

Mohmed Amin @ Amin C.R.M.Shaikh & Anr vs C.B.I Tr.Its Director on 18 November, 2008

Author: G.S. Singhvi

Bench: G.S. Singhvi, B.N. Agrawal

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.473 OF 2007

Mohmed Amin @ Amin Choteli
Rahim Miyan Shaikh & Anr.

... Appellants

Versus

C.B.I. through its Director

... Respondent

With

Criminal Appeal Nos.484, 582 and 705 of 2007

JUDGMENT

G.S. Singhvi, J.

These appeals by Mohmed Faruk @ Frauk Baba Alla Rakha Shaikh, Mohmed Umar Majid Ahmed Pathan @ Mohmed Fighter @ Mohmed Pabelwan @ Mohmedkhan, Sajidali @ Denny Mohmed Ali Saiyed, Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh, Iqbal Hussain @ Laliyo Dhobi Kasambhai Shaikh, Salimkhan Sikandarkhan Pathan @ Azamkhan Pathan and Gulam Mohmed @ Gulal Kadarbhai Shaikh (hereinafter described as appellant Nos. A-4, A-5, A-6, A-7, A-8, A-10 and A-11 respectively) are directed against judgment dated 6.2.2007 of the Designated Judge (TADA), Ahmedabad (hereinafter referred to as `trial Court') whereby they were acquitted of charges under Section 3 and 5 of The Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short `the Act') but were held guilty of different offences under the Indian Penal Code (for short `IPC') and sentenced to life imprisonment. Appellant Nos.A-5 and A-8 were also convicted under Section 27 of the Arms Act, 1959 and sentenced to three years rigorous imprisonment and a fine of Rs.3,000/- and in default to undergo rigorous imprisonment for a further period of six months. They were also convicted under Section 135 of the Bombay Police Act.

2. Background facts

(i) On 3.8.1992, Hansraj Trivedi, an alleged supplier of illicit liquor and eight others were gunned down at Radhika Gymkhana Club, Ahmedabad. Although the Police registered Criminal Case No.254 of 1992 in connection with that incident but effective steps were not taken to arrest Abdul Latif and his gang members, who were perceived as the culprits. There was public outcry against the police inaction. This compelled the concerned officers to intensify their efforts to arrest the accused. In the wake of this development, Abdul Latif and members of his gang planned surreptitious surrender of some unimportant members of their party so that real culprits could go scot-free. For this purpose, he sought help of a local politician Shri Hassankhan Shamsherkhan Pathan @ Hassanlala. The latter appears to have made efforts to facilitate surrender of some members of Abdul Latif gang but he could not succeed apparently because Abdul Rauf Mohamed Bhai @ Rauf Valiullah (former member of Rajya Sabha and General Secretary of Gujarat Pradesh Congress (I) Committee) who came to know of this plan stoutly opposed the same and is said to have prepared a memorandum, which was to be submitted to the Central Government to expose criminal-political nexus in the State. In order to prevent him from doing so, Abdul Latif and gang decided to eliminate Rauf Valiullah and to create terror among the people so that no one could come forward to oppose the plan of surreptitious surrender. The task of finishing Rauf Valiullah was entrusted to Rasoolkhan Yakubkhan Pathan @ Rasool Party and his gang. Some members of Rasool Party followed Rauf Valiullah from 6.10.1992 to 8.10.1992 but they could not target him. On 9.10.1992, appellant Nos.A-5, A-7, A-8 and A-11 were deputed to finish Rauf Valiullah. They accomplished the task at around 2.30 p.m. when A-5 fired three shots with 38-bore revolver from close range at the deceased while he was entering Maruti car parked outside Madhuban Building.

(ii) Pradeep Bhai @ Bakkabhai Nautamlal Dave (PW-28), who had accompanied the deceased to Madhuban building and was present at the site, lodged F.I.R. (Exh.179) at Ellisbridge Police Station. Thereupon, a case was registered under Section 302 read with Section 120B IPC, Section 25(1) (a) and (b) of the Arms Act and Sections 3 and 5 of the Act.

(iii) The investigation of the case was initially conducted by a police team headed by Assistant Commissioner of Police, 'D' Division, Ahmedabad, Mr. Makbulahmed Mohd. Hanif Anarwala, but in furtherance of Notification dated 12.2.1993 and corrigendum dated 17.2.1993 issued by the Government of India under Section 5 of the Delhi Special Police Establishment Act, 1946, with the consent of the Government of Gujarat, the case was entrusted to the Central Bureau of Investigation (CBI). After completing investigation and obtaining sanction from Commissioner of Police, Ahmedabad, the CBI filed charge-sheet under Section 3(1), 3(3) and (5) of the Act, Section 120B read with Section 302 IPC, Section 302 read with Sections 34 IPC, Section 302 read with Section 114 IPC, Section 302 IPC and Section 27 of the Arms Act. The case was committed to Designated Court and was numbered as TADA Case No.176 of 1993.

Subsequently, two more charge-sheets were submitted and the same were numbered as TADA Cases No. 25 of 1996 and 32 of 1996. All the cases were consolidated and were tried together.

(iv) The charges were framed on 2.7.1998 against 11 accused. All of them pleaded not guilty. The prosecution examined 124 witnesses and produced 147 documents, which were duly exhibited. Thereafter, statements of the accused were recorded under Section 313 of Code of Criminal Procedure (Cr.P.C.). They alleged that the police has foisted false cases against them to avoid embarrassment for having failed to solve the mystery surrounding the murder of Rauf Valiullah and that confessions were extracted from them by using coercion and threats.

3. After analyzing the evidence produced by the prosecution and considering the confessions made by the appellants except appellant No.A- 11, under Section 15 of the Act as also the statements made by them under Section 313 Cr.P.C., the trial Court concluded that the prosecution has been able to establish the charges of conspiracy and murder and held Javedkhan @ Jaid Azizkhan Pathan, Mohd. Taslim Mohd Umar Shaikh, appellant Nos.A-6, A-7, A-8 and A-10 guilty under Section 120B and Section 302 read with Section 120B IPC. Appellant Nos.A-4 and A-11 were held guilty of offence punishable under Section 114 read with Section 120B IPC and Section 302 read with Section 114 IPC. Appellant Nos.A-5 and A-8 were held guilty under Section 27 of the Arms Act and Section 135 of the Bombay Police Act. Abdul Khurdush was acquitted of all the charges but was found guilty under Section 176 IPC. However, all the accused were acquitted of the charge under Sections 3 and 5 of the Act. Abdul Khurdush was sentenced to one months imprisonment with a fine of Rs.500/- and in default to undergo further simple imprisonment of one month. Appellant Nos.A-4, A-5, A-6, A-7, A-8, A-10 and A-11 were sentenced to life imprisonment. Each of them was also directed to pay fine of Rs.5000/- and in default to undergo rigorous imprisonment for one year. Appellant Nos.A-5 and A-8 were sentenced to 3 years imprisonment for offence under Section 27 of Arms Act and in default to undergo 6 months simple imprisonment. For offence under Section 135(1) of Bombay Police Act, appellant Nos.A-5 and A-8 were awarded sentence of one month with fine of Rs.500/- and in default to undergo simple imprisonment for a period of one month.

Arguments

4. Learned counsel for the appellants argued that the impugned judgment is liable to be set aside because the findings recorded by the trial Court on the charges of conspiracy and murder are not based on legally admissible evidence. They emphasized that the prosecution did not produce any evidence to prove the ingredients of conspiracy i.e. an agreement or meeting of mind to commit the murder of Rauf Valiullah and argued that in the absence of such evidence the appellants could not have been convicted under Section 302 read with Section 120-B IPC. Learned counsel submitted that the language of confessions made by all the appellants is identical and this should have put the trial Judge on guard and a deeper scrutiny was required to be made on the issue of voluntary character of the confessions, which the learned Presiding Officer failed to do and argued that the appellants could not have been convicted by relying on confessions ignoring that the same were not voluntary. Learned counsel extensively referred to the statements made by the appellants under Section 313 Cr.P.C. to show that they were subjected to physical torture for the purpose of extracting confession and submitted that the same should have been rejected by the trial Court because,

(i) All the appellants were brought from Ahmedabad to Delhi within 24 hours of their arrest and they were compelled to make confessions without giving them adequate time to ponder over the

consequences.

(ii) The appellants were throughout kept in the custody of Shri O.P. Chatwal, Deputy Superintendent of Police and Investigating Officer (for short 'the Investigating Officer') and were deprived of the legal assistance.

(iii) The appellants were produced before Shri A.K. Majumdar, PW-

104 and Shri Harbhajan Ram, PW-103 (both Superintendent of Police, CBI) for the purpose of recording their confessions despite the fact that they were directly supervising the investigation and were in a position to dominate the will of the appellants.

(iv) After preliminary questioning, the concerned Superintendent of Police handed over the appellants to the Investigating Officer, who again produced them for the purpose of making statement and confessions of the appellants were recorded under the dictates of the officers.

(v) Shri A.K. Majumdar and Shri Harbhajan Ram did not follow the guidelines laid down by this Court in Kartar Singh vs. State of Punjab [1994 (3) SCC 569], except in the case of appellant No.A-10, inasmuch as they were not produced before Chief Judicial Magistrate, Delhi.

(vi) Copies of the confessional statements were supplied to the Investigating Officer even before the same were dispatched to the concerned Court.

(viii) The appellants had retracted their confessions on the first available opportunity.

5. Ms. Kamini Jaiswal, learned counsel for appellant Nos.A-7, A-8 and A-11 placed reliance on the judgment of this Court in State through Superintendent of Police, CBI/SIT vs. Nalini and Others [1999 (5) SCC 253] and argued that the trial Court committed serious error by convicting the appellants without requiring the prosecution to produce some evidence to corroborate the confessions. She laid considerable emphasis on the alleged failure of prosecution to explain as to why the appellants were taken from Ahmedabad to Delhi in the guise of conducting Polygraphic test when the facility for that test is available at Ahmedabad and CBI officers of the rank of Superintendent of Police are also stationed at Ahmedabad and argued that the confessions made by the appellants (except appellant No.A-

11) ought to have been discarded only on this ground notwithstanding the fact that the prosecution had made an endeavour to show compliance of Section 15 of the Act and Rule 15 of the TADA Rules, 1987 (for short 'the Rules'). She invited the Court's attention to the averments contained in CrI. Misc. No.2160 of 1994 filed before the High Court on behalf of Abdul Khurdush, Abdul Ghani Khan Sheikh and appellant Nos.A-1, A-4, A-7 and A-8, which was dismissed on 6.2.1995 and SLP (CrI.) No.1582 of 1995 to show that her clients had retracted the confessions at the first available opportunity, reiterated the same in the statements made under Section 313 Cr.P.C. and argued that such type of confessions could not be made basis for convicting them on the charge of murder.

