Mohd. Khalid vs State Of West Bengal on 3 September, 2002

Equivalent citations: AIRONLINE 2002 SC 266, (2003) 1 CUR LJ (CIV&CRI) 129, (2003) 1 EAST CRI C 282, (2002) 3 CUR CRI R 303, (2002) 6 SCALE 238, (2002) 4 CRIMES 160, (2002) 2 UC 714, (2003) 1 ALL CRI LR 138, (2002) 45 ALL CRI C 899, (2002) 4 SCJ 101, 2002 (7) SCC 334, (2002) 6 JT 486, (2003) 2 MADLW(CRI) 858, (2002) 6 SUPREME 132, 2002 SCC (CRI) 1734, (2003) 1 ANDH LT (CRI) 37, (2002) 2 ALD (CRI) 610, (2006) 5 ALL WC 4320, (2006) 62 ALL LR 241, (2013) 101 ALL LR 719, 2013 (10) SCC 714, (2013) 12 SCALE 143, (2013) 132 ALLINDCAS 37, (2013) 2 CLR 836 (SC), (2013) 2 HINDULR 556, (2013) 4 CURCC 69, (2013) 4 ICC 646, (2013) 4 JCR 256 (SC), (2013) 4 RECCIVR 632, (2013) 6 ALLMR 967, (2013) 6 ALL WC 5973, (2014) 1 BOM CR 132, (2014) 1 CIVLJ 374, (2014) 1 MARRILJ 134, (2014) 1 PAT LJR 9, 2014 (1) SCC (CRI) 393, (2014) 1 WLC(SC)CVL 47, (2014) 2 CLR 158 (SC)

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Bench: B.N. Kirpal, K.G. Balakrishnan, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  1114 of 2001

PETITIONER:
MOHD. KHALID

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT: 03/09/2002

BENCH:
B.N. KIRPAL CJI.& K.G. BALAKRISHNAN & ARIJIT PASAYAT

JUDGMENT:
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JUDGMENT 2002 Supp(2) SCR 31 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. No religion propagates terrorism or hatred. Love for all is the basic foundation on which almost all religions are founded. Unfortunately, some fanatics who have distorted views of religion spread messages of terror and hatred. They do not understand and realize what amount of damage they do to the society. Sometimes people belonging to their community or religion also become victims. As a result of these fanatic acts of some misguided people, innocent lives are lost, distrust in the minds of communities replaces love and affection for others, The devastating effect of such dastardly acts is the matrix on which the present case to which these appeals relate rests. On 16th March, 1993, just

before the stroke of mid-night, people in and around B.B. Ganguly Street in the Bow Bazar Area of Calcutta heard deafening sounds emanating from thundering explosions which resulted in total demolition of a building and partial demolition of two other adjacent buildings situated at 267,266 and 268 A, B.B. Ganguly Street. Large number of people were trapped in and buried under the demolished buildings. It was indeed a very ghastly sight and large number of people died because of the explosions impact and/or on account of the falling debris. Human limbs were found scattered all around the area. Those who survived tried to rescue the unfortunate victims. Police officers arrived at the spot immediately. The first information report was lodged at Bow Bazar Police Station for alleged commission of offences punishable under Section 120B, 436, 302, 307 326 of the Indian penal Code, I860 (in short 'the IPC) and Sections 3 and 5 of the Explosive Substances Act, 1908 (in short 'The Explosive Act').

Considering the seriousness and gravity of the incident, the Commissioner of Police set up a special investigating team. On investigation 8 persons including the six appellants were found linked with the commission of offences. Arrests were made. While rescue operations were on there was further explosion on 18.3.1993. The exploded bomb was handed over to the police officer after its examination on the spot by a Military Officer. Meanwhile, the pay loader picked up a gunny bag containing 22 live bombs. Afterwards. They were defused after examination. Certain materials were seized by the investigating team from the site of the occurrence and on examination, it was found that nitro-glycerin explosives were involved in the explosion. Large number of witnesses were examined.

Two of the accused persons, Pannalal Jaysoara (accused-appellant in Criminal Appeal No. 299/2002) and Mohd. Gulzar (accused-appellant in Criminal Appeal No. 494/2002) were arrested on 29.3.1993 and 13.5.1993 respectively. As they wanted to make their confessions, those were to be recorded before the Judicial Magistrate, accordingly, their confessional statements were recorded by the magistrates (PWs.81 and 82). Some of the accused persons were also identified by witnesses in the Test Identification Parade. On 11.6.1993. the Commissioner of Police on examination of the case diary, statement of witnesses, reports of the experts and confessional statements came to the conclusion that provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'The TADA Act') were applicable. Accordingly, sanction, was accorded for prosecution of the accused persons under the said statute. Charge sheet was submitted on 14.6.1993.

