

11. In support of this contention learned Counsel has quoted the following passage from Hale's Pleas of the Crown Vol. I - p. 33:

If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy, but be remitted to prison until that incapacity be removed; the reason is, because he cannot advisedly plead to the indictment; and this holds as well in cases of treason, as felony, even though the delinquent in his sound mind were examined, and confessed the offence before his arraignment; and this appears by the Statute of 33 H. 8 Cap. 20 which enacted a trial in case of treason after examination in the absence of the party; but, this statute stands repealed by the statute of 1&2 Phil & Mr. Cap. 10 cv. P.C. p. 6. And, if such person after his plea, and before his trial, becomes of non sane memory, he shall not be tried, or, if after his trial he becomes of non sane memory he shall not receive judgment; or, if after judgment he becomes of non sane memory, his execution shall be spared; for were he of sound memory, he might allege somewhat in stay of judgment or execution. He also cited a passage from Coke's Institutes, Vol. III, page 6, which runs as follows:

It was further provided by the said act of 33 H.S. that if a man arraigned of treason became mad, that notwithstanding he should be executed; which cruel and inhuman law lived not long, but was repelled, for in that point also it was against the common law, because by intendment of law the execution of the offender is for example, ut poena ad paucos, metus omnes perveniat, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law and of extreme inhumanity and cruelty, and can be no example to others.

The following passage from Black-stone's Commentaries on the Laws of England Vol. IV, pages 18 and 19 was also placed before us:

The second case of a deficiency in will, which excuses from the guilt of crimes, arises also from a defective or vitiated understanding, viz., in an idiot or a lunatic. For the rule of law as to the latter, which may easily be adapted also to the former, is that 'furiosus furore solum punitur.' In criminal cases, therefore, idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities; no, not even for treason itself. Also, if a man in his sound 'mind' commits an offence, and before arraignment for it he becomes mad, he ought not to be 'called on to plead to it, because he is unable to do so' with that advice and caution that he ought. And, if after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution. Indeed, in the bloody reign of Henry the Eighth, a statute was made, which enacted that if a person, being compos mentis, should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory. But this

savage and inhuman law was repealed by the statute 1 & 2 Ph. & M. c. 10. For, as is observed by Sir Edward Coke the execution of an offender is, for example, ut poena ad paucos, metus ad omnes perveniat; but so it is not a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be of no example to others.

A passage from a modern work, "An Introduction to Criminal Law", by Rupert Cross, (1959), p. 67, was also read. It reads as follows:

In conclusion it may be observed that there are two other periods in the history of a person charged with a crime at which his sanity may be relevant. First, although there may be no doubt that he was sane when he did the act charged, he may be too insane to stand a trial in which case he will be detained during the Queen's pleasure under the Criminal Lunatics Act, 1800 and 1883, pending his recovery (c). Secondly, if he becomes insane after sentence of death he cannot be hanged until he has recovered. In each of these cases, the question of sanity is entirely a medical question of fact and is in no way dependent on the principles laid down in M' Naghten's case.

The rule that insanity at the time of the criminal act should be a defence is attributable to the fact that the idea of punishing a man for that which was due to his misfortune is revolting to the moral sense of most of the community. The rule that the accused must be fit to plead is based on the undesirability of trying someone who is unable to conduct his defence, or give instructions on the subject. The basis of the rule that an insane person should not be executed is less clear. Occasionally, the rule is said to be founded on theological grounds. A man should not be deprived of the possibility of a sane approach to his last hours. Sometimes, the rule is said to be based on the fact that condemned men must not be denied the opportunity of showing cause why they should not be reprieved." Shri S.K. Sinha, learned Counsel for the appellant, has, industriously, collected a number of statements of the position in English law from the abovementioned and other works of several authorities such as Theobald on Lunacy (p. 254), and Kenny's Criminal Law (p. 74).

12. On the other hand, learned Additional Solicitor General, has relied on the following statement of a modern point of view contained in a book by Mr. Nigel Walker on "Crime and Insanity in England" (Vol. I: The Historical Perspective) - at pages 213-214:

Home Secretaries have been even more cautious in offering justifications for the practice of reprieving the certifiably insane or the mentally abnormal. Short, though he cited Coke, Hale, Hawkins, Black-stone, Hawkes, and Stephen to prove that he was bound by the common law, refrained from dwelling on their explanations of it, which are, as we have seen, far from impressive. The Atkin Committee, being lawyers, were more respectful to the institutional writers, and argued that 'many (sic) of the reasons given for the merciful view of the common law continue to have force even under modern conditions. Everyone would revolt from dragging a gibbering maniac to the gallows.' If they had reflected they would surely have conceded that 'modern conditions' greatly weakened two out of the

three traditional reasons. The abolition of public executions made Coke's argument irrelevant as well as illogical; and Hale's argument - that if sane the condemned man might be able to produce a sound reason why he should not be hanged - was greatly weakened now that the condemned man's interests were so well looked after by his lawyers. As for Hawles' argument that an insane man was spiritually unready for the next world (which not even Hawles regarded as the main objection) - were the committee such devout Christians that they set store by it? Equally odd was their remark that 'everyone would revolt from dragging a gibbering maniac to the gallows', which sounded as if it was meant as an endorsement of one or more of the traditional justifications, but if so could hardly have been more unfortunately phrased. Why should it be more revolting to hang a 'maniac' than a woman, a seventeen-year-old boy or a decrepit old man? Must the maniac be 'gibbering' before it becomes revolting?

A more logical justification was suggested by Lord Hewart, who opposed Lord Darling's attempt to legislate on the lines recommended by the Atkin Committee (see Chapter 6). Lord Hewart suggested that the medical inquiry should be concerned only with a single, simple question: 'If this condemned person is now hanged, is there any reason to suppose from the state of his mind that he will not understand why he is being hanged?' Although this suggestion would have appealed to Covarrubias, it had little attraction either for the Home Office or for humanitarians in general, for it was clearly intended to reduce the number of cases in which the inquiry led to a reprieve. Nevertheless, given certain assumptions about the purpose of the death penalty, it was at least more logical than the traditional justifications which the Atkin Committee had so piously repeated. If, as Covarrubias and Hewart no doubt believed, the primary aim of a penalty was retributive punishment, it could well be argued that the penalty would achieve its aim only if the offender understood why it was being imposed. This argument is not open, however, to someone who believes that the primary aim of a penalty such as hanging is the protection of society by deterrence or elimination. The Atkin Committee would have been more realistic if they had contented themselves with the observation that for at least four hundred years it had been accepted that common law forbade the execution of madman, although the institutional writers' explanations were obviously speculative and odd: and that since 1884 certifiable insanity had been accepted as the modern equivalent of 'madness'. Any further attempt to justify the practice would have involved them in one sort of difficulty or another, as Lord Goddard was to argue to the Gowers Commission.

13. Interesting as the statements on and origins of the Common Law rules on the subject in England, against the execution of an insane person, may be, we, in this country, are governed entirely by our statute law on such a matter. The Courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the Common Law of England against the execution of an insane person sentenced to death or some theological, religious, or moral objection to it, Our statute, law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront. What' the statute law

does not prohibit or enjoin cannot be enforced, by means of a writ of Mandamus under Article 226 of the Constitution, so as to set at naught a duly passed sentence of a Court of justice.

14. The question whether, on the facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he must not be let loose upon society, lest he commits similar crimes against other innocent persons when released, or, because of his antecedents and character, or, for some other reason, he deserves a different treatment, are matters for other authorities to consider after a Court has duly passed its sentence. As we have already indicated, even the circumstances in which the appellant committed the murders of which he was convicted are not before us. As the High Court rightly observed, the authorities concerned are expected to look into matters which lie within their powers. And, as the President of India has already rejected the appellant's mercy petitions, we presume that all relevant facts have received due consideration in appropriate quarters.

15. We think that the application to the High Court and the special leave petition to this Court, in the circumstances mentioned above, were misconceived. Accordingly, we dismiss this appeal.

16. We also dismiss Criminal Miscellaneous Petition No. 62 of 1976, an application for summoning of the original record, as it could be of no use, but we allow Criminal Miscellaneous Petition No. 380 of 1976, the application for intervention, whose contents we have quoted above. Stay of execution order is vacated.

MANU/SC/0027/1956

[Back to Section 85 of Indian Penal Code, 1860](#)

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 147 of 1955

[Back to Section 86 of Indian Penal Code, 1860](#)

Decided On: 17.04.1956

Basdev Vs. The State of Pepsu

Hon'ble Judges/Coram:

N. Chandrasekhara Aiyar and N.H. Bhagwati, JJ.

JUDGMENT

N. Chandrasekhara Aiyar, J.

1. The appellant Basdev of the village of Harigarh is a retired military Jamadar. He is charged with the murder of a young boy named Maghar Singh, aged about 15 to 16. Both of them and others of the same village went to attend a wedding in another village. All of them went to the house of the bride to take the midday meal on the 12th March, 1954. Some had settled down in their seats and some had not. The appellant asked Maghar Singh, the young boy to step aside a little so that he may occupy a convenient seat. But Maghar Singh did not move. The appellant whipped out a pistol and shot the boy in the abdomen. The injury proved fatal.

2. The party that had assembled for the marriage at the bride's house seems to have made itself very merry and much drinking was indulged in. The appellant Jamadar boozed quite a lot and he became very drunk and intoxicated. The learned Sessions Judge says "he was excessively drunk" and that "according to the evidence of one witness Wazir Singh Lambardar he was almost in an unconscious condition". This circumstance and the total absence of any motive or premeditation to kill were taken by the Sessions Judge into account and the appellant was awarded the lesser penalty of transportation for life.

3. An appeal to the PEPSU High Court at Patiala proved unsuccessful. Special leave was granted by this Court limited to the question whether the offence committed by the petitioner fell under section 302 of the Indian Penal Code or section 304 of the Indian Penal Code having regard to the provisions of section 86 of the Indian Penal Code. Section 86 which was elaborately considered by the High court runs in these terms:

"In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will".

4. It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where mens rea is required. Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarised as follows:-

So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

5. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things.

Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.

6. In the old English case, *Rex v. Meakin* [(1836) 173 E.R. 131; 7 Car. & P. 295, Baron Alderson referred to the nature of the instrument as an element to be taken in presuming the intention in these words:

"However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him, if drunk, when he made an intemperate use of it, as he would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."

7. In a charge of murdering a child leveled against a husband and wife who were both drunk at the time, Patteson J., observed in *Regina v. Cruse and Mary his wife* (1838) 173 E.R. 610; 8 Car. & P. 541.

"It appears that both these persons were drunk, and although drunkenness is no excuse for any crime whatever, yet it is often of very great importance in cases where it

is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence."

Slightly different words but somewhat more illuminating were used by Coleridge J., in Reg. v. Monk-house (1849) 4 Cox. C.C. 55.

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So, if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely, was he rendered by intoxication entirely incapable of forming the intent charged?"

"Drunkenness is ordinarily neither a defence nor excuse for crime, and where it is available as a partial answer to a charge, it rests on the prisoner to prove it, and it is not enough that he was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question, or to take away from him the power of forming any specific intention. Such a state of drunkenness may no doubt exist".

8. A great authority on criminal law Stephen J., postulated the proposition in this manner in Reg. v. Doherty (1887) 16 Cox C.C. 306 -

"..... although you cannot take drunkenness as any excuse for crime, yet when the crime is such that the intention of the party committing it is one of its constituent elements, you may look at the fact that a man was in drink in considering whether he formed the intention necessary to constitute the crime".

9. We may next notice Rex v. Meade [1909] 1 K.B. 895, where the question was whether there was any misdirection in his summing up by Lord Coleridge, J. The summing up was in these words:

"In the first place, every one is presumed to know the consequences of his acts. If he be insane, that knowledge is not presumed. Insanity is not pleaded here, but where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this - that if the mind at that time is so obscured by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to man-slaughter".
10. Darling, J., delivering the judgment of the Court of Criminal Appeal affirmed the correctness of the summing up but stated the rule in his own words as follows:

"A man is taken to intend the natural consequences of his acts. This presumption may be rebutted (1) in the case of a sober man, in many ways: (2) it may also be rebutted

in the case of man who is drunk, by showing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted".

Finally, we have to notice the House of Lord's decision in Director of Public Prosecutions v. Beard [1920] A.C. 479. In this case a prisoner ravished a girl of 13 years of age, and in aid of the act of rape he placed his hand upon her mouth to stop her from screaming, at the same time pressing his thumb upon her throat with the result that she died of suffocation. Drunkenness was pleaded as a defence. Bailhache J., directed the jury that the defence of drunkenness could only prevail if the accused by reason of it did not know what he was doing or did not know that he was doing wrong. The jury brought in a verdict of murder and the man was sentenced to death. The Court of Criminal Appeal (Earl of Reading C. J., Lord Coleridge J., and Sankey, J.) quashed this conviction on the ground of misdirection following Rex v. Meade [1909] 1 K.B. 895, which established that the presumption that a man intended the natural consequences of his acts might be rebutted in the case of drunkenness by showing that his mind was so affected by the drink that he had taken that he was incapable of knowing that what he was doing was dangerous. The conviction was, therefore, reduced to manslaughter. The Crown preferred the appeal to the House of Lords and it was heard by a strong Bench consisting of Lord Chancellor, Lord Birkenhead, Earl of Reading, C. J., Viscount Haldane, Lord Denedin, Lord Atkinson, Lord Sumner, Lord Buckmaster, and Lord Phillimore. The Lord Chancellor delivered the judgment of the court. He examined the earlier authorities in a length judgment and reached the conclusion that Rex v. Meade [1909] 1 K.B. 895, stated the law rather too broadly, though on the facts there proved the decision was right. The position "that a person charged with a crime of violence may show in order to rebut the presumption that he intended the natural consequences of his acts, that he was so drunk that he was incapable of knowing what he was doing was dangerous....." which is what is said in Meade's case, was not correct as a general proposition of law and their Lordships laid down three rules:

- (1) That insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged;
- (2) That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent;
- (3) That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

11. The result of the authorities is summarised neatly and compendiously at page 63 of Russel on Crime, tenth edition, in the following words:

"There is a distinction, however, between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention. If actual insanity in fact supervenes as the result of alcoholic excess it furnishes as complete an answer to criminal charge as insanity induced by any other cause.

But in cases falling short of insanity evidence of drunkenness which renders the accused incapable of forming the specific intent essentials to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, but evidence of drunkenness which falls short of proving such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act".

12. In the present case the learned Judges have found that although the accused was under the influence of drink, he was not so much under its influence that his mind was so obscured by the drink that there was incapacity in him to form the required intention as stated. They go on to observe:-

"All that the evidence shows at the most is that at times he staggered and as incoherent in his talk, but the same evidence shows that he was also capable of moving himself independently and talking coherently as well. At the same time it is proved that he came to the darwaza of Natha Singh P. W. 12 by himself, that he made a choice for his own seat and that is why he asked the deceased to move away from his place, that after shooting at the deceased he did attempt to get away and was secured at some short distance from the darwaza, and that when secured he realised what he had done and thus requested the witnesses to be forgiven saying that it had happened from him.

There is no evidence that when taken to the police station Barnala, he did not talk or go there just as the witnesses and had to be specially supported. All these facts, in my opinion, go to prove that there was not proved incapacity in the accused to form the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. The accused had, therefore, failed to prove such incapacity as would have been available to him as a defence, and so the law presumes that he intended the natural and probable consequences of his act, in other words, that he intended to inflict bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death".

13. On this finding the offence is not reduced from murder to culpable homicide not amounting to murder under the second part of section 304 of the Indian Penal Code. The conviction and sentence are right and the appeal is dismissed.

MANU/SC/0921/2020

[Back to Section 95 of Indian Penal Code, 1860](#)

Neutral Citation: 2020/INSC/682

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 160 of 2020

Decided On: 07.12.2020

Amish Devgan Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

A.M. Khanwilkar and Sanjiv Khanna, JJ.

JUDGMENT

Sanjiv Khanna, J.

1. Applications for intervention are allowed.
2. The writ Petitioner, Amish Devgan, is a journalist who, it is stated, is presently the managing director of several news channels owned and operated by TV18 Broadcast Limited, including News18 Uttar Pradesh/Uttarakhand, News18 Madhya Pradesh/Chhattisgarh and News18 Rajasthan.
3. The Petitioner hosts and anchors debate shows 'Aar Paar' on News18 India and 'Takkar' on CNBC Awaaz. On 15th June, 2020, at around 7:30 p.m., the Petitioner had hosted and anchored a debate on the enactment¹ which, while excluding Ayodhya, prohibits conversion and provides for maintenance of the religious character of places of worship as it existed on 15th August, 1947. Some Hindu priest organisations had challenged vires of this Act before the Supreme Court, and reportedly a Muslim organization had filed a petition opposing the challenge.
4. Post the telecast as many as seven First Information Reports (FIRs) concerning the episode were filed and registered against the Petitioner in the States of Rajasthan, Telangana, Maharashtra and Madhya Pradesh. The details of the FIRs are as under:

S. No.	FIR No.	Sections	Police Station/State
1.	78/2020	153B , 295A , 298 Indian Penal Code 66F of Information Technology Act, 2000	Dargah, Ajmer (Rajasthan)
2.	50/2020	153B , 295A , 298 Indian Penal Code 66F of Information Technology Act, 2000	Makbara, Kota (Rajasthan)
3.	173/2020	295A Indian Penal Code	Bahadurpura, Hyderabad City (Telangana)
4.	218/2020	295A Indian Penal Code	Itwara, Nanded (Maharashtra)
5.	217/2020	153A , 295A , 505(2) Indian Penal Code	Paidhuni, Mumbai (Maharashtra)
6.	674/2020	295A Indian Penal Code	Originally registered at P.S. Omati, Jabalpur (Madhya Pradesh) and subsequently on 30th June 2020 was transferred to P.S., Sector-20, Gautam Buddh Nagar (Uttar Pradesh)
7.	337/2020	295A Indian Penal Code	Naya Nagar, Thane (Maharashtra)

The gist of the FIRs is almost identical. The Petitioner, while hosting the debate, had described Pir Hazrat Moinuddin Chishti, also known as Pir Hazrat Khwaja Gareeb Nawaz, as "aakrantak Chishti aya... aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle". Translated in English the words spoken would read—"Terrorist Chishti came. Terrorist Chishti came. Robber Chishti came—thereafter the religion changed," imputing that 'the Pir Hazrat Moinuddin Chishti, a terrorist and robber, had by fear and intimidation coerced Hindus to embrace Islam.' It is alleged that the Petitioner had deliberately and intentionally insulted a Pir or a pious saint belonging to the Muslim community, revered even by Hindus, and thereby hurt and incited religious hatred towards Muslims.

5. The Petitioner, as per the writ petition, claims that post the telecast he was abused and given death threats on his phone, Twitter, Facebook and other social media platforms. Fearing for his life and limb, the Petitioner had filed FIR No. 539 of 2020 dated 20th June, 2020 at P.S. Sector-20, Noida, Uttar Pradesh, and submitted the links to the threats received through social media platforms.

6. On or about 22nd June, 2020, the present writ petition was filed Under Article 32 of the Constitution of India with an application for interim relief. This writ petition came up for hearing on 26th June, 2020 whereby notice was issued with a direction to the Petitioner

to implead the informants in the respective FIRs/complaints. An interim order was passed directing that till the next date of hearing there would be a stay on further steps/action on the FIRs mentioned in the writ petition, relating to the telecast dated 15th June, 2020, and the Petitioner was protected against any coercive process arising out of or relating to the said FIRs.

7. Pursuant to the aforesaid liberty, the writ petition was amended to implead the complainants. Thereafter, the writ petition was amended on a second occasion. The prayers made in the last amended writ petition to this Court are:

- (a) for issue of writ of certiorari, quashing the complaints/FIRs referred to above or any other FIR or criminal complaint which may be filed thereafter relating to the telecast in question dated 15th June, 2020;
- (b) strictly in the alternative, transfer and club the FIRs mentioned above or elsewhere in the country with the first FIR, i.e. FIR No. 78, P.S. Dargah, Ajmer, Rajasthan;
- (c) issue a writ of mandamus to the effect that no coercive process shall be taken against the Petitioner in the FIRs so lodged or subsequent complaint or FIRs on the subject broadcast; and
- (d) direct the Union of India to provide adequate safety and security to the Petitioner, his family members and his colleagues at various places in the country."

8. The Petitioner, in his submissions, claims that he has faith in Banda Nawaz Hazrat Khwaja Moinuddin Chishti and has also gone on Ziyarat pilgrimage to Ajmer Sharif to offer respects and to worship. Expressing regret, the Petitioner claims that the attributed words were uttered inadvertently and by mistake; in fact, the Petitioner wanted to refer to Alauddin Khilji and not Gareeb Nawaz Khwaja Moinuddin Chishti. Realising his mistake and to amend the inadvertent error, and to dispel doubts and vindicate himself, the Petitioner had promptly issued a clarification and an apology vide a tweet dated 17th June 2020. A video with similar clarification and apology was also telecast by the news channel on the very same day. Contention of the Petitioner is that in a whirl, he had taken the name of Chishti though he had no such intention, and he laments his lapse as he did not wish to hurt anybody. Accordingly, he had apologised to anyone who had been hurt. In addition, a number of submissions have been made by the Petitioner, which are summarised as under:

- Multiple FIRs arising out of the same incident are abuse of law, and violate fundamental rights of the Petitioner and freedom of press, causing a chilling effect on the freedom of speech and expression.

- The FIRs are meant to harass and intimidate the Petitioner; no part of 'cause of action' has arisen in the areas where the FIRs were lodged.
- On interpretation of Sections 153A, 295A, and 505(2) of the Indian Penal Code, 1860 (in short, the 'Penal Code') and Section 66-F of the Information Technology Act, 2000, (in short, the 'IT Act'), no offence whatsoever can be made out; the allegations are based upon utterances in isolation by picking up select words and not on the programme as a whole; the Petitioner did not have any malicious intent and mens rea to outrage religious beliefs and feelings; the programme has to be judged from the standard of a reasonable and strong-minded person and at best the words exhibit carelessness without any deliberate and malicious intent, which fall outside the ambit of Sections 153A, 295A and 505(2) of the Penal Code.
- In the alternative, it is submitted that a case of trifle or minor harm is made out, which would be covered by Section 95 of the Penal Code.
- Again, in the alternative, it is submitted that all the FIRs should be clubbed and transferred to Noida or Delhi.

Counsel for the Petitioner has relied upon the following decisions in support of his contention-Arnab Ranjan Goswami v. Union of India and Ors. Balwant Singh and Anr. v. State of Punjab MANU/SC/0344/1995: (1995) 3 SCC 214, Bhagwati Charan Shukla s/o. Ravishankar Shukla v. Provincial Government, C.P. & Berar MANU/NA/0057/1946: AIR 1947 Nagpur 1, Bilal Ahmed Kaloo v. State of A.P. MANU/SC/0861/1997: (1997) 7 SCC 431, Brij Bhushan and Anr. v. State of Delhi MANU/SC/0007/1950: AIR 1950 SC 129, Devi Sharan Sharma v. Emperor MANU/LA/0431/1927: AIR 1927 Lah 594, Emperor v. Sadashiv Narayan Bhalerao MANU/PR/0031/1947: AIR 1947 PC 82, Gopal Vinayak Godse v. Union of India MANU/MH/0012/1971: AIR 1971 Bom 56, Her Majesty the Queen v. James Keegstra (1990) 3 SCR 697, Niharendu Dutt Majumdar v. The King-Emperor MANU/FE/0005/1942: 1942 FCR 38, K.A. Abbas v. Union of India and Anr. MANU/SC/0053/1970: (1970) 2 SCC 780, Kedar Nath Singh v. State of Bihar MANU/SC/0074/1962: AIR 1962 SC 955, Lalai Singh Yadav v. State of Uttar Pradesh MANU/UP/0364/1971: 1971 CrL.J. 1773, Lalita Kumari v. Government of Uttar Pradesh and Ors. MANU/SC/1166/2013: (2014) 2 SCC 1 Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and Anr. MANU/SC/0473/2017: (2017) 7 SCC 760, Manzar Sayeed Khan v. State of Maharashtra and Anr. MANU/SC/7279/2007: (2007) 5 SCC 1, P.K. Chakravarty v. The King MANU/WB/0273/1926: AIR 1926 Calcutta 1133, Pravasi Bhalai Sangathan v. Union of India and Ors. MANU/SC/0197/2014: (2014) 11 SCC 477 Queen-Empress v. Bal Gangadhar Tilak ILR (1898) 22 Bombay 112, R. v. Zundel MANU/SCCN/0084/1992: [1992] 2 SCR 731, R.P. Kapur v. State of Punjab MANU/SC/0086/1960: AIR 1960 SC 866, Ramesh S/o Chhotalal Dalal v. Union of India and Ors. MANU/SC/0404/1988: (1988) 1 SCC 668 Ramji Lal Modi v. State of U.P.

MANU/SC/0101/1957: AIR 1957 SC 620, Romesh Thappar v. State of Madras
MANU/SC/0006/1950: AIR 1950 SC 124, Saskatchewan (Human Rights Commission) v. Whatcott
MANU/SCCN/0005/2013: (2013) 1 SCR 467, Shreya Singhal v. Union of India
MANU/SC/0329/2015: (2015) 5 SCC 1, State of Bihar and Anr. v. P.P. Sharma, IAS and Anr.
MANU/SC/0542/1992: 1992 Supp. (1) SCC 222, State of H.P. v. Pirthi Chand and Anr.
MANU/SC/0259/1996: (1996) 2 SCC 37, State of Haryana v. Bhajan Lal
MANU/SC/0115/1992: 1991 Supp (1) SCC 335, State of U.P. v. O.P. Sharma
MANU/SC/0778/1996: (1996) 7 SCC 705, Veeda Menez v. Yusuf Khan and Anr.
MANU/SC/0085/1966: 1966 SCR 123, Neelam Mahajan v. Commissioner of Police and Ors.
MANU/DE/0463/1993: 1993 (27) DRJ 357 Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh
MANU/SC/0299/2003: (2003) 6 SCC 175, Superintendent, Central Prison, Fatehgarh and Anr. v. Dr. Ram Manohar Lohia
MANU/SC/0058/1960: AIR 1960 SC 633, T.T. Antony v. State of Kerala and Ors.
MANU/SC/0365/2001: (2001) 6 SCC 181 and Virendra/K. Narendra v. State of Punjab and Anr.
MANU/SC/0023/1957: AIR 1957 SC 896.

9. The prayers made by the Petitioner are opposed by the states of Maharashtra, Rajasthan, Telangana and Uttar Pradesh, and the private Respondents. The informants submit that the Petitioner is a habitual offender and has on numerous earlier occasions offered similar apologies. The Petitioner had twice repeated the words 'aakrantak Chishti aya,' followed by the words 'lootera Chishti aya'. This assertion on three occasions conveys and reflects the intention of the Petitioner, who had described Khwaja Moinuddin Chishti as an invader, terrorist and robber who had come to India to convert its population to Islam. The pretext of inadvertent mistake is an afterthought and a sham and unreal defence. Respondent No. 9, namely, Saber Chausa Mohd. Naseer, in his affidavit has stated that the name of Khwaja Moinuddin Chishti as a Sufi Saint was taken by one of the panelists when the topic of conversion was being debated. The panelist had gone on record to state that the conversions at the time of Khwaja Moinuddin Chishti happened for moral, religious and spiritual reasons and the devotees and followers of Khwaja Moinuddin Chishti were inspired by his teachings. The affidavit also states that the discussion at that time was not in relation to Mughals or with reference to Aurangzeb or Allaudin Khilji. Further, the Petitioner had tampered with the broadcast of the debate uploaded on YouTube on 16th June, 2020, by deliberately deleting the part wherein the Petitioner had used the word 'aakrantak Chishti' (twice) and 'lootera Chishti'. These acts of sieving out of offensive portions, and the subsequent apology were after the Petitioner had learnt about the protests and registration of the FIRs at Ajmer and other places. The Respondents claim that the apology is not genuine but an act of self-defence. FIR at Ajmer was registered on 16th June, 2020 at 11:58 p.m. whereas the first apology (via Twitter) of the Petitioner appeared on 17th June, 2020, at 12:12 a.m., i.e., nearly 30 hours after the live telecast of the show where offensive words were uttered by the Petitioner.

10. The points raised by the Respondents can be summarised as under:

- The petition ought to be dismissed as Article 32 has been invoked in a cavalier manner. Remedy Under Section 482 of the Code of Criminal Procedure, 1973 (hereafter referred to as, 'Criminal Code') was available to the Petitioner.²
- The offending words were uttered thrice by the Petitioner, which shows his ill intention.³ The intention of the Petitioner was to create disharmony between the two faiths/groups and to incite disorder.⁴
- The debate was a staged program, where no experts or historians were on the panel; the program was staged to malign the Muslims and to promote hatred.⁵
- The themes of the programs hosted by the Petitioner are communal.⁶
- The conduct of the Petitioner was against norms of journalistic standards.⁷
- Petitioner uploaded an edited version of the video on Youtube, where he had removed the part containing the offensive speech. This was done after FIR was lodged as an attempt to tamper/destroy the evidence.⁸
- The Petitioner claimed that inadvertently he uttered "Chishti" in place of "Khilji", but there is no relation between these two historical figures. Khwaja Chishti came to India in 1136 when Md. Ghori was defeated by Prithvi Raj Chauhan for the first time in the battle of Tarain. Whereas, Khiljis ruled in India from 1290 to 1320. So Khilji and Khwaja Chishti were neither contemporaries nor related to each other.⁸
- Apology by the Petitioner was an afterthought. It came only after the registration of FIR.² The Petitioner did not apologize initially and let the followers of Khwaja Chishti be outraged, in order to gain popularity.²
- The two persons, whose credentials the Petitioner has mentioned in the petition, to press that the members of the community have forgiven him, is false. These two people as TV personalities and nowhere represent the devotees of Khwaja Chishti.⁸
- FIR need not have an encyclopaedia of the event. Even if only material facts have been disclosed, it is enough to continue with criminal proceedings.⁸
- Some communal elements in Maharashtra, after the broadcast of the utterances by the Petitioner, used this opportunity and started circulating this video to spread hatred.⁸
- Article 19(1)(a) of the Constitution is subject to express limitations Under Article 19(2) of the Constitution.

- The police should be permitted to file report Under Section 173 of the Code of Criminal Procedure and court should frame the charges. Then only the Petitioner would get the opportunity to defend himself in the court.⁹
- Section 19 of the Cable TV (Regulation) Act prohibits cable TV network to broadcast any content that promotes hate or ill will.⁵
- The broadcast was throughout the nation and thus cause of action arose in Ajmer too, where the intervener resides and serves as khadim to Dargah of Khwaja Chishti.
- Respondent No. 5, State of Uttar Pradesh,¹⁰ reiterated the facts of the FIR lodged at the instance of informant Amish Devgan. Also, it has been mentioned that one FIR which was filed in Jabalpur against the Petitioner Amish Devgan was transferred by Jabalpur police to Gautam Budh Nagar.
- State of Rajasthan¹¹ submitted:
 - (a) apology tendered by the Petitioner would not dilute the offence. Also, it was after 30 hours of the broadcast of the show.
 - (b) Allegations and counter allegations of facts are matter of trial.
 - (c) Transfer all FIRs to Ajmer as one of the FIRs is there, and matter also relates to Ajmer.
- State of Telangana¹² submitted:
 - (a) Complainants/informants came to the P.S. Bahadurpura, Hyderabad and made a complaint that the Petitioner has dishonoured Khwaja Chishti.
 - (b) As per State of Orissa v. Saroj Kumar Sahoo MANU/SC/2264/2005: (2005) 13 SCC 540, probabilities of prosecution version can't be denied at the early stages.
 - (c) Normal course of investigation cannot be cut-short in casual manner. Also, the Accused has a remedy under 482 of the Code of Criminal Procedure.

The Show and Debate

11. Before we examine the first prayer, we must take notice of the fact that the transcript filed by the Petitioner with the original writ petition and the amended writ petitions is not the true and correct transcript. As per these transcripts the Petitioner is stated to have only uttered the words "Akranta Chishti came... Lootera Chishti came after then religion changed". However, in the transcript filed by the Petitioner on 8th July, 2020, it is accepted that the Petitioner had used the words 'Akranta Chishti' not once but twice. This is the

correct version. The Petitioner accepts that the topic of debate was relating to the challenge posed by a Hindu priest organisation to the Places of Worship (Special Provisions) Act, 1991, according to which the de facto position of religious places as on 15th August, 1947 could not be changed or altered, though Ayodhya was kept out of the ambit of the Act, and this petition was opposed by a Muslim organisation stating that if notice is issued there would be widespread fear among the Muslim community. After the prelude initiating the debate, the Petitioner, as per the transcript, had stated "Today, this will be the key issue of the debate... Ayodhya Verdict delivered, Why Kashi-Mathura issue left unresolved?... asking Hindu Priests!". The Petitioner as per the transcript had then declaimed:

Now analyse the legal position of Kashi Mathura issue...Hindu Priest organisation has reached Supreme Court against Places of Worship (Special Provisions) Act, 1991...According to this Act of 1946, the de facto position of any religious place could not be altered in any condition...According to Act a mosque could not be changed into temple or a temple could not be changed into mosque...This is impossible...The Ayodhya issue was out of this ambit as it was already in litigation. The Ayodhya issue was 100 year old dispute...The priest organisation says that Places of Worship (Special Provisions) Act, 1991 is against the Hindus...Today we are not debating the issue of Kashi or Mathura...we are debating the Places of Worship (Special Provisions) Act, 1991...What changes should be made in this Act?...if the arguments of Hindu Priests to be believed.

12. We must also at this stage itself reproduce portions of the debate, including the portion which the Petitioner seeks to rely upon:

I don't want to make this debate a hot topic between Hindu-Muslim community...I would like to discuss the provisions of this Act...First, I am going to ask questions to Mahant Naval Kishore Das Ji...Naval ji...Why do you want a change to the provisions of this Act?...The indication is clear...Ayodhya Jhanki Hai...Mathura Kashi Baaki Hain...This was the slogan of RSS, VHP and BJP...

xx xx xx

Atiq-Ur-Rehman: Amish Ji, I'm welcoming your statements that you said you don't want the 'Hindu-Muslim' saga on the matter. And I pay respect to Mahant Ji as well. He put his thoughts in a well-behaved manner. The Mahant Ji raised the question; 'a mole in the thief's beard' (darta wo hai jinki dadi me tinka hota hai).

xx xx xx

Amish Devgan:

Point Number-2: You have said that with a clever step...Atiq-Ur-Rehman Ji I've listened your statement, you talked around 2-2½ minutes. You said that the verdict on the Ayodhya case came on the board cleverly. But, I want to refresh your memory; in the year of 1991-92 when there had the slogan for the Ayodhya in the air the Sant Samaj, VHP, Rashtriya Swayamsevak Sangh and authentic persons of the Hindu Samaj used to say Ayodhya jhanki hai, Kashi-Mathura baki hai.

So the demand is very old. The wish is too old. But when the Ayodhya's wish was fulfilled then definitely after that verdict you are raising the question on your own ways. That is your take. Now I'm moving to Dr. Sudhanshu Trivedi, Jamiat Ulema-e-Hind are saying that if these types of petitions to be heard then thee will be a danger to the Muslim worship places.

xx xx xx

Amish Devgan: Dr. Trivedi, you made your point. I'm moving to Maulana Ali Kadri, he is senior guy. Kadri Sahab; I'm asking you straight. The Saints/Pujaris/Purohits/Mahants have a constitutional right that they file the writ in the Supreme Court against the 1991 Act. And they have right to talk about the Kashi and Mathura. But, if there is the Dukan is the concern, Dar ki Dukan to pahle hi khol di. In that petition had said if there was a notice on it the Muslims would feel that their worship places were not safe. They feel fear. Jamiat Ulema-e-Hind's petition says then who is opening the Dar ki Dukan. The Dar ki Dukan has already opened. This is the constitutional right?

xx xx xx

Amish Devgan: Ali Qadri Sahab, why the Jamiat Ulema-e-Hind is hiding its failure? Why the organisation is saying that there will be a fear in the Muslims for their worship places due to the notice? If you want to show Dr. Sudhanshu Trivedi's party's failure and wish to expose the RSS and VHP, then please tell in 20 seconds.

xx xx xx

Amish Devgan: Mr. Vinod Bansal, there is a symbol of Om is showing behind you. Om, the symbol of peace. But Maulana Ali Kadri is saying; you want to spread Ashanti. You have defeated by corona and now seeking a base from the Mathura-Kashi issues. After these issues you will raise the Jama Masjid matter and Taj Mahal will be in your hit list.

xx xx xx

Amish Devgan: Then how the Kashi-Mathura issue came into limelight?

Vinod Bansal: There is clearly written that the 1947's status to be maintained. Despite of that why the properties had transferred to the Waqf Board in a large level? Waqf Board asked properties on the name of Mazars, Mosques and Graveyards several times. Is all the things are belong to their father (Ye sara inka, inke Baap ka hai?) This is not the right way.

The first thing is, if the law had implemented, it should complete in a shape.

And the second one is...is it not true that thousands of the Hindu temples had demolished? The Hindu had converted and humiliated in a large scale. There should be needed to rectify the historical wrongs. Why they are trying to escape from the reality.

Amish Devgan: The historical wrong should rectify. Though several historians said the Eidgah and Krishan Janam Bhoomi in Mathura are situated adjacent to each other. Several historians claimed that in the 17th century emperor Aurangzeb had demolished a temple and had built a mosque on the very same place. VHP's Giriraj Kishor also said the same thing that on the place where the mosque is situated in Mathura, the Lord Krishnan had birthed on the same place. Besides that, he said several things. Now I want to move to Shadab Chauhan. He wishes to say something. Please go ahead.

Shadab Chauhan: Peace Party pay respect to the Constitution of India and the social harmony. So, we have filed the curative petition for the justice. Now we will talk about Kashi and Mathura. After defeating from the coronavirus, government is trying to divert the nation's attention by raising the issue of Kashi and Mathura.

And now I'm saying with the challenge that there should not be any 'nanga-nach' like the 1992, on the name of worship place. We respect the 1991 law. I deeply said that my elder brother Sudhanshu Trivedi Ji said, that the temples which had built after August 15, 1947, will be removed. Are you talking about demolishing the temples? The Ram Mandir which will be constructed, have you will demolish it as well?

And the second thing is, the Ram Mandir verdict came on basis of the faith and we are not satisfied with the decision. So we moved to the court. This is the matter of justice not of any religion's issue. Now we will not allow any goon to insult the saffron colour. The terror was made with demolishing the Babri Masjid.

Amish Devgan: What you said? Repeat it. The insult of the saffron colour...we...any...what did you say?

Shadab Chaudhary: Listen...insult of the saffron colour. We don't allow any goon to demolish any worship place and don't allow kill the innocents.

Amish Devgan: No...You can't say goons to the Sant Samaj. I objected completely. Shadab Chauhan you said a wrong thing. You said India's Sant Sama/Purohit-Pande of the country are goons.

Mahant Nawal Kishor Das: These people should apologise. You invite such people for the debate? They didn't pay respect to their ancestors too. Due to the fear they converted in the other religion.

Shadab Chauhan: They are goons.

xx xx xx

Amish Devgan: You are wrong...we do not have any problem with Muslims...we do not have problems with Abdul Kalam, we do not have problem with Dara Shikoh but yes...we do have problem with AURANGZEB...being a Hindustani we should have problems with Aurangzeb.

xx xx xx

Maulan Qadri: I will answer Sudhanshu Sahab...Sudhanshu has said that the Ram Mandir decision was not merely based on faith...A few days before today, Shivlinga got excavated there, after that I do not want to name anything else and there was an idol of someone there...So it should be decided if there was a Ram temple or Jain temple, it can be disseminated to you...the excavation says another story...if talk about name of Shadab Chauhan or anybody else...we are proud to said that after Khawaja Moinuddin Chisti...a lot of Indians converted to Islam and saw Moinuddin's execution and converted to Islam by seeing his life...but not all the Muslims who are in India are converts.

Amish Devgan: Maulana sahib, you took the name of Chishti...Now tell me, you are in today's age, after watching Donald Trump, he is a Christian, you will not change your religion, will not change religion after seeing Prime Minister Narendra Modi's religion...

xx xx xx

Maulana Ali Qadri: Seeing the implementation of Khwaja Moinuddin Chishti...Seeing the Talimat of Islam that all live together, there is no inferiority...Seeing Moinuddin's life, people accepted Islam...

Amish Devgan: Dr. Sudhanshu Trivedi...Akranta Chishti came...Akranta Chisti came...Lootera Chishti came after then religion changed.

Maulana Qadri: No man accepted Islam at the edge of the sword...He became a Muttasir from Islam and accepted Islam by liking the teachers of Islam...I would like to say that to you...

xx xx xx

Amish Devgan: Vinod ji, I got your point...Why Jamiat is creating fear mongering among Muslim community...Jamiat is creating false perception that their place of worship is closing...

xx xx xx

Ateeq-ur-Rehman: Amish let's discuss the Act only...in the beginning of the show, you mentioned that Hindu-Muslim slugfest should not happen...We are adhere to this...Vinod Bansal is now saying that 1991 Act's provision should be discussed again...Is it not insult to Parliament...The Act was passed in Parliament when BJP was also present in the House...Why they have not discussed this issue before Ram Mandir verdict...Why they were silent...

Vinod Bansal: This case was in consideration before Ram Mandir issue.

Ateeq-ur-Rehman: Amish ji...Mahant ji talking about Hindu pride...What about Buddhist pride...

xx xx xx

Amish Devgan: I am stopping for break Sudhanshu ji Sudhanshu ji I am staying for break but on public demand, Shadab Chauhan will apologize after the break...I will go to Shadab Chauhan after the break...He will apologize to the whole saint society...I am coming back after the break and if he don't apologise, he will have to get out of this debate.

xx xx xx

Amish Devgan: Yes or No...I am not giving a chance to say yes or No...You will either apologize, your audio will open. If you do not apologize, I will say thank you...Thank you for coming...

Shadab Chauhan: The son of the farmer says that he...

Amish Devgan: The son of a farmer is not a matter of a son of a farmer, it is a matter of saints...

Shadab Chauhan: I leave the debate...They are goons, they are goons...Those who fight in the name of religion are goons...

Amish Devgan: I will not ask for forgiveness...keep shouting I do not matter...I will not ask for forgiveness...

Shadab Chauhan: No...Farmer's son won't apologise.

Amish Devgan: So get out again...You get this person out of debates...Turn off the audio of this...I never say that to any guest...But you spoke derogatory words...Show this person show a full frame...You are a foolish man...Open the audio, what is he saying...

Shadab Chauhan: And but goons will be called goons...

Amish Devgan: Apologise to the saint community...

Shadab Chauhan: I respect all religions but goons will be called goons...

Amish Devgan: Same respect for all religions, everybody spoke about religion...Nobody called anything derogatory to Jamiat Ulema Hind...No one spoke...The saints who are putting up a social petition would be called goons...goons?..

Shadab Chauhan: There are hooligans who break religious places...There are goons who break the Constitution are goons who destroy the Constitution...

Amish Devgan: Shut up and get out. You are out...You are not fit to sit in this debate. You are out...Turn these out. Turn off the audio. Keep eating the minds of your family...get out of here...I am asking you Qadri sahib...the words used by Shadab Chauhan, were they wrong or right?

Maulana Ali Qadri: See...the use of such derogatory words for any religion is not approved by me or by anybody...

Amish Devgan: Thanks.

Maulana Qadri: It is necessary to respect the Guru of any religion. I believe it to be yours and it is a request from you also that do not use the word Islamic terrorism...because terror has no religion...

xx xx xx

Amish Devgan: Thank you very much...Mahant ji, I am sorry, I will not be able to give more time than this...Thank you very much...for keeping your point in our discussion...Finally, I will always I conclude...

But in conclusion today, I want to say something that we should respect all religions...But many people wrote that Shadab Chauhan should not be called in this debate, such people are abusive...See we can't judge people on the basis of their face...He had done wrong...we put him out of debate...but it is very important to boycott such people...and that's why we boycotted them in this debate...Namaskar...

A. First Prayer-Whether the FIRs should be quashed?

(i) Cause of Action

13. We reject the contention of the Petitioner that criminal proceedings arising from the impugned FIRs ought to be quashed as these FIRs were registered in places where no 'cause of action' arose. Section 179 of the Code of Criminal Procedure provides that an offence is triable at the place where an act is done or its consequence ensues. It provides:

179. Offence triable where act is done or consequence ensues: When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

The debate-show hosted by the Petitioner was broadcast on a widely viewed television network. The audience, including the complainants, were located in different parts of India and were affected by the utterances of the Petitioner; thus, the consequence of the words of the Petitioner ensued in different places, including the places of registration of the impugned FIRs.

Further, Clause (1) of Section 156 of the Code of Criminal Procedure provides that any officer in-charge of a police station may investigate any cognizable case which a court having jurisdiction over the local limits of such station would have the power to inquire into or try. Thus, a conjoint reading of Sections 179 and 156(1) of the Code of Criminal Procedure make it clear that the impugned FIRs do not suffer from this jurisdictional defect.

(ii) Defence of causing slight harm

14. The Petitioner has relied upon the decision of this Court in Veeda Menez and the decision of the High Court of Delhi in Neelam Mahajan to plead the defence of trifles Under Section 95 of the Penal Code. We are not inclined at this stage to entertain this defence of the Petitioner. Section 95 is intended to prevent penalisation of negligible

wrongs or offences of trivial character. Whether an act, which amounts to an offence, is trivial would undoubtedly depend upon the evidence collated in relation to the injury or harm suffered, the knowledge or intention with which the offending act was done, and other related circumstances. These aspects would be examined and considered at the appropriate stage by the police during investigation, after investigation by the competent authority while granting or rejecting sanction or by the Court, if charge-sheet is filed. The present case cannot be equated with either Veeda Menez or Neelam Mahajan's case where the factual matrix was undisputed and admitted. It would be wrong and inappropriate in the present context to prejudge and pronounce on aspects which are factual and disputed. The 'content' by itself without ascertaining facts and evidence does not warrant acceptance of this plea raised by the Petitioner. The defence is left open, without expressing any opinion.

(iii) Hate Speech

15. Benjamin Franklin, in 1722, had stated:

Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as public Liberty, without Freedom of Speech; which is the Right of every Man, as far as by it, he does not hurt or control the Right of another; And this is the only Check it ought to suffer, and the only Bounds it ought to know.

Two centuries later it remains difficult in law to draw the outmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, so as to constitute a criminal offence. The difficulty arises in ascertaining the legitimate countervailing public duty, and in proportionality and reasonableness of the restriction which criminalises written or spoken words. Further, criminalisation of speech is often demarcated and delineated by the past and recent significant events affecting the nation including explanation of their causes. Therefore, constitutional and statutory treatment of 'hate speech' depends on the values sought to be promoted, perceived harm involved and the importance of these harms.¹³ Consequently, a universal definition of 'hate speech' remains difficult, except for one commonality that 'incitement to violence' is punishable.

16. This Court in 2014, in Pravasi Bhalai Sangathan had requested the Law Commission of India to examine the possibility of defining the expression 'hate speech', and make recommendations to the Parliament to curb this menace, especially in relation to electoral offences. This Court had expressed difficulty in 'confining the prohibition to some manageable standard'. The Law Commission, in its 267th Report on Hate Speech had recommended amendments to the criminal laws for inserting new provisions prohibiting incitement to hatred and causing fear, alarm, or provocation of violence in certain cases, but these have not yet been accepted by the government. Referring to the Constituent

Assembly Debates and the Constitution, the Report observes that the right to speech was not to be treated as absolute, but subject to restrictions on the grounds like sedition, obscenity, slander, libel and interest of public order. If the State is denied power to restrict speech on the basis of content, it might produce debates informed by prejudices of the public that would marginalise vulnerable groups and deny them equal space in the society. The mode of exercise of free speech, the context and the extent of abuse of freedom are important in determining the contours of permissible restrictions. The Commission also felt that laying down of a definite standard might lead to curtailment of free speech; a concern that has prevented the judiciary from defining hate speech in India. However, this is not to deny that the courts while adjudicating each case have to inevitably apply an objective test in terms of the legislative provisions. This is an inescapable legal necessity to ensure certainty and to prevent abuse and misuse, as failure to do so would curtail and subjugate the right to free speech and expression to occasional whims and even tyranny of subjective understanding of the authorities. Difference between free speech and hate speech in the context of the penal law must be understood.

17. The Law Commission report analysed the legal standards under various instruments of international law that lay down the regime for controlling and preventing hate speech, which we will encapsulate. Article 20(2) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) prohibits 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'. Similarly, Articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD), prohibits 'dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin...'. The Human Rights Council's Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in the context of internet content, states that freedom of expression can be restricted on grounds like hate speech (to protect rights of affected communities), defamation (to protect the rights and reputation of individuals against unwarranted attacks), and 'advocacy' of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others). Article 10 of the European Convention of Human Rights guarantees the right to freedom of expression, subject to certain 'formalities, conditions, restrictions or penalties' in the interest of... public safety, for the prevention of disorder or crime... for the protection of the reputation or rights of others...'. Further, Article 17 of the Convention prohibits abuse of the right by 'any State, group or person'. The Council of Europe's Committee of Ministers to Member States on Hate Speech has defined 'Hate Speech' as 'covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.' The Law Commission report notes that pluralism, tolerance, peace and non-discrimination have been termed non-derogatory values by the European Court of

Human Rights in ascertaining the extent of free speech allowed under the Convention; speech propagating religious intolerance, negationism, homophobia etc. has been excluded from the ambit of Article 10 of European Convention of Human Rights and the importance of responsible speech in a multicultural society has been stressed by the court in several cases. The Law Commission report has noted that in recent years, the European Court of Human Rights has moved from a strictly neutral approach, wherein not every offensive speech was considered illegitimate, by holding that interference is not to be solely judged on legitimate aim test but also whether such interference was necessary in a democratic society. This moderation takes into account that affording protection to all kinds of speech, even offensive ones, many times vilifies the cause of equality.

18. We will now succinctly refer to the American position which discloses a strong preference for liberty over equality, and commitment to individualism, predicated on the belief that:

...Truth was definite and demonstrable and that it had unique powers of survival when permitted to assert itself in a "free and open encounter." [...] Let all with something to say be free to express themselves. The true and sound will survive; the false and unsound will be vanquished. Government should be kept out of the battle and not weigh the odds in favor of one side or the other. And even though the false may gain a temporary victory, that which is true, by drawing to its defence additional forces, will through the self-righting process ultimately survive.¹⁴

19. The American framework on hate speech is based upon four major philosophical justifications.¹⁵ Justification from democracy is based on the belief that free speech enables a democratic self-government by allowing citizens to convey and receive ideas. This rationale does not grant protection to speech that is antidemocratic in general, and hateful or political extremist in particular. Another justification comes from the social contract theory, which requires that 'fundamental political institutions must be justifiable in terms of an actual or hypothetical agreement among all members of the relevant society.' The third justification-pursuit of the truth, is based on the utilitarian philosophy. Popularly known as the justification based on 'free marketplace of ideas,' it is grounded in the notion that truth is more likely to prevail through open discussion, and that the society will be better able to progress if the government is kept out of adjudicating as to what is true or false, valid versus invalid, or acceptable against abhorrent. The fourth justification comes from the idea of autonomy, and is primarily individualistic, unlike the previous three that value collective good. According to this, free speech enables individual autonomy, respect and well-being through self-expression.

20. The threshold or the standard in American jurisprudence to determine the circumstances under which the First Amendment freedoms of speech, press and assembly should be restricted has with time moved from the 'bad tendency test' i.e., prohibiting speech if it has tendency to harm public welfare, to the test of 'clear and

present danger',¹⁶ and to finally the test of 'imminent lawless action'. Mr. Justice Douglas in his concurring opinion in *Brandenburg v. Ohio* MANU/USSC/0132/1969: 395 U.S. 444 (1969) had adumbrated that the 'clear and present danger' precept in pronouncements during World War I and to check Marxism had moved away from the First Amendment ideal as in *Dennis v. United States* MANU/USSC/0089/1951: 341 U.S. 494 'not improbable' standard was followed. The 'imminent lawless action' test has three distinct elements, namely-intent, imminence and likelihood. In other words, the State cannot restrict and limit the First Amendment protection by forbidding or proscribing advocacy by use of force or law, except when the speaker intends to incite a violation of the law—that is both imminent and likely.

21. Michel Rosenfeld in his essay¹³ states that primary function of free speech has taken different forms in four historical stages. The first stage, dating back to the War of Independence, established protection of people against the government as the dominant function of free speech. In the second stage, as democracy became entrenched in the USA, free speech was meant to protect proponents of unpopular views against the tyranny of the majority. Stage three, panning between mid-1950s to 1980s when there was widespread consensus on essential values, saw the main function of free speech shift from lifting restraints on speakers to ensuring that listeners remain open-minded. Finally, with the rise of alternative discourses such as feminist and critical race theories attacking mainstream and official speech as inherently oppressive, the primary role of free speech became the protection of oppressed and marginalised discourses against the hegemony of discourses of the powerful. Accordingly, there are suggestions that 'imminent lawless action' fails to take into consideration and is prone to undermine the autonomy or self-respect of those whom the hate speech targets. Critics emphasise on the threat posed by unconstrained speech by the hegemony of dominant discourses at the expense of discourses of others, which as a result may only exacerbate the other's humiliation and denial of self-respect and autonomy. Counter approach reflects on the impact of hate speech on target and non-target audiences. The targeted audiences could experience anger, fear, concern and alienation. The non-targeted audiences may have different experiences from reversion to mixed emotions to downright sympathy for the substance of the main hate message, if not the form. This has long-term effects even on the non-targeted audiences, as even when they do not agree, they tend to accept as normal the message of hate over a period of time.

22. The Canadian jurisprudence on the subject proceeds on the basis of inviolability of human dignity as its paramount value and specifically limits the freedom of expression when necessary to protect the young and the right to personal honour. Canadian approach emphasises on multiculturalism and group equality, as it places greater emphasis on cultural diversity and promotes the idea of ethnic mosaic. The Canadian Supreme Court in *James Keegstra* had upheld the criminal conviction of a high school teacher for anti-Semitic propaganda on the ground that it amounts to wilful promotion

of hatred against a group identifiable on the basis of colour, race, religion or ethnic origin. It was observed as under:

(1) seeking and attaining truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in a tolerant and welcoming environment for the sake of both those who convey a meaning and those to whom meaning is conveyed.

The Canadian position, therefore, considers the likely impact of hate speech on both the targeted groups and non-targeted groups. The former are likely to be degraded and humiliated to experience injuries to their sense of self-worth and acceptance in the larger society and may well, as a consequence, avoid contact with members of the other group within the polity. The non-targeted members of the group, sometimes representing society at large, on the other hand, may gradually become de-sensitised and may in the long run start accepting and believing the messages of hate directed towards racial and religious groups. These insidious effects pose serious threats to social cohesion rather than merely projecting immediate threats to violence. Dixon, C.J., in Canada (Human Rights Commission) v. Taylor MANU/SCCN/0071/1990: (1990) 3 SCR 892, had observed:

...messages of hate propaganda undermine the dignity and self-worth of targeted group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open mindedness that must flourish in a multicultural society which is committed to the idea of equality.

23. Saskatchewan (Human Rights Commission) had laid down three tests to determine whether an expression could qualify as hate speech or not. First, courts must apply the hate speech prohibitions objectively by applying the test of a reasonable person. Secondly, the legislative term 'hatred' or 'hatred or contempt' must be interpreted to mean the extreme form of the emotions, i.e. detestation and vilification. Thirdly, the effect of the expression on the targeted group should be determined by the Court. Canadian laws attempt to restrict false and discriminatory statements that are likely to lead to breach of peace. In R. v. Zundel the Court observed that publishing and spreading false news that was known to be false is likely to cause injury to public interest and multiculturalism.

24. In Australia, the position of law is substantially aligned with that in Canada. The Australian Federal Court, in the case of Pat Eatock v. Andrew Bolt (2011) FCA 1103 followed the dictum in Keegstra in holding that the right to freedom of expression could be restricted vide legislation which made racial hatred a criminal offence. The Federal Court quoted with approval the observations in Keegstra that had examined and rejected the underlying rationale theory, to hold:

(a) The justification from pursuit of truth does not support the protection of hate propaganda, and may even detriment our search for truth. The more erroneous or mendacious a statement, the less its value in the quest of truth. We must not overemphasise that rationality will overcome all falsehoods.

(b) Self-fulfilment and autonomy, in a large part, come from one's ability to articulate and nurture an identity based on membership in a cultural or religious group. The extent to which this value furthers free speech should be modulated insofar as it advocates an intolerant and prejudicial disregard for the process of individual self-development and human flourishing.

(c) The justification from participation in democracy shows a shortcoming when expression is employed to propagate ideas repugnant to democratic values, thus undermining the commitment to democracy. Hate propaganda argues for a society with subversion of democracy and denial of respect and dignity to individuals based on group identities.

25. The South African position regards dignity as paramount constitutional value and the law and the courts are willing to subjugate freedom of expression when the latter sufficiently undermines the former. The constitutional provision, therefore, enjoins the legislature and the court to limit speech rights and the exercise of those rights which deprive others of dignity.

26. The position in the United Kingdom has shifted over the years from reinforcing the security of the government to checking incitement to racial hatred among non-target audience with the aim of protecting targets against racially motivated harassment. The Race Relations Act, 1965 makes it a crime to utter in public or publish words 'which are threatening, abusive or insulting' and which are intended to incite hatred on the basis of race, colour or national origin. The Act focuses on 'incitement to hatred' rather than 'incitement to violence' but requires proof of intent for conviction. It also distinguishes between free speech and protects expression of political position but checks and criminalises illegal promotion of hate speech on basis of race, colour or national origin.¹³

27. Germany, on the other hand, and by contrast, believes that freedom of expression is one amongst several rights which is limited by principles of equality, dignity and multiculturalism. Further, value of personal honour always triumphs over the right to utter untrue statements or facts made with the knowledge of their falsity. If true statements of fact invade the intimate personal sphere of an individual, the right to personal honour triumphs over the freedom of speech. If such truth implicates the social sphere, the court once again resorts to balancing. Finally, if the expression of opinion as opposed to a fact constitutes a serious affront to the dignity of a person, the value of person however triumphs over the speech. But if damage to reputation is slight, then

again, the outcome of the case will depend on careful judicial balancing. Therefore, German application strikes a balance between rights and duties, between the individual and the community and between the self-expression needs of the speaker and the self-respect and dignity of the listeners. It recognises the content-based speech Regulation. It also recognises the difference between fact and opinion.¹⁷

28. The United States and France saw birth of democracy vide 18th century revolutions that strove to guarantee rights to individuals. However, the situations were quite different. In France, the revolution sought to limit, if not abolish-the prerogatives of rich and powerful catholic church. The French Parliament defined 'religious freedom' in individual terms and in August, 1789 adopted the declaration des Droits de l'Homme et du Citoyen, which declared-'no one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law'. In 1905, Declaration of Laicite, freedom of conscience, the freedom to believe or not believe, was enshrined in the Constitution. The principle recognises freedom to practice religion, in private or in public, as long as the manifestation of the practice does not disturb the peace. The State guarantees equality to all citizens regardless of their philosophical or religious conviction as all persons are born and remain free and equal in right. Everyone is free to express their own particular convictions and adhere to it. Laicite confederates and reinforces the unity of the nation by bringing citizens together by adhering to values of the republic which includes the right to accept differences.¹⁸ In accordance with the above principle, the French recognise and accept the right to offend as an essential corollary to freedom of expression which should be defended or upheld by other means, than by causing an offence. France does have hate speech laws against racism and xenophobia, which includes anti-religious hate crimes, to protect groups and individuals from being defamed or insulted on the ground of nationality, race, religion, ethnicity, sex, sexual orientation, gender identity or because they have a handicap. However, the French law gives primacy to freedom of expression, which it believes is meaningless without the right to offend, which would to some not only include the right to criticise and provoke but also the right to ridicule when it comes to ideas and beliefs, including religious beliefs.

29. Andrew F. Sellars, in his essay 'Defining Hate Speech'¹⁹ has examined the concept of hate speech in different democratic jurisdictions, and refers to attempts to define 'hate speech' by scholars and academics, including Mari J. Matsuda, Mayo Moran, Kenneth D. Ward, Susan Benesch, Bhikhu Parekh and others. The Author has formulated common traits in defining 'hate speech' observing that this would be helpful and relevant in considering how the society should respond. These can be categorised as follows:

(a) Hate speech targets a group, or an individual as a member of the group. The word 'group' has been traditionally used with reference to historically oppressed, traditionally disadvantaged or minority, but some prefer not to look for a defined group but to see whether the speaker targets someone based on an arbitrary or normatively irrelevant

feature. The expression 'group' would include identification based upon race, ethnicity, religion, gender, sexual orientation, sexual identity, appearance, physical ability, etc.;

(b) Content of the message should express hatred. Hostility towards a group in the spoken words reflects the intent of the speaker. One should be able to objectively identify the speech as an insult or threat to the members of the targeted group, including stigmatising the targeted group by ascribing to it qualities widely disregarded as undesirable;

(c) Speech should cause harm, which can be physical harm such as violence or incitement and true threats of violence and can include deep structural considerations caused by silent harm because of the victim's desperation that they cannot change the attribute that gives rise to hatred. The speech could permeate and impact the victim's relationship with others, cause denial of oneself and result in structural harms within the society;

(d) Intent of the speaker to cause harm or other bad activity to most is an essential feature of hate speech. In some statutes it can be even tacit inherent component. However, what the speaker should intend to constitute hate speech is subject to varied positions. Intent may refer to non-physical aspects like to demean, vilify, humiliate, or being persecutorial, disregarding or hateful, or refer to physical aspects like promoting violence, or direct attacks. However, speakers can lie about their intent not only to others but to themselves. Intent may be disguised and obscured;

(e) Speech should incite some other consequence as a result of the speech. Incitement could be of non-physical reactions such as hatred, or physical reactions such as violence. Certain jurisdictions require that the incitement should be imminent or almost inevitable and not too remote;

(f) Context and occasion of the speech is important. This requirement means looking into the factors such as the power of the speaker, place and occasion when the speech was made, the receptiveness of the audience and the history of violence in the area where the speech takes place. It requires examination whether the statement was made in the public to the view of the targeted group as an undesirable presence and a legitimate object of hostility. In certain contexts, at 'home speeches' may themselves amount to hate speeches as the said speeches are now uploaded and circulated in the virtual world through internet etc.; and lastly

(g) Speech should have no redeeming purpose, which means that 'the speech primarily carries no meaning other than hatred towards a particular group'. This is necessarily subjective and requires examination of good faith and good motives on the part of the speaker. 'No legitimate purpose' principle being abstract has difficulties, albeit is well documented. 'Good faith' and 'no legitimate purpose' exclusions are accepted as a good exception.

C. Decisions of this Court and High Courts interpreting Article 19(1)(a) and 19(2) of the Constitution, and Sections 153A, 295A and Clause (2) of Section 505 of the Penal Code.

30. In *Ramji Lal Modi*, a Constitution Bench of five Judges, relying upon the earlier decisions in *Romesh Thapar* and *Brij Bhushan*, had upheld the constitutional validity of Section 295A, a provision which criminalises the act of insulting religious beliefs with the deliberate intention to outrage religious feelings of a class of citizens. Ruling that the right to free speech is not absolute as Article 19(2) of the Constitution envisages reasonable restrictions, this Court observed that the phrase 'public order', as a ground for restricting the freedom of speech, incorporated in Article 19(2) vide the Constitution (First Amendment) Act, 1951 with retrospective effect, reads 'in the interest of public order', which connotes a much wider import than 'maintenance of public order'. This distinction between 'maintenance of public order' and 'in the interest of public order' was reiterated by another Constitution Bench of five Judges of this Court in *Virendra/K. Narendra*.

31. Even so, in *Ramji Lal Modi* Section 295A of the Penal Code was interpreted punctiliously observing:

9....Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class...

Import of Section 295A of the Penal Code, *Ramji Lal Modi* holds, is to curb speech made with 'malicious intent' and not 'offensive speech'. Criminality would not include insults to religion offered unwittingly, carelessly or without deliberate or malicious intent to outrage the religious feelings. Only aggravated form of insult to religion when it is perpetuated with deliberate and malicious intent to outrage the religious feelings of that group is punishable. Notably, this Court had already dismissed the Special Leave Petition and upheld *Ramji Lal Modi*'s conviction Under Section 295A for having published an Article in a magazine against Muslims. It was specifically noticed that even earlier, the journalist in question had printed and published an Article or a cartoon about a donkey on which there was agitation by Muslims in Uttar Pradesh, which after prosecution, however, had eventually resulted in Petitioner's acquittal by the Allahabad High Court.

32. In *Kedar Nath Singh*, a Constitution Bench of five Judges of this Court had interpreted Sections 124A and 505 of the Penal Code post amendment to Clause (2) to Article 19 of the Constitution widening its ambit by incorporating the words-'in the interest of'... 'public order'. Reference was made to the difference in approach and interpretation by Sir Maurice Gwyer, C.J., speaking for the Federal Court in *Niharendu Dutt Majumdar* and the decision of the Privy Council in *Sadashiv Narayan Bhalerao*, which had approved

the elucidation by Strachey, J. in Bal Gangadhar Tilak. This Court held that the exposition of law by the Federal Court in Niharendu's case would be apposite and in conformity with the amended Clause (2) of Article 19. Specific reference was made to the dissenting opinions of Fazl Ali, J., in Romesh Thappar and Brij Bhushan, to observe that the difference between the majority opinion in the two cases and the minority opinion of Fazl Ali, J. had prompted the Parliament to amend Clause (2) of Article 19 by the Constitution (First Amendment) Act, 1951 with retrospective effect. Fazl Ali, J. had held that the concept of 'security of state' was very much allied to the concept of 'public order' and that restrictions on the freedom of speech and expression could validly be imposed in the interest of public order. At the same time, this Court had cautioned that the two penal provisions, read as a whole together with the explanation, aim at rendering penal only those activities which would be intended, or have the tendency, to create disorder or disturbance of public peace by resort to violence. It was elutriated that criticism and comments on government's action in howsoever strong words would not attract penal action as they would fall within the fundamental right of freedom of speech and expression. The penal provisions catch up when the word, written or spoken etc., have the pernicious tendency or intention of creating public disorder. So construed, the two provisions strike the correct balance between individual fundamental rights and the interest of public order. For interpretation, the court should not only have regard to the literal meaning of the words of the statute but take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.

33. With reference to Section 505 of the Penal Code, Kedar Nath Singh observes that each of the three clauses of the Section refer to the gravamen of the offence as making, publishing or circulating any statement, rumour or report-(a) with the intent of causing or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) cause fear or alarm to the public or a Section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. Constituent elements of each of the three clauses have reference to the direct effect on the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restriction on the right to freedom of speech and expression.

34. We have referred to the judgment in Kedar Nath Singh, for it interprets Clause (2) of Section 505 of the Penal Code and also lays down principles and guidelines to interpret a penal provision in the context of the fundamental right to freedom of speech and expression. Secondly, and more importantly, this decision affirms the view of the Federal Court in Niharendu's case that the expression 'government established by law' has to be distinguished from the 'persons for the time being engaged in carrying on the administration'. The former is the visible symbol of the State, which gets enwrapped when the very existence of the State will be in jeopardy if the government established by law is subverted. Written or spoken words etc. that bring the State into contempt or

hatred or create disaffection fall within the ambit of the penal statute when the feeling of disloyalty to the government established by law or enmity to it imports the idea of tendency to public disorder by use of actual violence or incitement to violence. Equally, strongly worded expression of disapprobation of the actions of the government, even elected government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence would never be penal. Further, disloyalty to the government by law and comments even in strong terms on the measures or acts of the government so as to ameliorate the condition of the people or to secure cancellation or alteration of those actions or measures by lawful means, without exciting of those feelings of enmity and disloyalty which imply excitement to public disorder or use of force, is not an offence. Another significant advertence is to the principle that recognises that if two views are possible, the court should construe the provisions of law penalising 'hate speech' in the way that would make them consistent with the Constitution, and an interpretation that would render them unconstitutional should be avoided. Interpreting the Sections under challenge, the provisions were read as a whole to make it clear that the aim is to render penal only such activities as would be intended, or have a tendency, to create public disorder or disturbance of public peace by resort to violence. As a sequitur it follows that the courts should moderate and control the ambit and scope of the penal provisions to remain within and meet the constitutional mandate. Interpretation and application that is distant and beyond the superior command of the permissible constitutional limitation vide Clause (2) to Article 19 is unacceptable.

35. The decision in Ramji Lal Modi and the later decision in Bilal Ahmed Kaloo, which had examined Sections 153A and 505(2) of the Penal Code, had primarily applied the 'Bad Tendency test' as propounded by the American jurists. In Dr. Ram Manohar Lohia, the Constitution Bench of five Judges, referring to the words 'in the interest of... public order' in Clause (2) to Article 19 had observed that order is a basic need in any organised society. It implies orderly state of society or community in which the citizens can peacefully pursue their normal activities of life. This is essential as without order there cannot be any guarantee of other rights. Security of the State, public order and law and order represent three concentric circles: law and order being the widest, within which is the next circle representing public order and the smallest circle represents the security of the State. The phrase 'security of the State' is nothing less than endangering the foundations of the State or threatening its overthrow. It includes events that have national significance or upheavals, such as revolution, civil strife, war, affecting security of the State but excludes breaches of purely local significance. The phrase 'minor breaches' refers to public inconvenience, annoyance or unrest. The phrase 'in the interest of...public order', in the context of Clause (2) to Article 19, would mean breaches of purely local significance, embracing a variety of conduct destroying or menacing public order. Public order, in view of the history of the amendment is synonymous with public peace, safety and tranquillity. Further, any restriction to meet the mandate of Clause (2) to Article 19 has to be reasonable, which means that the restriction must have proximate and real connection with public order but not one that is far-fetched, hypothetical, problematic or

too remote in the chain of its relationship with public order. Restriction must not go in excess of the objective to achieve public order. In practice the restriction to be reasonable, should not equate the actus with any remote or fanciful connection between a particular act of violence or incitement to violence. This Court upheld the decision of the Allahabad High Court striking down Section 3 of the U.P. Special Powers Act, 1932 as the Section within its wide sweep had included any instigation by words, signs or visible representation not to pay or defer payment of any extraction or even contractual dues of the government authority, land owner, etc. which was treated as an offence. Even innocuous speeches were prohibited by threat of punishment. It was observed there was no proximate or even foreseeable connection between such instigation and the public order sought to be protected. Similarly, the argument of the State that instigation of a single individual in the circumstances mentioned above may in long run ignite revolutionary movement and destroy public order was rejected on the ground that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. The argument that in a democratic society there is no scope for agitational approach and the law, if bad, can be modified by democratic process alone was rejected on the ground that if the same is accepted it would destroy the right to freedom of speech. However, what is important is the finding that public order is synonymous with public safety and tranquillity, in the sense that the latter terms refer to the former. The terms refer to absence of disorder, involving breaches of local significance in contradiction to national upheavals affecting security of the State. Yet they have be serious enough like civil strife and not mere law and order issues. Further, the 'proximate nexus test' in the 'interest of public order' should be satisfied.

36. In *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and Ors.* MANU/SC/0147/1970: (1970) 3 SCC 746 a seven Judge Constitution Bench of this Court has rejected challenge to the constitutional validity of Section 144 and Chapter VIII of the Code of Criminal Procedure, 1873 (sic 1973) holding that the impugned provisions properly understood were not in excess of the limits laid down in the Constitution for restricting the freedoms guaranteed Under Article 19(1) Clauses (a), (b), (c) and (d). The Constitution Bench was required to interpret Clauses (2), (3), (4) and (5) to Article 19 and whether the provision under challenge when interpreted would be protected in the sense that they would fall within the 'interest of..public order' occurring in Clauses (2), (3) and (4) and 'interest of.. general public' occurring in Clause (5). Noticing that the phrase 'in the interest of...public order', enacted with retrospective effect vide the First Amendment in 1951, has been interpreted as expanding the scope of restrictions, which was earlier restricted to aggravated activities calculated to endanger the security of the State only, reference was made to the decision in Dr. Ram Manohar Lohia which had also quoted judgments of the Supreme Court of the United States in which it had been held that public order is synonymous with public peace, safety and tranquillity. Hidayatullah, C.J., however, observed that the terms 'public order' and 'public tranquillity' do overlap to some extent but are not always synonymous as 'public tranquillity' is a much wider expression and it's breach may even include things that cannot be described as public

disorder. 'Public order' no doubt requires absence of disturbance of state of serenity in society but goes further and means ordre publique, a French term which means absence of insurrection, riot, turbulence or cry of violence. The expression 'public disorder' includes all acts which endanger the security of the State as also acts which are comprehended by the expression ordre publique but not acts which disturb only the serenity of others. For breach of public order, it is not necessary that the act should endanger the security of the State, which is a far stricter test, but would not include every kind of disturbance of society. Accepting that 'law and order' represents the largest circle within which is the next circle representing 'public order' and inside that the smallest circle representing the 'security of the State' is situated, it was observed that State is at the centre and the society surrounds it. Disturbances of society can fall under broad spectrum ranging from disturbance of serenity of life to jeopardy of the State. Therefore, the journey travels first through public tranquillity then through public order and lastly to the security of the State. Interpreting the requisites of Section 144, it was held that it was meant and concerned with power with the State to free the society from the menace of serious disturbances of grave character, that is to say that the annoyance must assume sufficiently grave proportions to bring the matter within the interest of public order. Rejecting the contention that the language of Section 144 was overbroad, reference was made to Section 188 of the Penal Code to hold that mere disobedience of the order is not sufficient to constitute an offence; there must be in addition obstruction, annoyance, or danger to human life, health or safety or a riot or an affray for an offence to be made out under the penal provision. Thus, the offence Under Section 188 of the Penal Code is restricted and confined by the legislative mandate. The general order Under Section 144 is justified on the ground that it may be necessary when number of persons is so large that distinction between them and general public cannot be made without the risk mentioned in the section. A general order is thus justified, and if the action is too general, the order may be questioned by appropriate remedy provided in the Code of Criminal Procedure.

37. Recently, this Court in Shreya Singhal, accepting the constitutional challenge and striking down Section 66A of the Information Technology Act, 2000, had differentiated between categories and adopted the scales test when offensive speech would be criminalised, observing:

13....There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc...

This judgment relies upon the American principles of 'clear and present danger' and 'imminent lawless action' wherein to criminalise speech, proximate nexus should be established, that is, causal linkage between the words spoken with the 'clear and present danger' and 'imminent lawless action'.

38. In Shreya Singhal, this Court has struck down Section 66A of the Information Technology Act on various grounds, including unreasonableness of the restriction, absence of requirements of Clause (2) to Article 19, including public order; having chilling effect and over-breadth; vagueness etc. Referring to the public order aspect of Clause (2) of Article 19 and the reasonable restriction mandate, it was observed that they connote limitation on a person in enjoyment of the right, and should not be arbitrary and excessive in nature, beyond what is required by the specific Clause applicable in the said case. Reference was made to several judgments, including Chintaman Rao v. State of Madhya Pradesh MANU/SC/0008/1950: AIR 1951 SC 118, State of Madras v. V.G. Row MANU/SC/0013/1952: AIR 1952 SC 196, N.B. Khare (Dr.) v. State of Delhi MANU/SC/0004/1950: AIR 1950 SC 211 and Mohammed Faruk v. State of Madhya Pradesh and Ors. MANU/SC/0046/1969: (1969) 1 SCC 853 to hold that the reasonable restriction test must be satisfied both in substantive and in procedural aspects. This test of reasonableness should be applied to each individual impugned statute, as no abstract standard or general pattern of reasonableness is applicable to all cases. Reasonableness always has reference to evil sought to be remedied and requires examination of the proportion of the imposition.

39. In Shreya Singhal, to exposit the public order stipulation in Clause (2) of Article 19, reference was made to Arun Ghosh v. State of West Bengal MANU/SC/0035/1969: (1970) 1 SCC 98 wherein the test as laid down in Dr. Ram Manohar Lohia was applied to hold that public order would embrace more of the community than law and order. Public order refers to the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from the acts directed against individuals which do not disturb the society to the extent of causing general disturbance of public tranquillity. This was explained by way of examples:

3....Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different...

...It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*...

In Arun Ghosh, it was held that a line of demarcation has to be drawn between serious and aggravated forms of breaches of public order which affect life of the community or forms of breaches of public order which endanger the public interest at large, from minor breaches of peace which do not affect the public at large. Acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity do not subvert public order, but are law and order issues. Referring to Dr. Ram Manohar Lohia's case, it was observed that similar acts in different context may affect law and order in one case and public order in the other. It is always the degree of harm and its effect on the community. The test which is to be examined in each case is whether the act would lead to disturbance of the current life of the community so as to amount to disturbance of public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed. The latter is not covered under and restriction must meet the test of *ordre publique* affecting the community in the locality.

40. In Anuradha Bhasin v. Union of India and Ors. MANU/SC/0022/2020: (2020) 3 SCC 637 this Court, while dealing with the suspension of internet services in the area of Jammu and Kashmir in the background of public order and security concerns, interpreted the term "reasonable" under Clause (2) of Article 19 of the Constitution. It was expounded as under:

37. The right provided Under Article 19(1) has certain exceptions, which empower the State to impose reasonable restrictions in appropriate cases. The ingredients of Article 19(2) of the Constitution are that:

- (a) The action must be sanctioned by law;
- (b) The proposed action must be a reasonable restriction;
- (c) Such restriction must be in furtherance of interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

38. At the outset, the imposition of restriction is qualified by the term "reasonable" and is limited to situations such as interests of the sovereignty, integrity, security, friendly relations with the foreign States, public order, decency or morality or contempt of court, defamation or incitement to an offence. Reasonability of a restriction is used in a qualitative, quantitative and relative sense.

39. It has been argued by the counsel for the Petitioners that the restrictions Under Article 19 of the Constitution cannot mean complete prohibition. In this context, we may note that the aforesaid contention cannot be sustained in light of a number of judgments of this Court wherein the restriction has also been held to include complete prohibition in appropriate cases. [Madhya Bharat Cotton Assn. Ltd. v. Union of India, Narendra Kumar v. Union of India, State of Maharashtra v. Himmathbai Narbheram Rao, Sushila Saw Mill v. State of Orissa, Pratap Pharma (P) Ltd. v. Union of India and Dharam Dutt v. Union of India.]

40. The study of the aforesaid case law points to three propositions which emerge with respect to Article 19(2) of the Constitution. (i) Restriction on free speech and expression may include cases of prohibition. (ii) There should not be excessive burden on free speech even if a complete prohibition is imposed, and the Government has to justify imposition of such prohibition and explain as to why lesser alternatives would be inadequate. (iii) Whether a restriction amounts to a complete prohibition is a question of fact, which is required to be determined by the Court with regard to the facts and circumstances of each case. [Refer to State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat]

41. The second prong of the test, wherein this Court is required to find whether the imposed restriction/prohibition was least intrusive, brings us to the question of balancing and proportionality. These concepts are not a new formulation under the Constitution. In various parts of the Constitution, this Court has taken a balancing approach to harmonise two competing rights. In Minerva Mills Ltd. v. Union of India and Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.], this Court has already applied the balancing approach with respect to fundamental rights and the directive principles of State policy.

41. Anuradha Bhasin's case refers to the principle of proportionality as formulated by this Court in Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors. MANU/SC/0495/2016: (2016) 7 SCC 353 in the following words:

...a limitation of a constitutional right will be constitutionality permissible if: (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally (iv) there needs to be a proper relation ('proportionality stricto sensu' or 'balancing') between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

Subsequently, the principle was reiterated in the Aadhaar judgment reported as Justice K.S. Puttasamy v. Union of India (2) MANU/SC/1044/2017: (2017) 10 SCC 1. We need

not elaborate on this principle in view of the limited controversy involved in the present case, albeit the formulation recognises the benefit and need for least intrusive measure when it comes to curtailment of fundamental rights and for this purpose the court can examine the reasonableness of the measures undertaken and whether they are necessary, in that there are no alternatives measures that can achieve the same purpose with a lesser degree of restriction. Secondly, there has to be proper proportionality or balance between the importance of achieving the proper measure and social importance of preventing the limitation on the constitutional right.

42. The expression 'reasonable restriction' has been elucidated in numerous decisions which have been quoted in Subramanian Swamy v. Union of India and Ors. MANU/SC/0621/2016: (2016) 7 SCC 221 to connote that the restriction cannot be arbitrary or excessive and should possess a direct and proximate nexus with the object sought to be achieved. Sufficient for our purpose would be reproduction of the observations of P.N. Bhagwati, J. (as His Lordship then was) in Maneka Gandhi v. Union of India MANU/SC/0133/1978: (1978) 1 SCC 248 wherein he had referred to the authority in Rustom Cowasjee Cooper v. Union of India MANU/SC/0074/1970: (1970) 2 SCC 298 and Bennett Coleman & Co. v. Union of India MANU/SC/0038/1972: (1972) 2 SCC 788, to observe:

20. It may be recalled that the test formulated in R.C. Cooper case merely refers to "direct operation" or 'direct consequence and effect' of the State action on the fundamental right of the Petitioner and does not use the word "inevitable" in this connection. But there can be no doubt, on a reading of the relevant observations of Shah, J., that such was the test really intended to be laid down by the Court in that case. If the test were merely of direct or indirect effect, it would be an open-ended concept and in the absence of operational criteria for judging "directness", it would give the Court an unquantifiable discretion to decide whether in a given case a consequence or effect is direct or not. Some other concept-vehicle would be needed to quantify the extent of directness or indirectness in order to apply the test. And that is supplied by the criterion of "inevitable" consequence or effect adumbrated in the Express Newspapers case. This criterion helps to quantify the extent of directness necessary to constitute infringement of a fundamental right. Now, if the effect of State action on fundamental right is direct and inevitable, then a fortiori it must be presumed to have been intended by the authority taking the action and hence this doctrine of direct and inevitable effect has been described by some jurists as the doctrine of intended and real effect.

43. The decisions in Rustom Cowasjee Cooper and Maneka Gandhi are also relevant for our purpose as they have considered the interrelation between the rights enshrined in Article 21, Article 14 and Article 19 and had made a departure from the majority view in A.K. Gopalan v. State of Madras MANU/SC/0012/1950: AIR 1950 SC 27 to hold that these freedoms contained in Part III shade and merge into each other and are not watertight compartments. They weave a pattern of guarantees on the basic structure of

human rights and impose negative obligations on the State not to encroach on individual liberty in its different dimensions. The rights under Part-III are wide ranging and comprehensive, though they have been categorised under different heads, namely, right to equality, right to freedom of expression and speech, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. Each freedom has a different dimension and merely because the limits of interference with one freedom are satisfied, the law is not free from the necessity to meet the challenge of another guaranteed freedom. Secondly, in *Maneka Gandhi*, it was held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go on to constitute the personal liberty of a man, though some of them have been raised to the status of distinct fundamental rights and given additional protection Under Article 19. Article 21 does not exclude Article 19 or vice-versa, or for that matter the right to equality Under Article 14 of the Constitution. Thus, Part III of the Constitution is expansive and its connotative sense carries a collection or bouquet of highly cherished rights. In *Subramanian Swamy*, this Court referred to *Charu Khurana and Ors. v. Union of India and Ors.* MANU/SC/1044/2014: (2015) 1 SCC 192 wherein it has been ruled that dignity is the quintessential quality of personality and a basic constituent along with honour and reputation of the rights guaranteed and protected Under Article 21. Dignity is a part of the individual rights that form the fundamental fulcrum of collective harmony and interest of a society. While right to speech and expression is absolutely sacrosanct in the sense that it is essential for individual growth and progress of democracy which recognises voice of dissent, tolerance for discordant notes and acceptance of different voices, albeit the right to equality Under Article 14 and right to dignity as a part of Article 21 have their own significance. The aforesaid proposition has been reiterated by Dr. D.Y. Chandrachud, J., in *India Young Lawyers Association and Ors. (Sabarimala Temple, In RE.) v. State of Kerala and Ors.* MANU/SC/1094/2018: (2019) 11 SCC 1 which decision refers to the four precepts which emerge from the Preamble, namely, justice, in its social, economic and political dimensions; individual liberty in the matter of thought, expression, belief, faith and worship; equality of status and opportunity amongst all citizens; and sense of fraternity amongst all citizens that assures the dignity of human life. Individual dignity can be achieved in a regime which recognises equality with other citizens regardless of one's religious beliefs or the group to which one belongs. Religious beliefs and faiths ensure wider acceptance of human dignity and liberty, but when conflict arises between the two, the quest for human dignity, liberty and equality must prevail. Constitutional interpretation must bring a sense of equilibrium-a balance, so that read individually and together, the provisions of the Constitution exist in a contemporaneous accord. Thus, effort should be made to have synchrony between different parts of the Constitution and different rights should be interpreted together so that they exist in harmony. Freedoms elaborated in Part III are exercised within the society which are networked. Freedoms, therefore, have linkages which cannot be ignored. In *Subramanian Swamy*, this Court had referred to a compendium of judgments dwelling on balancing of fundamental rights when the right of a citizen comes in conflict with a different fundamental right also

granted by the Constitution as each citizen is entitled to enjoy each and every one of the freedoms together and the Constitution does not prefer one freedom to another. In Ram Jethmalani and Ors. v. Union of India and Ors. MANU/SC/0711/2011: (2011) 8 SCC 1 this Court has observed that rights of citizens Under Article 19(1) have to be balanced against the rights of citizens and persons Under Article 21 and the latter rights cannot be sacrificed as this would lead to detrimental consequences and even anarchy. Constitutional rights no doubt very important, possibly are not made absolute as they may come into conflict with each other and when competing they have to be qualified and balanced. In Noise Pollution (V), In Re. MANU/SC/0415/2005: (2005) 5 SCC 733 it was observed that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21 as if one claims to right to speech, the others have the right to listen or decline to listen. A person speaking cannot violate the rights of others of peaceful, comfortable and pollution free right guaranteed by Article 21.

