition to the above, at various other places, viz., Naigan Cross Road, Dhanji Street and Sheikh Memon Street etc., bombs were planted by accused persons which were defused in time on the basis of information received by the police. Thus the object behind the said conspiracy was
F achieved and commercial hub of the country, Bombay was rocked by a series of blasts.

(p) Thereafter, a First Information Report (FIR) was lodged and pursuant thereto several arrests were made. After the arrest of Altaf Ali Mustaq Ali Sayed (A-67), he made a disclosure
G under Section 27 of the Evidence Act, 1872 and led Mr. Anil Prabhakar Mahabole (PW-506), Police Officer and pancha Suresh Jagaganath Satam (PW-37) to the residence of Mohammed Hanif from where the following articles were recovered and taken into possession vide Panchnama Exh.
H 109. A suit case (Article 42) was found containing 65 hand

grenades and 100 electronic detonators. In addition, one VIP suit case (Article 43) was found containing 40 hand grenades and 50 electronic detonators. During the examination, only 85 grenades were found in the two suit cases which were marked as Article 44 (1-84) and one hand grenade which was sent to the FSL was marked as Article 45.

(q) Further, on 12.03.1993, one maroon coloured Maruti van was found in abandoned condition near Siemens Factory, Worli bearing No. MFC 1972. When the Police party came to know about the abandoned vehicle, a search was conducted and it was seized by the Police Officer, Dinesh P. Kadam (PW-371) in the presence of Narayan Dattaram More (PW-46) vide Panchnama Exh. 190. The seizure included 7 AK-56 rifles, a plastic bag and 14 magazines which were forwarded to the FSL. One more plastic bag and four hand grenades were also recovered from the Van and were sent to the FSL. The FSL report Exh. 2439-A establishes that these hand grenades were capable of causing explosion. During investigation, it was found that in the above said van, the following persons were sitting, viz., A-57, Javed Chikna (AA), Bashir Khan and Nasir @ Babloo and were proceeding towards BMC office near V.T. for the purpose of killing BJP and Shiv Sena Corporators but they left the vehicle because of the damage caused to the car during the explosion at Century Bazaar.

(r) On 26.03.1993, the following items were recovered from Khalil Ahmed Sayed Ali Nasir (A-42), namely, a single 7.62 mm pistol without magazine (Article 87), a single 7.65 mm pistol without magazine having body No. 352468 made in Czechoslovakia marked as Article 88, four empty magazines, 13 cartridges, 7 cartridges of 7.65 mm pistol, 4 KF 7.65 mm cartridges, 2 SBP 7.65 mm cartridges and 8 cartridges of 7.62 mm pistol.

(s) On 26.03.1993, Investigating Officer (PW-506), in the presence of Lakshan Loka Karkare (PW-45) searched the house of accused Mujammil Umar Kadri (A-25) at village

A Mhasala, Tal. Shrivardhan and seized certain aricles vide Exh. 158, namely, 13 AK-56 rifles, 26 empty magazines and 3 gunny bags (Article 86).

(t) During the investigation, on 27.03.1993, at the instance of accused Ashrafur Rehman Azimulla Shaikh @ Lallu, Shivaji B Shankar Sawant (PW-524) and Abdul Kadar A. Khan (PW 323) prepared the disclosure Panchanama Exh. 439 in the presence of Sayyed Badshah Gaus Mohiuddin (PW-85). In pursuance of the said disclosure Panchanama, the police recovered hand grenades, white tubes, detonators tied together C and live cartridges.

(u) On 02.04.1993, at the instance of Mohammed Yunus Gulam Rasul @ Bota Miya (A-47), Eknath Dattatraya Jadhav (PW-606), in the presence of PW-34, prepared the disclosure D Panchnama Exh. 93. In pursuance of the same, the police seized vide seizure Panchnama Exh. 94 dated 02.04.1993, a single 7.62 mm assault short rifle without magazine, 30.32 empty rifle, magazines, rounds of 7.62 rifles, Goni, Rexin Bag and 6 swords from Raziya Manzil near Ram Shyam Theatre, E Jogeshwari, West.

(v) On 26.04.1993, at the instance of Mohd. Moin Faridulla Qureshi (A-43), Eknath Dattatraya Jadhav (PW-606), in the presence of Krishnanad Jacob Alwin (PW-41), prepared the disclosure Panchnama Exh. 133 and in pursuance of the said F disclosure Panchnama seized 17 hand grenades vide seizure Panchnama Exh. 134. The said hand grenades were defused with the help of Bomb Detection and Disposal Squad (BDDS).

(w) On 14.04.1993, at the instance of Manoj Kumar G Bhawarlal Gupta @ Munna (A-24), Ramrao Mahadev Desai (PW-512), in the presence of Pradeep Atmaram Ire (PW-42), prepared the disclosure Panchnama Exh. 138 and in pursuance of the said disclosure Panchnama seized a single .45 pistol with magazine, thirteen rounds of .45 pistol, a single 7.62 mm H pistol with magazine, six cartridges, one .38 revolver, nineteen

cartridges, one single barrel country made revolver and four cartridges of .315 bore. A

(x) On 25.03.1993, at the instance of Parvez Nazir Ahmed Shaikh (A-12), Anil Prabhakar Mahabole (PW-506), in the presence of Padmakar Krishna Bhosle (PW-43), prepared the disclosure Panchnama Exh. 146 and in pursuance of the said disclosure Panchnama seized a single revolver No. A-85525, five cartridges and six more cartridges vide seizure Panchnama Exh. 479. Besides the aforesaid items, one rexin pouch, one revolver case and Arms Licence and one permit in the name of Tiger Memon were also recovered. B C

(y) On 02.04.1993, at the instance of Ayub Patel (A-72), Eknath Dattatraya Jadhav (PW-606), in the presence of PW-44 prepared the disclosure Panchnama Exh. 154 and in pursuance of the said disclosure Panchnama seized 13 dismantled hand grenades and 3 more hand grenades vide seizure Panchnama Exh. 155 and marked under various article numbers. D

(z) On 26.03.1993, PW-506, in the presence of Laksham Loka Karkare (PW-45), searched the house of Sharif Parkar at Sandheri, Dist. Raigad and seized two AK-56 rifles, two empty magazines of AK-56 and one gunny bag. E

(aa) On 01.04.1993, at the instance of Ibrahim Mussa Chauhan @ Baba (A-41), Anil Prabhakar Mahabole (PW-506), in the presence of (PW-45), prepared the disclosure Panchnama Exh. 171 and seized a single 7.72 mm Assault short rifle without magazine, 10 empty rifle magazines, 564 cartridges and 25 hand grenades. In addition, a blue coloured rexin bag was also recovered. F G

(ab) On 18.04.1993, at the instance of Ahmed Birya (A-35), Uttam Khandoji Navghare (PW-545), in the presence of Manohar Balchandra Tandel (PW-56), prepared the disclosure Panchnama Exh. 226 and seized six rifles and 12 black coloured magazines. H

A (ac) On 13.04.1993, at the instance of Salim Rahim Shaikh (A-52), Shivaji Tukaram Kolekar (PW-526), in the presence of Sakharam Kishan (PW-35), prepared the disclosure Panchnama Exh. 101 and seized one pistol of black colour and 48 intact 7.62 mm cartridges.

B (ad) On 04.04.1993, at the instance of Ehsan Mohammed Tufel Mohammed Qureshi (A-122), Prakash Dhanaji Khanvelkar (PW-513), in the presence of Rohitkumar Ramsaran Chaurasia (PW-39), prepared the disclosure Panchnama Exh. 119 and seized one 7.62 mm pistol with C magazine and 14 intact and two test fired cartridges.

(ae) On 10.04.1993, at the instance of Nasim Ashraf Shaikh Ali Barmare (A-49), Srirang Vyas Nadgauda (PW-597), in the presence of Ranjeet Kumar Surender Nath Das (PW-38), D prepared the disclosure Panchnama Exh. 115 and seized a five chambered country made revolver.

(af) On 08.04.1993, at the instance of Asif Yusuf Shaikh (A-107), Ratan Singh Kalu Rathod (PW-600), in the presence E of Chandrakant Atmaram Vaidya (PW-40), prepared the disclosure Panchnama Exh. 126 and seized a single 3.62 mm pistol with magazine as well as 32 cartridges.

(ag) On 05.04.1993, at the instance of Shaikh Aziz (A-21), Vijay D. Meru (PW-561), in the presence of Bhaskar Baburao F Jadhav (PW-57), prepared the disclosure Panchnama Exh. 245 and seized a single .30 US Carbine, 28 cartridges and 3 magazines.

(ah) On 17.04.1993, at the instance of Ahmed Shah Durani G (A-20), Shivaji Shankar Sawant (PW-524), in the presence of Mohd. Ayub Mohd. Umer (PW-72), prepared the disclosure Panchnama Exh. 378 and in pursuance of the said panchnama seized one AK-56 rifle and two magazines.

(ai) On 09.04.1993, at the instance of Md. Dawood Mohd. H

Yusuf Khan (A-91), PW-522, in the presence of Ashok Kumar Hari Vilas Pande (PW-59), prepared the disclosure Panchnama Exh. 265 and seized 9 empty black coloured magazines and 3 AK-56 guns.

(aj) On 22.03.1993, at the instance of Mohammed Shoeb Mohammed Kasam Ghansar (A-9), PW-615, in the presence of Dinesh Dharma Sarvan (PW-53), prepared the disclosure Panchnama Exh. 216 and seized one folded blacken cardboard, one folded cardbox explosive, Packer Package Ltd. Lahore and one Number Plate bearing No. MP-13-D-0380.

(ak) On 12.03.1993, after the blast, one Maruti Van bearing No. MFC-1972 was found abandoned. During the course of search, xerox copies of registration papers of the said vehicle in the name of Rubina Suleman @ Arif Memon (A-8) were found which led the police party to the flat Nos. 22, 25 and 26 of Memons' at Al Hussaini Building. As the involvement of Memons' had come to light in the incidents, the said flats were searched by the Police Officer, namely, Dinesh P. Kadam (PW-371), in the presence of Uday Narayan Vasaikar (PW-67) and vide seizure Panchnama Exh. 337, the police party seized the passport of Shabana Memon, five key bunches, two keys 449, rubber slipper of right foot, brown leather chappal of right foot, pista coloured chappal, carpet pieces, rubber slipper and a pink piece of scrap.

(al) On 01.05.1993, at the instance of Yusuf Nullwala (A-118), Suresh S. Walishetty (PW-680), in the presence of Gangaram B. Sawant (PW-265), prepared the disclosure Panchnama Exh. 1100 and seized one plastic bag of Metro Co. and 57 intact bullets.

(am) During the investigation, the following items were recovered from the compound of Al Hussaini Building in the presence of Leoneison Desouza (PW-52), namely, 31 gunny cloth pieces, 25 black cardboard pieces and 34 blacken polythene papers.

A (an) Sanjay Dutt (A-117) received three AK-56 rifles and ammunitions from accused Abu Salem, who visited his residence along with A-53 and A-41. After sometime, he returned two AK-56 rifles to co-accused and kept one with him. He also purchased one .9mm pistol from one Qyaoom, a close B associate of Dawood. When the news of his involvement came to light, he telephoned A-118 to destroy the AK-56 rifle and the pistol. During the course of investigation, A-117 made a disclosure statement Exh. 1068 which was recorded as Exh. 1068-A. He led the police party to A-118. A-118 made a C disclosure statement which was recorded as Exh. 1068-B and led the police party to Kersi Adejania (A-124). A-124 made a disclosure statement which is Exh. 1068C and from him one iron rod and one iron spring were recovered. Thereafter, A-124 led the police party to A-125. A-125 made a disclosure which was recorded in Panchnama Exh. 1068D and led the D police party to A-120 who produced one pistol which is Article 384-D which came to be recovered vide Exh. 1068E drawn by Suresh S. Wallishetty (PW-680) in the presence of Shashikaam R.S. (PW-211).

E (ao) On 18.04.1993, at the instance of Noor Mohammed (A-50), Prakash Dhanaji Khanvelkar (PW-513), in the presence of PW-33, prepared the disclosure Panchnama Exh. 88 and seized one olive green bag, one khaki bag and a blackish lamp. During the course of investigation, Shankar F Sadashiv Kamble (PW-503), in the presence of PW-55, recovered one rifle from the residence of Abdul Rashid Khan (AA) at Dreamland Co-op. Society, Marol, Bombay.

(ap) On 07.04.1993, at the instance of Faki Ali Faki Ahmed Subedar (A-74), PW-588, in the presence of PW-88, G recovered 12 AK-56 rifles, 36 magazines and cartridges.

(aq) At the instance of Janu Kamlya Vetkoli, PW-588, in the presence of PW-89, recovered six military coloured bags containing 9000 rounds and 3 wooden boxes containing 44 H magazines vide Panchnama Exhibit 503. In the Court, the said

articles were marked as below:-

(i) 750 cartridges marked as Article No.296-B;

(ii) 6000 cartridges marked as Article No. 297-(A-i) to (A-viii);

(iii) 549 cartridges marked as Article No. 297 (A-ix(b));

(iv) 750 cartridges marked as Article No. 297 (A-x(b)); and

(v) 850 cartridges marked as Article No. 294-D (Colly).

(ar) On 25.05.1993, PW-670 forwarded 12 AK-56 rifles, 80 magazines and 100 cartridges with forwarding letter vide Exh. 2471 to Chemical Analyser.

(as) At the instance of Sayeed @ Mujju Ismail Ibrahim Kadri (A-104), PW-573, in the presence of PW-91, recovered five plastic jars containing explosives and detonators from the lavatory in the courtyard of the accused.

(at) The accused persons had undertaken firing practice at Chinchechamal, Dist. Raigad. Nandev P. Mahajan (PW-587), in the presence of PW-103, seized certain articles, namely, 3 broken branches, pieces of cardboard, 3 empties, 6 lead pieces and pieces of stones.

(au) Out of the aforesaid articles, the following articles were sent to the FSL vide Exh. 2112 i.e., 3 empties, 6 lead shots, 3 tree branches and pieces of target, stones, cardboard and 12 empties recovered on 01.04.1993, 02.04.1993 and 03.04.1993.

(av) At the instance of Issaq Mohammed Hajwani (A-79), PW-587, in the presence of PW-104, recovered 13 hand grenades and 79 empties from Sandheri Jetty. The articles were marked in the Court as per the details given below:

A

(i) 12 empties Article 307(v) colly

(ii) 67 empties Article 308-B colly

(iii) One hand grenade Article 309-A (i)

B

(iv) White, yellow and green explosive powder and a cap which was removed from the hand grenade.

(v) PW-598 defused the hand grenades at Goregaon P.S. and issued the Defusal Certificate. The carbon copy of the C Defusal Certificate is marked as Exh. 2055.

(vi) 12 defused hand grenades Article 310-B colly

(vii) On 21.06.1993, Shashinath Raghunath Chavan (PW-D 676) sent a letter Exh. 2517 to the FSL along with 67 empties for opinion.

(viii) CA Report dated 05.08.1993 vide M.L. case No. BL 643/93, 447/93, 385/93 and 568/93 through MA No. 382/2000 dated 17.10.2000.

E

(aw) During the course of investigation, Shashikant Eknath Shinde (PW-519), in the presence of Dilip Manekrao Dawalekar (PW-65), recovered 57 gunny bags filled with RDX and gelatine from the Nangla Creek on 02.04.1993. Out of F 57 bags, 37 were found to be loaded with RDX and the remaining 20 bags to be loaded with gelatine. A-50, A-24, A-59, A-69 and A-121 having admitted dumping of the said bags in the Nangla Creek in their confessional statements.

(ax) Thereafter, 27 criminal cases were registered in G relation to the said incidents at various police stations in Bombay City, District Thane and District Raigarh. Upon completion of the investigation, a single charge sheet was filed against 189 accused persons including 44 absconding accused persons on 04.11.1993. Subsequently, further

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investigation of the case was transferred to the Respondent-CBI who filed 19 supplementary charge sheets under Section 173(8) of the Code of Criminal Procedure, 1973 (in short 'the Code') and the trial of 123 accused persons was concluded on **23.11.2003**.

3. In order to enquire into the matter and render speedy justice, a Special Judge (TADA) was nominated and recording of evidence started in 1995 and the said process was concluded in the year 2002. Total 687 witnesses were examined and the Special Court pronounced the judgment on 12.09.2006/27.07.2007 awarding death sentence to 11 persons and life sentence and other sentences for the offences under TADA, the Indian Penal Code, 1860 (in short 'IPC') Arms Act, 1959 and the Explosives Act, 1884. By way of impugned judgment, the trial Court has convicted 100 persons and acquitted 23 persons of all the charges. The judgment under consideration pertains to the trial of 123 accused persons involved in the said blasts. In cases of death sentence, the Special Judge referred the matter to this Court for confirmation. In total, 51 appeals have been filed by the accused against their conviction ranging from various sentences upto life imprisonment. Against the order of acquittal, the State of Mahrashtra through CBI has filed 48 appeals.

**Yakub Abdul Razak Memon (A-1)**

4. At the first instance, let us consider the charges, materials placed by the prosecution, defence and details regarding conviction and sentence insofar as A-1 is concerned.

**Charges:**

The following charges were framed against A-1, namely:

".....During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.)

A Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law B established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, handgrenades and other explosive substances like RDX or inflammable C substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to D achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunitions, detonators, handgrenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all E these arms, ammunitions and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose off the same as need arises. To organize training camps F in Pakistan and in India to import and undergo weapons training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/ co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the G commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on H 12.03.1993 were successful in causing bomb explosions

at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Section 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1-A), (1-B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance."

In addition to the abovesaid principal charge of conspiracy, the appellant was also charged on the following counts:

**At head secondly**, for commission of the offence under Section 3(3) of TADA Act, for in pursuance to the conspiracy in India, Dubai and Pakistan, during the period between December, 1992 and April, 1993, having conspired advocated, abetted, advised and knowingly facilitated the commission of terrorist acts and acts preparatory to terrorist acts i.e. serial bomb blast in Bombay and its suburbs on 12.03.1993 by:

(i) arranging finance and managing the disbursement by generating the same through Mulchand Shah

A Choksi (A-97) and from the firm M/s Tejarat International owned by Ayub Memon (AA) for achieving the objective of conspiracy to commit the terrorist act;

B (ii) arranging air tickets through Altaf Ali Mushtaq Ali Sayyed (A-67), East West Travels and others to enable the co-conspirators and accused in the case to undergo weapons training in Pakistan and for having made arrangement for their lodging and boarding;

C

(iii) purchasing motor vehicles for the purpose of preparing them for being used as bombs and for planting them at important locations in furtherance of objective of conspiracy to commit terrorist act;

D and

(iv) requesting the discharged Amjad Ali Meharbux and A-67 to store suitcases containing arms and ammunitions, handgrenades which were part of consignment smuggled into India by the absconding

E accused Tiger Memon and other co-conspirators.

**At head thirdly,** for commission of the offence under Section 5 of TADA Act, on the count of unauthorisedly, within the notified area of Greater Bombay, from

F 03.02.1993 onwards, by being in possession of hand grenades, detonators which were the part of the consignment of arms, ammunitions and explosives smuggled into the country by Tiger Memon and his associates for committing the terrorist acts.

G

**At head fourthly,** for commission of the offence under Section 6 of TADA Act, on the count of unauthorisedly, within the area of Greater Bombay, with an intent to aid terrorists, from 03.02.1993 onwards, being in possession of handgrenades, detonators which were the part of the

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consignment of arms, ammunitions and explosives smuggled into the country by Tiger Memon and his associates for committing the terrorist act and thereby having contravened the provisions of the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 and the Explosives Rules, 2008 by keeping the same in his possession and by transporting and distributing the same to different persons.

**At head fifthly,** for commission of the offences under Sections 3 & 4 read with Section 6 of the Explosive Substances Act on the count of, from 03.02.1993 onwards, providing premises, having procured, concealed, aided and abetted Tiger Memon and his associates for smuggling arms, ammunitions and explosives into the country for commission of terrorist act and also by having in his possession and control explosive substances like handgrenades and detonators with an intent, and by means thereof, to endanger the lives and for causing serious damage to property in India and to enable his co-conspirators to do such acts."

5. The appellant (A-1) has been convicted and sentenced for the above said charges as follows:-

(i) The appellant-A1 has been convicted and sentenced to death under Section 3(3) of TADA and Section 120-B of IPC read with the offences mentioned in the said charge. In addition, the appellant was ordered to pay a fine of Rs. 25, 000/-. **(charge firstly)**

(ii) The appellant (A-1) was sentenced to RI for life alongwith a fine of Rs. 1,00,000/-, in default, to further undergo RI for 2 years under Section 3(3) of TADA. **(charge secondly)**

(iii) The appellant was sentenced to RI for 10 years alongwith a fine of Rs. 1,00,000/-, in default, to further undergo RI for 2 years under Section 5 of TADA **(charge thirdly)**

A (iv) The appellant was sentenced to RI for 14 years alongwith a fine of Rs. 1,00,000/-, in default, to further undergo RI for 2 years under Section 6 of TADA. **(charge fourthly)**

(v) The appellant was sentenced to RI for 10 years with a B fine of Rs. 50,000/-, in default, to further undergo RI for 1 year under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908. **(charge fifthly)**.

6. Heard Mr. Jaspal Singh, learned senior counsel for the appellant and Mr. Gopal Subramanium, learned senior counsel C duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent-CBI.

**Contentions raised by A-1:**

D 7. Mr. Jaspal Singh, learned senior counsel, after taking us through the charges framed against A-1, prosecution witnesses, documents and all other materials raised the following contentions:-

(i) The impugned judgment is not a "judgment" in terms of E Sections 353, 354, 362 and 363 of the Code since reasons for conviction and sentence were not provided to the appellant (A-1) along with the order of conviction and sentence dated 12.09.2006 and 27.07.2007 respectively. Inasmuch as only 'operative portion' was read out and after hearing the accused F the conviction and sentence was imposed, it is not permissible in law. He further pointed out that as per the "operative portion", A-1 was convicted and sentenced to death, RI along with fine for commission of offences mentioned in charges at head firstly to fifthly. In the absence of the entire judgment in terms of the G above mentioned provisions, the conviction and sentence imposed on A-1 cannot be sustained.

(ii) The prosecution mainly relied on the evidence of Mohammed Usman Jan Khan (PW-2), who turned approver. According to learned senior counsel, there is no provision for H pardoning an accused and permitting him to become an

approver under TADA. He further pointed out that neither under TADA nor under the Code it can be said that PW-2 has been validly pardoned. In any event, according to him, his statement needs to be corroborated and conviction based on his sole testimony cannot be sustained.

(iii) The Special Judge heavily relied on the confessional statements of A-10, A-11, A-46, A-67 and A-97. Among them, except A-97 others have retracted their statements. Since the prosecution case rests entirely upon the confessional statements of those accused persons, in view of their retraction statements, the conviction and sentence cannot be sustained.

(iv) Several recoveries were made by the prosecution on the statement of Md. Hanif (PW-282) and in the absence of strict adherence to the procedure, those recoveries are inadmissible in evidence. He further pointed out that seizure panchnamas were not in accordance with the procedure and, more particularly, Section 27 of the Indian Evidence Act, 1872.

(v) All the confessional statements are exculpatory and not inculpatory. In view of the same, the entire statements made are not acceptable.

(vi) There is no material to prove that there was a conspiracy among the accused persons pursuant to the demolition of Babri Masjid.

(vii) In any event, the prosecution failed to pin point the specific role of A-1. A-1 had no knowledge of the conspiracy and of the ultimate bomb blasts on 12.03.1993. Even, the confessional statements cannot be used against A-1 since the same were recorded before the amendment of Section 3(5) of TADA. Considering the entire evidence against him, the prosecution failed to point out any specific role, accordingly, the death sentence is not warranted and other sentences are also liable to be set aside.

A **Reply by CBI:**

8. Mr. Gopal Subramanium, learned senior counsel for the CBI duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel met all the points raised by Mr. Jaspal Singh. He pointed out the following evidence against the appellant (A1), namely;

(i) confessional statements made by co-accused;

(ii) testimonies of prosecution witnesses; and

(iii) documentary evidence.

According to him, it is incorrect to state that conviction was based solely on the evidence of Approver (PW-2). He pointed out that the prosecution has placed enough materials to substantiate **"conspiracy"** and the ultimate role played by each one of the accused persons, particularly A-1, in the commission of offence. He further pointed out that all the confessions made by the accused, namely, A-10, A-11, A-46, A-67 and A-97 are admissible, and on the other hand, their alleged retractions cannot be accepted. He further pointed out that apart from the confession of those accused, the prosecution has established several incriminating materials connecting all the accused in the commission of offence. He pointed out various recoveries made against the accused which clearly show the seriousness of the matter. Among all the accused persons, A-1, brother of Tiger Memon, was in-charge of entire financial management, sending persons to Pakistan via Dubai for training in arms and ammunitions, securing air-tickets and travel documents such as passports, visas etc. He further pointed out that there was no flaw in the procedure adopted by the Special Court in delivering the judgment. There is no merit in the appeal filed by A-1 and prayed for confirmation of death sentence.

9. We have carefully considered the entire materials, oral

and documentary evidence and the submissions made by either side.

**Validity of impugned judgment by the Special Court**

10. Among various points raised, since the argument relating to impugned judgment is paramount, we intend to take up the said issue at the foremost. Mr. Jaspal Singh, learned senior counsel for A-1, took us through the impugned judgment which contains two parts. According to him, in the absence of whole judgment for perusal of the accused, the sentence imposed cannot be sustained. In support of the above claim, he relied on Sections 353, 354, 362 and 363 of the Code. He further pointed out that only 'operative portion' was read out and after hearing the accused, conviction and sentence was imposed. As per the operative portion, A-1 was convicted under Sections 3(3), 5 and 6 of TADA read with Section 120-B IPC and Sections 3, 4 and 6 of the Explosive Substances Act, 1984. He further pointed out that after convicting and sentencing A-1, the Presiding Officer stated that the reasons will be given within two months which shows that, admittedly, the judgment was not ready on the date of the pronouncement.

11. In view of the above, it is desirable to go through the relevant provisions of TADA. The TADA contains: (a) judgment; and (b) orders, admittedly, it is not defined anywhere that what is meant by judgment/order. It is the claim of the learned senior counsel for the appellant that if it is not a complete judgment, accused cannot be convicted and sentenced. In the absence of specific provision in TADA with regard to the same, we have to look into the relevant provisions of the Code. Chapter XXVII of the Code speaks about 'Judgment'. The relevant provisions are Sections 353, 354, 362 and 363 which are as under:

> "**353. Judgment.**—(1). The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open court by the presiding officer immediately after the

termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders.

(a) By delivering the whole of the judgment; or

(b) By reading out the whole of the judgment; or

(c) By reading out the operative part of the judgment and explaining the substance of the judgment in a language, which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open court and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.

**354. Language and contents of judgment.**—(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353, -

(a) Shall be written in the language of the court;

(b) Shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) Shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) If it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that

A Code the offence falls, the court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or
B imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year of more, but the court
C imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provisions of this Code.

D

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125,
E section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

**362. Court not to alter judgment.**—Save as otherwise
F provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall after or review the same except to correct a clerical or arithmetical error.

**363. Copy of judgment to be given to the accused**
G **and other persons.**—(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

H (2) On the application of the accused, a certified copy of

the judgment, or when he so desires, a translation in his own language if practicable or in the language of the court, shall be given to him without delay, and such copy shall, in every case where the judgment is appeal able by the accused be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment, which is appealable by the accused.

(4) When the accused is sentenced to death by any court and an appeal lies from such judgment as of right, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(5) Save as otherwise provided in sub-Section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules provide."

12. By drawing our attention to Section 353(1)(a)(b)(c), it is contended by learned senior counsel for the appellant that it is incumbent on the part of the trial Judge to provide the whole

A judgment. In the absence of reasoning and the discussion in the form of full judgment, it is contended that the conviction and sentence under various provisions are not permissible. He also pointed out that in case of death sentence, special reasons have to be assigned. According to Mr. Jaspal Singh, in terms B of Section 353 of the Code, the judgment means the whole judgment signed by the Judge. He elaborated that when the Code permits the Court to hear the accused on sentence, he must be provided with the whole judgment including the reasons. According to him, though A-1 was awarded death C sentence, no special reasons were assigned by the Designated Court and he was not even furnished the whole judgment. By highlighting various aspects on the issue, in view of the fact that the judgment pronounced is not a "full judgment" in terms of the above said provisions, Mr. Jaspal Singh prayed for remand to D the Special Court to go through all the reasoning and hear afresh on the question of sentence. Though Mr. Gopal Subramanium met all the submissions relating to the alleged defect in the impugned judgment, first let us consider the decisions relied on by Mr. Jaspal Singh in support of the above proposition.

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13. In *Shambhu & Ors. vs. The State* AIR 1956 All. 633, learned single Judge of the High Court with regard to the words "judgment" and "order" has held as under:-

F "4. The argument sounds plausible; nevertheless I have no hesitation in holding it to be untenable. A study of the provisions of the Code of Criminal Procedure discloses that the expression of the opinion of the criminal Court on any matter at issue arrived at after due consideration of G the evidence and of the arguments (if any) falls into two categories : judgments and orders. None-theless neither of these terms has been defined either in the Code of Criminal Procedure or the Indian Penal Code.

There is, however, no controversy as to what a "judgment" H is. As held by the Federal Court in *Hori Ram Singh v.*

*Emperor* AIR 1939 PC 43 (A) and *Kuppuswami Rao v. The King,* it is used "to indicate the termination of the case by an order of conviction or acquittal of the accused", and to this, by virtue of Section 367(6), Criminal P. C. must be added orders under Sections 118 or 123 (3), orders which bear the character of a conviction. Chapter 26 of the Code deals exclusively with judgments and on the basis of its exhaustive provisions there can be no difficulty in recognising a criminal Court's "judgment"."

14. In *Baldeo. vs. Deo Narain and Ors.* AIR 1954 All. 104, there was discussion about how the judgment to be in terms of the provisions of the Code. The relevant para is as under:

"14.....Under Section 367, Criminal P. C. every judgment must contain:

(1) the points for determination;

(2) the decision thereon; and

(3) the reasons for such decision.

Where the reasons given by the trial Court are such as cannot be supported by the evidence on record, they are not reasons for the decision, out reasons against the decision. To constitute a legal appreciation of evidence, the Judgment should be such as to indicate that the Court has applied its mind to it. Every portion of the Judgment of the trial Court seems to indicate non-application of mind by the Court to the evidence on record. The third requirement laid down in Section 367, Criminal P. C. viz., the reasons for the decision, is an important ingredient of a Judgment. Compliance with law in this regard should not be merely formal but substantial and real, for it is this part of the judgment alone which enables the higher Court to appreciate the correctness of the decision, the parties to feel that the Court has fully and impartially considered their

A respective cases and the public to realise that a genuine and sincere attempt has been made to mete out even-handed Justice. It is in the way the Court discharges its duty in this regard that it is able to instil confidence in its justice and to inspire that respect and reverence in public
B mind which is its due. Reasons form the substratum of the decision and their factual accuracy is a guarantee that the Court has applied its mind to the evidence in the case. Where the statement of reasons turn out to be a mere hollow pretension of a baseless claim of application of
C mind by the Court, the Judgment is robbed of one of its most essential ingredients and forfeits its claim to be termed a Judgment in the eye of law."

15. In *Surendra Singh & Ors. vs. State of Uttar Pradesh* AIR 1954 SC 194, this Court has interpreted the word
D "judgment". The following conclusion is relevant which reads as under:-

"10. In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the
E parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that
F can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter - can be cured; but
G not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after
H giving notice to the parties and laying the draft on the table

for a given number of days for inspection. A

11. An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. We lay on stress on the mode of manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court. But however it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment". B C D E

14. As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because of the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication." F G

16. In *Ratia Mohan. vs. The State of Gujarat* AIR 1969 Guj. 320, the following para is pressed into service:- H

A "9. In this connection, I was referred to a decision In re. Athipalayan, AIR 1960 Mad 507, where it was held that the irregularity even in pronouncing the judgment in open Court and signing and dating the same would amount to an illegality vitiating the conviction and sentence passed in the B case. While saying so, it has been observed thus:—

".....it is one of the glorious principles of our criminal jurisprudence that we do not try or sentence people in absentia and we do not also convict and sentence people without judgments being pronounced in open court and C signed and dated then and there. It may be different in the continental system of criminal jurisprudence."

