Devender Pal Singh vs State National Capital Territory Of ... on 22 March, 2002

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Bench: M.B. Shah, B.N. Agarwal, Arijit Pasayat

JUDGMENT

Arijit Pasayat, J.

1. Notwithstanding my profound respect for Brother Shah's erudition, Iam unable to agree with his conclusions. While dealing with an accusedtried under the TADA, certain special features of the said Statute need tobe focused. It is also necessary to find out the legislative intent forenacting it. It defines "terrorist acts" in Section 2(h) with reference toSection 3(1) and in that context defines a terrorist. It is not possible todefine the expression 'terrorism' in precise terms. It is derived from theword 'terror'. As the statement of Objects and Reasons leading toenactment of the TADA is concerned, reference to The Terrorist andDisruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the'Old Act') is necessary. It appears that the intended object of the said Actwas to deal with persons responsible for escalation of terrorist activities inmany parts of the country. It was expected that it would be possible tocontrol the menace within a period of two years, and life of the Act wasrestricted to the period of two years from the date of its commencement.But noticing the continuance of menace, that too on a larger scale TADAhas been enacted. Menace of terrorism is not restricted to our country, andit has become a matter of international concern and the attacks on theWorld Trade center and other places on 111 th September, 2001 amply show it. Attack on the

Parliament on 13 th December, 2001 shows how grim thesituation is. TADA is applied as an extreme measure when police fails totackle with the situation under the ordinary penal law. Whether thecriminal act was committed with an intention to strike terror in the peopleor section of people would depend upon the facts of each case. As wasnoted in Jayawant Dattatray Suryarao etc. etc. v. State of Maharashtraetc. etc. (2001 AIR SCW 4717), for finding out the intention of theaccused, thee would hardly be a few cases where there would be directevidence. It has to be mainly inferred from the circumstances of each case.

2. In Hitendra Vishnu Thakur and Ors. v. State of Maharashtra andOrs. , this Court observed that "the legal positionremains unaltered that the crucial postulate for judging whether the offenceis a terrorist act falling under Act or not is whether it was done with theintent to overawe the Government as by law established or to strike terrorin the people etc. A 'terrorist' activity does not merely arise by causingdisturbance of law and order or of public order. The fall out of theintended activity is to be one that it travels beyond the capacity of theordinary law enforcement agencies to tackle it under the ordinary penallaw. It is in essence a deliberate and systematic use of coerciveintimidation". As was noted in the said case, it is a common feature thathardened criminals today take advantage of the situation and by wearingthe cloak of terrorism, aim to achieve acceptability and respectability in thesociety; because in different parts of the country affected by militancy, aterrorist is projected as a hero by a group and often even by manymisguided youth. As noted at the outset, it is not possible to preciselydefine "terrorism". Finding a definition of "terrorism" has hauntedcountries for decades. A first attempt to arrive at an internationallyacceptable definition was made under the League of Nations, but theconvention drafted in 1937 never came into existence. The UN MemberStates still have no agreed-upon definition. Terminology consensus would,however, be necessary for a single comprehensive convention on terrorism,which some countries favour in place of the present 12 piecemealconventions and protocols. The lack of agreement on a definition ofterrorism has been a major obstacle to meaningful internationalcountermeasures. Cynics have often commented that one State's "terrorist"is another State's "freedom fighter". If terrorism is defined strictly in termsof attacks on non-military targets, a number of attacks on militaryinstallations and soldiers' residences could not be included in the statistics.In order to cut through the Gordian definitional knot, terrorism expert A.Schmid suggested in 1992 in a report for the then UN Crime Branch that itmight be a good idea to take the existing consensus on what constitutes a"war crime" as a point of departure. If the core of war crimes -deliberateattacks on civilians, hostage taking and the killing of prisoners - isextended to peacetime, we could simply define acts of terrorism as"peacetime equivalents of war crimes".

1. League of Nations Convention (1937) : "All criminal acts directed against a State along with intended orcalculated to create a statute of terror in the minds of particularpersons or a group of persons or the general public".

(GA Res. 51/210 Measures to eliminate international terrorism) "1. Strongly condemns all acts, methods and practices of terrorismas criminal and unjustifiable, wherever and by whomsoevercommitted;

2. Reiterates that criminal acts intended or calculated to provokea state of terror in the general public, a group of persons or particularpersons for political purposes are in any circumstances unjustifiable,whatever the considerations of a political, philosophical, ideological,racial, ethnic, religious or other nature that may be invoked to justifythem".

3. Short legal definition proposed by A.P. Schmid to UnitedNations Crime Branch (1992) : Act of Terrorism = Peacetime Equivalent of War Crime

4. Academic Consensus Definition: "Terrorism is an anxiety-inspiring of repeated violent action,employed by (semi-) clandestine individual, group or state or actors,for idiosyncratic, criminal or political reasons, whereby - in contrastto assassination - the direct targets of violence are not the maintargets. The immediate human victims of violence are generallychosen randomly (targets of opportunity) or selectively(representative or symbolic targets) from a target population, andserve as message generators. Threat- and violence-basedcommunication processes between terrorism (organization),(imperiled) victims, and main targets are used to manipulate themain target (audience (s)), turning it into a target of terror, a target ofdemands, or a target of attention, depending on whetherintimidation, coercion, or propaganda is primarily sought" (Schmid,1988).

Definitions:

> 3. Terrorism by nature is difficult to define. Acts of terrorismconjure emotional responses in the victims (those hurt by theviolence and those affected by the fear) as well as in thepractitioners. Even the U.S. government cannot agree on one singledefinition. The old adage, "One man's terrorist is another man'sfreedom fighter" is still alive and well. Listed below are severaldefinitions of terrorism used by the Federal Bureau of Investigation.

Terrorism is the use or threatened use of force designed to bringabout political change. - Brian Jenkins Terrorism constitutes the illegitimate use of force to achieve apolitical objective when innocent people are targeted. - WalterLaqueur.

Terrorism is the premeditated, deliberate, systematic murder,mayhem, and threatening of the innocent to create fear andintimidation in order to gain a political or tactical advantage, usuallyto influence an audience. - James M. Poland Terrorism is the unlawful use or threat of violence against persons orproperty to further political or social objectives. It is usuallyintended to intimidate or coerce a government, individuals orgroups, or to modify their behavior or politics. - Vice President'sTask Force, 1986 Terrorism is the unlawful use of force or violence against persons orproperty to intimidate or coerce a government, the civilianpopulation, or any segment thereof, in furtherance of political orsocial objectives. - FBI Definition

4. The main plea of accused-appellant is that there was nocorroboration to the alleged confessional statement. Variouscircumstances, according to him, clearly show that it was not voluntary.Strong reliance is placed in State v. Nalini and Ors. to contend that corroboration is necessary. It is to be noted that legislaturehas set different standards of admissibility of a confessional statementmade by

an accused under the TADA from those made in other criminalproceedings. A confessional statement recorded by a police officer notbelow the rank of Superintendent of Police under Section 15 of the TADAis admissible, while it is not so admissible unless made to the Magistrateunder Section 25 of the Indian Evidence Act, 1872 (in short the 'EvidenceAct'). It appears consideration of a confessional statement of an accused toa police officer except to the extent permitted under Section 27 of theEvidence Act is not permissible. These aspects are noted by this Court in Sahib Singh v. State of Haryana and GurdeepSingh's case (supra). There is one common feature, both in Section 15 ofthe TADA and Section 24 of the Evidence Act that the confession has to bevoluntary. Section 24 of the Evidence Act interdicts a confession, if itappears to the court to be the result of any inducement, threat or promise incertain conditions. The principle therein is that confession must bevoluntary. Section 15 of the TADA also requires the confession to bevoluntary. Voluntary means that one who makes it out of his own free willinspired by the sound of his own conscience to speak nothing but the truth.As per Stroud's Judicial Dictionary, 5th Edn., at p. 2633, threat means. "It is the essence of a threat that it be made forthe purpose of intimidating, or overcoming, the will ofthe person to whom it is addressed [per Lush, J., Woodv. Bowron (1866) 2 QB 21) cited Intimidate]."