44. Right to equality enshrined in Article 14 is recognition that the principle of equality is inherent in the Rule of law. In the positive sense, it means absence of any privilege for particular individuals and in the negative sense, no one can be discriminated against; and anybody and everybody should be treated as equals. The latter is the essence and core of right to equality and imposes obligation on the State to take necessary steps so that every individual is given equal respect and enjoys dignity as others, irrespective of caste, creed, religion, identity, sexual preference etc. Right to equality is embodied not only in Article 14, but also finds different manifestations in Articles 15 to 18 of Part III, and Articles 38, 39, 39A, 41 and 46 of Part IV. Thus, right to equality has many facets, and is dynamic and evolving.²⁰

45. It is not only the Preamble and Articles 14, 21 and others referred to above which affirms the right to dignity of the individual. Clause (e) to Article 51A, which incorporates fundamental duties, states that it will be the obligation of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women. Clause (f) states that we must value and preserve the rich heritage of our composite culture.

46. At this stage, it is necessary to clarify what is meant by the expression 'dignity' in the context of 'hate speech'-for an expansive meaning, if given, would repress and impede freedom to express views, opine and challenge beliefs, ideas and acts. Dignity, in the context of criminalisation of speech with which we are concerned, refers to a person's basic entitlement as a member of a society in good standing, his status as a social equal and as bearer of human rights and constitutional entitlements.²¹ It gives assurance of participatory equality in inter-personal relationships between the citizens, and between the State and the citizens, and thereby fosters self-worth.²² Dignity in this sense does not refer to any particular level of honour or esteem as an individual, as in the case of defamation which is individualistic. The Supreme Court of the United States of America

in Beauharnais v. Illinois MANU/USSC/0102/1952: 343 U.S. 250 (1952), while upholding conviction for hate speech, had emphasised that such speech should amount to group defamation which though analogous to individual defamation has been traditionally excluded from free speech protection in America. Loss of dignity and self-worth of the targeted group members contributes to disharmony amongst groups, erodes tolerance and open-mindedness which are a must for multi-cultural society committed to the idea of equality. It affects an individual as a member of a group. It is however necessary that at least two groups or communities must be involved; merely referring to feelings of one community or group without any reference to any other community or group does not attract the 'hate speech' definition. Manzar Sayeed Khan, taking note of the observations in Bilal Ahmad Kaloo, records that common features of Sections 153A and 505(2) being promotion of feeling of enmity, hatred or ill-will 'between different' religious or racial or linguistic or regional groups or castes or communities, involvement of at least two groups or communities is necessary. Further, merely inciting the feeling of one community or group without any reference to any other community or group would not attract either provision. Definition of 'hate speech' as expounded by Andrew F. Sellars prescribes that hate speech should target a group or an individual as they relate to a group.

47. Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the nation. Dignity of individual and unity and integrity of the nation are linked, one in the form of rights of individuals and other in the form of individual's obligation to others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as the acts that 'promote' or are 'likely' to 'promote' divisiveness, alienation and schematism do directly and indirectly impinge on the diversity and pluralism, and when they are with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law. The purpose is not to curtail right to expression and speech, albeit not gloss over specific egregious threats to public disorder and in particular the unity and integrity of the nation. Such threats not only insidiously weaken virtue and superiority of diversity, but cut-back and lead to demands depending on the context and occasion, for suppression of freedom to express and speak on the ground of reasonableness. Freedom and rights cannot extend to create public disorder or armour those who challenge integrity and unity of the country or promote and incite violence. Without acceptable public order, freedom to speak and express is challenged and would get restricted for the common masses and law-abiding citizens. This invariably leads to State response and, therefore, those who indulge in promotion and incitement of violence to challenge unity and integrity of the nation or public disorder tend to trample upon liberty and freedom of others.

48. Before referring to provisions of the Penal Code, we would like to refer to an Article by Alice E. Marwick and Ross Miller of Fordham University, New York (USA),²³ elucidating on three distinct elements that legislatures and courts can use to define and identify 'hate speech', namely-content-based element, intent-based element and harm-

based element (or impact-based element). The content-based element involves open use of words and phrases generally considered to be offensive to a particular community and objectively offensive to the society. It can include use of certain symbols and iconography. By applying objective standards, one knows or has reasonable grounds to know that the content would allow anger, alarm or resentment in others on the basis of race, colour, creed, religion or gender. The intent-based element of 'hate speech' requires the speaker's message to intend only to promote hatred, violence or resentment against a particular class or group without communicating any legitimate message. This requires subjective intent on the part of the speaker to target the group or person associated with the class/group. The harm or impact-based element refers to the consequences of the 'hate speech', that is, harm to the victim which can be violent or such as loss of self-esteem, economic or social subordination, physical and mental stress, silencing of the victim and effective exclusion from the political arena. Nevertheless, the three elements are not watertight silos and do overlap and are interconnected and linked. Only when they are present that they produce structural continuity to constitute 'hate speech'.

49. On the aspect of content, Ramesh states that the effect of the words must be judged from the standard of reasonable, strongminded, firm and courageous men and not by those who are weak and ones with vacillating minds, nor of those who scent danger in every hostile point of view. The test is, as they say in English Law, '-the man on the top of a Clapham omnibus'. Therefore, to ensure maximisation of free speech and not create 'free speaker's burden', the assessment should be from the perspective of the top of the reasonable member of the public, excluding and disregarding sensitive, emotional and atypical. It is almost akin or marginally lower than the prudent man's test. The test of reasonableness involves recognition of boundaries within which reasonable responses will fall, and not identification of a finite number of acceptable reasonable responses. Further, this does not mean exclusion of particular circumstances as frequently different persons acting reasonably will respond in different ways in the context and circumstances. This means taking into account peculiarities of the situation and occasion and whether the group is likely to get offended. At the same time, a tolerant society is entitled to expect tolerance as they are bound to extend to others.

50. Richard Delgado²⁴ has proposed a definition of 'hate speech' as language that was intended to demean a group which a reasonable person would recognise as a 'racial insult'. Mari J. Matsuda²⁵ has referred to 'hate speech' as a message of racial inferiority, prosecutorial, hateful and degraded. Kenneth Ward²⁶ has analysed 'hate speech' as a form of expression, through which the speaker primarily intends to vilify, humiliate or incite hatred against their targets. As explained below, 'content' has relation with the subject-matter, but is not synonymous with the subject-matter. 'Content' has more to do with the expression, language and message which should be to vilify, demean and incite psychosocial hatred or physical violence against the targeted group.

51. The 'context', as indicated above, has a certain key variable, namely, 'who' and 'what' is involved and 'where' and the 'occasion, time and under what circumstances' the case arises. The 'who' is always plural for it encompasses the speaker who utters the statement that constitutes 'hate speech' and also the audience to whom the statement is addressed which includes both the target and the others. Variable context review recognises that all speeches are not alike. This is not only because of group affiliations, but in the context of dominant group hate speech against a vulnerable and discriminated group, and also the impact of hate speech depends on the person who has uttered the words.¹³ The variable recognises that a speech by 'a person of influence' such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a T.V. show carries a far more credibility and impact than a statement made by a common person on the street. Latter may be driven by anger, emotions, wrong perceptions or mis-information. This may affect their intent. Impact of their speech would be mere indifference, meet correction/criticism by peers, or sometimes negligible to warrant attention and hold that they were likely to incite or had attempted to promote hatred, enmity etc. between different religious, racial, language or regional groups. Further, certain categories of speakers may be granted a degree of latitude in terms of the State response to their speech. Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising.²⁷ Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory. Nevertheless, such speech should not provoke and 'incite'-as distinguished from discussion or advocacy-'hatred' and violence towards the targeted group. Likelihood or similar statutory mandate to violence, public disorder or 'hatred' when satisfied would result in penal action as per law. Every right and indulgence has a limit. Further, when the offending act creates public disorder and violence, whether alone or with others, then the aspect of 'who' and question of indulgence would lose significance and may be of little consequence.

52. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker. In other words, the expression 'reasonable man' would take into account the impact a

particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence.²⁸ This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'.

53. Further, the law of 'hate speech' recognises that all speakers are entitled to 'good faith' and '(no)-legitimate purpose' protection. 'Good faith' means that the conduct should display fidelity as well as a conscientious approach in honouring the values that tend to minimise insult, humiliation or intimidation. The latter being objective, whereas the former is subjective. The important requirement of 'good faith' is that the person must exercise prudence, caution and diligence. It requires due care to avoid or minimise consequences. 'Good faith' or 'no-legitimate purpose' exceptions would apply with greater rigour to protect any genuine academic, artistic, religious or scientific purpose, or for that matter any purpose that is in public interest, or publication of a fair and accurate report of any event or matter of public interest.²⁹ Such works would get protection when they were not undertaken with a specific intent to cause harm. These are important and significant safeguards. They highlight importance of intention in 'hate speech' adjudication. 'Hate speech' has no redeeming or legitimate purpose other than hatred towards a particular group. A publication which contains unnecessary asides which appear to have no real purpose other than to disparage will tend to evidence that the publications were written with a mala fide intention. However, opinions may not reflect mala fide intention.

54. The present case, it is stated, does not relate to 'hate speech' causally connected with the harm of endangering security of the State, but with 'hate speech' in the context of Clauses (a) and (b) to Sub-section (1) of Section 153A, Section 295A and Sub-section (2) to Section 505 of the Penal Code. In this context, it is necessary to draw a distinction between 'free speech' which includes the right to comment, favour or criticise government policies; and 'hate speech' creating or spreading hatred against a targeted community or group. The former is primarily concerned with political, social and economic issues and policy matters, the latter would not primarily focus on the subject matter but on the substance of the message which is to cause humiliation and alienation of the targeted group. The object of criminalising the latter type of speech is to protect the dignity (as explained above) and to ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference etc. Freedom to express and speak is the most important condition for political democracy. Law and policies are not democratic unless they have been made and subjected to democratic process including questioning and criticism. Dissent and criticism of the elected government's policy, when puissant, deceptive or even false would be ethically wrong, but would not invite penal action. Elected representatives in

power have the right to respond and dispel suspicion. The 'market place of ideas' and 'pursuit of truth' principle are fully applicable. Government should be left out from adjudicating what is true or false, good or bad, valid or invalid as these aspects should be left for open discussion in the public domain. This justification is also premised on the conviction that freedom of speech serves an indispensable function in democratic governance without which the citizens cannot successfully carry out the task to convey and receive ideas. Political speech relating to government policies requires greater protection for preservation and promotion of democracy. Falsity of the accusation would not be sufficient to constitute criminal offence of 'hate speech'. The Constitutional Bench decision of this Court in Kedar Nath Singh and the subsequent decisions have clearly and uniformly held that there is difference between 'government established by law' and 'persons for the time being engaged in carrying on administration' and that comment or criticism of the government action in howsoever strong words must be protected and cannot be a ground to take penal action unless the words written or spoken, etc. have pernicious tendency or intention of creating public disorder. Without exciting those feelings which generate inclination to cause public disorder by acts of violence, political views and criticism cannot be made subject matter of penal action. Reference to later decision in Arun Ghosh drawing distinction between serious and aggravated from of breaches of public order that endanger public peace and minor breaches that do not affect public at large would be apposite. In consonance with the constitutional mandate of reasonable restriction and doctrine of proportionality in facts of each case it has to be ascertained whether the act meets the top of Clapham omnibus test and whether the act was 'likely' to lead to disturbance of the current life of the community so as to amount to disturbance of public order; or it may affect an individual or some individuals leaving the tranquillity of the society undisturbed. The latter and acts excluded on application of the top of Clapham omnibus test are not covered. Therefore, anti-democratic speech in general and political extremist speech in particular, which has no useful purpose, if and only when in the nature of incitement to violence that 'creates', or is 'likely to create' or 'promotes' or is 'likely to promote' public disorder, would not be protected.

55. Sometimes, difficulty may arise and the courts and authorities would have to exercise discernment and caution in deciding whether the 'content' is a political or policy comment, or creates or spreads hatred against the targeted group or community. This is of importance and significance as overlap is possible and principles have to be evolved to distinguish. We would refer to one example to illustrate the difference. Proponents of affirmative action and those opposing it, are perfectly and equally entitled to raise their concerns and even criticise the policies adopted even when sanctioned by a statute or meeting constitutional scrutiny, without any fear or concern that they would be prosecuted or penalised. However, penal action would be justified when the speech proceeds beyond and is of the nature which defames, stigmatises and insults the targeted group provoking violence or psychosocial hatred. The 'content' should reflect hate which tends to vilify, humiliate and incite hatred or violence against the target group based upon identity of the group beyond and besides the subject matter.

56. Our observations are not to say that persons of influence or even common people should fear the threat of reprisal and prosecution, if they discuss and speak about controversial and sensitive topics relating to religion, caste, creed, etc. Such debates and right to express one's views is a protected and cherished right in our democracy. Participants in such discussions can express divergent and sometimes extreme views, but should not be considered as 'hate speech' by itself, as subscribing to such a view would stifle all legitimate discussions and debates in public domain. Many a times, such discussions and debates help in understanding different view-points and bridge the gap. Question is primarily one of intent and purpose. Accordingly, 'good faith' and 'no legitimate purpose' exceptions would apply when applicable.

57. On the aspect of truth or true facts, reference can be made to the decision of this Court in K.A. Abbas, which pertained to the documentary called 'A Tale of Four Cities' portraying contrast between the lives of rich and poor in the four principal cities of the country. The challenge was to the grant of certificate for exhibition restricted to adults. It was observed that audience in India can be expected to view with equanimity the different historical facts and stories. There is no bar in showing carnage or bloodshed which have historical value and depiction of such scenes as the sack of Delhi by Nadir Shah may be permissible, if handled delicately as a part of an artistic portrayal of confrontation with Mohd. Shah Rangila. Clearly, the restrictions were not to be reduced to the level where the protection to the least capable and the most deprived amongst us would be applicable. In Ebrahim Suleiman Sait v. M.C. Mohammed and Anr. MANU/SC/0347/1979: (1980) 1 SCC 398, it was observed that speaking the truth was not an answer to the charge of corrupt practice and what was relevant was whether the speech had promoted or had sought to promote feelings of enmity or hatred. The likelihood must be judged from healthy and reasonable standard thereby accepting the position that historical truth may be a relevant and important factor. However, the historical truth must be depicted without in any way disclosing or encouraging hatred or enmity between different classes or communities. In Lalai Singh Yadav and Anr. v. State of Uttar Pradesh MANU/UP/0364/1971: 1971 Cri.L.J. 1773 (FB) (Allahabad), the Allahabad High Court had observed that the book written by Dr. B.R. Ambedkar throwing light on the oppression and exploitation of Dalits and suggesting conversion to Buddhism was couched in a restrained language and did not amount to an offence. Rational criticism of religious tenets, is acceptable as legitimate criticism, is not an offence for no reasonable person of normal susceptibilities would object to it. In Ramesh, challenge to the serial 'Tamas' was rejected on the ground that it was an instructive serial revealing an evil facet of history within permissible extent of examination even if it depicted pre-partition communal tension and violence. A hurt, which is a product of a benevolent intent, may incite negative attitudes to the victim but would fall short of criminal hurt, i.e. hatred. Watching the bloodshed that accompanied partition, the average person will "learn from the mistakes of the past and realise the machinations of the fundamentalists and will not perhaps commit those mistakes again". Knowledge of

tragic experiences of the past would help "fashion our present in a rational and reasonable manner and view our future with wisdom and care". Quoting Lord Morley, Mukharji, J. noted in paragraph 20:

20....It has been said by Lord Morley in "On Compromise" that it makes all the difference in the world whether you put truth in the first place or in the second place. It is true that a writer or a preacher should cling to truth and right, if the very heavens fall. This is a universally accepted basis. Yet in practice, all schools alike are forced to admit the necessity of a measure of accommodation in the very interests of truth itself. Fanatic is a name of such ill-repute, exactly because one who deserves to be so called injures good causes by refusing timely and harmless concession; by irritating prejudices that a wiser way of urging his own opinion might have turned aside; by making no allowances, respecting no motives, and recognising none of those qualifying principles that are nothing less than necessary to make his own principle true and fitting in a given society. Judged by all standards of a common man's point of view of presenting history with a lesson in this film, these boundaries appear to us could (sic to) have been kept in mind. This is also the lesson of history that naked truth in all times will not be beneficial but truth in its proper light indicating the evils and the consequences of those evils is instructive and that message is there in "Tamas" according to the views expressed by the two learned Judges of the High Court. They viewed it from an average, healthy and commonsense point of view. That is the yardstick. There cannot be any apprehension that it is likely to affect public order or it is likely to incite into (sic) the commission of any offence. On the other hand, it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.

It should also be noted that contrary to the positivist claim of singularity and absoluteness of 'truth', it may, in actuality, be a subjective element, making it one person's relative truth over another's. Cultural value system, historical experiences, lived realities of social systems and hierarchies-all these are determinants in how an individual perceives the truth to be. George Bernard Shaw has said that our whole theory of freedom of speech and opinion for all citizens rests not on the assumption that everybody was right, but on the certainty that everybody was wrong on some point on which somebody else was right, so that there was a public danger in allowing anybody to go unheard.³⁰ Many so-called truths have been rectified and corrected because they were disputed scientifically or economically, socially and politically. One should not Rule out possibility of divergency between truth and popular belief or even situations that are described as epistemological problem of the 'post truth' era, which is not that people do not value truth, but some may believe and accept falsehoods.³¹ Nevertheless, in many ways, free speech has empowered those who were marginalised and discriminated and thus it would be wholly incorrect and a mistake to assume that free speech is an elite concept and indulgence.

58. On the question of harm, the legislations refer to actual or sometimes likely or anticipated danger, of which the latter must not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression 'public order' etc. Otherwise, the commitment to freedom of expression and speech would be suppressed without the community interest being in danger. In the Indian context, the tests of 'clear and present danger' or 'imminent lawless action' unlike United States, are identical as has been enunciated in the case of Shreya Singhal. The need to establish proximity and causal connection between the speech with the consequences has been dealt with and explained in Dr. Ram Manohar Lohia in great detail. In the case of actual occurrence of public disorder, the cause and effect relationship may be established by leading evidence showing the relationship between the 'speech' and the resultant 'public disorder'. In other cases where public disorder has not occurred due to police, third party intervention, or otherwise, the 'clear and present danger' or 'imminent lawless action' tests are of relevance and importance. 'Freedom and rational' dictum should be applied in absence of actual violence, public disorder etc. Further, when reference is to likelihood, the chance is said to be likely when the possibility is reasonably or rather fairly certain, i.e. fairly certain to occur than not. Therefore, in absence of actual violence, public disorder, etc., something more than words, in the form of 'clear and present danger' or 'imminent lawless action', either by the maker or by others at the maker's instigation is required. This aspect has been examined subsequently while interpreting the penal provisions.

59. We have repeatedly referred to the word 'tolerance', and noted that the expression 'who' refers to both the speaker and the targeted audience; and will subsequently refer to the ratio of the Calcutta High Court judgment in P.K. Chakravarty v. The King MANU/WB/0273/1926: AIR 1926 Cal. 1133, that something must be known of the kind of people to whom the words are addressed. Similarly, in paragraph 49, we have observed that a tolerant society is entitled to expect tolerance as they are bound to extend to others. The expression 'tolerance' is, therefore, important, yet defining it is problematic as it has different meanings. We need not examine the philosophies or the meanings in detail, and would prefer to quote Article 1 from the Declaration of Principles of Tolerance by the Member States of the United Nations Educational, Scientific and Cultural Organisation adopted in its meeting in Paris at the 28th session of the General Conference, which reads as under:

Article 1-Meaning of tolerance

1.1 Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication, and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

1.2 Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.

1.3 Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the Rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.

1.4 Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

There are multiple justifications for 'tolerance', which include respect for autonomy; a general commitment to pacifism; concern for other virtues such as kindness and generosity; pedagogical concerns; a desire for reciprocity; and a sense of modesty about one's ability to judge the beliefs and actions of others.³² However, tolerance cannot be equated with appeasement, permissiveness, or indifference. It is also not identical to neutrality. Toleration requires self-consciousness and self-control in a sense that it is a restraint of negative judgment that is free and deliberate. It implies no lack of commitment to one's own belief but rather it condemns oppression or persecution of others.³³ Interpreted in this sense, there is no 'paradox of toleration'.³⁴ The paradox whether those who express their views or activities that are themselves intolerant should be tolerated is answered by making evaluative judgment predicated on rational universal principles.³⁵ The test accepts rational argument principle to keep intolerant philosophies in check. Thus, tolerance is not to accept things that are better to overcome,³⁶ or when practices reflect intolerance within themselves, like disregard for human rights and principles of equality and fraternity. Further, there may even be unjustified religious beliefs in relation to morality, politics, origin of humanity, social hierarchies, etc. which should not be tolerated.³⁷ The argument can also be grounded on comprehensive moral theory.³⁸ Tolerance also means developing an 'overlapping consensus' between individuals and groups with diverse perspectives to find reason to agree about certain principles of justice.³⁹ It is being fair to allow reasonable consensus to emerge despite differences. In essence, it implies non-discrimination of individuals or groups, but without negating the right to disagree and disapprove belief and behaviour. It signifies that all persons or groups are equal, even when all opinions and conduct are not equal. It also means use of temperate language and civility towards others. In the correct and true sense, undoubtedly 'tolerance' is a great virtue in all societies, which when practiced by communities, gets noticed, acknowledged and appreciated.

(iv) Interpretation of the statutory provisions

60. We would now interpret Section 153A of the Penal Code, which reads as under:

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.--
(1) Whoever--

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.--(2) Whoever commits an offence specified in Sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

61. In the present case, we are not concerned with Clause (c) to Sub-section (1) to Section 153A and hence we would not examine the same. Section 153A has been interpreted by this Court in Manzar Sayeed Khan and Balwant Singh and other cases. It would be, however, important to refer to the legislative history of this Section as the same was introduced by the Indian Penal Code (Amendment) Act, 1898 on the recommendation of the Select Committee. The Section then enacted had referred to words, spoken or written,

or signs or visible representation or other means that promote or attempt to promote feeling of enmity or hatred between different classes of citizens of India which shall be punished with imprisonment that may extend to two years or fine or with both. The explanation to the said Section was as under:

Explanation.-It does not amount to an offence within the meaning of this Section to point out without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

The original enacted Section was amended with Clauses (a) and (b) by the Criminal Law (Amendment) Act, 1969 and Clause (c) was subsequently inserted by the Criminal Law (Amendment) Act, 1972.40

62. The Calcutta High Court in P.K. Chakravarty had delved into the question of intention and had observed that the intention as to whether or not the person Accused was promoting enmity is to be collected from the internal evidence of the words themselves, but this is not to say that other evidence cannot be looked into. Likewise, while examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account. Something must be known of the kind of people to whom the words are addressed. Words will be generally decisive, especially in those cases where the intention is expressly declared if the words used naturally, clearly or indubitably have such tendency. Then, such intention can be presumed as it is the natural result of the words used. However, the words used and their true meaning are never more than evidence of intention, and it is the real intention of the person charged that is the test. The judgment rejects the concept of constructive intention. Similarly, the Lahore High Court in Devi Sharan Sharma had observed that intention can be deduced from internal evidence of the words as well as the general policy of the paper in which the concerned Article was published, consideration of the person for whom it was written and the state of feeling between the two communities involved. In case the words used in the Article are likely to produce hatred, they must be presumed to be intended to have that effect unless the contrary is shown. The Bombay High Court in Gopal Vinayak Godse has observed that the intention to promote enmity or hatred is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of the nature calculated to promote feelings of enmity or hatred, for a person must be presumed to intend the natural consequences of his act. The view expressed by the Bombay High Court in Gopal Vinayak Godse lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarthy and Devki Sharma take a much broader and a wider picture which, in our opinion, would be the right way to examine whether an offence Under Section 153A, Clauses (a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable

and should not be strained, forced or subjected to utterly unreasonable interpretation. We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself-satisfying the test of top of Clapham omnibus, the who factor-person making the comment, the targeted and non targeted group, the context and occasion factor-the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm to cumulatively satiate the test of 'hate speech'. 'Good faith' and 'no legitimate purpose' test would apply, as they are important in considering the intent factor.

63. In Balwant Singh this Court had accepted that mens rea is an essential ingredient of the offence Under Section 153A and only when the spoken or written words have the intention of creating public disorder for disturbance of law and order or affect public 'tranquillity', an offence can be said to be committed. This decision was relied on in Bilal Ahmed Kaloo⁴¹ while referring to and interpreting Sub-section (2) to Section 505 of the Penal Code. Similarly, in Manzar Sayeed Khan, the intention to promote feeling of enmity or hatred between different classes of people was considered necessary as Section 153A requires the intention to cause disorder or incite the people to violence. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published.

64. In the context of Section 153A(b) we would hold that public tranquillity, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153A, therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words 'public tranquillity' in Clause (b) would mean ordre publique a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public Order in Clause (2) to Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area.

65. Section 295A and Clause (2) of Section 505 of the Penal Code reads as under:

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.--Whoever, with deliberate and malicious

intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

xx xx xx

505. Statements conduced to public mischief.--

xx xx xx

(2) Statements creating or promoting enmity, hatred or ill-will between classes.--Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

The two provisions have been interpreted earlier in a number of cases including Ramji Lal Modi, Kedar Nath, Bilal Ahmed Kaloo. It could be correct to say that Section 295A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, Sub-section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, cast, etc., feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

66. In Bilal Ahmad Kaloo, this Court had drawn a distinction between Sub-section (2) to Section 505 and Clause (a) to Section 153A of the Penal Code observing that publication is not necessary in the latter while it is sine qua non under Clause (2) of Section 505. Clause (2) of Section 505 of the Penal Code cannot be interpreted disjunctively and the words 'whosoever makes, publishes or circulates' are supplemented to each other. The intention of the legislature in providing two different Sections of the same subject vide single amending act would show that they cover two different fields of same colour.

67. Clauses (a) and (b) to Sub-section (1) to Section 153A of the Penal Code use the words 'promotes' and 'likely' respectively. Similarly, Section 295-A uses the word 'attempts' and Sub-section (2) to Section 505 uses the words 'create or promote'. Word 'likely' as explained above, in our opinion, convey the meaning, that the chance of the event occurring should be real and not fanciful or remote (*Tillmanns Butcheries Pty. Ltd. v. Australasian Meat Industry Employees' Union* (1979) 27 ALR 380). The standard of 'not improbable' is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality. This is the mandate flowing from the catena of judgments of the Constitutional Benches which we have referred to earlier and also the decision in *Shreya Singhal* drawing distinction between advocacy, discussion and incitement and that only the latter, i.e. the incitement, is punishable whereas the former two would fall within the domain of freedom to express and convey one's thoughts and ideas. 'Incitement' is a restricted term under the American Speech Law which has been adopted by us and as per *Brandenburg* applies when the incitement is imminent or almost inevitable. There has been some criticism that the said test is too strong, nevertheless, it conveys that the standard has to be strict. Instigation must necessarily and specifically be suggestive of the consequences. Sufficient certainty to incite the consequences must be capable of being spelt out to be incitement. Further, it is for the prosecution to show and establish that the standard has been breached by leading evidence, which can be both oral and documentary. 'Promote' does not imply mere describing and narrating a fact, or giving opinion criticising the point of view or actions of another person-it requires that the speaker should actively incite the audience to cause public disorder. This active incitement can be gauged by the content of the speech, the context and surrounding circumstances, and the intent of the speaker. However, in case the speaker does not actively incite the descent into public disorder, and is merely pointing out why a certain person or group is behaving in a particular manner, what are their demands and their point of view, or when the speaker interviews such person or group, it would be a passive delivery of facts and opinions which may not amount to promotion.

68. The word 'attempt', though used in Sections 153-A and 295-A of the Penal Code, has not been defined. However, there are judicial interpretations that an 'attempt to constitute a crime' is an act done or forming part of a series of acts which would constitute its actual commission but for an interruption. An attempt is short of actual causation of crime and more than mere preparation. In *Aman Kumar v. State of Haryana* MANU/SC/0104/2004: (2004) 4 SCC 379, it was held that an attempt is to be punishable because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. Further, in *State v. Mohd. Yakub* MANU/SC/0239/1980: (1980) 3 SCC 57, this Court observed:

13....What constitutes an attempt is mixed question of law and fact depending largely upon the circumstances of a particular case. "Attempt" defies a precise and exact definition. Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage he makes preparation to commit it. The third stage is reached when the culprit takes deliberate overt act or step to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence...

On the scope of proximity, it was elucidated that the measure of proximity is not in relation to time and place but in relation to intention.

In the context of 'hate speech', including the offences related to promoting disharmony or feelings of enmity, hatred or ill-will, and insulting the religion or the religious beliefs, it would certainly require the actual utterance of words or something more than thought which would constitute the content. Without actual utterance etc. it would be mere thought, and thoughts without overt act is not punishable. In the case of 'publication', again a mere thought would not be actionable, albeit whether or not there is an attempt to 'publish' would depend on facts. The impugned act should be more than mere preparation and reasonably proximate to the consummation of the offence, which has been interrupted. The question of intent would be relevant. On the question of the harm's element, same test and principle, as applicable in the case of 'likely' would apply, except for the fact that for intervening reasons or grounds public disorder or violence may not have taken place.

69. Having interpreted the relevant provisions, we are conscious of the fact that we have given primacy to the precept of 'interest of public order' and by relying upon 'imminent lawless action' principle, not given due weightage to the long-term impact of 'hate' speech as a propaganda on both the targeted and non-targeted groups. This is not to undermine the concept of dignity, which is the fundamental foundation on the basis of which the citizens must interact between themselves and with the State. This is the considered view of the past pronouncements including the Constitution Bench judgments with which we are bound. Further, a 'hate speech' meeting the criteria of 'clear and present danger' or 'imminent lawless action' would necessarily have long-term negative effect. Lastly, we are dealing with penal or criminal action and, therefore, have to balance the right to express and speak with retaliatory criminal proceedings. We have to also prevent abuse and check misuse. This dictum does not, in any way, undermine the position that we must condemn and check any attempt at dissemination of discrimination on the basis of race, religion, caste, creed or regional basis. We must act with the objective for promoting social harmony and tolerance by proscribing hateful and inappropriate behaviour. This

can be achieved by self-restraint, institutional check and correction, as well as self-Regulation or through the mechanism of statutory Regulations, if applicable. It is not penal threat alone which can help us achieve and ensure equality between groups. Dignity of citizens of all castes, creed, religion and region is best protected by the fellow citizens belonging to non-targeted groups and even targeted groups. As stated earlier, in a polity committed to pluralism, hate speech cannot conceivably contribute in any legitimate way to democracy and, in fact, repudiates the right to equality.

70. Majority of the cases referred to by the Petitioner were cases wherein after charge-sheet and trial, this Court had come to the conclusion that no offence had been proved and established Under Section 153A, 295A or Sub-section (2) to Section 505 of the Penal Code. We do not deem it necessary to reproduce the facts of those decisions and apply their ratio in the present case. However, we would like to refer to judgments where this Court has at the initial stage itself quashed the proceedings arising out of the FIR, namely, Manzar Sayeed Khan, Mahendra Singh Dhoni, Ramesh as well as Balwant Singh to clarify the ratio.

71. In Balwant Singh, this Court, allowing the appeal, had set aside convictions Under Sections 124A and 153A of the Penal Code. While we are not concerned with Section 124A, this Court significantly observed that the Appellants were never leading a procession or raising slogans with the intent to incite people, indicating that the Court did take into account the 'who' factor as the Appellants were unknown and inconsequential. This is of consequence as far as Section 153A of the Penal Code is concerned. Both the content and context, given the occasion, were highly incriminating and possibly warranted conviction, but as per paragraphs 10 and 11, the court was not convinced that the prosecution witnesses had spoken the whole truth and what slogan(s) was/were actually shouted. Lastly, the harm effect or impact was also taken into account. What is acceptable speech in one case, it could be well argued, should be acceptable in another, and therefore the ratio in Balwant Singh must be applied with caution as the decision had proceeded on failure of the prosecution. The 'who' factor as a variable had weighed with the court. Besides there was no impact or harm.

72. Manzar Sayeed Khan was a case wherein the Appellants had published a book titled 'Shivaji: Hindu King in Islamic India' authored by Prof. James W. Laine, a Professor of Religious Studies in Macalester College, United States of America, which had led to registration of FIR against the Indian Publisher and a Sanskrit scholar whose name had appeared in the acknowledgement of the book for having helped the author by providing him some information during the latter's visit to Pune. The primary reason according to us why the appeal was allowed and the proceedings arising from the FIR were quashed at the initial stage are reflected in paragraph 19 of the judgment which notes that the author was a well-known scholar who had done extensive research before publishing the book. Further, he had relied upon material and records at Bhandarkar Oriental Research Institute (BORI), Pune. It was highly improbable to accept that any serious and intense

scholar like the author would have any desire or motive to involve himself in promoting or attempt to promote any disharmony between communities, castes or religions within the State. Good faith and (no) legitimate purpose principle was effectively applied. These principles were also applied by this Court in Ramesh holding that the T.V. Serial 'Tamas' did not depict communal tension or violence to fall foul of Section 153A of the Penal Code and/or was the serial prejudicial to national integration to fall Under Section 153B of the Penal Code. Reliance was also placed on the test of 'Clapham omnibus' referred to above. Mahendra Singh Dhoni was a case in which prosecution Under Section 295A was initiated by filing a private complaint on the ground that the photograph of the well-known cricketer, as published in the magazine, was with a caption 'God of Big Things'. It was obvious that prosecution on the basis of content was absurd and too farfetched by any standards even if we ignore the intent or the hurt element.

(v) Validity of First Information Reports (FIRs)

73. Acronym FIR, or the First Information Report, is neither defined in the Code of Criminal Procedure nor is used therein, albeit it refers to the information relating to the commission of a cognisable offence. This information, if given orally to an officer in-charge of the police station, is mandated to be reduced in writing. Information to be recorded in writing need not be necessarily by an eye-witness, and hence, cannot be rejected merely because it is hearsay. Section 154 does not mandate nor is this requirement manifest from other provisions of the Code of Criminal Procedure. Further, FIR is not meant to be a detailed document containing chronicle of all intricate and minute details. In *Dharma Rama Bhagare v. State of Maharashtra* MANU/SC/0110/1972: (1973) 1 SCC 537, it was held that an FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court.

74. In Lalita Kumari, a Constitution Bench, of five judges of this Court, has held that Section 154 of the Code of Criminal Procedure, in unequivocal terms, mandates registration of FIR on receipt of all cognisable offences, subject to exceptions in which case a preliminary inquiry is required. The Petitioner has not contended that the present case falls under any of such exceptions. Conspicuously, there is a distinction between arrest of an Accused person Under Section 41 of the Code of Criminal Procedure and registration of the FIR, which helps maintain delicate balance between interest of the society manifest in Section 154 of the Code of Criminal Procedure, which directs registration of FIR in case of cognisable offences, and protection of individual liberty of those persons who have been named in the complaint. The Constitution Bench referring to the decision of this Court in Tapan Kumar Singh reiterated that the FIR is not an encyclopaedia disclosing all facts and details relating to the offence. The informant who lodges the report of the offence may not even know the name of the victim or the assailant or how the offence took place. He need not necessarily be an eye-witness. What is essential is that the information must disclose the commission of a cognisable offence and

the information must provide basis for the police officer to suspect commission of the offence. Thus, at this stage, it is enough if the police officer on the information given suspects-though he may not be convinced or satisfied-that a cognisable offence has been committed. Truthfulness of the information would be a matter of investigation and only there upon the police will be able to report on the truthfulness or otherwise. Importantly, in Tapan Kumar Singh, it was held that even if information does not furnish all details, it is for the investigating officer to find out those details during the course of investigation and collect necessary evidence. Thus, the information disclosing commission of a cognisable offence only sets in motion the investigating machinery with a view to collect necessary evidence, and thereafter, taking action in accordance with law. The true test for a valid FIR, as laid down in Lalita Kumari, is only whether the information furnished provides reason to suspect the commission of an offence which the police officer concerned is empowered Under Section 156(1) of the Code of Criminal Procedure to investigate. The questions as to whether the report is true; whether it discloses full details regarding the manner of occurrence; whether the Accused is named; or whether there is sufficient evidence to support the allegation are all matters which are alien to consideration of the question whether the report discloses commission of a cognisable offence. As per Clauses (1)(b) and (2) of Section 157 of the Code of Criminal Procedure, a police officer may foreclose an FIR before investigation if it appears to him that there is no sufficient ground to investigate. At the initial stage of the registration, the law mandates that the officer can start investigation when he has reason to suspect commission of offence. Requirements of Section 157 are higher than the requirements of Section 154 of the Code of Criminal Procedure. Further, a police officer in a given case after investigation can file a final report Under Section 173 of the Code of Criminal Procedure seeking closure of the matter.

(vi) Conclusion and relief

75. At this stage and before recording our final conclusion, we would like to refer to decision of this Court in Pirthi Chand wherein it has been held:

12. It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded Under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to *prima facie* consider from the

averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance [issue of process under Code of Criminal Procedure is availed of. A reading of a complaint or FIR itself does not disclose at all any cognizable offence--the court may embark upon the consideration thereof and exercise the power.

13. When the remedy Under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power Under Article 226 since efficacious remedy Under Section 482 of the Code is available. When the court exercises its inherent power Under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The Accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The Accused will have field day in destabilising the economy of the State regulated under the relevant provisions.

The aforesaid ratio was followed by this Court in O.P. Sharma.

76. In Arnab Ranjan Goswami, this Court in almost identical circumstances had refused to examine the question whether the proceedings arising out of the FIR filed against a journalist should be quashed in exercise of jurisdiction Under Article 32 of the Constitution on the ground that the Petitioner must be relegated to pursue equally efficacious remedies under the Code of Criminal Procedure, observing:

49. We hold that it would be inappropriate for the court to exercise its jurisdiction Under Article 32 of the Constitution for the purpose of quashing FIR 164 of 2020 under investigation at the NM Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the Petitioner's liberty are governed by the Code of Criminal Procedure. Despite the liberty

being granted to the Petitioner on 24 April 2020, it is an admitted position that the Petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court Under Article 32, to quash the FIR. The Petitioner must be relegated to the pursuit of the remedies available under the Code of Criminal Procedure, which we hereby do. The Petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition Under Article 32 is not maintainable. But when the High Court has the power Under Section 482, there is no reason to by-pass the procedure under the Code of Criminal Procedure, we see no exceptional grounds or reasons to entertain this petition Under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition Under Article 32 for the relief of quashing the FIR being investigated at the NM Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the Petitioner must be relegated to avail of the remedies which are available under the Code of Criminal Procedure before the competent court including the High Court.

77. We respectfully agree with the aforesaid ratio. Ordinarily we would have relegated the Petitioner and asked him to approach the concerned High Court for appropriate relief, albeit in the present case detailed arguments have been addressed by both sides on maintainability and merits of the FIRs in question and, therefore, been dealt with by us and rejected at this stage. We do not, in view of this peculiar circumstance, deem it appropriate to permit the Petitioner to open another round of litigation; therefore, we have proceeded to answer the issues under consideration.

78. We have already reproduced relevant portions of the transcript of the debate anchored by the Petitioner. It is apparent that the Petitioner was an equal co-participant, rather than a mere host. The transcript, including the offending portion, would form a part of the 'content', but any evaluation would require examination and consideration of the variable 'context' as well as the 'intent' and the 'harm/impact'. These have to be evaluated before the court can form an opinion on whether an offence is made out. The evaluative judgment on these aspects would be based upon facts, which have to be inquired into and ascertained by police investigation. 'Variable content', 'intent' and the 'harm/impact' factors, as asserted on behalf of the informants and the State, are factually disputed by the Petitioner. In fact, the Petitioner relies upon his apology, which as per the Respondents/informants is an indication or implied acceptance of his acts of commission.

79. Having given our careful and in-depth consideration, we do not think it would be appropriate at this stage to quash the FIRs and thus stall the investigation into all the relevant aspects. However, our observations on the factual matrix of the present case in

this decision should not in any manner influence the investigation by the police who shall independently apply their mind and ascertain the true and correct facts, on all material and relevant aspects. Similarly, the competent authority would independently apply its mind in case the police authorities seek sanction, and to decide, whether or not to grant the same. Same would be the position in case charge-sheet is filed. The court would apply its mind whether or not to take cognisance and issue summons. By an interim order, the Petitioner has enjoyed protection against coercive steps arising out of and relating to the program telecast on 15.06.2020. Subject to the Petitioner cooperating in the investigation, we direct that no coercive steps for arrest of the Petitioner need be taken by the police during investigation. In case and if charge-sheet is filed, the court would examine the question of grant of bail without being influenced by these directions as well as any findings of fact recorded in this judgment.

80. We are conscious and aware of the decisions of this Court in Bhajan Lal, P.P. Sharma and the earlier decision in R.P. Kapur which held that the High Court, in exercise of inherent jurisdiction, can quash proceedings in a proper case either to prevent abuse of process or otherwise to secure ends of justice. These could be cases where, manifestly, there is a legal bar against institution or continuance of the prosecution or the proceedings, such as due to requirement of prior sanction; or where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused; or where the allegations in the FIR do not disclose a cognizable offence; or where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused. Another qualifying category in cases where charge-sheet is filed would be those where allegations against the Accused do constitute the offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. Application of these principles depends on factual matrix of each case. Strict and restricted as the requirements are, they are at this stage not satisfied in the present case.

D. The second prayer-multiplicity of FIRs and whether they should be transferred and clubbed with the first FIR registered at P.S. Dargha, Ajmer, Rajasthan

81. We would now examine the second prayer of the Petitioner viz. multiplicity of FIRs being registered in the States of Rajasthan, Maharashtra, Telangana, and Madhya Pradesh (now transferred to Uttar Pradesh) relating to the same broadcast. Fortunately, both the sides agree that the issue is covered by the decision of this Court in T.T. Antony which has been followed in Arnab Ranjan Goswami's case. It would be appropriate in this regard to therefore reproduce the observations in Arnab Ranjan Goswami's case which are to the following effect:

28....The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this Court in T.T. Antony v. State of Kerala ("T.T. Antony"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the Code of Criminal Procedure including Section 173 and observed:

20...under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Code of Criminal Procedure, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Code of Criminal Procedure. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Code of Criminal Procedure.

The Court held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just the alleged cognisable offence, but also any other connected offences that may be found to have been committed. This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the Code of Criminal Procedure. The court observed:

18....All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling Under Section 162 Code of Criminal Procedure. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure.

This Court adverted to the need to strike a just balance between the fundamental rights of citizens Under Articles 19 and 21 and the expansive power of the police to investigate a cognisable offence. Adverting to precedent, this Court held:

27....the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report Under Section 173(2) Code of Criminal Procedure. It would clearly be beyond the purview of Sections 154 and 156 Code of Criminal Procedure, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report Under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power Under Section 482 Code of Criminal Procedure or Under Articles 226/227 of the Constitution.

(Emphasis supplied)

The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either Under Section 482 of the Code of Criminal Procedure or Articles 226/227 of the Constitution.

29. The decision in T.T. Antony came up for consideration before a three judge Bench in Upkar Singh v. Ved Prakash ("Upkar Singh"). Justice N Santosh Hegde, speaking for this Court adverted to the earlier decisions of this Court in Ram Lal Narang v. State (Delhi Administration) ("Ram Lal Narang"), Kari Choudhary v. Mst. Sita Devi ("Kari Choudhary") and State of Bihar v. J.A.C. Saldanha ("Saldanha"). The Court noted that in Kari Choudhary, this Court held that:

11....Of course the legal position is that there cannot be two FIRs against the same Accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.

30. In Saldanha, this Court had held that the power conferred upon the Magistrate Under Section 156(3) does not affect the power of the investigating officer to further investigate the case even after submission of the report Under Section 173(8). In Upkar Singh, this Court noted that the decision in Ram Lal Narang is "in the same line" as the judgments in Kari Choudhary and Saldanha and held that the decision in T.T. Antony does not preclude the filing of a second complaint in regard to the same incident as a counter complaint nor is this course of action prohibited by the Code of Criminal Procedure. In that context, this Court held:

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real Accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimate right to bring the real Accused to book. This cannot be the purport of the Code.

These principles were reiterated by a two judge Bench of this Court in Babubhai v. State of Gujarat. Dr. Justice B.S. Chauhan observed:

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the Accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

This Court held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter-claim, investigation may proceed.

[See also in this context Chirra Shivraj v. State of Andhra Pradesh and Chirag M Pathak v. Dollyben Kantilal Patel].

The aforesaid quotation refers to the judgment of this Court in Babubhai v. State of Gujarat and Ors. MANU/SC/0643/2010: (2010) 12 SCC 254 wherein the test to determine sameness of the FIRs has been elucidated as when the subject matter of the FIRs is the same incident, same occurrence or are in regard to incidents which are two or more parts of the same transaction. If the answer to the question is affirmative, then the second FIR need not be proceeded with.

82. In Arnab Ranjan Goswami's case, the proceedings in the subsequent FIRs were quashed as the counsel for the complainants in the said case had joined the Petitioner in making the said prayer. However, in the present case, we would like to follow the ratio

in T.T. Antony which is to the effect that the subsequent FIRs would be treated as statements Under Section 162 of the Code of Criminal Procedure. This is clear from the following dictum in T.T. Antony:

18. An information given Under Sub-section (1) of Section 154 Code of Criminal Procedure is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion Under Section 169 or 170 Code of Criminal Procedure, as the case may be, and forwarding of a police report Under Section 173 Code of Criminal Procedure. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Code of Criminal Procedure. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report--FIR postulated by Section 154 Code of Criminal Procedure. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling Under Section 162 Code of Criminal Procedure. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure. Take a case where an FIR mentions cognizable offence Under Section 307 or 326 Indian Penal Code and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR Under Section 302 Indian Penal Code need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H--the real offender--who can be arraigned in the report Under Section 173(2) or 173(8) Code of Criminal Procedure, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the Accused.

83. This would be fair and just to the other complainants at whose behest the other FIRs were caused to be registered, for they would be in a position to file a protest petition in case a closure/final report is filed by the police. Upon filing of such protest petition, the

magistrate would be obliged to consider their contention(s), and may even reject the closure/final report and take cognizance of the offence and issue summons to the Accused. Otherwise, such complainants would face difficulty in contesting the closure report before the Magistrate, despite and even if there is enough material to make out a case of commission of an offence.

84. Lastly, we would also like to clarify that Section 179 of the Code of Criminal Procedure permits prosecution of cases in the court within whose local jurisdiction the offence has been committed or consequences have ensued. Section 186 of the Code of Criminal Procedure relates to cases where two separate charge-sheets have been filed on the basis of separate FIRs and postulates that the prosecution would proceed where the first charge-sheet has been filed on the basis of the FIR that is first in point of time. Principle underlying Section 186 can be applied at the pre-charge-sheet stage, that is, post registration of FIR but before charge-sheet is submitted to the Magistrate. In such cases ordinarily the first FIR, that is, the FIR registered first in point of time, should be treated as the main FIR and others as statements Under Section 162 of the Code of Criminal Procedure. However, in exceptional cases and for good reasons, it will be open to the High Court or this Court, as the case may be, to treat the subsequently registered FIR as the principal FIR. However, this should not cause any prejudice, inconvenience or harassment to either the victims, witnesses or the person who is Accused. We have clarified the aforesaid position to avoid any doubt or debate on the said aspect.

85. In view of our findings, we accept the prayer made in the last amended writ petition and transfer all FIRs listed at serial No. 2 to 7 in paragraph 4 (supra) to police station Dargah, Ajmer, Rajasthan, where the first FIR was registered. We do not find any good ground or special reason to transfer the FIRs to Noida, Uttar Pradesh. Statement of the complaint/informant forming the basis of the transferred FIRs would be considered as statement Under Section 162 of the Code of Criminal Procedure and be proceeded with. Compliance of the above directions to transfer papers would be made by the concerned police station within four weeks when they receive a copy of this order. The above directions would equally apply to any other FIR/complaint predicated on the same telecast/episode.

E. The third prayer

86. Regarding the third prayer made by the Petitioner, following the ratio laid down in Arnab Ranjan Goswami we direct the State of Uttar Pradesh to examine the threat perception for the Petitioner and his family members and take appropriate steps as may necessary. Similar assessment be made by the State of Rajasthan and based on the inputs given by its agencies steps as may be necessary be taken on usual terms.

Operative directions

87. In view of the aforesaid discussion, we decline and reject the prayer of the Petitioner for quashing of the FIRs but have granted interim protection to the Petitioner against arrest subject to his joining and cooperating in investigation till completion of the investigation in terms of our directions in paragraphs 79 and 85 above. We have however accepted the prayer of the Petitioner for transfer of all pending FIRs in relation to and arising out of the telecast/episode dated 15th June 2020 to P.S. Dargah, Ajmer, Rajasthan, where the first FIR was registered. On the third prayer, we have asked the concerned states to examine the threat perception of the Petitioner and family members and take appropriate steps as may be necessary.

88. The writ petition and all pending applications are, accordingly, disposed of in the aforesaid terms.

1 The Places of Worship (Special Provisions) Act, 1991.

2 I.A. by Haji Syed Chisti, Khadim of Dargah; Respondent No. 9,

3 I.A. by Haji Syed Chisti, Khadim of Dargah; Respondent No. 9, Respondent No. 6

4 I.A. by Haji Syed Chisti, Khadim of Dargah

5 I.A. by Sajid Noormohammad Sheikh r/o Nashik, Maharashtra

6 Respondent No. 9, Respondent No. 10

7 Respondent No. 6

8 Respondent No. 9

9 Respondent No. 9 and Respondent No. 6

10 sworn by DSP/ASST. Commissioner, Noida

11 Respondent No. 3

12 Respondent No. 4

13 Hate Speech in Constitutional Jurisprudence: A Comparative Analysis by Michel Rosenfeld, 24 Cardozo L. Rev. 1523 2002-2003

14 Frederick Siebert writing on John Milton's *Areopagitica*, 1644, in The Libertarian Theory of the Press, in FOUR THEORIES OF THE PRESS 39, 44-45

15 "Justification from democracy, the justification from social contract, the justification from the pursuit of the trust, and the justification from individual autonomy."-Cardozo L. Rev. 1523 2002-2003 (Hein Online).

16 Mr. Justice Holmes in *Schenck v. United States*, 249 U.S. 47 (52), has described the test as:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

17 See Hate Speech in Constitutional Jurisprudence: A Comparative Analysis by Michel Rosenfeld, 24 Cardozo L. Rev. 1523 2002-2003.

18 Declaration for Laïcité-Observatoire de la laïcité (Republique Francaise)

- 19 Andrew F. Sellers, Defining Hate Speech, published by Berkman Klein Center for Internet & Society at Harvard University
- 20 Indira Sawhney v. Union of India, MANU/SC/0104/1993: (1992) Supp. 3 SCC 217 and Amita v. Union of India, MANU/SC/0481/2005: (2005) 13 SCC 721
- 21 See-Pat Eatock v. Andrew Bolt
- 22 O'Neill at (160)-(161) and Hill v. Church of Scientology of Toronto, MANU/SCCN/0068/1995: (1995) 2 S.C.R. 1130 (117) and (120)
- 23 'Online harassment, defamation, and hateful speech: A primer of the legal landscape'
- 24 'Words that Wound: A tort Action for Racial Insults, Epithets, and Name-Calling', 17 Harv. C.R.-C.L.L.rev. 133 (1982)
- 25 'Public Response to Racist Speech: Considering the Victim's Story', 87 Mich.L. Rev. 2320 (1989)
- 26 'Free Speech and the Development of Liberal Virtues: An Examination of the Controversies Involving Flag Burning and Hate Speech', 52 U. Miami K. Rev. 733 (1998)
- 27 Myra Mrx Ferree, William A. Gamson, Jurgen Gerhards and Dieter Rucht, 'Four Models of the Public Sphere in Modern Democracies,' published in THEORY AND SOCIETY, Vol. 31, No. 3 (June, 2002), pp. 289-324
- 28 In Bolam v. Friern Hospital Management Committee, [1957] 2 All E.R. 118, it was observed:
"A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular Article..Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view."
- 29 Racial and Religious Tolerance, 2001 (Victoria, Australia)
- 30 George Bernard Shaw, Socialism off Millionaires, 16(1901)
- 31 Joseph Blocher, 'Free Speech and Justified True Belief', Harvard Law Review, Vol. 133, No. 2, December 2019.
- 32 Internet Encyclopaedia of Philosophy, Toleration by Andrew Fiala, ISSN 2161-0002
- 33 John F. Kennedy
- 34 Karl Popper in The Open Society and Its Enemies, who has observed:
"...If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them..."
- 35 According to Martin Packer, at least since Immanuel Kant and David Hume, morality has been seeing as needing to take the form of 'rational, universal principles' that would guide the autonomous individual. These principles would necessarily transcend the many dictates of specific societies and cultures; the dictates are contingent while morality and the good must be universally compelling.
- 36 Marjoka Van Doorn, the Nature of Tolerance and the Social Circumstances in Which it Emerges, Current Sociology Review, 2014, Vol. 62(6) 905-927
- 37 Sam Harris, The End of Faith
- 38 Michael Sandel Democracy's Discontent (1998)

39 John Rawls, Theory of Justice (1971). Rawls idea of justice as fairness is based upon principle that justice is political and not necessarily on moral principles.

40 The Wounded Vanity of Governments in 'Republic of Rhetoric: Free Speech and the Constitution of India' by Abhinav Chandrachud, Penguin Books India (2017)

41 Bilal Ahmed Kaloo was overruled on a different point in Prakash Kumar Alias Prakash Bhutto v. State of Gujarat, MANU/SC/0030/2005: (2005) 2 SCC 409

MANU/SC/0649/2008

[Back to Section 96 of Indian Penal Code, 1860](#)

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 732 of 2002

Decided On: 28.01.2008

Kashi Ram and Ors. Vs. State of Rajasthan

Hon'ble Judges/Coram:

S.B. Sinha and Dalveer Bhandari, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sushil Balwada, Adv

For Respondents/Defendant: Naveen Kumar Singh, Shashwat Gupta and Aruneshwar Gupta, Advs.

JUDGMENT

Dalveer Bhandari, J.

1. This appeal is directed against the judgment dated 04.02.2002 in Criminal Appeal No. 826 of 2001 passed by the High Court of judicature for Rajasthan at Jodhpur.

2. Brief facts, which are necessary to dispose of this appeal are recapitulated as under:

2.1 The land measuring 21 bighas is located in village Bhinan, Tehsil Taranagar and the ownership of the same was recorded in the name of Smt. Chhoti Devi w/o Budh Singh Rajput and after her demise, the land was transferred in the name of Balu Singh.

2.2 The accused, Nanuram submitted an application before the Tehsildar, Taranagar and disclosed that he had bought the said land on the basis of agreement to sell from Smt. Chhoti Devi at a consideration of Rs. 1200/- and he is in possession of the land and is cultivating the same. It was alleged that the transfer in the name of Balu Singh had been wrongly recorded in the revenue records. The Tehsildar, after some enquiry cancelled the entry of transfer recorded in the name of Balu Singh.

2.3 On 13th June, 1999 at about 10 a.m., the complainant party consisting of Amar Singh PW4, his father Balu Singh (since deceased), Bahadur Singh PW8, Nanuram Nai PW1 and Prithvi Singh PW17 went to cultivate Khasra No. 512 situated in village Bhinan Tehsil, Taranagar District Churu. At that time, the accused persons were not there but on learning about the presence of the complainant party in Khasra No. 512 around 12 noon on the same day, the accused party consisting of Nanuram accused-appellant along with the acquitted 6 persons came from the side of village, armed with gandasa, lathis and axes and attacked the members of the complainant party and caused serious injuries to Amar Singh PW4, Nanuram Nai PW1 and Balu Singh. Balu Singh succumbed to those injuries in the hospital on the same day at 6 p.m.

2.4 Amar Singh PW4 lodged the first information report. The accused persons were apprehended and on their voluntary disclosure statements, lathis, gandasa and axes were recovered and after usual examination, they were charged under Section 302 read with Sections 149, 148 and 323 IPC. The accused-appellants in their statements under Section 313 of the Code of Criminal Procedure denied all the incriminating evidence and pleaded that they were in possession of the agricultural land and the complainant party wanted to dispossess them forcibly. In the process of protecting the possession of their land, a scuffle between the parties took place. Amar Singh P.W.4 and Balu Singh from the side of the complainant party received injuries and Gopiram from the side of accused appellants also received injuries.

2.5 According to the members of the complainant party, they were totally unarmed at the time of the incident and the accused persons who were armed with lathis, gandasa and axes had inflicted serious injuries on them. The injuries on the person of Balu Singh were medically examined. The doctor found the following external injuries:

(1) lacerated wound - 6 cm x 1 cm x bone deep on vertex of skull,

(2) lacerated wound - 5 cm x bone deep in the right frontal prominence region,

(3) lacerated wound - 3 cm x 1 cm x bone deep on occipital region of head and

(4) four abrasions on right middle leg, left knee and posterior region of left leg.

2.6 All the aforesaid injuries were found to have been caused with blunt weapon and x-ray was advised in respect of three lacerated wounds.

2.7 On the post-mortem of Balu Singh's body, it was revealed that apart from abrasions, three lacerated wounds, haematoma was present and the fracture of bone was detected. The brain was squeezed. In the opinion of doctor, cause of death of Balu Singh was shock due to aforesaid three lacerated injuries on his person.

2.8 On the head of Amar Singh four lacerated wounds on left parietal region, middle of forehead, right leg and two other lacerated wounds and middle region of left leg were found by the doctor. According to the doctor, these injuries were caused by a blunt weapon.

2.9 On Nanuram, lacerated wound on occipital region of head, upper left near ear region respectively and contusion on left shoulder were found. All the above three injuries were caused by a blunt weapon. Gandasa, lathis and other weapons of offence were recovered at the instance of the accused appellants. Blood-stained clothes of the deceased Balu Singh were seized by the police and clothes, earth etc. were sent to Forensic Laboratory for examination. In the serological examination human blood was detected in the blood-stained earth and on the deceased's shirt, dhoti and baniyan, however, no blood was found on the weapons recovered by the police. In the formal investigation of the case, no case was made out against Sri Chand, Dula Ram, Lilu Ram and Pappu and charge-sheet against the remaining 11 accused persons was filed in the court of the learned Judicial Magistrate, Taranagar. On committal, the case was sent to the Court of Sessions.

3. The prosecution, in order to support and strengthen its case has examined 25 witnesses and placed reliance on 78 documents on record. The statements of the accused persons were recorded under Section 313 Cr.P.C. wherein the accused denied the prosecution version and claimed themselves innocent and asserted that a false case has been made out against them. It was asserted by the appellants that Nanuram and Kashiram bought the disputed land from Smt. Chhoti Devi through agreement to sell dated 23.4.1965 and since then Nanuram has been in possession and was paying land revenue. It was further submitted that on 13.9.1999, on the basis of the information received that Balu Singh and

his sons along with other 15-20 persons went to their field (Khasra No. 512) on a tractor with the intention to take forcible possession of the field by cultivating it. About 100-150 people of village Bhinan went to stop them from doing so. They were armed with variety of weapons. They inflicted serious injuries on Amar Singh and Balu Singh.

4. The defence has produced DW1 Dr. Haleef, DW2 Mahender Singh and DW3 Nanuram. In the documentary evidence, extracts of statements of witnesses Nanuram, Mohan Kunwar, Amar Singh, Bhawan Singh, Moti Ram Patwari, Bhanwar Singh and written report by Dr. Mahesh Panwar to the SHO Police Station Taranagar, letter of SHO and injury report of Gopiram and copies of traced out site plans have been produced.

5. The prosecution mainly relied on PW2 Lal Chand, PW5 Het Ram, PW6 Lilu Ram, PW7 Moman Ram, PW12 Gulab Singh, PW13 Moti Ram, PW14 Manohar Lal and PW23 Pala Ram, investigating officer.

6. According to the investigating officer, the accused- appellants were in possession of the field where the occurrence took place. The complainant party went to this field with the intention to take its possession. The members of the complainant party were asked not to ply the tractor on the field. Despite the resistance the field was cultivated by the complainant party. On learning that the complainant party was cultivating Khasra No. 512, the accused appellants in a group of 15-20 people fully armed with different weapons, reached the said Khasra and attacked the complainant party. The case of the appellants as culled out from evidence is that the accused appellants were compelled to use force in order to protect the lives and property and their case is fully covered by the right of private defence. In this view of the matter, presence of the accused appellants cannot be doubted.

7. The entire evidence on record had been scrutinized in detail by the learned Additional Sessions Judge. On evaluation of the entire evidence it has been fully established by the learned Additional Sessions Judge that the fatal injuries were inflicted by Kashiram and other serious injuries were caused by Dharam Pal, Jagdish and Rupa Ram on the persons of Balu Singh and Amar Singh in furtherance of their common object of killing the members of the complainant party.

The trial court acquitted six accused and convicted five accused appellants.

8. From the analysis of the evidence by the trial court, it is abundantly clear that the accused appellants were in possession of Khasra No. 512. The complainant party had gone to cultivate the said Khasra at 10 a.m. on 13th June, 1999. At that time, the accused appellants were not there but on learning that the complainant party was cultivating the field, they reached there armed with varieties of weapons and caused serious injuries on the members of the complainant party. Admittedly, the members of the complainant party were totally unarmed. The appellants were responsible for causing fatal injury on Balu Singh and other serious injuries on Amar Singh and Nanuram. According to the findings of the Sessions Court, the accused appellants had exceeded the right of private defence.

9. Kashiram was convicted under Section 304 Part-II and was sentenced to 5 years rigorous imprisonment. Other 4 accused, namely, Dharam Pal, Jagdish, Rupa Ram and Om Prakash inflicted injuries on Amar Singh and Nanuram were convicted under Section 304 Part-II read with Section 149 IPC and they were also sentenced to 5 years rigorous imprisonment. They were also convicted under Section 323 IPC.

10. The High Court again examined the entire evidence and came to a clear conclusion that the accused appellants had exceeded in their right of private defence. They caused serious injuries to Balu Singh which proved fatal. They also caused serious injuries to Amar Singh and Nanuram. Injuries of such serious nature were totally unwarranted because the members of the complainant party were totally unarmed.

11. The finding of the High Court regarding accused appellants' private defence reads as under:

Therefore, the learned trial court has rightly held that the accused persons have exceeded their right of private defence of property.

12. The High Court also came to the conclusion that in the facts and circumstances the trial court has correctly evaluated the entire evidence on record and has taken a very lenient view. The High Court did not find any mitigating circumstance to interfere with the quantum of sentence.

The appellants aggrieved by the said judgment of the High Court have preferred this appeal before this Court.

13. It was submitted by the learned Counsel appearing for the appellants that the High Court failed to appreciate that the disputed land was in possession of the accused persons and the complainant party came to their field to dispossess them and their acts, if any, are fully covered by the right of self defence. It is also submitted that the appellants had filed a suit against the complainant party prior to this incident and an injunction was granted against the complainant party by the Revenue Court on 10.5.1999 and it was found that the accused appellants were in possession of the disputed land.

14. The appellants also submitted that it is a case of over implication because of previous enmity. According to the appellants, since they were in possession of the land in dispute, therefore, no offence under Section 304 Part-II IPC can be made out against them.

15. We have heard the learned Counsel for the appellants and the State. We have also perused the judgment of the trial court and the record of the case. The Sessions Court and the High Court found that the appellants were in possession of Khasra No. 512 and the complainant party at about 10 a.m. on 13th June, 1999 went to cultivate Khasra No. 512. The appellants were not there. The appellants learnt that the members of the complainant party were cultivating the said field, the accused appellants armed with gandasa, lathis and axes came to the field and assaulted the members of the complainant party when they were unarmed. Appellant Kashiram inflicted gandasa blow on Balu Singh from the reverse side and that injury proved fatal. The gandasa has been recovered at the instance of Kashiram. According to the report of the Chemical Examiner, human blood was detected from the blood-stained clothes of the deceased. The earth collected from the spot also contained human blood. Since the appellant Kashiram did not use the front side of gandasa, therefore, the trial court instead of convicting him under Section 302 IPC convicted him under Section 304 Part-II IPC. In view of our finding that the appellants were in possession of Khasra No. 512 and the appellants had gone to take back possession of Khasra No. 512 from the members of the complainant party, had inflicted fatal blow on Babu Singh and other serious injuries on the members of the complainant party.

16. The question which arises for our adjudication is that in the facts and circumstances of this case whether the accused appellants are protected by the right of private defence as enumerated by Section 96 of the Indian Penal Code.

17. Sections 96 to 106 deal with various facets of the right of private defence. Before determining the controversy in this case, we deem it proper to deal with these provisions in brief.

Section 96 IPC reads as under:

96. Things done in private defence.- Nothing is an offence which is done in the exercise of the right of private defence.

Section 97 of IPC gives right to a person to defend his body and the property. But, this right is subject to restrictions contained in Section 99. Section 99 IPC reads as under:

99. Acts against which there is no right of private defence. - There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised. - The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

18. The main question that arises for adjudication in this case is whether the accused appellants had right of private defence and this is the case of exceeding the right of private defence meaning thereby, inflicting more harm than it was necessary for the purpose of defence.

19. Section 100 of the Indian Penal Code deals with a situation when the right of private defence of the body extends of causing death. The relevant portion of the section reads as under:

100 - When the right of private defence of the body extends to causing death. - The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

First. - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. - xxxxxxxx xxx

Forthly. - xxxx xxx xxx

Fifthly. - xxx xxx xxx

Sixthly. - xxx xxx xxx

20. Section 103 IPC deals with a situation when the right of private defence of property extends to causing death. Section 103 IPC reads as under:

103. When the right of private defence of property extends to causing death. - The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated....

21. Admittedly, the members of the complainant party were totally unarmed. Even if the case of the accused appellants is accepted in toto that in order to take back the possession of Khasra No. 512 some injuries were inflicted but the act of the appellants in causing death cannot be covered by the ambit of Section 96 IPC. According to the findings of courts below, it was clearly a case of exceeding the right of private defence. The appellants indeed inflicted more harm than it was necessary for the purpose of defence.

22. The right of private defence is codified in Sections 97 to 106 of the Indian Penal Code and all these sections will have to be read together to ascertain whether in the facts and circumstances the accused appellants are entitled to right of private defence or they exceeded the right of private defence. Only when all these sections are read together, we

get comprehensive view of the scope and limitation of that right. The position of law is well-settled for over a century both in England and India.

23. Almost 150 years ago in Queen v. Fuzza Meeah alias Fuzza Mahomed (1866) 6 WR (Cr) 89 because of exceeding the right of private defence, the appellants were convicted, but the sentence of imprisonment was reduced.

24. In another case decided during the same period in Queen v. Shunker Sing, Kukhoor Sing (1864) 1 WR (Cr) 34, the court for exceeding the right of private defence convicted the accused and reduced the sentence.

25. This Court also on several occasions dealt with the cases of exceeding the right of private defence. In The Munney Khan v. State of Madhya Pradesh MANU/SC/0206/1970: [1971]1SCR943, this Court for exceeding the right of private defence converted the sentence of the accused appellant from under Section 302 IPC to Section 304 IPC. The relevant portion of the judgment reads as under:

Such a right of private defence is governed by Section 101, I.P.C. and is subject to two limitations. One is that, in exercise of this right of private defence, any kind of hurt can be caused, but not death; and the other is that the use of force does not exceed the minimum required to save the person in whose defence the force is used. In these circumstances, in the present case, when Zulfiqar was being given fist blows only, there could be no justification at all for the appellant to stab Reotisingh with a knife and particularly to give him a blow which could prove fatal by aiming it on his back. The use of the knife itself was in excess of the right of private defence and it became much more excessive when the blow with the knife was given on a vital part of the body which, in the ordinary course of nature, was likely to cause the death of Reotisingh. From the fact that the blow was given in the back with a knife an inference follows that the appellant intended to cause death or at least intended to cause such injury as would, in the ordinary course of nature, result in his death. In adopting this course, the appellant would have been clearly guilty of the offence of murder had there been no right of private defence of Zulfiqar at all. Since such a right did exist, the case would fall under the exception under which culpable homicide does not amount to murder on the ground that the death was caused in exercise of right of private defence, but by exceeding that right. An offence of this nature is made punishable under the first part of Section 304, I.P.C. Consequently, the conviction of the appellant must be under that provision and not under Section 302 I.P.C.

As a result, the appeal is partly allowed, the conviction under Section 302, I.P.C. is set aside, and the appellant is convicted instead under the first part of Section 304, I.P.C. In view of the change in the offence for which the appellant is being punished, we set aside the sentence of imprisonment for life, and instead, award him a sentence of seven years' rigorous imprisonment.

26. In *Balmukundand Anr. v.: State of Madhya Pradesh* (1981)4SCC432 this Court while dealing with the facts of similar nature converted the conviction from Section 302 IPC to Section 304 IPC. Relevant observations of the court reads as under:

In rural landscape even today dispute as to possession of agricultural land is a part of life. Occupancy of land being the only source of survival, emotional attachment apart, the struggle for survival leads to fierce fight and resort to arms to protect possession because in the context of tardy slow moving litigative process actual possession has ceased to be mere nine point in law but it has assumed alarming proportions. Years upon years spent in legal conundrums moving vertically through hierarchy of courts coupled with the cost and time to throw out a trespasser or even a rank trespasser provides occasionally provocation to resort to physical violence. The use of the firearm used to be spasmodic but it has started becoming a recurring malady. But right of private defence cannot be judged step by step or in golden scales. Once we accept the finding of the High Court that the appellants had the right of private defence of person and property meaning thereby that the appellants were the victims and the complainants were aggressors, but in the facts of the case they exceeded the same by wielding a firearm, a sentence of 10 years' rigorous imprisonment would appear to us in the facts and circumstances of the case to be a little bit too harsh.

Having given our earnest consideration to the question of sentence alone in this case, we are of the opinion that Balmukund, Appellant 1, should be sentenced to rigorous imprisonment for five years, and simultaneously the sentence of seven years under Section 307, Indian Penal Code awarded to Appellants 1 and 2 both be reduced to three years each. The substantive sentences should run concurrently.

27. In another case, while dealing with a case of self defence in *Dharam Pal and Ors. v. State of U.P.* MANU/SC/0039/1994: 1994CriLJ615, this Court for exceeding the right of private defence instead of convicting the accused appellant under Section 302 read with Section 149 IPC, converted the sentence under Section 304 Part-I IPC.

28. In *Mahabir Choudhary v. State of Bihar* MANU/SC/0495/1996: 1996CriLJ2860, this Court held that the High Court erred in holding that the appellants had no right of private defence at any stage. However, this Court upheld the judgment of the Sessions Court holding that since the appellants had right of private defence to protect their property, but in the circumstances of the case, the appellants had exceeded their right of private defence and were, therefore, rightly convicted by the trial court under Section 304 Part-I. The court observed that the right of private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right of private defence including killing.

29. We have examined the cases of exceeding of the right of private defence. In the instant case, both the Sessions Court and the High Court came to the conclusion that the accused appellants were guilty of exceeding the right of private defence and instead of convicting them under Section 302 convicted them under Section 304 Part-II along with 149 IPC.

30. Both the Sessions Court and the High Court clearly came to the conclusion that the accused appellants in a group of 15- 20 people armed with variety of weapons had gone to Khasra No. 512 where the complainant party was cultivating. The accused appellants in order to dispossess the members of the complainant party attacked them and caused serious injuries to the members of the complainant party in which Balu Singh died. Admittedly, the members of the complainant party were totally unarmed. From perusal of the entire evidence on record, it is abundantly clear that the accused appellants were the aggressor and they attacked the complainant party when they were totally unarmed. It is settled legal position that the right of private defence cannot be claimed when the accused are aggressors particularly when the members of the complainant party were totally unarmed. This Court in the recent judgment in *Bishna alias Bhiswasdeb Mahato and Ors. v. State of West Bengal* MANU/SC/1913/2005: AIR2006SC302 exhaustively dealt with this aspect of the matter. The facts of this case are akin to the facts of the instant cases. In this case, the Court while relying on the earlier judgments of this Court, clearly came to the conclusion that the right of private defence cannot be claimed when the accused is an aggressor.

31. In the said case, this Court relied on *Preetam Singh v. State of Rajasthan* MANU/SC/0881/2003: (2003)12SCC594. In this case, the Court clearly held that the appellants were the aggressors, therefore, the question of the appellants having the right of private defence or exceeding it does not arise. The plea of private defence is not at all available to the appellants.

32. In the instant case, the appellants were the aggressor. They inflicted serious injuries on the unarmed complainant party by a variety of weapons causing the death of Balu Singh and also inflicted serious injuries on other members of the complainant party.

33. Private defence can be used only to ward off unlawful force, to prevent unlawful force, to avoid unlawful detention and to escape from such detention as held by this Court in Bishna's case (*supra*). In the said judgment the relevant portion of Kenny's Outlines of Criminal Law and Criminal Law by J.C. Smith and Brian Hogan have been quoted. We deem it appropriate to reproduce the same.

It is natural that a man who is attacked should resist, and his resistance, as such, will not be unlawful. It is not necessary that he should wait to be actually struck, before striking in self-defence. If one party raises up a threatening hand, then the other may strike. Nor is the right of defence limited to the particular person assailed; it includes all who are under any obligation, even though merely social and not legal, to protect him. The old authorities exemplify this by the cases of a husband defending his wife, a child his parent, a master his servant, or a servant his master (and perhaps the courts would now take a still more general view of this duty of the strong to protect the weak).

34 The learned author further stated that self-defence, however, is not extended to unlawful force:

But the justification covers only blows struck in sheer self-defence and not in revenge. Accordingly if, when all the danger is over and no more blows are really needed for defence, the defender nevertheless strikes one, he commits an assault and battery. The numerous decisions that have been given as to the kind of weapons that may lawfully be used to repel an assailant, are merely applications of this simple principle. Thus, as we have already seen, where a person is attacked in such a way that his life is in danger he is justified in even killing his assailant to prevent the felony. But an ordinary assault must not be thus met by the use of firearms or other deadly weapons....

In Browne 1973 NI 96 (NI at p. 107] Lowry, L.C.J. with regard to self-defence stated:

The need to act must not have been created by conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need.

35. As regards self-defence and prevention of crime in Criminal Law by J.C. Smith & Brian Hogan, it is stated:

Since self-defence may afford a defence to murder, obviously it may do so to lesser offences against the person and subject to similar conditions. The matter is now regulated by Section 3 of the Criminal Law Act, 1967. An attack which would not justify D in killing might justify him in the use of some less degree of force, and so afford a defence to a charge of wounding, or, a fortiori, common assault. But the use of greater force than is reasonable to repel the attack will result in liability to conviction for common assault, or whatever offence the degree of harm caused and intended warrants. Reasonable force may be used in defence of property so that D was not guilty of an assault when he struck a bailiff who was unlawfully using force to enter D's home. Similar principles apply to force used in the prevention of crime.

36. The right of private defence is a very valuable right and it has been recognized in all free, civilized and democratic societies within certain reasonable limits (see Gottipulla Venkatasiva Subbrayanam and Ors. v. The State of Andhra Pradesh and Anr. MANU/SC/0124/1970: 1970CriLJ1004.

Russel in his celebrated book on Crimes (11th Edn.) p.491 has stated:

A man is justified in resisting by force any one who manifestly intends and endeavours by violence or surprise to commit a known felony against his person, habitation or property. In these cases he is not obliged to retreat and not merely to resist the attack where he stands but may indeed pursue his adversary until the danger is ended. If and in a conflict between them he happens to kill his attacker such killing is justifiable.

Blackstone [Commentaries Book 4; P. 185] also observed as under:

The party assaulted must, therefore, flee as far as he conveniently can either by reason of some wall, ditch, or some other impediment; or as far as the fierceness of the assault will permit him; for it may be so fierce as not to yield a step, without manifest danger of his life, or enormous bodily harm; and then in his defence he may kill his assailant instantaneously. And this is the doctrine of universal justice, as well as of the municipal law.

(Emphasis supplied)

Halsbury's Laws of England, Fourth Edition, Vol.11 pp. 630-631 dealt with self-defence and defence of property. The relevant portion in paras 1180-1181 reads as under:

1180. Self-defence. A person acting in self- defence is normally acting to prevent the commission of a crime, as is a person acting in defence of another. The test to be applied in such cases is now established to be the same as for cases of prevention of crime, that is the force used in self- defence or in defence of another must be reasonable in the circumstances

Provided the force used is reasonable a person is entitled to defence not only himself or a member of his family, but even a complete stranger if the stranger is subject to unlawful attack by others.

In deciding whether the force used was reasonable, all the circumstances may be considered. The matter is one of fact and not one of law, hence it cannot be ruled that a person who is attacked must retreat before retaliating. A person's opportunity to retreat with safety is a factor to be taken into account in deciding whether his conduct was reasonable, as is his willingness to temporize or disengage himself before resorting to force. A man is not obliged to refrain from going where he may lawfully go because he has reason to believe that he may be attacked, and is not thereby deprived of his right of self-defence.

1181. Defence of property. Where a person in defending his property is also acting in the prevention of crime then he may use such force as is reasonable in the circumstances. Where no crime is involved, as where there is merely a trespass, the same rule of reasonable force in the circumstances is applicable. If in using reasonable force the defendant should accidentally kill another, the killing would not amount to murder or man-slaughter. It would not, in general, be reasonable to kill in defence of property alone, although it has been held that a man may lawfully kill, a trespasser who would forcibly dispossess him of his house.

37. In Mohammad Khan and Ors. v. State of Madhya Pradesh MANU/SC/0143/1971: 1972CriLJ661, this Court has rightly concluded that the right of self-defence only arises if the apprehension is unexpected and one is taken unawares. If one enters into an inevitable danger with the fullest intimation beforehand and goes there armed to fight out, the right cannot be claimed.

38. Careful analysis of the right of private defence as codified in Sections 96 to 106 IPC and the legal position as crystallized by a number of judgments leads to an irresistible conclusion that the findings of the Sessions Court as upheld by the High Court in the

instant case regarding the appellants' exceeding the right of private defence are wholly erroneous and untenable.

39. The right of private defence is purely preventive and not punitive. This right is available only to ward off the danger of being attacked; the danger must be imminent and very real and it cannot be averted by a counter-attack.

40. In view of the facts of this case, the accused appellants did not have the right of private defence. Therefore, they cannot legitimately claim any benefit by invoking the principle of right of private defence.

41. The acts of the accused appellants of proceeding to a definite destination with lethal weapons and thereafter causing serious injuries including fatal injuries on the unarmed members of the complainant party can never legitimately claim the benefit of the provisions of the right of private defence. Since the accused appellants did not have the right of private defence, therefore, the findings of the courts below regarding their exceeding the right of private defence cannot be sustained and are accordingly set aside.

42. Since there is no appeal by the State against acquittal of the accused appellants under Sections 302 IPC, therefore it is not necessary for us to deal with the aspect whether their acquittal under Section 302 was justified or not.

43. The Sessions Court convicted accused Kashiram under Section 304 Part-II and the other appellants under Section 304 Part-II read with Section 149 IPC. In the impugned judgment the High Court has upheld their conviction.

44. On consideration of the peculiar facts and circumstances of the case the conviction and sentence of the accused appellants as recorded by the courts below do not warrant any interference. The appeal being devoid of any merit is accordingly dismissed.

The accused appellants are directed to surrender forthwith to suffer the remaining sentence.

MANU/SC/0218/1974

[Back to Section 100 of Indian Penal Code, 1860](#)

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 192 of 1972

Decided On: 02.05.1974

State of U.P. Vs. Ram Swarup and Ors.

Hon'ble Judges/Coram:

M. Hameedullah Beg, V.R. Krishna Iyer and Y.V. Chandrachud, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: D.P. Uniyal and O.P. Rana, Advs

For Respondents/Defendant: Frank Anthony, A.K. Garg, Santokh Singh and Ramesh Sharma and R.K. Garg, Advs.

JUDGMENT

Y.V. Chandrachud, J.

1. On the morning of June 7, 1970 in the Subzi Mandi at Badaun, U.P., a person called Sahib Datta Mal alias Munimji was shot dead. Ganga Ram and his three sons, Ram Swamp, Somi and Subhash were prosecuted in connection with that incident. Ram Swarup was convicted by the learned Sessions Judge, Badaun, under Section 302, Panel Code, and was sentenced to death. Ganga Ram was convicted under Section 302 read with Section 34 and was sentenced to imprisonment for life. They were also convicted under the Arms Act and sentenced to concurrent terms of imprisonment. Somi and Subhash were acquitted of all the charges as also was Ganga Ram of a charge under Section 307 of the Penal Code in regard to an alleged knife-attack on one Nanak Chand.

2. The High Court of Allahabad has acquitted Ganga Ram and Ram Swarup in an appeal filed by them and has dismissed the appeal filed by the State Government challenging the acquittal of Somi and Subhash. In this appeal by special leave we are concerned only with the correctness of the judgment of acquittal in favour of Ganga Ram and Ram Swarup.

3. Except for a solitary year, Ganga Ram held from the Municipal Board of Badaun the contract of Tehbazari in the vegetable market from 1954 to 1969. The deceased Munimji out-bid Ganga Ram in the annual auction of 1970-71 which led to the day-light outrage of June 7, 1970.

4. At about 7 a.m. on that day Ganga Ram is alleged to have gone to the market to purchase a basket of melons. The deceased declined to sell it saying that it was already marked for another customer. Hot words followed during which the deceased, asserting his authority, said that he was the Thekedar of the market and his word was final. Offended by this show of authority, Ganga Ram is alleged to have left in a huff.

5. An hour later Ganga Ram went back to the market with his three sons, Ram Swamp, Somi and Subhash. Ganga Ram had a knife, Ram Swarup had a gun and the two others carried lathis. They threw a challenge saying that they wanted to know whose authority prevailed in the market. They advanced aggressively to the gaddi of the deceased who, taken by surprise, attempted to rush in a neighbouring kothari. But that was much too late for before he could retreat, Ram Swarup shot him dead at point-blank range. It was at all stages undisputed that Ganga Ram and Ram Swarup went to the market at about 8 a.m. that one of them was armed with a gun and that a shot fired from that gun by Ram Swarup caused the death of Munimji.

6. Though there was no direct evidence of the 7 O'clock incident the learned Sessions Judge accepted the prosecution case that the shooting was preceded by that incident. In coming to that conclusion the learned Judge relied upon the evidence of Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah and Shiva Dutta Mal (P. Ws. 1 to 5) to whom the deceased had narrated the incident. These witnesses were also examined in order to establish the main incident and their evidence in that regard was also accepted by the learned Judge. Having found that these witnesses were trustworthy and that their evidence established the case of the prosecution the learned Judge proceeded to consider whether as contended by Ganga Ram and Ram Swarup the shot was fired by Ram Swarup in exercise of the right of private defence. Adverting to a variety of circumstances the learned Judge rejected that theory and held that the charges leveled against the two accused were proved beyond a reasonable doubt.

7. The High Court disbelieved the evidence in regard to the 7 O'clock incident. In any case, according to the High Court, that incident was far to trifling to lead to the shooting outrage. The High Court accepted the defence version that a scuffle had taken place between the deceased Munimji and Ganga Ram and that Ganga Ram was assaulted with lathis by Shiva Dutta Mal (P.W. 5) and the servants of the deceased. The High Court concluded:

If Ganga Ram was being given repeated lathi blows by P.W. Shiva Dutta Mal and servants of the deceased, then Ram Swarup had full justification to fire his gun in the right of private defence of the person of his father. It may be that the gun fire injured the deceased, rather than those who were belabouring Ganga Ram with lathis. But once we come to the conclusion that it was not unlikely that Ram Swarup had used his gun in the circumstances narrated above, i.e. in order to save his aged father from the clutches and

assaults of his assailants, he cannot be held guilty of murder or for the matter of that of any other offence.

In regard, to Ganga Ram the High Court held that he could not be found guilty under Section 302 read with Section 34 "as his presence in the Subzimandi was not for the purpose of killing the deceased, as suggested by the prosecution, but he had more probably reached there alongwith his son Ram Swarup, on way back from their vegetable farm, in order to purchase melons.

8. The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor shifted because the accused pleads the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and not until it does so can the question arise whether the accused had acted in self-defence. This position, though often overlooked, would be easy to understand if it is appreciated that the Civil Law rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case, it is open to a criminal court to find in favour of an accused on a plea not taken up by him and by so doing the court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defence and yet the court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private defence has been exceeded.

For a moment, therefore, we will keep apart the plea of the accused and examine briefly by applying the well-known standard of proof whether the prosecution, as held by the Sessions Court, has proved its case.

9. The evidence of the five witnesses--Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah, Shiva Dutta Mal--is consistent and convincing on the broad points of the case. The Sessions Court accepted that evidence after a careful scrutiny and we are inclined to the view that the High Court was unduly suspicious of that, evidence in the name of caution. The High Court thought that the evidence of these witnesses must be viewed with great caution because Sona Ram and Shanti Lal are the first cousins of the deceased, Nanak Chand and Shiva Dutta Mal were co-sharers of the deceased in the Tehbazari contract, Shariat Ullah was a constituent of the deceased and because Sona Ram, Nanak Chand and Shiva Dutta Mal being co-sharers in the contract should have been moving about the market rather than remain at the gaddi of the deceased where he was shot down. Caution is a safe and unfailing guide in the judicial armoury but a cautious approach does not justify an *a priori* assumption that the case is shrouded in suspicion. This is exemplified by the rejection of the melon incident by the High Court on the grounds, *inter alia*, that there was no entry in the account books of the deceased evidencing the sale of the melon-basket and that the owner of the melons was not called to support the prosecution case. The point in issue was not whether the melon-basket was in truth and reality sold to another customer, in which case the evidence of the owner and the account books of the

deceased would have some relevance. The point of the matter was that there was trade rivalry between the deceased and Ganga Ram, their relations were under a deep strain and therefore the deceased declined to sell the melons to Ganga Ram. The excuse which the deceased trotted out may be true or false. And indeed, greater the falsity of that excuse greater the affront to Ganga Ram.