6. Shri Vimal Chandra S. Dave, counsel appearing for appellant Nos.A- 4 and A-10 argued that the confessions of the appellants are liable to be rejected because both Shri A.K. Majumdar and Shri Harbhajan Ram, Superintendents of Police, CBI, who were actively supervising the investigation, had successfully tutored the minds of the appellants and induced them to make confessions. Shri Dave submitted that all the accused were kept in the custody of the Investigating Officer for 10 days before their confessions were recorded but this aspect has been ignored by the trial Court while deciding the issue of voluntary character of the confessions. Shri Dave pointed out that appellant No.A-10 retracted his confession on 25.7.1996 itself when he was produced before Chief Judicial Magistrate, Delhi and argued that the trial Court committed serious illegality by relying upon the retracted confession. Dr. Sushil Gupta argued that there is no evidence to link accused with the conspiracy allegedly hatched by Rasool Party and the learned Trial Judge committed serious error by convicting them. In support of their arguments learned counsel relied upon the judgments of this Court in Raja Khima vs. State of Saurashtra [AIR 1956 SC 217], Sarwan Singh Rattan Singh vs. State of Punjab [AIR 1957 SC 637], Shankaria vs. State of Rajasthan [1978 (3) SCC 435], Alope Nath Dutta vs. State of West Bengal [2006 (13) Scale 467] and State of Rajasthan vs. Ajit Singh [2007 (12) Scale 451].

7. Shri Amarjit Sharan, learned Additional Solicitor General relied upon Section 15(1) of the Act (as amended in 1993) and the judgments of this Court in Gurdeep Singh vs. State (Delhi Admn.) [2000 (1) SCC 498], Lal Singh vs. State of Gujarat [2001 (3) SCC 221], Jayawant Dattatray Suryarao vs. State of Maharashtra [2001 (10) SCC 109], Devender Pal Singh vs. State of NCT of Delhi [2002 (5) SCC 234], Jameel Ahmad vs. State of Rajasthan [2003 (9) SCC 673] and Abdulvahab Abdul Majid Shaikh vs. State of Gujarat [2007 (9) SCC 293] and argued that the confessions made under the Act is a substantive piece of evidence and can be used not only against the maker but also against co-accused, abettor or conspirator. He submitted that the trial Court did not commit any illegality by relying upon the confessions of the appellants because the same were recorded strictly in accordance with the procedure laid down in Rule 15 of the Rules. On the issue of voluntary character of confessions of the appellants, the learned Additional Solicitor General argued that recording thereof at Delhi under the supervision of Shri A.K. Majumdar and Shri Harbhajan Ram cannot lead to an inference that the same were not voluntary. Shri Sharan laid considerable emphasis on the fact that by virtue of order passed under Section 268 Cr.P.C., the Court had given custody of the appellants to the Investigating Officer and argued that he alone could have produced them before the concerned Superintendent of Police for the purpose of recording confession. Shri Sharan submitted that handing over of the accused to the Investigating Officer after recording of preliminary statement under Rule 15(1), cannot be dubbed as illegal because in terms of the order passed by the competent Court, Investigating Officer was duty bound to keep the custody of the accused. Learned Additional Solicitor General then submitted that the statements contained in discharge application filed before the trial Court and the SLP filed before this Court are per se contradictory and same cannot be relied upon for declaring the confessions to be non-voluntary. Shri Sharan then referred to the judgment of the Constitution Bench in Prakash Kumar vs. State of Gujarat [2005 (2) SCC 409] and argued that the conviction of the appellants under Section 302 read with Section 120B IPC cannot be faulted on the ground that they were acquitted of the charge under the Act. In the end, he argued that para 2 of the guidelines laid down by this Court in Kartar Singh's case which requires that the person who makes confession under Section 15(1) of the Act should be produced before the Chief

Metropolitan Magistrate or Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) of the Rules along with original statement of confession, is not attracted in the present case because confessions of the appellants except appellant no.A-10 were recorded prior to 11.3.1994 i.e. the date of judgment and insofar as appellant no.A-10 is concerned, he was produced before the Chief Judicial Magistrate, Delhi on the date his confession was recorded i.e. 25.7.1996.

8. We have given serious thought to the entire matter. Section 15 of the Act, as amended by Act No.43 of 1993 and Rule 15 of the Rules which have bearing on these cases read as under:-

Section 15 of the Act "Certain confessions made to Police Officers to be taken into consideration- (1)Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 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.

Rule 15 of the Rules Recording of confession made to police officers.- A confession made by a persons before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession. (3) The confession shall, if it is in writing, be-

(a) signed by the person who makes the confession; and

(b) by the police officer who shall certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession 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 recorded by me 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.

Sd/- Police Officer"

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence."

9. The challenge to constitutional validity of the Act was rejected in Kartar Singh's case. While doing so, the Court took note of the apprehension expressed by some of the learned counsel that the provisions of the Act are likely to be misused for coercing the accused to make confession and laid down the following guidelines:-

"(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

(2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

(3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

This is necessary in view of the drastic provisions of this Act. More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts. (5) The police officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure."

10. Although the Constitution Bench observed that the Central Government may take note of the guidelines and incorporate them by appropriate amendments in the Act and the Rules, necessary amendments have not been carried out so far.

11. The question whether a confession recorded under Section 15 of the Act can be used for convicting an accused for an offence under other enactments like IPC despite his acquittal of the charge framed under the Act, was considered and answered in negative by a two-Judges Bench in Bilal Ahmad Kaloo vs. State of A.P. [1997 (7) SCC 431]. The same view was reiterated in Rambhai Nathabhai Gadhvi vs. State of Gujarat [1997 (7) SCC 744] and Gurprit Singh vs. State of Punjab [2002 (10) SCC 201]. However, in Nalini's case, a three-Judges Bench held that if a person is tried simultaneously for offences under the Act along with other enactments his acquittal in respect of an offence under the Act is not sufficient to discard the confession recorded under Section 15 of the Act and the same can be used for conviction under other enactments. The three-Judges Bench referred to the earlier judgments in Bilal Ahmad's case (supra), Rambhai Nathabhai Gadhvi's case (supra), Gurprit Singh's case (supra) and observed:

"Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was only a trial for such other offence under any other law. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."

12. The correctness of the above extracted portion of the Nalini's judgment was doubted by a two-Judges Bench in Prakash Kumar's case (supra). When the matter was placed before a

three-Judges Bench, the same was referred to five-Judges Bench. The larger Bench rejected the argument of the appellant's counsel that the words "for an offence under this Act"

employed in Section 15 makes the confession admissible only for an offence under the Act and not for other offences and approved the ratio of Nalini's case on the issue of use of confession recorded under Section 15 for convicting an accused under other enactments. For the sake of clarity, paragraphs 33, 35 and 36 of the judgment of the larger Bench are extracted below:-

"33. A conjoint reading of the two sections as a whole leaves no manner of doubt that one provision is to be construed with reference to the other provision and vice versa so as to make the provision consistent with the object sought to be achieved. The scheme and object of the Act being the admissibility of the confession recorded under Section 15 of the Act in the trial of a person or co-accused, abettor or conspirator charged and tried in the same case together with the accused, as provided under Section 12 of the Act.

35. Section 12(1) as quoted above authorises the Designated Court to try offences under TADA along with another offence with which the accused may be charged under CrPC at the same trial. The only embargo imposed on the exercise of the power is that the offence under TADA is connected with any other offence being tried together. Further, Section 12(2) provides that the Designated Court may convict the accused person of offence under that Act or any rule made thereunder or under any other law and pass any sentence authorised under that Act or the Rules or under any other law, as the case may be for the punishment thereof, if in the course of any trial under TADA the accused persons are found to have committed any offence either under that Act or any rule or under any other law.

36. The legislative intendment underlying Sections 12(1) and (2) is clearly discernible, to empower the Designated Court to try and convict the accused for offences committed under any other law along with offences committed under the Act, if the offence is connected with such other offence. The language "if the offence is connected with such other offence" employed in Section 12(1) of the Act has great significance. The necessary corollary is that once the other offence is connected with the offence under TADA and if the accused is charged under the Code and tried together in the same trial, the Designated Court is empowered to convict the accused for the offence under any other law, notwithstanding the fact that no offence under TADA is made out. This could be the only intendment of the legislature. To hold otherwise, would amount to rewrite or recast legislation and read something into it which is not there."

13. In view of the last mentioned judgment of the larger Bench, it must be treated as settled law that even if a person is acquitted of the charge under the Act, a confession recorded under Section 15 can be used for convicting him for an offence under other enactments including IPC.

14. At this stage, we may notice some judgments in which law relating to confessions has been generally discussed.

15. In *Pakala Narayana Swami vs. Emperor* [AIR 1939 PC 47] Lord Atkin elucidated the meaning and purport of the expression "confession" in the following words:

"confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession....."

16. In *Bhuboni Sahu vs. The King* [AIR (36) 1949 PC 257], the Privy Council interpreted Section 30 of the Indian Evidence Act, 1872 (for short, 'the 1872 Act') and held:

"9. This section was introduced for the first time in the Evidence Act of 1872, and marks a departure from the Common Law of England. It will be noticed that the section applies to confessions, and not to statements which do not admit the guilt of the confessing party. In the present case the Courts in India appreciated this, and ruled out statements made by certain of the accused which were self-exculpatory in character. The statement of Trinath was, however, a confession. Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in S.3 Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. Their Lordships think that the view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct."

(Emphasis supplied)

17. The same view was reiterated in *Raja Khima's case*, and it was held that confession made by a person accused of an offence can be relied upon for convicting him only if the Court is satisfied that the same was made voluntarily. Applying this principle in *Bharat vs. State of U.P.* [1971 (3) SCC 950], the Court observed that "the voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case and that the confession must fit into the proved facts and not run counter to them." The Court held that "when the voluntary character of the confession and its truth are accepted it is

safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. The Court also dealt with the issue of retracted confession and held that "a court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after thought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an after thought and that the earlier statement was true."

18. The legal position on retracted confession was clarified in *Pyare Lal Bhargava vs. State of Rajasthan* [AIR 1963 SC 1094] in the following words:

"A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

CASES UNDER TADA

19. While enacting the Act, the legislature designedly made a departure from the provisions of the Cr.P.C. and 1872 Act and declared that confession made by a person before a police officer of the rank of Superintendent of Police or above, shall be admissible in the trial of such person as also the co-accused, abettor or conspirator for an offence under the Act or rules made thereunder. In order to ensure that this provision is not misused for extracting confession from a person accused of committing an offence under the Act, the legislature also specified certain safeguards in sub-section (2) of Section 15 of the Act and Rule 15 of the Rules. In *Gurdeep Singh's* case, this Court interpreted the provisions of Section 15 of the Act in contra-distinction to Section 25 of the 1872 Act and held:

"15. The legislature has conferred a different standard of admissibility of a confessional statement made by an accused under the TADA Act, from those made in other criminal proceedings. While under Section 15 of the TADA Act a confessional statement by an accused is admissible even when made to a police officer not below the rank of Superintendent of Police, in other criminal proceedings it is not admissible unless made to a Magistrate. Section 25 of the Indian Evidence Act debar

from evidence a confession of an accused to a police officer, except what is permitted under Section 27.

20. So the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

23. Whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for it has to prove that all requirements under Section 15 and Rule 15 under the TADA Act and Rules have been complied with. Once this is done the prosecution discharges its initial burden and then the burden shifts on the accused person. Then it is for him to prove through facts that the confessional statement was not made voluntarily. If such fact was pleaded and brought on record during trial the court must test its veracity, whether such fact constitutes to be such as to make his confessional statement not voluntarily made."