It was a case in which a sentence was announced before judgment, which was the final decision of the court D intimated to the parties and the world at large by formal pronouncement of delivery in open court by the trial judge and signing and dating it simultaneously and thereby terminating the criminal proceedings finally. In *Nathusing Vridhasing v. Vasantlal B. Shah.* 8 Guj LR 496 : (AIR 1968 E Guj 210), the question arose whether the order of dismissal of a complaint under Section 203 of the Criminal Procedure Code without recording any reasons amounts to an irregularity or illegality curable under Section 537 of the Criminal Procedure Code and it was held that the order F was one in contravention of that provision and such a breach of the provision renders the order void and ineffective. It was not curable under Section 537 of the Criminal Procedure Code. Some observations made by the Supreme Court in Willie (William) Slaney v. State of G Madhya Pradesh, AIR 1956 SC 116, were quoted to say that "the complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional Court. Being kept in ignorance of the reasons clearly prejudices his right to move the revisional Court and where he takes a matter to the revisional Court H

renders his task before that Court difficult, particularly in view of the limited scope of the provisions of Sections 438 and 439, Code of Criminal Procedure." Those observations may well apply in the present case particularly when the accused has a right of appeal against the order of conviction and sentence passed in the case and he would obviously be at a disadvantage to assail the reasons which were in the mind of the learned Magistrate and which came out so late as on 6-2-68. The accused-appellant had a right to know the reasons which led the learned Magistrate to come to that conclusion. It may well happen that after coming to know about the accused going in appeal, the learned Magistrate may try to record a proper judgment which otherwise he may later on do in some other manner. In any event, the learned Magistrate has clearly contravened the imperative provisions contained in Section 264 of the Criminal Procedure Code by passing the sentence without recording the judgment in the case and has that way acted illegally. Such an illegality cannot be treated as an irregularity contemplated under Section 537 or an omission as urged by Mr. Nanavati so as to become curable one. Even if it were to be treated as such as coming within the ambit of Section 537, it can easily be said that it had occasioned failure of justice in the circumstances of the case. In any view of the matter, the order is, therefore, liable to be set aside."

17. The other decision relied on is *State of Orissa vs. Ram Chander Agarwala & Ors.* (1979) 2 SCC 305. We have gone through the factual position and the ratio laid down therein. Inasmuch as it is only a general observation, the same is not helpful to the case on hand.

18. Another decision relied on is *Jhari Lal vs. Emperor* AIR 1930 Pat. 148. While considering Sections 367 and 369 of the Code, the Court held that pronouncing sentence before

A completing the judgment, that is to say, before preparing the essential part of it, such as the statement of points for determination and the reasons for decision makes the sentence illegal and vitiates conviction.

B 19. In *State of Punjab and Ors. vs. Jagdev Singh Talwandi* (1984) 1 SCC 596 while considering how the final order/ judgment is to be pronounced, this Court pointed out as under:-

"30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice
C increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a
D final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the order, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or,
E as in the instant case, that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High
F Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed
G pending delivery of the reasoned judgment."

20. The next decision relied on is *Krishna Swami vs. Union of India and Ors.,* AIR 1993 SC 1407, which is a Constitution Bench decision. We have gone through the factual position and the ratio laid down therein. According to us, the
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said decision is neither helpful nor applicable to the case on hand.

21. The other decision relied on by Mr. Jaspal Singh is reported in *K.V. Rami Reddi. vs. Prema* (2009) 17 SCC 308 which arose out of a civil proceeding. It is not in dispute that Section 2(9) of the Civil Procedure Code, 1908 defines "judgment". Order XX Rule 1(1)(2) of the Civil Procedure Code (Madras amendment) refers "judgment when pronounced" and "judgment to be signed". In para 9, this Court has held as under:

> "9. Order XX Rule 5 on which great emphasis was laid by learned counsel for the appellant says that in suits in which issues have been framed, the court shall state its finding or decision with the reason therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

In the light of the definition clause, namely, "judgment" though the same has not been explained in the Code, the procedure to be followed both in the civil and criminal cases are all acceptable.

22. By pointing out that when the judgment does not contain the material case of the prosecution, defence and discussion on conclusion, according to learned senior counsel, it not only vitiates the principles of natural justice but also infringes the right under Article 21 of the Constitution. He heavily relied on a Constitution Bench decision of this Court reported in *Sarojini Ramaswami (Mrs.) vs. Union of India & Ors.* (1992) 4 SCC 506. In para 141, the Constitution Bench has held as under:-

> "141 .....It is now settled law that the principles of natural justice are an integral part of constitutional scheme of just and fair procedure envisaged under Article 14 of the Constitution."

23. In *M. Nagaraj & Ors. vs. Union of India and Ors.*

(2006) 8 SCC 212 which is also a decision of the Constitution Bench, the following conclusion is pressed into service.

> "20.....Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. The Supreme Court by a majority held that "procedure established by law" means any procedure established by law made by Parliament or the legislatures of the State. The Supreme Court refused to infuse the procedure with principles of natural justice. It concentrated solely upon the existence of enacted law. After three decades, the Supreme Court overruled its previous decision in A.K. Gopalan and held in its landmark judgment in Maneka Gandhi v. Union of India that the procedure contemplated by Article 21 must answer the test of reasonableness. The Court further held that the procedure should also be in conformity with the principles of natural justice. This example is given to demonstrate an instance of expansive interpretation of a fundamental right. The expression "life" in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity. This Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression. In India, till recently, there was no legislation securing freedom of information. However, this Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an open Government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a)."

24. In *Confederation of ex-Servicemen Associations and*

*Others vs. Union of India and Ors.* (2006) 8 SCC 399 which is also a Constitution Bench judgment, this Court held as under:-

> "61. It cannot be gainsaid that the right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. If any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires Part III of the Constitution...."

25. Now, let us consider the decisions relied on by Mr. Gopal Subramanium, learned senior counsel for the CBI with regard to the contentions raised. In *Iqbal Ismail Sodawala vs. The State of Maharashtra and Others* (1975) 3 SCC 140, this Court considered almost similar question. It was argued before the Bench that the allegation of the petitioner therein that the judgment in the case under Sections 392 and 397 of IPC against the petitioner was not pronounced by learned Sessions Judge but by his Sheristedar. It was urged that the procedure adopted in this respect by learned Sessions Judge was not in accordance with law. This submission was not acceptable to the Bench. The following observation and conclusion are relevant:

> "6...The report of Shri Gupte shows that he dictated the judgment in the case against the petitioner in open court. The judgment included, as it must, the concluding part relating to the conviction and sentence awarded to the petitioner. The petitioner who apparently did not know English was thereafter apprised by the Sheristedar of the Court of the concluding part of the judgment relating to his conviction and sentence. Although normally the trial Judges should themselves convey the result of the trial to the accused, the fact that the learned Judge in the present case did not do so and left it to the Sheristedar would not introduce an infirmity in the procedure adopted by him. The Sheristedar in the very nature of things must have translated

A to the petitioner what was contained in the concluding part of the judgment. It was, in our opinion, the dictation of the concluding part of the judgment in open court by the learned Sessions Judge which should in the circumstances be taken to be tantamount to the pronouncement of the B judgment.

8. Question then arises as to whether the appellant can be said to be not properly imprisoned if the trial Judge had merely dictated the judgment but not signed it because of its not having been transcribed at the time he C pronounced it. So far as this aspect is concerned, we find that Section 537 of the Code of Criminal Procedure provides, inter alia, that subject to the other provisions of the Code, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on D appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission, irregularity has in E fact occasioned a failure of justice. This section is designed to ensure that no order of a competent court should in the absence of failure of justice be reversed or altered in appeal or revision on account of a procedural irregularity. The Code of Criminal Procedure is essentially F a code of procedure and like all procedural law, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. At the same time it has to be borne in mind that it is procedure that spells much of the difference between rule of law and G rule by whim and caprice. The object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results in miscarriage of justice. In all procedural H

> laws certain things are vital. Disregard of the provisions in respect of them would prove fatal to the trial and would invalidate the conviction. There are, however, other requirements which are not so vital. Non-compliance with them would amount to an irregularity which would be curable unless it has resulted in a failure of justice."

26. The next decision relied on by learned senior counsel for CBI is reported in *Rama Narang vs. Ramesh Narang and Ors.* (1995) 2 SCC 513 wherein it was held that judgment becomes complete and appealable only after conviction is recorded and also sentence is awarded.

27. In view of the above discussion, it is useful to refer the relevant provision of the Code with regard to right of hearing.

**Right of hearing under Section 235(2) of the Code**

Right of hearing to the accused on the question of sentence is provided under Section 235(2) of the Code and this provision was introduced in view of the 48th Report of the Law Commission of India. Section 235(2) of the Code reads as under:

> "If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360 hear the accused on the question of sentence, and then pass sentence on him according to law."

The purpose of adding the provision is recognition of new trend in penology and awarding of sentence taking into consideration various factors such as the prior criminal record of the offender, his age, employment, educational background, sociological backdrop, family background, financial position, antecedents, social adjustment, emotional and mental condition and the prospects of his returning to normal path in conformity with law. It is in fact humanist principle of individualising punishment to suit the person and his circumstances and, therefore, a hearing is required before imposition of penalty.

A In order to understand the concept more clearly, it is useful to refer some of the decisions of this Court directly on the point in issue.

28. In *Santa Singh vs. The State of Punjab,* (1976) 4 SCC
B 190, this Court observed:

"The provisions of Section 235(2) are very salutary and contain one of the cardinal features of natural justice, namely, that the accused must be given an opportunity to make a representation against the sentence proposed to
C be imposed on him."

"7. Non-compliance with the requirement of Section 235(2) cannot be described as mere irregularity in the course of the trial curable under Section 465. It is much more
D serious. It amounts to by-passing an important stage of the trial and omitting it altogether, so that the trial cannot be aid to be that contemplated in the Code. It is a different kind of trial conducted in a manner different from that prescribed by the Code. This deviation constitutes
E disobedience to an express provision of the Code as to the mode of trial, and as pointed out by the Judicial Committee of the Privy Council in Subramania Iyer v. King Emperor (1901) 28 I.A. 257 such a deviation cannot be regarded as a mere irregularity. It goes to the root of the
F matters and the resulting illegality is of such a character that it vitiates the sentence. (Vide Pulukurti Kotayya v. King Emperor (1947) 74 I.A. 65 and Magga and Anr. v. State of Rajasthan 1953 Cri.L.J. 892). Secondly, when no opportunity has been given to the appellant to produce material and make submissions in regard to the sentence
G to be imposed on him, failure of justice must be regarded as implicit. Section 465 cannot, in the circumstances, have any application in a case like the present".

"11....This obviously postulates that the accused must be
H given an opportunity of making his representation only

regarding the question of sentence and for this purpose he may be allowed to place such materials as he may think fit but which may have bearing only on the question of sentence. The statute seeks to achieve a socio-economic purpose and is aimed at attaining the ideal principle of proper sentencing in a rational and progressive society. The modern concept of punishment and penology has undergone a vital transformation and the criminal is now not looked upon as a grave menace to the society which should be got rid of but as a diseased person suffering from mental malady or psychological frustration due to subconscious reactions and is, therefore, to be cured and corrected rather than to be killed or destroyed. There may be a number of circumstances of which the Court may not be aware and which may be taken into consideration by the Court while awarding the sentence, particularly a sentence of death, as in the instant case. It will be difficult to lay down any hard and fast rule, but the statement of objects and reasons of the 1973 Code itself gives a clear illustration. It refers to an instance where the accused is the sole bread-earner of the family. In such a case if the sentence of death is passed and executed it amounts not only to a physical effacement of the criminal but also a complete socio-economic destruction of the family which he leaves behind. Similarly there may be cases, where, after the offence and during the trial, the accused may have developed some virulent disease or some mental infirmity, which may be an important factor to be taken into consideration while passing the sentence of death. It was for these reasons that Section 235(2) of the 1973 Code was enshrined in the Code for the purpose of making the Court aware of these circumstances so that even if the highest penalty of death is passed on the accused he does not have a grievance that he was not heard on his personal, social and domestic circumstances before the sentence was given."

29. In *Ram Deo Chauhan @ Raj Nath Chauhan vs. State of Assam,* AIR 2001 SC 2231, this Court examined the issue at length and held:

> "4.....The requirement contained in Section 235(2) of the Code (the obligation of the Judge to hear the accused on the question of sentence) is intended to achieve a purpose. The said legislative provision is meant for affording benefit to the convicted person in the matter of sentence. But when the Sessions judge does not propose to award death penalty to a person convicted of the offence under Section 302 IPC what is the benefit to be secured by hearing the accused on the question of sentence. However much it is argued the Sessions Judge cannot award a sentence less than imprisonment for life for the said offence. If a Sessions Judge who convicts the accused under Section 302 IPC (with or without the aid of other sections) does not propose to award death penalty, we feel that the Court need not waste time on hearing the accused on the question of sentence. We therefore choose to use this occasion for reiterating the legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence is as follows:-
>
> (1) When the conviction is under Section 302 IPC (with or without the aid of Section 34 or 149 or 120B of IPC) if the Sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. Section 235(2) of the Code will not be violated if the sentence of life imprisonment (SIC) awarded for that offence without hearing the accused on the question of sentence.
>
> (2) In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.
>
> (3) The normal rule is that after pronouncing the verdict of

guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.

(4) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge propose to impose death penalty) the proviso to Section 309(2) is not a bar for affording such time.

(5) For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict on the sentence is pronounced. Further detention will depend upon the process of law."

30. In case, such an opportunity of hearing is not provided, the Appellate Court must remand the case to the trial court on a limited issue for re-trial on the question of sentence. (Vide: *Narpal Singh & Ors. vs. State of Haryna,* AIR 1977 SC 1066). However, in exceptional circumstances, where remand is likely to cause delay, it is open to remedy the prejudice by giving a hearing to the accused on the question of sentence by the Appellate Court. (Vide: *Dagdu & Ors. etc. vs. State of Maharashtra,* AIR 1977 SC 1579; *Tarlok Singh vs. State of Punjab,* AIR 1977 SC 1747; and *Kamalakar Nandram Bhavsar & Ors. vs. State of Maharashtra,* AIR 2004 SC 503). In case, at the time of trial, there was no objection for not providing sufficient time to the accused or in respect of small fraction of the mandatory provision of Section 235(2) of the Code, he cannot be allowed to raise the plea of prejudice of such non-compliance at Appellate stage. (Vide: *Motilal vs. State of M.P. (Now Chhatisgarh),* (2004) 2 SCC 469).

31. Thus, in view of the above, it is evident that generally judgment must be complete and it must have points for determination, decision thereon and reasons for such a decision. The basic requirement for such ingredients appears

A to be that the superior court (appellate/revisional) may be able to examine as to whether the judgment under challenge has been rendered in accordance with law and particularly, based on evidence on record. So, the purpose of recording reasons is to facilitate the superior court to examine the correctness of B the judgment of the courts below. So far as the grievance of the accused/convict that opportunity of hearing was not given by the court below and, thus, he failed to address the court appropriately on the issue of sentence, may not have any substance for the reason that the legislative policy discernible C under Section 235(2) read with Section 354(3) is that quantum of punishment is to be determined on considerations and circumstances not merely connected with a particular crime but a court is bound to give due consideration to the other circumstances also of the criminal. It is for this reason that court D while hearing a convict on sentence is required to give a party an opportunity of producing evidence or materials relating to the various factors having some bearing on the question of sentence. The court, while determining the quantum of sentence, acts in an altogether different domain in which facts and factors E which operate are of an entirely different order than those which come into play on the question of conviction. Therefore, there is bifurcation of trial as an accused has a right of pre-conviction hearing under Section 234 and secondly right of pre-sentence hearing under Section 235 of the Code. For pre-conviction hearing, the accused must be well informed as to what the exact F prosecution case is and what evidence have been adduced by the prosecution to prove its case. It is for the prosecution to prove its case beyond reasonable doubt, as in case the pivot of the prosecution is not accepted, a new prosecution case cannot be made to imperil the defence. The prosecution as well G as the convict has a right to adduce evidence to show aggravating grounds to impose severe punishment or mitigating circumstances to impose a lesser sentence. More so, appeal is a continuity of trial.

H 32. In *Akhtari Bi (Smt.) vs. State of M.P.*, AIR 2001 SC

1528, this Court explained the nature of appeal observing as under:-

> "Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction".

33. Needless to say that Appellate court has a right of rehearing, re-appreciating the evidence and in exceptional circumstances even to permit a party to adduce additional evidence. Therefore, in a case where there has been some irregularity in delivering the judgment, it can be cured at the appellate stage.

34. As against the above mentioned decisions, it is also useful to refer the following decisions which are directly on the point in issue.

35. Judgment indicates the termination of the case by an order of conviction or acquittal of the accused and judgment is to be rendered in strict adherence to the provisions of Chapter XXVII of the Code. (Vide: *Hori Ram Singh vs. Emperor* AIR 1939 PC 43; and *Kuppuswami Rao vs. The King,* AIR 1949 PC 1)

36. In view of the provisions of Section 354 of the Code, it is necessary that every judgment must contain:

(1) the points for determination;

(2) the decision thereon; and

(3) the reasons for such decision.

Where the reasons given by the trial Court are such as cannot be supported by the evidence on record, they are not reasons for the decision. To constitute a legal appreciation of evidence, the judgment should be such as to indicate that the

A Court has applied its mind to it. Every portion of the judgment must indicate application of mind by the Court to the evidence on record. The reason for the decision is an important ingredient of a judgment. Compliance with the law in this regard should not be merely formal but substantial and real, for it is B this part of the judgment alone which enables the higher Court to appreciate the correctness of the decision, the parties to feel that the Court has fully and impartially considered their respective cases and the public to realise that a genuine and sincere attempt has been made to mete out even-handed C justice. Reasons form the substratum of the decision and their factual accuracy is a guarantee that the Court has applied its mind to the evidence in the case. Where the statement of reasons turned out to be a mere hollow pretension of a baseless claim of application of mind by the Court, the D judgment is robbed of one of its most essential ingredients and forfeits its claim to be termed as judgment in the eyes of law.

37. In *Bachan Singh vs. State of Punjab,* AIR 1980 SC 898, this Court observed:

E "151.....*Accordingly, sub-section (3) of Section 354 of the Cr.P.C. provides:*

"When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or F imprisonment for a term of years, the **judgment shall state the reasons for the sentence awarded**, and, in the case of sentence of death, the **special reasons for such sentence**."

"152. In the context, we may also notice Section 235(2) of G the Code of 1973, because it makes not only explicit, what according to the decision in *Jagmohan Singh vs. State of U.P.* AIR 1973 SC 947 was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at H the pre-sentence stage...."

> .....By enacting Section 235(2) of the new Code, Parliament has accepted that recommendation of the Law Commission. Although sub-section (2) of Section 235 does not contain a specific provision as to evidence and provides only for hearing of the accused as to sentence, yet it is implicit in this provision that if a request is made in that behalf by either the prosecution or the accused, or by both, the Judge should give the party or parties concerned an opportunity of producing evidence or material relating to the various factors bearing on the question of sentence.

In this view, we are in accord with the dictum laid down in *Balwant Singh vs. State of Punjab* AIR 1976 SC 230, wherein the interpretation of Section 354(3) first came up for consideration.

> "4.....Under this provision the court is required **to state the reasons for the sentence** awarded and in the case of sentence of death, **special reasons** are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case....."

The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of IPC, the court should not confine its consideration **"principally"** or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

38. In *Allauddin Mian & Ors. Sharif Mian & Anr. vs. State of Bihar,* AIR 1989 SC 1456, this Court observed:

A "10.....The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision B is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere C formality....."

39. In *Muniappan vs. State of T.N.*, AIR 1981 SC 1220, this Court held that the obligation to hear the accused on the question of sentence which is imposed by Section 235(2) of the Code is not discharged by putting a formal question to the D accused as to what he has to say on the question of sentence. **The Judge must make a genuine effort to elicit from the accused all information which will eventually have a bearing on the question of sentence.** All admissible evidence is before the Judge but that evidence itself often E furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of a Judge to cast aside the formalities of the court scene and approach the question of sentence from a broad, sociological point of view. **The occasion to apply the provisions of Section 235(2) arises** F **only after the conviction is recorded**. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. **The court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely** G **different order than those which come into play on the question of conviction**.

40. In *Rameshbhai Chandubhai Rathod vs. State of Gujarat*, (2009) 5 SCC 740, this Court observed that in a case where the court imposes the death sentence both the aforesaid H

provisions, namely, Section 235(2) and Section 354(3) of the Code assume signal significance. The constitutional validity of Section 354(3) was upheld in *Bachan Singh* (supra) as learned Judges have said that the legislative policy in sentencing is discernable from those two sections. In a judgment, both those two sections supplement each other and in a case where death penalty is imposed, both the sections must be harmoniously and conjointly appreciated and read.

41. Section 235(2), as interpreted by this Court in *Bachan Singh* (supra), provides for a "bifurcated trial". It gives the accused (i) a right of pre-sentence hearing, on which he can (ii) bring on record material or evidence which may not be (iii) strictly relevant to or connected with the particular crime but (iv) may have a bearing on the choice of sentence. Therefore, it has to be a regular hearing like a trial and not a mere empty formality or an exercise in an idle ritual. Even without referring to *Bachan Singh* (supra) in *Muniappan* (supra), a two-Judge Bench of this Court, emphasised the importance of hearing the accused on the question of sentence under Section 235(2) of the Code and came to the conclusion that the question of hearing the accused on sentence was not to be discharged without putting formal questions to the accused. This Court, in *Malkiat Singh & Ors. vs. State of Punjab* (1991) 4 SCC 341, while explaining the provisions under Section 235(2) of the Code, held as under.

"18. ... Hearing contemplated is not confined merely to oral hearing but also intended to afford an opportunity to the prosecution as well as the accused to place before the court facts and material relating to various factors on the question of sentence, and if interested by either side, to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty. Therefore, sufficient time must be given to the accused or the prosecution on the question of sentence, to show the grounds on which the prosecution may plead or the accused may show that the maximum sentence of death may be the appropriate

A sentence or the minimum sentence of life imprisonment may be awarded, as the case may be....."

Therefore, fairness, justice and reasonableness which constitute the essence of guarantee of life and liberty epitomised in Article 21 of the Constitution also pervades the sentencing policy in Sections 235(2) and 354(3) of the Code. Those two provisions virtually assimilate the concept of "procedure established by law" within the meaning of Article 21 of the Constitution. Thus, a strict compliance with those provisions in the way it was interpreted in *Bachan Singh* (supra) having regard to the development of constitutional law by this Court is a must before imposing death sentence.

42. It is clear that "judgment" is a formal intimation of the decision and its contents formally declare in a judicial way in open court. In other words, it is a declaration of the mind of the Court at the time of pronouncement. It is also clear that passing sentence without recording the judgment would amount to illegality. Pronouncing sentence before completing the judgment, that is, before preparing the essential part makes the sentence illegal and vitiates the conviction.

43. We have already adverted to the fact that the word "judgment" has not been defined in IPC, and even in TADA. However, the Code, particularly, Sections 353, 354, 362 and 363 make it clear that how the judgment is to be in a criminal trial, language and contents and the procedure to be followed in furnishing copy of the judgment immediately after pronouncement. It is also clear that the ultimate decision, namely, the judgment, shall be pronounced in the open court after the termination of the trial. Section 353(1) of the Code makes it clear that it is incumbent on the part of the Presiding Officer to deliver the whole of the judgment or by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader. We have already referred to the fact that the blasts occurred on 12.03.1993. Initially, the charge

sheet was filed by the State of Maharasthra on 04.11.1993 relating to 189 persons. Thereafter, CBI was asked to investigate further on 19.11.1993 and filed 19 supplementary charge sheets. Finally, on 10.04.1995, order framing charges was passed. Thereafter, recording of evidence began on 30.06.1995 by examining the first prosecution witness. Recording of the evidence continued till 18.10.2000. Thereafter, the arguments commenced from 09.08.2001 which continued up to 20.09.2003. After having voluminous record of evidence both oral and documentary, the Designated Court reserved for order on 23.11.2003 and the same position continued up till 12.09.2006. It is relevant to point out that in total 123 persons were tried as accused, out of which, 23 persons were acquitted of all the charges and the balance accused were convicted and sentenced under various charges. The records produced show that on 12.09.2006, the Designated Court started reading the conclusion. On that day, the Court passed the following order in respect of A-1.

A B C D

> "For the reasons separately recorded the conclusion being reached of:
>
> A-1 Yakub Abdul Razak Memon being found guilty for offences for which charge at head firstly is framed against him and for offence under Section 3(3) of TADA Act for which charge at head secondly is framed against him and for offence under Section 5 of TADA for which charge at head thirdly is framed against him and for offence under Section 6 of TADA for which charge at head fourthly is framed against him and for offence punishable under Sections 3 and 4 read with Section 6 of the Explosive Act for which charge at head fifthly is framed against him. "

E F G

Since at this moment, we are concentrating only on A-1, we are not extracting the conclusion reached in respect of other accused. After recording the above conclusion, the Designated Court has also recorded the following statements:

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A "The said accused were apprised regarding offences for which they were found to be guilty.

In view of court having reached to such findings A-3, 4, A-8 who are on bail are taken into custody of this court and
B their bail bonds stand cancelled.

For recording statement of accused who are found guilty about their say regarding quantum of sentence to be imposed, the matter stands posted tomorrow."

C 44. On 27.07.2007, the Designated Court again read the following conclusion in respect of A-1.

"82 a) Accused no. 1 Yakub Abdul Razak Memon out of remaining 5 accused at trial: is found guilty for the offence
D of conspiracy for commission of such acts as found proved from charge firstly framed at trial and punishable under Section 3(3) of TADA Act, 1987 and Section 120-B of IPC read with offences mentioned in said charge and on said count said accused is hereby convicted and sentenced to suffer punishment of death and for the said purpose is
E ordered to be hanged by the neck till he is dead but subject to confirmation of same by Hon'ble Apex Court about said part of sentence and is also ordered to pay a fine of Rs. 25, 000/- (Twenty Five Thousand.)

F (b) is also found guilty for offence punishable under Section 3(3) of TADA Act, 1987 for commission of such acts as found proved from charge at head secondly framed against him and on said count said accused is hereby convicted and sentenced to suffer RI for life and is ordered
G to pay a fine of Rs. 1,00,000/- (One Lakh only) and in default of payment of fine is ordered to suffer further RI for a period of 2(two) years.

(c) is also found guilty for offence punishable under Section 5 of TADA for commission of such acts as found proved
H from charge at head thirdly framed against him and on said

counts said accused is hereby convicted and sentenced to suffer RI for 10 (ten) years and is ordered to pay a fine of Rs. 1,00,000/- (One Lakh only) and in default of payment of fine is ordered to suffer further RI for a period of 2 (two) years.

(d) is also found guilty for offence punishable under Section 6 of TADA for commission of such acts as found proved from charge at head fourthly framed against him and on said count said accused is hereby convicted and sentenced to suffer RI for 14 (fourteen) years and is ordered to pay a fine of Rs. 1,00,000/- (One Lakh only) and in default of payment of fine is ordered to suffer further RI for a period of 2 (two) years.

(e) is also found guilty for offence punishable under Sections 3 and 4 read with Section 6 of the Explosives Act for commission of such acts as found proved from charge at head fifthly framed against him and on said count said accused is hereby convicted and sentenced to suffer RI for 10 (ten) years and is ordered to pay a fine of Rs. 50,000/- (Fifty thousand only) and in default of payment of fine is ordered to suffer further RI for a period of 1 (one) year.

(f) however, aforesaid accused being found not guilty of all other offences for which said accused was charged at trial vide charges framed at Exh. 4 said accused is acquitted for all said offences.

(g) accused entitled for set off in accordance with law for period for which he was in custody.

(h) the substantive sentence awarded to A-1 to run concurrently.

(i) A-1 is apprised of sentence awarded to him. The said accused is again apprised that sentence of Death awarded to him is subject to confirmation of same by

A Hon'ble Apex Court and for said purpose court would be making necessary reference to Apex Court within 30 days from the day of completion of passing of final order.

(j) The said accused is further apprised that it will take some time to complete pronouncement of final order of B conviction and sentence of remaining accused in this case and thus complete the judgment by getting same transcribed, corrected and signed. The said accused is apprised that a copy of judgment and order will be supplied to him free of cost after the same is completed and C corrected in all respect and for said purpose the said accused will be ordered to be produced before Registrar of this Court on 26th September 2007 for supplying such copy subject to same being by then ready.

D (k) the court Sheristedar to handover operative part of order passed today to A-1.

(l) Registrar to send A-1, A-3,

A-4 and A-8 to Arthur Road Prison along with appropriate E warrant.

27.07.2007

-Sd/-
(P.D. Kode)
F Presiding Officer
of the Designated Court
(Under TADA (P) Act, 1987)
For Bomb Blast Cases,
Greater Bombay"

G 45. On perusal of the conclusion with regard to A-1, it is very much clear that he was apprised regarding the offences for which he was found to be guilty. While A-1 was awarded death sentence, it is clear from the conclusion that he was apprised that sentence of death awarded to him is subject to

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the confirmation by the Apex Court and he was also informed that for the said purpose the Court would be making necessary reference to Apex Court within 30 days from the date of completion of passing of final order. In the same order, the Court has also apprised A-1 that it will take some time to complete the pronouncement of the final order of conviction and sentence of remaining accused and completed the judgment by getting the same transcribed, corrected and signed. The court also directed the Sheristedar to handover the 'operative part' of the order passed on both these days, i.e., 12.09.2006 and 27.07.2007. In view of the above, it is useful to refer the following decisions on the point.

46. In *Rama Narang vs. Ramesh Narang & Ors.*, (1995) 2 SCC 513, it was held as under:

> "12. ..... the trial, therefore, comes to an end only after the sentence is awarded to the convicted person."
>
> (emphasis supplied)
>
> "13. ..... Thus a judgment is not complete unless the punishment to which the accused person is sentenced is set out therein."
>
> (emphasis supplied)
>
> The Court further held in para 15:
>
> "15..... Under the provisions of the Code to which we have already referred there are two stages in a criminal trial before a Sessions Court, the stage upto the recording of a convicton and the stage post-conviction upto the imposition of sentence. **A judgment becomes complete after both these stages are covered....**"
>
> (emphasis supplied)

47. In *Lakdey Ashok vs. Government of A.P.*, (2009) 6

A ALT 677 (in Paras 12, 13 and 15) it was held by the Andhra Pradesh High Court that the 'judgment', as contemplated under Section 353 is complete only after the order on sentence is pronounced. The High Court held that:

B "It will thus be seen that under the Code after the conviction is recorded, Section 235(2) inter alia provides that a judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, comes to an end only after the sentence is awarded to the convicted person. It will thus be seen from above provisions that after the C court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 373 of the CrPC. Under the provisions of the Code to which we have already referred there D are two stages in a criminal trial before the sessions court, the stage up to recording of a conviction and the stage post-conviction up to the imposition of sentence. **A judgment becomes complete after both these stages are covered.**"

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(emphasis supplied)

F It is clear that a conviction order is not a "judgment" as contemplated under Section 353 and that a judgment is pronounced only after the award of sentence. In the case on hand, the Designated Judge pronounced the operative part of the judgment on 27.07.2007 and explained the substance of the judgment to the appellant in compliance with the G requirements of Section 353(1)(c) of the Code. A perusal of the final judgment of the Designated Court shows that the Designated Judge has dealt with the issue of pronouncing the judgment under Section 353(1)(c) in detail. In para 5 of Part 46 of the final judgment, the Designated Judge explained the

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reasons for pronouncing the judgment under Section 353(1)(c) of the Code as follows:-

> "5. In the premises aforesaid but in light of 1) events which had occurred in past at trial, 2) keeping in mind attitude and conduct of accused as disclosed during course of trial, **3) mammoth subject matter involved at trial i.e. charges framed thereon running into 512 with many of them containing in all 192 sub charges,** 4) delicacy and sensitivity of subject matter involved at trial due to numerous incidents involved and communal conflict said to be involved, **5) impact likely to be caused at/even after commencing process of judgment within and even outside court precincts,** 6) impact likely to be caused at/after declaration of final order, 7) point of security and safety of concerns attending during course of proceeding within or even outside precincts of court and point of law and order within the City/State/Nation, **8) large number of 123 accused about whom judgment was to be declared,** 9) necessity of smoothly completing process of judgement by taking due care to prevent/avoid occurring of any event causing disturbance, interruptions etc. during same vitiating decorum of court, **it was proper to deliver judgement only in accordance with provision of Sec. 353(1) (c) of Cr.P.C. rather than adopting any other prescribed mode for delivery of judgement.** Needless to add that following the other method was bound to result trend of judgement being known to accused prior to delivery of same and thus giving all the chance to unscrupulous accused on bail to flee away and such accused in custody to create confusion/or indulge in activities, disrupting ongoing work and thereby defeating the process of law. For the same reason it was also felt necessary to keep judgement computerized and contents thereof protected by putting password rather than taking print out of the same."

(emphasis supplied)

48. Since we have completely analyzed the method follwed by the Designated Judge, we are satisfied that the requirements of pronouncing a judgment under Section 353(1)(c) of the Code have been fully complied with. The above approach makes it clear that while pronouncing the operative part of the judgment, the Designated Court ensured that the substance of the judgment has been explained to the appellant in compliance with the requirement of Section 353. It is also relevant to point out that the said order dated 27.07.2007 was pronounced in open court and signed and dated by the Designated Judge in compliance with the requirements of the said section.

49. Regarding the requirement of providing a copy of the judgment immediately as required by the provisions of Section 363, the Designated Judge in para 61 of Part 46 of the final judgment has dealt with the same as follows:-

> "Having regard to the same, the word used "immediately" in sub-sec. 363 (1) of Cr.P.C. will be required to be interpreted in context of subject matter involved in each of the case. In short in a case involving such huge subject matter furnishing of such copy after reasonable time after completion of passing of final order would never be said to be an act offending provisions of law or defeating right of accused."

50. We have already pointed out that this was a joint trial of 123 accused persons. It is also brought to our notice that the copy of the final judgment was provided free of cost to the appellant after the pronouncement of the orders with respect to each of the accused by the Designated Judge. Further, as is evident from para (j) of the order dated 27.07.2007, the appellant was apprised of the fact that a copy of the final judgment would be provided after completion of the order as regards sentence in respect of the remaining accused.