Words and Phrases, Permanent Edition Vol. 44,p. 622, defines "voluntary" as: " 'Voluntary' means a statement made of the freewill and accord of accused, without coercion, whetherfrom fear of any threat of harm, promise, or inducementor any hope of reward -. State v. Mullin (85 NW 2d598, 600, 249 loan 10)."

At p. 629, "confession" is defined as: "where used in connection with statements byaccused, words 'voluntary' and 'involuntary' importstatements made without constraint or compulsion byothers and the contrary. Commonwealth v. Chin Kee(186 NE 253, 260, 283 Mass 248)."

In Words and Phrases by John B. Saunders, 3rdEdn., Vol. 4 p. 401, "voluntary" is defined as:

> ".....The classic statement of the principle is thatLord Summer in Ibrahim v. Regem (1914 AC 599) (atp. 609) where he said, "It has long been established as apositive rule of English criminal law that no statementby an accused is admissible in evidence against himunless it is shown by the prosecution to be a voluntarystatement, in the sense that it has not been obtainedfrom him either by fear of prejudice or hope ofadvantage exercised or held bout by a person inauthority. The principle is as old as Lord Hale".However, in five of the eleven textbooks cited to us...support is to be found for a narrow and rather technicalmeaning of the word "voluntary". According to thisview "voluntary" means merely that the statement hasnot been made in consequence of (i) some promise ofadvantage of some threat (ii) of a temporal character(iii) held out or made by a person in authority, and (iv)relating to the charge in the sense that it implies that theaccused's position in the contemplated proceedings willor may be better or words according to whether or notthe statement is made." R. v. Harz, R. v. Power (1966)3 All ER 433 (at pp. 454, 455) per Cantley, V.' So the crux of making a statement voluntarily is, whatis intentional, intended, enameled by other influences,acting on one's own will, through his own conscience.Such confessional statements are made mostly out of athirst to speak the

truth which at a given timepredominates in the heart of the confessor which impelshim to speak out the truth. Internal compulsion of theconscience to speak out the truth normally emergeswhen one is in despondency or in a perilous situationwhen he wants to shed his cloak of guilt and nothingbut disclosing the truth would dawn on him. Itsometimes becomes so powerful that he is ready to faceall consequences for clearing his heart.

5. As was observed in Nallini's case (supra) TADA was enacted tomeet extraordinary situation existing in the country. Its departure from thelaw relating to confession as contained in the Evidence Act is deliberate.Section 24 of the Evidence Act deals with confession caused byinducement, threat or promise, which is irrelevant in criminal proceedings.The expression "confession" has not been defined in the Evidence Act.Broadly speaking it is an admission made at any time by a person chargedwith crime, stating or suggesting the inference that he committed thatcrime. Law relating to confessions is to be found generally in Section 24to 30 of the Evidence Act, and Sections 162, and 164 of the Code ofCriminal Procedure, 1898 (hereinafter described as "old Code")corresponding to identical provisions of Code of Criminal Procedure, 1973(described as "Code" hereinafter). Confession is a species of admission.A confession or admission is evidence against maker of it, if itsadmissibility is not excluded by some provision of law. Law is clear that aconfession cannot be used against an accused persons unless the Court issatisfied that it was voluntary. At that stage question whether it is true orfalse does not arise. If the facts and circumstances surrounding the makingof a confession appear to cast a doubt on the voluntariness of theconfession, the Court may refuse to act upon the confession, even if it isadmissible in evidence. The question whether a confession is voluntary ornot is always a question of fact. A free and voluntary confession isdeserving of highest credit, because it is presumed to flow from the highestsense of guilt. In Principle and Digest of Law of Evidence, Volume I, NewEdition by Chief Justice M. Monir, after noticing conflicting views anddiscussing various authorities, the learned author summarized the positionas follows: "The rule may therefore, be stated to be that whereasthe evidence in proof of a confession having been made isalways to be suspected the confession, if once proved to havebeen made and made voluntarily, is one of the most effectualproofs in the law."

6. As was noted in Gurdeep Singh's case (supra), whenever an accusedchallenges that his confessional statement is not voluntary, the initialburden is on the prosecution for it has to prove that all requirements underSection 15 of TADA and Rule 15 of Terrorist and Disruptive Activities(Prevention) Rules, 1987 (hereinafter referred to as "Rule") have beencomplied with. Once this is done the prosecution discharges its burden andthen it is for the accused to show and satisfy the Court that theConfessional statement was not made voluntarily. The confessionalstatement of the accused can be relied upon for the purpose of conviction,and no further corroboration is necessary if it relates to the accusedhimself. It has to be noted that in Nalini's case (supra), by majority it washeld that as a matter of prudence the Court may look for somecorroboration if confession is to be used against a co-accused though thatwill be again within the sphere of appraisal of evidence. It is relevant tonote that in Nalini's case (supra), the Court was considering thepermissibility of conviction of a co-accused on the confessional statementmade by another accused. In this case, we are concerned with the questionas to whether the accused making the confessional statement can beconvicted on the basis of that alone without any corroboration.

Thefollowing observations in Jayawant Dattatray's case (supra) are relevant:

> "Confessional statement before the police officerunder Section 15 of the TADA is substantive evidenceand it can be relied upon in the trial of such person orco-accused, abettor or conspirator for an offencepunishable under the Act or the rules. The policeofficer before recording the confession has to observethe requirement of Sub-section (2) of Section 15. Irregularities here and there would not make suchconfessional statement inadmissible in evidence. If theLegislature in its wisdom has provided afterconsidering the situation prevailing in the society thatsuch confessional statement can be used as evidence, itwould not be just, reasonable and prudent to waterdown the scheme of the Act on the assumption that thesaid statement was recorded under duress or was notrecorded truly by the concerned officer in whom faith isreposed. It is true that there may be some cases wherethe power is misused by the concerned authority. Butsuch contention can be raised in almost all cases and itwould be for the Court to decide to what extent the saidstatement is to be used. Ideal goal may be:-confessional statement is made by the accused asrepentance for his crime but for achieving such idealgoal there must be altogether different atmosphere inthe society. Hence, unless a fool-proof method isevolved by the society or such atmosphere is created,there is no alternative, but to implement the law as it is.
>
> (Underlined for emphasis)

7. Learned counsel for the appellant has tried to show that thewitnesses examined have given lie to some parts of the confessionalstatement, like hiring of the room, purchase of the car etc. It is true thatthe witnesses have not spoken about the role of the appellant in the allegedtransactions. But, as was rightly submitted by learned counsel for therespondent, the very fact that these witnesses have stated about the identitygiven by the perspective tenants, the purchase of the car are factors whichdo not go in favour of the appellant, but against him. Otherwise, howwould be accused-appellant in his confessional statement state about theidentity disclosed by the perspective tenant and purchase of the car.Learned counsel for the appellant contended that these facts had come toknowledge of the police prior to the apprehension of the accused-appellantand, therefore, they have utilized their previous knowledge and put it in theconfessional statement. Such a contention has to be noticed to be rejected.Once it is held that the confessional statement is voluntary, it would not beproper to hold that the police has incorporated certain aspects in theconfessional statement which were gathered in the investigation conductedearlier. It is to be noted further that the appellant's so called retraction waslong after he was taken into judicial custody. While he was taken tojudicial custody on 24.3.1995, after about a month, he made a grievanceabout the statement having been forcibly obtained. This is clearly a case ofafter-thought. Since the confessional statement was voluntary, nocorroboration for the purpose of its acceptance is necessary.

8. Three other aspects were highlighted to raise doubt aboutauthenticity of prosecution version. The are: (i) circumstances about thealleged attempt to swallow the cyanide pill, (ii) non-dispatch of

theconfessional statement to the ACMM or the CJM and (iii) the typedcertificate given by the officer recording the evidence, when under Rule15(3)(b) of the Rules, requirement is a certification "under his own hand".