Accused Persons filed a writ application before the Calcutta High Court challenging the validity of the sanction and the order whereby the Designated Court took cognizance of the offences under the TADA Act. The High Court quashed the order of sanction and taking of cognizance. The matter was challenged before this Court by the prosecution. The appeal was allowed and the Designated Court was directed to proceed with the case in accordance with law with utmost expedition. [See: State of West Bengal and Anr. v. Mohd. Khalid and Ors, etc. [1995] 1 SCC 684. The Designated Court framed charges under Section 120B, 436/34, 302/34, IPC, Section 3 and 5 of the Explosive Act and under Section 3 (2) (1) and 3(3) of the TADA Act. As the accused persons facing trial pleaded innocence, trial was conducted.

The case of the prosecution, in short, is that the accused persons conspired and agreed to manufacture bombs illegally by using explosives to strike terror in the people, particularly, in the mind of the people living in Bow Bazar and its adjacent areas to adversely affect communal harmony amongst members of Hindu and Muslim communities Pursuant to this criminal conspiracy and in pursuance of the common intention, they caused complete/ partial destruction of properties by using the explosive substances. They committed murders knowing fully well that illegal manufacture of bombs by explosive substances in most likelihood would result in deaths or bodily injuries, by causing explosion. In causing explosion by unlawful and malicious user of explosive substances which was likely to endanger life or to cause serious injury to properties, they committed offences in terms of Sections 3 and 5 of the Explosive Act. The fact that they possessed explosive substances gave rise to a reasonable suspicion that such possession and control of the explosive substances were not for lawful object. Provisions of the TADA Act were applied on the allegations that pursuant to the conspiracy and in pursuance of the common intention they prepared bombs with huge quantities of explosive substances and highly explosive materials with intent to strike terror in the mind of the people adversely affecting the communal harmony amongst the people belonging to Hindu and Muslim religions. Their terrorist activities resulted in the death of 69 persons, injuries to a large number of persons and destruction and damage to properties. As a result of these acts commission of terrorist acts was facilitated.

Out of the 165 witnesses examined, three witnesses were picked up as star witnesses to prove the conspiracy and the connected acts. They are PW. 40 (Md. Sabir @ Natu), PW. 67 (Santosh Hazra) and PW 68 (Kristin Chow @ Kittu), By a detailed judgment ,the Designated Court found the accused appellants guilty of offences punishable under Section 120 B IPC, Sections 3 and 5 of the Explosive Act and Section 3(2)(1) and 3(3) of the TADA Act read with Section 34 IPC. However, they were found not guilty of the offences in terms of Sections 302 and 436 read with Section 34 IPC. After hearing on the question of sentence, the accused appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 3000 each for commission of offences under Section 3(2)(1) of the TADA Act read with Section 34 IPC, to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500 each for commission of offence under Section 3 (3) of the TADA Act. They were further sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,000 each for commission of offence under Section 3 of the Explosive Act and to suffer an imprisonment for one year and to pay a fine of Rs. 300 each for commission of offence under Section 5 of the Explosive Act. Each of them were also sentenced to imprisonment for life and to pay a fine of Rs. 3000 each for commission of offence under Section 120 B of IPC.

These appeals relate to the common judgment of the Designated Court. While the accused appellants have questioned the legality of the conviction and sentences imposed, the State has questioned the propriety of acquittal in respect of the offences in terms of Sections 302/34 and 436/34 IPC. Learned counsel for the accused appellants have submitted, inter alia, that the so-called star witnesses are persons with doubtful antecedents. They were rowdy elements who were under the thumb of police officers and the possibility of their having deposed falsely at the behest of police officers cannot be ruled out, and this is more probable. Referring to the evidence of PWs 40,67 and 68, it was submitted that their evidence suffers from innumerable fallacies. PW-40 claimed to have heard the accused- appellant, Rashid asking the accused-appellant, Pannalal