51. As pointed out earlier, the trial at the Designated Court involved 123 accused and findings were recorded for 512 charges and accordingly, the process of pronouncing sentence in respect of each accused and apprising the accused of the same could not have been completed in a day. Thus, the process of pronouncement of judgment had to be carried out for all accused since it was a joint trial and accordingly a copy of the final judgment could be provided to each of the accused only after the sentence was pronounced in respect of all the accused persons. The judgment also shows that detailed hearings on sentencing effectively commenced after all the conviction orders were pronounced and counsel for the appellant/appellants made detailed submissions on it. It is evident from para 351 onwards of Part 46 of the final judgment that detailed submissions were made by the counsel by pointing out mitigating factors that were considered by the Designated Judge while sentencing the appellant and other accused at the trial. It is also clear from the judgment that detailed submissions were made by the appellant (A-1) during the pre-sentence hearing and these submissions were considered and, accordingly, reasons have been recorded by the Designated Judge in Part 46 of the final judgment in compliance with the requirement of Section 235(2) and Section 353 of the Code. It is also relevant to mention that Section 354 makes it clear that 'judgment' shall contain the punishment awarded to the accused. It is therefore, complete only after sentence is determined.

52. Section 354(1)(c) states that every judgment referred to in Section 353 "shall specify the offence of which, and the section of the Indian Penal Code (45 of 1860), or other law under which, the accused is convicted and the punishment to which he is sentenced. In view of the same, the judgment under Section 353(1)(c) is to be pronounced only after the sentence in a case where conviction is determined. The process of delivery of judgment includes the determination of guilt, or otherwise, of an accused and in the event of such guilt being

A established, also includes the process of sentencing the accused.

53. In our case, it was pointed out that the judgment was reserved on 23.11.2003. Till 2006, the Court proceeded to B formulate its reasons and make judicial determination of guilt or otherwise in respect of each accused. The process of delivery of judgment commenced on 12.09.2006 when the Court pronounced its verdict on the guilt or otherwise of specific accused. Whilst doing so, the Designated Judge explained the C offences for which the accused were being convicted and invited the accused persons to make their statements with reference to the quantum of sentence. It is evident that at this stage, the detailed reasoning may not have been finally communicated to the accused, but the determination of the Court as well as the broad understanding of the operative part D of the judgment was communicated. In case there is an objection on the part of the accused regarding not knowing the reasons for his conviction, it contextually means that he had not been made aware as to the specific pieces of evidence or marshalling of facts which led to his conviction.

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54. In view of the same, there is no illegality or irregularity in the process followed and specifically under Sections 353, 354 and 235 keeping in mind the magnitude of the task before the Designated Judge inasmuch as he was trying 123 accused F persons and had to deliver a judgment which runs in about 4,300 pages. In view of the above, we hold that the pronouncement of the judgment was in compliance with the above said provisions of the Code and does not violate any of the provisions of the Code as contended by the appellant.

G 55. It is also clear from the reasoning of the Designated Court that by adopting the same procedure, the Designated Judge conveyed the conclusion with regard to various charges leveled against other accused (convicted total accused 100) and also apprised each one of them including A-1 the H reasoning and other materials for arriving at such a conclusion

as well as their pleaders. He also apprised that because the convicted accused are 100 in number and the common judgment is running into thousands of pages, it may require some time and as soon as the full judgment will be made ready, the same will be supplied to them free of cost. It does not mean that on the date of pronouncing the decision (decision was pronounced on various dates), the whole judgment was not ready or incomplete.

56. As the Code mandates that the accused are entitled to full/whole judgment, unless the conclusion relating to all the convicted accused is read over and explained to them, opportunity of hearing on sentence has been provided to them or their respective counsel and incorporation of both the conclusions relating to conviction and sentence has been done, the same cannot be supplied to the accused. Taking note of the number of persons involved, witnesses examined, documents marked/exhibited which are running into thousands of pages, unless the full/whole judgment containing all the details, the same cannot be supplied to the accused. In other words, the supplied copy of the judgment unless contains the charges, materials both oral and documentary relied on by the prosecution, discussion, ultimate conclusion and the sentence, the same cannot be treated as full/whole judgment in terms of the procedure prescribed under the Code. Inasmuch as all these factual aspects, particularly, the peculiar position about the number of accused and voluminous oral and documentary evidence, the Designated Judge not only apprised the accused regarding the offences for which they were found to be guilty but also of the reasoning adopted and the materials relied on by him.

57. It is also relevant to point out that on apprisal of various offences for which the accused were found to be guilty before hearing all the accused on sentence, their respective counsel took time for filing written arguments, in fact, filed written submissions on various dates conveying their views to the

A Court. It is also clear that on consideration of the objections raised, the accused were awarded sentence and the same were ultimately conveyed to all the accused. It is not in dispute that neither the decision relating to ultimate conviction nor the sentence could be done in one day in respect of all the B convicted 100 accused. Undoubtedly, it spread over to various dates and we are satisfied that the Designated Court completed its task by passing the impugned orders keeping in mind the procedural aspects to be followed in terms of the Code (vide Sections 353, 354, 362, 363 etc.) and at the same C time, adhering to the principles of natural justice and the valuable right of the accused under Article 21 of the Constitution.

**Whether the impugned judgment is in violation of Section 362 of the Code.**

D 58. It is also brought to our notice that several applications were made by various accused persons to amend the conviction orders which were dismissed as meritless by the Designated Court. In fact, the Designated Court dismissed the applications for amending the conviction orders of 99 accused E persons. Learned senior counsel for A-1 relied upon Section 362 and contended that since judgment on sentence had not been pronounced, the Designated Court could amend the conviction order to bring all convictions under the IPC instead of convicting 99 accused persons under TADA. In the light of F the submissions made, we verified the records and impugned final judgment, particularly, Part 46 and found that neither A-1 nor any other counsel pointed out the amendment, in particular, that would attract the provisions of Section 362 of the Code. On the other hand, as rightly pointed out by the counsel for the CBI, there is no alteration and amendment that has been made G in the judgment after its pronouncement as claimed by the counsel for the appellant.

59. The Code being essentially a code of procedure unlike all procedural laws is designed to further the ends of justice and H not to frustrate them by the introduction of endless technicalities.

The object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. From the materials placed and after verification of the decision, apprisal of the accused about the contents of the judgment, hearing all the accused and their pleaders regarding sentence, we are satisfied that the Designated Court has complied with the requirements of law and we are also satisfied that considering the voluminous nature of work, even if there is mere procedural irregularity that would not vitiate the trial or the ultimate conclusion unless the same results in miscarriage of justice. We are satisfied that the impugned judgment and procedure followed and adopted by the Designated Court fulfill the mandate of the Code and there is neither violation of principles of natural justice nor breach of Article 21 of the Constitution. Even otherwise, taking note of the fact that present appeals are the only remedy for the appellants, we heard the counsel at length, perused and analysed all the oral and documentary evidence running into several volumes. Every opportunity was granted to all the counsel and all the issues were considered without any restriction. Accordingly, we reject the contention raised by learned senior counsel for the appellant.

**Conspiracy**

60. Chapter VA of IPC speaks about Criminal Conspiracy. Section 120A defines criminal conspiracy which is as under:

> "**120A. Definition of criminal conspiracy**.- 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

A 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."

B Section 120B speaks about punishment of criminal conspiracy which is as under:

"**120B. Punishment of criminal conspiracy**.—(1) Whoever is a party to a criminal conspiracy to commit an C offence punishable with death, imprisonment for life 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.

D (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."

E **Objects and Reasons of the 1913 Amendment**

61. The above mentioned sections were introduced by the amendment of 1913. It is important to notice the Objects and F Reasons of the said amendment to understand that the underlying purpose of introducing Section 120-A was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means, punishable.

**Objects and Reasons are as follows:**

G "The sections of the Indian Penal Code which deal directly with the subject of conspiracy are those contained in Chapter V and Section 121-A of the Code. Under the latter provision, it is an offence to conspire to commit any of the H offences punishable by Section 121 of the Indian Penal

Code or to conspire to deprive the King of sovereignty of British India or any part thereof or to overawe by means of criminal force or show of criminal force the Government of India or any Local Government and to constitute a conspiracy under this Section. It is not necessary that any act or illegal omission should take place in pursuance thereof. Under Section 107, abetment includes engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. In other words, except in respect of the offences particularized in Section 121-A conspiracy per se is not an offence under the Indian Penal Code."

"On the other hand, by the common law of England, if two or more persons agree together to do anyting contrary to law, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons, who so agree, commit the offence of conspiracy. In other words, conspiracy in England may be defined as an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means, and the parties to such a conspiracy are liable to indictment."

"Experience has shown that dangerous conspiracies have entered into India which have for their object aims other than the commission of the offences specified in Section 121-A of the Indian Penal Code and that the existing law is inadequate to deal with modern conditions. The present Bill is designed to assimilate the provisions of the Indian Penal Code to those of the English law with the additional safeguard that in the case of a conspiracy other than a conspiracy to commit an offence some overt act is necessary to bring the conspiracy within the purview of the criminal law. The Bill makes criminal conspiracy a substantive offence, and when such a conspiracy is to commit an offence punishable with death, or rigourous

A imprisonement for a term of two years or upwards, and no express provision is made in the Code, provides a punishment of the same nature as that which might be awarded for the abetment of such an offence. In all other cases of criminal conspiracy the punishment contemplated
B is imprisonment of either description for a term not exceeding six months or with fine, or with both."

Prior to the amendment of the Code and the introduction of Sections 120-A and B, the doctrine of agency was
C applicable to ascertain the liability of the conspirators, however, conspiracy in itself was not an offence (except for certain offences). The amendment made conspiracy a substantive offence and rendered the mere agreement to commit an offence punishable. Prior to the amendment, unless an overt act took place in furtherance of the conspiracy it was not
D indictable (it would become indictable by virtue of being abetment). The proposition that the mere agreement constitutes the offence has been accepted by this Court in several judgments. Reference may be made to *Major E.G. Barsay vs. State of Bombay* (1962) 2 SCR 195 wherein this Court held
E that the the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. It is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise
F the commission of a number of acts. The Court has held as under:-

"31....Section 120-A of the Indian Penal Code defines "criminal conspiracy" and under that definition, "When two
G or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy."The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed
H

to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

**Theory of Agency and Conspiracy**

62. An important facet of the Law of Conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of the conspiracy. This principle has been recognized right from the early judgment in *Regina vs. Murphy* (1873) 173 ER 502. In the said judgment Coleridge J. while summing up for the Jury stated as follows:

"...I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by comroeff means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy

A to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means — the design being unlawful?' it is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it B necessary that they should have originated it. If a conspiracy be already formed, and a person joins it afterwards, he is equally guilty. You are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concertin this matter. If you C are satisfied that there was concert between them, I am bound to say that being convinced of the conspiracy, it is not necessary that you should find both Mr. Murphy and Mr. Douglas doing each particular act, as after the fact of conspiracy is already established in your minds, whatever D is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the acts of both."

63. Each conspirator can be attributed each others actions in a conspiracy. Theory of agency applies and this rule existed E even prior to the amendment of the Penal Code in India. This is reflected in the rule of evidence u/s 10 of the Evidence Act. Conspiracy is punishable independent of its fruition. The principle of agency as a rule of liability and not merely a rule of evidence has been accepted both by the Privy Council as well F as by this Court. The following judgments are relevant for this proposition:

(a) *Babulal vs. Emperor,* AIR 1938 PC 130, where the Privy Council held that:

G "if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators) these acts are committed in the course of the same transaction, which embraces the H conspiracy and the acts done under it..."

(b) *State of A.P. vs. Kandimalla Subbaiah* (1962) 1 SCR 194, where this Court opined that where a number of offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences, if the alleged offences flow out of the conspiracy, the appropriate form of charge would be a specific charge in respect of each of those offences along with the charge of conspiracy.

(c) *State of H.P. vs. Krishan Lal Pardhan,* (1987) 2 SCC 17 where it was held that the offence of criminal conspiracy consists of meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

(d) In *Nalini* (supra), this Court explained that conspiracy results in a joint responsibility and everything said written or done in furtherance of the common purpose is deemed to have been done by each of them. The Court held:

> "583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.
>
> 1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for

A consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be
B committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be
C unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence.
D Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain-A enrolling B, B enrolling C, and so on; and all will be
E members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the center does the enrolling and all the other
F members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present
G mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

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5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by

A Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

B 8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime C of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it D at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy E a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything F said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but G also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and H

the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies. A

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime." B C

(emphasis supplied)

64. The offence under Section 120B is a crime between the parties to do a particular act. Association or relation to lead conspiracy is not enough to establish the intention to kill the deceased. To make it clear, to bring home the charge of conspiracy within the ambit of Section 120B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence. D E

65. Since conspiracy is hatched in secrecy, to bring home the charge of conspiracy, it is relevant to decide conclusively the object behind it from the charges leveled against the accused and the facts of the case. The object behind it is the ultimate aim of the conspiracy. Further, many means might have been adopted to achieve this ultimate object. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. F G

66. In *Ajay Aggarwal vs. Union of India,* AIR 1993 SC 1637, this Court rejected the submission of the accused that as he was staying in Dubai and the conspiracy was initially H

A hatched in Chandigarh and he did not play an active part in the commission of the acts which ultimately lead to the incident, thus, could not be liable for any offence, observing:

> "8.....Section 120-A of the IPC defines 'conspiracy' to
> B mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy". No agreement except an agreement to commit an offence shall amount to a criminal conspiracy,
> C unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120-B of the IPC prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should
> D agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the
> E means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones case (1832) that an indictment for conspiracy must "charge
> F a conspiracy to do an unlawful act by unlawful means....."

The Court, thus, held that an agreement between two or more persons to do an illegal act or legal act by illegal means is criminal conspiracy. Conspiracy itself is a substantive offence
G and is distinct from the offence to be committed, for which the conspiracy was entered into. A conspiracy is a continuing offence and continues to subsist and is committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A
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crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design.

(Vide: *Sudhir Shantilal Mehta vs. Central Bureau of Investigation,* (2009) 8 SCC 1)

67. In *Yash Pal Mittal vs. State of Punjab,* AIR 1977 SC 2433, the rule was laid down as follows:

> "The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators."

68. For an offence under Section 120B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. It is not necessary that each member of the conspiracy must know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission

committed by the conspirators in pursuance of a common design. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continuing to be the parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain the sanction of the Central Government. All of them need not be present in India nor continue to remain in India. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. (Vide: *R.K. Dalmia vs. Delhi Administration,* AIR 1962 SC 1821; *Lennart Schussler & Anr. vs. Director of Enforcement & Anr.,* (1970) 1 SCC 152; *Shivanarayan Laxminarayan Joshi vs. State of Maharashtra,* (1980) 2 SCC 465 and *Mohammad Usman Mohammad Hussain Maniyar and Another vs. State of Maharashtra,* AIR 1981 SC 1062)

69. In *Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra,* (2008) 10 SCC 394, this Court held:

> "25 Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

70. In *Nirmal Singh Kahlon vs. State of Punjab,* AIR 2009 SC 984, this Court following *Ram Lal Narang vs. State (Delhi Admn.),* AIR 1979 SC 1791, held that a conspiracy may be a

general one and a separate one, meaning thereby, a larger conspiracy and a smaller one which may develop in successive stages.

71. In *K.R. Purushothaman vs. State of Kerala,* (2005) 12 SCC 631, this Court held:

> "11. Section 120-A IPC defines 'criminal conspiracy'. According to this section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.....The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy..."

72. In *State of Maharashtra vs. Som Nath Thapa,* AIR 1996 SC 1744, this Court held :

> "...to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended.....The ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

73. In *State through Superintendent of Police, CBI/SIT vs. Nalini & Ors.,* (1999) 5 SCC 253, this Court held:

> ".....Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with

A persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. B It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.....It is not necessary that all conspirators should agree to the common purpose at the same time. C They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible.....Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to D guard itself against the danger of unfairness to the accused.....There has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.....it is the unlawful agreement and not its accomplishment, which is the gist or essence E of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to F a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive G actions evidencing their joining of the conspiracy.

The agreement, sine qua non of conspiracy, may be proved either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the H

conspiracy which is usually done. In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator." A B

(See Also: *Kehar Singh & Ors. vs. State (Delhi Admn.),* AIR 1988 SC 1883)

74. In *Firozuddin Basheeruddin & Ors. vs. State of Kerala,* (2001) 7 SCC 596, this Court held: C

"Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state.....The law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators..... D E F

Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every G H

A other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the B group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger C division of labour to which the accused had also contributed his efforts.

Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one D conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions.....Thus conspirators are liable on an agency theory for statements E of co-conspirators, just as they are for the overt acts and crimes committed by their confréres."

(See also: *State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru,* (2005) 11 SCC 600)

F 75. In *Ram Narayan Popli vs. Central Bureau of Investigation,* (2003) 3 SCC 641, this Court held:

".....The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan G or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any H effectual means, and (d) in the jurisdiction where the

statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

76. In *Mohd. Khalid vs. State of West Bengal,* (2002) 7 SCC 334, this Court held:

"Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration."

77. In the present case, the conspiracy might have been started in Dubai but ultimately it continued here in India and a part of the object was executed in India and even in the conspiratorial meetings at Dubai, the matter was discussed with respect to India and amongst Indian citizens. Further, as far as the present accused is concerned, the fact that he was constantly present at Al-Hussaini building, where the major part of the plans have been made and executed, is established, and his active involvement has also emerged from the evidence on record as to how he was dealing with the so called men of Tiger, managing the ill gotten money of Tiger, booking tickets

A and actively working for confirming them for the conspirators. Further, there is enough evidence of meeting with co-accused and his actively working in furtherance of the conspiracy. The present accused need not be present at each and every meeting for being held to be a part of the conspiracy.

B 78. Section 10 of the Evidence Act further provides a unique and special rule of evidence to be followed in cases of conspiracy. Section 10 reads as under:

> "**10. Things said or done by conspirator in reference**
> C **to common design**—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
> D such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to 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."

E **Illustrations**

(i) Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

F

(ii) The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G
G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A' s complicity in it, although he may have been ignorant of all of them,

H

and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

It is to be seen that there are three conditions in the Section. One is, before utilizing the section for admitting certain statements of the co-accused from a confession, there should be a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong. According to this Section, only when this condition is satisfied in a given case, then only the question of utilizing the statement of an accused against the co-accused can be taken into consideration. Thus, as per Section 10, the following principles are agreed upon unanimously:-

1. There shall be prima facie evidence affording a reasonable ground for the Court to believe that two or more persons were part of a conspiracy to commit a wrongful act or offence;

2. Once this condition was fulfilled, anything said, done or written by any of its members, in reference to their common intention, will be considered as evidence against other co-conspirators;

3. This fact would be evidence for the purpose of existence of a conspiracy and that the persons were a part of such conspiracy.

79. This Court, in *Nalini* (supra), observed as under:

(a) *Justice Thomas* (para 106-113)

Theory of Agency, according to him, is the basic *principle* which underlines Section 10 of the Evidence Act. He says that the first condition for application of Section 10 is "reasonable ground to believe" that the conspirators have conspired together based on prima facie evidence. If this condition is fulfilled,

A anything said by any of the conspirators becomes substantive evidence for the purpose of corroboration if the statement is in reference to their common intention (This is much wider than its English counterpart which uses the expression in furtherance of the common object). The arrest of a conspirator will not cut-
B off his connection with the conspiracy.

(b) **Justice Wadhwa** concurring, (para 575-581)

He was of the opinion that before considering the principle of Section 10 and applying it to the facts and circumstances, it
C is necessary to ascertain the period of conspiracy because any statement made before or after the conspiracy is thatched will not be admissible under the aforesaid section. It would also be relevant against a person who entered or left the time frame during the existence of conspiracy.

D

(c) **Justice Wadhwa** (para 663-665)

Two conditions are to be followed:- firstly, reasonable ground to believe conspiracy, and secondly, conspiracy is to commit an offence or an actionable wrong. If both the conditions
E exist, then anything said or done can be used as a relevant fact against one another, to prove the existence of conspiracy and that the person was a part to it.

80. In the case on hand, the first condition for applying
F Section 10 of the Evidence Act is satisfied by the evidence of PWs 1 and 2 (approvers). There are 77 confessions in this case which are voluntary and are corroborated with the other circumstances of the case. These confessions contain statements inculpating the makers as well as the co-accused.
G A common charge of conspiracy was framed against all the co-conspirators including A-1. This is evident from the charges framed by the Special Judge which we have already extracted. On all the aforesaid charges, the appellant was found guilty by the Designated Court. The evidence in respect of A-1 is in the
H nature of the confessions made by the co-accused persons, the

testimony of prosecution witnesses and documentary evidence on record.

81. The law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. In order to achieve the ultimate object, parties may adopt many means. Such means may constitute different offences by themselves, but so long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. For an offence of conspiracy, it is not necessary for the prosecution to prove that conspirators expressly agreed to do an illegal act, the agreement may be proved by necessary implication. It is also not necessary that each member of the conspiracy should know all the details of the conspiracy. Conspiracy is a continuing offence. Thus, if any act or omission which constitutes an offence is done in India or outside its territory, the conspirators continue to be the parties to the conspiracy. The conspiracy may be a general one and a smaller one which may develop in successive stages. It is an unlawful agreement and not its accomplishment, which is the gist/ essence of the crime of conspiracy. In order to determine whether the conspiracy was hatched, the court is required to view the entire agreement and to find out as in fact what the conspirators intended to do.

82. Mr. Jaspal Singh, learned senior counsel for A-1, submitted that from the evidence of PW-2 (Approver), it is evident that various meetings were held on and from 02.02.1993 till 11.03.1993 at various places in and around Bombay. By taking us through the entire evidence of PW-2, he submitted that neither PW-2 nor any other co-accused nor even any independent witness/evidence spoken to about the role of A-1 either being aware of the said meetings or being present in them or having any knowledge about what conspired in the said meetings. Though learned senior counsel has vehemently

A contended that A-1 was neither involved in arranging for landing of arms and ammunitions nor in conducting surveys and choosing targets nor in filling vehicles with RDX and arms nor in the meeting held at Al-Hussaini building, the specific instances as stated by various prosecution witnesses amply B prove his involvement.

83. Apart from the evidence of PW-2, several accused persons in their confessional statements and other witnesses examined on the side of the prosecution clearly implicate A-1 and his involvement in all the events which we are going to C discuss under various heads.

84. It also emerged from the prosecution evidence that conspiratorial meetings were also held on 06.01.1993 at Hotel Parsian Darbar, Panvel which were attended by A-136, A-90, D A-102, A-134 and Md. Dosa, (AA), middle of January, 1993 at Dubai attended by A-14 and Tiger Memon (AA) and Dawood Ibrahim (AA) leading to the landing of arms and ammunitions at Dighi Jetty and Shekhadi. These meetings formed the genesis of the conspiracy and it was at these meetings that E meeting of minds occurred and knowledge was obtained by the co-conspirators and their intention was expressed to further the cause of the said conspiracy. Since we have elaborately discussed the constituents relating to the conspiracy, there is no need to refer to the same in subsequent appeals before us. F It is also evident that a common charge of conspiracy was framed against all the accused persons. In view of the above, we are satisfied that the prosecution has placed sufficient acceptable materials to prove the charge of conspiracy beyond reasonable doubt which we will analyse in the later part of our G judgment.

**Confession**

85. In this heading, we have to consider the confession made by accused and co-accused persons relied on by the H prosecution. Before going into the acceptability or otherwise

and merits of the claim made by both the parties relating to the confession of the accused and co-accused, it is useful to refer to the relevant provisions of the Code as well as TADA.

86. Section 164 of the Code speaks about recording of confession and statement which is as under:-

"**164. Recording of confessions and statements.**—(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any, time afterwards before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being, made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of

A an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect.

B "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, C and it contains a full and true account of the statement made by him.

(Signed)

D A.B.

Magistrate".

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner E hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

F

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried."

87. Insofar as interpretation relating to Section 164 of the G Code, particularly, recording of the same and procedures to be adopted, this very Bench in *Rabindra Kumar Pal @ Dara Singh vs. Republic of India* (2011) 2 SCC 490 after considering large number of judgments on the issue laid down the following principles:

H

"64 (i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence. A

(ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution. B

(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. C

(iv) The maker should be granted sufficient time for reflection. D

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession. E

(vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. F

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him. G

H

A (ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

B (xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement."

[See also *Kalawati & Anr. vs. State of H.P.* AIR 1953 SC C 131; *Dagdu & Ors. vs. State of Maharashtra* (1977) 3 SCC 68; *Davendra Prasad Tiwari vs. State of U.P.* (1978) 4 SCC 474; *Shivappa vs. Stae of Karnataka* (1995) 2 SCC 76; *Nalini* (supra) (1999) 5 SCC 253; *State of Maharashtra vs. Damu* (2000) 6 SCC 269; *Bhagwan Singh & Ors. vs. State of M.P.* D (2003) 3 SCC 21; *Gurjinder Singh vs. State of Punjab* (2011) 3 SCC 530; *Surender Koli vs. State of Uttar Pradesh & Ors.* (2011) 4 SCC 80; *Kulvinder Singh & Anr. vs. State of Haryana* (2011) 5 SCC 258; and *Inspector of Police, T.N. vs. John David* (2011) 5 SCC 509.]

E **Law relating to Confessions under TADA**

88. Similar provision is there in TADA, namely, Section 15 which reads as under:

F **15. Certain confessions made to police officers to be taken into consideration.-** (1) Nothwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police G officer in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or [co-accused, abettor or conspirator] for an offence under this Act or rules made thereunder:

H

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

The bracketed words '[or co-accused, abettor or conspiractor]' and the proviso in Section 15(1) above were added by way of an amendment on 22.05.1993. The amendments to TADA dated 22.05.1993 were not only in respect of Section 15(1) of TADA but also with respect to Section 21 of TADA (Presumption as to Offences under Section 3). The un-amended Section 21 is reproduced as under for ready reference:

**"21. Presumption as to offences under Section 3.** – (1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved –

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

**"(c) that a confession has been made by a co-accused that the accused had committed the offence; or**

A **(d) that the accused had made a confession of the offence to any person other than a police officer**

**(deleted by Act 43 of 1993)"**

B The Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under sub-section 3 of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably C suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section."

(emphasis supplied)

D

89. Admissibility of confession against co-accused under Section 15 of TADA was considered in *Nalini* (supra). This Court, while considering the provisions of Section 15 of TADA and Rule 15 of the Terrorist and Disruptive Activities (P) Rules, E 1987 (in short 'the Rules') held:

".....the confession of one accused as against a co-accused to be substantive evidence against the latter, and in the absence of proof to the contrary, the Designated F Court would have full power to base a conviction of the co-accused upon the confession made by another accused"

This Court further held:

"In view of the above discussions, we hold the confessions G of the accused in the present case to be voluntarily and validly made and under Section 15 of TADA confession of an accused is admissible against a co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the H quality of evidence that matters. As to what value is to be

attached to a confession will fall within the domain of appreciation of evidence. As a matter of prudence, the Court may look for some corroboration if confession is to be used against a co-accused through that will again be within the sphere of appraisal of evidence."

90. In *Ahmed Hussein Vali Mohammed Saiyed & Anr. vs. State of Gujarat* (2009) 7 SCC 254, this Court held that it is no more res integra that a confession recorded under Section 15 is a substantive piece of evidence against the accused and co-accused. However, in case of co-accused, as a rule of prudence, the court would look upon corroborative evidence as well.

91. In *Jayawant Dattatray Suryarao vs. State of Mharashtra,* (2001) 10 SCC 109, this Court considered in detail the evidentiary value and admissibility of a confessional statement recorded under Section 15 of TADA and held that it is a settled legal position that a confessional statement recorded by a police officer is a substantive evidence and it can be relied upon in the trial of such person or co-accused, abettor or conspirator so long as the requirements of Section 15 and TADA rules are complied with. It was observed:

"60. ..., Confessional statement before the police officer under Section 15 of the TADA is substantive evidence and it can be relied upon in the trial of such person or co-accused, abettor or conspirator for an offence punishable under the Act or the Rules. The police officer before recording the confession has to observe the requirement of sub-section (2) of Section 15. Irregularities here and there would not make such confessional statement inadmissible in evidence. If the legislature in its wisdom has provided after considering the situation prevailing in the society that such confessional statement can be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under duress or was

A not recorded truly by the officer concerned in whom faith is reposed."

It was further held by this Court that minor irregularities do not make the confessional statement inadmissible as
B substantive evidence and observed as under:

"**50.** In this view of settled legal position, confessional statement is admissible in evidence and is substantive evidence. It also could be relied upon for connecting the co-accused with the crime. Minor irregularity would not
C vitiate its evidentiary value....."

92. In *Ravinder Singh @ Bittu vs. State of Maharashtra,* (2002) 9 SCC 55, this Court, while considering the reliability of a confession recorded under Section 15 of TADA against
D the maker, as well as the co-accused, held that after State vs. Nalini, Kalpnath Rai vs. CBI does not reflect the correct position of law. It was observed:

"13. In *Kalpnath Rai v. State (through CBI)* it was observed that the confession made by one accused is not
E substantive evidence against a co-accused. It has only a corroborative value. In the present case, we are, however, primarily concerned with the confession made by the maker i.e. the appellant himself. Besides this confession, there is also a confession made by co-accused Nishan
F Singh which too implicates the appellant in commission of the offence of the bomb blast in the train. The observations made in Kalpnath Rai case were considered in State through Supdt. of Police, CBI/SIT v. Nalini, a decision by a three-Judge Bench. **"It was held that the confession**
G **recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. In this view, the observations in Kalpnath Rai case do not represent the correct position of**
H **law."**

It was further held that:

> **17.** It is thus well established that a voluntary and truthful confessional statement recorded under Section 15 of the TADA Act requires no corroboration. Here, we are concerned primarily with the confessional statement of the maker. The weight to be attached to the truthful and voluntary confession made by an accused under Section 15 of the TADA Act came to be considered again in a recent three-Judge Bench decision in *Devender Pal Singh v. State of NCT of Delhi.* It was held in the majority opinion that the confessional statement of the accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself.
>
> **18.** There can be no doubt that a free and voluntary confession deserves the highest credit. It is presumed to flow from the highest sense of guilt. Having examined the record, we are satisfied that the confession made by the appellant is voluntary and truthful and was recorded, as already noticed, by due observance of all the safeguards provided under Section 15 and the appellant could be convicted solely on the basis of his confession."

93. In *Mohmed Amin vs. Central Bureau of Investigation,* (2008) 15 SCC 49, it was observed:

> "28. In Devender Pal Singh case majority of three-Judge Bench made a reference to Gurdeep Singh case and Nalini case and held (at SCC pp. 261-62, para 33) that whenever an accused challenges the voluntary character of his confession recorded under Section 15(1) of the Act, the initial burden is on the prosecution to prove that all the conditions specified in that section read with Rule 15 of the Rules have been complied with and once that is done, it is for the accused to show and satisfy the court that the confession was not made voluntarily. The Court further held

A that the confession of an accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself. However, as a matter of prudence the court may look for some corroboration if confession is to be used against a co-
B accused though that will be again within the sphere of appraisal of evidence.

29. In Jameel Ahmed case a two-Judge Bench after discussing, considering and analysing several precedents on the subject, including Devender Pal Singh case, culled
C out the following propositions: (Jameel Ahmed case, SCC pp. 689-90, para 35)

"(i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the
D TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.

E (ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution,
F a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But
G this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to
H the use of confession against the maker as also in regard

to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement."

30. *In Abdulvahab Abdul Majid Shaikh* case this Court rejected the argument raised on behalf of the appellant that the confession made by him cannot be treated as voluntary because the same had been retracted and observed:

> "9. ... The police officer was empowered to record the confession and in law such a confession is made admissible under the provisions of the TADA Act. The mere fact that A-9 Musakhan @ Babakhan retracted subsequently is not a valid ground to reject the confession. The crucial question is whether at the time when the accused was giving the statement he was subjected to coercion, threat or any undue influence or was offered any inducement to give any confession. There is nothing in the evidence to show that there was any coercion, threat or any undue influence to the accused to make the confession."

A **31.** The ratio of the abovenoted judgments is that if a person accused of an offence under the Act makes a confession before a police officer not below the rank of Superintendent of Police and the same is recorded by the officer concerned in writing or on any mechanical device B like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, then such confession is admissible in the trial of the maker as also the co-accused, abettor or conspirator not only for an offence under the Act but also for offence(s) under other C enactments, provided that the co-accused, abettor or conspirator is charged and tried in the same case along with the accused and the court is satisfied that requirements of the Act and the Rules have been complied with. Whether such confession requires corroboration D depends on the facts of the given case. If the court is convinced that the probative value of the confession is such that it does not require corroboration then the same can be used for convicting the maker and/or the co-accused under the Act and/or the other enactments without independent corroboration."

E

After considering the confessions of the accused in the aforesaid case, it was held as under:

"81. Therefore, keeping in view the provisions of Section F 15 of the Act as interpreted by this Court in *Gurprit Singh* case, *Nalini* case, S.N. Dube case, Lal Singh case, *Devender Pal Singh* case and Jameel Ahmed case, we hold that the appellants are guilty of offence under Section 302 read with Section 120-B IPC and no independent corroboration is required for sustaining their conviction."