[Emphasis supplied]

20. In Nalini's case the majority of three-Judges Bench held that by virtue of non-obstante clause employed in Section 15, the provisions of the 1872 Act and Cr.P.C. stand excluded. Wadhwa, J. with whom Quadri, J. concurred noticed the background in which the Act was enacted and held that, "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. When the legislature enacts that the Evidence Act would not apply, it would mean all the provisions of the Evidence Act including Section 30. By judicial interpretation or judicial rigmarole, as we may put it, the court cannot again bring into operation Section 30 of the Evidence Act and any such attempt would not appear to be quite warranted. Reference was made to a few decisions on the question of interpretation of Sections 3 and 30 of the Evidence Act, foremost being that of the Privy Council in Bhuboni Sahu v. R. and though we note this decision, it would not be applicable because of the view which we have taken on the exclusion of Section 30 of the Evidence Act."

In his concurring judgment Quadri, J. highlighted the distinction between Section 30 of the 1872 Act on the one hand and Section 15 of the Act on the other hand and observed that while under the former, the Court is given discretion to take into consideration the confession against the maker as well as against those who are being tried jointly for the same offence, the latter provision mandates that confession of an accused recorded thereunder shall be admissible in the trial of the maker or co-accused, abettor or conspirator provided that each of them is charged and tried with the accused in the same case. His Lordship then held that in view of the express exclusion of the application of Sections 24 to 30 of the 1872 Act to a confession recorded under Section 15(1) of the Act, the requirements of Section 30 of 1972 Act cannot be read into Section 15 of the Act. Some of the

observations made by Quadri, J. are extracted below:-

"On the language of sub-section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him, so it is implicit that the same can be considered against all those tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused.

The amendments effected in Section 15(1) and Section 21(1) of the TADA Act by Act 43 of 1993 may be noticed here. The words "co-accused, abettor or conspirator" and the proviso are added in sub-section (1) of Section 15; clauses (c) and (d) of sub-section (1) of Section 21 are deleted. Before the amendment of Sections 15 and 21, the sweep of the legal presumption contained therein was that in a prosecution for any offence under sub-section (1) of Section 3 of the TADA Act on proof of the facts mentioned in clauses (a), (b), (c) and (d) of sub-section (1) of Section 21, it was mandated that the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence. Clauses (c) and

(d), which are deleted from sub-section (1) of Section 21 by Act 43 of 1993, related to a confession made by a co-accused that the accused had committed the offence and to the confession made by the accused of the offence to any person other than a police officer. 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.

I have already pointed out the difference in the phraseology of Section 15 of the TADA Act. Parliament used the expression "shall be admissible in the trial of such person or co-accused, abettor or conspirator" in Section 15 which is different from the language employed in Section 30 of the Evidence Act which says that the court may take into consideration such confession as against such other person as well as against the person who makes such confession. It has to be presumed that Parliament was aware of the interpretation placed by the courts including the Privy Council and the Supreme Court on Section 30 of the Evidence Act but chose to frame Section 15 differently obviously intending to avoid the meaning given to the phrase "the court may take into consideration such confession as against such other person ..." used in Section 30 of the Evidence Act. On the language of Section 15(1), it is clear that the intention of Parliament is to make the confession of an accused substantive evidence both against the accused as well as the co-accused."

21. In *S.N. Dube vs. N.B. Bhoir and Others* [2000 (2) SCC 254], the Court referred to the judgment of the Constitution Bench in *Kartar Singh's* case and 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 rather than frustrate it.

22. In Lal Singh's case, the Court referred to the earlier judgments in Kartar Singh's case, Nalini's case, S.N. Dubey's case and held:

"23.....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 (1994 (3) SCC 569) 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 (2000 (2) SCC 254) 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 (1999 (5) SCC 253) 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."

23. In Jayawant Dattatraya Suryarao's case, the Court reiterated the rule that if conditions embodied in Section 15 of the Act and Rule 15 of the Rules for recording confession of a person by a police officer are complied with, then such statement is admissible in evidence not only against the maker but also against co-accused, abettor or conspirator. The Court then observed that "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 in 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."

24. In Devender Pal Singh's case majority of three-Judges Bench made a reference to Gurdeep Singh's case, Nalini's case and held 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.

25. In Jameel Ahmad's case, two-Judges Bench after discussing, considering and analyzing several precedents on the subject, including Devender Pal Singh's case, culled out the following propositions:

"(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."

[Emphasis supplied]

26. In Abdulvahab Abdul Majid Shaikh's 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:-

"...The police officer was empowered to record the confessional 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."

27. The ratio of the above noted 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 concerned officer 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 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 co-accused under the Act and/or other enactments without independent corroboration. 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 or 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's case because the same have not been incorporated in the Act and/or the Rules.

28. The judgments in Raja Khima's case, Sarwan Singh's case, Shankaria's case, Alope Nath's case and Ajit Singh's case on which reliance has been placed by the learned counsel for the appellants do not have any direct bearing on these appeals. In Raja Khima's case, the offence is said to have been committed during the night of 18/19th May, 1952. The appellant was arrested on 20th May. On the next day he was sent for recording confession but the Magistrate recorded the confession on 3rd June. The Magistrate, who recorded the confession and was examined as PW 21, stated that he gave 10 days time to the appellant for reflection. By making a statement in writing before the committing court, he stated that while in jail, the police had coerced him to make confessional statement. He was frightened that if he would not confess the crime, the police will beat him and, therefore, he made false confession as per the dictates of the police.

A similar statement was made by him under Section 342 Cr.P.C. 1898, which is equivalent to Section 113 Cr.P.C. This Court discarded the confession by making the following observations:-

"The appellant was sent to a Magistrate at 8 p.m. on the 21st for the recording of a confession but the Magistrate did not record it till the 3rd of June. He was examined as PW 21 and explained that he gave the appellant ten days for reflection. The length of time is unusual but no objection about its fairness to the accused could reasonably have been raised had it not been for the fact that the judicial lock-up is in charge of a police guard which is under the direct control, orders and supervision of the very Sub-Inspector who had conducted the investigation and had earlier suspected and, according to the accused, actually arrested three other persons; and two of them are now called as prosecution witnesses to depose against the appellant about a matter on which the prosecution lay great importance, namely, the sharpening of an axe. The danger that they might exaggerate their stories or give false evidence in their anxiety to avert further suspicion from themselves is one that cannot be overlooked."

In para 11 of the judgment, the Court laid down the following proposition:-

"Now the law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. It is abhorrent to our notions of justice and fair play, and is also dangerous, to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realises that anything he says may be used against him; and any attempt by a person in authority to bully a person into making a confession or any threat or coercion would at once invalidate it if the fear was still operating on his mind at the time he makes the confession and if it "would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him": Section 24 of the Indian Evidence Act.

That is why the recording of a confession is hedged around with so many safeguards and is the reason why Magistrates ordinarily allow a period for reflection and why an accused person is remanded to jail custody and is put out of the reach of the investigating police before he is asked to make his confession."

29. The facts of Sarwan Singh's case were that the appellant was arrested on 25th November, 1955. His cloths were found blood stained. He is alleged to have made statement which led to discovery of incriminating articles. On 30th November, he was sent to Magistrate to record his confessional statement. According to Magistrate, Mr. Grover, the accused was produced before him at about 2.30 pm. He gave him half an hour time to think. Thereafter, the confessional statement was recorded. This Court noted that the appellant was taken before the Magistrate by the Sub-Inspector who remained standing in the verandah outside the Magistrate's office, soon after the statement the Sub-Inspector went to the Magistrate's room and also that even though there were injuries on the person of the appellant, the Magistrate did not inquire about the same and held:-

"There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the

accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case.

However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter."

30. In Shankaria's case this Court referred to the questions put to the accused during his preliminary examination, took cognizance of the argument of the learned amicus curiae that no explanation had been given by the prosecution for bringing the accused from Ganganagar to Raisinghnagar for getting confession recorded, keeping the accused in judicial lock-up which was contiguous to the police station, giving him less than 20 minutes for reflection before recording his confession and handing over him back to the Superintendent of Police immediately after recording the confession, noted the ratio of Sarwan Singh's case and held as under:

"It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged period to Jail or Judicial lock-up. In the instant case, the accused was got admitted to the Judicial lock-up on June 12 for getting his confession recorded under Section 164 CrPC, and such admission was made under the orders of the Magistrate who ultimately recorded his confession on June 14. The accused was about two days in judicial custody beyond the reach of the police. On June 13, 1974, a written request was made to the Magistrate by the police, for recording the confession of the accused. Even then, the Magistrate postponed the recording of the confession till the following day, obviously because he wanted to give the appellant one day more in judicial custody to ponder over the matter free from Police influence. On June 14, notwithstanding the fact that the accused Shankaria was in judicial custody from the evening of June 12 after the preliminary questioning, the Magistrate allowed 15 minutes more to him for reflection. Thus considered, Shankaria had, as a matter of fact, about 38 or 40 hours in judicial custody, immediately preceding the confession and this was rightly considered sufficient to secure freedom from fear or

influence of the police to him (Shankaria)."

31. Alope Nath Dutta's case was not arising out of prosecution under the Act. The argument of the counsel for the appellant which found favour with this Court was that the confession had not been recorded in accordance with law and in any case, in the absence of any corroborative evidence, the confession of a co-accused could not be made basis for conviction.

32. In Ajit Singh's case, the Court referred to the judgments in Kartar Singh's case, Jameel Ahmed's case and held that the confession of the co-accused cannot be relied upon for reversing acquittal of the respondents because none had admitted that they were aware of the involvement of respondent No.1 in the terrorist activities.

33. In the light of the above, we shall now deal with the arguments of the learned counsel for the appellants that confessions made by their clients were not voluntary and the learned trial Judge committed grave error relying upon the same for convicting them under Section 302 read with Section 120-B IPC. It is an undisputed position that appellant Nos.A-4, A-5, A-6, A-7 and A-8 were produced by the Investigating Officer before Shri A.K. Majumdar and appellant No. A-10 was produced before Shri Harbhajan Ram. After preliminary questioning, custody of each of the appellants was given to the Investigating Officer who again produced them on the dates fixed by Shri A.K. Majumdar and Shri Harbhajan Ram. After recording their statements in accordance with the manner prescribed under Section 15 of the Act and Rule 15 of the Rules, the concerned officer immediately sent the same to the Chief Metropolitan Magistrate, Delhi for onward transmission to the designated Court at Ahmedabad.

34. In reply to the questions put to him, appellant No.A-4 unequivocally stated that he was aware that it was not necessary for him to make confession and that the same can be used against him and further that he was making confession voluntarily without any fear, coercion or allurement. The questions put to appellant No.A-4 and his answers are extracted below:-

"Q1. Kindly tell your name, father's name and address?

A. My name is Mohd. Farukh alias Farukh Baba. My father's name is Alla Rakha Sheikh and my address is House No.1384, Maulki Pole, Dariyapur, Ahmedabad, Gujarat.

Q2. Do you know who I am and where are you sitting?

A. I know that you are S.P./CBI and at this time I am sitting in your Office at New Delhi.

Q3. In which offence you have been arrested?

A. I have been arrested by the CBI in the murder case of Raufwaliullah. My remand was obtained from

Q.4 Do you wish to make a confession in this case? If yes, then why?

A. Yes. I wish to make confession in this case so that I am able to tell you everything which I know about this case?

Q.5 Are you making this confession voluntarily or making this confession under any fear, coercion and allurement?

A. I am making this confession on my own and voluntarily without any fear, coercion or allurement.

Q.6 It is not necessary for you to make a confession. If you make a confession, then it can be used against you?

