

# **Yakub Abdul Razak Memon vs State Of Maharashtra Th:Cbi Mumbai on 21 March, 2013**

**Equivalent citations: AIRONLINE 2013 SC 661**

**Author: P. Sathasivam**

**Bench: P. Sathasivam, B.S. Chauhan**

APPEALS RELATING TO DEATH SENTENCE

PART-1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1728 of 2007

Yakub Abdul Razak Memon

.... Appellant(s)

vs.

The State of Maharashtra,  
through CBI , Bombay

... Respondent(s)

WITH

Criminal Appeal No. 609-610 of 2008

WITH

Criminal Appeal No. 628-629 of 2008

WITH

Criminal Appeal No. 637-638 of 2008

WITH

Criminal Appeal No. 365 of 2008

WITH

Criminal Appeal No. 864-865 of 2008

WITH

Criminal Appeal No. 897 of 2008

WITH

Criminal Appeal No. 941-942 of 2008

AND

Death Reference Case No. 1 of 2011

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1

2 CRIMINAL APPEAL NO. 1728 OF 2007

Yakub Abdul Razak Memon

.... Appellant (s)

Versus

State of Maharashtra thr., CBI, Bombay

.... Respondent(s)

With Batch

J U D G M E N T

P. Sathasivam, J.

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), Ranjitekumar 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 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 @ Phanasmian (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 @ Phanasmian (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 Havaladar (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 Dhondur Surve (A-62), Abu Asim 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), Mohmmmed Sultan Sayyed (A-90), Parvez Mohammed Parvez Zulfikar Qureshi (A-100), Ranjithkumar 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), Farooow 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 Nizamuddin 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 Bhiwandiwalla (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 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 Abdul Razak Memon (A-4), Abdul Razak Suleman Memon (dead) (A-5), Hanifa Abdul Razak Memon (A-6), Rahin Yakub Memon (A-7), Rubeena Suleman @ Arif Memon (A-8), Mohammed Shoaib Mohammed Kasam Ghansar (A-9), Asgar Yusuf Mukadam (A-10), Abdul Gani Ismail Turk (A-11), Parvez 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 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 Bhiwandiwalla (A-96), Niyaz Mohammed @ Islam 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 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 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.

(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 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 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 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;

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

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 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 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. 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 Mhasala, Tal. Shrivardhan and seized certain articles 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 Shankar Sawant (PW-524) and Abdul Kadar A. Khan (PW-323) prepared the disclosure Panchnama Exh. 439 in the presence of Sayyed Badshah Gaus Mohiuddin (PW-85). In pursuance of the said disclosure Panchnama, the police recovered hand grenades, white tubes, detonators tied together 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 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, 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 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 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 pistol with magazine, six cartridges, one .38 revolver, nineteen cartridges, one single barrel country made revolver and four

cartridges of .315 bore.

(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. (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. (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. (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. (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.

(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.

(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 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), 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 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 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 (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. 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.

(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 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 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 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).

(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 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, 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 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:

(i)	12 empties	Article 307(v) colly
(ii)	67 empties	Article 308-B colly

- (iii) One hand grenade Article 309-A (i)
- (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 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-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. (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 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 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 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 Maharashtra 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.) 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 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 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 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 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 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 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 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 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;

(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;

(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; 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 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 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.

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 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)

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 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 Subramaniam, learned senior counsel duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent-CBI.

Contentions raised by A-1:

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 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 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 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 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.

Reply by CBI:

8) Mr. Gopal Subramaniam, 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 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 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 or more, but the court 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.

(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, 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 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 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.

(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 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 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 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 the Special Court to go through all the reasoning and hear afresh on the question of sentence. Though Mr. Gopal Subramaniam 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.

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:-

“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 the evidence and of the arguments (if any) falls into two categories : judgments and orders. None-the-less 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" 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 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 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 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 “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 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 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 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 giving notice to the parties and laying the draft on the table for a given number of days for inspection.

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".

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.”

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

“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 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 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 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 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 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 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 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 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.

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 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 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, 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 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 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 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 Subramaniam, 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 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 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 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 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 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 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 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 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. 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 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 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 serious. It amounts to by-passing an important stage of the trial and omitting it altogether, so that the trial cannot be said 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 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 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 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 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 Haryana, 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 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 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 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 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 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 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 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.



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 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 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. 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 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:

“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 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 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 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:

“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 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 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 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 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 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 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 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 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 Maharashtra 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.

“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. ” 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:

“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 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.”

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 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 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.)

(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 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 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 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 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 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.

(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 warrant.

27.07.2007

-Sd/-

(P.D. Kode) Presiding Officer of the Designated Court (Under TADA (P) Act, 1987) For Bomb Blast Cases, Greater Bombay”

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 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 conviction 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 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:

“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 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 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.” (emphasis supplied) 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 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 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 followed 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 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 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 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. 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.

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 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.

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 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 appraisal 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 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 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 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.

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 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 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 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 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, appraisal 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 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.” 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 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.

(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.” 3  
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 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:

“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 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 anything 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 rigorous imprisonment 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 is imprisonment of either description for a term not exceeding six months or with fine, or with both.” 5 Prior to the amendment of the Code and the introduction of Sections 120-A and B, the doctrine of agency was 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 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 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 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 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 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 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 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 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 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 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 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:

"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 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 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 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 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. 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 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 enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the center does the enrolling and all the other 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 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.

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 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”.

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 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 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 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 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 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 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.

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.” (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.

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.

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 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 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, 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 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 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 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 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 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 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. 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. 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 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 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 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 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 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.” (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:

“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.....

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 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 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 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 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 of co-conspirators, just as they are for the overt acts and crimes committed by their confrères.” (See also: State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600)

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 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 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 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.

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 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 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.” Illustrations

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

(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 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, 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, 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-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 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.

(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 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 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 inculcating the makers as well as the co-accused. 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 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 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 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 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, 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 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. 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 judgment. Confession

85) In this heading, we have to consider the confession made by accused and co-accused persons relied on by the 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 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.

"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, and it contains a full and true account of the statement made by him.

(Signed) A.B. Magistrate".

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner 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.

(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 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:

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

(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.

(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.

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

(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.

(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.

(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.

(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.

(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 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. State 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.* (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.] Law relating to Confessions under TADA

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

15. Certain confessions made to police officers to be taken into consideration.- (1) Notwithstanding 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 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:

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 conspirator]' 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

(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)” 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 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)

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, 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 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 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 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 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 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 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 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 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 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 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 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 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-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 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 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, 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, 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 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 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.”

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 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 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 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.” 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 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.”

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 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....”

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:

“698. ....the effect of the said clauses was that in the event of the co- accused making confession inculcating 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.” 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 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 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 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 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 tested against the touchstone of Section 30 of the Indian Evidence Act under the general law.

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 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 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.

“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 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 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 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 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:

“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 Subramaniam 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.

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 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 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 is substantive evidence against him as well as against the maker of the confession.” It was further observed:

“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. 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.

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 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, 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.

(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.

(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 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 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.

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."

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 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.
  - 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 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 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 Van by Altaf (A-67).
  - 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.
  - 9) Next day, on his directions, the accused dropped Irfan Chougule, Asgar and Shahnawaz at Airport for their departure to Dubai.
  - 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) 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.
  - 2) Yakub Memon asked accused Altaf Ali about whether the bags had been delivered to him by Amjad.
  - 3) Yakub Memon arranged for tickets for some co-accused through accused Altaf Ali by sending money and passport through accused Rafiq Madi.

4) Yakub Memon sent 3 bags through Rafiq Madi to accused Altaf Ali for safe keeping. The bags contained arms/ammunition.

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 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) In his confessional statement, he narrated the role of A-1 as follows:

“It was emerged that Tiger Memon had a hawala account 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-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 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 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 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.

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 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 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.

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 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 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 of Parvez Mohammed 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. 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 @ Phansmiyan (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 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 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 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 (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 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.

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 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 delivered 5 suitcases to A-1 at Al- Hussaini Building. Thus, two suitcases remained in his possession. It has further been disclosed by 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 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 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 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 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 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 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 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 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 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 vehicles, 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 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

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 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 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:-

- a) At the time of blast, they all were living together at Dubai.
- b) After the blasts, the Memons' fled to Pakistan from Dubai.
- 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 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.
- 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 remnants 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 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 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 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.

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 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. 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 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 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 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 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.

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 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 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.

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.

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. 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-O-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 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:

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 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 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.

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 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 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 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 to A-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:

“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 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 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, 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 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 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 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 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.” (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).

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.

Corroboration of Confession:

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:-

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 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 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 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.

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 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:

"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 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 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 Mansfield 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 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 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 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 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 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. (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 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 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, 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, 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 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 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.”

143) In *Nazir Khan vs. State of Delhi*, (2003) 8 SCC 461, 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 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 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 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 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 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 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 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.”

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:

“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.

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.

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.

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 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 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 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

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 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. 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 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 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 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 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 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' 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 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 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 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 bungalow. 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 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. The bomb explosion resulted in a deafening sound followed by huge black smoke and it blew up stones and 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 Sahab and Jafarbai 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 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 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.

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 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.

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-

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 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.

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 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 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 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 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, 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-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 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 within the campus of petrol pump. The said petrol pump was Lucky Petrol Pump and it has a common boundary 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 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 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 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 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 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.

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 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 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 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 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 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.

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 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 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 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 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”.

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 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.

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 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 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 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.

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 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 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 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 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 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 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 Metropolitan 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 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 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 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. 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 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 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 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 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 repentance. 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 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:

(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 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 expressly denied by PW-2.

(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 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 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 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 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.	Deposition of PW-2	Corroborating Evidence	No.	1	Stay of co-accused and   Entries in the Big Splash Hotel (Register)     Meeting at Hotel Big       Splash by Tiger Memon   Confession of co-accused A-24, A-12, A-15, A-29       and A-64.             Employees of Hotel Big Splash – PWs 141 and       304.   2
a)	Participation in Ist   Confession of co-accused A-14, A-17, A-64,       Landing-Unloading and   A-16, A-12, A-29, A-15, PW-108 and PW-137       loading at Wagni Tower   (Watchman of Wagini Tower), PW-145 (panch),       PW-588 (I.O.)           b) Participation in   Confession of co-accused A-64, A-16, A-100,       Ind landing – Stay at   A-24, A-58, A-14, A-17 and A-11.       Persian Darbar       Hotel-During   Art.-1. Entries in Hotel Register by name M.V.       transportation – visit   Khan. Exh. 20.       of 2 Customs Officer.   (A-14), A-82 and A-113.   3   Handing over of Tickets   PWs-311, 341, 420       by A-1   Confession of A-46, A-67 and A-10.   4   Departure to Dubai and   Exh. 21-A – Embarkation Card (Emirates)       from Dubai to Pakistan   Confession of A-100, A-52, A-16 and A-32.       for training   Immigration Officers-Bill-1244   5   Assumed names given to   Exs. 1243, 1244, 1247, 1245       the trainee's   A-52, A-100, A-32, A-36, A-49, A-98, A-16,       co-accused   A-64, A-29.   6   No checking at the time   Passport of A-77, Exh. 1730       of arrival in Pakistan   A-29 Exh. 1731.       A-98 Exh. 648   7   No checking at the time   Confession of co-accused A-39, A-49, A-98, A-64,       of Departure from   A-52 and A-16.       Pakistan     8   Administration of Oath   Exh. 2487 – Tigers presence at Dubai.       at Dubai by Tiger Memon   Exh. 2490 – Ayub's Passport.       Confesion of co-accused A-64, A-32, A-36, A-39,       A-49, A-98, A-52 and A-16.   9   Arrival in India   Disembarkation Card-Exh. 22 – Emirates and       other Disembarkation Card and Immigration       Officer.   10   Meeting at Taj Hotel   Confession of co-accused A-44   11   Meeting at the   Confession of co-accused A-32, A-52, A-49,       residence of accused   A-13, A-64 and A-100.       Mobina on 07.03.1993     12   Survey of Shiv Sena   Confession of co-accused A-100 and A-64.       Bhavan and Sahar       Airport     13   Meeting at the   Confession of co-accused A-64, 39, 16 and A-98.       residence of Babloo     14   Selection of targets   Confession of co-accused A-64, 39, 16 and A-98.   15   Meeing at the residence   Confession of co-accused A-52, 64, 100 and       of Mobina   A-13.   16   Survey of Chembur   Confession of co-accused A-39.       Refinery     17   Meeting at the   Confession of co-accused A-64, 13, 52, 100, 49       residence of Tiger   and A-29.       Memon Distribution of       Money     18   Departure of Tiger   Exh. 2487-Tiger's Passport.       Memon   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 | Confession of A-16, PW-11 and 12 identified | | Bhawan | Pw-2 and A-16. | | | PW-469-SEM, TI Parade. | | | Letter to FSL 2447, 2469. | | | FSL opinion 2447A, 2448. | | 21 | Distribution of | Confession of co-accused A-32, 36, 39, 52, | | | Handgrenades for | Pws-5 and 6 and PW-13. | | | throwing at Mahim | | 22 | Member of Maruti Van | Seizure of Van-Pw-46 and PW-371. | | | MFC-1972 with other | | | co-accused | | 23 | Presence at Tonk | Confession of co-accused A-20 and A-130. | | 24 | Stay at Hotel Harry | Art. 2 | | | Palace-New Delhi in the | Exh. 3. | | | name of Nasir Khan. | Art. 3, Exh. 24. | | | Natraj-Howrah | |

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 when 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 obtained 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 want to die. Today I do not fear death. 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 mullaquat he was informed that the family is receiving threats he suspects the threats are 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 received by my family members and that 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 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 to the court as I was with the accused persons in 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 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 not complain of this to the court at any time till today. I did not complain 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.

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 and 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 Biryia 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 Biryia 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 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 is not correct to, state that I made deliberate 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-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 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 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 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 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 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 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 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.

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 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 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 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 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 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 provisions 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.

(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, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(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;

(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.

(a) Commit it for trial-

(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;

(b) In any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

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) 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 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 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.

In the case on hand, it was also contended that grant of pardon being a special power has to be conferred specifically. After advertng 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, 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 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 Srinivas Nayak. In Antulay case the Constitution Bench 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 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

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 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 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 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:

“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 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 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:

“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 Designated 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 provisions contained in the Code which read as under:

“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.

(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 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 provisions of the 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 provisions 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 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, 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-Section 1. Section 7(1) of TADA makes it further 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 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 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:

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.

(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.

(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 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 witness, subject to the right of the accused to recall the witness for cross-examination.

Section 18 also makes it clear that after taking cognizance of any offence, if the Designated Court is of the 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 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 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 cognizance 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 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 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 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 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 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 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 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.

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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).

#### 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 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 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 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 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 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 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.

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 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 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.
- (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 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 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 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 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.

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 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 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 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 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 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.”

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 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 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 negated 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 negated 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 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. 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 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 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 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:-

“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 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, 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.
- 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.
- 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 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 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. 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 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 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 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 Magistrate” 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 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.

#### 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 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 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 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 seeing it so as to refresh their memory u/s 159 of Indian Evidence Act.

#### Provisions relating to Panchnama in the Code

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.

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) 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.

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 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 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 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. 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 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 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 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 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.

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.

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 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 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 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. 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.

239) Apart from the above mentioned evidence of PW-541, who is an officer incharge of the muddemal property, since 20 hand grenades were found less while recording his evidence, he filed an affidavit dated 11.10.1999 before the Designated Court which reads as under:

“In the Court of Designated TADA(P) Ac, BBC, Gr. Mumbai In The State of Maharashtra/CBI, STF ...Appellant vs. Dawood Ibrahim Kaskar & Others. ....Accused AFFIDAVIT I, Ramesh Manohar Pargunde, 52 yrs Sr. Inspector of Police, Kherwadi Police Station, Mumbai, do hereby solemnly affirm and say as under:-

2. That I am filing this affidavit with a view to explaining the shortage of 20 hand grenades in muddemal property of this case.

3. I say that I was incharge of the store of muddemal property of Crime Bracnh, CID, Mumbai in the year 1993. On 22.05.1993, the Police Inspector of Worli Police Station had deposited 105 hand grenades and 150 detonators, which were seized in connection with LAC No. 389/93 of Worli Police Station, Mumbai in DCB, CID CR No. 112/93.

4. I say that I was informed that 20 hand grenades were found less in the muddemal property while recording the evidence of this case. I was, therefore, asked to check up the record of the above store of Crime Branch. I have personally checked and verified the said record.

I say that 5 handgrenades were lying in the strong room of Crime Branch, CID. I say that inadvertently the said 5 hand grenades were not deposited in the Court when the said muddemal property was produced before the Court. I say that the prosecution may be permitted to produce the said 5 hand grenades for which a separate application is being moved before this Hon'ble Court.

5. I say that I have verified the other record of the Crime Branch and found that the remaining hand grenades were given to the various authorities as per the orders of the superiors.

a) Six hand grenades given to Intelligence Bureau by PI, BDDS on 10.06.1993.

b) One hand grenade was given to DCP CB, Hyderabad.

c) Eight hand grenades have been given to the Ballistic Expert of Austria and Britain, as the said experts were called upon to opine on the origin of the said hand grenade I say that whatever stated in Para No. 3 and 4 is as per the record available in the office and whatever stated in Para No. 5 (a, b & c) is true as per my personal knowledge and as per the available records and I believe the same to be true.

Solemnly affirm.

This 11th day of October, 1999.

Deponent (R.M. Pargunde) Identified by me Spl. Public Prosecutor CBI, STF Mumbai"

240) The statements of various accused, 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 which we have discussed earlier, we are satisfied that though minor discrepancies are there, according to us, on this ground we cannot destroy the entire prosecution case. In view of the fact that the prosecution has led ample corroborative evidence, which we have discussed in the earlier paragraphs, we are of the view that the Designated Court was fully justified in relying on those recoveries while accepting the prosecution case.

Final Analysis relating to A-1

241) From the total appreciation of the evidence as produced by the prosecution in support of the case against A-1, an offence of conspiracy is clearly made out. The evidence in respect of A-1 is in the nature of confessions made by the co-accused persons, the testimonies of the prosecution witnesses and documentary evidence on record and recoveries.



a) A10 in his confessions has categorically stated that A-1 is the younger brother of Tiger Memon. It was A-1 who attended many telephone calls at the Tiger's residence. On 10/11.02.1993, A-1 handed over three tickets to Dubai and three passports to A10 asking him to pick up A-100, A-16 and Salim from Midland Hotel and handover the tickets and passports to them and also directed to drop them at the airport by taxi, all of which, was duly done by A-10. He further stated that at the airport, Tiger told them that he should keep in touch with A-1 and in case of any requirement of money he should get the money from Choksi (A-97). On 13th February, A-1 directed A-10 to collect Rs. 1 crore from Choksi (A-97) for him. A-10 collected the said money along with co-accused Abdul Gani (A-11), Parvez (A-

12), Md. Hussain, Salim and Anwar Theba (AA). On 17/18th February, A-1 directed A-10 to remain with Rafiq Madi (A-46). On the next day, A-10 and A-46 picked up Irfan Chougule (AA) from Mahim and Shah Nawaz (A-29) and his companion from Bandra Reclamation and dropped them at the Airport. It was A-1 who directed A-10 to transfer rupees 25 lakhs from Tiger's account to Irani's account and also to transfer Rs. 10 lakhs to Ohalia's account which was duly done by A-10. The timing of these transfers if seen in the context of activities being carried out contemporaneously was for meeting the expenses for achieving the objects of conspiracy, to meet the expenses incurred for admitting of co-conspirators and also to meet the expenses to be incurred during the absconition period.

b) In the same way, A-11, in his confession specifically stated that on 27th/28th January A-1 was present at Al-Hussaini Building with other co-accused, i.e., A-46, A-15, A-12, A-52. On 07.03.1993, A-11 was present at Al Hussaini Building along with Tiger, Shafi, Essa (A-3), A-7, A-5 and A-6.

c) (A-46), in his confession referred to the role of A-1 apart from mentioning that he is the younger brother of Tiger Memon. He further confessed that he used to drive Tiger's blue Maruti-800 for attending to all business activities. On 8th or 9th February, he handed over Rs. 50,000/- to him which was in turn given to Altaf Passportwala. Between 14/15th February, Anwar filled up brown coloured substance in three VIP suitcases from the secret cavity of the jeep at the instructions of A-1 in his presence. Next day, A-1 gave Rs. 62,000/- to Rs. 63,000/- to him to be given to A-67. On 17th February, A-1 handed over five passports and tickets to Anwar for Yeda Yakub and others for their departure to Dubai. The next day, on the directions of A-1, A-46 dropped Irfan Chougule (AA), Asgar Yusuf Mukadam (A-10) and Shah Nawaz at the Airport for their departure to Dubai. On 14th, he was given Rs. 4 lakhs by A-1 after collecting the said amount from Choksi A-97.

d) A-67 in his confession referred to the role of A-1. A-1 asked A-67 about the bags that have been delivered to him by Ajmal. It was A-1 who arranged for tickets for some ten accused through him by sending money etc. A-1 sent three bags through A-46 to accused A-67 for safe keeping of the same which contained arms and ammunitions. A-1 instructed A-67 over phone for sending the bags to Al-Hussaini i.e. residence of Memon's family. Earlier, A-1 had asked A-67 to keep the bags. When A-67 told A-1 that he may be implicated, A-1 replied that he need not worry.

e) The confessional statement of A-97 clearly establishes that Tiger had an account with him in which various amounts totaling about Rs.161.48 lakhs were deposited by A-26 at the behest of Tiger

Memon (AA) which was also controlled by A-1. It is relevant to mention that on 12.02.1993, at the time of departure to Dubai, Tiger told A-10 that he should remain in contact with A-1 and should bring money for him from A-97 in case A-1 needed money. From the above, it could 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 the other co-conspirators.

242) Confessional statements of A-10, A11 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 while leaving for Dubai, Tiger Memon told him to remain in touch with A-1 and having further told that in the event of A-1 requiring any money A-10 should collect the same from A-97 clearly reveals that A-1 himself having not collected the money from A-97 but he was using A-10 for the said purpose and was actively involved in day-to-day activities. The same is further clear in the confession of A-10 which reveals that after A-1 having told him to bring about an amount of Rs. 1 lakh 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.

243) Apart from the above evidence, Asif Sultan Devji (PW-341) and Massey Fernandes (PW-311) have deposed about booking of 12 tickets and 1 ticket respectively at the instance of A-67. It is relevant to note that A-67 in his statement under Section 313 of the Code has admitted having booked the tickets for Dubai through the said witnesses.

244) PW-2, Approver had categorically stated that A-1, at the instance of Tiger, gave air tickets to Javed which were of A-100, A-52, A-60, A-32 besides for himself.

245) It has also come in the evidence of S. P. Udayavar (PW-441) that at the instance of A-1, in January and March, 1993, he booked tickets for Dubai 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. All the above details clearly show that the tickets booked by A-67 and others at the behest of A-1 were for the co-accused, who went to Dubai and, subsequently, to Pakistan for weapons training as revealed in their confessional statements and evidence of PW-2. All this information emanated not only from the accused in their confessional statements but also from the persons who were in charge of issuance of tickets at the travel agencies and Airport. In the light of evidence of PW-441 about booking of tickets by A-1 in the account of Tejarath International coupled with the confession of co-accused A-14, A-94, A-49 and A-39 regarding their visits to Dubai during the relevant time, establish that A-1 had booked air tickets for the co-conspirators mentioned above. The examination of Vijayanti B. Dembla (PW-313) and Nitin K More (PW-310) establishes that it was A-1 who was booking tickets and used to send his employee to collect them from East West Travels. The examination further reveals that the office of his firm was burnt in the riots and he started working from his residence at the Al-Hussaini Building.

246) It is also seen from the confession of A-67 that A-1 had given him four bags on the first occasion which were containing ammunitions. On the second occasion, A-46 had delivered three more suit cases to A-67 and upon being asked by him, A-46 stated that the suit cases were

containing round bombs etc. Thus, A-67, in all had received 7 bags from A-1 through A-46 which containing arms/ammunition etc. A-67, thereafter, returned five bags to A-1 that included four bags which were received on the first occasion and one of the three received on the second occasion. The above confessional statement of A-67 corroborated the evidence of Akbar Khan Abusama Khan (A-37). A-46 in his confessional statement also stated about the delivery of three suit cases to A-67 by A-1. Though some discrepancies are there, in the light of the abundant materials, if we read the entire confessional statement of A-67, those were not of much importance.

247) It is further seen that in all important meetings with Tiger Memon, particularly, at the residence Al-Hussaini, A-1 used to interact with him. It is further clear that the confessional statement of A-67 corroborated the evidence of PW-37, PW-506 and PW-282. It has also come in evidence 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 suit cases by A-1 through A-46. It is also seen from the evidence of PW-87, driver working for A-5 and PW-630 Manager of Hind Automobile and Company that the Maruti Car bearing No. MP-09-H-0672 belonged to A-1 and the evidence also establishes that he is the owner of the said vehicle which was involved in the said bomb blast. It has been proved that the said maruti car of blue colour was planted at Bombay Stock Exchange which exploded at 0330 hours killing 84 persons, injuring 270 persons and causing loss of property worth Rs. 5 crores. The number plate (Art. 227) bearing MP-09-H-0672 was seized from the place of occurrence by Deputy Manager, Bombay Stock Exchange (PW-82). Engine No. and Chassis No. were seized by PW- 86 and PW-370 respectively. The said maruti car was purchased by Shafizarimal in the beginning of the year 1992 through Sulaiman Mohammed Lakdawala (PW-365) and thereafter, it was changed from hand to hand and this car was used to blast Bombay Stock Exchange building. This car was used by Tiger Memon and A-1 for explosion. This is evident from the evidence of PWs 87 and 630.

248) We have already noted that the confessions of A-10, A-11, A-46 and A- 97 are voluntary confessions and the same have been properly recorded by recording officers and the same being not liable to be discarded. Merely because confession of A-1 is not on record, i.e., the said accused having not made a confession, the same cannot be considered as a factor for terming other evidence led by the prosecution as a weak type of evidence.

249) The material portion in the confessions of A-10, A-11 and A-46 clearly reveal the relevant role of collecting money paid by the said accused at the behest of A-1. The oral and documentary evidence led in by the prosecution clearly prove that A-1 was not only associated with his brothers and other accused but had also participated in the conspiracy. Several co-accused, particularly, A-10, A-11, A-46 and A-97 in their confessional statements unequivocally referred to the role of A-1 and his participation in all aspects. The prosecution has also proved recoveries of incriminating articles like hand grenades etc., and also for the purchase of air tickets, getting passports and visas for the persons who went to Pakistan via Dubai for training in handling of arms and ammunitions. Apart from the categorical statement of co-accused, the prosecution has also examined the independent witnesses from the travel agencies and other authorities. Apart from this, there are ample evidence to show that he 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 owns 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. We are satisfied that the prosecution has established all the charges leveled against A-1 and the Designated Court, after analysing all the materials including oral and documentary evidence and the independent witnesses, rightly convicted him.

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

Criminal Appeal Nos. 609-610 of 2008 Zakir Hussain Noor Mohd. Shaikh (A-32) Abdul Khan @ Yakub Khan Akhtar Khan (A-36) & Firoz @ Akram Amani Malik (A-39) ..... Appellant(s) vs. State of Maharashtra, Through STF, CBI, Bombay ..... Respondent(s) \*\*\*\*\*

251) Mr. Priyadarshi Manish, learned counsel appeared for the appellants (A-32, A-36 and A-39) and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

252) The present appeals are directed against the final judgment and order of conviction and sentence dated 04.12.2006 and 24.07.2007 respectively whereby the appellants (A-32, A-36 and A-39) have been convicted and sentenced to death by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

253) The following common charge of conspiracy was framed against all the co-conspirators including the appellants herein. The relevant portion of the said charge is reproduced hereunder:

“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.) 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 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 explosives substances like RDX or inflammable

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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 appellants were also charged on the following counts:

At head Secondly; Each of the appellants (A-32, A-36 & A-39) committed an offence punishable under Section 3(3) of TADA by doing the following acts:

(i) They received training in handling of arms, ammunition and explosives in Pakistan along with co-conspirators.

(ii) They attended meetings at the residences of Nazir Ahmed Shaikh @ Babloo (AA) and Mobina @ Baya Musa Bhiwandiwalla (A-96) where plans for committing terrorist

acts were discussed and chalked out.

(iii) They participated in preparation of vehicle bombs on the night of 11.03.1993 at Al-Hussaini building.

At head Thirdly; Each of the appellants along with other co-accused went to Mahim Slope on 12.03.1993 in a Maruti Van bearing registration no. MP-13-D-385, and threw hand grenades on the hutments, which exploded causing death of three persons and injuries to six persons and damage to property worth Rs.50,000/- and thereby committed an offence punishable under Section 3(2)(i)(ii) of TADA read with Section 149 IPC.

At head Fourthly; Each of the appellants along with other co-accused persons formed unlawful assembly as mentioned above, while throwing the hand grenades at the said hutments at Mahim Causeway, which resulted into death, injuries and damage to properties and thereby committed an offence punishable under Section 148 IPC.

At head Fifthly; Each of the appellants, by causing the death of three persons as mentioned above by throwing hand grenades, committed an offence punishable under Section 302 read with Section 149 IPC.

At head Sixthly; Each of the appellants, by causing the aforesaid explosion by throwing hand grenades which resulted into injuries to various persons, committed an offence punishable under Section 307 read with Section 149 IPC.

At head Seventhly; Each of the appellants, by causing the aforesaid explosion by throwing hand grenades, which resulted into injuries, committed an offence punishable under Section 324 read with Section 149 IPC.

At head Eighthly; Each of the appellants, by causing the aforesaid explosion by throwing hand grenades, which resulted into damage to the properties worth Rs.50,000/- committed an offence punishable under Section 436 read with Section 149 IPC.

At head Ninthly; A-39, by causing the aforesaid explosion by throwing hand grenades, along with other co-accused persons at Mahim Causeway, which resulted into death, injuries and destruction of properties, also committed an offence punishable under Sections 3, 4 read with Section 6 of the Explosive Substances Act, 1908 read with Section 149 IPC.

254) The charges mentioned above were proved against all the appellants (A- 32, A-36 and A-39). The appellants have been convicted and sentenced for the above said charges as under:

#### Conviction and Sentence

(i) The appellants have been 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 appellants were also ordered to pay a fine of Rs. 25,000/- each. (charge firstly)

(ii) A-36 and A-39 have also been sentenced to suffer RI for 10 years while A-32 has been sentenced to RI for 14 years for the offence punishable under Section 3(3) of TADA. The appellants were also ordered to pay a fine of Rs.25,000/- each. (charge secondly)

(iii) The appellants have been sentenced to death for the offence punishable under Section 3(2)(i)(ii) of TADA read with Section 149 of IPC and were also ordered to pay a fine of Rs.25,000/- each. (charge thirdly)

(iv) The appellants were also sentenced to RI for three years under Section 148 of IPC. (charge fourthly).

(v) The appellants have been further sentenced to RI for life under Section 302 read with Section 149 of IPC accompanied with a fine of Rs.

25,000/- each, in default, to further undergo RI for 6 months. (charge fifthly).

(vi) The appellants were sentenced to RI for 14 years under Section 307 read with Section 149 of IPC accompanied with a fine of Rs.10,000/- each, in default, to further undergo RI for 3 months. (charge sixthly).

(vii) The appellants were sentenced to RI for 2 years under Section 324 read with Section 149 of IPC. (charge seventhly).

(viii) The appellants were sentenced to RI for 10 years accompanied with a fine of Rs.5,000/- each, in default, to further undergo RI for 1 month under Section 436 read with Section 149 of IPC. (charge eighthly).

(ix) A-39 has been sentenced to RI for 10 years accompanied with a fine of Rs.5,000/- each, in default, to further undergo RI for 1 month, under Sections 3, 4 read with Section 6 of Explosive Substances Act, 1908 read with Section 149 IPC. (charge ninthly).

Evidence:

255) The evidence against the appellants is in the nature of their own confessions, confessions made by other co-accused, the testimonies of prosecution witnesses, including eye witnesses and documentary evidence on record. A brief account of the evidence brought on record in respect of each of the appellant is as under.

256) Mr. Manish, learned counsel for the appellants, after taking us through the relevant materials submitted that the appellants joined the company of Tiger Memon

and had gone to Dubai and Pakistan due to circumstance and by force. He also submitted that they had no intention to go to Dubai and to attend weapons training at Islamabad. Their main aim was to secure some job at Dubai. He also pointed out that though they participated in the smuggling activities of the Tiger Memon group, they had no intention to involve in the terrorist act as claimed by the prosecution.

According to the counsel, though the prosecution has relied on their own confessional statements inasmuch as all of them have retracted from their statements, there is no need to give importance to those confessions. He also prayed that considering their poverty and also that at the relevant time they were in search of some job for their livelihood, the death sentence imposed by the Special Court is not warranted. On the other hand, learned senior counsel for the CBI, after taking us through their confessional statements, confessional statements of other co-accused, the evidence of PW-2 (Approver), eye-witnesses and recoveries as well as the loss of lives and damage to properties submitted that the Special Court was justified in awarding capital punishment.

#### Conspiracy:

257) The appellants have attended several conspiratorial meetings including the meeting at the residence of Babloo (AA) where targets were selected and at the Al-Hussaini building where RDX and other explosive materials were filled up in vehicles and suitcases in pursuance of the said terrorist act. The participation of the appellants (A-32, A-36 and A-39) in these meetings is a physical manifestation of the agreement. The agreement to commit an illegal act can also be inferred from the acts committed by the appellants, viz., receiving training in Pakistan, participating in filling RDX in vehicles in the intervening night between 11/12.03.1993 and throwing of hand grenades at the Fishermen's Colony at Mahim on 12.03.1993 causing death of 3 persons and injuring 6 others.

The object behind the conspiracy is the ultimate aim of the conspiracy and many means may be 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer to the same once again.

#### Confessional Statements:

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

258) Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs.) and 19.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confession, he made the following assertions:

(i) He knew Javed Chikna (AA) 'very well'.



(ii) He travelled to Dubai on 11.02.1993 along with other co-accused and they were received by Ayub Memon (AA), brother of Tiger Memon, at Dubai Airport.

(iii) He met Tiger Memon at a flat in Dubai and did not protest when he was told by Javed Chikna that he had come for training in handling arms and making bombs.

(iv) He left for Islamabad from Dubai by a Pakistan International Airlines flight.

(v) They were taken out of the Islamabad Airport without any checking.

(vi) He was renamed as 'Shakir' and other co-accused were also given fake names when they were in Pakistan.

(vii) Tiger Memon also joined them in training at Pakistan and stayed with them for two days.

(viii) He was trained in firing AK-56 rifle, preparation of bombs using RDX (black soap), using detonator and to throw hand grenades.

(ix) After return from Pakistan, he along with A-36, A-39 and other conspirators met in a flat where Tiger Memon brought a copy of holy Quran and everyone including him, took oath to keep the training in Pakistan a secret and that after reaching Bombay they would take revenge. Tiger Memon also delivered a lecture on communal riots in Bombay.

(x) On 07.03.1993, he attended the meeting in the house of Babloo (AA) in Bombay where Tiger Memon ordered them to cause riots.

(xi) On 10.03.1993, after the meeting in the house of Mobina @ Bayamoosa Bhiwandiwalla (A-96), he along with A-39 and other co-accused went to survey Bharat Petroleum Refinery as a prospective target for blasts.

(xii) On the same day, Tiger Memon told them to throw hand grenades at Fishermen's colony at Mahim.

(xiii) Each of the appellants (A-32, A-36 & A-39) filled RDX in vehicles at the Al-Hussaini building on the night of 11.03.1993.

(xiv) On 12.03.1993, at 2:30 p.m., A-32, A-36 and A-39 along with Bashir (A-

13), Mahmood, Salim Dandekar and Moin (A-43) left Al-Hussaini building; thereafter, they all threw hand grenades at Fishermen's Colony at Mahim. He threw two hand grenades and saw many people getting injured.

Reference to A-36 and A-39

- (i) A-36 and A-39 joined the training camp in Pakistan.
- (ii) A-36 and A-39 also took oath on holy Quran to keep the fact about receiving training in Pakistan a secret and to take revenge after their return to Bombay.
- (iii) A-36 and A-39 participated in filling RDX at Al-Hussaini Building and in throwing hand grenades at Fishermen's Colony at Mahim.

Confessional Statement of Abdul Khan Akhtar @ Yakub Khan Akhtar Khan (A-36) Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishno (PW-193), the then DCP, Zone III, Bombay. In his confession, he made the following assertions:-

- (i) He knew Shahnawaz Qureshi (A-29) very well and also knew that he was a well-known criminal.
- (ii) He went to Dubai in February, 1993 along with Shehnawaz and Irfan Chougule (AA) and met Gullu @ Gul Mohd. (A-77) at Dubai Airport. They were received by Ayub Memon (AA), brother of Tiger Memon, at the Airport.
- (iii) He met Tiger Memon at Dubai, and thereafter, left for Pakistan to receive training in use of arms and explosives.
- (iv) He along with A-32 were given training in handling AK-56 rifles, pistols, detonators, safety fuse, hand grenades, rocket launchers, use of RDX in making bombs and petrol bombs.
- (v) After return from Pakistan, he along with other co-accused took oath on holy Quran to keep the training in Pakistan a secret and to wage 'Jehad'.
- (vi) In the intervening night between 11/12.03.1993, he and other co-accused, filled RDX in vehicles at the Al-Hussaini building.
- (vii) On 12.03.1993, he along with A-32, A-39, Bashir (A-13), Moin (A-43), Mehmud and Salim drove to Fishermen's colony at Mahim and threw hand grenades.

Reference to A-32 and A-39

- (i) A-32 and A-39 took training in Pakistan
- (ii) A-32 and A-39 took oath on holy Quran to wage Jihad in Bombay.

(iii) A-32 and A-39 threw hand grenades at Fishermen's colony at Mahim.

Confessional Statement of Feroz @ Akram Amani Malik (A-39) Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. In his confessional statement, he made the following assertions:-

(i) He deposed that he was the brother-in-law of co-accused Fazal Abdul Rehman (A-76). He left for Dubai on 08.02.1993 along with Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98).

(ii) He and other co-accused were received by Ayub Memon (AA), brother of Tiger Memon, at Dubai Airport. He also met Nasim Ashraf Shaikh Ali Barmare (A-49) at Dubai.

(iii) He left for Pakistan from Dubai in a PIA flight along with other co-

accused where a person took them out of the Islamabad Airport without any immigration check.

(iv) He was renamed as 'Akram' in Pakistan and he received weapons training along with others where they were trained to assemble guns and throw bombs.

(v) Tiger Memon attended training in Pakistan and told the co-accused that they have to blast bombs at Bombay.

(vi) When they returned to Dubai, he and other co-accused took oath on holy Quran to keep the training in Pakistan a secret.

(vii) On 10.03.1993, he along with PW-2 went in a car to Shiv Sena Bhawan and a petrol pump nearby to survey the prospective targets. He also went to Chembur Refinery along with PW-2 to survey the target.

(viii) On 12.03.1993, he along with A-32, A-36, Bashir (A-13) Moin, (A-

43), Salim and Mahmud threw hand grenades at the Fishermen's Colony at Mahim.

Reference to A-32 and A-36

(i) A-32 and A-36 joined A-39 for training in Pakistan.

(ii) A-39 went along with A-32 to survey the Chembur Refinery.

(iii) A-32 and A-36 also threw hand grenades at the Fishermen's Colony at Mahim.

259) On perusal of the confessional statements made by the appellants, it is established that the appellants:

- (a) attended training camp in Pakistan;
- (b) took oath on holy Quran to do Jihad;
- (c) attended meetings at the residence of Babloo (AA) and Mobina;  
and
- (d) threw hand grenades at Fishermen's Colony at Mahim.

260) It is also clear that the confessions made by the appellants are truthful and voluntary and were made without any coercion. All safeguards enumerated under Section 15 of TADA and the rules framed thereunder have been duly complied with while recording the confessions of the appellants.

#### Retraction Statements

261) It is contended by learned counsel for the appellants that the above mentioned confessions should not be relied upon since they were subsequently retracted by A-32 and A-39 and the denial of the voluntariness of the confessional statement made by A-36 has been recorded by the Designated Court in the statement under Section 313 of the Code. In the instant case, it was brought to our notice that retractions were not made at the first available opportunity by the accused persons. After arrest, the accused persons were produced before the Court number of times in 1993 and 1994. While the confessions were recorded in April and May 1993, retractions have been made only in May, 1994, i.e. after a gap of 1 year. Since we have elaborately discussed the contention raised by learned counsel with regard to the same in the main appeal, there is no need to refer the same once again.

#### Confessional Statements of co-accused:

##### Confessional Statement of Bashir Ahmed Usman Gani Khairulla (A-13)

262) Confessional statement of A-13 under Section 15 of TADA has been recorded on 16.05.1993 (10:30 hrs.) and 18.05.1993 (17:15 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The prosecution submits that the confession of A-13 is pertinent since he was one of the co-accused who accompanied the appellants to the Fishermen's colony at Mahim on 12.03.1993. His confession corroborates the confessions of the appellants in material aspects.

##### Reference to A-32

(i) A-32 attended a conspiratorial meeting on 10.03.1993 at the residence of Mobina.

(ii) On 11.03.1993, at 11.00 p.m., A-32 took him to the house of Tiger Memon at the Al-Hussaini building.

(iii) He along with A-32, A-39, A-36, Saleem, Mehmood and Moin went to throw hand grenades at Mahim Slope Cause-way on 12.03.1993. Reference to A-36

(i) A-36 actively participated in preparation of vehicle bombs by using RDX at Al-Hussaini Building compound in the intervening night between 11/12.03.1993.

(ii) In the morning of 12.03.1993, A-36 was present at Al-Hussaini building to execute his job of throwing hand grenades as assigned by Tiger Memon.

(iii) He along with A-36, A-32, A-39, Saleem Dandekar and Mehmood went to Mahim Slope Cause-way and threw hand grenades at hutments.

Reference to A-39 He along with A-39, A-32, A-36, Saleem, Mehmood and Moin threw hand grenades at Mahim Slope way.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16) Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. In his confessional statement, he made the following assertions with regard to the appellants:-

Reference to A-32 A-32 attended training in handling arms and explosives in Pakistan. Reference to A-39 He attended the meeting held by Tiger Memon on 07.03.1993 in which Tiger informed that he was going to cause riots in Bombay.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23) Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. He made the following assertions:-

(i) In the intervening night between 11/12.03.1993, A-32 filled the vehicles with RDX along with other co-accused at Al-Hussaini building.

(ii) On 12.03.1993, A-36 filled the vehicles with RDX along with other co-

accused at Al-Hussaini building.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29) Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confessional statement, he made the following assertions with regard to the appellants:-

Reference to A-32

(i) A-32 was present in the training camp in Pakistan when he and others reached there.

(ii) A-32 was present at Al-Hussaini Building in the flat of Tiger Memon along with Tiger, Shafi, Anwar, Bashir Muchhad, Nasim, Parvez and Sardar Khan.

(iii) A-32 received Rs.5,000/- from Tiger Memon Reference to A-36

(i) A-36 was present in the training camp in Pakistan when he and others reached there.

(ii) A-36 received training in handling of arms and explosives in Pakistan.

(iii) A-36 returned from Dubai along with him, Feroz, Zakir and Mohd.

Rafiq.

(iv) A-36 was present at Al-Hussaini Building compound on the night of 11.03.1993 along with Tiger, Shafi, Anwar, Bashir Muchhad, Nasim, Parvez, Zakir and Sardar Khan where vehicle bombs were prepared.

(v) On 12.03.1993, at about 12:30 noon, A-36 was present in the flat of Tiger Memon at Al-Hussaini Building along with Javed Chikna, Bashir Muchhad, Bashir Mahimwala, Shafi, Usman, Salim Dandekar, Anwar and Zakir.

(vi) A-36 received Rs.5,000/- from Tiger Memon.

Reference to A-39

(i) A-39 was present in the training camp in Pakistan when he and others reached there.

(ii) A-39 returned from Dubai along with him and A-29 Zakir, Abdul, Akhtar and Mohd. Rafiq.

Confessional Statement of Nasim Ashraf Sherali Barmare (A-49) Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (09:30 hrs.) and 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. He made the following assertions:-

Reference to A-32

(i) A-32 participated in the weapons training in Pakistan.

(ii) A-32 was present at the Al-Hussaini building in the morning of 12.03.1993.

Reference to A-36

(i) A-36 participated in the training in Pakistan and after training returned to India via Dubai.

(ii) A-36 was involved in filling of RDX in the vehicles on the night of 11.03.1993.

Reference to A-39 A-39 also received weapons training in Pakistan.

Confessional Statement of Salim Rahim Shaikh (A-52) Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. He made the following assertions:-

Reference to A-32

(i) On 11.02.1993, A-32 along with other co-accused persons left Bombay and reached Dubai.

(ii) On 12.02.1993, A-32 along with others stayed in a building opposite to the Hotel Al-Khaleez in Dubai where Tiger Memon met them.

(iii) On 13.02.1993, A-32 along with other co-accused attended the meeting in the same building in which Javed Chikna and Tiger Memon talked about the communal riots in Bombay and Gujarat.

(iv) On 14.02.1993, A-32 along with other co-accused left Dubai and reached Islamabad where they were taken to the training camp for training in firing arms, handling LMG rifles, throwing of hand grenades, use of RDX, detonators and timer pencils.

(v) On 11.03.1993, A-32 was seen at the residence of Tiger Memon assisting in loading of vehicles with RDX for causing bomb blasts.

(vi) On 12.03.1993, he along with other persons boarded the Maruti Car driven by him (A-32) in which 30 hand grenades were kept and they took it to the Mahim Slopeway, Koliwada where he along with others threw hand grenades at Fishermen's Colony causing blasts.

Reference to A-39

(i) A-39 was present in the training camp in Pakistan where they were imparted training in use of arms and explosives.

(ii) On 11.03.1993, A-39 (referred to as 'Akram') was seen at the residence of Tiger Memon at the Al-Hussaini building along with other accused persons where vehicles were being loaded with RDX.

(iii) A-39 along with other conspirators boarded the Maruti Car to Mahim Slopeway, Koliwada and threw hand grenades. After that, he took over the bag of remaining

hand grenades and the pistol given to him earlier and left the vehicle near Bandra Reclamation.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57) Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. He made the following assertions:-

Reference to A-32

- (i) A-32 took out rifles from the sack and cleaned them.
- (ii) A-32 carried food for other co-conspirators at the Al-Hussaini building.

Reference to A-39

- (i) A-39 was a member of the meeting addressed by Tiger Memon, where he was asked to take revenge against the killings of Muslims in Bombay and Surat.
- (ii) He along with others were paid Rs.5,000/- by Tiger Memon in the said meeting.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64) Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by HC Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. A-64 made the following assertions:

Reference to A-32

- (i) A-32 was present at Dubai when A-64 and others reached there.
- (ii) A-32 attended conspiratorial meetings at Dubai.
- (iii) A-32 received training in use of arms and explosives in Pakistan. Reference to A-39
- (i) A-39 went to Pakistan by a PIA Flight and received training.
- (ii) A-39 attended a conspiratorial meeting on 10.03.1993 at the residence of Mobina.
- (iii) A-39, along with other co-accused, on being asked by Tiger Memon whether they were prepared, replied in the affirmative.
- (iv) A-39 actively participated in preparation of vehicle bombs at the Al-

Hussaini Building on the night of 11.03.1993 by using RDX which had landed at Shekhadi.



Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94) Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. He made the following assertions:-

Reference to A-32 On 10.03.1993, A-32 accompanied with Niaz @ Aslam, Usman (PW-2) and Feroz (A-39) went to meet Tiger Memon in a white Maruti Car to a building behind Bhabha Hospital. In the said meeting, Tiger enquired as to who knows driving etc. In the said meeting, he also distributed Rs.5,000/- to each one of them.

Reference to A-36 A-36 received training in arms in Pakistan. Training was also given in handling of pistols, rifles, hand grenades, rocket launchers and preparation of RDX bombs.

Reference to A-39

(i) A-39 received training in arms in Pakistan. Training was also given in handling of pistols, rifles, hand grenades, rocket launchers and making of RDX bombs.

(ii) On 10.03.1993, A-39 along with Nasim @ Aslam, Usman, Rafiq and Zakir went to meet Tiger Memon in a white Maruti Car to a building behind Bhabha Hospital where Tiger enquired as to who knows driving etc. In the said meeting, Tiger also distributed Rs. 5,000/- to each one of them.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh (A-98) Confessional statement of A-98 under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. He made the following assertions:-

Reference to A-32

(i) A-32 received training in handling of different types of arms and ammunitions, hand grenades and making of bombs by using RDX.

(ii) On 01.03.1993, after all others also reached Dubai, A-32, at the instance of Tiger Memon, took oath after placing his hands on holy Quran. He also heard about the speech given by Tiger regarding the riots in Bombay.

Reference to A-36

(i) A-36 received training in handling of different types of arms and ammunitions, hand grenades and making of bombs by using RDX.

(ii) On 01.03.1993, A-36 along with other conspirators, at the instance of Tiger Memon, took oath in Dubai after placing his hands on holy Quran.

A-36 also heard about the speech given by Tiger regarding the riots in Bombay.

Reference to A-39

(i) On 08.02.1993, A-39 along with Niyaz proceeded to Dubai. At the airport, he was received by Ayub Memon and stayed with Tahir.

(ii) A-39 received training in handling of different types of arms and ammunitions, hand grenades and making of bombs by using RDX. During training, his assumed name was 'Akram'.

(iii) On 01.03.1993, after all others also reached Dubai, A-39, at the instance of Tiger, took oath after placing his hands on Quran. He also heard about the speech given by Tiger regarding the riots in Bombay.