10. The melon incident formed a prelude to the main occurrence and was its immediate cause. By disbelieving it or by treating it alternatively as too trifling the High Court was left to wonder why Ganga Ram and Ram Swarup went to the market armed with a gun, which they admittedly did. The case of the prosecution that they went back to the market to retaliate against the highhandedness of the deceased was unacceptable to the High Court because "it does not stand to reason that the appellants and their two other companions (sons of Ganga Ram) would walk into the lion's den in broad day light and be caught and beaten up, and even be done to death by the deceased, his partners and servants, besides hundreds of people who were bound to be present in the Sabzimandi at about 8 A.M. Such a large congregation could have easily disarmed the appellants and their two other companions and given them a thorough beating if not mortal injuries". Evidently, they did go to the market which to their way of thinking was not a lion's den. And they went adequately prepared to meet all eventualities. The large congregation of which the High Court speaks is often notoriously indifferent to situations involving harm or danger to others and it is contrary to common experience that anyone would readily accost a gun-man in order to disarm him.

11. The High Court saw yet another difficulty in accepting the prosecution case:

Even if the appellants and their companions would have been so very hazardous, they could not have exposed their lives by carrying only one cartridge in the gun, if they had really gone to murder the deceased and make a safe retreat. It might very well have been that the first shot went stray and did not hit the deceased. It was, therefore, necessary to have at least both the barrels loaded with cartridges. In fact one would expect the ready availability of more cartridges with the appellants, because they were bound to fire some rounds of shots to create a scare in the crowded Sabzi mandi, before making good their escape. For this reason also one would expect them to keep both the barrels loaded with cartridges and also to carry some spare cartridges for the sake of contingency and safety. Murders like the one before us are not committed by coolly weighing the pros and cons. Ganga Ram and Ram Swarup were wounded by the high and mighty attitude of a trade rival and they went back to the market in a state of turmoil. They could not have paused to bother whether the double-barreled gun contained one cartridge or two any more than an assailant poised to stab would bother to take a spare knife. On such occasions when the mind is uncontrollably agitated, the assailants throw security to the winds and being momentarily blinded by passion are indifferent to the consequences of their action. The High Court applied to the mental processes of the respondents a test far too rigid and unrealistic than was justified by the circumstances of the case and concluded:

It is noteworthy that P.W. 1 Sona Ram clearly admits that Ganga Ram had a farm in village Naushera, which is at a distance of two miles from Badaun. It is very likely that the two appellants must have been going every early morning to have a round of their vegetable farm and returning home therefrom at about 8 A.M. in the sultry month of June. It is not surprising that on such return to Badaun on the morning of June 7, 1970 the appellants went to the Sabzimandi in order to purchase melons, when they were called to the Gaddi of the deceased, ultimately resulting in the fatal occurrence as suggested by the defence.

The High Court assumed without evidence that Ganga Ram used to carry a gun to his vegetable farm and the whole of the conclusion reproduced above would appear to be based on the thin premise that Sona Ram had admitted that Ganga Ram had a village farm situated at distance of two miles from Badaun. We find it impossible to agree with the reasons given by the High Court as to why Ganga Ram and Ram Swarup went to the market and how they happened to carry a gun with them. It is plain that being slighted by the melon incident, they went to the market to seek retribution.

12. The finding recorded by the High Court that the respondents went to the market for a casual purchase and that they happened to have a gun because it was their wont to carry a gun is the very foundation of its acceptance of the theory of private defence set up by the respondents- According to the High Court a routine visit to the market led to an unexpected quarrel between the deceased and Ganga Ram, the quarrel assumed the form of grappling, the grappling provoked the servants of the deceased to beat Ganga Ram with lathis and the beating impelled Ram Swarup to use the gun in defence of his father. Our view of the genesis of the shooting incident must, at the very threshold, deny to the respondents the right of private defence.

13. The right of private defence is a right of defence, not of retribution. It is available in face of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage-manages a situation wherein the right can be used as a shield to justify an act of aggression. If a person goes with a gun to kill another, the intended victim is entitled to act in self-defence and if he so acts there is no right in the former to kill him in order to prevent him from acting in self-defence. While providing for the right of private defence, the Penal Code has surely not devised a mechanism whereby an attack may be provoked as a pretence for killing.

14. Angered by the rebuff given by the deceased while declining to sell the melons, Ganga Ram went home and returned to the market with the young Ram Swarup who, on the finding of the High Court, carried a gun with him. Evidently, they went to the market with a pre-conceived design to pick up a quarrel. What semblance of a right did they then have to be piqued at the resistance put up by the deceased and his men? They themselves were the lawless authors of the situation in which they found themselves and though the Common Law doctrine of "retreat to the wall" or "retreat to the ditch" as expounded by

Blackstone Blackstone's Commentaries, Book IV, p. 185 has undergone modification and is not to be applied to cases where a victim, being in a place where he has a right to be, is in face of a grave uninvited danger, yet, at least those in fault must attempt to retreat unless the severity of the attack renders such a course impossible. The exemption from retreat is generally available to the faultless alone.

15. Quite apart from the consideration as to who was initially at fault, the extent of the harm which may lawfully be inflicted in self-defence is limited. It is a necessary incident of the right of private defence that the force used must bear a reasonable proportion to the injury to be averted, that is, the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. Undoubtedly, a person in fear of his life is not expected to modulate his defence step by step or tier by tier for as Justice Holmes said in *Brown v. United States* (1921) 256 U.S. "detached reflection cannot be demanded in the presence of an uplifted knife" But Section 99 provides in terms clear and categorical that "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence".

16. Compare for this purpose the injuries received by Ganga Ram with the injuries caused to the deceased in the alleged exercise of the right of private defence. Dr. N. A. Farooqi who examined Ganga Ram found that he had four contusions on his person and that the injuries were simple in nature. Assuming that Ganga Ram had received these injuries before Ram Swarup fired the fatal shot, there was clearly no justification on the part of Ram Swarup to fire from his gun at point-blank range. Munimji was shot on the chest and the blackening and tatooing around the wound shows that Ram swarup fired his shot from a very close range. Under Section 100 of the Penal Code the right of private defence of the body extends to the voluntary causing of death if the offence which occasions the exercise of the right is of such a nature as may, to the extent material, reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of the assault. Considering the nature of injuries received by Ganga Ram, it is impossible to hold that there could be a reasonable apprehension that he would be done to death or even that grievous hurt would be caused to him.

17. The presence of blood near the door leading to room No. 2 and the pellet marks on the door frame show that Ram Swarup fired at the deceased when the latter was fleeing in fear of his life. In any event, therefore, there was no justification for killing the deceased selectively. The right of defence ends with the necessity for it. Under Section 102, Penal Code, the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises and it continues as long as such apprehension of danger continues. The High Court refused to attach any significance to the pellet-marks on the door-frame as it thought that "the gun fire which hit the chaukhat was not the one which struck the deceased". But this is in direct opposition to its own view that the respondents had loaded only one cartridge in the gun--a premise from which it had concluded that the respondents could not have gone to the market with an evil design.

Ballistically, there was no reason to suppose that the shot which killed the deceased was not the one which hit the door frame. It is quite clear that the deceased was shot after he had left his gaddi and while he was about to enter room No. 2 in order to save his life.

18. It would be possible to analyse the shooting incident more minutely but it is sufficient to point out that under Section 105 of the Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, is upon him and the court shall presume the absence of such circumstances. The High Court must, of course, have been cognizant of this provision but the Judgment does not reflect its awareness of the provision and this we say not merely because Section 105 as such has not been referred to in its Judgment. The importance of the matter under consideration is that sections 96 to 106 of the Penal Code which confer and define the limits of the right of private defence constitute a general exception to the offences defined in the Code; in fact these sections are a part of Chapter IV headed "General Exceptions". Therefore, the burden of proving the existence of circumstances which would bring the case within the general exception of the right of private defence is upon the respondents and the court must presume the absence of such circumstances. The burden which rests on the accused to provide that any of the general exceptions is attracted does not absolve the prosecution from discharging its initial burden and truly, the primary burden never shifts save when a statute displaces the presumption of innocence; "indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence K.M. Nanavati v. State of Maharashtra [1962] (1) Supp S.C.R. 567". That is to say, an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by him while discharging the burden under Section 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal Dahyabhai Chhaganbhai Thakker v. State of Gujarat; MANU/SC/0068/1964: 1964CriLJ472. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea. Dahyabhai Chhaganbhai Thakker v. State of Gujarat; Supra; Munshi Ram and Ors. v. Delhi Administration, MANU/SC/0072/1967: A.I.R. 1968 S.C. 702.

19. The judgment of one of us, Beg J., in Rishikesh Singh v. State MANU/UP/0008/1970: AIR1970All51 explains the true nature and effect of the different types of presumptions arising under Section 105 of the Evidence Act. As stated in that judgment, while the initial presumption regarding the absence of circumstances bringing the case within an exception may be met by showing the existence of appropriate facts, the burden to establish a plea of private defence by a balance of probabilities is a more difficult burden to discharge. The judgment points out that despite this position-there may be cases where, though the plea of private defence is not established by an accused on a balance

of probabilities, yet the totality of facts and circumstances may still throw a reasonable doubt on the existence of "mens rea", which normally is an essential ingredient of an offence. The present is not a case of this latter kind. Indeed realising that a simple plea of private defence may be insufficient to explain the nature of injuries caused to the deceased, Ram Swamp suggested that the shot fired by him at the assailants of his father Ganga Ram accidentally killed the deceased. We have no doubt that the act of Ram Swarup was deliberate and not accidental.

20. The respondents led no evidence to prove their defence but that is not necessary because such proof can be offered by relying on the evidence led by the prosecution, the material elicited by cross-examining the prosecution witnesses and the totality of facts and circumstances emerging out of the evidence in the case. In view of the considerations mentioned earlier we find it impossible to hold that Ram Swarup fired the shot in defence of his father Ganga Ram. The circumstances of the case negative the existence of such a right.

21. The conclusion of the High Court in regard to Ram Swarup being plainly unsupportable and leading as it does to a manifest failure of justice, we set aside the order acquitting Ram Swarup and restore that of the Sessions Court convicting him under Section 302 of the Penal Code. The possibility of a scuffle, of course not enough to justify, the killing of Munimji but bearing relevance on the sentence cannot, however, be excluded and we would therefore reduce the sentence of death imposed on Ram Swarup by the Sessions Court to that of life imprisonment. We also confirm the order of conviction and sentence under Section 25(1)(a) and Section 27 of the Arms Act and direct that all the sentences shall run concurrently.

22. In regard to Ganga Ram, however, though if we were to consider his case independently for ourselves we might have come to a conclusion different from the one to which the High Court has come, the principles governing appeals under Article 136 of the Constitution would require of us to stay our hands. The incident happened within the twinkling of an eye and there is no compelling reason to differ from the concurrent finding of the High Court and the Sessions Court that Ganga Ram never carried the gun and that at all stages it was Ram Swarup who had the gun. The finding of the Sessions Court that "Ram Swarup must have shot at the deceased at the instigation of Ganga Ram" is based on no evidence for none of the five eye-witnesses speaks of any such instigation. On the contrary, Shariat Ullah (P.W. 4) says that "As soon as they came, Ram Swarup opened the gunfire" and Shiva Dutta Mal (P.W. 5) says that "Just after coming forward, Ram Swarup opened the gun-fire". The evidence of the other three points in the same direction. True that these witnesses have said that Ganga Ram and Ram Swarup challenged with one voice the authority of the deceased but in discarding that part of the evidence we do not think that the High Court has committed any palpable error requiring the interference of this Court. Such trite evidence of expostulations on the eve of an attack is often spicy and tends to strain one's credulity. We therefore confirm the order of the

High Court acquitting Ganga Ram of the charge under Section 302 read with Section 34 of the Penal Code.

23. The High Court was clearly justified in acquitting Ganga Ram of the charge under Section 307, Penal Code, in regard to the knife-attack on Nanak Chand Nanak Chand received no injury at all and the story that the knife-blow missed Nanak Chand but caused a cut on his kurta and Bandi seems incredible. The High Court examined these clothes but found no cut marks thereon. Tears there were on the Kurta and Bandi but it is their customary privilege to be torn. With that, the conviction and sentence under the Arms Act for possession of the knife had to fall.

24. There is no substance in the charge against Ganga Ram under Section 29(b) of the Arms Act because he cannot be said to have delivered his licensed gun to Ram Swarup. The better view is that Ram Swarup took it.

25. We, therefore, confirm the order of acquittal in favour of Ganga Ram on all the counts.

26. This disposes of the appeal on merits.

27. Mr. Garg had raised a preliminary objection to the maintainability of this appeal which, we thought, was devoid of substance and could briefly be dealt with at the end of the judgment. He argues, that the State Government has no locus standi to file in this Court an appeal against an order of acquittal passed by the High Court because no such right is conferred by the CrPC or by the Constitution and there can be no right of appeal unless one is clearly given by statute.

28. The CrPC does not provide for an appeal to this Court. In Chapter XXXI ("Of Appeals"), the only reference to an appeal to the Supreme Court is to be found in Section 426(2B) which empowers the High Court to suspend the sentence and enlarge an accused on bail if the Supreme Court has granted to him special leave to appeal against any sentence which the High Court has imposed or maintained. But by Section 417(1) of the Code the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. It is in pursuance of this power that State Governments file appeals in the High Court against orders of acquittal passed by courts subordinate to the High Court.

29. Article 132(1) of the Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Where the High Court has refused to give such a certificate, the Supreme Court may under Clause (2) of Article 132 grant special leave to appeal if it is satisfied that the case involves a substantial

question of law as to the interpretation of the Constitution. Where such a certificate is given or special leave is granted, "any party in the case" may, under Clause (3) of the Article, appeal to the Supreme Court on the ground that any question of the aforesaid description has been wrongly decided and with the leave of the Supreme Court, on any other ground.

30. Under Article 134(1) of the Constitution an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court (a) has in appeal reversed any order of acquittal of an accused person and has sentenced him to death; or (b) has withdrawn for trial before itself any case from a court subordinate to it and has sentenced the accused to death; or (c) certifies that the case is a fit one for appeal to the Supreme Court.

31. By Article 136(1) the Supreme Court may notwithstanding anything contained in Chapter IV ("The Union Judiciary"), grant special leave in its discretion to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India.

32. Article 132(3) referred to above shows that where the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution or the Supreme Court grants special leave to appeal on the ground that the case involves such a question, "any party in the case" may appeal to the Supreme Court. It is incontrovertible that if the State Government is impleaded to appear in the High Court as a contending party, it would be a "party in the case" and therefore if the decision is adverse to it, it would be entitled to appeal on the conditions mentioned in Article 132. This right is of course limited to cases in which a substantial question of law as to the interpretation of the Constitution is involved.

33. Article 134(1) extracted above shows that if the High Court reverses an order of acquittal and sentences the accused to death, he can appeal to the Supreme Court as a matter of right. A similar right is available to an accused whose case is withdrawn for trial by the High Court and who on being convicted is sentenced to death. In a case falling under Article 134(1)(a), the appeal against acquittal would normally be filed in the High Court by the State Government under Section 417(1) of the CrPC. It is only in cases instituted upon complaint that the complainant can ask for special leave to appeal from the order of acquittal. If the State Government files in the High Court an appeal against an order of acquittal passed by the lower court and if in such an appeal the accused is sentenced to death, it seems to us patent that if the accused files an appeal in the Supreme Court against the judgment of the High Court, the State Government would be entitled to defend the appeal as a respondent interested in the decision of the High Court. In an appeal falling under Article 134(1)(b) also it is the State Government which would be interested in and entitled to defend the appeal in the Supreme Court. The circumstance

that Article 134 does not refer to the right of the State Government to defend such appeals cannot be construed as depriving it of that right.

34. If in an appeal against a conviction the High Court acquits an accused or if in an appeal by the State Government against an order of acquittal the High Court confirms the order of acquittal, it is the State Government which, if at all, would be aggrieved by the order of acquittal and it would therefore be entitled to challenge the order in a further appeal if any such appeal is provided by law. The right of appeal is a creature of statute and if the law provides for no further appeal the matter has to rest where it stands. But if the Constitution provides for an appeal against a judgment or order, the party aggrieved or affected by that judgment or order would be entitled to avail of the right or facility of appeal, though on the conditions prescribed by the Constitution.

35. Under Article 136(1) of the Constitution this Court has a wide discretion, though sparingly exercised, to grant special leave to appeal from any judgment, decree, determination, sentence or order. This remedy can be availed of by any party which is affected adversely by the decision under challenge. If the State Government is a contesting party to a matter disposed of by the High Court and if it is aggrieved by the judgment or order of the High Court, it is entitled under Article 136(1) to ask for special leave of this Court to appeal from the decision of the High Court. It is, of course, not entitled to obtain leave but that is a separate matter because under Article 136(1) no party is entitled to obtain leave as a matter of right. "The Supreme Court may, in its discretion, grant special leave to appeal" and one of the relevant considerations in granting leave is whether the party seeking leave is aggrieved by the impugned decision, in which case it would, at any rate, have locus to ask for leave.

36. The locus standi of State Governments to file appeals in this Court against judgments or orders rendered in criminal matters, particularly those commenced otherwise than on private complaints, has been recognised over the years and for a valid reason. All crimes raise problems of law and order and some raise issues of public disorder. The effect of crime on the ordered growth of society is deleterious and the State Governments are entrusted with the enforcement and execution of laws directed against prevention and punishment of crimes. They have, therefore, a vital stake in criminal matters which explains why all public prosecutions are initiated in the name of the Government. The objection of Mr. Garg that the State Government has no locus standi to file this appeal must be rejected.

MANU/SC/1051/2003

[Back to Section 101 of Indian Penal Code, 1860](#)

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 887 of 1997 with SLP (Crl.) Nos. 47-49 of 1998

Decided On: 16.12.2003

[Back to Section 103 of Indian Penal Code, 1860](#)

James Martin Vs. State of Kerala

Hon'ble Judges/Coram:

Doraiswamy Raju and Dr. Arijit Pasayat, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sushil Kumar, Sr. Adv., M.T. George and Adolf Mathew, Advs

For Respondents/Defendant: Ramesh Babu M.R., Adv.

JUDGMENT

Arijit Pasayat, J.

1. Self-preservation is the prime instinct of every human being. The right of private defence is a recognized right in the criminal law. Therefore, Section 96 of Indian Penal Code, 1860 (in short 'the IPC') provides that nothing is an offence which is done in the exercise of the right of private defence. The question is, as happens in many cases, where exercise of such rights is claimed, whether the "Lakshman Rekha", applicable to its exercise has been exceeded. Section 99 IPC delineates the extent to which the right may be exercised.

2. The claim was made by the accused in the following background:

Appellant-James Martin faced trial along with his father-Xavier for alleged commission of offences punishable under Sections 302, 307, 324 read with Section 34 and Section 326 read with Section 114 IPC and Sections 25(b)(1) of the Arms Act, 1959 (in short 'the Act') and Sections 27 and 30 thereof. Learned Sessions Judge, N. Paravur, found the present appellant (A-1) guilty of offences punishable under Section 304 Part I, 326 and 324 IPC, while the other accused was found guilty of the offences punishable under Section 304 Part I read with Section 34, 326 read with Sections 34, 324 IPC. Both the accused persons were sentenced to undergo imprisonment for 7 years and for the second offence, 2 years RI and fine of Rs. 20,000/- with default stipulation of 1 year sentence. It was directed that in case fine was realized it was to be paid to (PW-3). Each of the accused was also to undergo sentence RI for 1 year for the offence punishable under Section 324 IPC and to pay a fine of Rs. 5,000/- with default stipulation of 6 months sentence. The fine, if any on

realisation, was directed to be paid to PW-7 and PW-8. The fine was directed to be paid to (PW-8). The sentences were directed to run concurrently.

3. A-2 also filed a complaint against 24 persons, which was tried as S.C. No. 74 of 1991. In the said case some of the PWs and their supporters were the accused. State had launched prosecution against 12 of the said 24 persons. The same as tried as S.C. No. 57 to 1990.

4. Several appeals and revisions were filed by the appellants, the prosecution witnesses and the State. Appeal filed by the accused persons was numbered as criminal appeal No. 4 of 1994. As complaint was lodged by the accused alleging various offences by the prosecution witnesses, a separate case (S.C. 74 of 1991) was registered in which there was an acquittal. Against such acquittal also appeal was filed by A-2 which was numbered as criminal appeal No. 471 of 1994. Criminal appeal No. 784 of 1994 was filed by the State questioning acquittal in S.C. 57 of 1990. Father of one of the victims filed Crl. Revision Cr.RP 820 of 1994. The propriety of conviction under Section 304 Part I instead of Section 302 IPC was questioned by the State in Crl. Appeal No. 312 of 1994. By a common judgment all matters were disposed of.

5. The matrix of the litigation related to a Bharat Bandh on 15.3.1998 sponsored by some political parties. Prosecution version as unfolded during trial is as follows:

6. Most of the shops and offices were closed and vehicles were off the road. There were isolated instances of defiance to the bundh call and some incidents had taken place that, however, did not escalate the uncontrolled dimensions. Cheranelloor, where the concerned incidents took place, is a politically sensitive suburb of Kochi where accused-appellant James and his father Xavier had their residence, besides a bread factory and a flour mill in the same compound. It was not anybody's case that they belonged to any political party or had credentials, which were unwholesome. By normal reckoning, their business activities flourished well. They owned a tempo van and other vehicles which were parked inside the compound itself. It was, however, said that their success in business was a matter of envy for Thomas Francis, their neighbour, particularly who filed complaints to the local authorities against the conduct of the mill and the factory and also filed a writ petition to get them closed down, but without success. He was one of the accused in S.C. No. 74 of 1991 and according to the accused appellant-James was the kingpin and that the incident was wrought by him out of hatred and deep animosity towards James and Xavier.

7. The incident involved in this case took place at about 2.30 p.m. on 15.3.1988 when five young men, the two deceased in this case, namely, Mohan and Basheer (hereinafter referred to as 'deceased' by their respective name), and PW-1, PW-2 and PW-4, who activities of the bundh, as followers of the political parties which organized that bundh on that day, got into the flour mill of the A-2 through the unlocked gate leading access to that mill situate in a property comprising the residential building, a bread factory and

other structures belonging to that accused. This group of five men on passing beside the mill of A-2 while they were perambulating the streets of Cheranelloor to have a first hand information as to the observance of the bundh on coming to know of the operation of the flour mill by A-2 proceeded to that place and made demands to PW-15, the employee of A-2 who was operating the mill to close down. An altercation took place between them and on hearing the commotion the accused, A-1 and A-2 who were inside their residential building, situate to the west of that mill, rushed to the place and directed the bundh activities to go out of the mill. As the activities of the bundh persisted in their demands for closing the mill, according to the prosecution, A-2 got out of the mill and on the instruction given by A-2, A-1 locked the gate of the compound from inside. Then both of them rushed back to the house with A-2 directing A-1 to take out the gun and shoot down the bundh activists by declaring that all of them should be finished off. On getting into the house and after closing the outer door of that building, both the accused rushed to the southern room of that building which faced the gate with a window opening to that side. The 1st accused on the instigation of the 2nd accused, his father, and having that accused beside him, fired at the bundh activists, who by that time had approached near the locked gate, by using an S.B.B.L. Gun through the window. The first shot fired from the gun hit against one of the bundh activists, who had got into the compound, namely Basheer, and he fell down beside the gate. The other four bundh activists on requesting the 1st accused not to open fire rushed towards Basheer and, according to the prosecution, the first accused fired again with the gun indiscriminately causing injuries to all of them. Even when the first shot was fired from the gun passersby in the road situate in front of that property also sustained injuries. When the firing continued as stated above some of the residents of the area who were standing beside the road also received gun shot injuries. On hearing the gun shots people of the locality rushed to the scene of occurrence and some of them by scaling over the locked gate broke opened the lock and removed the injured to the road, from where they were rushed to the hospital in a tempo van along with the other injured who had also sustained gun shot injuries while they were standing beside the road. One among the injured, namely, Monahan breathed his last while he was transported in the tempo to the hospital and another, namely, Basheer, succumbed to his injuries after being admitted at City Hospital, Ernakulam. All the other injured were admitted in that hospital to provide them treatment for the injuries sustained. After the removal of the injured to the hospital in the tempo as aforesaid a violent mob which collected at the scene of occurrence set fire to the residential building, flour mill, bread factory, household articles, cycles, a tempo and scooter, parked in front of the residential building of the accused, infuriated by the heinous act of the accused in firing at the bundh activists and other innocent people as aforesaid. Soon after the firing both the accused and PW-15 escaped from the scene of occurrence and took shelter in a nearby house.

8. The information as to the occurrence of a skirmish and altercation between bundh activists and the accused and of an incident involving firing at Cheranelloor was received by the police at Kalamassery Police Station from the Fire Station at Gandhi Nagar,

Ernakulam, which was informed of such an incident over phone by a resident living close to the place of occurrence.

9. The accused on the other hand, took the stand that the firing resulting in the death of two bundh activists and sustaining of grievous injuries to several others occurred when their house and other buildings, situated in a common compound bounded with well protected boundary walls, and movable properties kept therein were set on fire by an angry mob of bundh activists when the accused failed to heed their unlawful demand to close down the flour mill which was operated on that day.

10. The trial Court discarded the prosecution version that the deceased and PWs who had sustained injuries had gone through the gate as claimed. On analysing the evidence it was concluded that they had scaled the walls. Their entry into premises of the accused was not lawful. It was also held that PW-15 was roughed up by the bandh activists, making him runaway. A significant conclusion was arrived at that they were prepared and in fact used muscle power to achieve their ends in making the bandh a success. It was categorically held that the bandh activists on getting into the mill threatened, intimidated and assaulted PW-15 so as to compel him to close down the mill. He sustained injuries, and bandh activists indulged in violence before the firing took place at the place of occurrence. Accused asked PW-1, PW-2 and PW-4 to leave the place. It was noticed by the trial Court that the activists were in a foul and violent mood and had beaten up one Jossy, and this indicated their aggressive mood. They were armed with sharp edged weapons. Finally, it was concluded that the right of private defence was exceeded in its exercise.

11. On consideration of the evidence on record as noted above, the conviction was made by the trial Court and sentence was imposed. The trial Court came to hold that though the accused persons claimed alleged exercise of right of private defence same was exceeded. The view was endorsed by the High Court by the impugned judgment so far as the present appellant is concerned. But benefit of doubt was given to A-2, father of the present appellant.

12. Mr. Sushil Kumar, learned senior counsel for the appellant submitted that the factual scenario clearly shows as to how the appellant was faced with the violent acts of the prosecution witnesses. Admittedly, all of them had forcibly entered into the premises of the appellant. PW-15 one of employees was inflicted severe injuries. In this background, the accused acted in exercise of right of private defence and there was no question of exceeding such right, as held by the trial Court and the High Court.

13. In response, learned counsel for the State submitted that after analyzing the factual position the trial Court and the High Court have rightly held that the accused exceeded the right of private defence and when two persons have lost lives, it cannot be said that the act done by the accused was within the permissible limits. He also pressed for

accepting prayer in the connected SLPs relating to acquittal of A-2 and conviction of the accused-appellant under Section 304 Part I.

14. Only question which needs to be considered, is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offences which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration MANU/SC/0072/1967: 1968CriLJ806, State of Gujarat v. Bai Fatima MANU/SC/0217/1975: 1975CriLJ1079, State of U.P. v. Mohd. Musheer Khan MANU/SC/0153/1977: 1977CriLJ1897, and Mohinder Pal Jolly v. State of Punjab MANU/SC/0130/1978: 1979CriLJ584. Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. MANU/SC/0161/1978: 1979CriLJ323, runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

15. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See Lakshmi Singh v. State of Bihar, MANU/SC/0136/1976: 1976CriLJ1736]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Section 96 and 98 give a right of private defence against certain offences and acts. The right given under Section 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Section 100 and 101, IPC define the limit and extent of right of private defence.

16. Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a

reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offences, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In *Jai Dev v. State of Punjab* MANU/SC/0134/1962: [1963]3SCR489, it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

17. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in *Biran Singh v. State of Bihar* MANU/SC/0112/1974: 1975CriLJ44. (See: *Wassan Singh v. State of Punjab* MANU/SC/1014/1996: 1996CriLJ878, *Sekhar alias Raja Sekharan v. State represented by Inspector of Police, T.N.*, MANU/SC/0865/2002: 2003CriLJ53.

18. As noted in *Butta Singh v. The State of Punjab* MANU/SC/0314/1991: 1991CriLJ1464, a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negated. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

19. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See *Vidhya Singh v. State of M.P.* MANU/SC/0212/1971: 1971CriLJ1296. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusing of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to

adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.

20. In the illuminating words of Russel (Russel on Crime, 11th Edition Volume I at page 49):

"..... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable."

21. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

22. The background facts as noted by the trial Court and the High Court clearly show that the threat to life and property of the accused was not only imminent but did not cease, and it continued unabated. Not only there were acts of vandalism, but also destruction of property. The High Court noticed that explosive substances were used to destroy the properties of the accused, but did not specifically answer the question as to whether destruction was prior or subsequent to the shooting by the accused. The High Court did not find the prosecution evidence sufficient to decide the question. In such an event the evidence of PW-15 who was also a victim assumes importance. The High Court without indicating any acceptable reason held on mere assumptions that his sympathy lies with the accused. The conclusion was unwarranted, because the testimony was acted upon by the Courts below as a truthful version of the incident. The trial Court found that an unruly situation prevailed in the compound of the accused as a result of the violence perpetrated by the bandh activists who got into the place by scaling over the locked gate and that their entry was unlawful too, besides intimidating and assaulting PW-15 and making him flee without shutting down the machines. The circumstances were also found to have necessitated a right of private defence. Even the High Court, candidly found that tense situation was caused by the deceased and his friends, that PW-15 suffered violence and obviously there was the threat of more violence to the person and properties, that the events taking place generated a sort of frenzy and excitement rendering the situation explosive and beyond compromise. Despite all these to expect the accused to remain calm

or to observe greater restraint in the teeth of the further facts found that the accused had only PW-15 who was already manhandled though they were outnumbered by their opponents (the bandh activists) and whose attitude was anything but peaceful - would be not only too much to be desired but being unreasonably harsh and uncharitable, merely carried away only by considerations of sympathy for the lives lost, on taking a final account of what happened ultimately after everything was over. In the circumstances, the inevitable conclusion is that the acts done by the accused were in the reasonable limits of exercise of his right of private defence and he was entitled to the protection afforded in law under Section 96 IPC.

23. Accordingly we set aside the conviction and sentence imposed. The appeal is allowed. The bail bonds shall stand discharged so far as the present accused is concerned.

24. In view of the order passed in criminal appeal No. 887 of 197, and conclusions arrived at therein no further orders are necessary to be passed in SLP (Criminal) Nos. 47-49 of 1998 filed by the State of Kerala.

25. Before we part with the case it needs to be noted that in the name of Hartal or Bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not loose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike. Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think twice to hazard themselves into such risk prone ventures endangering public peace and public order. The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace.

MANU/SC/0945/1999

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IN THE SUPREME COURT OF INDIA

[Back to Section 201 of Indian Penal Code, 1860](#)

Death Reference Case No. 1 of 1998 (arising out of Dairy No. 1151 of 1998) with
Criminal Appeal Nos. 321, 322, 323, 324 and 325 of 1998

Decided On: 11.05.1999

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State through Superintendent of Police, CBI/SIT Vs. Nalini and Ors.

Hon'ble Judges/Coram:

K.T. Thomas, D.P. Wadhwa and S.S.M. Quadri, JJ.

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Counsels:

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[Back to Section 324 of Indian Penal Code, 1860](#)**JUDGMENT**

Authored By: K.T. Thomas, D.P. Wadhwa, S.S.M. Quadri
K.T. Thomas, J.

1. Rajiv Gandhi, a former Prime Minister of India was assassinated on 21-5-1991 at a place called Sriperumpudur in Tamil Nadu. The assassin was an adolescent girl named Thanu who was made into a human bomb and she got herself exploded at 10.19 P.M. at very close proximity to the visiting former Prime Minister. In a trice the life of Rajiv Gandhi was snuffed out and his body was smashed into smithereens. As for the assassin nothing except a few pieces of charred limbs and her sundered head were left behind. In the explosion lives of 18 others also got extinguished. Investigation pointed to a minutely orchestrated cabal, masterminded by some conspirators to extirpate the former Prime Minister from this terrestrial terrain. In the final charge-sheet made by the Central Bureau of Investigation (CBI) all the 26 appellants now before us, were arraigned as members of the conspiracy which targeted, inter alia, Rajiv Gandhi. The Special Judge who tried the case found all the 26 appellants guilty of various offences charged, the gravamen of them being Section 302 read with Section 120-B IPC. All of them were hence convicted of those offences and all of them were sentenced to death.

2. These appeals by right are under Section 19 of the Terrorists and Disruptive Activities (Prevention) Act (TADA for short). The Special Judge submitted the records to this Court for confirmation of the death sentence. We heard all the above matters together at great

length, perhaps the longest heard criminal appeal in this country. Shri Altaf Ahmad, Additional Solicitor General who was assisted by a team of Advocates argued the prosecution side adroitly and with great dedication. The accused's side was represented by Shri N. Natarajan, Senior Counsel who was assisted by array of counsel with meticulous preparation and admirable resourcefulness.

3. We were verily benefited by the remarkable contribution made by the counsel for both sides. We record our uninhibited thanks to them.

4. We may narrate, as briefly as possible, the events which preceded and succeeded the assassination as they would unfurl the conspectus of the case. The genesis can be traced to a movement which burgeoned in Sri Lanka for ventilating the grievances of the people of Tamil origin and for making certain demands for the Tamil speaking people of the island. Under the leadership of one Veluppillai Piribhakaran, a militant organisation called "Liberation Tigers of Tamil Eelam" (hereinafter referred to as ' LTTE' as the abbreviation) came to existence in the island. When the movement became belligerent the Government of Sri Lanka adopted sterner measures to curb their activities. Eventually a series of confrontations took place between the Government of Sri Lanka and the activists of LTTE.

5. When Sri Lankan Government found it difficult to meet the situation by themselves, the Government sought assistance from Government of India for tackling the problem. This was reciprocated by the Government of India. Some parleys took place between the diplomats of both nations in 1987. The President of Sri Lanka (Mr. Jayawardhane) and the Prime Minister of India (Sri Rajiv Gandhi) met together at New Delhi and Veluppillai Piribhakaran was also invited to be involved. An accord was signed by the aforesaid three persons by which Indian Government agreed, inter alia, to form a cadre called Indian Peace Keeping Force (IPKF for short). One of the tasks assigned to the force was to disarm LTTE militants. Pursuant to the terms of the accord Government of India despatched large number of IPKF personnel to Sri Lanka. While discharging their duties the IPKF committed many excesses which became inhuman conduct towards the followers of LTTE. Consequently hostility developed in the minds of LTTE cadre towards IPK Force. To register their protest against such excesses one of the LTTE hardcore activists by name Dileepan undertook a fast and he succumbed to it after a few days.

6. Skirmishes became rampant between members of the IPK Force and LTTE activists. In October 1987, a vessel carrying 17 LTTE functionaries was intercepted by the Sri Lankan navy while patrolling on the high seas and the passengers were held captives. Leaders of LTTE made a bid to save them by appealing to the Indian Government to intervene, but there was no response. 12 out of 17 captives committed suicide by consuming Potassium Cyanide. There was counter attack on IPK Force when LTTE commandos captured a ship carrying provisions for the army, and in the encounter which ensued 11 Indian soldiers were killed.

7. In the meanwhile one Varadaraja Perumal who was an accredited leader of a rival organisation called Eelam Peoples Revolutionary Liberation Front (EPRLF) got elected from the Northern Zone as a follow-up step of the terms of Sri Lanka-India Accord to which reference was made above. Later the Indian Government under the leadership of Rajiv Gandhi agreed for making a gradual denudation of IPK Force from Sri Lanka.

8. In the general election which was held in 1989, a new Government headed by Sri V.P. Singh as Prime Minister came to power in India. The new Government accelerated the process of denudation of IPK Force. However the said Government did not last long and another Government with Sri K. Chandrashekhar as Prime Minister assumed office. That Government too did not last long and the political changes in India reached a stage when the Lok Sabha was dissolved and the President of India issued a notification for fresh election. Rajiv Gandhi started campaigning for the Congress (I) Party. He made his views public when a correspondent of Amrit Bazar Patrika interviewed him which was published in the Sunday Magazine of the newspaper on the 12th and 19th of August, 1990. The pith of the interview, concerning Sri Lankan policy, was that Rajiv Gandhi did not favour withdrawal of the IPK Force from Sri Lanka and he was critical of the approach made by V. P. Singh Government towards Sri Lanka.

9. In the election manifesto published by Congress (I) for the ensuing general election the party reiterated its commitment to the India-Sri Lanka agreement of July 1987 as the basis for the settlement of outstanding issues relating to the Tamil population of Sri Lanka, and assured to ensure the territorial integrity of Sri Lanka.

10. The events which took place subsequent thereto were so intertwined with the above narrated political developments that this case cannot be understood without etching the afore-presented backdrop. We may now proceed to describe the prosecution case.

11. A criminal conspiracy was hatched and developed by the hardcore LTTE cadre which spread over a long period of 6 years commencing from July 6, 1987 and stretching over till May 1992. The main objects of the conspiracy were: (1) to carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India during the course of which to assassinate Rajiv Gandhi and Ors. (2) to cause disappearance of evidence thereof, (3) to harbour all the conspirators living in India and (4) to escape from being apprehended and to screen all those who were involved in the conspiracy from legal consequences.

12. As a follow-up step of the conspiracy, during the first half of its period LTTE commandos arrived on the Indian shore in different batches. The first batch arrived on 12-9-1990 which consisted of Perumal Vijayan (12th accused) and his wife Selvaluxmi (13th accused) and Bhaskaran (14th accused). They were seen off at Jaffna in Sri Lanka by one of the top ranking hardcore LTTE leader by name Sivarasan.

13. It is appropriate to mention now itself that the said Sivarasan would have been one of the most seriously involved accused in this case, but he is not alive now as he abruptly ended his life when he was sure of being nabbed by the police. Among the conspirators nobody else seems to have played a greater role on the Indian soil than what Sivarasan had played. Sivarasan reached India sometime in December 1990 and in collaboration with those who arrived in the first batch he managed to secure a house building in a locality called Kodangiyoorat Madras.

14. The next batch consisted of Robert Payas (9th accused), his wife and sisters and Jayakumar (10th accused) together with his wife Shanthi (11th accused). They arrived in India in September 1990. They took another house on rent at a more secluded locality in Kodangiyoor as suggested by Sivarasan who too started residing therein. The third batch consisting of Ravichandran (16th accused) and Suseendran (17th accused) came to India on December 17, 1990. Murugan (3rd accused) reached India in January 1991 and Radhayya (7th accused) and Chandalekha alias Athirai alias Guari (8th accused) reached India in April 1991. In the meantime two persons, Arivu (18th accused) and Irumborai (19th accused) went back to Sri Lanka in the company of another important LTTE activists called Baby Subramaniam. They collected instructions from Veluppillai Piribhakaran. Sivarasan was shuttling between India and Sri Lanka quite often during the above period.

15. The final arrivals were the most dedicated hardcore LTTE commandos who were brought on the Indian soil by Sivarasan on 1st of May, 1991. That batch consisted of the girl Thanu (who offered herself to become the human bomb) and her close friend Suba besides Santhan (2nd accused), Shankar (4th accused), Vijayanandan (5th accused) and Sivaruban alias Ruban (6th accused). They were seen off at Sri Lanka by a man called Pottu Omman (who was described as chief of intelligence wing of LTTE).

16. The targets of the conspiracy, according to the prosecution, were Fort St. George at Madras (which houses the Government Secretariat of Tamil Nadu and a lot of important State Government buildings), Tamil Nadu Police Headquarters and other police stations, Vellore Fort (in which the Central Jail is situate) Krishna Raja Sagar Dam (Karnataka) Vidhan Soudha at Bangalore. Among the persons the targets were Rajiv Gandhi, Varadaraja Perumal and certain other unspecified but identified personage.

17. Pursuant to the scheme of the conspirators, photos of Fort St. George, Madras Police Headquarters and a few other police stations were taken and forwarded them to the top leaders of LTTE at Sri Lanka. A sketch of Vellore Fort was drawn up which too was despatched to the island.

18. Sivarasan sheltered Suba and Thanu for a few days in the house of Jayakumar (A-10) and shifted them to the house of Vijayan (A-12). As instructed by Sivarasan a wireless set was installed in the house of Vijayan (A-12) and fitted it with operational facilities as

Station No. 910. Another wire-less set was installed in the house of Robert Payas (A-9). In October 1990, a house was taken on rent by Nalini (A-1) at High Court Colony, Villivakkom, Madras. Murugan (A-3), Suba and Thanu used to see Nalini and Sivarasan. In March 1991, another house was taken on rent by Rangan (A-24) at Park Avenue, Madras and one more house was taken by him at Bangalore. Both houses were taken on rent as per the instructions given by Sivarasan.

19. When information reached that Rajiv Gandhi was addressing a meeting at Marina Beach, Madras on 18-4-1991 four persons - Nalini (A-1), Murugan (A-3), Subha Sundaram (A-22) and one Haribabu went to the meeting place. The conspirators thought of conducting a trial for the purpose of assassinating Rajiv Gandhi. When they got information that V.P. Singh, a former Prime Minister, was addressing a meeting at Madras on 7th May, 1991 Sivarasan took Suba and Thanu to that place (Nandanam, in Madras), Nalini (A-1), Murugan (A-3) and Arivu (Perarivalan) and Haribabu also accompanied them. The idea was to give advance training to Suba and Thanu as to how to go near a former Prime Minister. V.P. Singh arrived at the meeting place only during the wee hours of 8th May, 1991. Before V.P. Singh could address the gathering, Nalini (A-1), Thanu and Suba made a bid to garland the visiting former Prime Minister on the rostrum of the meeting. The success of the aforesaid trial emboldened Suba and Thanu and they on 9th May, 1991 conveyed their confidence in achieving the target to Akila who was Deputy Chief of intelligence wing of LTTE. (Akila was also put in charge of the Women Wing of the organisation).

20. With the success they felt achieved in the trial run the main conspirators started acting swiftly. On 11-5-1991, Nalini (A-1) took Suba and Thanu to a tailoring shop and purchased some clothes including a Salwar-Kameez. On 17-5-1991, Sivarasan and Santhan (A-2) sent Sivaruban (A-6) to Jaipur to find out a hide-out for the conspirators and to take the same on rent under a pseudonymous name.

21. The tour programme of Rajiv Gandhi was published in the local newspapers on 19-5-1991 and then Sivarasan came to know that Rajiv Gandhi would address a meeting at Sriperumpudur on 21st May, 1991. Sivarasan determined not to miss that opportunity. He ascertained all about Sriperumpudur from Nalini (A-1) and then he told Nalini that the target was only Rajiv Gandhi.

22. On 20-5-1991, Arivu (A-18) purchased a 9-Watt golden power battery from a shop. Sivarasan deputed Kanagasabapathy (A-7) to go to Delhi to fix up a house as a hide-out to be used during the days after accomplishing the target. Sivarasan confabulated with Nalini (A-1), Murugan (A-3), Arivu (A-16) and Haribabu at the house of Jayakumar (A-10). Sivarasan instructed Nalini to take half a day's leave under some pretext or the other. Arivu (A-18) and Bhagyanathan (A-20) procured a Kodak film and supplied it to Haribabu who was a freelance photographer.

23. On 21-5-1991, Haribabu bought a garland made of sandalwood presumably for using it as a camouflage (for murdering Rajiv Gandhi). He also secured a camera. Nalini (A-1) wangled leave from her immediate boss (she was working in a company as P. A. to the Managing Director) under the pretext that she wanted to go to Karichipuram for buying a saree. Instead she went to her mother's place. Padma(A-21) is her mother. Murugan (A-3). was waiting for her and on his instruction Nalini rushed to her house at Villivakkom (Madras). Sivarasan reached the house of Jayakumar (A-10) and he got armed himself with a pistol and then he proceeded to the house of Vijayan (A-12).

24. Sivarasan directed Suba and Thanu to get themselves ready for the final event. Suba and Thanu entered into an inner room. Thanu was fitted with a bomb on her person together with a battery and switch. The loosely stitched Salwar-kameez which was purchased earlier was worn by Thanu and it helped her to conceal the bomb and the other accessories thereto. Sivarasan asked Vijayan (A-12) to fetch an auto-rickshaw.

25. The auto-rickshaw which Vijayan (A-12) brought was not taken close to his house as Sivarasan had cautioned him in advance. He took Suba and Thanu in the auto-rickshaw and dropped them in the house of Nalini (A-1). Suba expressed gratitude of herself and her colleagues to Nalini (A-1) for the wholehearted participation made by her in the mission they had undertaken. She then told Nalini that Thanu was going to create history by murdering Rajiv Gandhi. The three women went with Sivarasan to a nearby temple where Thanu offered her last prayers. They then went to "Parry's Corner" (which is a starting place of many bus services at Madras). Haribabu was waiting there with camera and garland.

26. All the 5 proceeded to Sriperumpudur by bus. After reaching there they waited for the arrival of Rajiv Gandhi. Sivarasan instructed Nalini (A-1) to provide necessary cover to Suba and Thanu so that their identity as Sri Lankan girls would not be disclosed due to linguistic accent. Sivarasan further instructed her to be with Suba and to escort her after assassination to the spot where Indira Gandhi's statue is situate and to wait there for 10 minutes for Sivarasan to reach.

27. Nalini (A-1), Suba and Thanu first sat in the enclosure earmarked for ladies at the meeting place at Sriperumpudur. As the time of arrival of Rajiv Gandhi was nearing Sivarasan took Thanu alone from that place. He collected the garland from Suba and escorted Thanu to go near the rostrum. Thanu could reach near the red carpet where a little girl (Kokila) and her mother (Latha Kannan) were waiting to present a poem written by Mokila on Rajiv Gandhi.

28. When Rajiv Gandhi arrived at the meeting place Nalini (A-1.) and Suba got out of the enclosure and moved away. Rajiv Gandhi went near the little girl Kokila. He would have either received the poem or was about to receive the same, and at that moment the hideous battery switch was clewed by the assassin herself. Suddenly the pawn bomb got

herself blown up as the incendiary device exploded with a deadening sound. All human lives within a certain radius were smashed to shreds. The head of a female, without its torso, was seen flinging up in the air and rolling down. In a twinkle, 18 human lives were turned into fragments of flesh among which included the former Prime Minister of India Rajiv Gandhi and his personal security men, besides Thanu and Haribabu. Many others who sustained injuries in the explosion, however, survived.

29. Thus the conspirators perpetrated their prime target achievement at 10.19 P.M. on 21-5-1991 at Sriperumpudur in Tamil Nadu.

30. After hearing the sound of explosion Nalini (A-1) and Suba ran across and reached Indira Gandhi statue. Sivarasan joined them without delay. He confirmed to them that Rajiv Gandhi was murdered and conveyed that their comrade Haribabu was also killed in the blast. Then they proceeded to a nearby house, took water therefrom and then escaped in an auto-rickshaw. They reached the house of Jayakumar(A-10).

31. Sivarasan transmitted wireless message to the LTTE supreme in Sri Lanka regarding the killing of Rajiv Gandhi. Pottu Omman, the Chief of intelligence of LTTE confirmed receipt of the message and in reply sent certain queries.

32. The next phase of activities of the conspirators consisted of attempts to abscond, to screen the offenders and to destroy the evidence regarding conspiracy.

33. On 24-5-1991 the newspapers published a photograph of Thanu holding a garland in her hand at Sriperumpudur in the company of a few other females waiting for the arrival of Rajiv Gandhi. On seeing it Pottu Omman sent a wireless query to Sivarasan whether Thanu was identifiable in the photo. Sivarasan, Suba, Nalini (A-1), her husband Murugan (A-3) and mother Padma (A-21) proceeded to Tirupati to offer thanks-giving worship to the Lord, and they returned Madras on the next day. Sivarasan thereafter moved from place to place and Suba was shifted to different houses.

34. In the first week of June 1991, Sivarasan felt that he was within the penumbra of suspicion of the police. Thereupon he entrusted the remaining work to be carried out by Murugan (A-3). Though Sivarasan advised Nalini to escape to Sri Lanka she did not do so for practical reasons known to her. She and her husband Murugan (A-3) again proceeded to Tirupati on 9-6-1991 in cognito. Murugan got his head tonsured by way of redeeming a vow.

35. By the middle of June, photographs of Nalini (A-1) and Suba appeared in the newspapers. Sivarasan kept Pottu Omman informed of the developments in India through wireless transmissions.

36. On 11-6-1991 Bhagyanathan (A-20) and Padma (A-21) were arrested by the police. Three days later Nalini (A-1) and Murugan (A-3) were arrested. The said development was communicated by Sivarasan to the LTTE Headquarters at Sri Lanka and thereafter he in the company of Suba and Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) and one LTTE activist by name Nehru had skulked to Bangalore and concealed themselves in a house at Indira Nagar. Irumborai (A-19) was already accommodated in that house. On 16-8-1991 they shifted to another house situated at Kananakunte in Bangalore.

37. The police got some scent regarding the above hide-out and they rushed to that place. But by the time the police could trace them out, Sivarasan, Suba, Nehru and Amman and other LTTE activists, who too were hiding in the same house, ended their lives by committing suicide. The remaining accused were arrested on different days at different places.

38. On completion of the investigation the CBI laid charge-sheet against all the 26 appellants besides Veluppillai Piribhakaran (the Supremo of LTTE), Pottu Omman (the Chief of intelligence wing of LTTE) and Akila (Deputy Chief of intelligence) for various offences including the main offence under Section 302 read with Section 120-B and Sections 3 & 4 of the TADA. In the charge-sheet names of 12 other persons were also mentioned as conspirators. co-conspirators. Among them two had died at the spot (Thanu and Haribabu) and the remaining 10 persons died subsequently. Their names are: (1) Sivarasan alias Raghuban (2) Suba alias Nitya alias Mallika (3) Nehru alias Nero (4) Suresh Master (5) Amman alias Gangai Kumar (6) Driver Anna alias Keerthy (7) Jamuna alias Jamila (8) Shanmugham (9) Trichy Santhan alias Gundu Santhan (10) Dixon.

39. All steps taken to apprehend three of the main accused (1) Veluppillai Piribhakaran (2) Pottu Omman and (3) Akila did not succeed and hence they were proclaimed as absconding offenders. Remaining 26 persons (who are appellants before us) were charged for offences under Section 302 and Sections 326, 201, 212 and 316 read with Section 120-B of IPC; Section 3 sub-section either (2) or (3) or (4) of the TADA. Ravichandran (A-16) and Suseendran (A-17) were, in addition, charged under Section 5 of the TADA. Less serious offences under certain provisions of Explosive Substance Act, Arms Act, Passport Act, Foreigners Act and Wireless Telegraphy Act were indicted on a few accused. (It is not necessary to pinpoint, the different offences mentioned in the charge-sheet against each accused as the same shall be referred to when we consider the liability of the each accused.)

40. The Special Judge, after a marathon trial, convicted all the 26 accused of all the main offences charged against each of them. He sentenced all of them to the extreme penalty under law (i.e. death) for the principal offence under Section 302 read with Section 120-B IPC. In addition thereto A-1 was again sentenced to death under Section 3(1)(ii) of the TADA. Ravichandran (A-16) and Suseendran (A-17) were further convicted under

Section 5 of TADA and were sentenced to imprisonment for life. For other offences of which the accused were convicted the trial court awarded sentences of lesser terms of imprisonment.

41. Before we proceed to discuss the evidence relating to the main offence under Section 302 read with Section 120-B of IPC it would be advantageous to consider whether prosecution could sustain offences under TADA (except the offence under Section 5 thereof which was fastened only against Ravichandran (A-16) and Suseendran (A-17) as that can be dealt with separately).

42. To constitute any offence under Sub-section (2) or Sub-section (3) of Section 3 of TADA the accused should have either committed a terrorist act or have done something concerning a terrorist act which is sine qua non for convicting the accused under either of the sub-sections. If terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law. But if any such crime should be dealt with under TADA it must be interlinked with "terrorist act" as defined there-under.

43. "Terrorist act" is defined in Section 2(1)(h) of the TADA, by giving "the meaning assigned to it in Sub-section (1) of Section 3" and the expression "terrorist" is mandated to be construed accordingly. It is therefore necessary to look at Section 3(1) more closely. We may extract the first three sub-sections of Section 3:

(1) Whoever with intent to. overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

44. A reading of the first sub-section shows that the person who does any act by using any of the substances enumerated in the sub-section in any such manner as are specified in the sub-section, cannot be said to commit a terrorist act unless the act is done "with intent" to do any of the four things: (1) to overawe the Government as by law established; or (2) to strike terror in people or any section of the people; or (3) to alienate any section of the people; or (4) to adversely affect the harmony amongst different sections of the people.

45. When the law requires that the act should have been done "with intent" to cause any of the above four effects such requirement would be satisfied only if the dominant intention of the doer is to cause the aforesaid effect. It is not enough that the act resulted in any of the four consequences.

46. It must be recapitulated now that the constitutional validity of Section 3 of TADA was challenged in this Court and a Five-Judge Bench has upheld the provisions in *Kartar Singh v. State of Punjab*: 1994CriLJ3139 by striking a note of caution that since provisions of TADA tend to be very harsh and drastic containing stringent provisions they must be strictly construed. The Bench approved the observations made by Ahmadi, J (as the learned Chief Justice then was) in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya and Ors.* MANU/SC/0337/1990: 1990 Cri LJ 1869.

Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law.

47. Dealing with the facts of that case where the accused was alleged to have killed one Raju and another Keshav for gaining supremacy in the under-world this Court has stated that "a mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them cannot constitute an offence under Section 3(1) of the Act" and then observed thus:

The consequence of such violence is bound to cause panic and fear; but the intention of committing the crime cannot be said to be to strike terror in the people or any section of the people.

48. A Two-Judge Bench of this Court has considered the distinction between the act done with the requisite intent and another act which had only ensued such consequences. In *Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.*

MANU/SC/0526/1994: 1995 Cri LJ 517 Dr. Anand, J (as the learned Chief Justice then was) has stated thus:

Thus unless the act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that section by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA.

49. The further reasoning contained in the Judgment is the following:

Likewise, if it is only as a consequence of the criminal act that fear, terror or/ and panic is caused but the intention of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the intention to achieve the result as envisaged by the section and not merely where the consequence of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the section, the offence would not attract Section 3(1) of TADA.

50. The Bench on the aforesaid reasoning, concluded thus:

Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the motive as postulated by the said section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA.

51. Two other decisions rendered by a Two-Judge Bench of this Court were cited before us. In Girdhari Parmanand Vadhava v. State of Maharashtra MANU/SC/1708/1996: (1996) 11 SCC 179 it has been pointed out that the intention of the wrong doer can be inferred from the circumstances. After referring to the case law i.e. Hitendra Vishnu Thakur (*supra*) the Bench had held that "terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or establishing public administration and threatening security and integrity of the country. In the instant case, the intention to strike terror in the minds of the people can be reasonably inferred because Birju declared such intention in no uncertain terms by indicating that Vaibhav should be killed in order to send the message to the people in the locality that if the demand of Birju

and his associates was not met, extreme consequence of killing of an innocent person would be resorted to."

52. In Mohd. Iqbal M. Shaikh and Ors. v. State of Maharashtra MANU/SC/0281/1998: 1998 Cri LJ 2537 the same combination of learned Judges reiterated the principle by reference to Hitendra Vishnu Thakur and inferred from the facts of the case that the offence fell under Section 3 of TADA.

53. Thus the 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.

54. Learned Additional Solicitor General endeavoured to show that the intention of the conspirators was to overawe the Government of India. His contention was that assassination of Rajiv Gandhi was a follow up action for restraining the Government from proceeding with the implementation of India-Sri Lanka Accord. In other words, the focus of the conspirators was the Government of India and Rajiv Gandhi was targeted to deter that focal point, according to learned Additional Solicitor General. This contention can be examined by a reference to the evidence in this case.

55. It is true, LTTE leaders were bitterly critical of "India-Sri Lanka Accord" which was signed on 22-7-1987. Any one who criticised the policy of a Government could not be dubbed as a terrorist unless he had done any of the acts enumerated with the object of deterring the Government from doing anything or to refrain from doing anything.

56. Veluppillai Piribhakaran addressed a meeting on 4-8-1987, the text of the speech was published which is marked in this case as Ext.354. In the said speech he used strong language to criticise "India-Sri Lanka Accord" and the manner in which it was made. But no word of hatred was expressed towards the Government of India though he aired his opposition towards Sri Lankan Government which he described as "Sinhala racist government". He also spoke bitterly against the Sri Lankan Tamil leaders who supported the Accord. About the Indian Government and its Prime Minister the LTTE supremo said the following:

The Indian Prime Minister offered me certain assurances. He offered a guarantee for the safety and protection of our people, I do have faith in the straightforwardness of the Indian Prime Minister and I do have faith in his assurances. We do believe that India will not allow the racist Sri Lankan State to take once again to the road of genocide against the Tamils. It is only out of this faith that we decided to hand over our weapons to the Indian peace keeping force.

57. It must be remembered that political changes which occurred in India thereafter had brought a new Government under the leadership of V.P. Singh as Prime Minister in 1989.

The IPKF inducted into Sri Lanka was gradually withdrawn in a phased manner, which process was commenced during the Prime Ministership of Rajiv Gandhi himself and continued during the Prime Ministership of V.P. Singh. The attitude of LTTE towards Government of India, during the aforesaid period, can be seen from what their own official publication "Voice of Tigers" had declared in its editorial column in the issue of the said journal dated 19-1-1990 (which is marked as Ext. 362). The editorial reads as follows:

In the meantime, the defeat of Rajiv Congress Party and the assumption to power of the National Front alliance under Vishwanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Eelam. The LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively according to Mr. Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. The LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister in Madras, are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh's government will act in the interests of the Tamil speaking people by creating appropriate conditions for the LTTE to come to political power in the North-Eastern Province.

58. The above editorial is a strong piece of material for showing that LTTE till then did not contemplate any action to overawe the Government of India. Of course the top layer Of LTTE did not conceal their ire against Rajiv Gandhi who was then out of power.

59. In this context it is important to point out what Veluppillai Piribhakaran, who went underground in Sri Lanka and resurfaced on 1-4-1990 after a period of 32 months of disappearance had said. (The news about his re-emergence was published in the newspaper - a copy of which has been marked as Ext.363). The LTTE supremo had told the newsmen then as follows:

We are not against India or the Indian people but against the former leadership in India who is against the Tamil liberation struggle and the LTTE.

60. Nothing else is proved in the case either from the utterances of the top brass LTTE or from any writings edited by them that anyone of them wanted to strike fear in the Government either of center or of any State.

61. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established.

62. Nor can we hold that the conspirators ever entertained an intention to strike terror in people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in people. We have no doubt that the aftermath of the carnage at Sriperumpudur had bubbled up waves of shock and terror

throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention of the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.

63. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.

64. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.

65. The next endeavour is to see whether the conspirators did any "disruptive activities" so as to be caught in the dragnet of Section 4(1) of TADA. The sub-section reads:

Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

66. "Disruptive activity" is defined in Sub-section (2). It is extracted below:

"For the purposes of Sub-section (1), 'disruptive activity' means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,-

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

67. An attempt was made to bring the case within the ambit of Sub-section (3) of Section 4 of TADA on the strength of the assassination of Rajiv Gandhi and also on the strength of death of a number of police personnel at Sriperumpudur on the fateful night. Sub-section (3) reads thus:

Without prejudice to the generality of the provisions of Sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which-

- (a) advocates, advises, suggests or incites; or
- (b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

68. The killing of a public servant or killing of any other person bound by oath would be an offence under the Indian Penal Code. But it must be noted that such killing, as such, is not a disruptive activity. Certain type of actions which preceded such killing alone is regarded as a disruptive activity through the legal fiction created by Sub-section (3). Such actions include advocating, advising, suggesting, inciting, predicting, prophesying, pronouncing or prompting the killing of such persons.

69. In other words, all the preceding actions directed positively towards killing of such persons would amount to disruptive activity, but not the final result namely, the act of killing of such person.

70. If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel.

71. However, there is plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But unfortunately Rajiv Gandhi was not then "a person bound by oath under the Constitution to uphold the sovereignty and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament.

72. The inevitable fall out of the above situation is that none of the conspirators can be caught in the dragnet of Sub-section (3) of Section 4 of TADA.

73. What remains to be considered for Section 4(1) of TADA is whether any disruptive activity falling within the ambit of the definition in Sub-section (2) has been established. The attempt which prosecution has made in that regard, is to show that the conspirators intended to disrupt the sovereignty of India. To support the said contention, our attention was drawn to the confessional statement of A-3 (Murugan), A-18 (Arivu) and the

photographs proved as M.Os.256 to 259 which were seized from the bag of A-3 (Murugan). The said items of evidence show that photos of Fort St. George, Madras (which houses the Government Secretariat of Tamil Nadu and the Legislative Assembly and Legislative Council), Police Headquarters, Central Jail within Vellore Fort etc. had been taken and despatched to the LTTE top brass of Sri Lanka.

74. It is too much a strain to enter a finding, on such evidence, that the above activities were unmistakably aimed at disrupting the sovereignty of India. The sketch of Vellore Fort (which houses the Central Jail) was drawn up, most probably, for planning some operation to rescue the prisoners (belonging to LTTE who have been interned therein). That of course would be an offence but not an activity which falls within the purview of Section 4 of TADA.

75. We are, therefore, unable to sustain the conviction of appellants for offences under Section 3 or 4 of TADA.

76. Now we have to proceed to consider whether the prosecution has succeeded in establishing the remaining offences found against the appellants.

77. We may put on record the following concessions made by the learned Counsel for all the appellants at the Bar:

(I) Prosecution has successfully established that Rajiv Gandhi was assassinated at 10.19 P.M. on 21-5-1991 at Sriperumpudur by a girl named Thanu who became a human bomb and got herself exploded in the same event; and that altogether 18 persons, including the above two, died in the said explosion.

(II) There is overwhelming evidence to show that assassination of Rajiv Gandhi was resulted from a conspiracy to finish him.

(III) It is also established by the prosecution beyond doubt that Sivarasan alias Raghuvanan who was a top brass of LTTE was one of the kingpins of the said conspiracy.

78. We may also record at this stage that the two points which are seriously disputed by the learned Counsel for the appellants are the following: (1) Assassination of Rajiv Gandhi was not the only focal point of the conspiracy. (2) Appellants were participants in the conspiracy.

79. In other words, the defence contended that the conspiracy was made only to assassinate Rajiv Gandhi and that none of the appellants had participated in the conspiracy.

80. For deciding the aforesaid major area of dispute, prosecution heavily relies on the statements allegedly made by a number of appellants and recorded purportedly under Section 15 of TADA. (Such statements will, hereinafter, be referred to, for convenience, as confessional statements of the accused). Such confessional statements were recorded by the Superintendent of Police, CBI/SPG who was deputed in the Special Team of Investigation. Every one of such confessional statements has been signed by the person who is shown as the maker thereof. Such confessional statement consists of inculpatory admissions, narrations which are neither inculpatory nor exculpatory, and incriminating roles attributed to other co-accused. It was not disputed before us that all such confessional statements, if duly recorded, are admissible in evidence in view of Section 15 of TADA. It is necessary to extract that Section which reads thus:

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

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

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

81. Learned Counsel for the defence made a bid to exclude the confessional statements from the purview of admissibility in this case on the premise that no offence under TADA could be found against any of the accused and hence the confessional statements would wiggle into the can of inadmissibility and consequently it cannot be used for offences outside TADA. To buttress up the said contention, learned Counsel invited our attention to the following observations made by a two-Judge Bench of this Court in *Bilal Ahmed Kaloo v. State of A.P. MANU/SC/0861/1997: 1997 Cri LJ 4091*:

While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for the offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the

trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence.

82. Shri Altaf Ahmed, learned Additional Solicitor General submitted that the above observations do not lay down the correct proposition of law and it requires reconsideration, more so because the two-Judge Bench did not advert to Section 12 of TADA. That apart, the Bench adopted that view partly because the counsel for respondents in that case had conceded to the said position. We are inclined to consider the position afresh.

83. Section 12 of the TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the CrPC. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law it does not mean that there was only a trial for such other offence under any other law.

84. Section 15 of the TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences.

85. The aforesaid implications of Section 12 vis-a-vis Section 15 of TADA have not been adverted to in Bilal Ahmed's case (*supra*). Hence the observations therein that "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it, since he was acquitted of the offences under TADA" cannot be followed by us. The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial.

86. While it is not disputed that a duly recorded confessional statement is substantive evidence in a trial of offences under TADA as against the maker thereof, learned Counsel for the defence contended that its use against the co-accused (which was tried in the same case) is only for a limited purpose, i.e. to be used for corroborating other evidence. In support of the contention learned Counsel relied on the decision of a two-Judge Bench of this Court in *Kalpnath Rai v. State* MANU/SC/1364/1997: 1998 Cri LJ 369. The ratio of that decision, on this point, is that "a confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

87. Shri Altaf Ahmad, learned Additional Solicitor General pleaded for reconsideration of the aforesaid legal position adumbrated in the said decision and contended that the non obstante limb in Section 15(1) of TADA ("notwithstanding anything in the Code or Indian Evidence Act") is a clear legislative indicator to permit a confession made by an accused against a co-accused to be used with the same force as it can be used against the confessor himself. He further contended that the position became clearer after the subsection was amended by Act 43 of 1993.

88. We shall first examine whether the amendment as per Act 43 of 1993 has improved the position from the pre-amendment position. Before the amendment Sub-section (1) of Section 15 read thus:

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

After the amendment in 1993 the sub-section reads in the present form (which has been extracted supra). The main changes in the sub-section, after the amendment, are addition of the words "or co-accused, abettor or conspirator", and insertion of a new proviso to the subsection as "Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

89. In this case we may refer to another provision in TADA (Sec.21) which also underwent much changes as per the same amending Act. That provision has a perceptible bearing on Section 15(1) of TADA. That provision, in specific terms, empowered the Designated Court to draw certain presumptions. Section 21(1), as it stood before 1993 amendment, read thus:

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

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

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

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

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

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

90. Act 43 of 1993 has snipped out Clause (c) which contained the words "that a confession has been made by a co-accused that the accused had committed the offence" and Clause (d) which contained-the words "that the accused had made a confession of the offence to any person other than a police officer" of Section 21(1).

91. No doubt, the amendment carried out in Section 15(1) and in Section 21(1) was in one package. It was done with a definite purpose. Before amendment the Designated Court had a duty to presume that an accused had committed the offence if his co-accused had, in a confession, involved the former. The words "shall presume" in Section 21(1) denoted that it was the duty of the court to draw such presumption. (See Section 4 of the Evidence Act).

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

93. But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute book. In other words, after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso. After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled: (1) The co-accused should have been charged in the same case along with the confessor. (2) He should have been tried together with the confessor in the same case. Before amendment the Designated Court had no such restriction as the confession of an accused could have been used against a co-accused whether or not the latter was charged or tried together with the confessor.

94. Thus the amendment in 1993 was a clear climbing down from a draconian legislative fiat which was in the field of operation prior to the amendment in so far as the use of one confession against another accused was concerned. The contention that the amendment in 1993 was intended to make the position more rigorous as for a co-accused is, therefore, untenable.

95. While considering the effect of the non-obstante limb we can see that Section 15(1) of TADA was given protection from any contrary provision in the Evidence Act. But what is it that Parliament did through Section 15(1) regarding a confession made to a police officer? It has only made such confession "admissible" in the trial of such person or the co-accused etc.

96. There are provisions in the Indian Evidence Act which prohibited admissibility of certain confessions, e.g. Section 25 of the Evidence Act prohibited proving any confession made by an accused to a police officer.

Section 26 prohibited proving any confession made by an accused to any person while that accused was in the custody of police. Section 27 permitted only a very limited part of the information supplied by the accused to a police officer, whether it amounts to a confession or not.

97. What Section 15(1) of TADA has done was to remove the said ban against admissibility of confessions made to police officer and brought it on a par with any other admissible confessions under the Evidence Act. A confession made to a magistrate is admissible under the Evidence Act, and a confession made by an accused to any person other than a police officer, if the accused was not in police custody, is also admissible under the Evidence Act.

98. The upshot of the above discussion is that the effect of the non obstante clause, when read with the words "shall be admissible in the trial of such person or a co-accused or abettor or conspirator" would only mean that the confession made to a police officer under Section 15(1) shall also become a confession like other admissible confessions under the Evidence Act. But it was not even in the legislative contemplation of Parliament to elevate a confession made to a police officer to a status even higher than a judicial confession recorded by a magistrate.

99. What is the evidentiary value of a confession made by one accused as against another accused apart from Section 30 of the Evidence Act? While considering that aspect we have to bear in mind that any confession when it is sought to be used against another has certain inherent weaknesses. First is, it is the statement of a person who claims himself to be an offender, which means, it is the version of an accomplice. Second is, the truth of it cannot be tested by cross-examination. Third is, it is not an item of evidence given on

oath. Fourth is, the confession was made in the absence of the co-accused against whom it is sought to be used.

100. It is well-nigh settled, due to the aforesaid weaknesses, that confession of a co-accused is a weak type of evidence. A confession can be used as a relevant evidence against its maker because Section 21 of the Evidence Act permits it under certain conditions. But there is no provision which enables a confession to be used as relevant evidence against another person. It is only Section 30 of the Evidence Act which, at least, permits the court to consider such a confession as against another person under the conditions prescribed therein. If Section 30 was absent in the Evidence Act no confession could ever have been used for any purpose as against another co-accused until it is sanctioned by other statute. So, if Section 30 of the Evidence Act is also to be excluded by virtue of the non obstante clause contained in Section 15(1) of TADA, under what provision a confession of one accused could be used against another co-accused at all? It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case.

101. Sir John Beaumont speaking for five law lords of the Privy Council in *Bhuboni Sahu v. The King* MANU/PR/0014/1949 had made the following observations:

Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence.

102. The above observations had since been treated as the approved and established position regarding confession vis-a-vis another co-accused. Vivian Bose, J, speaking for a Three-Judge Bench in *Kashmira Singh v. State of Madhya Pradesh* MANU/SC/0031/1952: 19 52 Cri LJ 839 had reiterated the same principle after quoting the aforesaid observations. A Constitution Bench of this Court has followed it in *Hari Charan Kurmi and Jogia Hajam v. State of Bihar* MANU/SC/0059/1964: 1964 Cri LJ 344. Gajendragadkar, J (as he then was) has stated the legal principle thus:

The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is

materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the Court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the Court has to adopt in dealing with these two types of evidence is thus clear, well-understood and well-established.

Thus the established position which gained ground for a very long time is that while a confession is substantive evidence against its maker it cannot be used as substantive evidence against another person even if the latter is a co-accused, but it can be used as a piece of corroborative material to support other substantive evidence. The non obstante words in Section 15(1) of TADA are not intended to make it substantive evidence against the non-maker, particularly after amendments were brought about in the sub-section through Act 43 of 1993.

103. Having set the legal position thus, we have now to consider the legal evidence to see whether prosecution has proved the disputed points.

104. The prime aim of the conspiracy, in this case, was to assassinate Rajiv Gandhi. The stand of the prosecution is that the Sri Lanka-India Accord (signed on 27-7-1987) was resented against by the LTTE top brass for reasons more than one. The acrimony was further fomented up with the LTTE repressive heaped up by the IPKF. The editorials published in the "Voice of Tigers" (the main publication of LTTE) and the articles reproduced in the compilation made under the nomenclature "Satanic Force" were replete with vituperative epithets expressed by LTTE activists against the said Accord and the actions which IPKF did against them. Rajiv Gandhi was not spared from the vitriolic onslaughts made through such publications. PW-75 (Basant Kumar) said that he was assigned with the work of preparing "Satanic Force", by LTTE top brass Veluppillai Piribhakaran, Pottu Oman and another person called Balasingam, containing strong criticism against IPKF and Rajiv Gandhi. PW-75 (Basant Kumar) accepted the work on payment of Rs. 2000/- per month.

105. We have pointed out earlier that LTTE was very much concerned about the general elections to the Lok Sabha in the year 1991. They felt that if Rajiv Gandhi came back to power, IPKF would again go to Sri Lanka which means lot more atrocities heaped upon LTTEs and the goal "Tamil Eelam" would again elude like a mirage.

106. In all probabilities a criminal intent to kill Rajiv Gandhi would have sprouted in the minds of LTTE top brass at the aforementioned stage. There is not even a speck of doubt

in our mind that the criminal conspiracy to murder Rajiv Gandhi was hatched by at least 4 persons comprising of Veluppillai Piribhakaran, Pottu Omman, Sivarasan and Akila. It could have been the scheme of the conspirators to enlist more persons in the field for the successful implementation of their targets.

107. We have no doubt from the circumstantial evidence in this case, that Thanu, the girl who transformed into a human bomb, and her friend Suba were unflinchingly committed commandos of LTTE and they were also brought into the conspiracy ring by the top brass of LTTE. Circumstances proved in this case regarding the aforesaid core points are too many. However, we are spared from the task of enumerating all such circumstances as learned Counsel for the accused have fairly conceded about the sufficiency of circumstances which have been proved in this case to establish the aforesaid points.

108. Learned Counsel for the appellants have focussed their attack on the indictment against individual accused. They endeavoured to show that none of the appellants was involved in the criminal conspiracy to assassinate Rajiv Gandhi. Hence that is the most disputed point in this case.

109. Before proceeding to discuss the evidence, we have to deal with yet another legal point canvassed by Shri Altaf Ahmed, learned Additional Solicitor General, regarding the amplitude of Section 10 of the Evidence Act. Such a decision is necessary to decide what exactly is the evidence of conspiracy. Learned Additional Solicitor General contended that the width of the provision is so large as to render any statement made by a conspirator as substantive evidence if it has succeeded in conforming with the other conditions of the Section. Such a contention became necessary for him to bring the confessional statement of one conspirator against an-other conspirator as substantive evidence if there is any legal hurdle in doing so under Section 15 of TADA, as we have already found that confession of one accused is not substantive evidence against another though it can be used for corroborative value. Section 10 of the Evidence Act, can, in this context, be extracted below:

Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

110. 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" are wider than the words used in English Law, (vide Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a.

111. 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.

112. Way back in 1940, the Privy Council has considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in Mirza Akbar v. King-Emperor MANU/PR/0037/1940 has 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.

113. In Sardul Singh Caveeshar v. The State of Bombay MANU/SC/0041/1957: 1957 Cri LJ 1325 Three-Judge Bench has reiterated that the rule of agency is the founding principle of Section 10 of the Evidence Act. A Two-Judge Bench of this Court in State of Gujarat v. Mohammed Atik and Ors. MANU/SC/0267/1998: 1998 Cri LJ 2251 has followed the said position and held thus:

It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, 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'.

114. Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. Normally a conspirator's connection with the conspiracy would get snapped after he is nabbed by

the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Of course we are not unmindful of rare cases in which a conspirator would continue to confabulate with the other conspirators and persists with the conspiracy even after his arrest. That is precisely the reason why we said that it may not be possible to lay down a proposition of law that one conspirator's connection with the conspiracy would necessarily be cut off with his arrest.

115. In this case, prosecution could not establish that the accused who were arrested, continued to conspire with those conspirators remaining outside. Prosecution cannot contend that the confession made by one accused in this case can be substantive evidence against another accused under Section 10 of the Evidence Act. At any rate we cannot uphold the contention that confessions made by an accused can be used as substantive evidence against the another co-accused on the principle enunciated in Section 10 of the Evidence Act,

116. The conclusion on the above score is that confessional statement made by an accused after his arrest, if admissible and reliable, can be used against a confessor as substantive evidence, but its use against the other co-accused would be limited only for the purpose of corroboration of other evidence.

THE CASE AGAINST A-1 (NALINI):

117. A-1 (Nalini) is the sole surviving conspirator who participated in the assassination, if the prosecution case is correct. The principal item of evidence available in this case is her own confessional statement (Ext.P-77) recorded on 9-8-1991. (She was arrested on 14-6-1991). She was aged 27 during the relevant period and has passed M.A. degree. She is the daughter of another co-accused (A21 -Padma) and sister of yet another co-accused (A20 - Bhagyanathan). She had fallen in love with one Murugan (who is accused No. 3) during the period of conspiracy and it is claimed that their marriage was solemnised on 21-4-1991 (within 9 months thereof she gave birth to a female child). She was working as Private Secretary to the Managing Director of a private company - M/s. Anabante Silicones.

118. The evidence in this case shows that A-1 (Nalini) much before her marriage quarrelled with her mother and brother and shifted her residence to No. 11, High Court Colony, Villivakkom, Madras. It was during the said time that A-3 (Murugan) got acquainted with her and gradually the familiarity grew into a love affair between them. A-3 (Murugan) was a committed LTTE member. In April 1991, A-1 (Nalini) came into contact with Sivarasan.

119. Ext. P-77 confessional statement contains the following facts as to have been stated by A-1 (Nalini): When she was contemplating with the idea of vacating the house at Villivakkom she was dissuaded from doing so by A-3 (Murugan) as Sivarasan was

expected to bring two girls from Sri Lanka. On 2-5-1991 Sivarasan brought those two girls (Suba and Thanu) to her house. Her mind changing process started thereafter as Murugan, Suba and Thanu were narrating various acts of atrocities which IPKF heaped on LTTE followers in Sri Lanka. Suba told Nalini of a horrendous story of how 7 little girls were raped and killed by the soldiers of IPKF. She was made to believe that Rajiv Gandhi was the person responsible for all such atrocities. She developed vengeful attitude towards Rajiv Gandhi and she too agreed to retaliate. She realised that the two girls were brought for the purpose of carrying out a very dangerous retaliatory step. Sivarasan had told Nalini to play the role of a chaperone to Suba and Thanu wherever they went.

120. In Ext.P-77, A-1 (Nalini) is alleged to have further stated that on 7-5-1991 she took Suba and Thanu, under the instructions of Sivarasan to Nandavanom (Madras) where V.P. Singh (a former Prime Minister) was addressing a meeting. Suba and Thanu tried to garland V.P. Singh. Later Sivarasan scolded A-1 (Nalini) for not taking the girls to the rostrum. It was then that Nalini realised as to how the murder was planned to be perpetrated.

121. In the confessional statement A-1 (Nalini) is alleged to have stated that on 11 -5-1991 she chaperoned Suba and Thanu to a readymade garments shop at Puruswakkom (Madras) and bought a chooridar suit (orange and green coloured) and a dupatta. On 17-5-1991, Sivarasan told her of Rajiv Gandhi's Tamil Nadu programme and asked her to attend one of the meetings. She confessed in her statement (Ext.P-77) that by then it was certain for her that Rajiv Gandhi was going to be killed. Sivarasan collected the details of the topography of Sriperumpudur from her and warned her not to divulge the contents of that conversation to any one else. She was instructed to take leave from her office on 21st May, 1991 under some false pretext.

122. She had narrated in the confessional statement the events which happened on the day of assassination and also on its preceding day. According to her, Sivarasan met her on 20-5-1991 at 6.00 P.M. and told her that the venue of the meeting was at Sriperumpudur, and she should take half day casual leave and not more and that she should make herself available in the house at 3.00 P.M. on the next day for being picked up for escorting Suba and Thanu. On 21st May, 1991 Nalini took half a day's leave and she went to her mother's house at Roypetta (Madras) where A-3 (Murugan) was waiting who told her to hurry up lest Sivarasan would be annoyed. So she reached her house at about 3.00 P.M. A little while thereafter Sivarasan reached the same house with Suba and Thanu. According to her, Thanu was then wearing an orange/green coloured chooridar and was hiding something in her dress. Suba told Nalini that Thanu was going to create history by murdering Rajiv Gandhi. At 4.00 P.M. Nalini took Suba and Thanu to the bus stop. On the way Haribabu also joined them. He had a garland with him.

123. It is further stated in Ext.P-77 that A-1 (Nalini) along with Suba, Thanu, Haribabu and Sivarasan reached the place of occurrence at 7.30 P.M. They stopped at the spot where there was a statue of Indira Gandhi. Sivarasan gave instructions to A-1 (Nalini) about the role to be performed by her just before and after the murder, if successful. By following the said instructions she along with Suba ran across Indira Gandhi statue and waited for Sivarasan. Within a few minutes Sivarasan rushed to them and said Rajiv Gandhi and Thanu died and Haribabu also died. Sivarasan gave Nalini a pistol which she handed over to Suba. They hurriedly left the place and on the way got some water to drink from a roadside house and then they went in an auto-rickshaw and reached Kodingyoor at 1.30 A.M. in the night.

124. The rest of the confessional statement (in Ext.P-77) relates to the hectic movements made by her in association with other accused. It is further recorded therein that on 13-6-1991, A-1 (Nalini) and A-3 (Murugan) went to Davangere (in Karnataka) and stayed in the house of Shashikala (PW-132). A-1 (Nalini) told Shashikala of what all happened regarding Rajiv Gandhi's murder.

125. The above were the statements said to have been made by A-1 (Nalini) in Ext.P-77. The Designated Court acted on the said confessional statement as valid and proved and reliable.

126. A three-fold attack was made against Ext.P-77 by Sri N. Natarajan, learned senior counsel for the accused. First is that the confession was not signed as provided in Rule 15 of the TADA Rules, 1987. Second is that it was not certified as required by the Rules. Third is that the confession was extracted by coercive methods and is therefore unreliable.

127. Rule 15(3) says that the confession shall be signed by its maker and also the police officer who recorded it. Further, the police officer "shall certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person".

128. Ext. P-77 was recorded in as many as 18 pages. All the first 16 pages contain the signatures of A-1 (Nalini) but the last two pages don't have the signatures. The requirement that confessional statement shall be signed by the maker has been substantially complied with despite the slip in obtaining the signatures in the last two pages. According to PW-52 - the Superintendent of Police who recorded it, the said slip was an inadvertent omission. But that omission does not mean that a confession was not signed by her at all. The certificate which is required by Rule 15(3) has also been made at the foot of Ext.P-77, but that happened to be made on one of the two pages where the signature of A-1 is absent.

129. On the facts we are not persuaded to uphold the contention that Rule 15(3) has not been complied with. That apart, even if there was such an omission the question is whether it would have injured the accused in her defence. Section 463 of the Code permits such an approach to be made in regard to the omissions in recording the confession under Section 164 of the Code. That approach can be adopted in respect of the confession recorded under Section 15 of the TADA as well. The resultant position is that the said omission need not be countenanced since it was not shown that the omission has caused any harm to the accused.

130. The contention that the confession was extracted by coercive methods is not supported by any material. We may point out that when A-1 (Nalini) was produced before the Judicial Magistrate soon after recording the confession she did not even express any complaint regarding the conduct of any personnel of the Special Investigation Team. Ext.P-77 has, in fact, reached the Judicial Magistrate on the next day itself and thereafter it was kept under sealed cover.

131. The confessional statement of A-1 (Nalini) in Ext. P-77, according to Shri Altaf Ahmad learned Additional Solicitor General, is corroborated by other substantive evidence and also by the confessional statements made by a number of other accused in this case. PW-132 (Shashikala) who is a teacher said that she got acquainted with A-1 in 1990 and A-1 visited her in the school when she was teaching, on 13-6-1991. Then A-3 (Murugan) was also with her. A-1 (Nalini) introduced A-3 (Murugan) as her brother by name -Das. PW-132 further stated that when they (three persons) went to her house A-1 told her that her husband, a Sri Lankan citizen, had brought two girls to Madras. PW-132 has also stated in her evidence that Nalini told her that it was she who took those girls to the meeting place at Sriperumpudur where Rajiv Gandhi came and in the incident which happened there, one of the girls died. PW-132, on hearing the said news, became frightened. Then both A-1 and A-3 implored her not to disclose it to anybody else.

132. The aforesaid evidence of PW-132 -a teacher, was fully believed by the trial judge. We have no reason to take a different view on that evidence. Its corroborative value is unassailable because A-1 herself admitted in her confessional statement that she made such a disclosure to PW-132.

133. Another item of corroborative evidence is M.O.144 Video Cassette. (It was viewed on the video in the trial court as well as by us in the Supreme Court). It was the video cassette of the meeting held at Nandavanam (Madras) in the early hours of 18-5-1991 which was addressed by V.P. Singh. PW-93 (Suyambu) said in his evidence that he attended the said meeting. When he was shown the video cassette replayed in the court he identified Sivarasan who was sitting at the meeting place, just left to the said witness. It was video graphed by PW-81 (Manivanam) as instructed by PW-77 (Ganani). PW-77 also identified Sivarasan in the video. We have noticed the presence of A-1 (Nalini) in the meeting when M.O.144 was displayed in this Court, with the help of a photograph in

which A-1's figure could be discerned by us and admitted by the defence counsel to be correct.

134. On the next day of the said meeting, i.e. 9th May, two letters were sent by Suba and Thanu jointly to Sri Lanka, one to Pottu Omman and the other to Akila. They are Ext.P-96 and Ext.P-95 respectively. Prosecution has proved that they were the letters written by the aforesaid two girls. We do not deem it necessary to refer to all the materials made available to prove the authorship of those letters because they are no more.

135. In Ext.P-96, the girls wrote to Pottu Omman "we are confident that we would be successful in completing the job for which we came as we expect a similar opportunity..." In Ext. P-95 they wrote to Akila like this: "We are confident that the work for which we came would be finished promptly as we are expecting another appropriate opportunity.... It would be implemented during this month itself.... Every word which you (Akila) had said to us would remain in our mind till last."