A. I am very well aware that it is not necessary for me to make a confession and that this confession can be used against me. But inspite of this I wish to make this confession voluntarily."

Thereafter, Shri A.K. Majumdar recorded the following note:-

"From the above questions and answers, I am satisfied that the accused Mohd. Farukh Allah Rakha Sheikh is making his confession voluntarily. However, I give him more time till 30.5.1993 again to think over whether he wants to make the confession."

35. On 30.5.1993, appellant No.A-4 was again produced before Shri Majumdar, who repeated the question whether he was desirous of making confession. In turn appellant No.A-4 reiterated that he was making confession voluntarily. Shri Majumdar then recorded his satisfaction that the accused was ready to make confession voluntarily. The question and answer as well as the note recorded by Shri Majumdar on 30th May, 1993 read as under:

"Q1. What have you thought about giving confession, do you still want to make confession?

A. I have considered thoroughly about giving my confession. I wish to give my confession voluntarily.

Read over and admitted to be correct."

Note: I am satisfied that accused Mohd. Farukh Allah Rakha Sheikh is ready to make his confession voluntarily without any fear, coercion and allurement. Hence, I proceed to record his confession under Section 15 of TADA(P) Act, 1987."

36. Thereafter, Shri A.K. Majumdar recorded the statement (Ex. 480) of appellant No.A-4, who gave out that after losing money in gambling, he joined the illegal business of liquor of Latif in 1988; that Latif gang was known as 'the company'; that the company purchased a new Scooter No. GJ-1C-2797 for him in 1989 from Pappu Bhai of Dilli Darwaja; that initially the colour of the scooter was blue but, later on, it was changed to brown; that the scooter was used by other members of the company including Amin Choteli and Iqbal Dhobi; that at the time of the seizure by the police, the colour of the scooter was brownish and stickers were pasted on the front and rear plates; that it was rumoured that members of Latif gang were involved in Radhika Gymkhana murder case; that he wanted 5 persons, who were not connected with the murders, to be arrested and he was discussing this matter with the Government of Gujarat and senior police officers; that after some days of Gymkhana murder case, a meeting was held in the house of Latif which was attended by many including Rasool Khan @ Rasool Party; that he also joined the meeting in which the hurdle created by Rauf Valliullah was discussed and it was decided to kill him; that this task was assigned to Rasool Khan @ Rasool Party; that on 9.10.1992, he came to know from evening newspaper of Gujarati language that Rauf Valliullah was murdered; that after one or two days, the news of involvement of Rasool Khan and Musharaf Khan came in; that after some days, the name of Iqbal Dhobi was also published in the newspaper; that the names of all members of the company was roped in by the police in the Radhika Gymkhana case and he remained in hiding and left Ahmedabad along with Iqbal Dhobi and Amin Choteli and Ejaj Pahlwan and continued to roam in Baroda, Bombay, Poona, Gulbarga and Hyderabad before being arrested.

37. Appellant Nos.A-7, Mohd. Amin and A-8 Iqbal Hussain were produced before Shri A.K. Majumdar on 28.5.1993. In response to the preliminary questions being put to them, both the appellants replied that they were aware that they were not bound to make confessions and that the same could be used against them. The appellants also declared that they were making confessions voluntarily without any fear, coercion or allurement. Both were again produced before Shri A.K. Majumdar on 30.5.1993. After asking them whether they had given thought about making confessions and getting reply that they wish to make confessions voluntarily, the concerned officer recorded their statements.

38. In his detailed statement, appellant No. A-7 disclosed the background in which he joined the business of spurious country liquor and came in contact with Latif and Gang, Rasool Khan @ Rasool Party and his associates including Sajid Ali (appellant No.A-6), Gulal (appellant No.A-

11) and Mohd. Pehalwan alias Mohd. Umar Majid Pathan (appellant No.A-

5) and the hideout of Rasool Khan alias Party at Baluchawad. He further disclosed that he knew Rauf Valliullah, a Congress leader belonging to the Muslim community and that he was called by Rasool Party through Gulal (appellant No.A-11) five-six days before the murder of Rauf Valliullah and asked to remain with Azamkhan (appellant No.A-10) and Sajidali (appellant No.A-6), who had been instructed to attack him (Rauf Valliullah) with knives; that he along with appellant Nos.A-10 and A-6 pursued Rauf Valliullah at various places but he could not attack him at Kalupur because of presence of his family members and at Lal Darwaja due to procession of Hindus; that on 9.10.1992 he was instructed by Rasool Party to go on scooter with Iqbal Hussain @ Laliyo Dhobi (appellant

No.A-8) to Madhuban building where Mohmed Pahelwan (appellant No.A-5) and Sajidali (appellant No.A-6) had been sent to kill Rauf Valiullah; and Iqbal Hussain (appellant No.A-8) was instructed to shoot Rauf Valiullah in case appellant No.5 was unsuccessful. The relevant portions of his statement are extracted below:-

..... Rasool told me that Rauf Valiullah has gone to his house in Kalupur and as soon as he comes out of his house, Azam and Sajid will attack him with knives. Rasool asked me to remain standing near the Auta of the Mosque from where Sajid and Azam were visible in the lane and Rasool stood on a side little away. Rasool also told me that when Sajid and Azam attack Rauf Valiullah then I would signal Rasool and thereafter Rasool will come and shoot Rauf Valiullah. We stood on our respective positions as told by Rasool. We remained standing upto 6.30 p.m. Thereafter I saw that Sajid and Azam are quickly running out of lane and upon this I saw towards Rasool and he signaled me to come near him. I immediately reached near Rasool and all four of us went inside the Majahid Ki Pole. After reaching there, Sajid and Azam told Rasool that Rauf Valiullah's family members had come outside to drop Rauf Valiullah upto car. Therefore it was very difficult to attack him.....

..... Rasool then told me that I should drive the scooter of Taslim and Sajid and Azam will sit behind me and all of us will chase the car of Rauf Valiullah and as soon as Rauf Valiullah comes out of his car after reaching his Navrangpur house, then Azam and Sajid will kill him with knives. I told Rasool that I do not know the route of Rauf Valiullah's house. Upon this Rasool said Azam and Sajid knows the route. Thereafter when we came out of the Mujahid Ki Pole, we saw that the car of Rauf Valiullah had left from there. Thereafter all three of us left from there on the scooter and reached Lal Darwaja via Relief Road. I was driving the scooter and Sajid and Azam were sitting behind me. One procession of Hindus was passing from Lal Darwaja and therefore I could not go towards Ellis Bridge and thereafter I took Nehru Bridge route as told by Sajid and reached near the Government flats at Navrangpura. As soon as I turned my scooter on right side road, I saw that car of Rauf Valiullah was standing inside the compound of the flat. Upon this Sajid asked me not to stop the scooter and told me to keep moving the scooter. From there we went to Nehru Bridge and from there reached Baluchawad.

..... It was a Friday on 9.10.1992. As soon as I reached my house at 1.30 p.m., after reading Namaj of Jumma, Gulal came to my house and told me that Rasool is calling me. At that time I was having Scooter No. 2797 belonging to Farukh Baba. Both of us went to Rasool in Baluchawad on the said scooter.

Rasool told me to go with Iqbal alias Lala Dhobi. I cam to Iqbal and thereafter took him to Rasool in Baluchawad. We met him in the Press of Rasool and so far I remember Gulal too was there. Rasool told me that Rauf Valiullah has gone to Madhuban Building situated near Ellis Bridge, Under Bridge and told us to go there. He also told that he has already sent Mohd. Pahalwan and Sajid on a scooter for

killing Rauf Valiullah. He also told us that Mohd. Pahalwan will fire that shot. Rasool gave one revolver to Iqbal Dhobi also instructed him that if Mohd. Pahalwan does not succeed in killing Rauf Valiullah, then Iqbal Dhobi will shoot and kill Rau valiullah.

.....

..... Both of us left Baluchawad on the scooter which I was driving. We went to Gujarat College, Ellis Bridge Road, via Nehru Bridge-Navrangpur and Gujarat College. We saw Sajid and Mohd. Pahalwan sitting on gray coloured scooter of Sajid. Sajid was sitting on the driver seat of the scooter and Mohd. Pahalwan was sitting behind him. Mohd. was wearing a blue colour check shirt and blue jeans. After alighting from scooter, I went towards Sajid and Mohd. Pahalwan. Sajid told me that Rauf Valiullah had come there in his Maruti car and that he has gone inside the Madhuban Building. He also showed me the Maruti car which was standing with its face towards wall.....

..... I decided that it will not be proper to apply grease on the scooter because Madhuban Building was in front of us. I decided that number should be covered with sticker or grease after purchasing it from some other place. Thereafter myself and Iqbal crossed Under bridge and reached B.S. Hospital on the scooter. I purchased one small roll of bandage from a shop for Rs.5/- and took a cold lemon water glass from a vendor nearby and thereafter tried to paste the bandage on the number plate behind a tree. But I could not cut the bandage and therefore I took a poker used for breaking ice from the lemon water vendor and also asked him to prepare one glass lemon water for me. I tore the bandage into two pieces with the help of poker and thereafter covered the numbers of scooter on both sides.....

..... As soon as I reached near Under Bridge, I saw a huge crowd of public there and also saw police jeeps and other vehicles standing there. People were shouting mar diya - mar diya. I could not find Iqbal there. I became sure that Rauf Valiullah has been shot dead. Since number plate of my scooter was covered, therefore, I immediately turned my scooter and parked my scooter in a deserted lonely place and removed the bandages pasted on the number plates of scooter and thereafter went to Rasool in Baluchawad in my scooter...

..... After reaching the den of Rasool I found that Rasool, Mohd. Pahalwan and Sajid were already there. Scooter of Sajid was parked at some distance. All of them were very happy. Rasool said work has been executed and thereafter shook hands with me. Thereafter I came back from there and after some distance I met Iqbal Dhobi and he asked me about Rasool and I told him that he is in his den.....

..... Suddenly Azam came there on scooter No. 515 which belonged to Rasool. Azam hurriedly said Rauf Valiullah has been killed. He also said S.P. Anarwala has perhaps seen him and his scooter at the spot. Upon this Rasool asked Gulal to immediately remove scooter from there. Gulal asked me to take away the scooter. But I refused

him. Thereafter both of them left from there on Scooter No. 2797 and I dropped Iqbal near his house. After some time Gulal came to me on the Scooter of Rasool and asked me to keep the scooter. I refused to do so and thereafter Gulal went away from there on the scooter. Later on, I came to know that this scooter was given to Yunus Ijjat Khan Pathan Foreman for changing the colour. Iqbal had told me that Mohd. Pahalwan had fired the shot upon Rauf Valiullah and after firing the shot he left from there on an auto rickshaw.....

..... My name too had come in the Police records along with names of other persons of the company in the murder case of Audhav. Therefore, all of us feared our arrest by police and decided that the members of the gang should leave Ahmedabad for some days. I along with Farukh Baba, Iqbal and Mohd. Ejaj took a Taxi from Ahmedabad and came to Baroda. My in-laws are living in Baroda. We went there and took our meals.