Joysorara about the preparation of bombs. He was the witness who was available immediately after the incident. But his statement was recorded two days after without any explanation being offered as to why he was examined two days after. Similarly, PWs. 67 and 68 , were also examined after two days. In Court, they made embellished and highly ornamented statements. It was pointed out that evidenced of PW-67, in particular, is full of holes. According to his own testimony, he was only connected with satta games. It was, therefore, highly improbable that he was allowed to go up and notice all those materials which were lying in the rooms and the activities being carried out, It was highly improbable that nobody stopped him. Many independent witnesses were not examined though their presence is accepted by the prosecution. A grievance is made that some of the persons who were available to be examined have not been so done. Particular reference has been made to Nausad and Osman. It is stated that the prosecution case is that Nausad was the owner of one of the premises and PW-68 told Osman about the conspiracy. Non-examination of these material and independent witnesses rendered the prosecution version suspect. There was no reliable evidence of conspiracy. There was no design to commit any act even if it is accepted that there was any explosion. That was an accident. In fact, no importance can be attached to the so-called judicial confessions because two accused person who allegedly made the confession had made retraction subsequently on 3.2.1995. They were terrorized, threatened and were compelled to make the confession. Even if, according to them, the prosecution case is accepted in its toto, it only proves that the Muslims were trying to protect themselves in the event of a possible attack of Hindus on them. In the bomb blast which took place in Bombay a few months earlier, the police was totally ineffective and could not save the lives of number of Muslims and were silent onlookers. That spread message of fear in the mind of Muslims and as the prosecution version itself goes to show, they were preparing to protect themselves as a matter of exercise of their right of prevent defence, to protect defence, in the most likely event of attack by the Hindus on them. This according to them rules out application of the TADA Act. They were not the aggressors and this preparations to protect their rights and properties in the event of an attack was not to spread a terror or to cause any unlawful act but was an act intended to be used as a shield and not a weapon. Further, Section 3 of the Explosive Act has no application because there was no material to show that the accused persons had caused explosion. It was pointed out that several persons who had lost their lives in the explosion were arrayed as accused persons. Even if, they caused the explosion, they could not save their own lives and it cannot be said that the accused appellants were responsible for the explosion. Coming to the charge of conspiracy, it was submitted that the statements recorded under Section 164 of the Code of Criminal Procedure, 1973 (in short 'the Code') of the two accused persons cannot be used against others unless the prescriptions of Section 30 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') were fulfilled. According to them, confession of a co- accused was not a substantive piece of evidence. It had a limited role to play. In case other evidence was convincing and credible, as an additional factor, confession of a co-accused for limited purpose can be used in evidence. The present was not a case of that nature. Finally, it was submitted that accused appellants are in custody since 1993 and a liberal view on sentence should be taken.

In response, Mr. K.T.S. Tulsi, learned senior counsel appearing for the prosecution submitted that the apparent intention of the accused appellants was to terrorise the people. Large quantity of the explosives and bombs recovered clearly gives a lie to the plea that self-protection was the object. Seen in the context of the motive it is clear that the intention was to terrorise a section of the people

and it is not a case that the accused appellants wanted to exercise their right of private defence for themselves. The real object and that motive were to use it for spreading communal disharmony under the cover of self-protection and to terrorise people. So far as the confession in terms of Section 164 of the Code is concerned, it was submitted that the statements were recorded after making the confessors aware that they may be utilized in evidence against them. The so-called retraction was afterthought. The mere fact that the witnesses were examined after two days does not per se render their evidence suspect. It has to be noted that there was total chaos after the explosions. Everywhere bodies were lying scattered. There was no information as to how many were buried under the debris. The first attempt was to save lives of people rendering immediate medical assistance. At that point of time, recording of evidence was not the first priority. In fact, after the special team was constituted, the process of recording statements was started on 18.3.1993 and on that date the statements of material witnesses were recorded, With reference of Section 15 of the TADA Act, it is submitted that though the statements recorded by the Magistrate was not strictly in line with Section 15 of the TADA Act, yet it deserves a greater degree of acceptability under the said Act. It cannot be conceived that the confession recorded by a Police Officer would stand on a better footing than one recorded by the Judicial Magistrate. Further, it was submitted that the confessional statements recorded clearly come within the ambit of Section 10 of the Evidence Act and, therefore, no further corroboration was necessary and to that extent Section 30 may not be applicable. Even otherwise, according to him, there was ample material to connect the accused appellants with the crime and the confessional statements were the last straw.

Responding to the plea that Section 3 of the Explosive Act had no application. It was submitted that the possession of the explosives has been established, the purpose for which they were stored and the bombs were manufactured has been established. Even if theoretically it is accepted that the accused appellants did not cause the explosion, but the others did at their behest. Their constructive liability cannot be wiped out. They were the perpetrators of the crine being the brain behind it. Even if, for the sake of arguments it is accepted that the final touch was given by somebody else, may be the deceased accused persons, as they were the brains behind the whole show, their liability cannot be ignored and ruled out. In any event, according to him, they have been charged with Section 3 of the Explosive Act and could be convicted under Section 4 of the said Act because the latter constitutes a lesser offence.

By ways of rejoinder, it was submitted by learned counsel for the-accused- appellants that Section 10 of the Evidence Act has no application, because after the act flowing from the conspiracy is over, the relevance of any statement of relation to the conspiracy is of no consequence. After the explosion even if the same was the result of conspiracy as alleged, any confessional statement recorded under Section 164 of the Code cannot come within the ambit of Section 10 of the Evidence Act.