136. The aforesaid telling circumstances confirm the truth of what A-1 has divulged in Ext.P-77.

137. PW-179 (Gunathilal Soni) said in his evidence that he was manager of a retail textile shop called "Queen Corner" at Puruswakkom and that on 11-5-1991, a chooridar (with orange and green colours) was sold to three ladies one of whom was A-1 (Nalini). From the photograph shown to the witness he identified the other lady as Thanu, The Cash Book which he maintained was marked as Ext.P-899 and the copy of the Bill for the said chooridar was marked as Ext.P-900.

138. It could be argued that it was not possible for any textile retail seller to identify the person who had purchased the goods only once. That may be so. But here PW-179 gave one reason for remembering A-1 (Nalini) and the girls, that they insisted on quick delivery of the stitched goods on the same day itself and then PW-179 took measurements of Thanu. Within a few days the witness saw the photo of Thanu in newspapers wearing the chooridar of that colour. That apart, the investigating officer could trace out PW-179 only because A-1 (Nalini) told him of the place wherefrom the chooridar was purchased. That portion was admitted in evidence under Section 27 of the Evidence Act. The cumulative effect is that the testimony of PW-179 can be treated as true evidence. It is a highly corroborating material.

139. PW-96 (Sujaya Narayan) was an officer in M/s. Anaband Silicon Private Ltd. where A-1 (Nalini) was working as Private Secretary to the Managing Director. He gave evidence that A-1 (Nalini) took half a days leave on 21-5-1991 saying that she wanted to go to Kanchipuram to purchase sarees and left office by 12 noon.

140. One of the most striking corroborative evidence for A-1's confession regarding her participation in the assassination scene of Rajiv Gandhi is the testimony of PW-32 (Anusuya). She is a woman Sub-Inspector who was deputed to do duty at the venue of the meeting to be addressed by Rajiv Gandhi at Sriperumpudur. She was one of the injured in the bomb blast. Nobody can dispute that she was on duty because she had come in the photo M.O.33. It was taken just before the occurrence. Pointing out Thanu in the photograph PW-32 (Anusuya) said in her evidence that she was found moving with two male persons at the scene of occurrence before the arrival of Rajiv Gandhi. One of them, on being questioned by PW-32, claimed to be a press photographer (it is with reference to Haribabu). The witness identified the other person as Sivarasan. PW-32 identified A-1 Nalini (who was present in the trial court) as one of the ladies who attended the meeting place. She identified A-1 from the photograph when M.O.32 photograph was shown to her. There was no dispute about the genuineness of the above said photograph. We have absolutely no reason to doubt the correctness of M.O.32.

141. PW-215 (Samundeeswari) said in her evidence that she is a resident at Sriperumpudur and that on 21-5-1991, while she was standing outside her house at about 10.45 P.M. waiting for her son to return/she found two ladies and one male getting into her house and they asked for water to drink. She gave them water. The witness identified A-1 as one of the ladies and identified Sivarasan and Suba with the help of M.O.105 photograph. The witness said that she had a dialogue with those visitors. After giving them water she asked them about Rajiv Gandhi's arrival and they replied to her that Rajiv Gandhi died even before reaching 7 feet away from the meeting place. The witness said that after drinking water the said three persons went towards Madras side. The significance of the evidence of PW-215 is that Investigating Officer succeeded in discovering her house on the information supplied by A-1 (Nalini).

142. PW-183 is an equally important witness. He is an auto-rickshaw driver at Thiruvallur. He said in his evidence that he took some persons in his auto-rickshaw and dropped them at the place of the meeting to be addressed by Rajiv Gandhi. As he parked the vehicle a little away he overheard the announcement through loudspeaker that Rajiv Gandhi was arriving, but within a short while a bomb-blast took place and all were found running helter-skelter. He also escaped from the place riding his auto-rickshaw. According to him, on the way two ladies and one male got into his auto-rickshaw and he took them right upto Madras and dropped them at Teynampet. The witness identified A-1 (Nalini) as one of the ladies and the male who travelled in his auto-rickshaw as Sivarasan and the other lady as Suba. M.O.183 and M.O.105 photographs were shown to the witness to help him to identify Sivarasan and Suba. He had sufficient opportunity to identify them as all of them were talking many things in their long distant drive in the auto-rickshaw.

143. It is unnecessary to refer to the remaining evidence which prosecution pointed out as further corroborating the confessional statements of A-1 (Nalini) in Ext.P-77, as we

think that in view of the already large number of items of evidence the truth of the confession stands established.

144. From the above, we come to the conclusion that prosecution has succeeded in proving, beyond reasonable doubt, that A-1 (Nalini) was one of the conspirators and she participated in the act of assassination of Rajiv Gandhi by playing a very active role.

A-2 SANTHAN ALIAS RAVIRAJ:

145. Santhan (A-2) is a Sri Lankan citizen. He was aged 22 during the relevant time. The evidence shows that he was a cardholder of the intelligence wing of the LTTE. He studied up to 5th standard in a school at Jaffna. He came in contact with Sivarasan and they eventually became close to each other. In February 1988, Sivarasan suggested to him to continue his studies at Madras and LTTE would meet his expenses. Pursuant thereto he came to India in February 1990 and secured admission at Madras Institute of Engineering Technology. His educational expenses were met by LTTE'. He was arrested in connection with Rajiv Gandhi murder case on 22-7-1991. His confessional statement was recorded on 17-9-1991 by the Superintendent of Police as per Section 15 of TADA. It is marked as Ext.P-104. The incriminating admissions contained in Ext.P-104 are the following:

Sivarasan persuaded A-2 (Santhan) to join him for liquidating one Padmnabha who was leader of EPRLF which was considered to be a rival organisation of Sri Lankan Tamils. A-2 (Santhan) accepted the assignment and began closely following the movements of Padmnabha and transmitted the information from time to time to Sivarasan. With the help of such information Sivarasan succeeded in getting Padmnabha gunned down on 19-6-1990 through some assassins. On the next day Sivarasan and A-2 (Santhan) left India and on arrival at Sri Lanka A-2 (Santhan) was profusely praised by Pottu Omman and Veluppilli Piribhakaran for the role he played in achieving the target of finishing Padmnabha.

146. By last week of April 1991 Pottu Omman gave a directive to A-2 (Santhan) to proceed to Tamil Nadu in the group lead by Sivarasan. On 1-5-1991 the group reached Kodingyoor in India. The said group consisted of Sivarasan, Suba, Thanu, A-6 (Sivaruban) and Nehru etc. besides A-2 himself.

147. On the evening of 9-5-1991, Sivarasan took A-2 (Santhan) to Marina Beach, Madras and introduced him to photographer Haribabu (who died in the bomb explosion at Sriperumpudur), A-3 (Murugan) and A-18(Arivu). In the night he was taken to the residence of A-10 (Jayakumar). On the next day he was taken to the house of photographer Haribabu where he (A-2) stayed for about a week. During this period Sivarasan gave Rs. 1,000/- to him for buying clothes.

148. On 15-5-1991, A-2 (Santhan) met a top LTTE leader called Kanthan and handed over to him a letter sent by Sivarasan. Kanthan entrusted A-2 with a sum of Rs. 5 lacs to be handed over to Sivarasan. A-2 handed over the amount to Sivarasan in installments as and when the latter asked for it. It was on 16-5-1991 that Sivarasan divulged to A-2 (Santhan) that Veluppillai Piribhakaran had great confidence in A-2 (Santhan) particularly after his performance in the murder of Padmnabha. Sivarasan also disclosed to him that Suba and Thanu were brought for the purpose of murdering Rajiv Gandhi.

149. Next day Sivarasan collected Rs. 10,000/- from A-2 (Santhan) and on the succeeding day Sivarasan again collected another Rs. 10,000/- out of the balance amount. Under Sivarasan's instructions A-2 (Santhan) gave Rs. 4,000/- to A-6 (Sivaruban). Next day evening A-2 (Santhan) took A-6 (Sivaruban) to Marina Beach where Sivarasan was waiting.

150. On 21-5-1991, which was the day of assassination of Rajiv Gandhi, A-2 (Santhan) met Sivarasan and saw the latter preparing himself. A pistol was concealed by him beneath his kurta, and Sivarasan checked up with A-2 (Santhan) whether it was visible from outside. A-2 gave a nod that nothing was visible and then Sivarasan left the place. It was on the said night that Sivarasan told him that Rajiv Gandhi was murdered. He also said that Thanu too died. It was only on the next day that Sivarasan revealed to A-2 (Santhan) that Haribabu died. On 27-5-1991 Sivarasan moved to Madras and instructed A-2 (Santhan) to hand over Rs. 5,000/- to A-10 (Jayakumar). A-2 (Santhan) was moving from place to place thereafter and finally on 30-5-1991 he went to Sundara Lodge. PW-111 (Vijayendran) conveyed to A-2 a message from Sivarasan that the latter should meet him. Pursuant to that, A-2 (Santhan) met Sivarasan on the next day. By that time Sivarasan had removed his moustache.

151. Sivarasan told A-2 (Santhan) that thenceforth it was A-3 (Murugan) who would look after the work which Sivarasan was to continue in India. A-2 booked three bus tickets to Coimbatore in pseudonymous names.

152. On 7-6-1991 Sivarasan and Suba met A-2 (Santhan) and asked him to handover a cover to A-3 (Murugan). A-2 (Santhan) learnt from A-3 (Murugan) that Sivarasan had instructed A-3 to murder one Chandrahasan. When A-3 (Murugan) asked A-2 (Santhan) as to the cause for which Chandrahasan was to be murdered A-2 (Santhan) replied that such a murder was planned for diverting the attention of CBI.

153. In the further portion of the confessional statement Ext.P-104, A-2 (Santhan) has narrated those occasions when he and Sivarasan met together. Among them an important meeting was on 11-5-1991 at 7.00P.M. They met at the house of A-5 (Vijayanandan).

154. Sivarasan wanted A-2 to keep his two bags and conceal the same at Kollivakkom. It was done so on the succeeding day itself. On 28-6-1991, Suresh Master (an LTTE leader)

directed A-2 (Santhan) to shift A-8 (Athirai) to some other place to escape from the catch of police. Pursuant thereto A-2 (Santhan) took A-8 (Athirai) to a house at Pammal and stayed there for a night. Next day A-2 (Santhan) handed over the wireless set to Suresh Master at the house of Vijayan.

155. The aforesaid are the prominent incriminating circumstances narrated in Ext. P-104. If the aforesaid confession is true it would be a justifiable inference that A-2 (Santhan) was very much involved in the conspiracy. The vivid details which Ext.P-104 contains would, in all probabilities, have been supplied by A-2 (Santhan) himself because he alone knew what all he did and where all he went and whom all he met.

156. Regarding the truth of the contents of Ext. P-104 we may verify whether it is corroborated by other evidence,

157. PW-120 (Sundarmani) is the father of photographer Haribabu. He said in his evidence that on 6-5-1991 his son Haribabu brought A-2 (Santhan) to his house and he stayed there for one week, for which Haribabu had to implore his mother because there was lack of space in the house and other female members of the family were also residing there. PW-111 (Vijayandran) is a cinema actor. He has a Doctorate from a US University. He deposed that Sivarasan came into contact with him pretending to be his admirer and on 8-5-1991 Sivarasan visited him along with A-2 (Santhan). Those items of evidence can be seen as details mentioned by A-2 (Santhan) in his confessional statement.

158. PW-285 (R. Sivaji) was a Superintendent of Police who arrested A-2 (Santhan). In his evidence it has come out that when A-2 (Santhan) was questioned the police officer got the information regarding the place where 3 plastic bags and one cloth bag were kept. The particular portion of the statement, it was admitted in evidence, has been marked as P-1396. Those bags were actually given to A-2(Santhan) by Sivarasan after returning from Tirupaty. Those articles were seized pursuant to the information for which Ext. P-1397 Mahassar was drawn up. M.O.1083 is a bag which was identified as containing the clothes and cosmetics and other materials belonging to Suba. M.O.1129 is a bag which contained articles of Sivarasan including a diary maintained by him.

159. PW-62 (Vimla), a teacher by profession narrated how she and her daughters were duped by Sivarasan when he brought Athirai (A-8) to their house under some false pretext without knowing that they were the persons involved in the assassination of Rajiv Gandhi. PW-62 (Vimla) was closely associated with A-8 (Athirai), PW-62 in her evidence said that A-2 (Santhan) was visiting A-8 (Athirai) and that once A-2 (Santhan) told the witness that CBI might perhaps search her house also. A-2 (Santhan) took A-8 (Athirai) away from the house of PW-62 (Vimla) on the direction of Sivarasan. We have absolutely no reason to disbelieve the evidence of PW-62. She said that the moment she came to know that those persons were suspected by the police in the Rajiv Gandhi murder case she screamed and implored to spare her and her daughters.

160. From the above corroborative items of evidence we are assured of the truth of the confession made by A-2 (Santhan) as recorded in Ext.P-104. We are hence of the view that prosecution has succeeded in proving that A-2 (Santhan) was also one of the conspirators in the Rajiv Gandhi assassination conspiracy.

A-3 MURUGAN ALIAS DAS:

161. Murugan was aged 21 at the time of the occurrence in this case. He belongs to Sri Lanka. He was a committed LTTE follower. After working for his organisation at Jaffna for a considerable period he was deputed by LTTE top brass to India for carrying out "an important mission". He was arrested in connection with Rajiv Gandhi murder case on 14-6-1991. Prosecution relies on the confessional statement said to have been given by him on 9-8-1991 to the Superintendent of Police. It is marked in this case as Ext.P-81.

162. In that confessional statement it is said that he joined the "Suicide Squad" of LTTE and he came to India in January 1991. He was received by Sivarasan at Kodiakarai. He got sketches of Fort St. George, Madras and Vellore Fort prepared under the instructions of his bosses in Sri Lanka. Photographer Haribabu went with him to Vellore Fort for that purpose and he got it photographed. Besides that, certain other Government buildings were also photographed by the said Haribabu. It was A-3 (Murugan), according to his own confession, who persuaded A-1 (Nalini) to associate with LTTE work by giving her repeated narrations of atrocities committed by IPKF soldiers on LTTE members. He made Nalini to become revengeful towards Rajiv Gandhi. He said that he had knowledge that Sivarasan and other top brass of LTTE were planning to murder an important personage of India. He knew it from the conversation he had with Sivarasan.

163. In Ext.P-81 he also referred to a letter written by Baby Subramaniam to Bhagyanathan (A-20) and two other letters written by Thanu and Suba to Pottu Omman and Akila (Ext. P-95 and Ext.P-96). A-3 (Murugan) further confessed in Ext.P-81 that on 20-5-1991 Sivarasan visited him and alerted him to be ready for the meeting to be addressed by Rajiv Gandhi next day. On 21-5-1991, A-3 (Murugan) alerted A-1 (Nalini) to move fast and reminded her that Sivarasan, Suba and Thanu might be waiting for her.

164. In the further portion of the confessional statement A-3 (Murugan) stated that Sivarasan expressed to him that he had accomplished his work though Haribabu and Thanu died in it. He stated further that on 25-5-1991 he along with A-1 (Nalini) and Suba accompanied Sivarasan to Tirupaty to visit the temple of Lord Venkateshwara. During that trip Sivarasan told him that it was with the help of a belt bomb connected to two switches that Thanu could explode the bomb and that it was Veluppillai Pirabhakaran's decision to utilize the girls to retaliate against Rajiv Gandhi because IPKF atrocities were done mostly on women. He also confessed that on 7-6-1991 he himself, Sivarasan, Suba

and A-2 (Santhan) met together at Astataka Temple and took a decision to go back to Sri Lanka.

165. In Ext.P-81, A-3 (Murugan) has further stated that Sivarasan told him to find out a girl from India for garlanding Rajiv Gandhi at a public meeting. This happened during the last week of March 1991. Then he realised that Rajiv Gandhi was the target. He believed that Rajiv Gandhi was responsible for all the atrocities which IPKF committed in Sri Lanka. He said that it was in April 1991 that Sivarasan brought Suba and Thanu to India. Then A-3 suggested that services of Nalini could be utilized for concealing the Sri Lankan identity of the girls. He further confessed that, on 18-4-1991 he along with Nalini and Haribabu attended the public meeting which Rajiv Gandhi addressed at Marina Beach, Madras during which Haribabu took photos of Rajiv Gandhi and supplied the photos to him and Sivarasan.

166. He also confessed in Ext. P-81 that on 7-5-1991 he attended the public meeting at Madras addressed by V.P. Singh and that A-1 (Nalini), the two girls (Thanu and Suba), Sivarasan and Haribabu were also with him then. He further confessed that the said function was attended by them for the purpose of conducting a trial as to how far the two girls would be able to go near the rostrum and garland a former Prime Minister. He mentioned in Ext.P-81 that Sivarasan scolded them for the failure to click the camera when the former Prime Minister was garlanded.

167. In substance A-3 (Murugan) has admitted in Ext.P-81 that he rendered a lot of help in carrying out the target of conspiracy i.e. the assassination of Rajiv Gandhi, though he did not go to Sriperumpudur. Except for the general criticism made against the prosecution case that all confessions were extracted by coercive methods no specific criticism has been raised as against Ext.P-81. We have no reason to think that Ext.P-81 is tainted due to any reason whatsoever.

168. Nonetheless, we can act on Ext.P-81 only if we are assured by other corroborative evidence. Prosecution has placed reliance on the confession of A-1 (Nalini) to be used as corroborative version. Learned Counsel for the defence cautioned us that the version of one accomplice should not be used to corroborate the version of an-other accomplice. Be that as it may, we have come across several other items of evidence which are of great corroborative value.

169. PW-120 (Sundarmani) who is the father of photographer Haribabu, said in his evidence that on 20-5-1991 A-3 (Murugan) went to his house in search of Haribabu and as the latter was not available A-3 (Murugan) instructed the witness to inform Haribabu about the visit, and that no sooner than Haribabu was told about it he left the house.

170. Ext.P-521 is a forged press accreditation card in the name of A-3 (Murugan) containing his photo also. This was seized from the house which A-3 (Murugan) had

taken on rent. Evidently it was a preparation to attend public meetings addressed by persons like Prime Minister or a former Prime Minister.

171. After the arrest of A-3 (Murugan) PW-282 (Inspector of CBI) seized six baggage which were buried in a pit. The baggage contained, among other things, Ext.P-95 and Ext.P-96 (letters written by Suba and Thanu to Pottu Omman and Akila after attending the meeting addressed by V.P. Singh on 17-5-1991). PW-86 (Mariappan) said in his evidence that he was staying in the house of one Sanmugham at Kodiakarai opposite to which some Sri Lankan people were staying, A-3 (Murugan) was one among them. PW-86 stated that one day A-3 (Murugan) told him to hand over a box to the witness and asked him to keep it till he returned from Madras. After A-3 (Murugan) left he was asked by his master (Sanmugham's brother) to bury the box. It contained six items. He collected those six items and tied them together in a plastic bag and buried them. It must be remembered that PW-86 was pointed out by A-3 when the CBI Inspector (PW-282) questioned him after the arrest.

172. PW-233 (Bharathi) said that she was staying at Royapetta, Madras and in the same house an other family consisting of A-20 (Bhagyanathan) and his mother A-21 (Padma) were residing. She said about the number of occasions when Sivarasan and A-3 (Murugan) were frequenting the house. She further said that she saw A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) in association with photographer Haribabu visiting the house and food was prepared for them. Sivarasan was also seen visiting them.

173. There is much evidence to prove that A-3 (Murugan) went to Tirupaty in the company of Sivarasan, Suba and Nalini on 25-5-1991. In this context we took into consideration that confession made by A-1 (Nalini) in which she has narrated her association with A-3 (Murugan) and the places which they visited together. We have dealt with those aspects earlier.

174. With the above corroborative items of evidence we are confident in relying on the confessional statement of A-3 (Murugan), as recorded in Ext.P-81, to be a true version. The active and positive involvement of A-3 (Murugan) in the conspiracy for assassinating Rajiv Gandhi looms large in the said confession. We have therefore no doubt that A-3 was also one of the conspirators.

175. A-4 to A-8 can be considered at a stretch, among them A-7 and A-8 can be considered together. Unlike the earlier considered accused A-4 to A-7 did not give any confessional statement to any person. Though A-8 gave a confessional statement his involvement, if at all any, in the conspiracy, cannot be seen different from that of A-7. So the first effort is to find out whether there is any circumstance or other evidence to prove the complicity of any one of those accused. Of course the trial court found all of them to be members of the conspiracy and convicted them of it.

A-4 SHANKAR:

176. A-4 (Shankar) has two other names, one is Koneswaran and the other is Russo. The circumstances unfurled in evidence as against him are these: (1) He was a full fledged LTTE member and came to India on 1-5-1991 in the group of 9 persons including Sivarasan, Suba and Thanu. (2) Ext. P-1062 (a sheet of paper) shows that A-4 (Shankar) would have met A-3 (Murugan) at Kodiakkarai and then the phone number of A-1 (Nalini) would have been supplied to him. (3) On 21-5-1991 he was staying at Esware Lodge which was a place frequented by Sivarasan. (4) In Ext.P-401 (a wireless message sent by Sivarasan to Pottu Omman on 9-6-1991) it was mentioned: "I got news that one of my associates was caught at Nagapattinam and he has told all the news about me." (5) When the news of arrest of A-4 was published Sivarasan communicated that fact to. Pottu Omman. (6) In Ext.P-1253, a diary, Sivarasan has mentioned having paid a sum of Rs. 10,000/- to A-4. (7) In Ext. P-439, Sivarasan has mentioned payment of Rs. 5,000/- to A-4 (Shankar).

177. The Special Judge of the Designated Court reached a conclusion, on the strength of the above narrated circumstances, that A-4 (Shankar) was a member of the conspiracy. It was contended by the learned Counsel for the defence that the above circumstances may, at the most, show that A-4 (Shankar) was actively involved in LTTE work because there is nothing to suggest that he ever knew that Rajiv Gandhi was going to be murdered. Of course the first among those circumstances has a strong tendency to create suspicion in our mind against A-4 (Shankar) but in the total absence of anything to show that the 9 passengers in the boat had talked about the assassination programme of Rajiv Gandhi or at least that Sivarasan or Suba or Thanu would have divulged it to others, there is great practical difficulty to fix up a premise that all of them shared any intention to murder Rajiv Gandhi when they set out the voyage from that island to India. It must be remembered that LTTE had several activities, even apart from murdering Rajiv Gandhi. So merely because a person is shown to be an active worker of LTTE that by itself would not catapult him into the orbit of the conspiracy mesh in order to murder Rajiv Gandhi. It cannot be forgotten that a conspiracy for that purpose would be strictly confined to a limited number of persons, lest, any tiny leakage is enough to explode the entire bubble of the cabal.

178. At any rate, we find it difficult to concur with the conclusion reached by the Special Judge that the aforesaid circumstances would unerringly point to the involvement of A-4 (Shankar) as a conspirator to assassinate Rajiv Gandhi. The worst that could be concluded from the afore-mentioned circumstances, assuming that they being all proved by the prosecution in this case, is that A-4 (Shankar) was also an ardent LTTE votary having close acquaintance with Sivarasan. But from that step of conclusion it is not legally permissible to ascend on to the highest tier and reach the final conclusion that he too was in the conspiracy to murder Rajiv Gandhi.

A-5 VIJAYANANDAN:

179. As against A-5 (Vijayanandan) the circumstances established are the following: (1) He too was in the 9-member group which clandestinely came to India on 1-5-1991. He had only a forged passport. (2) He stayed in Komala Vilas Lodge, Madras on 8th and 9th of May 1991 by showing a false address and also on a false pretext "to attend a marriage". (3) PW-75 said that A-5 stayed in his house and during then he was fuming with acerbity towards Rajiv Gandhi. (4) In a diary of Sivarasan (M.O.180) there is an entry showing that an amount of Rs. 50,000/- was given to "Hari Ayyah" on 8-5-1991.

180. In the first place we may point out that there is no substantive evidence in this case to show that A-5 (Vijayanandan) had another alias name as Hari Ayyah. Of course it is seen stated so by A-2 (Santhan) in the confessional statement but it has not been put to A-5 (Vijayanandan) when he was questioned under Section 313 of the Code. Even if it was put it is doubtful whether the said entry in the diary could have been used against A-5. However, the trial court upon the said circumstances reached the conclusion that he too was a member of the conspiracy.

181. It must be borne in mind that LTTE was a proscribed organisation in Sri Lanka and their members were indulging in secret activities for attaining a goal of independent Tamil Eelam in Sri Lanka. There were many, who were members of LTTE, living in India without exposing themselves lest they would be caught by the Sri Lankan authorities. Even prosecution has no case that all those who were members of the LTTE were also members of the conspiracy to murder Rajiv Gandhi. So the mere fact that someone was shown to be an LTTE votary and acquainted with the other accused persons in this case that by itself would not entangle him into the cobweb of the conspiracy to murder Rajiv Gandhi.

182. As in the case of A-4 (Shankar) the circumstances arrayed by the prosecution against A-5 (Vijayanandan) may, at the worst, show him to be an active LTTE votary. But beyond that stage the circumstances would not push him into the dragnet of the conspiracy.

A-6 SIVARUBAN:

183. A-6 (Sivaruban) was a boy in his teens when the incident took place. He also belongs to Sri Lanka. His left leg was amputated. Nevertheless he was an active LTTE member. The circumstances pitted against him by the prosecution are the following: (1) He was one among the 9 persons who arrived in India from Sri Lanka on 1-9-1991 in the company of Sivarasan. It was a clandestine voyage. (2) he was sent to Jaipur on 19-5-1991 by Sivarasan at the expense of LTTE. Though it was ostensibly for fixing up an artificial leg for him there is no evidence to show that the leg was fixed at Jaipur. (3) He stayed in Golden Hotel, Jaipur from 19-5-1991 to 23-5-1991 and then he shifted to Vikram Hotel, Jaipur. (4) M.O.667 series which were seized from the house occupied by A-3 (Murugan)

on 15-6-1991 contained a folio showing the telephone number and the address of A-6 (Sivaruban) at Jaipur. In a search conducted by the Inspector of CBI, Jaipur at Vikram Hotel on 20-6-1991 telephone numbers of A-15 (Thambi Anna) as well as A-9 (Robert Payas) were found out among the materials seized therefrom. (5) Ext.P-1200 is a letter which A-2 (Santhan) had written to A-6 (Sivaruban) dated 18-6-1991 in which A-6 was asked to shift from Vikram Hotel immediately.

184. The Special Judge of the Designated Court highlighted two features. First is, why should A-6, who is not a senior leader of LTTE, be sent to Jaipur when artificial leg could have been fixed at places like Madras and Bangalore. Second is, during the long period when he was in Jaipur he could not get the artificial leg fixed. Learned Special Judge took into account those features along with the circumstances enumerated above and came to the conclusion that there is force in the prosecution contention that A-6 (Sivaruban) was deputed to Jaipur for finding out a hide-out for Sivarasan and Suba to escape after assassination of Rajiv Gandhi.

185. There is no justification for reaching such a rash inference on the said evidence. If A-6 (Sivaruban) required an artificial leg it is not a proper query - why he could not have got it fixed at any other place. (It is an admitted fact that the institute at Jaipur for providing artificial legs is a very renowned one). Why one is preferring a particular Center to a less renowned place for such reparative devices, is too difficult a question for another person to answer. That apart, we do not know whether a period of one month is too long for completing the process of artificial leg attachment or whether any work was in progress at the center. At any rate no material has been placed in regard to those aspects.

186. A circumstance which created suspicion in the mind of the investigating agency was that A-6 (Sivaruban) also came to India along with the other 8 persons on 1-5-1991. That might be the reason why the associates of A-6 cautioned him that he too would be caught by the police and advised him to shift to another place. No doubt that is an incriminating circumstance against A-6 (Sivaruban). But it is too much a strain to jump to the conclusion, with the help of the aforesaid circumstance, that A-6 (Sivaruban) was also a conspirator for assassinating Rajiv Gandhi.

A-7 KANAGASABAPATHY AND A-8 ATHIRAI:

187. While considering the involvement of A-7 (Kanagasabapathy) it would be expedient to consider the case of A-8 Athirai alias Sonia (also called Gowri). Such a course was adopted by the trial court and we too feel that such a course would be advantageous. In fact the learned Counsel for the defence addressed arguments as for A-7 and A-8 together.

188. It must first be pointed out that no confessional statement was recorded by any person from A-7. A confessional statement attributed to A-8 is marked as Ext.P-97. We will refer to the said confessional statement before proceeding to other evidence concerning the said two accused.

189. A-8 is a girl hailing from Sri Lanka. She was in her teens during the days of conspiracy. Two of her sisters are now in Switzerland living with their husbands. A-8 (Athirai) had a love affair with a boy named Anand, but he died in a raid conducted by IPKF during 1989. She was recruited in the LTTE at the age of 16 and she was given a training in shooting. It was from her confessional statement that we got the idea of placement of Thanu and Suba in the LTTE ranking. The former was a member of "Black Women Tiger" and the latter was a member of the Army Branch of LTTE. The following facts are also mentioned in Ext.P-97:

When she was studying in 6th standard LTTE people visited her school and started the campaign for enlisting support from school children. She was then only aged 13. After reading a lot of literature on freedom struggle, Tamil culture etc. she decided to join LTTE when she was aged 16. She was christened by Veluppillai Pirabhakaran. She learnt shooting with AK-47. She was made to believe that IPKF, instead of protecting the Tamils was fighting against them and committing all sorts of atrocities on the innocent Tamilians of Sri Lanka.

190. In March 1991, Pottu Omman told her that if she would go to India the LTTE would meet all her expenses. She was introduced to A-7 (Kanagasabapathy). She understood that her work in India was to collect information about certain marked places in Delhi for facilitating the work of LTTE. She and A-7 (Kanagasabapathy) together left Sri Lanka and they reached India by boat in April 1991 and they stayed together in the house of a relative of A-7. Sivarasan helped her with money. After the murder of Rajiv Gandhi Sivarasan told her that thenceforth she would be looked after by A-2 (Santhan) as Sivarasan was apprehending arrest.

191. We have not found out any material whatsoever from the aforesaid confessional statement regarding her involvement in the conspiracy for Rajiv Gandhi murder. That young girl could not be attributed with even any knowledge that Rajiv Gandhi would be murdered. The worst that could be found against her is that her young mind was transformed into a stormy petrel of LTTE through brainwashing. That does not mean that she should necessarily have been cobbled into the conspiracy.

192. Over and above the circumstances pitted against A-7 on a par with A-8 (Athirai) it is proved that A-7 had gone to Delhi on 20-5-1991 with the money supplied by Sivarasan. He was accompanied by a person called Vanan and they both stayed in Delhi till 30-5-1991. Trial court drew an inference that Sivarasan would have sent A-7

(Kanagasabapathy) to New Delhi for fixing up a hide-out. Even if it was so, where is the evidence to show that A-7 was ever conspired with for the murder of Rajiv Gandhi?

193. In this connection reference has to be made to the testimony of two witnesses. PW-109 (Jai Kumari) is the niece of A-7 (Kanagasabapathy). She has stated in court that she has seen her uncle A-7 in the company of A-8 (Athirai) visiting "Higginbothams" (the famous bookseller) at Mount Road, Madras. They bought a map of Delhi and they were found enquiring for a book containing the addresses of VIPs. On 2-5-1991 Sivarasan was found talking with them and a few days thereafter they went away with Sivarasan, though A-7 used to visit her again infrequently. The witness said that when she saw the photo of Sivarasan connecting him with the murder of Rajiv Gandhi she asked her uncle about it. Then A-7 answered thus: "You are simply imagining many things. For Heaven's sake don't entertain any bad things about me and A-8. Otherwise you have to face God's punishment."

194. The Special Judge of the Designated Court drew an inference from the above talk of A-7 that he would have had the knowledge of the object of conspiracy. The above words said to have been used by A-7 to his niece could as well have been said as he was certain that he was not involved in the murder of Rajiv Gandhi. But the trial court took it the other way around.

195. PW-62 (Vimla) who is a teacher has stated in her Khandelwal Metal and Engineering Works v. Union of India MANU/SC/0123/1985: 1985 (20) ELT 222 (SC) evidence that it was Sivarasan who brought A-8 (Athirai) to her house and requested for accommodating her also in the house. (The witness has narrated how she came into acquaintance with Sivarasan). PW-62 further said that Sivarasan visited her house a couple of days after Rajiv Gandhi was killed and he talked with A-8 (Athirai). But later when the witness happened to see the photo of Sivarasan in the newspapers connecting him with the murder of Rajiv Gandhi she asked A-8 (Athirai) whether there was any truth in the news. A-8 strongly repudiated it and said that Sivarasan was a press reporter and he would have gone there to make a report of the function. Sivarasan visited A-8 on the same afternoon and then PW-62 (Vimla) requested Sivarasan to take A-8 away from that house. Sivarasan then said that he would not visit that house again. At the same time he warned the witness like this: "If anybody would identify him and give information about him he would meet the same fate as Padmnabha had". Thereafter Sivarasan did not visit PW-62 at all. It was A-2 (Santhan) who later took A-8 (Athirai) away from that house.

196. We have no reason to disbelieve the testimony of PW-62 or that of PW-109. We have no doubt from the aforesaid evidence that A-7 and A-8 were very close to Sivarasan who had taken much interest in them. But the question is, will that alone lead us to the conclusion that A-7 and A-8 were also associated with Sivarasan to the conspiracy to murder Rajiv Gandhi? In this connection it is well to remember that all those who worked for LTTE cause were familiar with Sivarasan. It is true that all conspirators had worked

in unison with Sivarasan and they were all ardent LTTE personnel. But the converse cannot be a necessary inference i.e. all those LTTE personnel who associated with Sivarasan should have been brought within the radius of the conspiracy to murder Rajiv Gandhi as participants thereof.

197. We entertain genuine doubt, in spite of the association that A-7 and A-8 had with LTTE Movement and also with Sivarasan, whether those two accused would have conspired with others in murdering Rajiv Gandhi.

A-9 ROBERT PAYAS:

198. Robert Payas was aged 25 during the relevant period. While he was in Sri Lanka he associated himself with LTTE work. He arrived in India on 20-9-1990. He was arrested in connection with Rajiv Gandhi murder case on 18-6-1991. Ext. P-85 is said to be the confessional statement given by him to the Superintendent of Police on 15-8-1991.

199. It has been narrated in Ext. P-85 that IPKF caught A-9 (Robert Payas) and detained him for 15 days along with some others, and during that time the army men committed a lot of atrocities in the houses of the detained persons. A suckling child of A-9 died in the army action. A-9 and his colleagues developed bitter hatred towards IPKF and the other rival organisations headed by Padmnabha.

200. The incriminating statements in Ext.P-85 are the following:

A-9 was in close contact with Kanthan (a senior LTTE leader) and Sivarasan, who came to India for carrying out a certain dreaded act. LTTE was bearing all the expenses of A-9 and his family and Sivarasan used to visit him frequently. In February 1991, Sivarasan and A-3 (Murugan) went to the house of A-9 and stayed there for a couple of days. A-2 (Santhan), Sivarasan and Kanthan used to chalk out plans for their movements while staying in the house of A-9. In the beginning of May 1991, Sivarasan brought Santhan to the house of A-9. On 5-5-1991 Sivarasan and A-2 (Santhan) had a talk with Haribabu, A-3 (Murugan), A-18 (Arivu) and A-9 (Robert Payas) at Marina Beach, Madras. Between 15th and 20th of May 1991, Kanthan, A-2 (Santhan) and two other persons of LTTE used to meet each other in the house of A-9 and while they were in dialogue Sivarasan was keeping them in close contact through phone.

201. It is further stated in Ext. P-85 that A-9 remained in his house on 21-5-1991 from the afternoon till next day expecting some message from Sivarasan. On 24th May, 1991 Sivarasan went to the house of A-9 riding a motorcycle but he felt that he could not see Kanthan in A-9's house. A-9 told that fact to Kanthan on the next day. On 27th May 1991, A-9 and A-2 (Santhan) decided between themselves to escape from the police. So he with his wife and sisters proceeded to Thiruchandur and from there they moved to other places in cognito.

202. From the above confessional statement recorded in Ext.P-85 it can be seen that A-9 had a serious involvement in the conspiracy with Sivarasan and Ors. for assassinating Rajiv Gandhi. But the question is whether Ext. P-85 can be treated as a reliable evidence. So our next effort is to find out whether there are other corroborating evidence.

203. Prosecution relied on the evidence of PW-197 (Dr. Claud Fernandez) who is a Dental Surgeon. He said in his evidence that he was residing just in front of the building where A-9 was residing. According to him, on the next day of the assassination of Rajiv Gandhi crackers were exploded in the house of A-9. The witness well remembers that A-9 and A-3 together visited his clinic. The aforesaid evidence of PW-197 has some corroborative value. There is no contention that the witness is speaking falsehood.

204. PW-59 (Raghu) has a Photo Studio at St. Thomas Mount, Madras. He said that A-9 and Sivarasan went to his studio on 15-9-1990 and got two photographs taken. Sivarasan then wrote his name and address in the records of the studio as follows:

R. Subaraj,
85 Gangai Amman Street,
Kodambakkam (Madras)

His version is supported by documentary evidence such as Exts.P-176 to P-184 (all are records kept in the studio).

205. In M.0.180 Diary, which is proved to be the diary of Sivarasan, there are umpteen entries showing various amounts paid to A-9. It is not disputed that the said diary belonged to Sivarasan and the entries were made at his instance.

206. In Ext.P-81 confessional statement, A-3 (Murugan) stated that a wireless set was installed in the house of A-9 at Porur by LTTE militant Kanthan. It was from that wireless set Sivarasan used to contact Pottu Omman at Sri Lanka.

207. The aforesaid items of evidence proved in this case have rendered the confessional statement made by A-9 in Ext. P-85 as wholly true. We therefore concur with the finding of the Special Judge that A-9 (Robert Payas) was very much involved in the conspiracy to assassinate Rajiv Gandhi.

A-10 JAYAKUMAR:

208. Jayakumar is the brother-in-law of A-9 (Robert Payas). (His sister Prema is A-9's wife). A-10 was lead into LTTE movement. He was sent to India in September 1990. He was arrested in connection with Rajiv Gandhi murder case on 26-6-1991. A confessional statement which is marked as Ext.P-91 is attributed to A-9. The incriminating statements in it are the following:

As IPKF committed lots of atrocities on LTTE people A-10 (Jayakumar) along with others felt very much annoyed. (A-9's little child died in one such IPKF action). So LTTE had decided to teach the leaders concerned a lesson. On 20-9-1990 A-10 reached India and met a hardcore LTTE personnel Nishanthan (who was also called Nixon). A house was arranged at a place called Porur for which an amount of Rs. 5,000/- was paid to the owner. Kanthan (another top ranking LTTE leader) used to supply money to A-10 and also to his brother-in-law A-9. A wireless set was installed by Kanthan inside the house of A-10 in order to facilitate the hardcore LTTE personnel to contact their Sri Lankan counterparts. Once he was told by Kanthan that a high ranking LTTE leader (Sivarasan) would be arriving in India for carrying out a dangerous plot. A similar information was passed on to him by his brother-in-law Robert Payas also. As Kanthan told him that a house was to be arranged for Sivarasan it was so arranged at Kodingayoor. In December 1990, Sivarasan was brought to A-10's house by his brother-in-law. He was directed to render all help to Sivarasan and he knew very well that the mission of Sivarasan was to execute a dangerous plot, Sivarasan used to supply enough money to A-10 (Jayakumar). Once Sivarasan brought a suit-case consisting of his diary, dress, a pistol and one AK-47 gun besides plenty of bullets. The pistol was concealed in a book in which a cavity was made out for containing the firearm.. Sivarasan used to carry the suit-case wherever he went. Once he went to Sri Lanka and on his return he brought Suba and Thanu. This was on the 2nd of May 1991. A-10 knew that Sivarasan brought those two girls for accomplishing the retaliatory plot. A-10 understood that Rajiv Gandhi was the focus of their hatred. He asked his wife to stitch a cloth cover for keeping the pistol of Sivarasan.

209. Regarding the activities on 21 -5-1991, A-10 (Jayakumar) is said to have confessed in Ext.P-91 that he saw Sivarasan keeping the pistol concealed and set out for the public meeting at Sriperumpudur. By midnight Sivarasan returned with Suba and Nalini and it was confirmed that Rajiv Gandhi was killed by Thanu. He saw Sivarasan going upstairs for talking with Santhan.

210. The further incriminating portions in Ext.P-91 are: On 22-5-1991 A-10 prepared meals for Sivarasan, Suba and Nalini and it was only on 23rd that Sivarasan left the house. Before leaving Sivarasan kept all his things in the suitcase, (except the pistol) and entrusted the pistol to A-10. The suit-case was put in a pit dug by A-10. As instructed by Sivarasan the pit was closed with a concrete slab and a painting was given on its surface.

211. The above is the substance of the confession contained in Ext.P-91. If that statement can be accepted as reliable we have no doubt that it would afford enough materials for concluding that A-10 (Jayakumar) was actively involved in the conspiracy to assassinate Rajiv Gandhi. In order to verify the truth of it we have to turn to other evidence which prosecution has adduced for corroboration purposes.

212. The first corroborative material pressed into service by the prosecution is the confessional statement made by his brother-in-law Robert Payas (A-9) in Ext.P.85. We have earlier found it acceptable and hence it can be regarded as a material to ensure confidence about the truth of the statement contained in Ext.P-91. Another item of evidence is the testimony of PW-63 (Smt. Kottammai). She is an employee of the Tamil Nadu State Electricity Board. She said that when she completed the house construction at Kodingayoor it was rented out to A-10 (Jayakumar) and his wife Shanti. Ext.P-217 is the rent agreement executed for the said purpose. PW-85 (Swaminathan) who is a nearby resident has stated that by the third week of December 1990 he saw A-10 and his wife occupying the new house of Kottammai. He also said that Sivarasan used to visit that house frequently and A-2 (Santhan) was also staying in that house from 6th May 1990 onwards. The witness remembers that Sivarasan started staying in that house from 22nd May onwards. He remembers the date because he knew that Rajiv Gandhi was murdered on the previous day. Nalini and Suba were also with Sivarasan. PW-85 further said that he noticed distribution of sweets in the house of A-10 by noon on 22nd May 1991.

213. PW-200 (Smt. Meera) who is another neighbouring resident gave evidence almost in the same manner as PW-85. What she further said was that Sivarasan was a regular visitor in the house of A-10 from January 1990 onwards and the witness noted Sivarasan bringing two girls in the first week of May 1991.

214. Testimony of those witnesses was believed by the trial court and we have no reason to take a different view. It is clear that the aforesaid items of evidence are of much corroborative value.

215. There is yet another circumstance which gives assurance about the involvement of A-10 with the conspiracy. When he was arrested and interrogated by PW-288 (Raghauthamam - one of the chief investigating officers) the accused gave the information that he had buried the suitcase and on the strength of the said statement the suit-case was unearthed. Ext.P-437 is the Mahassar which was prepared for it. (The statement which A-10 made pursuant to which the suit-case was unearthed was separately marked as Ext.P-1436). The articles contained the diaries of Sivarasan, the Sri Lankan Passport of A-2 (Santhan) besides some live cartridges and M.O.157 (which is a Tamil dictionary in which a cavity was carved out for keeping a pistol). PW-85 is a witness to the unearthing of the suit-case. He has stated that fact in his evidence.

216. Over and above the afore-narrated corroborative pieces of evidence prosecution has produced still further items of evidence. But we do not think it necessary to refer to all of them since we are fully satisfied even with the evidence already discussed above that the confessional statement contained in Ext.P-91 was made by A-10 and it is a true confession. We therefore conclude without hesitation that prosecution has succeeded in proving that A-10 (Jayakumar) was an active participant in the conspiracy for assassination of Rajiv Gandhi.

A-11 SHANTHI:

217. She is the wife of A-10 (Jayakumar). Except the fact that she accompanied her husband from Sri Lanka in September 1990 and continued to live with him in India we are unable to find any involvement for her in the conspiracy to murder Rajiv Gandhi. Learned Special Judge has considered her case, tagging it with her husband's case. We may point out, in this context, that no confession could be recorded from her under Section 15 of TADA. We have not come across any material, apart from her living with her husband A-10 (Jayakumar), to suggest that she had any role in the conspiracy. It is very unfortunate that for the role played by her husband she has been sentenced to death under Section 302 read with Section 120B of the Indian Penal Code.

A-12 VIJAYAN ALIAS PERUMAL VIJAYAN:

218. Vijayan was arrested on 8-7-1991 in connection with Rajiv Gandhi murder case. Ext.P-101 is a confessional statement said to have been recorded from him on 3-9-1991 by the Superintendent of Police as per Section 15 of TADA. We will first refer to the following incriminating passages in Ext.P-101:

A-12 (Vijayan) was conducting a workshop in Sri Lanka, but with the commencement of IPKF operation in the island the workshop ran into doldrums. That was a time when his wife was pregnant. He therefore thought of going to India for availing themselves of medical facilities, but then he found a hurdle that every Sri Lankan Tamil citizen wanting to leave the island had to pay Rs. 1500/- and two gold sovereigns to LTTE Movement. As A-12 (Vijayan) was in penury he approached LTTE leaders for exonerating him from the financial liability in crossing over to India.

219. He was then introduced to Sivarasan by a close relative. Sivarasan offered to meet all his expenses in going to India on a condition that he should work for LTTE. A-12 accepted the condition. On 12-9-1990, he, his wife (A-13) and his father-in-law (A-14) reached Rameshwaram. After getting themselves registered as Sri Lankan refugees they moved to Tuticorin.

220. In December 1990, Sivarasan visited them at Tuticorin and persuaded A-12 to shift his residence to Madras and take a house on rent so that the new arrivals of LTTE could also be accommodated therein. Sivarasan paid him Rs. 10,000/. So he and his family shifted to Madras.

221. On 2-5-1991 Sivarasan brought a suit case containing a wireless set and wanted A-12 (Vijayan) to keep it in his house. One person by name Nehru was also present along with Sivarasan. Sivarasan told A-12 that two girls would be brought from Sri Lanka for an

important work and requested to keep that information secret. Sivarasan paid him Rs. 10,000/- again.

222. After 3 days, Sivarasan brought Suba and Thanu to the house of A-12. He directed A-12 to dig a pit for keeping the wireless set as well as some guns. A-12 obeyed and he was helped by Nehru in digging the pit. On 21-5-1991 Sivarasan visited A-12's house at 12.30 noon and asked Thanu and Suba to get ready. Then the two girls went inside a room and after about an hour came out dressed up for going out. Sivarasan took the girls in an auto-rickshaw and left. On the next day Sivarasan reached A-12's house and disclosed to him that Rajiv Gandhi was murdered. He asked Nehru to transmit the message to Sri Lanka.

223. The remaining part of the confessional statement in Ext.P-101 contains the directives which Sivarasan gave to A-12 (Vijayan) which the latter had obeyed. But there is nothing in Ext.P-101 to show that A-12 ever knew before 22-5-1991 that Rajiv Gandhi would be murdered. Of course, he could have inferred that the important work which Sivarasan suggested would be some criminal activity but that does not mean he should necessarily have inferred that Sivarasan was targeting Rajiv Gandhi and was contemplating his assassination.

224. No doubt A-12 was very much used by Sivarasan without letting him know of his plan to murder Rajiv Gandhi. Nor did anyone else tell A-12 about it. Even from among the articles which PW-281 - a police officer recovered from his house (as per Ext.P-1359 Mahassar) nothing could be attributed to A-12 regarding his knowledge that Sivarasan was planning to murder Rajiv Gandhi.

225. But after the murder of Rajiv Gandhi A-12 (Vijayan) had helped Sivarasan very much to escape from being caught. In that endeavour he helped Suba also. It might be that Sivarasan could secure such assistance from A-12 on the strength of the financial assistance which he lavishly gave to A-12 and his family at the time of need. But we are unable to stretch the inference further backward to think that A-12 played any part in the conspiracy to murder Rajiv Gandhi.

A-13 SELVALUXMI:

226. Selvaluxmi is the wife of A-12 (Vijayan). Except that she was living with her husband she had no other role apart from what her husband did. She was arrested on 16-5-1992. Trial court dealt with the case of A-13 in conjunction with that of her husband A-12 (Vijayan). We note that the investigating agency could not elicit any confession from her. The result is there is practically nil evidence to show that A-13 was ever involved in the conspiracy to assassinate Rajiv Gandhi.

A-14 BHASKARAN:

227. Bhaskaran is the father-in-law of A-12 (Vijayan) and father of A-13 (Selvaluxmi). His involvement in the conspiracy was considered by the trial court conjointly with the discussion pertaining to A-12 and A-13. As from him also the investigating agency could not elicit any confession under Section 15 of TADA.

228. Though there is no evidence to show that he had any prior knowledge of the plan to murder Rajiv Gandhi there is evidence to show that after A-14 (Bhaskaran) came to know of the assassination he tried to protect Sivarasan and others from being caught or detected.

229. PW-97 (Chokkanathan) is the brother-in-law of A-14 (Bhaskaran). That witness has said in his evidence that on 21-6-1991 his brother-in-law (A-14) expressed a desire to have a larger house on rent by saying that such a house was necessary to accommodate certain important persons. A-14 (Bhaskaran) initially hesitated to divulge the identity of those important persons to PW-97, but later he disclosed that the house was meant for Sivarasan and Suba who were involved in Rajiv Gandhi murder case. PW-97 said that on hearing the said information he refused to help his brother-in-law, but his brother-in-law became very angry and gave a warning that if the information is divulged to the police he (PW-97) might have to meet his end. Next morning A-14 left the house of PW-97.

230. Shri Altaf Ahmad, learned Additional Solicitor General contended that the aforesaid conduct of A-14 is enough to draw the inference that A-14 was also privy to the conspiracy. But we are unable to stretch the inference to such a farthest extent. The evidence of PW-97 would certainly indicate that A-14 was interested in securing a safe place for Sivarasan and Suba to escape from police detection and also to save them from being caught by the police. It is quite possible that he would have been persuaded to help Sivarasan and Suba on the strength of the help which Sivarasan rendered to the family. It may be possible to go one more step further that perhaps Sivarasan would have disclosed to A-14 that Rajiv Gandhi was murdered at his behest and sought the help of A-14 to escape from police detection.

231. We can only conclude that A-14 would have harboured Sivarasan and Suba and also tried to screen them from being caught by the police.

A-15 SHANMU GAVADIVELU ALIAS THAMBI ANNA:

232. He was arrested on 16-5-1992, The Superintendent of Police recorded a statement on 17-5-1992. Claiming that it is a confessional statement it was marked by the prosecution as Ext.P-139. But its admissibility was resisted on the ground that it does not contain any passage which incriminates him. We will just reproduce the contents of what he said in Ext-P. 139.

233. In the year 1987, he and his wife with two children and his nephew left Sri Lanka and reached India. He had to get permission from LTTE for leaving Sri Lanka and Kjttoo (LTTE leader) helped him in that regard. In the first week of May 1991, Sivarasan and A-2 (Santhan) sought his help to get an introduction to PW-62 (Vimla) - a teacher. He obliged them. Later A-2 met him and requested him to keep some good amount in safe custody. As he agreed to do so A-2 (Santhan) gave him Rs. 1.25 lacs on one occasion (which was about a week prior to the murder of Rajiv Gandhi) and on a subsequent occasion A-2 (Santhan) entrusted Rs. 3.20 lacs to him. About 4 days prior to Rajiv Gandhi murder A-2 (Santhan) collected Rs. 70,000/- from him and a week after the assassination A-2 collected Rs. 3.12 lacs from him and after some days the balance amount was also collected. A couple of days later A-8 Athirai visited him, by which time the photo of Sivarasan appeared in newspapers as having involved in Rajiv Gandhi murder case. Thereupon A-15's wife resented any LTTE people visiting the house. A-15, in fact, asked A-2 (Santhan) as to why the photo of Sivarasan appeared in newspapers as involving in Rajiv Gandhi murder case. A-2 explained that there is nothing to worry about it.

234. The above are the important contents in Ext.P-139. It is needless to point out that the said statement is lacking any inculpatory admissions. On the contrary, it is mostly exculpatory. Even apart from that, prosecution could not adduce any tangible evidence against A-15 (Shanmugavadivelu), not even to doubt that he had any involvement in the conspiracy to murder Rajiv Gandhi. Of course, the conspirators would have found A-15 as a reliable person for keeping their money. We must not forget the fact that A-15 hailed from Sri Lanka and he got some help from LTTE people for going away from the island to India. The mere fact that A-2 (Santhan) had chosen A-15 as a safe person to keep money is hardly sufficient to conclude that he was involved in Rajiv Gandhi murder conspiracy.

A-16 RAVICHANDRAN AND A-17 SUSEENDRAN:

235. In dealing with the case against the above two accused we have necessarily to deli the offences under Sections 3(3) and 3(4) and 5 of TADA and Section 5 of the Explosive Substance Act and Section 3(1) of the Arms Act, for a certain obvious reason. It is an admitted fact that A-16 and A-17 were tried in another criminal case for the aforesaid offences read with Section 120-B of Indian Penal Code, inter alia, certain other counts of offences, A-16 and A-17 and a host of some other persons were arrayed in CCI of 1992 before a Designated Court, Poonamallai, Chennai (Madras). As per judgment dated 23-1-1998 they were convicted of those offences and sentenced to varying terms of imprisonment. It is also an admitted fact that the said judgment has become final and the convicted persons involved therein have undergone the punishment period.

236. Shri N. Natarajan, learned senior counsel for A-16 and A-17 contended that those accused are not liable to be tried again for the said offences since the facts now stated by the prosecution were substantially the same as were involved in CC 7 of 1992. Shri Altaf Ahmad, learned Additional Solicitor General made a strong bid to show that as the said

trial was not in connection with the assassination of Rajiv Gandhi the facts cannot be regarded as the same. We have no doubt that A-16 and A-17 cannot use the judgment in CC 7 of 1992 as a shield against the charge under Section 302 read with Section 109-B and under Section 212 of IPC. But the other offences found against them were based on the same facts of which they were tried for such offences in CC 7 of 1992. This can be discerned from the narration of facts in the aforesaid case.

237. Learned Counsel for the accused had produced a certified copy of the judgment in CC 7 of 1992. A-16 (Ravichandran) in this case was arrayed as A-2 in that case and A-17 (Suseendran alias Mahesh) in this case was arrayed as A-3 in that case. Relevant portion showing the facts in that case appearing in paragraph 2 of the judgment is extracted here:

A. 1 to A.32 together and in separate groups at various places such as Palaly, Jaffna in Sri Lanka, Coimbatore, Udumalpet, Pollachi, Madras, Vaniyambadi, Palani, Kaniyur, Dindiguland Pudukkottai conspired together and agreed to do illegal acts by illegal means like to form an armed force by name 'Tamil National Retrieval Troop' with an intention to overawe the Government established by law, cessation of Tamil Nadu from Indian Union and to strike terror in people and to exhort members of TNRT, to indulge in disruptive activities and make preparations for the same to fulfil their object, to achieve their object by procuring arms, ammunitions, bombs, wireless sets and other explosive substances, to loot police armories in Tamil Nadu for the said purpose, to aid, abet, advice and knowingly render assistance for acts preparatory to terrorist and disruptive activities and to harbour terrorists and destructionists and persons who conspire or attempts to commit or advocate, abet, advise or incite or knowingly facilitate the commission of a terrorist or disruptive activity, everyone did their best at different stages to achieve their common design.

238. The period of the aforesaid activities, as involved in that case, covered between 1987 and end of 1991. Section 300(1) of the CrPC contains the ban against a second trial of the same offence against the same person. Sub-section (1) reads thus:

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2), thereof.

239. The well-known maxim 'nemo debet bis vexari pro eadem causa' (no person should be twice vexed for the same offence) embodies the well established Common Law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Procedure Code is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it

ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.

240. Though Article 20(2) of the Constitution of India embodies a protection against second trial after a conviction of the same offence, the ambit of the sub-article is narrower than the protection afforded by Section 300 of the Procedure Code. It is held by this Court in Manipur Administration v. Thokehom Bira Singh MANU/SC/0065/1964: [1964] 7 SCR 123 that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the sub-article embodies the principle of autrefois convict Section 300 of the Procedure Code combines both autrefois convict and autrefois acquit.

241. Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) of the Code, or he could have been convicted for such other offence under Section 221(2) of the Code. In this context it is useful to extract Section 221 of the Procedure Code.

221. Where it is doubtful what offence has been committed.-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

242. As the contours of the prohibition are so widely enlarged it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial. We have absolutely no doubt that the offences which we have indicated above were fully covered by the trial in CC 7 of 1992, and therefore the prosecution is debarred in this case from proceeding against A-16 and A-17 for the aforesaid offences. Consequently the conviction and sentence passed by the Designated Court as per the impugned judgment for offences under Sections 3(3), 3(4) and 5 of TADA and also Section 5 of the Explosive Substance Act as well as Section 3(1) of the Arms Act on A-16 and A-17 are hereby set aside.

243. Now, we have to consider the case of A-16 (Ravichandran) for the offences under Section 302 read with Section 120-B of IPC as a member of the criminal conspiracy to assassinate Rajiv Gandhi.

244. A-16 (Ravichandran) is a Sri Lankan citizen. He was arrested on 20-10-1991 in connection with Rajiv Gandhi murder case. The Superintendent of Police (CBI) has recorded a statement which is said to contain the confession made by A-16 on 14-2-1992. It is marked in this case as Ext.P-121. The incriminating statements, as for this case contained in Ext.P-121 can be extracted after excluding the facts which were the subject matter of CC 7 of 1992.

245. A-16 (Ravichandran) and his companion A-17 (Suseendran) reached India in December 1990. He met Sivarasan as instructed by him near Devi Theatre. A few days hence Sivarasan handed over to A-16 a sum of Rs. 1.5 lacs for buying any kind of vehicle for the use of LTTE movement. Sivarasan gave A-16 a contact number (2343402) for any urgent need which might arise. A-16 went to the house of A-10 Jayakumar at Kodingayoor along with Sivarasan and on his instructions went to the Airport at Madras to know how security arrangements were in force when a VIP arrived. A-16 reported to Sivarasan that the first gate of the old Airport could be used for sneaking in. A-16 reminded Sivarasan that three months have already elapsed after they reached India but still A-16 did not know the target. Sivarasan then replied: "We need not go in search of the target but the target would come in search of us." Sivarasan further assured A-16 that the crucial situation would arrive very soon.

246. The further incriminating statements in Ext.P-121 are the following:

Sivarasan asked A-16 to start a make-believe Travel Agency at Delhi. A-16 collected Rs. 2 lacs from Sivarasan and a few days later collected a further sum or Rs. 5 lacs for the said purpose. However, Sivarasan cautioned him to start the Travel Agency only after getting definite instructions from him. Pottu Omman (one of the topmost LTTE hardcore) supplied a particular code number to A-16 for transmitting wireless messages. They are: No. A.9 for A.17, and No. P.O 91 for Pottu Omman. On 1st or 2nd of May 1991, A-16 met Sivarasan near Shanti Theatre (Madras) as directed in a letter which he got from his aunt (Lokmatha). On 13th or 14th of May, A-3 (Murugan) reached the same place with a suitcase. In the presence of A-16 one of the LTTE petrel "Sokkan" asked A-3 (Murugan) "why the work of Sivarasan has not yet reached the target? and A-3 gave the following reply: "why worry, it would take place and it must happen." Thereafter A-16 kept silence without putting further questions.

247. On 20-5-1991, A-16 was in the house opposite to Shanmugham's house. At 12.30 in the night the news that Rajiv Gandhi was killed was communicated to them. Then he and others left the place. Sokkan later told A-16 that death of Rajiv Gandhi was advantageous for LTTE movement.

248. The remaining portion of the confession in Ext.P. 121 relates to the joint activities of himself, Sivarasan, SubaandA-17. When much later he heard that Sivarasan and Suba died by consuming capsules he felt very sad. The rest of the statement relates to his continued contacts with Pottu Omman and other leaders of the LTTE.

249. If the aforesaid confession is true and reliable it can be treated as a safe foundation for resting a finding that A-16 was involved in the conspiracy to murder Rajiv Gandhi. True, A-16 did not divulge in so many words in that confession about the identity of the target of Sivarasan. But it is very clear from Ext.P-121 that A-16 knew about it. In December 1990, he was deputed to India to carry out the execution of an "important mission" and he was instructed to obey the direction of Sivarasan for that purpose. When he knew that Rajiv Gandhi was a target he wanted to get that confirmed from Sivarasan and that is why he asked Sivarasan in plain language -whether it was Rajiv Gandhi. The silence adopted by Sivarasan helped him to confirm it. All the activities done by him thereafter were in facilitation of the aforesaid common design. It has now to be considered whether the confessional statement made by A-16 has been corroborated in material particulars.

250. PW-206 (Lokmatha), the aunt of A-16, has said in her evidence that Sivarasan was found contacting A-16 in March 1991, and on another occasion Sivarasan entrusted one letter to her for handing over to A-16. The witness said that when the letter was given to A-16 he read it and immediately went out of the house. On 23-5-1991 Sivarasan again visited her house, but when he noted that A-16 was absent there he gave one more letter to the witness to be handed over to A-16. A couple of days thereafter PW-206 handed over that letter to A-16. He left the house and from the next day she found Sivarasan and A-16 in her house and both of them left together.

251. PW-217 is the husband of PW-206 and gave evidence substantially in tune with the version of his wife.

252. PW-133 (Karpagam) and her husband Shanmugham Sundaram (PW-208) said in their evidence that A-17 (Suseendran) visited them on 28-5-1991 along with Suba, and A-17 introduced her as his wife by name Mallagi whom he recently married. Both the witnesses believed that representation to be true and thought that a wedding gift should be presented to them. They purchased a wrist watch and gave it to A-17 as wedding present. Later A-17 and Suba paid Rs. 1000/- as price of the wrist watch saying that they were in need of it. They stayed in the house of those witnesses. In their evidence they said that on 2-6-1991 Sivarasan together with A-16 visited A-17. Later the witness saw the photo of Suba in the newspaper connecting her with Rajiv Gandhi murder. When A-17 was asked about it he first denied it and later admitted it and said that her name was Suba. However, A-17 gave a warning to both the witnesses not to disclose such things to anyone else.

253. Ext. P-149 is the diary of Sivarasan in which there is an entry showing that Sivarasan met A-16 near Devi Theatre. PW-56 (Utham Singh) said that he was running a grocery shop under the caption "Ebenezer Stores" at Porur. The telephone number of his Stores is 2343402. The witness said that some Sri Lankans who were residing nearby were availing

themselves of the said telephone facility for calling outside. He mentioned Sivarasan, A-2 (Santhan), Kanthan etc. among those who used the telephone. It was the said number which Sivarasan had supplied to

A-16 as a contact number.

254. Ext.P-411 dated 16-6-1991, Ext.P-417 dated 19-6-1991, Ext.P-419 dated 20-6-1991 and Ext.P-423 dated 21-6-1991 are all wireless messages sent by Pottu Omman. Those messages contain exhortations that A-16 should help Sivarasan to escape to Sri Lanka.

255. The above items of evidence which corroborate the confessional statement of A-16, give us confidence to believe that Ext.P-121 is a true version of A-16's involvement in Rajiv Gandhi's murder. So it can safely be concluded that A-16 was also a member of the criminal conspiracy.

256. As for A-17 a confessional statement is attributed to him claiming that it was recorded under Section 15 of the TADA (Ext.P-123). Here also we have to exclude those portions which relate to the offences covered by CC 7 of 1992. The remaining incriminating statements in Ext.P-123 are the following:

In December 1990, he met Sivarasan. Pottu Omman asked him to go to Tamil Nadu. He went to Madras and met A-16 at Marina Beach (Madras) and A-16 asked him to recruit more people to LTTE. He then set out on a tour to Pollachi, Coimbatore, Palani, and reached Madras on 26th May 1991. He met A-16 at Madras. When he met Sivarasan at Thiruvallur Bus Stand (Madras) Suba was introduced to him. They all went to Trichi.

257. A-17 has further said that he went with A-16 and Suba to Pollachi where he and Suba stayed in the house of PW-208 by pretending that Suba was his wife called Mallagi and Sivarasan was her brother.

258. It is not necessary to reproduce the further portion of the confessional statements as they relate to the efforts to save Sivarasan and Suba. We have no doubt that A-17 would have got information as to how Rajiv Gandhi was murdered at least when he met Suba and Sivarasan. But there is nothing in the confessional statement to indicate that he knew it at any time before the assassination. Nor is there any material which points to A-17's knowledge prior to 21-5-1991 about Sivarasan's target. Of course Ext.P-121 and the evidence of PW-206, PW-217, PW-133, PW-208 and PW-181 as also the recovery of the walkie-talkie as per Ext. 1172 would show that A-17 was actively helping Sivarasan and Suba to escape from the clutches of law. But that is not enough to credit him with the advance knowledge of Rajiv Gandhi's murder. It is equally possible that he, on coming to know of the predicament of LTTE personnel like Sivarasan and Suba, would have developed a desire to help them. But that is not enough to conclude that he had prior knowledge that Rajiv Gandhi would be murdered.

A-18 PERARIVALAN ALIAS ARIVU:

259. He was aged 20 during the relevant period. He is the son of a Tamil poet called "Kuyildasan". He was arrested on 18-6-1991 in connection with the murder of Rajiv Gandhi. PW-52 (Superintendent of Police, CBI) has recorded a confessional statement attributed to him. It is marked as Ext.P-87.

260. The following inculpatory passages in Ext.P-87 are said to be the confessions made by him: He had close association with LTTE people from 1989 onwards. He was selling LTTE publications such as "Tamil Eelam" and "Urumal". While he was in Sri Lanka he had an opportunity to meet Veluppillai Piribhakaran and other leaders of LTTE. The former sought A-18's help for LTTE services. It excited him. When he learnt that Tamil people in Sri Lanka were suffering a lot due to the atrocities committed by IPKF he developed a vengeful attitude towards Rajiv Gandhi. In the second week of October, 1990 he and A-19 (Irumborai) reached India by boat along with some other LTTE people. From February 1991 onwards he was residing with A-20 (Bhagyanathan) in a house at Roypetta, Madras. A-3 (Murugan) was also staying there. In March 1991, A-18 accompanied A-3 (Murugan) to Vellore for preparing a sketch of the Fort because LTTE prisoners were interned there. Blasting of Vellore Fort for rescuing LTTE prisoners was one of the programmes of LTTE in India.

261. In the further portion of Ext.P-87 it is stated that Kanthan, Sivarasan and Nixon were visiting A-3 (Murugan) occasionally and from their conversation A-18 understood that they were planning to carry out a very dangerous task. A-18 had his own reasons to think that the target of the said dangerous task was Rajiv Gandhi. In fact, Sivarasan asked him in April 1991 whether A-18 could work in unison with him and then A-18 agreed to do so. After this Sivarasan went to Sri Lanka.

262. After Sivarasan came back from Sri Lanka he asked A-18 to get a large sized car battery and some clips etc. A-18 bought a battery from a shop near LIC Building at Madras by giving a false name "Rajan" and a false address. He bought some wire and other accessories from another shop near Midland Theatre. A-18 took Sivarasan to a motor shop on 4.5.1991 and bought a motorcycle in his own name but giving a wrong address. He also bought two batteries (9-Volt Golden Power Battery) and handed them over to Sivarasan for using to blast bomb.

263. On 7-5-1991 he attended the public meeting addressed by V.P. Singh at Madras along with Suba, Thanu, A-3 (Murugan) and A-1 (Nalini). He bought a millimeter from a shop at Richie Street, Mount Road, Madras as Sivarasan wanted them.

264. He further confessed that on 20-5-1991, he went to A-20 Bhagyanathan's house. There he found Sivarasan, A.1 (Nalini), A.3 (Murugan) and Haribabu. Sivarasan divulged to

them about the public meeting which Rajiv Gandhi might address on the next day. A-18 (Arivu) thereupon gave a colour film (Kodak) to Haribabu,

265. On 21-5-1991, A-18 (Arivu) and A-20 (Bhagyanathan) went to see a film at 9.30 P.M. While returning he came to know that Rajiv Gandhi was murdered. So on the next day he packed up his things including TV and VCR and kept them in the house of a friend of him. On 23-5-1991, Sivarasan met him and gave full details of the incident in which Rajiv Gandhi died. Sivarasan conveyed to them that Haribabu also died in the bomb-blast. Sivarasan then asked A-18 (Arivu) to make all efforts to retrieve the dead body of Haribabu.

266. As days passed A-18 (Arivu) felt that he would be caught by the police. He therefore left his friends and stayed with his parents at Jolarpet. It was during the said period that Sivarasan's photo was published in the newspapers connecting him with Rajiv Gandhi's murder.

267. If the above incriminating portions in Ext.P-87 can be relied on as true confession they would uphold the prosecution case for convicting A-18 of criminal conspiracy to murder Rajiv Gandhi.

268. One of the contentions raised against the said confession is that A-18 (Arivu) was not given any time for reflection after eliciting that he was prepared to give a confession. But a perusal of the proceedings which led to the recording of Ext. P-87 shows that on 14.8.1991 preliminary questions were put to him by PW-52 (Superintendent of Police, CBI) but no confession was recorded on that date. It was on 15.8.1991 that PW-52 called him again. Even from the first question put to A-18 (Arivu) it is clear that the interval was intended to afford a period of reflection for A-18. The Superintendent of Police, CBI (PW-52) has also said the same thing in his evidence. In such a situation there is no scope for contending that A-18 was not afforded sufficient opportunity for reflection.

269. It seems there are a lot of circumstances to assure the truth of the statements in Ext.P-87.

270. M.O.49 is the sketch of the Vellore Fort which is said to be prepared by A-18 (Arivu). PW-75 (Basant Kumar - a freelance artist) has said in his evidence that he was engaged by LTTE people for printing books. He said that A-18 met him in February 1991, and gave him certain telephone numbers. One was that of Kittoo who was then in London. It was intended for effecting payments regarding the printing charges. The witness further said that A-18 gave him a letter of Veluppillai Pirabhakaran in which receipt of the books printed by him was acknowledged. By the beginning of May 1991, A-18 took this witness to Trichi and introduced him to A-2 (Shanthan). The witness further said that A-18 was found fuming with hatred towards Rajiv Gandhi for the atrocities which IPKF committed

in Sri Lanka. On 10th May 1991, A-18 went to this witness's house with Sivarasan. We have no reason to disbelieve the above testimony of PW-75.

271. PW-23 (Bharathi - a nurse) is the sister of A-20(Bhagyanathan). She said in her evidence that A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) were staying in the same house. M.O.286 - a diary of Sivarasan contains the entry regarding the amount paid to A-18.

272. PW-149 (Latha) said that she had acquaintance with LTTE people through A-20 (Bhagyanathan). She identified A-18 as one of the LTTE strong men. The witness said that she saw A-18 (Arivu) and A-20 (Bhagyanathan) conversing with each other at the press where this witness was working.

273. PW-91 (Moideen) is a salesman in Hindustan Training Company, Roypetta High Road, Madras. He said in his evidence that during second week of May 1991, A-18 (Arivu) had purchased two batteries from his shop. He mentioned a reason for remembering that it was, A-18 who purchased the batteries. Whatever be the reason, the fact remains that it was on the strength of the information supplied by A-18 that the Investigating Officer (PW-266 Venkateswaran) came to know of PW-91's shops. The inference is therefore irresistible that A-18 would have pointed out the shop and PW-91 the salesman as the person from whom A-18 had purchased two "9-Volt Golden" batteries.

274. In this context it is significant to note that a little portion of one battery was recovered from the place of occurrence. When that was tested at the Forensic Laboratory it was found to be the portion of a 9-Volt golden battery.

275. Another item of evidence to corroborate the confession of A-18 is the further portion of the testimony of PW-266.¹ The witness said that from the interrogation of A-18 he came to know of PW-88 (Dalip Chodia) who is dealer of a firm called "International Tyre Service" at Mount Road, Madras. The copy of a Cash Bill was proved through PW-88 as Ext.PW-447. It is in respect of a Bill issued in the name of one Rajan, Door No. 6, Lady Madhavan Street, Mahabalipuram, Madras. The Bill is in respect of selling an Exide Battery No. EM-3878.

276. PW-281 (M. Narayanan) is the Deputy Superintendent of Police, CBI. He said in his evidence that when he interrogated A-18 on 2-8-1991, he got the information that LTTE books and literature and cassettes were kept by A-18 in the house of PW-210. Pursuant to the said information 49 items were recovered from the said house. Ext. 1344 is the Mahassar prepared for that purpose. It contains the list of the articles which is consistent with the statement made by A-18.

277. We have no reason to disbelieve or reject the above items of evidence. It is not necessary to refer to yet other items of evidence which prosecution has presented for corroborating the confessional statement of A-18 (Arivu) because even with the help of those which we have adverted to above we are satisfied that A.18's confession in Ext. P-87 has been corroborated in material particulars.

278. We therefore reach the conclusion that A-18 (Arivu) was actively involved in the criminal conspiracy to assassinate Rajiv Gandhi.

A-19 IRUMBORAI:

279. Irumborai is an Indian citizen. His original name was Duraisingam. After he joined the Rationalists' Organisation of Dravida Kazhakam he changed his name as Irumborai. In a meeting of Dravida Kazhakam held in 1985 a resolution was adopted to give full support to the Tamil liberation movements in Sri Lanka.

280. A-19 (Irumborai) was arrested on 9-10-1991. The most important item of evidence placed by the prosecution against him is Ext.P-117 which is a statement recorded by PW-52 (Superintendent of Police, CBI) on 3-12-1991 under Section 15 of TADA which is said to be a confessional statement. No doubt Ext.P-117 contains inculpatory statements about A-19 trying to screen the offenders in Rajiv Gandhi murder case and to harbour some of them. But on the crucial question whether he was a party to the conspiracy to assassinate Rajiv Gandhi, following portion of the statement would throw light.

He was in contact with A-2 (Santhan), Suresh Master and some other leaders of LTTE. In the second week of May 1991 he went to Trichi as per the instructions of Suresh Master (a leader of LTTE) and collected an amount of Rs. 15.000/- from A-2 (Santhan) to be delivered over to Suresh Master. Then he was told by A-2 (Santhan) that LTTE was making arrangements to kill "an important leader quickly."

281. It is clear that A-19 (Irumborai) did not then understand who that leader was because A-19 then asked A-2 (Santhan) whether that leader could be "Vazhappadi". A-2 (Santhan) in his answer did not confirm it or deny it but expressed ignorance about the identity of the person and also about the manner by which it was to be accomplished. A-19 (Irumborai) further said in the confessional statement that when he heard the above answer from A-2 (Santhan) he did not talk with anybody else on that subject. He also said that he knew that Rajiv Gandhi was murdered in a bomb blast only on 22-5-1991. On hearing the news he became frightened.

282. The rest of the confessional statement relates to the help rendered by him to Sivarasan, Suba, Nehru, Vicky etc. to hide themselves from police catch.

283. Thus it is not discernible from the confessional statement whether he knew that Rajiv Gandhi was going to be murdered. But his own thinking was that it was Vazhappadi (a local leader of Tamil Nadu) who was the target. When that doubt was eliminated there is no material to show that he knew that the target of the plotters was Rajiv Gandhi. Prosecution relies on a letter which Trichy Santhan (a top ranking LTTE personnel) had written to A-19. That letter is dated 7-9-1991 and is marked as Ext.P-128. (It is not necessary to embark on a discussion regarding the proof of Ext. P-128-letter written by Trichy Santhan, as the defence counsel has agreed that it can be taken as proved). In Ext.P-128 an advice seems to have been given to A-19 (Irumborai) like this: "Don't say that Rajiv incident was known before."

284. It is admitted that Trichy Santhan died later. Prosecution wants to press into service the aforesaid advice of Trichy Santhan to prove that as a matter of fact A-19 knew about Rajiv Gandhi incident earlier and that is why he was advised not to say so.

285. There are two hurdles before we take up that piece of evidence into consideration. First is that it was a statement made by a person who is now dead. It does not relate to any transaction of the circumstances which resulted in his death. So the statement would not fall within the ambit of Section 32 of the Evidence Act. Second is that if the statement has to be brought within the ambit of Section 10 of the Evidence Act the pre-condition has to be satisfied that we must have reason to believe that A-19 and Trichy Santhan were members of the conspiracy to murder Rajiv Gandhi. Even assuming that the said statement can be brought under Section 10 of the Evidence Act, the question is -will it be a conclusive inference therefrom that the sender of the letter knew that fact earlier? It could be an advice given to A-19 (Irumborai) that he should not loosely talk that he knew about Rajiv Gandhi's murder earlier. It does not necessarily mean that A-19 (Irumborai) knew it earlier.

286. Even taking the alternative interpretation, the worst is that the sender of the letter (Trichy Santhan) would have believed that the sender had advance knowledge of Rajiv Gandhi's murder. Could it not have been possible for A-19 to clarify to Trichy Santhan that there was no need to give such an advice because he in fact did not know about it earlier.

287. In whatever way it is looked at we have difficulty to credit A-19 (Irumborai) with the advance knowledge of Rajiv Gandhi's murder on such a fragile material.

288. We are therefore inclined to extend to A-19 the benefit of reasonable doubt regarding his involvement in the conspiracy for assassinating Rajiv Gandhi though we are fully satisfied that he was involved in helping the offenders to escape from police.

A-20 BHAGYANATHAN:

289. Bhagyanathan is an Indian citizen. He is the brother of A-1 (Nalini) and son of A-21 (Padma). During the relevant period he was aged 25. He has passed B.Com. degree examination. He and his mother were residing in the Nurses Quarters of "Kalyana Nursing Home", Madras where his mother was working. His father was a Sub-Inspector of Police.

290. He was arrested on 10-6-1991 in connection with Rajiv Gandhi murder case. PW-52 Superintendent of Police, CBI recorded a statement from him which is marked as Ext. P-69. Prosecution wants to treat it as a confessional statement recorded under Section 15 of the TADA. The following are said to be the inculpatory statements in Ext.P-69.

291. In 1988, A-20 (Bhagyanathan) got himself acquainted with Muthuraja who was an important person in LTTE and they became friends. Through him A-20 secured friendship with Baby Subramaniam - another LTTE senior leader. A-20 was allured to LTTE movement by Muthuraja. In course of time he became friendly with A-18 (Arivu). Muthuraja arranged a press to be transferred to A-20 and he agreed to print LTTE publications at that press.

292. According to A-20, he and his family shifted the residence to a house at Roypetta on 26-1-1991. He accommodated A-3 (Murugan) also to stay in the said house as Muthuraja requested him to do so. His mother raised objections to the said accommodation but he prevailed upon her to agree. Muthuraja went back to Sri Lanka in February 1991.

293. The further contents in Ext. P-69 are that A-3 (Murugan) brought Sivarasan to the house of A-20 in the month of April 1991. He sent a letter to Baby Subramaniam on 9-5-1991 offering full co-operation for the cause of Tamil liberation in Sri Lanka. The letter was sent per A-3 (Murugan). On 20-5-1991, Haribabu visited the house of A-20 at Roypetta. A Kodak film was obtained from Arivu and A-20 gave it to Haribabu.

294. Regarding the activities on the day of assassination of Rajiv Gandhi A-20 (Bhagyanathan) has stated in Ext.P-69 that on 21-5-1991 A-18 (Arivu) and himself went to the house of Muthuraja. A-18 who returned to the house at 9.30 P.M., after seeing a cinema show, came to know of Rajiv Gandhi's murder. The other confessions in Ext.P-69 are that on 23-5-1991 Sivarasan reached the house and informed them that Haribabu also died; and on 24-5-1991, A-20 (Bhagyanathan) compelled his mother to go along with Sivarasan, Suba and A-1 (Nalini) to Tirupaty. The confession shows that A-20 (Bhagyanathan) destroyed LTTE stickers which remained with him. When he saw the photo of Sivarasan in the newspapers connecting him with Rajiv Gandhi's murder case A-20 became very much bewildered.

295. The above statement of A-20 (Bhagyanathan) cannot be taken as a confession. He did not know that Rajiv Gandhi was going to be assassinated. He did not say anything in Ext.P-69 which would have at least impliedly connected him with Rajiv Gandhi's murder or the conspiracy. He was, of course, a strong sympathiser of LTTE.

296. Even assuming that the statement recorded in Ext.P-69 is a confessional statement there is no confession that A-20 ever knew that Rajiv Gandhi was going to be assassinated.

297. One of the materials which prosecution has pressed into service as a circumstance involving A-20 (Bhagyanathan) with the conspiracy is, Ext.P-128 letter which is said to have been written by Trichy Santhan to A-19 (Irumborai) on 7-9-1991. We have already discussed about the proof of that letter and so we proceed on the assumption that the letter was written by Trichy Santhan. The following passage in the letter is made use of by the prosecution as against A-20 (Bhagyanathan):

Speaking about the mistakes of Raghuvaran's people like Arivu, Baby Anna Press, Haribabu and Subhasundaram, such things would not have occurred if our own people were utilised as was done in the case of Padmnabha.

298. It is not disputed that the reference to Raghuvaran means Sivarasan, Baby Anna means A-20 (Bhagyanathan), Subhasundaram means A-22 and Arivu means A-18.

299. The first question is how far is that reference in Ext.P-128 admissible as against A-20. The writer of that letter Trichy Santhan is now no more. The letter does not speak to any transaction of the circumstances which resulted in his death. Nor has the cause of his death come into question in this case. Hence, the said reference cannot fall under the purview of Section 32 of the Evidence Act.

300. But the greater effort made was to bring it within the ambit of Section 10 of the Evidence Act. The primary condition to invoke the said Section is the existence of "reasonable ground to believe" that Trichy Santhan and A-20 (Bhagyanathan) had conspired together to commit an offence. When the very question whether A-20 was a party to the conspiracy, is being considered the aforesaid primary hurdle forecloses the use of the contents of Ext.P-128 as against A-20 (Bhagyanathan).

301. Barring the above materials we are unable to find that A-20 was party to the conspiracy to murder Rajiv Gandhi.

A-21 PADMA:

302. She is the mother of A-1 (Nalini) and A-20 (Bhagyanathan). As pointed out earlier she is a nurse. She was arrested on 10-6-1991 in connection with Rajiv Gandhi's murder,

303. We may say at the outset, regarding A-21 (Padma), that it is very unfortunate that she too was convicted as a conspirator in Rajiv Gandhi murder case and was sentenced to hanging. We are unable to find anything which involves her in the conspiracy. Of course there is some evidence to show that A-21 (Padma) is privy to accommodate some

of the offenders in Rajiv Gandhi murder case. At the most she is liable to be convicted of that offence.

304. Ext.P-73 is said to be a confessional statement given by PW-21 on 7-8-1991 and that too was recorded under Section 15 of the TADA. A-21 is said to have confessed the following.

Muthuraja brought A-3 (Murugan) to her house in February 1991. A-21 (Padma) was not willing to accommodate him in the house. But she was prevailed upon by A-3 (Murugan) not to raise any objection. A-3 (Murugan) used to help the family with money. Sivarasan was brought to her house by A-3 in March or April 1991. On 20-5-1991, Sivarasan brought Suba and Thanu to her house. Till then they were in the house of A-1 at Villivakkom. Some medicines were given by A-21 to Thanu as she had a sprain on the leg.

305. A-21 (Padma) has further said in Ext.P-73 that in the morning of 21 -5-1991 she went to her Nursing Home as usual and returned in the evening. Late in the night she came to know of the assassination of Rajiv Gandhi when A-18 and A-20 told her about it.

306. In the further portion of Ext.P-73 she has stated that on 23-5-1991, she came to know from her daughter (A-1 Nalini) the details of the killing of Rajiv Gandhi at Sriperumpudur. According to A-21 she became frightened on hearing the said information and at the same time she started worrying about her daughter (A-1 Nalini) and her son-in-law (A-3 Murugan). When the photo of Thanu appeared in the newspapers A-21 (Padma) started entertaining a fear that she too would be embroiled in the case.

307. The above is the substance of her statement in Ext.P-73. A reading of it would show that A-21 had no inkling whatsoever that Rajiv Gandhi was going to be murdered. Of course, as a mother it was a concern for her when she knew that her daughter (A-1) and her son-in-law (A-3) were wanted by the police in connection therewith.

308. The only inculpatory statement in Ext.P-73 is that she harboured the offenders in her house after coming to know that they were involved in the murder of Rajiv Gandhi. She is liable to be convicted of that.

A-22 SUBHA SUNDARAM:

309. He is a photographer. He was running a Photo Studio by name "Subha News Photo Service" at Madras. Haribabu was a cameraman attached to the said Photo Studio. (Haribabu died along with Thanu during the bomb blast at Sriperumpudur.) No confessional statement was elicited from A-22 which could be used under Section 15 of TADA. Hence prosecution had to depend upon certain circumstances alone for establishing the charge against him. Such circumstances are the following: Im 16

(1) Ext.P-544 is an article prepared by A-22 on 5.8.1989. (It was written in the handwriting of PW-116 - Girija Vallabhan on the dictation given by A-22). Ext.P-544 contains a scathing criticism of the activities of IPKF in Sri Lanka.

(2) The camera which Haribabu carried to the scene of occurrence belonged to A-22.

(3) On 22-5-1991, A-22 told some others that he and Haribabu met together on 21.5.1991. (PW-108 Santhana Krishna), PW-120 (Sundaramony) and PW-151 (Ravisankaran are the witnesses who spoke about it.)

(4) When a search was conducted by the police in the Photo Studio of A-22 on 5.6.1991, LTTE literature and cassettes were recovered. Ext.P-1354 is the Search List prepared then.

(5) In a letter which Trichy Santhan wrote to A-19 (Irumborai) on 7.9.1991 (Ext.P-128) he criticised the supporters of Sivarasan. Among such supporters the name of A-22 was mentioned by Trichy Santhan.

(6) PW-172 (Ramamurthy) another photographer who happened to be at the place of occurrence said in his evidence that A-22 asked him whether he could have brought back the camera of Haribabu from the scene of occurrence.