Confessional Statement of Mohd. Parvez Zulfikar Qureshi (A-100) Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and 17.04.1993 (17:00 hrs.) by Sanjay Pandey (PW 492), the then DCP, Zone-VIII, Bombay. He made the following assertions:-

Reference to A-32

(i) A-32 participated in the training of fire arms and ammunitions in Pakistan along with his associates during February, 1993.

(ii) On 02.03.1993, A-32 came back to Dubai, where Tiger Memon gave 200 Dirhams to each one of them and administered oath on Quran to take revenge against Hindus for demolition of Babri Masjid and their tyranny perpetrated on them.

(iii) A-32 was present at the residence of Tiger Memon at Al-Hussaini building on the night of 11.03.1993 along with other co-accused.

Reference to A-39 A-39 participated in the training of fire arms and ammunitions at Islamabad, Pakistan along with his associates during Feb. 1993.

263) A perusal of the confessional statements of all the above accused viz., A-13, A-23, A-29, A-49, A-52, A-57, A-64, A-94, A-98 and A-100 clearly establish the fact that the appellants i.e., A-32, A-36 and A-39 were present at Al-Hussaini Building in the night intervening 11/12.03.1993 and actively participated in filling of RDX in the cavities of vehicles which were later planted at various targets in Bombay causing irreparable damage to life and property. It is also sufficiently established that they went to Pakistan via Dubai and received training in handling of arms and ammunitions at the hands of Tiger Memon and all of them also took oath on holy Quran to take revenge for the riots in Bombay and to keep the training in Pakistan a secret. It is also sufficiently proved that in pursuance

of the said conspiracy, all the appellants herein threw hand grenades in Fishermen's Colony at Mahim on 12.03.1993 causing death of 3 persons and injuring 6 others.

Deposition of Prosecution Witnesses:

Deposition of Mohammed Usman Ahmed Zan Khan (PW-2) (Approver)

264) PW-2 deposed as under:-

Reference to A-32

(i) He knew A-32 as 'Zakir' and identified him in the court.

(ii) He accompanied A-32 and other co-accused persons to Dubai in February, 1993.

(iii) Ayub Memon (AA), brother of Tiger Memon, received them at Dubai Airport and Tiger Memon also visited them at Dubai.

(iv) In Dubai, A-32 informed PW-2 and other co-accused persons that Tiger Memon had asked them to come to Dubai Airport. All the accused persons, including A-32, then boarded a flight to Islamabad, Pakistan.

(v) On reaching Islamabad, all the accused persons including A-32, were taken out of the Airport without any immigration check.

(vi) In Pakistan, all of them received training in use of RDX, pencil detonators, guns and hand grenades.

(vii) On return to Dubai, all the accused persons met at a flat where Tiger Memon was also present. In this conspiratorial meeting, they discussed about the riots in Bombay and took oath on holy Quran to take revenge and not to disclose the secret of the training in Pakistan to anyone.

(viii) On 08.03.1993, several accused persons including A-32 met at the residence of Babloo (AA) where targets were selected by Tiger Memon.

(ix) A-32 attended another meeting on 10.03.1993 at Bandra where he met Tiger Memon and other co-accused and they discussed about the targets and A-32 gave his report on Chembur Refinery.

(x) PW-2 along with A-32 conducted the survey of Bharat Petroleum Refinery as a possible target of blasts.

Reference to A-36

(i) A-36 also joined training in Pakistan.

(ii) A-36 attended the meeting at the Al-Hussaini building on 11.03.1993 where targets were discussed.

(iii) A-36 received four hand grenades from Javed Chikna (AA) on 12.03.1993 and was instructed to throw the same at Fishermen's colony at Mahim. Reference to A-39

(i) A-39 joined training in Pakistan

(ii) In Dubai, A-39 also took oath on holy Quran along with other co-

accused at the instance of Tiger Memon to keep the training in Pakistan a secret.

(iii) A-39 was present in the meeting at Shakeel's place on 07.03.1993 where Tiger Memon discussed about targets.

(iv) On 11.03.1993, A-39 along with other co-accused persons went to survey Bharat Refinery as a prospective target.

265) A perusal of the deposition of PW-2 clearly establishes and fully corroborates the confessions of the appellants in all material particulars that the appellants played an active and crucial role in achieving the object of the conspiracy. It further corroborates the fact that they traveled to Pakistan and received training in handling of arms and ammunitions, explosive substances and throwing of hand grenades. They attended meetings at Dubai and in India and also took oath on holy Quran to take revenge. They participated in filling RDX in vehicles which were used to cause explosions at targets and hurled hand grenades at innocent people in Fishermen's colony at Mahim, on 12.03.1993.

Deposition of Laxman Patil (PW-5) PW-5 is a resident of the Fishermen's Colony and is an eye-witness to the incident. He witnessed the incident while he was waiting on the road.

(i) He identified A-52, A-32, A-36, A-13 and A-43 in court.

(ii) He participated in the identification parade dated 15.05.1993 conducted at Mahim Police Station by Special Executive Magistrate (PW-

469).

(iii) He also identified the car bearing No. MP-13-D-385 in which the appellants came to Mahim slopeway in order to throw hand grenades. Deposition of Santosh Patil (PW-6) PW-6 deposed as follows:

(i) He is a resident of Fishermen's Colony at Mahim. He witnessed the said incident while he was waiting near Municipal School at Mahim Slope.

(ii) He deposed that the appellants came in a Maruti Van to the said Colony and the number of the said vehicle was MP 385.

(iii) He identified A-52, A-32, A-36, A-13, A-43 and A-39 in the Identification Parade conducted in the Court on 20.09.1995.

(iv) He also identified A-32, A-36 and A-39 in the identification parade dated 15.05.1993 conducted at Mahim Police Station by Special Executive Magistrate, PW-469.

Deposition of Shashikant Shetty (PW 13) PW-13 is an eye-witness and a resident of Mahim Fishermens' Colony. He deposed as under:-

(i) He came out of his house after hearing the sound of explosion.

(ii) He identified A-52, A-32, A-36, A-39, A-13 and A-43 in Court.

(iii) He participated in the identification parade dated 15.05.1993, conducted at Mahim police station by Special Executive Magistrate PW-

469.

(iv) He identified the Maruti Van in which the accused persons came to Fishermen's Colony as MP-D-13-385.

(v) PW-13 lodged the First Information Report in respect of the explosions at Fishermen's Colony.

266) From the depositions of PWs-5, 6 and 13, the eye-witnesses, the identification of the appellants as those persons who threw hand grenades towards Fishermen's Colony at Mahim on 12.03.1993 has been established. They also identified the Maruti Van bearing No. MP-D-13-385 as the vehicle in which the appellants came to the place of incident and fled away. Depositions of the said witnesses fully establish the charge in respect of the incident at Fishermen's colony against the appellants. Investigation, Recoveries and FSL Report:

267) On 12.03.1993, Shantaram Gangaram Hire (PW-562), Police Officer, visited the blast site i.e., Fishermen's colony at Mahim and prepared spot panchnama (Exh. 1942) in the presence of panch witnesses Dayaram Timbak Akare and Mahendra Sadanand Mehre. PW 562, in the presence of Tamore (PW-330) and experts collected the articles from the blast site vide Panchnama Exh. No. 1221 which were sent to the Forensic Science Laboratory ("FSL") for opinion. The FSL Report Exh. 1943 proved remnants to be explosives and part of hand grenades.

Evidence with regard to injured victims and deceased:

268) It is seen from the records that in July, 1993, Achyut Shamrao Pawal (PW-542), Police Inspector, collected the injury certificates of the following injured persons, namely, Mr. Gurudutt Agaskar, Ms. Rajashri Agaskar and Ms. Sheetal Kenihas from Bhaba Hospital which amply prove that they sustained injuries during the blast. Injured Shashikant Shetty (PW-

13) and Sheetal Keni (PW-412) also proved to have sustained injuries during the blast. Dr. Wadekar (PW-641) and Dr. Krishna Kumar (PW-640) were the doctors who have proved the injury certificates issued to PW-13 and Sheetal Keni (PW-412) which are Exh. Nos. 2374 and 2372 respectively.

269) Gajanan Tare (PW-413) (husband of the deceased Gulab Tare) and Karande (PW-414) (nephew of the deceased Hira Dhondu Sawant) claimants of two bodies, have proved the death of Mrs. Gulab Tare (wife of PW-413) and Smt. Hira Dhondu Sawant (PW 414's aunt) in the said incident. Dr. Pujari (PW-482) and Gangadhar Uppe (PW-480) have established the cause of death to be the injuries received on 12.03.1993. Achyut Shamrao Pawal (PW-542) also proved the death of 3 persons at Fishermen's Colony in the said incident. Vehicle used for committing the act:

270) The prosecution has brought to our notice that the vehicle used by the appellants for traveling to Fishermen's Colony was purchased by Shafi (AA) which has been proved through the following witnesses:

Deposition of Kailash Govind Rao Baheti (PW 342) He deposed as follows:-

"On 18.01.1993 I had received a telephone call given by Shakil Hasham from Bombay. Shakil requested me to book one red coloured Maruti Van in the name of Asif Darvesh resident of M.G. Road, Indore and another new Maruti Van of blue colour in the name of Shri Kasam Ahmed residing at Indira Nagar, Ujjain. He also requested me to register both the Maruti Van at Indore and send the same to Bombay. He also told me that the payments of the same would be made at Bombay to the driver. I quoted a price of Rs.1,69,000/- per vehicle inclusive of registration and transport charges. I was having red coloured Maruti Van brought by me from M/s Bhatia & Company, Gurgaon, Haryana and blue coloured Maruti Van brought from Vipul Motors, Faridabad, Haryana, in my stock. I had brought both the said vehicles by making advance payment. After receipt of booking from Shakil Hasham for red and blue coloured brand new Maruti Vans, I informed the details of the purchasers to M/s Bhatia Company and M/s Vipul Motors. After receipt of the said letters and bills from both the said companies in the name of purchasers who wanted red and blue Maruti Vans I sent papers of both the Vans for registration to RTO. The blue coloured Maruti Van was registered in the name of Kasam Ahmed at Ujjain RTO. The blue coloured Maruti Van could not be registered at Indore due to lack of E- Form

necessary for registration. Thereafter, I sent both the said Vans to Bombay to Shakil Hasham. Shakil Hasham received the delivery and paid Rs.3,38,000/- to my drivers. My drivers gave the said amount to me. I made the necessary entries in my office record for sending the said Vans to Bombay to Shakil Hasham after purchasing the same for the parties told by him. The RTO Authority at Ujjain had given registration Number MP-13-D-0385 to "blue coloured Maruti Van. Today I am not remembering the engine number and chassis number of the said Maruti Van." Deposition of Shakeel Suleman Hasham (PW-366) He deposed that he had asked PW-342 to arrange for two Maruti Vans (red and blue) in February, 1993. Both the vans were purchased in Madhya Pradesh and the blue Maruti Van was registered in Ujjain with the registration number MP-13-D-0385. It is submitted that this number and the said blue Maruti Van has been identified by PWs-5, 6 and 13 in their depositions as the vehicle which was involved in the said incident at Fishermen's Colony. PW 366 further deposed:

"In the same month (February, 1993) I had also arranged for one blue coloured and another red coloured Maruti Vans also registered at Madhya Pradesh for Suleman Lakdawala. The said vehicles were registered at Madhya Pradesh, Indore, in the name of the purchasers given to me by Suleman Lakdawala. I had given the work of registration to one Kailash Baheti of Indore. Both the said vans were insured by Insurance Agent Rakesh Tiwari before giving the same to Suleman Lakdawala. Both the said vehicles had arrived from Indore. I had sent the same to the petrol pump of Suleman and asked him to take the delivery from the said drivers who had brought the delivery of the said vehicles. Accordingly, he took the delivery by making payment to the drivers." The said vehicles were insured through Vijay A. Tamore (PW-338). Evidence of travel to Dubai for training in Pakistan:

271) The Immigration Officer, Asmita Ashish Bhosale (PW-215) proved the Embarkation card ('X'-314') that was submitted at the Sahar Airport on 11.02.1993 by A-32 who was flying to Dubai. The Immigration Officer, Vishambhar Yadavrao Mitke (PW-212) proved the Disembarkation card given by A-32 at the time of arrival in Bombay from Dubai on 03.03.1993. The depositions of PWs-215 and 212 establish that A-32 left India on 11.02.1993 for Dubai and returned on 03.03.1993. These depositions further corroborate the confessional statement of A-32 wherein he admitted to flying to Dubai on 11.02.1993 and returned on 03.03.1993.

272) The Immigration Officer, Chandrakant Gangaram Sawant (PW-244) proved the Disembarkation card given to him by A-39 while flying to Dubai from Bombay on 08.02.1993. It is submitted that the deposition of PW-244 corroborates the confessional statement of A-39 wherein he stated that he left for Dubai on 08.02.1993 from Bombay.

273) The Immigration Officer, Ajay Krishnaji Lonaare (PW-209) proved the Disembarkation card ('X-306') submitted by A-36 at the time of his arrival from Dubai to Bombay on 03.03.1993. This deposition further corroborates the confessional statement of A-36 wherein he stated that he

returned from Dubai on 03.03.1993.

274) The evidence on record, particularly, as discussed above, sufficiently establish that each of the appellants, namely, A-32, A-36 and A-39 were actively involved in the conspiracy of causing blasts in Bombay in the following manner:

(i) The appellants attended conspiratorial meeting at Dubai on 01.03.1993 where they took oath on holy Quran to keep their training in Pakistan a secret.

(ii) On 08.03.1993, the appellants (A-32 and A-39) attended conspiratorial meeting at Babloo's residence.

(iii) On 10.03.1993, the appellant (A-32) attended conspiratorial meeting at Mobina's residence.

(iv) On 11/12.03.1993, the appellants (A-36 and A-39) attended conspiratorial meeting at the Al-Hussaini building.

(v) The appellants received weapons training in Pakistan;

(vi) On 11/12.03.1993, the appellants participated in filling of RDX in vehicles at the Al-Hussaini building and;

(vii) On 12.03.1993, the appellants threw hand grenades towards the Fishermen's colony which resulted in death of 3 persons and injuring 6 others.

275) It is contended by Mr. Manish that the appellant (A-32) was working as a floor mechanic prior to 1992 December riots, and since then he was jobless and was lured to go to Dubai as it attracts a large number of Indian mechanics, plumbers, electricians, etc. and he willingly went to Dubai not knowing that he was to attend a training camp in Pakistan. It is further contended that he was forced to go to Pakistan since his passport was taken from him in Dubai, and accordingly, he had no choice but to follow the instructions. He thus did not willingly participated in the conspiracy but was forced to carry out conspiratorial acts.

276) As against this argument, learned senior counsel for the CBI pointed out that this line of defence has never been urged by the appellant before the trial Court. It is further pointed out that had there been any compulsion, the appellant could have opted out of the conspiracy upon his return from Dubai, which he did not do. Further, on a holistic reading of the entire body of evidence, it is clear that from the very beginning, the appellants have willingly participated in the successful execution of the object of conspiracy. The argument of coercion is a belated argument and necessarily a product of afterthought. It is further contended on behalf of the appellant (A-32) that the reasons for his involvement in the conspiracy were (i)



money, (ii) provocation, and (iii) riots. It is further contended that there is no record anywhere that someone will take care of the family of the appellant (A-32) after the blasts. In such a situation, appellant would not have willingly participated in such a conspiracy without having thought about his family. In reply, learned senior counsel for the CBI contended that he was fully conscious of the conspiratorial acts and willingly participated in the conspiracy. The loss, if any, suffered by the appellant during the riots does not justify his terrorist act of killing innocent people. The fact that appellant (A-

32) was fully conscious of his acts is further established from his conduct subsequent to the incident, wherein he traveled to Karnataka immediately after the blasts in order to evade arrest.

277) The fact that appellant (A-32) was actively involved in the conspiratorial acts is clear from his own confession wherein he has stated that after their return to Dubai from Pakistan, he along with other co-

conspirators took oath on holy Quran that they will take revenge for the Bombay riots and will not disclose the training in Pakistan to anyone.

278) All the aforesaid acts clearly establish the fact that the appellants knowingly and willingly participated in the conspiratorial acts and were fully aware and conscious of the fact that they were participating in a conspiracy with a grave design.

279) It is further contended by the counsel for the appellants that the Al- Hussaini building is located in a densely populated area within a few hundred meters of Mahim Police Station and it is strange that neither the statement of the security guard was recorded nor any of the neighbours saw anyone filling RDX in vehicles in the intervening night between 11/12.03.1993. Therefore, learned counsel for the appellants vehemently contended that the prosecution story is fabricated and no reliance can be placed on it. But it is amply clear from the materials on record, the confessional statements of the appellants and other co-accused, deposition of prosecution witnesses and the testimony of the Approver (PW-2) that RDX was filled in vehicles which were parked in the garages at Al-Hussaini building. The aforesaid acts were the result of a conspiracy and were carried out in a covert manner in the night at the Al Hussaini Building.

280) It is further contended by the appellant (A-32) that there are material inconsistencies between his confession and that of A-39 that A-32 went to Mahim on 12.03.1993 in a blue Maruti car while A-39 stated that he went in a white Maruti car to Mahim. In our considered view, these are minor inconsistencies which do not go to the root of the matter since both the abovesaid accused have admitted to have gone to Mahim on the fateful day in a Maruti car.

281) It is further contended by the counsel for the appellants that PW-5 is not an independent witness but is an interested witness since his brother-in-law and sister-in-law sustained injuries in the blast at Mahim. In the light of the materials placed, we hold that the testimony of PW-5 is

convincing and even the credibility of the witness has not been shaken in the cross-examination. The testimony of Laxman Patil (PW-5) is further corroborated by the testimony of Santosh Patil (PW-6). A perusal of all the above materials clearly shows that the prosecution has established all the charges and the Designated Court rightly convicted them for the same.

Criminal Appeal Nos. 628-629 of 2008

Mohammed Mushtaq Moosa Tarani (A-44) .... Appellant

vs.

State of Maharashtra,  
Through STF, CBI Bombay .... Respondent

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282) Mr. Priyadarshi Manish learned counsel appeared for the appellant (A-

44) and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent

283) The instant appeals are directed against the final judgment and order of conviction and sentence dated 27.09.2006 and 18.07.2007 respectively, whereby the appellant has been convicted and sentenced to Death by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in BBC No. 1/1993.

Charges:

284) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-44). The relevant portion of the said charge is reproduced hereunder:-

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 above-said principal charge of conspiracy framed at head firstly, the appellant (A-44) was also charged on other counts which are as under:

At head secondly; The appellant (A-44) committed an offence punishable under Section 3(3) of TADA by committing following overt acts:

a) He attended a meeting with co-conspirators at Hotel Taj Mahal;

and

b) He surveyed Stock Exchange Building and Bombay Municipal Corporation Building, along with co-accused for the purpose of committing terrorist acts by

planting bombs.

At head thirdly; On 12.03.1993, the appellant (A-44) planted a suitcase filled with RDX in Room No.3078 of Hotel Centaur, Juhu Tara Road, Mumbai, which exploded, causing injuries to three persons and loss of property to the tune of Rs.2.1 crore, thereby committing an offence punishable under Section 3(2)(ii) of TADA At head fourthly; The appellant (A-44), by causing the aforesaid explosion in Hotel Centaur, Juhu Tara Road, Mumbai, which resulted into injuries to three persons, committed an offence punishable under Section 307 of IPC At head fifthly; The appellant (A-44), by causing the aforesaid explosion, which resulted into injuries to three persons, committed an offence punishable under Section 324 of IPC.

At head sixthly; The appellant (A-44), by causing the aforesaid explosion, which resulted in damage of property, by using explosive material, committed an offence punishable under Section 436 of IPC.

At head seventhly; On 12.03.1993, the appellant (A-44) planted an explosive laden scooter bearing No. MH-05-TC-16 at Shaikh Memon Street with an intent to cause death and destruction of properties by explosion and thereby committed an offence punishable under Section 3(3) of TADA.

At head eighthly; The appellant (A-44), by planting the aforesaid explosive laden scooter also committed an offence punishable under Section 307 of IPC At head ninthly; The appellant (A-44), by planting the aforesaid explosive laden scooter with the knowledge that it was likely to cause damage to the properties, committed an offence punishable under Section 435 read with Section 511 of IPC.

At head tenthly; The appellant (A-44), by planting the aforesaid explosive laden scooter committed an offence punishable under Section 436 of IPC.

At head eleventhly; The appellant (A-44), by planting the aforesaid explosive laden suitcase in Hotel Centaur, Juhu Tara Road, which caused damage to the properties, committed an offence punishable under Section 3 of the Explosive Substances Act, 1908 and;

At head twelfthly; The appellant (A-44), by planting the aforesaid explosive laden suitcase and by possessing the RDX in the said suitcase unauthorisedly committed an offence punishable under Section 4(a)(b) of the Explosive Substances Act, 1908.

285) The Designated Judge found the appellant guilty on all the aforesaid charges. The appellant has been convicted and sentenced for the above said charges as follows:

**Conviction and Sentence:**

- (i) The appellant (A-44) has been sentenced to death under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with the offences mentioned in the said charge. In addition, the appellant was also ordered to pay a fine of Rs. 25, 000/- (charge firstly)

(ii) He has been sentenced to RI for 12 years along with a fine of Rs.

50,000/-, in default, to further undergo RI for one year for the commission of offence under Section 3(3) of TADA. (charge secondly)

(iii) He has been sentenced to RI for life along with a fine of Rs. 25,000/- , in default, to further undergo RI for 6 months for the commission of offence under Section 3(2)(ii) of TADA. (charge thirdly)

(iv) He has been sentenced to RI for life along with a fine of Rs. 25,000/- , in default, to further undergo RI for 6 months for the commission of offence under Section 307 of IPC. (charge fourthly)

(v) He has been sentenced to RI for 3 years for the commission of offence under Section 324 of IPC. (charge fifthly)

(vi) He has been sentenced to RI for 10 years along with a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years for the commission of offence under Section 436 of IPC. (charge sixthly)

(vii) He has been sentenced to RI for life along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year for the commission of offence under Section 3(3) of TADA. (charge seventhly)

(viii) He has been sentenced to RI for 10 years along with a fine of Rs. 50,000/-, in default, to further undergo RI for 1 year for the commission of offence under Section 307 of IPC. (charge eighthly)

(ix) He has been sentenced to RI for 3 1/2 (three and a half) years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months for the commission of offence under Sections 435 read with 511 of IPC. (charge ninthly)

(x) He has been sentenced to RI for 5 years along with a fine of Rs. 12,500/-, in default, to further undergo RI for 3 months for the commission of offence under Section 436 read with Section 511 of IPC. (charge tenthly)

(xi) He has been sentenced to RI for 7 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months for commission of offence under Section 3 of the Explosive Substances Act, 1908. (charge eleventhly)

(xii) He has been sentenced to RI for 7 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months, for the commission of offence under Section 4(b) of the Explosive Substances Act, 1908. (charge twelfthly) Evidence

286) The evidence against the appellant (A-44) is in the form of:-

- (i) his own confession;
- (ii) confessions made by other co-conspirators; (co-accused);
- (iii) testimonies of prosecution witnesses including eye witnesses; and
- (iv) documentary evidence.

Conspiracy:

287) As mentioned above, a common charge of conspiracy has been framed against all the accused persons and in order to bring 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer the same once again.

Confessional Statement of the appellant - Mohammed Mushtaq Moosa Tarani (A-

44)

288) The prosecution pointed out the involvement of the appellant (A-44) in the conspiratorial acts which is evident from his own confession recorded under Section 15 of TADA on 26.05.1993 and 28.05.1993 at 18.30 hrs by Shri K.L. Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confessional statement is summarized hereinbelow:

(i) Since 1991, the appellant (A-44) had developed good friendship with Tiger Memon and he knew that Tiger Memon was a notorious 'goonda'.

(ii) On 05.03.1993, the appellant (A-44), along with his friend Md. Farooq Mohammed Yusuf Pawale (A-16), met Tiger Memon and other co-

conspirators at Taj Mahal Hotel where Tiger Memon told them that they have to take revenge for the damage suffered by Muslims during the riots and called for their help.

(iii) Thereafter, the appellant and others, viz., A-16, PW-2, Bashir Ahmed Usman Gani Khairulla (A-13), Javed Chikna agreed to help Tiger Memon. The appellant, along with Tiger Memon and others, went to survey the BMC building and the Stock Exchange building.

(iv) On 06.03.1993, the appellant along with PW-2 and A-13 went to survey the BMC building, BJP and Shiv Sena office and also showed them the entry and exit gates of the said buildings.

(v) On the same day, after surveying the targets, the appellant met A-16 and told him about what transpired during the day and about the plans of Tiger Memon, on which, A-16 told the appellant not to worry and do whatever has been directed by Tiger Memon.

(vi) On 11.03.1993, the appellant reached Al-Hussaini building and on the instructions of Tiger Memon understood his job from Anwar. Thereafter, Anwar instructed the appellant to carry a suitcase filled with RDX to Hotel Centaur, Juhu on 12.03.1993 and plant the same in the reserved room.

(vii) On 12.03.1993, the appellant went to Anwar's house and thereafter both of them boarded a Maroon coloured car driven by Asgar Yusuf Mukadam (A-10). Anwar took out pencil detonators from his pocket and inserted them in the three suitcases filled with RDX. Thereafter, the appellant was dropped by Anwar on the way and he (A-44) took a taxi and reached Hotel Centaur.

(viii) On reaching the hotel, the appellant kept the bag filled with explosives in Room No. 3078 and came back to the Al-Hussaini building where he informed Anwar that he had planted the bag containing bomb at Hotel Centaur, Juhu in Room No. 3078.

(ix) On Anwar's instructions, the appellant drove a scooter filled with RDX and parked the same at Zaveri Bazaar.

(x) The appellant, thereafter, met A-16 and informed everything to him on which A-16 told him that he should not worry and nothing would happen as the appellant has done the job for their community and 'Allah' would help him.

289) On perusal of the aforesaid confessional statement of the appellant (A-44), the following facts emerge:

(i) The appellant was an old associate of Tiger Memon;

(ii) The appellant was fully aware of Tiger Memon's character and that he was a 'goonda';

(iii) The appellant had participated in the conspiratorial meeting with Tiger and his co-conspirators;

(iv) In the said meeting, the appellant agreed to help the Tiger Memon in the object of the conspiracy; and

(v) Pursuant to the said agreement, the appellant performed several acts, namely, reconnaissance of targets, planting of suitcase laden with RDX and scooter bomb at

the targets.

290) The confession of the appellant (A-44) establishes the charges framed against him in the trial. The fact that the appellant (A-44) knowingly committed the overt act of planting the bomb at Hotel Centaur, Juhu, is evident from his own confession. He himself informed Anwar that he had planted the bag containing bomb at Hotel Centaur, Juhu. The appellant (A-

44) was fully conscious of the gravity and diabolic nature of his act which is apparent from his confession wherein he stated that after committing the overt acts he himself informed everything to A-16 who consoled him by saying that 'Allah' would help him as he has done all this for his community.

Retraction Statement:

291) Mr. Manish, learned counsel for the appellant (A-44) contended that the above-mentioned confession of the appellant dated 26.05.1993 and 28.05.1993 should not be relied upon since it was sought to be retracted by the appellant on 07.06.1994. In reply, learned senior counsel for the CBI submitted that a voluntary and free confession, even if retracted subsequently, can be relied upon. It is also relevant to point out that the retraction allegedly made by the appellant also fails to pin-point the reason behind failure to make complaint to the authorities or police officers or any other authority including the court regarding his signatures being obtained on blank papers and/or the papers containing some typed material and the reason to effect the said signatures. In this case, the Designated Court rightly relied upon the original confession and discarded the subsequent retraction. Since we have elaborately discussed the admissibility or otherwise of the retraction statements in the earlier part of our judgment, there is no need to refer the same once again.

Confessional Statements of co-accused:

292) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-

accused. The legality and acceptability of the confessions of the co-accused has been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-44) are summarized hereinbelow:

Confessional Statement of Md. Shoaib Mohammed Kasam Ghansar (A-9)  
Confessional statement of A-9 under Section 15 of TADA has been recorded on 19.04.1993 and 22.04.1993 by Shri P.K. Jain, the then DCP, Zone X, Bombay. A brief summary of the statement with reference to the appellant is as follows:-



(i) When A-9 along with Parvez Nazir Ahmed Shaikh (A-12) and Asgar Yusuf Mukadam (A-10) reached the house of Anwar, a boy of fair color with curly hair, wearing coat and pant, also came along with him.

(ii) After Anwar inserted the pencil detonators in the bags, the boy with curly hair was dropped and was asked to go to Hotel Centaur, Juhu and to plant the bag at the designated place and come back.

(iii) At the Al-Hussaini building, first, the boy with curly hair came back and then Anwar came back followed by Parvez (A-12).

(iv) In the afternoon of 12.03.1993, on the instructions of Anwar, A-44 drove the scooter filled with black chemical and parked the same at Zaveri Bazaar.

Confessional Statement of Asgar Yusuf Mukadam (A-10) Confessional statement of A-10 under Section 15 of TADA has been recorded on 20.04.1993 and 23.04.1993 at 18:00 hrs by Shri K.L. Bishnoi (PW-

193), the then DCP, Zone III, Bombay. A brief summary of the confessional statement of A-10 with reference to the appellant (A-44) is as follows:

(i) When A-10 reached the house of Anwar, he came down along with a boy and all of them sat in a car. In the car, Anwar took out pencil detonators from his pocket and inserted the same in the bags.

Thereafter, Anwar instructed the boy (whom he referred to as Mushtaq) to get down with the bag and plant the same at the designated place.

(ii) When A-10 reached Al-Hussaini after dropping Anwar and others, the appellant (A-44) also reached there. Thereafter, as instructed by Anwar, A-44 drove a scooter filled with RDX and parked the same at Zaveri Bazaar.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12) Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 and 20.04.1994 at 06:50 hrs. by Shri P.K. Jain (PW-

189), the then DCP, Zone X, Bombay. A brief summary of the statement with reference to the appellant (A-44) is as follows:

(i) When A-12 along with A-10 and A-9 reached the house of Anwar, they met a person with curly hair whose name was Mushtaq. Mustaq and Anwar sat in a car, and thereafter, Anwar opened the bags and inserted pencil detonators which he was carrying.

(ii) When A-12 reached the Al-Hussaini building after planting the suitcase at Hotel Sea Rock, the appellant (A-44) had also reached there.

Confessional Statement of Imtiyaz Yunus Miyan Ghavate (A-15) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 and 09.05.1993 by Shri K.L. Bishnoi, (PW-193), the then DCP, Zone III, Bombay. A brief summary of the said statement with reference to the appellant is as follows:

(i) When A-15 reached the residence of Anwar, the appellant had also come there. He had curly hair and fair complexion and was wearing a black coloured coat.

(ii) A-10 came there in a maroon coloured Maruti Van and the appellant along with Anwar and others sat in the van and left the place.

(iii) When the appellant came to the Al-Hussaini Building, he was holding his coat in his hand. Thereafter, Anwar instructed him to plant the scooter filled with RDX.

293) A perusal of the confessional statements of all the above accused, viz., A-9, A-10 A-12 and A-15 clearly establish the fact that it corroborates the confessional statement of the appellant (A-44). The above- said confessions of the co-accused further establish the following facts:-

(i) The appellant (A-44) was seen in the company of the Anwar (AA);

(ii) The appellant went along with Anwar (AA) and Asgar Yusuf Mukadam (A-10) in a Maruti Van.

(iii) The appellant witnessed the insertion of pencil detonators in the suitcases filled with RDX;

(iv) The appellant planted the suitcase filled with RDX in Hotel Centaur Juhu;

(v) The appellant returned to the Al-Hussaini building and reported the successful planting of the suitcase bomb to Anwar; and

(vi) On the instructions of Anwar (AA), the appellant proceeded to park the scooter filled with RDX at Zaveri Bazaar.

Deposition of Prosecution Witnesses:

Deposition of Ravindra Sitaram Vichare (PW-17)

294) The deposition of PW-17 was recorded on 20.11.1995. The relevant material in his evidence is as follows:-

- (i) He deposed that at the relevant time, he was working as a bellboy at Hotel Centaur, Juhu.
- (ii) On 12.03.1993, around 11:45 am, one guest got down from the motor taxi and was carrying a light blue coloured briefcase type bag.
- (iii) He took the bag from the hands of the guest and kept it in the Baggage Section.
- (iv) After sometime, the guest came to the Baggage Section and picked up his bag and enquired about the lift for going to the room.
- (v) He showed the way towards the lift to the guest.
- (vi) At around 3:00/3:30 p.m., when he was in the lobby of the Hotel, there was a loud sound of explosion.
- (vii) He identified the appellant (A-44) before the court in the dock as the person who came to the Hotel on 12.03.1993.
- (viii) He also identified the appellant in the identification parade dated 07.06.1993 conducted by Special Executive Magistrate, Vaman D. Sapre (PW-249) at Santacruz Police Station.

Deposition of Milind Purushottam Kamble (PW-18) The deposition of PW-18 was recorded on 22.11.1995 and he deposed that:

- (i) At the relevant time, he was working as an attendant in the House Keeping Department of Hotel Centaur, Juhu.
- (ii) On 12.03.1993, the appellant (A-44) enquired from him about the location of Room No. 3078 in the Hotel.
- (iii) Floor Supervisor, who was also present with PW-18, pointed out towards Room No. 3078.
- (iv) He saw the appellant (A-44) entering into Room No. 3078 with a light blue color suitcase.
- (v) Thereafter, the appellant (A-44) came out of the room and left saying that he is going to the restaurant to meet someone and will return shortly. At that time, he was not carrying the blue suitcase.

(vi) He identified the appellant (A-44) before the Court in the dock as the person who kept the suitcase in Room No. 3078.

(vii) He also identified the appellant (A-44) in the identification parade held on 07.06.1993 conducted by the Special Executive Magistrate, Vaman D. Sapre (PW-249).

(viii) He also identified Article No. 9 (coat), Article No. 10 (black pant) and Article No. 11 (white shirt) being clothes worn by the appellant (A-44) on 12.03.1993 when he visited the Hotel.

295) From the perusal of the testimony of PWs-17 and 18, it is clear that the witnesses established the identity of the person, who planted the suitcase in the hotel, as the appellant. They very well proved how the appellant went to the room where the blast took place. The presence of witnesses in the hotel at the time when the appellant went to the hotel for planting the suitcase has been fully established. The witnesses have withstood the lengthy cross-examination and established themselves as credible and reliable witnesses.

Deposition of Nitin Sumitran (PW-260) The deposition of PW-260 was recorded on 13.01.1998. He deposed that:

(i) At the relevant time, he was working as a receptionist at Hotel Centaur, Juhu.

(ii) On 08.03.1993, a male person, aged about 30 to 35 years, approached the Front Desk and told that he was having a reservation in the name of one Mr. Sanjeev Rai and that he had come to make an advance payment of Rs.5,000/- towards reservation of the room.

Deposition of Sanjay Manohar Dalvi (PW-261) The deposition of PW-261 was recorded on 13.01.1998. He deposed that at the relevant time, he was working as the Front Office Cashier and he confirmed that a room was booked at Hotel Centaur, Juhu by one Mr. Sanjeev Rai on 08.03.1993 and he issued a receipt of Rs.5,000/- (Exh. 1093) as advance payment towards the room rent.

Deposition of Cedric Merwyn Creado (PW-262) The deposition of PW-262 was recorded on 13.01.1998. He deposed that:

(i) At the relevant time, he was working as a Front Office Receptionist and on 11.03.1993, a male person came to the desk and enquired for a room.

(ii) He asked him as to whether he has any prior reservation, on which, he replied that he was having a reservation in the name of Sanjeev Rai.

(iii) He gave him a registration card which he returned after filling the same.

(iv) On verification of the card, he found that the name was mentioned as 'Gyanchandani Lalit' and the address was 501, Bel Air Apartment, Linking Road, Bandra, Bombay. As the booking was made in the name of Sanjeev Rai, he asked him as to why he has written a different name on which he replied that since people know him by this name that is why he had mentioned the said name.

(v) He deleted the name and re-wrote the name as Sanjeev Rai on the Registration Card. A corrected reservation slip (Exh. 1096) was also prepared by the Hotel staff.

(vi) Thereafter, PW-262 allotted Room No. 3078 to him and gave him the keys of the room.

**Deposition of Titus Peter Paul Pinto (PW-102)** The deposition of PW-102 was recorded on 27.09.1996. PW-102 is a resident of Bel Air Apartment since 1963 and he is the Secretary of the said Cooperative Housing Society. He deposed that there is no flat bearing No. 501 in the said Apartment. He further deposed that no occupant by the name of Sanjeev Rai or Gyanchandani Lalit was living at the relevant time in that building.

**Deposition of Ravindra Mahadev Kolte (PW-322)** The deposition of PW-322 was recorded on 27.04.1998. He deposed that:

(i) At the relevant time, he was working as an Assistant Security Officer at Hotel Centaur, Juhu. He also described about the scene of the blast.

(ii) Three persons were injured in the blast on 12.03.1993 at 15:30 hrs. in Room No. 3078.

(iii) The ceiling and flooring of the said room were completely destroyed and the occupant of the said room was not present in the room at the time of blast.

(iv) He also made a complaint which was registered as C.R. No. 155/1993.

**Deposition of Jaisingh Shivajirao Patil, Police Officer, (PW-544)** The deposition of PW-544 was recorded on 10.12.1999. In his deposition, he deposed that:-

(i) He inspected the scene of the blast in the presence of panch witness Tiyyadath R. Nair (PW-438) and prepared a spot panchnama Exh. No. 1414.

(ii) He also prepared a panchnama dated 15.03.1993 of four sealed sample packets containing debris collected by the experts from FSL marked as Exh. No. 1859 in the presence of Sadashiv M. Pattanshetti (PW-549).

(iii) He also proved that he recorded FIR being C.R. No. 155/1993 marked as Exh. No. 1208.

(iv) The aforesaid articles which were seized by him were sent to the forensic lab for examination.

(v) FSL Reports (Exh. Nos. 2604 and 2605) show the presence of traces of High Explosive substance, viz., RDX on these articles.

Deposition of Sridhar M. Pandit (PW-355) At the relevant time, he was working as GM (Technical), Hotel Corporation of India. He deposed that he inspected the site of the explosion and the estimated damage at Hotel Centaur, Juhu came to the tune of Rs. 2.1 crores.

Deposition of Ketan Kantilal Shah (PW-433) He was the guest staying at the Hotel at the relevant time and has proved the injuries sustained by him on account of the explosion in the Hotel on 12.03.1993.

Deposition of Vaman Dhondu Sapre, Special Executive Magistrate (PW-249) He is the person who conducted TIP on 07.06.1993 at Santacruz Police Station in which the appellant (A-44) was identified by PWs-17 and 18 and has proved the TIP panchnama Exh. No. 1071 dated 07.06.1993.

Deposition of Ramesh Pandurang Bhasare (PW-74) He is a panch witness who was running a cigarette-bidi stall at Zaveri Bazaar at the relevant time and he deposed as under:

(i) The appellant (A-44) made a statement in the office of Crime Branch on 19.05.1993.

(ii) Thereafter, the appellant (A-44) led the police party and panchas to a Footwear Shop at Khambekar Street and took out the keys from a pit like portion on the roof.

(iii) The police party was further taken to Room No. 12 of a building opposite to Building No. 160 which was locked.

(iv) The appellant opened the lock with the keys which he had taken out from the pit.

(v) Thereafter, from a cupboard, the appellant (A-44) took out a black coat, black pant, white shirt and two keys marked as Article 258-B(i).

(vi) The police party recovered the aforesaid articles vide discovery panchnama marked as Exhibit 389.

The eye witness at the hotel has also identified the above cloth as the same which was worn by the appellant (A-44) at the time of planting of suitcase bomb.

Evidence in respect of the unexploded scooter parked in front of DP Jewellers at Zaveri Bazaar:

Deposition of Shashikant Ramkumar Shukla (PW-26).

296) PW-26 is an eye witness to the incident who witnessed the parking of the said scooter by the appellant (A-44) in front of the shop of D.P. Jewellers, Zaveri Bazaar. He deposed that:

(i) At the relevant time, he was the owner of a cutlery shop at Vithalwadi Naka, Zaveri Bazaar.

(ii) On 12.03.1993, he saw the appellant (A-44) quarelling with a car driver in front of D.P. Jewellers, Zaveri Bazaar for parking space.

He forcibly parked the grey coloured scooter with Registration No. MH- 05-TC 16 and left the place on the pretext of offering namaz at 'Juma Masjid'.

(iii) On 16.03.1993, he learnt that the scooter parked in front of the shop of D.P. Jewellers, Zaveri Bazaar contained explosives.

(iv) Thereafter, he went to Lokmanya Tilak Marg Police Station to see the scooter which was taken into custody by the police. There, he met PI Subhash Jadhav who recorded his statement and showed him two scooters. He identified the scooter which was parked in front of the shop of D.P. Jewellers at Zaveri Bazaar.

(v) He also identified the appellant (A-44) before the court in the dock as the person who had parked the scooter

(vi) He also identified the appellant (A-44) in the Identification Parade dated 04.06.1993 conducted by Sharad Vichare, Special Executive Magistrate, (PW-459).

Deposition of Shantaram Sakharam Sigwan (PW-27) (eye-witness).

PW-27 is a salesman working at Shop No. 263, Shaikh Memon Street, Zaveri Bazaar. He deposed that:

(i) He saw the appellant (A-44) arguing with a car driver to park his scooter in front of D.P. Jewellers. After forcibly parking his grey scooter No. MH-05-TC-16, the appellant left on the pretext of offering namaz at 'Juma Masjid'.

(ii) On 12.03.1993, an explosion took place in front of the shop of Narayandas Jewellers and there was panic in the locality and all the shop keepers closed their shops and everyone left for their home.

(iii) On 16.03.1993, he learnt from a feriwala that the police have seized a scooter which was parked in front of the shop of D.P. Jewellers.

(iv) He, thereafter, went to the police station and noticed that a grey scooter bearing Registration No. MH-05-TC-16 was parked in the compound of the police station.

(v) He identified the scooter and PI Jadhav recorded his statement.

(vi) He also identified the appellant (A-44) before the court in the dock as the person who had parked the scooter.

(vii) PW-27 also identified the appellant (A-44) in the TIP conducted on 04.06.1993 by Sharad S. Vichare, Special Executive Magistrate, (PW-

459) and Memorandum Panchnama Exh. No. 1461 was prepared for the same.

297) The eye witnesses discussed above clearly established the following facts:

(i) the appellant (A-44) came on a scooter at the relevant time.

(ii) the appellant (A-44) had a sort of quarrel with a car driver with regard to parking.

(iii) the appellant (A-44) tried to forcibly park the said scooter, which drew the attention of the witnesses.

(iv) the appellant (A-44) left the place on the pretext of offering namaz.

(v) the identity of the appellant (A-44) is fully established and he has been identified by both the witnesses in TIP.

Deposition of Subhash Dattaram Jadhav (PW-547) At the relevant time, PW-547 was working as PI with LT Marg Police Station. He deposed that:

(i) He received a message that an unclaimed scooter has been found parked in front of DP Jewellers at Zaveri Bazaar.

(ii) He visited Zaveri Bazaar along with Panch Witness Shambhu K. Dwadiga (PW-451).

(iii) He inspected the scooter and noticed that there were black spots outside the dicky of the scooter which was locked. He further deposed that the handle of the scooter was free.

(iv) Since blast had already occurred in Bombay, he got suspicious and, accordingly, sent a message to the control room for sending Bomb Detection and Disposal Squad (BDDS).



(v) Meanwhile, he cordoned off the area where the scooter was parked and sand bags were placed around the scooter and two panch witnesses, namely, Shri Shambhu (PW-451) and Shri Prasanna were also called.

(vi) Nand Kumar Chaugule (PW-444), an officer of BDDS, reached the spot along with his team and inspected the vehicle.

(vii) PW-444 found that there was a layer of brownish oily substance at the top, and thereafter, a layer of blackish oily substance and below the blackish substance, again one brownish layer was present in the dicky.

He also noticed that the said cakes were also containing some pallets.

(viii) PW-547 further deposed that PW-444 took away three metallic tubes and one pipe with holes from the said three layers. The materials recovered were sealed in packets, and thereafter, wrapped in a brown paper.

(ix) PW-444 prepared a spot panchnama dated 15.03.1993 and instructed the police constable to take the scooter to LT Marg Police Station.

(x) On 10.06.1993, SI Dastagir Ghavandi (PW-552) handed over two keys seized by him during investigation of C.R. No. 155/1993.

(xi) On the same day, he called Vijay Ramji Wala (PW-454), Supervisor and Mr. Ajit Vanjari (PW-651) of Vasan Automobiles and in the presence of the two panchas, he gave the said two keys to PW-454 to check whether the same fits in the lock of the scooter which was parked in front of D.P. Jewellers. PW-454 was able to apply the keys to the said scooter.

(xii) He then drew a panchnama which is marked as Exh. No. 1868 stating that the keys found matched with all the three locks of the scooter, i.e., dicky lock, steering lock and the helmet-box lock. The deposition of PW-547 has proved that:

(i) A scooter was reported abandoned in front of D.P. Jewellers at Zaveri Bazaar.

(ii) The condition in which the scooter was found aroused suspicion.

(iii) PW-444 was called from BDDS who successfully diffused the bomb fitted in the front side dicky of the scooter. (the substance subsequently was found to be RDX).

(iv) The witness, in front of the independent witnesses, also checked that the keys recovered at the instance of the appellant fitted in the scooter.

Deposition of Nandkumar Anant Chaugule (PW-444).

The deposition of PW-444 was recorded on 05/06.10.1998. At the time of the incident, he was the Incharge, Senior Inspector of Police, Bomb Detection and Disposal Squad of CID Intelligence, Bombay. He deposed that:

- (i) On 15.03.1993, he received information through his operator that a scooter has been found lying in suspicious condition opposite to D.P. Jewellers, Zaveri Bazaar. He went to Zaveri Bazaar and inspected the scooter. The dicky of the scooter was opened by SI Pandre with the help of hook and rope.
- (ii) The dicky of the said scooter contained a black substance with timer device inserted in the same. The remaining part of the dickey contained three or more polythene bags of brownish color material.
- (iii) Thereafter, the timer was pulled out by SI Pandre by means of a small fishing hook tied with a rope. He further deposed that he separated the detonator from the timer pencil and made the same ineffective and handed over the same to the Police Officers at LT Marg Police Station.
- (iv) The other officers from the BDDS removed the black and brown material from the front dickey of the scooter and gave the same to the police officers of LT Marg police station.
- (v) From the physical appearance of the said black material, he gathered that the same was RDX and from the physical appearance of brown material, he gathered that the same was nitroglycerin, both being high explosive substances.

Deposition of Dhananjay Raghunath Daund (PW-532) The deposition of PW-532 was recorded on 02.12.1999. At the relevant time, he was a PSI attached with the Worli Police Station. He deposed that:

- (i) He arrested the appellant (A-44) on 18.05.1993 and handed him over to PI Shri Ghavandi (PW-552), I.O. in C.R. No. 155/1993.
- (ii) In the presence of Ramesh Pandurang Bhasare (PW-74), two keys of a Bajaj Scooter entangled in a ring were recovered vide disclosure and seizure Panchnama (Exh. No. 389) at the instance of the appellant who led the police party to Kwaliti Footwear shop, Khambekar Street.
- (iii) He handed over the said keys to PI Ghavande (PW-552).

The owner of the scooter was traced through examination of the following witnesses:

Deposition of Sreeram Jeetram Vasan (PW-81)

298) PW-81 was the sub-Dealer of scooters carrying on business in the name of Mohan Automobiles. He deposed that:

(i) He used to purchase scooters from Vasani Automobiles and sell the same to customers.

(ii) He knows a person by the name Sayed Farid Sayed Abdul Wahab @ Farid Bhai (PW-298) who is also a sub-dealer for Bajaj Auto Ltd. and is carrying on business under the name Nisha Sales and Services.

(iii) In the month of February and March, 1993, he sold 22 Bajaj Chetak Scooters and 2 Kinetic Honda Scooters to PW-298 out of the lot of 40 scooters purchased by him from Vasani Automobiles.

(iv) On 18.03.1993, when he went to the office of the Crime Branch, he identified the three scooters, which were sold by him to Nisha Sales and Services on 14.02.1993, 04.03.1993 and 11.03.1993 and he further produced the notes Exh. Nos. 424, 424-A and 424-B respectively of the said scooters to Inspector Homi Irani.

Deposition of Sayeed Abdul Sattar (PW-82) PW-82 was working with Munaf Halari (AA). He had helped him in getting loan through his friend Rahid Shaikh. He deposed that:

(i) On 10.03.1993, Munaf (AA) contacted him for purchase of 2/3 Bajaj Scooters stating that he required the same for his foreign delegation.

(ii) On the same day, around 6 p.m., they took delivery of 2 scooters of blue and stone colour bearing registration Nos. MH-04-Z-261 and MH-05-

TC-29, respectively, from Asgar Ali Tahir Ali Masalawala, Scooter Dealer, (PW 299).

(iii) Next day, i.e, on 11.03.1993, Munaf (AA) took delivery of the third scooter bearing Registration No. MH-05-TC 16 and asked PW-82 to arrange for documents for the registration of the said scooters and got two Xerox copies of Ration Card from Abdul Aziz, an RTO agent. Munaf (AA) collected the documents from him on 12.03.1993.

(iv) When he asked Munaf (AA) to repay the loan, Munaf told him to forget about it since the scooters have been purchased by Tiger Memon and that Tiger Memon has used the same for the bomb blast.