9. It is to be noted that Ex. PW83/B is the copy of the personal searchmemo of the accused and Serial No. 6 refers to cyanide capsules. Merelybecause no statement has been made by witnesses about the attempt toswallow the cyanide, that does not, in any way, dilute the evidencerecording seizure of a cyanide capsule from the accused-appellant.Mention about the cyanide capsule in the confessional statement goes along way to show that the statement was truthful. So far as the alleged non-dispatchof the confessional statement is concerned, evidence of PW.133 -B.B. Chaudhary, ASJ is significant. On 24.1.1995, he was working asACM, New Delhi. An application Ex. PW.133/A was put up before him byACP Shri K.S. Bedi (P.W. 130) regarding request for recording statementunder Section 15 of the TADA made by of the accused-appellant. He wasalso produced before the ACM, who asked him whether his confessionalstatement was recorded on 23.1.1995 by DCP Shri B.S. Bola (PW 121).He answered in the affirmative and his signatures were also obtained onthe application in confirmation of his admission having made a statementbefore the DCP. When the accused was produced before the ACM, he didnot make any grievance that his confessional statement was not in factrecorded as claimed or that his signatures were obtained on blank pieces ofpaper as claimed latter. Such a plea was raised after a long passage of time.It is further relevant to note that when the accused was produced in Court,he never made any grievance about any duress or coercion. It is to be notedthat the confessional statement was sent directly to the Designated Courtand was received at 12.45 p.m. Merely because the report was sent directlyto the Designated Court, it does not become a suspicious circumstance.Rather, it adds to the authenticity of the document. It has been noted by thelearned Trial Judge that the accused was produced in Court only at 2.00p.m. and the confessional statement had reached the Designated Courtbefore that time. The purpose of the confessional statement being sent tothe Court by producing the accused for confirmation of the statement is toensure that interpolation or manipulation is ruled out at a later date. Asnoted above, the confessional statement in this case had been sent to theDesignated Court before producing the accused before the ACMM. Thatbeing so, in the absence of any prejudice to the accused, non-dispatch ofthe confessional statement to the ACM is really of no consequence. In anyevent the prescription regarding despatch is directory and not mandatory.In Jayawant Dattaray's case (supra) a similar contention was rejected. Itwas observed that as per Rule 15 what is mandatory is that the confessionalstatement should be forwarded to the Designated Court, which may takecognizance of the offence. Violation, if any, in the matter of dispatch tothe Chief Judicial Magistrate cannot be held to be incurable illegality. (SeeRe: Wariyam Singh and Ors. v. State of U.P. .

10. The other aspect on which great emphasis has been laid by learnedcounsel for the appellant is regarding the manner of recording of theconfessional statement. Evidence of PW 131 - ASI Kamlesh is of greatimportance. The confessional statement runs into 9 pages. The witness hascategorically stated that she had recorded the confessional statement oncomputer as per the diction of the DCP. In her cross-examination, shehas stated that the time taken was 6 hours. The accused has taken a standthat his signatures were taken on blank papers. As noted above, theaccused never made a grievance about any deficiency in the confessionalstatement till 19.4.1995. That is of great significance. Merely because theconfessional statement was recorded in a computer, it cannot be a

groundfor holding that the confessional statement was not voluntary. Similarly,as DCP has given a certificate in typing when the requirement is thatcertificate has to be "under his own hand" that is urged to be illegal. Itwould be too technical to discard the confessional statement or doubt itsauthenticity on that score. This is merely a procedural requirement. Thenon-observance does not cause any prejudice to the accused. It has notbeen shown as to how the accused was prejudiced by the certificatehaving been typed. Procedure is handmade and not the mistress of law,intended to subserve and facilitate the cause of justice and not to govern orobstruct it. Like all rule of procedure, the requirement of recording "underhis own hand" demands an approach which would be rational and practicaland not otherwise. Such minor deficiency, if any, cannot be considered tobe a fatal factor so far as prosecution case is concerned. There is one moreimportant aspect which needs to be noted. Admittedly, the accused was afugitive and was on the run. At the India Gandhi International Airport hewas arrested for travelling on a forged passport. It has been accepted by theaccused in his statement recorded under Section 313 of the Code that hehad sought asylum in Germany and was deported from there on refusal ofasylum. As the records reveal Shri K.S. Bedi (PW.130) brought to thenotice of Shri B.S. Bhola (PW.121) that on 22.1.1995 the accused wantedhis statement to be recorded under Section 15 of the TADA and requestedShri B.S. Bhola (PW.121) to do the needful. Shri Bhola talked to theaccused after sending everyone except his P.A. (PW.131) out of the room,and asked him whether he was making a statement without any fear orduress etc. He was also intimated that the statement could be used inevidence against him. Despite that, the accused wanted his statement to berecorded. Shri Bhola had given time to the accused till 23.1.1995. The I.O.was directed to produced the accused on the next date at 2.00 p.m. On23.1.1995 the accused was again produced in the office of Operation Cell,Lodhi Estate. He was asked whether the statement was voluntary or underpressure. After ensuring that all procedures and safeguards have beenobserved the statement was recorded. A mere statement that requisiteprocedures and safeguards were not observed or that statement wasrecorded under duress or coercion, is really of no consequence. Such astand can be taken in every case by the accused after having given theconfessional statement. It could not be shown as to why the officials wouldfalsely implicate the accused. There is a statutory presumption underSection 114 of the Evidence Act that judicial and official acts have beenregularly performed. The accepted meaning of Section 114(e) is that whenan official act is proved to have been done, it will be presumed to havebeen regularly done. The presumption that a person acts honestly appliesas much in favour of a police officer as of other persons, and it is notjudicial approach to distrust and suspect him without good groundstherefore. Such an attitude can do neither credit to the magistracy nor goodto the public. It can only run down the prestige of police administration.[See Aher Raja Khima v. State of Saurashtra].

11. It has been highlighted by the accused that because of co-accused'sacquittal the case of conspiracy highlighted by the presentation getsdemolished.

12. Section 120B IPC is the provision which provides for punishmentfor criminal conspiracy. Definition of "criminal conspiracy" given inSection 120A reads as follows:

> "120-A- When two or more persons agree to do, orcause to be done-

(1) an illegal act, or (2) an act which is not illegal by illegal means, suchan agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement tocommit an offence shall amount to a criminal conspiracyunless some act besides the agreement is done by one or moreparties to such agreement in pursuance thereof."

13. The element of a criminal conspiracy have been stated to be: (a) anobject to be accomplished, (b) a plan or scheme embodying means toaccomplish that object, (c) an agreement or understanding between two ormore of the accused persons whereby they become definitely committed toco-operate for the accomplishment of the object by the means embodied inthe agreement, or by any effectual means, (d) in the jurisdiction where thestatute required an overt act. The essence of a criminal conspiracy is theunlawful combination and ordinarily the offence is complete when thecombination is framed. From this, it necessarily follows that unless thestatute so requires, no overt act need be done in furtherance of theconspiracy, and that the object of the combination need not beaccomplished, in order to constitute an indictable offence. Law makingconspiracy a crime is designed to curb immoderate power to do mischiefwhich is gained by a combination of the means. The encouragement andsupport which co-conspirators give to one another rendering enterprisespossible which, if left to individual effort, would have been impossible,furnish the ground for visiting conspirators and abettors with condignpunishment. The conspiracy is held to be continued and renewed as to allits members wherever and whenever any member of the conspiracy acts infurtherance of the common design. (See American Jurisprudence Vol. IISection 23, p. 559). For an offence punishable under Section 120B,prosecution need not necessarily prove that the perpetrators expresslyagree to do or cause to be done illegal act; the agreement may be proved bynecessary implication. Offence of criminal conspiracy has its foundation inan agreement to commit an offence. A conspiracy consists not merely inthe intention of two or more, but in the agreement of two or more to do anunlawful act by unlawful means. So long as such a design rests in intentiononly, it is not indictable. When two agree to carry it into effect, the veryplot is an act in itself, and an act of each of the parties, promise againstpromise, actus contra actum, capable of being enforced, if lawful,punishable if for a criminal object or for use of criminal means.

14. No doubt in the case of conspiracy there cannot be any directevidence. The ingredients of offence are that there should be an agreementbetween persons who are alleged to conspire and the said agreementshould be for doing an illegal act or for doing illegal means an act whichitself may not be illegal. Therefore, the essence of criminal conspiracy isan agreement to do an illegal act and such an agreement can be provedeither by direct evidence or by circumstantial evidence or by both, and it isa matter of common experience that direct evidence to prove conspiracy israrely available. Therefore, the circumstances proved before, during andafter the occurrence have to be considered to decide about the complicityof the accused.