G

94. In *Jameel Ahmed & Anr. vs. State of Rajasthan,* (2003) 9 SCC 673 this Court held that Section 30 of the Evidence Act has no role to play in deciding the admissibility of a confession recorded under Section 15 of TADA. The Court H held that:

"**23.** .... it is relevant to note that Section 15 of the TADA Act by the use of non obstante clause has made confession recorded under Section 15 admissible notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure. It also specifically provides that the confession so recorded shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. Apart from the plain language of Section 15 which excludes the application of Section 30 of the Evidence Act, this Court has in many judgments in specific terms held that Section 30 of the Evidence Act has no role to play when the court considers the confession of an accused made under Section 15 of the TADA Act either in regard to himself or in regard to his co-accused."

95. In *Ahmed Hussein Vali* (supra), this Court, while relying upon Nalini (supra), held that if the confession made by an accused is voluntary and true, then it is admissible against the co-accused as a substantive piece of evidence, and that minor and curable irregularities in the recording of the confession like omission in obtaining the certificate of competent office with respect to confession do not affect the admissibility of the said evidence. It was further observed:

"**74.** ... As far as the admissibility of the confessional statement of A-27 is concerned with regard to his co-accused in this case, it is not vitiated because of the amendment and it is rightly used as a major evidence for the trial of his co-accused by the Designated Court. As this confessional statement was made complying with all the procedural essentials as provided for by the TADA Act and the Rules it can be a valid ground for the conviction when corroborated with the confessional statement of the other four accused, namely, A-1, A-2, A-3 and A-20 respectively which have been made prior to the amendment of the Act...."

A 96. The amendment, by Act 43 of 1993 which came into force from 22.05.1993 deleted sub-clauses (c) and (d) to sub-section (1) of Section 21. This Court considered the effect of amendment in Nalini (supra), and observed as follows:

B "698: ....the effect of the said clauses was that in the event of the co-accused making confession inculpating the accused or in the event of the accused himself making an extra-judicial confession to any person other than a police officer the legal presumption that the accused had committed such offence would arise."

C

In the event of un-amended TADA as it stood prior to 22.05.1993 were to apply, there would be a presumption of guilt against the appellant pursuant to un-amended Section 21 since confession of other co-accused would implicate the appellant D for the offence of conspiracy. The amendment of 1993 did not bring about any change as to the admissibility and applicability of the confession of the co-accused.

**Admissibility of Confessions recorded u/s 15 of TADA** E **prior to the amendment**

97. Learned senior counsel for A-1 submitted that as the amendment of Section 15 of TADA under which the said confessional statements were purported to have been recorded was brought into effect from 22.05.1993, the said confessional F statements could not be used to adjudge the appellant guilty inasmuch as all the said confessional statements were recorded prior to the date of amendment. He further stated that the said confessional statements were obtained pursuant to prolonged police custody of the said accused persons, therefore, the same G cannot be said to be obtained voluntarily and further cannot be said to be free from taint and were wholly unreliable. Learned senior counsel has finally submitted that as the said confessional statements were recorded prior to the date of amendment of Section 15 of TADA, the same have to be

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tested against the touchstone of Section 30 of the Indian Evidence Act under the general law. A

98. The prosecution heavily relied on the confessional statements of co-accused persons, namely, Asgar Yusuf Mukadam (A-10), Abdul Gani Ismail Turk (A-11), Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46), Altaf Ali Mustaq Ali Sayed (A-67) and Mulchand Sampatraj Shah @ Choksi (A-97). It was submitted by senior counsel for A-1 that all the said statements were recorded prior to the date of amendment of TADA Act on 22.05.1993. Till the said amendment, the statement of an accused person was admissible only against him. However, the amended Section 15 of TADA made the statement of an accused person admissible in evidence against a co-accused, an abettor and a conspirator. It was submitted by learned senior counsel that as the recording of statement of A-10 was completed on 20.04.1993, A-11 on 18.04.1993, A-46 on 23.04.1993, A-67 on 19.04.1993 and A-97 on 19.05.1993 i.e., before the date on which the said Section 15 of TADA was amended and in the absence of express intention making the said amendment retrospective, the same will have to be taken as prospective, as a result whereof, the said statements cannot be used against the appellant and cannot be the basis of adjudging him guilty. It was submitted by learned senior counsel that law is well settled that an amendment which is procedural in nature may be applied retrospectively but an amendment which not only changes the procedure but also creates new rights and liabilities has to be construed to be prospective in nature unless otherwise provided either expressly or by necessary implication. It was further submitted by learned senior counsel that a procedural amendment that imposes new duties or creates new disabilities or obligations in respect of transactions already accomplished cannot be said to be retrospective in nature. It was urged by learned senior counsel that as the said confessional statements were recorded prior to the amendment of TADA, i.e., on 22.05.1993 and the said amendment cannot be said B C D E F G H

A to be retrospective in nature, it does not necessarily mean that the same will have to be totally discarded rather they will have to be appreciated in the light of Section 30 of the Evidence Act and can be used to lend assurance to independent materials collected by the investigating agency but cannot be made the B sole basis of adjudging the appellant guilty as has purportedly been done in the instant case.

99. With regard to the same, reliance was placed on the decision of this Court in *State of Rajasthan vs. Ajit Singh* (2008) 1 SCC 601, which held as under in paras 15 and 16.

C

> **"15.** It has accordingly been emphasised that the statement made by the accused could be used one against the other. Mr Sodhi has however pointed out that the decision in Jameel Ahmed case had been rendered without noticing D that the words in Section 15(1) of the Act (which have been underlined above) that is "or co-accused, abettor or conspirator" had been inserted in the Act in 1993 and as such could not be retrospectively applied to an incident of 12-8-1991. He has also referred us to *State (NCT of* E *Delhi) v. Navjot Sandhu* to submit that this issue had been specifically raised and while noticing the addition made in 1993 it had been observed that a confessional statement recorded under Section 15 would be sufficient to base a conviction on the maker of the confession but on the other F proposition whether such a confession could be used against a co-accused was another matter.
>
> **16.** It is, therefore, clear that the Division Bench in Navjot Sandhu case clearly repelled the contention raised by the State counsel that a confession made by an accused could G be used as against a co-accused....."

100. Reliance was also placed on the decision of this Court in *Ganesh Gogoi vs. State of Assam* (2009) 7 SCC 404. Paragraph Nos. 21 and 24 are relevant which read as under:

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"**21.** It appears that in the instant case the charge which was framed by the court against the appellant was under Section 3(5) of the said Act. But such a charge could not have been framed against him by the court inasmuch as on the alleged date of occurrence i.e. in September 1991, Section 3(5) of TADA was not brought on the statute. The framing of the charge was thus inherently defective.....

24.....It is clear from the perusal of Section 3 and its interpretation in Hitendra Vishnu Thakur that the requisite intention is the sine qua non of terrorist activity. That intention is totally missing in this case. It is not there in the charge and it has also not come in the evidence. Therefore, both the framing of charges against the appellant under Section 3(5) and his conviction under Section 3(2)(i) of the said Act are totally bad in law."

101. In *State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600, this Court held as under:

*"49.....It is, however, the contention of the learned Senior Counsel Shri Gopal Subramanium that Section 32(1) can be so construed as to include the admissibility of confessions of the co-accused as well. The omission of the words in POTA "or co-accused, abettor or conspirator" following the expression "in the trial of such person" which are the words contained in Section 15(1) of TADA does not make material difference, according to him. It is his submission that the words "co-accused", etc. were included by the 1993 Amendment of TADA by way of abundant caution and not because the unamended section of TADA did not cover the confession of the co-accused. According to the learned Senior Counsel, the phrase "shall be admissible in the trial of such person" does not restrict the admissibility only against the maker of the confession. It extends to all those who are being tried jointly along with the maker of the confession provided they are also affected by the confession. The*

*learned Senior Counsel highlights the crucial words "in the trial of such person" and argues that the confession would not merely be admissible against the maker but would be admissible in the trial of the maker which may be a trial jointly with the other accused persons. Our attention has been drawn to the provisions of CrPC and POTA providing for a joint trial in which the accused could be tried not only for the offences under POTA but also for the offences under IPC. We find no difficulty in accepting the proposition that there could be a joint trial and the expression "the trial of such person" may encompass a trial in which the accused who made the confession is tried jointly with the other accused. From that, does it follow that the confession made by one accused is equally admissible against others, in the absence of specific words? The answer, in our view, should be in the negative. On a plain reading of Section 32(1), the confession made by an accused before a police officer shall be admissible against the maker of the confession in the course of his trial. It may be a joint trial along with some other accused; but, we cannot stretch the language of the section so as to bring the confession of the co-accused within the fold of admissibility. Such stretching of the language of law is not at all warranted especially in the case of a law which visits a person with serious penal consequences [vide the observations of Ahmadi, J. (as he then was) in* Niranjan Singh *v.* Jitendra; *SCC at p. 86, which were cited with approval in* Kartar Singh case*]. We would expect a more explicit and transparent wording to be employed in the section to rope in the confession of the co-accused within the net of admissibility on a par with the confession of the maker. An evidentiary rule of such importance and grave consequence to the accused could not have been conveyed in a deficient language. It seems to us that a conscious departure was made by the framers of POTA on a consideration of the pros and cons, by dropping the*

*words "co-accused", etc. These specific words consciously added to Section 15(1) by the 1993 Amendment of TADA so as to cover the confessions of the co-accused would not have escaped the notice of Parliament when POTA was enacted. Apparently, Parliament in its wisdom would have thought that the law relating to confession of the co-accused under the ordinary law of evidence, should be allowed to have its sway, taking a cue from the observations in* Kartar Singh case *at para 255. The confession recorded by the police officer was, therefore, allowed to be used against the maker of the confession without going further and transposing the legal position that was obtained under TADA. We cannot countenance the contention that the words "co-accused", etc. were added in Section 15(1) of TADA,* ex majore cautela."

102. In *Harjit Singh vs. State of Punjab* (2011) 4 SCC 441, at para 14, it was held:

"14.....However, the submission is not acceptable as it is a settled legal proposition that a penal provision providing for enhancing the sentence does not operate retrospectively. This amendment, in fact, provides for a procedure which may enhance the sentence. Thus, its application would be violative of restrictions imposed by Article 20 of the Constitution of India..... "

Learned senior counsel also placed reliance on the following decisions, viz.,: *Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi I* (2007) 9 SCC 665, *Sanjay Dutt vs. State through CBI, Bombay* (1994) 5 SCC 410, *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.* (1994) 4 SCC 602, *Fairey vs. Southampton County Council* (1956) 2 ALL ER 843, *The Colonial Sugar Refining Co. Ltd. vs. Irving* 1905 AC 369, *In Re: Athlumney* (1898) QB 547.

A 103. The issue of admissibility of confessions recorded under Section 15 of TADA prior to the amendment on 22.05.1993 has been dealt with in detail by the Designated Judge in paras 1-8 of Part 3 of the final judgment. The issue of admissibility against the co-accused of the confessions B recorded prior to the amendment in Section 15 of TADA was considered by this Court in *Nalini* (supra) wherein this Court concluded that confessions recorded under Section 15 of TADA are substantive evidence and are accordingly admissible not only against the maker but also against the co-accused C charged and tried in the same case together with the accused. It was further held:

> '416. The term "admissible" under Section 15 has to be given a meaning. When it says that confession is admissible against a co-accused' it can only mean that it D is substantive evidence against him as well as against the maker of the confession."
>
> It was further observed:
>
> E "429. ....Confession of the accused is admissible with the same force in its application to the co-accused who is tried in the same case. It is primary evidence and not corroborative."

104. We are in entire agreement with the same. F Accordingly, we hold that the confession of the co-accused, namely, A-10, A-11, A-46, A-67 and A-97 are admissible as primary and substantive evidence against the appellant (A-1) notwithstanding the amendment by Act 43 of 1993.

G 105. **To sum up**, it can easily be inferred that the position of law on the **evidentiary value of confession** is as under:-

> (i) If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 of TADA and the Rules made thereunder, and if the H same is found by the court as having been made

voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession. A

(ii) Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case. B

(iii) With regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused. C D

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement. E F

(v) The requirement of sub-rule (5) of Rule 15 of the Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the G H

confessional statement to the Designated Court should satisfy itself on the facts of each case whether such direct transmission of the confessional statement creates any doubt as to the genuineness of the said confessional statement.

Since we have elaborately discussed the contention raised by learned senior counsel relating to the admissibility or otherwise of the confessional statements, there is no need to refer to the same in subsequent appeals before us.

106. In light of the above principles, let us discuss the confessions made by the co-accused persons.

**(i) Confessional statement of Asgar Yusuf Mukadam (A-10)**

Confessional statement of A-10 (Exh. Nos. 858 and 858A) was recorded by Mr. K.L. Bishnoi (PW-193), the then DCP which referred to A-1 as under:

(1) "A-1 is the younger brother of Tiger Memon.

(2) When A-10 had telephoned at Tiger's residence, Yakub Memon (A-1) attended the call and asked him to come and meet him. On 10/11th February, at his residence, A-1 handed over 3 tickets for Dubai and 3 passports to A-10 asking him to pick up Parvez Qureshi (A-100), Farooq (A-16) and Salim from Midland Hotel, handover the said tickets and passports to them and drop at the airport by taxi which was duly performed by the confessing accused. The next day Tiger asked him to come and meet him. When he went to see Tiger, he was ready to go to Airport. At the airport, Tiger told him that he should stay in touch with A-1 and in case of requirement of money he should get the money from Choksi and give it to him.

(3) On 13th February, he directed the confessing accused to collect Rs. 1 crore from Choksi for him which was done by the confessing accused with the help of co-accused Gani (A-11), Parvez (A-12), Mohd. Hussain, Salim and Anwar (AA).

(4) On 17-18th February, Yakub Memon directed the accused to remain with Rafiq Madi (A-46). Next day the accused and Rafiq Madi picked up Irfan Chougule (Absconding) from Mahim and Shahnawaz and his companion from Bandra Reclamation and dropped them at the airport.

(5) On return to Tiger's residence, Yakub directed the confessing accused to talk to Tiger on phone (during the telephonic talks Tiger pulled up the deponent accused for having not contacted him on phone).

(6) On 9th March, he directed the confessing accused to transfer Rs. 25 lakhs by transferring the same from Tiger's account to Irani's account and transfer Rs. 10 lakhs to the Ohalia's account which was done by the accused by contacting Choksi (A-97) on phone.

(7) In the morning, on 10th March, he again asked the confessing accused to transfer Rs. 21 lakhs from Tiger's account to Irani's account which was duly got done by the deponent accused by instructing Choksi (A-97) on phone accordingly."

**(*ii*) Confessional Statement of Abdul Gani Ismail Turk (A-11)**

Confessional statement of A-11 (Exh. Nos. 818 and 818A) was recorded by Mr. P.K. Jain (PW-189) which stated as under:

(1) "On 27/28th Jan, A-1 was present at Al-Hussaini

A building with co-accused Tiger, Anwar, (AA), Rafiq Madi (A-46), Imtiyaz (A-15), Parvez, Rahim (A-52) when the said co-accused left for Mhasla after taking the meals.

B (2) On 07.03.1993, he was present in Al-Hussaini building with Tiger, Shafi, Essa (A-3), Rahim (A-7) wife of A-1, A.R. Memon (A-5) since deceased, father of A-1 and Hanifa Memon (A-6), mother of A-1, when co-accused Gani visited Al-Hussaini."

C **(iii) Confessional Statement of Md. Rafiq Moosa Biyariwala (A-46)**

Confessional statement of A-46 (Exh. Nos. 867 and 867A) was recorded by Mr. K.L. Bishnoi (PW-193) which referred the D appellant as follows:

(1) "A-1 is the younger brother of Tiger Memon.

(2) He used to drive Tiger's blue Maruti-800 for attending business activities.

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(3) On 8/9th February, he handed over Rs. 50,000/- to the Rafiq (A-46) which were made over to Altaf Passportwala by the latter.

(4) On 10/11th February, he got the VIP suitcases F taken out of the jeep in his garage through Anwar and he took the same to his house upstairs.

(5) On 13th February, he got the jeep after repairs brought to Meharbux's residence through the G accused and Anwar.

(6) Between 14/15th February, he got the brown coloured round objects from the secret cavities of the jeep filled into three VIP suitcases which he got transported away from his garage by red Maruti

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Van by Altaf (A-67). A

(7) Next day, he handed over Rs. 62,000/- or 63,000/- to the accused to be given to Altaf.

(8) On 17th February, he handed over 5 passports and tickets to Anwar for Yeda Yakub and others for their departure to Dubai. B

(9) Next day, on his directions, the accused dropped Irfan Chougule, Asgar and Shahnawaz at Airport for their departure to Dubai. C

(10) On 14th, he was given Rs. 4 lakhs by the accused after collecting the said amount from Choksi (A-97)."

**(iv) Confessional Statement of Altaf Ali Mustaq Ali Sayeed (A-67)** D

Confessional statement of A-67 (Exh. Nos. 819 and 819A) was recorded which referred the appellant as under:

(1) "In the presence of Yakub Memon, Amjad (A-68) told Altaf that the goods belonging to Yakub are to be shifted to some other places as these got burnt in the riots. E

(2) Yakub Memon asked accused Altaf Ali about whether the bags had been delivered to him by Amjad. F

(3) Yakub Memon arranged for tickets for some co-accused through accused Altaf Ali by sending money and passport through accused Rafiq Madi. G

(4) Yakub Memon sent 3 bags through Rafiq Madi to accused Altaf Ali for safe keeping. The bags contained arms/ammunition.

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A (5) Yakub instructed Altaf Ali over phone for sending the bags to Al-Hussaini Building i.e., residence of Yakub Memon and his family members.

(6) Earlier, Yakub Memon had asked Altaf Ali to keep
B the bags since he was giving so much business. When Altaf Ali told Yakub that he may be implicated, Yakub replied that he need not worry."

**(v) Confessional Statement of Mulchand Sampatraj Shah @ Choksi (A-97)**

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In his confessional statement, he narrated the role of A-1 as follows:

"It was emerged that Tiger Memon had a hawala account
D with him and in the said account, which was opened in November, 1992, a sum of Rs. 1,89,78,000/- was deposited by A-26 Raju Laxmichand Jain @ Raju Kodi from November, 1992 to December, 1992. A-26, in his confessional statement, admitted having deposited the said amount in the account of Tiger Memon with A-97. A-
E 10 Asgar Yusuf Mukadam has also stated in his confession about handling some transaction from the said account."

107. In pursuance of the said disclosure, PW-513, in the
F presence of Pandharinath Ganpat Hanse (PW-70) recovered two chits i.e., Article Nos. 247 and 247-A from a diary in a pouch (Art. 248) vide panchnama Exh. No. 373 which was found in the cupboard of Room No. 604, 6th Floor, Rajender Vihar, Guilder Lane, Grant Road, Bombay. The writings
G mentioned on the said two chits corroborate the figures given by A-97 in his confessional statement. The amounts deposited/ withdrawn on the said two chits if seen in light of confessional statements of co-accused, i.e., A-10, A-26 and A-46 were the amounts deposited/withdrawn by accused Tiger Memon
H through his men on various dates.

108. A perusal of the above recitals in the form of confessional statements clearly establish the fact that Tiger had an account with A-97 in which various amounts totaling to Rs. 161.48 lakhs were deposited by A-26 at the behest of Tiger Memon (AA) and which was also being controlled by A-1.

109. On 12.02.1993, at the time of departure to Dubai, Tiger Memon told A-10 that he should remain in touch with A-1 and in case of need of money to A-1, arrange the same from A-97. Tiger Memon further asked him to bring Rs. 5 lakhs from A-97 and to pay the same to Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) on account of landing charges. Accordingly, A-10 alongwith Parvez Nazir Ahmed Shaikh (A-12) brought the money from A-97 and paid it to A-17 at his residence. From the above, it can safely be inferred that the account maintained with A-97 by Tiger Memon was being used for meeting the expenses incurred for achieving the objects of criminal conspiracy and A-1 was handling it through other co-conspirators. Confessional statements of A-10, A-11 and A-46 clearly reveal that the relevant role of collecting money was played by A-10 at the behest of A-1. In the said context, the material contained in the confession of A-10 that Tiger Memon while leaving for Dubai had told him to remain in touch with A-1 and having further said that in the event of A-1 requiring any money then he should collect the same from A-97 clearly reveals that A-1 himself having not collected the money from A-97 but he was handling it through other conspirators. The said matter is further clear from the confession of A-10 which reveals that when A-1 told him to bring an amount of Rs. 1 crore from A-97, the manner in which the said amount was brought by A-10 by going to the house of A-97 along with A-11, A-12 and two more persons. The further materials in the confession of A-10 regarding the transaction of Rs. 25 lakhs and Rs. 10 lakhs effected on 09.03.1993 clearly reveals that the account of Tiger Memon was operated by A-1 through A-10. The same is also clear after considering the manner in which the transaction had taken place on 10.03.1993 by A-1.

A 110. It has come in the confessional statement of A-67 that A-1 had asked him to book air-tickets for Dubai, and he agreed to do the same. It has also come in the confession of A-67 that he had booked around 10-12 tickets for Dubai at the instance of A-1 and A-46 used to bring the money for the same. From B the above, it is evident that A-67 agreed to book the tickets for Dubai at the instance of A-1 and for which A-46 used to bring the cash. Further, from a perusal of the confessional statement of A-46, it is clear that on 8/9th February, A-1 gave him Rs. 50,000/- for giving it to A-67 and he accordingly C delivered the same to him. It has also come in the confession of A-46 that on 14/15 February, he, alongwith A-10 brought Rs. 4 lakhs from A-97 and gave the same to A-1. On 14/15 February, he was given Rs. 62-63 thousand by A-1 to be delivered to A-67 which he, accordingly, delivered.

D 111. From the above recital of the confessional statement of A-46, it is evidently clear that out of Rs. 4 lakhs i.e., the amount which was brought by A-46 and A-10 from A-97 at the instance of A-1, Rs. 62-63 thousand were given to A-67 by A-46. It is also clear from the confession of A-67 that it was A-46 E who used to bring the cash for the tickets he was booking for A-1 for Dubai. Asif Sultan Devji (PW-341) and Massey Fernandes (PW-311) have deposed about the booking of 12 tickets and 1 ticket respectively at the instance of A-67. A-67, in his 313 statement had admitted having booked the tickets F for Dubai through the said witnesses.

112. Md. Usman Ahmed Jan Khan (PW-2), the approver, (about acceptability or reliability, we shall consider it in a separate heading) categorically stated that A-1, at the instance of Tiger Memon, handed over air-tickets to Javed which were G of Parvez Mohmmed Parvez Zulfikar Qureshi (A-100), Salim Rahim Shaikh (A-52), Md. Farooq Md. Yusuf Pawale (A-16), Zakir Hussain Noor Mohammed Shaikh (A-32), Salim Mujahid besides PW-2. It has also come in the confession of A-10 that on 09.03.1993, at the instance of A-1, A-10 got transferred Rs.

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25 lakhs from Tiger's account with A-97 to Irani's account and Rs. 10 lakhs to Ohalia's account. Even on 10.03.1993, Rs. 21 lakhs were transferred to the account of Irani from Tiger's account at the instance of A-1 by A-10.

113. The timing of these transfers, if seen in the context of activities being carried out contemporaneously, was transferred for meeting the expenses for achieving the objects of conspiracy, to meet the expenses incurred for ticketing of the co-conspirators and also to meet the expenses to be incurred during that period. As far as Tejarath International is concerned, it has come in the evidence of S.P. Udyawar (PW-441) that at the instance of A-1, in January/March, 1993, he booked tickets for Dubai for the following persons, viz., Dawood @ Dawood Taklya Md. Phanse @ Phanasmiyan (A-14) Abdul Razak Memon (A-5), Hanifa Abdul Razak Memon (A-6), Yakub Abdul Razak Memon (A-1), Rahin Yakub Memon (A-7), Essa @ Anjum Abdul Razak Memon (A-3), Yusuf Abdul Razak Memon (A-4) and Tiger Memon (AA) vide Exh. 1421. PW-441 had categorically stated that the tickets booked by him were collected by a person from Tejarath International sent by A-1. Besides this, Exh. 1192 shows booking of tickets for A-49, A-98, A-94, A-39 and A-14. Exh. 1192 is a statement of Tejarath International maintained by the firm of PW-441. The confessional statement of A-67 to the effect that in the second week of February, A-1 asked him to book tickets for Dubai, which he agreed to and he also admitted having booked 15-16 tickets for A-1 to Dubai in February 1993 and received money from A-46 for the same in the second week of February 1993 itself, the time when the co-accused went to Dubai and then for training to Pakistan. The confessional statement of A-46 also shows payment of a sum of Rs. 50,000/- on 8/9th February and Rs. 62-63,000/- on 14/15th February by A-1 to be given to A-67. The admission of A-67 in 313 statement is also evident from the booking of tickets to Dubai through PW-341, who was running a travel agency by the name of M/s ABC

A Travels and Massey Fernandes (PW-311) was working with M/s Hans Air Services Pvt. Ltd. PW-341 deposed about booking 12 tickets for A-67 and the bills which were marked as under:

> "**Exh. 1246** – For booking Dubai on 11th February, 1993 for A-100, A-32, Javed Chikna and Mohd. Tainur Phansopkar.
>
> **Exh. 1247** for 12th February, 1993, for Javed Dawood Tailor
>
> **Exh. 1248** Emirates Flight for 17th February, for Yeda Yakub, Anwar Theba, Bashir Ahmed Khan, Nasir Dhakla (A-64), Gul Mohammed (A-77) and Abdul Ahmed.
>
> **Exh. 1243** on 11.02.1993 Shahnawaz Abdul Kadar Qureshi (A-29) and Irfan Chougule."

114. A-10, in his confession has stated that on 10/11 February, A-1 gave three tickets and 3 passports and asked him to drop A-100 and A-16 to the Airport. It is pertinent to note here that Exh. 1246 shows the booking of A-100 for Dubai on 11.02.1993. The said booking was done at the behest of A-67 who did it at the instance of A-1. A-46, in his confession stated that Javed Chickna (AA) accompanied Tiger to Dubai on 12.02.1993. Exh. 1247 shows the booking of Javed Dawood Tailor to Dubai for 12.02.1993 by Emirates. Immigration Officer (PW-205) stated that Javed Dawood Tailor left India by Emirates on 12.02.1993. Further, in the confessional statement of A-46 it has come that on 17.02.1993, A-1 called Anwar Theba (AA) and handed over 5 passports and 5 tickets. Anwar asked A-46 to drop him and others at the Airport for going to Dubai. Accordingly, he dropped Bashir, Gul Mohammed (A-77), Anwar Theba and Yeda Yakub. He also saw A-64 at the Airport and all five of them left for Dubai. Exh. 1248 shows the booking of these persons for Dubai on 17.02.1993 by Emirates. Thus, this booking was

done by A-67 at the instance of A-1. Immigration Officer (PW-221) stated that the above mentioned persons left by Emirates Airlines. It has come in the confession of A-46 that A-1 had given him 3 passports and 3 tickets for dropping 3 persons at the Airport. Accordingly, A-46 and A-10 dropped A-29, Irfan Chougule and one more person at the Airport. Confessional statements of A-36 and A-29 show that he was the person who traveled with them. A-10 in his confession corroborates with A-46. Exh. 1243 shows the booking of A-29 and Irfan Chougule by Air India for going to Dubai. PW-197 stated that Irfan Chougule left by Air India on 18.02.1993. Passport of A-29 (Exh. 1731) shows his departure on 18.02.1993. From the above, it is clear that the tickets booked by A-67 at the behest of A-1 were for the co-accused persons mentioned above, who first went to Dubai and, subsequently, to Pakistan for weapons training as revealed in their confessional statements and evidence of PW-2. The above confessional statements by the co-accused/conspirators would show that A-1 was playing a key role in furtherance of the above said conspiracy.

115. The funds of Tejarath International were also used for achieving the object of criminal conspiracy. It has come in the evidence of PW-441 that at the instance of A-1, he booked tickets for Dubai in January/March, 1993 as under:

"Exh. – 1421 A-14 18th January, 1993 (Dawood Phanse)

Exh. – 1422 A-5, A-6, A-4

Exh. – 1423 A-7, A-3, A-1 March 1993

Exh. – 1424 Tiger Memon"

PW-441 had categorically stated that the tickets booked by him were collected by a person from Tejarath International sent by A-1. Besides this, Exh. 1192 shows booking of tickets for A-49, A-98, A-94, A-39 and A-14 which is a statement of Tejarath International maintained by the firm of PW-441. From

A the evidence of PW-441, it is clear that A-1 was managing the affairs of Tejarath International and had booked tickets on its account with the firm of PW-441. In light of the evidence of PW-441 about the reservation card of the firm and booking of tickets by A-1 in the account of Tejarath International coupled with the B confession of the co-accused, viz., A-14, A-94, A-49 and A-39 regarding their visits to Dubai during the relevant time, it is clear that A-1 had booked air tickets for the co-conspirators.

116. Vijayanti B. Dembla (PW-313) from East West Travels had deposed that he had been introduced by Samir Hingora C (A-53) to Tiger Memon and was organizing tickets for Tiger since March 1992. He named Nitin K. More (PW-310), who used to collect tickets on behalf of Tiger Memon. The prosecution has examined PW-310 and shows that it was A-1 who was booking tickets and would send his employee to D collect the same from East West Travels. He is a convincing witness for the fact that A-1's firm office was burnt in the riots and that he had started working from his residence at Al Hussaini Building. It is relevant to mention that practically there was no cross examination of the witness.

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117. It has come in evidence (confessional statements of A-67 and A-46) that 4 suitcases were kept in the jeep which was parked in the residential premises of Amhjad Ali Meharbax (A-68-since discharged) by A-11 and Anwar Theba (AA) at the F instance of A-1. Subsequently, A-67 took away the suitcases and kept them in his office at the instance of A-1. Later, A-46 brought three more suitcases and kept them at the office of A-67. Out of the total seven suitcases, A-67 delievered 5 suitcases to A-1 at Al-Hussaini Building. Thus, two suitcases remained in his possession. It has further been disclosed by G A-67 that due to the involvement of A-1 in the matter, he kept the said suitcases at the residence of Mohammed Hanif (PW-282).

118. After the arrest of A-67, he made a disclosure under

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Section 27 of the Evidence Act and led the Police and Pancha (PW-37) to the residence of Mohammed Hanif from where the following articles were recovered and taken into possession vide Panchnama Exh. 109:

(a) One suitcase (Article 42) was found containing 65 handgrenades and 100 electronic detonators.

(b) One VIP suitcase (Article 43) was found containing 40 hand grenades and 50 electronic detonators. During the examination of Akbar Khan Abu Sama Khan (dead) (PW-37) in the Court only 85 handgrenades were found in the two suitcases which were marked as Article 44 to 84 and one hand grenade which was sent to the FSL was marked as Article 45.

(c) The incharge of the store room of CID, Crime Branch, P.I. Pargunde has submitted the details of disposal in respect of remaining 20 defused hand grenades to the Court. The recovered articles were forwarded to the FSL and its report (Exh. 2439) proves the nature of article recovered.

(d) Out of 150 electronic detonators, one is marked Article 46 (one) to (three) and the remaining 149 were forwarded to the Bomb Detection and Disposal Squad (BDDS) for defusal.

119. It is clear from the confession of A-67 that 4 bags were given to him at the first occasion which were containing ammunitions etc., by discharged accused Amjad Ali Meharbax at the instance of A-1. On the second occasion, A-46 had delivered 3 more suitcases to A-67 and on being asked, A-46 stated that the suitcases were containing round bombs etc. Thus, A-67, in all had received 7 bags from A-1 which contained arms/ammunitions etc. A-67, thereafter, returned 5 bags to A-1 that included 4 bags which were received on the first occasion and one of the three bags received on the second occasion. Thus in all, there remained two bags with A-67 which were recovered by PW-506. These facts were stated by A-67 in his confessional statement which has since been exhibited

A and read in evidence as substantive evidence. Moreover, the confessional statement of A-67 corroborated the evidence of PW-37, PW-506 and PW-282. A-46, in his confessional statement, also stated about the delivery of 3 suitcases to A-67 by A-1, but there is a small discrepancy about the manner B of receipt of 3 suitcases by A-67 wherein he stated that A-46 had delivered 3 suitcases to A-67. The manner of delivery of 3 suitcases is not of much importance, as it has clearly come in the confession of A-67 in respect of delivery of bags at the instance of A-1 and the subsequent recovery of two suitcases C at the instance of A-67 which contained 105 hand grenades and 150 electronic detonators.

120. In the confessional statement of A-46, it was mentioned that on 13.02.1993 he alongwith Anwar Theba (AA) went to the residence of Amjad Ali Meharbax (since D discharged). Accordingly, both of them brought the said jeep to the Al-Hussaini Building and Anwar Theba went up and handed over the key of the jeep to A-1. On 14/15.02.1993, when A-46 was present at Al-Hussaini Building alongwith Anwar Theba (AA), A-1 called Anwar upstairs and after sometime E Anwar came down alongwith three suitcases. He also brought the key of a jeep kept inside the garage and Anwar Theba asked A-46 to unscrew the bolts of the floor of the jeep. A-46 accordingly unscrewed the bolts of the floor and when he was about to lift the floor, he was asked by A-1 to go to the office F of A-67. He immediately went to the office of A-67 and when he found that A-67 was not there, he informed A-1 accordingly. At that time, A-46 saw that Anwar Theba was filling something in the said suitcases which was of light green colour and round in shape. At that time, A-1 asked A-46 to stand outside the G garage and watch the movements of the people. He was apparently sent outside by A-1 so that he could not see the contents which were being filled in the suitcases. He was again sent by A-1 to see whether A-67 was available. Accordingly, he went to the office of A-67 and as A-67 was not present, he

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came back to Al-Hussaini. At that time, he saw A-67 keeping the said suitcases in his Maruti Van. In the light of the evidence on record, it is clear that A-1 was in possession of handgrenades and electronic detonators which were concealed in the jeep and which were delivered to A-67 in three suitcases by A-1 through A-46.