First, we shall deal with the plea regarding acceptability of the evidence. It is to be seen as to what is the evidence of PWs 40, 67 and 68 and how they establish prosecution case. PW-40 had deposed about presence of Murtaza Bhai, Gulzar Bhai, Khalid Bhai, Ukil Tenial, Khursid and Hansu while they were coming inside Satta Gali carrying two loaded gunny bags. Thereafter, they went upstairs of 267 B.B. Ganguly Street. PW-40 followed them up. He noticed the aforesaid persons mixing the ingredients of bombs and also manufacturing bombs. He found two drums, few gunny bags and

small containers lying there. Murtaza, Gulzar and Khalid were shifting and straining the explosive materials after taking it and from the gunny bags. His nose and eyes got irritated when the process was going on. Therefore, he came down. Around 10 to 10.30 p.m. he saw Rashid, Aziz Zakrin and Lalu coming inside the Satta Gali with an old man wearing spectacles (identified as accused-appellant Panalal Jaysoara). While moving up the stairs to the upper floor, Rashid asked the old man to prepare bombs with the materials brought by him. Criticism was levelled by learned counsel for accused- appellant that the entire conversation alleged to have taken place was disclose by PW40 during investigation. On verification of records, it appears that though the exact words of the conversation were not stated, in substance the same idea was conveyed. PWs 67 and 68 have stated about plan of and preparation for manufacture of bombs. Their statement was to the effect that on 16.3.1993 at about 11.00 p.m. they went to meet Rashid Khan to ventilate their grievance against some of the pencillors disturbing the tranquility of the locality. PW-67 has deposed that Rashid was standing alone in front of the Satta office. As he and PW-68 were reporting the matter to Rashid, an old man wearing spectacles (identified as accused Pannalal Jaysoara) and Osman came out of Satta gali. The old man reported to Rashid that it would take whole night to prepare bombs by using the mixture. On being asked as to what would be done with the bombs, Rashid replied that large number of bombs were required bombs were required because of the riot at Bombay between Hindus and Muslims. Statement of PW-68 is to the similar effect that on 16.3.1993 around 11.00 p.m. accused- appellant Rashid intimated an old man (identified as accused-appellant Pannalal Jaysoara) that preparation of large number of bombs was required to be used in the event Hindus attacked the Muslims, and it was necessary in view of riots in Bombay . PWs 67 and 68 belonged to the locality and were acquainted with Rashid Khan. Their near relatives were staying in locality. It is on record that some relatives of PW-68 have lost their lives in the incident. Confidential statement of accused-appellant. Pannalal Jaysoara was to the effect that he had asked accused-appellant Rashid as to the urgency for preparing large number of bombs. His reply was that he took the decision of preparing bombs so that Muslims could fight in the possible riot. In the test identification parade PWs 40, 67 and 68 identified accused-appellant Pannala Jaysoara on 15.4.1993. Confessional statement of accused-appellant Gulzar is relevant, He stated that Rashid had reminded them that many Muslims had been killed in the riot at Bombay and Government did not do anything for the Muslims. If there is a riot, many Muslims may die as the Government may not do anything. Therefore, he took the decision of preparing large quantity of explosives and bombs. PW 67 has deposed that accused-appellant Rashid directed preparation of large number of bombs overnight. Presence of the accused persons in and around the place of occurrence has been amply established by the evidence of PWs 40,67 and 68, as well the confessional statements of Pannalal and Gulzar.

In the case at hand , the evidence of PWs. 40,67 and 68 even after the close scrutiny cannot be termed to be unreliable. Merely because they were the persons with no fixed avocation, the very fact that they were regular visitors to the place of occurrence described as 'Satta Gali' makes their presence nothing but natural. Additionally, we find that relatives of PW-68 have lost lives. Mere delay in examination of the witnesses for a few days cannot in all cases be termed to be fatal so far as the prosecution is concerned. There may be several reasons. When the delay is explained, whatever be the length of the delay, the Court can act on the testimony of the witness if it is found to be cogent and credible. In the case at hand, as has been rightly pointed out by the learned counsel for the

respondents, the first priority was rendering assistance to those who had suffered injuries and were lying under the debris of the demolished buildings. The magnitude of the incident can be well judged from the fact that a total building collapsed and two other buildings were demolished to a substantial extent, 69 persons lost their lives and large number of persons were injured. Therefore, statement of PW-68 that he was busy in attending to the injured and collecting dead bodies till 18.3.1993 cannot be said to be improbable. Though, an attempt has been made to show that there is no truth in his statement that he had carried the injured persons to the hospital by making reference to certain noting in the medical reports to the effect that unknown person brought the injured to the hospital, that is really of no consequence. When large number of persons were being brought to the hospital, the foremost duty of the doctors and other members of the staff was to provide immediate treatment and not to go about collecting information as to who had brought the injured to the hospital for treatment. That would be contrary to the normal human conduct. Looked at from any angle, the evidence of PWs. 40, 67 and 68 cannot be said to be suffering from any infirmity. Their statements along with the confessional statements of the co-accused and a definite assurance to the prosecution version.

Next comes the accused-appellants' plea relating to non-examination of witnesses.