(v) Munaf Halari also cautioned him not to disclose this to anyone, else Tiger Memon will shoot him and his family members.

(vi) He identified the scooters in Court through their registration numbers.

Deposition of Govind Bechan Baria (PW-452) At the relevant time, PW-452 was working with Excellent Petroleum Company situated at J.J. Junction. He deposed that:

- (i) Munaf Halari (AA) had requirement of 3 scooters and he had approached him on 10.03.1993 for the same.
- (ii) He suggested to him that he should go to the Scooter Dealer, Asgar Ali Tahir Ali Masalawala (PW 299).
- (iii) PW-299 referred Munaf (AA) to Sayed Farid Abdul Wahab @ Farid Bhai (PW 298), Scooter Dealer who was working under the name of Nisha Sales and Services.

Deposition of Ajit Vithalrao Vanjari (PW-651) PW-651, at the relevant time, was working as a Sales Manager with M/s Vasan Automobiles. He deposed that he had sold 25 Bajaj Chetak Scooters to Mohan Automobiles.

Deposition of Sambhali S. Hargude (PW-325) PW-325 was the Sub-inspector on station house duty on 15.03.1993. He deposed that:

- (i) He received information about the scooter bearing Registration No. MH-05-TC-16 parked at Zaveri Bazaar through Police Havaladar Shri Kumbhar posted at the Shaikh Memon Street chowki.
- (ii) In the dickey of the said scooter, the iron pieces mixed with a black coloured substance were found.
- (iii) The dickey was also containing a timer pencil inserted at the centre of the said black substance.
- (iv) The bomb squad defused the said bomb by dismantling the timer pencil.

Deposition of Vijay Ramji Wala (PW-454) PW-454 was a Service Provider at M/s Vasan Automobiles, Kalyan. He deposed that on being asked to inspect the scooter with the help of the keys given to him at the LT Marg Police Station, he discovered that the said keys belonged to the said scooter. He was not sure about the registration number of the scooter. He, however, said that it was either MH-05-TC-15 or MH-05-TD-16. He then deposed that it was MH-05-TC-16. It is relevant to point out that the keys which were recovered at the instance of the appellant (A-44) belonged to the same scooter which was planted by the appellant at Zaveri Bazaar and was laden with highly explosive substances.

299) From the evidence discussed above, it is established that:

- (i) The appellant (A-44) actively participated in the conspiracy;

(ii) He was an old associate of Tiger Memon;

(iii) He agreed with the object of conspiracy in the meeting held at Hotel Taj Mahal and performed several overt acts pursuant to the said agreement;

(iv) He associated himself with Tiger Memon (AA) and on his instructions with Anwar (AA).

(v) He was seen taking instructions and being in association with Anwar (AA) by several co-conspirators.

(vi) In his presence, detonators were fitted in the suitcases filled with RDX.

(vii) He planted one such suitcase laden with RDX in Room No. 3078 of Hotel Centaur, Juhu which exploded injuring 3 persons and causing damage to the property to the tune of Rs.2.10 crores;

(viii) He parked a scooter laden with RDX in front of the shop of DP Jewellers, Zaveri Bazaar;

(ix) He threw the keys of the room on the roof of a Footwear shop where he hid the clothes he was wearing at the time of commission of offence and also the keys of the scooter which he had parked at Zaveri Bazaar to avoid detection by police; and

(x) He went to his friend Md. Farooq Mohammed Yusuf Pawale (A-16) and told him everything who, in turn, supported him by saying that 'Allah' would help him as he has done this for his community.

300) It is contended on behalf of the appellant (A-44) that no TIP was conducted in reality. It is pointed out by the prosecution that in the instant case, after the arrest of the appellant, identification parade was conducted on 04.06.1993 by Sharad S. Vichare, Special Executive Magistrate (PW-459) wherein PWs-27 and 26 identified the appellant as the person who had parked the scooter filled with RDX at Zaveri Bazaar. It is further submitted that on 07.06.1993, TIP was conducted by Vaman D. Sapre, Special Executive Magistrate (PW-249) wherein PWs-17 and 18 identified the appellant as the person who had visited the Hotel Centaur, Juhu and planted the suitcase in Room No. 3078 of the Hotel. It is further submitted that the said parade was duly conducted in the presence of panch witnesses and memorandum panchnamas were also prepared for the same.

301) It is further contended on behalf of the appellant (A-44) that Nandkumar Anant Chaugule (PW-444), an officer of BDDS, forcibly opened the lock of the dickey so the question of opening the dickey with the keys recovered by PW-454 from the roof of the footwear shop does not arise.

302) Further, the prosecution submitted that the appellant (A-44), after his arrest on 18.05.1993, made a disclosure statement on 19.05.1993 and led the police party to Kwaliti Footwear shop at Khambekar street, and thereafter, he took the keys from its roof and further led the police party to Room No. 12 of the building opposite the shop. It is further stated that the appellant then opened the lock of the room with the same keys and went inside the room and two keys of Bajaj Scooter and other articles were recovered from a cupboard. Thereafter, the said keys were handed over to the IO who gave the same to PW-547. In order to complete the link, PW-547 called Vijay Ramji Wala (PW-454) who is a Supervisor at M/s Vasan Automobiles to check whether the keys were of the same scooter which was parked by the appellant at Zaveri Bazaar. Thereafter, PW-454 inserted the keys in all the three locks of the scooter and the same tallied with the locks. Thus it was proved that the keys recovered at the instance of the appellant belonged to the scooter laden with RDX recovered from Zaveri Bazaar.

303) It is also contended on behalf of the appellant (A-44) that the handwriting in which the booking was made in the hotel was not confirmed during investigation. We are unable to accept the contention raised since on perusal of the entire evidence as produced by the prosecution, it is established that the appellant planted the suitcase laden with RDX in Room No. 3078 of Hotel Centaur, Juhu. We are satisfied that sufficient evidence has been brought on record by the prosecution to show that the said room was booked by the conspirators in a fake name for which payment was also deposited in advance.

304) It is further contended by the appellant that PW-2 (Approver) has not named the appellant in his deposition. The prosecution pointed out that this does not have any bearing on the prosecution case.

305) We are satisfied that the prosecution has produced sufficient evidence against the appellant (A-44) to bring home the charges framed against him.

Criminal Appeal Nos. 637-638 of 2008 Asgar Yusuf Mukadam (A-10) and Shahnawaz Abdul Kadar Qureshi (A-29) .....Appellant(s) versus The State of Maharashtra Thr. CBI-STF, Bombay .....Respondent(s)

306) Ms. Farhana Shah, learned counsel appeared for the appellants (A-10 and A-29) and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

307) The above-said appeals are directed against the final judgment and order of conviction and sentence dated 18.09.2006 and 19.07.2007 respectively, whereby the appellants (A-10 and A-29) have been sentenced to death by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No. 1/1993.

Charges:

308) A common charge of conspiracy was framed against all the co-conspirators including the appellants (A-10 and A-29). The relevant portion of the said charge is reproduced hereunder:

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 aforesaid principal charge of conspiracy framed at head firstly, the appellants (A-10 and A-29) were also charged on other common counts which are summarized as under:

At head secondly; the appellants (A-10 and A-29), abetted and knowingly and intentionally facilitated the commission of terrorist acts and acts preparatory to terrorist acts by participating in the landing and transportation of arms, ammunition and explosives at Shekadi on 3rd and 7th February, 1993; by participating in the conspiratorial meetings at the residence of Nazir Ahmed Anwar Shaikh (AA) and Baya Moosa Bhiwandiwalla (A-96) to chalk out the plans for commission of terrorist acts and by participating in the preparation of vehicle bombs at Al-Hussaini Building and collecting money from the co-accused Mulchand Shah for disbursement to various accused persons who were involved in criminal conspiracy and thereby committed an offence punishable under Section 3(3) of TADA.

At head thirdly; the appellants (A-10 and A-29), planted an explosive laden Maruti Van in the compound of Plaza Cinema on 12.03.1993, which exploded causing death of 10 persons, injuring 36 others and further damage to property worth Rs. 87 lakhs and thereby committed offences punishable under Section 3(2)(i) of TADA At head fourthly; the appellants (A-10 and A-29), by causing the aforesaid explosion caused death of 10 persons and thereby committed an offence punishable under Section 302 IPC read with Section 34 IPC.

At head fifthly; the appellants (A-10 and A-29), by causing the aforesaid explosion, caused hurt to 36 persons and thereby committed an offence punishable under Section 307 IPC read with Section 34 IPC.

At head sixthly; the appellants (A-10 and A-29), by causing the aforesaid explosion, caused grievous hurt to 16 persons and thereby committed an offence punishable under Section 326 IPC read with Section 34 IPC.

At head seventhly; the appellants (A-10 and A-29), by causing the aforesaid explosion, voluntarily caused hurt to 27 persons and thereby committed an offence punishable under Section 324 IPC read with Section 34 IPC.

At head eighthly; the appellants (A-10 and A-29), by causing the aforesaid explosion, caused damage to properties and thereby having committed an offence punishable under Section 435 IPC read with Section 34 IPC.

At head ninthly; the appellants (A-10 and A-29), by causing the aforesaid explosion, caused damage to the property used as dwelling house and for custody of property and thereby having committed an



offence punishable under Section 436 IPC read with Section 34 IPC.

At head tenthly; the appellants (A-10 and A-29), by causing the aforesaid explosion committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head eleventhly; the appellants (A-10 and A-29), by causing the aforesaid explosion, committed an offence punishable under Section 4(b) of the Explosive Substances Act, 1908.

At head twelfthly; the appellants (A-10 and A-29) by possessing RDX in the said Maruti Van, which was used for causing the aforesaid explosion, committed an offence punishable under Section 9B(1)(b) of the Explosives Act, 1884.

At head thirteenthly; the appellant (A-10), abetted and knowingly facilitated explosions at Hotel Sea Rock, Hotel Centaur and Airport Centaur and thereby committed an offence punishable under Section 3(3) of TADA.

At head fourteenthly; the appellant (A-10), travelled in the van MFC- 1972 with the explosive laden suitcases and thereby committed the offences punishable under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908.

309) The Designated Judge found the appellants guilty on all the aforesaid charges. The appellants have been convicted and sentenced for the above said charges as follows:

Conviction and Sentence:

(i) The appellants have been 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 appellants were also ordered to pay a fine of Rs.

25,000/- each. (charge firstly)

(ii) The appellants (A-10 and A-29) were convicted and sentenced to RI for 9 years and 10 years respectively along with a fine of Rs.50,000/- each, in default, to further undergo RI for 1 year for commission of offence under Section 3(3) of TADA. (charge secondly)

(iii) The appellants have been sentenced to death, subject to confirmation of the same by this Court, along with a fine of Rs.25,000/- each, for the offence punishable under Section 3(2)(i) of TADA. (charge thirdly)

(iv) The appellants have been sentenced to death, subject to confirmation of the same by this Court, along with a fine of Rs 25,000/- each, for the offence punishable under Section 302 of IPC read with Section 34 of IPC. (charge fourthly)

(v) The appellants have been sentenced to RI for life along with a fine of Rs. 50,000/- each, in default, to further undergo RI for 1 year, for the offence punishable under Section 307 of IPC read with Section 34 of IPC. (charge fifthly)

(vi) The appellants have been sentenced to RI for 10 years along with a fine of Rs. 50,000/- each, in default, to further undergo RI for 1 year, for the offence punishable under Section 326 of IPC read with Section 34 of IPC (charge sixthly)

(vii) The appellants have been sentenced to RI for 3 years for the offence punishable under Section 324 of IPC read with Section 34 IPC. (charge seventhly)

(viii) The appellants have been sentenced to RI for 7 years along with a fine of Rs. 50,000/- each, in default, to further undergo RI for 1 year, for the offence punishable under Sections 435 and 436 of IPC read with Section 34 IPC. (charges eighthly & ninthly)

(ix) The appellants have been sentenced to RI for 10 years along with a fine of Rs. 25,000/- each, in default, to further undergo RI for 6 months, for the offence punishable under Section 3 of the Explosive Substances Act, 1908. (charge tenthly)

(x) The appellants have been sentenced to RI for 7 years along with a fine of Rs 25,000/- each, in default, to further undergo RI for 6 months, for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908. (charge eleventhly)

(xi) The appellants have been sentenced to RI for 2 years for the offence punishable under Section 9B(1)(b) of the Explosives Act, 1884. (charge twelfthly)

(xii) The appellant (A-10) has been sentenced to RI for 7 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months, for the offence punishable under Section 3(3) of TADA. (charge thirteenthly)

(xiii) The appellant (A-10) has been sentenced to RI for 5 years along with a fine of Rs 25,000/-, in default, to further undergo RI for 6 months, for the offence punishable under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908. (charge fourteenthly) Evidence:

310) The evidence against the appellants (A-10 and A-29) is in the form of:-

(i) their own confessions;

(ii) confessions made by other co-conspirators; (co-accused);

(iii) testimonies of prosecution witnesses; and

(iv) documentary evidence.

## Conspiracy

311) The object behind the conspiracy is the ultimate aim of it and many means may be adopted to achieve this ultimate object. The crime of conspiracy is complete the moment there is an agreement in terms of Section 120-A of IPC. However, where the conspiracy has in fact achieved its object and resulted in overt acts, all the conspirators in terms of the law explained hereinabove 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer the same once again.

### Confessional Statements:

#### Confessional Statement of Asgar Yusuf Mukadam (A-10)

312) Confessional statement of A-10 under Section 15 of TADA has been recorded on 23.04.1994 (18:00 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of the confessional statement of A-10 is reproduced hereunder:

(i) He was working in the office of Tiger Memon (AA) and his job was to maintain an account of the Hawala money and the money received in the smuggling of gold and silver.

(ii) Due to riots in December, 1992, the office of Tiger Memon (AA) was closed which resumed on 17th December after the riots subsided.

Again, on 6th January, 1993, his office was closed as the riots had resurfaced.

(iii) Anwar (AA) and Shafi (AA) always used to be by the side of Tiger Memon (AA). The smuggled silver used to be purchased by Raju Laxmichand Jain @ Raju Kodi (A-26).

(iv) The money received by Tiger Memon (AA) in the above transactions was kept in a 'Hathi account' maintained by Tiger with Mulchand Sampatraj Shah @ Choksi (A-97). Whenever Tiger needed money he would either withdraw it himself or through A-10

(v) In January, 1993, A-10 had come to know from Anwar that Tiger was going to smuggle arms and ammunitions, explosive (Kala Sabun) and hand grenades.

(vi) On 10th/11th February, Yakub Abdul Razak Memon (A-1) directed A-10 to meet him in the evening. At about 6:30-7:00 p.m., A-10 visited the residence of A-1 at which time 3 tickets and 3 passports of Parvez Mohammed Parvez Zulfikar Qureshi (A-100), Md. Farooq Mohammed Yusuf Pawale (A-16) and Salim Phansopkar were handed over to him and he was asked to pick them up from Midland Hotel and then drop them at the Airport for their journey to Dubai. Accordingly, A-10

carried out the said instructions and dropped the aforesaid three persons at the Airport after handing over their passports and tickets. The said tickets were for Dubai.

(vii) Next day, A-10 went to the Tiger's residence on his instructions.

There he saw Anwar Theba (AA), Shafi (AA), and A-12 standing outside the building. Thereafter, he met Tiger Memon and escorted him to the Airport where Rafiq Madi and Javed Chikna (AA) also arrived. Tiger left for Dubai along with Javed Chikna instructing A-10 to remain in contact with A-1 and in case of requirement of money to A-1 to get the same from A-97. A-10 was also told by Tiger that Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) was to be paid Rs. 5 lacs against the landing and that the same should be paid to him.

(viii) After Tiger's departure, A-10 along with co-accused (A-12) collected Rs. 5 lacs from A-97 and handed over the said amount to A-17 at his residence in Juhu.

(ix) Next day, A-10 was instructed over the phone by A-1 to collect Rs. 1 crore from A-97 for him. A-10, with the help of the other co-accused, collected the said amount from A-97 and gave it to A-1.

(x) On A-1's instructions, on 17th or 18th February, A-10 along with other co-accused, viz., Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-

46) picked up Irfan Chougule (AA) from Paramount Hotel and A-29 and his companion from Bandra Reclamation and dropped them at the Airport.

(xi) On 9th March, A-1 directed A-10 to transfer Rs. 25 lacs from Tiger's account to Irani's account and also Rs. 10 lacs to Ohalia's account and the same was done by contacting Choksi (A-97) over the phone.

(xii) In the morning of 10th March, A-10 transferred Rs. 21 lacs from Tiger's account to Irani's account by contacting Choksi (A-97) over the phone on the instructions of A-1.

(xiii) On 11th March, A-10, following the instructions of Tiger, picked up 2 VIP bags, 2 rexine shoulder bags and one briefcase from the garage at Tiger's residence and carried them to Room No. 17 of the Haj Committee House near Crawford Market. Co-accused Parvez (A-12) also accompanied him. The key of the room was given by Tiger Memon.

(xiv) On the instructions of Shafi, A-10 took a new scooter from his residence and left it at the residence of Tiger.

(xv) On 11th March 1993, at about 11 p.m., following the instructions of Tiger, A-10 took two briefcases and went to the residence of Mobina @ Bayamoosa Bhiwandiwalla (A-96) in Tiger's Maruti Van bearing No. MFC- 1972, collected Tiger's passport and ticket and reached the Airport along with his relative Md. Shoaib Md. Kasam Ghansar (A-9). There, A-9 checked-in his luggage and got the boarding pass issued. The remaining briefcase, passport and ticket were given to Tiger by

A-10 on his arrival at the Airport at about 3.45 am. At the time of departure, Tiger instructed A-10 to follow the instructions of Anwar.

(xvi) On returning to Tiger's residence, A-10 met co-accused Javed Chikna, Shafi, Gani, Parvez, Bashir, Usman and several others. He also saw one new Ambassador Car, one blue coloured Commander Jeep, 2 Maruti-800 cars (one blue and one white), 3 new Bajaj Scooters and 2 old Bajaj Scooters, all of which were parked there laden with black coloured chemical.

(xvii) While returning from the Al-Hussaini building along with A-9 and A-12, A-10 handed over the plastic bags which contained empty boxes of the said chemical to the attending staff of the garbage vehicle at Bandra Reclamation. Then, A-10 collected 3 VIP bags from Tiger's garage and at that time A-9 and A-12 were also with him. They picked up Anwar from his residence in a vehicle. One more boy, namely, Mushtaq (A-44) also came along with Anwar. Anwar placed aluminium like pencils in the chemical contained in all the 3 bags. On Anwar's direction, A-10 took the vehicle to Linking road and dropped Mushtaq (A-44), and also dropped Parvez and Anwar on the way with one VIP bag each and reached the Al-Hussaini Building, Mahim around 11:45-12:00 o' clock at night.

(xviii) At the Al-Hussaini Building, Anwar Theba (AA), A-44 and A-12 joined A-10 within an hour. A-10 saw that Anwar picked up aluminum rod like pencils which were lying on the back seat of the vehicle and inserted them one by one in all the five scooters which were parked there.

(xix) Further, A-10 saw that on the instructions of Anwar Theba (AA), A-15, A-12, A-44 and a boy known to Javed Chikna took out the scooters one by one and left the place.

(xx) A-10 also saw that Anwar had individually briefed all of them about parking the said scooters.

(xxi) A-10 was asked by Anwar whether A-9 could drive a scooter and when he answered in the affirmative, Anwar asked A-10 to direct A-9 to park one scooter near Zaveri Bazaar. Following the said instructions, A-9 left with the fifth scooter.

(xxii) A-10 further noticed that at about 1:45 p.m., Usman arrived with a new red coloured Maruti Van in which two VIP bags were kept by the boys of Javed Chikna. A-10 was given the keys of the said vehicle by Anwar while those of Maruti Van bearing MFC-1972 were given by Anwar to Javed Chikna.

(xxiii) A-10 was directed by Anwar and Javed Chikna to park the said Maruti Van near the Plaza Cinema. On refusal by A-10 as he was scared, he was directed to take A-29 along with him. A-10 and A-29 took the red Maruti Van and parked it in the parking lot of the Plaza Cinema at about 2:15 p.m.

(xxiv) After sometime, A-10 heard the sound of a bomb blast while boarding a taxi hired at Dadar T.T. Both A-10 and A-29 arrived at Crawford Market where they both parted ways. After roaming around for 15-20 minutes in the market, he then took a local train from Churchgate and reached home.

Confessional Statement of Shah Nawaz Abdul Kadar Qureshi (A-29) Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 and 21.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A brief summary of his confession is reproduced hereunder:

(i) A-29 was a resident of Nargis Dutt Nagar Zhopadpatti, Bandra Reclamation Road, opposite the Telephone Exchange Bandra (W), Bombay.

(ii) A-29 was acquainted with Javed Chikna and Usman of Mahim since the last 3-4 years.

(iii) A-29 participated in the landing of smuggled goods at Shekhadi along with Javed Chikna, Shafi, Riyaz, Munna, Karimulla, Akbar, Anwar, Parvez, Imtiyaz, Yeda Yakoob, Dadabhai and others.

(iv) In the evening of 01.02.1993, Javed Chikna asked A-29 to accompany him to bring the smuggled goods of Tiger Bhai. He along with Javed, Usman, Nasir Dhakla and Shafi left in a blue coloured Commander Jeep.

On the way, they met Riyaz along with 3 boys, namely, Munna, Karimulla and Akbar who were in a Maruti Van near a Hotel. Shafi and Munna discussed something and the Maruti Van followed their jeep.

(v) A-29 was acquainted with Tiger, who met there along with Anwar Theba (AA), A-12 and A-15. Tiger arranged for their stay in the hotel.

(vi) A-29 attended a meeting in a hotel on the way to Shekhadi, in which Tiger informed all the persons that he was bringing weapons to take revenge against Hindus.

(vii) A-29 actively participated in the unloading, reloading and opening of packets containing smuggled arms and ammunitions and explosives at the Waghani Tower.

(viii) A-29 travelled in a jeep containing arms etc. from Waghani Tower to Bombay along with Bashir Ahmed Usman Gani Khairulla (A-13) and Akbar.

(ix) A-29, at the instance of Javed, gave his own passport as well as of his friend Abdul Akhtar to Usman.

(x) A-29 reached Dubai along with Irfan Chaugule and Abdul Akhtar. They met Gul Mohammed @ Gullu Noor Mohammed Shaikh (A-77) at the Dubai Airport and were received by Ayub Memon. Anwar, Haji Yakoob, Nasir Dhakla, Bashir Muchhad and Mohd. Rafiq had already reached Dubai and met them at the place of their stay. Tiger Memon also met them there.

(xi) A-29 attended conspiratorial meetings in Dubai with Tiger Memon and others.

(xii) A-29 went to Pakistan from Dubai alongwith Yakub Yeda, Bashir Muchhad, Anwar, Nasir Dhakla, Gul Mohd., Mohammed Rafiq and Irfan Chougule for receiving training in arms and ammunitions. No immigration formalities were observed at the Airport while travelling to Pakistan.

(xiii) A-29 received training in handling of revolver, AK-47, AK-56 rifles, hand grenades and making of bombs with black chemical powder (RDX) and pencil bomb timer devices. The training was given by Pakistani Army Officers for about 10 days. Tiger Memon also attended the said training.

(xiv) After the training, A-29 returned to Dubai along with others without completing any immigration formalities in the same manner.

(xv) In Dubai, at the instance of Tiger Memon, he along with others took an oath by putting their hands on the holy Quran that they would take revenge for the atrocities committed on the community and would indulge in Jihad for Islam and they would not disclose anything about the training to any one and in the event of their arrest they would not disclose anything about others to the police.

(xvi) A-29 returned to Bombay from Dubai along with Nasim, Feroz Abdul Akhtar and Mohd. Rafiq.

(xvii) On the night of 11.03.1993, A-29 went to the flat of Tiger Memon and received Rs. 5,000/- from him. He also noticed that a number of boys were already present there.

(xviii) On 12.03.1993, A-29 was present in the Al-Hussaini building along with Javed Chikna, Bashir Muchhad, Bashir Mahimwala, Usman, Salim Dandekar, Zakir, Abdul Akhtar, Anwar, Shafi and 3-4 unknown boys. In his presence, Usman came there with one bag full of handgrenades. Javed Chikna distributed 3 to 4 hand grenades each to the boys standing there.

(xix) Two VIP suitcases were kept by Anwar in a red Maruti Van. A-29 was told by Anwar that the vehicle was filled with bombs and directed him to go along with A-10 and leave the vehicle at Plaza Cinema. Thereafter, he along with A-10 took the vehicle and reached Plaza Cinema at about 1:45 or 2:00 p.m. The security guards at Plaza Cinema asked something to A-10 and he parked the vehicle in one corner and came out from there, took a taxi and came to Bhendi Bazar side.

(xx) After the bomb blast, A-29 fled to Rampur and was later arrested by police from Indore.

313) From the above, it can easily be inferred that both the accused, viz., A-10 and A-29, apart from implicating themselves in various activities along with other accused persons, corroborate with each other. It is also clear that both the appellants were present at Tiger's residence 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 exploded killing 10 persons and injuring 36 others.

Confessional Statements of co-accused:

Confessional Statement of Zakir Hussain Noor Mohd. Shaikh (A-32)

314) Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (11:25 hrs) and 19.05.1993 (17:30 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to the appellants (A-10 and A-29):

(i) On 11.02.1993, A-10 went to the Sahar Airport with Zakir Hussain, Saleem Dandekar, Parvez at the instance of Javed Chikna and handed over to them their passports and tickets for Dubai.

(ii) A-29 went to Pakistan by a PIA flight for the purpose of training.

(iii) A-29 attended conspiratorial meeting on 10.03.1993 at the residence of Mobina (A-96).

(iv) A-29 actively participated in the preparation of vehicle bombs in the Al-Hussaini building compound in the intervening night between 11/12.03.1993 by using RDX which had landed at Shekhadi.

Confessional Statement of Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-

46) Confessional statement of A-46 under Section 15 of TADA has been recorded on 21.04.1993 (19:00 hrs) and 24.04.1993 (21:25 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the abovesaid confessional statement, the following references have been made to the appellants:

(i) A-10 worked in the office of Tiger Memon.

(ii) On 12th February, 1993, A-10 accompanied Tiger Memon and other co-

accused and went to the airport wherefrom Tiger and other co-accused left for Dubai.

(iii) On 18th February, A-10 along with A-46 picked up Irfan Chougule and other co-accused persons and dropped them at the Airport after handing over to them their passports and tickets to Dubai.

(iv) On 17th February, 1993, A-29 was dropped by the said accused and Anwar along with other accused persons for their departure to Dubai.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57) Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the abovesaid confessional statement, the following references have been made to the appellants:

i) A-10 worked in the office of Tiger Memon.



ii) A-10 drove the explosives laden red Maruti Van along with A-29 from the Al-Hussaini Building on 12.03.1993.

iii) A-29 was present when Anwar Theba (AA) kept two RDX laden suitcases in the dickey of a red coloured Maruti Van and he (A-29) along with A-57 kept two packets of 'Kala Sabun' in the dickey of the said Van. He further stated that the said van was taken by A-

10 and A-29 accompanied by A-57 himself.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64) Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995 by Shri HC Singh (PW-474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. In the abovesaid confessional statement, the following references have been made to the appellants:

i) A-10 was present at the Al-Hussaini Building compound in the intervening night between 11th/12th March, 1993 when RDX was being filled in vehicles.

ii) A-29 participated in the first as well as second landing at Shekhadi.

iii) A-29 was present in Dubai when A-64 and others went there and attended conspiratorial meetings in Dubai.

iv) A-29 went to Pakistan by a PIA flight for training.

v) A-29 attended conspiratorial meeting on 10.03.1993 at the residence of Mobina.

vi) A-29 actively participated in preparation of vehicle bombs at the Al-Hussaini Building compound in the intervening night between 11/12.03.1993 by using RDX which had landed at Shekhadi.

Confessional Statement of Parvez Mohammed Parvez Zulfikar Qureshi (A-100) Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (22:30 hrs.) and 17.04.1993 (17:00 hrs.), by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. In the above said confessional statement, the following references have been made to the appellants:

i) A-29 participated in the training of fire arms and ammunitions at Islamabad, Pakistan along with his associates during February, 1993.

ii) A-29 was present at the residence of Tiger Memon in the intervening night between 11/12.03.1993 along with other co-

accused.

Confessional Statement of Mohammed Shoaib Mohammed Kasam Ghansar (A-9) Confessional statement of A-9 under Section 15 of TADA has been recorded on 19.04.1993 (13:10 hrs.) and 22.04.1993 (00:30 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. In the above said confessional statement, the following references have been made to the appellant (A-10):

- (i) A-9 and A-10 are both from the same village, i.e. Karda in District Ratnagiri.
- (ii) A-9's elder sister is married to A-10's elder brother, Anwar.
- (iii) A-10 told him that he works for Tiger and does the business of Hawala and smuggling of gold and silver.
- (iv) A-9 obtained the boarding pass used by Tiger on 11.03.1993 at the request of A-10.
- (v) A-10 was at the Airport to see off Tiger Memon before the blasts and he arranged for his boarding pass.
- (vi) A-10 and A-9 came back to the Al-Hussaini building after dropping Tiger on 11.03.1993. At that time, co-accused persons were filling chemicals in the vehicles as told to him (A-9) by A-

10.

- (vii) A-10 was driving the Maruti Van on 12.03.1993 and he dropped the co-accused sitting in the Van at a taxi stand to go to Hotel Sea- Rock, Bandra and Centaur Hotel near Airport.
- (viii) A-10 gave a scooter to A-9 for parking the same at Zaveri Bazaar intersection.
- ix) A-9 met A-10 on 13.03.1993 after the blasts.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12) Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.) by Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. In the above said confessional statement, the following references have been made with regard to A-10:

- i) A-10 was working in the office of Tiger Memon.
- ii) A-12 was also working in Tiger's office along with A-10 and other associates to help him in Hawala transactions as well as in the landing of smuggled silver.
- iii) On 15th/16th February, 1993, A-10 along with A-12 went to the residence of Tiger where they along with others were paid Rs.10,000/- by Shafi.

iv) On 11th March, 1993, at noon, A-10 and A-12 were given two small suitcases, two hand bags and one big suitcase by Tiger Memon which were taken by them to room No.17 of Musafirkhana in which one bag was containing AK-56 rifles while the other was containing hand grenades.

v) On the night of 11th March, A-10 was assisting Gani and others in the filling of black soap into the secret cavities of the vehicles.

vi) At the time of leaving for home, A-10 along with A-12 and A-9 were given 5 plastic bags in which the chemicals were kept which were thrown by them into the wastage van of BMC.

vii) A-10 along with A-12 and A-9 carried three suitcases in a van to the residence of Anwar. From there, Anwar and A-44 joined them.

Anwar inserted three timer pencils in each of the said suitcases.

viii) After the blast, on 13.03.1993, A-10 met A-12 and A-9 and received the keys of the scooter which was planted by A-12 at Katha Bazaar.

Confessional Statement of Imtiaz Yunusmiyan Ghavate (A-15) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 (12:30 hrs.) and 09.05.1993 (13:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made with regard to A-10:

i) While working for Tiger, A-15 delivered money to various people on the instructions of A-10.

ii) A-10 was managing the delivery of Hawala money in India.

iii) Tiger with A-10 and other co-accused persons was also involved in selling smuggled silver.

iv) A-10 was seated in the Maruti Van No. MFC 1972 in the morning of 12.03.1993 along with A-15.

Confessional Statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) Confessional statement of A-17 under Section 15 of TADA has been recorded on 18.04.1993 (00:15 hrs.) and 20.04.1993 (02:50 hrs.) by Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. In the above said confessional statement, a reference has been made to A-10 that he gave Rs. 5 lakhs to A-17 for the landing work.

Confessional Statement of Mohd. Mushtaq Musa Tarani (A-44) Confessional statement of A-44 under Section 15 of TADA has been recorded on 26.05.1993 (16:55 hrs.) and 22.05.1993 (10:00 hrs.)

by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the abovesaid confessional statement, the following references have been made with regard to A-10:

i) On 12.03.1993, A-10 was driving a maroon coloured car which was carrying A-44 and other accused involved in planting bombs.

ii) A-44 again met A-10 around noon on 12.03.1993 at Tiger's house.

Confessional Statement of Baya Musa Bhiwandiwalla @ Mobina (A-96) Confessional statement of A-96 under Section 15 of TADA has been recorded on 30.04.1993 (18:00 hrs.) and 02.05.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to A- 10:

i) A-10 worked for Tiger.

ii) A-10 took the tickets for Tiger to Dubai from Mobina's residence on 11.03.1993.

Confessional Statement of Mulchand Sampatraj Shah @ Choksi (A-97) Confessional statement of A-97 has been recorded on 14.05.1993 (20:55 hrs.) and 18.05.1993 (16:15 hrs.) by Vinod Balwant Lokhande (PW-183), the then DCP, Airport Zone. In the abovesaid confessional statement, the following references have been made to A-10:

i) A-10 @ Munna opened Tiger Memon's Hathi account with A-97.

ii) A-10 (Munna) had been routinely operating Tiger Memon's Hathi Account with A-97.

iii) All dealings with A-10 were done on the instructions of Tiger Memon.

Confessional Statement of Mohd. Farooq Mohd. Yusuf Pawale (A-16) Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.) by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. In the above said confessional statement, the following references have been made to A-29:

i) On 08.02.1993, A-16 along with others (including A-29) went to the spot of landing and assisted Tiger in landing of smuggled items containing 84 bags and in their transport to Bombay.

ii) A-29 attended the training of dismantling and handling of fire arms and bombs including chemical bombs as well as hand grenades in Pakistan and, thereafter, went to Dubai along with others.

Confessional Statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23) Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs.) and 22.05.1993 (10:00

hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, a reference has been made to A-29 that he was present at Tiger's house on the day of the blast.

Confessional Statement of Munna @ Mohammed Ali Khan @ Manojkumar Bhanwar Lal Gupta (A-24) Confessional statement of A-24 has been recorded on 30.04.1993 (16:15 hrs.) and 09.05.1993 (19:00 hrs.) by Sanjay Pandey (PW-492), the then DCP, Zone III, Bombay. In the above said confessional statement, a reference has been made to A-29. It was disclosed that A-29 actively participated in the landing and transportation of smuggled goods from Shekhadi coast to Waghani Tower where the packets containing arms and ammunitions and explosives were opened under the supervision of Tiger Memon.

Confessional Statement of Abdul Khan @ Yakub Khan Akhtar Khan (A-36) Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to A-29:

- i) A-36 knew A-29 for many years.
- ii) A-29 took A-36 to Dubai for training.

iii) Tiger told A-29 in Dubai that his ticket to Bombay was ready and that he should leave.

iv) A-29 loaded RDX in the vehicles on 11.03.1993.

Confessional Statement of Feroz @ Akram Amani Malik (A-39) Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. In the above said confessional statement, A-39 refers to A-29 that he received training in Pakistan. Confessional Statement of Nasim Ashraf Shaikh Ali Barmare (A-49) Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (9:30 hrs) and 18.05.1993 by Shri Krishna Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to A-29:

i) A-29 joined Nasim Barmare in Pakistan and received training in arms and ammunitions.

ii) In Dubai, they all were given inflammatory speech by Tiger Memon to take revenge against the atrocities upon the Muslims.

(iii) A-29 left Dubai along with other co-accused.

Confessional Statement of Salim Rahim Shaikh (A-52) Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. In the above said confessional statement, the following references have been made to A-29:

i) A-29 was one of the nine persons who underwent training in Pakistan. They were given training in use of hand-grenades, RDX and detonators.

ii) On 06.03.1993, after coming to Bombay, all the persons (including A-

29) underwent training in Pakistan and met at the residence of Tiger Memon in Bandra to discuss about the bomb blasts.

iii) Tiger gave Rs. 5,000/- to each person in another meeting at his flat next day where the persons who had gone for training were also present.

iv) On the night of 11.03.1993, A-52 saw several persons at Tiger's flat at the Al-Hussaini building including A-29.

Confessional Statement of Gul Mohd. @ Gullu Noor Mohd. Shaikh (A-77) Confessional statement of A-77 under Section 15 of TADA has been recorded on 17.04.1993 (14:10 hrs.) and 19.04.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the abovesaid confessional statement, the following references have been made to A-29:

i) A-77 met A-29 in a Hotel room in Dubai.

ii) A-29 came to Pakistan with them for training.

Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94) Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30 hrs.) and 16.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to A-29:

i) A-29 was in Dubai with other co-accused.

ii) Tiger gave tickets to A-29 to fly to Bombay from Dubai.

Confessional Statement of Niyaz Mohd. @ Aslam Iqbal Ahmed Shaikh A-98 Confessional statement under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and 20.05.1993 (11:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In the above said confessional statement, the following references have been made to A-29:

i) A-29 joined him for training in Pakistan.

ii) On 01.03.1993, after others also reached Dubai, the co-accused (A-

29), who had taken training in Pakistan at the instance of Tiger, took oath after placing his hands on holy Quran. He also heard about the speech given by Tiger regarding the riots in Bombay.

315) A perusal of all the aforesaid confessional statements substantiate the fact that the appellants, viz., A-10 and A-29 were fully aware of the conspiracy and willfully participated in performing the conspiratorial acts. Further, the confessions 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-96, A-97, A-16, A-23, A-24, A-36, A-39, A-49, A-52, A-77, A-94 and A-98 corroborate the confessional statements of the appellants (A-10 and A-29) in material particulars.

316) It is also clear that the confessions made by the appellants as well as by co-accused are truthful and voluntary and were made without any coercion. All safeguards enumerated under Section 15 of TADA and the rules framed thereunder have been duly complied with while recording the confessions of the appellants.

#### Retraction Statements:

317) Ms. Farhana Shah, learned counsel for the appellants contended that the confessional statements of the appellants and the confessional statements of the co-accused persons relied upon by the prosecution against them were retracted subsequently, and therefore, it is not safe to base conviction on the said confessional statements under Section 15 of TADA.

In reply to the above contention, learned senior counsel for the CBI submitted that where the original confession was truthful and voluntary and has been recorded after strictly following the prescribed procedure, the subsequent retraction and denial of such confession under Section 313 statement by the accused is nothing but is a result of an afterthought. Since the very same objection had already been considered in the earlier part of our judgment, we are not inclined to repeat the same once again. The said conclusion is applicable to these appeals also. Deposition of Prosecution Witnesses:

#### Evidence of Mohammed Usman Jan Khan (PW-2) (Approver)

318) PW-2, in his deposition, implicates the appellants and withstood the lengthy cross examination. He deposed as follows:

i) PW-2 identified A-10 and A-29.

ii) The appellants (A-10 and A-29) worked with him in the conspiracy which led to the blasts in Bombay and they were involved in planning, conspiracy, training, landing as well as in blasting of bombs.

iii) A-29 participated in the landing of arms and ammunitions at Shekhadi.

iv) On 11.02.1993, when he went to meet Tiger Memon at Al-Hussaini building, A-10 took him to the Tiger's flat at 5th floor.

v) A-29 participated in the training in Pakistan.

vi) When he (PW-2) returned after surveying the Chembur Refinery on 11.03.1993, he noticed several boys with Tiger Memon including the appellants at that time.

The said witness duly corroborates the confessions of the co-accused and the confessions of the appellants themselves. In the present case, the deposition of PW-2 has also been corroborated in material particulars. It has been contended by the counsel for the appellants that there are contradictions in the statement of PW-2 in respect of the presence of A-10 as to whether he was standing downstairs or in the hall of the 5th floor. On a perusal of the entire evidence of PW-2, it can be inferred that when PW-2 came to the Al-Hussaini building, Tiger Memon was in the flat which was on the fifth floor along with various accused including the appellants. Thereafter, PW-2 described about a meeting where Tiger explained the modalities of the blasts and he came down using the stairs when A-10 was standing downstairs.

319) It is further contended by the counsel for the appellants that there are certain contradictions regarding the air tickets given to A-10 and regarding introducing A-32 to A-10 at Hotel Midland with respect to Exhibit

25. It is relevant to mention that Exhibit 25 was not the document which was pressed into service by the prosecution. PW-2 proposed to make full and true disclosure of all the facts and on the said promise he was granted pardon. Both the statement and the deposition were made under different statutes under the law and are not comparable with each other. The approver has withstood the rigorous cross examination and the prosecution has also corroborated the deposition of the approver by adequate evidence which further affords credibility to his deposition Evidence of Sanjay Salunke (PW-3) and Sanjay Mangesh Salaskar (PW-4) PWs-3 and 4, who were the Security Guards on duty at Plaza Cinema at the relevant time have also witnessed the incident and have deposed as follows:

i) On 12.03.1993, at about 2.15 p.m., one Red coloured Maruti Van had been inside Plaza Cinema Theatre compound from the main gate and was parked in scooter parking area.

ii) There was an altercation between PW-4 and the driver of the said van regarding parking of the van in the scooter parking area.

iii) Seeing this, PW-3, alongwith two other security guards, approached towards them and explained the correct parking area for the same.

Thereafter, the persons in the Maruti Van parked it in the car parking area.



iv) After about 45 minutes to 1 hour, there was a big explosion in the car parking area. The whole area was shaken and PW-3 noticed that the said red coloured Maruti Van parked there was totally damaged. The other motor vehicles in the said area also caught fire and several persons were injured and a situation of panic emerged among the persons who had come to the theater.

v) Other Security Guards, viz., Mr. Singh and Mr. Manchekar were also injured and, subsequently, Mr. Singh died due to the injuries suffered by him in the incident.

vi) PW-3 had taken his colleague Security Guard PW-4, who suffered a back injury and two three more injured persons to Sion Hospital and the said persons were admitted in the hospital after examination.

vii) On the way to Sion Hospital, PW-4 told PW-3 that the persons with whom they had altercation and who had come in a red coloured Maruti Van were responsible for the said incident as some thing had gone wrong in the said red coloured Maruti Van.

viii) PW-3 and PW-4 identified A-10 in the court as the driver of the said red coloured Maruti van.

ix) PW-3 and PW-4 identified A-29 as the person who was sitting by the side of the driver i.e., A-10.

320) Ms. Farhana Shah, learned counsel for the appellants contended that PW-3 was an employee of one Hindustan Security Force and not of Plaza Cinema as stated by him in his deposition. Further, it was contended on behalf of the appellants that the said witness had not specifically described/stated about the height of A-10 and thus it is a material omission. It was also contended that his 'general' description of the kurta- pyjama worn by the accused at the time of the said incident and not explaining the details thereof is also a material omission. Thus, it was argued that in view thereof, the identification of A-10 by PW-3 is doubtful.

321) PW-3 was an employee of Hindustan Security Force which was engaged for providing security guards to Plaza Cinema and he was 'deputed' and was on 'duty' as a Security Guard at Plaza Cinema. Further, he has never stated in his deposition that he was an 'employee of Plaza Cinema'. A-10 has been correctly identified by PW-3 in the court at the time of his deposition and also in the test identification parades dated 21.03.1993 and 25.04.1993, conducted by SEM, PW-462 and in parade dated 14.05.1993 conducted by SEM PW-

469. Thus, the identification has been duly established by the eye witnesses.

322) Further, the depositions of PWs-3 and 4 sufficiently prove the incident and involvement of the appellants. The said depositions also provide corroboration with the above said 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.

Other Witnesses:

323) Kashiram Kubal (PW-449), Piyara Singh (PW-447), Mohan Mayekar (PW-

455), Dattatreya Pawar (PW-448) and Ramesh Lad (PW-450) proved the injuries sustained by them during the explosion. Dr. Rajaram Bhalerao (PW-646), a doctor at Hinduja Hospital who issued certificates regarding treatment of PW-449 and PW-407 sufficiently corroborates the fact of injury suffered by the victims. Vinayak A. Mayekar (PW-456), who was the brother of the deceased Vishram Mayekar, who died due to head and chest injuries sustained in the explosion at Plaza Theatre proved the death of the said victim and also deposed about the charge being taken by him of the dead body on 13.03.1993 from KEM Hospital. Ramesh Barasingh (PW-457), son of the deceased Kisan Barasingh, who died due to scalp injury sustained in the explosion at Plaza Theatre proved the death of the said victim and also deposed about the charge being taken by him of the dead body on 13.03.1993 from KEM Hospital. This fact is further corroborated by the deposition of Dr. Walter Vaz (PW-476), who certified the deaths and its cause of the above said victims.

324) Ramesh Naik (PW-305), the Supervisor of Plaza Cine House deposed regarding hearing a loud explosion on 12.03.1993, at about 03:14 p.m., and saw that the cars parked in the parking area caught fire and a red Maruti Van was completely destroyed, a big crater was formed, compound wall was collapsed, watchman and other staff were injured and further inspected and ascertained the damage of Rs. 50 lakhs and lodged a complaint with PW-551 of Mahim Police Station. Further, he visited Sion and KEM Hospital and found that watchman Singh and project operators Shinde and Vasta had succumbed to their injuries.

325) Ramesh Tulsiram Kolhe (PW-551), an Officer from Mahim Police Station who recorded the complaint of the above, i.e., Ramesh Naik (PW-305) proved the said document. He further deposed that on 13.03.1993, he registered accidental death of Shinde, Vasta, Nissar, Siddiqui and sent a letter to Coroner for effecting post-mortem etc. under panchnama Exh. 1894 and took charge of brass articles penetrated in the body of PW-449 brought from Hinduja Hospital by PC Kamble. PW-551 also deposed about the Accidental Death Reports prepared by him in respect of the deceased persons.

326) Nivrutti S. Kokare (PW-557), was the officer who inspected the scene of offence and prepared the inspection panchnama in the presence of witnesses vide Panchnama Exh. 1918 regarding the crater being formed in the area of car parking, collapse of northern compound wall, burnt vehicles etc. He also took charge of 4 to 5 broken parts of the said red Maruti Van and the number plate bearing No. MAM 962 amongst other things.

327) It is contended on behalf of the appellants with respect to the deposition of PW-305 that on 12.03.1993, despite arrival of so many policemen at the place of explosion, there was no Panchnama prepared on the said date and it came to be prepared only the next day. Further, with respect to the deposition of Narsingh Sherkhane (PW-556), it is contended that the said API of the Bombay Police prepared the Panchnama only on 14.03.1993 whereas the offence was committed on 12.03.1993, and therefore, there has been delay in recording Panchnama which is a serious lapse in the procedure. It

is brought to our notice that the Police had cordoned off and sealed the said area so as to ensure that the scene of crime was not tampered with. Moreover, after several explosions in the city, there was a state of panic and law and order situation which the Police were required to handle as a priority.

328) It is further contended by Ms. Farhana Shah on behalf of the appellants that no efforts were made by the prosecution or PW-557 to trace the ownership of the said Maruti Van. It is further contended with respect to PW-557 that, on inspection of the scene of offence and after effecting the seizure of articles therefrom, he did not mention the articles seized and certain details while drawing up the panchnama and thus his deposition cannot be relied upon. A perusal of the deposition of PW-557 reveals that he has duly inspected the scene of crime and carefully drawn up the panchnama (Exh. 1918) mentioning all the details. He has mentioned the details of all the articles seized by him therein, more particularly, the broken parts of the said Maruti van and the number plate bearing no. MFC 1972. Further, it is amply clear from the depositions of PWs-3 and 4 that the said Maruti van came inside the Plaza Cinema, they having seen the accused in the said van and it has been significantly proved that the appellants were inside the van and that it is the said van which caused the explosion. It has already been proved that the two Maruti Vans, one of blue and the other of red colour were purchased by Mohd. Shafi Jariwala (AA) from Suleman Lakdawala (PW-365) and Kailash Baheti (PW-342). Further, the number of blue Maruti Van is MH-13-D-385 but the number of red coloured Maruti was not known as it was not registered. The delivery of both these vans was given by PW-366 which was supplied by PW-365, who in turn delivered these vans to Shafi Jariwala.

329) It is contended on behalf of the appellants that no evidence has been brought on record to corroborate that the appellants had any driving licence. To this, prosecution pointed out that A-10 has been duly and properly identified as the driver of the said Maruti van by the eye-witnesses, viz., PWs-3 and 4. It has also been revealed by him in his own confessional statement as well as in the confessional statements of other co-accused that he drove the car to Plaza Cinema. Notwithstanding the absence of driving licence, it has been established that A-10 was driving the car.

330) Chordekar (PW-361) has proved the damage caused to the MTNL (public property). FSL Reports Exhs. 1952 to 1955 show the traces of RDX explosives. Rajkumar Nagdawne (PW-563) vide letter had sent the articles collected from the scene of offence and other places to FSL for opinion.

331) In view of the above said 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.

Criminal Appeal No.365 of 2008

Mohammed Shoeb Mohammed  
Kasam Ghansar (A-9)

.... Appellant(s)

vs

The State of Maharashtra,  
Through STF, CBI Mumbai

... Respondent(s)

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332) Ms. Farhana Shah, learned counsel appeared for the appellant (A-9) and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

333) The present appeal is directed against the final judgment and order of conviction and sentence dated 14.09.2006 and 19.07.2007 respectively, whereby the appellant has been convicted and sentenced to death by the Designated Court under TADA for the Bombay Bomb Blasts Case, Greater Bombay in B.B.C. No. 1/1993.

Charges:

334) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-9). The relevant portion of the charge is reproduced hereunder:-

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 above said charge of conspiracy, the appellant (A-9) has also been charged for commission of the following offences:

At head secondly; the appellant (A-9) committed an offence punishable under Section 3(3) of TADA by doing the following overt acts:

- i) Participated in landing of arms and explosives at Shekhadi Coast, Raigad District along with co-conspirators on the 3rd and 7th of February, 1993;
- ii) facilitated the escape of Tiger Memon (AA) by fetching his ticket and passport from the house of Mobina (A-96) and by obtaining his boarding pass on the morning of 12.03.1993, at Sahar Airport; and
- iii) actively participated in preparation of vehicle bombs in the night intervening 11th/12th March, 1993 at Al-Hussaini Building.