(7) PW-205 (Smt. Parimalam) a cousin of Haribabu said that she got a phone call in the name of A-22 advising her to remove all the papers and cassettes from the house of Haribabu.

(8) PW-258 (Vazhappari Ramamurthy) said that A-22 told him on 23.5.1991 and also on 27.5.1991 to enquire about the camera which Haribabu carried to Sriperumpudur.

(9) A-22 persuaded the father of Haribabu to issue a press statement that Haribabu had no knowledge in Rajiv Gandhi murder case. In fact A-22 drafted that statement for the witness.

The trial court found that all the above 9 circumstances were proved and are reliable. On that basis the Special Judge further found that A-22 was a member of the conspiracy, and that he had harboured the offenders. Learned Counsel for A-22, contended that even if all the above circumstances are found to be legal evidence it would not form a completed chain for the court to draw any conclusive inference.

310. We too are of the definite view that the aforesaid circumstances, even if all of them are assumed to be legal evidence, would hardly be sufficient to prove the involvement of A-22 in the conspiracy to murder Rajiv Gandhi.

311. That apart, if the circumstances are individually analysed, many of them cannot be treated as incriminating circumstances at all. A-22 would have been a critic of IPKF activities in Sri Lanka. He would have been a sympathiser of LTTE movement. Those two premises are discernible from the aforesaid circumstances.

312. Of course there is one circumstance which, if found reliable, would be incriminating to A-22. It was spoken to by PW-205 (Parimalam) that A-22 phoned her up and advised her to remove the incriminating articles from the house of Haribabu. But the difficulty regarding that evidence is, PW-205 (Parimalam) never knew A-22 and she had never heard his voice earlier. So her evidence is hardly sufficient for holding that A-22 called her over the phone. Anybody else could have called her in the name of A-22.

313. Most probably A-22 was the owner of the camera which Haribabu took to Sripurumpudur. So A-22's concern was to get his valuable property back. He would have sought the help of others for that purpose. The conduct of A-22 can only show that he evinced much interest for securing his property. But that can hardly be a circumstance which is consistent only with the guilt of the accused.

314. We cannot therefore concur with the finding of the trial court that A-22 was a member of the conspiracy to assassinate Rajiv Gandhi.

A-23 DHANASEKARAN alias RAJU:

315. He was arrested on 13.10.1991 in connection with Rajiv Gandhi's murder. He was conducting a Motor Transport Company at Tuticorin. Ext.P-113 is the record containing his statement which PW-52 (Superintendent of Police, CBI) recorded on 4.11.1991. It is sought to be used as his confessional statement.

316. But the difficulty with Ext.P-113 is, it shows clearly that A-23 had absolutely no knowledge about the murder of Rajiv Gandhi. The following passage in Ext.P-113 would bear testimony to it:

On 21st May, I was in my house at Mettur. Then only I heard the news that Rajiv Gandhi died due to bomb explosion at Sripurumbuthur. The news was flashed through papers and television. Later, I came to know that LTTE organisation is the main cause for that assassination and Sivarasan, Subha and Thanu were involved in that murder.

Of course, his statement thereafter in Ext.P-113 shows that he too was involved in helping the offenders to escape. It is not necessary to refer to those passages in Ext.P-113 because learned Counsel for the accused has fairly conceded that he is not attacking the finding of the trial court regarding the offence under Section 212 of the IPC.

317. One circumstance which the trial court used against A-23 is that he purchased a Maruti Gypsy (M.O.540) on 14.11.1990. There is evidence to prove that fact. There is also

evidence to prove that the said vehicle was used by Sivarasan, Suba and others for moving from one place to other, but all such travels were subsequent to the assassination of Rajiv Gandhi. The trial court concluded on the strength of the aforesaid evidence like this:

Thus M.O.540 Maruti Gypsy purchased in November, 1990 in Salem before the assassination of Rajiv Gandhi was used by A-24, and Sivarasan, Subha and A-26 and other accused, after the assassination of Rajiv Gandhi. The close association between these accused is thus proved by the prosecution beyond doubt. Purchase of M.O.540 Maruti Gypsy and its subsequent use by the members of the conspiracy also proves the involvement of A-23 in the accomplishment of the object of conspiracy.

318. The aforesaid leap jump to such a conclusion is impermissible and contrary to the well established principles governing circumstantial evidence. We therefore dissent from the trial court's conclusion regarding A-23's involvement in the conspiracy to murder Rajiv Gandhi.

A 24 RAJASURIYA alias RANGAN:

319. He is a Sri Lankan citizen. He was aged 27 during the relevant time. He was arrested on 29.8.1991 in connection with Rajiv Gandhi murder, PW-52 (Superintendent of Police, CBI) recorded his confessional statement on 23.10.1991 as per Section 15 of TADA. It is marked as Ext.P-109.

320. A-24 (Rangan) has stated in Ext.P-109 that he was working for LTTE in Sri Lanka and he reached India in 1989 and that he stayed at Thiruvanniyur. He was conducting a Travel Agency business without obtaining the required permission for it. He said that he was making fake travel documents for his clients and he was closely associated with LTTE movement in India. He further stated that in April 1991, he got acquainted with Trichy Santhan and Suresh Master and A-18 (who were all senior leaders of LTTE). A-24 (Rangan) was given an assignment to look after the injured LTTE fighting men. In Ext.P-109 he further said that in May 1991 he was asked by Suresh Master to arrange transportation of LTTE men to different places. But A-24 did not say that he had any knowledge about Rajiv Gandhi's murder before the assassination took place. In June 1991, A-24 himself gave hospitality to Sivarasan, Suba and Suresh Master and thereafter they were helped to escape by a Tanker Lorry,

321. It is not necessary to extract the further portion in the confessional statements as they contain his admissions regarding the activities which he carried on for helping Sivarasan and others to escape from police nabbing. We have no doubt that A-24 had harboured the offenders and helped them to escape from the police net.

322. But regarding the crucial fact whether A-24 had any involvement in the conspiracy to assassinate Rajiv Gandhi, the confessional statement is of no help because it does not even indicate that he had any prior knowledge about the same.

323. PW-65 (Mridula) is the wife of A-26 (Ranganath). She said in her evidence that on 2.8.1991 her husband brought A-24 and some other persons who are accused in the Rajiv Gandhi murder case. Suba was also among such persons. On the next day, a green Maruti Gypsy van reached their house. When she viewed the television programme she knew that Sivarasan and Suba were wanted by the police in connection with the aforesaid case. PW-230 (Selvaraj) was the person who drove the Tanker Lorry. PW-22 (Sathyamoorthy) said that on 8.8.1991 A-24 brought a Maruti Gypsy for painting. The witness painted it with white colour.

324. The above items of evidence would also help in finding that A-24 was actively helping the accused to escape from the police. Learned Additional Solicitor General argued that considering the fact that he was an active LTTE votary and also considering his activities during the post assassination days it is possible to draw an inference that he too was involved in the conspiracy to murder Rajiv Gandhi.

325. Such an inference is not a necessary inference, for, it is equally possible to think that A-24 being an active LTTE votary, would have decided to help other LTTE people to escape from the police clutches though he knew about their involvement in the assassination of Rajiv Gandhi only after he himself came to know that the former Prime Minister was assassinated.

A-25 VIGNESWARAN (r) VICKY:

326. He is a Sri Lankan citizen. He was aged 28 during the relevant period. He was, by profession, a cleaner of vehicles. He was arrested on 4-2-1992 in connection with Rajiv Gandhi murder case. A statement was elicited from him on 24-2-1992 which has been marked as Ext.P. 127. Prosecution treated it as a confessional statement under Section 15 of the TADA.

327. A-25 (Vicky) has admitted in Ext.P-127 that he was working for LTTE movement from 1985 onwards. He moved to India when his house was destroyed by Sri Lankan Army in 1987. He was acquainted to Trichy Santhan by middle of 1990. Another LTTE member called Dixon was introduced to him. When he was staying in Trichy he was doing some business in medicines for which Trichy Santhan extended financial help to him.

328. In the further portion of Ext.P-127 he has stated that 2 days after the murder of Rajiv Gandhi he was told by Trichy Santhan not to venture to stay in Trichy any more. Hence he decided to shift to Coimbatore and agreed to take over all the medicines for which

Trichy Santhan had placed orders. He came to know of Sivarasan only after the newspapers published the photo of that person though he had seen him before.

329. The rest of the statements in Ext.P-127 contain clear admissions of the activities of A-25 (Vicky) for helping Sivarasan, Suba etc. to escape from the police. However, there is absolutely no statement of him in the document which could be used to involve him in the conspiracy to murder Rajiv Gandhi. Apart from his role in helping some of the accused who were wanted by the police in Rajiv Gandhi murder case there is no evidence to suggest that A-25 (Vicky) had even knowledge that Rajiv Gandhi would be murdered by anyone whom he knew.

330. The trial court, after referring to various items of evidence, concluded in paragraph 2373 of the Judgment that "A-25 was also instrumental in the transportation of Sivarasan, Suba and Nehru from Madras to Bangalore in M.O. 543 Tanker-Lorry driven by PW-230 Selvaraj". It is a conclusion which needs no interference,

331. But Thereafter learned Special Judge proceeded to mention that A-25 identified the photo of the Tanker-Lorry and also the photos of Sivarasan, Suba and Nehru and even the photos of dead body of Suba, Suresh Master and Sivarasan. The trial court adverted to his association with Trichy Santhan. After making reference to such facts learned Special Judge made a long leap to reach the next conclusion like this: "All the above evidence and circumstances would go to establish the active part played by A-25 in consonance with the directions of Trichy Santhan in furtherance of the object of the conspiracy."

332. We are unable to uphold the second conclusion regarding A-25 (Vicky) for want of any evidence and also for the reasons set out by us in the preceding paragraphs.

A-26 RANGANATH:

333. The trial court at the close of the discussion of evidence against A-26 has entered the following finding in paragraph 2419 of the Judgment:

From the foregoing discussion and analysis of evidence proved by the prosecution it has to be concluded that A-26 harboured Sivarasan and Suba, who were proclaimed offenders and the other accused A-24 Rangan, Nehru, Suresh Master, Driver Anna and Amman in his house at Puttanahalli and subsequently at Konanakunte voluntarily and willingly without any fear to his life.

334. The above is the only finding on facts which the learned trial Judge appears to have made regarding the role of A-26. Thereafter no discussion is seen made about his activities. But learned Judge had held in paragraph 2451, that A-26 is also guilty of the offence under Section 120-B read with Section 302 IPC and rest of the offences included in the charge.

335. We have no difficulty to concur with the finding of the trial court that A-26 (Vicky) is guilty of offences under Sections 212 & 216 of the Indian Penal Code. In this context we may point out that PW-65 is the wife of A-26, and apart from her evidence the testimony of PW-218 (Anjanappa), PW-223 (Rajan) and PW-229 (Jayasankar) were read out to us. In the trial court a plea was made on behalf of A-26 that he is prelisted by Section 94 of the Indian Penal Code. We do not think it necessary to advert to that plea now in view of the concession made by the learned Counsel for A-26 that the appeal as for A-26 is not pressed regarding the offences under Sections 212 & 216 of the IPC because the accused concerned had already undergone the sentence of imprisonment awarded by the trial court as for those two counts.

336. But at the same time we have to point out that there is absolutely no evidence whatsoever for connecting A-26 with the conspiracy to assassinate Rajiv Gandhi. In fact, the prosecution did not even bother to establish that A-26 had no knowledge that anybody would be plotting to murder Rajiv Gandhi. It is very unfortunate that the trial court has convicted A-26 also of the offence under Section 120-B read with Section 302 IPC and sentenced him to be hanged.

337. Now, we come to the stage of deciding who are all liable to be convicted and of which offences. We may point out that learned Counsel for the accused submitted at the Bar that it is not worthwhile, at this distance to time, to press the appeal of the appellants as against the conviction under Sections 212 & 216 of IPC, Section 14 of the Foreigners Act, Section 6(1 -A) of Wireless and Telegraph Act, 1933, Section 3 of the Wireless Act and Section 5 of the Explosive Substance Act as well as Section 12 of the Passports Act.

338. For the reasons set out in the preceding paragraphs of this Judgment we confirm the conviction of the offence under Section 120-B read with Section 302 IPC as against A-1 (Nalini), A-2 (Santhan alias Raviraj), A-3 (Murugan alias Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran alias Ravi) and A-18 (Perarivalan alias Arivu). We shall deal with the question of sentence for the said offence separately. However, we set aside the conviction and sentence passed on all the accused under Section 120-B of the IPC read with all the other counts of offences (except Section 302 IPC). We also set aside the conviction and sentence passed by the trial court on those appellants who were convicted of offences under Section 3(3), Section 3(4) and Section 5 of TADA.

339. We confirm the conviction passed by the trial court for the offences under Sections 212 & 216 of the IPC, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substance Act, Section 12 of the Passports Act, and Section 6(1-A) of the Wireless and Telegraph Act, 1933, in respect of those accused who were found guilty of those offences. However, as the sentence awarded by the trial court in respect of those offences did not exceed imprisonment for a period of two years we are not disposed to disturb the sentence passed by the trial court on those counts. It is for the

jail authorities to consider the question of releasing those accused who have already undergone the period of rigorous imprisonment for two years, and against whom there is no conviction confirmed under any other counts of offence, as they are entitled to be set at liberty forthwith.

340. In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Royert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) all the remaining appellants shall be set at liberty forthwith.

SENTENCE REGARDING OFFENCE UNDER SECTION 302 READ WITH SECTION 120-B OF IPC:

341. Now we have reached the proximity of the terminus of a long journey. But the remaining stage is the hardest and the most tedious sector - to decide on the sentence passed for the offence under Section 302 read with Section 120-B IPC.

342. We have before us only two alternatives - death or life term. The trial judge opted to award the former for all the 26 appellants. This was dubbed as amounting to judicial massacre by the defence counsel, while the Additional Solicitor General endeavoured to justify the imposition of extreme penalty.

343. A fervent plea was made to us that the high profile of the celebrity dimension of the targeted victim should not colour our judicial vision in determining the sentencing extent. But the other side of the picture was etched by pleading that the court cannot adopt a Nelson's eye to the stark reality that the target of the dastardly intrigue was a leader who represented bulk of the nation's population in whom the nation reposed its faith and trust for a full term. Be such factors as they may - we would proceed to discharge the task as law enjoins.

344. Both sides cited a number of decisions of this Court in support of their respective pleas - one for retention of the sentence and the other for choosing the next alternative. Decisions which held the field before the introduction of the Code of Criminal Procedure, 1973 do not afford any help because the Criminal Procedure then obliged the court to pass death sentence for murder as a general proposition and the alternative sentence could be awarded only in exceptional cases for which the court was then required to advance special reasons. After 1973, there was a complete reversal to the approach. Thereafter, life imprisonment was made the normal sentence for murder and death penalty was allowed to be passed only in exceptional cases. The criminal courts were required to state special reasons for choosing the latter. But the decisions rendered during the aforesaid second stage were divided into two categories with the pronouncement of the decision of this Court in Bachan Singh v. State of Punjab MANU/SC/0055/1982: 1980 Cri LJ 636.

345. During pre Bachan Singh period the Sessions Court was free to choose death penalty in any case where special reasons could be advanced. But during post Bachan Singh period even that was drastically changed as the Constitution Bench made it impermissible to award death sentence except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed.

346. As the law which has been pronounced in such unreserved language on the subject, holds the field ever thereafter we are required to remind ourselves of the legal position adumbrated by the Constitution Bench in Bachan Singh's case (*supra*). The following is the ratio which emerged after making a detailed analysis of various view points on the sustainability of the provision empowering the court to pass death sentence:

It is therefore imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

347. The Constitution Bench, however, did not agree with the approach adopted by a three-Judge Bench of this Court in *Rajendra Prasad v. State of U.P.* MANU/SC/0212/1979: 1979 Cri LJ 792 that focus of special reasons has shifted from the crime to the criminal. On that part, the majority view in Bachan Singh is the following:

As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case.

Their Lordships accepted the broad contours of the circumstances cited before them by one of the learned Counsel as having mitigating impact. The Constitution Bench has observed, on the aforesaid submission of the counsel, as follows:

We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence.

Three such circumstances which the court was told about are the following:

(1) The age of the accused - if the accused is young or old the sentence of death should be avoided.

(2) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(3) That the accused acted under duress or domination of another person.

348. Bearing the above principles in mind we have now to determine whether the death sentence passed by the trial court should be confirmed or not in respect of the 7 accused whose conviction of the offence under Section 302 read with Section 120-B we have confirmed. There can be no two opinions that looking at the crime conspectus of what was perpetrated at Sriperumpudur it was most dastardly to the superlative degree. Those who machinated to bring about such a horrendous crime cannot normally escape the extreme penalty of law. As the law enjoins that we have to look at the criminals also we are duty bound to look at it from that perspective also.

349. The conspirators in the Rajiv Gandhi assassination can be vivisected into four broad categories.

First, those who formed the hardcore nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth, those among the conspirators who participated in the actual commission of murder.

350. Persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction. Veluppillai Piribhakaran, Pottu Omman, Akila, Sivarasan and Trichy Santhan have been described as persons falling within the radius of the first category. As they were not tried for the offences so far we refrain from observing anything concerning them in the sphere of sentencing exercise.

351. However, we can hold with certainty that A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) belonged to the second category even if they slip out of the first. They were not merely carrying out the orders of the first category personnel but they made others to work according to their directions in order to achieve the target. The role played by them was prominently direct and active. They were in the leadership layer among the conspirators. We are not able to find out anything extenuating as for the said three persons in their activities for implementation of the decisions of the cabal.

352. We therefore confirm the extreme penalty imposed by the trial court on A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) for the offence under Section 302 read with Section 120-B of the IPC.

353. A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any dominating role. She was persistently brain-washed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Thanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women and girls of Tamil origin in Sri Lanka. By such indoctrinate exercises she would have honestly believed in the virtue of offering her help to the task undertaken by the conspirators. In the confessional statement made by her brother A-20 (Bhagyanathan) he revealed one fact i.e. A-1 (Nalini) had confided to him on 23-5-1991 itself that as a matter of fact she realised only at Sriperumpudur that Thanu was going to kill Rajiv Gandhi. Perhaps that may be a true fact. But she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini) to get extricated herself. She knew how Sivarasan and Santhan had liquidated those who did not stand by them. Padmnabha's episode would have been a lesson for her. Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company the mere fact that she became obedient to all the instructions of Sivarasan, need not be used for treating her conduct as amounting to "rarest of the rare cases" indicated in Bachan Singh's case.

354. Another consideration which we find difficult to overlook is - she is the mother of a little female child who would not have even experienced maternal huddling as that little one was born in captivity. Of course the maxim "Justitia non novit patrem nee mortem" (Justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As we have confirmed the death sentence passed on the father of that small child an effort to save its mother from gallows may not militate against *jus gladiate* " so that an innocent child can be saved from imposed orphanhood.

355. Thus, on an evaluation of the plus and minus, pros and cons -we persuade ourselves to save A-1 (Nalini) from gallows. Hence the sentence passed on her is altered to one of imprisonment for life.

356. What remains is the case of A-9 (Robert Payas), A-10 (Jayakumar), and A-16(Ravichandran). They do not belong to the first or even to the second category. They were LTTE followers and they just obeyed the commands of leaders like Sivarasan who

had the capacity to dominate over them. We are inclined to alter their sentence from death penalty to imprisonment for life. We order so.

357. The appeals filed by all the 26 accused and the proceedings submitted by the Special Judge of the Designated Court under Section 366 of the CrPC are disposed of in the aforementioned terms.

D.P. Wadhwa, J.

358. I have studied the draft judgment prepared by my learned and noble brother K.T. Thomas, J. It is a judgment so well written, but, regrettably, I find myself unable to agree with him entirely both on certain questions of law and conviction and sentence proposed by him on some of the accused. Moreover, keeping in view the fact that since sentence of death passed on 26 accused by the Designated Court has been submitted to this Court for confirmation evidence needs to be considered in somewhat greater detail, I venture to render separate judgment.

359. On the night of 21.5.1991 a diabolical crime was committed. It stunned the whole nation. Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb. With him 15 persons including 9 policemen perished and 43 suffered grievous or simple injuries. Assassin Dhanu an LTTE (Liberation Tigers of Tamil Elam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer (and also a conspirator) engaged to take photographs of the horrific sight, also died in the blast. As in any crime, criminals leave some footprints. In this case it was a camera which was found intact on the body of Haribabu at the scene of the crime. Film in the camera when developed led to unfolding of the dastardly act committed by the accused and others. A charge of conspiracy for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946, and the Indian Wireless Telegraphy Act, 1933 was laid against 41 persons, 12 of whom were already dead having committed suicide and three absconded. Out of these, 26 faced the trial before the Designated Court. Prosecution examined 288 witnesses and produced numerous documents and material objects. Statements of all the accused were recorded under Section 313 of the CrPC (Code). They denied their involvement. The Designated Court found them guilty of the offences charged against them. Thereafter all the accused were heard on the question of sentence. Designated Court awarded death sentence to all of them on the charge of conspiracy to murder. "A judicial massacre", bemoaned Mr. Natarajan, learned senior counsel for the accused, and rightly so in our opinion. Designated Court also sentenced each of the accused individually for various offences for which they had been separately charged.

360. In view of the provisions of Section 20 of TADA, Designated Court submitted the sentence of death to this Court for confirmation. The accused also filed appeals under Section 19 of TADA challenging their conviction and sentence.

361. The accused have different alias and while mentioning the accused name it may not be necessary to refer to them with all their respective alias and alias of an accused will be indicated wherever necessary. There is no dispute about these alias. For proper comprehension of the facts it will be appropriate to refer to the appellants as accused,

362. Three absconding accused are (1) Prabhakaran, (2) Pottu Amman alias Shanmuganathan Sivasankaran and (3) Akila alias Akilakka. Prabhakaran is alleged to be the supreme leader of Liberation Tigers of Tamil Elam (LTTE) - a Sri Lankan Tamil organization, who along with Pottu Amman, Chief of Intelligence Wing of LTTE, Akila, Deputy Chief of Women Wing of LTTE, and others designed criminal conspiracy to assassinate Rajiv Gandhi and commit other offences in pursuance thereof.

363. Deceased accused (DA) who are alleged to be the members of the conspiracy and died either by consuming cyanide or in the blast or by hanging are:

1. S. Packiachandran alias Raghavarajan alias Sivarasan
2. Dhanu alias Anbu alias Kalaivani
3. SubhaaliasNithya
4. S. Haribabu
5. Nehru alias Nero alias Gokul
6. N. Shanmugam alias Jayaraj
7. Trichy Santhan alias Gundu Santhan
8. Suresh Master
9. Dixon alias Kishore
10. Amman alias Gangai Kumar
11. Driver Anna alias Keerthy
12. Jamuna alias Jameela

The accused, who are put on trial and are appellants before us, are:

A-1 S. Nalini,

A-2 T. Suthendaraja alias Santhan

A-3 Sriharan alias Murugan alias Thas alias Indu Master

A-4 Shankar alias Koneswaran A-5 D. Vijayanandan alias Hari Ayya

A-6 Sivaruban alias Suresh alias Suresh Kumar alias Ruban

A-7 S. Kanagasabapathy alias Radhayya

A-8 A. Chandralekha alias Athirai alias Sonia alias Gowri

A-9 B. Robert Payas alias Kumaralingam

A-10 S. Jayakumar alias Jayakumaran alias Jayam

A-11 J. Shanthi

A-12 S. Vijayan alias Perumal Vijayan

A-13 V. Selvaluxmi

A-14 S. Bhaskaran alias Velayudam

A-15 S. Shanmugavadivelu alias Thambi Anna

A-16 P. Ravichandran alias Ravi alias Pragasam

A-17 M. Suseendran alias Mahesh

A-18 G. Perarivelan alias Arivu

A-19 S. Irumborai alias Duraisingam

A-20 S. Bhagyanathan

A-21 S. Padma

A-22 A. Sundaram alias Subha Sundaram

A-23 K. Dhanasekaran alias Raju

A-24 N. Rajasuriya alias Rangan

A-25 T. Vigneswaran alias Vicky

A-26 J. Ranganath

364. Prosecution case is that Prabhakaran, Pottu Amman, Akila and Sivarasan master-minded and put into operation the plan to kill Rajiv Gandhi which was executed by Sivarasan, and Dhanu, of the two assassins (other being Subha), with the back-up of other accused, who conspired and abetted them in the commission of the crime which included providing them safe haven before and after the crime. Charge of conspiracy is quite complex and when analysed it states that 26 accused before us, and those absconding, deceased and others, are charged with having entered into criminal conspiracy between July, 1987 and May, 1992 at various places in Sri Lanka and India to do or cause to be done illegal acts, namely:

1. to infiltrate into India clandestinely,
2. to carry and use unauthorized arms, ammunition and explosives,
3. to set up and operate unauthorized wireless sets to communicate with LTTE leaders in Sri Lanka from time to time,
4. to cause and carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India by use of bombs, explosives and lethal weapons so as to scare and create panic by such acts in the minds of the people and thereby to strike terror in the people,
5. in the course of such acts to assassinate Rajiv Gandhi, former Prime Minister of India and others, who were likely to be with him,
6. to cause disappearance of evidence thereof and to escape,
7. to screen themselves from being apprehended,
8. to harbour the accused and escape from the clutches of law, and
9. to do such other acts as may be necessary to carry out the object of the criminal conspiracy as per the needs of situation.

and in pursuance of the said criminal conspiracy and in furtherance of the same to carry out the object of the said criminal conspiracy:

- (I) Santhan (A-2), Murugan (A-3), Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Athirai (A-8), Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13), Bhaskaran (A-14), Rangam (A-24) and Vicky (A-25) along with the deceased accused Sivarasan, Dhanu, Subha, Nero, Gundu (Trichy) Santhan, Suresh Master, Dixon, Amman, Driver Anna and Jamuna infiltrated into India from Sri Lanka clandestinely and otherwise on different dates during the said period of criminal conspiracy;
- (II) Shanmugam (DA) amongst them arranged to receive, accommodated and rendered all assistance to the members of the conspiracy;
- (III) Robert Pay as (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) after having come over to India secured houses at Porur and Kodungaiyur in Madras at the instance of Sivarasan (DA) for accommodating one or other of the co-conspirators from time to time and for chalking out the modalities of the course of action to be followed for the achievement of the object of the said criminal conspiracy;
- (IV) Nero (DA) established contacts with Prabhakaran (absconding) through Pottu Amman (absconding) through illegally operated wireless sets brought into India by Sivarasan (DA) through illicit channel from the house of Vijayan (A-12);
- (V) Kanagasabapathy (A-7) and Athirai (A-8) came to India through illicit channel and set up hide outs in Delhi;
- (VI) Sivarasan (DA) brought Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with the deceased accused Dhanu, Subha, Nero and Driver Anna to Kodiakkrai and got them all accommodated in several places in Tamil Nadu to be of assistance in carrying out the object of criminal conspiracy;
- (VII) (a) Arivu (A-18) visited Jaffna and other places in Sri Lanka along with Irumborai (A-19) clandestinely in June 1990, purchased a Kawasaki Motor cycle on 4,5,1991 at Madras to facilitate quick movement of himself and one or the other of the co-conspirators,
- (a-1) arranged payment for printing the compilation described as "The Satanic Force" and sent one copy of the same to Prabhakaran (absconding) through Sivarasan (DA) and another set through Murugan(A-3),

(b) purchased and provided a battery for operating the wireless apparatus and other two battery cells, which were used as detonator in the belt bomb used by Dhanu (DA) for the murder of Rajiv Gandhi and 15 others;

(VIII) Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with Driver Anna (DA) rendered all assistance necessary therefor;

(IX) Sivarasan decided to murder Rajiv Gandhi, former Prime Minister of India in the public meeting to be held at Sriperumbudur on 21.5.91 on learning that Rajiv Gandhi was to address the meeting on the said day and finalized the method of operation to murder him by enlisting the services of Nalini (A-1) to be of help at the scene of crime;

(X) Arivu (A-18) handed over the film roll for the purposes of taking photographs of events to Haribabu (DA), who also purchased a sandal wood garland from Poompuhar Handicrafts, Mount Road Madras to be used for garlanding Rajiv Gandhi at the scene of occurrence by Dhanu (DA) so as to gain access to the VVIP under the guise of garlanding;

(XI) Dhanu equipped herself with the necessary apparel in order to hide a belt bomb and detonator attached thereto for detonating the same when she was in close proximity to Rajiv Gandhi;

(XII) Haribabu (DA) met Suba Sundaram (A-22) on 21.5.1991 and thereafter took a Chinon camera from a friend for taking photographs at the scene of offence and loading the camera with the film already provided by Arivu (A-18);

(XIII) Nalini (A-1) along with the deceased accused Sivarasan, Dhanu and Subha met Haribabu at Parrys Corner, Broadway Bus Stand and proceeded to the venue of the public meeting at Sriperumbudur on the evening of 21.5.1991 where Nalini (A-1) provided cover to Dhanu and Subha and when Rajiv Gandhi arrived at the scene of occurrence at about 10.10 P.M. Dhanu gained access nearer to Rajiv Gandhi and while in close proximity to Rajiv Gandhi Dhanu detonated the improvised explosive device kept concealed in her waist belt at about 10.20 P.M. resulting in the blast and assassinated Rajiv Gandhi and 15 others and also killing herself (Dhanu) and also causing the death of Haribabu accused and causing injuries to 43 persons;

(XIV) Nalini (A-1) along with the deceased accused Sivarasan and Subha immediately fled from the scene of occurrence, reached the house of Jayakumar (A-10) and Shanthi (A-11) and took shelter in Jayakumar's (A-10)house;

(XV) Suba Sundaram (A-22) attempted to retrieve the camera used by Haribabu from the scene of occurrence, caused destruction of documents and material objects linking Haribabu in this case and arranged to issue denial in the press about any connection of the said Haribabu with the LITE;

(XVI) Bhagyanathan (A-20) and Padma (A-21) rendered all assistance and harboured the deceased accused Sivarasan and Subha, Murugan (A-3) and Arivu(A-18);

(XVII) Nalini(A-1), Murugan (A-3) and Padma (A-21) accompanied the deceased accused Sivarasan and Subha to Tirupathi, where Nalini (A-1) did "Angapradakshinam";

(XVIII) Nalini (A-1) and Murugan (A-3) hide themselves in different places in Tamil Nadu and Karnataka State in order to evade arrest;

(XIX) Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25) harboured the deceased accused Sivarasan, Subha and Nero by transporting them and concealing them inside a tanker lorry bearing No. TN-27-Y-0808 belonging to Dhanasekaran (A-23) from Madras to Bangalore;

(XX) Nero (DA) operated the wireless set and communicated with the absconding accused Prabhakaran and Pottu Amman and conveyed the developments on behalf of the accused Sivarasan;

(XXI) the deceased accused Nero, Gundu Santhan, Suresh Master, Dixon, Amman and Driver Anna rendered all assistance to the deceased accused Sivarasan;

(XXII) Rangam(A-24) rendered all assistance to Sivarasan and others by transporting them in a Maruti Gypsy in Bangalore and other places in Karnataka purchased by Dhanasekaran (A-23) using LTTE funds;

(XXIII) Ranganath (A-26) harboured the accused Rangam (A-24) and the deceased accused Sivarasan, Subha, Nero, Suresh Master, Amman, Driver Anna and Jamuna at Knonnakunte, Bangalore and on 19.8.1991 the deceased accused Sivarasan, Subha, Nero, Suresh Master, Amman, Driver Anna and Jamuna committed suicide;

(XXIV) Shanmugavadivelu alias Thambi Anna (A-15) rendered financial assistance to Sivarasan and to one or other of coconspirators to carry out the object of conspiracy and abetted the commission of the said offence;

(XXV) Nalini(A-1)to Ranganath(A-26) caused the disappearance of evidence of murder of Rajiv Gandhi;

and thereby Nalini (A-1) to Ranganath (A-26) committed offences punishable under Section 120-B of IPC read with Sections 302 of IPC, 326 of IPC, 324 of IPC, 201 of IPC, 212 of IPC and 216 of IPC; Sections 3, 4 and 5 of Explosive Substances Act of 1908; Section 25 of Arms Act of 1959; Section 12 of Passport Act, 1967; Section 14 of the Foreigners Act,

1946; Section 6(1A) of the Wireless Telegraphy Act, 1933 and Sections 3, 4 and 5 of TADA of 1987.

365. Including the charge of conspiracy, which is charge No. 1, there are 251 other charges framed against the accused for having committed various offences in pursuance to the conspiracy under Charge No. 1. Out of these Nalini (A-1) has been charged on 121 different counts. Second charge against her is that in pursuance to the conspiracy and in the course of the same transaction and in furtherance to the common intention of the accused she and the deceased accused Sivarasan, Dhanu, Subha and Haribabu did "commit murder of Rajiv Gandhi and others, who were likely to be with him on 21.5.1991 at about 10.20 P.M. at Sriperumbudur in the public meeting where Nalini (A-1) was physically present at the scene of crime and provided the assassin Dhanu [deceased accused (DA)] the necessary cover from being detected as a foreigner, which enabled the assassin to move freely in the scene of crime and gain access nearer to Rajiv Gandhi to accomplish the object of conspiracy, where Dhanu did commit murder and intentionally caused the death of Rajiv Gandhi by detonating the improvised explosive device which was kept concealed in her waist belt when she was in close proximity to Rajiv Gandhi and thereby she (Nalini) committed an offence punishable under Section 302 read with Section 34 IPC."

366. Charges 3 to 17 are also under Section 302 read with Section 34 IPC for having caused the death of persons, who were in close proximity to Rajiv Gandhi. Charges 18 to 34 are under Section 326/ 34 IPC for voluntarily causing grievous hurt to the persons who were in close proximity to Rajiv Gandhi at the time of explosion. Charges 35 to 60 are under Section 324 read with Section 34 IPC for voluntarily causing hurt to the persons at the same time. Charges 61 to 119 are under Section 3(2) TADA read with Section 34 IPC. In these charges under Section 3(2) TADA it is mentioned that Nalini (A-1) committed terrorist acts by providing cover to Dhanu (DA) who detonated the improvised explosive device resulting in the bomb, blast and in the murder of Rajiv Gandhi and others. Charge No. 120 is for offence under Section 3(3) TADA and this charge is as under:

367. That Nalini (A-1) in pursuance of the said criminal conspiracy referred to in Charge No. 1, and in the course of the same transaction she in furtherance of the common intention, of Nalini (A-1) she proceeded to Sriperumbudur along with Sivarasan, Subha, Dhanu and Haribabu on the night of 21.5.1991 at about 10.20 P.M. in the public meeting having knowledge of the commission of the terrorist act viz., explosion of bomb for killing Rajiv Gandhi and others and causing injuries to those, who were likely to be around him, and also striking terror in the people and rendered assistance to the terrorists Dhanu, Sivarasan and Subha prior to the terrorist act by taking them to the bus, hotel, the venue of public meeting and the like and intentionally aided the said terrorist act by being present on 21.5.1991 at Sriperumbudur in the public meeting, where the terrorist act was committed by Dhanu by detonating the improvised explosive device kept concealed in her waist belt resulting in the bomb blast, and with intent to aid and facilitate the

commission of the said terrorist act Nalini (A-1) provided a cloak to Dhanu and Subha from being easily identified as Sri Lankan Tamils at the scene of crime and also facilitated the escape of the above said accused concerned in the crime, and thus Nalini (A-1) abetted the commission of the terrorist act and acts preparatory to the terrorist act or knowingly facilitated the commission of the terrorist act and acts preparatory to the terrorist act and thereby Nalini (A-1) committed the offence punishable under Section 3(3) of the TADA of 1987.

368. Last charge against Nalini (A-1) is under Section 4(1) TADA read with Section 34 IPC for having committed offence under Section 4(3) TADA for killing of nine police officials, who were public servants and were at that time with Rajiv Gandhi on duty.

369. Santhan (A-2) has been charged for an offence under Section 3(3) TADA and Section 14 of Foreigners Act (Charges 122 and 123). Other accused have also been similarly charged. As to how all the accused have been charged and whether found guilty or not and sentences passed against them by the Designated Court can be best illustrated by the table given hereunder:

CHARGES
COMMON TO ALL 26 ACCUSED

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
1	120-B r/w 302, 326, 324, 201, 212, 216 of IPC 3, 4 and 5 of Explosive Substances Act 25 of Arms Act 12 of Passport Act 14 of Foreigners Act 6 (1-A) Wireless and Telegraphy Act 3, 4 & 5 TADA	Guilty	Death

Nalini (A-1)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
2 to 17	302 r/w 34 IPC	Guilty	Death (16 counts)
18 to 34	326 r/w 34 IPC	Guilty	3 years RI (13 counts)
35 to 40	324 r/w 34 IPC	Guilty	1 year RI (6 counts)
41 to 60	324 r/w 34 IPC	Not guilty	Acquitted (20 counts)
61 to 76	3(2)(i) of TADA r/w 34 IPC	Guilty	Death (16 counts)
77 to 99	3(2) (ii) TADA r/w 34 IPC	Guilty (not guilty for 79, 82, 84, 93 Acquitted for four counts)	Life (19 counts)
100 to 119	3(2)(ii) TADA r/w 34 IPC	Not guilty	Acquitted (20 counts)
120	3(3) TADA	Guilty	Life (Life Imprisonment)
121	4(3) TADA and 4(1) r/w 34 IPC	Guilty	Life

Santhan (A-2)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
122	3(3) TADA	Guilty	Life
123	14 of Foreigners Act	Guilty	2 years RI

Murugan (A-3)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
124	3(3) TADA	Guilty	Life
125	14 of Foreigners Act	Guilty	2 years RI
126	6(1-A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI

Shankar (A-4)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
127	3(3) TADA	Guilty	Life
128	14 of Foreigners Act	Guilty	2 years RI

Vijayanandan (A-5)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
129	3(3) TADA	Guilty	Life
130	14 of Foreigners Act	Guilty	2 years RI

Ruhan (A-6)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
131	3(3) TADA	Guilty	Life
132	14 of Foreigners Act	Guilty	2 years RI

Kanagasabapathy (A-7)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
133	3(3) TADA	Guilty	Life
134	3(4) TADA	Guilty	Life
135	212 IPC	Guilty	2 years RI
136	14 of Foreigners Act	Guilty	2 years RI

Athirai (A-8)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
137	3(3) TADA	Guilty	Life
138	3(4) TADA	Guilty	Life
139	212 IPC	Guilty	2 years RI
140	14 of Foreigners Act	Guilty	2 years RI

Robert Payas (A-9)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
141	3(3) TADA	Guilty	Life

Jayakumar (A-10)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
142	3(3) TADA	Guilty	Life
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years RI
145	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Shanthi (A-11)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years RI
145	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI
146	3(3) TADA	Guilty	Life

Vijayan (A-12)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
147	3(3) TADA	Guilty	Life
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
150	6(1A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI

Selvaluxmi (A-13)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
150	6(1A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI
151	3(3) TADA	Guilty	Life

Bhaskaran (A-14)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
152	3(3) TADA	Guilty	Life

Shanmugavadivelu (A-15)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
153	3(3) TADA	Guilty	Life

Ravi (A-16)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
154	3(3) TADA	Guilty	Life
155	3(4) TADA	Guilty	Life
156	212 IPC	Guilty	2 years RI
157	5 of TADA	Guilty	Life
158	5 of Explosive Substances Act	Guilty	2 Years RI
159	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Suseendran (A-17)

CHARGENO.	OFFENCE U/S	FINDING	SENTENCE
160	3(3) TADA	Guilty	Life
161	3(4) TADA	Guilty	Life
162	212 IPC	Guilty	2 years RI
163	5 of TADA	Guilty	Life
164	5 of Explosive Substances Act	Guilty	2 Years RI
165	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Ariyu (A-18)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
166	3(3) TADA	Guilty	Life
167 to 182	109 and 302 IPC	Guilty	Death (16 counts)
183 to 199	109 and 326 IPC	Guilty (13 counts) 183, 184, 86, 187, 189, 191 to 198, 200 to 205, 226 to 228 Acquitted of charges 185, 188, 190 and 199 (4 counts)	3 years RI (13 counts)
200 to 225	109 and 324 IPC	Guilty (6 counts) 200 to 205 acquitted on 20 counts (206 to 225)	1 year RI

226	6(1-A) of Wireless & Telegraphy Act and 109 IPC	Guilty	2 years RI
227	12 of Passport Act	Guilty	3 months RI
228	4(3) TADA punishable u/s 4(1) TADA and 109 IPC n/w 34 IPC	Guilty	Life

Irumborai (A-19)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
229	3(3) TADA	Guilty	Life
230	3(4) TADA	Guilty	Life
231	212 IPC	Guilty	2 years RI
232	12 of Passport Act	Guilty	3 months RI

Bhagyanathan (A-20)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
233	3(3) TADA	Guilty	Life
234	212 IPC	Guilty	2 years RI

Padma (A-21)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
235	3(3) TADA	Guilty	Life
236	212 IPC	Guilty	2 years RI
237	6 (1-A) Wireless & Telegraphy Act	Guilty	2 years RI

Suba Sundaram (A-22)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
238	3(3) TADA	Guilty	Life
239	212 IPC	Guilty	2 years RI

Dhanasekaran (A-23)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
240	3(3) TADA	Guilty	Life
241	3(4) TADA	Guilty	Life
242	212 IPC	Guilty	2 years RI

Rangam (A-24)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
243	3(4) TADA	Guilty	Life
244	212 IPC	Guilty	2 years RI
245	14 Foreigners Act	Guilty	2 years RI

Vicky (A-25)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
246	3(4) TADA	Guilty	Life
247	212 IPC	Guilty	2 years RI
248	14 of Foreigners Act	Guilty	2 years RI

Ranganath (A-26)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
249	3(4) TADA	Guilty	Life
250	216 IPC	Guilty	2 years RI
251	212 IPC	Guilty	2 years RI

370. Before we consider the evidence and the arguments advanced by both the parties it may be more appropriate to set out various provisions of law which are the subject-matter of the charges against the accused.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(a) to (c)...

(d) "disruptive activity" has the meaning assigned to it in Section 4, and the expression "disruptions" shall be construed accordingly;

(e) to (gg)...

(h) "terrorist act" has the meaning assigned to it in Sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly;

Section 3. Punishment for terrorist acts.-

(1) Whoever with intent to overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption or any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine,

(5) Any person who is a member of a terrorists gang or a terrorists organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which shall

not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 4. Punishment for disruptive activities.- (1) Whoever commits or conspired or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of Sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,-

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.-For the purposes of this Sub-section (a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of Sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which-

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptions shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

5. Possession of certain unauthorized arms, etc., in specified areas.- Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category 1 and III (a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

6. Enhanced penalties.- (1) If any person with intent to aid any terrorist or disruptions, contravenes any provision of, or any rule made under, the Arms Act, 1959 (54 of 1959), the Explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908), or the inflammable Substances Act, 1952 (20 of 1952), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of Sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

15. Certain confessions made to police officers to be taken into consideration.-

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

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

(2) The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such

confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

25. Over-riding effect.- The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

28. Power to make rules.- (1) Without prejudice to the powers of the Supreme Court to make rules under Section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,-

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever, reasonably suspected of being used for committing the offences referred to in Section 3 or Section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon,-

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution.

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of the State Government not lower in rank than that of a District Magistrate to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(d) the arrest and trial of persons contravening any of the rules or any order make thereunder;

- (e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;
- (f) providing for seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in Clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.

TADA Rules

15. Recording of confession made to police officers.- (1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

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

(3) The confession shall, if it is in writing, be-

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

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

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

Sd/- Police Officer.

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

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

INDIAN PENAL CODE (IPC)

120-A. Definition of criminal conspiracy. - When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

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

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

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

120-B. Punishment of criminal conspiracy - (1) whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

302.Punishment for murder-Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.-

Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

324. Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

201. Causing disappearance of evidence of offence, or giving false information to screen offender-Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.

if a capital offence shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend

to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

212 Harbouuring offender.-Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, if a capital offence shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with, imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following Sections, namely, 302, 304, 482, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception-This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

216. Harbouuring offender who has escaped from custody or whose apprehension has been ordered.-

Whenever any person convicted or charged with an offence, being in lawful custody for that offence, escapes from such custody, or when ever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this sections, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception-The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

"EXPLOSIVE SUBSTANCES ACT, 1908

3. Punishment for causing explosion likely to endanger life or property -Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property - Any person who unlawfully and maliciously -

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for

a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Punishment for making or possessing explosives under suspicious circumstances-Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

ARMS ACT, 1959

3. Licence for acquisition and possession of firearms and ammunition.- [1] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder."

"25(1-B) Whoever-.

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3;

xxx xxx xxx xxx

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

"PASSPORTS ACT, 1967

12. Offences and penalties - (1) Whoever-

(a) contravenes the provisions of Section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) Whoever, not being a citizen of India,-

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under Sub-section (1) or Sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

THE FOREIGNERS ACT, 1946

14. Penalties.-If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be

liable to fine; and if such person has entered into a bond in pursuance of Clause (f) to Sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid."

"3(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner, -

(a)to(e)....

(f) shall enter into a bond with or without sureties for the due observance of as in alternative to enforcement of any or all prescribed or specified restrictions or conditions,

(g)...

and make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may in the opinion of the Central Government be expedient or necessary for giving effect to this Act.

INDIAN WIRELESS TELEGRAPHY ACT, 1933

6(1-A)Whoever possesses any wireless transmitter in contravention of the provisions of Section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

3. Prohibition of possession of wireless telegraphy apparatus without licence - Save as provided by Section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

INDIAN EVIDENCE ACT, 1872

10.Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was formed by them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.-

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation - "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.

371. Having set out provisions of law we may refer to the preliminary submissions of Mr. N. Natarajan, senior advocate, who appeared for all the accused except Shanmugavadi Velu alias Thambi Anna (A-15). He submitted that he is not challenging the convictions of various accused under the Foreigners Act, Passport Act, Explosive Substances Act, Indian Wireless and Telegraphy Act, Arms Act and Sections 212 and 216 IPC. This he said was on account of the fact that for offences under these Acts accused were awarded sentence of imprisonment for two years or for a period less than two years which in any case has to be set off under Section 428 of the Code as they had been under detention throughout the period during trial. We are thus left to consider offences under Section 120B IPC, 302/34 IPC, 326/34 IPC 324/34 IPC and under Sections 3, 4 and 5 of TADA.

372. Opening his arguments Mr. Natarajan submitted that the first charge gives the over all view of the case of the prosecution. In brief he said there were five facets of conspiracy alleged by the prosecution against the accused, namely, (1) clandestine infiltration into India, (2) hiring of safe accommodation for the conspirators, (3) unauthorized wireless operation by them, (4) assassination of Rajiv Gandhi and others on 21.5.1991, and (5) harbouring of offenders in order to escape from India and disappearance of evidence. The prosecution evidence propounds a criminal conspiracy. Mr. Natarajan was right in his submissions when he said it would be futile to contend that there was no conspiracy. The questions that arise for consideration are as to what is the object of that conspiracy, who were members of the conspiracy, whether any offence under TADA is made out and whether it was a case of conspiracy to murder and causing grievous and simple hurt by use of bombs. Assuming that whatever prosecution evidence has led to be admissible and reliable there is no conspiracy to commit any offence under TADA and the conspiracy is only to commit the murder of Rajiv Gandhi. On the question of motive of the crime, we find, there is no dispute. For past couple of years there has been unrest in the north part of Sri Lanka, a neighbouring country which area is inhabited mostly by Tamils. These Tamils or Tamilians complained of atrocities committed by the majority community of Sinhalis inhabiting in south of Sri Lanka. To protect the rights of the Tamils various organizations came up in Sri Lanka, foremost being the Liberation Tigers of Tamil Elam (LTTE). This Organization claimed to be the only representative body of the Tamils. For the independence of Tamil area in Sri Lanka arm struggle started between LTTE and Sri Lankan army. On this account there was turmoil in Sri Lanka resulting in the influx of Tamil refugees to India from Sri Lanka and by 1987 the problem, it appeared, was

getting out of hands. During the arm struggle LTTE was having a free field in India. To support its struggle against Sri Lankan army cadre of LTTE had been operating from Indian soil for the purpose of arms training, treatment of injured LTTE people, supply of medicines and other provisions, collection of funds, printing and publishing of propaganda material, buying of provisions like petrol, diesel, wireless equipments, explosives and even cloths.

373. An Indo-Sri Lankan Agreement to establish peace and normalcy in Sri Lanka was entered into on 29.7.1987. It was signed by Rajiv Gandhi, Prime Minister of the Republic of India and J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka. After the agreement was signed Prime Minister Rajiv Gandhi made a statement in the Rajya Sabha on the Agreement which he said aimed "at bringing to an end the difficult conflict which has afflicted our friendly neighbour Sri Lanka for years" and that the conflict assumed acute dimensions over the last four years endangering the very stability, unity and integrity of Sri Lanka. The agreement among other things envisaged lifting of emergency in the eastern and northern provinces of Sri Lanka by 15.8.1987, holding of elections, constitution of interim council, etc. Cessation of hostilities was to come into effect all over the island within 48 hours of the signing of the Agreement and all arms presently held by Tamil militant groups were to be surrendered, in accordance with an agreed procedure, to authorities to be designated by the Government of Sri Lanka. Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism Act and other Emergency laws. Para 2.16 of the Agreement provided as under:

2.16 These proposals are also conditional to the Government of India taking the following actions if any militant groups operating in Sri Lanka do not accept this framework of proposals for a settlement, namely,

- (a). India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.
- (b) The Indian Navy/Coast Guard will co-operate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.
- (c) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals, the Government of India will co-operate by giving to the Government of Sri Lanka such military assistance as and when requested.
- (d) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there, concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.

(e) The Government of India and Sri Lanka will co-operate in ensuing the physical security and safety of all communities inhabiting the Northern and Eastern Provinces.

The Indo-Sri Lankan Accord had thus the following features :-

1. It contains a package for the devolution of political power recognising the Northern and Eastern province of Sri Lanka as the traditional homeland of the Tamils.
2. It gives to India a "Guarantor" role in the implementation of the devolution package and the other provisions within the frame work of "United Sri Lanka".
3. It takes account of India's security concerns in the area.

374. In pursuance to the Agreement Indian forces called the Indian Peace Keeping Force (IPKF) went to Sri Lanka on 29.7.1987. After the initial somewhat reluctance to acceptance LTTE got disillusioned with the accord which is reflected from the following factors:-

1. The Accord ruled out separate Tamil Elam in Sri Lanka and so went against the objectives of LTTE to form an independent Tamil Elam.
2. LTTE looked towards India with certain expectations under the Accord, which, according to it, were not fulfilled. It was the way the Tamil refugees of Sri Lanka were rehabilitated by Sri Lankan Government which was not to the satisfaction of LTTE.
3. In the interim council to be formed under the Accord LTTE was given less seats though it claimed to be the sole representative body of Sri Lankan Tamils.

(4) On 15.9.1987 one Dileepan of LTTE went on hunger strike in Sri Lanka. He took fast against the atrocities committed by IPKF and for Government of India not acting properly. He died fasting on 26.9.1987.

(5) 17 important functionaries of LTTE were captured by Sri Lankan Navy in the first week of October, 1987. They were being taken to Colombo for interrogation. LTTE approached Government of India for their release. Government of India did not vigorously pursue the matter and while it was negotiating with the Sri Lankan Government to secure their release, 12 of them committed suicide by consuming cyanide.

(6) In the night of 3/4.10.1987 when IPKF convoy was carrying ration it was attacked by LTTE and 11 Indian soldiers were killed. It was the flash point of breach between IPKF and LTTE and active confrontation between the two started. Prabhakaran, supreme leader of LTTE, went underground.

(7). The agreement or the accord, as it is normally called ultimately, did not find favour with LTTE and in spite of the agreement activities of LTTE on the Indian soil continued growing substantially.

375. LTTE became opposed to the Accord and also against the IPKF. Prabhakaran at one stage even said that it was stabbed in the back by agreeing to the accord and had been betrayed. There was more influx of refugees to India. Now LTTE complained of atrocities committed by IPKF on the Tamils in Sri Lanka and accused IPKF of torture, rape, murder, etc. As to what led India to enter into the Accord with Sri Lankan Government and the background of the ethnic trouble in Sri Lanka and also reservations expressed on the Accord, there is the statement of R.M. Abhyankar (PW-173), Joint Secretary in the Ministry of External Affairs, Government of India. Two volumes of the book "Satanic Force" (MO-124 and MO-125) were published in India at the behest of LTTE which contained compilation of speeches of Prabhakaran and other articles and photographs showing the atrocities committed by IPKF on Tamils in Sri Lanka after the Accord and the animosity which Prabhakaran developed towards Rajiv Gandhi. The book was compiled by N. Vasantha Kumar (PW-75). He is an artist by profession. The printing and publishing of the book was authorised and financed by LTTE. It was published in January, 1991 and contains information up to March, 1990. In his statement Brig. Vivek Sapatnekar (PW-186), who was earlier in-charge of IPKF operations in Sri Lanka, also stated that the Accord was not having the support of LTTE. MO-125 (Volume 2 of "Satanic Force") contained the news item published in the Indian Express of April, 1990 which quotes the speech by Prabhakaran saying that he was against the former leadership in India and that LTTE was not against India or Indian people. These two volumes of "Satanic Force" contain over 1700 pages. No article or writing has been pointed out from the "Satanic Force" from which it could be inferred that it was ever in the contemplation of Prabhakaran or any other functionary of LTTE questioning the sovereignty and territorial integrity of India rather they identified Rajiv Gandhi with the Accord and the atrocities committed by IPKF. In the editorial in the official Journal of LTTE Voice of Tigers' dated 19.1.1990 the following comment appears:-

In the meantime, the defeat of Rajiv's Congress Party and the assumption to power of the National Front alliance under Viswanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Elam. The LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively accrediting to Mr. Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. The LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister In Madras, are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh's government will act in the interests of the Tamil speaking people by creating appropriate conditions for the LTTE to come to political power In the Northeastern Province.

376. It may be noted that in general elections in India Congress was defeated and new Government under V.P. Singh as Prime Minister had taken over. Withdrawal of IPKF from Sri Lanka was completed on 24.3.1990. In March, 1991 general elections in India were again announced. First phase of elections was over on 20.5.1991 and next phase was to be held on 23.5.1991. This second phase was postponed for 15 days on account of assassination of Rajiv Gandhi on 21.5.1991.

377. Aveek Sarkar (PW-255) had an interview with Rajiv Gandhi which was published in the Sunday magazine issue of August 12-19, 1990. The interview is dated July 30/31, 1990. In the interview Rajiv Gandhi supported the Accord and criticized V.P. Singh in withdrawing the IPKF. He said there was no rationale behind the withdrawal and as things till then had not stabilized and Accord had not been fully implemented. In the Congress manifesto which was released in 1991 for Lok Sabha elections Congress supported the Accord. This manifesto was brought on record in the statement of K. Ramamurthi (PW-258), who was the President of Tamil Nadu Congress Committee at the relevant time.

378. Rajiv Gandhi in August, 1990 predicted general elections in the country in early 1991. In the writings and articles in the two volumes of "Satanic Force" there were scathing attacks on Shri Rajiv Gandhi, who was projected as the perpetrator of the sufferings of Tamils in Sri Lanka by sending IPKF. Prabhakaran when he came out of his hiding after about two and a half years he made statement in April, 1990 that he was against the former leadership, namely, Rajiv Gandhi. Though the Congress lead by Rajiv Gandhi was out of power in 1990 there was clear indication of mid-term poll and perceptible upswing in the popularity of Rajiv Gandhi. LTTE apprehended the reversal of the Government of India's policy of non-interference towards Sri Lanka and with the possibility of return of Rajiv Gandhi as Prime Minister. Rajiv Gandhi stood for territorial integrity of Sri Lanka and for role of various Tamil organizations in Sri Lanka for any Tamil solution. LTTE on the other hand claimed to be the sole representative body of Tamils there.

379. It was on this account, submitted Mr. Natarajan; that there was conspiracy to eliminate Rajiv Gandhi in order to prevent him from coming back to power. He said LTTE perceived the accord as object to stop creation of separate Tamil Elam which went against the basic objective of LITE. The creation of separate Tamil Elam was thwarted by the induction of IPKF and in the fight with IPKF more Tamil Sri Lankan died than they died fighting Sri Lankan army. IPKF committed atrocities on Tamils in Sri Lanka. LTTE thus turned against the Government of India and the former leadership as it identified Rajiv Gandhi and his Government as bringing the struggle of Sri Lankan Tamils to square one. Rajiv Gandhi and the Congress manifesto supported the Accord even after IPKF had been withdrawn from Sri Lanka. Mr. Natarajan said that motive was not to overawe the Government of India or to create terror as was being alleged by the prosecution. Animosity of LTTE was only against Rajiv Gandhi who was identified with the Accord.

Prabhakaran, the supreme leader of LTTE, had clearly stated more than once that he was not against the Indian Government and the Indian people.

380. According to prosecution conspiracy was activated with the publication of an interview of Rajiv Gandhi in Sunday magazine and now the conspiracy was put into operation. First group of conspirators to achieve the object of conspiracy arrived in India on September 12, 1990. This group consisted of Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14). Bhaskaran (A-14) is father of Selvaluxmi (A-13). They arrived at Rameshwaram in India like other refugees from Sri Lanka and got themselves registered. At Jaffna in Sri Lanka they were seen off by deceased accused Sivarasan without paying any toll to LTTE. It is in evidence that anyone leaving Sri Lanka from the area in the control of LTTE had to pay two sovereigns of gold and Rs. 1500/- . The reason for not paying the toll was that they had left for India to take a house on rent for the work of LTTE. From Rameshwaram they were sent to the refugee camp at Tuticorin. Sivarasan visited them there on two occasions -once in December, 1990 and on second time in the first week of April, 1991. Sivarasan during his visit in December, 1990 told Vijayan (A-12) that he was to take a house on rent in Madras at the time when he would be so told. In April, 1991 Sivarasan gave instructions to Vijayan (A-12) to go to Madras and to take a house on rent with the help of Vijayan's cousin Munusamy. At that time Sivarasan also told Vijayan (A-12) that he would be meeting him on 10.4.1991 at the house of Munusamy. Vijayan (A-12) was given Rs. 1000/- towards expenses for the purpose by Sivarasan. Sivarasan did meet Vijayan (A-12) at Munusamy's house as promised. Sivarasan wanted that the house which was to be taken on rent should be in a secluded place as "he thought that the movements of LTTE men are not known to the neighbours". House of J. Duraisamy Naidu (PW-82) at No. 12, Eveready Colony, Kodungaiyur, Madras (Kodungaiyur house) was thus taken on rent by Vijayan (A-12). He, thereafter brought his family (Selvaluxmi (A-13) and Bhaskaran (A-14)) from the refugee camp at Tuticorin and started living in this Kodungaiyur house from 20.4.1991..

381. Second group comprising Robert Payas (A-9), his wife Prema, his sister Premalatha, Jayakumar(A-10) and his wife Shanthi (A-11) came to India from Sri Lanka on 20.9.1990 as refugees and reported at Rameshwaram. Shanthi (A-11) is an Indian Tamil while Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. This group was similarly exempted from paying toll to LTTE and was sent for taking a house on rent for the work of LTTE. They registered themselves at the refugee camp there. They left for Madras of their own and on reaching there stayed with the relatives of Shanthi (A-11). From 1.10.1990 house of G.J. Srinivasan (PW-252) bearing number 26, Sabari Nagar Extn., Porur, Madras (Porur house) was taken on rent in the name of Jayakumar (A-10). It was taken through an M. Utham Singh (PW-56), a property agent and proprietor of Ebenezer Stores. Sivarasan (deceased accused) and Kanthan (not named accused) used to visit them in their Porur house. Telephone No. 2343402 installed at Abenezer Stores, Porur was used by Sivarasan, Robert Payas (A-9) and others to contact one another. A wireless set was installed in the Porur house, which was numbered as Station No. 95. Till

December, 1990 families of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) stayed together in this house. Sivarasan then wanted Robert Payas (A-9) to take another independent house at secluded place for him (Sivarasan) to stay. This third house was taken on rent in the name of Ramasamy, father-in-law of Jayakumar (A-10) (father of Shanthi (A-11)). The house was owned by K. Kottammal (PW-63) and was at No. 153, Muthamil Nagar, Kodungaiyur, Madras (Muthamil house). On 18.12.1990 Jayakumar (A-10), Shanthi (A-11) and their child moved to this house and Sivarasan also started staying with them.

382. Third Group comprising Ravi (A-16) and Suseendran (A-17) along with Sivarasan arrived in India from Sri Lanka in the end of December, 1990. Both Ravi (A-16) and Suseendran (A-17) are Indian Tamils. This group was seen off at Sri Lanka by Pottu Amman. They were instructed by Pottu Amman to follow the instructions of Sivarasan. Both Ravi (A-16) and Suseendran (A-17) had gone to Jaffna and took training in LTTE camp in arms and in their indoctrination regarding atrocities committed by IPKF on Tamils in Sri Lanka and to enlist more people in Tamil Nadu in India for the movement of LTTE and for creation of Tamil State separate from India.

383. Fourth group comprising Arivu (A-18) and Irumborai (A-19) came to India in October, 1990. They had gone to Sri Lanka in May, 1990. with Baby Subramaniam where they had met Prabhakaran.

384. In the fifth group there is only one person - Murugan (A-3), who arrived in India clandestinely in the third week of January, 1991 with the directions from Pottu Amman. He reached Kodiakkarai on the Indian coast where Sivarasan was waiting to receive him. They thereafter went to the house of one Mahalingam, a Sri Lankan Tamil, residing in Kodiakkarai. Then they came to Madras and went to the Porur house where now Robert Payas (A-9) was staying with his family. Murugan (A-3) stayed there for a few days. Muthiraja, an LTTE activist took Murugan (A-3) to the house of Padma (A-21), who was staying there with her son Bhagyanathan (A-20). This house is situated at No. 22, Muthiah Garden Street, Royapettah, Madras (Royapettah house).

385. Sixth group comprising Kanagasabapathy (A-7) and Athirai (A-8) came to India on 23.4.1991 and was seen off by Pottu Amman with certain specific instructions in an LTTE boat with escort. They reached Kodiakkarai on the coast of India and were received by Chokan, an LTTE helper, who took them to the house of V. Kantha Raja (PW-60). After staying there for two days Kanagasabapathy (A-7) and Athirai (A-8) left for Madras and stayed in the house of Jayakumari (PW-109), niece of Kanagasabapathy (A-7). Sivarasan met them there on 2.5.1991 as per the prior arrangement fixed by Pottu Amman.

386. Seventh and the last group consisting of nine persons under the leadership of Sivarasan arrived at Kodiakkarai on 1.5. 1991 in an LTTE boat. This group was seen off by Pottu Amman on 27.4.1991. The boat in which they were travelling developed a snag

and had to return. They left shore of Sri Lanka on 30.4.1991 when again Pottu Amman was there to see them off. Nine persons were Sivarasan, Santhan (A-2), Shankar(A-4), Vijayanandan (A-5), Ruban (A-6), Subha, Dhanu, Nero and Keerthi. Last four and Sivarasan are deceased accused. On 2.5.1991 Sivarasan took Subha and Dhanu to the house (Muthamil house) of Jayakumar (A-10) and Nero to the house (Kodungaiyur house) of Vijayan (A-12). On 6.5.1991 Sivarasan took Subha and Dhanu also to the Kodungaiyur house. A wireless set, which belonged to Sivarasan, was installed by Nero in the Kodungaiyur house which is Station No. 910 and started communicating with LTTE Headquarters in Sri Lanka. On 3.5.1991 Santhan (A-2) and Ruban (A-6) went to Porur house of Robert Payas (A-9) at Madras. Shankar (A-4) stayed at Kodiakkrai till 15.5.1991. Then he came to Madras and stayed at Samundeeswari Lodge up till 23.5.1991, Vijayanandan (A-5) went to Trichy where he stayed till 7.5.1991 and then came to Madras and stayed at Komala Vilas Lodge, Madras. Arivu (A-18) also came to Madras on 9.5.1991 and took Vijayanandan (A-5) to meet N. Vasantha Kumar (PW-75) on the instructions of Sivarasan. Keerthi alias Driver anna, who was also in the nine members group, who had come to India on 1.5.1991, was later found dead along with Sivarasan, Subha and others in the house at Konanakunte, Bangalore on 20.8.1991. There is nothing on record as to where Keerthi stayed from the time of his arrival in India till he was found dead.

387. When Murugan (A-3) met Shankar (A-4) at Kodiakkrai on 14.5.1991 he gave him a slip of paper (Exh.P-1062) containing the names Nalini (A-1)-Thas (also pronounced as Das by which name Murugan (A-3) was as well known) and telephone number 419493, which was the phone number of the office of Nalini (A-1). Before Santhan (A-2) arrived in India in the nine members group on 1.5.1991 at Kodiakkrai Shanmugavadivelu (A-15) (also described as Thambi Anna) had made arrangements with P. Veerappan (PW-102), a travel agent and C. Vamadevan (PW114), a Sri Lankantravel agent, for getting an Indian passport and travel documents for him (Santhan (A-2)) in the last week of April, 1991 for Santhan (A-2) to go abroad.

388. Sivarasan has been travelling between India and Sri Lanka though clandestinely during the period February, 1990 to May, 1991. Evidence shows his presence in these two countries as follows:

1.	15-2-1990	arrives India along with Santhan (A-2)
2.	21-6-1990	went to Sri Lanka
3.	Last week of Dec. 1990	Sivarasan, Ravi (A-16) and Suseendran (A-17) arrive in India
4.	Feb., 1991	Went to Sri Lanka
5.	24-4-1991	He was at Madras in the House of Vijayan (A-12)
6.	27-4-1991	He was at Jaffna in Sri Lanka
7.	1-5-1991	Reached Kodiakkrai

388-A. Up till now we have referred to that part of the evidence as to how different groups arrived in India to achieve the object of conspiracy. They are all LTTE activists or its

ardent supporters and were to act under the instructions of Sivarasan. It is not disputed, however, that existence of LTTE was already in India.

389. The first step was to hire places for shelter of the conspirators and this was achieved by hiring houses - one at Porur and two at Kodungaiyur. Fourth house is that of Padma (A-21). Nalini (A-1) was living with her mother. Since October, 1990 she started living separately in a house at No. 11, High Court Colony, Villivakkam, Madras. On 7.3.1991 Rangam (A-24) took on rent a house at No. 3, Park Avenue, Alwarthirunagar, Madras, purportedly for the stay of LTTE men. The house belonged to Nageswara Rao(PW-178). On 21.3.1991 a house at Indira Nagar, Bangalore was taken on rent in the name of Sivapackiam, wife of K. Jagannathan (PW-211) at the instance of Dhanasekaran (A-23) for the alleged purpose of serving it as a hide out for the conspirators.

390. Of the remaining accused facing trial, Suba Sundaram (A-22) owned studio and had trained deceased accused Haribabu in photography. Haribabu was assigned the role of taking photographs of the scene of crime. Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25) transported the deceased accused Sivarasan, Subha, etc., who were proclaimed offenders from Madras to Bangalore in a tanker owned by Dhanasekaran (A-23). Ranganath (A-26) harboured proclaimed offenders Sivarasan, Subha and others.

391. According to prosecution steps to achieve the object of conspiracy had already started even prior to arrival in India on 1.5.1991 of the assassins Dhanu and Subha accompanied by Sivarasan and six others. Houses for the use of LTTE persons had already been hired. In March, 1991 Arivu (A-18), Bhagyanathan (A-20) and deceased accused Haribabu removed certain incriminating material of LTTE from the house of M. Sankari (PW-210) and kept them in the house of V. Radhakrishnan (PW-231). Baby Subramaniam, an LTTE activist was staying in the house of M. Sankari (PW-210). Arivu (A-18) purchased a Kawasaki Bajaj motor cycle (MO-82) on 4.5.1991. Vijayan (A-12) purchased two bicycles for use of Subha and Dhanu. A Maruti Gypsy (MO-540) had already been purchased by Dhanasekaran (A-23) in November, 1990 in the name of Mohan. This Maruti Gypsy was driven by Rangam (A-24) and was used by deceased accused Sivarasan, Subha, Nero, Suresh Master and Keerthi for their movements in Bangalore after the crime. On 3.5.1991 Arivu (A-18) purchased a 12 volt Exide car battery (MO-209) for use in the house of Vijayan (A-12) to operate the wireless set installed there (Station 910). During the second week of May, 1991 Arivu (A-18) purchased two 9 volt Golden Power batteries and gave them to Sivarasan. These golden power batteries are alleged to have been ultimately used to detonate the belt bomb on 21.5.1991 killing Rajiv Gandhi and others. Various conspirators had been meeting each other under the charge of Sivarasan for communicating amongst themselves. While at Madras they used telephone numbers of Ebenezer Stores (2343402), Nalini (A-1) (419493) and of Shanmugavadielv (A-15) (864249). An OYT telephone connection was applied for on 8.4.1991 in the name of Shanthi (A-11) for the shop premises hired in her name for coffee powder machine. On 11.5.1991 Nalini(A-1) took Subha and Dhanu to the shop of M.

Gunankhalal Soni (PW-179), gave him the measurement of Subha for stitching a loose salwar kameez from the material bought from the shop itself. This salwar kameez was used by Dhanu for concealing the improvised explosive device. On 18.4.1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and Suba Sundaram (A-22) and deceased accused Haribabu attended the meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras. On the night between May 7-8, 1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and deceased accused Sivarasan, Subha, Dhanu and Haribabu attended the meeting of Prime Minister V.P. Singh at Nandanam, Madras, where they conducted a 'dry run' by securing access to V.P. Singh for garlanding him. On May 16/17, 1991 Vijayan (A-12), Sivarasan and Nero dug a pit in the kitchen room of the house of Vijayan (A-12) for the purpose of concealing wireless set and gun. On 17.5.1991 Ruban (A-6) along with Vijayendran (PW-111) was sent to Jaipur for the purported purpose of fixing an artificial limb on the leg of Ruban (A-6) but in fact for hiring safe accommodation. Similar role has been assigned to Robert Payas (A-9) and Athirai (A-8) for hiring a place at Delhi for LTTE activists. All the payments for hiring accommodation, buying vehicles and expenses of Ruban (A-6) and going to Jaipur, etc. were borne by Sivarasan. On 19.5.1991 tour programme of Rajiv Gandhi to Tamil Nadu for May 21 and 22, 1991 was published in local newspapers. When Nalini (A-1), Subha and Dhanu after visiting Mahabalipuram came to the house of Nalini (A-1) at Villivakkam they found Sivarasan waiting for them. He showed the clipping of the Tamil newspaper in which the visit to Tamil Nadu for election campaign of Rajiv Gandhi was published. Sivarasan told Nalini (A-1) to take two days leave. On 19.5.1991 itself Sivarasan went to the house of N. Vasantha Kumar (PW-75) where Vijayanandan (A-5) was staying and shifted him to the house of one Vanan. On 20.5.1991 Kanagasabapathy (A-7) along with Vanan went to Delhi by flight to fix a house there. One house in Delhi was secured at Moti Bagh belonging to K. Thiagarajan (PW-57). On 20.5.1991 Sivarasan visited the house of Bhagyanathan (A-20) where Bhagyanathan (A-20), Murugan (A-3), Arivu (A-18) and deceased accused Haribabu were present. A message had already been left at the house of Haribabu when he was not there by Murugan (A-3) to go to the house of Bhagyanathan (A-20). Nalini (A-1) also joined the group. Sivarasan told Nalini (A-1) to apply for half day casual leave on 21.5.1991 as venue of the public meeting, which Rajiv Gandhi was to address, was at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu. This Kodak colour film was to be used by Haribabu to take pictures of the scene of crime. On 21.5.1991 Haribabu purchased a sandalwood garland from Poompuhar Emporium. He then went to the studio of K. Ravi Shankar (PW-151) and borrowed his camera (MO-1). In the afternoon he went to the studio of Suba Sundaram (A-22) when he was having garland packet in his hands. On 21.5.1991 Nalini (A-1) got permission from her office to leave early and told her colleague N. Sujaya Narayan (PW-96) that she was going to Kancheepuram for buying sarees. She went to her mother's house at Royapettah where Murugan (A-3) was present. He directed her to rush to her Villivakkam house where Sivarasan would be waiting for her or else he would be angry. From there Nalini (A-1) immediately went to her house at Villivakkam. It was about 3.00 p.m.

392. On that very day Sivarasan dressed in white kurta-pyjama left the house of Jayakumar (A-10). Santhan (A-2) was also present there at that time. Sivarasan was armed with a pistol. Sivarasan then went to the house of Vijayan (A-12) and talked to Subha and Dhanu. Both Subha and Dhanu went inside the room and after about 30 to 40 minutes came out. Dhanu was wearing the orange colour salwar kameez. Sivarasan, Subha and Dhanu went to the house of Nalini (A-1) at Villivakkam in an auto-rikshaw. Sivarasan had asked Vijayan (A-12) to hire the auto-rikshaw and had told him to stop at a distance from his house. Subha told Nalini (A-1) that Dhanu was going to create history by assassinating Rajiv Gandhi and they would be happy if she participated in that. Nalini (A-1) agreed. Nalini (A-1) also saw that some apparatus were concealed underneath the dress of Dhanu. All four of them, namely, Sivarasan, Subha, Dhanu and Nalini (A-1) went in the auto-rikshaw to a nearby temple where Dhanu offered prayers. They then went to Parrys Corner where Haribabu was waiting for them with camera and sandalwood garland. All five then now left for Sriperumbudur by bus and reached there at about 7.30 p.m. Near Indira Gandhi Statue Sivarasan directed Nalini (A-1) to give cover to Subha and Dhanu at the place of meeting before the occurrence and after the occurrence had taken place to take care of Subha and to wait for him near the statue of Indira Gandhi for about ten minutes and if he failed to turn up they could proceed as already planned. They then proceeded towards the place of meeting. Sivarasan and Haribabu went towards the stage. Nalini (A-1), Subha and Dhanu sat in the women enclosure. Sivarasan then came to the women enclosure, got the garland parcel from Subha and took with him Dhanu towards the stage. Nalini (A-1) saw Dhanu standing in between a young girl (Kokila) and a lady (Lata Kannan) near the red carpet. It was about 9.30 p.m. Thereafter Rajiv Gandhi arrived. Nalini (A-1) and Subha got up from the women enclosure and moved away. There was a loud explosion. Nalini (A-1) and Subha ran across to Indira Gandhi statue and waited for Sivarasan. Sivarasan came there and told them that Rajiv Gandhi and Haribabu died in the blast and that it was unfortunate that Haribabu died. Dhanu of course exploded herself. All this has come in the confession of Nalini (A-1) admissibility of which has been challenged by Mr. Natarajan.

393. After the occurrence prosecution led evidence of harbouring, escaping and removal and destruction of incriminating evidence.

394. Dhanu is already dead in the blast. She was a human bomb. Principal perpetrators of the crime and others met their end during the course of investigation. They are all dead. They committed suicide. They are Sivarasan, Subha, Haribabu, Nero, Shanmugam, Trichy Santhan, Suresh Master, Dixon, Amman, Driver Anna alias Keerthy and Jamuna alias Jameela, all Sri Lankan nationals.

395. First Information Report of the crime was lodged at 1.15 a.m. on 22.5.1991 under Section 302, 307, 326 IPC and Section 3 to 5 of Indian Explosives Act. Camera (MO-1) was found lying on the dead body of Haribabu without any damage. Ten photographs taken by Haribabu before he died at the scene of crime showed the presence of the accused

Sivarasan, Dhanu, Subha and Nalini (A-1). One photograph also showed the event of the explosion itself. (Exh. P-735 is the exposed part of the film and MO-542 is the unexposed part of the film). During the course of investigation accused were arrested on various dates and confessions of all the accused except Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Shanthi (A-11), Selvaluxmi (A-13), Bhaskaran (A-14), Suba Sundaram (A-22) and Ranganath (A-26) were recorded. Their dates of arrest, confession and nationality are as under:

Name	Nationality	Date of arrest	Date of confession
Nalini (A-1)	Indian	14-6-91	9-8-91
Santhan (A-2)	Srilankan	22-7-91	17-9-91
Murugan (A-3)	Srilankan	14-6-91	8-8-91
Shankar (A-4)	Srilankan	19-5-92	No confession
Vijayanandan (A-5)	Srilankan	16-5-92	No confession
Ruban (A-6)	Srilankan	16-5-92	No confession
Kanagasabapathy (A-7)	Srilankan	4-7-91	No confession
Athirai (A-8)	Srilankan	5-7-91	29-8-91
Robert Payas (A-9)	Srilankan	18-6-91	15-8-91
Jayakumar (A-10)	Srilankan	26-6-91	22-8-91
Shanthi (A-11)	Indian	16-5-92	No confession
Vijayan (A-12)	Srilankan	8-7-91	4-9-91
Selvaluxmi (A-13)	Indian	16-5-92	No confession
Bhaskaran (A-14)	Indian	8-7-91	No confession
Shanmugavadivelu (A-15)	Srilankan	16-5-92	17-5-92
Ravi (A-16)	Indian	6-1-92	14-2-92
Suseendran (A-17)	Indian	6-1-92	14-2-92
Ariyu (A-18)	Indian	19-6-91	15-8-91
Irumborai (A-19)	Indian	9-10-91	3-12-91
Bhagyanathan (A-20)	Indian	11-6-91	5-8-91
Padma (A-21)	Indian	11-6-91	7-8-91
Suba Sundaram (A-22)	Indian	2-7-91	No confession
Dhanasekaran (A-23)	Indian	13-10-91	4-11-91
Rangam (A-24)	Srilankan	28-8-91	23-10-91
Vicky (A-25)	Srilankan	4-2-92	24-2-92
Ranganath (A-26)	Indian	28-8-91	No confession

396. The immediate fall out of the assassination of Rajiv Gandhi was that general elections in India got postponed. A notification was issued by Election Commission of India on 22.5.1991 stating that earlier notification dated 19.4.1991 had been issued under Section 30 of the Representation of People Act, 1951 fixing 20.5.1991, 23.5.1991 and 26.5.1991 as the dates on which poll shall be taken in the parliamentary constituencies in India and that "the country has suffered a great tragedy in the death of Shri Rajiv Gandhi at the assassins' hands". The Election Commission directed that election to the constituencies fixed for 22.5.1991 shall be held on 12.6.1991 and that fixed for 26.5.1991 shall be held on 15.6.1991.

397. During the course of investigation prosecution, as stated above, arrested the accused on various dates, recorded their confessions, recorded the statements of witnesses, collected documents and other material and submitted challan under Section 173 of the Code for offences punishable under Sections 120B IPC read with 302, 326, 324, 201 and 212 IPC; Sections 3, 4 and 5 of Explosive Substances Act; Sections 25 and 27 of Arms Act; Section 12 of Passports Act; Section 14 of Foreigners Act; Section 6(1A) of Wireless Telegraphy Act and Sections 3(3), 4(2), 4(3) TADA, 1987. Specific offences committed by each of the accused in pursuance to the criminal conspiracy were also stated.

398. Mr. Natarajan took us through the evidence. He understood the futility of the arguments, and in our opinion rightly, to challenge the very existence of a conspiracy. From the evidence led by the prosecution he did not dispute that reasonable grounds existed to believe that there was a conspiracy to commit an offence. According to him the object of conspiracy was to assassinate Rajiv Gandhi and not to commit any terrorist act or disruptive activity falling under Sections 3 and 4 of TADA as contended by the prosecution. Having accepted the existence of conspiracy he said it was only to be seen as to what was the object of the conspiracy and who were the members of the conspiracy. Confessions of the accused have been recorded under Section 15 of TADA. Rule 15 of the TADA Rules framed under Section 28 of TADA prescribes the conditions for recording of confession made to police officer. He said confessions were not voluntary and have been retracted by the accused. Under Section 20 of TADA certain modified provisions of the Code are applicable. Except for Shanmugavadivelu (A-15), who was taken into custody on 16.5.1992 and his confession was recorded on the following day, in the case of other accused confessions have been recorded only a day or so when the police remand was to expire which was for 60 days. No sufficient time was granted to the accused to reflect if they wanted to make confession. In the case of Nalini (A-1) and Arivu (A-18) mandatory safeguards have been violated. Confession of one accused could not be used for corroboration of the confession of another accused.

399. Mr. Natrajan said that confessions of the accused could not be taken into consideration. His arguments were:

- (1) all these confessions have been retracted by the accused having being taken under coercion and under Police influence;
- (2) sufficient time was not given to accused before recording of the confession. They were given only few hours to reflect if they wanted to make any confession;
- (3) under the provisions of the Code as amended by TADA, the Police took full remand of the accused for 60 days and when a day or so before the remand was to expire the accused were made to give their confessions. There is, thus, every possibility of the confessions being extracted. It cannot also be ruled out that the confessions were obtained by causing physical harm to the accused and playing upon their psychology;

(4) confessions of Nalini (A-1) and Arivu (A-18) are otherwise inadmissible as mandatory provisions contained in Section 15 of TADA and Rule 15(3) of TADA Rules have been violated;

(5) all the accused were kept together in a building called Malagai situated at Green Pass Road, Madras which were the headquarters of CBI, Firstly, remand was taken for one month but no confession came to be recorded. Further remand of one month was taken. During this period, Ponamalai sub-jail was denotified as jail and handed over to CBI and converted into Police Station. All the accused were transferred there and again kept together under the control of special investigating team of CBI. Legal principles required that the accused should have been kept separate and sufficient time should have been given to them for their minds to reflect if they wanted to make clean breast of the whole thing;

(6) it is settled law that confession of an accused cannot be used for corroboration of the confession made by co-accused. The rule of prudence so requires; and

(7) all these confessions are post-arrest confessions and confession of one accused cannot be used against the other even with reference to Section 10 of the Evidence Act. It could not be said that object of conspiracy was not accomplished by the assassination of Rajiv Gandhi and that the conspiracy was still in existence.

400. Coming to the confession of Nalini (A-1), it was submitted by. Mr. Natrajan that she, in her confession, referred to Murugan (A-3), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-2,1) among the accused now arraigned before the Court. She also referred to Jayakumar (A-10) though he comes in the picture after the act of assassination has been completed. Nalini (A-1) who was present at the scene of the crime is the sole surviving accused of the group and had gone to Sriperumbudur in furtherance of conspiracy to assassinate Rajiv Gandhi. Nalini (A-1) has denied in her statement under Section 313 of the Code that her confession was voluntary. She said blank papers were got signed from her. This confession does not satisfy the requirement of law under Section 15 of TADA and Rule 15(3) of TADA Rules though it is not disputed that all the confessions are recorded by V. Thiagarajan (PW-52), Superintendent of Police.

401. It was submitted that the certificate required to be recorded under Rule 15 (3) of the Rules of TADA is on the same lines as given in Section 164 (4) of the Code. Section 164(4) of the Code is as under:"

(4)Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

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

(Signed)
A.B. Magistrate".

402. It is unnecessary to refer to provisions of Section 281 of the Code as it is not disputed that otherwise the confessions of the accused have been properly recorded. Contention in the case of Nalini (A-1) is that the mandatory provision of Rule 15 (3) have been violated as it is not signed by Nalini (A-1) which signatures are required at the end of the confession. It was thus submitted that since the confession does not bear the signatures of Nalini (A-1) it could not be said to be a valid confession. It is important that the accused signs the confession at the end. In that way he comprehends that he has made confession. Confession of Nalini (A-1), it was submitted, has to be rejected in its entirety. Confession is said to be in 18 pages out of which only pages 1 to 16 bear her signatures while pages 17 and 18, which are crucial to the confession, do not bear her signatures. It may be said that the police officer has appended his certificate at the end of the confession but his recording of the certificate is immaterial if the accused did not append his signatures at the end of the confession. Omission of signatures of Nalini (A-1) cannot cure the defect. V. Thiagarajan (PW-52), who recorded the confession, merely stated in the examination-in-chief that his not getting the signatures of Nalini (A-1) was an omission. No explanation has been given as to why the omission occurred and it was not for the accused to bring out in cross-examination as to the circumstances under which signatures of Nalini (A-1) could not be obtained at the end of the confession. It is also not relevant if each page of the confession is signed, signature has to be put on the last page at the end of the confession and only then endorsement by the police officer recording the confession has a meaning. Both the signatures at the end of the confession and the certificates of the police officer must go together. Rule 15 provided an assurance that confession recorded is as per prescribed provisions. In support of the submission Mr. Natarajan referred to a Constitution Bench decision of this Court in Kartar Singh v. State of Punjab: 1994CriLJ3139 where this Court considered constitutional validity of the provisions of Section 15 of TADA and Rule 15 of TADA Rules. It was submitted that the constitutional validity of TADA was upheld because of the safeguards provided by Rule 15 for recording confession by police officer which under ordinary law is impermissible. In Kartar Singh's case the Court said:

In view of the legal position vesting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, we state that there should be no breach of procedure and the accepted norms of recording the

confession which should reflect only the true and voluntary statement and there should be no room for hyper criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability as it could be ironically put that when a judge remarked, "Am I not to hear the truth", the prosecution giving a startling answer, "No, Your Lordship is to hear only the evidence".

This is how this Court analyzed Section 15 and Rule 15:-

As per Section 15(1), a confession can either be reduced into writing or recorded on any mechanical device like cassettes, tapes or sound tracks from which sounds or images can be reproduced. As rightly pointed out by the learned Counsel since the recording or evidence on mechanical device can be tampered, tailored, tinkered, edited and erased etc., we strongly feel that there must be some severe safeguards which should be scrupulously observed while recording a confession under Section 15(1) so that the possibility of extorting any false confession can be prevented to some appreciable extent.

Sub-section (2) of Section 15 enjoins a statutory obligation on the part of the police officer recording the confession to explain to the person making it that he is not bound to make a confession and to give a statutory warning that if he does so it may be used as evidence against him.