Normally, the prosecution's duty is to examine all the eyewitnesses selection of whom has to be made with due care, honestly and fairly. The witnesses have to be selected with a view not to suppress any honest opinion, and due care has to be taken that in selection of witnesses, no adverse inference is drawn against the prosecution. However, no general rule can be laid down that each and every witness has to be examined even though his testimony may or may not be material. The most important factor for the prosecution being that those witnesses strengthening the case of the prosecution have to be examined, the prosecution can pick and choose the witnesses who are considered to be relevant and material for the purpose of unfolding the case of the prosecution. It is not the quantity but the quality of the evidence that is important. In the case at hand, if the prosecution felt that its case has been well established though the witnesses examined, it cannot be said that non-examination of some persons rendered its version vulnerable.

As was observed by this Court in Habeeb Mohammad v. State of Hyderabad, AIR (1954) SC 51 prosecution is not bound to call a witness about whom there is a reasonable ground for believing that he will not speak the truth.

It has not been shown as to how the examination of persons like Nausad and Osman would have thrown any light on the issues involved. Whether Usman was the owner of the house or not has no significance when the prosecution has established the conspiracy angle and preparation of bombs by credible evidence. Similarly, Osman was the person to whom one witness is stated to have told about the conspiracy angle. Since that witness has been held to be reliable, non-examination of Osmana is really of no consequence. A reference was made to some persons who were parties to the Test Identification Parade. It is pointed out that some of them did not identify all the accused persons. Here again, the non-examination of these persons cannot be held to be of any consequence. Those persons who have identified the accused persons knew them earlier. Therefore, even if some persons not examined did not identify all the accused persons that does not in any way affect the credibility

of the witnesses who knew them, have identified them and deposed about the conspiracy and the preparation of combs. Above being the position, no adverse inference can be drawn.

It would be appropriate to deal with the question of conspiracy. Section 120B of IPC is the provision which provides for punishment for criminal conspiracy. Definition of 'criminal conspiracy' given in Section 120A reads as follows:

> "120A-When two or more persons agree to do, or cause to be done,-
>
> (1) all 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.' The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co- conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol. II Sec. 23, p. 559). For an offence punishable under section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal, Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is

a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

In Halsbury's Laws of England (vide 4th Ed. Vol.11, page 44 page 58), the English Law as to conspiracy has been stated thus:

> "Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in thee discretion of the Court.
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> The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made, and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus rues in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place, it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. (See: Bhagwan Swarup Lal etc. etc. v. State of Maharashtra, AIR (1965) SC 682 at p. 686].

Privacy and secrecy are more characteristics of conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

The provisions of Section 120-A and 120-B,IPC have brought the law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on crime (12 Ed. Vol. I, p. 202) may be usefully noted-

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in citing others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge,

or even discussion, of the plan is not, per se, enough."

Glanville Williams in the "Criminal Law" (Second Ed. P. 382) states-

> "The question arose in an Iowa case, but it was discussed in terms of conspiracy rather then of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P.O. was acquitted of conspiracy because there was no agreement for 'concert of action, no agreement to 'co-operate'. Coleridge, J, while summing up the case to Jury in Regina v. Murphy, (1837) 173 ED 502 at p. 508] states:
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> "I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means the design being unlawful."

As note above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120 B read with the proviso to sub-section (2) of Section 120 A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120 B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, to commit the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120 B [See: S.C. Bahri v. State of Bihar, AIR (1994) SC 2420.

The conspiracies are not hatched in open, by their nature, they are secretly, planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. [See: E.K. Chandrasenan v. State of Kerala, AIR (1995) SC 1066].

In Kehar Singh and Ors. v. The State (Delhi Administration), AIR(1988)SC 1883 at p. [1954], this Court observed:

> "Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Conspiracy can be proved by circumstances and other materials. (See: State
>
> o) Bihar v. Paramhans, (1986) Pat LJR 688. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary, In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use Finally, when the ultimate offence consists of a chain of actions, i would not be necessary for the prosecutions to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use . (See State of Maharashtra v. Som Nath Thapa, J] (1996) 4 SC 615.

We may usefully refer to Ajay Agarwal v. Union of India and Ors., J] (1993) 3 SC 203. It was held:

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"8.....It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of conspiracy. Conspiracy is conceived as having three elements. (1) agreement; (2) between two or more persons by whom the agreement is effected: and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones' case that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of the judges while referring the question to the House of Lords in

Mulcahy v. Reg, and House of Lords in unanimous decision reiterated in Quinn v. Leathem:

> 'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rest in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; punishable of for a criminal object, or for the use of criminal means.' The Court in B.G. Barsay v. State of Bombay, held:
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> "The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the India Penal Code, an act would be illegal if it is an offence or if it is prohibited by law."

In Yash Pal Mittal v. State of Punjab, [1977] SCC 540 the rule was laid as follows: (SCC p. 543 para 9) 'The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators.' In Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra, (1981) 2 SCC 443, it was held that for an offence under Section 120B IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."

Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. [See Baburao Bajirao Patil v. State of Maharashtra, [1971] 3 SCC 432]. It can in some cases be inferred from the acts and conduct of parties. [See Shivanarayan Laxminarayan Joshi and Ors. v. State of Maharashtra and Ors,, AIR (1980) SC 439.