15. In Halsbury's Laws of England (Vide 4 th Ed., Vol. 11, page 44, para58), the English Law as to conspiracy has been stated thus-

> "Conspiracy consists in the agreement of two or morepersons to do an unlawful act, or to do a lawful act byunlawful means. It is an indictable offence at common law,the punishment for which is imprisonment or fine or both inthe discretion of the Court.
>
> The essence of the offence of conspiracy is the fact ofcombination by agreement. The agreement may be express orimplied, or in part express and in part implied. The conspiracyarises and the offence is committed as soon as the agreementis made; and the offence continues to be committed so long asthe combination persists, that is until the conspiratorialagreement is terminated by completion of its performance orby abandonment or frustration or however, it may be. Theactus reus in a conspiracy is the agreement to execute theillegal conduct, not the execution of it. It is not enough thattwo or more persons pursued the same unlawful object at thesame time or in the same place; it is necessary to show ameeting of minds, a consensus to effect an unlawful purpose.It is not, however, necessary that each conspirator should havebeen in communication with every other."

16. There is no difference between the mode of proof of the offence ofconspiracy and that of any other offence, it can be established by direct orcircumstantial evidence . [See Bhagwan Swarup etc. etc. v. State ofMaharashtra (AIR 1965 SC 682 at p. 686)].

17. Privacy and secrecy are more characteristics of a conspiracy, then ofa loud discussion in an elevated place open to public view. Direct evidencein proof of a conspiracy is seldom available, offence of conspiracy can beproved by either direct or circumstantial evidence. Its not always possibleto give affirmative evidence about the date of the formation of the criminalconspiracy, about the persons who took part in the formation of theconspiracy, about the object, which the objectors set before themselves asthe object of conspiracy, and abut the manner in which the object ofconspiracy is to be carried out, all this is necessarily a matter of inference.

18. The provisions of Sections 120A and 120B, IPC have brought thelaw of conspiracy in India in line with the English Law by making theovert act unessential when the conspiracy is to commit any punishableoffence. The English Law on this matter is well-settled. Russell on Crime(12 Ed. Vol.1, p.202) may be usefully noted- "The gist of the offence of conspiracy then lies, not indoing the act, or effecting the purpose for which theconspiracy is formed, nor in attempting to do them, nor ininciting others to do them, but in the forming of the scheme oragreement between the parties agreement is essential. Mereknowledge, or even discussion, of the plan is not, per se,enough."

19. Glanville Williams in the "Criminal Law" (Second Ed p.382)states- "The question arose in an lowa case, but it wasdiscussed in terms of conspiracy rather than of accessoryship.D, who had a grievance against P. told E that if he wouldwhip P someone would pay his fine. E replied that he did notwant anyone to pay this fine. that he had a grievance of hisown against P and that he would whip him at the firstopportunity. E whipped P. D was acquitted of conspiracybecause there was no agreement for 'concert of action, noagreement to 'co-operate'.

20. Coleridge, J, while summing up the case to Jury in Regina v. Murphy (1937) 173 ER 502 at p. 508) states: "I am bound to tell you, that although the commondesign is the root of the charge, it is not necessary to provethat these tow parties came together and actually agreed interms to have this common design and to pursue it bycommon means, and so to carry ti into execution. This is notnecessary, because in many cases of the most clearlyestablished conspiracies there are not means of proving naysuch thing, and neither law nor common sense requires that itshould be proved. If you find that these two persons pursuedby their acts the same object, often by the same means, oneperforming one part of an act, so as the complete it, with aview to the attainment of the object which they were pursuing,you will be at liberty to draw the conclusion that they havebeen engaged in a conspiracy to effect that object. Thequestion you have to ask yourselves is. 'Had they thiscommon design, and did they pursue it by these commonmeans the design being unlawful."

21. As noted above, the essential ingredient of the offence of criminalconspiracy is the agreement to commit an offence. In a case where theagreement is for accomplishment of an act which by itself constitutes anoffence, then in that event no overt act is necessary to be proved by theprosecution because in such a situating criminal conspiracy is establishedby proving such an agreement. Where the conspiracy alleged is with regardto commission of a serious crime of the nature as contemplated in Section120B read with the proviso to Sub-section (2) of Section 120A, then inthat event mere proof of an agreement between the accused forcommission of such a crime alone is enough to bring about convictionunder Section 120B and the proof of any overt act by the accused or byany one of them would not be necessary. The provisions, in such asituation, do not require that each and very person who is a party to theconspiracy must do some overt act towards the fulfillment of the object ofconspiracy, the essential ingredient being an agreement between theconspirators to commit the crime and if these requirements and ingredientsare established, the act would fall with in the trapping of the provisionscontained in Section 120B [See S.C. Bahri v. State of Bihar].

22. The conspiracies are not hatched in open, by their nature, they aresecretly planned, they can be proved even by circumstantial evidence, thelack of direct evidence relating to conspiracy has no consequence. [See E.K. Chandrasenan v. State of Kerala].

23. In Kehar Singh and Ors. v. State (Delhi Administration) , this Court observed- "Generally, a conspiracy is hatched in secrecy and itmay be difficult to adduce direct evidence of the same. Theprosecution will often rely on evidence of acts of variousparties to infer that they were done in reference to theircommon intention. The prosecution will also more often relyupon circumstantial evidence. The conspiracy can beundoubtedly proved by such evidence direct or circumstantial.But the Court must enquire whether the two persons areindependently pursuing the same end or they have cometogether to the pursuit of the unlawful object. The former doesnot render them conspirators, but the latter does. It is,however, essential that the offence of conspiracy requiredsome king of physical manifestation of agreement. Theexpress agreement , however, need not be proved. Nor actualmeeting of the two persons is necessary. Nor it is necessary toprove the actual words of communication. The evidence as totransmission of thoughts sharing the unlawful design may besufficient. Conspiracy can be proved by circumstances andother materials. (See: State of Bihar v. Paramhans [1986 PatLJR 688]. To establish a charge of conspiracy knowledgeabout indulgence in either an illegal act or a legal act byillegal means is necessary. In some cases, intent of unlawfuluse

being made f the goods or service in question may beinferred form the knowledge itself. This apart, the prosecutionhas not to establish that a particular unlawful use wasintended, so long as the goods or service in question could notbe put to any lawful use. Finally, when the ultimate offenceconsists of a chain of actions, ti would not be necessary forthe prosecution to establish, to bring home the charge ofconspiracy, that each of the conspirators had the knowledge ofwhat the collaborator would do so, so long as it is known thatthe collaborator would put the goods or service to an unlawfuluse [See: State of Maharashtra v. Som Nath Thapa (1996Cr.LJ 2448 at p. 2453(SC)].

24. Where trust worthy evidence establishing all links of circumstantialevidence is available, the confession of a co-accused as to conspiracy evenwithout corroborative evidence can be taken into consideration. [See Baburao Bajirao patil v. State of Maharashtra]. It canin some cases be inferred for the acts and conduct of parties. [See Shivanarayan Laxminarayan Joshi and Ors. v. State of Maharashtra andOrs.].

25. It is submitted that benefit of doubt should be given on account ofco-accused's acquittal.

26. Exaggerated devotion to the rule of benefit of doubt must not nurturefanciful doubts or lingering suspicions and thereby destroy social defence.Justice cannot be made sterile on the plea that it is better to let hundredguilty escape than punish an innocent. Letting guilty escape is not doingjustice according to law. [See Gurbachna Singh v. Stapal Singh and Ors.]. Prosecution is not required to meet any and everyhypothesis put forward by the accused. [See State of U.P. v. Ashok KumarSrivastava].

27. If a case is proved perfectly it is argued that it is artificial; if a casehas some flaws, inevitable because human beings are prone to err, it isargued that it is too imperfect. One wonders whether in the meticuloushypersensitivity to eliminate a rare innocent form being punished, manyguilty persons must be allowed to escape. Proof beyond reasonable doubtis a guideline, not a fetish. [See Inder Singh and Anr. v. State (DelhiAdministration)]. Vague hunches cannot take placeof judicial evaluation. "A Judge does not preside over a criminal trial,merely to see that no innocent man is punished. A judge also presides tosee that a guilty man does not escape. Both are public duties." [PerViscount Simon in Stirlant v. Director of Public Prosecution (1944 AC(PC) 315) quoted in State of U.P. v. Anil Singh].