Rule 15 of the TADA Rules imposes certain conditions on the police officer with regard to the mode of recording the confession and requires the police officer to make a memorandum at the end of the confession to the effect that he has explained to the maker that he was not bound to make the confession and that the confession, if made by him, would be used as against him and that he recorded the confession only on being satisfied that it was voluntarily made. Rule 15(5) requires that every confession recorded under Section 15 should be sent forthwith either to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and the Magistrate should forthwith forward the recorded confession received by him to the Designated Court taking cognizance of the offence.

For the foregoing discussion, we hold that Section 15 is not liable to be struck down since that section does not offend either Article 14 or Article 21 of the Constitution.

Notwithstanding our final conclusion made in relation to the intendment of Section 15, we would hasten to add that the recording of a confession by a Magistrate under Section 164 of the Code is not excluded by any exclusionary provision in the TADA Act, contrary to the Code but on the other hand the police officer investigating the case under the TADA Act can get the confession or statement of a person indicted with any offence under any of the provisions of the TADA Act recorded by any Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate of whom the two latter Magistrates are included in Section 164(1) by Sub-section (3) of Section 20 of the TADA Act and empowered to record confession.

The net result is that any confession or statement of a person under the TADA Act can be recorded either by a police officer not lower in rank than of a Superintendent of Police, in exercise of the powers conferred under Section 15 or by a Metropolitan Magistrate or Judicial Magistrate or Executive Magistrate or Special Executive Magistrate who are empowered to record any confession under Section 164(1) in view of Sub-section (3) of Section 20 of the TADA Act.

Reference was also made to a Division Bench decision of the Bombay High Court in Abdul Razak Shaikh v. State of Maharashtra 1988 Crl.L.J. 382, which relying on a decision of Privy Council in Nazir Ahmad v. King-Emperor MANU/PR/0020/1936, held, "that the provision that the Magistrate after recording confession should obtain the signature of the accused thereon is a salutary provision and has been specially provided for, for safeguarding the interest of the accused and, therefore, it is mandatory". High Court said that this omission cannot be cured by examining the Magistrate under Section 463 of the Code. Section 463 of the Code is as under:-"

463. Non-compliance with provisions of Section 164 or Section 281.- (1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under Section 164 or Section 281, is tendered, or has been received, in evidence finds that any of the provisions of either or such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in Section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

In Nazir Ahmad v. King-Emperor MANU/PR/0020/1936 the Magistrate, who purportedly recorded the confession, was called as a witness. He said that the accused made a full confession of his participation in the crime. The Magistrate said he made rough notes of what he was told and, after dictating to a typist memorandum from the rough notes, then destroyed them. The Board then noticed:

He produced, and there was put in evidence, a memorandum, called a note, signed by him, containing the substance but not all of the matter to which he spoke orally. The note was signed by him and at the end, above the signature, there was appended a certificate somewhat to the same effect as that prescribed in Section 164, and in particular stating that the Magistrate believed that 'the pointing out and the statements were voluntarily made'. But it was not suggested that the Magistrate, though he was manifestly acting under Part 5 of the Code, either purported to follow or in fact followed the procedure of Sections 164 and 364 (old Code). Indeed, as there was no record in existence at the

material time, there was nothing to be shown or to be read to the accused, and nothing he could sign or refuse to sign. The Magistrate offered no explanation of why he acted as he did instead of following the procedure required by Section 164.

403. The Board did not express any opinion in this case on the question of the operation or scope of Section 533 (old) corresponding to Section 463 of the present Code. It was conceded that the Magistrate neither acted nor purported to act under Section 164 or Section 364 (old) and nothing was tendered in evidence as recorded or purporting to be recorded under either of the sections. The Board then went on to hold as under:-

On the matter of construction Sections 164 and 364 must be looked at and construed together, and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. Upon the construction adopted by the Crown, the only effect of Section 164 is to allow evidence to be put in a form in which it can prove itself under Sections 74 and 80, Evidence Act. Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.

In Abdul Razak Shaikh's case Bombay High Court also relied on a decision of the Nagpur High Court in Neharoo Mangtu Satnami v. Emperor MANU/NA/0209/1936, where also Nagpur High Court relying the aforesaid decision of the Privy Council in Nazir Ahmad v. King-Emperor MANU/PR/0020/1936 held that the evidence of the Magistrate, who recorded the confession of the accused and did not obtain his signatures thereon was inadmissible. The Magistrate also while recording the confession of the accused did not follow the provisions of Sections 164 and 364 of the Code (old) and did not record the confession of the accused with required care and formality. He also did not record the certificate as required by Section 164 and also failed to obtain signature of the accused. The Magistrate subsequently went into the witness box for the prosecution and deposed that the confession was made by the accused voluntarily. In these circumstances High Court held that the evidence of the Magistrate was inadmissible and the confession recorded by him was ineffective.

404. In the case before the Bombay High Court contention was that "as per the provisions of Sub-section (4) of Section 164 Cr.P.C. it is mandatory for the Magistrate, after recording the confession, to obtain the signature of the accused thereon and as in the present case

the learned Judicial Magistrate failed to obtain the signature of the accused on the confession recorded by him, that confession could not be admitted in evidence and the defect could not be cured by invoking the provisions of Section 463, Cr.P.C.". This contention was upheld by the High Court relying on the aforesaid two decisions one of the Privy Council and the other of the Nagpur High Court. We do not think the view taken by the Bombay High Court and Nagpur High Court is correct. It may be noted that the Privy Council did not consider the scope and applicability of Section 463 in the circumstances of the case before it. In that case it was conceded that the confessions were not recorded either under Section 164 or Section 281 of the Code. The view taken by the Bombay High Court appears to us to be rather too technical and if we accept this view it would be almost making Section 463 of the Code ineffective. Confession of Nalini (A-1) runs into 18 pages. The certificate as required by Rule 15 (3) of TADA Rules in the form prescribed has been appended by V. Thiagarajan (PW-52), S.P., at the end of the confession. Signatures of Nalini (A-1) appear on pages 1 to 16. In his testimony V. Thiagarajan (PW-52) has submitted that his not getting signatures of Nalini (A-1) at the end of confession is an omission. There is no cross-examination of V. Thiagarajan (PW-52) as to why the omission occurred. It has not been suggested that the omission was deliberate. Statement of V. Thiagarajan (PW-52) is forthright. There could certainly be a human error but that would not mean that Section 463 of the Code becomes inapplicable. Mr. Natarajan is correct in his submission that when the requirement of law is that confession should be signed by the person making it, it would mean his signatures at the end of the confession. What Section 463 requires is that evidence could be led of police officer recording the confession as to why provisions of Rule 15 (3) could not be complied while recording the confession. It has not been suggested or brought on record as to how not getting signatures of Nalini (A-1) on the last pages of the confession has injured her in her defence on the merits of the case. The confession has been corroborated in material particulars by means of independent evidence even if the confessions of the co-accused are set apart. Confession of Nalini (A-1) was recorded on 7.8.1991 and was sent to the court of the Chief Judicial Magistrate on the following day and on 9.8.1991 it was sent to the Designated Court. We find that the confession was duly made, which was recorded by V. Thiagarajan (PW-52). We are, therefore, inclined to admit the confession of Nalini (A-1) overruling the objection that Rule 15 (3) of the TADA Rules has been violated.

405. We think sufficient time was given to the accused in the circumstances of the case for them to reflect if they wanted to make confession. Merely because confession was recorded a day or so before the police remand was to expire would not make the confession involuntary. No complaint was made before the trial court that confession was the result of any coercion, threat or use of any third degree methods or even playing upon psychology of the accused.

406. In the Case of Arivu (A-18) it was submitted that when he was produced before V. Thiagarajan (PW-52) on 14.8.1991 his statement was recorded that he wanted to give confession statement voluntarily. But then while giving time to him for reflection V.

Thiagarajan (PW-52) recorded that "the accused Shri Payas alias Kumaralingam has been made to remain alone in his apartment for the purpose of reflection in order to further make up his mind as to whether he should make a confessional statement or not". Argument was that it was not Arivu (A-18), who was called on 14.8.1991 and rather it was accused Payas (A-9). We do not think that this submission has any merit as on the following day, i.e., 15.8.1991 confession dated 15.8.1991 of Arivu (A-18) was duly recorded. We have examined the proceedings of 14.8.1991 and of 15.8.1991 and we have no doubt in our minds that these refer to the accused Arivu (A-18) and that the name of Payas (A-9) was merely typing error and no advantage can be drawn from that.

407. Mr. Natrajan said that evidence in the present case does not show if any offence under Section 3 or 4 of TADA has been made out and when there is no offence under TADA, provisions of Section 15 of TADA would not apply and all the confessions would become inadmissible in evidence as all these were made before a Police Officer. In support of his submissions, he referred to a decision of this Court in Bilal Ahmed Kaloo v. State of Andhra Pradesh MANU/SC/0861/1997: 1997 Cri LJ 4091. In that case, the accused was challaned before the Designated Court at Hyderabad for offences under Sections 124-A, 436, 153-A and 505(2) IPC and under Sections 3, 4 and 5 of TADA and also under Section 25 of the Arms Act. The Designated Court acquitted him of the offences under TADA but convicted him of the offences under the IPC and also under Section 25 of the Arms Act. In these circumstances, this Court said that confession made by the accused before the Police Officer was inadmissible in respect of the offences under the IPC. The Court observed as under:

While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence.

408. As to whether any offence under Section 3 or 4 of TADA is made out in the present case, we will consider at subsequent stage of the judgment. In view of the decision of this Court in Bilal Ahmed Kaloo's case contention of Mr. Natrajan is rather correct. However, it appears to us that while holding the confession to be inadmissible in a trial when the accused is acquitted of offences under Section 3 or 4 of TADA, provisions of Section 12 of the TADA were not taken into consideration by this Court in the said judgment. Section 12 reads as under:

12. Power of Designated Courts with respect to other offences.-(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law for the punishment thereof.

409. It is apparent that provisions of Section 12 of TADA were not brought to the notice of the Court in Bilal Ahmed Kaloo's case. This judgment which was rendered by two learned Judges of this Court, does not lay a good law on this aspect of the matter. Continuing Mr. Natrajan said that even if the confession of an accused is admissible under Section 15 of TADA it is not a substantive piece of evidence and cannot be used against a co-accused unless it is corroborated in material particulars by other evidence. Confession of one accused cannot corroborate the confession of another. In support of his submission, he referred to another two Judge Bench decision in Kalpanath Rai v. State (Through CBI) MANU/SC/1364/1997: 1998 Cri LJ 369 where this Court said that confession under Section 15 of TADA cannot be used as substantive evidence and that it has only corroborative value. This is how this Court considered this question:

70. Section 15 of TADA provides that "notwithstanding anything in the Code or in the Indian Evidence Act... a confession made by a person before a police officer not lower in rank than a Superintendent of Police... shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused". In this context we may point out that the words "or co-accused, abettor or conspirator" in the proviso were not in the section until the enactment of Act 43 of 1993 by which those words were inserted. By the same Amendment Act Section 21 was also recast which, as it originally stood, enabled the Designated Court to draw a legal presumption that the accused had committed the offence "if it is proved that a confession has been made by a co-accused that the accused had committed the offence".

71. The legal presumption linked to an accused vis-a-vis a confession made by a co-accused has been deleted by Parliament through Act 43 of 1993 and as a package inserted the words mentioned above in Section 15.

72. What is the effect of such deletion from Section 21 and addition to Section 15 of TADA? It should be remembered that under Sections 25 and 26 of the Evidence Act no confession made by an accused to a police officer, or to any person while he was in police custody could be admitted in evidence, and under Section 162 of the Code no statement made by any person during investigation to a police officer could be used in a trial except for the purpose of contradiction. In view of the aforesaid ban imposed by the legislature Section 15 of TADA provides an exception to the ban. But it is well to remember that other confessions which are admissible even under the Evidence Act could be used as

against a co-accused only upon satisfaction of certain conditions. Such conditions are stipulated in Section 30 of the Evidence Act, which reads thus:

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

73. The first condition is that there should be a confession i.e. inculpatory statement. Any exculpatory admission is not usable for any purpose whatsoever as against a co-accused. The second condition is that the maker of the confession and the co-accused should necessarily have been tried jointly for the same offence. In other words, if the co-accused is tried for some other offence, though in the same trial, the confession made by one is not usable against the co-accused. The third condition is that the confession made by one accused should affect him as well as the co-accused. In other words, if the confessor absolves himself from the offence but only involves the co-accused in the crime, while making the confession, such a confession cannot be used against the co-accused.

74. Even if no conditions are satisfied the use of a confession as against a co-accused is only for a very limited purpose i.e. the same can be taken into consideration as against such other person. It is now well settled that under Section 30 of the Evidence Act the confession made by one accused is not substantive evidence against a co-accused. It has only a corroborative value (vide Kashmira Singh v. State of M.P. MANU/SC/0031/1952: 1952 Cri LJ 839, Nathu v. State of U.P. MANU/SC/0104/1955: 1956 Cri LJ 152 and Haricharan Kurmi v. State of Bihar MANU/SC/0059/1964: 1964 Cri LJ 344).

75. A confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act.

410. Mr. Altaf Ahmad, learned Additional Solicitor General submitted that the statement of law as spelled out in para 75 of the judgment in Kalpnath Rai's case needs re-consideration. He said what Section 15 contains is a non-absent clause and it applies notwithstanding the provisions of the Evidence Act and the Code.

411. Section 21 of TADA was amended by the amending Act 43 of 1993 and Clauses (c) and (d) were omitted. Section 21 before deletion of Clauses (c) and (d) was as under:

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

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

or explosives or other substances of a similar nature, were used in the commission of such offence; or

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

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

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

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

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

412. By the same amending Act words "or co-accused, abettor or conspirator" were introduced in Section 15 TADA after the words "shall be admissible in the trial of such person". Now this Section reads as under:

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

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

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

413. In Kalpnath Rai's case this Court said that Sections 25 and 26 of the Evidence Act were excluded and not Section 30. The question that arises for consideration is as to what is the effect of deletion Clauses (c) and (d) in Section 21 and addition of words in Section 15.

414. Mr. Altaf Ahmad said that the provisions of Sections 15 and 21 after their amendment provided that a confession of an accused is now admissible in evidence against co-accused. It is the substantive evidence against the co-accused as well. Concept of drawing presumption though as was earlier mentioned in Section 21 now no more existed.

415. When Section 15 TADA says that confession of an accused is admissible against co-accused as well it would be substantive evidence against the co-accused. It is a different matter as to what value is to be attached to the confession with regard to the co-accused as that would fall in the realm of appreciation of evidence.

416. The term 'admissible' under Section 15 has to be given a meaning. When it says that confession is admissible against a co-accused it can only mean that it is substantive evidence against him as well as against the maker of the confession.

417. Mr. Natrajan said that the confession may be substantive evidence against the accused who made it but not against his co-accused. He reasoned that the confession was not that of the co-accused and it was not the evidence; it is the confessor who owned his guilt and not the co-accused; it is not evidence under Section 3 of the Evidence Act; it is not tested by cross-examination; and lastly, after all it is the statement of an accomplice. According to him it can have only corroborative value and that is a well established principle of the evidence even though Section 3 and Section 30 of the Evidence Act be ignored. But then Section 15 TADA starts with non-absent clause. It says Evidence Act will not apply and neither the CrPC. This is certainly a departure from the ordinary law. But then it was also the submissions of Mr. Natrajan that the bar which is removed under Section 15 is qua Sections 24, 25 and 26 of the Evidence Act and not that all the provisions of the Evidence Act have been barred from its application. He, therefore, said that the view taken by this Court in Kalpnath Rai's case MANU/SC/1364/1997: 1998 Cri LJ 369 that Section 30 Evidence Act was in any case applicable, was correct. We think, however, that the view expressed in that case needs reconsideration.

418. If we analyze Section 15 the words which have been added by the Amending Act, 1993 have to be given proper meaning and if we accept the argument of Mr. Natrajan these words will be superfluous which would be against the elementary principles of interpretation of statute. For the confession of accused to be admissible against co-accused proviso to Section 15 says that they should be tried together. That is also Section 30 Evidence Act. Clauses (c) and (d) of Section 21 were deleted which raised a presumption of guilt against the co-accused. According to Mr. Natrajan that provision

made the confession of co-accused a substantive evidence and Parliament did not think it proper that it should be so. But then why add the words in Section 15?

'Admissible' according to Black's Law Dictionary means, "pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding."

419. It defines 'Admissible evidence' as, "As applied to evidence, the term means that the evidence introduced is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced at trial. To be "admissible" evidence must be relevant, and, *inter alia*, to be "relevant" it must tend to establish material proposition...". If we again refer to Black's Law Dictionary 'substantive evidence' means "that adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (i.e. showing that he is unworthy of belief), or of corroborating his testimony".

420. TADA was enacted to meet extraordinary situation existing in the country. Its departure from the law relating to confession as contained in Evidence Act is deliberate. Law has to respond to the reality of the situation. What is admissible is the evidence. Confession of the accused is admissible with the same force in its application to the co-accused who is tried in the same case. It is primary evidence and not corroborative. When the legislature enacts that Evidence Act would not apply which would mean all the provisions of the Evidence Act including Section 30. By judicial interpretation or judicial rigmarole, as we may put it, the Court cannot again bring into operation Section 30 of the Evidence Act and any such attempt would not appear to be quite warranted. Reference was made to a few decisions on the question of interpretation of Sections 3 and 30 of the Evidence Act, foremost being that of the Privy Council in *Bhuboni Sahu v. The King* MANU/PR/0014/1949, and though we note this decision it would not be applicable because of the view which we have taken on the exclusion of Section 30 of the Evidence Act. In *Bhuboni Sahu*'s case the Board opined as under:

Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. Their

Lordships think that the view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct.

421. In Kashmira Singh v. State of Madhya Pradesh MANU/SC/0031/1952: 1952 Cri LJ 839 one of the questions was how far and in what way the confession of an accused person can be used against a co-accused. The Court relied on the observations made by the Privy Council in Bhuboni Sahu's case and said that testimony of an accomplice can in law be used to corroborate another though it ought not to be used save in exceptional circumstances and for reasons disclosed.

422. In Hari Charan Kurmi and Jogia Hajam v. State of Bihar 1964 (2) SCR 623 this Court again relied on its earlier decision in Kashmira Singh's case and on the, decision of the Privy Council in Bhuboni Sahu's case. It said that technically construed, definition of evidence as contained in Section 3 of the Evidence Act will not apply to confession. Even so, Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant 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 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 a 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.

423. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made and under Section 15 of TADA confession of an accused is admissible against co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached, to a confession will fall within the domain of appreciation of evidence. As a matter of prudence court may look for some corroboration if confession is to be used against a co-accused though that will again be with the sphere of appraisal of evidence.

424. Having thus held the confessions to be voluntary and admissible we proceed to examine these confessions and other evidence but before that it may be useful to have a look at the witnesses and the nature of the evidence produced. Rajiv Gandhi had come to Sriperumbudur to address an election meeting for Maragatham Chandrasekar, who was contesting election on Congress ticket as MP from Sriperumbudur constituency. She is herself a witness (PW-29) and was injured in the blast. PWs-1 to 51 give evidence of the tour programme of Rajiv Gandhi, his arrival at the venue at Sriperumbudur, security

arrangements by the police and eye witnesses to the blast being Congress party workers, photographers and journalists. We are not concerned with the tour programme of Rajiv Gandhi and the security arrangements made for him. His addressing meeting at Sriperumbudur on May 21, 1991 was published in local newspapers and was known to some of the conspirators. All the security arrangements could not save his life from the human suicide bomb. Many bystanders and police personnel died along with him or suffered grievous or simple injuries. One such person was a young girl Kokila of 14 years who had come with her mother Latha Kankan to recite a poem to Rajiv Gandhi which she had written in Hindi. She was talking to Rajiv Gandhi when blast occurred. She died and so her mother. In one of the photographs in the camera (MO-1) Kokila with her mother Latha Kankan is seen standing next to Dhanu, the human bomb. Some of the persons who suffered hurt have been examined. Of these 51 witnesses, who are not in the list of injured one is C.S. Ganesh (PW-18), Music Director, who was giving his programme at the meeting before the arrival of Rajiv Gandhi; and Sundararajan Murali (PW-34) and Subramaniyan (PW-35) who give opinion regarding motive of LTTE against Rajiv Gandhi. In the photographs found in the camera (MO-1) and other photographs taken at the site by other witnesses Dhanu, Subha, Nalini (A-1), Sivarasan and Haribabu are identified at the scene, of the crime. The witnesses give gory picture of the scene of the crime. There is no dispute that death of Rajiv Gandhi and 15 others was homicidal and the grievous and simple hurt caused to 43 on account of the blast. There is also no dispute about the identity of the accused. Dr. Cecelia Cyril (PW-121), Dr. M.N. Damodaran (PW-124) to Dr. Jishnu Mohan (PW-127), Dr. N. Ramasamy (PW-129), Dr. B. Santhakumar (PW-130), Dr. Veerapandian (PW-134) to Dr. T.S. Koshy (PW-146), Dr. Raja Venkatesh (PW-150), Dr. Kanagaraj (PW-155), Dr. A. Srinivasan (PW-162), Dr. E.V. Yuvaraj (PW-163), Dr. Ponnusamy (PW-165), Dr. K. Poongothai M.S. (PW-166), Dr. Saraswathi (PW-169) and Dr. Ramesh Kumar Sharma (PW-182) are medical officers, who conducted post-mortem and examined the injured. Dr. L. Thirunavukkarasu (PW-243), Dr. S. Rajendran (PW-244), Dr. S. Maghivanan (PW-246) and Dr. T. Shankughavel Samy (PW-247) are the medical officers who conducted the post-mortem on the dead bodies of the deceased accused, who committed suicide during investigation. Dr. Amrit Patnaik (PW-147) is the medical officer who conducted the post-mortem on the dead body of Dhanu.

425. We may now examine the confessions given by the accused and other evidence led by the prosecution to see how each confession corroborates the other and how the evidence corroborates the confessions.

426. Nalini (A-1) is the only accused who was present at the scene of the crime. She is the sister of Bhagyanathan (A-20) and daughter of Padma (A-21). During 1991 she was working as P.A. to Managing Director of Anabond Silicones Pvt. Ltd. at Adyar, Madras. Her office telephone number was 419493. N. Sujaya Narayan (PW-96) was her colleague and acquainted with her hand-writing. Baby Subramaniam, an LTTE leader, was running a printing press in Madras which was bought by Bhagyanathan (A-20) and named it BPL All Rounders. Till January, 1991 Padma (A-21) was staying in Kalyani Nursing Home

quarters where she was working. Thereafter she rented Royapettah house in January, 1991. She was living with her three children Bhagyanathan (A-20), Nalini (A-1) and Kalyani, another daughter. When Nalini (A-1) started living separately she for a short while lived with M. Sankari (PW-210), who is sister of Muthuraja, an LTTE activist. This Muthuraja was a friend of Bhagyanathan (A-20). Nalini (A-1) thereafter rented a house in Villivakkam. Muthuraja was working with Baby Subramaniam, who was a top leader of LTTE. Family of Bhagyanathan (A-20) was introduced to M. Sankari (PW-210) by her brother Muthuraja. Baby Subramaniam used one room in the house of M. Sankari (PW-210) and kept his belongings such as books and papers there. Bhagyanathan (A-20), Arivu (A-18), Haribabu (DA) and Irumborai (A-19) used to visit the room occupied by Baby Subramaniam and meet him. In February, 1991 Irumborai (A-19) and Suresh Master (DA) met M. Sankari (PW-210) and told her that they had come from Jaffna and wanted her to take them to the house of Bhagyanathan (A-20) which she did. Muthuraja had told M. Sankari (PW-210) that he was working in Subha Sundaram Studio but for how long he worked there she did not know. This studio belonged to Subha Suba Sundaram (A-22). Muthuraja had left for Jaffna in February, 1991. He was a professional photographer and was recording video cassettes and he did that work for LTTE movement.

426-A. Bhagyanathan (A-20) had also a job in Subha Sundaram Studio of Subha Suba Sundaram (A-22) which job Padma (A-21) had arranged for him. Subha Suba Sundaram (A-22) was known to Padma (A-21) as she attended the delivery of the wife of the former at Kalyani Nursing Home. Bhagyanathan (A-20) was introduced to Baby Subramaniam by Muthuraja. Arivu (A-18) also became friend of Bhagyanathan (A-20). Like Muthuraja, Arivu (A-18) used to gather news and photographs. He used to compile Tamil and English news, record in video cassettes, edit them and send them to LTTE Headquarters in Sri Lanka. He was staying in the house of Padma (A-21) since February, 1991. For the purpose of recording news on video cassettes he had bought a National colour TV and video deck. In the first week of February, 1991 Muthuraja introduced Murugan (A-3) to the family of Padma (A-21). He belonged to LTTE organization. Padma (A-21) at first did not like Murugan (A-3) to stay in her house but she agreed when Muthuraja told her that police was keeping a watch over his house and he could not keep him there. Murugan (A-3) used to provide financial help to Padma (A-21). He helped Bhagyanathan (A-20) by giving him money as well. One K. Bharathi (PW-233), a nurse, was a friend of Kalyani. She also stayed in the house of Padma (A-21) since February, 1991. On one occasion in February, 1991 K. Bharathi (PW-233) found Murugan (A-3) in the house of Padma (A-21). On inquiry Padma (A-21) told her that he had come from Tirunelveli and that Muthuraja had sent him to learn English.

427. In the second week of February, 1991 Kalyani, sister of Nalini (A-1), accompanied with K. Bharathi (PW-233) and Murugan (A-3) came to the office of Nalini (A-1). Nalini (A-1) was introduced to Murugan (A-3) and was told that he was staying in the house of her mother Padma (A-21). Murugan (A-3) started coming to the office of Nalini (A-1) regularly thereafter and she was quite infatuated of him. Haribabu (DA) and Robert

Payas (A-9) were friends of Murugan (A-3) and they also used to come to the office of Nalini (A-1) and used her telephone to talk to their friends. After some time Murugan (A-3) told Nalini (A-1) that he was an important member of LTTE and had been sent to India by Pottu Amman, Intelligence Chief of LTTE. Murugan (A-3) also told Nalini (A-1) that in India he was working under the charge of Sivarasan (DA), who was in-charge of operations of LTTE in India. On April 18, 1991 Nalini (A-1) attended the election meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras along with Murugan (A-3). She went there at the instance of Murugan (A-3). In the month of April, 1991 when Nalini (A-1) was in the house of her mother Padma (A-21) she met Sivarasan. Murugan (A-3) told her that he (Sivarasan) was his boss and that it was under his Instructions that he was carrying out his work. Nalini (A-1) wanted to vacate her Villivakkam residence but was persuaded by Murugan (A-3) to stay on there for some more time. He told her that Sivarasan was bringing two girls from Sri Lanka for LTTE operations and those girls would be staying with her. Nalini (A-1) agreed. On 2.5.1991 Sivarasan brought Subha and Dhanu to her house. They, however, did not stay with Nalini (A-1) and used to visit her on some days. They told her that they were staying in Kodungaiyur house. Nalini (A-1) learnt both Subha and Dhanu were committed LTTE tigresses and committed to the cause of LTTE. Murugan (A-3) had told Nalini (A-1) that they were working under Pottu Amman and Akila. During their discussions Nalini (A-1) was told by Murugan (A-3), Subha and Dhanu about the atrocities committed by IPKF on Sri Lankan Tamils. They said Rajiv Gandhi was responsible for sending troops to Sri Lanka who killed Tamils, raped and humiliated their women. Nalini (A-1) was also told about the suicide committed by 12 Tamil activists, who were detained by Sri Lankan Navy. All this led Nalini (A-1) to have strong feeling of disgust against Rajiv Gandhi. She also read the book "Satanic Force" and developed extreme hatred for Rajiv Gandhi. Since Subha and Dhanu had come to India for the first time and were finding it difficult to communicate and thus required a natural cover to facilitate their movements. Nalini (A-1) by this time was mentally prepared by Sivarasan, Murugan (A-3), Subha and Dhanu for any kind of retaliatory action including killing of leaders. On 2.5.1991 when Sivarasan brought Subha and Dhanu to the house of Nalini (A-1) and she was told that they were going to garland Indian leaders while addressing public meeting Nalini (A-1) felt instinctively that they were going to assassinate some leader. They had, however, not discussed about it. Sivarasan was of the view that in order to acquaint with the method by which they could bypass the police security and reach the leaders addressing the meetings they should attend those meetings. He said it was very important that Subha and Dhanu reached very close to VIP for garlanding him at the meeting. Sivarasan told Nalini (A-1) that her role was a very important one because being an Indian nobody would suspect Subha and Dhanu if she accompanied them. At the instance of Sivarasan Nalini (A-1), Subha and Dhanu attended the election meeting addressed by V.P. Singh, the then Prime Minister. Sivarasan briefed them in advance that how they should try to go to the dais. Dhanu and Subha were to carry garlands. Haribabu, who had also been briefed, was to be present at the dais to take photographs and was to be a part of the rehearsal. Murugan (A-3) gave Nalini (A-1) a camera and told her that she should try to take photographs. Before going

to the meeting they purchased two rose garlands from a nearby shop. Nalini (A-1), Subha and Dhanu were unable to go to the dais as organizers did not permit them to go there. They were all standing near the stair-case leading to the dais and when V.P. Singh reached there Subha and Dhanu managed to hand over garlands to him. Nalini(A-1) tried to take photographs but could not operate the camera. Haribabu also for some reason could not take photographs. After the meeting when they all assembled failure of Dhanu and Subha reaching the dais was considered. It was also, thought that some donations or bribes should be offered to party workers and the security people in order to go to the dais. Now by this time Nalini (A-1) was convinced that they had definite mission to perform. The meeting of V.P. Singh was also attended by Arivu (A-18) but separately.

428. On 9.5.1991 Murugan (A-3) told Nalini (A-1) that he was to go Sri Lanka on instructions received from Sri Lanka as conveyed to him by Sivarasan. He left for Sri Lanka on 11.5.1991. Sivarasan gave him two letters written by Dhanu and Subha to Pottu Amman and Akila. Bhagyanathan (A-20) also wrote a letter (Exh.P-453) on 9.5.1991 to Baby Subramaniam and gave that to Murugan (A-3) to be delivered to Baby Subramaniam at Sri Lanka. These two letters dated 9.5.1991 are Exh. P-95 and P-96 and were subsequently seized during the course of investigation. These are in Tamil. Though these are written by Subha but are sent on behalf of both Subha and Dhanu. English translation of these two letters is as under:

Ex.P. 95

Tamil Elam
09.05.91.

Dear Akila sister,

We are well and we shall be confident until the fulfillment of the job we came here. Here it is very hot and hence we cannot proceed to any place in the noon.

We are confident that the work for which we came would be finished in a proper manner. Because we were expecting another opportunity appropriately it would be executed within this month.

Otherwise, the state of this country is very bad. We have to practise only to speak. Otherwise there is no problem for us. It is necessary to enact a drama. Akila sister's, every word shall remain in our mind until last.

The remaining, if we meet? Are everybody is well?

Yours
Sd/- Subha-Dhanu

Ex. P. 96

Tamil Elam
09.05.91

To
Pottanna,

We are confident and well. I am confident that we will be successful in the attempt of job for which we came.

Because, we expected a similar opportunity (we went very near to Singh).

We will be confident until last

Yours
Sd/- Subha-Dhanu

Ex. P. 96

Tamil Elam
09.05.91

To
Pottanna,

We are confident and well. I am confident that we will be successful in the attempt of job for which we came.

Because, we expected a similar opportunity (we went very near to Singh).

We will be confident until last

Yours
Sd/- Subha-Dhanu

429. On 7.5.1991 Sivarasan sent a coded wireless message from Madras to Pottu Amman in Sri Lanka (Exh. P-392) which, when decoded, reads as under:

She is the eldest daughter in the house of Indu Master. Moving closely. Our intention is not known to anybody except we three. I have told her that it is to have the support of

the party who will be coming to power. Here V.P. Singh is coming. We are receiving. Like that we are receiving all the leaders.

I am slowly approaching. If I tell our intention there is no doubt that she will stand firmly on our side.

We are moving with her closely, have full satisfaction. Girls are telling that the intention can be revealed to her she can be believed.

If I return I will return as your man. We are strong in powder business.

430. Here reference to 'eldest daughter'.is to Nalini (A-1) and Indu Masters Murugan (A-3). On 11.5.1991 Subha and Dhanu came to Nalini (A-1) and all three went for shopping. They purchased a set of 'churidar' in orange colour with designs, green colour 'kameez' (shirt) and a green 'duppatta' from a shop in Purasawakkam. These purchases were made for Dhanu. Her measurements were required but she said she need not give any measurement as she wanted a very loose kurta. It was Subha who gave measurements on her behalf. From another shop a pair of sleepers ('chappals') was also purchased for Dhanu. S. Chinnamani (PW-203) is salesman working in shop called Metro Square in Pondy Bazaar, Madras, who testified of having sold chappals to Dhanu and identified the same as worn in the leg in photograph (MO-527). He said at that time there were two more ladies with her. M. Gunankhalal Soni (PW-179) testified having sold the 'churidar' to Dhanu from his shop. He has identified the dress sold by him and worn by Dhanu in the photograph (MO-31). M. Gunankhalal Soni (PW-179) identified Subha and Nalini (A-1) in photograph (MO-105) and also Nalini (A-1) in the court as one of the two women who came along with Dhanu.

431. In the morning of 19.5.1991 Nalini (A-1), Subha and Dhanu went to Mahabalipuram and returned in the evening when they found that Sivarasan was waiting for them in the house of Nalini (A-1). He showed them the clipping of an evening Tamil newspaper in which the visit of Rajiv Gandhi to Tamil Nadu in connection with the election campaign was published. Nalini (A-1) found Sivarasan tense and excited. He said that "they had come only for that and that we should attend his meeting on 21st or 22nd, whether at Pondicherry or Sriperumbudur". He asked Nalini (A-1) to apply for two days' leave. Sivarasan's presence at the house of Nalini (A-1) at that odd hour, his excitement and his command gave Nalini (A-1) a feeling of terror. She, however, managed to tell him that it would be difficult to apply for two days' leave and go to Pondicherry and that she would be able to visit the nearest point. Sivarasan said that he would decide about the venue the next day. Nalini (A-1) now had a strong feeling that Rajiv Gandhi was their final target. Sivarasan again came to the house of Nalini (A-1) on the morning of 20.5.1991 and said that he would inform her about the venue in the evening. He told her to go to Royapettah house in the evening at about 6.30 p.m. He asked her where Sriperumbudur was and when she told him that she would make inquiries and let him know he said sternly that

on no account she should discuss that matter with any one and that he would himself find out about Sriperumbudur. Sivarasan told Nalini (A-1) to apply for leave on some pretext but not for Sriperumbudur meeting. Then he left along with Dhanu and Subha. Nalini (A-1) went to Royapettah house in the evening. Sivarasan also came there and told her that venue was Sriperumbudur and that she need take only half day's leave on 21.5.1991 and should be available at her house positively at 3.00 p.m. sharp. He said he would come along with Dhanu and Subha and pick her up. At that time Haribabu had also come to Royapettah house since message was left at his house by Murugan (A-3) to go there. Murugan (A-3) was also present as he had returned to Madras and told Nalini (A-1) that he could not go to Sri Lanka. After getting instructions to return to Sri Lanka on 11.5.1991 Murugan (A-3) after purchasing certain articles and getting letters from Subha and Dhanu (Exh. P-95 and P-96) and from Bhagyanathan (A-20) (Exh.P-453) went to Kodiakkarai. He also carried a dress given by Arivu (A-18) for Baby Subramaniam and negatives of photographs of Chennai Fort, D.G.P. Office. At Kodiakkarai he had met Shankar (A-4) and while returning he gave him piece of paper containing his name and that of Nalini (A-1) and also her telephone number 419493. He waited there till 17.5.1991 and as no boat came from Sri Lanka he returned to Madras after leaving his articles in boxes at Kodiakkarai. These boxes contained the two letters by Subha and Dhanu and that one written by Bhagyanathan (A-20) to Baby Subramaniam. Murugan (A-3) reached Madras on 18.5.1991.

432. When the meeting disbursed Haribabu told Nalini (A-1) that he was also coming to Sriperumbudur next day, i.e, 21.5.1991. After Murugan (A-3) returned from Kodiakkarai on 18.5.1991 he was staying with Nalini (A-1).

433. On the morning of 21.5.1991 while Nalini (A-1) went to her office Murugan (A-3) went to Royapettah house. In the meeting Arivu (A-18) and Bhagyanathan (A-20) were also present. Arivu (A-18) gave a Kodak colour film to Haribabu,

434. Nalini (A-1) told her boss that she wanted half day's leave. She was told that she need not take leave and could go after finishing her work. She, however, told her colleague N. Sujaya Narayan (PW-96) that she was going to Kanchipuram for buying sarees. Sriperumbudur is mid way between Madras and Kanchipuram. After Nalini (A-1) left her office at about 2.00 p.m. she went to Royapettah house. She found only Murugan (A-3) was present there. Murugan (A-3) told her to hurry and go to her house otherwise Sivarasan would get annoyed. Nalini (A-1) reached her house at 3.00 p.m. At 3.45 p.m. Sivarasan came there along with Subha and Dhanu. He was wearing a white loose 'kurta' and narrow 'pyjama' and was carrying a note pad and a camera in his hand. Subha was wearing a green colour saree which had been purchased earlier. Dhanu was wearing loose fitting green colour 'kameez', orange colour 'churidar' and a green colour dupatta which had been purchased earlier from the market. Subha told Nalini (A-1) that Dhanu was going to create history that day by assassinating Rajiv Gandhi and they would be very happy if Nalini (A-1) also participated in that. Nalini (A-1) agreed. She

could see that Dhanu was concealing an apparatus under her dress. Nalini (A-1) wore a saree. At about 4.00 p.m. they all left in an auto rikshaw. Dhanu said that she would go to temple for her final prayers. They went to Pillayar Temple near Nadamuni Theatre and Dhanu offered prayers. before leaving the house Nalini (A-1) left her keys with Rani (PW-90), her neighbour, whom she told that she was going to Vellore. They went to Parrys Corner and reached Thiruvalluvar bus stand around 5.00 p.m. Haribabu was already there. He had purchased a sandalwood garland which was wrapped in a brown cover. This garland was purchased in the morning by Haribabu from Poompuhar Handicrafts, Madras. It was sold to him by A.K. Anbalagan (PW-94). He was also having a camera. This was the camera (MO-1) which was found at the scene of the crime and had been borrowed from K. Ravi Shankar (PW-151). Thereafter they boarded a bus for Sriperumbudur. For all five, tickets were purchased by Sivarasan. They reached Sriperumbudur at about 7.30 p.m. They purchased flowers. Dhanu purchased Kanakambaram, Subha and Nalini (A-1) purchased Jasmine. They ate their dinner and started towards the meeting point where Rajiv Gandhi was to address a meeting. On the way they stopped near Indira Gandhi statue and discussed their roles. Nalini (A-1) was to help Subha after the assassination to take refuge in some city till Sivarasan gave further instructions. Haribabu was to take photographs of the assassination scene. Nalini (A-1) was also to provide cover to both Subha and Dhanu during the event. After the event Nalini (A-1) and Subha were to wait for ten minutes near Indira Gandhi statue for Sivarasan. If he did not come they would push off as instructed before. Subha, Dhanu and Nalini (A-1) went to the ladies enclosure in the meeting and sat there. Haribabu and Sivarasan went separately towards the stage. Music programme of C.S. Ganesh (PW-18) was going on at that time. After surveying the scene Sivarasan came and called Dhanu. Subha, who was having the garland parcel, given to her by Haribabu, handed over the same to Dhanu. She opened the parcel and took out the garland. Dhanu and Sivarasan then went back near the dais. Nalini (A-1) could see them with Haribabu. Sivarasan was also trying to put Dhanu in the crowd of people who were waiting to greet Rajiv Gandhi. There were a mother and daughter sitting in the women enclosure behind where Subha and Nalini (A-1) were sitting. The mother was telling that her daughter had written a poem which she would recite to Rajiv Gandhi. After some time both daughter and mother were seen standing near Dhanu, who was talking to the daughter and appeared to befriend her. About 9.30 p.m. there was announcement that all persons who were waiting to garland and greet Rajiv Gandhi might make a queue near the carpet. Dhanu was standing between the mother and daughter. After some time announcement was made that Rajiv Gandhi was coming. Thereafter Rajiv Gandhi arrived. Subha and Nalini (A-1) got up from the ladies enclosure and moved away. Subha was holding the hand of Nalini (A-1) and was nervous. There was a loud explosion. Dhanu exploded herself. Nalini (A-1) and Subha ran across to the Indira Gandhi statue as instructed earlier by Sivarasan and waited for him. Soon thereafter Sivarasan came running there. He told that both Rajiv Gandhi and Dhanu had died and said that unfortunately Haribabu also died. Sivarasan took out a pistol wrapped in a white cloth and gave it to Nalini (A-1) to be given to Subha. Nalini (A-1) handed over that pistol to Subha. They came to the bus stand and saw there

was a bus but they were told that that bus would not be leaving. They ran further down the road and saw a lady Samundeeswari (PW-215) who was standing outside a house. They requested her and were given water to drink. They were able to reach Madras by changing two auto rickshaws. Last auto rikshaw was driven by K. Vardarajan (PW-183). They reached Kodungaiyur at 1.30 a.m. in the night of 21/22.5.1991. Jayakumar (A-10) and his wife Shanthi1 (A-11) were in the house. Nalini (A-1) met them for the first time. They spent night there. Nalini (A-1) and Subha were quite upset that Haribabu had unexpectedly also died in the blast. Subha told Nalini (A-1) that it was she who had personally prepared Dhanu to put the belt on her waist containing the bomb. The bomb had two switches and for it to explode Dhanu had pressed one switch after another. The bomb contained a small battery for electric circuit. On the morning of 22.5.1991 Santhan (A-2) brought some newspapers. At about 7.30 a.m. they all went to the house of D.J. Swaminathan (PW-85), a neighbour, to watch TV news. The whole day they spent in the house of Jayakumar (A-10).

435. On the morning of 23.5.1991 Sivarasan left the house and came back at about 8.30 a.m. on a red Kawasaki Bajaj motor cycle. He dropped Nalini (A-1) to her office on the motor cycle. Since the office on that day was not working Nalini (A-1) went to Royapettah house to her mother. She learnt that in the morning Sivarasan had come there and gave details of the incident to Murugan (A-3) and Bhagyanathan (A-20). In the evening Nalini (A-1) accompanied by Murugan (A-3) went to her house at Villivakkam. She got the key of the house from Rani (PW-90).

436. On the morning of 25 5.1991 Sivarasan told Nalini (A-1) that they all should go out of Madras and go to Tirupathi. Nalini (A-1) and Murugan (A-3) after locking the house and handing over the key to Rani (PW-90) went to Royapettah house. In the afternoon Sivarasan, Nalini (A-1), Murugan (A-3), Padma (A-21) and Subha went in a tourist taxi to Tirupathi. They returned on the next day. In Tirupathi Nalini (A-1) did Angapradakshnam. Rooms in Tirupathi were taken in the name of taxi driver V. Ramasmy (PW-107). Taxi was arranged by Bhagyanathan (A-20) from Sriram Travels of R. Shankar (PW-117) and S. Vaidyanathan (PW-104). It was on the suggestion of Sivarasan that nobody would suspect if Padma (A-21) also accompanied them to Tirupathi. Before leaving for Tirupathi Nalini (A-1) went to her neighbour Gajalakshmi (PW-189) and told her that she had arranged for Abhishekam at Pillaiyar Temple for 26.5.1991 and that as she would not be available Gajalakshmi (PW-189) might attend the Abhishekam. While going to Tirupathi Sivarasan and Subha were picked up from Parrys Corner and on return they were dropped there. Padma (A-21) went to her Royapettah house. Murugan (A-3) and Nalini (A-1) went to Villivakkam house where they packed up their belongings and came to stay at Royapettah house. Murugan (A-3) arranged a house for him at Madipakkam on 28.5.1991 where Nalini (A-1) and he could hide. However, he started staying in the press of Bhagyanathan (A-20). Nalini (A-1) continued to attend her office till 7.6.1991. On 7.6.1991 she gave a plastic cover containing Rs. 25,000/- to her colleague N. Sujaya Narayan (PW-96) and requested her to keep the same

in her table drawer. Three days earlier Murugan (A-3) had come to the office of Nalini (A-1) and took her to a lady doctor to know if Nalini (A-1) was pregnant. That day they stayed in Madipakkam house. On 6.6.1991 Nalini (A-1) asked her sister Kalyani to go to Villivakkam house and settle the rent arrears with the landlord there. On 7.6.1991 as per earlier programme Nalini (A-1) and Murugan (A-3) went to Ashtalaxmi temple at Besant Nagar where Subha and Sivarasan also came. Sivarasan said that CBI was making detailed inquiries and invited Nalini (A-1) to go to Sri Lanka with him. Nalini (A-1) declined, He then told her to take Subha to a doctor as she was very weak. Nalini (A-1) took Subha to Asian Hospital at Besant Nagar and doctor advised her to take rest and prescribed some medicines. Sivarasan and Subha then left by an auto. Nalini (A-1) and Murugan (A-3) also returned. Nalini (A-1) went to see the lady doctor, who confirmed that she was pregnant.

437. On the morning of 8.6.1991 Nalini (A-1) suggested to her mother that they all should commit suicide. This was because of the fear that CBI was looking for them. Nalini (A-1) brought some poison from a nearby shop but then they decided not to commit suicide. She and Murugan (A-3) decided to go out of Madras. On the morning of 9.6.1991 Nalini (A-1) went to her office. It was Sunday. She took out the amount of Rs. 25,000/- kept by N. Sujaya Narayan (PW-96) in her table drawer. Nalini (A-1) then wrote a resignation letter (Exh. P-471) on a slip of paper and kept it on the table of N. Sujaya Narayan (PW-96). She handed over the key of her office to maid servant of N. Sujaya Narayan (PW-96). She did not attend the office from 10.6.1991. Murugan (A-3) and she left for Tirupathi by bus and stayed there in a lodge. The lodge was taken in an assumed name "Lalitha with one other". Murugan (A-3) tonsured his head. On 11.6.1991 they left Tirupathi and went to Madurai and stayed in the house of R. Ravi Srinivasan (PW-115), Nalini (A-1) had known to R. Ravi Srinivasan (PW-115) as she had worked with him as his steno. Before coming to the house of R. Ravi Srinivasan (PW-115) Nalini (A-1) had called him up from Tirupathi on phone and asked him whether she could stay with her husband in his house for few days. Nalini (A-1) told R. Ravi Srinivasan (PW-115) that she had married one Sri Lankan citizen and introduced Murugan (A-3) as her brother-in-law by name Raju. While they were all sitting for breakfast a telephone call came for Muthupandian, who was sub-inspector of police. R. Ravi Srinivasan (PW-115) sent his maid servant to call Muthupandian. He was, however, not in his house. Nalini (A-1) was quite perplexed when she asked R. Ravi Srinivasan (PW-115) how he knew the police. He told her that Muthupandian was his neighbour and he had given the telephone number of R. Ravi Srinivasan (PW-115). He then asked Nalini (A-1) as to why she was afraid of police to which she replied that since she had married a Sri Lankan and her parents did not like that and that they had lodged a complaint with the police.

438. On the morning of 12.6.1991 Nalini (A-1) woke up and told R. Ravi Srinivasan (PW-115) that they were going to Meenakshi Temple and will come back later. When the newspapers came that day R. Ravi Srinivasan (PW-115) found a notice published with the caption "Do you know these women, who are connected with Rajiv's assassination".

In that notice there was description of Nalini (A-1) mentioned. R. Ravi Srinivasan (PW-115) gave information on telephone to SIT at about 10.00 a.m. Nalini (A-1) and Murugan (A-3), however, did not return from the temple. Murugan (A-3) had left his cap (MO-395) in the house which R. Ravi Srinivasan (PW-115) handed over to the police. From Madurai Nalini (A-1) and Murugan (A-3) went to Villupuram and then to Devangere near Bangalore on 13.6.1991 and stayed there in the house of Sasikala (PW-132). There Nalini (A-1) introduced Murugan (A-3) as her brother-in-law Thas (Doss) to Sasikala (PW-132). Sasikala (PW-132) met Nalini (A-1) earlier in a common acquaintance house and had conversed with her. Nalini (A-1) told Sasikala (PW-132) that she was two months pregnant. Husband of Sasikala (PW-132) came to the house in the evening. He asked Nalini (A-1) how and when she got married. Nalini (A-1) said it was a long story and it would take time to narrate. While she was narrating her story Murugan (A-3) stopped her mid way and said they had to go to Madras urgently. During the course of their stay Nalini (A-1) told Sasikala (PW-132) that her husband was a Sri Lankan citizen and that he had brought two girls to see Madras. Sasikala (PW-132) in her statement then says as under:

Then Nalini told me that she showed them beach and market. Then Nalini told me that those girls told her that they have to see Rajiv Gandhi's meeting which is to be held at Sriperumbudur on May 21, 1991 and so that she took them to the Rajiv Gandhi meeting and one girl died in it. Nalini told me that since the police had suspected her husband, he gave the sum of Rupees twenty five thousand and asked her to go with his brother and later he will come and bring her. She told me that her husband told her that he will come and take her after the election was over and there will be tight police security in the seashore. Nalini told me that since the police suspect them, they came to this area. On hearing this I was frightened. Then my husband came to our house I told him about this matter, separately. He also frightened. Then Thas told us that we should not tell about this with anybody else.

Both Nalini (A-1) and Murugan (A-3) left for the bus stand and were dropped there by husband of Sasikala (PW-132). While at Sasikala's (PW-132) place they bought new cloths. Nalini (A-1) left behind in the house of Sasikala (PW-132) her old dress which was seized by the CBI (Exh. P-634) and later identified in court by Sasikala (PW-132) as that of Nalini (A-1). Sasikala (PW-132) identified both Nalini (A-1) and Murugan (A-3) as the persons who stayed in her house. Sasikala (PW-132) also said that Nalini (A-1) told her that her husband had brought two girls from Sri Lanka to Madras for sight seeing.

After being dropped at the bus stand Nalini (A-1) and Murugan (A-3) came to Bangalore. From there they picked up a bus for Villupuram and from Villupuram to Madras. It was on 14.6.1991 when they got down at Saidapet bus stand, Madras they were arrested.

439. Confession of Bhagyanathan (A-20) bears out what Nalini (A-1) said in her confession. Apart from the fact that we find truthfulness in the version given by Nalini (A-1), it also stands corroborated by material particulars. We may briefly note what

Bhagyanathan (A-20) said in his confession. In 1988 he got acquainted with Muthuraja, an Indian and strong LTTE sympathizer. It was through Muthuraja that Baby Subramaniam became known to Bhagyanathan (A-20) when he was working at Suba Studio. Various persons connected with LTTE used to come to Suba Studio to meet Baby Subramaniam. In the course of time Bhagyanathan (A-20) was also attracted towards LITE. In 1989 Bhagyanathan (A-20) used to stay in the house of Muthuraja during nights. He then came in contact with Arivu (A-18), a diploma holder in Electronics and Communications. Arivu (A-18) was meeting Baby Subramaniam everyday. He was selling books and collecting news for the political propaganda wing of LITE. Baby Subramanian was senior member of LTTE and was incharge of political wing of LTTE in Tamil Nadu. At the suggestion of Muthuraja, Bhagyanathan. (A-20) purchased the press being run by Baby Subramaniam in 1990. He bought it for a petty sum of Rs. 5,000/- though he purportedly bought it for Rs. 51,000/- . He was told not to pay the balance amount and instead he was required to print monthlies of Tamileelam and Urumal which were being published from the press. Baby Subramaniam left for Srilanka in the end of May, 1990. Arivu (A-18) and Irumborai (A-19) also went along with him. They, however, returned after about four or five months. Irumborai (A-19) came to be known to Bhagyanathan (A-20) through Baby Subramaniam as he was also in the political wing of LTTE.

440. During last months of 1990 State Government had taken strong steps against LTTE because of the killing of EPRLF leader Padmanabha and his associates at Madras. It had become difficult for LTTE to operate freely in India and now they were doing so clandestinely. Arivu (A-18) and Irumborai (A-19) when on their return came from Sri Lanka brought with them photographs and literature published by LTTE showing weapons seized by LTTE from IPKF. These were distributed by Arivu (A-18) to Tamil magazines and to various supporters of LTTE movement. LTTE was having a office of its political wing in Madras which was sealed and some persons were arrested by the police. That was around November, 1990. According to Bhagyanathan (A-20) it was at the instance of Muthuraja that he allowed Murugan (A-3)to reside with their family at Royapettah house though that was initially objected by Padma (A-21). Murugan (A-3) told Bhagyanathan (A-20) that he had come to India to learn English. Subsequently, however, he told him that he belonged to Intelligence Wing of LTTE under the charge of Pottu Amman. Bhagyanathan (A-20) was put in fear, the time he purchased the press from Baby Subramaniam that he and his family might have to face consequences if he operated against LITE.

441. When Murugan (A-3) needed a person to assist him Bhagyanathan (A-20) introduced Haribabu to him. Haribabu had also worked with Suba Sundaram (A-22) as photographer. He was also known to Muthuraja and was interested in LITE. He would come to the meetings conducted in support of LITE, take photographs and give them to Suba Sundaram (A-22) and Muthuraja. He was being paid anything from Rs. 100/- to Rs. 1000/- a month.

442. In April, 1991 there was change of Government and LTTE men were searched and arrested with the result that Arivu (A-18) also started residing in Royapettah house. Murugan (A-3) joined English speaking course in an institute in Madras. At the request of Muthuraja LTTE publications, photographs and posters were shifted, which were kept in the house of M. Sankari (PW-210), to the house of V. Radhakrishnan (PW-231) (MO-594 to 632). The material which was shifted included the 'Black Book' (B.B.) in three volumes. In the third volume (MO-609) there was a diagram of electric circuit. Prosecution has tried to infer that the electric circuit used in the waist belt-bomb to kill Rajiv Gandhi was identical to the diagram in MO-609. The material was shifted by Arivu (A-18), Bhagyanathan (A-20) and Haribabu. P. Vadivelu (PW-202) is a tempo driver in whose tempo the material was shifted from the house of M. Sankari (PW-210) to the house of V. Radhakrishnan (PW-231). V. Radhakrishnan (PW-231) is working in the Customs Department of the State Government. He was familiar with Arivu (A-18) and Suba Sundaram (A-22). In January, 1991 Arivu (A-18) had asked him for a house for keeping his books. V. Radhakrishnan (PW-231) told him that he was not having any house at Madras but had one in his village. Arivu (A-18) agreed for that house and in March, he sent his books in a tempo with two persons. When the books were being kept there Arivu (A-18) had also come. After seeing that the books related to LTTE movement V. Radhakrishnan (PW-231) asked Arivu (A-18) to remove those books on which Arivu (A-18) said that he would do so within a month or two months time. A sum of Rs. 50/- was paid by him to the mother of V. Radhakrishnan (PW-231) towards rent. All this material was subsequently seized by the police.

443. Various persons connected with LTTE activities in Tamil Nadu came to be known to Bhagyanathan (A-20) since they used to come either to meet Suba Sundaram (A-22) or Baby Subramaniam or Murugan (A-3). In his letter (Exh.P-453) Bhagyanathan (A-20) to Baby Subramaniam said that he was running the press properly though he had shifted the press to another place and that he had informed Arivu (A-18) about that and he was keeping contact with him. He also described the working of the press. The letter was recovered during course of investigation. Bhagyanathan (A-20) learnt about the attending the meeting of Rajiv Gandhi and Jayalalitha and of V.P. Singh and also about Subha and Dhanu from his sister Nalini (A-1). Bhagyanathan (A-20) in his confession said that around 7.00 p.m. on 20.5.1991 Haribabu came to their house when K. Bharathi (PW-233), his other sister Kalyani, Nalini (A-1), Murugan (A-3), Arivu (A-18) and he were there in the house. He said at the instance of Haribabu he did get from Arivu (A-18) a Kodak colour roll which he handed over to Haribabu. But there is no charge against Bhagyanathan (A-20) that he handed over the film roll to Haribabu. Rather this charge is against Arivu (A-18) of handing over the Kodak colour film roll to Haribabu. According to Bhagyanathan (A-20) on 23.5.1991 when Nalini (A-1) came to Royapettah house she told him as to how Sivarasan asked her to take leave on 21.5.1991; how they all went to Sriperumbudur by bus when during travel from Madras to Sriperumbudur Nalini (A-1) came to know that Dhanu was about to assassinate Rajiv Gandhi; how after reaching the

place of meeting Sivarasan took Dhanu with him and by paying Rs. 500/- to woman constable they moved to the front row and Haribabu took photos; and finally how they escaped after the blast. On 21.5.1991 Bhagyanathan (A-20) and Arivu (A-18) had gone to see a movie at 9.30 p.m. and when they returned they came to know that Rajiv Gandhi had been assassinated. After reaching home they informed Murugan (A-3) and others about this. Murugan (A-3) did not express any surprise or shock. Next morning video and audio cassettes belonging to Arivu (A-18) were removed from Royapettah house and taken to the house of Veeramani, a friend of Arivu (A-18).

444. On 23.5.1991 Sivarasan came to Royapettah house and informed the death of Haribabu. Arivu (A-18) and Murugan (A-3) were there at that time. Bhagyanathan (A-20) and Arivu (A-18) went to Subha Studio to get the address of Haribabu. Murugan (A-3) sent Rs. 1000/- to the family of Haribabu which money was handed over by Bhagyanathan (A-20) there. At this stage Bhagyanathan (A-20) also learnt that Haribabu had taken a camera from K. Ravi Shankar (PW-151) to get photograph of garlanding Rajiv Gandhi as was told by Haribabu to K. Ravi Shankar (PW-151). When Bhagyanathan (A-20) told this fact to Suba Sundaram (A-22) he said not to open his mouth in this regard. But Ravi Shanker (PW-151) does not say of any conversation he had with Haribabu when he took the camera (MO-1). Bhagyanathan (A-20) said that he compelled his mother Padma (A-21) to go to Tirupathi along with Nalini (A-1), Murugan (A-3), Sivarasan and Subha in the car arranged by him. He burnt LTTE stickers and Prabhakaran's stickers.

445. On 25.3.1991 Dhanu's photo, which had been taken by Haribabu, was published in the papers. On 26.5.1991 Sivarasan's photo was published. On 27.5.1991 Murugan (A-3) asked Bhagyanathan (A-20) to meet Sivarasan at Mount Road Post Office. They both went by auto. Sivarasan gave Bhagyanathan (A-20) the motor cycle key and a bag containing documents of the motor cycle and asked him to take away the motor cycle (MO-82) and conceal it, which had been parked nearby. He warned them that even though he was not there they may be watched by somebody. He also said that he would arrange a cyanide capsule for Nalini (A-1). Fearing arrest by the police Bhagyanathan (A-20) allowed Murugan (A-3) to stay in his press for four or five days. Thereafter he was arrested by the police.

446. MO-82 Kawasaki Bajaj Motorcycle used by Sivarasan was subsequently seized by the police during investigation from the press of Bhagyanathan (A-20).

447. We may at this stage note a letter (Exh. P-128) dated 7.9.1991 written by Trichi Santhan (deceased accused) to Irumborai (A-19) when he was on his way to Sri Lanka. This letter was seized from Irumborai (A-19). In this Trichy Santhan gave instructions to Irumborai (A-19) what he was to tell Prabhakaran in Sri Lanka. Photocopy of this letter is Exh.P-131. But another letter (Exh.P-129) which was seized from Irumborai (A-19) was one addressed by Trichy Santhan to Prabhakaran. He is complaining about the mishandling of the whole affair by Sivarasan and about other things. Letter of Irumborai

(A-19) gives him instructions as to what he should tell prabhakaran and what he should not. Some of these instructions are:

- * Don't speak as though you knew in advance about Rajiv's incident.
- * Speak about the persons who are monthly paid, because we are caught only while going to make payments to them.
- * Speak about the prevailing political situation/ also about the leader.
- * Speak in details about the mistake committed in our association with the supporters of Raghavar like Arvin/person connected with the press of Baby Anna/ Haribabu/Subha Sundaram. Name of the movement would not have come to light, had it been done through our own people as done in Padmanabha's case. Movement behind Arivu, Subha Sundaram and presence of our emblems in the press are these not evidence?

448. From these instructions prosecution wants to infer that Irumborai (A-19) was member of the conspiracy to kill Rajiv Gandhi and so was Trichy Santhan (DA), Arivu (A-18), Haribabu Suba Sundaram (A-22) and perhaps Bhagyanathan (A-20), who was running the press earlier run by Baby Subramaniam. We, however, do not think that advantage can be drawn by the prosecution from this letter. It is a post-conspiracy letter. It does not show if Trichy Santhan was a conspirator. There is no evidence of Trichy Santhan being a member of the conspiracy to kill Rajiv Gandhi. He was one of the persons who committed suicide in Bangalore. Then any knowledge of conspiracy is not enough to implicate a person as a member of the conspiracy.

449. Padma (A-21) did not know if Murugan (A-3) was an LTTE activist when he came to stay in her house at the instance of Muthuraja, who told her that his house was being watched by police. Only later on she came to know that Murugan (A-3) was an LTTE activist. He helped her financially as financial condition of Padma (A-21) was not sound. Padma (A-21) had even borrowed money from M. Chandra (PW-214) (Rs.4000/-), who was working as a maid in the neighbourhood of Kalyani Nursing Home, where Padma (A-21) was working and where her employer had been admitted. This amount Padma (A-21) returned three months prior to the death of Rajiv Gandhi. Padma (A-21) had also borrowed money from R. Janaki (PW-226) whom she knew. This amount she returned in the month of March, 1991. From the notebook of Murugan (A-3) (MO-286), which was seized during the course of investigation, the amounts paid by him to Padma (A-21) have been mentioned. Padma (A-21) introduced Murugan (A-3) to K. Bharathi (PW-233) as the boy who had been sent by Muthuraja and had come from Tirunelveli to learn English. Whenever Sivarasan came to the house of Padma (A-21) she found that Sivarasan, Murugan (A-3), Arivu (A-18) and Bhagyanathan (A-20) "used to discuss matters in low tone". On 20.5.1991 a day before the assassination of Rajiv Gandhi Dhanu had sprain in her leg. Nalini (A-1) suggested Sivarasan to take Subha and Dhanu to Kalyani Nursing

Home for treatment of Dhanu where her mother Padma (A-21) was working. K. Rajalakshmi(PW-76), who was working as a pharmacist in Kalyani Medical center, stated on the basis of the records maintained in the center that six tablets of Brufen were given to Padma (A-21) on 20.5.1991. Sivarasan asked Padma (A-21) to prescribe medicine for Dhanu as she was having sprain in her leg. Dhanu, however, refused to show her leg. She asked for pain-killer. She was given six brufen tablets. Later in the evening at about 8.30 p.m. on 20.5.1991 when Padma (A-21) came back home she learnt through Kalyani, K. Bharathi (PW-233) and Arivu (A-18) that Nalini (A-1), Murugan (A-3) and Haribabu had come and after finishing their dinner they had left. Sivarasan also met Nalini (A-1) in the house. Next day Padma (A-21) returned from her duty at 4.00 p.m. After Arivu (A-18) and Bhagyanathan (A-20) came back from the late night show they told her that Rajiv Gandhi had been assassinated in a bomb blast. On 23.5.1991 Nalini (A-1) when came to the Royapettah house she informed Padma (A-21) that she had gone along with Sivarasan, Subha, Dhanu and Haribabu to Sriperumbudur on the night of 21.5.1991 for Rajiv Gandhi's assassination. This made Padma (A-21) worried. She was more concerned about Nalini (A-1) and Murugan (A-3). When on the morning of 24.5.1991 Dhanu's photo was published in the papers Padma (A-21) was frightened and was in fear of her arrest. On 26.5.1991 after return from Tirupathi Nalini (A-1) vacated her Villivakkam house and she and Murugan (A-3) came to the house of Padma (A-21). From 27.5.1991 onwards Nalini (A-1) was going to her office while Murugan (A-3) was staying in the house. On 27.5.1991 Murugan (A-3) gave Padma (A-21) one Code Sheet belonging to LITE, meant for transmitting secret messages through wireless, so that it might not be seized by the police. He asked her to keep that safely hidden. Padma (A-21) gave that Code Sheet to her co-nurse Devasena Raj (PW-73) for safe custody. Devasena Raj (PW-73) in her statement said that it was on the morning of 7.5.1991 when she was going for duty that Padma (A-21) asked her to keep one brown cover in her locker. Padma (A-21) said it was important. MO-106 is the brown cover and papers which were in the cover are MO-107 and MO-108. These were taken into possession by the police during investigation. Both Padma (A-21) and Bhagyanathan (A-20) were arrested on 12.6.1991. There is a wireless message dated 12.6.1991 sent by Sivarasan from Wireless Station 910 to Station 91 of Pottu Amman which reads "the brother of officer-girl, her mother were arrested". Reference to office-girl is to Nalini (A-1).

450. Murugan (A-3) is a Srilankan national. He joined LTTE movement in 1988. He is hard-core LTTE activist. He took training in shooting, drill, political classes and weaponry; He used to train new entrants. He spent two months in Yalpanam (Jaffna) fort and was also guarding the prison there. He subjected prisoners to torture in order to elicit information. Over thirty persons died due to the torture inflicted on them by various methods. Murugan (A-3) in his confession described the set up of LITE. He said, among them, Prabhakaran (absconding accused) was the world leader, Mathiah was political leader, Pottu Amman (absconding accused) was leader of spy wing and the man incharge of military was Palraj. Shanthi was incharge of intelligence wing of women in LTTE and her next in command was Akila (absconding accused). Murugan (A-3) told Pottu Amman

that he did not like the job he was doing. Pottu Amman asked him to go to India for an important job. In January, 1991 Murugan (A-3) joined the suicide squad of LITE. He was given the job of procuring the sketch of the interior of Chennai Fort, Police Headquarters at Chennai and various other police stations with their locations. He was also asked to take photographs and video graphs of those places. He was given two gold biscuits weighing one kilo each and a sum of Rs. 2000/- in cash. He was told that when he reached Indian soil he would be met by Sivarasan who would take him to Kanthan at Madras. Kanthan would arrange a house for him- and if any news were to be given by Murugan (A-3), these were to be sent through wireless set of Kanthan and if any further amount was required Kanthan was to give the same. In the third week of January, 1991 Murugan (A-3) reached Kodiakkarai on Indian soil. Along with him one Mukunthan came, who was a smuggler. Sivarasan met him there. He told him that though his name was Raghavarajan he was having the name of Sivarasan in India and should be called by that name. From there both Sivarasan and Murugan (A-3) came to Madras and went to the house of Robert Payas (A-9). Kanthan met Murugan (A-3) in the house of Robert Payas (A-9). He was having a red colour Yamaha motorcycle. Kanthan and Sivarasan were quite close to each other. One Nisanthan was assisting Kanthan. After staying in the house of Robert Payas (A-9) for five days, in the first week of February, 1991 arrangements for his stay in Royapettah house of Padma (A-21) were made. This was as per plan of Muthuraja as stated by Murugan (A-3). Here Murugan (A-3) came in contact with Nalini (A-1) and other members of the family. Murugan (A-3) did go to an institute for learning English for two or three days and thereafter he stopped. Because of his influence Nalini (A-1) became very much attracted to LTTE movement. In March, 1991 Sivarasan asked Murugan (A-3) to find out from Padma (A-21) if she would come with him to Delhi to arrange a house for their stay. Padma (A-21) did not agree. When Sivarasan asked Murugan (A-3) about this he felt that there was some plan for serious act like murder. However, he did not ask for any details from Sivarasan. On his request Bhagyanathan (A-20) introduced Haribabu as his confidential man to Murugan (A-3). In the third week of February, 1991 Murugan (A-3) and Haribabu went to Vellore and saw the Fort where certain persons belonging to LTTE were arrested and detained. Haribabu of his own went to Vellore three or four times and collected the structure of the jail interiors and maps as desired by Murugan (A-3). These were sent to Pottu Amman through Kanthan's code message. Murugan (A-3) was snubbed that he should do that work only which was entrusted to him at Madras and he was to do his duty without questioning. Pottu Amman told Murugan (A-3) that if he was asked to watch a particular shop he should not watch the next shop. Haribabu was doing the job of taking photographs and videograph of St. George Fort, Chennai, Fort buildings, DGP Office, Police stations and their locations. Murugan (A-3) asked Bhagyanathan (A-20) and Arivu (A-18) also to take photographs of these places. After collecting the same he sent them to Sri Lanka. In the last week of March, 1991 Sivarasan asked Murugan (A-3) that he had plan to garland Rajiv Gandhi for the first time in a public meeting and asked him if he could arrange for an Indian girl for that purpose. When the name of Rajiv Gandhi was mentioned Murugan (A-3) understood that the next target was Rajiv Gandhi. As Rajiv Gandhi was responsible for

the atrocities committed by IPKF, there were strong feelings among the women folk to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi but Sivarasan neither told that nor confirmed about that to Murugan (A-3). Murugan (A-3) said he would arrange for an Indian girl. Nalini (A-1) was thus thought of. Again in the first week of May, 1991 Sivarasan told Murugan (A-3) that he had brought two girls Subha and Dhanu from Sri Lanka and he required an Indian girl for him to finish the job as both Subha and Dhanu would speak Tamil in Sri Lankan dialect and in order to mix with the crowd without any suspicion he felt the need of an Indian Tamil girl. They then decided to make use of Nalini (A-1). Murugan (A-3) knew Subha and Dhanu as the women working with LTTE. Murugan (A-3) attended public meeting of Rajiv Gandhi and Jayalalitha on 18.4.1991 along with Nalini (A-1) at Madras. Haribabu had also come to that meeting and took photographs of Jayalalitha and Rajiv Gandhi. Murugan (A-3), Subha, Dhanu, Haribabu and Nalini (A-1) went to the public meeting of V.P. Singh on 7.5.1991. That was to rehearse if Dhanu and Subha could go to the dais and garland V.P. Singh. Nalini (A-1) was assigned to take photographs. This was a "dry run". A fabricated press accredited card prepared by Haribabu was given to Murugan (A-3) (Exh. P-521). This press accredited card with Murugan's (A-3) photo and name was seized from the house taken on rent by Murugan (A-3) at Madiapakkam. Forged press accreditation photo card was also given by Haribabu to Sivarasan. This was for them to gain access to VIP. When Murugan (A-3) got instructions to go to Sri Lanka he purchased some articles and got collected other things. He reached Kodiakkrai on the Indian soil on 14.5.1991 and stayed there upto 17.5.1991. Since no boat came he returned to Madras. The boxes which he was carrying he left at Kodiakkrai with M. Mariappan (PW-86), an employee of Shanmugham(DA). Those were subsequently recovered and seized and letters written by Subha, Dhanu and Bhagyanathan (A-20) (Exh. P-95, P-96 and P-453) were found. Two volumes of "Satanic Force" (MO-125 and 126), video cassettes showing various parts of Fort St. George (MO-323), photographs of DGP Office etc. (Mos-256-259) were also found. Murugan (A-3) reached Madras on 18.5.1991 and stayed with Nalini (A-1). While at Kodiakkrai, Murugan (A-3) met Shankar (A-4) and gave him a slip of paper (Exh.P-1062) containing the name: "Nalini-Thass-419493". On 20.5.1991 Sivarasan came to Royapettah house to instruct them to be ready for the meeting of Rajiv Gandhi on the next day. Murugan (A-3) went to the house of Haribabu and since Haribabu was not available he asked his sister to tell Haribabu to go to Royapettah house. On the night of 21.5.1991 Murugan (A-3) was in Royapettah house. When Arivu (A-18) and Bhagyanathan (A-20) came at 1.30 a.m. after seeing late night show they told him about Rajiv Gandhi's assassination by human bomb. From this Murugan (A-3) understood that Sivarasan had finished his task. Now he was anxious about Nalini (A-1). While at Tirupathi on 25.5.1991 Sivarasan told Murugan (A-3) about the belt bomb. He told him there were two switches and after switching the first switch on, Dhanu asked Sivarasan to go away. Murugan (A-3) when asked Sivarasan the reasons for killing of Rajiv Gandhi he replied that Kasi Anandhan (PW-242) had met Rajiv Gandhi at Delhi and was told that the meeting was very cordial there and if Rajiv Gandhi came to power he would help LTTE movement. Prabhakaran showed the letter written by Kasi

Anandhan (PW-242) suggesting cordial relations to Pottu Amman and said that people like Kasi Anandhan (PW-242) should be removed from the movement. When Sivarasan met Prabhakaran he told him that "we must teach a lesson to Rajiv Gandhi through the girls since IPKF dishonoured women". From this Murugan (A-3) understood that decision to assassinate Rajiv Gandhi was taken by Prabhakaran. When on 7.6.1991 Murugan (A-3) met Sivarasan at Astalakshmi Temple it was decided that Murugan (A-3) would continue the task of Sivarasan and these tasks were to take care of old Vijayanandan (A-5) living in the house of Vanan; to send Arivu (A-18) to Delhi and also to contact Santhan (A-2). Sivarasan also said that they must go back to Sri Lanka on or before June 10/11, 1991 and that he was arranging the boat for the purpose from Nagapattinam.

451. Santhan (A-2) is a Sri Lankan national. He knew Sivarasan as they both belonged to same town in Sri Lanka. According to Santhan (A-2) important decisions like murder of any body could be taken only by Prabhakaran. Santhan (A-2) knew that Sivarasan was a member of military wing of LTTE movement. He knew the set up of LTTE, its activities and its skirmishes with IPKF. In February, 1988 Sivarasan asked Santhan (A-2) if he wished to continue his education at Madras, LTTE would make arrangements for that. Santhan (A-2) accepted the offer. He and Sivarasan came to India on 15.2.1990. They reached Kodiakkrai by boat and overnight stayed in the house of shanmugam (DA). Next day they went to Madras and to the house of one Nagarajan, a smuggler and a Sri Lankan Tamil. Sivarasan, Nagarajan and Shanmu-gavadivelu (A-15) took Santhan (A-2) to Madras Institute of Engineering Technology where he got admission. Nagarajan was introduced as uncle of Santhan (A-2). Fees and expenses were paid by Sivarasan. Santhan (A-2) was residing in the hostel. Santhan (A-2) in his confession has described as to how Padmanabha, leader of EPRLF and other leaders of EPRLF were killed by Sivarasan and other LTTE tigers David, Danial alias Dinesh Kumar and Ravi on 19.6.1990 and how they were able to effect the escape back to Sri Lanka. Santhan (A-2) though himself did not take part in the killing was entrusted with the duty to watch the place where meeting of EPRLF was being held and to give that information to Sivarasan. He also escaped with Sivarasan and other Sri Lankans. Pottu Amman welcomed them and praised them by patting their shoulders. Prabhakaran also met them and shook hands with David, who was incharge of Padmanabha's murder. Because of this incident Santhan (A-2) discontinued his studies. P.S. Padmanabhan (PW-187) was a student of Madras Institute of Engineering Technology. He identified Santhan (A-2) as Raja who was studying in that Institute. He said Santhan (A-2) studied in the institute only for a couple of days and thereafter he did not see him. In the last week of April, 1990 Pottu Amman called him and asked him to get ready on 27.4.1991 to go to Tamil Nadu with a group under the leadership of Sivarasan. On the morning of 1.5.1991 Santhan (A-2) along with other comprising a group of nine arrived at Kodaikkrai in the boat from Sri Lanka. They stayed for a short while in the house of deceased accused Shanmugam. Then all these persons left for various places after arriving at the Indian soil. Santhan (A-2) stayed in the house of Robert Payas (A-9) at Porur till 5.5.1991. On 5.5.1991 Santhan (A-2) was

introduced to Haribabu, Murugan (A-3) and Arivu (A-18) by Sivarasan. Sivarasan asked Haribabu to take Santhan (A-2) to his residence for Santhan (A-2) to stay there. That evening Sivarasan also took Santhan (A-2) to the residence of Jayakumar (A-10) where he met Jayakumar (A-10) and his wife Shanthi (A-11). That night Santhan (A-2) stayed in the house of Jayakumar (A-10) with Sivarasan. Next day Santhan (A-2) went to the house of Haribabu. When Haribabu's mother asked Santhan (A-2) his native place he told her that he was from Pariyakulam, Madurai. Santhan (A-2) stayed in the house of Haribabu for about a week. On 12.6.1991 Santhan (A-2) met Sivarasan who inquired from him about his Switzerland visit. Santhan (A-2) said he had inquired about that from a travel agent P. Veerappan (PW-102) who told him that his passport would be ready within a week. Sivarasan remarked that if he did not go to Switzerland LTTE would suffer a loss of Rs. 1,00,000/-.

452. P. Veerappan (PW-102) said that he was doing the job of getting passports and renewal of old passports and also getting visas. He knew C. Vamadevan (PW114) who started the business of brokerage of letting houses on rent. In that connection Vamadevan (PW-114) came in contact with Shanmugavadivelu (A-15). In the end of April, Shanmugavadivelu (A-15) met Vamadevan (PW-114) and asked him if he could suggest some agent to send his brother-in-law to a foreign country. Vamadevan (PW-114) thought of P. Veerappan (PW-102) and took Shanmugavadivelu (A-15) to him. When P. Veerappan (PW-102) asked Shanmugavadivelu (A-15) as to which country his brother-in-law belonged to he replied that he belonged to Madras only. P. Veerappan (PW-102) told him that he had a friend who would arrange for his brother-in-law to go to a foreign country. He asked hanmugava divelu (A-15) to bring necessary documents such as passport, ration card, school certificate, etc. and his brother-in-law should also come along with him. Shanmugavadivelu (A-15) was told that the expenses of visa, ticket and foreign exchange for the purpose would be Rs. 80,000/- and Rs. 50,000/-- were required in advance. In the first week of May, 1991 Shanmugavadivelu (A-15) brought his brother-in-law and introduced him to P. Veerappan (PW-102). He asked him certain questions. After two or three days C. Vamadevan (PW114) and Shanmugavadivelu (A-15) came to P. Veerappan (PW-102) and gave him Rs. 50,000/. Shanmugavadivelu (A-15) said that other documents he will bring within a few days. Shanmugavadivelu (A-15) again met P. Veerappan (PW-102) two/three times and told him that necessary documents were getting ready. In the second week of July, 1991 brother-in-law of Shanmugavadivelu (A-15) came to P. Veerappan (PW-102) and asked him if papers were ready for his foreign trip. He told that documents have still not been given to him. P. Veerappan (PW-102) identified Santhan (A-2), who was introduced to him as brother-in-law by Shanmugavadivelu (A-15). P. Veerappan (PW-102) was, however, unable to identify if Shanmugavadivelu (A-15) was the person who brought Santhan (A-2) to him though Vamadevan (PW-114) identified both Santhan (A-2) and Shanmugavadivelu (A-15) in court.

453. Santhan (A-2) told Sivarasan that he was not comfortable staying in the house of Haribabu. Sivarasan then took him to the house of Jayakumar (A-10) on 13.5.1991. On 15.5.1991 Sivarasan gave a letter to Santhan (A-2) and asked him to give it to Kanthan, who was in Robert Payas's (A-9) house. Santhan (A-2) gave the letter to Kanthan who in turn gave him Rs. 5 lacs and asked him to give the sum to Sivarasan. Santhan (A-2) accordingly paid the amount to Sivarasan who took Rs. 2,00 lacs and asked him to keep the balance with him. On 17.5.1991 Sivarasan and Santhan (A-2) went to Eashwari Lodge and met Snankar (A-4). Sivarasan took Rs. 10,000/- from Santhan (A-2) and gave that to Shankar (A-4). On 18.5.1991 Sivarasan again got Rs. 20,000/- from Santhan (A-2). He asked Santhan (A-2) to go to the house of Robert Payas (A-9) where he gave Rs. 4,000/- to Ruban (A-6). Then both Robert Payas (A-9) and Santhan (A-2) went to Pondy Bazaar and purchased clothes and a watch for Ruban (A-6). Ruban (A-6) came to stay at Robert Payas's (A-9) house only a day before. At the instance of Sivarasan, Santhan (A-2) brought Ruban (A-6) to Marina Beach on 19.5.1991. Sivarasan and Ruban (A-6) talked to each other and then all three went to the house of Vijayendran (PW-111), a Sri Lankan national. After that all four of them and one more boy went to Central Station of Railway. A send off was given to Ruban (A-6), Vijayendran (PW-111) and the boy on a train to Delhi on way to Jaipur.

454. Santhan (A-2) said that Ruban (A-6) had lost one of his legs in bomb blast and that journey was to take treatment for that. More money was given by Kanthan to Santhan (A-2) who in turn gave that back to Sivarasan. Sivarasan asked Santhan (A-2) to furnish him the account of money he received from Kanthan which account Sivarasan had to give to a man going to Sri Lanka. The account which Santhan (A-2) wrote as told to him by Sivarasan was as under:

<u>Income:</u>	*
Received from Kanthan Through Santhan	Rs. 9,50,000
Received from Kanthan by Sivarasan	Rs. 9,50,000
<u>Expenditure:</u>	
To X Y	Rs. 3,00,000
Delta (Murugan)	Rs. 25,000
	Rs. 5,000
A.T.	Rs. 1,00,000
	Rs. 3,50,000
	Rs. 1,00,000
To Y X through Delta	Rs. 5,00,000
To self (Sivarasan)	Rs. 15,000"

455. Sivarasan then asked Santhan (A-2) as to why he had not shown the amount of Rs. 50,000/- which was given to Santhan (A-2). He asked Santhan (A-2) that out of that amount Rs. 25,000/- be paid to Murugan (A-3) and Rs. 5,000/- each to Jayakumar (A-10) and Keerthi. These amounts Santhan (A-2) paid as directed after the assassination of Rajiv Gandhi. On 20.5.1991 Santhan (A-2), Jayakumar (A-10) and Sivarasan were in the house

of Jayakumar (A-10). before that on 16.5.1991 Sivarasan had told Santhan (A-2) that Prabhakaran had paid special attention on Santhan (A-2) after the murder of Padmanabha and important works were allotted to him and all this was on account of the cooperation given by Santhan (A-2) in Padmanabha case. Santhan (A-2) said that Sivarasan also told him that he was going to help Subha and Dhanu to finish Rajiv Gandhi. In Jayakumar's (A-10) house Santhan (A-2) stayed upto 28.5.1991. D.J. Swaminathan (PW-85) in his deposition said that Santhan (A-2) stayed in the house of Jayakumar (A-10) from 16.5.1991 to 26.5.1991.

456. On 21.5.1991 Santhan (A-2) saw Sivarasan in white kurta-pyjama. Sivarasan inserted a white cloth bag containing a pistol in his hip pocket and asked Santhan (A-2) whether the gun was protruding outside the dress. To this Santhan (A-2) replied in the negative. The pistol was Czechoslovakia make. Cloth bag was stitched by Shanthi (A-11) two days earlier. A pistol (MO-79) was seized by P.P. Chandrasekara Nair (PW-271) from the house at Konanakunte (Bangalore) where Sivarasan, Subha and others committed suicide. Sivarasan then went out and returned around mid-night when Santhan (A-2) was sleeping. Sivarasan woke him up and told him that Rajiv Gandhi and Dhanu had died. He also told that he had brought one sister who was a helper of LTTE. His reference was to Nalini (A-1). Next morning Sivarasan, Subha and Nalini (A-1) went to the house of a neighbour to watch TV. On 28.5.1991 Santhan (A-2) went to Tirupathi in the assumed name of Kumaresan. On his return journey from Tirupathi he saw the picture of Sivarasan in Kurta Pyjama in a newspaper. He went to the house of Robert Payas (A-9) and not to the house of Jayakumar(A-10). On 30.5.1991 Robert Payas (A-9), his wife Prema, sister Latha and Santhan (A-2) went to Thiruchendur and planned to stay in a cottage there. Receptionist there, on hearing Santhan (A-2), asked him his address. He gave the address as No. 30, Vanniar Street, Choolaimedu. Santhan (A-2) then left the place fearing that they would be trapped if the receptionist asked the PIN code of Choolaimedu. From Thiruchendur they came to Madurai and after staying there for a while left for Madras reaching there early morning. Robert Payas (A-9) and his family returned to Porur house while Santhan (A-2) went to K.K. Nagar. In between he had been meeting Sivarasan and getting instructions from him. He said Sivarasan told him that thereafter Murugan (A-3) would look after his work and that of Kanthan, i.e., to send Keerthi to Colombo, Athirai (A-8) to Delhi, to send money to Ruben (A-6); provision of a house for Shankar (Shankar (A-4)); and arranging money for such works. Sivarasan was frantically trying to escape to Sri Lanka. Santhan went to the house of P. Thirumathi Vimala (PW-62) to meet Athirai (A-8) who was staying there. He took Shanmugavadivelu (A-15) along with him.

457. P. Thirumathi Vimala (PW-62) said that Santhan (A-2) did come to her house and said that he was acquainted with Athirai (A-8) that he knew her already and that he had come to see her. She told him that she was having problem and asked him to take away Athirai (A-8) immediately. He said he would do that. He wanted a letter for Dixon (DA)

who was staying in Gowri Karunakaran's house, a relative of P. Thirumathi Vimala (PW-62).