That brings us to another angle i.e. acceptability of the confession. Section 24 of the Evidence Act interdicts a confession if it appears to the Court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. It must be the outcome of his own free will inspired by the sound of his own conscience to speak nothing but

truth.

Words and Phrases, permanent edition, Vol. 44, p. 622 defines 'voluntary' as:

> 'Voluntary' means a statement made of the free will and accord of accuse, without coercion, whether from fear of any threat of harm, promise, or inducement or any hope of reward-State v. Mullin, (85NW 2nd 598, 600, 249 down 10)"
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> Words and Phrases by John B. Saunders 3rd edition, vol. 4 4, p. 401, 'voluntary' is defined as:
>
> ".....the classic statement of the principle is that of Lord Sumner in lbrahim v. Regem, (1914) AC 599 (at p. 609) where he said, "it has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to be a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercise or held out by a person in authority. 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 technical meaning of the word "voluntary". According to this view, "voluntary". According to this view, 'voluntary" means merely that the statement has not been made in consequence of (i) some promise of advantage or 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 the accused's position in the contemplated proceedings will or may be better or worse according to whether or not the statement is made. R. v. Power, (1966) 2 All ER 433 (at pp. 454, 455) per Cantley, V."

A confessional statement is not admissible unless it is made to the Magistrate under Section 25 of the Evidence Act. The requirement of Section 30 of the Evidence Act is that before it is made to operate against the co- accused the confession should be strictly established. In other words, what must be before the Court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it being the confession of the maker, it is not to be treated as evidence within the meaning of Section 3 of the Evidence Act against the non-maker co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with crime and that too as a corroborative piece. It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of co-accused cannot be considered under Section 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of

co-accused does not come within the definition of evidence contained in Section 3 of the 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 only when a persons admits guilty to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. Legislature provides that his statement may be considered against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence. This position has been clearly explained by this Court Kashmira Singh v. The State of Madhya Pradesh, AIR (1952) SC

159. The exact Scope of Section 30 was discussed by the Privy Council in the case of Bhubani v. The King, AIR (1949) PC 257. The relevant extract from the said decision which has become locus classicus reads as follows:

> "Sec. 30 applies to confessions, and not to statements which do not admit the guilt of the confessing party.....But a confession of a co-accused is obviously evidence of a very weak type.....It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Sec. 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, make it evidence on which the Court may act but the section does not say that the confession is to amount to proof. Heady 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. The confession of the co-accused and be used only in support of other evidence and cannot be made the foundation of a conviction". Kashmira Singh's principles were noted with approval by a Constitution Bench of these Court Hart Charan Kurmi and Jodia Hajam v. State of Bihar, [1964] 6 SCR 623. It was noted that the basis on which Section 30 operates . is that if a person makes a confession implicating himself that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is to likely that the maker would implicate himself untruly. So Section 30 provides that such a confession may be taken into consideration even against the co-accused who is being tried along with the maker of the confession. It is significant however that like other evidence which is produced before the Court it is not obligatory on the Court to take the confession into account. When evidence as defined by the Evidence Act is produced before the Court it is the duty of the Court to consider that evidence. What weight should be attached to such evidence is a matter in the discretion of the Court. But the Court cannot say in respect

> of such evidence that it will just not take that evidence into account. Such an approach can however be adopted by the Court in dealing with a confession because Section 30 merely enables the Court to take the confession into account. Where, however, the Court takes it into confidence, it cannot be faulted. The principle is that the Court cannot start with confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidences, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about the reach on some other evidence. That is the true effect of the provision contained in Section 30. We may note that great stress was laid down on the so-called retraction of the makers of the confession. Apart from the fact that the same was made after about two years of the confession. PWs 81 and 82 have stated in Court as to the procedures followed by them, while recording the confession. The evidence clearly establishes that the confessions were true and voluntary. That was not the result of any tutoring, compulsion or pressurization. As was observed by this Court in Shankaria v. State of"

Rajasthan, (1978) Crl. LJ. 1251, the Court is to apply double test for deciding the acceptability of a confession i.e. (i) whether the confession was perfectly voluntary and (ii) if so, whether it is true and trustworthy. Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise, such as mentioned in Section 24 of the Evidence Act, it must be excluded and rejected brevi manu. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. The Judicial Magistrate PWs. 81 and 82 have followed the requisite procedure. It is relevant to further note that complaint was lodged before the Magistrate before his recording of the confessional statement of accused Md. Gulzar. The complaint was just filed in Court and it was not moved. The name of the lawyer filing the complaint could not be ascertained either. This fact has been noted by the Designated Court.