At head thirdly; on 12.03.1993, the appellant (A-9), parked a scooter laden with explosives and fitted with a time device detonator in Zaveri Bazaar, which exploded killing 17 persons, injuring 57 persons and causing loss of property to the tune of Rs.1.20 crores and thereby committed an offence under Section 3(2)(i)(ii) of TADA.

At head fourthly; for the aforesaid act mentioned in charge thirdly, the appellant (A-9) committed an offence punishable under Section 302 IPC.

At head fifthly; for the aforesaid act mentioned in charge thirdly, the appellant (A-9), committed an offence punishable under Section 307 IPC by injuring 57 persons.

At head sixthly; the appellant (A-9), by causing the aforesaid explosion which resulted in grievous hurt to 9 persons committed an offence punishable under Section 326 IPC.

At head seventhly; the appellant (A-9), by causing the aforesaid explosion and voluntarily causing hurt to 48 persons committed an offence punishable under Section 324 IPC.

At head eighthly; the appellant (A-9), by causing the aforesaid explosion, which resulted into damage to the properties worth Rs. 1.2 crores committed an offence punishable under Section 435 IPC.

At head ninthly; the appellant (A-9), by causing the aforesaid explosion, which resulted into damage to the properties worth Rs. 1.2 crores committed an offence punishable under Section 436 IPC.

At head tenthly; the appellant (A-9), by causing the aforesaid explosion at Zaveri Bazaar which resulted into death, injuries and destruction of properties, also committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head eleventhly; the appellant (A-9), by causing the aforesaid explosion at Zaveri Bazaar which resulted into death, injuries and destruction of properties, also committed an offence punishable under Section 4(b) of the Explosive Substances Act, 1908.

At head twelfthly; the appellant (A-9), in pursuance of the conspiracy and in contravention of rules made under Section 5 of the Explosives Act, 1884 without licence having possessed and used RDX, committed an offence punishable under Section 9-B (1)(b) of the said Act.

At head thirteenthly; the appellant (A-9), in pursuance of the said conspiracy, on 12.03.1993, in the afternoon, having abetted and knowingly facilitated terrorist act i.e. the explosion at Centaur Hotel Juhu, Centaur Hotel at Airport and Hotel Sea Rock at Bandra committed by the co-conspirator i.e. Mohammed Mushtaq Moosa Tarani (A-

44), Parvez Nazir Ahmed Shaikh (A-12) and Anwar Theba (AA) by planting explosive laden suitcases in the rooms of the said hotels respectively and yourself by accompanying them and A-10 in a Maruti Van bearing No. MFC-1972 on their way for planting the said suitcases in the said hotels with intent to commit the terrorist act, committed an offence punishable under Section 3(3) of TADA.

At head fourteenthly; the appellant (A-9), for the aforesaid act mentioned in charge thirteenthly, committed an offence punishable under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908.

335) The Designated Judge found the appellant (A-9) guilty on all the aforesaid charges except the charge of participating in landing. The appellant (A-9) has been convicted and sentenced for the above said charges as follows:

Conviction and Sentence:

- (i) The appellant was found guilty for the offence of conspiracy for commission of such acts as found proved from charge firstly framed at trial and punishable under Section 3(3) of TADA and Section 120-B of IPC read with the offences mentioned in the said charge and on the said count the appellant has been sentenced to suffer RI for life along with a fine of Rs.25,000/-.(charge firstly)
- (ii) The appellant has been sentenced to RI for 5 years along with a fine of Rs. 25,000/- for the offence punishable under Section 3(3) of TADA. (charge secondly)
- (iii) The appellant has been sentenced to death along with a fine of Rs.25,000/- for the offence punishable under Section 3(2)(i) of TADA. (charge thirdly)
- (iv) The appellant has been sentenced to death along with a fine of Rs 25,000/- for the offence punishable under Section 302 IPC. (charge fourthly)
- (v) The appellant has been sentenced to RI for life along with a fine of Rs. 50,000/- for the offence punishable under Section 307 IPC. (charge fifthly)
- (vi) The appellant has been sentenced to RI for 10 years along with a fine of Rs. 50,000/- for the offence punishable under Section 326 IPC. (charge sixthly)
- (vii) The appellant has been sentenced to RI for 3 years for the offence punishable under Section 324 IPC. (charge seventhly)
- (viii) The appellant has been sentenced to RI for 7 years along with a fine of Rs. 50,000/- for the offence punishable under Section 435 IPC. (charge eighthly)
- (ix) The appellant has been sentenced to RI for 7 years along with a fine of Rs. 50,000/- for the offence punishable under Section 436 IPC. (charge ninthly)
- (x) The appellant has been sentenced to RI for 10 years along with a fine of Rs. 25,000/- for the offence punishable under Section 3 of the Explosive Substances Act, 1908. (charge tenthly)
- (xi) The appellant has been sentenced to RI for 7 years along with a fine of Rs 25,000/- for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908. (charge eleventhly)
- (xii) The appellant has been sentenced to RI for 2 years for the offence punishable under Section 9B(1)(b) of the Explosives Act, 1884. (charge twelfthly)
- (xiii) The appellant has been sentenced to RI for 7 years along with a fine of Rs. 25,000/- for the offence punishable under Section 3(3) of TADA. (charge thirteenthly)

(xiv) The appellant has been sentenced to RI for 5 years along with a fine of Rs 25,000/- for the offence punishable under Sections 3 and 4 read with Section 6 of the Explosive Substances Act, 1908. (charge fourteenthly) Evidence:

336) The evidence against the appellant is in the form of:-

- (i) his own confession;
- (ii) confessions made by other co-conspirators; (co-accused);
- (iii) testimonies of prosecution witnesses; and
- (iv) documentary evidence on record.

#### Conspiracy

337) As mentioned above, a common charge of conspiracy has been framed against all the accused persons and in order to bring 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer to the same once again.

#### Confessional Statement of the appellant - Mohammed Shoeb Mohammed Kasam Ghansar (A-9)

338) Confessional statement of the appellant (A-9) under Section 15 of TADA has been recorded on 19.04.1993 and 22.04.1993, by Shri P.K. Jain, the then DCP, Zone X, Bombay. The following facts emerge from the said confessional statement:

- (i) In the night of 11.03.1993, on being asked by Asgar Yusuf Mukadam (A-10), the appellant went to Sahar Airport along with him and got a boarding card issued for Tiger Memon.
- (ii) The appellant (A-9) asked A-10 that "what to do if anyone catches me", at this, A-10 answered to tell that "it (boarding card) belongs to my brother".
- (iii) Tiger Memon left India in the morning of 12.03.1993, at 4 a.m., and the appellant (A-9) and A-10 saw him leaving the Airport for Dubai.
- (iv) The appellant (A-9) was present at the Al-Hussaini building on the night of 11.03.1993 after dropping Tiger Memon at the Airport, and was also present when RDX was being filled into the vehicles by other co-



accused persons including Abdul Gani Ismail Turk (A-11), Parvez Nazir Ahmed Shaikh (A-12), Mohd. Shafi (AA) and Anwar Theba (AA).

(v) The appellant (A-9), along with A-10 and A-12, disposed of six big plastic bags in a wastage van of BMC at Bandra Reclamation Road. These bags were handed over to them by Anwar Theba (AA) at the Al- Hussaini Building.

(vi) On 12.03.1993, the appellant (A-9), accompanied A-10 and went to the residence of A-12 in order to pick him up and, thereafter, they went to the Al-Hussaini Building in a Maruti Van.

(vii) 3 VIP Bags were collected by A-12 and A-10 from the garage at the Al-

Hussaini building and then they along with the appellant (A-9) went to the residence of Anwar Theba (AA) to pick him up.

(viii) On 12.03.1993, the appellant (A-9) was present in the Van at the time of insertion of timer pencil detonators in the black chemical (RDX) kept in the 3 VIP suit cases by Anwar Theba (AA).

(ix) On 12.03.1993, the appellant (A-9) was also present with A-10 in the van used for dropping the co-accused, namely, A-12, A-44 and Anwar Theba (AA) who went for planting bombs in Hotel Sea Rock, Hotel Centaur Juhu and Hotel Centaur Airport respectively.

(x) The appellant (A-9), thereafter, returned to the Al-Hussaini building with A-10. A-12, A-44 and Anwar Theba (AA) also returned to the said building after planting the bombs at the targets which exploded later. He noticed that three new scooters were parked at Al-Hussaini compound. He was present when Mustaq (A-44) left with one of the new scooters.

(xi) On the very same day, i.e., 12.03.1993, on the instruction of A-10, the appellant (A-9) planted a scooter laden with RDX in front of a jewellery shop at Zaveri Bazaar as per the instructions of A-10. Anwar Theba (AA) had inserted timer pencil detonators in the black chemical (RDX) filled in dicky of the scooter. The appellant (A-9) had the knowledge that the scooter was carrying bomb as told to him by A-10.

(xii) After planting the scooter laden with RDX, the appellant (A-9) went to a Masjid and begged for forgiveness for his sins. He also threw the keys of the scooter in a drain near Bus Stop No. 4 at Mohd. Ali Road.

339) From a perusal of the entire confession, it is established that the appellant was fully aware and conscious of the overt acts committed by him. The above stated facts are established from the admission of his guilt that after planting the bomb at Zaveri Bazaar, he begged for forgiveness for his sins from 'Allah' (the Almighty God) and that even at the time of getting the boarding pass of Tiger Memon, he was conscious and cautious that he was facilitating, aiding and abetting a terrorist in fleeing from the country, and accordingly, the appellant enquired from A-10 at the Airport as to 'what will happen if anyone catches 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. The appellant consciously joined the conspiracy and committed overt acts in furtherance of the conspiracy. He was well aware of the consequences of his actions and the actions of other co-conspirators.

Confessional Statements of co-accused:

340) Apart from his own confession, the involvement of the appellant (A-9) has also been disclosed in the confessional statements of the following co-

accused. The legality and acceptability of the confessions of the co-accused has been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant are summarized hereinbelow:

Confessional Statement of Asgar Yusuf Mukadam (A-10) Confessional statement of A-10 under Section 15 of TADA has been recorded on 20.04.1993 and 23.04.1993 (18:00 hrs.), by Shri K.L. Bishnoi, the then DCP, Zone III, Bombay. The following facts emerge from the abovesaid confession with regard to the appellant (A-9):

(i) In the night of 11.03.1993, the appellant booked the luggage of Tiger Memon and obtained his boarding card at the Airport for his departure to Dubai.

(ii) The appellant (A-9), accompanied by A-10 and A-12, disposed of the plastic bags in a wastage van of BMC which contained the empty boxes of explosives.

(iii) The appellant (A-9), accompanied by A-10 and A-12, picked up three VIP bags loaded with explosives from the garage at the Al-Hussaini building and took them to the residence of Anwar Theba (AA) where Anwar fitted the detonators in these suitcases and thereafter, the bags were taken away by A-12, A-44 and Anwar Theba (AA) to Hotel Sea Rock, Hotel Centaur Juhu and Hotel Centaur Airport respectively.

(iv) The appellant (A-9), on being asked by A-10, drove the scooter laden with explosives on the instructions of Anwar Theba (AA) and parked it at a crowded place in Zaveri Bazaar which later exploded killing 17 persons and injuring 57 others.

Confessional Statement of Abdul Gani Ismail Turk (A-11) Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 and 18.04.1993 by Shri P.K. Jain, the then DCP, Zone III, Bombay. A-11, in his confession, has stated that the appellant (A-9) was present at Al-Hussaini Building in the night of 11.03.1993 along with other co-accused, namely, Bashir Ahmed Usman Gani Khairulla (A-13), Parvez Nazir Ahmed Shaikh (A-12), Md. Shafi, Anwar Theba (AA), Javed Chikna (AA) and he filled the chemical (black soap) in the vehicles which were to be planted as bombs. He further stated as follows:

“.....After sometime Shafi, Anwar, Javed Chikna, Bashir, Parvez, Shoeb and 10/12 boys assembled there. All people came in the garage of Al- Hussaini Building and all

of them filled chemical @ black soap in a number of vehicles....” Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12) Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 and 21.04.1993 (06.50 hrs), by Shri P.K. Jain, the then DCP, Zone III, Bombay. The following facts emerge from the abovesaid confession with regard to the appellant (A-9):

(i) The appellant (A-9) was present at the Al-Hussaini building on the night of 11.03.1993 along with other co-conspirators when the work of filling the black chemical (RDX) into the vehicles to be planted as bombs in Bombay was being done. The said black chemical was brought from Shekhadi which was landed on 03.02.1993.

(ii) The chemical was packed in cardboard boxes and pieces of iron were also added to it.

(iii) In the morning of 12.03.1993, on the instructions of Anwar Theba (AA), the appellant (A-9), along with A-10 and A-12, threw 5-6 plastic bags in a wastage van of BMC at Bandra which contained the empty cardboard boxes of the explosives.

(iv) A-12 further stated as follows:

“And then at about 10.30 o’ clock, Asgar came back to my house with Shoaib in the same red coloured van and we three came at Al- Hussaini. From there, we reached to the house of Anwar taking the three Suit cases (big briefcase) which were kept in the garage, by Maruti van, where we met Anwar and Mushtaq whose hair were curly. They both came and sat in the car, before starting the car Anwar opened the bag and pierced the article just like pencil into the chemical and closed the bags.”

(v) The appellant (A-9), along with A-10, came to the house of A-12 on 13.03.1993 and discussed about the blasts that had occurred on 12.03.1993.

Confessional Statement of Imtiyaz Yunusmiyan Ghavate (A-15) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 and 09.05.1993 (13.30 hrs.), by Shri K.L. Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following facts emerge from the confessional statement of A-15:

(i) The appellant (A-9) was seated in the maroon coloured Maruti Van along with A-10 and A-12 on 12.03.1993 and all of them drove to the house of Anwar Theba (AA) to collect the three suitcases.

(ii) On 12.03.1993, A-9, along with A-10, came to the Al-Hussaini Building in a Maruti Van.

(iii) In the presence of the appellant (A-9), Anwar Theba (AA) inserted timer pencil detonators in the dicky of scooters laden with explosives which were later planted as bombs.

(iv) The appellant drove a scooter laden with explosives and fitted with pencil detonators on 12.03.1993.

Confessional Statement of Mohd. Mushtaq Moosa Tarani (A-44) Confessional statement of A-44 under Section 15 of TADA has been recorded on 26.05.1993 and 22.05.1993 (10.00 hrs.), by Shri K.L. Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confessional statement, he stated that on 12.03.1993, A-9 and A-15 came to the residence of Anwar Theba (AA) in a Maroon coloured car driven by A-10.

341) The aforesaid confessional statements of co-accused persons, viz., A- 10, A-11, A-12, A-15 and A-44 duly corroborate the confessional statement of A-9 in all material aspects. From the above, it is established that:

(i) The appellant (A-9) was actively involved in the conspiracy;

(ii) The appellant was present at the Al-Hussaini building in the night of 11.03.1993 and filled RDX in vehicles;

(iii) The appellant went to various places with A-10 and A-12 and also picked up three suitcases filled with RDX from the garage of the Al- Hussaini building in which detonators were inserted by Anwar Theba (AA) in order to plant the same at various places in the city.

(iv) The appellant was traveling in the car in which A-10, A-12, A-44 and Anwar Theba (AA) were also present.

(v) The appellant participated in various conspiratorial acts like aiding, abetting and in fleeing of Tiger Memon out of the country.

(vi) The appellant was fully aware that the aforementioned accused persons were carrying suitcase bombs for planting the same at Hotel Sea Rock, Hotel Centaur, Juhu and at Hotel Centaur, Airport.

(vii) The appellant parked the scooter at the junction of Sheikh Memon Street and Mirza Street at Zaveri Bazaar which exploded at about 03:05 p.m. killing 17 persons and injuring 57 others;

(viii) After parking the scooter, the appellant (A-9) threw the keys of the scooter into a gutter to avoid detection and went to a mosque to beg forgiveness for his sins.

342) It is also clear that the confessions made by co-accused persons are truthful and voluntary and were made without any coercion. All safeguards enumerated under Section 15 of TADA and the rules framed thereunder have been duly complied with while recording the confessions of the appellants.

Retraction Statements:

343) Ms. Farhana Shah, learned counsel for the appellant (A-9) contended that the confessional statement of the appellant as well as of co-accused persons relied upon by the prosecution against the appellant (A-9) were retracted subsequently, and therefore, it is not safe to base the conviction on the said confessional statements under Section 15 of TADA.

Since the very same objection raised in the connected appeals was considered and rejected, we are not once again repeating the same. The said conclusion is applicable to this appeal also. Depositions of Prosecution Witnesses:

344) The prosecution has relied upon the evidence of several prosecution witnesses to establish the involvement of the appellant (A-9) in the conspiracy. The relevant facts emerge from the deposition of witnesses incriminating the appellant have been enumerated below:

Eye-witnesses:

Deposition of Badrinath Bishansingh Sharma (PW-29)

(i) PW-29 is a hawker at Zaveri Bazaar. He is an eye-witness to the blast. He testified that on 12.03.1993, he saw a person trying to park a scooter in front of the shop of Narayandas Jewellers at Zaveri Bazaar which fell down. PW-29 offered to help him in lifting the scooter but the appellant (A-9) refused to take any help.

(ii) He remembered the colour of the scooter as grey and noted its number on a cigarette pack. The said packet was handed over to the police on 18.03.1993 which was seized by seizure Panchnama Exh. No. 1878 proved by Nisar Ahmed Kankarbhai Shaikh (PW-550). PW-29 also identified the said cigarette packet.

(iii) He also described about the site of the blast and stated that several persons were killed and injured in the blast including himself who got injured in his right leg.

(v) PW-29 identified the appellant (A-9) in the identification parade held at Sacred Hearts School, Worli on 25.03.1993 as the person who parked the said scooter on 12.03.1993 at Zaveri Bazaar.

(vi) PW-29 again identified the appellant (A-9) on 13.05.1993 in the identification parade held at the office of CID in Crawford Market. A perusal of the deposition establishes the fact that the appellant (A-9) parked the scooter laden with explosives at Zaveri Bazaar. Ms. Farhana Shah, learned counsel for the appellant (A-9) contended that PW-29 is an unreliable witness and his deposition should be discarded since he did not disclose the number of the scooter or inform anyone until he had seen the appellant even after five days of the blasts on 12.03.1993. It is relevant to point out that PW-29 was also injured in the said blast and thereafter, he went to his house. The police had cordoned off the

area. On the sixth day after the blasts, PW-29 came to the market and informed the police that he could identify the person who had parked the scooter at Zaveri Bazaar. PW-29 actually identified the appellant in the Test Identification Parade conducted on 25.03.1993 and 13.05.1993 as the person who parked the scooter at Zaveri Bazaar.

Deposition of Amit Champalal Acharya (PW-36)

(i) PW-36, who is an Estate Agent, is an eyewitness to the incident.

(ii) When he was standing in front of the shop of Narayandas Jewellers on the fateful day, a scooterist (A-9), lost his balance while parking his scooter in front of the shop and fell down. One passerby tried to help him but he refused angrily.

(iii) He further testified that the scooterist (A-9) left hurriedly after parking the scooter. This further shows that he was aware that there was a bomb inside the scooter which could explode anytime.

(iv) He identified the appellant (A-9) in the identification parade held on 13.05.1993 at the office of CID in Crawford Market. Ms. Farhana Shah, learned counsel contended on behalf of the appellant (A-

9) that the deposition of this witness should be discarded since PW-36 failed to identify the appellant in the court when he was given opportunity twice. The prosecution submits that non-identification of A-9 in the Court would not make the deposition of PW-36 unreliable as he did identify the appellant (A-9) in the identification parade held on 13.05.1993. The identification parade took place shortly after the blasts but the identification in court took place only on 12.01.1996, which is almost after three years, thus it is possible that due to passage of time PW-36 was unable to identify the appellant before the court. The prosecution further submits that this does not impeach the deposition made by PW-36 since his evidence is sufficiently corroborated by the deposition of PW-29 in all material aspects. The prosecution has brought to our notice that the identification parade dated 25.03.1993 was conducted at Sacred Hearts High School by Ram S. Bhosale (PW-460), who conducted the parade in compliance with the provisions of the Code. PW-460 also recognized Exh.1471, i.e., memorandum panchnama prepared during the parade. PW-460 further stated that no police official was present in the parade room at the time of the parade and that the appellant (A-9) was brought into the parade room wearing a cover (chadar) so as not to reveal his identity. Deposition of Moreshwar Gopal Thakur (PW-469) Special Executive Magistrate (PW-469) conducted the identification parade in respect of A-9. Exh. 1510 is the memorandum of the TIP dated 13.05.1993. The following information is available in the said memorandum:-

(i) TIP memorandum records that a TIP was conducted by SEM Shri Thakur (PW-460) on 13.05.1993.

(ii) The first witness – PW-29 identified the appellant as the person who parked the scooter at Zaveri Bazaar on 12.03.1993.

(iii) The second witness – PW-36 also identified the appellant as the person who parked the scooter at Zaveri Bazaar on 12.03.1993.

Evidence with regard to recovery of the keys of the Scooter:

Deposition of Narsingh Tukaram Sherkhan (PW-556)

345) PW-556, a police officer, recorded the Disclosure Statement made by the appellant on 21.03.1993 to the following effect:

The appellant (A-9) said to the officer:

“Come with me, I will show you the place, where I had thrown the keys of the scooter, after I parked the said Bajaj Scooter laden with explosives” The said statement was recorded vide Disclosure memo Exh.199 in the presence of Panch Witnesses. Pursuant to the said disclosure, the appellant (A-9) led the police party and the same was recorded in the Panchnama (Exh.

200) to the following effect:

“Upon making the statement by the accused in pursuance of the aforesaid panchnama, we the panchas, Police party and the accused Mohammed Shoeb Mohammed Kasam Ghansar, Muslim, aged 30 years sat in the police jeep Number MH-01-M-364 and as per the instruction of the accused, the jeep Driver of P. N. 1938 Mahim Police Station drove the jeep by L. J. Road, Tilak Bridge, Dadar T.T., Ambedkar Road, Ibrahim Rahimatulla Road, Bhendi Bazar and after the jeep reached at Johar chowk via Mohammed Ali Road the accused asked the Jeep Driver to halt the vehicle (jeep) and thereupon the jeep driver halted the jeep. Thereafter the accused person, we the panchas and the police party got down from the jeep. Thereafter, as per the instruction of the accused, we the panchas, police party crossed the Mohammed Ali Road and came to the open space in front of the office of 'Time Travel & Tour' on the Western side foot path and on coming at the said place, pointed at a gutter on Mohammed Ali Road, situated on the opposite side of the 'Time Travel & Tour' and the accused also pointed that the key was thrown therein. The said gutter is at a distance of 10 feet from the said office. On the said gutter there are two cement lids and below the same there is a cement grille. In the presence of us, the panchas, distance was measured from the said gutter which distance from the Electric pole MHL 53 is 12 feet.

The accused push aside the cement lid on the said gutter and dipped his hand in the said gutter and removed a below described key from the silt of the gutter when the police in the presence of us, the panchas, observed the key removed by the accused, the description of the said key is as follows.

There are two keys in one steel ring and on one side of both the said keys, 'Bajaj' has been inscribed in English and below the same '2-112' has been inscribed and on the another side the letters K. V. P. has been inscribed in English and the same were smeared with the earth." It is brought to our notice by the prosecution that these were the keys of the scooter used in the blast at Zaveri Bazaar and this recovery, therefore, also established the fact that the appellant (A-9) had parked the scooter at Zaveri Bazaar on 12.03.1993 and threw the keys in the gutter after parking the same. The prosecution submitted that the appellant further led the police party to recover his passport and driving licence.

Deposition of Kamalakar Kashinath Deo (PW-51) The evidence of PW-556 is further corroborated with the evidence of panch witness Kamalakar Kashinath Deo (PW-51) wherein he stated that the appellant (A-9) had made a voluntary statement in his presence on 21.03.1993 and disclosed the location of the keys of the scooter.

346) It has been contended on behalf of the appellant that the deposition of PW-51 should not be relied upon since the gutter from where the keys were recovered had a manhole, and therefore, the investigating agency has planted the keys. To this, the prosecution pointed out that PW-51 is a panch witness and has identified the appellant as the person who offered to take the police party to the place where the keys of the scooter had been thrown by him and were infact recovered from the said gutter after duly opening the manhole. It is further pointed out that PW-51 withstood the rigorous cross-examination and is a credible witness.

347) It has also been contended on behalf of the appellant that the evidence of PW-556 is unreliable due to various contradictions. It is pointed out by the prosecution that there is no contradiction in the deposition of PW-556 and on going through the same, we feel that the contradictions pointed out on behalf of the appellant (A-9) were minor contradictions and they do not go to the root of the matter so as to discredit the testimony of the witness.

Evidence with regard to purchase of scooter:

348) The prosecution pointed out that the scooter which was planted by the appellant (A-9) along with two other scooters, was purchased by Munaf Halari (AA), who was a close friend of Tiger Memon. The said purchase was done in the following manner:

(i) Munaf Halari approached Abdul Sattar (PW-82) for the purchase of these scooters under an assumed name.

(ii) PW-82 took Munaf Halari to Govind Baria (PW-452) and PW-452 in-turn directed them to Asgar Ali Masalewala (PW-299).

(iii) Munaf Halari paid an amount of Rs. 70,000/- in cash to PW-299 and took the delivery of two Bajaj scooters on 10.03.1993, and the 3rd scooter was delivered to Munaf Halari on the following day.



(iv) PW-299 is a sub-agent of PW-298 who in-turn had purchased the scooters from M/s. Mohan Automobiles as deposed by Shriram Jitram Vasan (PW-81).

(v) PW-81 stated that he purchased the scooter from Ajit Vanjari (PW-651) of M/s. Vasan Automobiles.

Deposition of Sayeed Abdul Sattar (PW-82) PW-82, who was an employee of Munaf Halari (AA), stated that two new scooters were purchased on 11.03.1993 from the garage of PW-299 in Chor Bazar, Bombay and one of them was of blue color. The delivery of the third scooter was given on the next day. He identified two out of the three scooters purchased, in court.

Deposition of Govind Bechan Baria (PW-452)

(i) PW-452 worked at a petrol pump where Munaf Halari used to park his vehicle and that is how he knew Munaf Halari.

(ii) PW-452 deposed that Munaf Halari, along with two other persons, approached him to purchase new scooters on 10.03.1993 and that the witness referred them to Asgar Ali Masalewala (PW-299).

Deposition of Asgar Ali Tahir Ali Masalewala (PW-299)

(i) PW 299 carried on the business of sale/purchase of scooters.

(ii) On 10.03.1993, Akhtar came to PW-299 with a request to purchase scooters. PW-299 obtained the delivery of scooters from a dealer, viz., Nisha Sales and gave the scooters to Akhtar and his two companions.

(iii) The request for purchase of a third scooter was made on 10.03.1993.

On 11.03.1993, he obtained the third scooter from the abovesaid dealer and passed it on to Akhtar and his two companions.

Deposition of Shriram Jitram Vasan (PW-81)

(i) PW-81 is a scooter sub-dealer (he used to purchase scooters from Vasan Auto and sell the same to customers) and prepares scooter purchase challans in the name of Mohan Auto.

(ii) PW-81 sold 22 scooters to Nisha Sales in early days of 1993 three of which were of stone, blue and cosmic colour respectively.

(iii) PW-81 identified the remaining two of the three scooters sold to Nisha Sales in Court.

Deposition of Ajit Vitthalrao Vanjari (PW-651)

(i) PW-651 was an employee at Vasan Auto.

(ii) He recognized the challans issued in respect of purchase of Bajaj Scooters for delivery to M/s Mohan Auto in 1993.

The prosecution pointed out that the above depositions and the documents clearly establish the chain of purchase of scooters used in the blasts on 12.03.1993.

Investigation, Recoveries and FSL Reports:

349) The place of incident, i.e., where the blast took place at Zaveri Bazaar was inspected by Narayan Yedu Rajguru (PW-554) vide panchnama Exh.

1908. The panchnama described the effect of the explosion and vide this panchnama debris and other articles were seized by the I.O. from the place of occurrence. PW-554 also took samples from the place of occurrence in the presence of FSL Experts vide panchnama Exhibit 1909.

Deposition of Narayan Yedu Rajguru (PW-554) In his deposition dated 29.12.1999, he deposed that:

(i) He reached the site within 15 minutes of the blast.

(ii) He prepared a panchnama Exh.1908 in the presence of panch witnesses and seized the articles/blast debris etc.

iii) He also proved this panchnama in court.

(iv) He deposed that the Forensic expert had also collected the samples from the blast site on 13.03.1993 and a panchnama (Exh. 1909) was prepared in the presence of panch witnesses.

(v) The panchnama was proved by the witness.

(vi) The said panchnama records the burnt scooter at the blast site.

The seized articles were sent to the FSL for examination vide Exh. Nos. 1910 and 1911. The FSL Reports pertaining to the examination of these samples are Exh. Nos. 1883, 1884 and 1885 which show the presence of residual high explosive RDX in the samples forwarded for examination.

Evidence with regard to Injured Victims and the Relatives of the Deceased:

350) Nisar Ahmed Kankarbhai Shaikh (PW-550) has proved the deaths and injuries caused to various persons due to the said explosion. The following injured witnesses have also deposed regarding the injuries received by them on account of explosion at Zaveri Bazaar:

(i) Ramchandra Raghunath Deshmukh (PW-394) was injured by a glass splinter that hit him on his back, tearing his shirt and causing a wound.

(ii) Shivari B Garg (PW-424) was also injured by 15 to 20 glass splinters which struck him with great force causing multiple bleeding injuries near his left eye, left side of forehead, left hand and chest.

(iii) Arjun Padurang Devde (PW-578) received injuries on the left side of his waist. He had to remain in the hospital for 8-9 days as the injuries were sustained due to some foreign particles which had pierced into his waist. It is pertinent to mention that metallic pieces (Article 485) were extracted from his body which were seized by Ashok Ganpat Dabhade (PW-558) vide panchnama Exhibit 1925.

The following doctors have proved the injury certificates (Exh. Nos. 2364 and 2355) with regard to PWs-394 and 424:

(i) Dr. Durgaprasad Mahavir Vyas (PW-634) and;

(ii) Dr. Vijaykumar Purshotam Ved (PW-637).

The following witnesses have proved the ADR/Inquest panchnamas in respect of the victims who died in the explosion:

(i) Sudhir Prabhakar Aspat (PW-569) and;

(ii) Feroz Rajahamed Patel (PW-576) and PW-558.

The following witnesses have proved the death of their relatives in the explosion:

(i) Vinayak Dattatray Chavan (PW-395) deposed with regard to the death of his sister, brother-in-law and nephew, who died due to injuries sustained in the blast that took place at Zaveri Bazaar on 12.03.1993 and;

(ii) Radheshyam Mangalchand Poddar (PW-396) deposed about the death of his son due to the blast that took place at Zaveri Bazaar.

The prosecution has also established the damage caused to various properties due to the bomb blast at Zaveri Bazaar from the panchnama Exh. No. 1908 as also by the deposition of PW-554. It also stands established that the damage was due to the explosion caused with the help of RDX explosives.

351) In view of the above said confessional statement of the 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 contentions raised by learned counsel for the appellant regarding his participation in the conspiracy, landing, conspiratorial meetings as well as the filling of RDX during the intervening night, are meritless as the charges framed against the appellant (A-9) have been duly proved.

Criminal Appeal Nos. 864-865 of 2008

Abdul Gani Ismail Turk (A-11)  
versus  
The State of Maharashtra  
Through STF, CBI Bombay

... Appellant(s)  
  
... Respondent

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352) Ms. Farhana Shah, learned counsel appeared for the appellant and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

353) These appeals have been filed against the final judgment and order of conviction and sentence dated 19.09.2006 and 18.07.2007 respectively, whereby the appellant has been convicted and sentenced to death by the Designated Court under TADA Bombay Bomb Blast Case, Greater Bombay in BBC No. 1/ 1993.

Charges:

354) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-11). The relevant portion of the charge is reproduced hereunder:-

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 other counts which are summarized as under:

At head Secondly:- The accused committed an offence punishable under Section 3 (3) of TADA (P) Act 1987 by committing the following overt acts:

- (a) He participated in the landing of arms and explosives at Shekhadi in February 1993.
- (b) He attended meetings at the house of Babloo and Mobina to make plans for committing terrorist acts.
- (c) He received training in handling of arms, explosives at village Sandheri and Borghat.

(d) He participated in preparation of vehicle bombs in the night of 11th/12th March 1993.

At head Thirdly:- He planted the explosive laden Jeep No. MP-09-S- 0070 in front of Udipi Hotel in Century Bazar, Worli on 12.3.1993, which exploded causing death of 88 persons, injuries to 159 persons and loss of properties worth Rs. 2.41 crores and, thereby, committed an offence punishable under Section 3(2)(i)(ii) of TADA.

At head Fourthly:- By causing the above mentioned explosion which resulted into death of 88 persons, he committed an offence punishable under Section 302 IPC.

At head Fifthly:- By causing the above mentioned explosion which resulted into injuries to 159 persons, he committed an offence punishable under Section 307 IPC.

At head Sixthly:- By causing the aforesaid explosion which resulted into grievous injuries to 53 persons, he committed an offence punishable under Section 326 IPC.

At head Seventhly:- By causing the above said explosion which resulted into injuries to 106 persons, he committed an offence punishable under Section 324 IPC.

At head Eighthly:- By causing the aforesaid explosion which resulted into damage to properties worth Rs. 2.5 crores, he committed an offence punishable under Section 435 IPC.

At head Ninthly:- By causing the aforesaid explosion, he also committed an offence punishable under Section 436 IPC.

At head Tenthly:- By causing the aforesaid explosion which resulted into death, injuries and damage to the properties, he committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head Eleventhly:- By causing the aforesaid explosions by possessing explosive substances, he committed an offence punishable under Section 4(a)(b) of the Explosive Substances Act, 1908.

At head Twelfthly:- By possessing the explosives without valid licence that caused the aforesaid explosions, he committed an offence punishable under Section 9B (1) (b) of the Explosives Act, 1884.

At head Thirteenthly:- By causing the aforesaid explosion which resulted into damage to the public properties, he committed an offence punishable under Section 4 of the Prevention of Damage to Public Property Act, 1984.

Conviction and Sentence:

355) On all the aforesaid charges the appellant was found guilty except for charges (b) and (c) at head secondly by the Designated Judge. The appellant (A-11) has been convicted and sentenced as under:

(i) to suffer punishment of death along with a fine of Rs.25,000/- under Section 3(3) of TADA and Section 120-B of IPC read with the offences mentioned in the said charge. (charge firstly).

(ii) to suffer RI for 10 years along with a fine of Rs.50,000/-, in default, to further undergo RI for 1 year for the offence punishable under Section 3(3) of TADA (charge secondly).

(iii) to suffer punishment of death along with a fine of Rs.25,000/- for the offence punishable under Section 3(2)(i) of TADA (charge thirdly).

(iv) to suffer punishment of death along with a fine of Rs.25,000/- for the offence punishable under Section 302 IPC (charge fourthly).

(v) to suffer RI for life along with a fine of Rs.25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 307 IPC (charge fifthly).

(vi) to suffer RI for 14 years along with a fine of Rs.25,000/-, in default, to further undergo RI for six months for the offence punishable under Section 326 IPC (charge sixthly).

(vii) to suffer RI for 2 years for the offence punishable under Section 435 IPC (charge eighthly).

(viii) to suffer RI for 7 years along with a fine of Rs.25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 436 IPC (charge ninthly).

(ix) to suffer RI for 10 years along with a fine of Rs.25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 3 of the Explosive Substances Act, 1908 (charge tenthly).

(x) to suffer RI for 7 years along with a fine of Rs.25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908 (charge eleventhly).

(xi) to suffer RI for 2 years for the offence punishable under Section 9B(1)(b) of the Explosives Act, 1884 (charge twelfthly).

(xii) to suffer RI for 5 years along with a fine of Rs.25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 4 of the Prevention of Damage to Public Property

Act, 1984 (charge thirteenthly).

Evidence:

356) The evidence against the appellant (A-11) is in the form of:-

- (i) his own confession;
- (ii) confessions made by other co-conspirators; (co-accused);
- (iii) testimonies of prosecution witnesses including eye witnesses; and
- (iv) documentary evidence.

Conspiracy

357) As mentioned above, a common charge of conspiracy was framed against all the accused persons and in order to bring 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer to the same once again.

Confessional Statement of the appellant - Abdul Gani Ismail Turk (A-11)

358) Confessional statement of the appellant (A-11) under Section 15 of TADA has been recorded on 15.04.1993, by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The following facts emerge from the confession of the appellant:

- (i) He knew that Tiger was a smuggler but he still joined him and used to perform the work of delivery/bringing of Hawala money.
- (ii) He knew that Asgar Yusuf Mukadam (A-10), Imtiyaz Yunus Miyan Ghavate (A-15), Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46), Anwar (AA), Parvez Nazir Ahmed Shaikh (A-12) and the fact that they were working with Tiger.
- (iii) He used to bring money from Mulchand Sampatraj Shah @ Choksi (A-97) of Zaveri Bazaar.
- (iv) He took part in landings of silver at Mhasla, Shekhadi where Jeeps of Raju Laxmichand Jain @ Raju Kodi (A-26) were used for transportation.



(v) On 27/28 January, on being called by Shafi, he visited the Al-Hussaini Building, where Tiger, Anwar Theba (AA), Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46), Imityaz Yunus Miyan Ghavate (A-15), Parvez Nazir Ahmed Shaikh (A-12), Yakub Abdul Razak Memon (A-1) and his wife were also present.

(vi) On 27/28 January, 1993, he left for Mhasla alongwith Tiger, Anwar Theba (AA), Imtiyaz Yunus Miyan Ghavate (A-15), Shafi, Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46) and Parvez Nazir Ahmed Shaikh (A-12) and from there he went to Shekhadi.

(vii) As there was no landing for 2-3 days, he stayed at Hotel Vaisava alongwith co-accused.

(viii) He stayed along with others at Hotel Big Splash, Alibaugh on 31.01.1993 where other gang members also joined them.

(ix) On 02/03.02.1993, late at night, he alongwith co-accused Imtiyaz Yunus Miyan Ghavate (A-15) and other 4-5 persons went to Waghani Tower by jeep.

(x) He had seen 70-80 boxes of black coloured chemical, 250 - 500 hand grenades, 15-20 big pistols, 60-70 big rifles, electronic wires, magazines and rounds when the boxes were brought to the Tower by Tiger Memon and his men. Those items were also checked by Tiger.

(xi) All the smuggled contraband was loaded in the jeeps, tempo and van after their packing in the presence of the appellant (A-11).

(xii) The jeep of Raju Kodi (A-26) was also used for transportation of arms and ammunitions and RDX explosives.

(xiii) He also brought one such jeep of Raju Kodi to Bombay via Khandala and left it at Anwar's residence as per Tiger's instructions and dropped the other co-accused at Bandra before leaving the vehicle.

(xiv) He came to know about the object of smuggling of arms and ammunitions from the conversation of co-accused. He knew that this was being done to take revenge for the suffering of Muslims in the riots.

(xv) He visited A-15's residence and as per the instructions of Anwar Theba (AA), he brought the jeep to the residence of Amjad and handed over 3 bags containing wire bundles and bullets to him. He (A-

11) parked the jeep there.

(xvi) He visited Tiger Memon's (AA) house after 04.02.1993 and accompanied him to the house of Anwar Theba (AA) and met Suleman Mohammed Kasam Ghavate (A-18) and Sayyed Abdul Rehman Shaikh (A-

28), who had a tempo with them.

(xvii) He received Rs. 1 lakh from Tiger Memon to be paid to Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14). He also received instructions to bring 'black soap' and to go along with Suleman Mohammed Kasam Ghavate (A-18) and Sayyed Abdul Rehman Shaikh (A-28) using a tempo available with them. He knew that the 'black soap' was the same material which was brought at Tower on 03.02.1993.

(xviii) He left for Mhasla along with Suleman Mohammed Kasam Ghavate (A-

18) and Sayyed Abdul Rehman Shaikh (A-28) for the said purpose. (xix) He reached Mhasla in the morning and as instructed, contacted Dawood Taklya (A-14) and paid Rs. 1 lakh to him.

(xx) He loaded 59 bags in the tempo and left for Bombay. On the way, he met Tiger Memon.

(xxi) On 07.03.1993, he accompanied Tiger and Shafi (AA) to Bandra and then went to the residence of Mobina (A-96) as per Tiger's instructions.

(xxii) At Mobina's place, he gave his scooter to Shafi. Other persons also went to the residence of Mobina.

(xxiii) On 08.03.1993, he accompanied Tiger Memon to Mobina's residence.

(xxiv) He accompanied Shafi to Jogeshwari in a Commander Jeep. He had seen Shafi with a bag in which 2 rifles, 4-6 hand-grenades and some rounds were kept.

(xxv) He then accompanied Shafi to the residence of Mobina (A-96). (xxvi) He went to Mahad in a Jeep along with 3 other co-accused, out of them, one was Bashir Ahmed Usman Gani Khairulla (A-13) and waited at Hotel Vasava for Tiger as per his instructions. Tiger Memon, Javed Chikna (AA), Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), Sardar Shawali Khan (A-54) and three other persons came there after sometime.

(xxvii) In his presence, Tiger threw hand-grenades and imparted training in firing to the co-accused at Sandheri.

(xxviii) He accompanied the co-accused to Sandheri and waited till they did firing practice.

(xxix) He also accompanied the co-accused to Bombay and dropped them at Mahim slope. The Jeep was parked at Shahnaz Hotel and keys of the jeep were given to Tiger's parents.

(xxx) He knew about the planting of suitcases in the hotels and the filling of RDX by the co-accused.

(xxxi) He knew that Maruti van was used for carrying RDX filled suit cases for planting the same in hotels. This van was also used for throwing of empty gunny bags and boxes etc. immediately after they were emptied.

(xxxii) He participated in the filling of RDX in the vehicles along with the other co-accused persons. One Jeep, two Maruti cars, one Maruti van, one Ambassador car and 5 scooters were filled with RDX under the supervision of Tiger Memon (AA) and Javed Chikna (AA).

(xxxiii) He accompanied Shafi to his residence and they brought 2 new scooters to the Al-Hussaini building. He again brought one more scooter with Shafi.

(xxxiv) Timer pencils were inserted by the co-accused Anwar Theba (AA) and 2 others in the RDX which was filled in the vehicles in his presence.

(xxxv) He planted the RDX-laden Commander Jeep at Passport office, Worli, Bombay.

(xxxvi) He had knowledge about the smuggling of chemicals and weapons for taking revenge and also about the consequences on account of use of RDX.

359) From the above confession, it is clear that the appellant (A-11) was a close associate of Tiger Memon. 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 contrabands and making of suitcase and vehicle bombs. He planted a jeep containing a bomb at Century Bazaar. He was involved 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.

360) Ms. Farhana Shah, learned counsel for the appellant (A-11) contended that a perusal of his confession shows that he was only an employee (driver) of Tiger Memon and was used only for transportation of goods and had no role in the conspiracy. It was submitted by the prosecution that he (A-11) knew that Tiger Memon was a criminal and he also used to take delivery on behalf of Tiger Memon in the hawala transactions and also participated in the smuggling of silver ignots. On 27/28 January, he went to take delivery of arms and ammunitions and explosives along with other accused. When the landing was delayed by 2-3 days, he stayed in a hotel along with others. The appellant (A-11) has admitted in his confession that he had seen 70 - 80 boxes of black coloured chemical, 250 - 500 hand- grenades, 15-20 big pistols, 60-70 big rifles, electronic wires, magazines and rounds at the time of landing that took place on 02/03.03.1993 at Waghani Tower. From the confessional statement of the appellant (A-11), it can be concluded that he was an integral part of the conspiracy and was a very close associate of Tiger Memon and not merely an innocent servant who knew nothing about the actions of his master. It is also evident from the fact that in his confessional statement, he has stated that he knew the object of the smuggling of arms and ammunitions, which in his words was "to take revenge of the suffering of Muslims".

361) It has also been contended on behalf of the appellant that Section 15 of TADA has not been complied with and the warning required to be given was not given. However, a perusal of the same shows that the officer had asked the appellant (A-11) if he was aware that the confession to be made by him can be used as evidence against him in the Court. The accused had answered the aforesaid question in affirmative. The questions that were asked while recording the first part of the confession were:

“whether he has any complaint against anybody?

Ans. No. Q. Whether anyone has put any kind of pressure on you to make this confessional statement?

Ans. No. Q. Whether you have been given any kind of allurement or threat? Ans. No.

Q. Do you want to make your confessional statement/ statement willingly?

Ans. Yes.

Q. Whether you understand that you are not bound to make this statement/confessional statement?

Ans. Yes.

Q. Whether you understand that it may be produced in the court as an evidence against you in case you confess?

Ans. Yes.

Q. After this you will be kept at place other than the custody of Tapasi Officer. Whether you know this?

Ans. Yes.

Q. Do you still desire to make a confession ?

Ans. Yes.

Q. I do not wish to record your statement forcibly or under any pressure and I, therefore, give you time of 48 hours to think over the same. During this you will be kept at place other than the custody of Tapasi Officer. Whether have you understood this? Ans. Yes.” Before recording the second part of the confession, the officer asked the following questions to the appellant. The questions and answers are quoted below:

“Q. On 15.4.93, you were produced before me and on that day you were given time of 48 hours to think over before recording the statement. That time limit has been expired, have you thought it over? Ans. Yes.

Q. Whether you are under any pressure or you have been given any threat or allurements to make this confessional statement? Ans. No. Q. Whether you know that, if you make any confession, then it may be produced in the court as an evidence against you?

Ans. Yes.” The above quoted conversation shows that the appellant (A-11) had been given due warning by the officer recording the statement that his statement can be used against him. He had also been asked if there was any coercion or threat due to which he was giving his confessional statement. The questions and answers establish that the confession made by the appellant (A-11) was voluntary.

362) It has also been contended by the side of the appellant that a part of the confession was made after two months and, hence, it is a manipulated confession. This contention of the appellant (A-11) is devoid of any merit.

The second confession has been discarded by the trial court and the prosecution has also not pressed into service that confession before this Court.

363) Learned counsel for the appellant (A-11) has further contended that the confession of the appellant (A-11) was recorded in the odd hours of the night. It is pointed out by the prosecution that this fact could be elicited from the officer recording the confession, who was the best person to answer the query. It was also highlighted that it was not as a matter of routine that the confessions were recorded late at night and only a few confessions have been recorded in the late hours which could have been explained by the recording officer, if he was given an opportunity to explain in the cross examination.

364) The said confession was sought to be retracted on 11.01.1994. It is pointed out by the side of the prosecution that the material contained in the retraction statement is vague. It does not give any details or particulars. The said retraction statement fails to pin point the reason behind the failure of concerned accused to make any complaint to the authority- higher police officers or any other authority including Court regarding his signatures being obtained on blank papers and/or the papers containing some typed material and the reason behind himself being forced to effect the said signatures. It may also be noted that retraction was not made at the first available opportunity by the accused person. After arrest, the accused persons were brought before the court number of times in 1993 and 1994 and the retraction was made many months after making of the confession. From the above discussion, it is established that the confession of the appellant (A-11) was truthful and voluntary. It has also been demonstrated that the requirements of Section 15 of TADA have been complied with. Hence the confession of the appellant (A-11) is admissible as substantive evidence.

Confessional Statement of co-accused:

365) A perusal of the above confession of the appellant (A-11) shows that he was playing a key role in furtherance of the abovesaid conspiracy. The other accused, in their confessions under Section 15 of TADA, have also discussed the role played by the appellant (A-11) in the conspiracy.

Confessional statement of Mohammed Shoaib Mohammed Kasam Ghansar (A-9) Confessional statement of A-9 under Section 15 of TADA has been recorded on 19.04.1993 and 22.04.1993 by Prem Krishna Jain (PW 189), the then DCP, Zone X, Bombay. In the abovesaid confessional statement, the reference to the appellant (A-11) is as follows:

“We, thereafter, came at Al- Hussaini Building of Tiger by red coloured Maruti van. He took the car inside after dropping me at the gate and took me inside after ten minutes and offered me a chair to sit. At that time Gani, Parvez, Shafi, Anvar were present there and 5/6 more persons were working in garage.” (emphasis supplied) Confessional statement of Asgar Yusuf Mukadam (A-10) Confessional statement of A-10 under Section 15 of TADA has been recorded on 23.04.1994 (18:00 hrs), by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confessional statement, the reference to the appellant (A-11) is as follows:

(i) His confession establishes that the appellant (A-11) was a close associate of Tiger Memon and used to assist him in hawala transactions by accepting delivery and receipt of funds. He also used to assist Tiger in the landing of smuggled items and their transportation to various places.

(ii) A-11, alongwith other co-accused, assisted the accused (A-10) in collecting Rs. 1 crore from Choksi (A-97) for Yakub Abdul Razak Memon. (A-1)

(iii) Following the departure of Tiger, he was seen present alongwith other co-accused, viz., Javed Chikna (A-12), Shafi, Parvez, Bashir, Usman etc. at Tiger's residence where various vehicles loaded with RDX were parked which were used for causing bomb blast.

Confessional statement of Parvez Nazir Ahmed Shaikh (A-12) Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs) and 21.04.1993 (06:50 hrs) by Prem Krishna Jain (PW 189), the then DCP, Zone X, Bombay. The references made by him with regard to the appellant (A-11) are as follows:

(i) A-11 introduced A-12 to Tiger Memon.