Mehmooob Bhai of the family of my In-laws arranged our tickets for Bombay on a luxury bus and in the night we left for Bombay. We reached Bombay on the next day. We stayed in Hotel Akshar in Bhindi Bazar where we disclosed our fictitious names as Ghani Khan, Sultan, Mehmood and Ahmad, Residents of Baroda. After 3-4 days we left Bombay and went to Gulbarga. From there we made a phone call at Ahmedabad and came to know that 5 members of the gang have already been caught by the police. Thereafter we caught bus from Gulbarga and went to Pune and stayed there in a Hotel near Railway Station. Myself and Ejaj came back to Bombay from Pune in a taxi and again stayed in Hotel Akshar in the names of Mehmood and Sultan. We stayed there for one day and thereafter went back to Ahmedabad in a bus. Thereafter I remained in Ahmedabad and continued to shift places.....

..... On 24th February, 1993, Khurdus came to me and said that I should surrender before the police and also said that he will make the necessary arrangements for this or else police will itself catch me and if that happens, then the Company will not help me. Considering the circumstances prevalent at that time, I decided that I should surrender before the police as advised by Khurdus. Khurdus told me that I should reach his house on the night of 27.2.1993 at 9 p.m. and police will come there and will take him from there.....

..... On 27.2.1993, myself and one other member of the gang namely Hafiz went to the house of Khurdus. At about 10 p.m. in the night one police gypsy with a red beacon came there and took away both of us."

39. In his confessional statement, Iqbal Hussain @ Laliyo Dhobi Kasambhai Shaikh (appellant No.A-8) narrated how he was acquainted with Rasool Khan @ Rasool Party and Rauf Valiullah. He then stated that on 9.10.1992, he was called by Rasool Party through Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh (appellant No.A-7) who came on scooter No.GJ-1C-2797 belonging to Mohmed Faruk @ Faruk Baba Alla Rakha Shaikh (appellant No.A-4) and how he was given revolver loaded

with six bullets by Rasool Khan with instructions to murder Rauf Valiullah. Appellant No.A-8 also gave out that Rasool Khan had also sent Sajidali and Mohmed Pahelwan for murdering Rauf Valiullah and that he was to shoot only if the Mohmed Pahelwan failed in his attempt. The relevant portions of his statement read as under:-

"9.10.1992 was a Friday. At about 1.30 p.m. after I had read my Namaj, Mohd. Amin alias Choteli who is an employee of the Company came to me on Scooter No. 2797 of Farukh Baba and told me that Rasool Khan alias Party is calling me. I went to Rasool Khan in the Press in Baluchawad along with Choteli on the scooter. So far I remember Gulal was also present there along with Rasool Khan. Rasool Khan gave a revolver to me which was loaded with 6 bullets. He told me that I have to murder Rauf Valiullah. He also told me that Rauf Valiullah has gone inside Madhuban Building situated near Under Bridge, Ellis Bridge. He further told me that he has already sent Sajid and Mohd. Pahalwan for murdering Rauf Valiullah. Rasool told me that myself and Choteli should go to that place on the scooter and if Mohd. Pahalwan fails in killing Rauf Valiullah, then I should shoot and kill Rauf Valiullah. Choteli was to drive the scooter. Rasool told us to cover the number plate of the scooter by applying grease on it after going out of the Mohalla.....

I saw that Sajid was sitting on his gray colour scooter on the side of Madhuban Building. Scooter was parked in a stand and Sajid was sitting on the driver's seat. Behind him one young boy was sitting, who I had not seen earlier.

After parking scooter, Choteli went towards Sajid and came back after talking to him. He told me that Rauf Valiullah is still inside the buiding and he has not come out so far. He also told me that Sajid and Mohd. Pahalwan are also waiting for him to come out of the building.....

After 5-10 minutes I saw that Rauf Valiullah who was wearing a white Kurta Pyjama, came out of the building and after getting down from the sloppy phootwari started moving towards the place where 4-5 cars were parked. There were 2-3 persons with him. I saw, but I cannot tell, whether all these persons were with Rauf Valiullah or not. One of the person opened the gate of driver side of Maruti car and sat inside.

Thereafter Rauf Valiullah moved towards left of the car. The face of car was towards the wall of Madhuban Building and back side of the car was towards toad. Suddenly I saw that Sajid drove his scooter and came just behind the car and thereafter I saw Mohd. Pahalwan coming towards Rauf Valiullah from the middle of road. When Mohd. Pahalwan was at a distance of about 1 Ft. from Rauf Valiullah, he fired upon him. I think the shots were filed in head. I heard sounds of 2-3 shots. After seeing all this, I started walking towards the sloppy road. Since I was having revolver with me and Choteli had not come there by that time, therefore, I feared being caught. This road after coming out of the Under Bridge goes towards right side. I traveled a long distance. But I did not see Mohd. Pahalwan and Sajid going from that road.....

After some time Amin Choteli met me on the scooter No. 2797 and asked me whether I have met Rasool there. Choteli told me that Rasool is in his den. Thereafter I went to the den of Rasool along with Choteli on the scooter. Rasool was present in his den (Press). Sajid, Mohd. Pahalwan and Gulal were also there. I returned back the revolver of Rasool. Rasool told us that the work has been executed and asked us to leave. Rasool asked Mohd. Pahalwan to change his shirt. Thereafter I came out of the Press. Suddenly I saw that Azam Khan who is an accomplice of Rasool came there on a white colour Bajaj Scooter No. 515 and said Rauf Valiullah has been eliminated. He further told that Police has seen him and his scooter. Although Rasool told Gulal to give the Scooter No. 515 to Choteli, but Choteli refused to take it. Thereafter both left from there on brownish colour scooter No. 2797. Choteli dropped me near my house. Thereafter I remained inside my house. I did not see Rasool party thereafter.....

Since my name had appeared in this murder, therefore, I stopped sleeping in my house and started sleeping on the roofs of other persons. After some days, I came to Bangalore on a train along with Mohd. Yunus Usman Bhai who is residing in Lakhota Pole, Dariapur. Both of us stayed in Hindustan Guest House which is near Railway Station, Bangalore. We stayed there for some days. From there we went to Mysore and Ooty also. From Bangalore we came back to Bombay and lived in the house of Yunus's brother Anis in Boriwili for 7-8 days and thereafter we came back to Ahmedabad..... In the evening of 17th February, 1993, Musharaf asked me to come to the house of brother-in-law of Khurdas namely Ghani Bhai and told me that he had a talk with Latif Seth on telephone and Seth has ordered that Musharaf and myself should surrender before the police in connection with the murder case of Rauf Valiullah and also said that we should confess our crime. Since it was an order from Latif Seth, therefore, we readily agreed to surrender....."

40. Appellant Nos.A-5 and A-6 were produced before Shri A.K. Majumdar on 8.9.1993. From the replies given by them, Shri Majumdar felt satisfied that both were willing to make confessions voluntarily. Accordingly, he recorded note similar to the one recorded in the cases of all other appellants. Both were again produced before Shri A.K. Majumdar on 9.9.1993, on which date their statements were recorded. Appellant No.A-5 Mohmed Umar Majid Ahmed Pathan @ Mohmed Fighter @ Mohmed Pahelwan @ Mohmedkhan disclosed how after leaving studies he started work in 1978-79 and how he joined Amba Bhai Purani Gym, Kankaria, Ahmedabad, where he met Hamid Khan Party (brother of Rasool Khan @ Rasool Party). He then stated that he felt obliged to Rasool Party because the latter helped him in his dispute with Shyam Sindhi and Bashir Madrasi and agreed to work for him; that Rasool contacted him on telephone on 9.10.1992 and told that Gulal (appellant No.A-11) will give something and after taking the same he should go to under-bridge and give it to Azam Khan and another boy, who will be on a scooter; that Gulal gave him revolver and then he realized that the work assigned by Rasool was to murder someone; that after taking revolver he reached under-bridge on bullet motorcycle bearing No.GAC-6005, where Azam contacted him and took motorcycle; that thereafter he sat on the scooter with the boy who, later on, pointed out that the person with beard who had come out of Madhuban building is to be killed; that after shooting the man having beard he fled on the scooter along with the boy and came to Kakoriwala Ki

Pole, where Rasool Party and his gang members were sitting. The relevant portions of his statement read as under:-

"It was Friday the 9th October, 1992 when Rauf Valiullah was murdered. After talking my bath etc., I was standing on the corner of the lane below my house at about 10.30 a.m. in the morning. One boy working in the opposite shop came to me and told me that there is a phone call for me. When I attended the phone, I came to know that it was the phone call of Rasool. Rasool after wishing me good day, asked me what I am doing. I told him that I have just taken my bath. He asked me whether I have any vehicle with me. I replied that I have my own motor cycle. Rasool told me to go to Rosy Cinema hall in Sarangpur and meet Gulal there.Gulal met me outside Rosy Cinema. When I reached near him, he asked me to park my motor cycle nearby on one side and thereafter took me to the office of a transport company nearby.....

.....After about 5-10 minutes, Rasool called on the said telephone. Firstly Gulal attended the said phone and thereafter Gulal gave the receiver to me. Rasool Khan asked me whether I have seen the under bridge behind Mangaldas Town, Ellis Bridge. I told him that I have seen this bridge. Thereupon Rasool told me that Gulal will give me something and I should take that something and go to under bridge and give it to Azam Khan and one other boy who are on a scooter and will meet me at Teen Rasta near Gujarat College ahead of the under bridge.

I knew Azam from before because he used to come to Lal Darwaja for swimming. Rasool also told me that I should hand over that something to the boy accompanying Azam and also hand over my motor cycle to Azam. Rasool told me that the said boy will execute the work and I should drive the scooter and after the work is over, I should leave the place with the said boy on the scooter. However, Rasool did not tell as to what work is to be executed. Rasool asked me whether I will be able to do all this. I said Yes because I was indebted to him. Thereafter Rasool talked with Gulal on telephone. After completing the talks, Gulal gave me a revolver and told me that it is loaded. When Gulal gave me the revolver, I realized that work means murdering someone. I asked Gulal as to who is to be murdered. Upon which he said I will myself come to know about it later on. Thereafter I reached under bridge on my Bulet Motor Cycle No. GAC-6005 via Sarangpur-Raipur-Ellis Bridge. After crossing the under-bridge, I saw Azam sitting on a Bajaj Super Scooter with one boy on the left side of road. There was no number plate on that scooter. Immediately on seeing me, Azam stood up and came near me and took my motor cycle. I took Sun glasses of Azam from him and thereafter Azam went towards Gujarat College on my motor cycle. I sat with the boy on his scooter.....

..... He also told me that they are two persons and out of them one is having beard and other is wearing white Kurta Pyjama and that both of them will sit in their Maruti car after coming out of the big building. He also told me that the person wearing Kurta Pyjama is to be murdered. I do not remember the colour and number

of said Maruti car at present. The said boy asked me whether I have brought that something with me. Upon which I told him that I have brought that something with me which is a revolver. On this he asked me to hand over the revolver to him and told me that he will execute the work. I asked him there is nothing so and kept the revolver with me. Actually at that time two things were striking in my mind i.e. firstly that perhaps we will return back without executing anything and secondly that whether I drive the scooter or shoot the person, my involvement is sure. In fact, I wanted to repay obligations done by Rasool upon me. We remaining sitting there for 1 and = hours. The said boy, whose name I came to know later on was Sajid, was wearing a plan Zero number eye glass.....