121. PW-87, who was the driver working for Abdul Razak Suleman Memon (A-5), has deposed that A-5 was having four vechicles, namely, red Maruti Van, blue Maruti Car, white coloured Maruti Car and one red coloured Maruti 1000. He also stated that A-5 was staying at 5/6th floor of Al-Hussaini Building alongwith his wife, daughter-in-laws and sons, namely, Essa @ Anjum Abdul Razak Memon (Anjumbhai) (A-3), Yusufbhai (A-4) and Ayubbhai (AA). He also stated about taking his blue coloured Maruti car to a service station opposite to Paradise Talkies on 2-3 occasions. He also identified his signatures (Exh. Nos. 444 and 445) on the bills (Exh. Nos. 444A and 445A) respectively. These signatures were affected by him at the time of taking the car for servicing. The said witness did not fully support the prosecution and was declared hostile.

122. PW-630, who was the Manager of Hind Automobile and Co., deposed that he had issued Exh. Nos. 444A and 445A to the Driver who brought the Maruti Car bearing No. MP-09-H-0672 for servicing on 03.01.1993 and 23.02.1993 respectively. He also stated that he had written the name of the owner of the car and the car number on the said bills on the basis of the information given by the Driver who brought the car for servicing on the said two occasions. It is pertinent to note here that the driver who brought the vehicle for servicing was PW-87 as evident from his signatures on Exh. Nos. 444 and 445. Exh. Nos. 444A and 445A shows that A-1 was mentioned as the owner of Vehicle No. MP-09-H-0672.

123. It has been proved that the said Maruti Car of blue colour was planted at Bombay Stock Exchange which exploded at 03:30 hrs killing 84 persons, injuring 217 persons and

A causing loss to property worth rupees 5 crores. The number plate (Article 227) bearing No. MP-09-H-0672 was seized from the place of occurrence by Vipul Manubhai Vyas, Deputy Project Manager, Bombay Stock Exchange (PW-86). Engine No. F/8/BIN703676 and Chassis No. 481528 was seized by B PW-86 and PW-370 respectively. It is also evident that the Maruti 800 Car bearing No. MP-09-H-0672 was purchased by Shafi Zariwala (AA) in the beginning of 1992 through Suleman Mohammed Lakdawala (PW-365), Shakeel S. Hasan (PW-366), Roopak Madanlal Malik (PW-628), Atmaram C Ramchandra (PW-642), Rajkumar Kamal Chand Jain (PW-649) and this Maruti Car was used to blast the Bombay Stock Exchange Building. Ultimately, this car was used by Tiger Memon and A-1 for explosion. This is evident from the evidence of PWs 87 and 630. It also finds mention in the confessional D statement of A-46 that A-1 was using a blue coloured Maruti Car.

124. From the above, the following conduct of the appellant (A-1) alongwith the co-conspirator family members may be relevant:-

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(a) At the time of blast, they all were living together at Dubai.

(b) After the blasts, the Memons' fled to Pakistan from Dubai.

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(c) Their conduct of living together after fleeing from Bombay and not providing information about these blasts to the concerned authorities at Indian Embassy prove that the members of the Memon family were also co-conspirators in G committing the said bomb blasts. With all the activities going on at the Al-Hussaini Building, on the eve of blasts, the members of Memon family were aware of the activities.

(d) They never disclosed the connection of Tiger Memon with the blasts to anybody.

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(e) In Pakistan, they had obtained Pakistani Passports and National Identity Cards in assumed names.

(f) They had acquired properties, started a business in the name and style of M/s Home Land Builders, acquired fictitious qualification certificates, driving licenses etc. to lead a comfortable life all of which will show that they have chosen a comfortable life in Pakistan after causing blasts in Bombay and were determined not to return to India in their original identity.

(g) They failed to appear before the Court inspite of issuing of proclamation and the same being widely published.

(h) Instead of surrendering, they traveled to Bangkok and Singapore from Karachi for holidays in assumed names on Pakistani Passports during April, 1993.

(i) They had not taken any steps to surrender before the Indian authorities or Thailand Authorities on their arrival to Bangkok and Singapore.

(j) Nor they had made any attempt to return to India.

(k) Large amount of jewellery and cash was abandoned by the Memons' at the Al-Hussaini Building when they hurriedly left Bombay just before the blasts.

Further, recovery from the walls/portions of the lift at the Al-Hussaini building of RDX remanants on 22.03.1993 establishes the case of the prosecution of the activities being carried out by the appellant and the co-conspirators at the said place.

125. Apart from the above confessional statements and evidence, nine Indian passports and seven Pakistani passports belonging to the members of Memon's family including the appellant which were found with A-1 were also seized by H.C. Singh (PW-474), SP-STF, Delhi, CBI from his person at the

A time of arrest. A series of other documents were also seized from the appellant like a Pakistani Driving Licence, Pakistani Identity Card, Chits having numbers of Karachi residents, Address Book, Pakistani Computer Education Certificate and Pakistani National Tax Number Certificate in favour of Home
B Land Builders. The evidence of Kanjira Parambil (PW-473), Consulate General of India at Karachi further established that all the Pakistani Passports (13 in number) including the one seized from A-1 are passports issued genuinely by the Pakistan Government. On perusal of the entries in the passports seized
C from the appellant (A-1), the following facts emerge:

(a) Indian Passport No. M-307804 in respect of A-1 establishes that A-1 left Dubai on 17.03.1993 and there is no arrival stamp of any country available on the said passport.

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(b) Pakistani Passport No. AA-763242 in respect of Yusuf Ahmed Mohammed shows that the said passport holder left Karachi on 17.04.1993 and reached Bangkok on the same day. Again, the said
E passport holder left Bangkok on 29.04.1993. The passport holder left Karachi on 20.06.1994 and reached Dubai on the same day. Again, the passport holder left Dubai on 28.06.1994 but there is no entry stamp showing his arrival at any place.
F After seeing the Pakistani as well as Indian Passports, it can be seen that Yusuf Ahmed Mohammed and A-1 are the same persons.

(c) Pakistani Passport No. AA-763651 in respect of Aftab Ahmed Mohammed (A-2) shows that the
G passport holder left Karachi on 16.04.1993 and reached Bangkok on 16.04.1993 itself. The said person left Bangkok on 27.04.1993. There is no arrival stamp of any country on the said passport. The said person again left Karachi on 17.06.1994
H and entered Dubai on the same day. The said

person left Dubai on 03.07.1994. Again, the said person left Karachi on 09.07.1994 and entered Dubai on 09.07.1994 itself. Again, the said passport holder left Dubai on 25.08.1994 and entered India on 25.08.1994 itself.

(d) Pakistani Passport No. AA-763650 in respect of Akhtar Ahmed Mohammed shows that the said passport holder left Karachi on 16.04.1993 and reached Bangkok on 16.04.1993 itself. The said passport holder left Bangkok on 27.04.1993. There is no arrival stamp of any country on the said passport. The said passport holder again left Karachi on 17.06.1994 and reached Dubai on 17.06.1994 itself. Again, the said passport holder left Dubai on 25.08.1994 and reached India on 25.08.1994 itself.

(e) Indian Passport No. C-340734 in respect of Yusuf Abdul Razak Memon (A-4) shows that the said person left Bombay on 11.03.1993 and reached Dubai on 11.03.1993. Further, he left Dubai on 17.03.1993. However, there is no arrival stamp of any country on the said passport.

(f) Pakistani Passport No. AA-763654 in respect of Imran Ahmed Mohammed reveals that the said passport holder left Karachi on 17.04.1993 and reached Bangkok on the same day. The said passport holder left Bangkok on 29.04.1993. There is no arrival stamp of any country on the said passport. Again, the said passport holder left Karachi on 20.06.1994 and entered Dubai on 20.06.1994 itself. The said passport holder left Dubai on 28.06.1994. There is no arrival stamp of any country on the passport. Again, the said passport holder left Karachi on 25.07.1994 and

A reached Dubai. The said person left Dubai on 10.08.1994 and re-entered Dubai on 11.08.1994. Again, the passport holder left Dubai on 25.08.1994 and arrived at New Delhi on 25.08.1994. From the Indian Passport of Yusuf B Abdul Razak Memon and Pakistani passport in respect of Imran Ahmed Mohammed, it is clear that Imran Ahmed Mohammed and Yusuf Abdul Razak Memon are the same persons.

C (g) Indian Passport No. C-013120 in respect of Abdul Razak Memon (A-5) (dead) shows that the said person left Dubai on 17.03.1994 and there is no arrival stamp of any country after that. From the Indian Passport and Pakistani Passport, it is clear that Abdul Razak Memon and Ahmed Mohammed D are the same persons.

(h) Pakistani Passport No. AA-763649 in respect of Ahmed Mohammed shows that the said passport holder left Karachi on 25.07.1994 and entered E Dubai on the same day itself. The said passport holder left Dubai on 10.08.1994 and re-entered Dubai on 11.08.1994. Again, the said passport holder left Dubai on 25.08.1994 and reached India on 25.08.1994 itself.

F (i) Indian Passport No. C-013796 in respect of Hanifa Abdul Razak Memon (A-6) shows that she left Dubai on 17.03.1993 and there is no arrival stamp of any country on the said passport.

G (j) Pakistani Passport No. AA-763645 in respect of Zainab Ahmed Mohammed shows that she left Karachi on 25.07.1994 and reached Dubai on the same day itself. She again left Dubai on 10.08.1994 and re-entered Dubai on 11.08.1994. H She again left Dubai on 25.08.1994 and entered

India on 25.08.1994 itself. From the Indian passport and Pakistani passport, it is clear that Zainab Ahmed Mohammed and Hanifa Abdul Razak Memon are the same persons.

(k) Indian Passport No. N-307801 in respect of Rahin Yakub Memon (A-7) shows that she left Bombay on 11.03.1993 and reached Dubai on 11.03.1993 itself. She left Dubai on 17.03.1993 and there is no arrival stamp of any country on the said passport.

(l) Passport No. T-0-780 in respect of Rahin Yakub Memon shows that Rahin Yakub Memon reached Delhi on 05.09.1994 on the said passport.

(m) Indian Passport No. C-672378 in respect of Rubina Suleman Memon (A-8) shows that she left Dubai on 20.03.1993. There is no arrival stamp of any country available on the said passport.

(n) Pakistani Passport No. AA-763653 in respect of Mrs. Mehtab Aftab Ahmed shows that she left Karachi on 16.04.1993 and reached Bangkok on 16.04.1993. Again, she left Bangkok on 27.04.1993. There is no arrival stamp of any country on the said passport.

(o) Pakistani Passport No. AC-001087 in respect of Mrs. Mehtab Aftab Ahmed shows that she left Karachi on 25.07.1994 and entered Dubai on the same day. She left Dubai on 10.08.1994 and entered Dubai on 11.08.1994. Again, she left Dubai on 25.08.1994 and entered India on 25.08.1994. The passport shows that Rubina Suleman Memon and Mehtab Aftab Ahmed are the same persons.

The above evidence alongwith the confessions of various co-accused amply prove that the weapons training was

A organized with the aid of the Government of Pakistan and also clearly shows a very deep involvement of A-1 in the organization and conduct of serial bomb blasts in question.

**Retractions:**

B 126. It has been contended by learned senior counsel that all the confessions relied upon have been retracted and therefore, they are not trustworthy and it would not be safe to place reliance on them. It is also contended that those statements had been obtained under threat and coercion and C were not voluntary, as such, those confessional statements could not be taken to be worthy of reliance. It was submitted by the prosecution that a voluntary and free confession, even if later retracted, can be relied upon. It was pointed out that the retractions were not made at the first available opportunity by D the accused persons. It was also highlighted that after their arrest, the accused were brought before the Magistrate's court several times in 1993 and 1994, however, the retractions were made many months after recording of the confessions.

E 127. This Court, in *Mohd. Amin v. CBI,* (2008) 15 SCC 49, considered several TADA cases where confession was recorded under Section 15 of TADA and later retracted. This Court was pleased to observe:

> "If a person accused of committing an offence under the F Act challenges his confession on the ground that it was not made voluntarily, then the initial burden is on the prosecution to prove that all requirements under Section 15 of the Act and Rule 15 of the Rules have been complied with. Once this is done, the burden shifts on the accused G person and it is for him to prove that the confession was not made voluntarily and that the same is not truthful and if he adduces evidence during the trial to substantiate his allegation that the confession was not voluntary then the court has to carefully scrutinize the entire evidence and H surrounding circumstances and determine whether or not

the confession was voluntary. The confession made under Section 15 of the Act cannot be discarded only on the ground of violation of the guidelines laid down in Kartar Singh case because the same have not been incorporated in the Act and/ or the Rules."

The court rejecting the contention that confession should not be relied upon further held in Paragraph 69 that:

"If the confessions of the appellants are scrutinized in the light of the above enumerated factors, it becomes clear that the allegations regarding coercion, threat, torture, etc. after more than one year of recording of confessions are an afterthought and products of ingenuity of their advocates. The statements made by them under Section 313 of CrPC were also the result of an afterthought because no tangible reason has been put forward by the defence as to why Appellants A-4 to A-8 did not retract their confessions when they were produced before the Magistrate at Ahmedabad and thereafter despite the fact that they had access to legal assistance in more than one way. Therefore, we hold that the trial court did not commit any error by relying upon the confessions of the Appellants A-4 to A-8 and A-10 and we do not find any valid ground to discard the confessions of Appellants A-4 toA-8 and A-10."

128. This Court, in *Jameel Ahmed vs. State of Rajasthan,* (2003) 9 SCC 673 held that "it happens very often, it is the common defence of a person making confessional statement to deny the same or retract from the same subsequently and to allege compulsion in making such statement."

129. In *State of Maharashtra vs. Bharat Chaganlal Raghani,* (2001) 9 SCC 1, this Court, while setting aside the judgment of acquittal recorded by the Designated TADA Court, observed as under:

A "58. .... There is no denial of the fact that the judicial confessions made are usually retracted. Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law.... Corroboration of the confessional statement is not B a rule of law but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case."

130. In *Manjit Singh vs. CBI,* (2011) 11 SCC 578, this Court, while considering the question whether retracted C confessions of co-accused could be relied upon to convict the accused, held that the retracted statements can be used against the accused as well as the co-accused provided such statements were truthful and voluntary when made. In the said case, the two accused that made confessional statements, D subsequently retracted from their statements. This Court observed:

"87. A confessional statement given under Section 15 of TADA shall not be discarded merely for the reason that E the same has been retracted...."

Where the original confession was truthful and voluntary and has been recorded after strictly following the law and the prescribed procedure, the subsequent retraction and denial of such confessional statement in the statement of the accused F under Section 313 was only as a result of afterthought.

131. In *Kalawati vs. State of Himachal* AIR 1953 SC 131, it was said that "the amount of credibility to be attached to a retracted confession would depend upon the facts and G circumstances of each case."

132. In *State of Tamil Nadu vs. Kutty* AIR 2001 SC 2778, it was held:

".....the twin test of a confession is to ascertain whether it

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was voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Therefore, retracted confession may form legal basis for conviction if the court is satisfied the confession was true and was voluntarily made." A B

(See also: *Navjot Sandhu* (supra).

133. In *Balbir Singh vs. State of Punjab,* AIR 1957 SC 216, it was held that the rule of practice and prudence requires a retracted confession to be corroborated by independent evidence. (See also: *Parmananda Pegu vs. State of Assam,* AIR 2004 SC 4197, *Pyare Lal Bhargava vs. State of Rajasthan* AIR 1963 SC 1094, *Kehar Singh & Ors. vs. State* AIR 1988 SC 1883, *Babubhai Udesinh Parmar vs. State of Gujarat* (2006) 12 SCC 268). C D

134. It is therefore clear that where the original confession was truthful and voluntary, the Court can rely upon such confession to convict the accused in spite of a subsequent retraction and its denial in statement under Section 313. Since we have elaborately discussed the contention with regard to retraction of statements, there is no need to refer to the same in respect of other appeals before us. E

**Corroboration of Confession:**

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135. Further, a contention was raised by learned senior counsel for the appellant that there was no sufficient corroboration of the confessional statements made by the accused. In reply to the above, the prosecution relied upon the following decisions:- G

136. In *Wariyam Singh vs. State of U.P.,* (1995) 6 SCC 458, this Court relied upon the confession made by the accused for convicting him. The confession was alleged to have been fabricated. In para 16 of the judgment, it was held H

A that a part of the confession stood corroborated by the testimony of a witness and, hence, there was no reason to believe that the confession was fabricated. This Court held that the allegation of the confession being fabricated was without any basis and the confession could be taken into account while
B recording conviction.

137. In *S.N. Dube vs. N.B. Bhoir,* (2000) 2 SCC 254, this Court in para 34 observed that the confessions of two accused being substantive evidence are sufficient for considering them and it also received corroboration from the confessions of other
C accused and also general corroboration as regards the other illegal activities committed by them from the evidence of other witnesses. On the basis of those confessional statements, this Court reversed the orders of acquittal passed by the High Court.

D 138. In *Lal Singh vs. State of Gujarat,* (2001) 3 SCC 221, this Court upheld the conviction of the accused on the basis of the confessions. It was held that the Nation has been 'facing great stress and strain because of misguided militants and cooperation of the militancy' which was affecting the social
E security, peace and stability. Since the knowledge of the details of such conspiracies remains with the people directly involved in it and it is not easy to prove the involvement of all the conspirators, hence the confessional statements are reliable pieces of evidence. The Court in para 84 observed:

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> "84. ..... Hence, in case of conspiracy and particularly such activities, better evidence than acts and statements including that of co-conspirators in pursuance of the conspiracy is hardly available. In such cases, when there is confessional statement it is not necessary for the
G prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence

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of the facts in issue. For assessing evidence in such cases, this Court in Collector of Customs v. D. Bhoormall dealing with smuggling activities and the penalty proceedings under Section 167 of the Sea Customs Act, 1878 observed that many facts relating to illicit business remain in the special or peculiar knowledge of the person concerned in it and held thus: (SCC pp. 553-55, paras 30-32 and 37)

"30. ... that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and—as Prof. Brett felicitously puts it — 'all exactness is a fake'. El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered — to use the words of Lord Mansfied in Blatch v. Archar (1774) 1 Cowp 63: 98 ER 969 (Cowp at p. 65) 'according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted'."

139. In *State of Maharashtra vs. Bharat Chaganlal Raghani,* (2001) 9 SCC 1, this Court relied mainly on the confessional statements of the accused which were also retracted. It was held that there was sufficient general corroboration of the confessional statements made by the

A accused. This Court found sufficient corroboration in the testimony of the witnesses and the recoveries pursuant to the statements given by the accused. It was also held that once the confessional statements were found to have been made voluntarily, the test identification parade was not significant. It
B was further held that corroboration is not a rule of law but a rule of prudence.

140. In *Devender Pal Singh vs. State of NCT of Delhi,* (2002) 5 SCC 234, this Court was considering, among other things, whether the accused making the confessional statement
C can be convicted on the basis of the confession alone without any corroboration. It was held that once it is found that the confessional statement is voluntary, it is not proper to hold that the police had incorporated certain aspects in the confessional statement which were gathered during the investigation
D conducted earlier. It was held that the so-called retraction by the appellant was made long after he was taken into judicial custody. It was also observed that:

> "51. Where trustworthy evidence establishing all links of
> E circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. (See *Baburao Bajirao Patil v. State of Maharashtra.*) It can in some cases be inferred from the acts and conduct of the parties.
> F (See *Shivnarayan Laxminarayan Joshi v. State of Maharashtra*)
>
> 54. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too
> G imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See *Inder Singh v. State (Delhi Admn.)] Vague* hunches
> H cannot take the place of judicial evaluation.

"A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties...." (Per *Viscount Simon in Stirland v. Director of Public Prosecution quoted in State of U.P. v. Anil Singh,* SCC p. 692, para 17.)

**55.** When considered in the aforesaid background, the plea that acquittal of the co-accused has rendered the prosecution version brittle, has no substance. Acquittal of the co-accused was on the ground of non-corroboration. That principle as indicated above has no application to the accused himself."

141. In *Ravinder Singh vs. State of Maharashtra,* (2002) 9 SCC 55 this Court held that a confession does not require any corroboration if it relates to the accused himself. It was further held that there was enough evidence to provide general corroboration to the confessional statement. It was further held that minor contradictions in the statements of the accused were of no consequence once the confessions were held to be reliable.

142. In *Jameel Ahmed vs. State of Rajasthan,* (2003) 9 SCC 673, the position of law was summed up by this Court as follows:

"**35.** To sum up our findings in regard to the legal arguments addressed in these appeals, we find:

(i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not,

A is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, B a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But C this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard D to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a E prudent man to believe in the existence of facts mentioned in the confessional statement.'

(v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief F Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case G whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement."

143. In *Nazir Khan vs. State of Delhi*, (2003) 8 SCC 461, H this court held that the confessional statements made by co-

accused can be used to convict a person, and that it is only as a rule of prudence that the Court should look for corroboration elsewhere. It was held that:

> **"27.** Applying the principles which can be culled out from the principles set out above to the factual scenario, the inevitable conclusion is that the trial court was justified in its conclusions by holding the accused-appellants guilty. When an accused is a participant in a big game planned, he cannot take the advantage of being ignorant about the finer details applied to give effect to the conspiracy hatched, for example, A-7 is stated to be ignorant of the conspiracy and the kidnapping. But the factual scenario described by the co-accused in the statements recorded under Section 15 of the TADA Act shows his deep involvement in the meticulous planning done by Umar Sheikh. He organized all the activities for making arrangements for the accused and other terrorists.

144. In *Sukhwant Singh vs. State,* (2003) 8 SCC 90, this Court upheld the conviction solely on the basis of the confession of the co-accused, without any corroboration, that too in a situation where the accused himself had not confessed. The judgment in the case of *Jameel Ahmed* (supra) was relied upon. It was held:

> **"3.** In the present case we are aware of the fact that the appellant has not made any confessional statement nor is there any corroboration of the confessional statement of the co-accused implicating this appellant from any other independent source but then we have held in the above-reported case that if the confessional statement of a co-accused is acceptable to the court even without corroboration then a confession of a co-accused can be the basis of conviction of another accused so implicated in that confession. Therefore the fact that the appellant herein has not confessed or the confessional statements

A made implicating him by A-1 and A-2 are not independently corroborated, will not be a ground to reject the evidence produced by the prosecution in the form of confessional statement of co-accused provided the confession relied against the appellant is acceptable to the B court."

145. In *Mohmed Amin vs. Central Bureau of Investigation,* (2008) 15 SCC 49, this Court convicted the accused on the basis of their confessions and confessional statements of co-accused. It was held that there is no requirement of C corroboration if the confessions are proved to be made voluntarily, and the Rules applicable have been complied with. The following observations are pertinent:

"**31.** The ratio of the abovenoted judgments is that if a D person accused of an offence under the Act makes a confession before a police officer not below the rank of Superintendent of Police and the same is recorded by the officer concerned in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which E sounds or images can be reproduced, then such confession is admissible in the trial of the maker as also the co-accused, abettor or conspirator not only for an offence under the Act but also for offence(s) under other enactments, provided that the co-accused, abettor or F conspirator is charged and tried in the same case along with the accused and the court is satisfied that requirements of the Act and the Rules have been complied with. Whether such confession requires corroboration depends on the facts of the given case. If the court is convinced that the probative value of the confession is such G that it does not require corroboration then the same can be used for convicting the maker and/or the co-accused under the Act and/or the other enactments without independent corroboration."

H 146. In *Mohd. Ayub Dar vs. State of Jammu and Kashmir,*

(2010) 9 SCC 312, it was held that even though the guidelines in Kartar Singh, have not been strictly followed, the confession of the accused recorded is admissible against him and can be relied upon solely to convict him. The following observations of this Court are pertinent: A

> "59. It would, therefore, be clear, as rightly contended by Shri Rawal that merely because the guidelines in *Kartar Singh v. State of Punjab* were not fully followed, that by itself does not wipe out the confession recorded. We have already given our reasons for holding that the confession was recorded by A.K. Suri (PW 2) taking full care and cautions which were required to be observed while recording the confession. B C
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> 60. In *Ravinder Singh v. State of Maharashtra* it has been observed in para 19 that if the confession made by the accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and a conviction of the accused can be solely based on it. It has also been observed that such confessional statement is admissible as a substantive piece of evidence. It was further observed that the said confession need not be tested for the contradictions to be found in the confession of the co-accused. It is for that reason that even if the other oral evidence goes counter to the statements made in the confession, one's confession can be found to be voluntary and reliable and it can become the basis of the conviction. D E F
>
> **61.** In this case, there is ample corroboration to the confession in the oral evidence as well as the documentary evidence in shape of a chit, which is referred to in the said confession. There is a clear reference that the Personal Assistant, who was a non-Kashmiri and kept a beard, had sent a slip inside. Ultimately, that slip was found by the police, which corroborates the contents in the confession. In our opinion, that is a sufficient corroboration to the confession. G H

A **64.** All these cases suggest that the only test which the court has to apply is whether the confession was voluntary and free of coercion, threat or inducement and whether sufficient caution is taken by the police officer who recorded the confession. Once the confession passes that
B test, it can become the basis of the conviction. We are completely convinced that the confession in this case was free from all the aforementioned defects and was voluntary."

147. In view of the above, it can easily be inferred that with
C regard to the use of such confession as against a co-accused, as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis
D of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

**Deposition of Md. Usman Jan Khan (PW-2) Approver**

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148. In the light of the above principles, it is useful to analyse the entire evidence of PW-2 not only implicating A-1 but also other accused in respect of the incident that took place on 12.03.1993. PW-2, who turned approver, is a native of District Rampur, U.P. However, according to him, he is residing
F at Bombay for the last 28 years. He was working as an Estate Agent and Property Dealer. He was arrested on 10.05.1993 by the Bombay Police in connection with the Bomb Blasts Case. He was arrested on the allegations that he was involved in the conspiracy, landing, planning, training and planting of bombs.
G In his evidence, he admitted that he took training in handling of weapons in Pakistan for a period of 10 days along with others. During the training, according to him, they were also imparted training for handling RDX. For the present, since we are concerned about the role of A-1 relating to conspiracy, we are

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constrained to refer his evidence relating to the said aspect. He admitted that he knew Javed Dawood Tailor (AA) known as Javed Chikna, Mushtaq @ Ibrahim Abudal Razak Memon known as Tiger Memon and Yakub Adbul Razak Memon as Yakub (A1). While identifying the accused concerned in the Court, PW-2 identified him in the fourth batch consisting of eight persons. He further stated that all the accused persons whom he identified before the Court have worked with him and admitted that they were together in the bomb blasts. It was further stated that all the persons including A-1 were involved in planning, conspiracy, training, landing and planting of bombs. According to him, when he met Tiger Memon and others at Hotel Big Splash on 02.02.1993, he (Tiger Memon) told them that in communal riots in Bombay and Surat, Muslims have suffered a lot and Babri Masjid has been demolished and that restrictions have been put even on "Azaan" and "Namaz". He informed all of them that during the riots their mothers and sisters have been dishonoured and the Government is not extending any help to them. So, he wanted to take revenge and he requested all of them to help him in this regard. When this meeting was going on, two persons, namely, Yeda Yakub and Shahid also joined them in the meeting. Tiger Memon also told them that he has arranged for arms and explosives from Pakistan which are coming on that day and he also warned them that if any person betrays him, he will finish him and his family.

149. He further deposed that on the same day, at about 4 p.m., all of them left for Shekhadi Coast in two Commander Jeeps. In one Jeep he was traveling along with Tiger Memon, Javed, Munna, Anwar, Akbar and Karimullah and others were in the second jeep driven by Shafi. According to him, at Shekhadi Coast, three agents of Tiger Memon, namely, Dadabhai, Dawood Taklya and Rahim Laundriwala along with 30/40 persons from the neighbouring village were present. At about 11 p.m., one speed boat came near the coast and passed over 7 military coloured bags containing guns, pistols

A and grenades of green colour having oval shape. The guns were AK-56 rifles. Tiger Memon distributed AK-56 rifles to Javed and Anwar and others including PW-2 were given handgrenades and pistols. PW-2 was also given a pistol. All the goods were loaded in a truck which was parked there. Tiger B asked them to proceed towards Waghani Tower. When they reached Waghani Tower, PW-2 noticed that 2/3 jeeps and a Maruti Car were parked there. He along with others unloaded the goods from the truck and brought them to the central room of Waghani Tower. On Tiger's instructions, he and others C unpacked the bags. The bags were containing AK-56 rifles, hand grenades, pistols, round (cartridges), wires (detonators), magazines and RDX etc. All these items were then kept in the cavities of the motor jeeps. One box of detonators was kept in a blue coloured Commander Jeep by Shafi to take to Hotel D Persian Darbar on the instructions of Tiger Memon.

150. He also explained about booking of a room in Hotel Persian Darbar at Panvel on 10.02.1993 in the name of Md. Usman Khan. On 11.02.1993, Javed Chikna came to his residence and asked for his passport telling him that 'Tigerbhai' E has called for it. PW-2 handed over his passport to Javed Chikna. PW-2 informed the Court that he had obtained the passport in January, 1987 and his passport No. is B-751254. At about 1 p.m., he received a call from Javed Chikna informing him to come prepared for going to Dubai and to meet him at F the Hindustan Soda Factory, Mahim. At about 4 p.m., he met Javed Chikna at the said place and from there Javed took him to the Al Hussaini Building. In categorical terms, he asserted that Tiger Memon resides in the Al-Hussaini Building at Mahim. On 11.02.1993, when he went there, Tiger Memon and Yakub G Memon (A-1) were sitting together in the flat. Tiger Memon told Yakub Memon to give six air tickets to Javed Chikna (AA). Thereafter, Yakub Memon (A1) gave six air tickets to Javed Chikna. PW-2 and Javed Chikna wished "Khuda Hafiz" to Tiger Memon and left the place. Thereafter, he along with others went H to the airport to go to Dubai. He reached Dubai at 10.30 p.m.

At Dubai Airport, Ayub Memon (AA) had come to receive them. Ayub Memon is the brother of Tiger Memon. This was on 11.02.1993. He also informed the Court that on 13.02.1993, Tiger Memon and Ayub Memon met them at the Dubai Airport. Tiger Memon gave seven air tickets of Pakistan International Airlines and their passports to Javed Chikna. Tiger Memon informed all of them that they need not worry about their journey to Pakistan. He also informed that one Jafar Saheb will receive them at the Islamabad Airport and will take care of them. On reaching Islamabad Airport, Jafar Saheb escorted them and they were not required to pass through the immigration counter and various checks and they came out of the airport with their luggage without any problem. The Airport Officials salute Jafar Saheb when he was escorting them out of the Airport. He further explained that two Jeeps were parked outside the Airport and from there they were taken to a bunglow. On reaching the bungalow, Jafar Saheb collected their passports and air tickets and each one of them was given a fake name. He was named 'Nasir'. Likewise, names of others were also changed. Jafar Saheb instructed them that during their stay in Pakistan they should call each other by these new names. They stayed in the bungalow for two days i.e. 14th and 15th. Then on 16th, Jafar Saheb took all of them to a different place and introduced them to two persons and informed them that these persons will impart training in arms and ammunitions and left the place. On the next day, three more persons joined the training camp and all of them were given training in operating fire arms like AK-56 rifles, pistols and they were also shown how to dismantle and reassemble the fire arms. Training in fire arms was given from 19.02.1993 to 21.02.1993. During this time, in the night, nine more persons came to the training camp, viz., Yeda Yakub (AA-11), Nasir Dhakla (A-64), Anwar Theba (AA-8), Irfan Chougule (AA-12), Shahnawaz (A-29), Abdul Akhtar (A-36), Mohmed Rafiq (A-94), Gullu (A-77) and Bashir Khan (AA-15). These persons also joined them for training. According to PW-2, in all, there were 19 persons taking training at the relevant time. On the next day, Tiger Memon along with

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A one Ahmed Sahab arrived at the training camp and stayed there. In training, they were taught how to operate AK-56 rifles, pistols, hand grenades and the use of RDX for preparing bombs. They were given a practical demonstration of an RDX bomb which was fitted with a half an hour timer pencil detonator. B The bomb explosion resulted in a deafening sound followed by huge black smoke and it blew up stonesand earth. The next day, Tiger left the camp. On 27.02.1993, they all returned from the training camp to the bungalow where they were kept on their arrival at Islamabad. All of them were escorted by Ahmed C Sahab and Jafarbhai and without any checking they were given boarding cards and they left Islamabad by a PIA flight and reached Dubai at about 1.30 to 2 p.m. On reaching Dubai, Tiger took all of them to a bungalow situated at Al-Rashidia. After finishing their meals, they discussed the communal riots D in Bombay and Surat where Muslims had suffered. Thereafter, Tiger directed Irfan Chougule (AA-12) to bring the holy Quran from the other room. Tiger administered oath to all of them by placing their hands on the holy Quran that they will not disclose anything about the training in Dubai and Pakistan to any person including their family members and about their proposed future E plans and in the event that they were arrested by the Police they would not disclose their plans and names of their associates. Thereafter, Tiger Memon distributed 200 Dirhams to each one of them for shopping etc. Thereafter, they left Dubai in batches as and when they received their passports and tickets.