28. When considered in the aforesaid background, the plea thatacquittal of co-accused has rendered prosecution version brittle, has nosubstance. Acquittal of co-accused was on the ground of non-corroboration.That principle as indicated above has no application to accused himself.

29. It has been pleaded that prosecution has failed to place any materialto show as to why accused would make a confessional statementimmediately on return to India. Acceptance of such a plea wouldnecessarily mean putting of an almost impossible burden on theprosecution to show something which is within exclusive knowledge of theaccused. It can be equated with requiring the prosecution to show motivefor a crime. One cannot normally see into the mind of another. What is theemotion which impels another to do a particular act is not expected to beknown by another. It is quite possible the said impelling factors wouldremain undiscoverable. After all, the factors are

psychologicalphenomenon. No proof can be expected in all cases as to how mind of theaccused worked in a particular situation. Above being the position, learnedTrial Judge has rightly held the appellant to be guilty.

30. Coming to the question of sentence of death as awarded by thelearned Trial Judge, the same has to be judged in the background of whatwas stated by this Court in several cases.

31. From Bachan Singh v. State of Punjab and Machhi Singh and Ors. v. State of Punjab , theprinciple culled out is that when the collective conscience of thecommunity is so shocked, that it will expect the holders of the judicialpower center to inflict death penalty irrespective of their personal opinionas regards desirability or otherwise of retaining death penalty, same can beawarded. It was observed:

> "The community may entertain such sentiment in thefollowing circumstances:-
>
> (1) When the murder is committed in an extremelybrutal, grotesque, diabolical, revolting, ordastardly manner so as to arouse intense andextreme indignation of the community.
>
> (2) When the murder is committed for a motivewhich evinces total depravity and meanness; e.g.murder by hired assassin for money or reward;or cold-blooded murder of against of a personvis-a-vis whom the murderer is in a dominatingposition or in a position of trust; or murder iscommitted in the spouse for betrayal of themotherland.
>
> (3) When murder of a member of a Scheduled Casteor minority community etc., is committed not forpersonal reasons but in circumstances whicharouse social wrath, or in cases of bride burningor dowry deaths or when murder is committed inorder to remarry for the sake of extracting dowryonce again or to marry another woman onaccount of infatuation.
>
> (4) When the crime is enormous in proportion. Forinstance when multiple murders, say of all oralmost all the members of a family or a largenumber of persons of a particular caste,community, or locality, are committed.
>
> (5) When the victim of murder is an innocent child,or a helpless woman or old or infirm person or aperson vis-a-vis whom the murderer is in adominating position, or a public figure generallyloved and respected by the community.

If upon taking an overall global view of all thecircumstances in the light of the aforesaid propositionsand taking into account the answers to the questionsposed by ways of the test for the rarest of rare cases, thecircumstances of the case are such that death sentenceis warranted, the Court would proceed to do so".

32. As the factual scenario of the present case shows, at least ninepersons died, several persons were injured, a number of vehicle caughtfire and were destroyed on account of the perpetrated acts. The dastardlyacts were diabolic in conception and cruel in execution. The "terrorists"who are sometimes described as "death merchants" have no respect forhuman life. Innocent persons lose their lives because of mindless killing bythem. Any compassion for such persons would frustrate the purpose ofenactment of TADA, and would amount to misplace and unwarrantedsympathy, Death sentence is the most appropriate sentence in the case athand, and learned trial Judge has rightly awarded it.

33. However, a question arises as to the effect of Brother Shah, J.holding the accused innocent, while deciding the question of sentence.Observations made by this Court in Ramdeo Chauhan v. State of Assam are relevant. It was inter alia observed as follows:-

> "But, a question that remains to be consideredfurther is the effect of conclusion arrived at by mylearned brother Mr. Justice Thomas. Is the accusedremediless; that remains to be seen. Few provisions inthe Code of criminal Procedure (for short "the Code")and others in the Constitution deal with such situation.Sections 432, 433 and 433A of the Code and Articles 72and 161 of the Constitution deal with pardon. Article 72of the Constitution confers upon the President power togrant pardons, reprieves, respites or remission ofpunishment or to suspend, remit or commute sentence ofany person of any offence. The power so conferred iswithout prejudice to the similar power conferred on theGovernor of the Sate. Article 161 of the Constitutionconfers upon the Governor of a State similar powers inrespect of any offence against any law relating to amatter to which the executive power of the State extends,The power under Article 72 and Article 161 of theConstitution is absolute and cannot be fettered by anystatutory provision such as Sections 432, 433 and 433Aof the Code or by any prison rules.
>
> Section 432 of the Code empower the appropriateGovernment to suspend or remit sentences. Theexpression "appropriate Government" means the CentralGovernment in cases where the sentences or order relatesto the matter to which the executive power of the Unionextends, and the State Government in other cases. Therelease of the prisoners condemned to death in exerciseof the powers conferred under Section 432 and Article161 of the Constitution does not amount to interferencewith due and proper cause of justice, as the power of thecourt to pronounce upon the validity, propriety andcorrectness of the conviction and sentence remainsunaffected. Similar power as that contained in Section432 of the Code or Article 161 of the Constitution can beexercised before, during or after trial. The powerexercised under Section 432 of the Code is largely anexecutive power vested in the appropriate Governmentand by reducing the sentence, the authority concernedthereby modifies that judicial sentence. The sectionconfines the power of the Government to the suspensionof the execution of the sentence or remission of thewhole or any part of the punishment. Section 432 of theCode give no power to the Government to revise thejudgment of the court. It only provides power ofremitting the sentence. Remission of punishmentassumes the correctness of the conviction and onlyreduces punishment

in part or whole. The word "remit"as used in Section 432 in not a terms of art. Some of themeanings of the word "remit" are "to pardon, to refrainfrom inflicting, to give up". It is, therefore, no obstacle inthe way of the President or Governor, as the case may bein remitting the sentence of death. A remission ofsentence does not mean acquittal.

The power to commute a sentence of death isindependent of Section 433A. The restriction underSection 433A of the Code comes into operation onlyafter power under Scion 433 is exercised. Section 433Ais applicable to two categories of convicts: (a) thosewho could have been punished with sentence of death,and (b) those whose sentence has been converted intoimprisonment for life under Section 433. It was observedin Maru Ram v. Union of India thatSection 433A does not violate Article 20(1) of theConstitution.

In the circumstances, if any motion is made interms of Section 432, 433 and 433A of the Code and/orArticle 72 or Article 161 of the Constitution as the casemay be, the same may be appropriately dealt with. Itgoes without saying that at the relevant stage, the factorswhich have weighed with my learned Brother Mr. JusticeThomas can be duly taken note of in the context ofSection 432(2) of the Code."

The principles set out above have application to the present case.

34. There is no reason to interfere with the order of learned trial Judge.The appeal deserves to be dismissed which (SIC) direct. Reference as made forconfirmation of death sentence imposed under Section 3(2)(i) is accepted.

B.N. Agrawal, J.

35. I respectfully agree with Brother Pasayat, J.

ORDER OF THE COURT

36. The conviction and sentence passed by the trial Court standsconfirmed by dismissal of the appeal filed by the accused-appellant and thedeath reference is accordingly answered.

Shah, J.

37. By judgment and order dated 24/25.8.2001, in Sessions CaseNo. 4 of 2000, the Designated Court-1, New Delhi convicted theappellant for the offence punishable under Section 3(2)(i) of Terroristand Disruptive Activities (Prevention) Act, 1987 (hereinafter referredto as the 'TADA') and Section 120B read with Section 302, 307,326, 324, 323, 436 and 427 of the Indian Penal Code and sentencedhim to death and also to pay a fine of Rs. 10,000/-. He was alsosentenced to suffer rigorous imprisonment for five years for theoffence punishable under Section 4 and 5 of TADA and to pay a fineof Rs. 10,000/-. Against the judgment and order, the appellant hasfiled Criminal Appeal

No. 993 of 2001 and for confirmation of deathsentence, the State has filed Death Reference Case (Crl.) No. 2 of 2001before this Court.