When more than 1 and = hours passed and we kept waiting, then at about 2.30 p.m. Sajid suddenly told me that they are coming. I saw that two persons, one having beard and other wearing a white Kurta Pyjama were going towards Maruti Car parked there in front and suddenly I crossed the road and walked towards Maruti car. Person with beard opened the door of driver side and sat inside and the person wearing white kurta-pyjama walked behind the car and reached the left side door of the car and put something in his mouth. By that time, I had reached very near to him and immediately on reaching there I took out the revolver which I had tucked in the belt of my pant below my shirt and fired three rounds continuously on the head of the person wearing white kurta pyjama. In fact, I was so nervous at that time that I could not even count the shots which I fired. Suddenly Sajid brought the scooter from front and I immediately sat on the back seat of the said scooter and both of ran away from there on the scooter towards Ellis Bridge.....

After running away from there, we passed via Ashram, ITO Crossing, Wise Crossing, Subhash Bridge, Under Bridge, Girdhar Nagar Bridge, Dariapur and reached Kakoriwala Ki Pole to meet Rasool Khan. Rasool Khan and Gulal were sitting in the Press at that time. After reaching there, Sajid parked his scooter outside the Press and thereafter went inside the Press and told Rasool that the work has been executed."

The relevant portions of the statement of appellant No.A-6, Sajidali, are extracted below:-

"I was coming to Baluchawad frequently. I was going to Carom Club there. Ejaj Ahmad, Abdul Rehman etc. I saw Abdul Latif many times when I came to Baluchawad. He was doing illegal business of illicit liquor. He is living in Mohalla Mand. This gang is called Company. I know several members of this company who are also resident of this locality, namely, Sharif Khan, Rasool Khan Party, his brother Hamid, Abdul Khurdus Baba, Musharaf Gorey Khan Pathan, Farrukh Baba, Iqbal, Laliya Dhobi, Amin Chauteli etc.....

..... While I was living in Baluchawad, I came in contact with Rasool Khan. Rasool Khan is an accomplice of Latif and Sharif Khan and he is engaged in illegal

businesses. He has a house in Kankori Wala Ki Pole and Gulal is also living in this Pole and he is the key man of Rasool Khan. Another key man is Azam Khan who is living in Mujahid Ki Pole, which is at a small distance from my house.

Rauf Valiullah was murdered on Friday the 9th October, 1992 and about 7-8 days prior to this murder, when I was sitting in my house for taking meals, then Gulal came to my house in the afternoon and said that Rasool Khan has called me. He had come on his Scooter No. 515. I met Rasool in Kankora Wala Ki Pole. Azam Khan was there from before. Rasool said to me that one bogus person has to be killed and Azam knows that man. I should go with Azam on my scooter and keep a watch on that man and as soon as I get a chance, I should kill him by stabbing with knife. He also told me that if I could not execute the work, I should come back, because he has already explained Azam to execute the work. He also told me that he will bear all the expenses of scooter and goods. Both of us were told to keep a watch on that man from next day.

On the next day at about 9.30-10.00 a.m., I took my scooter and went to the house of Azam in Mujahid Ki Pole. Mujahid is living on the upper floor of house. After some time, Azam came prepared and gave me a steel knives made of Japan. This knife was covered. He kept on knife with him. Both of us concealed our knives in the pants below our shirts. Thereafter we came out of Mujahid Ki Pole and went to Peer Mohammad Shah Dargah Trust on Relief Road. I was driving the scooter. Azam told me that he has been keeping a watch on this person since many days and the said person was coming trust. Azam went inside to search for that man and after some time came out of the Trust. He told me that the person for whom we are searching, is not there.

On the next day, I along with Azam again went out on my scooter for keeping a watch. Azam again gave the knife to me. First of all we went to the Trust where Azam went inside and thereafter we went to Congress Bhawan and when we found that the car is not there also, we went behind Gujarat College and saw that Fiat car was standing inside the Compound of the house. We kept watch upto 4.00 p.m. and thereafter came back and again Azam Khan gave a report of our watch to Rasool Khan. Similarly on third day also I and Azam first went to Trust and thereafter Congress Bhawan and thereafter behind Gujarat College and again took tea there. We again saw that the car was standing there upto afternoon. Thereafter both of us came back for eating our meals. I dropped Azam at the Pole of Mujahid and thereafter went to my huse for taking my meals. After some time Azam came there hurriedly and told me that the said person has come to the Karora Ki Pole. After saying so, he went inside the Kankori Wala Ki Pole near Rasool Khan. After some time, Rasool Khan signaled me and called me inside. By that time Gulal had also brought Amin Chauteli there. Rasool asked me, Azam and Chotel to immediately go to the Karora Ki Pole and also said that he himself is also reaching there. He had told us that as soon as the said person comes out of the house, he should be stabbed with knives.

Thereafter all three of us went to Karora Ki Pole on the scooter and after parking the Scooter outside Karora Ki Pole, we went inside the Pole and distanced ourselves from each other. Rasool Khan too had reached the Pole and went to the Mujahid Pole from there. We had reached there at about 4 p.m. and after keeping a watch for long time, we saw that three persons, one of whom had a beard, two ladies and 1-2 children came out of the house. Azam asked me to move and thereafter all three of us went to Rasool in Mujahid Ki Pole and told him that the work cannot be executed here because entire family had come out of the house. When we were talking with each other, I saw the fiat car going towards Kalupur Tower. One driver was driving the car and the said person was sitting on the back seat. On that day I came to know that we have to murder of Rauf Valiullah. We continued to chase the car and reached Lal Darwaja via Relief Road. There was a huge traffic jam there because of a procession of Hindus. Therefore, we could not cross Ellis bridge and therefore took Nehru Bridge route and reached the house of Rauf Valiullah. At that time the car of Rauf Valiullah was entering inside the compound and therefore we could not do anything.

On the next day i.e. on 9.10.1992 it was Friday. Like before, after 10 a.m. we again went out on Scooter No. 9655 for keeping a watch. First of all we went to Trust and Azam went inside the Trust. One can easily the office of Trust if he enters the Trust. After some time Azam came back and asked me to move to Congress Bhawan. When we reached Congress Bhawan, we did not find the car of Rauf Valiullah there and then we went to tea vendor outside house of Rauf Valiullah and took tea and read newspaper there. When we were passing in front of his house, we saw one blue colour Maruti car standing outside the house. Azam said - perhaps Rauf Valiullah has come out of the house. After some time i.e. at about 11-11.30 we saw the same blue colour maruti car coming out of the house of Rauf Valiullah. A bearded person was driving the car and Rauf Valiullah was sitting on the side of the driver in the front seat. Azam asked me to chase the car. I immediately started my scooter and chased the car. The car after taking under bridge route, stopped in the parking on the road outside one 7-8 storey building. I took my scooter on one side and parked it there. We saw that the bearded man was wearing shirt pant whereas Rauf Valiullah was wearing a white kurta-pyjama and he was holding a packet in his hand.

After about 30-45 minutes one Mohd. Fighter came to us on a motor cycle Azam had told me his name. Mohd. Fighter had come on a black colour Bullet motor cycle. After Mohd. Fighter reached there, Azam took his motor cycle and left Fighter there and went towards Gujarat College. Fighter was wearing pant shirt and white colour sports shoes on that day. Fighter sat with me on the scooter after Azam left us. I had told him that the person who is to be eliminated has gone inside the building and he is wearing a white kurta- pyjama and one bearded person is also with him and both of them had come here in blue colour Maruti car.

While we were sitting on our scooter, then we saw Rauf Valiullah and the bearded man coming out of the building at about 2-2.30 p.m. I do not remember now whether Rauf Valiullah was holding any packet in his hands or not. Immediately after Rauf Valiullah came out, I showed him to Mohd. Fighter. The bearded man opened the gate of the car and sat inside whereas Rauf Valiullah Sahib was going towards the side gate of the car from the right side and when he had just reached the gate of the car, Mohd. Fighter too crossed the road and reached very near to him and immediately I also started my scooter and took my scooter behind the car and kept my scooter in starting position. Suddenly I saw Rauf Valiullah putting something in his mouth. Immediately thereafter Mohd. Fighter fired three shots in the head of Rauf Valiullah from a very close range. These shots were fired quickly one after the other. Thereafter Fighter immediately sat on my scooter and we ran towards Ellis Bridge. I did not see bearded man coming out of the car. I was driving scooter very fast and therefore I could not hear the noises behind me.....

I parked my scooter outside the Press of Gulal Bhai. Gulal and Rasool Party were inside the press at that time. Mohd. Fighter and myself went inside the Press and informed Rasool that the work has been done. Rasool became very happy and he shook his hands with me and fighter. Rasool took back the revolver from fighter and also took my scooter and said that now he will keep the same with him because scooter should not be driven now. After some time Amin Chauteli and Lalia Dhobi also reached there. Amin Chotel told Rasool Khan that murder was committed within the time when he had gone to cover the number plan and came back after covering the number plate. After some time Azam too came there on Scooter No. 515. Azam immediately on coming said that Rauf Valiullah has been eliminated i.e. killed. Police has already reached there and also said that the police has seen his scooter. Upon this Rasool asked Gulal to immediately remove away the scooter from there....."

41. Appellant No.A-10 was produced before Shri Harbhajan Ram on 24.7.1996. In reply to the first question put to him, appellant No.A-10 gave out that he was arrested by ATS from Dani Limra, Ahmedabad on 13.6.1996 and on that very day he was taken into custody by CBI. In reply to another question, appellant No.A-10 stated that he was aware of the fact that he was not bound to give statement and that he was voluntarily making confession after having thought about it. Thereafter, Shri Harbhajan Ram recorded satisfaction about the voluntary character of the statement made by appellant No.A-10 expressing his desire to confess his role in the crime. Appellant No.A-10 was again produced before Shri Harbhajan Ram on 25.7.1996. He reiterated his wish to voluntarily make the statement. At that stage, Shri Harbhajan Ram recorded note as per the requirement of Rule 15 of the Rules. Thereafter, Appellant No.A-10 made statement disclosing his acquaintance with Abdul Latif and his gang, Rasool Khan @ Rasool Party, Mohammad Farukh (appellant No.A-4), Mohmed Umar @ Mohammad Pahelwan @ Mohammad Fighter (appellant No.A-5), Sajidali @ Danny (appellant No.A-6), Mohmed Amin @ Amin Choteli (appellant No.A-7), Iqbal Hussain @ Lalia Dhobi (appellant No.A-8) and Gulam Mohmed @ Gulal (appellant No.A-11), who were members of Rasool Party gang and were accomplices of Abdul Latif in the business of illicit liquor. He further stated that about 7-8 days prior to the killing of Rauf Valiullah, Rasool Party called him and told

about the decision to eliminate Rauf Valiullah because he was creating hurdles in the affairs of the company. According to appellant No.A-10, Rasool Party asked him and Sajidali to keep strict watch on Rauf Valiullah and kill him with knives. Rasool Party also gave scooter belonging to Sajidali for the purpose of keeping watch on Rauf Valiullah. Appellant No.A-10 also gave details of how he, Sajidali (appellant No.A-6) and Amin Choteli (appellant No.A-7) tracked the movements of Rauf Valiullah but failed to kill him due to the intervening factors. As regards the incident of 9.10.1992 and his subsequent arrest, appellant No.A-10 made the following statement:

"..... On 9.10.1992, i.e the day on which Raufwaliullah was murdered, myself and Sajid Ali were keeping a watch on Raufwaliullah from the morning itself on our scooter no.GJ- IM-9655. We saw a blue coloured Maruti car standing outside the house of Raufwaliullah behind Gujarat College. When Raufwaliullah came out of his house along with his driver Pradip Dave and left in said blue colour Maruti car No.GCB- 4591, we chased him on our scooter and reached in front of Madhuban Building. When Raufwaliullah and Pradip Dave went inside Madhuban Building, I immediately went to a PCO situated at a distance from Madhuban Building and informed Rasool Khan alias Rasool Party on telephone. Rasool Party told me that he is sending his man for murdering Raufwaliullah. I can accompany and identify the said PCO from where I had telephoned Rasool Party.