That letter was delivered at Gowri Karunakaran's house. Santhan (A-2) got a reply while he was still in the house of P. Thirumathi Vimala (PW-62). At his request Santhan (A-2) was taken to the house of Gowri Karunakaran. When he met Dixon he knew that he was a member of LTTE. A few days later Santhan (A-2) again came to the house of P. Thirumathi Vimala (PW - 62) and told her that Shanmugavadivelu's (A-15) house had been searched by the CBI and had caught him and that perhaps CBI would come to the house of P. Thirumathi Vimala (PW-62) also since Athirai (A-8) who was staying there was not holding passport and that it would be problem for her. He said he had, therefore, come to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went along with Santhan (A-2). before leaving, Athirai (A-8) left Rs. 8,000/- with P. Thirumathi Vimala (PW-62). Around 1.7.1991 when P. Thirumathi Vimala (PW-62) came to her house she found Santhan (A-2) and Athirai (A-8) waiting for her. Athirai (A-8) wanted her money back. P. Thirumathi Vimala (PW-62) said that she never expected them to come back immediately and that she had already spent Rs. 1,500 out of that money for certain purchases and was left with Rs. 6,500/. They said it was alright and asked her to give that money to them. They then left. Kangasabapathy (A-7) had also come along with Santhan (A-2) and Athirai (A-8) but afterwards had left before P. Thirumathi Vimala (PW-62) returned to her house.

Santhan (A-2) then received a message from Dixon that he wanted to meet him. Dixon told Santhan (A-2) that all their wireless messages were spied by Tamil Nadu police. Santhan (A-2) took Athirai (A-8) to Pamal house where he also stayed. On the night of 1.7.1991 Santhan (A-2) made Athirai (A-8) to get in the train at Central Railway Station to Delhi and then went to Pamal house and stayed there. Though Santhan (A-2) in his confession said that he saw off Athirai (A-8) at the Central Railway Station but evidence shows that he saw off both Kanagasabapathy (A-7) and Athirai (A-8) on 1.7.1991 to New Delhi.

458. In letter (Exh.P-129) dated 7.9.1991 written by deceased accused Trichy Santhan to Prabhakaran he mentioned that arrest of Santhan (A-2) was a great danger to LTTE and that members of the movement had been captured alive and that members had made disclosure right from Padmanabha incident.

459. Confession statement of Shanmugavadivelu alias Thambi Anna (A-15) was recorded on 18.5.1992 while he was arrested on 16.5.1992. He is a Sri Lankan national and gives his family background. He was owning a lorry along with another in Sri Lanka and doing business there. However, his business was hit because of war between LTTE and Sri Lankan army. His house was damaged in 1987 by bomb lodged by Sri Lankan army. He then decided to stay in India. Since 1985 while in Sri Lanka LTTE had started collecting money from each family for its war efforts. He left Colombo on 19.6.1987 and came to

Madras with his wife and two children and his sister's son. Initially he stayed with his elder sister's son Dr. Thiru Vadivel (Dentist). Then he rented a house where he started living with his family. In 1988 Dr. Thiru Vadivel went back to Sri Lanka hoping that situation would normalize after the presence of IPKF in Sri Lanka. Shanmugavadivelu (A-15) got the telephone No. 864249 of Dr. Thiru Vadivel installed in his house. That telephone always remained in the name of Dr. Thiru Vadivel. Shanmugavadivelu (A-15) started lorry service along with his wife's brother Arvinda Das. One Karunakaran was working as a lorry contractor in Madras harbour. 35% of the profit was taken by Karunakaran and rest 65% was shared between Shanmugavadivelu (A-15) and Arvinda Das. According to Shanmugavadivelu (A-15) Arvinda Das was disbursing money to Sri Lankan Tamils there from lorry service. He was also receiving money from Sri Lanka at times for distribution as per instructions received on telephone by him. Shanmugavadivelu (A-15) knew P. Thirumathi Vimala (PW-62) from Sri Lanka. She had come to India three or four years earlier to Shanmugavadivelu (A-15). She shifted to her house at Royapettah in 1990. P. Thirumathi Vimala (PW-62) was known to wife of Shanmugavadivelu (A-15). They were on visiting terms. One child was born to Shanmugavadivelu (A-15) while in India. One day two persons by the name Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and wanted to give a letter to P. Thirumathi Vimala (PW-62). Shanmugavadivelu (A-15) took them to the house of P. Thirumathi Vimala (PW-62). When Sivarasan and Santhan (A-2) expected some money from Shanmugavadivelu (A-15) he told them that that matter was attended to by Arvinda Das. Sivarasan said that whenever Santhan (A-2) would come and ask for money that be given to him. When Shanmugavadivelu (A-15) took them to P. Thirumathi Vimala's (PW-62) house she was not at home. He, however, introduced Sivarasan to her daughters who were aged 15 and 16 years. After four or five days Santhan (A-2) again came to the house of Shanmugavadivelu (A-15) and asked to be taken to the house of P. Thirumathi Vimala (PW-62) which again Shanmugavadivelu (A-15) did. At that time also P. Thirumathi Vimala (PW-62) was not at home. One week before Rajiv Gandhi's assassination Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and gave him a bundle containing Rs. 1.25 lacs for safe custody. Shanmugavadivelu (A-15) had helped Santhan (A-2) to get admission in M.I.E.T. Institute through Nagaraja. After four or five days Santhan (A-2) again came and this time gave Rs. 3.20 lacs to Shanmugavadivelu (A-15). This money Santhan (A-2) took back subsequently. One day when he came to get some money from Shanmugavadivelu (A-15) by that time photo of Sivarasan connected with the assassination of Rajiv Gandhi was published in newspaper. Shanmugavadivelu (A-15) asked Santhan (A-2) about Sivarasan and his photo appearing in paper to which Santhan (A-2) said that he need not worry. before the assassination of Rajiv Gandhi one-day P. Thirumathi Vimala (PW-62) with her daughter and Athirai (A-8) came to the house of Shanmugavadivelu (A-15). Athirai (A-8) said that she expected a phone call from foreign country and told Shanmugavadivelu (A-15) that she might be informed about that. Daughter of P. Thirumathi Vimala (PW-62) told Shanmugavadivelu (A-15) that Athirai (A-8) was Sivarasan's person. Next day when phone call came which was attended to and the person who spoke on the phone said that he was Athirai's (A-8)

brother. He asked to call Athirai (A-8) and said that he would call again within an hour. Shanmugavadivelu (A-15) went and called Athirai (A-8). After one hour phone call came but Shanmugavadivelu (A-15) did not know what were they talking about. On May 30/31, 1991 Athirai (A-8) again came to the house of Shanmugavadivelu (A-15) to receive a phone call about which Shanmugavadivelu (A-15) did not know. Wife of Shanmugavadivelu (A-15) did not like Athirai (A-8) when she came to know that she was LTTE person. Wife of Shanmugavadivelu (A-15) had strong dislike for LTTE because on one occasion they kidnapped their son aged four years and on other two brothers-in-law including Arvinda Dass were kidnapped. LTTE used to ask for money before releasing the kidnapped but no one did make any complaint about that. Wife of Shanmugavadivelu (A-15) had thus developed a great hatred for LTTE. When Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) for the first time they had noted his phone number. Shanmugavadivelu (A-15) does not talk of any help rendered by him to Santhan (A-2) to go abroad and for that purpose to get passport and visa for him or about any conversation between him and P. Veerappan (PW-102) and C. Vamadevan (PW114). In one of the papers seized from Ruban (A-6) at Jaipur telephone number of Shanmugavadivelu (A-15) 864249 is mentioned. From this prosecution seeks to draw an inference that Ruban (A-6) was sent to Jaipur by Santhan (A-2) and Sivarasan on 17.5.1991 for fixing a hide out and he was given telephone number of Shanmugavadivelu (A-15) as his contact number. Shanmugavadivelu (A-15) was known to Sivarasan and Santhan (A-2) as early as 1990 and had helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.

460. There is no confession of Ruban (A-6). Vijayendran (PW-111) is a Sri Lankan national. He came to India in 1979, studied here, wrote many books and acted in films. Sivarasan met Vijayendran (PW-111) in the second week of April, 1991 at railway platform bookstall and introduced himself. During conversation Sivarasan told him that he was leaving for Sri Lanka in a week's time. Vijayendran (PW-111) had not received any letter from his home in Sri Lanka for more than one and a half years. He asked Sivarasan to hand over his letter to his mother, brothers and also to receive a reply to that. Sivarasan after two days of the meeting came to the house of Vijayendran (PW-111) to collect the letter. Sivarasan again met him on 11.5.1991 bringing to him reply dated 8.5.1991 to his letter. He addressed Vijayendran (PW-111) as brother. Vijayendran (PW-111) expressed gratitude to Sivarasan for his help. Once Sivarasan came to the house of Vijayendran (PW-111) with Santhan (A-2). Sivarasan requested Vijayendran (PW-111) to accompany Ruban (A-6), who was introduced as Suresh Kumar, to Jaipur to fix an artificial limb as he did not have left leg. Vijayendran (PW-111) asked whether there was no doctor available in Madras but Sivarasan said that in India Dr. Sethi was a specialist in that medical field and was based in Jaipur and he wanted treatment for Ruban (A-6) from him. Vijayendran (PW-111) agreed. He, however, told Sivarasan that he would take another person along with him as he himself did not know Hindi. Sivarasan gave him Rs. 15,000/- in cash to meet the medical expenses and the conveyance charges. He asked Vijayendran (PW-111) to buy tickets of G.T. Express for Delhi leaving on 17.5.1991. The

railway tickets were got reserved by Vijayendran (PW-111) on 14.5.1991. Ruban (A-6), Vijayendran (PW-111) and a boy called Ajas Ali left by G.T. Express on 17.5.1991. Sivarasan and Santhan (A-2) had come to see them off. Sivarasan told Vijayendran (PW-111) that Santhan (A-2) would come to him to receive any letter which might be given to him by Ruban (A-6) on his return. Vijayendran (PW-111) said that Sivarasan asked him to use his name as Maharaja in which name he was writing his poems. After arriving at Delhi the group then went to Jaipur on the evening of 19.5.1991. They stayed in Golden Lodge in the names of Ajas Ali, Suresh Kumar and Maharaja. Next day they went to meet the doctor. While at Jaipur on 22.5.1991 Vijayendran (PW-111) came to know about the assassination of Rajiv Gandhi at Sriperumbudur. He said they got into panic as they could be suspected as Tamilians. Ruban (A-6) suggested to vacate the lodge. Next day in the evening they changed to Vikram Lodge. Vijayendran (PW-111) met Mr.Rajan, Manager of the Lodge and asked him to help Ruban (A-6) for getting treatment as Dr. Sethi had given them appointment for 13.6.1991. He along with Ajas Ali left Jaipur on 24.5.1991 for Madras reaching there on the night of 27.5.1991. Ruban (A-6) told him that he would write letter to him addressed as Maharaja and to hand over that to Santhan (A-2). Ruban (A-6) gave him a letter which had already been written by him. Vijayendran (PW-111) saw the photo of Sivarasan published in newspaper on 29.5.1991 with announcement that his whereabouts be informed as he was the main person involved in the assassination of Rajiv Gandhi. That shook Vijayendran (PW-111). On 30.5.1991 Sivarasan came to him and inquired about Ruban (A-6) if he had given any letter. The letter which Ruban (A-6) had written was handed over to Sivarasan.. Vijayendran (PW-111) asked about his picture published in the newspapers. At this he gave sarcastic smile and told him in authoritative tone that he was going to Sri Lanka and would return after three months and then left. One more letter was received from * Ruban (A-6) by Vijayendran (PW-111) on 3/4.6.1991. On 7.6.1991 Santhan (A-2) came to collect that letter. As seen above Santhan (A-2) gave Vijayendran (PW-111) a sum of Rs. 2,000/- and asked him to send it to Ruban (A-6) by telegraphic money order. Entries in the lodge registers at Jaipur were made by Vijayendran (PW-111) (Exh.P-111 and 523).

461. Ruban (A-6) was one of the nine persons who had clandestinely landed at Indian soil in a boat from Sri Lanka on 1.5.1991. In his confession Robert Payas (A-9) said that he met an LTTE boy who had come to his house along with Indrankutti on 9.5.1991. He said the name of that boy was Ruban alias Suresh. He had lost one of his legs in bomb blast in Sri Lanka and had come to India along with Sivarasan for his treatment.

462. Y.R. Nagarajan (PW-106) was working as receptionist in Golden Lodge in Jaipur. He has testified to the stay of Vijayendran (PW-111), Ruban (A-6) and Ajas Ali. He said Ruban (A-6) did not have left leg. Ruban (A-6) stayed in Jaipur till 20.6.1991 when he was arrested. Search was effected in the room in the lodge where Ruban (A-6) was staying. One of the documents seized is a telephone index book (MO-659) containing telephone numbers of Robert Payas (A-9) and Shanmugavadivelu (A-15). In a bunch of papers (MO-667) seized on 15.6.1991 from the house of Murugan (A-3) at Madipakkam, in one of the

papers there was Jaipur address of Ruban (A-6). A letter (Exh.P-1200) dated 18.6.1991 written by Santhan (A-2) to Ruban (A-6) at Vikram Lodge address was also recovered from the lodge. In this letter Santhan (A-2) had advised Ruben (A-6) to again shift from his present place of stay to another safe place. This is an inland letter written after the death of Rajiv Gandhi. This letter is stated to have been handed over by Rajan, Manager of Vikram Lodge, to police inspector R.D. Kalia (PW-236). It is not the original letter rather a Xerox copy. Original is stated to have been lost in the court and as such secondary evidence was allowed to be led. This document is proved by the handwriting expert K. Ramakrishnan (PW-262) but only the address is said to be in the writing of Santhan (A-2). There is no evidence about the contents of the letters as if written by Santhan (A-2). In the notebook (MO-159) there is entry (Exh.P-439) giving details of expenses incurred for Ruban (A-6). In the confession of Irumborai (A-19) he has mentioned about the deceased accused Jamuna alias Jameela an injured LTTE tigress staying in Neyveli in Tamil Nadu for getting an artificial leg fixed as she had lost her leg in the fight at Jaffna against the Army. Ruban (A-6) did not get artificial limb in Jaipur and it was fixed in Madras itself while he was in judicial custody.

463. Arivu (A-18) was little less than 20 years of age on the date of assassination of Rajiv Gandhi. He was sympathizer of LTTE movement. In 1986 he took part in an agitation and was imprisoned for 15 days in Madras. Suba Sundaram (A-22) was known to his father. Arivu (A-18) joined his studio (Suba Studio) in May, 1989. Muthuraja and Baby Subramaniam used to visit Suba Studio. Arivu (A-18) became close to them and started working for LITE. He started selling and distributing LTTE literature. He used to sell these books in public meetings. In Suba Studio he also came in contact with Bhagyanathan (A-20) and deceased accused Haribabu, who were also working there. Even after they had left Suba Studio they used to come there. On account of the influence of Baby Subramaniam and his assistant Muthuraja both Bhagyanathan (A-20) and Haribabu were attracted towards LTTE movement and got involved there. When Arivu (A-18) came to Madras in May, 1989 he started staying with Bhagyanathan (A-20) and also with Muthuraja. Place of Muthuraja was used by LTTE people. In connection with LTTE work Arivu (A-18) used to visit Bangalore quite often. Arivu (A-18) also got in contact with Suresh Master (DA) and Trichy Santhan. Both were having important place in LITE. Arivu (A-18) was being paid by Trichy Santhan for the work done by him for LITE. He was getting a fixed amount every month. After the shooting incident of killing of Padmanabha and others by LTTE at Madras offices of LTTE were closed and thereafter it was an underground movement. Arivu (A-18) went to Sri Lanka with Baby Subramaniam in June, 1990. Irumborai (A-19) also went with them. In Sri Lanka Arivu (A-18) met Prabhakaran and other leaders and assured them to give full support for LTTE movement. During his stay in Sri Lanka there was war between LTTE and Sri Lankan Army. Then he learnt about the atrocities committed by IPKF and a feeling of revenge came to his mind. He and Irumborai (A-19) came back to India in the second week of October, 1990 with other wounded LTTE soldiers. Now he was full-fledged worker of LTTE. It was from February, 1991 that Arivu (A-18) started staying with Bhagyanathan

(A-20). It was on account of the fact that President Rule was extended in January, 1991 and police was taking strong action against LTTE. Arivu (A-18) left his own residence and went to stay with Bhagyanathan (A-20). After Muthuraja went to Sri Lanka his job was taken over by Arivu (A-18). He was getting money from deceased accused Suresh Master and Trichy Santhan for meeting his expenses and was also paying to M. Sankari (PW-210), sister of Muthuraja. Arivu (A-18) in his confession statement said that Murugan (A-3) had come to Tamil Nadu from Sri Lanka for an important work of LTTE and in this work Haribabu was helping him and for that Haribabu had been receiving monthly salary from Murugan (A-3). Murugan (A-3) had been appointed in the spy wing of LTTE. Arivu (A-18) was recording TV news in VCR in Royapettah house. In March, 1991 he went with Murugan (A-3) to Vellore for LTTE work as in Vellore Fort and Jail Sri Lankan Tamils and LTTE personnel were kept in custody. Blast of Vellore Fort and Jail and releasing of LTTE militants was one of the LTTE works in India. Various people connected with LTTE would come to the house of Bhagyanathan (A-20). Arivu (A-18) said when these people were talking among themselves he understood that it was for a very important and dangerous act and he had a strong suspicion that the target would be Rajiv Gandhi.

464. In April, 1991 when Sivarasan came to the house of Padma (A-21) he asked Arivu (A-18) if he was prepared to work with him. Arivu (A-18) agreed to work for him as Sivarasan was a senior LTTE member. Bhagyanathan (A-20) had already accepted to work for Sivarasan, before going to Sri Lanka Muthuraja has handed over his work to Arivu (A-18) and also instructed Bhagyanathan (A-20) to give all help to Arivu (A-18) as may be needed for the movement. Muthuraja had also requested Nalini (A-1) to provide all help to Arivu (A-18) in his absence. Photos and publications of LTTE movement and other books which were with Muthuraja were kept by Arivu (A-18). In March, 1991 he shifted them to the house of V. Radhakrishnan (PW-231), a friend of Arivu (A-18). These contained a 3 volume Black Book and in the 3rd volume of the book there was a diagram of an electric circuit similar to one used for the belt bomb by the assassin Dhanu. Arivu (A-18) said that when the material was being transported Bhagyanathan (A-20) was also with him. On 3.5.1991 Arivu (A-18) met Sivarasan in India and at that time deceased accused Gokul alias Nero and Murugan (A-3) were also with him. Sivarasan asked Arivu (A-18) to buy a large size car battery, clips and other articles. Arivu (A-18) went to a shop along with Nero and bought battery, wire and other articles. Apart from other things battery was meant for a wireless set which Sivarasan wanted to install, by which he would contact LTTE Headquarters in Sri Lanka. While buying battery he gave his name as Rajan and also wrong address. Sivarasan also told Arivu (A-18) that he wanted a motorcycle to facilitate his travel and for the purpose he had come to India. He asked Arivu (A-18) to make arrangements for it as he himself did not want his name to be exposed. Arivu (A-18) arranged one Kawasaki Bajaj Motorcycle (Registration No. TN-07-A-5203). He took Sivarasan to the showroom on 4.5.1991 and bought the motorcycle in his own name but giving a wrong address. With the same wrong address Arivu (A-18) had also opened a bank account in the bank. Sivarasan had given money for the purchase

of the motorcycle. Arivu (A-18) also bought 9-volt battery (golden power) and gave that to Sivarasan. Arivu (A-18) said in his confession that Sivarasan used this (Battery) only to blast the bomb. On 7.5.1991 Arivu (A-18) had also gone to attend the public meeting of V.P. Singh and there he saw Nalini (A-1), Subha, Dhanu and Murugan (A-3). These three women were trying to step on towards the stage. Nalini (A-1) was requesting the organizers of the meeting and the police while Subha and Dhanu were standing with rose garlands in their hands. Haribabu was also seen on the stage. Arivu (A-18) did not see Sivarasan. Arivu (A-18) knew that Subha and Dhanu were lady tigresses of LTTE brought from Jaffna in Sri Lanka by Sivarasan for his job and they were "going and coming with Nalini (A-1)". After the end of the public meeting Murugan (A-3) gave a colour film roll to Arivu (A-18) for developing. None of the pictures had come out clearly. Arivu (A-18) also bought a multi meter for Sivarasan for use to test the electrical equipments. He had also bought earth wire. Sivarasan asked Arivu (A-18) to look after Vijayanandan (A-5), who was a senior LTTE leader. Vijayanandan (A-5) had come to India along with Sivarasan in the group of nine persons arriving on 1.5.1991. Vijayanandan (A-5) was staying in Komala Vilas lodge. Arivu (A-18) met him and took him to the house of N. Vasantha Kumar (PW-75). Vijayanandan (A-5) was to buy some books for the LTTE movement. In his confession Arivu (A-18) described N. Vasantha Kumar (PW-75) as his partner. He also described N. Vasantha Kumar (PW-75) as an LTTE member and close to Sivarasan. Once he said he had gone with N. Vasantha Kumar (PW-75) to the house of Trichy Santhan (DA). N. Vasantha Kumar (PW-75) was involved in publishing the LTTE propaganda book "Satanic Force" which contained articles relating to atrocities committed by IPKF. It was Trichy Santhan (DA) who was giving finance for that. On 20.5.1991 Arivu (A-18) learnt that in the evening when Nalini (A-1), Murugan (A-3) and Haribabu were in the house of Bhagyanathan (A-20) Sivarasan had a talk with Nalini (A-1) and Haribabu. Padma (A-21) had also come back from hospital at 8.00 p.m. According to Arivu (A-18) Sivarasan had a talk regarding the public meeting of Rajiv Gandhi to be held on the next day at Sriperumbudur. He gave a Kodak colour film roll to Haribabu. After having their food Haribabu, Murugan (A-3) and Nalini (A-1) left. On 21.5.1991 Arivu (A-18) and Bhagyanathan (A-20) went to see late night movie and when they returned from the show they heard the news that Rajiv Gandhi was murdered. Murugan (A-3) confirmed it. On 22.5.1991 Arivu (A-18) packed his goods from the house of Padma (A-21) and cleared them one by one and kept at the houses of his friends. On 23.5.1991 Sivarasan came to the house of Padma (A-21) in the morning and gave details about the incident resulting in the assassination of Rajiv Gandhi. He also told them about the unexpected death of Haribabu in the bomb blast. He asked Arivu (A-18) to go to Suba Sundaram (A-22) to see the progress in getting the body of Haribabu. That evening Nalini (A-1) also came to the house of Padma (A-21) late in the evening and told about the murder of Rajiv Gandhi. Arivu (A-18) did not feel safe in the house of Bhagyanathan (A-20). Murugan (A-3) had already hidden himself at Bhagyanathan's Press. Arivu (A-18) had a fear that he might be found so he then went and stayed with his parents at Jolarpet. before going to Jolarpet Murugan (A-3) had asked Arivu (A-18) to come to Gandhi Beach on 10.6.1991 in the evening at 7 O'clock to discuss about further proceedings. Arivu (A-

18) came to Gandhi Beach but Murugan (A-3) was not there. He also searched for Bhagyanathan (A-20) next day but again could not meet him. After few days Arivu (A-18) was arrested.

465. N. Vasantha Kumar (PW-75) is an artist. In 1984 he met a person by the name Raghavan in a bookshop who came to the shop to buy books for LTTE. When Raghavan came to know that N. Vasantha Kumar (PW-75) was an artist he asked him if he would print books for LTTE organization. N. Vasantha Kumar (PW-75) agreed. Raghavan introduced himself to Baby Subramaniam and Nithyanandam, President of LTTE Propaganda Committee. N. Vasantha Kumar (PW-75) was promised Rs. 1000/- for his labour in getting the books printed for LITE. In his deposition N. Vasantha Kumar (PW-75) has described as to how he had become close to top rank leaders of LTTE including Pottu Amman, Prabhakaran, Kasi Anandan and others. He also visited LTTE training camp near Mettur in Tamil Nadu. N. Vasantha Kumar (PW-75) in partnership with Basheer Ahamad also published magazine called 'Pudhu Yugam'. The publication was stopped after two issues. In 1988 N. Vasantha Kumar (PW-75) was engaged to print calendars and some other pamphlets for LTTE at a monthly salary of Rs. 1500/-. He got printed various pamphlets like 'Indian Military Offensive', 'An unjust war against Tamils', 'Indo-Sri Lanka Accord', 'LTTE point of view', etc. In 1989 when DMK came to power in Tamil Nadu Baby Subramaniam was moving about openly in all places in an auto. He met N. Vasantha Kumar (PW-75) and asked him to print a book by the name 'Socialistic Tamil Ezham'. That book gave the political programme of LTTE. The book was got printed by N. Vasantha Kumar (PW-75) and his work was appreciated by Prabhakaran. Later Baby Subramaniam asked N. Vasantha Kumar (PW-75) to publish a big book by the name "Satanic Force" containing the atrocities of IPKF and other articles criticizing Rajiv Gandhi. N. Vasantha Kumar (PW-75) was promised Rs. 2000/- per month for the work in printing the book. A separate flat was hired for the purpose. All expenses of printing the book and hiring the flat, etc. were met by Baby Subramaniam. The material for the book "Satanic Force" was supplied by Baby Subramaniam. The book contained statements of LTTE leaders, news published in India and foreign countries, essays, comments, advertisements, cartoons and statements of Sri Lankan Tamilians who had suffered. The book also contained collections of photographs. N. Vasantha Kumar (PW-75) designed the book. Paper for the book was purchased in the name of Ramesh, a member of LTTE for Rs. 3,20,000/-. N. Vasantha Kumar (PW-75) had also gone with Ramesh to buy the paper. Ramesh gave a bogus address to the shopkeeper for preparation of the bill. "Satanic Force" is in two parts which contained information up to March, 1990. N. Vasantha Kumar (PW-75) said he used to often meet Baby Subramaniam in Suba Studio. Arivu (A-18) and Irumborai (A-19) were always with Baby Subramaniam. Since the book "Satanic Force" was against Indian Peace Keeping Force and Rajiv Gandhi it was thought not to mention that it was printed in India. Baby Subramaniam asked N. Vasantha Kumar (PW-75) to show that the book was printed in U.K. Some copies for the books when finished were sent to Sri Lanka to Baby Subramaniam and the mode of transport was informed to Baby Subramaniam. Thereafter Baby Subramaniam went to

Jaffna in Sri Lanka accompanied by Arivu (A-18) and Irumborai (A-19). N. Vasantha Kumar (PW-75) then described the attempt made by him to get the payment of the book to be made to various parties. Four sets of the books were printed and ready. Two sets were kept by N. Vasantha Kumar (PW-75) and two sets were given by him to Arivu (A-18). N. Vasantha Kumar (PW-75) said he received a letter from Prabhakaran appreciating his work who told him that he had written letter to Trichy Santhan (DA) who was in charge at Trichy to make the payment for the book. Prabhakaran also wrote that N. Vasantha Kumar (PW-75) could come to Sri Lanka whenever he wished. He said he tore the letter after reading that. On 2 or 3.5.1991 N. Vasantha Kumar (PW-75) and Arivu (A-18) went to Trichy to get payment from Trichy Santhan. In the morning Arivu (A-18) took N. Vasantha Kumar (PW-75) to a house at Ramalinga Nagar where Irumborai (A-19) was also present along with some other workers. At about 11.00 a.m. Trichy Santhan (DA) came. Arivu (A-18) introduced N. Vasantha Kumar (PW-75) to him. Trichy Santhan (DA) paid Rs. 90,000/- to N. Vasantha Kumar (PW-75) and promised to pay the balance through Arivu (A-18). They then returned to Madras. In the first week of May, 1991 Arivu (A-18) came to the house of N. Vasantha Kumar (PW-75) with Vijayanandan (A-5). Arivu (A-18) asked him to help Vijayanandan (A-5) in purchasing the books for LTTE library. N. Vasantha Kumar (PW-75) made Vijayanandan (A-5) to stay in his adjoining flat. Vijayanandan (A-5) told N. Vasantha Kumar (PW-75) that he was a supporter of LTTE and that Pottu Amman had called him and had asked him to take charge of the library and for that purpose he had come to purchase the books. He also told him that about seven or eight days ago he had come to Kodiakkrai with eight other persons illegally in an LTTE boat. When N. Vasantha Kumar (PW-75) asked him if he had the list of books to be purchased, he replied that he did not have the list and that he would purchase the books directly. N. Vasantha Kumar (PW-75) sent Basheer Ahmad for helping Vijayanandan (A-5) in purchasing the books. Vijayanandan (A-5) had purchased about 400 books. Vijayanandan (A-5) used to talk about the atrocities committed by IPKF in Sri Lanka and his hatred towards Rajiv Gandhi. He gave him a book 'Alisiya' and its Tamil manuscript and told N. Vasantha Kumar (PW-75) that Pottu Amman had asked him to print three thousand copies of the book in the letter press. Vijayanandan (A-5) for that purpose gave Rs. 10,000/- and again Rs. 20,000/-. He also gave N. Vasantha Kumar (PW-75) a list of books which he could not purchase and asked him to purchase those books and for that purpose also he gave N. Vasantha Kumar (PW-75) Rs. 5,500/-. On 10.5.1991 Arivu (A-18) came to meet N. Vasantha Kumar (PW-75) with Sivarasan on a Kawasaki Bajaj motorcycle. Sivarasan had come to see Vijayanandan (A-5). All three of them talked for about ten minutes and then Arivu (A-18) and Sivarasan left. N. Vasantha Kumar (PW-75) wanted to visit Moogambigai on 19.5.1991. He, therefore, asked Arivu (A-18) to take Vijayanandan (A-5) with him. Arivu (A-18) promised that he would come and take him. On 17.5.1991 early in the morning at 6.00 a.m. Irumborai (A-19) came to the house of N. Vasantha Kumar (PW-75) and inquired about Arivu (A-18). When told Arivu (A-18) had not come Irumborai (A-19) left leaving a message for Arivu (A-18) to meet him urgently. Later when Arivu (A-18) came N. Vasantha Kumar (PW-75) informed him accordingly. Again he asked Arivu (A-18) to take Vijayanandan (A-5) with him. On the morning of

18.5.1991 Sivarasan came on motorcycle and took Vijayanandan (A-5) with him. He asked Vijayanandan (A-5) if he had purchased the books. Vijayanandan (A-5) replied that he had purchased everything. Sivarasan told Vijayanandan (A-5) that he would give him an address where he could stay and asked him to leave immediately. Vijayanandan (A-5) packed his dresses and left. While leaving he told N. Vasantha Kumar (PW-75) that he would take the books later. On the morning of 19.5.1991 Arivu (A-18) again came to the house of N. Vasantha Kumar (PW-75) and told him that Trichy Santhan had sent Rs. 75,000/- for the book "Satanic Force". N. Vasantha Kumar (PW-75) told him that since he was leaving for the tour the money could be given by Arivu (A-18) to Balcon Press. N. Vasantha Kumar (PW-75) after his tour with his family and friends returned to Madras. While away he learnt about the assassination of Rajiv Gandhi through news broadcast on radio on the morning of 22.5.1991 by a bomb blast at Sriperumbudur while attending the meeting. On 29.5.1991 picture of Sivarasan was published in the Hindu newspaper. N. Vasantha Kumar (PW-75) recognized Sivarasan who had been brought to his house by Arivu (A-18). On 30.5.1991 Arivu (A-18) again came, to meet N. Vasantha Kumar (PW-75).and gave him Rs. 25,000/-, He was asked about the photo of Sivarasan and whereabouts of Sivarasan and if Arivu (A-18) was having any connection with the murder. At this Arivu (A-18) laughed sarcastically and left without any reply. Due to fear N. Vasantha Kumar (PW-75) did not inform the matter to anybody. At Balcon Press where Arivu (A-18) had gone to hand over Rs. 75,000/-- he came to know that police was in search of him. He was afraid and left Madras and went to his friend at Neyveli. In his absence on 4.6.1991 Vijayanandan (A-5) had come to his house and gave his wife a bag, Rs. 5,000/- and three sarees and told her that he would come and collect the same later. N. Vasantha Kumar (PW-75) returned from Neyveli and then with his family left Madras and stayed at a place outside the city. At this point of time he learnt the name of Sivarasan though earlier he was never introduced to him by that name. On 18.1.1992 one CBI inspector came to meet N. Vdsantha Kumar (PW-75) and asked him to appear at Malligai police station where he identified the books "Satanic Force" got printed by him. N. Vasantha Kumar (PW-75) identified various material got printed by him from time to time. He identified the notes regarding the books, etc. purchased by Vijayanandan (A-5) when he had come to the house of N. Vasantha Kumar (PW-75) and N. Vasantha Kumar (PW-75) seen him writing (Exh.P-351). He also identified the books 'Aljsiya' and its Tamil manuscript (MO-113 and 114). He also identified various other documents and the articles recovered from the house.

466. Delip Chordia (PW-88) is a dealer of tyres and batteries. The name of his firm is International Tyres Service from whose shop Arivu (A-18) purchased the battery. He identified the battery (MO-209) sold to one Rajan on 3.5.1991. Battery (MO-209) was seized by M. Narayanan (PW-281), D.S.P. from the pit dug in the kitchen of the house occupied by Vijayan (A-12). Mohanraj (PW-254), wireless expert, stated that a wireless set could be operated using the 12 volt battery like MO-209. Wireless set was installed in the house of Vijayan (A-12) by making use of battery MO-209 for communication with

LTTE leaders in Sri Lanka which was operated by deceased accused Nero, who was a wireless operator and came to India in nine member group on 1.5.1991.

467. R. Ravichandran (PW-95) is a salesman of the showroom from where Kawasaki Bajaj motorcycle (MO-82) bearing registration No. TN-07-A-5203 was purchased by Arivu (A-18). The address which Arivu (A-18) gave while buying motorcycle was the address of Padma (A-21) when she was staying in Kalyani Nursing Home quarters. At the relevant time of purchase of motorcycle she was, however, staying in Royapettah house.

468. N. Moideen (PW-91) was working as a salesman in a shop in Royapettah High Road. He said that in the second week of May, 1991 he sold two golden power batteries for Rs. 46. He was asked if he could identify the man whom police officers had brought to the shop as the person to whom he sold the batteries. He identified Arivu (A-18).

469. G.J. Srinivasan (PW-252), Assistant Director, Tamil Nadu Forensic Science Laboratory, Madras after examining the portion of 9 volt golden power battery (MO-678) recovered from the scene of the crime gave opinion that these were the portions of 9 volt golden power battery.

470. Lt. Col. Manik Sabharwal (PW-157), Bomb expert and Dr. P. Chandrasekaran (PW-280), Director, TNFSL, Madras gave opinion that 9 volt golden power battery was used as power source in the belt bomb used by Dhanu. From the statement of N. Vasantha Kumar (PW-75) it was seen that Arivu (A-18) was connected with the printing and publication of propaganda material for LTTE including the book "Satanic Force". Dr. R. Kuppusamy (PW-194) said in his statement that after examining the exposed frames of negatives used by Haribabu at the scene of crime (Exh.P-735) that these were from Kodak colour film and that was used for camera (MO-1). The unexposed portion of the Kodak colour film is MO-542 which was cut and removed from Exh.P-735. The material which had been removed by Arivu (A-18) from the house of Padma (A-21) after learning the assassination of Rajiv Gandhi, was subsequently recovered on the basis of disclosure statement (Exh.P-1343). In his letter (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) he mentioned about the mistake committed in LTTE with the supporters of Sivarasan like Arivu (A-18) connected with Baby Anna.

471. Athirai (A-8) is a Sri Lankan national. At the very young age of 13 years she got involved in LTTE movement. She learnt how to prepare code sheets for conveying messages, making of bombs and driving. In the military camp she got training to use AK-47 rifle. She also got training in photography and videography. Her brothers and sisters are settled in Germany or Switzerland. In her confession she said that one of the principles of LTTE is that it does not brook any opposition and the undisputed leader of LTTE is Prabhakaran. She gave the names of various LTTE leaders in whose contacts she came. She said Pottu Amman is incharge of Intelligence Branch of LTTE and sister Shanthi and Akila are also in that branch. Athirai (A-8) said that her friend, who was 24

years of age and LTTE wireless operator died in fight with IPKF in 1988. Her own boy friend also died in 1989 in a raid by IPKF. Athirai (A-8) also got training in the political wing of LITE. She had been explained as to how Prabhakaran was compelled to sign the Indo-Sri Lankan Accord and how IPKF instead of protecting Tamilians in Sri Lanka was fighting against them and committing atrocities on the innocent Tamilians there. She said about the organizations of Black Tigers and Black Women Tigers whose members would sacrifice their lives in suicide daring acts. Athirai (A-8) said she was able to recognize all the persons in the LTTE organization. Dhanu, she said, belonged to suicide squad. She was a black woman tiger. She did not wear spectacles but for the purpose of not being identified in Rajiv Gandhi murder case she wore spectacles. Subha also belonged to army branch of LTTE. Both had received the same training in the military camp of LTTE in Sri Lanka. Subha might have come along with Dhanu to encourage her and to give training to her and to tie belt bomb. In March, 1991 Athirai (A-8) met Pottu Amman who introduced her to Kanagasabapathy (A-7). Pottu Amman told her that Kanagasabapathy (A-7) was a helper in LTTE and would be coming with her to Delhi to make arrangements for her stay. The arrangement was that Athirai (A-8) would go to Delhi purportedly to learn Hindi or computer. She understood that the arrangement was with a view to gather information regarding certain marked places in Delhi and the work was in connection with the organization, and further that if persons belonging to LTTE came to Delhi they would be staying there in her house and would finish their work without any suspicion.

472. Relatives of Kanagasabapathy (A-7) were in Madras. He had already been to Delhi earlier. Athirai (A-8) and Kanagasabapathy (A-7) came to India in the end of April, 1991. They came in a fully armed boat of LTTE. On reaching Indian soil they went to the house of V. Kantha Raja (PW-60) alias Chokan, another LTTE sympathizer. That place Was Kodiakkrai. From there V. Kantha Raja (PW-60) took them to Madras and they went to the house of Jayakumari (PW-109) who was a relative of Kanagasabapathy (A-7). While they were staying in the house of Jayakumari (PW-109) Sivarasan came to meet her which was a pre-arranged meeting earlier by Pottu Amman. Sivarasan gave money to Athirai (A-8) for expenses and for her stay in Delhi. It appeared to Athirai (A-8) that Sivarasan was incharge of her. Athirai (A-8) said in her confession that later on she came to understand that when occasion would arise Sivarasan and other LTTE people would come for their purposes to Delhi and would be staying in the house taken by her. Sivarasan also gave money to Kanagasabapathy (A-7) for expenses. Once when Sivarasan came to the house of Jayakumari (PW-109), Athirai (A-8) told him that there were all male members in the house of Jayakumari (PW-109). He, therefore, took her to the house of P. Thirumathi Vimla (PW-62). Athirai (A-8) said that that house was arranged through Shanmugavadivelu (A-15) as both P. Thirumathi Vimla (PW-62) and Shanmugavadivelu (A-15) are sympathizers of LTTE. Athirai (A-8) would either go to the house of Shanmugavadivelu (A-15) or Thangam Stores, a store nearby, to telephone her elder brothers in Germany. P. Thirumathi Vimla (PW-62) or her daughter would company her. Athirai (A-8), P. Thirumathi Vimla (PW-62), her family members and her father then went outside Madras on excursion from 8.5.1991 to 14.5.1991. P. Thirumathi

Vimala (PW-62) in her statement said that on 5.5.1991 Shanmugavadivelu (A-15) with some other person had come to her house in her absence. That person had brought a letter from her mother in Sri Lanka for her. The letter (Exh.P-209) was left in the house. Next day the boy aged about 22 or 23 years came to her house. He was wearing pant and shirt and was also wearing spectacles. P. Thirumathi Vimala (PW-62) said she could not find if that person was having artificial eye in his left eye. By the time that person came she had read the letter. Shanmugavadivelu (A-15) was not there at that time. That person introduced himself as Raghu (Sivarasan). On account of the letter from her mother P. Thirumathi Vimala (PW-62) asked Sivarasan what help she could offer him. Sivarasan said that he brought a lady with him who had to go to Germany and that her name was Gowri (Athirai (A-8)) and he wanted a secured place for her to stay. Sivarasan told P. Thirumathi Vimala (PW-62) that she being mother of daughters might accept his request to allow Athirai (A-8) to stay in her house. He said Athirai (A-8) would leave within a month. P. Thirumathi Vimala (PW-62) agreed. On 7.5.1991 Sivarasan brought Athirai (A-8) along with him to stay with P. Thirumathi. Vimala (PW-62). On 16.5.1991 Sivarasan again came to meet Athirai (A-8) and gave her Rs. 10,000/- to meet her expenses. In between Sivarasan asked Kanagasabapathy (A-7) to make efforts to arrange the house for himself (Kanagasabapathy (A-7)) and for Athirai's (A-8) stay at Delhi and for this purpose he gave Rs. 23,000/- to him. Kanagasabapathy (A-7) accompanied by one Vanan, whom she did not know, left for Delhi on 20.5.1991. Sivarasan came to meet Athirai (A-8) one day after the assassination of Rajiv Gandhi and told her that it was difficult to take charge of her as police might arrest him. He told her that Santhan (A-2) would take charge of her. Speaking about the assassination of Rajiv Gandhi Sivarasan laughed. After his return from Delhi Kanagasabapathy (A-7) did not meet Athirai (A-8). He, therefore, shifted from the house of Jayakumari (PW-109) due to police surveillance. Sivarasan met Athirai (A-8) on 3.6.1991. Thereafter Santhan (A-2) used to visit her frequently. Sivarasan, Kanagasabapathy (A-7), Manju, daughter of P. Thirumathi Vimala (PW-62) and Athirai (A-8) used to meet at Marina Beach and talked about the status of Sri Lankan Tamilians as compared to status of Tamilians in India. In one of these meetings Kanagasabapathy (A-7) told Athirai (A-8) that he had arranged a double bed room house at Delhi. They decided to go to Delhi on 1.7.1991. Three days before that day Santhan (A-2) came and told Athirai (A-8) that police was interrogating Shanmugavadivelu (A-15) and it would be better for her not to stay with P. Thirumathi Vimala (PW-62) any further. He took Athirai (A-8) to the house of one Rajagopal at Pammal and introduced her to him as Sasikala. Santhan (A-2) himself went in hiding. Athirai (A-8) went to the house of P. Thirumathi Vimala (PW-62) for taking leave of her that she and Kanagasabapathy (A-7) were going to Trichy as they did not like to be caught by police. Rajagopal and Santhan (A-2) then took them to the railway station from where they boarded a train for Delhi. At Delhi they were taken into police custody.

473. On The morning of 15.5.1991 Athirai (A-8), who was staying with P. Thirumathi Vimala (PW-62) wanted to make a phone call from the house of Shanmugavadivelu (A-15). Anju, daughter of P. Thirumathi Vimala (PW-62) went along with her but found the

house of Shanmugavadivelu (A-15) locked and came back. P. Thirumathi Vimala (PW-62) then took Athirai (A-8) again to the house of Shanmugavadivelu (A-15) for making a phone call but the house was locked at that time too. She then advised that they could make a call from Thangam Stores which was near to her house. Athirai (A-8) said that they gave their address to the shopkeeper who would immediately come and inform them if there was a call for Athirai (A-8). On 21.5.91 Athirai (A-8) was still staying with P. Thirumathi Vimala (PW-62). When P. Thirumathi Vimala (PW-62) saw the photograph of Sivarasan in the newspaper with the news that he was connected with the murder of Rajiv Gandhi she told this to Athirai (A-8), P. Thirumathi Vimala (PW-62) asked Athirai (A-8) if Sivarasan was the person connected with the murder of Rajiv Gandhi and whether he brought Athirai (A-8) along with him. Athirai (A-8) said it was not so and that Sivarasan was a paper reporter and that he might have gone there (Sriperumbudur) and that by mistake his photograph would have been published. Athirai (A-8) told P. Thirumathi Vimala (PW-62) that she need not get scared about that and that it would not be so. On 3.6.1991 when P. Thirumathi Vimala (PW-62) came back from her school in the afternoon and was climbing stairs to go to her house Sivarasan and Athirai (A-8) were coming down from the upper stairs talking to each other. P. Thirumathi Vimala (PW-62) was shocked and scared and asked Sivarasan as to why he acted in that way. She said her children and grand-father at home were crying bitterly and that he should take away Athirai (A-8) from there and asked him not to come to her house any further. Sivarasan said that he would not come thereafter and that persons who would identify him and give information about him would meet with the same fate as Padmanabha and that it would apply to whomsoever it might be. Saying this he went away and did not come thereafter. P. Thirumathi Vimala (PW-62) told Athirai (A-8) also not to stay there any further and asked her to go away. At this Athirai (A-8) cried and said she did not have anyone else other than P. Thirumathi Vimala (PW-62) and that Sivarasan had already gone away. She pleaded that she be permitted to stay on. P. Thirumathi Vimala (PW-62) kept quiet. She read in the papers requiring all Sri Lankan refugees to get their names registered. Since Athirai (A-8) was not having any passport or any other document P. Thirumathi Vimala (PW-62) sent her daughter Manju along with Athirai (A-8) to get Athirai (A-8) registered as refugee. They returned and said it had been done. Application form requesting for issuance of identification card for Athirai (A-8) is Exh.P-214 and the application for getting name registered is Exh.P215. These were filled and signed by Athirai (A-8) and bear her photograph fixed on it. One day when P. Thirumathi Vimala (PW-62) returned from her school she was told by her children that uncle of Athirai (A-8) by the name Kangasabapathy had come. At this P. Thirumathi Vimala (PW-62) confronted with Athirai (A-8) that from where her uncle had come when she earlier had told her that she had no one to go to. She said that her uncle had come from Trichy and she knew about that only when he came. Next day Kanagasabapathy (A-7) again came and P. Thirumathi Vimala (PW-62) accordingly asked him as to why they were hatching conspiracy at her house and that photograph of the person who brought Athirai (A-8) had been published in the newspapers. She asked him to take away Athirai (A-8). Kanagasabapathy (A-7) said that he was going to Trichy and would come back again and

take her away. After few days Santhan (A-2) came. P. Thirumathi Vimala (PW-62) asked him also to take away Athirai (A-8). A few days thereafter Santhan (A-2) had come to the house of P. Thirumathi Vimala (PW-62) and informed her that CBI had come to the house of Shanmugavadivelu (A-15) and conducted search there and had caught him. He said CBI might come to her house also and since Athirai (A-8) was not holding a passport it would be a problem for her and therefore he had to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went with Santhan (A-2).

474. Kanagasabapathy (A-7) is a Sri Lankan national. He did not make any confession. He came to India in the last week of April, 1991 along with Athirai (A-8). He was having a genuine passport (MO-558) which was seized from him. He did not come to India through proper channel but landed at Kodiakkarai with Athirai (A-8). Jayakumari (PW-109), who is also a Sri Lankan national, came to India in 1986 through proper channel. In between she went to Sri Lanka after her marriage and again returned to India in March, 1988. At that time Kanagasabapathy (A-7) who is her uncle (her mother's sister's husband) had also come along with her. Kanagasabapathy (A-7) went back to Sri Lanka in August, 1988. In September, 1989 he again came to India to attend his son's wedding and then returned to Sri Lanka. On the morning of 26.4.1991 he came to the house of Jayakumari (PW-109) along with a young girl, Athirai (A-8) and another person. Kanagasabapathy (A-7) told Jayakumari (PW-109) that Athirai's (A-8) name was Gowri and she belonged to Sri Lanka and that her mother had expired in military attack and that she had come to study computer and journalism at Delhi. He also said that Athirai (A-8) would not talk much due to the grief of her mother's death. He did not introduce the other person but addressed him as brother, who left in the afternoon. Following day Kanagasabapathy (A-7) and Athirai (A-8) went to a book shop at Mount Road to buy some books. They purchased there Delhi Road map. They were also searching for a book containing addresses of VIPs but it was not available. On 2.5.1991 that person who had come with Kanagasabapathy (A-7) and Athirai (A-8) on 26.4.1991 came with Sivarasan. On 7.5.1991 Sivarasan again came and took Athirai (A-8) with him. before leaving Athirai (A-8) told Jayakumari (PW-109) that she would be staying at her brother's place and later she would go to Delhi. On 10.5.1991 Sivarasan again came on motorcycle and took along with him Kanagasabapathy (A-7). Later Kanagasabapathy (A-7) came back to the house and took his brief case, etc. and told Jayakumari (PW-109) that he was leaving for Delhi and would return after a week. On 30/31.5.1991 Kanagasabapathy (A-7) with two more persons came to the house of Jayakumari (PW-109) in an auto. He stayed in the house while other two left. Jayakumari (PW-109) informed Kanagasabapathy (A-7) that police was searching houses of Sri Lankans stating that Sri Lankans were involved in Rajiv Gandhi murder case and she asked him to register in the police station. He declined and left the house at about 9.00 p.m. He left behind a brief case which Jayakumari (PW-109) opened and found that it contained airlines tickets and a letter written by a person from Tamil Nadu House, Delhi. This letter was written to a person serving in Delhi Airport Authority to assist Kanagasabapathy (A-7). Kanagasabapathy (A-7) kept on coming to the house of Jayakumari (PW-109). He asked her to give the telephone number of Athirai

(A-8). Jayakumari (PW-109) knew earlier that Sivarasan was having one eye and when it was published in the newspaper in the second week of June, 1991 that a person connected with the murder of Rajiv Gandhi was having one eye, she inquired from Kanagasabapathy (A-7) about Sivarasan and his connection with him. Kanagasabapathy (A-7) told her that she was imagining things and if she entertained in her mind anything harmful to Kanagasabapathy (A-7) or Athirai (A-8) God would punish her. Jayakumari (PW-109) did give telephone number of Athirai (A-8) to Kanagasabapathy (A-7) and said he was putting them in unnecessary problem. He said he would not come if she gave him the telephone number. It is only through newspapers that Jayakumari (PW-109) came to know the name of the person as Sivarasan, who had come to her house for the first time on 2.5.1991. Athirai (A-8) telephoned Jayakumari (PW-109) on 17.6.1991 and gave telephone number as 8250228 and told her to give the number to Kanagasabapathy (A-7). That number was given by Jayakumari (PW-109) to Kanagasabapathy (A-7). On 29.6.1991 Kanagasabapathy (A-7) again came to the house of Jayakumari (PW-109), took his belongings and said that he was leaving for Delhi and from where he would go to Johannesburg. When on 30/ 31.5.1991 Kanagasabapathy (A-7) with two other persons came they told her that they had come from Delhi by aeroplane. Kanagasabapathy (A-7) opened an account in Canara Bank and he gave the address of Jayakumari (PW-109). The account opening form is Exh.P-516.

475. On 20.5.1991 Kanagasabapathy (A-7) went to Delhi by flight with one Vanan and stayed in Hotel Krishna there. K. Thiagarajan (PW-57) helped Kanagasabapathy (A-7) to get a house on rent at Moti Bagh in Delhi on monthly rent of Rs. 2,000 and an advance of Rs. 6,000/- . He was also staying in Krishna Hotel, Delhi. That Kanagasabapathy (A-7) and Vanan travelled by air is evident by flight coupons of Indian Airlines (Exh.P-1329 and Exh.P-1330). In the note book (MO-159), diaries (MO-180 and Exh.P-1253), which are of Sivarasan, amounts have been shown to have been paid to Kanagasabapathy (A-7) and Athirai (A-8) and also to Vanan. In the wireless message (Exh.P-407) dated 14.6.1991 Sivarasan informed Pottu Amman that there was no news of Kanagasabapathy (A-7) who had gone to Delhi. This wireless message had been intercepted by T.P. Sittler (PW-78) and decoded by S. Mani (PW-84). On both the occasions at Delhi Kanagasabapathy (A-7) first time with Vanan and second time with Athirai (A-8) stayed in the Krishna Hotel. Ramkumar (PW-196), partner of the Krishna hotel has given statement with reference to the registers of arrival and departure (Exh.P-931) kept in the hotel. He had identified Kanagasabapathy (A-7) and Athirai (A-8). According to his record K. Thiagarajan (PW-57) along with Rajiv Pant stayed in the hotel from 19.5.1991 to 1.6.1991 and Kanagasabapathy (A-7) and Vanna stayed from 20.5.1991 to 29.5.1991. Entry in the hotel register on 3.7.1991 was made by Kanagasabapathy (A-7). They declared their nationality as Indian. Purpose of visit of Kanagasabapathy (A-7) was mentioned as business and that of Athirai (A-8) studies and place from where they arrived is mentioned as Madras. On 4.7.1991 both Kanagasabapathy (A-7) and Athirai (A-8) were arrested by the CBI at Krishna Hotel, Delhi.

476. Vijayanandan (A-5) is a Sri Lankan national. He came to India on 1.5.1991 and was one of the members of the nine members group. He made no confession. A forged passport (MO-559) was recovered from him and seized during investigation. P.G. Abeykoon Bandara (PW-185) who was Deputy Controller, Deptt. of Immigration and Emigration, Sri Lanka had testified that the passport (MO-559) was a forged document. On arrival from Sri Lanka Vijayanandan (A-5) stayed in Komala Vilas Lodge, Madras. He made entry (Exh. P-497) in the arrival register of the Lodge (Exh.P-496). He wrote that he had come from Madurai and was a teacher by profession. The reason which he gave for coming to Madras was "wedding". This had been testified by A. Ravindra Reddy (PW-100) Manager of Komala Vilas Lodge. Document Exh.P-351 is a slip of paper recovered from the residence of N. Vasantha Kumar (PW-75). This slip of paper has been marked as Exh.P-351 in the statement of N. Vasantha Kumar (PW-75) when he said that he could identify the document regarding the books, etc. purchased by Vijayanandan (A-5) when he was staying in his house. It is doubtful if such a statement is enough to prove the document. This document was put to the accused in his statement under Section 313 Cr.P.C. which he denied. This document shows the arrival of Vijayanandan (A-5) at Kodiakkrai on Indian soil on 1.5.1991 and then his coming to stay in Komala Vilas Lodge. In diary (MO-180) of Sivarasan seized from the house of Jayakumar (A-10) it is mentioned that a sum of Rs. 50,000/- was paid to Vijayanandan (A-5) on 8.5.1991. There is also an entry in this diary which shows that Sivarasan was to meet Vijayanandan (A-5) on 18.5.1991 in the morning from 9 to 12. That he did come to the house of N. Vasantha Kumar (PW-75) has been spoken to by N. Vasantha Kumar (PW-75).

477. Shankar (A-4) is a Sri Lankan national. He is also one of the nine members' group who came to India in a boat on 1.5.1991. At Kodiakkrai where the boat came Shankar (A-4) stayed with one Jagadeesan till 15.5.1991 and then came to Madras and stayed at Easwari Lodge from 16.5.1991 to 23.5.1991. before coming over to Madras Shankar (A-4) met Murugan (A-3) at Kodiakkrai when Murugan (A-3) was going for Jaffna but could not leave as boat had not arrived from Sri Lanka. Murugan (A-3) gave him a slip of paper containing (Ext. 1062) his name Thass' and name of Nalini (A-1) and her telephone number 419493. Santhan (A-2) and Sivarasan met Shankar (A-4) at Easwari Lodge and gave him Rs. 10,000/- Santhan (A-2) and Sivarasan knew the place of stay of Shankar (A-4). On 23.5.1991 Shankar (A-4) sought help of S. Kalyan Krishnan (PW-58) owner of the Easwari Lodge to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 of Ebenezer Stores. Shankar (A-4) was arrested on 7.6.1991 at Thiruthuraipoondi near Nagapattinam. Exh.P-401 is a wireless message from Sivarasan to Pottu Amman dated 9.6.1991 which reads:- "...There is news that one of my associates was caught at Nagapattinam and he has told all the news, things about me....". In letter (Exh.P-1-29) dated 7.9.1991 from Trichy Santhan (DA) to Prabhakaran it was mentioned that CBI had caught the Shanmugham (DA) only after it was disclosed by Shankar (A-4) Murugan (A-3), Robert Payas (A-9) and Santhan (A-2) that all had come (from Sri Lanka) and landed at Shanmugham's place. In diary (Exh.P-1253) of Sivarasan the fact that Rs. 10,000/- was paid to Shankar (A-4) was mentioned. In note book (MO-159) of Sivarasan there is again

a mention of payment of Rs. 5,000/- by Sivarasan to Shankar (A-4) (Exh.P-439). Ch. Gandhi (PW-267) is hand-writing expert and has proved the hand-writing of Sivarasan.

478. S. Kalyan Krishnan (PW-58) is running Easwari Lodge. With reference to his guest register maintained in his lodge he said that on the evening of 16.5.1991 one Jagadeesan came to his lodge to take a room. He said he was regular customer for the past about 20 or 25 years. He said later a guest whose name he came to know was Shankar (A-4) joined Jagadeesan. Though Jagadeesan left Shankar (A-4) continued to stay in the lodge. On 23.5.1991 Shankar (A-4) told S. Kalyan Krishnan (PW-58) that he was vacating the room and was going to his native place. He wanted to make a phone call. He gave a slip of paper on which it was written in ink as "Payas house, Sivarasa," and a telephone number was also mentioned. S. Kalyan Krishnan (PW-58) telephoned that number and was told that Payas house was situated at a distance of about 1-1/2 furlong and message could not be conveyed. He, however, got the address of Robert Payas (A-9) and made a note of that on the slip of paper given by Shankar (A-4). That slip of paper (Exh.P-164) was identified by S. Kalyan Krishnan (PW-58). The address in pencil on the slip (Exh.P-164) was in the hand of S. Kalyan Krishnan (PW-58). This slip he kept with him and wrote another slip (Exh.P-1645) giving the details of the address of Robert Payas's (A-9) house to Shankar (A-4). S. Kalyan Krishnan (PW-58) also explained to Shankar (A-4) a route to go to Robert Payas (A-9) house. There is, however, nothing in the evidence to show that Shankar (A-4) did go to the house of Robert Payas (A-9).

479. Robert Payas (A-9), his wife Prema, sister Premlatha, brother-in-law Jayakumar(A-10), his wife Shanthi (A-11) and some other 30 or 35 Tamils had come to India in September, 1990 from Sri Lanka and got themselves registered as refugees on 20.9.1990. As noted above Prema, wife of Robert Payas (A-9) and Jayakumar (A-10) are brother and sister. Shanthi (A-11) is Indian national. Others are all Sri Lankan nationals. Shanmuga ingam is the father of Prema and Jayakumar (A-10). In his confession Robert Payas (A-9) said that he had been helping LTTE since 1985 during war first with Sri Lankan army and thereafter with Indian army IPKF. He said a rival organization EPRLF betrayed them to IPKF which caught hold of them and kept them in custody for 15 days. IPKF also raided their houses and beat up the ladies severely. He said at that time due to the action of IPKF his son aged 1-1/2 months died. He said they had developed hatred towards IPKF and even EPRLF. According to him IPKF was subjecting common people to great sufferings like committing murders, rape and other kinds of ill-treatments and harassment. Jayakumar (A-10) was a frequent visitor to Tamil Nadu. Porur house of Jayakumar (A-10) was rented through M. Utham Singh (PW56) proprietor of Ebenezer Stores who was paid commission. Jayakumar (A-10) also shifted to another house in Kodungaiyur. These two houses were arranged in such a way as to accommodate LTTE people comfortably. In the Porur house many LTTE personnel came to visit or even to stay there Robert Payas (A-9) opened a Savings Bank account in the Central Bank of India in his name. He said Kanthan had purchased one red colour Yamaha motorcycle bearing registration No. TN-09-A-8213 in the name Raja. Nishanthan had made arrangement for purchase of the

motorcycle while Kanthan made the payment. Kanthan, Nishanthan and Sivarasan were making use of the motorcycle. Robert Payas (A-9) said that he knew that Sivarasan and Kanthan had come to India for some dreaded jobs and it was a known fact about LTTE's activities and its hand in assassinating Padmanabha and his friends in Madras. After some time Sivarasan started staying in the house of Jayakumar (A-10). Sivarasan used to come over to the residence of Robert Payas (A-9) frequently and to meet Kanthan and Santhan (A-2). In February, 1991 Sivarasan had come to Porur house along with Murugan (A-3), who stayed with Robert Payas (A-9) for two days and thereafter went to stay at Royapettah house. Murugan (A-3) was a frequent visitor to the house of Robert Payas (A-9). He would come over there along with Sivarasan or of his own. He would come to take money from Kanthan or even to see Sivarasan. They used to assemble in the house of Robert Payas (A-9) and plan works for their "movement" and then they would execute those works as per their plans. LTTE members would have contacts with Sivarasan, Kanthan, Nishanthan through the telephone number 2343402 installed in Ebenezer Stores of M. Utham Singh (PW56). Even calls would come from Colombo, Canada and England. T. Soundara Pandian (PW-54), who was working in Ebenezer Stores, would bring the messages. In the absence of Sivarasan, Kanthan and Nishanthan those messages would be received by Robert Payas (A-9) to help them. Kanthan only used to arrange for the money and give them to all for the conspiratorial work of LTTE. He would bring gold biscuits, encash them and give money to Sivarasan, Murugan (A-3) and other LTTE members. Indirankutty, another LTTE activist, would come from Trichy quite frequently. He would also help persons like Sivarasan and Kanthan. In the beginning of May, 1991 Sivarasan brought Santhan (A-2) to the house of Robert Payas (A-9). Santhan (A-2) stayed there for two days and then at Haribabu's house. On 5.5.1991 Robert Payas (A-9), Santhan (A-2), Murugan (A-3), Haribabu: Arivu (A-18) and Sivarasan all met at Marina Beach. On 9.5.1991 Indirankutty came to Robert Payas (A-9) with Ruban (A-6) who had lost one of his legs in a bomb blast in Sri Lanka and had come to India with Sivarasan for medical treatment. Robert Payas (A-9) helped Sivarasan to get a learning licence¹ for motorcycle. He could not get a regular licence as he had lost one of his eyes. A week before the assassination of Rajiv Gandhi Sivarasan and Kanthan had come to the residence of Robert Payas (A-9) and they had a conference. Kanthan gave money to Sivarasan. Robert Payas (A-9) said that that money was used for their conspiracy work. Between 15.5.1991 to 21.5.1991 Santhan (A-2) came to the residence of Robert Payas (A-9) three times, first time when he came Kanthan gave him Rs. 2.00 lacs to hand over the same to Sivarasan who was staying at the residence of Jayakumar (A-10), second time Santhan (A-2) got Rs. 5.00 lacs and went away. One or two days later Robert Payas (A-9) and Santhan (A-2) went to market to make certain purchases for Ruban (A-6) which were needed for his journey to Jaipur and back. Ruban (A-6) was staying with Robert Payas (A-9). Robert Payas (A-9) also mentioned the name of Vanan being an LTTE member. He said in the month of May he had gone to the residence of Vanan. There he met Vijayanandan (A-5) who had come to India in the boat along with Sivarasan, Santhan (A-2) and others in the beginning of May, 1991. According to Robert Payas (A-9) Sivarasan and Santhan (A-2) would also be going over to the residence of Vanan. On his first visit to Delhi, Kanagasabapathy (A-7)

had gone along with Vanan. This Vanan has not been examined. Robert Payas (A-9) said in his confession that between 15.5.1991 and 20.5.1991 Ramanan, Santhan (A-2), Rangam and Kanthan had come to his residence several times in connection with the LTTE conspiracy and they used to receive phone calls from Sivarasan through Ebenezer Stores. On 21.5.1991 Robert Payas (A-9) was at his residence. On 22.5.1991 he got the news of Rajiv Gandhi assassination. He did not leave his residence on 23.5.1991 expecting message from Sivarasan. On 24.5.1991 Sivarasan came to his house in his Kawasaki Bajaj motorcycle to meet Kanthan but Kanthan was not there. On 25.5.1991 when Kanthan came on his red Yamaha motorcycle Robert Payas (A-9) told him that Sivarasan had come the previous day looking for him. On 27.5.1991 Santhan (A-2) came to the residence of Robert Payas (A-9) and they all decided to leave Madras in order to escape from the police. On 28.5.1991 they bought tickets in assumed names and went to Thiruchendur by night bus on 29.5.1991. They did not check in any lodge in Thiruchendur and on 30.5.1991 again by night bus came to Madurai on 31.5.1991. Robert Payas (A-9) said they took ladies with them to avoid any suspicion. For Madurai also they took night bus and reached Madras on 1.6.1991. Santhan (A-2) went to some other place. Robert Payas (A-9) sent his wife and his younger sister to the residence of his uncle in Vadapalani and he himself went to the residence of one Loga in Nasapakkam to hide. On 3.6.1991 he went to Vadapalani and brought back his family to the Porur house. He did not receive any information either from Sivarasan or Kanthan and in a few days he was arrested by CBI. According to Robert Payas (A-9) all of his expenses were met by Kanthan who also paid for the expenses of other LTTE members staying in his house

480. Jayakumar (A-10), who is husband of Shanthi (A-11) gave a confession. He also talks of war first between Sri Lankan army and LTTE and then LTTE and IPKF. He said that Robert Payas (A-9), his sister's husband, was helping LTTE in his native village. In one raid made by IPKF Robert Payas (A-9) and Jayakumar (A-10) were caught and kept in a camp. Though Jayakumar (A-10) was released after a few days but not Robert Payas (A-9). Lives had become miserable because of raids by IPKF. They were now having close contacts with LTTE movement who were providing northern even financial help. In September, 1990 Jayakumar (A-10) said LTTE "people" told Robert Payas (A-9) and him to go and stay in Madras with instructions to keep houses ready for their purpose. He said on account of the atrocities committed jointly by IPKF and EPRLF, the LTTE movement had thought to teach a lesson to the leaders in India and to the persons belonging to EPRLF hiding in Madras. Since they were sent by LTTE movement to India they did not give two sovereigns of gold and pay Rs. 1500/- for each of the person coming to India which LTTE was charging. After getting themselves registered at Rameshwaram as refugees they all went to stay at Madras. Nishanthan, Saravanan, Raja alias Kalapathy, all LTTE people arranged Porur house which was rented out in the name of Jayakumar (A-10). Nishanthan and Kumaradoss stayed in Porur house with Robert Payas (A-9) and Jayakumar (A-10) families. After about one week of stay in Porur house another LTTE activist Kanthan also came and stayed in the house. Since both Jayakumar (A-10) and Robert Payas (A-9) were unemployed Kanthan was giving them money. In fact Kanthan

was providing money for all the matters of LTTE movement in Madras. A wireless set was installed at Porur house after Kanthan had come to stay there. He and Nishanthan alias Nixon used to talk to the movement at Jaffna by wireless. Another supporter of LTTE Indirankutty also used to come to Porur house in white Maruti van bearing registration number TAY-9444 from Trichy. He would also get money from Kanthan. Jayakumar (A-10) also talks of buying a motorcycle by Kanthan in the name of Shanmugaraja, an LTTE man through Sarvanan and Kalapathi alias Raja. Jayakumar (A-10) said that Robert Payas (A-9) and Kanthan told him that a high ranking person from the movement would come to India during the second week of December and that his name was Sivarasan and was coming to India with a dangerous plot. It was decided that another house should be arranged by Jayakumar (A-10) for his stay. It was so thought that since Jayakumar (A-10) would be staying with family nobody would have suspicion on Sivarasan. Kanthan also told Jayakumar (A-10) that Sivarasan would give him the required money for all the expenses. Accordingly Kodungaiyur house was rented with the help of Ramaswamy, father-in-law of Jayakumar (A-10). The house was taken in the name of Ramaswamy. Jayakumar (A-10) moved with his family to that house in December, 1990 and after a fortnight or so Robert Payas (A-9) brought Sivarasan to his house and told him that Sivarasan would stay there. Jayakumar (A-10) was told that he should be helpful to Sivarasan and to all the activities of the movement. Jayakumar (A-10) said "that Sivarasan was sent to India by the movement to fulfil a dangerous plot". Sivarasan had brought a suitcase with him in which he kept his dresses, AK-47 rifle, a diary and a pistol. Whenever he would go out he would take pistol with him kept concealed in a thick book where he had made a cavity. From January to April, 1991 Sivarasan went to Sri Lanka two or three times and returned. On 2.5.1991 when he returned from Sri Lanka he brought two LTTE lady tigresses Dhanu and Subha. Jayakumar (A-10) said it was known to him that "Sivarasan had brought those two LTTE movement lady tigers with a murder plan". He said it was also known to him that Sivarasan and lady tigresses had decided to wreak vengeance for the atrocities committed by IPKF. After staying in the house of Jayakumar (A-10) for a day or so those two girls went to stay in the house of Vijayan (A-12) and Bhaskaran (A-14), his father-in-law. Sivarasan also bought one red colour Bajaj Kawasaki motorcycle which he kept in the house of Vijayan (A-12). Subha and Dhanu would often come to the house of Jayakumar (A-10). Shanthi (A-11) would go with them for shopping. Sivarasan would visit the house of Vijayan (A-12) daily. One day when Sivarasan came to stay in the house of Jayakumar (A-10) he brought Santhan (A-2), who was his "partner". Jayakumar (A-10) said that he knew that Santhan (A-2) was in connivance with Sivarasan in all the activities and that Santhan (A-2) was assisting Sivarasan "for the dangerous work which he would carry out". Since Jayakumar (A-10) had no work Sivarasan gave him Rs. 35,000/- and asked him to start a business of grinding coffee seeds. On 19.4.1991 Jayakumar (A-10) paid Rs. 20,000/- as advance and took a shop on rent in the name of his wife Shanthi (A-11) at a monthly rent of Rs. 450/-. He bought coffee seeds grinding machine also for Rs. 15,000/-. Then he applied for a telephone connection paying Rs. 8,000/- for his shop. He applied for telephone connection in the name of his wife Shanthi (A-11). Telephone connection

was applied for the convenience of Sivarasan and other persons of LTTE movement to contact among themselves. Whenever Subha and Dhanu came to the house of Jayakumar (A-10) Sivarasan would take them separately and talk to them secretly. A few days before the assassination of Rajiv Gandhi Sivarasan told Jayakumar (A-10) to stitch a cloth cover for his pistol which Shanthi (A-11) did. If the gun was put in the cover it would not be visible to others. Then Sivarasan also got one kurta and pyzama. The measurements were provided by Jayakumar (A-10) as Sivarasan was not willing to go to the tailoring shop. One day Shanthi (A-11) also took Subha to nearby tailoring shop and got dresses stitched for her. Jayakumar (A-10) was quite often visiting the house of Robert Payas (A-9). In the month of May, 1991 he had seen Sivarasan, Kanthan, Santhan (A-2) and Murugan (A-3) in that house. There they would confer about the plot. Then Jayakumar (A-10) added "about a week before the murder of Rajiv Gandhi, Sivarasan had talked with Santhan (A-2) about his murder plan". Sivarasan left the house of Jayakumar (A-10) on the morning of 21.5.1991 and returned at 1 O'clock and went to his room. He changed his dress and now he wore kurta-pyzama. He hid a pistol in his dress. He was supposed to go to the public meeting of Rajiv Gandhi at Sriperumbudur. From the house of Jayakumar (A-10) he went to the house of Vijayan (A-12). He returned at 12.30 in the night with Subha and Nalini (A-1). It was confirmed that Rajiv Gandhi was murdered by Dhanu. Sivarasan then went upstairs to talk about the incident with Santhan (A-2). In the morning of 22.5.1991 Santhan (A-2) went out and bought newspaper. Afterwards Subha and Nalini (A-1) went to watch news on TV to the neighbour's house (D. J. Swaminathan (PW-85)) while Sivarasan went to the house of Vijayan (A-12). On 23.5.1991 in the morning Sivarasan went out with Nalini (A-1) and then took Subha and left her at the house of Vijayan (A-12). When he came back in the night he said that he had decided to leave within a day or two. He kept all his things in a suitcase which included his cloths and that of Subha, two big dictionaries and notebooks which Sivarasan was keeping, took the pistol separately and packed the bullets in a separate parcel. In the notebooks Sivarasan used to write his income and expenses. In the suitcase he also kept photos, passports, cassettes and the artificial eye which he used to wear. On his directions Jayakumar (A-10) dug a pit in the corner of the kitchen where he placed the suitcase and parcel of bullets and covered the pit with a concrete slab that he had bought, again on the instructions of Sivarasan. Jayakumar (A-10) then painted the area in such a way that nobody could find out. All these things were seized on 26.6.1991 as disclosed in the confession statement of Jayakumar (A-10). Sivarasan then left but Santhan (A-2) kept on staying in the house for two or three days. Then he also left as Sivarasan had instructed Jayakumar (A-10) to change the house. before leaving he gave Rs. 5,000/- to Jayakumar (A-10). On the same day or the following day Nero (DA) another partner of Sivarasan came and received a bag from Jayakumar (A-10) as per instructions of Sivarasan. Earlier also Nero had come to the house of Jayakumar (A-10). He was connected with the LTTE movement and a helper of Sivarasan,

481. M. Utham Singh (PW-56) is the owner of Ebenezer Stores in Porur locality. T. Soundara Pandian (PW-54) was working as assistant in his shop. Telephone number

2343402 was installed in his shop premises. One person by name Shanmugham got acquainted with M. Utham Singh (PW-56) as he had been buying provisions from his shop. Rajakalapathy and his wife, father-in-law and mother-in-law were also residing with Shanmugham. In September, 1990 two Sri Lankan Tamilians came to M. Utham Singh (PW-56) on a red colour Yamaha motorcycle and asked him whether there was any house available for rent. House of Dr. G.J. Srinivasan (PW-252) in the said locality was newly built. Dr. G.J. Srinivasan (PW-252) wanted the house to be let out and for that purpose he had kept a key with M. Utham Singh (PW-56) for him to show the house to any one who wanted to take the same on rent. When M. Utham Singh (PW-56) asked those two persons if they would give the name of any acquaintance in the area they told him about Rajakalapathy. When M. Utham Singh (PW-56) asked them to bring Rajakalapathy he came with them. The house in question was shown and they liked the same. Those two persons, who came on the motorcycle, were Sarvanan and Nishanthan alias Nixon. Rate of rent and the advance amount payable was agreed to during discussion with Dr. G. J. Srinivasan (PW-252). On the request of Dr. G.J. Srinivasan (PW-252) as to how many members would be staying in that house Sarvanan furnished the list of seven members on a white piece of paper (Exh.P-153), who were K. Kumaralingam, K. Kumaradoss, K. Premalatha, K. Nishanthan, S. Jayakumar, J. Shanthi and K. Prema. Families of Robert Payas (A-9) and Jayakumar (A-10) then occupied the house. They used to purchase provision from the shop of M. Utham Singh (PW-56). Robert Payas (A-9) told M. Utham Singh (PW-56) that his relatives were living abroad and requested him if they made any phone call for Robert Payas (A-9) he might call him. To this M. Utham Singh (PW-56) agreed. Jayakumar (A-10) also used to receive calls from Germany and Robert Payas (A-9) from Italy and Denmark. Robert Payas (A-9) also introduced Kanthan to M. Utham Singh (PW-56), who also requested for the facility of receiving phone calls. M. Utham Singh (PW-56) said that when these persons used to attend the calls they would speak only in cerebral 'yes', 'correct', 'O.K.' and some time 'I will come'. Either M. Utham Singh (PW-56) or his assistant T. Soundara Pandian (PW-54) would go to the house of Robert Payas (A-9) to tell them of the receipt of the call. On 22.5.1991 M. Utham Singh (PW-56) did not open the shop because of some ceremony in his house. On 23.5.1991 T. Soundara Pandian (PW-54) came to open the shop in the morning at 7.00 a.m. M. Utham Singh (PW-56) himself did not go. At about 12.30 noon M. Utham Singh (PW-56) made a call to the shop and asked how was the business. T. Soundara Pandian (PW-54) told him that it was on an average. M. Utham Singh (PW-56) instructed him to close the shop and go home since riots had broken out in certain areas. At about 1.30 p.m. T. Soundara Pandian (PW-54) came to the house of M. Utham Singh (PW-56) and told him that he had received a call from one Shankar, who was staying in some lodging house and had requested him to call Robert Payas (A-9) or Sivarasan to which T. Soundara Pandian (PW-54) had replied that he was the only person in the shop and could not go to give the message. He said after two minutes of that call Shankar again called him and asked him to give the address of the shop. According to M. Utham Singh (PW-56) neither Robert Payas (A-9) nor Jayakumar (A-10) was engaged in any work. In December, 1990 Jayakumar (A-10) shifted from Porur house though still he would be visiting the shop of

M. Utham Singh (PW-56) to purchase provisions. Rent agreement was executed bearing signatures of Dr. G.J. Srinivasan (PW-252) and M. Utham Singh (PW-56). In fact there were two agreements one for rent (Exh.P-154) and one for fitting and fixtures (Exh.P-155).

482. T. Soundara Pandian (PW-54) employee of M. Utham Singh (PW-56) said that Robert Payas (A-9) and Jayakumar (A-10) used to get phone calls from the shop Ebenezer Stores of which M. Utham Singh (PW56) was the proprietor. The phone calls used to come from foreign countries and local calls were also received. Apart from Robert Payas (A-9) and Jayakumar (A-10) Kanthan, Sivarasan and Nixon also used to come to the shop to receive phone calls. Some time T. Soundara Pandian (PW-54) would go to Porur house to leave a message that telephone had come. He said on second day of the death of Rajiv Gandhi he came to the shop as usual. There was a telephone call and the person who called wanted him to call either Sivarasan or Robert Payas (A-9). When T. Soundara Pandian (PW-54) declined because of riots nearby the phone was disconnected. After two or three minutes again phone call came and caller identified himself as Shankar and he said that he was the person who spoke earlier and wanted him to call Sivarasan or Robert Payas (A-9) urgently. T. Soundara Pandian (PW-54) told him that he was alone in the shop and could not go to call them. That person (Shankar) said he was speaking from a lodge and he wanted to have the address of Robert Payas's (A-9) house. T. Soundara Pandian (PW-54) told him that he did not know the number of the house of Robert Payas (A-9) but that house was next to Ebenezer Stores. He, therefore, gave the address of Ebenezer Stores. He said he told M. Utham Singh (PW56) about this call of Shankar.

483. Robert Payas (A-9) and Sivarasan had gone to Studio Memory Makers of S. Raghu (PW-59) on 15.12.1990 for getting passport size photographs. They also went to Kavitha Driving School of T. Panneer Selvam (PW-61) on 4.4.1991 and 9.5.1991 to take Driving licence. Robert Payas (A-9) lived in the neighbourhood of Dr. Claud Fernandez (PW-19-7), a Dentist, Dr. Claud Fernandez (PW-197) knew Robert Payas (A-9) as he was President of the residents' association of that area. Robert Payas (A-9) and his friend had come to the clinic of Dr. Claud Fernandez (PW-197) for treatment. The name of his friend was Ramanan. Second time he came with his another friend whose name was Murugan (A-3). On 23.7.1991 police had come from Malligai CBI headquarters to the residence of Robert Payas (A-9) and recovered his passport and other small items. Dr. Claud Fernandez (PW-197) was witness of the recovery. He said assassination of Rajiv Gandhi took place on 21.5.1991 and "when they are feeling sad, on 22nd evening at about 6 or 7 p.m. we heard a sound of blast from the house of Robert Payas (A-9). That was the sound of crackers". He said he could not see the persons when he came out but above the house of Robert Payas (A-9) it was filled with smoke.

484. K. Kottammal (PW-63) is the owner of Kodungaiyur house where Jayakumar (A-10) and Shanthi (A-11) started living from 18.12.1990. As noted above the house was taken on rent in the name of Ramaswamy, father of Shanthi (A-11). Rent agreement is Exh.P-

217, which bears the signature Ramaswamy and husband of K. Kottammal (PW-63). K. Kottammal (PW-63) identified the signature of her husband.

485. D.J. Swaminathan (PW-85) was living in house number E-152, Kodungaiyur. It was next to the house of Jayakumar (A-10) and Shanthi (A-11) which is house No. E-153. He met Sivarasan who was staying in that house and who told him that he lost his left eye in an accident. In the first week of May, 1991 he saw Sivarasan and two girls coming in an auto to the house of Jayakumar (A-10). Their names were Subha and Dhanu. They stayed for about two days and thereafter D. J. Swaminathan (PW-85) said he did not see them while Sivarasan continued to stay in the house. In the first week of May, 1991 Sivarasan came on a new Kawasaki Bajaj bike. The bike was driven by another person. That was without registration number. Both these persons stayed in the house of Jayakumar (A-10). He stayed there till 26.5.1991. On the morning of 22.5.1991 when D.J. Swaminathan (PW-85) put on the TV to hear the news about the Rajiv Gandhi assassination Sivarasan, Nalini (A-1) and Subha also came to his house. After the news was over some one in the family of D.J. Swaminathan (PW-85) remarked that it would be the work of Liberation Tigers only. Sivarasan asked how could they say so. The reply was given that Tamil people could not do such kind of job. Sivarasan then left the place without saying anything. The witness said that they (presumably Sivarasan, Subha and Nalini (A-1)) were telling that not even rice was available for cooking. Since all the shops were closed on account of assassination of Rajiv Gandhi the witness told them that "I will give rice, if wanted". They declined the offer. At about 12.00 noon they distributed sweet mixed with grated coconut which made the witness wonder. On the morning of 23.5.1991 Sivarasan took Nalini (A-1) on his bike. D.J. Swaminathan (PW-85) said that he did not see Subha thereafter. Sivarasan stayed in that house for three days. He saw Santhan (A-2) till 26.5.1991. He saw the photograph of Dhanu on television in the end of May, 1991. When he had seen Dhanu first time she did not wear spectacles. Initially, therefore, witness said he could not identify her in the photograph if it was Dhanu. Two days thereafter Sivarasan's photograph was shown on T.V. Now D.J. Swaminathan (PW-85) got suspicious. On 2.6.1991 he dialed telephone number 100 and gave the information. When he told the person receiving the call that Sivarasan and Dhanu stayed in the house of Jayakumar (A-10) no one made any inquiry. He did not give his address. Again in the second week of June, 1991 he himself went to the office of CBI headquarters, Malligai and stated the facts he knew. His statement was recorded. On 26.6.1991 house of Jayakumar (A-10) was searched. At that time Shanthi. (A-11) and her father Ramaswamy were there in the house. Various articles were seized. On 7.7.1991 CBI officers with Jayakumar (A-10) came to his Kodungaiyur house. They were not having key of the house. Lock was broken open. Jayakumar (A-10) entered the house and showed the place in the kitchen at the left side. A slab at that place was removed and it was found that there was a pit 2-1/2 fit deep. From that pit Jayakumar (A-10) took out a plastic bag and a suitcase (Aristocrat make). In that bag one belt and two packets of bullets containing 25 and 18 bullets were found. From the suit case a dictionary was taken out which was cut out inside so that a pistol could be kept there. There was one article like artificial eye and five recorded small

micro cassettes, photographs (MO-163 to MO-166), passport (MO-161) in the name of Thillaiambalam Suthendaraja, notebooks (MO-158, MO-159 and MO-160) and diaries were also found and recovered. A list was prepared (Exh.P-437) which bears the signatures of the witness D.J. Swaminathan (PW-85). D.J. Swaminathan (PW-85) has identified photograph of Sivarasan in colour photographs (MO-163 and MO-164) and black and white photographs (MO-165 and MO-166). Colour photograph (MO-169) and black and white photographs (MO-170 and MO-171) are the photographs of Santhan (A-2).

486. S. Meera (PW-200) was living in the neighbourhood of Jayakumar(A-10) in the same locality. She and Shanthi (A-11) became friends and were visiting each other. When S. Meera (PW-200) asked, Shanthi (A-11) as to who was the person wearing spectacles, she said he was her uncle and had a welding shop at Kodungaiyur. Jayakumar (A-10) was not doing any work and was remaining idle at home. Some time in the first week of May, 1991 Sivarasan and two women came in an auto at 8.00 p.m. One day in the first week of May itself Sivarasan brought a car battery on his cycle to the house of Jayakumar (A-10). He, however, took away that battery same evening itself. The two girls Subha and Dhanu used to come to the house of Jayakumar (A-10) on ladies' bicycle now and then. S. Meera (PW-200) said she did not know the names of Sivarasan, Subha and Dhanu in the first instance but she came to know only when their names were published in the newspapers or telecast on T.V. She said many people kept on coming and going in the month of May, 1991 in the house of Jayakumar (A-10). One such person was husband of Jayakumar's (A-10) younger sister as told to S. Meera (PW-200) by Shanthi (A-11). S. Meera (PW-200) said she was not staying in her house from 7.5.1991 to 23.5.1991 and that she had gone to her mother-in-law's house.

487. M. Janarthanam (PW-71) said that he let out his shop to Shanthi (A-11), wife of Jayakumar (A-10) in Kodungaiyur and received Rs. 20,000/- as advance though he executed the agreement for Rs. 4,500/- only in the month of April, 1991. The purpose of letting was to run a coffee grinding shop. On 25.7.1991 M. Janarthanam (PW-71) was called to Malligai office of CBI headquarters where he handed over the agreement (Exh.P-338). He had also given a letter of consent (Exh.P-339) to Shanthi (A-11) for installing the coffee grinding machine in the shop, which he also handed over to the police. During his statement M. Janarthanam (PW-71) was asked to identify Jayakumar (A-10), who had approached him for running out the shop along with his brother-in-law Damodaran. M. Janarthanam (PW-71) identified Bhagyanathan (A-20) as Jayakumar (A-10). M. Janarthanam (PW-71) said that on 29.1.1992 Ramaswamy, father of Shanthi (A-11) came to the shop and removed the grinding machine and other equipments. He also asked for refund of advance of Rs. 20,000/- which the witness did not give. Shanthi (A-11) wrote a letter (Exh.P-343) on 13.8.1992 to M. Janarthanam (PW-71) from the prison for the purpose but M. Janarthanam (PW-71) said that letter from Jayakumar (A-10) should also come. Then Shanthi (A-11) and Jayakumar (A-10) wrote a letter (Exh.P-344) to M. Janarthanam (PW-71) from the prison. In his statement M. Janarthanam (PW-71) further stated that the

Judge questioned him in the court to which he replied he did receive Rs. 20,000/- advance and said that he had no objection to return that back. The Judge passed the order on 3.11.1992 that the settlement might be made out of court. -M. Janarthanani (PW-71) said that afterwards Ramaswamy called on him and obtained receipt (Exh.P-342) from him on 26.12.1992 and he returned the amount of Rs. 20,000/-.