38. It is the prosecution version that on 11.09.1993 Mr. M.S. Bitta,the then President of Indian Youth Congress (I) was in his office at 5,Raisina Road, New Delhi. At about 2.30 p.m., Mr. Bitta left the officeand the car in which he was travelling came out of the main gate of 5,Raisina Road and one pilot car, in which security personnel providedto him were sitting, was ahead of his car. The pilot car slowed downin order to take right turn on Raisina Road. In the meantime, one buscame on Raisina Road, from the side of Windsor Place. AT the time,there was an explosion in a car parked outside 5, Raisina Road,Though, Mr. Bitta was not hurt badly, a number of other vehiclesparked on the road and footpath caught fire. Because of the Bombblast nine persons succumbed to the injuries and 29 other personssustained injuries. During the course of investigation, it was learntthe Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and DayaSingh Lahoria, all members of KLF, a terrorist organisation, werebehind this blast and their aim was to assassinate Mr. Bitta.

39. It is the further prosecution version that secret information wasreceived that appellant Devender Pal Singh who was in custody ofGerman authorities was to come to Delhi from Frankfurt on the nightof 18/19.1.1995. On his arrival, he was handed over to IGI Airportpolice authorities by Lufthansa Airlines Staff. Immediately upon hisarrest, he tried to swallow cyanide capsule. However, he wasprevented.

40. Other accused Daya Singh Lahoria, who was extradited fromUSA to India was also arrested. He was also tried along with theappellant but was acquitted by the Designated Court on the groundthat there was no evidence against him and that he has not made anyconfessional statement. The Court also observed that there was no iotaof material on record to corroborate confessional statement made byaccused Devender Pal Singh against his co-accused Daya SinghLahoria and prudence requires that in absence of corroboration,benefit should go to Daya Singh Lahoria.

41. In this appeal, learned counsel for the appellant submitted thatexcept the so called confessional statement, there is no other evidenceagainst the appellant and the said confessional statement is neithervoluntary nor true and in any case there is no corroborative evidence.Hence, the judgment and order passed by the Designated Courtconvicting the appellant requires to be set aside.

42. For appreciating the contention raised by the learned counselfor the appellant, the relevant evidence led by the prosecution isrequired to be considered. It is the say of PW37 Inspector SeveraiaKujur that on 19.1.1995 he was posted at Immigration Airport and atthe time of clearance of flight LH-760 at about 2.30 a.m., the staff ofLH flight handed over Devender Pal Singh who was deported fromGermany. He was interrogated by PRO Vigilance and SB Branch andit was found that he was having forged passport, so he made a rukkaunder Sections 419, 420, 468, 471 IPC and Section 12 of the PassportAct. Further, PW83 Inspector Tej Singh Verma, Operation Cell,Lodhi Colony, New Delhi, has also stated that on 19.1.1995 he wasposted in IGI Airport as Sub Inspector and that accused Devender Palwho was deported from Germany was arrested in case FIR No. 22 of1995 for the offences punishable under Sections 419, 420, 468 and471 of the IPC and Section 12 of the Passport Act. During the courseof interrogation, in the said case, he made a disclosure

statement. Hehas also stated that personal search was conducted and that travellingdocuments were recovered from the accused. Along with thedisclosure statement and personal search memo, he was handed overto ACP K.S. Bedi who conducted the investigation of this case. Incross-examination, he has denied that Devender Pal Singh had notmade any disclosure statement and that this signatures were obtainedon blank sheets.

43. Now, as against this, we have to consider the evidence ofPW130 Mr. K.S. Bedi, ACP. It is his say that on the relevant date hewas posted in Operation Cell, Lodhi Colony. He received informationthat an KLF extremist namely Davenderpal Singh @ Deepak has beendetained in Germany in the last week of December, 1994, he wastrying to get released from there and that he would proceed toPakistan or he may be deported to India. He along with other officerswent to IGI Airport to check the incoming passengers from Frankfurt,Germany. At 2.30 a.m., Lufthansa Airlines Staff handed over theaccused who was having forged travelling documents to PW 37. Hetried to swallow a capsule in plastic foil which was caught and afterthis he disclosed that his name was Devender Pal Singh. On thatbasis, IGI airport staff registered a case vide FIR No. 22 dated19.1.1995. It is his further say that on that date he made disclosurestatement describing his involvement in many cases including a bombblast at 5, Raisina Road. Therefore, he collected the copy of thedisclosure statement Ex.PW83/A and made his formal arrest in thepresent case. He produced the accused before Shri B.B. Chaudhary,ACMM, New Delhi and secured his police remand for 10-days. Hewas interrogated on 21.1.1995 and accused again made a disclosurestatement in which he admitted his involvement in the bomb blast atRaisina Road. On 22.1.1995, he gave in writing that he wanted tomake confession. Thereafter, he informed Mr. B.S. Bola, DCP(PW121) for recording the confessional statement. Mr. Bola afterfollowing the procedure recorded his confessional statement on 23rdJanuary, 1995. On 24 th January, 1995, he was produced before theCourt of ACMM, New Delhi before the expiry of police custodyremand and from there the accused was taken by the Punjab Police.In cross-examination, Mr. Bedi has stated that he was not having anyprior information that accused was being deported from Germany toIndia but he had gone to IGI Airport for checking the passengerscoming from Germany in the expectation that the accused might havebeen deported. He also admitted that in pursuance of the disclosurestatement Ex.PW83/1, no article was recovered from the accused or athis pointing out. He further stated that there is no recovery memopertaining to the car recovered from Bulandshahar on the judicial file.However, there is a reference about the car in a photocopy of DDNo. 69 dated 30.10.1993 of PS Bulandshahar. This DD was notbrought by him. He denied the suggestion that the involvement of theaccused persons was within the knowledge of police prior to19.1.1995. He also admitted that on 23.1.1995, the DCP used thecomputer installed in his office for recording the statement of theaccused. He also admitted that he had given a wireless messageinforming the Punjab Police that accused would be produced beforethe court on 24.1.1995 and that is how the Punjab Police had soughthis police remand. He has denied the suggestion that accused wasforced to make a false confessional statement before the DCP and theaccused was deliberately produced prior to the expiry of policeremand and was sent to Punjab. He admits that thereafter accusedremained in police custody for more than two months in Punjab. Infurther cross-examination, he has stated that he had not produced thecopy of the confessional statement or the original before the learnedACMM when the accused was produced before him. He alsoadmitted that before the accused was produced before ACMM on24.1.1995, he was formally arrested by the police of Police StationSriniwaspuri. He also admitted that Investigating Officers of the

casepertaining to P.S. Sriniwaspuri and Punjab Police were present insidethe court when the accused was produced before the ACMM. He hasdenied the suggestion that accused was put under fear and duress orthat he was warned not to reveal the true circumstances under whichthe confessional statement was recorded or that in case he so reveals,he would be done to death by Punjab Police.

44. PW121 Mr. B.S. Bola, DCP recorded the confessionalstatement of accused. In the cross-examination, he has admitted thathe was aware about the entire facts of the case prior to the recordingof the statement of the accused under Section 15 of TADA.

45. The prosecution also led the evidence of PW131 ASI Kamleshwho recorded the confessional statement on the computer as per thedictation of accused which is running into nine pages. She hasadmitted in cross-examination that during the period of six hourswhen his statement was recorded accused was not provided any wateror snacks and the matter typed out on the computer was not saved norit was taken on a floppy.

46. The prosecution has also examined PW133 Mr. B.B.Chaudhary, ASI, Tis Hazari, Delhi, who was ACMM, New Delhi atthe relevant time stated that accused was produced before him whenhe was in police custody. He asked only one question to theaccused whether his statement was recorded by DCP on 23.1.1995?To that, accused answered in affirmative and his signatures wereobtained on the application in confirmation of his admission of havingmade a statement before the DCP. He admitted that he had not askedany other question. It is his say that he did not think it necessary totake the accused to his chamber to assess is mental state. He alsoadmitted that at that time no statement of accused was producedbefore him.