When myself and Sajid Ali alias Danny were watching outside Madhuban Building, then Mohd. Umar alias Mohd. Fighter came there on a black colour bullet motor cycle No.GAC-6005 and gave me his motor cycle and asked me to take the motor cycle to Rasool party. I took the Motor Cycle and went to the den of Rasool Party at Baluchawad and handed over the said Motor Cycle to Rasool Party. Rasool Party gave me his Scooter No.515 and asked me to go back again to Madhuban Building. I took the scooter. But instead of going to Madhuban Building, I went to my house. After taking my meal, when I left my house, I found that there was rampant fear and panic amongst general public and everyone was discussing murder of Raufwaliullah. I immediately went to the den of Rasool Party on the aforesaid scooter. Sajid Ali alias Danny, Mohd. Umar alias Mohd. Fighter, Amin Choteli, Gulal and Lalio Dhobi were also present there. I told Rasool Party that Raufwaliullah has been eliminated i.e. killed and handed over the scooter to Rasool Party. Rasool Party asked me to go home and instructed me not to discuss/talk with anyone about murder of Raufwaliullah.

In June, 1993, after arrest of Mohd. Fighter by the Police, I went to Bombay for some days to avoid my arrest and in Bombay I stayed in Gujarat Momin Guest House near Central Arbi Hotel. After the pressure of Police and CBI subsided, I came back to Ahmedabad and mostly lived in the Masjid of my locality and Imambara of Babaji.

On 13.7.1996, when I was in Dani Limra, Ahmedabad, ATS of Gujarat Police came there and arrested me....."

42. From what has been noticed above, it is crystal clear that before recording confessions of appellant Nos.A-4 to A-8 and A-10, the two officers viz. Shri A.K. Majumdar and Shri Harbhajan Ram explained to each of them separately that he is not bound to make confession and that if he does so, the same may be used as evidence against him. The concerned officers also recorded their satisfaction that the appellants were making confessions voluntarily and that no threat or allurement was given to any of them and nobody had coerced them to make confession. Each of the six appellants was given time to think on the issue of making confession and having felt convinced that they were doing so out of their volition, the officers recorded their statements. The confessions of six appellants were typed by the stenographer on Hindi typewriter. The same were read over to the accused who admitted that the recording contains full and true account of his statement and then signed it. The officers also recorded their observations about voluntary character of the confessions and then signed the same. The statements of the six appellants were immediately sent to Chief Metropolitan Magistrate, Delhi for onward transmission to the Designated Court at Ahmedabad. All this shows that there was total compliance of Section 15 of the Act and Rule 15 of the Rules.

43. The argument of the learned counsel for the appellants that the trial Court committed grave error in relying upon the confessions of appellant Nos.A-4 to A-8 and A-10 for the purpose of their conviction under Section 302 and 120B IPC read with Section 120B IPC ignoring that at the relevant time they were in the custody of the Investigating Officer and did not have access to legal assistance and also because the confessions were recorded by the officers who were actively supervising investigation of the case and were in a position to influence the appellants, lacks merit and deserves to be rejected. The prosecution evidence shows that the confessing appellants were brought to Delhi pursuant to transit warrant granted by the competent court at Ahmedabad. Therefore, the Investigating Officers were bound to keep their custody till the end of the period specified in the transit warrant and they could not have transferred the custody of the accused to any other person. It was during the period of their custody with the Investigating Officers that appellant Nos.A-4 to A-8 and A-10 and some other accused, with whose cases we are not concerned, expressed desire to confess their role in the commission of crime. Accordingly, they were produced before two Superintendents of Police, CBI and their confessions were recorded in accordance with the provisions of Section 15 of the Act and Rule 15 of the Rules. At the cost of repetition, it deserves to be mentioned that before recording confession, each of the appellants was told by the concerned officers that he is not bound to make confession and that if he does so, it may be used as evidence against him. The concerned officers also recorded their satisfaction in writing that the accused was making confession voluntarily. The statements of the confessing appellants were recorded in a room where no one except the concerned Superintendents of Police, CBI and stenographers were present. After completion of recording, statement made by the individual accused was read over to him and he appended the signatures after finding that the recording was correct. Thereafter, the concerned officers again noted that the confessions have been made voluntarily, appended their signatures and sent confessional statements to the Chief Metropolitan Magistrate, Delhi for being forwarded to the Designated Court at Ahmedabad. Appellant Nos.A-4 to A-8 were not produced before Chief Metropolitan Magistrate because their confessions were recorded before the judgment of Kartar Singh's case but appellant No.A-10 was so produced on 25.7.1996 as per the guidelines laid down in Kartar Singh's case. It is thus evident that there was total compliance of the mandate of law in

recording the confessions of six appellants.

44. The question whether confession made by a person under Section 15 of the Act should be rejected only on the ground that at the relevant time he was in police custody, was considered an answer in negative in Gurdeep Singh's case, Lal Singh's case and S.N. Dube's case. In Gurdeep Singh's case, it was argued that the confession of the accused should be discarded because he was handcuffed and while recording the confession, another policeman was present in the room at some distance holding the chain of the handcuff and that armed guards were outside the room where confession was recorded. While rejecting this plea, the Court held:-

"Keeping an accused under police custody in what manner with what precautions is a matter for the police administration to decide. It is for them to decide what essential measures are to be taken in a given case for the purpose of security. What security, in which manner are all in the realm of administrative exigencies and would depend on the class of accused, his antecedents and other information etc. The security is also necessary for the police personnel keeping him in custody or other personnel of the police administration including the public at large. Thus what measure has to be taken is for the police administration to decide and if they feel greater security is required in a case of trial under the TADA Act, it is for them to decide accordingly. The Preamble of the TADA Act itself reveals that this Act makes special provisions for the prevention of and for coping with terrorists and disruptive activities. In fact the earlier TADA Act of 1985 was repealed to bring in the present Act to strengthen the prosecution to bring to book those involved under it without their filtering out, by bringing in more stringent measures under it. In this background, we do not find the handcuffing of the appellant or another policeman being present in the room with the chain of his handcuffs or armed guards present outside the room to be such as to constitute (sic conclude) that the appellant's confessional statement was not made voluntarily."

In Lal Singh's case the Court held:

"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 arisen out of terrorism unleashed by terrorist activities by persons residing within or outside the country."

In S.N. Dube's case, the Court observed:

"In this case there is nothing on record to show, except that the confessions were recorded by Shinde in the police station, that they were not recorded in a free atmosphere. No other person was allowed to remain present at that time and all the accused were given time to reconsider their willingness. After they were produced

again Shinde had ascertained whether they were still willing to make confessions. All the accused were previously told that they were not bound to make a confession. Each one of them was warned that if he made a confession then it could be used against him.....Shinde had tried to ascertain if any threat or inducement was given to them or whether they were ill-treated or pressurised. All the accused had categorically stated that no such thing had happened. From the answers given by the accused it can be said that Shinde had good reason to believe that the accused were making confessional statements voluntarily.....It was not even the case of the accused that they were not taken to Shinde for recording their confessions. The only suggestion that was made in his cross- examination was that he had obtained those confessions after exerting influence, coercion and physical and mental torture. We have already pointed out earlier that in the absence of any specific act suggested by the defence it is not possible to accept the belated allegation made by those accused that their confessions were obtained in that manner....."

45. In view of the above stated legal position, no fault can be found in the recording of confessions of appellant Nos.A-4 to A-8 and A-10 while they were in the custody of the Investigating Officer.

46. The question whether confessions of the appellant Nos.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 No.A-10 was produced before 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 period specified in transit warrants, all the confessing appellants were produced before the concerned Magistrate 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 confession.

(vi) All the confessing appellants were facing trial in number of other cases [this is evident from the statement of PW-100, Mr. Satyakant, the then Deputy Inspector General of Police, CID, Crime (Exh.430)] in which they were duly represented by advocates but till the recording of the statements under Section 313 Cr.P.C., 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.

47. 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 No.A-10, Salimkhan was never willing to give any confessional statement and his statement was not recorded. He also denied the suggestion that appellant No.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 the 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.

48. 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. According to PWs 103 and 104, the statements of the accused were recorded by the stenographers at 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 defense 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 appellant Nos.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.

49. Likewise, there is no substance in the argument of the learned counsel that the confessions of the appellant Nos.A-4 to A-8 and A-10 should be discarded because the same had been retracted on the first available opportunity. As mentioned above, the only statement made by appellant No.A-10 before Chief Metropolitan Magistrate, Delhi on 25.7.1996 was that he had not made any confession. However, he did not contest his signatures on the confessional statement made before PW-103, Shri Harbhajan Ram. When the appellants were produced before the concerned Magistrate at Ahmedabad, none of them gave out that he had not made confessional statement or that his signatures had been obtained on the blank paper or that he was made to sign on the prepared statement or that he had been subjected to torture, or any threat or allurement was given to him to make confession. While they were in jail, none of the confessing appellants made any application to the Court that he wants to retract the confession.

50. In the bail application dated 21.10.1994 (in paragraph `L'), filed on behalf of appellant Nos.A-4, A-7, A-8 and Abdul Khurdus Abdul Ganikhan Shaikh, under Sections 437 and 439 Cr.P.C. read with Section 20(8) of the Act, it was averred that the only evidence against them is in the nature of confessional statements which are not admissible because the procedure prescribed for recording of the confessional statement has not been followed. For the first time an indication of so called torture was made in the application dated 23.11.1994 (paragraph 11) filed under Section 18 of the Act on behalf of appellant No.A-5. Therein, it was stated that the confession was recorded falsely and forcefully to involve the accused in the case with the malafide intention. A somewhat similar statement was made in paragraph (vi) of the Special Leave Petition (Crl.) No.1582 of 1995 filed on behalf of appellant Nos.A-4, A-7 and A-8 for grant of bail. In that paragraph it was averred that the petitioners were subjected to third degree measures and made to sign statements which were written at the dictates of the police officers. In the discharge application dated 23.8.1996, filed on behalf of appellant No.A-5, it was averred that his confession was recorded at Delhi under threats and great mental and physical torture and the same is not voluntary in nature and that the confession recorded under the provisions of the Act cannot be used against him. In the statements made by them under Section 313 Cr.P.C., the appellants made contradictory statements. Some of them made mention of the alleged physical and mental torture as also of threats held out by different officers compelling them to make confession. In reply to question no.169 put to him under Section 313 Cr.P.C., appellant No.A-7 stated that he was subjected to torture and was compelled to sign on blank papers. A similar statement was made by appellant No.A-8 in reply to question no.170. This is clearly contradicted by statement contained in para (vi) of SLP (Crl.) No.1582 of 1995, wherein it was stated that the appellants were made to sign on the statements recorded under the dictates of the police officer.