(ii) A-11 worked in the Tiger's office at Dongri and introduced A-12 to Tiger for employment in his office.

(iii) A-11 used to attend Hawala transactions of Tiger alongwith other associates and also used to help him in his landing operations at Shekhadi Coast.

(iv) A-11 went to Shekhadi Coast alongwith other associates to help Tiger in the landing of arms and ammunitions and explosives, which was delayed and effected on 03.02.1993, and transported the said material to the Tower and then to Bombay with the help of the vehicles containing secret cavities for the said purpose.

(v) A-11 also assisted Tiger alongwith other associates in landing at Shekhadi in the second week of February, 1993 and transportation of the consignments to the Tower and thereafter to Bombay.

(vi) A-11 was present in the Al Hussaini building even after the departure of Tiger Memon.

(vii) On the night of 11.03.1993, A-11 filled the chemical into the vehicles parked in the garage at the Al-Hussaini Building.

366) It has been contended by learned counsel for the appellant that from the confession of A-12, it can be inferred that the appellant (A-11) was working as a driver of Tiger Memon. In view of the fact that A-12 has given details about the presence and involvement of the appellant (A-11) in the conspiracy and also about his participation in the act of loading chemicals into the vehicles, it cannot be denied that he was not an integral part of the conspiracy. The fact that A-11 was working in close association with Tiger Memon and was entrusted with the task of driving the jeep shows the trust reposed in him by Tiger Memon. It is just because of the said trust, the position of responsibility commanded by the appellant in the conspiratorial design followed. He played an important and significant role. It cannot be said that A-12 has not given details of any overt act done by A-11. A-12 has, in fact, given significant details about the involvement of A-11 in the landings that took place and in the movement of vehicles in which cavities were made. A-11 was present in the Al Hussaini building even after the departure of Tiger Memon in the early hours of 12.03.1993. This fact establishes that there was no coercion and threat and the appellant (A-11) was working in pursuance of the object of the conspiracy out of his own free will and volition.

Confessional statement of Bashir Ahmed Usman Gani Khairulla (A-13) Confessional statement of A-13 under Section 15 of TADA has been recorded on 16.05.1993 and 18.05.1993, by Shri Krishan Lal Bishnoi (PW-

193), the then DCP, Zone III, Bombay. The reference to the appellant (A-11) in the said confession has emerged as under:-

(i) A-11 participated in the firing practice at Sandheri.

(ii) He was asked by Tiger to take out one gun along with its rounds and hand-grenades for training purpose at Sandheri.

Confessional statement of Imtiaz Yunus Miya Ghavate (A-15) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 (12:30 hrs) and 09.05.1993 (13:30 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. In his confessional statement, the following facts have emerged:

- (i) A-11 was a close associate of Tiger Memon and worked in his office.
- (ii) A-11 had gone to receive Tiger Memon at the Airport on the night of 23rd/ 24th January 1993 and then took him to his residence.
- (iii) He participated in the landing and transportation of smuggled arms and ammunitions at Shekhadi.
- (iv) He transported the arms and explosives from Waghani Tower to Bombay in a Jeep.

Confessional statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) Confessional statement of A-17 under Section 15 of TADA has been recorded on 18.04.1993 and 20.04.1993, by Prem Krishna Jain (PW 189), the then DCP, Zone X, Bombay. He referred to the role of A-11 as follows:-

- (i) On 07.02.1993, the appellant (A-11), along with other co-accused (A-18 and A-28), visited the residence of co-accused A-14, and paid Rs. 1 lakh to him. He also brought gunny bags in a Tempo.
- (ii) A-17 stated that they were given a total of Rs. 15 lakhs which included Rs. 1 lakh which was given through the appellant (A-11). This money was distributed amongst the various Custom officers, Police officers, Trawlerval, labourers and some money was also spent for the truck and other miscellaneous expenses.
- (iii) The appellant (A-11) brought other co-accused in a Jeep. From the Jeep, handgrenades and rifles were taken out for firing at Varad Ghat beyond Mahad.
- (iv) The appellant (A-11) was present along with A-17 at the foot-hill when co-accused were doing the firing practice.

Confessional statement of Suleman Mohd. Kasam Ghavate (A-18) Confessional statement of A-18 under Section 15 of TADA has been recorded on 18.04.1993 (13:00 hrs) and 01.05.1993 (20:30 hrs), by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The following facts have emerged from the confessional statement of A-18:-

- (i) On 05.02.1993, the appellant (A-11) accompanied A-18 and A-28 and went to Mhasla in a Tempo bearing No. MMP- 4799 and on 06.02.1993 he met Dawood Taklya (A-14) and Dadabhai (A-17) at Mhasla. He helped in loading 59 to 63 packets



in the tempo. He also associated with transporting of those bags.

(ii) At the instance of Tiger Memon, A-11 along with A-18 returned to Mhasla from Panvel. They again went to Bombay along with the son of Dawood Taklya (A-14).

(iii) On 08.02.1993 or 09.02.1993, he met A-18 at Mahad when he was with Tiger and others.

(iv) He was also present at Mhasla Tower alongwith others.

Confessional statement of Mohd. Iqbal Mohd. Yusuf Shaikh (A-23) Confessional statement of A-23 under Section 15 of TADA has been recorded on 20.05.1993 (10:00 hrs) and 22.05.1993 (10:00 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following facts have emerged from his confessional statement:

(i) The appellant (A-11) has been referred to as 'a man of Tiger'.

(ii) The appellant (A-11) took A-23 and others to the hills where he (A-

11) took out the arms and ammunitions (a gun, two hand grenades, and a bag of bullets of the gun) and Tiger imparted training in throwing hand grenades and firing with AK-56 rifle.

Confessional statement of Manoj Kumar Bhanwar Lal Gupta (A-24) Confessional statement of A-24 under Section 15 of TADA has been recorded on 30.04.1993 (16:15 hrs) and 09.05.1993 (19:00 hrs) by Sanjay Pandey (PW- 492), the then DCP, Zone-VIII, Bombay. The following facts have emerged in his confessional statement:-

(i) A-11 participated in the first landing at Shekhadi.

(ii) At Shekhadi, the packets were opened and reloaded in the truck. There were AK-56 rifles, hand-grenades, pistols, cartridges in the packets.

(iii) A-24 also participated in the second landing at Shekhadi along with other people (he has not named the people present in the second landing).

Confessional statement of Syed Abdul Rehman Kamruddin Syed (A-28) Confessional statement of A-28 under Section 15 of TADA has been recorded on 23.04.1993 (17:00 hrs) and 01.05.1993 (23:30 hrs) by Sanjay Pandey (PW-492), the then DCP, Zone-VIII, Bombay. The following facts emerge from his confessional statement:-

(i) A-28 knew Tiger, Anwar, Rafique Madi, Haji Yakub and Gani (A-11).

(ii) On 05.02.1993, the appellant (A-11), along with A-18 and A-28, proceeded in a vehicle from Mahim to Mhasala.

(iii) At Mhasala, he met A-14 and A-17, who got 55-60 gunny bags loaded in their tempo.

(iv) Tiger sent A-11 and A-28 to Persian Darbar.

Confessional statement of Shahnawaz Abdul Kadar Qureshi (A-29) Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs) and 21.05.1993 (14:45 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The statement of A-29 further corroborates the fact that A-11 participated in the landing that took place at Shekhadi. From the statement, it is further established that Gani (A-11) had driven the jeep which was carrying the smuggled goods.

Confessional statement of Mohd. Rafique Musa Miariwala @ Rafiq Madi (A-46) Confessional statement of A-46 under Section 15 of TADA has been recorded on 21.04.1993 (19:00 hrs) and 23.04.1993 (21:25 hrs), by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following references have been made in the said confession regarding the appellant:

(i) A-11 worked in the office of Tiger Memon.

(ii) A-11 was one of the staff members of Tiger Memon attending his Dongri office for assistance in his business activities including his landing operations of smuggled goods.

(iii) A-11, along with A-46 and other associates, assisted Tiger Memon in the landing at Shekhadi which took place on 03.02.1993 after the delay of 2-3 days and then arranged for transport along with A-17 and others for its services at the Tower.

(iv) A-11 reached the Tower in a Commander Jeep and exchanged his vehicle with A-46.

Confessional statement of Sahikh Ali Shaikh Umar (A-57) Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The reference to the appellant in the said confession is as follows:-

(i) In the first week of February, when Javed Chikna (AA) took A-57 and A-

77 to the house of Tiger Memon, A-11 was present there along with other co-accused.

(ii) A-11 was seen on 10.03.1993 after a meeting took place in a flat at Bandra.

(iii) A-11 was present in the flat of Tiger Memon at the Al Hussaini building on the night of 11.03.1993 and then in the garage where the filling was being done.

Confessional statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64) Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and 24.01.1995, by Shri HC Singh (PW- 474), the then Superintendent of Police, CBI/SPE/STF, New Delhi. The references to the appellant (A-11) in the said confession are as follows:

(i) In the last week of January, when A-64 went to meet Tiger Memon, A-11 was present there along with other co-accused.

(ii) He observed that A-11, Javed Chikna, Shafi, Anwar Theba and Rafiq Madi used to visit the residence of Tiger Memon.

(iii) The appellant was seen driving a blue coloured Maruti car in which Tiger Memon had gone to Hotel Persian Darbar to meet the other conspirators.

(iv) While going to Shekhadi, on the way, the accused stopped at a place, where A-11 brought a black coloured bag which contained five AK-47/AK- 56 rifles, revolver, magazines and cartridges.

(v) The appellant participated in the first landing at Shekhadi.

(vi) A-11 also participated in the second landing at Shekhadi.

(vii) He was present at the Al-Hussaini Building compound during the preparation of vehicle bombs by using RDX in the night of 11/12.03.1993 which had landed at Shekhadi.

Confessional statement of Gulam Hafiz s/o Suleman Shaikh @ Baba (A-73) Confessional statement of A-73 under Section 15 of TADA has been recorded on 15.05.1993 (22:05 hrs) and 17.05.1993 (01:45 hrs) by Vinod Balwant Lokhande, the then DCP, Airport Zone, Bombay. The references to the appellant in the said confession are to be found as under:

(i) The appellant (A-11) was present at Mhasla Tower along with Tiger and others in a Jeep. They had also brought a truck which was loaded with goods which contained bombs, rifles and cartridges.

(ii) He was present while unloading contraband from a truck into a tempo and jeep at Mhasla Tower.

Confessional statement of Mohd. Parvez Zulfikar Qureshi (A-100) Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs) and 17.04.1993 (17:00 hrs), by Shri Sanjay Pandey (PW 492), the then DCP, Zone-VIII, Bombay. The references to the appellant in the said confession are as follows:

(i) He was present at the residence of Tiger Memon in the night of 11/12.03.1993 along with other co-accused.

(ii) The appellant was loading 'goods' in the Jeep.

Thus, it is very well established that the appellant was aware of the consequences of his action and played an important role in the conspiracy.

367) From the confessional statements of the above co-accused, the following facts are established:

(i) The appellant was a very close associate and trusted confidant of Tiger Memon.

(ii) The appellant worked in the office of Tiger Memon and was entrusted with the tasks which could only be assigned to trusted and responsible persons.

(iii) The appellant played an active role in the hawala transactions of Tiger Memon.

(iv) The appellant used to collect money from Choksi (A-97) of Zaveri Bazaar.

(v) The appellant collected Rs. 1 lakh from Choksi (A-97) for Yakub Memon (A-1).

(vi) The appellant was involved in the episode of landing of arms and ammunitions and explosives at Shekhadi Coast.

(vii) The appellant was present at Waghani Tower where the said articles were shifted in a tempo and jeep.

(viii) The appellant participated in the landing which took place at Mhsala and was also entrusted with the duty of transportation of the smuggled goods.

(ix) The appellant was present in the garage of the Al-Hussaini Building in the intervening night between 11/12.03.1993.

(x) The appellant was actively involved in the work of filling of chemical in the vehicles for their use as bombs.

(xi) On 23/24.01.1993, the appellant had gone to the Airport to receive Tiger Memon.

(xii) The appellant attended conspiratorial meetings.

(xiii) The appellant was a participant in the training programme conducted at Sandheri by Tiger Memon.

(xiv) The appellant was present in the Al-Hussaini building even after the departure of Tiger Memon.

(xv) The appellant was one of the most active member of the conspiracy and was a part of it from the stage of inception to the final stage of execution of the terrorist activities.

(xvi) The appellant participated in the conspiracy from planning to execution at various stages.

#### Retracted Confessions:

368) We have already held that the confessional statement made by a person under Section 15 of TADA 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. A confessional statement given under Section 15 shall not be discarded merely for the reason that the same has been retracted. Further, a voluntary and truthful confessional statement recorded under Section 15 of the TADA Act requires no corroboration. Since the very same objection raised in the connected appeals was considered earlier, we are not once again repeating the same. The said conclusion is applicable to these appeals also.

#### Deposition of Prosecution Witnesses:

##### Deposition of Mohammed Usman Jan Khan (PW-2) (Approver)

369) In the deposition of PW-2, the following statements are relevant:

(i) PW-2 deposed that he knew A-11. He identified the appellant in the Court.

(ii) He mentioned that Tiger Memon along with other co-accused was waiting for the appellant to come with his Commander Jeep after the landing had taken place at Shekhadi.

(iii) On reaching Nagothane Petrol Pump, Shafi took the co-accused to the South Indian Hotel at the Petrol Pump where the witness saw the appellant (A-11) sitting with Tiger along with Anwar Theba (AA), Munna, Karimullah, Ethesham, Akbar. Then they all had lunch in the hotel.

(iv) He also deposed about the landing of AK-56 rifles, rounds, hand grenades, pistols, magazines and RDX i.e. "Kala Sabun".

(v) He also gave details of their stay at Hotel Persian Darbar where the appellant (A-11) was also present.

(vi) On the same day, i.e., on 10.02.1993, at about 7:30 p.m., Tiger Memon came to Hotel Persian Darbar with A-16. Tiger Memon went to the room of the witness and told Shafi to shift the box which they had brought from their Jeep to the Jeep of the appellant (A-11).

(vii) PW-2 also told about the meeting which took place at the house of Shakil, and thereafter, the meeting with the appellant (A-11) outside Lucky Hotel.

370) Learned counsel for the appellant submitted that A-11 had no involvement in the conspiracy and was used as a driver to transport goods and people from one place to another and also that the presence of A-11 in the important conspiratorial meetings has not been mentioned by the approver. It is pointed out by the prosecution that the charges against the appellant have been fully established by the admissible and reliable evidence on record. It is also stated that it is not necessary that the approver ought to speak about each and every aspect of the prosecution case. It is not the case of the appellant that the approver present an inherently contradictory facts than the one proved by the prosecution. It is also pointed out that A-11 has admitted that he was present when the chemical (black soap/ RDX) was being filled in the vehicles, viz., one jeep, 2 Maruti cars, one Maruti Van, one Ambassador and 5 scooters. He further stated as under:

“While filling the chemical, firstly a layer of chemical was filled and then pieces of iron were spreaded over and again a layer of chemical was filled and pressed. I also had done some work. Something like pencil was pierced into the chemical when the work of filling the chemical was over and before we left taking the vehicle in the morning. This work of piercing the pencil into was done by Anvar and some other 1-2 boys.” Further, when a question was put to him as to why these arms and ammunitions were brought and what was the motive behind the conspiracy, he answered that this was to avenge the loss suffered by Muslims during the riots and he further admitted to be knowing the consequences of the actions, i.e., the destruction that would take place due to their actions.

Deposition of 5

Shekhar Shukra Devadiga (PW-15)

(eye-witness)

PW-15 has deposed as under:-

(i) He had seen A-11 parking the Jeep at Century Bazaar on 12.03.1993.

(ii) He identified A-11 in the Test Identification Parade held on 14.05.1993 by Moreshwar Gopal Thakur, Special Executive Magistrate, (PW-469) for which Memorandum Exhibit 1512 was prepared.

(iii) He again identified A-11 in the Court and said that he had observed A-11 very carefully prior to identifying him.

(iv) He identified the appellant (A-11) as the person who brought the blue jeep and parked it in front of his shop which subsequently exploded.

(iv) He deposed that other than identifying the appellant (A-11) in Court and seeing him on the day of the blast, he had never seen him before. Regarding the evidence given by PW-15, learned counsel for the appellant (A-

11) has contended that the eye witness had left the city after the blast and, hence, he was not reliable. In reply to the said contention, it is rightly pointed out that this is normal human conduct. Further, it has come on record that many persons left the city immediately after the blasts. The people who were injured or who had witnessed the blasts were very scared and horrified by the incident. Similar explosions were caused at various places in the city. So the people of the city were frightened and went to their native places. The said conduct of the witness does not render his testimony doubtful.

Deposition of Moreshwar Gopal Thakur, Special Executive Magistrate, (PW-

469) PW-469, the Special Magistrate, deposed on 01.02.1999. He stated that he conducted the Test Identification parade on 14.05.1993 for PW-15 for the identification of A-11. The eyewitness (Shri Shreedharan Govindan and Shri Shekhara Shukara Devadiga (PW-15)) identified the appellant (A-11) as the person who parked the blue jeep near Century Bazaar, Worli. The witness also proved Exhibit 1512 which was the identification parade panchnama.

Deposition of Maharajpuram Subramaniam Seshadri (PW-327) At the relevant time, PW-327 was the Deputy General Manager, Quality Control, Mahindra & Mahindra Company. He deposed as under:

(i) The bumper (Article No.406) was of a Commander Jeep. The said article was proved to be a part of front bumper of Mahindra Jeep, Commander hard top model shown to him by Inspector Gaikwad at the office of Police at Crawford Market.

(ii) He also proved his report being Exhibit No. 655 and gave the same to Police officer Gaikwad.

Deposition of Anilkumar Vithal Kamat (PW 669) At the relevant time, PW-669 was the Inspector of Police. He deposed as under:

(i) He seized 11 articles from the place of occurrence in the presence of FSL Experts and prepared a Panchnama Exhibit 2466. This panchnama contains the details of collection of samples by Chemical Analyser and the chassis and engine number of fully burnt cars.

(ii) One engine was also seized from the place of occurrence. He also stated that the investigation carried out so far by him provided reasonable ground to believe the involvement of A-11.

(iii) He arrested the appellant.

(iv) He obtained the custody of the appellant (A-11) on 12.05.1993 from the Designated Court.

(v) He interrogated the appellant (A-11) and put him for identification parade.

Deposition of Fatehsingh Sohanrao Gaekwad (PW-543) At the relevant time, PW-543 was working with the DCB, CID. His deposition was recorded on 09.12.1999. He also proved the death of various persons in the said blasts. He deposed that:

(i) He recorded the statement of the appellant (A-11) in August 1993 under Section 108 of Customs Act, 1962 in respect of damage done to the property due to bomb blast.

(ii) He sought the order of sanction for prosecution of the appellant (A-

11), who had already been arrested by him along with other accused.

It has been contended by learned counsel for the appellant that PW-543 had made a mistake and had admitted the same in paragraph 21, so it can be inferred that they were acting negligently and they have not adhered to the provisions of the Code. PW-543 admitted as under:

“Though I had formally arrested the said 11 accused persons, the said persons being in judicial custody, I had not taken custody of the same and hence, I had not drawn any arrest panchnama while formally showing them to be arrested in C.R. No. 117/93. My earlier statement of myself having formally arrested the said 11 accused persons before applying for grant of sanction is incorrect statement. I made the said mistake of fact while giving the said answer.” It is pointed out by the prosecution that this mistake was a bonafide one which the officer corrected at the earliest opportunity. He has also admitted the same in his deposition. The error made by him was an honest human error which cannot be said to have caused any prejudice to the appellant (A-11). From the admission of the officer, it can be conclusively inferred that the investigation was not manipulated and the officers were careful in the work done by them.

Deposition of Mahesh Yashwarnt Athavale (PW-611) At the relevant time, PW-611 was attached with the Dadar Police Station as a P.S.I. He inspected the scene of offence. On 24.03.2000, he deposed before the Court as under:



(i) A Panchnama was drawn by him being Exhibit No. 1182 at the site regarding the prevailing situation and ascertaining the damage in the presence of panch witness Gaurishankar Rajnarayan Oza (PW-307).

(ii) The said Panchnama was in respect of the inspection of the site of explosion and the seizure of bumper of the vehicle bearing No. MP-09-S- 0070 (Article No.-406).

(iv) The panchnama also records that a crater 11 feet long (south to north), 14 ft, 9 inches long (east to west) and (5ft, 9 inches deep) was found after explosion at Century Bazaar, Worli.

(v) The windows of the nearby buildings were broken and extensive damage was caused in and around the blast site.

(vi) Many vehicles were damaged and two cars were fully burnt.

(vii) The said Panchnama was also proved by PW-307.

It was submitted on behalf of the appellant that the complainant has described the scene of explosion but he has not mentioned the name of anyone as the accused, so his complaint and testimony are not reliable and admissible. It is submitted that merely because the complaint does not carry the name of the accused, it would not lose its significance.

Deposition of Hari Shridhar Bhangale (PW-306) PW-306 was a Constable attached with the Dadar Police Station. At the relevant time, he was posted at Police Chowky near Century Bazaar along with Police Naik Keny. He deposed before the court that:-

(i) He heard a loud explosion at the side of Ramodia Mansion on Annie Beasant Road.

(ii) He also felt a jolt while in chowky.

(iii) He saw dense smoke billowing and he rushed to the place of explosion.

(iv) At the place of explosion, he found that a big ditch/crater was formed and that other buildings, BEST buses, motor taxis and several cars on the said road got damaged and many persons sustained injuries and had succumbed to death and were lying nearby the spot.

(v) He had taken 25 injured persons to Poddar Hospital.

Investigation, Recoveries and FSL Reports:

371) Various articles were sent to FSL vide Exhibit Nos. 1850, 1852 and 2423 for opinion and the reports of FSL were marked as Exhibit Nos. 1851, 1853, 2424, 2467 and 2468. FSL reports show the traces of RDX in the said articles which are as follows:

(i) Exhibit 1850 is a letter to the FSL dated 17.07.1993 from CID requesting information about percentage/purity of RDX found on forwarded articles and components of explosives used.

(ii) Exhibit 1851 is the reply of the FSL dated 22.07.1993 to CID stating that percentage of RDX could be provided.

(iii) Exhibit 1852 is a letter to FSL dated 08.08.1993 from CID requesting confirmation whether the engine sent for examination belonged to the exploded Mahindra Jeep No. MP-09-S-0070.

(iv) Exhibit 1853 is the reply letter of FSL stated that a high explosive device would have been placed near the engine and the gear box.

(v) Exhibit 2423 is a letter from Police dated 15.03.1993 to the Chemical Analyser, Bombay sending substances used in Century Bazar bomb blast and requesting for an opinion on the nature of the bomb used.

(vi) Exhibit 2424 is a letter from Police dated 15.03.1993 requesting FSL's opinion on samples collected from the blast site.

(vii) Exhibit 2466 is a panchnama containing the details of collection of samples by chemical analyser. Chemical Analyser has noted the chassis and engine number of fully burnt cars.

(viii) Exhibit 2467 is a FSL report dated 26.03.1993 giving Engine number (DQ 16230) and Chassis number (CDR 75 0 DP-2WD-HT-DQ1620). The report clarified that RDX was detected as an explosive from amongst the substances recovered by Police at blast site.

(ix) Exhibit 2468 is FSL report dated 23.03.1993 which confirmed the presence of RDX as explosive.

Witness describing the Blast and Damage:

Deposition of Anjani Bhanu Gorule (PW-388)

372) Her deposition was recorded on 05.08.1998. She deposed as under:

(i) On 12.03.1993, at 2:30 p.m., while doing household work on the first floor of her house at Nehru Nagar, Rahivashi Sangh, Century Bazaar, Bombay-18, she heard the sound of a loud explosion and she was thrown on the ground floor.

(ii) She became unconscious. However, after gaining consciousness, she found herself and her relative Sunanda Tambe, who had been in her house on the said day, in Poddar Hospital.

(iii) She sustained burn injuries to her right leg, fracture to left leg and minor injuries to her person due to piercing of splinters and she remained in the hospital for four days.

Deposition of Mrs. Sunita Rajendra Walvekar (PW-389) In her deposition dated 05.08.1998, she stated that at about 2 p.m., she had been to beauty parlour on second floor of Ramodia Mansion. She further deposed that:

(i) Around 2:30 to 2:35 p.m., she heard the sound of a huge explosion.

(ii) As she was sitting near the window, something struck on her head and left hand which caused bleeding to her.

(iii) She found that shattered glass had pierced her hand. She removed the same and wrapped the injury with her clothes (pallu of saree) and came out of Ramodia Mansion.

(iv) She found that the entire atmosphere was full of black smoke.

(v) Her brother took her to KEM Hospital where she was treated for 11 days.

Deposition of Jayant Anant Sawant (PW-390) He deposed in the Court on 05.08.1998 as follows:

(i) On 12.03.1993, at about 2.45 p.m., while he was at his Typing and Xerox Centre situated opposite to Passport Office on A.B. Road, he heard a loud explosion from the side of Century Bazaar.

(ii) He was thrown away at a distance of 15 feet from the place where he was.

(iii) He sustained injuries on his right cheek due to striking of glass splinters and sustained bleeding injury on his right forearm along with swelling.

(iv) He also sustained injury on his right thigh.

(v) He went to KEM Hospital along with 2/3 persons who also had sustained injuries.

(vi) He was admitted in the said hospital and the glass splinters from his cheek and thigh were removed.

(vii) A piece of iron rod was removed from his forearm and plastic surgery was conducted on his right cheek.

(viii) He remained as an indoor patient in KEM Hospital for one month.

(ix) One Chedda accompanied him and some more injured persons were admitted at KEM Hospital for treatment while others were discharged after the treatment.

Other Evidences:

373) PWs-644, 638 and 632-Doctors have issued the Injury Certificates Exhibit Nos. 2379, 2366 and 2350 for the injuries sustained by PW-388, PW-

389 and PW-390 respectively. Deposition of Dr. Shivkumar Dhanjuram Jaiswal (PW-644) PW-644 is a doctor attached to MA Poddar Hospital. He deposed regarding the Certificate issued by him and entry of casualty Register. His deposition reveals that PW 388 was brought to hospital on 12.03.1993 and was having 3 injuries and in his opinion the same were involving risk to her life and had also given history of injuries being sustained due to bomb blast. The Medical certificate of Anjani Manu Borale (PW-388) certifying that she was brought to MA Poddar Hospital on 12.03.1993 due to burns during the bomb blast has been proved by the witness.

Deposition of Dr. Vidya Shirvaikar (PW-638) The witness proved the Medical certificate of Sunita Walvekar (PW-389) dated 12.03.1993 which had been marked as Exhibit 2366 certifying that she was treated in the out-patient department of KEM Hospital, Parel for Contused Lacerated Wound (CLW) on face below eye.

Deposition of Dr. Parag Laxman Mhatre (PW 632) PW-632 proved Exh. No. 2350, the Medical certificate of Jayant Sawant dated 12.03.1993 certifying that the said victim was treated in the out-patient department of KEM Hospital, Parel for Contused Lacerated Wound (CLW) on face.

374) A total of 88 people died in the blast that took place at Century Bazaar. PWs-391 and 393 proved the death of two of the victims in Century Bazaar blast as follows:

(i) Vilas Baliram Gamre (PW-391) deposed as a witness regarding the death of his father. While travelling in BEST bus, his father Baliram Gamre succumbed to injuries on 12.03.1993 at about 2:30 to 2:45 p.m. due to bomb blast occurred at Century Bazaar.

(ii) Ashalata Prakash Phatak (PW-393) proved the death of her husband, Prakash Gopal Pathak, in the blast that took place at Century Bazaar.

The doctors, who examined the dead bodies of various persons died on account of the blasts, have also deposed regarding the injuries received by the deceased persons.

(i) Dr. Walter George Vaz (PW-476) on 03.05.1999 described the reasons for the death of the victims in the blast and proved the death certificates namely, Exhibit Nos. 1584, 1585 and 1587 which were countersigned by him regarding cause of death of John Thomas, Kisan Barshinge and Vishram Mayekar respectively after they were examined by Dr. Baxi, Dr. Pisal & Dr. Inamdar respectively. He also proved his certificate regarding opinion given by him for the cause of death of Prakash Pathak after examining his dead body.

(ii) Dr. Anand Pandurangraj Desai (PW-477) proved the certificates countersigned by him regarding opinion given by him for cause of death of Baliram Gamre, Niyati Acharya and Mamta Surendra after examining their dead bodies.

Deposition of Kishore Laxman Sawant (PW-568) PW-568 proved the Accidental Death Reports (ADRs) prepared by him in respect of the dead persons in the blast. The PSI of Dadar Police Station at KEM hospital had registered ADR Nos. 25/93, 34/93 and 37/93 regarding accidental death of Balimar Gamre, Kum. Niyati Acharya and Prakash Pathak respectively. After the bodies were identified by their relatives, they were sent to Coroner's Court through officers of Coroner's Court. In the same manner, with the help of other police officers, he had registered 34 accidental deaths reported at KEM Hospital. The said persons succumbed to death due to the bomb explosion which occurred at Century Bazaar. Deposition of Shashikant Ramachandra Raut (PW-309) PW-309 proved the damage caused by the explosion. The Panchnama Exhibit 1186 dated 15.04.1998 was drawn by the police officer Shri Agarkar in his presence and in the presence of co-panch on 13.03.1993 at 2.30 p.m. This panchnama was regarding the places visited by them and especially the damage caused to Century Bazaar Building.

Deposition of Devji Nanji Jogadia (PW-580) PW-580 proved the damage to the Passport Office. At the relevant time, he was the Superintendent of Administration at Passport Office, Bombay.

(i) Due to the explosion that occurred on 12.03.1993 in front of Ramodia Mansion, opposite to Passport Office, glass panes, window frames, furniture and doors of the Passport office Building were damaged.

(ii) For carrying out the repairs, an expenditure of Rs. 3,29,908/- was incurred which was paid by Ministry of External Affairs and the quotation of M/s Mahindra & Company was accepted for the same.

Deposition of PWs-583 and 647 proved the damage caused to BEST Buses-Public properties.

(i) Sadanand Yashwant Padgaonkar (PW-583) was the Assistant General Manager, BEST Office, Colaba. On 12.03.1993, he found one single decker bus in completely burnt condition lying at the spot of Century Bazaar blast. He also reported seeing 4 damaged buses being brought to workshop at Dadar and ordered repair of the said damaged buses and replacement of the bus lying at Century

Bazaar which was also brought to the workshop. In the month of August, 1993, he received the statement sent by the Officer of the Engineering Department of BEST informing that the total expenditure of Rs.13,93,000/- had been incurred for the above stated work.

(ii) Pradeep R Karandikar (PW-647), who was an Assistant Engineer in the Street Lighting Department of BEST deposed that as per the record the total cost was assessed as under:

- (a) One BEST electric light pole of value Rs.12,000/- was vanished;
- (b) 3 lanterns of value Rs.4,000/- were damaged; and
- (c) BEST had sustained a loss of Rs. 16,294/- due to the blast that occurred at Century Bazaar.

Deposition of Jayvant Rahdeo Salvi (PW-316) At the relevant time, PW-316 was the Colony Officer, G-Ward South for BMC and proved the damage caused to the properties belonging to BMC (public property).

(i) The pipelines in the Century Bazaar which were supplied by BMC were damaged due to the said explosion.

(ii) The said damage was assessed to the tune of Rs. 45,000/- by Assistant Engineer, Water Works, G-South Ward of BMC.

Deposition of Hemant Dattatray Parab (PW-579) At the relevant time, PW-579 was a Fire Officer in the Worli Fire Station and proved the damage caused in general. In his deposition dated 08.02.2000, he deposed that:

- (i) After attending and inspecting passport office on 12.03.1993, he prepared the fire report Exhibit 2006 and Exhibit 2007 on 13.03.1993 regarding the damage caused to the said site and the fire spread in the said area;
- (ii) 29 vehicles on the road, 6 RCC Buildings and one shed were under fire which was extinguished by them.

Evidence with regard to the vehicle (Jeep) used in the Blast:

375) Three commander jeeps were purchased by Mohammed Shafi Zariwala (AA). The following are the Registration numbers of the same:-

- (i) MP 09-S 0070
- (ii) MP 09-S 0080

(iii) MP 09-S 0082 The first jeep was used for the blast at Century Bazaar, Worli. The other two jeeps were found abandoned and were seized by the police. Shafi Zariwala (AA) purchased all these vehicles through PWs-365 and 366 and bookings were done by PW-195, an employee of M/s. Wasan Motors, who were also dealers of jeeps. PW-627 of M/s. Wasan Motors received the cash payment.

Deposition of Nilesh G Parekh ( PW-195) PW-195 is a Salesman of M/s. Wasan Motors. He deposed that:

(i) In January, 1993, Shakeel Suleman Hasham (PW-366) of Auto Links booked 3 Mahindra Commander Jeeps in the names of Altaf Hussain, Aslam Shaikh and Jamal Ahmed of Indore. The delivery of the said jeeps, i.e., Article Nos. 378/379 was taken through his representative on two different dates in the month of January 1993.

(ii) About ten days after the blast on 12.03.1993, the Jeep (Article 378) bearing registration No. MP-09-S-0082 was shown to him at MRA Marg Police Station.

(iii) After 3 to 4 days, he also saw the blazer-blue coloured Jeep (Article

379) bearing registration no. MP-09-D-3043 at the office of Crime Branch.

(iv) He inspected the said jeeps and found that one additional cavity box and aluminium sheet flooring was prepared.

(v) On 22.01.1993, the Jeep, bearing Engine No. DQ 16217, Chassis No.16217 and Temporary Registration No. DMR-8322 was sold by M/s Wasan Motors.

(vi) Exhibit 865 is the order form of 3 jeeps purchased by Shakeel, i.e., first blazer blue coloured jeep purchased for Altaf Hussain of M.G. Road, Indore, M.P. with temporary registration No. DMR-8322, Chassis no. DQ-16217, second blazer blue coloured jeep purchased for Aslam Shaikh of M.G. Road, Indore, M.P. with temporary registration No. DMR-

8323, Chassis no. DQ-16140 and a third blazer blue coloured jeep purchased for Jamal Ahmed of M.G. Road, Indore, M.P. with chassis no. DQ-16230.

Deposition of Navnit Dhanpatrai Saini (PW-627) At the relevant time, PW-627 was working as a Sales Executive with M/s Wasan Automobiles at Chembur. In his deposition dated 11.04.2000, he deposed as under:

(i) On 20.01.1993, as asked by PW 195, he met at his residence at Bibijan Terrace, Byculla.

(ii) He alongwith PW-366 went to Patel Petrol Pump and received Rs.4.73 lakhs from PW-365 as an advance for two Mahindra Commander Jeeps which he wanted to book.

(iii) Thereafter, he deposited the said amount with PW-195. On 21.01.1993, as instructed by PW 195, he along with sub-broker PW-366 had gone to PW-365 and placed an order for one more Mahindra Hard Top Commander Jeep and paid Rs.2.36 lakhs in cash and he had given the same to PW

195.

Deposition of Kailash Baheti (PW-342) PW-342 was carrying on the business as an Auto Consultant under the name and style of "Baheti Consultant". In his deposition, he deposed that on 22.02.1993, he received the papers for registration of 3 Mahindra Commander Jeeps at Indore. On the next day, after receiving a call from Bombay regarding the registration papers of the jeeps, he handed over the documents and necessary charges to Mahesh Tiwari, RTO Agent. The officer registered the said jeeps at RTO, Indore. PW-342 gathered from the sale certificates that all the said jeeps were purchased from M/s Wasan Automobiles at Bombay and he deposed that one of the purchasers of the jeeps was Jamal Ahmed who was residing at M.G. Road, Indore and other purchasers were also residents of M.G. Road, Indore. Deposition of Shakeel Suleman Hasham (PW-366) PW-366 was carrying his business under the name and style of M/s Auto Links. In his deposition dated 09.07.1998, he disclosed that before giving the delivery of the said three jeeps to PW 365, he got them insured through Insurance agent Rakesh Tiwari (PW-338). He also got them registered at Indore, Madhya Pradesh through one Kailash Bindav. The delivery of the said three jeeps was taken by the concerned party directly from the showroom of M/s Wasan Automobiles.

Deposition of Suleman Mohd. Lakdawala (PW-365) PW-365 was running his own Petrol Pump at Byculla, under the name and style of M/s Patel Brothers since 1988. Besides the said Petrol pump business, he was also carrying the business of sale and purchase of motor vehicles. In his statement dated 09.07.1998, he stated that in the month of January/February 1993, he arranged for the purchase of three new Commander Jeeps. The jeeps were bearing registration numbers of M.P. They were purchased through PW-366 from Wasan Automobiles for a price of Rs. 7 lakhs. The amount was paid by Shafi Zariwala (AA) and delivery of the jeeps was taken by Shafi who brought them to his petrol pump.

Deposition of Rakesh Tiwari (PW-338) PW-338 was an Insurance Agent. Sometime, in between, 22-01-1993 and 25- 01-1993, at the instance of PW-366 of Auto Links, he insured 3 Commander Jeeps and 2 Maruti Vans with National Insurance Company. He gave the policy certificates to PW-366, who paid him the necessary charges. Exhibit 1236 colly is the cover notes of policies prepared as per the information given by PW-366.

Mukhtar Imdad Ahmed (PW-281) PW-281 deposed that he had been asked by the Shafi (AA) to prepare cavities in the Jeep. The cavities were to be prepared under the front seat by covering the lower portion of the front left side seat of the jeep.



376) The evidence of the approver, the eye-witness, 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-accused which have been discussed above are in consonance with the other available evidence. Hence, it is 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.

377) The appellant (A-11) in his confessional statement admitted having planted the Jeep at Century Bazaar. It is clear from his own confession along with the confessions of co-accused and other witnesses that he himself drove the jeep and left it there along with the bomb. It is also clear that he was aware of the entire conspiracy and was very close to A-1. He actively participated in landings, smuggling of arms and ammunitions, making of bombs and planting the bomb at Century Bazaar. The evidence given by the doctors and the family members of the deceased shows the extent of suffering that was inflicted by A-11 and the other accused in pursuance of the said conspiracy. 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 and 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.

378) In view of the above, we hold that the prosecution has produced sufficient evidence to bring home the charges framed against him.

Criminal Appeal No. 897 of 2008

Parvez Nazir Ahmed Shaikh (A-12)

....Appellant(s)

versus

The State of Maharashtra  
Thr. CBI-STF, Mumbai

.....Respondent(s)

379) Ms. Farhana Shah, learned counsel appeared for the appellant (A-12) and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

380) The instant appeal is directed against the final judgment and order of conviction and sentence dated 21.09.2006 and 18.07.2007 respectively, whereby the appellant has been convicted and sentenced to death by the Designated Court under TADA for the Bombay Bomb Blasts Case, Greater Bombay, BBC Case No. 1/1993.

Charges:

381) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-12). The relevant portion of the said charge is reproduced hereunder:-

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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; He abetted and knowingly and intentionally facilitated the commission of terrorist acts and acts preparatory to terrorist acts by doing the following overt acts:

- i) He along with co-conspirators participated in the landing and transportation of arms, ammunition and explosives at Shekhadi on 3rd and 7th February, 1993;
- ii) He participated in training in handling and use of arms, ammunition and handgrenades on the outskirts of village Sandheri and Borghat;
- iii) He along with co-conspirators participated in preparation of vehicle bombs in the night of 11th/12th March, 1993 at Al-Hussaini Building;
- iv) He participated in the transportation of arms, ammunition, handgrenades and electric detonators from Jogeshwari to Musafirkhana with co-accused Ashrafur Rehman Azimulla Sheikh @ Lalloo and Smt. Ruksana Mohammed Shafi Zariwala and thereby having committed an offence punishable under Section 3(3) of the TADA.

At head thirdly; He drove scooter bearing registration no. MP-14-B- 5349, laden with RDX explosives and fitted with time device detonator and parked the said vehicle at Katha Bazaar, opposite Maturchhaya Building, PS Pydhonie, Bombay which exploded resulting in death of 4 persons, injuring 21 others and causing loss of properties worth Rs. 37 lakhs and thereby committed offences punishable under Section 3(2)(i) and (ii) of TADA.

At head fourthly; For the aforesaid act mentioned in charge thirdly, the appellant has committed an offence punishable under Section 302 IPC.

At head fifthly; For the aforesaid act mentioned in charge thirdly, the appellant committed an offence punishable under Section 307 IPC by injuring 21 persons.

At head sixthly; The appellant (A-12), by causing the aforesaid explosion, which resulted in grievous hurt to 10 persons, committed an offence punishable under Section 326 IPC.

At head seventhly; The appellant (A-12), by causing the aforesaid explosion and voluntarily causing hurt to 11 persons, committed an offence punishable under Section 324 IPC.

At head eighthly; The appellant (A-12), by causing the aforesaid explosion, caused damage to properties worth Rs. 37 lakhs, committed an offence punishable under Section 435 IPC.

At head ninthly; The appellant (A-12), by causing the aforesaid explosion, caused damage to the property used as dwelling house and as places for custody of property committed an offence punishable under Section 436 IPC.

At head tenthly; The appellant (A-12), by causing the aforesaid explosion, committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head eleventhly; The appellant (A-12), by causing the aforesaid explosion, committed an offence punishable under Section 4 (a)(b) of the Explosive Substances Act, 1908.

At head twelfthly; The appellant (A-12), by possessing RDX without licence which was filled in the above mentioned scooter, which was used for causing the aforesaid explosion, committed an offence punishable under Section 9B(1)(b) of the Explosives Act, 1884.

At head thirteenthly; The appellant (A-12), planted an explosive laden suitcase in Room No. 1840 of Hotel Sea Rock on 12th March, 1993, which exploded causing damage to the property to the tune of Rs. 9 crores and thereby committed an offence punishable under Section 3(2)(ii) of TADA.

At head fourteenthly; The appellant (A-12), by causing the aforesaid explosion committed an offence punishable under Section 307 IPC.

At head fifteenthly; The appellant (A-12), by causing the aforesaid explosion in Hotel Sea Rock by using explosives committed an offence punishable under Section 436 IPC.

At head sixteenthly; The appellant (A-12), by causing the aforesaid explosion in Hotel Sea Rock which resulted in damage to the properties worth Rs. 9 crores, committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head seventeenthly; The appellant (A-12), by causing the aforesaid explosion in Hotel Sea Rock committed an offence punishable under Section 4 (a)(b) of the Explosive Substances Act, 1908.

At head eighteenthly; The appellant (A-12), by possessing explosives without licence, committed an offence punishable under Section 9B (1)(b) of the Explosives Act, 1884.

382) The Designated Judge found the appellant guilty on all the aforesaid charges. The appellant has been convicted and sentenced for the above said charges as follows:

**Conviction and Sentence:**

- (i) The appellant 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 was further found guilty for the offence punishable under Section 3(3) of TADA for commission of such acts as found proved from clauses 'a' and 'c' from charge at head secondly framed against him and on said count the appellant (A-12) was convicted and sentenced to suffer RI for 12 years and is ordered to pay a fine of Rs.50,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 1 year. (charge secondly)

(iii) The appellant was further found guilty for the offence punishable under Section 3(2)(i) of TADA for commission of such acts as found proved from charge at head thirdly framed against him and on said count he was convicted and sentenced to suffer punishment of death, subject to confirmation of the same by this Court, and is also ordered to pay a fine of Rs.25,000/-. (charge thirdly)

(iv) The appellant was further found guilty for the offence punishable under Section 302 IPC for commission of such acts as found proved from charge at head fourthly framed against him and on the said count he was convicted and sentenced to suffer punishment of death, subject to confirmation of the same by this Court, and is also ordered to pay a fine of Rs.25,000/-. (charge fourthly)

(v) The appellant was further found guilty for the offence punishable under Section 307 IPC for commission of such acts as found proved from charge at head fifthly framed against him and on the said count he was convicted and sentenced to suffer RI for life and is ordered to pay a fine of Rs.25,000/-, in default of payment of fine, he was ordered to suffer further RI for a period of 6 months. (charge fifthly)

(vi) The appellant was further found guilty for the offence punishable under Section 324 IPC for commission of such acts as found proved from charge at head seventhly framed against him and on the said count he was convicted and sentenced to suffer RI for 3 years. (charge seventhly)

(vii) The appellant was further found guilty for the offence punishable under Section 435 IPC for commission of such acts as found proved from charge at head eighthly framed against him and on the said count he was convicted and sentenced to suffer RI for 7 years and was ordered to pay a fine of Rs.25,000/-, in default of payment of fine, he was ordered to suffer further RI for a period of 6 months. (charge eighthly)

(viii) The appellant (A-12) was further found guilty for the offence punishable under Section 436 IPC for commission of such acts as found proved from charge at head ninthly framed against him and on the said count he was convicted and sentenced to suffer RI for 5 years and was ordered to pay a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months. (charge ninthly)

(ix) The appellant was further found guilty for the offence punishable under Section 3 of the Explosive Substances Act, 1908 for commission of such acts as found proved from charge at head tenthly framed against him and on the said count he was convicted and sentenced to suffer RI for 10 years and was ordered to pay a fine of Rs.25,000/-, in default of payment of fine, he was ordered to suffer further RI for a period of six months. (charge tenthly)

(x) The appellant was further found guilty for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908 for commission of such acts as found proved from charge at head eleventhly framed against him and on the said count he was convicted and sentenced to suffer RI for 7 years and is ordered to pay a fine of Rs.25,000/-, in default of payment of fine, he was ordered to suffer further RI for a period of 6 months. (charge eleventhly)

(xi) The appellant was further found guilty for the offence punishable under Section 9B(1)(b) of the Explosives Act, 1884 for commission of such acts as found proved from charge at head twelfthly framed against him and on the said count he was convicted and sentenced to suffer RI for two years. (charge twelfthly)

(xii) The appellant was further found guilty for the offence punishable under Section 3(2)(ii) of TADA for commission of such acts as found proved from charge at head thirteenthly framed against him and on the said count he was convicted and sentenced to suffer RI for life and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 3 years. (charge thirteenthly)

(xiii) The appellant was further found guilty for the offence punishable under Section 307 IPC for commission of such acts as found proved from charge at head fourteenthly framed against him and on the said count he was convicted and sentenced to suffer RI for 10 years and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 3 years. (charge fourteenthly)

(xiv) The appellant (A-12) was further found guilty for the offence punishable under Section 436 IPC for commission of such acts as found proved from charge at head fifteenthly framed against him and on the said count he was convicted and sentenced to suffer RI for 10 years and was ordered to pay a fine of Rs.1,00,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 3 years. (charge fifteenthly)

(xv) The appellant (A-12) was further found guilty for the offence punishable under Section 3 of the Explosive Substances Act, 1908 for commission of such acts as found proved from charge at head sixteenthly framed against him and on the said count he was convicted and sentenced to suffer RI for 7 years and was ordered to pay a fine of

Rs.25,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 6 months. (charge sixteenthly) (xvi) The appellant was further found guilty for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908 for commission of such acts as found proved from charge at head seventeenthly framed against him and on the said count, he was convicted and sentenced to suffer RI for 7 years and was ordered to pay a fine of Rs.25,000/-, in default of payment of fine, was ordered to suffer further RI for a period of 6 months. (charge seventeenthly) (xvii) The appellant was further found guilty for the offence punishable under Section 9B(1)(b) of the Explosives Act, 1884 for commission of such acts as found proved from charge at head eighteenthly framed against him and on the said count he was convicted and sentenced to suffer RI for two years. (charge eighteenthly) Evidence:

383) The evidence against the appellant (A-12) is in the form of:-

- (i) his own confession;
- (ii) confessions made by other co-conspirators; (co-accused);
- (iii) testimonies of prosecution witnesses including eye witnesses; and
- (iv) documentary evidence.

Conspiracy:

384) As mentioned above, a common charge of conspiracy has been framed against all the accused persons and in order to bring home the charge, 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 circumstance. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer the same once again.

Confessional Statement of Parvez Nazir Ahmed Shaikh (A-12)

385) Confessional statement of A-12 under Section 15 of TADA has been recorded on 18.04.1993 (14:00 hrs.) and 21.04.1993 (06:50 hrs.), by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The facts emerge from his confessional statement are as under:

- i) The appellant (A-12) was introduced to Tiger by Abdul Gani Ismail Turk (A-11).
- ii) The appellant (A-12) was told by A-11 that his (A-12) job was to bring and deliver the Hawala money. Tiger Memon told the appellant to work with honesty.
- iii) In Tiger's office, the appellant (A-12) came across Asgar Yusuf Mukadam (A-10), Shafi (AA), Rafiq Madi (A-46), Anwar Theba (AA), Imtiyaz Yunusmiyan Ghavate

(A-15), Salim Rahim Shaikh (A-52), Mohd.