47. From the aforesaid evidence led by the prosecution, questionsthat arise for consideration are - (i) whether the confessionalstatement is true and voluntary? and (ii) whether there is anycorroboration to the said statement?

48. Before considering the evidence led by the prosecution, it is tobe stated that accused in his statement recorded under Section 313Cr.P.C. stated that he had sought asylum in Germany and wasdeported from there on refusal of asylum. He has denied recovery ofcyanide capsule from him. He has also denied having made theapplication Ex.PW121/B expressing desire to make a confessionalstatement. He has also denied having made the confessionalstatement before Mr. Bola on 23.1.1995. According to him, he wasmade to sign some blank and partly written papers under threat anddduress and entire proceedings were fabricated upon those documents.He has also stated that before he was produced before the ACMM, hewas told that if he made any statement to the Court he would behanded over to Punjab Police who would kill him in an encounter, andas he was under fear, he made a statement before learned ACMM. Hehas also stated that he was taken to Punjab and brought back afterabout three months and thereafter he sent an application from jail on21.4.1995 retracting his confessional statement and clarifying thecircumstances under which the said statement was recorded.

49. It is apparent that Investigating Officer Mr. K.S. Bedi hasimproved his version by stating that accused tried to swallow cyanidecapsule when he was arrested. As against this, it is the say of PW37 Severaia Kujur and PW83 Inspector Tej Singh that accused washanded over to him by the staff of Lufthansa Airlines and nowherethey stated that at that time accused tried to swallow any pill. Itappears that Mr. K.S. Bedi tried to give colour to the story thatappellant tried to swallow the cyanide pill. If that story was genuine,necessary panchnama of the cyanide pill would have been made at thespot. Further, it is admitted position on record that during the courseof investigation of the bomb blast, the police had learnt that Kuldeep,Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria,who were members of KLF, a terrorist organisation, were behind theblast. Therefore, it would be difficult to believe that the IO Mr. Bedihas gone to the Airport only for keeping a watch. On the contraryof involvement of accused and his group in the bomb blast case.Therefore, the version of Mr. Bedi that he had gone at the IGI Airportto check the incoming passengers from Frankfurt Germany cannot berelied upon. From the evidence of DCP Mr. Bola it is apparent thatinformation was received that accused was coming from Germanyand, therefore, a watch at IGI Airport was kept.

50. Apart from the aforesaid improvement, it is difficult to believethat the accused who was arrested for travelling on a forged passportafter landing at the airport, would make a disclosure statementinvolving himself in various crimes including the bomb blast. Therewas no earthly reason to make such disclosure on 19 th itself so thataccused could be arrested by Mr. K.S. Bedi for the allegedinvolvement in the offence under the TADA. It is also admitted thatwhen the accused was produced before ACMM, the confessionalstatement was not produced for the perusal of the ACMM and theACMM only asked him the question--whether he admits makingconfessional statement before DCP B.S. Bola. It would be difficult toaccept that if confessional statement was recorded and when theaccused was produced before the Magistrate, he would be taken therewithout the said confessional statement. Rule 15(5) of TADArequires that every confession recorded under Section 15 shall be sentforthwith to the CMM or the CJM having jurisdiction over the area inwhich such confession has been recorded and such Magistrate shallforward the confession so received to the Designated Court whichmay take cognizance of the offence. In this view of the matter, therewas no reason to produce the accused before the ACMM withoutso-called confessional statement.

51. Further Sub-section (1) of Section 15 of TADA specificallyprovides inter alia that in case confession made by a person before thepolice officer is recorded by such police officer either in writing or onany mechanical device like cassettes, tapes or sound tracks from outof which sounds or images can be reproduced, shall be admissible intrial of such person for an offence under this Act or rules madethereunder. The confessional statement was recorded on computerand floppy thereof is not produced in the court and is admitted to havenot been saved in the computer by ASI Kamlesh.

52. From the aforesaid evidence, it is apparent that the confessionalstatement of the appellant is recorded by DCP B.S. Bola (PW121)who was the Investigating Officer at the relevant time. Admittedly,the accused was in police custody. Thereafter he was handed over tothe Punjab Police. Further, from the record it appears that accusedwas wanted in bomb blast case since 1993 and as soon as he arrived atthe IGI Airport, he was arrested and was handed over to PW130 Mr.K.S. Bedi, ACP. It is stated that Mr. Bedi also recorded the disclosurestatement of the appellant on 21.1.1995,

wherein he admitted hisinvolvement in the bomb blast case. Thereafter, confessionalstatement under Section 15 of the TADA was recovered by DCP B.S.Bola. In such state of affairs, doubt may arise--whether the accusedhas made any confessional statement at all. In Kartar Singh v. Stateof Punjab , this Court observed thus:- "Though it is entirely for the court trying theoffence to decide the question of admissibility orreliability of a confession in its judicial wisdom strictlyadhering to the law, it must, while so deciding thequestion should satisfy itself that there was no trap, notrack and no importune seeking of evidence during thecustodial interrogation and all the conditions required arefulfilled."

53. In such case it would be unsafe to solely rely upon the allegedconfession recorded by Investigating Officer. Further, looking at theoriginal confessional statement, there appears to be some substance inwhat is contended by the accused in his statement under Section 313Cr.P.C. that his signatures were taken on blank paper. Under Rule15(3)(b) of the TADA Rules, the police officer who is recording theconfession has to certify the same "under his own hand" that the saidconfession was taken in his presence and recorded by him and at theend of confession, he has to give certificate as provided thereunder.In the present case, the certificate was not given under the hands ofD.C.P., but was a typed one.

54. Further, for finding out--whether the statement is truthful ornot, -- there must be some reliable independent corroborativeevidence. In the present case, co-accused Daya Singh Lahoria whowas tried together with the appellant was acquitted on the ground thatthere was no evidence against him and that as he had not made anyconfessional statement. However, for connecting the appellant, thelearned Judge has relied upon the decision in Gurdeep Singh v. State(Delhi Admn.), for holding that when theconfessional statement in voluntary, corroboration is not required. Itappears that the Court has not read the entire paragraph of the saidjudgment and has missed the previous lines which read thus:- "For the aforesaid reasons and on the facts andcircumstances of this case, we have no hesitation to holdthat the confessional statement of the appellant is notonly admissible but was voluntarily and truthfully madeby him on which the prosecution could rely for hisconviction. Such confessional statement does not requireany further corroboration. Before reliance could beplaced on such confessional statement, even thoughvoluntarily made, it has to be seen by the court whether itis truthfully made or not. However, in the present casewe are not called upon nor is it challenged that theconfessional statement was not made truthfully."

55. From the aforesaid judgment, it is clear that before solelyrelying upon the confessional statement, the Court has to find outwhether it is made voluntarily and truthfully by the accused. Even ifit is made voluntarily, the Court has to decide whether it is madetruthfully or not. But in Gurdeep Singh's case (supra), there was nochallenge made to the fact that it was not made truthfully.

56. In the confessional statement it is mentioned that accused hiredrooms at Sahibabad, Jaipur at Bangalore. Merely because somehouse numbers are mentioned in confessional statement, it cannot beheld that as house numbers are found by police officers, it is acorroborative piece of evidence. None of the neighbours has deposedbefore the court that the accused stayed in the said houses. To writesuch numbers is easy for investigating officers because they wereinvestigating the case from the

date of the bomb blast i.e. since 1993.No independent witnesses or landlord came forward to depose thataccused resided in the said premises or took it on lease. Noincriminating articles were found from the said house or placesmentioned in confession to connect the accused with the crime. Even PW80 Harcharan Singh who sold the car which was seized at thescene of offence in 1993, has not stated that appellant-accusedpurchased the said car or that acquitted accused Daya Singh purchasedthe same. PW44 Prehlad Sharma, property dealer of Sahibabad,Ghaziabad, stated that in August, 1993 he had arranged a house on rentbasis for two boys, who told themselves to be working as contractor inG.D.A. He, also, filed to identify accused as the boys who came athis shop to take the premises on rent. On 28.9.1993, the police cameto him and informed that some RDX was recovered from that house,shown some photographs to him and he identified two photographs ofthe said person. However, he has not identified the accused as theboy who came at his shop to take the premises on rent. Similarly, PW69 Nasir Siddiqui, who was running a shop of electrical goods atLajpat Nagar had sold one water pump to a customer residing inLajpat Nagar. The police came to his show-room and pointed somephotographs for identification of the person who had purchased thewater pump. He had identified the photograph of that person.However, in the court, he refused to identify the accused as thecustomer who had purchased the water pump from his shop.