In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under Section 164 of the Code as to be given greater credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. In State of Gujarat v. Mohd. Atik and Ors., [1998] 4 SCC 351, it was held that principle is no longer res Integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

The first condition which is almost the opening lock of that provision is the existence of "reasonable ground to believe" that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement "in reference to their common intention". Under the corresponding provision in the English law the expression used is "in furtherance of the common object." No doubt, the words "in reference to their common intention" we wider than the words used in English law (vide Sardar Sardul Singh Caveeshar v. The State of Maharashtra, AIR (1965) SC 682.

But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 if it was made "in reference" to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlies in Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under Section 10.

Way back in 1940, the Privy Council had considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in Mirza Akbar v. King-Emperor, AIR (1940) P.C. 176 had stated the legal position thus:

> "The words 'common intention' signify a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party."

Intention is the volition of mind immediately preceding the act while the object is the end to which effect is directed the thing aimed at and that which one endeavours to attain and carry on. Intention implies the resolution of the mind while the object means the purpose for which the resolution was made.

In Bhagwan Swamp's case (supra), it was observed that the expression 'in reference to their common intention' is wider than the words 'in furtherance of the common intention' and this is very comprehensive and it appears to have been designedly used to give it a wider scope than the words 'in furtherance of in the English Law. But, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made 'in reference to the common intention. Therefore, a post arrest statement made to the police officer was held to be beyond the ambit of Section 10 of the Evidence Act.

In Sardul Singh Caveeshar v. The State of Bombay, AIR (1957) SC 747, it was held:

> "The principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in Section 10 of the Evidence Act confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say 'things said, done or written while the conspiracy was on foot' and 'in carrying out the conspiracy'. It would seem to follow that where the charge specified the period of conspiracy evidence of acts of co-conspirators outside the period is not receivable in evidence."

In a given case, however, if the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of a criminal conspiracy continues and Section 10 of the Evidence Act applies. In other words, it cannot be said to be a rule of universal application. The evidence in each case has to be tested and the conclusions arrived at. In the present case, the prosecution has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest. Similar view was expressed by this Court in State v. Nalini, [1999] 5 SCC 253.

It was urged with some amount of vehemence by the learned counsel for the appellants that no terrorise act was involved.

While dealing with an accused tried under the TADA, certain special features of the said Statute need to be focused. It is also necessary to find out the legislative intent for enacting it. If defines "terrorist acts" in Section 2(h) with reference to Section 3(1) and in that context defines a terrorist. It is not possible to define the expression 'terrorism' in precise terms. It is derived from the word 'terror'. As the Statement of Objects and Reasons leading to enactment of the TADA is concerned, reference to The Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the 'Old Act') is necessary. It appears that the intended object of the said Act was to deal with persons responsible for escalation of terrorist activities in many parts of the country. It was expected that it would be possible to control the menace within a period of two years, and life of the Act was restricted to the period of two years from the date of its commencement. But noticing the continuance of menance, that too on a larger scale TADA has been enacted. Menance of terrorism is not restricted to our country, and it has become a matter of international concern and the attacks on the World Trade Centre and other laces on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is. TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case. As was noted in Jayawant Dattatray Suryarao etc. etc. v. State of Maharashtra etc. etc., (2001) AIR SCW 4717, for finding out the intention of the accused, there would hardly be a few cases where there would be direct evidence. It has to be mainly inferred from the circumstances of each case.

In Hintendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors., [1994] 4 SCC 602, this Court observed that:

> "that legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under TADA or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity is to be one that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. It is in essence a deliberate and systematic use of conercive intimidation".

As was noted in the said case, it is a common feature that hardened criminals today take advantage of the situation and by wearing the cloak of terrorism, aim to achieve acceptability and respectability in the society; because in different parts of the country affected by militancy, a terrorist is projected as a hero by a group and often even by many misguided youth. As noted at the outset, it is not possible to precisely define "terrorism". Finding a definition of "terrorism" has haunted countries for decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agree-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 piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Cynics have often commented that one State's "terrorist" is another State's "freedom fighter". If terrorism is defined strictly in terms of attacks on non- military targets, number of attacks on military installations and soldiers' residences could not be included in the statistics. In order to cut through the Gordian definitional knot, terrorist expert A. Schmid suggested in 1992 in a report for the then UN Crime Branch that it might be a good idea to take the existing consensus on what constitutes a "war crime" as a point of departure. If the core of war crime-deliberate attacks on civilians, hostage taking and the killing of prisoners-is extended to peacetime, we could simply define acts of terrorism as "peacetime equivalents of war crimes."

League of Nations Convention (1937) :

> "All criminal acts directed against a State along with intended or calculated to create a statute of terror in the minds of particular persons 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 terrorism as criminal and unjustifiable, wherever and by whomsoever committed;

2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances

unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."

3. Short legal definition proposed by A.P. Schmid to United Nations Crime Branch (1992):

> Act of Terrorism = Peacetime Equivalent or War Crime

4. Academic Consensus Definition:

> "Terrorism is an anxiety-inspiring of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reason, whereby -in contrast to assassination -the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience
>
> (s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propoganda is primarily sought" (Schmid, 1988).