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151. On 04.03.1993, they reached Sahar Airport, Bombay. The Disembarkation Card was filled by him in his own handwriting and he himself signed it. At the airport, he noted that one Ambassador Car and one Maruti Car had come to G receive them. He further stated that Tiger Memon and Javed Chikna sat in the Maruti Car which was driven away by Tiger Memon. He along with Bashir Khan sat in the Ambassador Car in which Yakub Memon (A-1) and one more person was sitting. After reaching Mahim from there, he went to his house at 5 p.m.

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152. The critical analysis of the evidence of PW-2 makes it clear that though he did not mention about the participation of A-1 in all the meetings, however, he identified A-1 in court and asserted that he is the brother of Tiger Memon and it was he who assisted his brother at the Al-Hussaini Building for all preparations, viz., purchasing tickets, getting visas, making arrangements for the persons who were sent to Pakistan via Dubai for training in handling and throwing bombs, filling RDX in vehicles etc., their stay at Dubai and comfortable return of such persons from Pakistan to Bombay, payments to various persons who underwent training which clearly prove the involvement of A-1 in the conspiracy as well as in subsequent events and actions along with his brother and other accused.

153. On the very same day, i.e, on 04.03.1993, all of them met at the Taj Mahal Hotel. In the hotel, they went to the Coffee shop, Shamiana. This was around 10.30 to 10.45 p.m. Tiger Memon, after discussion with one Farooqbhai took them towards the Share Market building in his car near Fountain and showed them the new and the old building of the Share Market. On the way, Tiger Memon told them to survey the Bombay Municipal Corporation Building and to check its two entrances. After noticing the same from there, they returned to the Taj Mahal Hotel. After dropping Tiger Memon at his residence i.e. at the Al-Hussaini Building, Mahim, they took his maruti car and went to the residence of Sardar Shawali Khan (A-54) at Kurla. Bashir Khan then administered oath to A-54 stating that whatever they will do, they will do for Islam and would take revenge for the demolition of the Babri Masjid and communal riots.

154. In respect of a question relating to the purpose of the survey, he answered that the purpose was to shoot down the Municipal Councillors of BJP and Shiv Sena parties with AK-56 rifles by indiscriminately firing upon them. After conducting the survey, they went to meet Tiger Memon and briefed him and after that left for their house. He explained that the third meeting was held on 07.03.1993 and in that meeting Javed Chikna (AA-

A 7), Tiger Memon (AA-2), Nasim @ Yusuf (A-49), Kalu, Bashir Electrician (A-13), Moin (A-43), Parvez Kelewala (A-100), Nasir Dhakla (A-64) and he along with Bashir Khan, Salim Rahim Shaikh, Akram @ Firoz and some persons who were with them in the training and Sardar Shahwali Khan (A-54) and Lalli were B also present. In the said meeting, Tiger organized separate groups for surveying targets. The task assigned to his group was to survey the Sena Bhavan and Sahar Airport. According to him, as directed by Tiger, after completion of the work, he and others briefed Tiger.

C 155.On 08.03.1993, a fourth meeting was held at Babloo's (AA-18) place between 10 and 10.30 p.m. This meeting was held at a flat on the terrace portion. After calling them, including PW-2 inside the flat, Tiger Memon selected the targets. These targets include Air India Building, Nariman Point, Bharat D Petroleum Refinery, Chembur, Share Market near Fountain, Zaveri Bazaar near Mohd. Ali Road and Pydhoni, Five Star Hotels, Cinema Theatres, Shiv Sena Bhavan, Shivaji Park, Dadar, Bombay Municipal Corporation Building, V.T., Sahar Airport, Passport Office, Worli, Mantralaya etc. These were the E places which were to be attacked by planting bombs, by using AK-56 rifles and by throwing hand grenades. Tiger Memon formed separate groups and gave instructions separately. About the Bombay Municipal Corporation Building, Tiger Memon also explained to them the entry and exit points of the F said Building for the purpose of attacking BJP and Shiv Sena Councillors with AK-56 rifles. After this, they came back to Mahim and left for their residence.

156. According to PW-2, another meeting was held on 10.03.1993 at the Hindustan Soda Factory, Mahim in the G evening. There he met Javed Chikna. At that time, Javed Chikna informed him that in the evening around 8 p.m. there is a meeting at Shakil's place at Bandra and directed him to attend the said meeting. Pursuant to the same, PW-2 reached Shakil's residence at 8.30 p.m. There he met Tiger Memon, H

Javed Chikna, Salim Bazarwala, Bashir Khan, Zakir, Nasir Dhakla, Parvez Kelewala, Moin, Iqbal, Sardar Shawali Khan, Bashir Electrician, Mehmood @ Kaloo and Nasim @ Yusuf. Tiger Memon also distributed Rs.5,000/- to each one of them in the said meeting. He explained to Tiger about the survey of the Chembur Refinery.

157. On the next day i.e., on 11.03.1993, they all gathered at the Hindustan Soda Factory, Mahim at 8 p.m. At 9.30 p.m., they received a phone call from Tiger Memon who directed all of them to reach the Al-Hussaini building immediately. Pursuant to the said direction, all of them including PW-2 went to the fifth floor of the said building, i.e, to Tiger's flat and he noticed several persons interacting with Tiger. Tiger called him to his bedroom. There, once again, he explained the survey of the Chembur Refinery and informed him that there is very tight security, hence, it will be impossible to carry out the work there. On this, Tiger Memon cancelled the plan of Chembur Refinery. Tiger Memon instructed them that as they have learnt the work relating to detonators and timer pencils, they should fill RDX in the vehicles and place detonators and timer pencils in a proper way. They all agreed to do the same. Tiger Memon handed over some detonators and timer pencils to them. Tiger instructed them to go to the Share Bazaar i.e. Stock Exchange and Air India Building. Tiger also gave pencils to various persons and instructed Javed Chikna and Anwar Theba to pay Rs. 5,000/- to each one of them and also directed that they have to act and work according to the directions of Javed Chikna and Anwar Theba.

158. He further informed the Court that Tiger Memon conveyed to them that after the blasts in Bombay, there will be communal riots, so all of them should leave Bombay and they can contact him over the telephone. He gave his telephone No. of Dubai as 27 27 28. Thereafter, Tiger Memon met all of them and left in a Maruti Car with Anwar (AA-8), Asgar (A-10) and Shafi (AA-9). He also stated that in the garage Abdul Akhtar

A (A-36), Iqbal (A-23), Moin (A-43), Kalu @ Mehmood, Nasim @ Yusuf (A-49) were filling RDX in the dicky of the motor vehicles. PWs 2 and 6 met Farooq Pawale (A-16) and Javed Chikna instructed Farooq Pawale to take one maruti car to Shiv Sena Bhavan, Dadar and park it near there. As directed, PW-2 B accompanied A-16 in a white maruti car and it was he who drove the maruti car to Shiv Sena Bhavan. He further informed that one Hawaldar (Constable) was sitting there who was not allowing us to park the car but with great difficulty he parked the maruti car near the wall by the side of the service station C within the campus of petrol pump. The said petrol pump was Lucky Petrol Pump and it has a common boundry wall with Shiv Sena Bhavan.

159. He also explained that after reaching the Al-Hussaini Building, he went to the fifth floor in Tiger's flat. There he saw D Javed Chikna was distributing hand grenades to some persons, namely, Salim Bazarwala (A-52), Abdul Akhtar (A-36), Kalu @ Mehmood, Moin (A-43) and Bashir Electrician (A-13). They all were given four hand grenades each by Javed Chikna. He instructed them that they would have to throw these hand E grenades in Fishermen's Colony at Mahim. He also gave four hand grenades each to Iqbal (A-23) and Nasim @ Yusuf (A-49) and directed them to throw the same to Sahar Airport. As planned, several blasts took place at various places in Bombay. He contacted Tiger Memon and apprised him of the same and F as directed left Bombay immediately and reached Calcutta. From there also, he contacted Tiger but he could not speak to him. He reached Delhi by train and went back to his village at Rampur, U.P. He was arrested on 10.05.1993 and on the same day, he was brought to Bombay. About his statement to DCP G Bishnoi, he deposed before the Court on 25.06.1993 that the DCP has correctly recorded his statement. It bears his signature and is also counter signed by DCP Bishnoi.

160. On 20.09.1993, he wrote a letter to the Joint Commissioner of Police, Mr. M.N. Singh through the Jail H Authorities. In this letter, he expressed that he is repenting the

crime committed by him against his country and humanity and so he wanted to confess his crime before the Court. At Killa Court, ACP Babar told him that if he is really repenting what he has done then he can be made a witness and can be given pardon if he will tell the truth before the Court. On his statement, he was produced before the Chief Metropolitan Magistrate. The CMM asked him about his involvement in the Bombay blasts which took place on 12.03.1993. He stated before the CMM about his involvement in the conspiracy and planting of bombs and expressed that he is repenting for what he had done. When the CMM asked him whether he will state the same in the Court, PW-2 answered in the affirmative, i.e., Yes. At this, the CMM offered him pardon and he accepted it. The entire conversation between the CMM and PW-2 was recorded by the typist and read over to him. He also expressed that tender and acceptance of pardon was correctly recorded and it bears his signature. On 28.09.1993, when he was granted pardon in the Killa Court, he was brought back to the prison and kept in Ward No. 10.

161. In the cross-examination, he admitted that he had been a resident of Mahim since 1985. With regard to several questions put by various counsel, in his cross-examination, he admitted that he was involved in the case from the stage of conspiracy till planting of bombs and is responsible for the explosions. He also admitted that he participated in all the stages of conspiracy till the achievement of the object. He admitted that the blasts that took place on 12.03.1993 were very heinous and a serious crime.

162. When he was produced before the DCP, namely, Shri K.L. Bishnoi (PW-193) on 25.06.1993, in categorical terms, he explained that the DCP had cautioned him that he was going to record his confession under Section 15 of TADA and also warned him that he was not bound to make a statement before him and that the said statement would be used against him in the court during the trial.

A 163 .In respect of a question relating to certain variations in his earlier statement (Exh. 25A), he informed the court that "I cannot say why it is not recorded in my statement Exh. 25A". Though counsel appearing for the accused pointed out certain variations/omissions, if we consider the entire statement both B in the examination-in-chief and his explanation in the cross examination, we are of the view that those omissions do not materially affect his statement. In fact, he has admitted that he narrated the whole story to Mr. Bishnoi and he recorded whatever was told to him. However, he admitted that certain C statements have been incorrectly recorded in Exh. 25A.

164. In cross-examination, he reiterated what he had stated in the examination-in-chief that he came into contact with Tiger in connection with property dealing through Javed Chikna. Thereafter, he admitted that he used to meet Tiger at the D Hindustan Soda Factory where Javed Chikna also used to visit. He informed the Court that Javed Chikna was a 'dada' and hatchman of Tiger. He was assured that there was no risk in participating in the landing of goods which were being smuggled by Tiger as Tiger was known for managing everyone. According E to him, the Hindustan Soda Factory at Mahim was a den for all sorts of anti-social activities which was owned by the brother-in-law of accused Hanif Kandawala. In the meeting, he agreed to participate in the conspiracy because Tiger aroused his religious feelings mentioning about communal riots and F demolition of the Babri Masjid. He admitted that on 12.03.1993, he left the Al-Hussaini building in a Maruti Van bearing No. MFC 1972 in order to attack the Bombay Municipal Corporation building which was the target entrusted to him and to his team.

G 165. When he was in custody, he came to know that most of other accused have also made confessions like him. He also admitted that he was aware that they will be caught for the destruction caused in bomb explosions and the maximum penalty will be death. Assistant Commissioner of Police, Mr. Babar had told him in Killa Court that if he agreed to become H a prosecution witness and make a true and full disclosure of

events, he will be granted pardon to which he agreed. According to him, he read the Order Exh. 27. The order was directed to be produced before the Metropolitan Magistrate, 13th Court, Dadar for recording a statement under Section 164. In para 215 of the cross-examination, in categorical terms, he admitted "my statement Exh. 25A is correctly recorded except small mistakes and so what I deposed before the Court in my examination-in-chief and recorded on Page 138 in para 88 to the effect that my statement recorded on 28.06.1993 and 29.06.1993 is correctly recorded, is correct."

166. In para 233 of his cross-examination, PW-2 has admitted that "the contents of the retraction (Exh-D-2) are not his statements as it contains language and words of a qualified person conversant with legal terminology". For another question, he specifically denied that prior to becoming an approver, he was trying to extract money from other accused persons. He also denied the allegation as incorrect that on 05.10.1993 he expressed his unwillingness to become an approver and showed his anxiety to join the company of other accused. He also denied the allegation that while he was in police custody, the police obtained his signature on blank sheets.

167. With regard to the Al-Hussaini Building, he stated that there were certain open and closed garages. He described that the Al-Hussaini building is a multistoried building and Mahim Police Station is situated at a walking distance of one minute from the said Building. In para-243 of his statement, in categorical terms, he admitted that "I have participated in all the stages of conspiracy till Bombay blasts on 12.03.1993 i.e. in landing of arms and ammunitions and explosives, weapons training at Islamabad, survey of targets chosen for causing bomb explosions in various meetings held to plan things and also in planting of motor vehicle bombs near Shiv Sena Bhavan and in the unsuccessful attempt to attack i.e. preparation by proceeding towards the goal in a Maruti Van MFC-1972 to

A attack Councillors of BJP and Shiv Sena in B.M.C. Building at V.T."

168. Regarding weapons training, he mentioned in para 244 that "It is correct to say that for the first time in my life, I B was given weapon training in handling and operation of AK-56 rifles, 9 mm pistols, handgrenades and RDX explosives during the period 17.02.1993 to 27.02.1993. Before this, I have never operated any fire arm. It is true that I was given a loaded Pistol at Shekhadi Coast on the night of 02.02.1993 with clear instructions to attack any outsider who comes to the landing C site, I did not tell Tiger Memon that I do not know how to operate Pistol." Regarding training and execution of work, he stated that "my object was to take training and participate in the acts in accordance with the instructions of Tiger Memon".

D 169. About his reaction after Bombay blasts, he stated in his deposition that "on 12.03.1993, after the successful explosion of bombs, my only desire was to run away and escape as otherwise if I was arrested by the police, my position would have been precarious." Regarding landing of E ammunitions and explosives, he admitted that arms and ammunitions and explosives were landed at Shekhadi in the intervening night between 02.02.1993 and 03.02.1993 and this consignment was carried out as per the instructions of Tiger Memon.

F 170. Regarding filling of RDX and other ammunition, he stated that the work of filling RDX in the motor vehicles started after half an hour of Tiger Memon's departure. According to him, there were about 10-12 motor vehicles like Ambassador cars, Maruti cars, Commander jeeps and scooters. He explained G that a motor vehicle bomb can be prepared by loading RDX explosive in its dicky or at any place in the vehicle and by fixing it with a timer pencil and that it will explode at the time set in the Timer Pencil. The time of explosion will deviate and depend on the temperature. The timer pencil which he was shown in H the training had a duration ranging from half an hour to five

hours. He and others were trained in Pakistan to prepare motor vehicle bombs.

171. In para 322, he asserted that in his statement before P.I. Pharande, DCP Bishnoi and P.I. Chavan, he had stated the truth and made full and true disclosure of all the facts within his knowledge. In his statement before these officers, he reiterated that he had stated all the relevant and important events within his knowledge. He also admitted that "he was motivated to participate in this heinous crime by Tiger Memon by arousing his sentiments by administering oath on holy Quran for taking revenge of the demolition of Babri Masjid, riots in Bombay and Surat in which Muslim people had suffered a lot, destruction caused in communal riots in Bombay and Surat, restrictions imposed on 'Azaan' and 'Namaz' and dishonouring of their family members in riots and Government remaining silent and hence, he got prepared to participate in the crime to take revenge."

172. With regard to the relationship of A-1 with his brother and others, it was stated by him that "In my statement before P.I.Chavan I have stated that Yakub Memon, with one more person had come to receive us at the Sahar Airport on our return from Dubai as stated by me before the Court which is recorded on Page: 108 Para 60. Similarly, I also stated that I along with Bashir Khan sat in the Ambassador Car in which Yakub Memon and one more person were there, as stated by me before the Court, but, it is not recorded in my statement before P.I.Chavan, I can not assign any reason why it is not recorded by P.I.Chavan." He also reiterated that his confessional statement was recorded as per his narration and DCP, Bishnoi (PW-193) used to dictate it to the typist as per his say.

173. He is also very well aware of the fact that giving false evidence in Court is an offence and asserted that he is a law abiding citizen. In para 364, he fairly accepted that after recording his statement and after its completion, he signed it

A on all the pages at the bottom and at the end of the statement before he came out of the office of the DCP. After his signature, DCP Bishnoi checked up his signature on all the pages and, thereafter, he also signed the same.

B 174. About his willingness to confess his guilt before the Court, let us consider whether all the required formalities and procedures have been complied with by the concerned investigating officer and the court concerned. The Chief Investigating Officer, Bomb Blast Case, in his letter dated 28.09.1993, addressed to the Chief Metropolitan Magistrate C stated that after the Bombay blast that took place on 12.03.1993, one of the accused, namely, Mohammed Usman Ahmed Jan Khan (PW-2) who also participated right from the conspiracy ending with blasts on 12.03.1993 and who had been arrested has submitted an application from jail on D 20.09.1993 expressing voluntary readiness and willingness to confess his guilt before the Court. In the said letter, it was further stated that during the investigation, it has transpired that a conspiracy was hatched between the accused persons in Dubai and in pursuance of the said conspiracy, some of the E accused persons involved in the blasts were sent to Pakistan for training in handling RDX explosives, firearms, grenades etc. It further transpired during investigation that the said conspiracy was hatched in order to strike terror in people as well as to affect adversely the harmony between Hindus and Muslims and F also to wage war against the Central and the State Government. In the said letter, it was further stated that except the participants, nobody had any personal knowledge of how, when, where and why the criminal conspiracy was hatched and how all the details were chalked out to perfect the said G conspiracy, how different acts were carried out with determined intention of achieving the object of the said conspiracy including training in Pakistan, how RDX explosives and other firearms were smuggled into India, how the RDX laden vehicles were planted at different places in Bombay and how the bomb blasts H took place. The officer has further stated that the said accused

(PW-2) has voluntarily expressed his desire to confess before the Court out of repentance. Accordingly, he suggested that instead of his mere confession, his evidence before the Court as a prosecution witness would help the prosecution to a great extent in collecting evidence against such other offenders. He also noted that inasmuch as the accused is repenting very much and is prepared to run the risk of giving a judicial confession, the said accused would be a very good witness as an approver if pardon is granted to him by this Court. Hence, it was urged that it is necessary to tender pardon to the said accused on the condition of his true and full disclosure of all the facts and circumstances within his knowledge so far as conspiracy hatched in Dubai, training in Pakistan, smuggling of RDX and landing of the same at Dighi and Shekhadi coasts, transportation of RDX to Bombay, filling of the vehicles with RDX and planting of the same at important places in Bombay on 12.03.1993 and other acts incidental thereto are concerned. With these particulars and details, the Chief Investigating Officer prayed before the Court or such other Metropolitan Magistrate that he may kindly be directed to record his statement under Section 164 of the Code.

175. The said application of the Chief Investigating Officer, Bombay Bomb Blast case on 28.09.1993 was submitted to the Court through Special Public Prosecutor Shri Nikam. Shri Nikam has also produced the warrant issued by the Designated Court in Misc. Application No. 632 of 1993 in TADA Special R.A. No. 34 of 1993. In the said warrant, the Designated Court directed that the accused Mohammed Usman Jan Khan be produced and forwarded to the Court of Chief Metropoitan Magistrate on 28.09.1993 at 1200 hours with a direction to the said Court to tender pardon to him on the condition of his true and full disclosure of facts pertaining to the Bombay blast offences within his personal knowledge. Thereafter, after fulfilling all the formalities, the said accused was first questioned by the Chief Metropolitan Magistrate, Bombay at 4.15 p.m. The accused stated that he is aware that he is before the Court of

A Chief Metropolitan Magistrate of Bombay. Thereafter, the Chief Metropolitan Magistrate showed the accused his handwritten application dated 20.09.1993 addressed by him from Bombay Central Prison to Shri M.N.Singh, Joint Commissioner of Police, Bombay. The accused identified his hand writing and B his signature. On being confronted with this letter, the accused stated that the letter was written by him voluntarily. The Chief Metropolitan Magistrate, thereafter, asked the accused as to whether he was aware as to why he was being produced before him. By way of reply, the accused stated that he was involved C in the Bombay blasts which took place in Bombay on 12.03.1993 along with other persons in a conspiracy and as he desires to disclose all these things in full detail, he is being produced before him. The Chief Metropolitan Magistrate further noted that he was prepared to make all the disclosures in detail. D The accused also replied that he is ready and willing to stand as a witness for prosecution and would make all these disclosures if pardon is granted to him. The Chief Metropolitan Magistrate has also recorded that on going through the replies given by the accused to several queries, he was satisfied that E the accused is ready and willing to give a full and true disclosure of all circumstances within his knowledge relating to Bombay Bomb Blasts Case. The Chief Metropolitan Magistrate has also carefully perused the report of the Chief Investigating Officer and was fully satisfied that it is a case of conspiracy and in pursuance to the said conspiracy, the accused and other F persons had planted and caused explosion of bombs at various places in Bombay on 12.03.1993. Therefore, he was satisfied that the grounds given by the Chief Investigating Officer in his application were true and correct. After recording the same, on 28.09.1993 itself, he passed an order in view of powers G conferred on him under Section 306 of the Code and tendered pardon to the accused-Mohammed Usman Jan Khan (PW-2) on the condition of his making full and true disclosure of all the circumstances within his knowledge relating to the blasts which occurred on 12.03.1993 and also in respect of the offence of H conspiracy and such other offences connected therewith in the

commission thereof. The said order has been read over and explained to the accused in Hindi and he accepted the tender of pardon on the aforesaid condition. Pursuant to the same, the Superintendent, Central Jail, Bombay was directed to keep the accused (PW-2) in a separate cell under proper surveillance and to make him available for the purpose of producing him before the Metropolitan Magistrate for recording his statement under Section 164 of the Code as requested by Chief Investigating Officer. The above mentioned letter of the Chief Investigating Officer dated 28.09.1993 and the consequential order passed by the Chief Metropolitan Magistrate dated 28.09.1993 giving pardon and recording his statement satisfy the procedure prescribed and there is no flaw with regard to the grant of pardon and the recording of his statement thereafter.

176. A perusal of the entire evidence of PW-2 clearly show that at no point of time he acted under pressure to become an approver. It is also clear that after serious thought and due to repentance, he realized that in such a serious matter it is better to reveal all the details to the Court. He withstood the lengthy cross-examination. PW-2's testimony runs into hundreds of pages and he covered all the aspects starting from initial conspiracy and ending with execution of blasts at various places in Bombay on 12.03.1993. We are also satisfied that his confessional statement before the Deputy Commissioner of Police and his statement before the Designated Court are not borne out of fear but due to his conscience and repentence. We are also satisfied that his statement is believable and merely because at one or two places, he made certain comments on the omission/addition in the statement recorded by the Chief Investigating Officer, it does not materially affect the statement. On the whole, his testimony is reliable and acceptable and the Designated Court rightly relied on his entire statement in support of the prosecution case.

177. It was further contended by learned senior counsel

A that the evidence of the approver does not incriminate the appellant (A-1). The deposition of PW-2 reveals several incriminating circumstances against the appellant (A-1) which may be summarized as follows:

B (i) PW-2 identifies the appellant in Court.

(ii) PW-2 has deposed that on being told by Tiger Memon (AA), the appellant gave six air tickets to Javed Chikna (AA) at Al-Hussaini Building on 11.02.1993 for going to Dubai. PW-2 and Asgar Mukadam (A-10) were also C present at the flat of Tiger Memon where the appellant handed over air tickets to Duabi. Further, the fact that three air tickets were given by the appellant to Javed Chikna instead of six has been expressely denied by PW-2.

D (iii) These six air tickets were actually used by the accused persons to undergo training in Pakistan where they went via Dubai. The appellant was thus instrumental in achieving the ultimate object of conspiracy by arranging for and handing over the air tickets to accused persons in the E presence of Tiger Memon.

(iv) On return from arms training in Pakistan, PW-2 states that Tiger Memon (AA), Javed Chikna (AA), Bashir Khan (AA) and he returned together from Dubai to Bombay on 04.03.1993 by Emirates Flight. At the airport, two cars F were waiting to receive them and PW-2 sat in an Ambassador car in which the appellant was also present.

178. PW-2 stated that the tickets were given by the appellant to a co-conspirator which fact has been corroborated G by A-10 in his confessional statement. If this evidence is considered along with the fact that these tickets were arranged by the appellant (A-1) and he was present in the meeting of the co-conspirators, i.e., in the meeting of Tiger Memon, PW-2, Javed Chikna and A-10, it very clearly establishes his unity with H the object of the conspiracy.

179. The prosecution has established by evidence that arranging the tickets to Dubai was one of the responsibilities of A-1. It is very clear that the deposition of PW-2 to the extent that when PW-2 and other conspirators were called by Tiger Memon, Yakub Memon was also present there, who on being asked by Tiger Memon, handed over the tickets to a co-conspirator which clearly establishes the active participation of A-1 in the conspiracy. If it was a conspiracy only known to Tiger Memon and Yakub Abdul Razak Memon did not share the object of the conspiracy with the Tiger Memon and other co-conspirators then Tiger memon would not have met with the co-conspirators in the presence of A-1. The fact that the co-conspirators were called for the meeting in the presence of A-1 and were being given instructions by Tiger Memon about the conspiracy in his presence clearly establish the active participation of A-1 in the conspiracy.

180. It has further come in evidence that when PW-2 returned from Dubai along with Tiger Memon and other co-conspirators, A-1 was present with the car at the airport and returned to Mahim along with other co-conspirators. In fact, if A-1 had gone to the airport to receive his brother only, he would then have returned in the car with his brother alone. However, he came back in the car with other co-conspirators which also show his familiarity with other co-conspirators.

181. It has also been contended by learned senior counsel for A-1 that the evidence of an approver is very weak and reliance has been placed on various decisions of this Court to that effect. In the light of the provisions of Section 133 read with Section 114 Illus (b) of the Evidence Act this Court has held that the evidence of an approver needs to be corroborated in material particulars. The evidence of the approver has been corroborated in material particulars by way of primary evidence by the prosecution. The following table may summarise the corroboration provided by various materials and evidence on record:

| Sr. No. | Deposition of PW-2 | Corroborating Evidence |
|---|---|---|
| 1 | Stay of co-accused and Meeting at Hotel Big Splash by Tiger Memon | Entries in the Big Splash Hotel (Register) Confession of co-accused A-24, A-12, A-15, A-29 and A-64.<br><br>Employees of Hotel Big Splash – PWs 141 and 304. |
| 2 | a) Participation in Ist Landing-Unloading and loading at Wagni Tower | Confession of co-accused A-14, A-17, A-64, A-16, A-12, A-29, A-15, PW-108 and PW-137 (Watchman of Wagini Tower), PW-145 (panch), PW-588 (I.O.) |
| | b) Participation in IInd landing –Stay at Persian Darbar Hotel-During transportation –visit of 2 | Confession of co-accused A-64, A-16, A-100, A-24, A-58, A-14, A-17 and A-11 Art.-1. Entries in Hotel Customs Officer. Register by name M.V. Khan. Exh. 20. (A-14), A-82 and A-113. |
| 3 | Handing over of Tickets by A-1 | PWs-311, 341, 420 Confession of A-46, A-67 and A-10. |
| 4 | Departure to Dubai and from Dubai to Pakistan for training | Exh. 21-A – Embarkation Card (Emirates) Confession of A-100, A-52, A-16 and A-32. Immigration Officers-Bill-1244 |

| | | | |
|---|---|---|---|
| 5 | Assumed names given to the trainee's co-accused | Exs. 1243, 1244, 1247, 1245<br>A-52, A-100, A-32, A-36, A-49, A-98, A-16, A-64, A-29. | A |
| 6 | No checking at the time of arrival in Pakistan | Passport of A-77, Exh. 1730<br>A-29 Exh. 1731.<br>A-98 Exh. 648 | B |
| 7 | No checking at the time of Departure from Pakistan | Confession of co-accused A-39, A49, A-98, A-64, A-52 and A-16. | C |
| 8 | Administration of Oath at Dubai by Tiger Memon | Exh. 2487 – Tigers presence at Dubai.<br>Exh. 2490 – Ayub's Passport.<br>Confesion of co-accused A-64, A32, A-36, A-39, A-49, A-98, A-52 and A-16. | D |
| 9 | Arrival in India | Disembarkation Card-Exh. 22 – Emirates and other Disembarkation Card and Immigration Officer. | E |
| 10 | Meeting at Taj Hotel | Confession of co-accused A-44 | F |
| 11 | Meeting at the residence of accused Mobina on 07.03.1993 | Confession of co-accused A-32, A-52, A-49, A-13, A-64 and A-100. | |
| 12 | Survey of Shiv Sena Bhavan and Sahar Airport | Confession of co-accused A-100 and A-64. | G |
| 13 | Meeting at the residence of Babloo | Confession of co-accused A-64, 39, 16 and A-98. | |
| | | | H |

| | | |
|---|---|---|
| 14 | Selection of targets | Confession of co-accused A-64, 39, 16 and A-98. |
| 15 | Meeing at the residence of Mobina | Confession of co-accused A-52, 64, 100 and A-13. |
| 16 | Survey of Chembur Refinery | Confession of co-accused A-39. |
| 17 | Meeting at the residence of Tiger Memon Distribution of Money | Confession of co-accused A-64, 13, 52, 100, 49 and A-29. |
| 18 | Departure of Tiger Memon | Exh. 2487-Tiger's Passport. Confession of co-accused A-10 and A-9. |
| 19 | Filing of RDX | Confession of co-accused A-57, 12, 39, 49, 64, 23 and A-43. |
| 20 | Planting at Shiv Sena Bhawan | Confession of A-16, PW-11 and 12 identified Pw-2 and A-16. PW-469-SEM, TI Parade. Letter to FSL 2447, 2469. FSL opinion 2447A, 2448. |
| 21 | Distribution of Handgrenades for throwing at Mahim | Confession of co-accused A-32, 36, 39, 52, Pws-5 and 6 and PW-13. |
| 22 | Member of Maruti Van MFC-1972 with other co-accused | Seizure of Van-Pw-46 and PW-371. |
| 23 | Presence at Tonk | Confession of co-accused A-20 and A-130. |
| 24 | Stay at Hotel Harry Palace-New Delhi in the name of Nasir Khan. Natraj-Howrah | Art. 2 Exh. 3. Art. 3, Exh. 24. |

182. It is further contended by the appellant (A-1) that the statement of approver dated 25.06.1993 given to DCP Bishnoi-(PW-193) was subsequently retracted in terms of a letter dated 10.12.1993 and, accordingly, should not be relied upon. The said statement has not been pressed into service by the prosecution during the course of trial against any accused person including the appellant. PW-2 has himself explained the episode leading to the drafting of the said retraction and stated that the said statement was drafted at the instance of one Hanif Kadawala and Samir Hingora. The witness remained unshaken about the said aspect in the deposition. PW-2 was clear that he was told in jail by Hanif Kadawala and Samir Hingora that unless PW-2 retracts his statement they would finish him and his family. The following extracts from the deposition are pertinent in this regard:

Para 142 of the cross-examination of PW-2

".....(The attention of the witness is drawn to one letter tendered by Majeed Memon) "This letter has been written by me at the instance of Hanif and Samir at the time I was made to write my retraction by them. The letter is marked as Exh. D-1. This letter D-1 was got prepared as a rough note on the basis of which my retraction was finalized on 10.12.1993. The application dated 10.12.1993 retraction is marked as D-2. At the time in my examination in chief on 21.07.1995 whebn I stated before the court that Exh. D-2 was obtained from me by Hanif Kadawala and Samir Hingora I did not mention that there was another letter or letters obntained by them like the letter Exh. D-1. Witness volunteers that there were two/three such letters prepared and on the basis of all such letters the retraction Exh. D-2 was finalized and produced before the Court. I did not read it but has written Exh. D-1 as dictated to me by Hanif Kadawala and Samir Hingora. All these letters which were prepared before the retraction D-1 were in possession of accused Hanif Kadawala and Samir Hingora. I did not

A want to die. Today I do not fear deasth. At this stage witness complains to the Court that his family members are receiving repeated threats and on Saturday i.e. 29.07.1995 in his jail mulaquat he was informed that the family is receiving threats he suspects the threats are
B coming from Samir Hingora and Hanif Kadawala. The witness wants the court to take necessary action."

Para 143

"...It is not correct to say that no threats have been
C received by my family members and tht I am mentioning this in the Court falsely." In my statement Exh. 25-A recorded by DCP Bishnoi there is no mention on names Hanif Kadawala and Samir Hingora because at that time I was not concerned with them. Till Friday 28.07.1995 I did
D not tell about these letters like D-1 and others to any authority or to the court as it was not asked. I had made a complaint to the court. I have made an oral complaint 15/ 20 days of filing the retraction Exh. D-2. I did not make any complaint t the court as I was with the accused persons in
E jail and I was afraid of them."