Hussian, Mohammed Mushtaq Moosa Tarani (A-44) and Haneef (A-40) and also came to know that Tiger was a smuggler of silver.

iv) In the last week of January, 1993, the appellant (A-12) accompanied A-15 to the Tiger's residence from where they, along with Tiger and other associates, left for Shekhadi for landing of smuggled items.

v) The landing took place after three days. Meanwhile, the appellant (A-12) and others stayed at Vesava Hotel at Mahad and also at Hotel Big Splash, Alibaug.

vi) On the 4th day, landing took place at Shekhadi. The appellant and some other boys were asked to wait for A-11 at the Tower. Thereafter, Tiger Memon came there along with a motor lorry which was loaded with goods. All the boxes in the lorry were unloaded at the Tower. The appellant and others opened the boxes and found that they were containing hand grenades, bullets, revolvers and wire bundles. Thereafter, some goods were loaded in the cavities of the Jeeps and the remaining goods were loaded in the lorry.

vii) The appellant (A-12) along with Nasir Abdul Kader Kewal @ Nasir Dhakla (A-64), drove a Jeep and stayed at Khandala as instructed by Tiger. A-64 left for Bombay as his daughter was sick. Tiger instructed the appellant (A-12) to stay there and told him that Suleman Mohammed Kasam Ghavate (A-18) will come in the morning. Accordingly, A-18 and A-15 came to Khandala and all of them left for Bombay.

viii) At the time of opening of goods at the Tower, Tiger showed a pencil like item to all of them and told that it was worth Rs.25,000/- and he could blow one Hotel Oberoi with it.

ix) In the second week of February, 1993, the appellant again went with Tiger Memon and other accused persons to Shekhadi coast and was present there at the time when the goods were unloaded and re-loaded in the tempo. Thereafter, he went to the Tower along with other accused persons.

x) On 15th/16th February, 1993, the appellant along with A-10 went to the Tiger's residence at Al-Hussaini Building where Shafi distributed Rs.10,000/- to everyone present there.

xi) On 11th March, on the instructions of Tiger, the appellant along with A-10, carried two suitcases, two hand bags and one big suitcase to Room No. 17 of Musafir-khana where he found that one bag was containing AK-56 rifles and another bag was having hand grenades in it. Thereafter, they went to the house of Shafi.

xii) The appellant (A-12) and Shafi then went to Shafi's sister-in-law's house at Jogeshwari in a jeep where wife of Shafi (Rukhsana) (A-



103) was also present. Shafi kept 2 AK-56 rifles and some hand grenades in one bag and pistols in another bag.

xiii) The appellant (A-12) and others carried both the bags and left in a Jeep and Shafi dropped them at Mahim and asked them to go to his house. Thereafter, they went to the house of Shafi and left both the bags there.

xiv) The appellant (A-12) drove Shafi's scooter and reached Al-Hussaini Building.

xv) At Al-Hussaini Building, the appellant saw that the accused persons were filling the black coloured chemical into the cars, scooters and Jeeps which was smuggled on 03.02.1993 at Shekhadi. xvi) The appellant also assisted the co-accused persons in filling RDX in vehicles.

xvii) The appellant, A-10 and Shoaib were asked by Anwar Theba (AA) to dispose off 5/6 plastic bags containing the empty cardboard boxes in which black soap was packed.

xviii) On return to Tiger's residence, the appellant along with Asgar and Shoaib picked up three suitcases which were kept in the garage and reached Anwar's residence in a red coloured Van where they met Anwar Theba (AA) and Mushtaq (A-44). A-15 also joined them later.

xix) Anwar Theba (AA) and Mushtaq (A-44) sat in the Van and left towards Link Road. On the way, Anwar Theba (AA) opened the bags and inserted the pencil like articles into the chemical filled therein and then closed the same.

xx) After reaching Link Road, Anwar Theba (AA) instructed A-12 to take one bag and keep it in Room No. 1840 of Hotel Sea Rock. xxi) Accordingly, the appellant kept the said explosive-laden bag in the said room and reached the Al-Hussaini Building and handed over the keys of the said room to Anwar.

xxii) Thereafter, Anwar handed over an old blue coloured Bajaj Scooter to the appellant and asked him to park it in Katha Bazaar. Before leaving, Anwar Theba (AA) further inserted the said pencil into the black chemical which was filled in the scooter. The appellant parked the scooter at Katha Bazaar and took away the keys of the scooter with himself.

xxiii) On 12.03.1993, When Asgar and Shoaib came to the house of the appellant (A-12), he then handed over the keys of the scooter which he had parked at Katha Bazaar to Asgar.

xxiv) He knew that the explosions were for taking revenge for demolition of Babri Masjid against Hindus. He knew that the explosion would cause huge loss to human lives and properties and he intentionally committed this mistake.

386) On perusal of the aforesaid confessional statement, the followings facts emerge:

- i) The appellant (A-12) was a trusted confidant of Tiger Memon since he was assisting him in crime relating to Hawala transaction and was well acquainted with other co-conspirators;
- ii) He participated in the landing of arms and ammunitions and explosives and was fully aware of the nature and capacity of such material which is clear from the demonstration given by Tiger and as stated by the appellant (A-12) that a pencil like thing was good enough to blow the Oberoi Hotel;
- iii) He participated in the transportation and storage of such material;
- iv) He participated in filling of RDX in the vehicles parked in the garage of Al-Hussaini building;
- v) He planted the suitcase in Hotel Sea Rock knowing that it contains RDX and is fitted with time pencil detonator; and
- vi) He parked the scooter laden with black chemical and fitted with time pencil detonator at Katha Bazaar.

**Retraction Statement:**

387) It was contended on behalf of the appellant (A-12) that since he subsequently retracted from his own confession dated 11.01.1994, the same cannot be relied upon. Since we have elaborately discussed the admissibility or otherwise of the retraction statements in the earlier part of our judgment, there is no need to refer the same once again. The said conclusion will be applicable to this appeal also. Confessional Statements of co-accused:

388) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-

accused. The legality and acceptability of the confessions of the co-accused has been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant are summarized hereinbelow:

Confessional Statement of Mohammed Soaib Mohammed Kasam Ghansar (A-9)  
Confessional statement of A-9 under Section 15 of TADA has been recorded on 19.04.1993 (13:10 hrs.) and 22.04.1993 (00:30 hrs.), by Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. A-9 with reference to A-12 has stated as under:

- i) The appellant (A-12) was working for Tiger Memon and he used to visit his shop occasionally.

ii) The appellant (A-12) along with other accused persons was working in the garage at Al-Hussaini.

iii) A-12 and A-10, on the instructions of Anwar Theba (AA), threw away six big plastic bags in the wastage van of BMC.

iv) In the morning of 12.03.1993, A-12 and A-10 brought out three VIP bags from the garage at Al-Hussaini Building and put them in the Van and left for the residence of Anwar.

v) Anwar Theba (AA) inserted pencil of steel into the blackish chemical inside the bags and then the appellant was dropped near a taxi and was asked to go to Hotel Sea Rock with a bag.

vi) The appellant came back to the Al-Hussaini building.

(vii) After the blast, A-10 and A-9 went to the house of the appellant on 13.03.1993.

Confessional Statement of Asgar Yusuf Mukadam (A-10) Confessional statement of A-10 under Section 15 of TADA has been recorded on 23.04.1994 (18:00 hrs.), by Shri Krishan Lal Bishnoi (PW-

193), the then DCP, Zone III, Bombay. A-10 with reference to the appellant has stated as under:

i) The appellant was dealing with Hawala money.

ii) The appellant was present at Tiger's residence.

iii) A-10 and A-12 took Rs. 5 lakhs from Choksi (A-97) and gave it to Sharif Abdul Gafoor Parkar @ Dadabhai (A-17).

iv) The appellant assisted him in collecting Rs. 1 crore from Choksi (A-

97) for Yakub Abdul Razak Memon (A-1).

v) The appellant accompanied him to the Tiger's residence and shifted two VIP bags, one hand bag and one briefcase from Tiger's residence to Room No.17 of the Haj Committee House, near Crawford Market.

vi) The appellant accompanied him (A-10) to the house of Shafi and took a new scooter from his residence.

vii) The appellant (A-12) along with other co-accused persons was present at the Al-Hussaini building in the night intervening between 11/12th March and was loading black chemical in the vehicles.

viii) A-10 and A-12 disposed off the plastic bags in which the empty boxes of chemicals were kept.

ix) The appellant was present along with him when Anwar Theba (AA) inserted aluminum like pencils into the chemical filled in the suitcases.

x) The appellant was dropped by the accused (A-10) on the instructions of Anwar Theba (AA) with one of the said VIP bag.

(xi) The appellant (A-12) came back to Al-Hussaini building, thereafter, as per the instructions of Anwar, he drove one scooter loaded with RDX to park it at the designated place.

Confessional Statement of Abdul Gani Ismail Turk (A-11) Confessional statement of A-11 under Section 15 of TADA has been recorded on 15.04.1993 (22:35 hrs.) and 18.04.1993, by Shri Prem Krishna Jain (PW-

189), the then DCP, Zone X, Bombay. A-11 with reference to the appellant has stated that:

i) The appellant (A-12) was present at the residence of Tiger Memon on or about 27/28th January along with co-accused Shafi, Yakub Abdul Razak Memon (A-1), Rahim Yakub Memon, Rafiq Madi (A-46) and Imtiyaz Yunusmiyan Ghavate (A-15), whereafter, all of them (except Yakub and his wife) left for Mhasla/Shekhadi.

ii) The appellant (A-12) was present at Al-Hussaini on 11.03.1993 and was filling chemical @ black soap in the vehicles along with the co-

accused.

Confessional Statement of Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14) Confessional statement of A-14 under Section 15 of TADA has been recorded on 17.04.1993, by Shri P.K. Jain, the then DCP, Zone III, Bombay. A-14 with reference to the appellant stated that the appellant along with Tiger Memon and others came to Shekhadi for landing of arms. Confessional Statement of Imtiaz Yunusmiyan Ghavate (A-15) Confessional statement of A-15 under Section 15 of TADA has been recorded on 07.05.1993 (12:30 hrs.) and 09.05.1993 (13:30 hrs.), by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-15 with reference to the appellant stated the following:

i) The appellant worked in the office of Tiger Memon.

ii) The appellant participated in the landing at Shekhadi.

iii) The appellant arrived at Anwar's house in the morning of 12.03.1993 along with A-10.

iv) Thereafter, the appellant reached Al-Hussaini building.

v) The appellant drove a scooter filled with black coloured soap like chemical at the instance of Anwar Theba (AA).

389) On perusal of the aforesaid confessions of the co-accused, it is clearly discernable that the appellant knowingly participated in doing the following overt acts:

i) The appellant was a trusted confidant of Tiger Memon since he was assisting him in crime relating to Hawala transactions and was well acquainted with other co-conspirators.

ii) The appellant participated in the landing of arms and ammunitions and explosives and was fully aware of the nature and capacity of such material.

iii) The appellant participated in transportation and storage of such material.

iv) The appellant was involved in filling of RDX in the vehicles parked in the garage of the Al-Hussaini building.

v) The appellant planted suitcase in Hotel Sea Rock knowing that it contains RDX and is fitted with time pencil detonator.

vi) The appellant parked the scooter laden with black chemical on the instructions of Anwar.

390) It is also clear that the confessions made by the appellants are truthful and voluntary and were made without any coercion. All safeguards enumerated under Section 15 of TADA and the rules framed thereunder have been duly complied with while recording the confessions of the appellants.

#### Deposition of Prosecution Witnesses:

##### Blast at Katha Bazaar Deposition of Laxman Dhondu Posture (PW-8)

391) PW-8 was working as a peon in the office of Chemical Corporation, Katha Bazaar. He is an eyewitness to the incident and has deposed as under:

i) The appellant parked the scooter on the road in front of the Matruchayya Building at Katha Bazaar. It was this scooter in which the bomb exploded.

ii) PW-8 identified the appellant before the court in the dock as the person who parked the said scooter.

iii) PW-8 identified the appellant in the identification parade conducted by Moreshwar Thakur (PW-469), Special Executive Magistrate, on 13.05.1993, in Sitaram Building.

iv) PW-8 further deposed that his employer's scooter was also parked next to the scooter parked by the appellant which was blown into pieces.

Deposition of Abdulla Ibrahim Shaikh (PW-9) PW-9 was a driver working with one Mr. Mehra, whose office was on the third floor of AGH Chambers which is opposite to Matruchayya building:

i) PW-9 deposed that on 12.03.1993, a boy was trying to park a scooter adjacent to his employer's car.

ii) PW-9 told the driver of the scooter not to park it there since it would be difficult for him to take out his car.

iii) PW-9 further deposed that on this the driver of the scooter told him that he will leave in a while and parked his scooter there itself.

iv) While parking the scooter, the appellant even lost his balance and was about to fall on the car then he helped the driver of the scooter to park it.

v) PW-9 stated that after sometime he heard the sound of a big explosion and saw that his car was completely burnt.

vi) PW-9 identified the appellant (A-12) before the Court as the boy who parked the said scooter which exploded.

vii) PW-9 also identified the appellant in the identification parade conducted on 21.03.1993 at 4.30 p.m. by PW-462 at Sacred Heart School.

392) 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 appellant was duly identified by PWs 8 & 9 before the Court and also during the identification parade conducted by the Special Executive Magistrate.

The above depositions also sufficiently corroborate the confessional statement made by the appellant that he parked a scooter laden with explosives at Katha Bazaar.

Deposition of Vasant Ganpat Kamble (PW-462) At the relevant time, PW-462 was the Special Executive Magistrate (SEM) who conducted the Test Identification Parade for the identification of the appellant. He deposed as under:

- i) He conducted the Test Identification Parade on 21.03.1993 for PW-9.
- ii) He further deposed that PW-9 duly identified the appellant (A-12).
- iii) The witness proved the panchnama of the parade which was prepared by him and is marked as Exh. 1478.

Deposition of Moreshwar Thakur (PW-469) At the relevant time, PW-469 was the Special Executive Magistrate who conducted the Test Identification Parade for the identification of the appellant-A-12. He deposed as under:

- i) PW-469 conducted the Test Identification Parade on 13.05.1993 at Sitaram Building in the presence of two panchas and also prepared a panchnama for the said parade.
- ii) PWs-8 and 9 identified the appellant as the person who parked the scooter at Katha Bazaar.
- iii) PW-469 in his deposition proved the panchnama.

Deposition of Suresh Satappa Walishetty (PW-680) PW-680 was the Investigating Officer at the relevant time in the case pertaining to blast at Katha Bazaar:

- i) He deposed that the appellant made a statement before him that he was willing to make a voluntary disclosure which was reduced into writing by him.
- ii) The appellant (A-12) led the police party to Room No. 63 on the ground floor of Railway Quarters from where he took out a white shirt from a trunk and handed over the same to the police. On inspection by the police, it was found that it contained black stains on both the sleeves.
- iii) He deposed that he drew a recovery panchnama of the entire event.
- iv) He deposed that on 31.05.1993, the appellant made another disclosure statement and led the police party and got his driving licence bearing No. MH-01-93-5023 issued on 17.02.1993 recovered from the house of his friend Mohd. Taufiq Naulakhiya resident of Hussain Rattan Chawl. The panchnamas for the entire event were also prepared.
- v) Vide covering letter dated 28.06.1993, PW-680 sent the said shirt to the Chemical Analyzer.
- vi) The report of the Chemical Analyser dated 16.07.1993 was received by him.

vii) He also deposed that one Raju Kodi (A-26) made a voluntary confession and led the police party to his shop and he took out a packet from a cupboard and handed over the same to the police party who opened it and found that it contained a registration certificate of Bajaj Scooter bearing No. MP-14-B-5349, Chassis No. MO-5-178695.

viii) He deposed that he prepared two panchnamas of the entire event.

The report of the Chemical Analyzer confirms the presence of the highly explosive RDX (Cyclonite) on the shirt recovered by the police party at the instance of the appellant (A-12). Thus it can safely be inferred that the appellant was present at the time of filling RDX in the vehicles and during the said process he had soiled his shirt.

Deposition of Sanjay Laxman Kadam (PW-530) PW-530 was the API and had assisted PW-680 in the interrogation of the appellant on 31.05.1993. PW-530 confirms and corroborates the fact of the appellant (A-12) making a voluntary statement and, thereafter, leading the police party to the house of his friend Mohd. Taufiq from where his driving licence was recovered.

Deposition of Abdul Rauf (PW-525) PW-525 was a police officer at Pydhonie, Police Station at the relevant time. He deposed that he inspected the place of occurrence in the presence of panch witnesses. He further deposed as under:

i) He seized chassis of a scooter and a part of the scooter which had burnt on the spot. The chassis bore the No. MO-5-178695.

ii) He seized the number plate of the scooter bearing No. MP 1B 5349.

iii) He also seized glass splinters and ashes from the spot.

iv) He deposed that he seized pieces of cloth and earth soaked with oil lying on the spot.

v) He also drew a spot panchnama which was proved by him.

Deposition of Ramesh G. Thakur (PW-64) PW-64, an electrician working in Andheri, has deposed as a witness. The following facts have been established from his statement:

i) He is a panch witness.

ii) In his presence, A-26 made a voluntary statement.

iii) A-26 led the police party and the panch witness to his shop.



iv) In his presence, the police party pursuant to disclosure recovered the registration papers of Bajaj scooter.

Deposition of Shantilal Gandhi (PW-386) PW-386 was involved in the preparation of ornaments of gold and owned a stall in Zaveri Bazaar. He deposed to the following effect:

i) He is a resident of Ratlam and after staying there he came to Bombay and worked at Zaveri Bazaar.

ii) He knows A-26 since 1983.

iii) Between 15-20th April, 1992 he went to Ratlam by train and before leaving, he met A-26.

iv) A-26 told him that since Kumbhmela was going on in M.P., he would get 50% off on purchase of scooters.

v) A-26 gave him Rs.20,000/- to purchase a scooter from Ratlam, M.P. in the name of P.B. Mali.

vi) He purchased the scooter for Rs.19,000/- from Ratlam in the name of P.B. Mali and gave his residential address as 53, Hatiram Darwaja.

vii) The Registration No. of the scooter was MP-14-B-5349.

viii) He then booked the scooter by train to A-26 from Ratlam.

Upon perusal of the evidence of PW-386, it is clearly established that he purchased the scooter at the behest of A-26 from Ratlam, MP in the fake name of P.B. Mali and A-26 paid the money for the said purchase. PW-386 also sent the registration papers to him which were subsequently recovered from his shop vide disclosure statement made by A-26. Deposition of Pratapram Buraji Mali (PW-75) He had his own business of making gold and silver ornaments and so also in the Share Market. He deposed as under:

i) He knew Raju Kodi (A-26) for the last ten years.

ii) He had seen Raju Kodi driving a blue coloured scooter of Bajaj Company.

iii) He had not booked any scooter in his name.

On perusal of the aforesaid deposition, it is clearly discernible that the scooter was booked in the fake name which fact is also established from the deposition of PW-75.

Other Witnesses:

Depositions of Dharmendra Ratilal Parekh (PW-423) and Sadashiv Ganpat Ranmale (PW-429)

393) The above witnesses deposed about taking claim of the dead body of their brothers who succumbed to the injuries sustained during the blast at Katha Bazaar.

Deposition of Dr. Madhavrao Lalasaheb Lankeshwar (PW-478) PW-478 deposed about the fact that Hiten Ratilal Parikh, brother of PW- 423 died on account of burn injuries sustained by him. PW-478 also issued Medical Certificate explaining the cause of the death. Deposition of Vijay Harishchandra Kelvekar (PW-479) PW-479 deposed about the fact that Baburao Ganpat Ranmale, brother of PW-429, died on account of burn injuries sustained by him. He also issued Medical Certificate explaining the cause of the death.

Deposition of Faizan Khan (PW-372) PW-372 deposed that Gulabi House owned by his company was damaged. He deposed that the damage estimated to the tune of Rs.25,000/-. Deposition of Dinanath Ramchand Ramani (PW-373) PW-373 deposed that he has an office at Vyapar Bhavan and due to the explosion at Katha Bazaar the glass panes of the windows in the bathroom and balcony were damaged.

Depositions of Suresh Shamrao Jathar (PW-617), Maheshwar Diwakar Datt Sharma (PW-616) and Anil Baburao Gorakshakar (PW-618) All the abovesaid witnesses have proved the damage caused to the public property on account of explosion at Katha Bazar. Deposition of Namdeo Yashwant Gole (PW-430) PW-430 deposed that he sustained injuries on his leg and forehead due to which he became unconscious and was admitted in GT Hospital.

Explosion at Hotel Sea Rock:

Deposition of Premchand Pandhari Nath Garud (PW-23)

394) PW-23 was working as an attendant in the House Keeping Department of the said Hotel. He deposed as under:

- i) A guest (A-12), carrying a biscuit coloured suitcase and a black shoulder bag checked in Room No. 1840 at about 12:15 hrs.
- ii) The guest (A-12) was finding difficulty in opening the lock of the room so he assisted him in opening the door.
- iii) The appellant asked him not to disturb as he was exhausted and wanted to sleep.
- iv) Around 3 p.m., he heard a loud explosion due to which the said room was completely damaged and the lift also stopped working.
- v) PW-23 identified the appellant before the Court in the dock.

vi) He also identified the appellant in the Test Identification Parade conducted by Vasant Kamble (PW-462) on 21.03.1993. Deposition of Vasant Kamble (PW-462)

i) He is the SEM who conducted the TIP on 21.03.1993 for the identification of A-12 at Sacred Hearts School.

ii) A Panchnama of the parade was also prepared by him which is marked as Exh. 1478 and he also proved the same.

Deposition of Suresh K. Singh (PW-28) At the relevant time, PW-28 was working as a bell boy in the said hotel.

i) On 12.03.1993, he offered help to the appellant (A-12) to carry his biscuit coloured suitcase and black coloured bag but he refused to take any help.

ii) After 10/15 minutes, he saw the appellant leaving the hotel without luggage.

(iii) He identified the appellant (A-12) in the Identification Parade dated 07.05.1993 conducted by Almedia, Special Executive Magistrate at Bandra Police Station in the presence of panch witness.

Deposition of Suresh Kumar Champalal Bhandari (PW-467)

i) He was the panch witness of the parade conducted by the SEM.

ii) He deposed that PWs-28 and 23 duly identified the appellant (A-12) in the Identification Parade conducted by SEM

iii) He deposed that a panchnama was prepared for the parade. The above said evidence establishes the fact that the appellant (A-12) entered into the Room No. 1840 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).

Deposition of Ms. Darive Nicholas Henriques (PW-279) PW-279 was the Front Office Receptionist at Hotel Sea Rock at the relevant time and deposed that a person by name Domnic D'Souza came to the hotel along with one more person to make an advance payment for Mr. Advani's reservation on 08.03.1993.

Deposition of Johnwin George Manavalan (PW-280) PW-280 was working as a Cashier at Hotel Sea Rock and deposed of having accepted Rs.7,000/- on 08.03.1993 towards advance payment for reservation of the said room commencing from 11.03.1993, in the name of Mr. Advani. He further deposed that he issued receipt for the same. Deposition of Valery D'Souza (PW-620) PW-620 was a Reservation Assistant at Hotel Sea Rock at the relevant time and deposed that on 08.03.1993, a person had come to confirm the check in of one Mr. Advani on 11.03.1993. She deposed that the said person deposited Rs.7,000/- with the cashier and completed the reservation formalities.

Deposition of Lorraine Gonsalves (PW-495) A receptionist at Hotel Sea Rock testified as follows:

- i) One person came to the desk and told that he has a booking in the name of Mr. Advani for Gorakhpur Metal Company.
- ii) He gave the booking number.
- iii) He also produced the receipt for advance payment.
- iv) He was given a registration card in which he filled 108, Napean Sea Road, as his address.
- v) After completing all the formalities, she allotted Room No. 1840 and handed over the keys of the said room to him.

Deposition of Dr. Manoj Jagatraj Virani (PW-107) He was a doctor and residing at 100 AA, Sea View Bungalow. He deposed that no person by name Dominic D'Souza or Advani stayed at 108 Napean Sea Road.

On perusal of the aforesaid evidence, it is established that Room No. 1840 was booked in a fictitious name.

Deposition of Dominic Anthony Martis (PW-333) At the relevant time, PW-333 was working as a Security Assistant at Hotel Sea Rock and deposed about the explosion and damage caused due to it. He proved his complaint which culminated into a first information report about the said incident.

Deposition of Rajan Mayandy Natarajan (PW-437) He was also a Security Officer at Hotel Sea Rock and he deposed about the scene after the blast. He further deposed about the inspection of the site conducted by PSI Bhagwan and proved the panchnama drawn by him. Dastagir Mohamad Gavandi (PW-552) PW-552 was a police officer and he deposed as under:

- i) He inspected the site.
- ii) PSI Bhagwan collected 7 to 8 samples from the room by drawing panchnama in the presence of panch witnesses.
- iii) On 14.03.1993, he along with PW-531 again went to the Hotel with FSL experts who took some samples and handed over them to PW-531 vide panchnama Exh. 1826.
- iv) On 19.03.1993, he sent three sealed packets vide covering letter to Chemical Analyzer through PW-531.
- v) The chemical analyser report was received on 29.03.1993.

The report of the Chemical Analyser in this regard is clear that the samples sent for examination contained traces of high explosive RDX (Cyclonite) and nitrite.

Deposition of Bhaurao Takekar (PW-531) PW-531 was a police officer and deposed that on 14.04.1993 he went to the Hotel along with Mandlik and Karnik, FSL experts and inspected the said room. The FSL experts collected samples and handed over to him. He deposed that he drew a panchnama and handed over the seized articles to PW-

552. He further deposed that he handed over three sealed packets to FSL for opinion vide covering letter Exh. 1897.

Deposition of Ashok Hotchand Motwani (PW-419) PW-419 was a Project Manager at Hotel Sea Rock and deposed about the monetary loss/damage caused to the hotel building owing to the explosion. Other Recoveries at the behest of the appellant:

Deposition of Padmakar Bhosale (PW-43)

395) PW-43 is a hawker near Gandhi Market. He deposed that:

- i) The appellant made a voluntary statement that he was in possession of the licence and the revolver of the Tiger Memon which he has kept in a black coloured pouch in a house.
- ii) The appellant led the police party and the panchas to Railway Quarters, Andheri.
- iii) The appellant took them behind his house and took out a black coloured pouch from the cavity of a fallen tree which contained a revolver loaded with six rounds and five loose rounds were also found, out of which, three were similar in number and two had different numbers inscribed on it.
- iv) The police party seized the same and a panchnama was drawn by PW-

506. Deposition of Anil Prabhakar Mahabole (PW-506) PW-506 was posted at Matunga Police Station as API. He deposed as under:

- i) The appellant expressed his willingness to make a voluntary statement.
- ii) He called for two panchas.
- iii) He recorded the statement of the appellant (A-12) by drawing the panchnama.
- iv) The appellant (A-12) led the police party and the panchas to Railway quarters.

v) The appellant (A-12) then took the police party behind his house and from the cavity of a fallen tree pulled out a pouch.

vi) The said pouch contained one old cobra brand loaded revolver and five loose live cartridges.

396) It is contended by the counsel for the appellant (A-12) that there is no eye-witness to the incident of filling of RDX and as such the said incident has not been proved by the prosecution. 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. We are 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 11th/12th March, 1993.

397) It is contended on behalf of the appellant that PW-8 saw a person parking the said scooter at Katha Bazaar from the window of his office which is at a distance of about 15-20 meters from the road and therefore, his statement should not be relied upon. It is further contended on behalf of the appellant (A-12) that the doctor who treated PW-8 of the injuries sustained by him in the blast has not been examined by the prosecution to corroborate the evidence of PW-8. The said contentions are also liable to be rejected since the scooter of PW-8's employer was parked close to the scooter parked by the appellant (A-12). It is normal human behaviour to look out for one's own vehicle or employer's vehicle and accordingly, PW-8 was attentive and had a clear sight of the scooter. Thus, there was no difficulty in seeing the appellant parking the scooter which later exploded. Further, PW-8 has correctly identified the appellant (A-12) before the Court during the dock proceedings and also in the Test Identification Parade. In addition to the same, it is relevant to mention that PW-8 has been extensively cross-examined by the defence on the point that he was injured and he took treatment at Dr. Shah's Clinic and he withstood the cross-examination without being shaken. Therefore, the credibility of the evidence of PW-8 is not affected whatsoever.

398) It is contended on behalf of the appellant (A-12) that PW-530 had not obtained the signatures of panch witnesses upon the licence and/or that he had not recorded the Registration number of the vehicle in the Station Diary and that the panch witness was not a local panch witness and was from a place more than 100 kms. away. This submission is also liable to be rejected since PW-530 clearly explained the circumstances in which he had taken the said panch for the panchnama, i.e., the persons who were fetched by staff from Crawford Market. PW-530 in his deposition stated that the driving licence being a plastic card, he could not obtain the signatures on the same and the details of the driving licence having already been mentioned in the panchnama, he had not pasted the label of the signature of panch witness upon the same and that he had mentioned in the Station Diary the purpose of his visit and

the persons accompanying him.

399) Finally, it is contended on behalf of the appellant (A-12) that the testimony of PW-28 should be disregarded since he failed to identify the appellant (A-12) before the Court. This contention of learned counsel is also liable to be rejected since PW-28 had correctly identified the appellant (A-12) during the test identification parade dated 07.05.1993 and he failed to identify him before the Court possibly because his testimony was recorded after about 2 years and 9 months, i.e. on 21.12.1995.

400) In view of the above said 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.

Criminal Appeal Nos. 941-942 of 2008 Mohammed Farooq Mohammed Yusuf Pawale (A-16) .....Appellant(s) versus The State of Maharashtra thr. CBI-STF, Bombay .....Respondent(s)

401) Ms. Farhana Shah, learned counsel appeared for the appellant and Mr. Gopal Subramaniam, learned senior counsel, duly assisted by Mr. Mukul Gupta, learned senior counsel and Mr. Satyakam, learned counsel for the respondent.

402) The present appeals are directed against the final judgment and order of conviction and sentence dated 09.10.2006 and 25.07.2007 respectively, whereby the appellant has been convicted and sentenced to death by the Designated Judge in the Bombay Bomb Blast Case, Greater Bombay in BBC No. 1/1993.

Charges:

403) A common charge of conspiracy was framed against all the co-conspirators including the appellant (A-16). The relevant portion of the same is reproduced hereunder:

“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.) 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 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 explosives substances like RDX or inflammable 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, damage to and disruption of supplies of services essential to the life of the community, and to 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 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 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 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 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 Indian Penal Code read with Sections 3(2)(i)(ii), 3(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 (1A), (1B)(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 aforesaid principal charge of conspiracy, A-16 was also charged on other counts which are summarized as follows:

At head secondly; He committed an offence punishable under Section 3(3) of TADA by committing the following overt acts.

- (a) He participated in the landing and transportation of arms, ammunitions and explosives which were smuggled into India at Shekhadi in February, 1993.
- (b) He visited Pakistan via Dubai for receiving training in handling of arms, ammunitions and explosives from the agents of ISI to commit terrorist acts in India.



(c) He attended the conspiratorial meetings during the month of March 1993 at the residence of Babloo @ Nazir Anwar Shaikh and Mobina @ Baya Musa Bhinwandiwalla for making plans to commit terrorist act.

(d) He participated along with co-conspirators in loading the explosives like RDX fitted with time device detonators in various vehicles and in the preparation of vehicle bombs in the intervening night of 11/12 March, 1993.

(e) He surveyed and conducted reconnaissance of the Stock Exchange Building and Air India Building on 10.03.1993 for causing explosions there at the instructions of Tiger Memon.

At head thirdly; He, along with PW-2 drove explosive laden Maruti Car No. MH-03-A-2143 and parked the same at Lucky Petrol Pump near Shiv Sena Bhavan, Dadar, Bombay which exploded and caused death to four persons and injury to 50 persons and causing loss of property worth Rs. 21,20,600/- and thereby committed an offence punishable under Section 3(2)(i)(ii) of TADA.

At head fourthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the death of 4 persons, committed an offence punishable under Section 302 IPC.

At head fifthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the injury to 50 persons, committed an offence punishable under Section 307 I.P.C At head sixthly; The appellant (A-16), by causing the aforesaid explosion, which resulted in grievous hurt to 10 persons, committed an offence punishable under Section 326 IPC.

At head seventhly; The appellant (A-16), by causing the aforesaid explosion, which resulted into injury to 40 persons committed an offence punishable under Section 324 IPC.

At head eighthly; The appellant (A-16), by causing the aforesaid explosion which resulted into damage to properties worth Rs. 22 lakhs, committed an offence punishable under Section 435 IPC.

At head ninthly; The appellant (A-16), by causing the aforesaid explosion, committed an offence punishable under Section 436 IPC.

At head tenthly; The appellant (A-16), by causing the aforesaid explosion, which resulted into death, injury and damage to property as mentioned has committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head eleventhly; The appellant (A-16), by causing the aforesaid explosion and possessing RDX explosives in the said car committed an offence punishable under Section 4(a)(b) of the Explosive Substances Act, 1908.

At head twelfthly; The appellant (A-16), by possessing RDX without licence committed an offence punishable under Section 9B(1)(b) of the Explosives Act, 1884.

At head thirteenthly; The appellant (A-16), along with co-conspirators drove explosive laden Ambassador Car No. MH-20-TR-622 fitted with detonators and parked the said vehicle at the Tunnel Road, Air India building in front of the rear gate of Bank of Oman Limited at Air India Building which exploded and caused death to 20 persons and injured 84 persons and loss of properties to the tune of Rs. 2.15 crores and thereby committed an offence punishable under Section 3(2)(i)(ii) of TADA.

At head fourteenthly; The appellant (A-16), by causing the aforesaid explosion at Air India Building which resulted in death, committed an offence punishable under Section 302 IPC.

At head fifteenthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the injury of 84 persons committed an offence punishable under Section 307 IPC.

At head sixteenthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the grievous injury to 36 persons committed an offence punishable under Section 326 IPC.

At head seventeenthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the injury of 49 persons committed an offence punishable under Section 324 IPC.

At head eighteenthly; The appellant (A-16), by causing the aforesaid explosion which resulted in the damage of property committed offence punishable under Section 435 IPC.

At head nineteenthly; The appellant (A-16), by causing the aforesaid explosion committed an offence punishable under Section 436 IPC.

At head twentiethly; The appellant (A-16), by causing the aforesaid explosion which resulted in the death, injury and damage to the property as mentioned above has committed an offence punishable under Section 3 of the Explosive Substances Act, 1908.

At head twenty-firstly; The appellant (A-16), by causing the aforesaid explosion committed an offence punishable under Section 4(a)(b) of the Explosive Substances Act, 1908.

At head twenty-secondly; The appellant (A-16), by possessing the RDX explosives in the above mentioned vehicle without licence, committed an offence punishable under Section 9B(1)(b) of the Explosives Act, 1884.

At head twenty-thirdly; The appellant (A-16), by causing the aforesaid explosion which resulted in the damage of public property i.e., Air India Building committed an offence punishable under Section 4 of the Preventive Damage to Public Property Act, 1984.

404) The Designated Court found the appellant guilty on all the aforesaid charges after considering the evidence brought on record by the prosecution. The appellant has been convicted and sentenced for the above said charges as follows:

Conviction and Sentence:

(i) The appellant 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 was found guilty for the offence punishable under Section 3(3) of TADA and sentenced to suffer RI for 12 years and is ordered to pay a fine of Rs.25,000/-, in default, he was ordered to suffer further RI for a period of 1 year. (charge secondly)

(iii) The appellant was sentenced to death, subject to confirmation of the same by this Court, for the offence punishable under Section 3(2)(i) of TADA and Section 302 of IPC respectively, and is also ordered to pay a fine of Rs.25,000/-. (charges thirdly & fourthly)

(iv) The appellant has been sentenced to RI for life for the offence punishable under Section 307 IPC. (charge fifthly)

(v) The appellant has been sentenced to suffer RI for 10 years along with a fine of Rs. 25,000/- for the offence punishable under Section 326 IPC. (charge sixthly)

(vi) The appellant has been sentenced to suffer RI for 3 years along with a fine of Rs. 10,000/- for the offence punishable under Section 324 IPC. (charge seventhly)

(vii) The appellant has been sentenced to suffer RI for 7 years and 10 years for the offence punishable under Sections 435 and 436 IPC respectively along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charges eighthly & ninthly)

(viii) The appellant has been sentenced to suffer RI for 10 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 3 of the Explosive Substances Act, 1908. (charge tenthly)

(ix) The appellant has been sentenced to suffer RI for 7 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908. (charge eleventhly)

(x) The appellant has been sentenced to suffer RI for 1 year for the offence punishable under Section 9-B(1)(b) of the Explosives Act, 1884.

(charge twelfthly)

(xi) The appellant has been sentenced to death along with a fine of Rs. 25,000/-, in default, to further undergo RI for 3 years for the offence punishable under Section 3(2)(i) of TADA. (charge thirteenthly)

(xii) The appellant has been sentenced to death, subject to confirmation of the same by this Court, along with a fine of Rs. 25,000/- for the offence punishable under Section 302 IPC. (charge fourteenthly)

(xiii) The appellant has been sentenced to RI for life for the offence punishable under Section 307 IPC. (charge fifteenthly)

(xiv) The appellant has been sentenced to suffer RI for 10 years along with a fine of Rs. 25,000/- for the offence punishable under Section 326 IPC. (charge sixteenthly)

(xv) The appellant has been sentenced to suffer RI for 3 years along with a fine of Rs. 10,000/- for the offence punishable under Section 324 IPC. (charge seventeenthly) (xvi) The appellant has been sentenced to suffer RI for 7 years and 10 years for the offence punishable under Sections 435 and 436 of IPC respectively along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months. (charges eighteenthly & nineteenthly) (xvii) The appellant has been sentenced to suffer RI for 10 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for 1 year under Section 3 of the Explosive Substances Act, 1908. (charge twentiethly) (xviii) The appellant has been sentenced to suffer RI for 7 years along with a fine of Rs. 5,000/-, in default, to further undergo RI for 1 year for the offence punishable under Section 4(b) of the Explosive Substances Act, 1908. (charge twenty-firstly) (xix) The appellant has been sentenced to suffer RI for 1 year for the offence punishable under Section 9-B(1)(b) of the Explosives Act, 1884. (charge twenty-secondly) (xx) The appellant has been sentenced to suffer RI for 5 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months for the offence punishable under Section 4 of Prevention of Damage to Public Property Act, 1984. (charge twenty-thirdly).

Evidence:

405) The evidence against the appellant (A-16) is in the form of:-

- (i) his own confession;
- (ii) confessions made by other co-conspirators; (co-accused);
- (iii) testimonies of prosecution witnesses including eye witnesses; and
- (iv) documentary evidence.

Conspiracy:

406) As mentioned above, a common charge of conspiracy has been framed against all the accused persons and in order to bring home the charge, 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. Since we have elaborately discussed the issue relating to conspiracy in the earlier part of our judgment, there is no need to refer the same once again.

#### Confessional Statement of Mohammed Farooq Mohammed Yusuf Pawale (A-16)

407) Confessional statement of A-16 under Section 15 of TADA has been recorded on 20.05.1993 (16:30 hrs.) and 22.05.1993 (16:45 hrs.), by Sanjay Pandey (PW-492), the then DCP, Zone VIII, Bombay. The appellant, 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. We have been taken through his entire confession. The following facts emerge from his confessional statement:

i) He resided at Balmiya Lane, Pamkar Chawl, Room No. 8, Wanjewadi, Mahim, Bombay and worked as a driver at Anees Travels, Mahim.

ii) He stated that he knows Javed Chikna (AA), resident of Mahim for the last five years (as on date of confession) and who is a goon and has also committed murder. He further stated that he also knew the friends of Javed Chikna i.e., Usman, Nasir Dhakla and Parvez Zulfikar Qureshi who were also criminals.

iii) On 07th February, 1993, Javed Chikna called him and asked whether he could drive a jeep for him and whether he could take 2 days leave. He (A-16) agreed and said that he would take leave for two days.

iv) Next day, i.e., on 08/09th February, 1993, he accompanied Usman to Bharat Training School where he saw Javed Chikna, Nasir Dakhla and Parvez. Two blue coloured jeeps arrived there after about half an hour. Javed Chikna sat in one jeep and A-16, Shaikh Ali, Parvez, Nasir Dhakla and Usman sat in another jeep which stopped at Vashi. He got down at that time and saw that Munna, Bashir, Anwar Theba (AA) and two other persons were sitting in other jeep. He identified Anwar and Bashir because they used to visit Javed Chikna. Usman told him the name of Munna.

v) He along with Munna, Anwar and other co-accused assisted Bhai @ Tiger Memon in the landing of 84 bags. He mentioned that it was dark and they were prohibited from lighting even a matchstick. This shows that the bags contained explosive material and they did not want to take any risk.

vi) He was given a plastic bag containing two pistols for his safety by Tiger after that they searched for the tempo which was carrying their material.

vii) On 10.02.1993, he along with 5 other persons left Bombay and reached Dubai.

viii) On 13.02.1993, he along with six other co-accused persons was sent to Islamabad, Pakistan by Tiger Memon.

ix) On 16.02.1993, he was taken to the training spot where he was given seven days' training in dismantling and handling of arms, use of bombs, hand grenades and chemical bombs. He further stated:

“Next day we were given training in dismantling and re- assembling the rifles and pistols and the use of the bombs. Second day, we were given physical training and handling of pistol and rifle. We were also given training in firing.”

x) On 27.02.1993, he was taken back to Islamabad and on 01.03.1993 to Dubai.

xi) In the evening on 03.03.1993, he along with 5 others, returned to Bombay from Dubai.

xii) On 07.03.1993, he attended a meeting along with Irfan and other accused persons at Khar in which Tiger told that he was going to cause riots in Bombay and asked him to work with Salim Mujahid and Irfan.

xiii) On 10.03.1993, he collected one white safari suit for himself, a blue coloured suit for Irfan and a biscuit coloured suit for Salim.

xiv) On the same day, A-16, Irfan and Salim wearing their respective suits surveyed Air India Building, Nariman Point in a red Maruti 1000 car driven by the appellant (A-16). The appellant stopped the car, came out and saluted the said two companions. Then he took them to the Saudi Consultate and Maker Tower. At about 1:30 p.m., they visited the Stock Exchange Building where he parked the car in the parking lot. Irfan got down earlier, while Salim got down at the parking place. On objection being raised by the watchman, A-16 took the vehicle out of the parking lot.

xv) On the same day, in the evening, he alongwith others attended the meeting at Bandra behind the Bhabha Hospital whereby Tiger distributed Rs. 5,000/- to each one of them and asked them to work without fear.

xvi) On 12.03.1993, he was paid Rs. 5,000/- by Javed Chikna who handed over to him a white Ambassador Car to park it at the spot near Air India Building which was earlier surveyed by them. He also took one pistol and rounds from Javed which he hid in his shirt. xvii) A-16, who was wearing a white Safari Suit, took the Ambassador Car and left it near the Bank of Oman near Air India Building. xviii) At that time, he was picked up by Irfan Chougule along with Salim Rahim Shaikh (A-52), who was in a blue coloured Maruti Car and he was, thereafter, dropped at Sachivalaya

(Secretariat). xix) He handed over the pistol and rounds (ammunitions) to A-52. xx) He was taken by Usman in a Maruti 800 Car to Sena Bhavan Junction where Usman parked the car at the nearby Petrol Pump. xxi) In the evening, he told Bashir (A-13) that he had parked one vehicle near Air India Building which caused the blast. xxii) Next day, he came to know that the Memon's Building (Al Hussaini) was raided by the Police.

xxiii) On 14.03.1993, on the advice of Rafiq, he went to Siraz Saloonwala at Mumbra and stayed there for 7 days and, thereafter, to his relative Tauji Ahmed at Kalva for 2 days and then to Uran from where he was arrested from the residence of his relative Fusa Kumbi.

408) The appellant herein was involved in the blasts that took place in three places, namely, Air India Building, Shiv Sena Bhawan and the Stock Exchange. It is submitted that in these three blasts 108 people were killed, 314 were injured and property worth Rs. 7.7 crores was destroyed.

From the overt acts committed by the appellant herein, it is discernible that the appellant was fully conscious of the conspiratorial design and has actively and willingly participated in the conspiracy.

Confessional Statements of other co-accused:

409) A perusal of the above confession by the accused shows that the appellant was playing a key role in furtherance of the abovesaid conspiracy. The other accused, in their confessions under Section 15 of TADA have also discussed the role played by A-16 in the conspiracy. The confessions of the co-accused persons are as follows:-

Confessional Statement of Asgar Yusuf Mukadam (A-10) Confessional statement of A-10 under Section 15 of TADA has been recorded on 23.04.1993 (18:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused has stated that the appellant (A-16) along with Parvez Nazir Ahmed Shaikh (A-12) and Salim Rahim Shaikh (A-52) left for Dubai on 10/11th February, 1993 when he (A-16) was picked up along with the said two associates by A-10 from Midland Hotel and were dropped at the Airport. This statement corroborates with the confession of the appellant, who too had stated that he went to Dubai on 10.02.1993.

Confessional Statement of Shahnawaz Abdul Kadar Qureshi (A-29) Confessional statement of A-29 under Section 15 of TADA has been recorded on 18.05.1993 (18:30 hrs.) and on 21.05.1993 (14:45 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

i) A-16 was present in the training camp in Pakistan when Shahnawaz, Abdul Kadar Qureshi (A-29) and others reached there.

ii) They received training in handling of arms and explosives in Pakistan.

Confessional Statement of Zakir Hussain Noor Mohammed Shaikh (A-32) Confessional statement of A-32 under Section 15 of TADA has been recorded on 16.05.1993 (1125 hrs.) and 19.05.1993 (1730 hrs.) by Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

(i) A-16 went to Dubai along with other co-accused.

(ii) They (including A-16) received training in handling of arms and ammunitions in Pakistan.

(iii) During his stay in Pakistan, A-16 was renamed as 'Faizal' and the accused were not allowed to use their actual names.

(iv) On 03.03.1993, Farooq, Parvez, Salim Mujahid, Salim Dandekar, Irfan and A-32 left Dubai at 1 p.m. and came to Bombay.

Confessional Statement of Abdul Akhtar Khan (A-36) Confessional statement of A-36 under Section 15 of TADA has been recorded on 19.05.1993 (17:40 hrs.) and on 21.05.1993 (18:20 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused also stated that A-16 had undergone training in handling arms and ammunitions and explosives in Pakistan. This confession, along with the above stated confessions, establishes that the appellant went to Pakistan to receive training in the use of arms and ammunitions and explosives. This further proves that the conspirators were maintaining secrecy and the actions on 12.03.1993 were a result of a pre-planned agreement between the conspirators.

Confessional Statement of Feroz @ Akram Amani Malik (A-39) Confessional statement of A-39 under Section 15 of TADA has been recorded on 19.04.1993 (22:30 hrs.) and on 23.04.1993 (20:50 hrs.) by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

i) A-16 had received training in the use of arms and ammunitions and handling of bombs in Pakistan.

ii) The trainees were told that they have to place the bombs in the trains in Bombay and explode them to cause harm to Hindus and also that whatever they were doing, they were doing it for Islam.

The confessional statement of A-39 establishes that the conspirators were well aware of the motive of the conspiracy and had become a part of it and were also fully aware of the consequences of their actions. The training which was imparted to them was for the purpose of causing destruction in Bombay. It is conclusively established from this confession that all the accused who went for training in Pakistan were fully aware of the conspiracy and its motive.



Confessional Statement of Nasim Ashraf Sherali Barmare (A-49) Confessional statement of A-49 under Section 15 of TADA has been recorded on 16.05.1993 (09:30 hrs.) and on 18.05.1993 by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused referred to the role of the appellant (A-16) and said that A-16 joined him with his assumed name as 'Faizal' in Pakistan and received training in using pistols, AK-56 rifles, machine guns, hand grenades, RDX, detonators, pencil timers etc. Confessional Statement of Salim Rahim Shaikh (A-52) Confessional statement of A-52 under Section 15 of TADA has been recorded on 15.04.1993 and on 18.04.1993 by Mr. P.D. Pawar (PW-185), the then DCP, Zone V, Bombay. The said accused also referred to the involvement of the appellant (A-16) in the conspiracy at various stages. From the statement of A-52, the following facts emerge regarding the appellant which are as follows:

i) On 11.02.1993, he along with the appellant and others left Bombay and reached Dubai.

ii) On 12.02.1993, he along with others stayed in a building opposite to Hotel Al-Khaleez where Tiger Memon met them.

iii) On 13.02.1993, he along with the appellant attended the meeting in the same building in which Javed Chikna and Tiger Memon talked about the communal riots of Bombay and Gujarat.

iv) On 14.02.1993, he along with other accused left Dubai and reached Islamabad where they were taken to the training camp and were given training in firing arms, handling LMG rifles, throwing of hand grenades, use of RDX, detonators and timer pencils. He further stated as follows:

"We were given the training of firing with Pistol. The pistol was loaded with one magazine. We were taught about opening and assembling of LMG. We were taught about firing with LMG rifles. Fourth day, we learnt about firing of rifles. Thereafter, we were given the training of throwing hand grenades. There were two persons for our training, one was Pathan and another was aged 50 years. Both were about 45-50 years old."

v) A-52 also stated that they were told about 'black soap named RDX'.

vi) A-52 further explained about the object and the motive of the training. He stated as follows:

"Tiger also came there on the seventh day of our training. He also took training. He told all of us "Take good training, you have to do good work in Bombay as per this training." During the last two days, the training of hand grenades with weight, without weight and with detonators was given. We were also told about black soaps named RDX. Time pencil was also shown. The red coloured pencil used to burst in 15 minutes and the white coloured pencil used to burst in one hour and the green

coloured pencil used to burst in 2 and a half hours. We threw that pencils by using detonators.” (Emphasis supplied)

vii) On 28.02.1993, at Dubai, he had taken oath along with all the other members by placing their hands over Quran for not disclosing anything about the training to anyone and to take revenge for the loss caused to their persons. He further stated:

“They had also given us the oath of causing loss to those persons who had caused loss to our persons and burnt them in Bombay.”

viii) On 03.03.1993, he along with the appellant and other co-accused left Dubai and reached Bombay.

ix) After returning from Dubai, on the 3rd day, the conspirators met at the house of Babloo. All those who received training in Pakistan were present in the meeting. In this meeting, it was decided that the blasts in Bombay would be caused after Ramzan.

x) All the trainees, along with other co-accused attended a meeting in a flat at Bandra where they were divided in groups by Tiger Memon.

xi) On 11.03.1993, at night, A-16 along with other co-accused was present in the garage of the Al-Hussaini building, i.e. at the residence of Tiger Memon where the vehicles were loaded with RDX for causing bomb blasts.