51. If the confessions of the appellants are scrutinized in the light of the above enumerated factors, it becomes clear that the allegations made by them regarding coercion, threat, torture, etc. after more than one year of recording of confessions are after thought and products of ingenuity of their advocates. The statements made by them under Section 313 Cr.P.C. were also the result of after thought because no tangible reason has been put forward by the defense as to why the appellant Nos.A-4 to A-8 did not retract from 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 appellant Nos.A-4 to A-8 and A-10 and we do not find any valid ground to discard the confessions of appellant Nos.A-4 to A-8 and A-10.

52. The stage is now set for considering whether the prosecution succeeded in establishing the charge under Section 302 read with Section 120B IPC. However, before advertng to the evidence adduced by the prosecution, we consider it proper to notice the definition of criminal conspiracy and its interpretation by the Court. Section 120A IPC, which defines criminal conspiracy, reads as under:-

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

53. In Yash Pal Mittal vs. State of Punjab [1977 (4) SCC 540], this Court interpreted the term conspiracy and held:-

"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 mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy."

54. In Nalini's case the Court analyzed various decisions on the subject and held:-

"In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the

requisite intention would be parties to the agreement and would be conspirators but those who drop out, cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offence..... Sections 120-A and 120-B make conspiracy a substantive offence and render the mere agreement to commit an offence punishable. Even if an overt act does not take place pursuant to the illegal agreement, the offence of conspiracy would still attracted. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. The unlawful agreement and not its accomplishment is the essence of the crime of conspiracy. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, not in attempting to do it, nor in inciting before others to do it, but in the forming of the scheme or agreement between the parties....."

55. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.

56. In the present case the prosecution led evidence to show that the public was outraged against the police because it failed to arrest Abdul Latif and his gang members, who were perceived as culprits responsible for committing murder of nine persons in Radhika Gymkhana on 3.8.1992 and in this backdrop, Abdul Latif planned surrender of some unimportant members of his gang and for this purpose he took help of the local political leader, Hassankhan Shamsher Khan Pathan @ Hassanlala. Their move was opposed by Rauf Valiullah, a former member of Rajya Sabha and General Secretary of Gujarat Pradesh Congress (I) Committee. Therefore, Abdul Latif and gang decided to eliminate him and create terror in the mind of the public. A meeting for this purpose was organized by Abdul Latif and the task of killing Rauf Valiullah was assigned to Rasool Khan @ Rasool Party. In their confessions, Abdul Khurdush Abdul Ganikhan Shaikh, appellant Nos.A-4, A-7 and A-8 have given details of the activities of Abdul Latif and gang, Rasool Party and his associates, their nexus in the supply of illicit liquor, the meeting organized by Abdul Latif which was attended by members of the company, Rasool Party and associates and the decision taken in that meeting to eliminate Rauf Valiullah, who was considered as an impediment in the surrender of unimportant members of Abdul Latif gang in connection with Radhika Gymkhana murder case. In his statement, PW-28, Pradeep @ Nautamal Dave has spoken about the papers prepared by Rauf Valiullah regarding political situation

of the State of Gujarat and his decision to go to Delhi to submit the same to the high command. In his confession, appellant No.A-4 disclosed how he joined illegal business of liquor of Abdul Latif, whose gang was known as company. He then stated that Abdul Latif and gang purchased a new scooter bearing No.GJ-1C-2797 for him in 1989, colour of which was, later on, changed. He has also spoken about the meeting held at the residence of Abdul Latif, the decision taken to eliminate Rauf Valiullah and assigning of the task to Rasool Party. In his statement before PW 104, appellant No.A-7 narrated the background in which he joined the business of spurious liquor and how he came in contact with Abdul Latif gang and Rasool Party and his associates which included appellant Nos.A-5, A-6 and A-11 and also about the hide-out of Rasool party at Baluchawad. He then stated that Rasool party called him through appellant No.A-11 and instructed him to remain with appellant Nos.A-6 and A-10 who were instructed to follow Rauf Valiullah and kill him with knives. Appellant No.A-7 disclosed how he along with appellant Nos.A-6 and A-10 followed Rauf Valiullah at various places including Kalupur and Lal Darwaza and why the latter failed to attack Rauf Valiullah at the two places. He then disclosed that on 9.10.1992, Rasool Party asked him to go on scooter with appellant No.A-8 to Madhuban building with an indication that appellant Nos.A-5 and A-6 have been sent to kill Rauf Valiullah and also that appellant No.A-8 was given revolver with instructions to shoot Rauf Valiullah, in case appellant No.A-5 was unsuccessful. In their confessions, appellant Nos.A-6 and A-10 have given an account of instructions given by Rasool Party to keep a watch over the movements of Rauf Valiullah, efforts made by them to kill Rauf Valiullah and annoyance of Rasool Party due to their failure to achieve the task. Appellant Nos.A-6 and A-10 have also given details of how they followed Rauf Valiullah and PW 28, Pradeep Bhai upto Madhuban building and how appellant No.A-10 intimated Rasool Party that Rauf Valiullah is in Madhuban building. Appellant No.A-8 confessed his acquaintance with Rasool Party. He stated that on 9.10.1992, Rasool Party called him through appellant No.A-7, who came on scooter No.GJ-1C-2797 belonging to appellant No.A-4. He also spoke about handing over of loaded revolver by Rasool Party with instructions to kill Rauf Valiullah in case of failure of appellant No.A-5. Appellant No.A-5 gave an account of the incidents in which Rasool Party obliged him and why he agreed to work for the latter. He then stated that at the asking of Rasool Party, appellant No.A-11, Gulam Mohmed @ Gulal Kadarbhai Shaikh gave him revolver from which he has learned that he has to kill someone. He further stated that as per the instructions, he went Madhuban building on his own motorcycle which was handed over to appellant No.A-10 and then he sat on the scooter which was with appellant No.A-6. He has also given minute details of Rauf Valiullah coming out of Madhuban building along with PW 28, his firing three shots at Rauf Valiullah in succession and then escaping with appellant No.A-6 on his scooter. Appellant Nos.A-4 to A-8 and A-10 have also given complete account of their going out of Ahmedabad, staying at different places before return to Ahmedabad and arrest by the police. It is thus clear that in their confessions, appellant Nos.A-4 to A-8 and A-10 have not only disclosed their acquaintance with Abdul Latif and gang and/or Rasool Party and his associates, but given the details of conspiracy hatched by Abdul Latif and gang to eliminate Rauf Valiullah, assignment of this task to Rasool Party, specific instructions given by Rasool Party to them and their individual roles in keeping track on the movement of Rauf Valiullah, pursuing him at different places with a view to kill him, as also the actual murder of Rauf Valiullah on 9.10.1992. Each of the confessing appellant has candidly acknowledged that he acted as per the instructions and directions given by the Rasool Party for achieving the object of killing Rauf Valiullah and how they get in collaboration with each other for accomplishment of the task. Although, appellant No.A-11 has not

made confessional statement, his role as a collaborator of Rasool Party and his participation in the conspiracy to kill Rauf Valiullah and as also his role in the actual incident of killing Rauf Valiullah are proved from the confessions of appellant Nos.A-5, A-6, A-7 and A-8 which, as mentioned above are candid and unambiguous. Therefore, keeping in view the provisions of Section 15 of the Act as interpreted by this Court in Gurprit Singh's case, Nalini's case, S.N. Dube's case, Lal Singh's case, Devender Paul's case and Jameel Ahmad's case, we hold that the appellants are guilty of offence under Section 302 read with Section 120B IPC and no independent corroboration is required for sustaining their conviction.

57. De-hors the above conclusion, we find that the prosecution has produced sufficient corroborative evidence and the trial Court did not commit any error in relying upon the same to support its conclusion that the appellants are guilty of offence under Section 302 read with Section 120B IPC and other offences. PW 58, Bhagwan Das Lalwani (proprietor of K.P. Auto Consultant), PW 50, Prakash Bhagwan Das Lalwani, PW 53, Naresh Chauhan (RTO Agent), PW 59, Raju Morandani (employee of the RTO agent, Naresh Chauhan), PW 44, Vijay Kumar More (Motor Vehicle Inspector in RTO Office, Ahmedabad) have given detailed account of the purchase of Bajaj Scooter bearing No.GJ-1C-2797 by Abdul Latif under fictitious name of Maksood Ahmed, its registration, which was used by appellant No.A-7 and A-8 as back up party on the date of incident. PW 72, Jayanti Hira Lal Panchal, Police Sub-Inspector had seized scooter No.GJ- 1C-2797 on 14.10.1992 of which possession was taken by the CBI on 23.3.1993. PW 111, Mohd. Khan Pathan, who is related to appellant No.A- 7, Amin Choteli, has given evidence regarding purchase of four tickets from S.K. Travels for Amin Choteli and his companions for going from Baroda to Bombay. PW 112, Sirajuddin Ajimuddin Sheikh is the owner of S.K. Travels from whom PW 111 had purchased four tickets on 10.11.1992. PW 100, S.K. Sakia, the then Deputy Inspector General of Police, CID, Gujarat State furnished details of 14 other cases registered against appellant No.A-4, 3 cases against appellant No.A-5, 1 case against appellant No.A-6, 18 cases against appellant No.A-7, 3 cases against appellant No.A-8, 1 case against appellant No.A-10 and 3 cases against appellant No.A-11. PW 35, Rajni Kant Ganpat Patel, who was employed as peon in Dairy Den India Private Ltd. having office at Madhuban building has stated that on 9.10.1992 he had seen appellant No.A-5 who fled after shooting Rauf Valiullah while the latter was about to sit in the car of PW 28. He has stated that appellant No.A-5, Mohd. Fighter fled away from the spot on the scooter driven by appellant No.A-6. He also identified appellant Nos.A-5 and A-6 in the Test Identification Parade. PW 28, Pradeep Nautamal Dave @ Baka Bhai is the complainant and the eye witness. He gave detailed account of his coming with Rauf Valiullah to the office of Dairy Den India Private Ltd. situated in Madhuban building, handing over of memorandum for the purpose of typing and shooting of Rauf Valiullah while he was sitting on the car. In the Test Identification Parade held on 19.8.1993, he identified appellant No.A-6. PW 29, Raju Bhai Nayak, who was working as a labour at construction site of Western Hotel opposite to Madhuban building stated that he saw firing of bullets by a person who was earlier sitting on the pillion of the scooter and then fleeing away of two persons on the scooter. He also saw that the person with bullet injuries fell down on the ground and was taken to the hospital. PW 11, Parijat N. Damania is the typist to whom Rauf Valiullah had given papers for typing in the office of Dairy Den India Private Ltd. PW-49, Govind Bhai Babu Bhai is the person who sold Bullet Motorcycle No.GAC-6005 to appellant No.A-5 in 1991. He identified appellant No.A-5 in the Court. PW 55, Rajender Singh Prem Singh Chawla, PW 88, Rajesh Rajender Nath Mehta, PW 116, Susharta Dutta, General Secretary of Union

Power Lifting Federation have given evidence that appellant No.A-5 was not a member of the power lifting team which visited Durgapur and yet he came to the venue of championship on 14.10.1992. Learned counsel for the appellants could not point out any serious infirmity in the appreciation of the evidence of the afore-mentioned witnesses by the trial Court.

58. In the result, we hold that the trial Court did not commit any error in recording a finding that charges of conspiracy and murder are proved against the appellants. Consequently, the appeals fail and are dismissed.

..... J.

(B.N. Agrawal)J. (G.S. Singhvi) New Delhi November 18, 2008.