Para 91

"....I sign in Hindi and English as per my choice. I can read write and understand English. .....It is true that his
F application was written by me and is signed by me and it was forwarded to the court. This application is written in my hand. This application was not presented by me but it was presented by hanif Kadawala and Samir Hingora. This application was obtained from me against my wish. I did
G not complain of this to the court at any time till today. I did not complaint to the Superintendent Jail about this application that it has been obtained from me by the other two accused against my wish either orally or in writing.

H Para 233

"The contents of the retraction D-2 are not mine as it contains language and words of a qualified person conversant with legal terminology. The retraction D-2 was written by me during the day on 9-12-1993 and was submitted in the court on 10-12-1993 through the Jailor. This was written by me when I was with other accused persons in the circle. In my Retraction Exhibit D-2 there is no reference of Samir Hingora nad Hanif kadawala....."

Ans: "I did not tell the court because I was kept with the accused persons and was under their influence and pressure".

Para 234... "It will be correct to say that Hanif Kadawala, Samir Hingora and Abdul Hamid Birya these three accused persons had filed an application before this court on affidavit that I am demanding monies from them. I do not know what were the contents of the affidavit filed by these three accused persons before this Court. I was informed by these accused persons that they are going to file such an affidavit in the court before it was filed in the court on 1-10-1993. The accused Abdul Hamid Birya was not in it and he did not tell me that he was going to file such an affidavit. It is not correct to say that I demanded a huge sum of money from hanif kadawala and samir hingora for not becoming an approver. It is not correct to say that I also told them if they do not give me money I will falsely implicate them. It is not true that for these reasons the accused Hanif kadawala and Samir Hingora filed an application on oath before this court on 1.10.1993. It is not correct to say that similarly I have been demanding monies from other accused persons otherwise I threatened them of falsely implicating them in the case. It is not correct to say that at the instance of police I was pressurizing the accused persons to turn approver like me....."

In para 235...."It is not correct to say that prior to becoming an approver I was trying to extract money from the other

A accused persons. It is not correct to say that as I did not get Satisfactory response from the accused persons I turned to the police expressing my willingness to become an approver and negotiated terms and conditions with them. It it not correct to, state that I made deliberate B mistakes in my letter addressed to Mr. M.N.Singh i.e. Exh. 26 in order to keep my options open. It is not correct to state that after making an half hearted attempt of becoming an approver I again started demanding money from the accused to decide on the names of involvement and non- C involvement in my evidence. It is not correct to state that immediately, prior to my evidence in the court and during my evidence being recorded & I coerced or induced the accused persons at the instance of police to turn approver in the case like me and failed. It is not correct to state that my evidence before the court and attribution of roles of D various accused persons is guided by this consideration."

Para 236..."It is not correct to state that retraction D-2 was prepared by me with the assistance of co-accused persons on my request and willing. It is not correct to state that I E approached the accused S M Thapa, R K Singh and Mr. Sayyed of the Customs Department by requesting them to prepare an effective retraction. It is not correct to state that retraction D-2 was read over and understood by me and I willingly signed it in the presence of jailor for dispatch F to this court."

Para 237.... "It is correct to state that the co-accused facing trial in this case were unhappy on my becoming an approver. It is not correct to say that in order to convince the accused persons that in reality I have not become an G approver and I have mislead the police by writing exhibit 26 in which I have deliberately made three important mistakes and that the accused should be rest assured that I am not an approver, I wrote the letter D-1 to be retained as a documentary proof of the above fact with the H accused."

Para 238...."It is not correct to state that on 28-9-1993 before I signed Exhibit 27 the order was not read over to me or I read it. It is not correct to state that Hanif kadawala and Samir HIngora never threatened me at any time. It is not correct to state that I did not write anything like D-2 under the threat or influence of Hanif and Samir. It is not correct to state that letter Exhibit D-1 is not a preparatory note."

Para 243...."It is not true to say that my confession Exhibit 25-A is involuntary and my retraction Exhibit D-2 is voluntary. It is not true to say that my letter Exhibit D-1 is true expression of events written by me in the said letter on my own accord and independent of any external influence. It is not true to say that it is not possible for any co-accused to repeatedly give threats to other accused and extract any writings spread over several days. It is not correct to say that accused Hanif kadawala and Samir Hingora never gave me any threats and never asked me to write anything against my wish anytime. It is not true to say that I am making false statement against Hanif and Samir because they refused to pay monies demanded by me."

183. It has been further contended by the appellant (A-1) that there are variations in the statement given by PW-2 in relation to the air tickets to Dubai. PW-2, in his examination-in-chief has clearly stated that the appellant (A-1) gave six air tickets for Dubai to Javed Chikna (AA) on 11.02.1993, on the instructions of Tiger Memon. This statement has been clarified by PW-2 in his cross-examination where he confirms that "It did not happen that Tiger Memon told Yakub Memon to give six air tickets to Asgar and Yakub Memon gave six air tickets to Asgar. The air tickets were given to Javed Chikna by Yakub Memon as told by Tiger Memon..." It is wrongly recorded in my statement Exhibit 25A. I cannot assign any reason why it is so recorded." Further, PW-2 has clarified his statement and

A asserted that it was the appellant (A-1) who gave the air tickets. It is further submitted that there is no contradiction about the fact that such a meeting amongst the co-conspirators took place where the appellant (A-1) was present and he was asked to provide the tickets. The contradiction pointed out by the B defence does not go to the root of the matter and is not a material contradiction.

184. In the light of the above discussion, we hold that the evidence of PW-2 very clearly implicates the appellant (A-1) in respect of his involvement in the conspiracy.

C

**Grant of Pardon under Section 306 of the Code to Mohammed Usman Ahmed Zan Khan/(PW-2)/Approver**

185. It was submitted by learned senior counsel for A-1 D that TADA is a complete Code containing provisions for setting up of Designated Courts, conduct of trials, awarding of punishment etc. The said Act does not contain any provision for the grant of pardon as contained in the Code, namely, Sections 306, 307 and 308. It was submitted by learned senior E counsel that the power to grant pardon is a substantive power and not a procedural power, and as such, the same has to be conferred specifically and cannot be assumed to be an inherent power of a Court. In the instant case, pardon has been granted by the Chief Metropolitan Magistrate, Bombay to PW-2 though there was no specific power of grant of pardon in TADA with F the Chief Metropolitan Magistrate, and as such, the said pardon is ultra vires the scheme of TADA and the evidence of the said persons cannot be relied upon against the appellant.

186. In reply to the above contention, learned senior G counsel for the CBI placed reliance on a three-Judge Bench decision of this Court in *Harshad S. Mehta & Ors. vs. State of Maharashtra* (2001) 8 SCC 257 wherein an identical objection was raised, namely, in the absence of specific provisions for grant of pardon, the Special Court has no power to grant pardon H under Special Court (Trial of offences relating to prosecutions

in Securities), Act, 1992. Taking note of various provisions of the Code, particularly, Chapter XXIV, this Court repelled the said contention. Chapter XXIV of the Code deals with general provisons as to inquiries and trials. Sections 306 and 307 of the Code deal with tender of pardon to an accomplice. Section 306 confers power upon the Magistrate and Section 307 on the Court to which commitment is made. Section 308 provides for the consequences of not complying with the conditions of pardon by a person who has accepted tender of pardon made under Section 306 or Section 307. The relevant provisions of the Code read as under:

> "**306. Tender of pardon to accomplice.**—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any, stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.
>
> (2) This section applies to-
>
> (a) Any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).
>
> (b) Any offence punishable with imprisonment, which may extend to seven years or with a more severe sentence.

A (3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

(a) His reasons for so doing;

(b) Whether the tender was or was not accepted by the person to whom it was made,

B

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

C (4) Every person accepting a tender of pardon made under sub-section (1)-

(a) Shall be examined as a witness in the court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

D

(b) Shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has, been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case.

E

(a) Commit it for trial-

F (i) To the Court of Session if the offence is triable exclusively by that court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) To a court of Special Judge appointed under the Criminal Law Amendment Act 1952 (46 of 1952), if the offence is triable exclusively by that court;

G

(b) In any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

H

**307. Power to direct tender of pardon.**—At any time after commitment of a case but before Judgment is passed, the court to which the commitment is made may, with a view, to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

**308. Trial of person not complying with conditions of pardon.**(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial the court shall-

A (a) If it is a Court of Session, before the charge is read out and explained to the accused;

(b) If it is the court of a Magistrate before the evidence of the witnesses for the prosecution is
B taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the court shall record the plea and proceed with the trial and it shall, before passing
C judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall notwithstanding anything contained in this Code, pass judgment of acquittal.

D In the case on hand, it was also contended that grant of pardon being a special power has to be conferred specifically. After adverting to the above mentioned provisions of the Code and in the absence of any specific exclusion or bar for the application for grant of pardon by Special Courts in the Code,
E in *Harshad S. Mehta* (supra), this Court has concluded "but it does not necessarily follow therefrom that the power to tender pardon under Sections 306 and 307 has not been conferred on the Special Court". In para 22, the Court has held as under:

"22. The Special Court may not be a criminal court as
F postulated by Section 6 of the Code. All the same, it is a criminal court of original jurisdiction. On this count the doubt, if any, stands resolved by the decision of the Constitution Bench of this Court in A.R. Antulay v. Ramdas Sriniwas Nayak. In Antulay case the Constitution Bench
G said that shorn of all embellishment, the Special Court is a court of original criminal jurisdiction and to make it functionally oriented some powers were conferred by the statute setting it up and except those specifically conferred and specifically denied, it has to function as a court of
H original criminal jurisdiction not being hidebound by the

terminological status description of Magistrates or a Court of Session. Under the Code, it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied."

187. Posing these questions, the Bench analysed to see whether power to grant pardon has been specifically denied to the Special Court established under the Act. The contention of the learned senior counsel was that the Act does not postulate commitment of the case to the Special Court and no provision having been inserted in the Act to empower the Special Court to tender pardon, hence, the impugned order granting pardon is without jurisdiction. In para 35, the Court has observed as under:

**"35.** There cannot be any controversy that there is no express provision in the Act excluding therefrom the applicability of Sections 306 and 307 of the Code. Can it be said to be so, by necessary implication, is what we have to determine."

The following conclusions are also relevant:

**"51.** The Code has been incorporated in the Act by application of the doctrine of legislation by incorporation. The power to grant pardon has not been denied expressly or by necessary implication. As earlier stated after decision in the case of A.R. Antulay it was not necessary to make specific provision in the Act conferring power on the Special Court to grant pardon at trial or pre-trial stage. The Special Court is a court of original criminal jurisdiction and has all the powers of such a court under the Code, including those of Sections 306 to 308 of the Code, the same not having been excluded specifically or otherwise.

**52.** There is no provision in the Act which negates the power of the Special Court to grant pardon. The Special Court has power to grant pardon at any stage of the

A proceedings. The power under Section 307 cannot be denied merely because no commitment of the case is made to the Special Court. Learned Solicitor-General, in our view, rightly contends that the other statutes are only an external aid to the interpretation and to rely upon the B omission of a provision which is contained in another different enactment, it has to be shown that the two Acts are similar which is not the position here. The scheme of the two Acts is substantially different as has been earlier noticed by us. It is also evident from Fernandes case as C well".

188. After arriving at such a conclusion, the Bench, in para 55 held as under:

"**55.** In the present case, we are unable to find either any D inconsistency or any provision which may indicate expressly or by necessary implication the exclusion of the provision of the Code empowering grant of pardon."

After saying so, the Bench concluded as under:

E "**62.** Our conclusion, therefore, is that the Special Court established under the Act is a court of exclusive jurisdiction. Sections 6 and 7 confer on the court wide powers. It is a court of original criminal jurisdiction and has all the powers of such a court under the Code including F those of Sections 306 to 308."

The above conclusion fully supports the stand taken by CBI and the ultimate decision arrived at by the Designated Court.

189. It was argued by learned senior counsel appearing G for the CBI that the word 'notwithstanding' appearing in various provisions of TADA shows that the Code would apply to all cases unless specifically provided for in the TADA. He placed reliance on Section 4(2) of the Code which provides as follows:

H "All offences under any other law shall be investigated,

inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

The other decision relied upon by learned senior counsel for the CBI to support his contention that the power of pardon does exist by necessary implication to cases under TADA is *Lt. Commander Pascal Fernandes vs. State of Maharashtra & Ors.* (1968) 1 SCR 695 in which question relates to tendering pardon to a co-accused under Section 8(2) of the Criminal Law Amendment Act of 1952. A three-Judge Bench of this Court, even after finding that Special Judge created under the Criminal Law Amendment Act, 1952 (Act 46 of 1952) is not one established under the Code held, "For the cases triable by Special Judges under Criminal Law Amendment Act, a special provision is to be found in Section 8(2) of that Act, for tender of pardon to an accomplice, as part of the procedure and powers of Special Judges".....On the tender of pardon by the Special Judge the provisions of Sections 339 and 339-A of the Code will apply".

190. It was submitted on behalf of the appellant that even if Section 306 of the Code is held to be applicable, power to grant pardon could be exercised only by the Designated Judge and not by the Chief Judicial Magistrate and as in the present case the power was exercised by the Chief Metropolitan Magistrate and not by the Deisgnated TADA Judge, the said exercise of power was illegal and renders the grant of pardon bad in law. The above contentions of Mr. Jaspal Singh, learned senior counsel for A-1 are not acceptable since several provisions in TADA clearly show that Code would apply to all cases. In view of Section 4 of the Code, trial of all offences under the Indian Penal Code or any other laws including TADA have to be investigated, enquired into, tried and dealt with according to the provisons contained in the Code which read as under:

A "4.**Trial of offences under the Indian Penal Code and other laws.** -(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

B

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with C such offences."

Section 4(2) of the Code makes it clear that all the offences under any other law shall be investigated, inquired into, tried and dealt with according to the provisons of the D Code but subject to specific clause/reference of the Special Act. It is also clear from Section 5 of the Code that in the absence of specific provisons in any enactment, the provisions of the Code shall govern for the purpose of investigation, enquiry etc. As per Section 2(1)(b) of the E TADA, 'Code' means the Code of Criminal Procedure, 1973 (2 of 1974). Section 7(3) of TADA makes it clear that the provisions of the Code shall, sofaras may be and subject to such modification made in the Act, apply to the exercise of powers by the officer under sub-Section 1. F Section 7(1) of TADA makes it futher clear that notwithstanding anything contained in the Code or in any other provision of this Act (TADA), the Central Government, for proper implementation of the provisions of the Act confers upon any officer, the power to investigate and G proceed under the Act. As per Section 9, the Central Government or the State Government may, by notification in the Official Gazette, constitute one or more Designated Courts for such area or areas or for such class or classes or group of persons by specifying in the Notification. Procedure and power for Designated Courts have been H mentioned in Section 14 of TADA. Section 14(2) makes

it clear that if any offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-Section 1 of Sections 260 or 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code shall apply to such trial. Section 14(3) of TADA specifically confers upon the Designated Court all the powers that can be exercised by a Court of Sessions under the Code which includes the power to grant pardon under Section 306 of the Code. Section 14 of TADA provides as follows:

**"14. Procedure and powers of Designated Courts.** — A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

A Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

B (3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, **have all the powers of a Court of Session** and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

C

(4) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of Section 11 shall be dealt with as if such case had been transferred under Section 406 of the Code to such
D Designated Court.

(5) Notwithstanding anything contained in the Code, a Designated Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any
E witness, subject to the right of the accused to recall the witness for cross-examination.

Section 18 also makes it clear that after taking congnizance of any offence, if the Designated Court is of the
F opinion that the offence is not triable by it or it shall notwithstanding that it had no jurisdiction to try such offence, transfer the case for the trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of offence as if it had
G taken cognizance of the offence. Section 20 of the Act makes it clear that certain provisions of the Code are automatically applicable and the Designated Court is free to apply those provisions from the Code for due adjudication of the cases under the Act. So, from the above, it is clear that no provision
H of TADA is inconsistent with the provisions of the Code of

Criminal Procedure, 1973, for grant of pardon as envisaged under Sections 306 to 308. While upholding the power of the special courts established under a Special Courts Act to grant pardon under Section 306 of the Code, this Court, in *Harshad S. Mehta* (supra) held thus:

> "61. ... It is also not possible to accept that it was intended by necessary implication that the Special Court under the Act shall not have the power to grant pardon. All powers of Sections 306 to 308 to the extent applicable and can be complied are available to the Special Court under the Act. The provisions of the Act and the Code can stand together. There is no inconsistency. The two statutory provisions can harmoniously operate without causing any confusion or resulting in absurd consequences and the scheme of the Code can, without any difficulty, fit in the scheme of the Act...."

Further, TADA does not preclude the applicability of Section 306 of the Code. As observed earlier, Section 306(2)(b) is clear in that it is specifically applicable to instances where the offence for which an accused is being tried is punishable with imprisonment extending to seven years or more. In the instant case, the approver was accused of offences which carried the maximum punishment as capital punishment.

191. The object of Section 306 is to tender pardon in cases where a grave offence is alleged to have been committed by several persons so that the offence could be brought home with the aid of evidence of the person pardoned. The legislative intent of this provision is, therefore, to secure the evidence of an accomplice in relation to the whole of circumstances, within his knowledge, related to the offence and every other person concerned. In the light of the above analysis, we hold that the power to grant pardon under Section 306 of the Code also applies to the cases tried under the provisions of TADA and there was no infirmity in the order

granting pardon to the approver (PW-2) in the facts and circumstances of the present case.

192. It is further contended on behalf of the appellant (A-1) that the deposition of PW-2 cannot be relied upon since the procedure laid down in Section 306(4)(a) of the Code was not followed. In the instance case, the CMM granted pardon to PW-2 on 28.09.1993 in compliance with the provisions of Section 306. Section 306(4)(a) requires that the Court of Magistrate taking cognizance of the offence shall examine the witness. In the instant case, where appellant has been charged with the offences under TADA, the Designated Court established under TADA alone has the jurisdiction to take cognizance of the offences under TADA. Section 14 of TADA provides that a Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such an offence or upon a police report of such facts. Section 306(5) contemplates committal of a case by the Magistrate taking cognizance of the offence to the court of appropriate jurisdiction. In the instant case, there did not arise an occasion for the Magistrate to commit the case to the Designated Court by virtue of above-said provision contained under Section 14 of TADA whereby the Designated Court had jurisdiction to take cognizane and try the offences in TADA. 193) This Court, in *Sardar Iqbal Singh vs. State (Delhi Admn.)* (1977) 4 SCC 536 while dealing with a case where the offence was triable by the Special Judge who also took cognizance of the offence and like the present case, no committal proceedings were involved, held as under:

> **"5.** From these provisions it would appear that where a person has accepted a tender of pardon under sub-section (1) of Section 337 at the stage of investigation in a case involving any of the offences specified in sub-section (2-B), the prosecution can file the chargesheet either in the Court of a competent Magistrate or before the Special

Judge who under Section 8(1) of the Criminal Law Amendment Act, 1952 has power to take cognizance of the offence without the accused being committed to him for trial. It follows that if the Magistrate takes cognizance of the offence, the approver will have to be examined as a witness twice, once in the Court of the Magistrate and again. in the Court of the Special Judge to whom the Magistrate has to send the case for trial, but if the chargesheet is filed directly in the Court of the Special Judge, he can be examined once only before the Special Judge. This means that in a case where the chargesheet is filed in the Court of a Magistrate, the accused gets an opportunity of having the evidence of the approver at the trial tested against what he had said before the Magistrate; the accused is denied this opportunity where the chargesheet is filed in the Court of the Special Judge. Whether the accused will get the advantage of the procedure which according to the appellant is more beneficial to the accused, thus depends on the Court in which the proceeding is initiated, and, it is contended, if the choice of forum is left to the prosecution, it will result in discrimination. Mr Sen submits that the only way to avoid this position is to read sub-sections (1), (2) and (2-B) of Section 337 of the Code and Section 8(1) of the Criminal Law Amendment Act, 1952 together and to construe them in a way to require that in every case where an accomplice is granted pardon, the chargesheet must be filed in the Court of a Magistrate.

**6.** We are unable to accept the contention. It is clear from the scheme of Section 337 that what is required is that a person who accepts a tender of pardon must be examined as a witness at the different stages of the proceeding. Where, however, a Special Judge takes cognizance of the case, the occasion for examining the approver as a witness arises only once. It is true that in such a case there would be no previous evidence of the approver against

A which his evidence at the trial could be tested, which would have been available to the accused had the proceeding been initiated in the Court of a Magistrate who under sub-section (2-B) of Section 337 of the Code is required to send the case for trial to the Special Judge after examining
B the approver. But we do not find anything in sub-section (2-B) of Section 337 to suggest that it affects in any way the jurisdiction of the Special Judge to take cognizance of an offence without the accused being committed to him for trial. Sub-section (2-B) was inserted in Section 337 in
C 1955 by Amendment Act 26 of 1955. If by enacting sub-section (2-B) in 1955 the Legislature sought to curb the power given to the Special Judge by Section 8(1) of the Criminal Law Amendment Act, 1952, there is no reason why the Legislature should not have expressed its intention
D clearly. Also, the fact that the approver's evidence cannot be tested against any previous statement does not seem to us to make any material difference to the detriment of the accused transgressing Article 14 of the Constitution. The Special Judge in any case will have to apply the well
E established tests for the appreciation of the accomplice's evidence. This Court in Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay held that the mere availability of two procedures would not justify the quashing of a provision as being violative of Article 14 and that "what is necessary to attract the inhibition of the article
F is that there must be substantial and qualitative difference between the two procedures so that one is really and substantially more drastic and prejudicial than the other . . .". In our opinion, there is no such qualitative difference in the two procedures; whether a witness is examined once
G or twice does not in our opinion make any such substantial difference here that one of them could be described as more drastic than the other. The appeal is accordingly dismissed.

H 194. In view of the above discussion and the ratio

decidendi of the decisions of this Court, we are of the view that the provisions of sub-Section 4 of Section 306 have not been violated and there is no illegality in not having examined the approver twice by the Designated Court.

**Other witnesses:**

**Evidence of Shri P K. Jain (PW-189)**

195. He joined Maharashtra Police in January 1983 as an Assistant Superintendent of Police. He was promoted as Superintendent of Police in April 1985. The rank of Superintendent was equivalent to the rank of Deputy Commissioner of Police (DCP) in Greater Bombay. He is conversant and well versed with English, Hindi, Marathi and Punjabi languages and according to him, he is able to speak, read and write the said four languages. Since January 1993, he was posted as DCP, Zone IX, Bombay. In February 1993, Zone IX of Bombay was re-named as Zone X and he functioned as DCP for Zone X up till August, 1994. He recorded the confessional statement of 96 accused persons in this case. First, he recorded the confessional statement of A-11. He explained before the Court the relevant provisions of TADA for recording a confession, procedure to be followed etc. He also deposed before the Court that before recording a confession, he used to receive a letter of requisition for the same. He also explained that on each and every occasion, he explained his position to the accused who intended to make a confession and apprised him of the fact that there was no compulsion on the part of the accused to make a confessional statement and also informed the Court that he had also explained to the accused that the confession would be used against him. He further explained that upon the production of each accused, he verified that the accused was not under compulsion and was free from any pressure either by the investigating agency or by anyone else. He also informed the Court that after highlighting all the procedures and satisfying himself, he allowed every accused to have 48 hours breathing time and asked the accused

A concerned that still if he was desirable to make such a statement he was free to appear before him in his office. His evidence also shows that whenever such accused was produced, he used to verify that no police personnel or anybody else was present inside his Chamber and recorded his confessional B statement after closing the door and only after proper verification. He also informed the Court that every accused who has made a statement before him was apprised of the fact of his position i.e. DCP, Zone X. After making sure that the accused understood his position and after verifying the C language, in which he desired to make a statement, recorded the same in his own handwriting. He also explained that no accused had raised any complaint/grievance against any police officer or police in general. He also said that he had asked all the accused who confessed before him "whether he D was under any fear or pressure or given any inducement for making the confession". After completion of his recording in his own handwriting and after explaining the same to the accused in the language known to him, he obtained the signature of the accused on all the pages. After satisfying the accused about confessional statement made and the procedure followed, he E used to handover the custody of the said accused to the police officer concerned. Thereafter, the recorded confessions were sealed in one envelope and after preparing a covering letter, the same were sent to Chief Metropolitan Magistrate. According to him, he also obtained the acknowledgement for receipt of F the same in the said Court through his subordinate officers. He also informed the Court that by following the said elaborate procedure, he recorded the confessional statements of various accused, viz., A-11, A-67, A-17, A-12 and A-9. He also informed the Court that he had issued the necessary certificate G as required under Rule 15 of the Rules. He also issued a certificate regarding the voluntariness of the confession made by the accused and the correctness of the record of the same prepared by him. He also signed below the said certificates. He also produced and marked the letters of requisition H received by him from various Investigating officers for recording

the confession.

196. In the cross-examination, he specifically informed the Court that he had not investigated any offence under TADA. He also clarified that in his Zone i.e. Zone-X, none of the bomb explosions had occurred and that no case was registered with regard to the same. He also stated that he was not asked to carry out any investigation in connection with LAC Case No. 389 of 1993 registered with Worli Police Station and according to him, the area under Worli Police Station does not fall within the jurisdiction of Zone X.

197. With regard to the allegation that confession was recorded in the Police Station, he explained that he had recorded the confession in the Chamber of DCP, Zone IV, at Matunga. According to him, the said office is situated in the building in which Matunga Police Station is also housed. However, he explained that the office of DCP, Zone IV is on the fourth floor of the said building. For a further query, he also clarified that Zone IV office is different office then the Matunga Police Station. He asserted that he had followed the procedures mentioned in the Rules and instructions while making the record of confession of all the accused whose confession were recorded by him.

**Evidence of Shri K.L. Bishnoi (PW-193)**

198. According to him, he had joined the Police Department in January, 1986 as an Assistant Superintendent of Police. He was promoted as Superintendent of Police in January, 1990 and was posted at Latur as Superintendent of Police. He was posted as DCP in Bombay from April, 1992, up till December, 1995. He worked in Bombay City in various categories. He also informed the Court that the post of Superintendent of Police in District is equivalent to Deputy Commissioner of Police (DCP) in Commissionarate area. He admitted that he had supervised one case registered with Worli Police Station then under his jurisdiction and one crime

A registered in connection with the serial bomb blasts which had occurred in the month of March, 1993. He had recorded confessions of several accused persons arrested in the year 1993 in connection with the offences for which the crimes were registered in respect of the bomb blasts which had occurred
B in the month of March, 1993 in Bombay.

199. He explained before the Court the relevant provisions of TADA for recording a confession, procedure to be followed etc. He also deposed before the Court that before recording a confession, he used to receive a letter of requisition for the
C same. He also explained that on each and every occasion he had explained his position to the accused who intended to make a confession and had apprised him of the fact that there is no compulsion on the part of the accused to make a confessional statement and also informed the Court that he had
D also explained to each accused that the confession would be used against him and there was no compulsion to make such a statement. He further explained that upon production of each accused, he verified that the accused was not under compulsion and was free from any pressure either by the
E investigating agency or by anyone else. He also informed the Court that after highlighting all the procedures and satisfying himself, he allowed the accused to have 48 hours breathing time and asked the accused concerned that still if he was desirable to make such a statement, he was free to appear before him
F in his office. His evidence also shows that whenever such accused were produced, he would verify that no police personnel or anybody else was present in his Chamber and recorded the confessional statements after closing the door and after proper verification that nobody was there inside. He also
G informed the Court that every accused who made a statement was apprised of the fact of his position i.e., DCP. After making sure that the accused understood his position and after verifying the language in which he desired to make a statement, he recorded the same in his own handwriting. He was also used
H to tell the respective accused that during the said period of two

days i.e., 48 hours, he would be kept at other Police Station away from the influence of I.O.

200. He further explained that he used to write the question after asking the same to the accused and record the answer to the said question after the same was given by the accused. He further made it clear that he was following the same procedure while making the record on the typewriter instead of writing the questions asked, he was dictating the same to the typist. After recording in the aforesaid manner, he would read over the whole confessional statement to the accused in the language known to him. He would also obtain signatures on all the pages of the concerned accused. After satisfying the accused about the confessional statement made and the procedure followed, he would handover the custody of the said accused to the police officer concerned. Thereafter, the recorded confessions were sealed in one envelope and after preparing a covering letter, the same were sent to the Chief Metropolitan Magistrate. According to him, he also obtained the acknowledgement for receipt of the same in the said Court through his subordinate officers. He also informed the Court that by following the said elaborate procedure, he recorded the confessional statements of the following accused, namely, Gul Mohammed (A-77), Asgar Yusuf Mukadam (A-10), Dawood Phanse (A-14), Shaikh Ali (A-57), Mobina (A-96), Imtiyaz Ghavate (A-15), Sanjay Dutt (A-117), Nulwala, Kersi Bapu Adejania, Mohammed Usman Jan Khan (PW-2) and Raju Kodi (A-26).

201. In respect of a question asked regarding whether during the relevant period he was not only supervising the investigation of the said case (LAC No. 381 of 1993) but also coordinating the investigation, he admitted to the same. In para 584 of his evidence, in reply, he admitted that he had the recorded confessions of accused A-14, A-10 and Sujat Alam in a period when he was supervising the investigation of the case against them. However; he clarified that the public

A prosecutor has produced and marked an order dated 22.04.1993 passed by the Joint Commissioner of Police regarding the overall supervision of investigation of the Bombay Bomb Blast case being given to the DCB (CID).

B **Recording of Confessions by Police Officers:**

202. Further, it is contended that confessions recorded before the Police Officers should be discarded since the same were recorded by the officers who were also supervising the investigation. To this, the prosecution pointed out that in the C instant case, the confessions of the accused have been recorded after following all the safeguards as enumerated under Section 15 of TADA and the rules framed thereunder. It is further pointed out that the appellants have volunteered to confess their role in the crime and they were aware of the fact D that they were under no compulsion to make a confession and that the same could be used against them. Further, this Court, in *S.N. Dube vs. N.B. Bhoir,* (2000) 2 SCC 254 negated a similar contention and held that no illegality or impropriety persists in recording of a confession by an officer supervising E the investigation:

> **"28.** The confessions have been held inadmissible mainly on two grounds. The first ground given by the learned trial Judge is that the power under Section 15 of the TADA Act was exercised either mala fide or without proper F application of mind. The second ground on which they are held inadmissible is that they were recorded in breach of Rules 15(2) and 15(3) of the TADA Rules and also in breach of the requirements of Section 164 and the High Court Criminal Manual. The learned trial Judge held that G the TADA Act was applied in this case without any justification. The permission was granted in that behalf without any application of mind. According to the trial court there was no material on the basis of which the TADA Act could have been invoked at that stage and that most H probably the said Act was invoked in order to defeat the

bail application filed by two accused in the High Court. In our opinion the trial court was wrong in taking this view. We have already pointed out earlier that Deshmukh had collected enough material on the basis of which reasonable satisfaction could have been arrived at that the acts committed by the two gangs were terrorist acts. It is no doubt true that it was wrongly reported by Deshmukh that Section 5 was also applicable in this case and that without proper verification sanction was granted to proceed under that section also. The applicability of Section 5 depended upon the existence of a requisite notification by the State Government. It was wrongly reported by PI Deshmukh in his report that such a notification was issued and relying upon his statement the higher officer had given the sanction. Merely on this ground it cannot be said that Shinde has exercised the power under Section 15 of the TADA Act mala fide. The learned trial Judge has also held that it was not fair on the part of Shinde to record the confessions as he was also supervising the investigation. Shinde has clearly stated in his evidence that he had made attempts to find out if any other Superintendent of Police was available for recording the confessions and as others had declined to oblige him he had no other option but to record them. We see no illegality or impropriety in Shinde recording the confessions even though he was supervising the investigation. One more flimsy reason given by the trial court for holding that the power under Section 15 was exercised mala fide is that the accused making the confessions were not told that they had been recorded under the TADA Act. No such grievance was made by the accused in their statement under Section 313. On the other hand, it appears from the confessions themselves that the accused were made aware of the fact that those confessions were recorded under the TADA Act.

A 203. Further in *Mohd. Amin vs. CBI,* (2008) 15 SCC 49, this Court held as under:

"**61.** The question whether confessions of Appellants A-4 to A-8 and A-10 should be treated as non-voluntary and held inadmissible on the ground that the same were made
B before the officers who were supervising the investigation deserves to be considered in the backdrop of the following facts:

*(i)* Each of the confessing appellants had volunteered to
C confess his role in the crime.

*(ii)* Their confessions were recorded strictly in accordance with the manner and procedure prescribed in Section 15 of the Act and Rule 15 of the Rules.

D *(iii)* In reply to the questions put by Shri A.K. Majumdar and Shri Harbhajan Ram, each of the confessing appellants replied that he was aware of the fact that he was under no compulsion to make confession and that the same can be used against him and that there was no threat, coercion
E or allurement for making confession.

*(iv)* When Appellant A-10 was produced before the Chief Metropolitan Magistrate, Delhi on 25-7-1996, he did state that he has not made any confessional statement but did
F not utter a word about any threat, coercion, inducement or allurement by Shri Harbhajan Ram (PW 103) for making confession.