This confession further proves the fact of training in Pakistan and that the accused went to Pakistan via Dubai. It also proves the extent of training that was given. The taking of oath on holy Quran has also been proved. It also establishes the motive of the conspirators which was to cause destruction and havoc in achieving their ultimate goal. He also stated about the meetings that took place at the house of Babloo and at a flat in Bandra after the conspirators returned from Dubai. He also proved that the appellant (A-16) was present in the Al Hussaini Building when the vehicle bombs were being prepared.

Confessional Statement of Shaikh Ali Shaikh Umar (A-57) Confessional statement of A-57 under Section 15 of TADA has been recorded on 19.04.1993 (12:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. A-57 went to meet Javed Chikna on 08/09.02.1993 at the Soda Factory. He said that at that time, Usman, Nasir, Farooq and some other people were also present there. This incident was related to meeting before the landing at Shekhadi.

Confessional Statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64) Confessional statement of A-64 under Section 15 of TADA has been recorded on 22.01.1995 and on 24.01.1995 by H.C. Singh (PW-474), Superintendent of Police, CBI/SPE/STF, New Delhi. The said accused referred to the role of the appellant (A-16) in his confession as follows:

i) He described the meeting near Soda Factory wherefrom all the participants (including A-16) went for the first landing at Shekhadi.

ii) On the way to Shekhadi, the accused stopped at a place where Abdul Gani had brought a black coloured bag which contained five AK-47/AK- 56 rifles, revolver, magazines and cartridges.

iii) Around 60-70 large packets were smuggled by them.

iv) After the second landing, he transported smuggled arms and explosives from Hotel Persian Darbar to Mumbra with the appellant (A-16). On the way, the conversation between the Tiger Memon and his associates revealed that the arms were to be used to take revenge against the demolition of Babri Masjid. These arms were to be used against Hindus. The wires brought in his jeep to Waghani Tower were to be used in the bomb blasts at Bombay.

v) A-16 was present at the Al Hussaini Building during the preparation of vehicle bombs in the night of 11/12.03.1993 by using RDX which had landed at Shekhadi.

vi) A-16 was seen going to the Al-Hussaini compound in the morning of 12.03.1993 wearing a white uniform as a driver.

The said confessional statement proves that the appellant (A-16) was involved in the landings which took place in Shekhadi. It is also established that the motive of the conspiracy was known to the conspirators and the claim/contention of the appellant that the motive was not known to them is without any basis. The statement also further established that the appellant was present at the Al Hussaini building on the night when the RDX was being filled in the vehicles for their preparation as vehicle bombs.

Confessional Statement of Md. Rafiq Usman Shaikh (A-94) Confessional statement of A-94 under Section 15 of TADA has been recorded on 14.05.1993 (18:30 hrs.) and on 16.05.1993 by Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

i) A-94 told about the presence of the appellant when they were waiting to go to Pakistan for training.

ii) On 14.03.1993, A-16 met A-94 and told him that the bomb blasts have been caused by Tiger Memon. He told Rafiq to escape to Mumbra with him and, accordingly, both of them went to Mumbra.

iii) A-16 also told A-94 that he had parked the white Ambassador Car which was laden with RDX/explosives at Air India Building.

(iv) A-94 and A-16 were arrested by the police. A-94, in his confession stated that the police had come to his house along with the appellant.

Confessional Statement of Niyaz Mohammed @ Aslam Iqbal Ahmed Shaikh (A-98) Confessional statement of A-98 under Section 15 of TADA has been recorded on 17.05.1993 (14:30 hrs.) and on 20.05.1993 (11:30 hrs.) by Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

(i) A-98 admitted that he had received training in handling of different types of arms and ammunitions, hand grenades and making of bombs by using RDX. He said that A-16 also took training with him in Pakistan. He further stated as follows:

“The training included P.T. and exercise from 7:00-8:00 hrs and from 9:00 a.m. to 1:00 p.m. dismantling, reassembling and manner of firing of pistols AK-56 rifles, LMG etc. After 3-4 days, seven boys had also joined whose names were Javed Chikna alias Ali, Usman alias Nasir, Farooq alias Faizal, Zabir alias Shakir, Salim alias Mujahid, Parvez alias Qureshi and Salim Driver alias Irfan. They had their training together with us.....

During the training period they also gave the training in hand grenades, RDX, detonators, safety fuse, Electric Detonators and Timer Pencil. They told us on black-board about making of a bomb by using RDX. After 1-2 days there came a bearded person with Ahmedbhai. All the other boys were calling that bearded man as Tiger. He got the details of the training for 2 days.”

(ii) On 01.03.1993, after reaching Dubai, A-16, who had gone for training at the instance of Tiger took an oath by placing his hands on Quran. A speech was given by Tiger regarding the riots in Bombay and about taking revenge.

The confession of A-98 along with that of A-52 proves that the accused knew about the black soap which is an explosive viz., RDX. It is established beyond doubt that during the training, the accused were taught how to use the detonators, hand grenades, timer pencils as well as RDX. The confessional statement further establishes that the accused were taught how to make bombs using RDX.

Confessional Statement of Mohd. Parvez Zulfikar Qureshi (A-100) Confessional statement of A-100 under Section 15 of TADA has been recorded on 15.04.1993 (23:30 hrs.) and on 17.04.1993 (17:00 hrs.), by Sanjay Pandey (PW-492), the then DCP, Zone VIII, Bombay. The said accused referred to the role of the appellant (A-16) as follows:

i) He disclosed the participation of the appellant in the landing of smuggled items of Tiger Memon on 09.02.1993 at Shekhadi coast and thereafter in transportation of the said consignment to Waghani Tower and other places.

ii) He participated in the training of fire arms and ammunitions at Islamabad, Pakistan alongwith his associates during February 1993.

iii) On 02.03.1993, he came back to Dubai where Tiger Memon gave 200 Dirhams to each one of them and administered oath on Quran to take revenge against Hindus for demolition of Babri Masjid and their tyranny perpetrated on them.

(iv) He was present at the residence of Tiger Memon in the night of 11/12.03.1993 alongwith other co-accused when the explosives were being filled in the vehicles which were brought for the said purpose.

410) From the confessional statements made by different co-accused, the following facts emerge:

i) A-16 had gone for training in handling weapons and explosives to Pakistan via Dubai along with other accused.

ii) A-16 was given fake name as 'Faizal' which was used in Pakistan while training.

iii) A-16 was fully aware of the conspiratorial design and the plan to cause blasts and destruction in the city of Bombay at a large scale;

iv) A-16 knew that this was an act of retaliation by the conspirators and he was one of them;

v) A-16 had also participated in the landing of explosives and weapons at Shekhadi;

vi) A-16 had attended various meetings between the conspirators;

vii) A-16 was present at the time of filling of RDX/Black chemical in the vehicles at Al Hussaini Building;

viii) A-16 had taken oath on holy Quran that he would cause destruction and loss to the Hindu community as a revenge for what had happened on 06.12.1992 (demolition of Babri Masjid) and in the riots that ensued;

ix) A-16 was responsible for taking the explosives laden vehicle to the Air India Building and the Shiv Sena Bhawan (Lucky Petrol Pump) and causing death and destruction.

From the above, it can easily be inferred that A-16 was fully aware and conscious of the fact that their actions were of such a nature that they had to keep the conspiracy a secret and the activities done by them were grave. Taking of oath on Quran shows their intent and determination to cause damage and destruction. Their sole aim was to terrorise the people of the country by causing

massive and extensive damage to the financial capital of the country and to destabilize the Government of India. From the above confession, it is evident that he had no trace of remorse for the actions committed by him. The very fact that when the appellant fled from Bombay, he also suggested A-94 to do the same which shows their incriminating post incident conduct. Hence, it is clear that the appellant was well aware of the consequences of his action and played an important role in the conspiracy. We have already held that a voluntary and truthful confessional statement recorded under Section 15 of TADA requires no corroboration.

#### Retracted Confessions:

411) It has been contended that all the confessions relied upon against the appellant including his own confession have been retracted and therefore, they are not trustworthy. Since the very same objection has already been considered and rejected, we are not repeating the same once again. The said conclusion is applicable to these appeals also.

#### Deposition of Prosecution Witnesses:

##### Deposition of Mohammed Usman Jan Khan (PW-2) (Approver)

412) PW-2, the approver, has also deposed against the appellant. We have gone through the portion relating to A-16. The deposition of PW-2 with regard to the involvement of A-16 is summarized hereinbelow:

(i) He knew Md. Farooq Mohammed Yusuf Pawale as Farooq Pawale (A-16).

(ii) He identified the appellant in the identification parade.

(iii) On 09.02.1993, he met A-16 at the Soda Factory along with other co-

accused and went to Waghani Tower where the goods brought in the cars were unpacked by them.

(iv) The gunny bags contained AK-56 rifles, its rounds, hand grenades, pistols, magazines and RDX, i.e, 'Kala Sabun'. All these items were then kept in the cavities of the jeeps. A box of detonators was also there.

(v) On 10.02.1993, the appellant went to Hotel Persian Darbar along with Tiger Memon.

(vi) The appellant (A-16) also accompanied the approver and other co-

accused to Pakistan for training in handling of arms and ammunitions and explosives.

(vii) In the training, they were taught how to operate and use AK-56 rifles, pistols, hand grenades and use of RDX for preparing bomb. They were explained that the RDX could be used for exploding

and blowing off the bridges, trains, dams etc. They were also shown timer pencils, detonators of different colours which could ignite RDX bombs from a period of half an hour to five hours and were told how to use them. In the evening time, classes were held and they were explained things on black board and were also instructed about rocket launcher but were not given firing practice of the same.

(viii) The appellant (A-16) was present in the meeting at Babloo's residence which took place on 08.03.1993 wherein the targets for the explosions were selected and finalised.

(ix) Tiger had called A-16 and two other people in a room to talk to them separately.

(x) A-16 was present in the meeting at the residence of Tiger Memon at Al Hussaini Building on 11/12.03.1993.

(xi) PW-2, along with the appellant, took the white coloured Maruti 800 car (laden with RDX) and parked it near the Shiv Sena Bhawan/Lucky Petrol Pump.

(xii) A-16 had altercations with a Hawaldar (Constable) as well as with an employee of the Lucky Petrol Pump regarding the parking of the said car. This fact has been corroborated by the testimony of the prosecution witness.

413) Learned counsel for the appellant placed reliance on para 74 of the deposition of the approver in support of her contention that the accused was only a pawn and was following the directions of his masters. Para 74 reads as under:-

“After talking to Tiger Memon on telephone, Javed Chikna and all of us came downstairs. We met Farooq Pawale (A-16). Javed Chikna instructed Farooq Pawale to take one Maruti Car 800 to Shiv Sena Bhawan, Dadar and park it near Shiv Sena Bhawan, Dadar. Farooq Pawale requested me to accompany him. I accompanied Farooq Pawale in the white coloured Maruti 800 car, I drove the Maruti Car to Shiv Sena Bhawan. The white coloured Maruti 800 car was filled with RDX. We were told to park the white coloured Maruti Car near Shiv Sena Bhawan to blow it up.” A-16 participated in the landing and transportation of arms and ammunitions and explosives which were smuggled into India at Shekhadi in February, 1993. He 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 Babloo @ Nazir Anwar Shaikh and Mobina @ Baya Musa Bhiwandiwalla (A-96) for making plans to commit terrorist act.

414) 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 11/12th March, 1993. He surveyed and conducted reconnaissance 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.

415) 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 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, 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 accused.

#### Other Witnesses Deposition of Ishwar Haralkar (PW-11)

416) PW-11 was a service man at Lucky Petrol Pump. He deposed that while he was on duty on 12.03.1993, at 2 p.m., the driver (PW-2) of a white coloured Maruti 800 car stopped in front of the service station. He further deposed as follows:

(i) PW-11 refused to allow the driver to park the car there as it had not come for servicing in the station. There was an altercation between PW-11 with the person (A-16) sitting next to the driver. Ultimately, PW-2 parked the said car towards the direction of Shiv Shahi Chawl at the side of petrol pump and left it there. After half an hour, PW-11 heard the sound of a big explosion and saw that the said Maruti Car had exploded. He noticed that there was fire and massive damage to the vehicles standing nearby. The cement roof of the service station blown up and fell on him. He was injured and went to the doctor. He noticed complete damage to the service station and the petrol pump.

(ii) PW-11 identified PW-2 in the identification parade dated 11.05.1993 conducted by the Special Executive Magistrate, Ram S Bhosale (PW-460) and he again identified PW-2 as well as A-16 in the identification parade dated 23.05.1993 conducted by SEM Moreshwar Thakur (PW-469).

(iii) The witness also identified the appellant (A-16) in the Court.

417) It has been contended by the counsel for the appellant that the person (A-16) sitting next to the driver got off before the white coloured Maruti 800 car was parked at the side of the Lucky Petrol Pump. On the basis of this, the counsel submitted that A-16 was not responsible for the blast that took place at the Petrol Pump. It is submitted that even though the accused (A-16) was not the last person to leave the car but most certainly he went with the other person who was driving the car (PW-2) to plant the bomb at the said Petrol Pump. It is further submitted that A-16 had to get



down from the car only because PW-11 did not permit the parking of the vehicle in front of the said Pump. A-16 had gone along with PW-2 to the place where the incident took place for the purpose of planting the vehicle.

418) It has also been contended on behalf of the appellant that the height of A-16 has not been recorded and so PW-11 is not a reliable witness. It was submitted by the counsel that the witness has stated:

“My statement recorded on 12.03.1993 was read over and explained to me after it came to be recorded and found that it was correctly recorded. (The attention of the witness is drawn to his statement dated 12.03.1993). In my statement recorded by the Police on 12.03.1993 there is no mention of the height of the person who was sitting by the side of the driver. I cannot assign any reason why it is not recorded. According to me the colour complexion of a person would be important in describing him. In case of the person whom I noticed sitting by the side of the driver in the Maruti Car on 12.03.1993, his colour complexion was important feature and not his shortness.” Therefore, in view of the above statement, the witness was conscious of the fact that the height was not recorded in the earlier statement. It was submitted from the side of the prosecution that for identifying the accused, it was not his height which was important but it was his colour and complexion which was important.

419) The witness has further deposed that the statement was read over to him and he found it to be correct. It cannot be contended by the appellant that merely because the height of the accused was not mentioned in the earlier statement, the witness is unreliable. PW-11 has, in fact, identified the accused A-16 and therefore his testimony is reliable. It was further contended on behalf of the appellant that since PW-11 was an injured witness, the doctor who treated him should have been examined and his non-examination would result in discrediting the witness.

420) The witness has given accurate description of the accused and the approver has identified them. The testimony of the witness is corroborated by the evidence given by the accused, the approver and other witnesses. It is also mentioned in his statement that he did not suffer any bleeding injuries. Since the witness was not seriously injured, there was no need for him to be admitted in a hospital and for the Investigating Officer to examine any doctor in this regard. Hence, the contention of the appellant is without any basis.

Deposition of S.S. Hande (PW-12) PW-12 was a police constable attached to Dadar Police Station. On 12.03.1993, he along with PC 13196 was on duty at the Shiv Sena Bhawan. He is an eye-witness to the incident. PW-12 deposed as under:

(i) Around 2 p.m., PW-12 had an altercation with A-16 who was sitting next to the driver (PW-2) of white coloured Maruti Car with regard to the parking of car near Shiv Sena Bhawan. The driver (PW-2) took the car away from there and ultimately parked it near the compound wall of service station after some discussion with an employee of the Lucky Petrol Pump. After parking the vehicle, both A-16 and PW-2

left the place.

(ii) He further deposed that after sometime an explosion occurred and there was lot of smoke in the area and many vehicles and buildings were damaged.

(iii) PW-12 identified PW-2 and A-16 in the identification parade dated 23.05.1993 conducted by SEM Moreshwar Thakur (PW-469) who prepared the memorandum Panchnama Exh. 1519 for the same.

(iv) The witness also identified the appellant (A-16) in the Court. It was submitted by the counsel for the appellant that this witness has deposed that A-16 had an altercation with him regarding parking of car. Thereafter, he saw them talking to an employee of the Lucky Petrol Pump. After some time, the person sitting next to the driver got down from the car. Here again, it was contended that A-16 was not there until the car was parked and so he was not responsible for the blast that took place at the Lucky Petrol Pump. In view of the above, it is contended that even though he did not finally park the car, his intention was to cause the blast and he got down from it only because of the altercation. A-16 was an equal participant in the planting of the car at the place of the blast.

421) Learned counsel for the appellant has placed para No. 5 in which the accused has been identified by the witness and paragraph No. 8 where the distinguishing marks on the face of the accused have been described by the witness. This supports the case of the prosecution that the eye-witness has correctly identified the accused and, therefore, the accused can be placed at the scene of crime on the date and time of the incident. However, the counsel has not pointed out para No. 312 from the statement of PW-2 which reads as "I told Farooq Pawale to get down and go ahead and engage a Taxi for us, as stated in my evidence before the Court." It is thus established that the testimony of the witness is reliable and also the fact that the accused had gone to the site of the explosion along with PW-2 in the car in which the explosion took place. The evidence given by PWs 11 and 12 corroborate the evidence given by the accused himself and the approver.

422) Learned counsel for the appellant also submitted that PWs 11, 12 and 2 have given different versions of the story which are contradictory and thus their statements cannot be relied on. The statements of all the witnesses and the confession of the accused, if read as a whole, do not give any contradictory or conflicting account, in fact, they corroborate each other.

Deposition of Jagannath B. Patil (PW-668) PW-668 was a Police Officer who visited the said Petrol Pump after the blast in the presence of two panch witnesses Sudhakar Kadam and Kallapa. He drew a panchnama and seized ten Articles, viz., Articles 549-A (colly) to 558-A (colly) in and around the site of explosion. These articles included burnt pieces of tar, burnt pieces of wood and mud from the ditch created due to the explosion. PW-668 also collected samples/Articles vide Panchnama Exh. 2460 in the presence of Panch Witness Kiran Padhrinath Deshmukh (PW-666). A Panchnama was prepared in respect of articles taken by the Assistant Chemical Analysers from the site of the blast near Shiv Sena Bhavan in Dadar.

Deposition of Anil Kumar V. Kamat (PW-669) PW-669 was the person who sent articles like burnt pieces of bones, skull, branches of trees, etc. to the FSL for its opinion and has also deposed about the injuries to the persons and the deaths of the persons on account of explosion at Lucky Petrol Pump. The reports sent by the FSL confirm the traces of RDX which were present in the objects collected from the scene of the blast.

Deposition of Fazal Fruitwala (PW-363) PW-363 was a Car Broker. In July, 1990, Salim Abdul Gani Gazi (AA) had approached him for purchasing a new white coloured Maruti 800 car. PW- 363 inquired with Shakil Hasam of Auto Links. He informed Salim Gani that the car was available. As asked by Shakil Suleman on 12.07.1990, the delivery order was taken from M/s Sai Service Station. The car was in the name of the original purchaser Sultan Ali. On the same day, at 7 p.m., Salim Gani had paid Rs. 1,40,000/- inclusive of brokerage. PW-363 had asked Salim Gani to take delivery from Daman Stockyard. After deducting the brokerage, PW-363 sent the price of the car to Shakeel Hasam. The vehicle, i.e., the white Maruti Car used for the explosion was purchased by Salim Abdul Gani Gazi (AA) in July, 1990 through PW-363 and Shakeel S. Hasam (PW-366). The car was given Registration No. MH-03-A-2143. The registration of the car was done under a fictitious name which is proved by the evidence of PW-329 who was a postman in the concerned locality. Deposition of Sadanand S. Paradkar (PW-329) PW-329 was a Postman and was in the service of Ghatkopar Rajawadi Post Office in the year 1993. It was deposed by him that Garodia Nagar did not have any building by name of Manohar Apartment and, hence, there was no question of any person by name Sultan Ali residing in Flat No. 8, on the second floor of the said building. His deposition proves that the registration of the car was done under a false identity.

Deposition of Sudhakar D. Kadam (PW-445) PW-445 was a petrol-filler at the Lucky Petrol Pump. On 12.03.1993, at 5 p.m., he went to the petrol pump as he was posted in the second shift, i.e., from 5 p.m. to 12 a.m. He found that the atmosphere was smoky; the roof of the service station was missing; the petrol pump was partly burnt and the articles and parked vehicles were partly or fully burnt. There was a big hole on the 2nd floor wall of the building. He further deposed that damage was also caused to the buildings behind the petrol pump and things in its vicinity. He also gave the information regarding the situation of petrol pump and its vicinity in the presence of panchas. He further deposed that the police had correctly drawn the Panchnama Exh. 1431 dated 12.03.1993.

#### Injured Witnesses:

423) It was pointed out that around 50 people suffered injuries due to the explosion which took place at the Shiv Sena Bhawan/Lucky Petrol Pump.

The following witnesses have deposed about the injuries suffered by them on account of the explosion at the Lucky Petrol Pump on 12.03.1993:

i) Sudhir Shankar Chandrorkar (PW-408) – sustained bleeding injuries due to the pieces of iron which had pierced into his body at various places.

ii) Lallan S. Pandey (PW-409) – suffered various bleeding injuries and his left leg had to be amputated from the thigh region, and

(iii) Ankush K. Sawant – (PW-308) – suffered bleeding injuries due to striking of plastic splinter on his left thigh.

The following doctors have deposed with respect to the injuries suffered by the aforestated injured witnesses:

i) Dr. Vijay Madhav Deshmukh – (PW-631) – He is the person who prepared the Medical Certificate for PW-408.

ii) Dr. sunil Raghunath Rai – (PW-633) – He is the person who prepared the Medical Certificates for PWs 409 and 308.

The said witnesses (doctors) proved to have issued the medical certificates Exh. 2348 in respect of the above mentioned injuries.

The following claimants have claimed the dead bodies of their son (Shri John Thomas) and cousin sister (Smt. Mamta Surendra Pilankar) respectively who died on account of the explosion at Lucky Petrol Pump:

i) Thomas Itiyavira Modabamkunnel – (PW-427) and;

(ii) Nitin Vasant Parkar – PW-410 Four persons died in the blast that took place at Shiv Sena Bhawan.

Kishore L. Sawant PW-568 – has prepared the Accidental Death Reports (ADRs) in respect of the two deceased persons.

i) Exh. 1967 – ADR No. 19/93 in respect of death of Smt. Mamta Surendra Pilankar, cousin sister of Shri Nitin Vasant Parkar (PW-

410).

ii) Exh. 1971 – ADR No. 42/93 in respect of death of Shri John Thomas, son of Shri Thomas Itiyavira Modabamkunnel (PW-427). The doctors who prepared the Death Report Certificates in respect of the deceased are:

i) Dr. Walter G. Vaz (PW-476) – prepared the death certificate of John Thomas son of Thomas Itiyavira Modabamkunnel (PW-427);

ii) Dr. Anand P. Desai (PW-477) – prepared the death certificate of Mamta Surendra Pilankar who was the cousin sister of Nitin V. Parkar (PW-410).

The articles seized from the scene of the blast that took place at Shiv Sena Bhawan were sent to the Forensic Science Laboratory for opinion vide Exh. 2447 and Exh. 2469. The FSL Reports received in respect of the said letters are Exh. 2447-A and Exh. 2448. The reports prove that the articles found at the scene contained traces of Highly Explosive substance 'RDX'. It was further found that the clothes were stained with human blood and had traces of RDX as well. The aforesaid evidence establishes the fact that the appellant planted the vehicle bomb at the site of the explosion and massive damage was caused to life and property due to his actions. Witnesses regarding the incident at the Air India Building:

Deposition of Vilas Vyankatesh Kulkarni (PW-10)

424) He is an eye-witness to the incident. He deposed with respect to the explosion at Air India Building and the Ambassador car which exploded causing damage.

i) He was the owner of MAFCO Farm Fair Shop. On 12.03.1993, at about 12 noon, while going to his shop, he noticed a white coloured ambassador car bearing No. MH -9622 parked abutting the footpath and opposite to the footpath at the rear gate of Bank of Oman. In the tunnel, the driver alighted from the car and locked it. He stood near the car and at the same time noticed another Contessa Car entering the tunnel from the eastern side in reversed position.

ii) He also saw a blue coloured Maruti-800 car stopped 5 to 6 feet away from him and the person sitting by the side of the driver called the driver of the white coloured Ambassador. They then left together in a blue coloured Maruti 800 car.

iii) Around 2:40 to 2:45 p.m., PW-10 reported hearing a deafening sound from the Air India Building. He saw the white Ambassador car 5 to 6 feet up in the air. He also noticed black smoke rising from the tunnel and heard falling of glass pieces. After 15 minutes, he saw a big crater formed at the place where the white coloured Ambassador Car was parked.

iv) He also reported that many people were injured and died in the said incident. His shop was also badly damaged and his employees, viz., Ganesh and Joginder sustained minor injuries.

v) He identified A-16 in the identification parade dated 09.04.1993 conducted by the SEM (PW-462) and again he identified A-16 in the identification parade dated 14.05.1993 conducted by the SEM PW-469.

vi) He also identified the photographs of the appellant which were marked as Article Nos. 7 and 8 in the parade dated 15.06.1993 conducted by SEM PW-469.

425) It was submitted by the counsel for the appellant (A-16) after reading paragraph Nos. 7, 8 and 14 of his deposition that witness was not able to identify the accused even after giving more chances to identify the accused. It was further contended that there being only one eye-witness, who also could not identify the accused, hence, there is no other eye-witness in the case. It is pointed out that

the witness had wrongly identified A-16. It is submitted that the witness understood his mistake and informed that he had wrongly identified the accused. It is relevant to mention that the incident took place on 12.03.1993 and the identification was held in the court on 11.10.1995, i.e., after a period of two years, and therefore, the witness could not identify A-16. This cannot be taken to discredit the other facts which have been accurately described by him. The witness had identified the appellant when the parade was conducted by the SEM, however, it is only due to lapse of time that he could not identify the accused again.

Deposition of Fuldas Yadav Bhoye (PW-321) PW-321 was a PSI with Cuffe Parade Police Station at the time of the incident. He deposed regarding the damage caused to life and property at the scene of the blast. He deposed as follows:

(i) On 12.03.1993, at 3 p.m., he along with PI Chaudhary and other staff had been to the Air India Building. He found two cars burning in front of the Bank of Oman.

(ii) He further stated in his deposition that the entire atmosphere was surrounded with dense smoke and a crater of size 8x7 feet had been created in the porch.

(iii) The flooring of the first underground floor also had a similar crater and the second underground floor was visible through the craters that had been formed.

(iv) The building of the Bank of Oman had been fully destroyed and there was substantial damage to the offices of Air India, Mauritius and Singapore Airlines.

(v) He further deposed that three cars bearing registration numbers BLL-

904, MH-01-M-5039 and BLN-2933 and motor taxi bearing registration no. MMT-3075 were completely burnt, leaving behind only the chassis.

(vi) The cars parked on the porch of Air India building were also damaged.

(vii) Six dead bodies were removed and sent to the JJ Hospital with the help of firemen.

(viii) The injured were taken to GT Hospital and the Bombay Hospital. Deposition of N. Venkatramni (PW-376) He was the Engineer-in-charge of Air India Building situated at Nariman Point, Bombay. He found that there was extensive damage caused to Air India Building after the blast that occurred in front of the said building. He along with other engineers inspected the site. They appointed specialized valuers 'M/s Sunil Vora & Associates' for ascertaining the damage caused to the building. The valuers visited the building in April 1993 and gave a report estimating the damage to be to the tune of Rs. 1 crore 51 lakhs.

Deposition of Abbas Husseini Rangwala (PW-377) He was working with the Bank of Oman at the time of the incident. He deposed as follows:

(i) On 12.03.1993, at 2.40 p.m., he heard a big sound like bomb explosion and the ceiling and glass panels fell down. The furniture was damaged, computers worth Rs. 10 lakhs were damaged, air conditioning system was totally damaged and two vehicles belonging to the bank which were parked in the tunnel were fully damaged causing loss of Rs. 6 lakhs.

(ii) The bank lost about Rs. 2 lakhs 96 thousand due to sudden interruption in banking operations.

(iii) Twelve employees of the bank were injured, out of which 2 ladies succumbed to death. In addition, 3-4 customers of the Bank were also injured. Three persons from RBI sustained injuries and later succumbed to death.

(iv) The Bank appointed M/s Bhatavedekar & Co., specialised valuers, to ascertain the damage caused. The report of the valuers assessed the damage to be to the tune of Rs. 50 lakhs.

Other witnesses:

426) The number of injured people in the blast which took place at the Air India Building was 84 and 20 people had died in the said incident. The following injured persons have deposed as witnesses who were present inside the Air India building when the blast took place:

(i) Purshottam Narhar Karmarkar (PW-404)

(ii) Madhav Pundalik Patkar (PW-405)

(iii) Sadashiv Gopal Pendse (PW-407) Their deposition may be summarized as under:

(i) At 2.45 p.m., while waiting for lift in the lobby of Air India building, they heard the sound of a big explosion which was followed by a black out.

(ii) The false ceiling of the lobby collapsed and fell on them.

(iii) PW-404 sustained injury in his leg.

(iv) PWs 405 and 407 sustained multiple injuries from splinter glasses also. They were frightened and immediately left the building.

(v) Glass splinters pierced on the right side of the body of PW-405 who was later admitted in Bombay Hospital and discharged on 18.03.1993.

PW-404 and PW-407 were admitted in the casualty ward of JJ Hospital and were later shifted to the Hinduja Hospital. PW-404 was discharged on 22/23rd March, 1993 and 3-4 days after that PW-405

was discharged. The testimonies of these witnesses proves the fact that the impact of the blast was massive, causing exponential loss to life and property. These people were present at the scene of the incident and received injuries due to the blast which occurred at the Air India Building. The people inside the building were also hurt by the blast and huge loss was caused to the property.

Deposition of Dr. Sanjay Rajendra Agarwala (PW-653) He was the doctor at Hinduja Hospital and deposed regarding the injuries sustained by PW-404 who was admitted in the said hospital on 13.03.1993. He deposed that the victim had seven to eight injuries; his major injuries included a fracture of left elbow sustained in bomb blast occurred on 12.03.1993. He had to be operated on and was treated and discharged on 24.03.1993. He was again admitted on 02.05.1993 and was discharged on 05.05.1993 after treatment and removal of foreign body 'granuloma' from the ring finger of his right hand and the metacarpel region of neck.

Deposition of Dr. Rajaram Amrut Bhalerao (PW-646) He was the doctor at Hinduja Hospital and has deposed regarding PW-407 who was brought to the casualty centre of the said hospital on 13.03.1993. He deposed that the injured was having one major injury towards right side of the neck and multiple abrasions on the neck and face and had suffered loss of blood.

Deposition of Dr. Rajkumar Patil (PW-635) He was the doctor at Bombay Hospital and has deposed regarding PW-405. He deposed that the injured witness was brought to the Bombay Hospital on 12.03.1993 and examined by one Dr. Gupta. He was admitted in a place where arrangements were made for victims of bomb blasts that had occurred at the Bombay Stock Exchange, Air India Building and Zaveri Bazaar. Dr. Patil reported that PW-405 had been treated at the hospital and was discharged on 19.03.1993.

Depositions of Sandeep Prakash Bafna (PW-194) and Prakash Sanchalal Bafna (PW-247) At the relevant time, both were working with Hindustan Motors and Hero Honda Motors respectively. In the month of January, 1993, Gulam Rasool (A-

58) of Ujjain (M.P.) had taken the delivery of an Ambassador car for Rs. 1,84,466/- from Hindustan Motors whose temporary Registration No. was MH-20- TR-622. This booking was made through 'Sulebhai' (Suleman Lakdawala (PW-

365)) of Petrol Pump at Byculla and Shakeel Suleman of Auto Links. PW-194 identified the photograph (Article 377-A) of Gulam Rasool in the identification parade held at Police Head Quarters conducted by SEM Shri Vichare (PW-247) and also identified the photograph (Article 382-B) in an identification parade held at the office of DCB, CID conducted by SEM PW-

469. Thus, the place from where the car was purchased was located and the witness identified the person who had bought the car. Deposition of Suleman Lakdawala (PW-365) PW-365 deposed that Shafi Zariwala (AA) told him that he required three new Commander Jeeps bearing Registration Number of Gujarat State during February/March 1993. PW-365 contacted Shakeel Suleman Hasham, who informed that the cars with Registration No. of Madhya Pradesh were available. Shafi (AA) agreed to buy those cars. Suleman Lakdawala also arranged for one white ambassador car for



Shafi. This would further be established by the evidence of PW-366.

Deposition of Shakeel Suleman Hashan (PW-366) In his deposition, he stated that he (PW-366) introduced PW-365 with the car agency by name 'Kailash Agencies'. PW-365 taken the said car from the said agency and delivered it to Shafi Zariwala (AA). Deposition of Mukhtar Imdad Ahmed PW-281 PW-281 deposed that he had been asked by Shafi (AA) to prepare cavities in between the rear seat and fuel tank of the white Ambassador car bearing Registration No. MH-2Q-TR-622. It is pointed out that it was this car which was used to cause the explosion outside the Air India building. It is further pointed out that all these witnesses prove that the car which was used by the appellant for the blast was bought by the other co-accused. It has been established that Shafi Zariwala was a close associate of Tiger Memon. The depositions of these witnesses establish the link between all the evidence leading to the appellant (A-16) and the incident of explosion that took place on 12.03.1993.

Deposition of Ashok Budhavale (PW-614) PW-614 was working in the Worli Police Station as an API in the year 1993. It was contended that the police officer did not remember whether he had made entries in the station diaries while taking the accused out for TIP and while bringing them back. It was also contended that his senior officer PI Pharande had not given him any written orders for taking the accused out of the custody and so the TIP is vitiated as the procedure was not followed. It is relevant to note regarding the entries to be made in the diary that the officer had deposed that he did not recollect whether he had made the entry or not and with respect to the communication between the API and the PI, it is pointed out that the API had received oral instructions from his superior and there was no requirement of any written orders.

Deposition of Madhukar Baburao Gathade (PW-535) In the year 1993, he was attached as a PI with DCB, CID, Unit IX. In his deposition, he mentioned that he did not remember as to how many letters of sanctions were sent to him by the District Magistrate. The counsel for the appellant submitted that he did not grant any sanction and even if he did, the sanction was not granted on due application of mind by the District Magistrate. It is pointed out that the deposition of the witness was made on 06.12.1999, i.e., six and a half years after the incident. It is not possible for all the witnesses to remember all the details of all the events that took place during the trial. It is further submitted that the investigating officer had written a letter to the District Magistrate explaining the circumstances in which his sanction was sought to prosecute under the provisions of the Explosive Substances Act. Deposition of Ramalingam Nadar (PW-349) PW-349 acted as a panch witness in the search that was conducted at the house of A-16. It was submitted by the counsel for the appellant that the witness did not know English and the statement and panchnama were recorded in English and the driving licence was also in the English language. It is pointed out that the witness deposed that the document was explained to him in Hindi and he found the contents to be true. The contention of the counsel for the appellant stands negatived. Deposition of Nagesh Lohar (PW-356) PW-356 was working with Unit-I of DCB, CID and went to the house of A-16 when the search was made. It was submitted by the counsel for the appellant that no personal search of the members of the raiding party was conducted by the panch witness when they went to search the house of A-16. The witness deposed that a personal search was conducted; however, he did not record it in the panchnama due to oversight. He deposed that he did not realize that it had to be recorded till the time he was questioned for it.

Deposition of Rajan Dhoble (PW-585) In the year 1993, he was attached with DCB, CID, Unit-I as a PI. The counsel for the appellant submitted that the same person was acting as a witness in investigation taking place at two places of incident, i.e., Air India Building and the Stock Exchange and, hence, was not a reliable witness. It is pointed out by the other side that there is no prohibition that a Police Inspector cannot investigate two matters at the same time. Evidence of Witness regarding the incident at the Stock Exchange:

Deposition of Ashok Kamble (PW-24)

427) PW-24 was a Security Guard at the Bombay Stock Exchange Building. He is an eye-witness to the incident. His deposition revealed that on 10.03.1993, the appellant along with other accused persons had entered the Stock Exchange Building for parking the said red coloured Maruti 1000 car.

PW-24 identified A-16 in the Court at the time of his deposition as well as in the TIP dated 11.05.1993 and 08.06.1993 conducted by SEMs PW-458 and PW- 469 respectively. In view of the above, it was submitted that the deposition of PW-24 establishes that the appellant had been to the Stock Exchange Building prior to the blasts for the purpose of surveying the targets.

Deposition of Brijmohan Mehra (PW-458) PW-458 was the SEM who conducted the TIP with regard to the accused A- 16 for PW-24. It was submitted by the counsel for the appellant that the SEM was neither aware of the guidelines nor he had seen the Rules framed by the High Court of Judicature of Bombay regarding the precautions to be taken by a person conducting the TIP. It is relevant to note that the Government of Maharashtra had not issued as such any guidelines but had given the draft memorandum for Identification Parade. Therefore, it is established that the procedure which was required to be followed was known to the SEM and he had conducted it in accordance with the same.

428) A perusal of the entire evidence above establishes the guilt of the appellant (A-16). The confession of the appellant gives the detail of all the important events that took place during the time when the conspiracy was in its nascent stage. The appellant (A-16) was involved in the landing of arms and ammunitions and explosives; he went to Pakistan for training in using arms and making explosives; attended crucial conspiratorial meetings; went to survey the targets; was also present in the meeting when the targets were being finalized; and in addition to all these actions, he planted explosives laden vehicles at two locations and went to survey the third location.

429) All these events have been narrated by the co-accused also and the presence of the appellant has been narrated in the confessions of many co- accused including the ones who were an integral part of the plan. The evidence given by the approver and eye-witnesses also corroborate the fact that the appellant had planted explosives at two locations and had surveyed the third place.

430) The evidence of the approver, the eye-witnesses, experts and other witnesses above clearly 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.

431) The evidence given by the doctors and the family members of the deceased show the extent of suffering that was inflicted by A-16 and the other accused in pursuance of the conspiracy. The quantity of RDX that was used in the 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 involvement of the appellant in the entire conspiracy establishes the critical role played by him in the blast.

432) In view of the above said confessional statement of the appellant (A-

16), the confessional statements of other co-accused persons, 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.

#### TERRORISM:

433) The term “terrorism” is a concept that is commonly and widely used in everyday parlance and is derived from the Latin word “Terror” which means the state of intense fear and submission to it. There is no particular form of terror, hence, anything intended to create terror in the minds of general public in order to endanger the lives of the members and damage to public property may be termed as a terrorist act and a manifestation of terrorism. Black’s law dictionary defines terrorism as “the use of threat or violence to intimidate or cause panic, esp. as a means of affecting political conduct” (8th edition, page 1512).

434) Terrorism is a global phenomenon in today’s world and India is one of the worst victims of terrorist acts. Terrorism has a long history of being used to achieve political, religious and ideological objectives. Acts of terrorism can range from threats to actual assassinations, kidnappings, airline hijackings, bomb scares, car bombs, building explosions, mailing of dangerous materials, computer-based attacks and the use of chemical, biological, and nuclear weapons—weapons of mass destruction (WMD).

435) The fight against terrorism requires a concerted and multifaceted strategy at both the domestic and international levels and should involve a legal order which itself needs to be updated and elaborated upon and should hence be turned into a practical tool. There exist several domestic and international legislations to counter terrorism. The Terrorist and Disruptive Activities (Prevention) Act, 1985 (Act 31 of 1985) which received the assent of the President on May 23, 1985 and was published in the Gazette of India, Extra., Part II, Section 1, dated May 23, 1985, came into force on May 24, 1985 in the whole of India for a period of two years.

The Statement of Objects and Reasons of the said Act reads as follows:

“Prefatory Note — Statement of Objects and Reasons.— Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.”

436) The Bill as introduced sought to make provisions for combating the menace of terrorists and disruptionists, inter alia, to—

- (a) provide for deterrent punishment for terrorist acts and disruptive activities;
- (b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and
- (c) provide for the constitution of Designated Courts for the speedy and expeditious trial of offences under the proposed legislation.

437) The said Act No. 31 of 1985 was due to expire on May 23, 1987 and in order to combat and cope with terrorist and disruptive activities effectively and to strengthen it further, the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987) was enacted. Since both the Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, 1987 which came into force w.e.f. May 24, 1987. However, this Act repealing the Ordinance, received the assent of the President of India on September 3, 1987 and was published in the Gazette of India, Extra., Part II, Section 1, dated September 3, 1987. The scheme of the Act 31 of 1985 and Act 28 of 1987 as reflected from their preambles is the same. The scheme of the special provisions of these two Acts were/are “for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto”.

#### International Conventions

438) There also exist several International Conventions, which aim to suppress terrorism and define terrorist acts. The League of Nations took the initiative to formulate the first Global Convention on

Preventing Terrorism and, accordingly, adopted the 1937 Convention for the Prevention and Punishment of Terrorism, which defined “acts of terrorism” as:

“Criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public.”

439) More recently, several International Conventions and Multilateral Agreements have been entered into by States to curb global terrorism. The International Convention for the Suppression of Terrorist Bombings, 1997 defines the offence of “terrorist bombing” as follows:

“Article 2.1 – Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place or public use, a State or government facility, a public transportation system or an infrastructure facility:

- a) With the intent to cause death or serious bodily injury; or
- b) With the intent to cause extensive destruction of such a place, facility or system, where such a destruction results in or is likely to result in major economic loss.”

440) The United Nations Security Council in its 2004 Resolution denounced “terrorist acts” as follows:

“criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” India’s Contribution in Combating Terrorism

441) India has played a major part in strengthening international consensus against terrorism in UN, Non-Aligned Movement (NAM) and South Asian Association for Regional Cooperation (SAARC). India is a party to major international conventions against terrorism and has also incorporated them in domestic legislation. These conventions and treaties condemn terrorist acts and expressly state the grave concern posed by terrorism. Terror Attacks

442) Another trend common to both national and international terrorism is the emergence of terrorist groups motivated by religious fanaticism.

Whenever the perpetrators are motivated by religious fanaticism or had secular goals and beliefs, they become susceptible to the idea of sacrificing their own life for carrying out the will of God, or Allah or in waging a 'holy war'. It is important to note here that 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 a victim on several occasions. An indicative list of recent terrorist attacks on India as furnished by learned senior counsel for the CBI is provided below:

S.No.	Date of	Place of Attack	No. of Bomb	No. of Persons	Attack	Blasts
1.	12.03.1993	Bombay	13	257		
2.	14.02.1998	Coimbatore	13	46		
3.	13.12.2001	New Delhi	-	9		
4.	25.09.2002	Akshardham	-	29		
5.	06.12.2002	Mumbai (Ghatkopar)	-	2		
6.	25.08.2003	Mumbai (Zaveri Bazaar)	-	50		
7.	29.10.2005	Delhi	3	60		
8.	11.07.2006	Mumbai (Local trains)	-	209		
9.	25.08.2007	Hyderabad	2	42		
10.	23.11.2007	Lucknow, Varanasi, Faizabad	-	18		
11.	13.05.2008	Jaipur	9	63		
12.	25.07.2008	Bangalore	9	2		
13.	26.07.2008	Ahmedabad	21	56		
14.	13.09.2008	Delhi	5	30		
15.	26.11.2008	Mumbai	-	172		
16.	13.02.2010	Pune	-	17		
17.	13.07.2011	Mumbai	3	26		
18.	07.09.2011	Delhi (outside Delhi)	1	12		
19.	13.02.2012	Delhi (Israeli Embassy)	-	-		
		Injured Persons	-	-		
		Embassy Official's	4	-		
		car	-	-		

443) Terrorist attacks are not only limited to India but several terrorist attacks have also been taken place in countries around the world.

Following is a list of select terrorist attacks outside India:

S.No.	Date of	Place of Attack	No. of Bomb	No. of Persons	Attack	Blasts
1.	11.09.2001	NY and Washington DC	4	Nearly 3000		
2.	12.10.2002	Bali, Indonesia	3	202		
3.	11.03.2004	Madrid, Spain	10	191		
4.	07.07.2005	London, England	4	52		

444) The Supreme Court of India has also explained the term 'terrorism' in a series of cases. Provided below are summaries of key cases on terrorism.

In *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.*, (1994) 4 SCC 602, one of the key questions for consideration of this Court was in relation to the applicability of Section 3(1) of TADA. This Court held that while offences mentioned in Section 3 of TADA may overlap with offences mentioned in other statutes, a charge under Section 3 should be made where the offence was committed with the intention as envisaged in Section 3. This Court further observed:

"7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes

‘terrorism’. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or “terrorise” people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A ‘terrorist’ activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that ‘terrorism’ is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon.....” (emphasis supplied)

445) Girdhari Parmanand Vadhava vs. State of Maharashtra, (1996) 11 SCC 179 relates to kidnapping of a boy for ransom and on non-payment of the same, the accused persons tortured and killed the boy. The Designated Court convicted the accused and awarded life sentence. While adjudicating the appeal, it was contended by counsel for the accused persons before this Court that kidnapping is not a terrorist activity within the meaning of the provisions of TADA. This Court, while affirming the conviction and that the offence committed was a terrorist act, held as under:

“39. A crime even if perpetrated with extreme brutality may not constitute “terrorist activity” within the meaning of Section 3(1) of TADA. For constituting “terrorist activity” under Section 3(1) of TADA, the activity must be intended to strike terror in people or a section of the people or bring about other consequences referred to in the said Section 3(1). Terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country.....

..... It is the impact of the crime and its fallout on the society and the potentiality of such crime in producing fear in the minds of the people or a section of the people which makes a crime, a terrorist activity under Section 3(1) of TADA. In our view, in the facts of the case, the learned Designated Judge has rightly convicted the accused for offences under Section 3(1) of TADA besides convicting each of them under Section 120-B and Section 302 read with Section 120-B of the IPC.” (emphasis supplied)

446) In State through Superintendent of Police, CBI/SIT vs. Nalini & Ors., (1999) 5 SCC 253, this Court, while adjudicating the convictions of several accused persons in the case for assassination of Mr. Rajiv Gandhi, former Prime Minister of India, spelt out the ingredients of an offence under Section 3(1) of TADA as follows:

“650. .... A perusal of the provision (Section 3(1)), extracted above, shows that it embodies the principle expressed in the maxim “actus non facit reum, nisi mens sit rea”; both “mens rea” and a criminal act are the ingredients of the definition of “terrorist act”. The mens rea required is the intention (i) to overawe the Government as by law established; or (ii) to strike terror in the people or any section of the people; or (iii) to alienate any section of the people; or (iv) to adversely affect the harmony amongst different sections of the people. The actus reus should comprise of doing any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detaining any person and threatening to kill or injure such persons in order to compel the Government or any other person to do or abstain from doing any act.” (emphasis supplied)

447) In Mohd. Khalid vs. State of West Bengal, (2002) 7 SCC 334, while affirming the decision in appeal, this Court held that it is difficult to define terrorism in precise terms and acknowledged that terrorism is a threat to global peace and security. This Court further observed as under:

“42. ....It is not possible to define the expression ‘terrorism’ in precise terms. It is derived from the word ‘terror’. As the Statement of Objects and Reasons leading to enactment of the TADA is concerned, reference to the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the ‘Old Act’) is necessary. It appears that the intended object of the said Act was to deal with persons responsible for escalation of terrorist activities in many parts of the country. It was expected that it would be possible to control the menace within a period of two years, and life of the Act was restricted to the period of two years from the date of its commencement. But noticing the continuance of menace, that too on a larger scale TADA has been enacted. Menace of terrorism is not restricted to our country, and it has become a matter of international concern and the attacks on the World Trade Center and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is, TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case.” (emphasis supplied)



448) Nazir Khan & Ors. vs. State of Delhi, (2003) 8 SCC 461 pertains to prosecution of accused persons involved in kidnapping of foreign nationals and killing of police officers during combat. While the mastermind of this terrorist operation was subsequently released by the government in exchange for passengers held as hostages in the hijacked Indian Airlines Flight IC 814, the other accused persons were tried for offences punishable under the IPC and TADA. This Court, while hearing their appeals, challenging the judgment of Designated TADA Court, which had awarded death and life sentences to certain accused persons, made detailed observations about the nature of terrorist activities and attempted to define terrorism and held as under:

“13.... As noted at the outset, it is not possible to precisely define “terrorism”. Finding a definition of “terrorism” has haunted countries for decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agreed-upon definition. Terminology consensus would, however, be necessary for a single comprehensive convention on terrorism, which some countries favour in place of the present twelve piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Cynics have often commented that one State's “terrorist” is another State's “freedom fighter”. If terrorism is defined strictly in terms of attacks on non-military targets, a number of attacks on military installations and soldiers' residences could not be included in the statistics. In order to cut through the Gordian definitional knot, terrorism expert A. Schmid suggested in 1992 in a report for the then UN Crime Branch that it might be a good idea to take the existing consensus on what constitutes a “war crime” as a point of departure. If the core of war crimes — deliberate attacks on civilians, hostage-taking and the killing of prisoners — is extended to peacetime, we could simply define acts of terrorism as “peacetime equivalents of war crimes”. (emphasis added)

14. League of Nations Convention (1937):

“All criminal acts directed against a State along with intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.” (GA Res. No. 51/210: Measures to eliminate international terrorism)

1. Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed.
2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

3. Short legal definition proposed by A.P. Schmid to the United Nations Crime Branch (1992):

Act of Terrorism = Peacetime Equivalent of War Crime

4. Academic Consensus Definition:

“Terrorism is an anxiety-inspiring of repeated violent action, employed by (semi-) clandestine individuals, groups or State actors, for idiosyncratic, criminal or political reasons, whereby — in contrast to assassination — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and violence-based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target [audience(s)], turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.” (Schmid, 1988) Definitions

15. Terrorism by nature is difficult to define. Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the US Government cannot agree on one single definition of uniform and universal application. The old adage, “One man's terrorist is another man's freedom fighter” is still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation:

Terrorism is the use or threatened use of force designed to bring about political change. Brian Jenkins Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted.