57. In any set of circumstances, let us consider the confessionalstatement as it is. In the present case other accused D.S. Lahoria wastried along with the appellant and was acquitted. The role assigned toD.S. Lahoria in the confessional statement in major one. In theconfessional statement, appellant Devenderpal Singh has stated asunder:-

> "I was born in Jullandar on 26.5.65.....I completedpre-engineering examination from Layal Pur KhalsaCollege Jullandhar in 1984 and joined B.E. in theMechanical at Guru Nanak Engineering College,Ludhiana and completed my degree course in1988.....In the month of No.v., 1991, policecame to know about the names of the boys who werebehind the car bomb attack on SSP/Chandigarh and thepolice raided the house Partap Singh where Dr. HariSingh and Videshi had stayed one day before the blast.Partap Singh further disclosed that they are also known tome.... The police raided my house. I was not presentin the house. My father and father-in-law were arrestedby the police..... I was told that he alongwith PartapSingh, Balwant Singh Multani and Navneet SinghKadian @ Pal R/o Village Kadia Distt. Batala and MangalSingh are wanted in SSP/Chandigarh bomb blast case.Thereafter, I went under ground and talked to mymaternal uncle Shri Sukhdev Singh Sandhu inVencouver, Canada who advised me that the chances ofrelease of his father are very minimum as the case relatesto Sumed Singh Saini and that he should also go underground.
>
> In August, 1993, plans were chalked out toeliminate M.S. Bitta because Keepa felt that he isspeaking to much against their movement and themilitants. Keepa along with Charni went to Punjaband took out one quintal of RDX and left it with onePawan Kumar @ Chajju at Ludhiana. They came backand sent Harnaik @ Chottu to bring this RDX to theirSahibabad hideout. Part of this consignment wasbrought by Pawan Kumar which was handed over toKuldeep Keepa at Delhi--Karnal Border.

Harnaik @Chotu got the steel container fabricated for thebombs. Daya Singh Lahora went to purchase anAmbassador Car which was subsequently used in thebomb blast. The cordless telephone was purchasedfrom Ludhiana by Harnaik. On 2nd September, 1993, Kuldeep Keepa and Navneet Kadian conducted therecede of the office of MS Bitta at 5, Rai Sina Road,New Delhi. Next day, Kuldeep Keepa, Navneet, Sukha@ Sangatpuria, Harnaik, Lahoria and myself againcame to the office of Bitta to watch the proceedings. We made two attempts on 6 th and 9 th September, 1993.On 6 th September, 1993, the mechanism did not work andwe could not trigger and blast. On 9 th September, 1993,MS Bitta did not come to the office. Myself andKuldeep Keepa fixed the bombs in the rear seat andthe dickey and the master receiver of the telephonewas placed on the rear seat. The two wires coming outthe receiver were connected to the detonators. Around40 kgs of RDX was used in the blast.

On 11.9.1993, we came to the office of Bitta ataround 11 a.m. and the car was parked close to thefront gate. Navneet, Keepa and Sangatpuria werewaiting in the back side of parking of Meridian Hotelalongwith Gypsy No. DNC-1790 which was a fakenumber. I went to Connaught Place to bring Harnaik @Chotu with whom the time was fixed the previous day. In the meanwhile, MS Bitta went inside his office andwe could not trigger off the blast as none of us were inposition. We decided to go back, but when we reachedPragati Maidan, Keepa insisted on making another try. We reached Janpath Hotel and connected the wires in theparking area and sent Lahoria to park the car near thegate of the office. The other five of us went in theGypsy and parked it in the parking area in front ofChelmsford club. Harnaik and myself got down fromGypsy and went towards the office of MS Bitta. Ipositioned myself on the opposite side of the office andHarnaik positioned himself close to the walls ofJawahar Bhawan to save himself from the blast. When Lahoria came out of the car after parkingimmediately, thereafter, the cars of MS Bitta startedmoving out and Lahoria gave a signal to Harnaik whopushed the button of the hand set of the cordlesstelephone. The security car of MS Bitta was hit andBitta's car which was behind was not damaged. Sincelahoria was very closed, he was hit any splinters on hisback. Harnaik and myself went to the parked Gypsyfrom where Sukha had already come towards 5 Rai SinaRoad, New Delhi to see whether any of us had beeninjured or not. Kuldeep and Navneet were already sittingin the Gypsy. Four of us left the place and droppedNavneet at the back of Meridian Hotel to come by bus orauto-rickshaw because he was a Sikh and possibility ofidentification was more strong. Lahoria went to thehospital in auto rickshaw and registered himself underthe name of VK Sod and left the hospital immediatelyafter first aid. He went his hideout which is not knownto me."

58. There is nothing on record to corroborate the aforesaidconfessional statement. Police could have easily verified the hospitalrecord to find out whether D.S. Lahoria went to the hospital andregistered himself under the name of V.K. Sood on the date ofincident and left the hospital after getting First Aid. In any set ofcircumstances, none of the main culprits i.e. Harnaik or Lahoria isconvicted. In

these set of circumstances, without there beingcorroborative evidence, it would be difficult to solely rely upon theso-called confessional statement and convict the accused and that toowhen the confessional statement is recorded by the investigatingofficer. For this purpose, it would be worth-while to refer to thedecision in Topandas v. State of Bombay :-

> "Criminal conspiracy has been defined in Section 120APenal Code:
>
> "When two or more persons agree to do or cause tobe done (i) an illegal act, or (ii) an act which is notillegal by illegal names, such an agreement isdesignated a criminal conspiracy.
>
> By the terms of the definition itself, there ought to be twoor more persons who must be parties to such anagreement and it is trite to say that one person alone cannever be held guilty of criminal conspiracy for the simplereason that one cannot conspire with oneself. If,therefore, 4 named individuals were charged with havingcommitted the offence under Section 120B, Penal Code,and if three out of these 4 were acquitted of the charge,the remaining accused, who was the accused No. 1 in thecase before us, could never be held guilty of the offenceof criminal conspiracy."

59. The court further discussed the aforesaid question and referredto the decision in R. v. Plummer [1902 (2) KB 339 (C)] and held asunder:-

> "(1902) 2 KB 339 (C) which is cited in support ofthis proposition was a case in which, on a trial ofindictment charging three persons jointly with conspiringtogether, one person had pleaded guilty and a judgmentpassed against him, and the other two were acquitted. Itwas held that the judgment passed against one who hadpleaded guilty was bad and could not stand. Lord JusticeWright observed at p. 343: "There is much authority to the effect that, ifthe appellant had pleaded not guilty to the chargeof conspiracy, and the trial of all three defendantstogether had proceeded on that charge, and hadresulted in the conviction of the appellant and theacquittal of the only alleged co-conspirators nojudgment could have been passed on the appellant,because the verdict must have been regarded asrepugnant in finding that there was a criminalagreement between the appellant and the othersand none between them and him: see--'Harison v.Errington', (1627) Posh 202 (D), where upon anindictment of three for riot two were found notguilty and one guilty, and upon error brought itwas held a "void verdict", and said to be "like tothe case in 11 Hen 4 c.2, conspiracy against two,and only one of them is found guilty, it is void, forone alone cannot conspire."

60. In this view of the matter, when rest of the accused who arenamed in the confessional statement are not convicted or tried, thiswould not be a fit case for convicting the appellant solely on the basisof so-called confessional statement recorded by the police officer.

61. Finally, such type of confessional statement as recorded by theinvestigating officer cannot be the basis for awarding death sentence.

62. In the result, Criminal Appeal No. 993 of 2001 filed by theaccused is allowed and the impugned judgment and order passed bythe Designated Court convicting the appellant is set aside. Theaccused is acquitted for the offences for which he is charged and he isdirected to be released forthwith if not required in any other case.

63. In view of the above, Death Reference Case (Crl.) No. 2 of2001 would not survive and stands disposed of accordingly.