(v) At the end of the period specified in transit warrants, all the confessing appellants were produced before the
G Magistrate concerned at Ahmedabad with an application for their remand to judicial custody. None of them made any grievance of ill-treatment, torture (physical or mental), inducement or allurement by the investigating officers or supervising officers or claimed that he had made

H

confession under any other type of compulsion. Even when they were in judicial custody, none of the appellants made a grievance that he was tortured, threatened or coerced by the investigating officers or supervising officers or that any allurement was given to him to make the confession.

(vi) All the confessing appellants were facing trial in a number of other cases [this is evident from the statement of PW 100, Mr Satyakant, the then Deputy Inspector General of Police, CID, Crime (Ext. 430)] in which they were duly represented by advocates but till the recording of the statements under Section 313 CrPC, neither they nor their advocates made a grievance regarding denial of legal assistance or alleged that any threat was given to either of them or they were subjected to physical or mental torture or that undue influence was exercised by the investigating officers or the supervising officers or any allurement was given for the purpose of making confession.

**62.** Both the investigating officers, namely, Shri R.K. Saini (PW 122) and Shri O.P. Chatwal (PW 123) were subjected to lengthy cross-examination. Shri R.K. Saini denied the suggestion that Appellant A-10 Salimkhan was never willing to give any confessional statement and his statement was not recorded. He also denied the suggestion that Appellant A-10 had complained to the Chief Metropolitan Magistrate that he was ill-treated by the officers while in custody. In his cross-examination, Shri O.P. Chatwal (PW 123) categorically denied the suggestion that Shri A.K. Majumdar had instructed him to ill-treat the accused. He further stated that none of the accused was ill-treated mentally or physically by CBI. Shri Chatwal also denied the suggestion that the confessional statements of the accused were prepared by him and their signatures were obtained on the same. In reply to another question, he denied that the accused had sought for the presence of advocate but the same was declined.

A **63.** In their statements, PW 103 Shri Harbhajan Ram and PW 104 Shri A.K. Majumdar explained the details of the mode and manner in which confessions of the accused were recorded. Both of them categorically stated that before recording confession each of the accused was told B that he is not bound to make confession and that the same can be used against him and whether there was any threat, coercion or allurement for making confession. According to the two witnesses, each of the accused expressed unequivocal willingness to confess his role in the crime by C stating that he knew that the confession can be used against him, that there was no threat, coercion or allurement and that he was making confession voluntarily.

**64.** According to PWs 103 and 104, the statements of the accused were recorded by the stenographers verbatim D and each one of them appended signatures after satisfying that the same was correctly recorded. In reply to the suggestion made to him in cross-examination that the accused had been subjected to torture, PW 104 categorically stated that none of the accused was ill-treated E by him or any other officer/official. The defence had made suggestion about the nature and extent of supervision exercised by PW 104 but it was not put to them that either instructed the investigating officers to torture the accused and forced them to confess their guilt. In this view of the F matter, the confessions of Appellants A-4 to A-8 and A-10 cannot be held inadmissible on the premise that before recording of confessions they were in police custody and the statements were recorded by the officers supervising the investigation."

G 204. Similarly, in *Lal Singh vs. State of Gujarat,* (2001) 3 SCC 221, this Court was pleased to observe:

"**91.** The next contention that Rule 15 of the TADA Rules has not been followed also does not carry any weight. For H this purpose, we would refer to the evidence of PW 128,

PW 132 and PW 133. PW 128 Satishchandra Rajnarayanlal, who was SP, CBI II, Punjab Cell at New Delhi in 1992 stated that he registered the offence RC No. 6-SII/92. He recorded the confessional statements of A-1 Lal Singh, Ext. 620 and A-3 Tahir Jamal, Ext. 618 along with other accused. Before recording confessional statements, he ascertained from every accused whether they were voluntarily ready to give confessional statements. Necessary questions were put to them and time was given to them to think over the matter. After being satisfied that they were willing to give voluntary confessional statements, he recorded their confessional statements. PW 132 Padamchandra Laxmichandra Sharma, who was SP, CBI, SIC II at the relevant time stated that when he took over the charge of this case RC No. 6-(S)/92 from Mr Satishchandra, this case was in the last phase. Deputy SP, CBI, D.P. Singh (PW 136) had produced A-2 Mohd. Sharief and A-20 Shoaib Mukhtiar before him on 8-7-1993 and 6-2-1994 for recording their voluntary confessional statements, which are Ext. 650 and Ext. 654 respectively. Before recording their statements, he warned them of the consequences of making confessional statements and further gave them time to think over the matter. On being satisfied that they wanted to give confessional statements, he recorded their statements. PW 133 Sharadkumar Laxminarayan, DIG Police, CBI, SIC II Branch, New Delhi stated that in the year 1992 he was SP in the same branch at New Delhi. On 5-11-1992 he was directed by DIG M.L. Sharma to proceed to Ahmedabad in order to record statement of A-4 Saquib Nachan under Section 15 of the TADA Act. On 6-11-1992 after reaching at Ahmedabad, Saquib Nachan was produced before him. He put necessary questions to A-4 Saquib Nachan. Before recording confessional statement, he ascertained from him whether he was voluntarily ready to give confessional statement and warned him that if he made confessional statement, the same can be used against him. He also

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A apprised the accused that he is not bound to make such statement. When the accused replied that he wanted to make clean admission of guilt, he recorded the confessional statement of A-4 Saquib Nachan. From the above evidence, it is clear that Rule 15 was fully followed by the witnesses, who recorded the confessional statements of accused.

Observations made in para 23 are also noteworthy:

"23. In view of the settled legal position, it is not possible to accept the contention of learned Senior Counsel Mr Sushil Kumar that as the accused were in police custody, the confessional statements are either inadmissible in evidence or are not reliable. Custodial interrogation in such cases is permissible under the law to meet grave situation arising out of terrorism unleashed by terrorist activities by persons residing within or outside the country. The learned counsel further submitted that in the present case the guidelines suggested by this Court in Kartar Singh were not followed. In our view, this submission is without any basis because in the present case confessional statements were recorded prior to the date of decision in the said case i.e. before 11-3-1994. Further, despite the suggestion made by this Court in Kartar Singh case, the said guidelines are neither incorporated in the Act nor in the Rules by Parliament. Therefore, it would be difficult to accept the contention raised by learned counsel for the accused that as the said guidelines are not followed, confessional statements even if admissible in evidence, should not be relied upon for convicting the accused. Further, this Court has not held in Kartar Singh case that if suggested guidelines are not followed then confessional statement would be inadmissible in evidence. Similar contention was negatived by this Court in S.N. Dube v. N.B. Bhoir by holding that a police officer recording the confession under Section 15 is really not bound to follow

any other procedure and the rules or the guidelines framed by the Bombay High Court for recording the confession by a Magistrate under Section 164 CrPC; the said guidelines do not by themselves apply to recording of a confession under Section 15 of the TADA Act and it is for the court to appreciate the confessional statement as the substantive piece of evidence and find out whether it is voluntary and truthful. Further, by a majority decision in State v. Nalini the Court negatived the contentions that confessional statement is not a substantive piece of evidence and cannot be used against the co-accused unless it is corroborated in material particulars by other evidence and the confession of one accused cannot corroborate the confession of another, by holding that to that extent the provisions of the Evidence Act including Section 30 would not be applicable. The decision in Nalini case was considered in S.N. Dube case. The Court observed that Section 15 is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it and that the correct legal position is that a confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also."

205. A perusal of the evidence of both the officers who recorded the confession of the accused clearly show that they were aware of the procedure to be followed before recording the confession of the accused and how the same is to be recorded. We are satisfied that before recording the confessional statements both the officers apprised the accused persons who wished to make the same that there is no compulsion on their part to make a confessional statement and thus also apprised them that the confessions would be used against them. It is also clear from their evidence that both of them had specifically verified whether such persons were under coercion, threat or promise at the time of making confession

A and all of them were given adequate time to think it over and make a confessional statement. It is also clear that after recording their confession, the same was explained to them in the language known to them and in token of the same, they put their signatures and the officers' counter signed the same. B Though in the cross-examination, both of them have admitted certain procedural violations, in the case of one or two persons, however, the verification of their entire evidence and the confessional statements of the accused concerned clearly show that there is no flagrant violation of any procedure. We are C satisfied that the Designated Court was fully justified in relying upon the evidence of PW-189 and PW-193.

**Special Executive Magistrates (SEM):**

206. A contention was also raised that the SEMs were not D Judicial Magistrates and their appointment was not made in accordance with law. It was contended that the SEMs who conducted the parades were not eligible to do so and so the entire evidence is vitiated. It is submitted that the Criminal Manual of the Bombay High Court in Chapter 1 expressly states E that non-Judicial Magistrates or Honourary Magistrates should carry out identification parades. A Special Executive Magistrate is a non-Judicial Magistrate and is an honorary appointment by the government. Extracts of the relevant provisions from the Criminal Manual are provided below:-

F "**Identification Parades**

It is not desirable that Judicial Officers should associate themselves with identification parades. All Civil Judges and Judicial Magistrates are, therefore, directed that they G should not participate in identification parades which are conducted by the police for investigation purposes.

In this connection, order in the Government Circular, Home Department, No. MIS. 1054/84588 dated 22nd April,

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1955, is reproduced below for the information of the Civil Judges and Judicial Magistrates:

> In the Judgment delivered by the Supreme Court in Ramkishan vs. Bombay State AIR 1955 SC 104, it has been held that the statements made before police officers by witnesses at the time of identification parades are statements to the Police, and as such are hit by Section 162 of the Code of Criminal Procedure, 1898. In view of that ruling, it is necessary that such parades are not conducted in the presence of Police Officers. The alternative is to take the help of the Magistrates or leave the matter in the hands of panch witnesses. There would be serious difficulties in panch witnesses conducting parades successfully.
>
> In regard to Magistrates, it is not feasible to associate Judicial Magistrates with such parades. The only practicable course, therefore, is to conduct the parades under Executive Magistrates and Honorary Magistrates (not doing judicial work). Government is accordingly pleased to direct that the Police Officers concerned should obtain the help of Executive Magistrates and Honorary Magistrates in holding identification parades." (emphasis added)

The Criminal Manual requires that a non-judicial Magistrate (i.e. including an SEM) should preferably conduct identification parades of accused persons. The Criminal Manual has adopted the principles enumerated by Archibold in his treatise "Criminal Pleading, Evidence and Practice" and states that such principles would apply mutatis mutandis to identification parades with suitable variations. These guidelines include:

(a) Identification parade should appear fair and precaution must be taken to exclude any suspicion of unfairness or risk of incorrect identification.

A (b) Officer concerned with the suspect must not take part in the parade.

(c) Witnesses should be prevented from seeing the suspect before he is paraded.

B (d) The suspect should be placed among persons of similar height, age, weight etc. as far as possible.

(e) Witnesses should be introduced one by one and should be asked to identify the suspect. Witness C should be free to touch any person.

(f) If parade takes place in a prison then the prison officer should be present throughout the parade.

(g) SEM should prepare a parade memorandum D containing details of the time, place and date of the parade; details of panch witnesses; names of the persons standing in the parade; statements made by identifying witnesses etc.

E The particulars/materials placed by the prosecution show that the identification parades were carried out in compliance with the requirements of the Criminal Manual.

207. It was further contended by learned senior counsel for the accused that the identification parade should not have been F conducted by the SEM. However, in the light of the provisions of the Criminal Manual, identification parades should preferably be conducted by non-Judicial Magistrates (i.e. Special Executive Magistrates) and that in the instant case identification parades were conducted by Special Executive Magistrates in G compliance with the provisions of the Criminal Manual.

208. The Criminal Manual and the Government Circular, Home Department, No. MIS.1054/84588 dated 22nd April, 1955 in clear terms requires that non-judicial Magistrates or Honorary Magistrates such as a Special Executive Magistrate H

should preferably conduct an identification parade and, accordingly, identification parades in the instant case were conducted by Special Executive Magistrates.

**Appointment of Special Executive Magistrates**

209. It was further contended that Special Executive Magistrates are not trained Magistrates and they ought not to have conducted the proceedings. In this regard the law relating to the appointment of Special Executive Magistrates may be pertinent. Special Executive Magistrates (SEMs) are appointed by the State Government under Section 21 of the Code which states as follows:

> "**21 Special Executive Magistrates:** The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrate, as it may deem fit."

Section 21 is thus clear that the State Government can appoint SEMs for particular functions on such terms and conditions as it may deem fit.

210. Section 21 of the Code was enacted pursuant to the Thirty-Seventh Report of the Law Commission of India which recommended creation of a special class of magistrates for carrying out specific functions. This report also brought forth a draft of the new section for appointment of Special Magistrates for particular areas or for particular functions and confer upon them such powers as are conferrable on an Executive Magistrate under the Code. It may be noted that the Forty-First report of the Law Commission did not approve of the creation of Special Magistrates. However, the Joint Select Committee of the Parliament agreed with the Thirty Seventh Report of the Law Commission and recommended amending the Code to

provide for creation of a special class of Magistrates to carry out specific functions, upon whom powers exercised by an Executive Magistrate can be conferred. Accordingly, Section 21 was enacted.

211. Special Executive Magistrates are appointed by the State Government for a particular purpose and can exercise powers so conferred upon them by the State as are exercisable by an Executive Magistrate. It is useful to note that the legality of Section 21 of the Code which provides for appointment of Special Executive Magistrates was also considered by this Court in *State of Maharashtra vs. Mohd. Salim Khan* (1991) 1 SCC 550. In this case, the State of Maharashtra appointed all Assistant Commissioner of Police (ACPs) in the Greater Bombay area as Special Executive Magistrates. This Court, while upholding the appointment of ACPs as Special Executive Magistrates held as under:

> 'The purpose of empowering the State Government to appoint Special Executive Magistrates was evidently to meet the special needs of a particular area or to perform particular functions in a given area. Such appointments without adequate powers would be futile and the legislation without providing such powers would be pointless. It can be assumed that the Parliament does not indulge in pointless legislation. Indeed, it has not done so in Section 21. A careful analysis of the section indicates very clearly that the Special Executive Magistrates are also Executive Magistrates."

**Provisions of TADA in this regard:**

212. Section 20 of TADA provides for certain modifications to the provisions of the Code. One such modification was made to Section 21 of the Code which provides that a Special Executive Magistrate can also be appointed by the Central Government in addition to the State Government as provided for in the Code. Similarly, another

modification provides that a Special Executive Magistrate may also record statements made under Section 164 of the Code. Section 20 of TADA provides as follows:

> "**20. Modified application of certain provisions of the Code**.-(1) Notwithstanding anything contained in the Code or any other laws, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.
>
> (2) Section 21 of the code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modification that the reference to "the State Government" therein shall be construed as a reference to "the Central Government or the State Government."
>
> (3) Section 164 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder, subject to the modification that the reference in sub section (1) thereof to "Metropolitan Magistrate or Judicial Magsitrate" shall be construed as a reference to "Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate....."

Section 20 of TADA expressly permits that Section 21 of the Code applies in relation to an offence punishable under TADA. Accordingly, a Special Executive Magistrate may be appointed in a TADA case either by the State Government or the Central government to perform such functions as the government may deem fit. Special Executive Magistrates may perform such functions as are required in a TADA case. In the instant case, Special Executive Magistrates conducted identification parades of arrested accused persons in

compliance with the provisions of the Criminal Manual of the Bombay High Court.

213. Section 20 of TADA read with Section 21 of the Code permits a Special Executive Magistrate to carry out such functions as are required in a TADA case and accordingly in the instant case Special Executive Magistrates, inter alia, conducted identification parades of the accused persons.

214. The constitutional validity of Section 20 of TADA has been upheld by this Court in *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569 wherein this Court upheld that Special Executive Magistrates appointed under Section 21 of the Code can record confessional statements for offences committed under TADA and perform such other functions as directed. This Court held as follows:

> "309. Therefore, merely because the Executive Magistrates and Special Executive Magistrates are included along with the other Judicial Magistrates in Section 164(1) of the Code and empowered with the authority of recording confessions in relation to the case under the TADA Act, it cannot be said that it is contrary to the accepted principles of criminal jurisprudence and that the Executive Magistrates and Special Executive Magistrates are personam outside the ambit of machinery for adjudication of criminal cases.
>
> 316.....Therefore, the contention of the learned counsel that the conferment of judicial functions on the Executive Magistrates and Special Executive Magistrates is opposed to the fundamental principle of governance contained in Article 50 of the Constitution cannot be countenanced. Resultantly, we hold that sub-section (3) of Section 20 of the TADA Act does not offend either Article 14 or Article 21 and hence this sub-section does not suffer from any constitutional invalidity."

In the instant case, which involves offences punishable under TADA, Special Executive Magistrate can be appointed and carry out such functions, including conducting identification parades, as the government may deem fit. In view of the same, contentions raised regarding SEMs are liable to be rejected.

**Recoveries:**

215. Mr. Jaspal Singh, learned senior counsel for A-1 submitted that based on the statement of Mohd. Hanif (PW-282) and other witnesses as well as confessional statements of accused, several recoveries were made by the prosecution and in the absence of strict adherence to the procedure, those recoveries are inadmissible in evidence. He also pointed out that seizure panchnama was not in accordance with the procedure and, more particularly, Section 27 of the Indian Evidence Act. Now, let us consider how far the prosecution has established that the recovered articles/materials were either used or intended to be used for the Bomb blasts on 12.03.1993 pursuant to the conspiracy hatched. Apart from the argument of Mr. Jaspal Singh relating to a deficiency in the panchnama, Mrs. Farhana Shah, learned counsel appearing for some of the accused has also raised the same contention.

216. Before going into the merits of the oral and documentary evidence led in by the prosecution, let us consider the salient features of a Panchnama and whether the prosecution witnesses strictly adhered to the procedure contemplated for a valid Panchnama.

**Panchnama:**

217. The primary intention behind the Panchnama is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search with or without warrant and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or

A planted by the officers of the search party. The legislative intent was to control and to check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of article.

B **Evidentiary value of Panchnama**

218. Panchnama is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime. However, it is not only the recordings of the scene of crime but also of anywhere else C which may be related to the crime/offence and from where incriminating evidence is likely to be collected. The document so prepared needs to be signed by the investigating officer who prepares the same and at least by two independent and impartial witnesses called 'Panchas', as also by the concerned D party. The witnesses are required to be not only impartial but also 'respectable'. 'Respectable' here would mean a person who is not dis-reputed. One should also check if the witnesses are in their senses at the time of the panchnama proceedings. Only majors are to be taken as witnesses as minors' witness E may not withstand the legal scrutiny.

219. Panchnama can be used as corroborative evidence in the court when that respectable person gives evidence in the court of law under Section 157 of the Indian Evidence Act. It can also be used as evidence of the recorded transaction by F seeing it so as to refresh their memory u/s 159 of Indian Evidence Act.

**Provisions relating to Panchnama in the Code**

G 220. The word 'Panchnama' is nowhere stated in the Code, but it can be construed from the language of certain provisions under the code. Sections 100 and 174 of the code mandate the presence of respectable persons as witnesses at the time of search and investigation respectively.

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**Section 100: Persons in charge of closed place to allow search** (1)Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend

during the search and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

**174. Police to inquire and report on suicide, etc.** (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, **in the presence of two or more respectable inhabitants of the neighborhood** shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of inquiry as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) xxx

(3) xxx

(4) xxx"

221. Section 100 of the Code was incorporated in order to build confidence and a feeling of safety and security among the public. Section 100 clauses (4) to (8) stipulate the procedure with regard to search in the presence of two or more respectable and independent persons preferably from the same locality. The following mandatory conditions can be culled out from section 100 of the code for a valid Panchnama:

(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

(h) If a search is conducted without warrant of court u/s 165 of the Code, the I.O. must record reasons and a search memo should be issued.

222. Section 174 of the Code enumerates the list of instances where the police officers are empowered to hold inquests, the proviso to this section mandates the inquest to be conducted in the presence of two or more respectable inhabitants of the neighbourhood.

**Circumstances when the Panchnama is inadmissible:**

223. The Panchnama will be inadmissible in the court of law in the following circumstances:

(i) The Panchnama recorded by the I.O. under his supervision should not be hit by Sec.162 of the Code. The procedure requires the I.O. to record the search proceedings as if they were written by the panch witnesses himself and the same should not be recorded in the form of examining witnesses as laid down u/s 161 of the Code.

(ii) The Panchnama must be attested by the panch witnesses for it to be valid in the eyes of law. In case of a literate panch witness, he must declare that he has gone through the contents of Panchnama and it is in tune with what he has seen in the places searched, whereas for illiterate panch witness, the contents should be read over to him for his understanding and then the signature should be appended. If the above said declaration is not

recorded, then the panchnama document will be hit by Sec.162 of the Code.

224. On any deviation from the procedure, the entire panchanama cannot be discarded and the proceedings are not vitiated. If any deviation from the procedure occurs due to a practical impossibility then that should be recorded by the I.O. in his file so as to enable him to answer during the time of his examination as a witness in the court of law. Where there is no availability of panch witnesses, the I.O will conduct a search and seize the articles without panchas and draw a report of the entire such proceedings which is called as a 'Special Report'.

225. In *Pradeep Narayan Madgaonkar and Ors. vs. State of Maharashtra* (1995) 4 SCC 255, this court upheld that the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigating or the prosecuting agency. But prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible a corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation and requires greater care to appreciate their testimony.

226. In *Mohd. Hussain Babamiyan Ramzan vs. State Of Maharashtra,* (1994) Cri.L.J. 1020, and *Pannalal Damodar vs. State of Maharashtra* (1979) 4 SCC 526, it was held that normally, it is expected that the investigating officer will take independent panch witnesses and if knowingly he has taken pliable witnesses as panch witnesses then the entire raid would become suspect and in such a case it would not be possible to hold that the evidence of police witnesses by themselves would be sufficient to base conviction.

227. In *M. Prabhulal vs. The Assistant Director, Directorate of Revenue Intelligence* (2003) 8 SCC 449 and *Ravindra Shantram Sawan vs. State of Maharashtra* (2002)

A 5 SCC 604, this Court came to the conclusion that mere non-examination of the panch witnesses, who are normally considered as independent witnesses, would not be sufficient to discard the evidence of the police witnesses, if their evidence is otherwise found to be trustworthy.

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228. In *Rameshbhai Mohanbhai Koli and Ors. vs. State of Gujarat* (2011) 11 SCC 111, this Court held that "Merely because the panch-witnesses have turned hostile is no ground to reject their evidence in toto but the same can be accepted to the extent that their version was found to be dependable on C a careful scrutiny.

229. Keeping the above principles in mind, let us consider the recoveries made through prosecution witnesses. **Altaf Ali Mustaq Ali Sayed, (A-67)**, in his confessional statement D narrated about various articles and also identified the articles used for the preparation of bomb. He made his confessional statement before Mr. P.K. Jain (PW-189), the then DCP, Zone-X, Bombay. Since we are concerned about the recoveries, we are not adverting to his entire statement for the present. A-67 E in his confessional statement implicated A-1 at many places. He informed the officer that A-1 asked him to get the tickets confirmed for Dubai on short notice since he was working as a recruiting agent. For this, he assured A-1 that it would be possible for him to arrange tickets even on short notice. F Thereafter, when he returned to his office, in the evening, he received a call from Amjad telling him that as discussed in the morning with A-1, bags have been sent for keeping the same with him. After saying so, he brought 4 bags in which one was a big brown coloured VIP bag, one small and one black G coloured VIP like bag and two handbags tied together, from a jeep parked in the compound and handed over the same to him. The next day, according to him, A-1 telephoned him and verified whether Amjad had handed over the bags to him. He answered in the affirmative then he asked to book 4-5 tickets for Dubai. A-1 also sent the names with money through one H

Rafiq Madi (A-46), who was also a resident of Mahim and known to him for the last 10-12 years. He booked 15/16 tickets for them. Rafiq Madi, who used to bring the money every time, took the tickets. In his further confession, he stated that after 10-12 days Amjad handed over three bags through Rafiq for keeping the same with him (A-67), out of them, one was big and two were small and A-46 kept them in his office and told him that Yakub Menon had sent these bags and these were to be sent along with the persons going abroad. He gave them 5 tickets in the first week of March and all the persons went away but the bags remained lying there, then he spoke to Yakub Memon over phone and asked as to when he will take away the bags. For this, A-1 replied that he will take away the same in a couple of days. On the same day, in the afternoon, at 2 p.m., A-1 called him and directed him to send those bags to him since he had nobody with him. Then, at 6 'o' clock, in the evening he put all those bags in his Maruti car and reached his building. He further explained that among those bags, 4 bags were given to him by Amjad and one small bag was given by Rafiq Madi. He could not give the other 2 bags due to their being heavy. When he asked the watchman to call Yakub bhai, at that time, a servant girl, aged about 10/12 years, came down with the keys of garage and put those bags inside the garage of Yakub bhai. When he returned to his house, he telephoned Yakub Memon (A-1) that he had given 5 bags to his watchman and he had put them in his garage.

230. Thereafter, he went to Borivali where he heard that bombs had exploded at several places in Bombay on Friday i.e. 12.03.1993. After 2-3 days, when he read the newspaper and came to know that Yakub Memon and his men were behind the blasts then he got very scared. The other two bags were lying in his office. He further stated before the DCP that during this period, Amjad had gone to Karachi and London on 21/22nd March. He gave both the bags to Yakub Memon (A-1) through a Taxi Driver, viz., Mohammed Hanif, who used to

A handle all his parties etc. and told him to keep those bags with him and return as and when required or when he was asked for the same. He also stated that the police came to his office on 26.03.1993, at about 5 'o' clock and inquired about the bags which Amjad had given to him and he explained to them in B detail. Later, he realized and believed that the bags kept in his office by Yakub Memon through Amjad contained gun powder, arms and ammunitions and he and his men used all that for the bomb blasts in Bombay.

C 231. In his confessional statement before the recording officer, he stated that, at first, A-1 told him that it contained office documents but later he informed him that it contained weapons etc. to take revenge against the loss of Muslims in Bombay riots. Later, he informed A-1 not to implicate him and not to create any problem for him. On this, A-1 told him to keep those D two bags for few more days. After this, when Rafiq came to keep 3 bags with him, he asked him what was contained in these bags as they were very heavy, at that time, he told him that the bags contained bullets and grenades etc. for some work in Bombay. He informed the officer that he had no other role E except for keeping those bags in his office.

232. The next witness heavily relied upon by the prosecution is **'Mohammed Hanif Usman Shaikh (PW-282)'**. According to him, he had been residing at Bombay for the last F 30 years and had been plying a taxi for the last 10 years. He admitted in his evidence that he knows Altafbhai (Altaf Passportwala) and he identified Altafbhai in the Court and also informed his full name as Altaf Ali Mustaq Ali Sayeed. He further informed the Court that Altafbhai gave him 2 suit cases G in his office when he had been to the said office at 09:00 p.m., on 22.03.1993. Both the said suitcases were given to him in a closed condition. Altafbhai told him to keep the said suit cases and informed him that it contained fax machines. Both the said suitcases were of light brown colour. While describing further, it was stated that 1 suitcase was of bigger in size while another H

one was of smaller in size. He further explained that since Altafbhai was not having place to keep the said suitcases, he had given the same to him for keeping the same for a few days. Accordingly, he brought the said suitcases to his house.

233. In continuation of his evidence, he stated that on 26.03.1993, at about 10:30 p.m., 4/5 policemen along with Altafbhai came to his house. On seeing him, Altafbhai told him to return the bags given by him. Though an objection was raised about the said question, the Designated Court has rightly clarified that the answer was allowed with the limited object to show only a fact that Altafbhai had made a statement. Thereafter, PW-282 deposed that he took out the bags which were under the Sofa and gave the same to police persons who had accompanied Altafbhai (A-67). Since he was not having the keys, he was unable to produce the same when he was asked by Police Officer Mahabale. Thereafter, the said officer called a mechanic and the mechanic opened both the bags by preparing the keys for the same. After opening the bags, the mechanic went away. Both the said bags were found to contain hand grenades. Both bags also contained wire bundles. The bigger suit case contained 65 hand grenades. The same also contained 10 bundles of wire. The smaller suit case contained 40 hand grenades and 5 bundles of wire. He further explained that the chits were affixed on each of the hand grenades in both the said bags. The bundles of wire from both the bags were kept together and wrapped in a paper. The said packet was tied by means of a string. A seal was also affixed upon the said packet. The hand grenades from both the bags were of similar size. The same were of green colour. Each bundle of wire contained wires of green, red and yellow colour. The witness deposed that he had seen the suit-cases before this day. Accordingly, the suit cases were marked as Article Nos. 42 and 43 after showing the same to him. He mentioned that he had seen both the said suitcases in the year 1993 and had seen both the said suit cases on 22.03.1993. He reiterated that

A he had seen the said suit cases on the said day in the office of Altafbhai. Thereafter, the said suitcases were given to him by Altafbhai. When a specific question was put, namely, whether Article Nos. 42 and 43 shown to him had any connection with the suitcases given to him by Altafbhai, he B answered that the same were the suitcases like these suitcases. He again reiterated that suitcases Article Nos. 42 and 43 were the suitcases given to him by Altafbhai.

234. In the cross-examination, he mentioned that the hand grenades from the bigger suitcase were counted in his presence C and asserted that after counting the same they were found to be 65 in number. He also reiterated that thereafter 65 labels were prepared and signatures of panch witnesses were obtained upon each of the said labels. After affixing of the said 65 labels one by one on each of the said hand grenades, the D labeled hand grenades were kept in a bigger suit case. He also asserted that the said labeled hand grenades or any hand grenade out of them was not removed from the said bigger suitcase after the same were kept in the same up till the said bag was removed from his house by the police. Before E removing the bigger suit case from his house, he stated that the same was locked by means of a key which was prepared by the mechanic for opening the said suitcase. He also stated that the bigger suitcase was sealed in his presence in such a manner that contents thereof could not be removed by anybody F without tampering or breaking the seal affixed on the said suit case.

235. Regarding the smaller box, he stated that in the same manner 40 hand grenades were found from the smaller bag and after that the same were labeled. The said bag was also locked G by means of a key prepared by the mechanic for opening the said bag. He also stated that the said bag was also sealed in such a manner that the contents thereof could not be taken out without damaging the intact seal affixed to the said bag or without breaking the said bag. He also stated that none of the H

labeled hand grenades kept in the said bag was removed after the same were kept in the said bag, after labeling and uptill the said small bag (suitcase) was taken out of his house by the police.

236. He further stated that in the said night, he had seen only 105 hand grenades and out of them 65 hand grenades were kept in bigger suitcase and 40 hand grenades were kept in the smaller suit case. Since he disputed the number of hand grenades, labeling and locking in cross examination, with the permission of the Court, the Special Public Prosecutor put questions regarding happenings at Mahim Police Station in the month of Feb./March, 1993 and the circumstances in which the statement of the witness was recorded by the police and the reason for which he had deposed before the Court. In respect of a suggestion that he had made such a wrong statement at the instance of accused Altafbhai (A-67) and his agents, he denied the same. Regarding the acceptability or its evidentiary value regarding the number of hand grenades is to be discussed in the coming paragraphs.

237. Regarding recoveries, the prosecution also relied on the evidence of **'Ramesh Manohar Parkunde (PW-541)'**. According to him, in the month of March 1993, he was attached to the DCB CID, Unit VIII as P.I. He deposed before the Court that on 24.03.1993, senior P.I. V. S. Kumbhar of DCB, CID entrusted him with further investigation of C.R. 138 of 1993 registered with L.T. Marg Police Station on 23.03.1993. After taking charge of the said investigation, he registered C.R. No. 77 of 1993 as a corresponding C.R. No. for the said crime. On going through the earlier papers of investigation, he noticed a panchnama dated 23.03.1993 affected at L.T. Marg Police Station. He took charge of the articles recorded in the said panchnama and kept the same in the Strong Room of DCB, CID. The said articles were suit cases, AK-56 rifles, ammunitions and hand grenades etc. He further informed that

A on 24.03.1993, he visited the place from where the said articles were seized and made a thorough inquiry regarding the manner in which the said articles came to the said spots. He further stated that on 27.03.1993, he handed over all live hand grenades seized under Panchnama Exh. 728 to P.I. Chaugule
B of B.D.D.S for defusing the same. On the same day, he had also given him all the detonators seized under the same panchnama for diffusing. He had requested the said squad for returning the said hand grenades and detonators after diffusing the same.

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238. PW-541 forwarded the seized articles to FSL for examination by preparing necessary forwarding letter and described the articles sent therein. On going through the office copy of the said letter, he explained that on the said day, he
D had sent in all 11 sealed packets to the FSL and out of them 4 articles were sealed gunny bag packets and other 7 were sealed bags with each packet containing the articles as described in the said forwarding letter. The said articles were received on the same day by the FSL and the FSL has given
E the acknowledgement of receipt of the letter and articles. The letter shown to him containing the said acknowledgement of FSL is marked as Exh. 1846. According to him, since the said articles were in large quantity, he had personally taken those articles to the FSL. On 02.04.1993, he had taken out the said
F articles from the Strong Room. He asserted that the said articles were found in perfectly sealed labeled and packed condition in which the same were deposited in the strong room, i.e., they were in the same condition in which he had received them. He sent those articles in the same condition to the FSL.
G On 27.04.1993, he received a report from Chemical Analysor regarding the articles sent by him for examination. In the absence of any objection by the defence counsel, the Chemical Analyser report has been admitted in evidence and the same is marked as Exh. 1847.

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