Walter Laqueur Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience.

James M. Poland Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a government, individuals or groups, or to modify their behavior or politics.

Vice-President's Task Force, 1986 Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

FBI definition” (emphasis supplied)

449) In *Madan Singh vs. State of Bihar*, (2004) 4 SCC 622 this Court upheld the conviction and sentence awarded by the Designated Court in respect of accused persons who had killed several police officers in combat. While affirming that the offence committed was rightly charged under Section 3 of TADA, this Court observed in detail in respect of terrorist activities and held as follows:

“19. Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised and orderly society.....

.....It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb the harmony of the society or “terrorise” people and the society and not only those directly assaulted, with a view to disturb the even tempo, peace and tranquillity of the society and create a sense of fear and insecurity.”

450) In *People’s Union for Civil Liberties and Anr. vs. Union of India*, (2004) 9 SCC 580, the constitutional validity of various provisions of the Prevention of Terrorism Act, 2002 (“POTA”) were challenged. While upholding the constitutional validity of POTA, this Court discussed domestic and international authorities on terrorism and observed that:

“6. In all acts of terrorism, it is mainly the psychological element that distinguishes it from other political offences, which are invariably accompanied with violence and disorder. Fear is induced not merely by making civilians the direct targets of violence but also by exposing them to a sense of insecurity.....

8. All these terrorist strikes have certain common features. They could be very broadly grouped into three:

1. Attack on the institution of democracy, which is the very basis of our country (by attacking Parliament, Legislative Assembly etc.). And the attack on economic system by targeting economic nerve centres.
2. Attack on symbols of national pride and on security/strategic installations (e.g. Red Fort, military installations and camps, radio stations etc.).
3. Attack on civilians to generate terror and fear psychosis among the general populace. The attack at worshipping places to injure sentiments and to whip

communal passions. These are designed to position the people against the Government by creating a feeling of insecurity.

9. Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development and so on. This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of our nation and its citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together. Therefore, terrorism is a new challenge for law enforcement. By indulging in terrorist activities organised groups or individuals, trained, inspired and supported by fundamentalists and anti-Indian elements are trying to destabilise the country. This new breed of menace was hitherto unheard of. Terrorism is definitely a criminal act, but it is much more than mere criminality. Today the Government is charged with the duty of protecting the unity, integrity, secularism and sovereignty of India from terrorists, both from outside and within the borders. To face terrorism we need new approaches, techniques, weapons, expertise and of course new laws. In the abovesaid circumstances Parliament felt that a new anti-terrorism law is necessary for a better future. This parliamentary resolve is epitomised in POTA.

451) Terrorism is a major problem that is reoccurring over the globe in many different forms. In short, terrorism 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 so that other groups and people are not motivated to make themselves heard through various acts of terrorism. In our considered view, the following procedures/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 term strategies to combat terrorism.
- iii) More advanced technologies must be used for communication among law enforcement agencies.
- 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.

India being a secular State, such religious fanaticism which resulted in such terrorist acts should not be allowed to destroy the very basic structure of our Constitution. Unless every one of us put our sincere efforts to fight terrorism, we will not be able to curb this menace. Role of Pakistan in the Blasts:

452) It is devastating to state that Pakistan being a member of the United Nations, whose primary object is 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. This duty to prevent acts of terrorism stems from the basic principle of sovereignty, which entails both rights and obligations. Under the 'Universal Neighbouring Principles', it is well established that the rights of one state end where the territory of another state begins. An obvious source of this obligation lies in Article 2(4) of the UN Charter, which embodies the customary law of "prohibiting states from using or threatening to use force against another state". A host-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 amounts to force by definition.

453) In the relevant scenario, the accused arrived in Pakistan for training and they were received by ISI operatives who took them out of the airport without observing any immigration formalities. Meaning thereby, they had a green channel entry and exist in Pakistan. Another confession reveals that they received training from the ISI officials themselves on some occasions. These events unveil the tolerance and encouragement shown by Pakistan towards terrorism.

454) An effective anti-terrorism campaign will require a substantial strengthening of the international regime of state responsibility.

Presently, there are several documents adopted under the aegis of the UN and various multilateral treaties emphatically promote all states to work together urgently to bring to justice the perpetrators, organizers or those harbouring the perpetrators, organizers and sponsors will also be held accountable.

455) In the light of the Para 2 of the UNSC Resolution No. 1373 adopted under Chapter VII of the UN Charter, every State has the following obligations to perform:-

(a) Every State should refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

(b) Take necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information.

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe heavens.

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.

(e) Every such person supporting terrorist acts should be brought to justice and it must be ensured that, in addition to any other measures taken against them, the punishment awarded duly reflects the seriousness of such terrorist acts.

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings including assistance in obtaining evidence in their possession necessary for the proceedings.

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and thorough measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

456) With regard to the facts available in the case at hand, the role attributed by the neighbouring State can be summarized as under:-

(1) A large number of convicted accused and absconders have received training in making of bombs by using RDX and other explosives, handling of sophisticated automatic weapons like AK-56 Rifles and handling of hand grenades in Pakistan.

(2) A-92, A-95, A-108 and A-115 received weapons training in Pakistan in January, 1993. During the same period, five absconding accused persons also received training in Pakistan. Confessional statements of A-92, A-

95, A-115 and A-134 prove these facts.

(3) The arrangement for their training was made by Dawood Ibrahim (AA), Anees Ibrahim, Mohd. Dossa, A-136 and Salim Bismillah Khan (since deceased).

(4) PW-1 and PW-2 in their depositions before the Court and A-16, A-29, A-

32, A-36, A-39, A-49, A-52, A-64, A-77, A-94, A-98 and A-100 in their confessional statements have stated that during February 1993 the accused persons were sent, in batches, from Bombay to Dubai and Dubai to Islamabad, where they were given training by ISI/Army Personnel in different camps.

(5) The above said persons were taken to Dubai from where they were taken to Islamabad Airport and were received by ISI operatives, who took them out of the Islamabad Airport without observing any immigration formalities after completion of training.

(6) No immigration formalities were observed when they left Islamabad for Dubai.

(7) Some of the passports seized during investigation carry two arrival stamps of Dubai but the details of their journey during the intervening period are not reflected in the passports. (8) Pakistan took precautions not to bring its involvement on record. (9) A-58, A-88, A-109, A-114, A-126, A-127, A-128, A-129, A-130 and A-135 were taken to Dubai for sending them to Pakistan but arrangements could not be made for their training in Pakistan. Hence, they had to return from Dubai.

457) A careful reading of the confessional statements of convicted accused exposes that large number of accused including the absconders received training in making of bombs by using RDX and other explosives, handling of sophisticated automatic weapons like AK-56 Rifles and handling of hand grenades in Pakistan which was organized and methodically carried out by Dawood Ibrahim (AA), Anees Ibrahim, Mohd Dossa and Salim Bismillah Khan (since deceased). The training received in Pakistan materialized in the unfortunate serial blasts in Bombay, India on 12th March 1993. A responsible state owes an obligation not only to another state but also to the international community as a whole. We sincerely hope that every State will strive towards the same.

#### Role of Police Officers:

458) In a civilized era, every country is governed by Rule of Law and the primary concern of the Rule of law is promotion of human rights of the people and protection of their civil, political, social, economic and cultural rights. The Constitution of our country has entrusted substantial duty to the impartial police department for safeguarding and upholding rule of law; whose essential duty is to preserve peace and maintain order in the society.

459) The role of police officials has become more vital in the present century owing to the frequent terror attacks occurring across the country.

Terrorism is spreading across the border and there is increasing reliance on explosive devices to spread terror. 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. Explosive devices can be manufactured, transported, handled and fitted with a variety of unsuspecting objects multiplying their potential manifold. 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.

460) Unfortunately, in the present case the police officers themselves have taken active part in smuggling and transportation of arms and explosives in Bombay.

461) The twin duties of police are prevention of crime and maintenance of law and order. If crimes are prevented in time, the human rights of the people will be protected to a large extent. If the Bombay 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.

462) With regard to the facts and circumstances of the case in hand, the role played by police personnel of different ranks can be summarized as under:-

(1) A-116, who was Sub. Inspector Incharge of Shreevardhan Police Station and had jurisdiction over Shekhadi and Dighi Jetty, where illegal landings of arms and explosives took places and 7 Constables, viz., A-

101, A-70, A-110, A-99, A-83, A-84 and A-87, posted in the same Police Station, connived and took active part in smuggling of arms and explosives at Dighi Jetty on 09.01.1993.

(2) Confessions of A-30, A-82, A-134 and A-136 as also the depositions of PW-94, PW-97, PW-158, PW-159, PW-160, PW-161, PW-162 and PW-167 prove their role in the said landing and transportation of smuggled arms etc. (3) A-116, alongwith 7 Constables intercepted the convoy carrying smuggled contraband, on the night of 09.01.1993. A-116 held negotiations with A-134 and A-136 with the help and assistance of A-30 and Customs Officer Gurav (A-82) and permitted them to proceed after retaining five silver bricks as security against the payment of Rs. 10 lacs.

(4) The bribe amount was paid later on, to A-116, who released the five silver bricks.

(5) The said bribe amount was distributed among all the Police Personnel on two occasions to Mahasala Police Station, Shrivardan Police Station and Borali Outpost.

(6) Substantial amounts have been seized from each of the above noted Police Personnel during investigation.

(7) A-14 and A-17, in their confessions, have also deposed about the payment of bribe amount to A-116 for allowing the said landings.

463) As mentioned earlier, the police officials are the foundation for the existence of the rule of law; if they collapse the whole system indeed breaks down. Hence, they have sensitive responsibility to defend the safety and security of the people at all times. Law empowers them with numerous powers to prevent and control crimes like terrorism affecting internal security. They should always remember that when they fail in their duty they eventually fail the society as a whole.

Role of Customs Officers:

464) 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 for the time being in force. They are



entrusted with powers of search and seizure and conduct of on-spot investigations. But when the officer of customs enters into or acquiesces in any agreement to abstain from doing or permits, conceals or connives at any act whereby any fraudulent import is affected, it can have a disastrous effect on country's security.

465) It is shattering to notice that all grades of 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.

466) The occurrence of Bombay Bomb Blasts brings us to the reality that such incidents take place along the Indian coastline irrespective of the numerous laws and safeguards provided due to the lack of moral ethics and misconduct on the part of the officials.

467) Custom being a significant source of government revenue, the officers of Customs Department must perform their respective duties honestly and diligently. Any act or omission on their part can have devastating consequences. The role played by the Customs Officers in pursuance of the conspiracy can be summarized as under:-

(1) A-82, A-90, A-102, A-112 and A-113, who were the Customs Officers at the relevant time in Bombay and Alibaug, have played an active role as members of the conspiracy.

(2) A-112 attended a meeting with Mohd. Dossa (AA) in Hotel President, Bombay about 6 to 8 months prior to the bomb blasts and discussed their smuggling plans.

(3) Confessions of A-82, A-90 and A-113 as also confessions of co-accused A-134, A-136, A-14, A-17 and A-30 prove the role played by the Customs officers in the conspiracy.

(4) On 06.01.1993, A-102 and A-90, with some other customs staff members, attended a meeting at Hotel Parsian Darbar, Panvel with Mohd. Dossa (AA), A-134 and A-136, where the Customs Officers agreed to charge Rs. 7 to 8 lacs from Mohd. Dossa group for each landing.

(5) On 08.01.1993, A-102 and A-90 were informed by A-134 and Firoz Abdul Rashid Khan that landing would take place in the night. [Firoz Abdul Rashid Khan was absconding and has since been arrested on 06.02.2010] (6) A-82 played an important role in negotiations with Police Officers and A-116 and seven Constables when they intercepted the convoy carrying smuggled contraband on 09.01.1993. A-82 even permitted A-30 to drive a customs jeep when they went for negotiations. (7) Collector Customs (PW-470), on receipt of information from DRI, through a DO letter dated 25.01.1993, conveyed to all the Customs Officers (accused) and others that the ISI Syndicates

located in Middle East may try to smuggle contrabands and arms along with silver bricks in the districts of Bombay, Raigarh and Thane and instructed them to be more vigilant. PW-470 also gave instructions to A-112 and A- 102 in this regard.

(8) PW-172, Customs Inspector, received information of landing of silver at Mhasala on 29th, 30th and 31st Jan. 1993. He conveyed this information to A-112 for taking suitable action.

(9) A-112 deliberately kept a 'nakabandi' at the wrong place i.e. Puranphata and Dehanphata leaving one route open for the accused persons to carry the smuggled arms and explosives without any check. (10) When the subordinate Customs Officers suggested to keep 'nakabandi' at proper place i.e. junction of Sai Mobra-Mangaon Road and Mahasala- Goregaon Road, A-112 informed them that he had specific information that Tiger Memon would bring the contraband goods from that route only. PW-172 had not told A-112 that landing would be organized by Tiger Memon.

(11) Landing of arms and explosives did take place on the night of 2nd and 3rd Feb. 1993. Tiger Memon and other accused participated in the landing.

(12) When the landing was being done, PW-171 (another Addl. Collector of Customs) received information about it and conveyed the same over phone to A-112. On getting information from PW-171, A-112 sent a misleading wireless message to Marine & Preventive, Srivardhan to keep a vigil at Bankot, which is miles away from the place of landing. (13) When landing of arms and explosives was in progress at Shekhadi on the night of 02.02.1993, A-90 and A-82 reached the place of landing and met A-14 and Tiger Memon. They enquired from Tiger Memon whether the landing was for weapons. Tiger Memon replied in negative. (14) Another landing took place on the night of 7th and 8th Feb. 1993. A large quantity of arms and explosives were smuggled during this landing also. Tiger Memon and other accused participated in this landing.

(15) A-14, A-17 and A-30 have also spoken about the payment of illegal gratifications to Customs Officers for the landings.

468) From the above, it will not be an overstatement to state that if not for the help of the customs officials, they 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' security. Corruption among public servants indicates a failure of our system where pursuit of personal gratification subdues public interest.

Lack of vigilance in the Indian Maritime Zone and Indifference on the part of Coast Guards:

469) India being a maritime nation, the role of coast 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 who is responsible for overall seaward security of long coastline. Secondly, the coast guards who guard the Exclusive Economic Zone (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.

470) This triple-layered security system is created primarily to guard the Indian Coastline from maritime terrorism, piracy and to keep out foreign intruders. Hence, it is the paramount duty of all these officials to be vigilant, heedful and attentive to each activity which occurs in the sea and on the shore. However, the occurrence of Bombay Bomb Blasts on 12th March 1993 discloses the deficient performance of the officials.

471) Similarly, the Indian Coast Guard (ICG) was set up in 1978 as a paramilitary branch of the Indian Armed Forces primarily for surveillance of the India's Exclusive Economic Zone to prevent poaching, smuggling and other illegal activities in the zone. The 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.

472) For the same, they are empowered to search and seize ships suspected of illegal activities. Besides, Section 14 of the Coast Guard Act, 1978 gives the ample scope for coast guards to assist the customs and other authorities in anti-smuggling operations necessary for protection of our long coastline.

473) As the perception of war is changing we should not overlook the role and the significance of the coast guards and the customs officials in combating terrorism. 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 opportunity for the terrorists to attack on our country via our maritime boundary.

#### Quantum of Sentence:

474) 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.

475) Before we deliberate and decide upon the role played by each of the appellants and their respective sentence, certain reference to the contextual developments over the epochs with regard to death sentence would be timely, which will assist us in determining the sentence in this case.

#### Evolution of Law Relating to Death Sentence:

476) The constitutional validity of the death sentence has been brought under scrutiny from time to time to test the rationality of the death sentence with the emerging civilization. Though death penalty as a punishment is not abolished as yet, significant amendments have been brought in for limiting the usage of the

punishment. It is manifest from the bare reading of judgments on death penalty from 1950 to till date that the judiciary has always exercised its discretion in awarding this extreme penalty with great circumspection, caution and restraint. The nature of this discretion bestowed on judges has been considered and reflected in the most celebrated Bachan Singh case (supra) in the following terms:-

“165....Cognizant of the past experience of the administration of death penalty in India, Parliament, in its wisdom thought it best and safe to leave the imposition of this gravest punishment in gravest cases of murder, to the judicial discretion of the courts which are manned by persons of reason, experience and standing in the profession. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It is exercised judicially in accordance with well-recognized principles crystallized by judicial decisions, directed along the broad contours of legislative policy towards the signposts enacted in Section 354(3).” The dictum in Bachan Singh case paraphrases that the duty casted upon the judges in deciding the appropriate sentence is a matter of judiciousness and not of law.

477) Earlier, Section 3(2) of the TADA Act, 1985 stipulated mandatory death sentence for a terrorist act, which results in death. The challenge to this provision was mounted on the ratio of Supreme Court decision in Mithu vs. State of Punjab, (1983) 2 SCC 277 in which their Lordships struck down Section 303 of the IPC as unconstitutional, which provided for compulsory imposition of death sentence. As a result, the corresponding provision of TADA Act had also provided for the alternative sentence of life imprisonment thus bringing the provision in line with the provision of 302 of IPC. Section 3(2)(i) of TADA now prescribes death or life imprisonment in alternative as the penalty for a terrorist act. It is noticeable from the above transformation in the sentencing policy that the courts were required upon to look into each and every case on its own merits, to determine the appropriate sentence for the offender.

478) While so, the Code of Criminal Procedure signposts the court as to its application. 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. For clarification, though TADA Act, 1987 is a special act the application of the Code of Criminal Procedure is permissible to the extent of its consistency with the act.

479) The very first case where the constitutional validity of capital punishment was vehemently discussed and decided was in Jagmohan Singh vs. State of U.P (1973) 1 SCC 20. This case was decided when the Code of Criminal Procedure, 1898 (for short the old Code) was in force. Section 367(5) of the old Code provided that if an accused person is convicted of an offence punishable with death, but he is sentenced to a punishment other than death, the Court was required to state the reason why a sentence of death was not passed.

Section 367(5) of the old Code reads as follows:-

“If the accused is convicted of an offence punishable with death, and the court sentences him to any punishment other than death, the court shall in its judgment state the reason why sentence of death was not passed.” Therefore, all the death penalty cases until 1973 were decided according to the principle that death sentence was the rule and life imprisonment was the exception. However, after the new Code of Criminal Procedure, 1973 which came into force with effect from 1st April, 1974, the principle took a converse turn and it was stated that imprisonment for life would be the rule and a sentence of death was an exception.

Amended section 354(3) of the Code reads as follows:-

“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 sentence.” The Code effectively reversed the position as it existed under the old Code and also placed a rider that if a sentence of death is awarded, the court should record special reasons for awarding the same. As an outcome, the discretion to impose the sentence of death has been curbed to the extent of stating the ‘Special reasons’. Presently, judges are left with the task of discovering the ‘Special reasons’.

480) What are these ‘Special Reasons’ and does the provisions of the Code help us in discovery of these special reasons? A reference to Bishnu Deo Shaw vs. State of West Bengal (1979) 3 SCC 714 case would be helpful to understand what actually are these special reasons refers to.

Justice Chinnappa Reddy penning the judgment said as follows:

“26....Section 361 and Section 354(3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. We will not, therefore, be wrong in assuming that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors.” It was further stated:

“27 Criminal justice is not a computer machine. It deals with complex human problems and diverse human beings. It deals with persons who are otherwise like the rest of us, who work and play, who laugh and mourn, who love and hate, who yearn for affection and approval, as all of us do, who think, learn and forget. Like the rest of us they too are the creatures of circumstance. Heredity, environment, home neighbourhood, upbringing, school, friends, associates, even casual acquaintances, the books that one reads, newspapers, radio and TV, the economics of the household,

the opportunities provided by circumstances and the calamities resulting therefrom, the success and failure of one's undertakings, the affairs of the heart, ambitions and frustrations, the ideas and ideologies of the time, these and several other ordinary and extra-ordinary incidents of life contribute to a person's personality and influence his conduct. Differently shaped and differently circumstanced individuals react differently in given situations. A Judge has to balance the personality of the offender with the circumstance, the situations and the reactions and choose the appropriate sentence to be imposed. A judge must try to answer a myriad questions such as was the offence committed without premeditation or was it after due deliberation? What was the motive for the crime? Was it for gain? Was it the outcome of a village feud? Was it the result of a petty, drunken, street brawl, or a domestic bickering between a hapless husband and a helpless wife? Was it due to sexual jealousy? Was the murder committed under some stress, emotional or otherwise? What is the background of the offender? What is his social and economic status? What is the level of his education or intelligence? Do his actions betray a particularly callous indifference towards the welfare of society or, on the other hand, do they show a great concern for humanity and are in fact inspired by sum concern? Is the offender so perpetually and constitutionally at war with society that there is no hope of ever reclaiming him from being a menace to society? Or is he a person who is patently amenable to reform? Well, may one exclaim with Prof. Vrij "What audacity is involved in these three tasks : to interpret life, explain an act, predict the latest inclination of a human mind."

'Special reasons', we may, therefore say, are reasons which are special with reference to the offender, with reference to constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of Criminology and connected sciences. Special reasons are those which lead inevitably to the conclusion that the offender is beyond redemption, having due regard to his personality and proclivity, to the legislative policy of reformation of the offender and to the advances made in the methods of treatment etc.

481) In brief, Justice Reddy said that 'Special Reasons' necessary for imposing death sentence must relate, not to the crime as such but to the criminal. In the same line of thought in Rajendra Prasad vs. State of UP (1979) 3 SCC 646, this Court, by majority judgment, observed:

"83.... 'Special reasons' necessary for imposing death penalty must relate, not to the crime as such but to the criminal. The crime may be shocking and yet the criminal may not deserve death penalty. The crime may be less shocking than other murders and yet the callous criminal, e.g. a lethal economic offender, may be jeopardizing societal existence by his act of murder. Likewise, a hardened murderer or dacoit or armed robber who kills' and relishes killing and raping and murdering to such an extent that he is beyond rehabilitation within a reasonable period according to current psycho-therapy or curative techniques may deserve the terminal sentence. Society survives by security for ordinary life. If officers enjoined to defend the peace

are treacherously killed to facilitate perpetuation of murderous and often plunderous crimes social justice steps in to demand penalty dependent on the totality of circumstances.”

482) Subsequent decision, Dalbir Singh and Ors. vs. State of Punjab (1979) 3 SCC 745 also endorsed this view.

483) Now, we have a clue as to what these Special Reasons are. The next question that arises is:- Is there a comprehensive provision in the criminal procedure code, which enunciates the mechanism for collection and presentation of the social and personal data of the culprit to the extent required to decide the verdict on sentence?

484) There were no provisions as such until the Law Commission recommended in its 48th report observing that:-

“It is now being increasingly recognized that rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is the lack of comprehensive information as to characteristics and background of the offender.

The aim of sentencing:--- Themselves obscure becomes all the more so in the absence of information on which the correctional process is to operate. The public as well as the courts themselves are in dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged and both the prosecution and the accused should be allowed to co-operate in the process.”

485) By enacting Sub-section (2) of 235, the Parliament has actually acceded to the recommendations of the Law Commission. Enactment of this provision is an act of affirming the new trend in penology, which mandates the courts to consider various factors such as the prior 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.

486) In this background of standards, the judiciary with the aid of Section 235(2) ascertained the ‘Special Reasons’ pertaining to the criminals as required by Section 354(3) of the Code to impose death penalty. Subsequently, the constitutional validity of Section 302 and the sentencing procedure embodied in sub-section (3) of Section 354 of the Code was challenged before a Constitution Bench in Bachan Singh (supra) wherein the need for reconsideration of Jagmohan Singh (supra), was felt necessitated due to subsequent events and changes in law. In addition, a query was raised whether dictum in Rajendra Prasad (supra) that “special reasons” necessary

for imposing death penalty must relate not to the crime as such, but to the criminal was warranted by the law or not.

487) The principal questions, which were considered, in this case are:

I. Whether death penalty provided for the offence of murder in Section 302, Indian Penal Code is unconstitutional.

II. If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in Sec, 354(3) of the Cr.P.C., 1973 (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of murder or any other capital offence punishable under the Indian Penal Code with death or, in the alternative, with imprisonment for life.

III. Whether the “special reasons” necessary for imposing the death penalty should relate to the criminal alone or even the crime.

488) The first main question was answered in negative, indicating that the constitutional validity of death penalty was upheld in the line of Jagmohan Singh (supra). The second question regarding the unguided and untrammelled discretion vested upon the judges to impose death sentence or imprisonment for life was answered in the following words:-

“161. A study of the propositions set out above, will show that, in substance, the authority of none of them has been affected by the legislative changes since the decision in Jagmohan's case. According to the then extant CrPC both the alternative sentences provided in Section 302, Penal Code are normal sentences, and the Court can, therefore, after weighing the aggravating and mitigating circumstances of the particular case, in its discretion, impose either of those sentences. This postulate has now been modified by Section 354(3) which mandates the Court convicting a person for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, not to impose the sentence of death on that person unless there are "special reasons" - to be recorded - for such sentence.....”

489) Accordingly, the second question was answered. With regard to the third question regarding what constitutes “special reasons”, the majority view clarified that the expression “special reasons” will be in reference to the crime as well as the criminal thereby overruling Rajendra Prasad (supra) and Bishnu Deo Shaw (supra). It reads as follows:

“201. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is



quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the 'man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist." "163.....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, Penal Code, the Court should not confine its consideration "principally" or merely to the circumstances connected with particular crime, but also give due consideration to the circumstances of the criminal."

490) As a consequence, the majority view in Bachan Singh (supra), 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 under Section 302 or in the context of this case in Section 3(2)(i) of TADA will have to be identified by balancing the aggravating and mitigating or extenuating circumstances.

491) 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 all circumstances relating to criminal are mitigating. From the above conspectus, it is clear that the aggravating circumstances pertaining to both crime and criminal are the reasons, which can be against the accused;

likewise the mitigating circumstances marshaled from both crime and criminal can be the reasons in favour of the accused.

492) For instance, the manner of commission of murder may not be brutal or diabolic or pre-meditated. This can be construed as a mitigating circumstance pertaining to crime and not the criminal. Hence, 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.

493) 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 offender must be taken into account in determining the sentence for an individual accused in addition to aggravating and mitigating circumstances.

494) Now, straightaway we shall determine the sentence for the appellants within the boundaries prescribed by law, bearing in mind the purpose of punishment and taking into account all circumstances influencing the degree of severity (mitigating and aggravating circumstances) and, in particular the degree of criminal responsibility.

495) For convenience, we shall discuss Yakub Abdul Razak Memon's appeal discretely as against the other 10 appellants.

Criminal Appeal No. 1728 of 2007 Yakub Abdul Razak Memon (A-1) Before we shall enumerate the aggravating and mitigating circumstances for consideration on sentencing, we ought to find the degree of responsibility of A-1 for the occurrence of blasts on 12th March, 1993 in comparison with other appellants. Our legal system has always emphasized that the sentence shall reflect the relative significance of the accused's role.

496) A-1 is the younger brother of Tiger Memon, (AA), who is one of the masterminds behind the blasts. A-1 was in a position of authority, particularly, had played a significant role in the context of the blasts which is important while determining the sentence. The confessional statements of co-accused discussed in earlier part of judgment under A-1's appeal establish the dominating position of the appellant in comparison with other 10 appellants.

497) At the cost of repetition, we may reiterate the conduct of A-1, which may be very relevant for ascertaining his dominant position in commission of the crime.

498) The following conduct of the appellant (A-1) along with the co- conspirator family members may be relevant:-

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

b) Moreover, A-1's role was limited not only to the extent of correspondence between the masterminds and all other accused but he was also entrusted with task of handling the explosive bags and for their safe keeping, which is again revealed in the confessional statements of various co-accused persons.

c) Furthermore, he was actively involved in hawala transactions for the purpose of facilitating the blasts on 12th March 1993.

d) Besides, he acquired tickets both for Dubai and Pakistan for transporting the appellants to the respective places for the purpose of training and coaching them in envisaging their participation for the blasts in Bombay.

499) Essentially, A-1's deeds can't be viewed distinct from the act of Tiger Memon, hence, 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, it is not hyperbole to state that, he was one of the 'driving spirit' 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 12th March, 1993 was at the discretion of the masterminds, meaning thereby, 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.

500) Hence, there is a significant difference in the role played by A-1 and the rest of the appellants. It is difficult to rule out with certainty that if the absconding accused were to be brought to trial, they might have thrown further light at the role-played by A-1. Since A-1 as well as other absconders were the real conspirators who hatched the scheme for such a tragic act, 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 subordinates whose knowledge and acquaintance might have been restricted to their counterparts. If we say it in a metaphoric style, A-1 and all the absconding accused were the archers whereas rest of the appellants were the arrows in their hands.

501) We are mindful of the fact that there is no direct act attributed to A-1 as far as parking of the explosives filled vehicle in different localities are concerned. But we should recollect, that if, not for 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 our 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 Memon's family members including A-1 have fled the country anticipating detention for their illegal acts.

502) From this, it can safely be concluded that no offence might have taken place at all but for the instigation by the absconding accused and A-

1. Hence the dominant position of the accused is an aggravating factor by itself, as it gives the status of direct responsibility.

503) The following aggravating circumstances as against A-1 can be culled out:-

**Aggravating Circumstances:**

1. A-1 was one of the brains behind the hatching of larger conspiracy for the Bombay Bomb Blasts in 1993.
2. The dominant position and significant role played by A-1 is a factor that may aggravate his punishment.
3. The “vulnerability of the victims” and “the depravity of the crimes” constitute additional aggravating circumstances.
4. Crime of terrorism is in itself an aggravating 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.
5. He 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 design would put it at the level of extreme atrocity and cruelty.

**Mitigating Circumstances:**

504) Mr. Jaspal Singh, learned senior counsel submitted the following as the mitigating circumstances to reduce the severity of the sentence of A-1.

- He is a Chartered Accountant by profession and a respectable person in the society before the occurrence of this incident.
- Learned senior counsel emphasized more on the point that this is a fabricated case and A-1 was merely inflicted in this trial on the sole ground of being the brother of Tiger Memon, who is the absconding accused in this case. As a consequence, 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.
- No criminal antecedent.
- He suffers from depression since 1996.
- Lastly, he had served more than 19 years in jail.

505) In our considered opinion, the argument of learned senior counsel that A-1 was inflicted in this trial only on the sole ground of being the brother of Tiger Memon does not impress us, as the evidence shows the contrary. We accept the contention of learned senior counsel and treat the lack of prior criminal record as a mitigating factor; other ascertained mitigating circumstances are not at

the higher pedestal to bargain for reduction of sentence.

506) Now, the task is vested upon us to determine appropriate sentence for an accused who was in the commanding position and was involved in crimes of the utmost gravity. Under the established jurisprudence, these 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.

507) For the foregoing reasons, having taking into account and weighed the totality of A-1's culpability and all the particular circumstances of the case, we concur with the decision of the Designated Court and confirm the sentence of capital punishment to A-1 and the appeal is disposed of accordingly.

508) We shall now discuss the appeals filed by rest of the appellants sentenced to capital punishment by the Designated Court.

509) The above said appellants have traded the freedom of choice for the freedom to commit atrocities. The discussion relating to Yakub Abdul Razak Memon (A-1) amply differentiates the role played by these 10 appellants with A-1. Though the incident of bomb blasts is not a brainchild of these 10 appellants yet they turned the conspirators' orders into action by executing the blasts for which they are indisputably liable for the consequence of their acts. Every person is responsible for his or her actions and they can't evade the accountability by placing the responsibility to another person. At the same time, our legal system mandates that the sentence shall reflect the relative significance of the accused's role.

510) The following are the aggravating circumstances with regard to the above said appellants:-

Aggravating circumstances

1. They 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 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 inhuman treatment it represents and the severity of the pain and suffering inflicted.
4. The "vulnerability of the victims" and "the depravity of the crimes" constitute additional aggravating circumstances.
5. The manner of its execution and its design is at a level of extreme atrocity and cruelty.

Though the aggravating circumstances remains the same for all the 10 appellants, but their mitigating circumstance differ from individual to individual. Therefore, we shall catalog the mitigating circumstances independently for each accused.

511) The following factors may be relevant while ascertaining the mitigating circumstances:-

Criminal Appeal Nos. 609-610 of 2008 Learned counsel for the appellants submitted that all the three appellants (A-32, A-36 and A-39) have been in custody since their arrest except A-39, who was granted interim bail on medical grounds to look after his mother who was seriously ill. As on date, the appellants have served more than 19 years each in jail. According to learned counsel, during the above said entire period, there is no complaint against the appellants either by the jail authorities or by the escort party as and when they were granted permission to go for medical treatment and to their respective homes in order to attend marriage, sickness, other functions and death of their near and dear ones. Learned counsel further submitted that the appellants being the first time offenders have already incarcerated more than 19 years in custody and they must be considered and be given a chance of reformation to be in society. It was further pointed out that A-32 has completed his Graduation (Bachelor of Commerce) from Yeshwantrao Chavan Maharashtra Open University, Nashik while in jail which itself indicates the prospect of his reformation and rehabilitation. As far as A-36 is concerned, he belongs to the lower strata of the society. He used to make and sell brooms to eke out his livelihood and is suffering from a cardiac ailment. Insofar as A-39 is concerned, learned counsel submitted that he is the one, who was granted interim bail by the Designated Court in order to look after his ailing mother. After considering his application being Bail Application No. 5 of 2005, learned Judge granted him bail and he was on interim bail for about 4 ½ months. In a nutshell, their mitigating circumstances can be summarized as under:-

Mitigating Circumstances (A-32):

1. At the time of arrest, he was 21 years of age.
2. He shows remorse for his role in the blast.
3. Lack of prior criminal record.
4. He cooperated in the investigation.
5. He suffers from Bone Tb, Arthritis, which severely affected his right shoulder and arm bone; he further suffers from paralysis, which has affected right side of his face. He has developed glands in his testicles and developed ailment at cervical vertebrata. He has been suffering from cervical vertebrata. On the whole he has been suffering from illness for the past 8 years and has been operated twice during the said period.

6. Family circumstances: He has sick parents and mentally retarded brother to look after.

7. He was a mechanic by profession.

8. He is in custody since 18.04.1993.

A36's Mitigating Circumstances:

1. At the time of arrest, he was 32 years of age.

2. He shows remorse for his role in the blast.

3. Lack of prior criminal record.

4. He co-operated in the investigation.

5. He suffers from cardiac ailment.

6. Family circumstances: He has old mother, wife and three children to look after.

7. Before the blasts, he was earning his livelihood by making and selling broom in the market.

8. He is in custody since 18.04.1993.

A39's Mitigating Circumstances:

1. He shows remorse for his role in the blast.

2. Lack of prior criminal record.

3. He co-operated in the investigation.

4. He suffers from psychiatry problem and was treated for the same while in custody.

5. Family circumstances: He is unmarried and has old mother to look after.

6. He used to work for the relief camps setup for helping persons affected by riots.

7. He is in custody since 1993 Criminal Appeal Nos. 628-629 of 2008 Learned counsel for the appellant (A-44) submitted that the sentence awarded by the Designated Court is very harsh and he is in custody for more than 19 years, hence, he deserves to be released for the period already undergone. It was also submitted that

there is neither any complaint against the appellant nor misuse of any facilities granted to him by the Designated Court. According to the counsel, the period already undergone must be considered and he be released from jail as he intends to lead a life of a good and reformed person. It was further submitted that he has to look after his family especially his two daughters who are yet to be married and one son whom he intends to pursue for higher studies. It was also brought to our notice that before the incident, he was earning his livelihood by selling readymade garments. The abovesaid submission can be summarized as under:-

A44's Mitigating Circumstances:

1. At the time of arrest, he was 37 years of age.
2. He shows remorse for his role in the blasts.
3. Lack of prior criminal record.
4. He co-operated in the investigation.
5. He used to sell readymade garments in the streets.
6. He is in custody since 19.05.1993.

Criminal Appeal Nos. 637-638 of 2008 With regard to sentence, Ms. Farhana Shah, learned counsel for the appellants (A-10 and A-29) submitted that both of them are in judicial custody for more than 19 years. She also pointed out that the sentence awarded to them is very harsh and they should be given a chance to be in society as reformation is more important than being a deterrent and also that they deserve to be released for the period already undergone.

She further pointed out that Asgar Yousuf Mukadam (A-10) has completed his Graduation while in custody which shows that he should be given a chance of reformation which he would lose in case he is incarcerated in prison. It was further submitted that the accused persons are not hardened habitual criminals and they deserve to get a chance for reformation and rehabilitation. It was also pointed out that even during the entire period of judicial custody there is neither any report of misuse of the permissions/facilities granted to them nor there is any adverse report from the jail authorities. In a nutshell, their mitigating circumstances can be summarized as under:-

A10's Mitigating Circumstances:

1. At the time of arrest, he was aged about 31 years.
2. He shows remorse for his role in the blasts.
3. Lack of prior criminal record.



4. He co-operated in the investigation.
5. Family circumstances: He is unmarried and has old parents to look after.
6. He used to work as an Accountant of Tiger Memon (AA).
7. He acted under extreme duress because he was under substantial domination of the main conspirator.
8. He is in custody since 12.03.1993.

A29's Mitigating Circumstances:

1. He is an illiterate person.
2. He shows remorse for his role in the blasts.
3. Lack of prior criminal record.
4. He co-operated in the investigation.
5. Family circumstances: He has a young child and wife to look after.
6. He is in custody since 1993 Criminal Appeal No. 365 of 2008 Ms. Farhana Shah, learned counsel for the appellant (A-9) submitted that the appellant has been in custody since his arrest on 17.03.1993.

According to her, during his entire period of custody for more than 19 years, there is not even a single complaint against him neither any misuse of the permissions granted nor any attempt to flee away from justice. She further pointed out that the appellant was granted permission to visit home on number of occasions in order to meet his ailing mother and to attend the marriage of his brother but he never misused the same at any point of time.

In addition to the same, learned counsel pointed out that though he was convicted and sentenced to death, he completed his Graduation from Yeshwantrao Chavan Maharashtra Open University, Nashik while in jail which shows that there is chance of reformation in him and the appellant is not a hardened criminal, hence, he deserves to lead a normal life to serve his aged sick mother who is bed-ridden and waiting for his return.

A9's Mitigating Circumstances:

1. He shows remorse for his role in the blasts.
2. Lack of prior criminal record.

3. He co-operated in the investigation.
4. Family circumstances: He is unmarried and has old parents and siblings to look after.
5. He was a salesman in a shopping center.
6. He is in custody since 17.03.1993.

Criminal Appeal Nos. 864-865 of 2008 With regard to sentence, Ms. Farhana Shah, learned counsel for the appellant (A-11) has submitted that the appellant has served more than 19 years in jail since his arrest on 18.03.1993. She further pointed out that during the entire period of 19 years, there is neither any complaint against him nor misuse of any permissions granted nor any attempt to abscond/flee away from justice. It is further pointed out that the appellant has been sent home on a number of occasions for attending the marriage of his children, last rites, visit his ailing wife, etc. but he never misused the same, hence, he may be given a chance to lead a normal life along with his family members. Before the date of incident, he was earning his livelihood by driving a taxi.

A11's Mitigating Circumstances:

1. At the time of arrest, he was aged about 44 years.
2. He shows remorse for his role in the blast.
3. Lack of prior criminal record.
4. He co-operated in the investigation.
5. Family circumstances: He has aged parents and two unmarried daughters to look after.
6. He used to be a taxi driver.
7. He is in custody since 18.03.1993.

Criminal Appeal No. 897 of 2008 With regard to sentence, Ms. Farhana Shah, learned counsel for the appellant submitted that the appellant (A-12) has undergone more than 19 years in custody since his arrest on 20.03.1993. She also pointed out that there is neither any complaint against him nor misuse of any facility granted to him and he has never made any attempt to flee away from justice. She also pointed out that even during the pendency of this appeal, this Court granted him permission on two occasions to visit his home and graveyard at the time of death of his father and mother.

In addition to the same, learned counsel also pointed out that though he was convicted and sentenced to death, he has completed his Graduation from Yeshwantrao Chavan Maharashtra Open University, Nashik which shows that reformation theory can be applied in his case. Further, it was pointed out that he is not a hardened criminal, hence, he deserves to get a chance to lead a normal life. With these materials, learned counsel prayed for leniency in his sentence.

A12's Mitigating Circumstances:

1. At the time of arrest, he was aged about 25 years.
2. He completed his graduation in jail.
3. He shows remorse for his role in the blasts.
4. Lack of prior criminal record.
5. He co-operated in the investigation.
6. Family circumstances: He has old parents, wife and a son to look after.
7. He used to be a mechanic.
8. He is in custody since 20.03.1993.

Criminal Appeal Nos. 941-942 of 2008 Ms. Farhana Shah, learned counsel for the appellant (A-16) submitted that the appellant is in custody for more than 19 years and he deserves to be released for the period already undergone. She also pointed out that there is neither any complaint against him nor misuse of any facility granted by the Designated Court. She further pointed out that the appellant is suffering from mental disorder and he was under treatment of J.J. Hospital and Thane Mental Hospital during the entire period of trial. He is still under treatment and, as advised by the doctors, is surviving on medicines. His mental condition is not stable. In support of the above claim, learned counsel has submitted his medical reports for perusal of this Court.

A-16's Mitigating Circumstances:

1. He shows remorse for his role in the blasts.
2. Lack of prior criminal record.
3. He co-operated in the investigation.
4. He is undergoing psychiatric treatment for the last 9 years and was admitted to the prison hospital for 15 months.

5. Family circumstances: He has old mother, wife and three children to look after.
6. He was earning his livelihood by making and selling brooms in the market.
7. He is in custody since 24.03.1993.

512) At the outset, we can classify these mitigating circumstances into seven heads, namely, age, act of remorse, no prior criminal antecedents, co- operation with the investigation, family circumstances, ill health and 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.

513) Another vital factor stated as mitigating circumstance in all these petitions is that they have all been imprisoned for around 20 years and they continue to be in jail; hence the defence counsel submitted that on humanitarian grounds, sentence of all the death convicts must be reduced to imprisonment for life. Nevertheless, it is settled law by a Constitution Bench in Triveniben vs. State of Gujarat (1989) 1 SCC 678 that 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 delay in the execution of death sentence, the sentence must be substituted by the sentence of 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 suffered by the accused over a period of two decades, as an exceptional scenario, we are inclined to consider the long delay as a mitigating circumstance but less significance will be attached to them in comparison with other six circumstances.

514) Furthermore, as we have already narrated, all the above said 10 appellants belong to the lower strata of society, most of whom don't even have any regular job for their livelihood. In brief, their personal life was relatively moderate before this incident. Subsequently, 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. 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.

515) Recalling that the sentence should directly reflect the role of the accused in the crime, we made an attempt to evaluate the significance of these mitigating circumstances respectively and their repercussions on the quantum of sentence on these 10 appellants.

516) Technically, it is these 10 appellants who parked the explosive filled vehicles in the respective destinations, however, if we do lift the veil 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 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.

517) Accordingly, to differentiate the degree of punishment to A-1 and other 10 appellants, we contemplate that the ends of justice would be served if the death sentence of these ten appellants be commuted to imprisonment for life.

518) With a note of caution, we reiterate 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 their facts and circumstances.

519) In view of the above, it is apt to quote a decision of this Court in State of U.P. vs. Sanjay Kumar (2012) 8 SCC 537, to understand the sentencing policy having regard to the nature of the offence and the manner in which it was executed or committed etc. The following paragraphs are relevant:-

“21. Sentencing policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to [pic]prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

22. Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.

23. The survival of an orderly society demands the extinction of the life of a person who is proved to be a menace to social order and security. Thus, the courts for the purpose of deciding just and appropriate sentence to be awarded for an offence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed, in a dispassionate manner. In the absence of any foolproof formula which may provide a basis for reasonable criteria to correctly assess various circumstances germane for the consideration of the gravity of the crime, discretionary judgment, in relation to the facts of each case, is the only way in which such judgment may be equitably distinguished. The Court has primarily dissected the principles into two different compartments—one being the “aggravating circumstances” and, the other being the “mitigating circumstance”. To balance the two is the primary duty of the court. The principle of proportionality between the crime and the punishment is the principle of “just deserts” that serves as the foundation of every criminal sentence that is justifiable.

In other words, the “doctrine of proportionality” has valuable application to the sentencing policy under the Indian criminal jurisprudence. While determining the quantum of punishment the court always records sufficient reasons. (Vide *Sevaka Perumal v. State of T.N.* AIR 1991 SC 1463 [pic]*Ravji v. State of Rajasthan* AIR 1996 SC 787, *State of M.P. v. Ghanshyam Singh* AIR 2003 SC 3191, *Dhananjay Chatterjee v. State of W.B.* AIR 2004 SC 3454, *Rajendra Pralhadrao Wasnik v. State of Maharashtra* AIR 2012 SC 1377 and *Brajendrasingh v. State of M.P.* AIR 2012 SC 1552) 24.....The aforesaid judgments make it crystal clear that this Court has merely found out the via media, where considering the facts and circumstances of a particular case, by way of which it has come to the conclusion that it was not the “rarest of rare cases”, warranting death penalty, but a sentence of 14 years or 20 years, as referred to in the guidelines laid down by the States would be totally inadequate. The life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds, for example, non-application of mind while passing the order; non-consideration of relevant material; or if the order suffers from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted. The aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under the Jail Manual, etc. or even under Section 433-A CrPC.” Life Imprisonment Means Rigorous Imprisonment:

520) There was a misperception that life imprisonment is distinct from the punishment of rigorous or simple imprisonment shown in clause (4) of Section 53 of the Code of Criminal Procedure. This issue was clarified in *Md. Munna vs. UOI and Ors./Kartick Biswas vs. State of West Bengal and Ors.* (2005) 7 SCC 417, it was held:

“10.....Imprisonment for life is a class of punishment different from ordinary imprisonment which could be of two descriptions, namely, “rigorous” or “simple”. It was unnecessary for the Legislature to specifically mention that the imprisonment for life would be rigorous imprisonment for life as it is imposed as punishment for grave offences.” Therefore, “imprisonment for life” is to be treated as “rigorous imprisonment for life”.

#### Meaning of Life Imprisonment:

521) 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 has always clarified that the punishment of a fixed term of imprisonment so awarded would be subject 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 under Section 432 of the Code as the case may be.

522) As observed in *State of Uttar Pradesh vs. Sanjay Kumar*, (2012) 8 SCC 537, there is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or if the order suffers from arbitrariness. The power to grant remissions and to commute sentences is coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code.

523) In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-sections (2) to (5) of Section 432 of the Code lay down basic procedure for making an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. We are of the view that exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code cannot be automatic or claimed as a right for the simple reason, that this is only an enabling provision and the same would be possible subject to fulfillment 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 be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government.

524) As rightly observed by this Court in *Sangeet and Anr. vs. State of Haryana*, 2012 (11) Scale 140, there is misconception that 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 Government under Section 432 of the Code, which in turn is subject to the procedural checks mentioned in the said provision and to further substantive check in Section 433-A of the Code.

525) Therefore, pursuant to Sections 432 and 433 of the Code and clemency powers of President and Governor, as vested by the Constitution under Articles 72 and 161 respectively, the accused persons, viz., 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 and the appeals are disposed off on the above terms. We may add a footnote to the above conviction that the executive should take due consideration of judicial reasoning before exercising the remission power.

526) For convenience, we have reproduced the conclusion arrived at in respect of all the appeals dealt with under this part in Annexure 'A' appended hereto.

Death Ref. Case (Crl.) No. 1 of 2011  
State of Maharashtra  
through CBI

.... Appellant (s)

vs.

Yakub Abdul Razak Memon & Ors.

.... Respondent(s)

527) In view of the conclusion arrived at in respect of the above said appeals filed by the appellants herein, we confirm the death reference with regard to Yakub Abdul Razak Memon (A-1) and commute the death sentence into life imprisonment for rest of the appellants convicted under this part. The Death Reference is disposed of accordingly.

.....J. (P. SATHASIVAM) .....J. (DR. B.S. CHAUHAN) NEW DELHI;

MARCH 21, 2013.

Annexure 'A'

SN	Criminal No	Appeal	Accused Name and Number.	Sentence by Designated Court	Award by Supreme Court
1	1728/2007		Yakub Abdul Razak Memon (A-1)	Death Sentence	Confirmed
2	609-610/2008		Zakir Hussain Noor Mohd. Shaikh (A-32)	Death Sentence	
			Abdul Khan @ Yakub Khan Akhtar		
			Khan (A-36)		
			Firoz @ Akram Amani Malik		
			(A-39)		



				Commuted to	
				Life	
				Imprisonment	
3	628-629/2008	Mohammed Mushtaq Moosa Tarani (A-44)	Death Sentence		
4	637-638/2008	Asgar Yusuf Mukadam (A-10) and Shahnawaz Abdul Kadar Qureshi (A-29)	Death Sentence		
5	365/2008	Mohammed Shoeb Mohammed Kasam Ghansar (A-9)	Death Sentence		
6	864-865/2008	Abdul Gani Ismail Turk (A-11)	Death Sentence		
7	897/2008	Parvez Nazir Ahmed Shaikh (A-12)	Death Sentence		
8	941-942/2008	Mohd. Farooq Mohammed Yusuf Pawale (A-16)	Death Sentence		

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