Definitions:

> Terrorism by nature is difficult to define. Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the U.S. government cannot agree on one single definition. The old adage, "One man's terrorist is another man's freedom fighter" is still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation.
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> Terrorism is the use or threatened use of force designed to bring about political change.-Brain Jenkins.
>
> Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted.-Walter Laqueur.
>
> Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience. - James M. Poland.
>
> Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a

governmental, individuals or groups, or to modify their behaviour or polities. -Vice-President's Task Force, 1986.

Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. - Definition.

Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential or producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or. disturb harmony of the society or 'terrorise' people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity.

In the background of what we have said about terrorist's acts (supra), plea of accused-appellants is clearly unacceptable. As was observed by this Court when earlier the matter was before it in the prosecution's appeal questioning the quashing of order of sanction and application of TADA, the preparation of bombs and possession of bombs would tantamount to terrorizing the people. Credible evidence proves it to be a terrorist act. The explosion of large number of live bombs is a clear indication of conspiracy. It was further held that it cannot be contended that if the bombs are for self defence there was no mens rea. Preparation and storage of bombs are per se illegal acts.

Further question is when the right of private defence arises. It never commences before a reasonable apprehension arises in the mind of the accused. Here there was no evidence that there was any indication about attack on the Muslims and, therefore, the question of any reasonable apprehension does not arise. The cover of self-protection when pierced unravels a sinister design to unleash terror.

As was observed by this Court in Yogendra Moraffi v. State of Gujarat, [1980] 2 SCC 218, the right of self defence commences not before a reasonable apprehension arises in the mind of the accused.

As was observed by this Court in Puran Singh and Ors. v. The State of Punjab, AIR (1975) SC 1674 (Para 20) right is not available if there is sufficient time for recourse

> to a public authority. There was no scope for interfering the so-called view of the accused persons that police may not help them. That occasion had not arisen. On the question of applicability of Sections 3 and 4 of the Explosive Act and the true intent, we only need to refer to Corpus Juris Secundum (A Contemporary Statement of American Law), Volume 22. It is held at page 116 (Criminal Law) as under:
>
> "Intention
>
> (a) In general
>
> (b) Specific or general intent crimes
>
> (a) In general.-As actual intent to commit the particular crime toward which the act moves is a necessary element of an attempt to commit a crime.

Although the intent must be one in fact, not merely in law, and may not be inferred from the overt act alone, it may be inferred from the circumstances."

As regards motive in American Jurisprudence, 2nd Edn., Vol. 21, in Section 133, it is stated as under:

> "133. Motive-In criminal law motive may be defined as that which leads or tempts the mind to indulge in a criminal act or as the moving power which impels to action for a definite result."

In view of our conclusions that charges under Sections 3(2)(1) and 3(3) of TADA and Section 120B IPC are clearly established, we do not think it necessary to go through a hair splitting approach vis-a-vis Section 3 and 4 of the Explosive Act. Even if it is accepted that Section 3 of the Act was not applicable and what was applicable in Section 4 of the Explosive Act yet it can only be the question of sentence which can be imposed. As the charge is for higher offence, conviction of lesser offence is permissible. As we are upholding the award of life sentence for the offences under Sections 120B IPC and Section 3(2)(1) and Section 3(3) of the TADA Act, any reduction in sentence from 10 years to 7 years (in the background of Sections 3 and 4 of the Explosive Act) is really of no consequence. The appeals filed by the accused persons deserves to be dismissed, and we so direct.

Coming to the appeal filed by the prosecution against the acquittal in respect of charges under Section 302/34 and Section 436/34 IPC, learned counsel for the prosecution fairly stated, and in our opinion rightly, that the acquittal is justified. Though, it was submitted by Mr. K.T.S. Tulsi that higher sentences would have been more appropriate in respect of established offences, we do not think it necessary to go into that question in absence of an appeal by the prosecution in that regard. The appeal filed by the State is accordingly dismissed. In the result, all the seven appeals stand dismissed.

Before parting with the case, we may point out that the Designated Court deferred the cross examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a grievance that accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the Trial Court, should not adjourn the matter on mere asking. These aspects were highlighted by this Court in State of U.P. v. Shambhu Nath Singh and Ors., [2001] 4 SCC 667 and N.G. Dastance, v. Shrikant S. Shivde and Anr., [2001] 6 SCC 135. In Shambhu Nath Singh's case (supra) this Court deprecated the practice of courts adjourning cases without examination of witnesses when they are in attendance with following observations:

> "9. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the door stamp from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty. No sadistic pleasure, in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers, can be persuading factor for granting such adjournments lavishly, that too in a casual manner."

In N.G. Dasane case (supra) the position was reiterated. The following observations in the said case amply demonstrate the anxiety of this Court in the matter :

> "An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of the witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct."

It would be desirable for the Court to keep these aspects in view. Appeals are dismissed, as noted above. S.K.S. Appeals dismissed.