488. V. Kannan (PW-199) sold the coffee grinding machine for Rs. 15,000/. Receipt showing the coffee grinding machine is Exh.P-971. Both Jayakumar (A-10) and Shanthi (A-11) had come to V. Kannan (PW-199) to buy the machine.

489. Sowmya Narayanan (PW-70) is one of the staff members from Telecom Department and he has identified application for telephone connection (Exh.P-336) by Shanthi (A-11) in OYT scheme for the shop premises. The application was registered on 22.4.1991. A sum of Rs. 8,000/- is shown to have been paid with the application.

490. In the diary (MO-180) of Sivarasan seized from the house of Jayakumar (A-10) there is mention of a sum of Rs. 10,000/-on 11.4.1991 for telephone.

491. Jayakumar (A-10) stated to have made disclosure statement to the police on 9.7.1991 (Exh. P-1436) on the basis of which it is stated that Jayakumar (A-10) took the police to Kodungaiyur house and recoveries made. The trial Judge has strongly commented on the conduct of the police in recording the disclosure statement to boost its case and has criticized the investigating officer in adopting such a course. In the disclosure statement Jayakumar (A-10) said that on 21.5.1991 Sivarasan had dug a pit in the kitchen and kept a brief suitcase and a plastic bag and then covered the same with a cement slab. He said Sivarasan told him not to disclose that to any one and not to give the material placed in the pit to any one except to him.

492. Vijayan (A-12), whose confession was recorded, was a lorry driver in Sri Lanka. He started his own workshop and during the period 1987-89 he used to repair vehicles of LTTE. When IPKF came to Sri Lanka his work was affected. Selvaluxmi (A-13) is his wife. She is daughter of Velayudam alias Bhaskaran (A-14). Vijayan (A-12) decided to come to India in 1990 as his wife was pregnant and he thought that in India she would get necessary medical facility. One Kutty told him that he would make arrangements for him to go to India without making any payment to LTTE. Kutty introduced Vijayan (A-12) to Sivarasan who told him that if he worked for LTTE his expenses would be looked after by the LTTE. Sivarasan told him to take a house on rent and to stay there and that persons belonging to LTTE would come and stay in that house for their work. While staying at Tuticorin, Vijayan (A-12) worked in Tuticorin Port Trust and at SPIC as daily wage earning Rs. 20 to Rs. 30/- per day. His wife gave birth to a son on 17.10.1990. After Vijayan (A-12) settled in his house in Madras as described earlier Sivarasan along with Chokkanathan alias Sabapathi and Munusami, LTTE workers came to his house. Sivarasan told Vijayan (A-12) that in the first week of May, 1991 he would bring some

LTTE men for an important work and he asked him to make necessary arrangements for their stay. He was also cautioned by him not to tell that to anybody. Sivarasan again came on 2.5.1991 with Gokul alias Nero, an LTTE activist. Both came with a suitcase containing wireless set and other things. Sivarasan then informed Vijayan (A-12) that he would bring two LTTE women to the house. He gave him Rs. 10,000/- for his expenses. After three or four days Sivarasan took him to a place nearby and gave him a big car battery and asked him to take that to his house. The battery was for fixing a wireless set. Vijayan (A-12) gave that battery to Nero. Same day Sivarasan brought a black and white TV and kept the same in the house. He said that he had bought this for the family of Vijayan (A-12). Sivarasan asked Nero to have a link with Sri Lanka through wireless which Nero was able to achieve within two/three days. Whenever Nero spoke on the wireless he would use to say from 910 to 91. Vijayan (A-12) bought a battery charger from a shop at Mount Road, Madras and also other articles of furniture. Sivarasan paid for all. On 6.5.1991 Sivarasan brought Dhanu and Subha to Vijayan's (A-12) house. That day his father-in-law Bhaskaran (A-14) had also come from Tuticorin. These two women would keep their important things in a black bag and would always carry that whenever they went out. Sivarasan gave money to Vijayan (A-12) to buy two cycles for the women. Subha and Dhanu would go out on Friday and would come on Monday morning. On 16/17-5-1991 Sivarasan asked Vijayan (A-12) to dig a pit in the kitchen to hide the wireless set and guns. Vijayan (A-12), Sivarasan and Nero dug the pit. On the morning of 21.5.1991 Sivarasan came to the house of Vijayan (A-12). He gave some message to Nero to be transmitted on wireless. Then he said something to Subha and Dhanu who got ready by 12 O'clock after having their lunch. Sivarasan again came at 12.30 p.m. wearing a Kurta-Pyzama with a camera in his hand. He asked Dhanu and Subha to get ready. Vijayan (A-12) said usually his wife would help Subha to wear saree. On that day, however, Subha and Dhanu both closed the door of their room and got dressed. They took about half an hour to dress. Subha was wearing a saree; Dhanu was wearing orange colour kurta and green colour dupatta. She was wearing spectacles. Generally she did not wear spectacles in the house. A photo session started. 10 photographs were taken among themselves with the camera Sivarasan had brought. Vijayan (A-12) took photographs of Subha, Dhanu and Sivarasan together. Dhanu had put on over make-up on her face. Sivarasan asked Vijayan (A-12) and Nero to go and bring an auto. He told them not to bring the auto near the house and to stop that near the bus stand away from the house. This arrangement was so that auto driver would not be able to identify the house. They brought the auto as instructed. Sivarasan, Subha and Dhanu walked up to the auto. Nero went with them but came back and then gave some message through wireless. He used to speak daily through wireless once in the morning and once in evening. On the morning of 22.5.1991, Sivarasan came to the house of Vijayan (A-12) and said that the work was over and that the Rajiv Gandhi was murdered. He asked Nero to send the message to Sri Lanka through wireless and himself went to sleep. Sivarasan would write on a piece of paper in a language which was not understandable and would give that to Nero to send that message through wireless. After lunch Sivarasan went away. On 23.5.1991 he came on a cycle, took the motorcycle and again went away. He used to keep the motorcycle in the house of Vijayan

(A-12). From the evening of 23.5.1991 Sivarasan, Subha and Nero were staying in the house of Vijayan (A-12). Nero used to keep his gun (AK-47) always ready. All these three used to watch carefully if police was coming. This watching started from the day Dhanu's photograph appeared in the newspapers. Sivarasan used to go out with his pistol. While sleeping he used to keep it under his pillow. He and Subha went to Tirupathi on 25.5.1991 and came back the next day in the night. Vijayan (A-12) said that Sivarasan used to say if police would come to arrest him he would kill a dozen of policemen and then only he would be caught. On 27.5.1991 he took out the motorcycle and hid somewhere. Vijayan (A-12) did not see the motorcycle afterwards. In the end of May, 1991 Sivarasan's photo also appeared in the newspapers. Vijayan (A-12) used to buy all the newspapers which Nero would read and tell Sivarasan the progress of investigation made by the police in the case. One day Sivarasan took off his moustache. Movements of Sivarasan got limited after his photo appeared in the newspapers. He used to go out on foot and would give messages to LTTE men. One day in the first week of June, 1991, Sivarasan said that Nero had spoken to Jaffna through wireless and arrangements were made for their escape from India by boat. Sivrsasan took Subha somewhere and returned on 10.6.1991. He said they had gone to Coimbatore. That day Nero told Sivarasan that he spoke through wireless and that there was some problem and that boat won't be coming from Jaffna. By this time photo of Subha also appeared in the newspapers which scared Subha. Sivarasan then put Subha's dresses in a black bag and took that out somewhere and hid it. On that day only Santhan (A-2), who was a close companion of Vijayan (A-12), came for the first time. On 12.6.1991 Sivarasan came to Vijayan's (A-12) house and told him that it was very difficult to stay like that. They should buy photos of Rajiv Gandhi, M.G.R. and Jayalalitha and keep them in front of the room and in that way nobody would doubt them. This Vijayan (A-12) did. Sivarasan paid him Rs. 100/- for that. After few days Sivarasan asked Bhaskaran (A-14) to get help from his relative to arrange for some other house. Bhaskaran (A-14) went to his relative N. Chokkanathan (PW-97) to look for some other house but said that N. Chokkanathan (PW-97) was of no use and it was difficult to get another house. Sivarasan said he would seek help of some other person to see the house. On 23.6.1991 he gave a message to Nero to be transmitted through wireless. Nero told Sivarasan that that was the last message to be given. After that Sivarasan and Nero took off the antenna and wires and kept the wireless set in the pit which had been dug in the kitchen. After a day or two Santhan (A-2) brought another person to take Sivarasan and Subha with him. Later, Vijayan (A-12) came to know that his name was Suresh Master (DA). In the evening they brought an auto. The plan was that Sivarasan, Subha, Nero and Suresh Master would all go together. Thereafter Vijayan (A-12) said he did not see all of them. Vijayan (A-12) and family then decided to go to Tuticorin and after staying for one week returned to their house to take the things and to vacate the house but by that time the police came and arrested Vijayan (A-12).

493. Mangaleswaran (PW-234) and Rose D. Nayagam (PW-235) respectively were in charge of Rameshwaram and Tuticorin refugee camps and they have testified to the

registration of stay of Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-law Bhaskaran (A-14) in the refugee camps, as refugees coming from Sri Lanka.

494. J. Duraisamy Naidu (PW-82) is the owner of the house which was taken on rent by Vijayan (A-12). Tenant agreement (Exh.P-426) was executed. The house was occupied on 23.4.1991. The tenant agreement bears signature of Vijayan (A-12) for Plot No. 12, Eveready Colony, No. 12 at Kodungaiyur. Rent agreement was taken into possession by the police.

495. Esylen Mantel (PW-99), who was living in Plot No. 14, Eveready Colony, Kodungaiyur, said that Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-la-,v Bhaskaran (A-14) were staying in the neighbouring house. Esylen Mantel (PW-99) said in the first week of May, 1991 two auto rickshaws had come to the house of Vijayan (A-12). I none auto there were two ladies and in the other there were two gents. The girls names came to be known to Esylen Mantel (PW-99) as Subha and Dhanu and the gents' as Sivarasan and Nero. Esylen Mantel (PW-99) said they also brought a TV to the house of Vijayan (A-12) and fixed the antenna on the terrace. They also fixed two casuarina tree posts on the terrace and connected the black wire between posts with the wire connection inside the house of Vijayan (A-12). On 21.5.1991 at about 2.00 p.m. Esylen Mantel (PW-99) saw Sivarasan, Subha and Dhanu standing at the bus stand at Kodungaiyur. Next day the witness came to know about the assassination of Rajiv Gandhi on TV news. Esylen Mantel (PW-99) saw Sivarasan, Subha and Nero at Vijayan's (A-12) house on 24.5.1991 but did not see Dhanu. Same day Dhanu's photograph was published in the newspapers. Esylen Mantel (PW-99) suspected that it was the same girl who was seen by her at the bus stand. On 29.5.1991 Sivarasan's photo was also published. Now it was confirmed to Esylen Mantel (PW-99) that all these persons were involved in the assassination of Rajiv Gandhi. She developed fear on that account. Vijayan (A-12) came to the house of Esylen Mantel (PW-99) in the second week of June, 1991 and borrowed a driller stating that he wanted to fix a regulator for the fan. Since he did not return the driller same day Esylen Mantel (PW-99) went to the house of Vijayan (A-12). On reaching there she saw Sivarasan standing in the hall with one left eye closed. Earlier Esylen Mantel (PW-99) had seen him wearing spectacles. Now he was not wearing spectacles. When she asked Selvaluxmi (A-13) as to what happened to the eye of Sivarasan she told her that he lost his eye while playing. One day Esylen Mantel (PW-99) saw Sivarasan sitting on the steps of the house of Vijayan (A-12). She went near him, wished him and asked him if he was employed somewhere. Sivarasan said he was unemployed and was trying to get a job in Dubai. At that time she noticed he had two eyes. Left eye looked like an artificial eye. Now he did not have even mustache and did not wear spectacles. Mother of Esylen Mantel (PW-99) went to CBI office at Malligai to give information. But because of fear of LTTE she did not do so. She said they should watch the house to collect more clues and then to inform CBI. Thereafter they were keeping watch on Vijayan's (A-12) house and noticing the movements on that house. On 26.6.1991 at 7.30 a.m. Esylen Mantel (PW-99) saw Vijayan (A-12) taking Bhaskaran (A-14) on a cycle. While passing in front of her house Bhaskaran

(A-14) told Esylen Mantel (PW-99) that he was going to Madurai. That day Sivarasan was not in the house of Vijayan (A-12). Vijayan (A-12) said Sivarasan had gone to Madurai to get a job and would return in a month or so. At that time there was a black boy in the house who was later identified as Santhan (A-2). Vijayan (A-12) introduced Santhan (A-2) as his brother who was a driver and was trying for a job in Dubai. On 1.7.1991 again at 7.30a.m. Esylen Mantel (PW-99) saw Vijayan (A-12) and Santhan (A-2) going on a cycle. After ten minutes Vijayan.(A-12) came back alone and now he had changed his dress too, Vijayan (A-12) told Esylen Mantel (PW-99) while passing through her house that he was leaving for Madurai since he received a telegram from his father-in-law. Vijayan (A-12) also said that he would come back after one and a half month or so. That day Vijayan (A-12) also told her that Sivarasan would not be coming back as he was the most wanted person by CBI. On 2.7.1991 Esylen Mantel (PW-99) informed the CBI about the incident. She was examined by the police and identified Santhan (A-2), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) in the row of accused and Sivarasan, Subha and Dhanu in photographs.

496. In diary (MO-180) of Sivarasan it was mentioned against date 6.4.1991 "Vijayan (A-12) Veedu (house) -15,000/-" meaning that Sivarasan had paid Rs. 15,000/- to Vijayan (A-12) for getting a house on rent in Madras.

497. L.D.N.J. Wijesinghe (PW-67), Senior Superintendent of Police, Sri Lanka has spoken about the wireless network of LTTE. He intercepted LTTE wireless transmissions. He said Nero was using wireless station 910 and 91 while communicating with LTTE leaders in Jaffna. Wireless station 91 belonged Pottu Amman in Sri Lanka and Station 910 is the wireless station belonged to Sivarasan in India.

498. T.P. Sither (PW-78) is the wireless operator of Government of India in the Ministry of Home Affairs. He has also testified regarding wireless messages monitored during the period from 1988. He also deposed that station 91 belonged to Pottu Amman and station 910 was used by Sivarasan.

499. Hashmuth S. Setal (PW-98) is the owner of Barathi Cycle company and Barathi Cycle Agency. He sold BSA Delux cycle to one P. Vijayan of Plot No. 12, Muthamizh Nagar, Kodungaiyur, Madras as per bill (Exh.P-491). Cycle was sold on 8.5.1991. He identified that cycle (MO-390). Another cycle BSA SLR was also sold to Vijayan (A-12) on 8.5.1991 as per bill (Exh.P-493) having the same address.

500. Mohanraj (PW-254) was working as officer-in-charge of International Monitoring Station at Perungudi, Madras. He has testified that wireless Trans receivers (MO-770) could be operated by using 12 volt D.C. battery like MO-209.

501. N. Chokkanathan (PW-97) is a distant relation of Bhaskaran (A-14). In his deposition he said that he had met Bhaskaran (A-14) in the year 1952 when he went to Sri Lanka to

seek a job. Then suddenly on 20.6.1991 Bhaskaran (A-14) called on him. He entertained him and discussed about family matters. They went for an evening movie show. That day Bhaskaran (A-14) slept in the house of N. Chokkanathan (PW-97). After they had supper Bhaskaran (A-14) asked N. Chokkanathan (PW-97) to get a big house rented for him in an outer area at a monthly rent of Rs. 2000/- to Rs. 3000/-. N. Chokkanathan (PW-97) was surprised and said that a house at the rate of Rs. 300/- per month would be sufficient for his family. Bhaskaran (A-14) said the house was not for him but was required for some important persons. When N. Chokkanathan (PW-97) inquired who those important persons were Bhaskaran (A-14) said it would create some problem if he disclosed him and their names. N. Chokkanathan (PW-97) said that unless he revealed the names of the important persons he would not take any step to search for a house. Then Bhaskaran (A-14) told him that the house was meant for Sivarasan and Subha who were involved in Rajiv Gandhi assassination case and whose photographs had been exhibited in TV and posters. N. Chokkanathan (PW-97) said he was shocked and asked what was the relation between him and those persons. Bhaskaran (A-14) said that at that time he was residing in a house in Kodungaiyur area and that those persons were residing there. When N. Chokkanathan (PW-97) refused to give any help, Bhaskaran (A-14) then pleaded with N. Chokkanathan (PW-97) to at least permit Subha to stay in his house for some time as a family member. N. Chokkanathan (PW-97) again refused. That made Bhaskaran (A-14) angry. He refused to eat and threatened N. Chokkanathan (PW-97) that he would kill him if he gave any information to the police about him or Sivarasan or Subha. Bhaskaran (A-14) then left the house. Next day, i.e., 22.6.1991 with the assistance of his relative one Srinivasan, with whom N. Chokkanathan (PW-97) discussed the matter, they went to the office of Malligai CBI headquarters. N. Chokkanathan (PW-97) gave his statement to the police. They sent him back saying that they would call him after four days. He was again called by the CBI officials on 28.6.1991 when he was interrogated and his statement was recorded.

502. M. Narayanan (PW-281) is D.S.P., CBI and one of the investigating officers. As far as Bhaskaran (A-14) was concerned he said his presence was secured on 7.7.1991 but how that was done he was unable to say. He said he was brought to the office of CBI on that day but who brought him again he was unable to tell. When he was taken to the house of Vijayan (A-12) and was about to break open the lock of the house Vijayan (A-12) and Selvaluxmi (A-13) with their child came there. They were identified by Bhaskaran (A-14). Vijayan (A-12) had the key with which he opened the house. Thereafter seizure was effected. Vijayan (A-12) voluntarily pointed out the space in the kitchen from which signal making articles were recovered. M. Narayanan (PW-281) said that Vijayan (A-12) voluntarily pointed out towards the pit otherwise that place could not have been found. He said N. Chokkanathan (PW-97) came to his office on 23.6.1991 and was accompanied by Srinivasan. Statement of N. Chokkanathan (PW-97) was not recorded at that time because of immediate action was to be taken to locate the house and to make attempt to apprehend Bhaskaran (A-14). Statement of N. Chokkanathan (PW-97) was recorded on 28.6.1991. As per witness M. Narayanan (PW-281) the recovery was effected on 8.7.1991

on the basis of the disclosure statement made by Vijayan (A-12) (Exh.P-1358). It has come on record during the course of examination of the witness that recovery had already been effected on 7.7.1991 (Exh.D-63). The trial court has accepted Exh.D-63 and has rejected Exh.P-1358 and had adversely commented to the conduct of the witness, the investigating officer, in allegedly manipulating the recovery.

503. Ravi (A-16) is an Indian national. He made confession. He was attracted towards LITE. He got training in military camp run by LTTE on Indian soil. He joined LTTE movement and got deeply involved in it. In his confession he described the details of the training he got and the oath he took. Ravi (A-16) also described some of the activities of LITE. He went to Sri Lanka as well where also he got further training in military operations. Ravi (A-16) then came back to Madras before Indo-Sri Lankan Accord was signed in 1987. In Madras he continued his operation. During holidays, however, he would meet various LTTE personnel like Kittu, Baby Subramaniam, etc. in the LTTE office at Indira Nagar in Madras. When war started between IPKF and LTTE he said he was eager to go to Sri Lanka to take part in the war operations against IPKF. He was kept under house arrest in the month of June-July, 1988. On 8.8.1988, he along with 89 others, belonging to LTTE cadre, was arrested and kept in lock-up in Madras Central Jail. From there all these persons were sent to Sri Lanka by an Indian Air Force plane. Ravi (A-16) said he was sent to Sri Lanka because it was thought that he was a Sri Lankan national. In Sri Lanka firstly, they were kept in Indian Army camp. They learnt about the rapes, murders and other atrocities committed by IPKF. They developed a strong feeling of revenge. Ravi (A-16) was released in 1989. He went to LTTE camp in Sri Lanka where he met various leaders. There he was indoctrinated to start a movement so that entire Tamil people in the world joined hands. Ravi (A-16) said when he asked his role he was told to go to Tamil Nadu and to select youths, who had got feeling for Tamil race and tell them about the struggle of LTTE and the traitorous acts committed by India. Ravi (A-16) said that India thus became their enemy and they were to fight for Tamils' nation. He was advocated for armed revolution to establish a separate Tamil nation. Ravi (A-16) was given a letter and was told that if he gave that letter to the seashore incharge in India he would be given money for his expenses. After coming to India Ravi (A-16) went to Selam along with other LTTE people. He gave that letter to one Richard in Selam, who after reading the letter gave him Rs. 15,000/- . From there Ravi (A-16) went to Madras and was told to go to Subha Studio at Royapettah to meet Muthuraja. It was in the second week of January, 1990 that he came to Madras and met Muthuraja in Subha Studio and apprised him about the instructions he got in Sri Lanka. He met Suseendran (A-17), who was a member of Dravida Kazhagam. He was also told about the need of armed revolutions in Tamil Nadu and the LTTE support of that. Initially they were to collect youths. In his confession Ravi (A-16) further described as to how ten persons were collected by Suseendran (A-17) and arrangements were made for their training in Sri Lanka. Ravi (A-16) also went to Sri Lanka. He further described his activities in India for LTTE. He met Suseendran (A-17) again in May, 1990 at Coimbatore and asked him to enroll more youths. By this time war had started between LTTE and Sri Lankan Army. During these

training days in Sri Lanka Ravi (A-16) had met Pottu Amman as well who explained that to carry on the work assigned to Ravi (A-16) and others it had to be done in three phases (1) to arrange houses for the stay of LTTE cadre personnel, (2) to enroll more people and impart training to them and (3) to develop seashore linkage and to form separate boat line, if possible. Training in wireless operation was also given. In the month of December, 1990 Ravi (A-16), Suseendran (A-17) and two others were brought to a house in Jaffna by Pottu Amman for the purpose of their return to Tamil Nadu. In this House Sivarasan was introduced to Ravi (A 16) by Pottu Amman. Pottu Amman separately called Ravi (A-16) and told him that Sivarasan was also going with them to Tamil Nadu and that he might be contacted if there was any need for money for selection of personnel for the movement and it would be useful to get suggestions from him. Pottu Amman also reminded him the incident of Padmanabha case in Tamil Nadu and said some important matters would be going to occur there and for that his role must be prominent one. He was, therefore, told to follow the instructions of Sivarasan and consult him in case of any doubt. They all were seen off by Pottu Amman. While they were waiting in the boat Ravi (A-16) asked Sivarasan "about this is what work and how many persons". He said "lesser man bigger target". Ravi (A-16) further inquired whether it would be a big shot in Tamil Nadu politics and to that Sivarasan replied that it was something bigger than that. Again when Ravi (A-16) asked whether it could be Rajiv Gandhi but Sivarasan did not give any reply directly and told him that they were going to perform and that "we will see later" and the talk ended. In the training camp in Sri Lanka, Ravi (A-16) said people would often speak about Rajiv Gandhi and IPKF and showed their hatred and emotion and that was the reason why he asked Sivarasan whether it was Rajiv Gandhi to which he replied that it was a big target. Ravi (A-16) further in his confession said that there was no direct reply coming out. Sivarasan, however, spoke his words in such a way that he confirmed his suspicion. Ravi (A-16) gave his aunt's Longamadha (PW-206) address to Sivarasan if he was to be contacted. They reached Kodiakkarai on Indian soil in the last week of December, 1990. Sivarasan said that he would give his address and telephone number to Ravi (A-16) in a few days' time. Firstly, they stayed in the house of Shanmugham (DA). Sivarasan gave him Rs. 2,000/- out of which he gave Rs. 500/- each to Suseendran (A-17) and two others. After ten days of their arrival they met again in Madras as arranged earlier. Sivarasan gave Rs. 3 lacs to Ravi (A-16), 1.5 lacs each on two different occasions and told Ravi (A-16) to buy a vehicle if required for the movement. Sivarasan gave his contact telephone number 2343402 to Ravi (A-16) to contact him if there was any urgent need and in case he was not there to contact Robert Payas (A-9) and to give him the message. Sivarasan again gave him Rs. 50,000/- out of which he gave Rs. 5,000/- each to Suseendran (A-17) and two others. At the end of March, 1991 there was a message lying in the house of Longamadha (PW-206) for Ravi (A-16) to meet Sivarasan. There was a wireless set brought by LTTE cadre and Sivarasan asked Ravi (A-16) to come with him to receive the set. They then went to the house of Jayakumar (A-10). After taking the food while they were sleeping on the terrace, Ravi (A-16) said that Sivarasan had once told him to find out the airport security when a VIP would come. He said he did not remember the name of the VIP. That night Sivarasan asked about the VIP security and Ravi (A-16)

told him that when great leaders come, first gate of the old airport was used and that it was a narrow road and that the "place is advantageous for us". Ravi (A-16) asked Sivarasan that three months had elapsed after they had come to India and that nothing was done 'about the target. Sivarasan told him that "we must not go in search of target and that target would come searching us and we shall see at that time". He also said that it might take place in near future if the election is declared. Sivarasan said that in order to make wireless set functioning to contact Sri Lanka two or three places of shore had to be separately arranged. Sivarasan then told Ravi (A-16) to start a travel agency in Delhi and then asked him to send some person to collect the details to Delhi. When Ravi (A-16) said that that would be an expensive proposition Sivarasan replied that expenses need not be bothered. Ravi (A-16) received another sum of Rs. 2 lacs from Sivarasan. After 15 days when Ravi (A-16) again met Sivarasan he gave him Rs. 5 lacs to start travel agency in Delhi. He, however, said travel agency need not be started immediately but it was enough if arrangements are made. In his confession Ravi (A-16) described the enrollment of some youths for training and for making arrangements for them to go to Sri Lanka by boat for the purpose. Then he described about attempt to get wireless connection with Sri Lanka. Again on one visit to Kodiakkarai when Ravi (A-16) was staying in the house Shanmugham (DA), Murugan (A-3) came there with a big Aristocrat suitcase. It was on 13/14.5.1991. Then he said that when he, Murugan (A-3) and one other person Chokkanathan were sitting separately Chokkanathan asked that work of Sivarasan had not yet occurred. Murugan (A-3) said that "where would it go without occurring and it ought to occur". Nobody then talked about it later. Since boat did not come Murugan (A-3) went back to Madras. Ravi (A-16) was to go to Sri Lanka. The boat did come on 20.5.1991 but Chokkanathan did not allow Ravi (A-16) to go in that boat as that boat was to carry goods for Sri Lanka.

504. On the night of 21.5.1991 while Ravi (A-16) was sleeping in a hut opposite to the house of Shanmugham (DA), in the mid night servant of Shanmugham told him that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died including Moopanar and Vazhapadi Ramamoorthy. He said that message came by telephone to Shanmugham and he advised that Ravi (A-16) should not remain there. Next day when Ravi (A-16) met Chokkanathan he said assassination of Rajiv Gandhi was advantageous to LITE. Since it was not certain that boat would come from Sri Lanka for Ravi (A-16) and others to return he gave his bag and Murugan's (A-3) suitcase to Chokkanathan and asked him to give them to Shanmugham and went to Trichy. He gave a message to Suseendran'(A-17) to meet him at Madras on 26.5.1991. He himself reached Madras on 24.5.1991. When he went to his aunt's (Longamadha (PW-206)) house he was given a letter from Sivarasan dated 23.5.1991 addressed in the name of 'Prakash'. One day after Sivarasan came and took Ravi (A-16) out. He asked Ravi (A-16) why he had not gone to Sri Lanka. Then Ravi (A-16) gave him the details. Sivarasan asked him if the shore was clear and added that suspicion had arisen on LTTE and there might be some problems to Sri Lankan Tamils. Sivarasan wondered how the police came in possession of his photograph and that police was searching him in connection with the murder of

Rajiv Gandhi. That being so he said that there would be problem for Subha and it would be better if she was kept in the custody of Ravi (A-16) in the house of some Indian Tamil family. When Ravi (A-16) met Suseendran (A-17) on 26.5.1991 he brought the problem to his notice. Suseendran (A-17) said that if it was for few days there was no problem in keeping Subha in his custody. Ravi (A-16) and Suseendran (A-17) met Sivarasan in the evening. Then Ravi (A-16), Suseendran (A-17), Sivarasan and Subha gathered at 9.00 p.m. at the bus stand from where Ravi (A-16) took leave. After returning he informed Pottu Amman through wireless that Sivarasan had left Subha in his and Suseendran's (A-17) custody. Ravi (A-16) sent a message to Sivarasan that the shore was now clear. Ravi (A-16) along with Sivarasan went to the house of Karpagam (PW-133), relative of Suseendran (A-17) at Pollachi where Subha had been taken. Both Suseendran (A-17) and Subha were there. Ravi (A-16), Suseendran (A-17), Sivarasan, Subha, Kanthan and Murugesan collected at the seashore to take a boat for Sri Lanka. That was 10.6.1991. A message was, however, received that the boat got hit in the sea near Jaffna and all 11 persons who were coming to India died. Yet another attempt was made to leave India from another shore. Sivarasan said that security would now be tightened. At this Ravi (A-16) told him that "we would try, if not 'consume the capsule'." Ravi (A-16) said that problem for leaving from Indian shore would get aggravated if there was any further delay. In his confession then Ravi (A-16) described the attempts of the group to leave India and their inters meetings to achieve that purpose and the difficulty faced by them because of war in Sri Lanka. Ravi (A-16) thought that their position should be explained to Pottu Amman. He, therefore, contacted Suseendran (A-17) for forming a wireless set connection and for that purpose to arrange a house. In the last week of July, 1991 Suseendran (A-17) arranged a house at Dindigul. Kanthan gave his wireless set to Ravi (A-16) telling him to keep that safe. Through wireless set they could reach Jaffna and sent information that CBI was searching for Kanthan and his picture had been published in newspapers and asked them to arrange for a boat urgently. Later, Ravi (A-16) along with Kanthan and another went to the house of Robert Payas (A-9). While Ravi (A-16) stood outside Kanthan went inside the house through back entry and after a few minutes came out. He told Ravi (A-16) that inmates of the house asked him not to come to their house since police was searching him. Later Kanthan went to a lonely house in Porur and when he returned he said that the old man in that house had been arrested by CBI. On 20 or 21.7.1991 Suseendran (A-17) went to Dindigul and gave information to Pottu Amman about the latest position. In his confession Ravi (A-16) had shown his various attempts for him and others to leave the country and his being in constant touch with Pottu Amman through wireless set installed at Dindigul. On 28.7.1991 Ravi (A-16) along with Kanthan and Ramanan went to Sri Lanka and met Pottu Amman. Ravi (A-16) said when Pottu Amman asked as to the position of Tamil Nadu he told him that there was no place even-to, stand in the existing circumstances. Pottu Amman then asked him as to why Sivarasan went to Bangalore. Ravi (A-16) said he did not know about Sivarasan's going to Bangalore and that he had earlier informed Pottu Amman that he was not in contact with Sivarasan. Ravi (A-16) gave Pottu Amman up-to-date perception of the investigation and the arrest of various persons. Ultimately Ravi (A-16) stated that he returned to India. He left Sri Lanka on

10.8.1991 with various weapons, 12 gold biscuits and 15 code sheets. The weapons included 2 SMG, 10 grenades, 1350 rounds and 5 pistols. Pottu Amman told Ravi (A-16) that now weapons had been handed over to him, time had come for starting the struggle and to fight against a very big super power and asked him to be careful. He told Ravi (A-16) to decide targets and then suggested many other things as to how to go about and use the arms and ammunition. They came to India through a boat. He contacted Suseendran (A-17). 1350 rounds, 2 SMG and 5 grenades were dumped in a place by two LTTE men on the direction of Ravi (A-16). Next morning they came to Dindigul with 2 walkie-talkie, 12 gold biscuits (each weighing 120 grams), code sheets and 3 pistols. Jaffna was informed through wireless set of Kanthan. Ravi (A-16) gave 6 biscuits, 2 grenades, one pistol and code sheets to Suseendran (A-17) and asked him to keep them. One pistol Ravi (A-16) kept with him and one he gave to one Sukumar. 6 gold biscuits were given to one Charles. On 12.8.1991 Ravi (A-16) left Dindigul and reached Madras on the next day. There he got the news in papers that weapons hidden in the ground at Nambuthalai had been taken by the customs. Pottu Amman was informed of this seizure. On 21.8.1991 Ravi (A-16) was arrested by the police. He was shown the letters and other diaries of Sivarasan to identify the handwriting of Sivarasan. He identified various persons in LTTE cadre, they being Chokkanathan, Arivu (A-18), Yogi alias Yoga Ratnam, Shanmugham, Haribabu, Sivarasan, Aruna, Suba Sundaram (A-22), Avadi Manoharan, Robert Payas (A-9), Ramanan, Jayakumar(A-10), Kanthan, Murugan (A-3), Chinna Shanthan, Gundappa, Dixon and Irumborai (A-19).

505. Suseendran (A-17) is another Indian Tamil living in Tamil Nadu. He also became LTTE sympathizer and had been working for LTTE. He got contact with Muthuraja, Baby Subramiam and Kasi Anandhan (PW-242) and other persons belonging to LITE. In 1989 he went to Sri Lanka and organized there a procession in support of LITE. In end of January, 1990 he came to know Ravi (A-16). They both discussed the creation of separate Tamil Nadu and its liberation. Suseendran (A-17) did not consider this offer seriously. After a few days Ravi (A-16) again talked to him to which Suseendran (A-17) replied that though he felt confident but asked as to how it was going to be attained. Ravi (A-16) said youths who were interested in getting separate Tamil Nadu could be organized and involved in the struggle and that LTTE would help in giving arm training to them. Suseendran (A-17) said he got interested and decided to collect persons interested in separate Tamil Nadu. In his confession Suseendran (A-17) then described the attempt to organize youths and then to make arrangement for them to go to Sri Lanka for training. In Sri Lanka he met Pottu Amman as well. He came to the training camp where Suseendran (A-17) and others were getting training. He told them that they should always be ready at right time to attack important places in Tamil Nadu and that weapons and money required for the struggle would be given by LTTE. He said that they must fight as one under the leadership of Ravi (A-16). The movement which was to be started by Ravi (A-16) and Suseendran (A-17) was called Tamil National Retrieval Troops (as translated in English). In the end of December, 1990 Pottu Amman took him, Ravi (A-16) and others to Jaffna. He took Ravi (A-16) separately and talked to him. In the house there

was one person whose name was Sivarasan. Then Sivarasan, Pottu Amman and Ravi (A-16) talked together for a while. They then left for Indian soil on boat and were seen off by Pottu Amman. In his further confession Suseendran (A-17) described his meeting with various persons connected with LTTE and the expenses met by Sivarasan. He was involved in organizing the youths and went to places like Pollachi. As per earlier arrangement he met Ravi (A-16) at Madras on 26.5.1991. Sivarasan also came there. At that time Ravi (A-16) told him to have a lady tiger stay with him for one week since the police problem was too much at Madras. He requested that the girl could stay in a house of a, sup-porter whom he knew. Sivarasan, Subha, Ravi (A-16) and Suseendran (A-17) then gathered at bus stop at 9 O'clock when Ravi (A-16) left leaving them there. That lady was introduced to Suseendran (A-17) as Malliga. Suseendran (A-17) said that later he came to know that her name was Subha. He, Sivarasan and Subha left for Trichy reaching there in the morning. From there they went to Pollachi. He said there they stayed in the house of D. Shanmugasundaram (PW-208). He introduced Mallika as his wife and sister of Sivarasan. Karpagam (PW-133), wife of D. Shanmugasundaram (PW-208), was a distant relative of Suseendran (A-17). Sivarasan then left saying that he would come back and take Mallika in 5 days. Meanwhile Sivarasan's photo was published in the newspapers. Sivarasan did not come. Suseendran (A-17) thought that it was not right to stay in that house any further as that would give unnecessary trouble to D. Shanmugasundaram (PW-208). He, therefore, with Mallika left the place saying that they were going to Bangalore. When they reached Pollachi bus stand Suseendran (A-17) told Subha that they would go to Madras. She refused. She said that Sivarasan would definitely come within a day or two. For the purpose of hiding, Suseendran (A-17) took her to Trichur by bus, from where to a place at Cochin and went to Trivandrum and then came back to Pollachi after visiting various places and reaching Pollachi by 10 O'clock in the night. They again went to D. Shanmugasundaram's (PW-208) house and told him that they were unable to go to Bangalore and returned after staying with another friend's house. He was informed that Sivarasan had come and searched for him and Subha. That night they stayed there. He said Subha would often talk to him about lady tiger organization named as 'freedom, birds' (English translation). He also saw her once writing poem in coloured autograph book (Exh.P-480). She also read some crime novels which were purchased by Suseendran (A-17). Sivarasan came after about two days and same night Suseendran (A-17), Subha and Sivarasan went to Madras by bus. They got down at Saidapet bus stop. While Sivarasan and Subha went away, Suseendran (A-17) returned to Pollachi itself. After about ten days Suseendran (A-17) went to Palani where he met Ravi (A-16). Suseendran (A-17) made arrangement for installing wireless set in a place near Coimbatore. Then he took a house on rent at Dindigul. In his confession Suseendran (A-17) described further activities connected with LTTE and attempt to go to Sri Lanka. On 27.8.1991 LTTE boat came by night in which Ravi (A-16), Ramanar and Kanthan went to Sri Lanka. In the first week of September, 1991 a message was received from Jaffna to identify the coast for the boat in which Suseendran (A-17) was coming. Suseendran (A-17) identified the coast and informed Pottu Amman by wireless. On 10.9.1991 Ravi (A-16) arrived by boat in the night. Four more persons also came with him,

who had completed their training. Ravi (A-16) brought two wooden boxes containing weapons. In the same boat which had come four more persons were sent to Jaffna for training. Ravi (A-16) and Suseendran (A-17) came to Dindigul. Jaffna was informed by wireless. Ravi (A-16) gave a walkie talkie, three grenades, one nine M.M, pistol, 6 gold biscuits, code sheets and eight cyanide capsules to Suseendran (A-17) and asked him to keep them safely. Ravi (A-16) also gave him Rs. 30,000/- and told him to buy sockets for the wireless. Ravi (A-16) also told Suseendran (A-17) to make arrangement for buying of petrol and diesel and to send them to Jaffna. He told Suseendran (A-17) that in future they had to make arrangement for the petrol needed for the boat to send the weapons and persons. In the month of October, 1991 Suseendran (A-17) went to Pollachi. All the things which Ravi (A-16) gave him he kept locked in a suitcase and gave that to a friend K. Periasami (PW-213) and told him that he would come and collect that later. He then went to Kodiakkrai and gave Rs. 30,000/- to his friend Jothi Venkatachalam and asked him to arrange for diesel. He gave Jothi's mother one walkie talky and two grenades rapped in plastic paper and told her that he would come and take them afterwards. When he came back to Dindigul again, police arrested him.

506. In his disclosure statement (Exh.P-1323) made on 20.1.1992 Suseendran (A-17) with respect to part of weapons which were given to him by Ravi (A-16) said that if he was taken to the place and to the person with whom he kept the articles he would be able to identify those persons, their residences and the articles which he gave them.

507. K.S. Madhavan (PW-273), Sub-inspector of Police of Tamil Nadu State Police, testified to the disclosure statement made by Suseendran (A-17) (Exh.P-1323) and the recoveries made on that basis both at Pollachi and Kodiakkrai as aforementioned.

508. K. Periasami (PW-213) was involved in Dravida Kazhagam (DK) political organization. He got acquainted with Suseendran (A-17). That was since 1985. In the second week of October, 1991 in the morning Suseendran (A-17) came to his house with one suitcase in his hand. He said he was going out of station and asked him to keep the suitcase with him carefully. That suitcase was locked. He, however, did not come back. He was arrested within two weeks from that time in connection with LTTE. After he read the news of his arrest in newspapers K. Periasami (PW-213) thought that there might be some articles in the suitcase, which Suseendran (A-17) gave, connected with LTTE. Using a screw driver he opened the suitcase and found one walkie talkie, three aerials of walkie talky, one rifle, 18 bullets, one hand grenade, five cyanide bottles and six gold biscuits. K. Periasami (PW-213) after seeing the articles was terrified. He threw all the things except the six gold biscuits inside a well at the back side of his house and also threw the suitcase in a nearby thorny bush. Thereafter Suseendran (A-17) came with the CBI to his house on 22.1.1992 and asked for the box which he had given him. K. Periasami (PW-213) said he had kept the gold biscuits concealed in the false ceiling of his room. He took Suseendran (A-17) and police officers near the well and gave them details of the articles which he found in the suitcase. Services of fire brigade were requisitioned and they

brought out all the articles from the well. Articles (MOs 582-587) were seized by Mahazar Exh.P-1003. Six gold biscuits (collectively MO 588) were seized as per Mahazar Exh.P-1004. Suitcase, however, could not be found.

509. Magarathinam (PW-260) said he was resident of Kodiakkrai. He is in laundry business. He said Sundaramoorthy Pillai and his wife Valliamai were residing in the house next to his door. Later on they got their own house and shifted. About four years back five policemen had come nine days after Pongal festival. There were two pits in the western side of the house of Pillai. In one there were two explosives (MO-754 and MO-755) and in the other one walkie talky (MO-777). Valliamai was showing those objects to the police. A seizure memo was prepared taking into possession the articles (Exh.P-1172). Walkie talky and two explosives were kept by Suseendran (A-17) with Valliamai, who is mother of Jothi Venkatachalam, a friend of Suseendran (A-17).

510. M. Mariappan (PW-86) was working in the house hold of Shanmugham (DA) at Kodiakkrai. He was living in the elder brother's house of Shanmugham (DA). At that time he said that some Sri Lankan people were coming and going. There was a tent in front of Shanmugham's brother's house where they used to stay. One day one Murugan (A-3) came there from Madras. He stayed in the tent for four days and since no boat came from Sri Lanka he returned to Madras. He gave M. Mariappan (PW-86) six items - two boxes and four bags and said he would take back those on his return from Madras. Shanmugham's brother told M. Mariappan (PW-86) and Shanmugham to bury and conceal the items. This he did. Police made inquiry from M. Mariappan (PW-86) and he after digging unearthed the hidden things and gave them to Tahsildar of the area. M. Mariappan (PW-86) said he and his brother Govindan buried those six items. He identified those two boxes (MO-198 and 199) and four boxes (MO-200 to 203), which Murugan (A-3) had given him and he had buried.

511. Karpagam (PW-133), whose husband is D. Shanmugasundaram (PW-208), said that she knew Suseendran (A-17). He was her husband's senior in college and she came to know him after marriage. One day on 28.5.1991 Suseendran (A-17) came to their house. He introduced the girl accompanying him as his wife Malliga and said she was a Sri Lankan refugee and it was a love marriage between them. The person with beard, who was also accompanying them, was introduced as Malliga's brother. Suseendran (A-17) said that since it was a love marriage her parents were opposed to it and they would stay for three or four days. The person, who had beard, went away. When D. Shanmugasundaram (PW-208) came home in the evening she gave him the details. Karpagam (PW-133) also bought one HMT watch as gift for the newly weds with the consent of her husband. Malliga also bought a chappal. Karpagam (PW-133) then bought some sarees for Malliga on the request of Suseendran (A-17). Suseendran (A-17), however, gave Rs. 1,000/- to D. Shanmugasundaram (PW-208), which was the cost of the watch. He said the watch was a gift but Suseendran (A-17) said it was not necessary in the condition they were. They, however, kept the watch. On 1.6.1991 Suseendran (A-17)

told D. Shanmugasundaram (PW-208) that he was taking Malliga to Bangalore where he had got a house to live. On 2.6.1991 they left the house. Next day Malliga's brother (Sivarasan) came to the house of Karpagam (PW-133) whom she informed that Suseendran (A-17) had taken Malliga to Bangalore. Karpagam (PW-133) identified the photo of Sivarasan (MO-470) as the person who was introduced as brother of Malliga by Suseendran (A-17). There was another person who had come with Sivarasan. Karpagam (PW-133) identified him as Ravi (A-16). On 3.6.1991 Suseendran (A-17) and Malliga came back and when D. Shanmugasundaram (PW-208) asked them whether they had gone to Bangalore, Suseendran (A-17) replied that they could not get the tickets and had stayed in a friend's house. Malliga was told that her brother had come on a day before. Suseendran (A-17) left the house on 4.6.1991 and came back the next day. After some time Sivarasan came and then all three left. They did not tell Karpagam (PW-133) as to where they were going. After about ten days Suseendran (A-17) came to the house of Karpagam (PW-133) and when she inquired about Malliga's health he said she was fine and asked her to come to Bangalore where they were staying in a separate rented house. After one month suddenly on one night Suseendran (A-17) came again and told D. Shanmugasundaram (PW-208) that the woman who had stayed in their house was Subha and if they disclose that to anybody they would be put in trouble and also said that he would not be responsible for that. Saying that he went away. Karpagam (PW-133) said that they were afraid and did not divulge about their stay to anybody. When Malliga alias Subha was presented with a new watch the old citizen watch (MO-471), which she was wearing, she left in the house of Karpagam (PW-133). Suseendran (A-17) had left a Philips radio (MO-472). Police took these articles into possession by seizure memo Exh.P-635. Police also took into possession bill for the purchase of the HMT watch (Exh. P-636). There was also a guarantee card of the watch (Exh.P-637). Karpagam (PW-133) identified both Sivarasan and Subha in the photograph and she also identified Ravi (A-16) and Suseendran (A-17). D. Shanmugasundaram (PW-208), husband of Karpagam (PW-133), corroborated the statement of his wife in all respects.

512. Irumborai (A-19) is Indian national. He developed interest in the party Dravida Kazhagam (DK) and became Secretary of Pudukottai District Youth Forum of the party in 1978. In a conference of DK held at Trichy in 1985 a resolution was passed to give full support to LTTE in their struggle. Public meetings were arranged in support of LTTE and funds collected. Irumborai (A-19) took part in arranging the meetings. He met many persons of LTTE cadre. One of whom was Kasi Anandhan (PW-242). For two years in 1986-87 nobody came to collect the funds from Sri Lanka. Then one Ramesh of LTTE cadre was introduced to Irumborai (A-19). He was organizing providing medical treatment to the injured LTTE cadre, who were injured in war in Sri Lanka and had come to India for treatment. He took Irumborai (A-19) to hospital to assist him in looking after the patients who were getting treatment there. During the meeting organized by DK Irumborai (A-19) also met Baby Subramaniarh. In the end of 1989 or beginning of 1990 Irumborai (A-19) and Ramesh went to LTTE headquarters at Indira Nagar, Madras where they met Baby Subramaniam. Irumborai (A-19) was meeting Baby Subramaniam quite

often in public meetings and also at his press at Madras. In his confession Irumborai (A-19) said he also used to cut the news relating to LTTE published in newspapers and paste them in a notebook which he would hand over to Baby Subramaniam who in turn would send that to Jaffna. Irumborai (A-19) said that he also used to go to photo studio run by Suba Sundaram (A-22) along with Baby Subramaniam. Baby Subramaniam would bring copies of video and audio cassettes relating to LTTE to the studio of Suba Sundaram (A-22), which related to LTTE camps in Sri Lanka and the affected places and persons. At the studio of Suba Sundaram (A-22), Irumborai (A-19) also said that he got acquainted with Bhagyanathan (A-20) but he did not see either his sister or his mother. Whenever Irumborai (A-19) came to Madras he would stay in a room near water tank, rent of which was paid by Baby Subramaniam. Irumborai (A-19) had also seen Arivu (A-18) in DK conferences. He also got acquainted with Muthuraja through Baby Subramaniam, who was strong supporter of LTTE. Muthuraja and Arivu (A-18) had also been staying in the room near water tank in Indira Nagar. Irumborai (A-19) said he and others did not accept the policy of Indian Government and specially the action of the IPKF. In June, 1990 Irumborai (A-19), Arivu (A-18) and Baby Subramaniam went to Trichy. When they were staying in a house, Trichy Santhan (DA) came there in a Maruti van. They along with some other LTTE persons went to a place near the coast by van and from there to Jaffna in Sri Lanka by a boat. After spending some days there Irumborai (A-19) and others decided to return to India but by that time there was a conflict started between LTTE and Sri Lankan army with the result that they could not return. Irumborai (A-19) did the same work there in the press of Baby Subramaniam. He met senior members of LTTE. He was also introduced to Prabhakaran. For five months Irumborai (A-19) was in Sri Lanka and he met many women and children who were affected by the conflict with IPKF. That moved Irumborai (A-19). In November, 1990, Irumborai (A-19), Arivu (A-18), Suresh Master and two injured ladies came to India by boat. He met one Kripan who was also the organizer for giving treatment to the injured boys. In March Irumborai (A-19) came to Madras and he met one Kumar, who was the organizer for political wing of LTTE. Irumborai (A-19) went with Suresh Master (DA) to see the boys who were under treatment in various hospitals. During February, 1991 police arrested those persons who were in the house at Adayar. Kripan was also arrested. Irumborai (A-19) said he stayed in Y.V.K. Hospital and Vijaya Hospital and one day in the month of March, 1991 he and Suresh Master (DA) went to Trichy and met Trichy Santhan (DA), who had just then returned from Jaffna. They discussed about the arrest of Kripan and the problem that was being faced in raising funds. Trichy Santhan (DA) said that he would provide the necessary funds. After that they returned to Madras. Suresh Master (DA) hired a house in Alwar Thirunagar in Madras. The house had already been hired by Amman, who was staying there. Other injured LTTE boys were also there. Irumborai (A-19) said he was continuously doing the hospital work and apart from that he also met the LTTE persons who were in prisons at Tiruchy and Vellore and helped them in getting necessary things. As per instructions of Suresh Master (DA) one day in the second week of May, 1991, Irumborai (A-19) said, he went to Tiruchy and told Trichy Santhan (DA) that Suresh Master (DA) asked for money for his expenses. Trichy Santhan gave Rs. 15,000/- to

Irumborai (A-19). At that time Trichy Santhan (DA) told Irumborai (A-19) that LTTE were making arrangements to kill an important leader shortly, and that Suresh Master (DA), the injured boys and others be asked to be careful. At this Irumborai (A-19) asked Trichy Santhan (DA) whether they were going to kill "(Vazhapadi) K. Ramamurthi" (PW-258) of Rajiv Congress to which Trichy Santhan said he did not know the details of the persons and place and alerted all of them to be careful. Irumborai (A-19) then returned to Madras and gave money to Suresh Master and also told him the details told by Trichy Santhan. Irumborai (A-19) said in his confession that after that he did not talk with any one about that. On 21.5.1991 Irumborai (A-19) said he and Suresh Master went to a place called Luz Corner. Arivu (A-18) and Bhagyanathan (A-20) were also there. They all went to M. Sankari's (PW-210) house. Thereafter Irumborai (A-19) and Suresh Master went to Anna Nagar by an auto. Suresh Master got down saying that he was going to see Kasi Anandhan (PW-242). Irumborai (A-19) went home and took a boy Anand to a dentist. He came back by 10 O'clock in the night. Suresh Master also came. Next day on 22.5.1991 in the morning there was news of Rajiv Gandhi being murdered in bomb blast in Sriperumbudur as announced on TV and in newspapers. Irumborai (A-19) said everybody got frightened and did not go out for two days. He thought Rajiv Gandhi's murder was a brave deed and an act of revenge. On third day he and Suresh Master went to Anna Nagar to meet Kasi Anandhan (PW-242). Suresh Master told him that he needed some money. Next day when they again went to meet Kasi Anandhan (PW-242) as told by him he gave money to Suresh Master. Irumborai (A-19) then said that in the last week of May, 1991 he went to Neyveli to see whether an artificial leg had been fitted to a girl Jamuna who was admitted by Irumborai (A-19) in the hospital. Irumborai (A-19) then returned to Madras and as told by Suresh Master went to Salem to get money from Trichy Santhan but he was not available. In the first week of June, 1991 Irumborai (A-19) again went to Selam to meet Trichy Santhan. That night he stayed with him and they discussed about the photos of murderers which were published in the newspapers and who were involved in the murder of Rajiv Gandhi. Both returned to Madras. Trichy Santhan got down at Saidapet and said he was going to Adayar and told Irumborai (A-19) to inform Suresh Master to come and meet him. Irumborai (A-19) went to the house at Alwar Thirunagar and conveyed the message to Suresh Master who then went to Adayar and returned late in the night. Suresh Master then sent the injured boys in pairs to Bangalore. At that time a person named Rangam (A-24) from Thiruvanmiyur was frequently coming to meet Suresh Master. In the second week of June, 1991 Irumborai (A-19) again went to Neyveli to see if the artificial leg was fitted to Jamuna, a girl of 16-17 years of age and who was an LTTE woman tiger. She had lost her leg in war with militants in the fort at Jaffna. He met her this time and he found that artificial leg had been fitted to Jamuna. Now, when he returned to Madras he was told by Suresh Master that his photo has been seized by the police and they were in search of him. Suresh Master advised Irumborai (A-19) not to go any where from the house. After about three or four days in the third week of June, 1991 Suresh Master arranged a Maruti van through Rangam (A-24) and asked Irumborai (A-19) to go to Bangalore. Irumborai (A-19) went to Bangalore with Rangam (A-24) and stayed in a house in Indira Nagar, In that house LTTE injured boys

were already there. Irumborai (A-19) said he came to know later that that house was arranged by K. Jagannathan (PW-211). In the end of June, 1991 Trichy Santhan (DA) came there and told Irumborai (A-19) to bring Jamuna to Bangalore. He also told Irumborai (A-19) to have contacts with Andhra Naxalites and also to find out if boat transport could be available at place Malliapattinam near Pudukottai. Irumborai (A-19) then went to Neyveli and told Jamuna to be ready. He also inquired about the boat transport to Sri Lanka and was told because of security being tightened and there being patrolling by Navy it was not possible. Irumborai (A-19) then accompanied with Jamuna returned to Bangalore. Two days later Trichy Santhan also came to Bangalore. He said Sivarasan and Subha were not able to go to Jaffna and that he had received an order to look after them and he said he would accompany them to Bangalore within two days. Then one day in the end of June, 1991 at about 6.30 in the morning Sivarasan, Subha and Nero came to the house at Indira Nagar where Irumborai (A-19) was staying. Along with them Vicky (A-25), Rangam (A-24) and Dhanasekaran (A-23) also came. Irumborai (A-19) asked Trichy Santhan how they had come and was told that they had come to Bangalore from Madras by hiding in a tanker lorry of Dhanasekaran (A-23). After four days of their arrival Vikky and Dixon also came to that house in Indira Nagar. Trichy Santhan (DA) and Dixon were discussing as to how to send Sivarasan and Subha to Jaffna. They were looking for a safe place to leave Indian soil. In the house at Indira Nagar, Sivarasan told Irumborai (A-19) that police were informed about their identity only because the photo taken by Haribabu and the affairs between Murugan (A-3) and Nalini (A-1). A week or 10 days thereafter Subha, Nero and Sivarasan shifted to another house. Then news came that in the last week of July, 1991 Vicky (A-25) and Raghu were caught in Coimbatore by police and Dixon (DA) had died. Since Vicky (A-25) knew the place in Indira Nagar at Bangalore it was decided to shift from that place. All the injured LTTE boys in the first house at Indira Nagar were shifted to the second house. There were about 20 to 30 of them. Suresh Master suggested that a separate house should be arranged for Sivarasan, Subha and Nero. Then Irumborai (A-19) in his confession described as to how he moved about, shifting some of the injured LTTE cadre to other places and getting news of suicide committed by some of LTTE cadre while consuming cyanide. Both Irumborai (A-19) and Trichy Santhan themselves went in hiding from one place to another. They then heard the news of 12 LTTE boys having died by consuming cyanide in Indira Nagar. Trichy Santhan (DA) then directed Irumborai (A-19) to go to his native place. Within two or three days news came that Sivarasan, Subha, Suresh Master (DA), Nero and Jamnua died in Bangalore. In the first week of September, 1991 Irumborai (A-19) again met Trichy Santhan who told him that he was short of funds and since police was making efforts to search him he could not go to Jaffna. He asked Irumborai (A-19) to some how make arrangement to go to Jaffna to meet Baby Subramaniam and then to meet Prabhakaran directly and to inform him about political situation in India at that time and other things. Ultimately arrangement for Irumborai (A-19) to go to Sri Lanka were made and he was told to be ready on 29.9.1991, Sunday night at a particular place. He conveyed the news to Trichy Santhan (DA). Trichy Santhan sent a cover with a letter written by him to Prabhakaran and also a letter written by him to Irumborai (A-19) and some other letters written by other LTTE

persons for being taken to Sri Lanka. In the cover addressed to Prabhakaran it was super scribed as "very important to the leader". There was another letter which Trichy Santhan (DA) wrote to Irumborai (A-19). It was dated 7.9.1991 and was in two pages. A boat which was to take I rumborai (A-19) and other LTTE persons came from Rameshwaram near a place 'Vil Oondi Theertham' near seashore as arranged earlier. They got into the boat. When the boat was moving in the sea at about 1.30 in the night Navy men who were patrolling surrounded the boat. Three LTTE persons, who were in the boat, took cyanide. Two died and one in serious condition was taken to the hospital. On the morning of 3.10.1991 Irumborai (A-19) and others, who were also in the boat were handed over to the police at Rameshwaram. The letters, which were written by Trichy Santhan (DA) to Prabhakaran and Irumborai (A-19) (Exh.P-128 and 129) and other letters were also seized from him. P.V. Francis (PW-172), Commander in Indian Navy, and P.P.S. Dhillon (PW-239), Flight Commander of the Helicopter Unit of Portblair, both testified to the capturing of boat taking LTTE personnel and seizure of letters Exh.P-128 and 129.

513. Dhanasekaran (A-23) is in lorry business with his brother. They had been taking loan from Sundaram Finance Ltd. for purchase of lorries. Two buses were bought in his name which were plying on two different routes in Tamil Nadu. There was separation in the family business and to his and elder brother Krishnamurthi share one bus and six lorries were allotted. They named the bus service allotted to them as O.K. Transporters (D. for Dhanasekaran and K. for Krishnamurthi). In the year 1985 through an advocate friend Dhanasekaran (A-23) visited LTTE camp situated in the garden of Kollathur Mani in Tamil Nadu. Dhanasekaran (A-23) got attracted to LTTE movement and used to visit the LTTE camp quite often. He came in contact with various important persons of LTTE. He would go and look after the LTTE boys, who got injured in the struggle with Sri Lankan army and had come to India for treatment. By the passage of time he developed strong connections with LTTE persons. In his confession Dhanasekaran (A-23) said that of the LTTE boys he was looking after two of them, namely, Murthy and Vardhan, died after taking cyanide at Bangalore. One Kruppan of LTTE asked him once if he knew anyone to purchase a Maruti Gypsy vehicle. For this purpose Dhanasekaran (A-23) and two other LTTE persons went to Union Motors, Selam. They met V.P. Raghunathan (PW-153), Manager of the Union Motors. He told them that the vehicle would be delivered within three months if full amount was paid in cash. That money was provided by LTTE people. Dhanasekaran (A-23) along with two others again visited Union Motors to make payment but V.P. Raghunathan (PW-153) said that he would not accept cash and that payment might be made by a bank Demand Draft. Accordingly a Demand Draft was obtained from Indian Bank. Similarly Dhanasekaran (A-23) was again approached for purchase of two more Maruti Gypsy vehicles. He again got two Demand Drafts through his account from Vijaya Bank, Mettur and got the vehicles booked at Union Motors, Salem. In November, 1990, he received a phone call from Union Motors that all the Gypsy vehicles were ready for delivery and that delivery would be made at Tiruchy. Dhanasekaran (A-23) said that he would have the vehicle delivered at Salem itself. He got one Maruti Gypsy delivered in the name of K. Prakash by signing as K. Prakash. Similarly two other vehicles were delivered. Dhanasekaran (A-23) said this way he booked six Maruti Gypsy vehicles under

various names for LITE. During December, 1990 he took two seriously injured persons in Maruti van from Mettur to Bangalore for treatment. K. Jagannathan (PW-211) and another person belonging to LTTE helped him and also came with them up to Bangalore and a house was arranged in Bangalore through K. Jagannathan (PW-211). Of the injured persons so transferred one died. His body was brought and buried at the side of the LTTE camp. In April, 1991 Trichy Santhan (DA) and an important member of LTTE came along with Rangam (A-24) whom Dhanasekaran (A-23) already knew as driver. He was also known to Trichy Santhan as he met him in Gokulam Hospital at Salem where LTTE persons were getting treatment. Trichy Santhan told Dhanasekaran (A-23) that more boys of LTTE movement were in prison in Tamil Nadu and he had come to Tamil Nadu to look after them and wanted to see Kolathur Mani where LTTE camp was situated. After some days Dhanasekaran (A-23) got a message to meet Trichy Santhan at Salem. He went there. Trichy Santhan asked him to meet Kolathur Mani and to remind him to send him money. Dhanasekaran (A-23) said that on 21.5.1991 he was in his house at Mettur when he heard the news of Rajiv Gandhi's death due to bomb explosion at Sriperumbudur. He got the news through newspapers and television. He said later he came to know that it was the LTTE cadre who was mainly responsible for the assassination of Rajiv Gandhi and that Sivarasan, Subha and Dhanu were involved in the same. He saw their photographs in the magazine and on T.V. Dhanasekaran (A-23) then said that on 23.6.1991 when he went to attend a marriage he again got a message from Kolathur Mani to meet Trichy Santhan at Salem and to help him to transfer two persons to another place. Dhanasekaran (A-23) along with K. Jagannathan (PW-211) went to Salem. He met Trichy Santhan separately. There he instructed him to take Sivarasan, Subha and Nero from Madras to Bangalore. He gave the idea that they could be taken in an empty tanker lorry by hiding them in the tanker after cleaning it. That idea he gave as nobody would search the empty tanker lorry usually. He said that tanker lorry be arranged in two or three days itself otherwise those three persons would be arrested by the police. Dhanasekaran (A-23) said he selected a tanker lorry bearing registration No. TN-27-Y-0808, which he had bought after obtaining loan from Sundaran Finance Ltd. The loan had not been discharged and to avoid seizure by Sundaram Finance Dhanasekaran (A-23) changed the lorry number as TAM-8998. The lorry having registration No. TAM-8998 was kept in garage as it had met with an accident and Dhanasekaran (A-23) had already received the insurance amount after completing the formalities. After changing the registration plate of the tanker lorry as TAM-8998, Dhanasekaran (A-23) along with driver R. Selvaraj (PW-230) and cleaner Vijayan left Mettur on 27.6.1991 at 1.00 p.m. and reached Salem. From Salem Dhanasekaran (A-23) left for Madras along with Vicky (A-25), Amman (DA), driver R. Selvaraj (PW-230) and cleaner Vijayan. The lorry was driven by R. Selvaraj (PW-230). The tanker was filled with water on the way. Fuel (Diesel) was taken for Rs. 1,000/- from an Indian Oil petrol-pump. Water was released near Sriperumbudur. Next day on 28.6.1991 They arrived at 6 O'clock at Poonamallee. Amman (DA) alighted near yapping Thangal. They further stopped the lorry near Poonamallee by-pass road. They sent away driver R. Selvaraj (PW-230) and cleaner Vijayan. In the night Amman (DA) came with Rangam (A-24) and asked Dhanasekaran (A-23) and Vicky (A-25) to go with them. Vicky

(A-25), Amman (DA), Rangam (A-24) and Dhanasekaran (A-23) took the tanker and halted it at a certain place after crossing Porur. Vicky (A-25), Amman (DA) and Rangam (A-24) went out and returned along with Suresh Master (DA) who was introduced to Dhanasekaran (A-23). By that time three persons, namely, Sivarasan, Subha and Nero came there with three bags with them. They entered inside the tanker after Vicky (A-25) opened the cap of the container. Vicky (A-25), Amman (DA) and Rangam (A-24) were seated along with Dhanasekaran (A-23) in lorry cabin. It was driven by Dhanasekaran (A-23). Driver R. Selvaraj (PW-230) and cleaner Vijayan boarded the lorry at Poonamallee. They drove the vehicle straight on the Bangalore Road. At two places messages were sent to Bangalore that they were reaching there. They reached Bangalore in the morning at about 7 O'clock on 29.6.1991. Tanker lorry was stopped a little away from Indira Nagar. Driver R. Selvaraj (PW-230) and cleaner Vijayan were again sent away to have tea. Vicky (A-25) was left in the vehicle and Dhanasekaran (A-23) and Rangam (A-24) went to the house at Indira Nagar. There they saw Trichy Santhan and Irumborai (A-19). More injured persons of LTTE cadre were also there. Dhanasekaran (A-23) further said that he took the Fiat car to a place where tanker lorry was parked as directed by Trichy Santhan (DA). Sivarasan, Subha and Nero exited from the tanker and were brought to Indira Nagar house in the Fiat car. Confession of Dhanasekaran (A-23) is silent about Amman (DA) after tanker reached Bangalore. Dhanasekaran (A-23) then went to the tanker again by an auto and drove the tanker lorry to Madras along with driver R. Selvaraj (PW-230) and cleaner Vijayan. Tanker lorry was loaded from SPIC Chemicals and reached Mettur. This tanker lorry was seized by Sundaram Finance Ltd. after a month. Dhanasekaran (A-23) then said that he again went to the house at Indira Nagar on 24.7.1991 and saw Sivarasan. He had conversation with him for nearly half an hour. When Dhanasekaran (A-23) asked him as to why did he murder Rajiv Gandhi, his answer was that "he did it in accordance with the instructions by their leader". Then Dhanasekaran (A-23) asked why Subha accompanied him and his answer was that she was for an alternative arrangement. After he learnt that police was looking for him he went in hiding for some time and consulted his advocate in Madras. He was advised to return to his house. Later he was arrested at Mettur on 13.10.1991.

514. Rangam (A-24) is a Sri Lankan national. In 1983 he joined LTTE movement. He got military training. He took part in the war with Sri Lankan army in 1984. He was injured and after he got the treatment he did not go for military duty and instead he was given the work of transport. In Jaffna he met various important persons belonging to LTTE. He came to know Sivarasan. He also met Prabhakaran. In 1989 he came to India where, he said, he was running a travel agency without permit. In his confession he said he prepared passports and other documents for Sri Lankans, who wanted to go abroad. He said he used to prepare fake documents through a travel agency in Adayar in Madras and made good income. In December, 1990 he got links with LTTE movement in India. He also got acquainted with Amman (DA) who was a driver and was working under Trichy Santhan (DA) and his assistant Suresh Master (DA), who belonged to political wing of LTTE. Rangam (A-24) said he helped Amman and sent Sri Lankan Tamilians to

go abroad during December, 1990 and January, 1991. He brought one Maruti van TN-04A-0337 in the name of Ramesh who also arranged a house for him. He said he came to know Trichy Santhan(DA), Suresh Master (DA) and Irumborai (A-19) through Amman (DA). Rangam (A-24) said that Prabhakaran had entrusted Trichy Santhan the responsibility of looking after the work such as political activities of LTTE in India, necessary supplies to Sri Lanka, arranging for treatment of injured "tigers", arranging houses for the persons in LTTE movement and to take them from place to place. A house at Alwarthirunagar was arranged by Amman (DA) for the stay of LTTE persons. That house was independent and situated in a remote place and was convenient for LTTE men to come and go without being noticed. Rangam (A-24) said that Suresh Master (DA) told him in the beginning of May, 1991 that police would take action very soon and that LTTE men should be shifted to some other place. Rangam'(A-24) said that he was taking LTTE men, who were injured, continuously in his Maruti van. Some of them stayed in the house at Alwar Thirunagar, some in Vijaya Nursing home and some were taking treatment in Asian Hospital. He removed those injured persons from those places in his van and dropped them in places like Thiruvalluvar bus stand and Parrys corner. From there Trichy Santhan, Suresh Master, and Irumborai (A-19) would take them to different places by bus. In his confession Rangam (A-24) further said that during May 18-21,1991 he was busy in sending the Sri Lankan Tamilians abroad. But after assassination of Rajiv Gandhi situation became bad. Photograph of Sivarasan was published in the newspapers and so Rangam (A-24) said he was actively working at that time to send LTTE men out of Madras with the help of Suresh Master and Irumborai (A-19). In June, 1991 Rangam (A-24) went to Bengaluru to the house of K. Jagannathan (PW-211) at Indira Nagar. His address was given to him by one Balaguru in Madras whom he met in Vijaya Nursing Home. While going to Bangalore Sudha, an LTTE activist and mother of Balagur, and one Ravi went in his van to Bangalore. K. Jagannathan (PW-211) arranged to get treatment to the injured LTTE persons. Rangam (A-24) said that he also met one Vasanthan, who was a partner of Trichy Santhan and working under the leadership of Trichy Santhan. He was actively doing the work in LTTE like arranging safe houses for their mission. In the end of June, 1991 Suresh Master (DA) told Rangam (A-24) that he was being given an important work. At that time Dixon (DA), another LTTE man, was also present. Suresh Master (DA) told Rangam (A-24) to wait in a remote place at Alwar Thirunagar at 7.30 in the evening on the following day. At about 8 O'clock in the night Suresh Master (DA) along with Sivarasan, Subha and Nero came in an auto. They all stayed in the house at Alwar Thirunagar while Rangam (A-24) went to his house in Thiruvanmiyur. Sivarasan, Subha and Nero stayed there for about four or five days. Suresh Master then told Rangam (A-24) that they should be taken to place outside Madras. Amman (DA) took him to a place at Porur-Poonamallee Road where a tanker was parked. Amman (DA) told Rangam (A-24) that Trichy. Santhan had arranged that tanker to take Sivarasan and others to Bangalore. One person by name Dhanasekaran (A-23) with another small boy to assist him by the name Vicky (A-25) was with him. While Dhanasekaran (A-23) stayed in the tanker Rangam (A-24) took Sivarasan, Subha and Nero from their place of stay and made them get into the tanker through the hole at the back of the tanker. Sivarasan and others

were having AK-47 gun and also a pistol with them. Rangam (A-24), Vicky (A-25) and Amman (DA) sat in front portion of the tanker and they left for Bangalore by 9 O'clock in the night. Two more boys, who were working with Dhanasekaran (A-23) were also taken in the tanker on their way. Vicky (A-25) telephoned Bangalore from PCO while they were going to Bangalore and informed Trichy Santhan about their arrival. They reached Bangalore early in the morning. Then Rangam (A-24) in his confession corroborates what Dhanasekaran (A-23) said. On the same day Rangam (A-24) said, he returned to Madras and shifted the remaining injured LTTE persons to some other places like lodges, etc. He vacated his house at Thiruvanmiyur. He went to stay with Suresh Master (DA) in Vijaya Nursing Home. In the third week of July, 1991 Rangam (A-24) again went to Bangalore on the instructions of Suresh Master. He went by night bus. Suresh Master also reached Bangalore by that time. There they went to the house at Indira Nagar where Sivarasan and others were hiding. Rangam (A-24) met some other LTTE men in that house. After hearing that Vicky (A-25) had been arrested in Coimbatore the house at Indira Nagar was vacated and they all moved to another house nearby. Some LTTE persons were already staying in that house. Trichy Santhan gave Rangam (A-24) a Maruti Gypsy which Rangam (A-24) was driving. Rangam (A-24) then said that when CBI raided the house at Indira Nagar, two of the LTTE persons committed suicide and other injured persons went to different places. He said, in the meanwhile Suresh Master (DA) arranged the house of Ranganath (A-26) for Sivarasan and others to stay. That house was in Puthien Halli. Rangam (A-24) took Sivarasan, Subha, Nero, Suresh Master (DA) and Amman (DA) to that house. They moved to that house in the beginning of August, 1991. After some days Ranganath (A-26) arranged another house in Anaikal for treatment of LTTE persons. Rangam (A-24) and Ranganath (A-26) shifted LTTE persons in Maruti Gypsy to that house in Anaikkal. In the meanwhile an LTTE person was arrested by local police. After that it was decided to change the colour of the Fiat car and Maruti Gypsy. Rangam (A-24) with the help of a mechanic, who was arranged by Ranganath (A-26) went and got repainted the colour of the vehicles. Gypsy from green to white and Fiat car from sky blue to white. Ranganath (A-26) arranged two houses outside Bangalore in two villages called Beroota and Muthathi where injured persons from Anaikkal were shifted. Yet another house was arranged by Ranganath (A-26) in Konanakunta for Sivarasan, Subha and Nero to hide. Around 16.8.1991 Rangam (A-24) said they moved their residence from Puthan Halli to Konanakunta. Rangam (A-24) took Sivarasan Subha and Nero in the Maruti van. Ranganath (A-26) and his wife also went to that house. Thereafter Rangam (A-24) said he went to look after the injured LTTE persons in G.G. Hospital. From there he took one injured LTTE woman Jamuna (DA) to the house at Konanakunta. In that house only Sivarasan, Subha, Nero, Amman, Suresh Master, Driver Anna and Keerthi were staying. On the evening of 18.8.1991 when Rangam (A-24) came to the house in Konanakunta he found that police had surrounded that house from all sides. He turned back. Next day he took Gypsy van and arrived at Madras on the morning of 20.8.1991. He went to Balaguru and handed over the key of the vehicle to him after parking the Gypsy in Vijaya Nursing Home. Since police was looking for him he asked Balaguru to

arrange a house for him at Avadi. One day when he went to Adayar Travel Agency, police caught him.

515. Vicky (A-25) is a Sri Lankan national. His father was having a shop selling cloths. That shop was destroyed in a raid by Sri Lankan Air Force in the year 1985. Vicky (A-25) thereafter came to India illegally by boat carrying with him video cassettes, audio cassettes, sarees, V.C.P., etc. which he sold in India. Instead he carried lungis and food articles and returned back to Sri Lanka and earned some money by way of selling those articles in Sri Lanka. By Sri Lankan military one of their houses was completely damaged by bomb blast in the year 1987. His family resided at certain places as refugees. In 1990 he again came to India to start some business here. Then he met an LTTE activist who said he had come to India for treatment of his wounds and now he was looking those wounded in Sri Lanka and had come to India for treatment. Vicky (A-25) also met LTTE boys who had been injured and were getting treatment in the hospitals in India. Vicky (A-25) assisted that LTTE activist in getting medicines and acted as his helper. In the middle of 1990, Vicky (A-25) said in his confession that he was introduced to Trichy Santhan. He further said that in the month of 'Panguni', 1991 Trichy Santhan met him and told him that he was in need of medicines and that those should be purchased urgently and were to be sent to Sri Lanka. Trichy Santhan gave him Rs. 2.00 lacs and list of medicines to be purchased. Trichy Santhan also introduced Vicky (A-25) to Dixon (DA), who was also a member of LTTE movement. Vicky (A-25) then described his meeting with various LTTE activists. The medicines which had been purchased were given to LTTE activist Bharatham who left for Sri Lanka with the medicines. In a rented house Vicky (A-25) was stocking the medicines in bundles which he had purchased. He said two days after the assassination of Rajiv Gandhi Trichy Santhan met him and told that it was now impossible to stay in Tiruchy and said he would go to Coimbatore and again asked him to purchase all those medicines ordered by him. He further told Vicky (A-25) that if any one of Sivarasan's man wanted to go to home town they should be told to go to Indiran Kutty's house. It was only after Rajiv Gandhi's assassination, Vicky (A-25) said in his confession, that he came to know that his name was Sivarasan. Vicky (A-25) then in his confession described his instructions from Trichy Santhan and his coming to Madras and ultimately his going in the tanker lorry with others to Bangalore. He also described his helping injured LTTE personnel. After leaving Bangalore Vicky (A-25) went to Coimbatore where he was arrested by the police.

516. V.P. Raghunathan (PW-153) was manager of the Union Motors, Salem. He has testified about the four Gypsy being purchased by Dhanasekaran (A-23) in different names on 14.11.1990. He produced delivery receipts and documents connected with the sale of these four Gypsies. Maruti Gypsy, which was purchased in the name of R. Mohan, was subsequently used by Rangam (A-24) to transport Sivarasan, Subha, Nero and other activists to Bangalore. This Gypsy (MO-540) was seized during investigation.

517. S. Syed Ibrahim (PW-232) is Insurance Surveyor, who surveyed the damaged tanker bearing registration No. TAM-8998.

518. S.V. Krishnan (PW-168) is from Sundaram Finance Ltd., who had financed the lorry tanker bearing registration number TN-27-Y-0808 and which was used with fake registration plate (TAM-8998) to transport Sivarasan, Subha, Nero and others from Madras to Bangalore. Since the vehicle was under hire purchase agreement with Sundaram Finance Ltd. it was taken into possession by S.V. Krishnan (PW-168). Subsequently during investigation this tanker lorry (MO-543) was seized by the police.

519. R. Selvaraj (PW-230) was the driver of the tanker lorry (MP-540) and Vijayan was the cleaner. In his statement R. Selvaraj (PW-230) said that he drove the tanker lorry on 27.6.1991 from Mettur to Madras. On the way it was filled with water. The purpose was to clean the tanker. Tanker was also filled with diesel for fuel. Prosecution has produced S. Vasudevan (PW-245) to testify that 238 litres of diesel was put in the tanker lorry (MO-543) on 27.6.1991. R. Selvaraj (PW-230) then said that at Sriperumbudur tanker was emptied of water and cleaned from inside. They reached Poonamallee on 28.6.1991 in the morning where he and Vijayan got down. Now it was Dhanasekaran (A-23) who drove the vehicle with Amman (DA) and Vicky (A-25) visiting in the tanker lorry. When the tanker came back to Poonamallee R. Selvaraj (PW-230) and Vijayan got into the vehicle and the vehicle proceeded toward Bangalore. It was being driven by Dhanasekaran (A-23). On the way Vicky (A-25) got down and made a telephone call on STD. That a call was made has been proved by A. Selvaraj (PW-256). Call was made to telephone number 541824 of Bangalore. In further statement R. Selvaraj (PW-230) said that when the tanker lorry reached Bangalore again he and cleaner Vijayan went away for tea but Vicky (A-25) remained in the tanker, while Dhanasekaran (A-23) and Rangam (A-24) went by an auto rikshaw. Afterwards Dhanasekaran (A-23) came back in an auto where tanker lorry was parked. Tanker lorry now proceeded towards Madras with Dhanasekaran (A-23), R. Selvaraj (PW-230) and Vijayan in the vehicle. In the notebook (Exh.P-1012), regularly maintained by R. Selvaraj (PW-230) there were entries of the trips and other expenses incurred. Notebook (Exh.P-1012) showed that R. Selvaraj (PW-230) drove tanker lorry (MO-543) from Mettur to Salem where a new mattress was purchased and kept on the top of the cabin of the vehicle. The vehicle left for Madras and at Poonamallee both R. Selvaraj (PW-230) and Vijayan got out. When they again brought in the vehicle at Poonamallee R. Selvaraj (PW-230) did not find the mattress. At Bangalore similarly when R. Selvaraj (PW-230) and cleaner Vijayan came back to the vehicle the mattress was again found in the cabin. This mattress was thrown in the river near Hosur when tanker lorry was going back to Madras. Prosecution seeks to draw inference from this that mattress was kept inside the tanker lorry for the comfortable sitting of Sivarasan, Subha and Nero and when its use was over it was thrown away in the river.

519A. Rangam (A-24) had purchased Maruti van in the name of his friend V. Ramesh, bearing registration number TN-4A-0037 (MO-950). A. Nageswara Rao (PW-178) is the

owner of the house No. 13, Park Avenue, Velan Nagar Extension, Alwarthirunagar, Madras which was taken on rent by Rangam (A-24) in March, 1991. Lease documents were also executed (Exh.P-895-897). Rangam (A-24) vacated the house in the first week of July, 1991. before their escape to Bangalore Sivarasan, Subha, Nero and others were staying in this house. That Maruti Gypsy (MO-540) was being driven by Rangam (A-24) in Bangalore has also been testified by Mrudulla (PW-65), wife of Ranganath (A-26). K.N. Mohan (PW-222) is the owner of the workshop where Maruti Gypsy was repainted from green to white.

520. Ranganath (A-26) is an Indian national settled in Bangalore. Mrudulla (PW-65) is his wife. At the relevant time he was without any job. In March, 1991 he was staying with his wife at a house in Puttan Halli which was owned by E. Aanjanappa (PW-218).

521. R. Rajan (PW-223) in his deposition said that he was friendly to one Vasanthan who was Tamilian and whose native place was in Jaffna, Sri Lanka. Both knew each other from Tamil Association in Bangalore. On 29.7.1991 Vasanthan asked R. Rajan (PW-223) that a house was required for stay of four or five persons urgently. After two days Vasanthan again met R. Rajan (PW-223) for the purpose. He told him that no house was available. On 1.8.1991 Jagadish, a friend of R. Rajan (PW-223) met him and told him that he wanted to buy a lathe machine. A lathe machine was owned by Ranganath (A-26) who wanted to sell the same. In that connection R. Rajan (PW-223) met Ranganath (A-26) in his house. R. Rajan (PW-223) introduced Ranganath (A-26) to Vasanthan telling him that he was an LTTE activist and asked Ranganath (A-26) to arrange a house for him. R. Rajan (PW-223) said that he knew Ranganath (A-26) since 1990 as he was friend of Jagadish. R. Rajan (PW-223) said on 2.8.1991 that about 5.30 or 6.30 p.m. he and Vasanthan met near Sivaji Circle, Bangalore. At that time two more persons had come with Vasanthan and those two persons and Vasanthan talked to Ranganath (A-26) privately and left. On 2.8.1991 in the night at 10 O'clock Ranganath (A-26) brought Sivarasan, Rangam (A-24), Amman, Suresh Master, Driver Anna and Amman to his house, through front door and then brought Subha and Nero through back door. All these seven persons continued to stay in the house at Puttan Halli with Ranganath (A-26) till 16.8.1991. They would remain confined themselves in a room and would not come out. While staying in the house only Rangam (A-24) was driving Maruti Gypsy (MO-540) for buying vegetables and taking Mrudulla (PW-65) and Ranganath (A-26) for outside work.

522. K.N. Mohan (PW-222) was a car mechanic and was running garage in Bangalore. He said he did the painting work of green Gypsy of Ranganath (A-26). He painted the Gypsy white. Ranganath (A-26) had brought the Maruti Gypsy to the garage on 8.8.1991 and got its delivery back on 10.8.1991 after paying total charges of Rs. 2,200/-. On 16.9.1991 Ranganath (A-26) again came to the garage with Premier Fiat car bearing registration number CAU 6492. That Fiat car was also painted white though its original colour was sky blue. For the work done on the Fiat car K. N. Mohan (PW-222) charged Rs. 2,500/-. That car was still lying in the garage when K.N. Mohan (PW-222), said that, on 28.8.91

Ranganath (A-26) came to the garage with 4 CBI officers. Ranganath (A-26) had pointed the Fiat car to the CBI officers. The car was taken into possession by the CBI.

523. Mrudulla (PW-65), wife of Ranganath (A-26), is a teacher. She was married to Ranganath (A-26) in June, 1986. She said on 2.8.1991 around 10 O'clock in the night Ranganath (A-26) came with a person who said there were more persons with him and they would stay in the house for four days. The person, who came with Ranganath (A-26), was Suresh Master (DA). Ranganath (A-26) and Suresh Master both went out and brought four persons with them, who were Sivarasan, Rangam (A-24), Driver Anna and Amman (DA). Two persons entered the house from the back door and they were Subha and Nero. Next morning Mrudulla (PW-65) said she saw green Maruti Gypsy van in front of the house which was covered with tarpaulin. She could not see the number plate of the vehicle. Ranganath (A-26), Suresh Master and Rangam (A-24) went out on the morning of 3.8.1991. When Suresh Master and Rangam (A-24) returned it was about 2.30 p.m. They had brought provisions. Her husband did not come at that time. Mrudulla (PW-65) said that when her husband returned in the night she told him that the persons, who were staying, were hesitating to go out and she said some thing was fishy. He replied that they would stay for two or, three days and would leave. Fifth day Mrudulla (PW-65) watched the news on the TV and saw the pictures of Subha and Sivarasan. Mrudulla (PW-65) identified Subha. Subha also knew that she had been identified by Mrudulla (PW-65). In the evening Mrudulla (PW-65) told her husband about this fact who said not to ask any question. Subha afterwards became familiar with Mrudulla (PW-65). She told Mrudulla (PW-65) she was eager to return to Jaffna to meet her leader Prabhakaran. Once Mrudulla (PW-65) saw Sivarasan fixing a lens on his left eye. Mrudulla (PW-65) asked Subha as to why did they kill Rajiv Gandhi, and her reply was that Rajiv Gandhi was responsible in sending the IPKF to Sri Lanka and they had 'spoiled' many women and children. She was wearing a cyanide capsule in a thread around her neck. Persons staying in the house were having arms as well and Mrudulla (PW-65) said that they used to threaten them that "if this was reported to somebody they will kill us". Mrudulla (PW-65) then described the stay of those persons in her house and some time their moving out and meeting certain people. Those persons stayed in the house up till 16.8.1991. On 16.8.1991 Ranganath (A-26) told Mrudulla (PW-65) that he had fixed a house in Konankunta at a rent of Rs. 800/- per month and advance of Rs. 10,000/- was to be paid. They all went to Konankunte house with provisions. After performing pooja they returned. Mrudulla (PW-65) said that while in her house at Puttanhalli she noticed Ak-47 rifle in Nero's hand and a pistol in Subha's hand. Again when she asked about that they said if she told anything about that to anybody they would not spare her. At 10.30 p.m. Ranganath (A-26), Mrudulla (PW-65), Suresh Master (DA), Nero, Subha, Amman, Driver Anna, Sivarasan left for Konankunte house. They went by Gypsy van. They also carried gas stove and other articles with them to that house. Mrudulla (PW-65) said she refused to accompany them but she was forcefully taken. They all spent that night there. In Konankunte house Mrudulla (PW-65) saw some papers which had the sketches of K.R.S. Dam and Vidhan Soudha. They were also having pictures of the blast that killed Rajiv Gandhi. Again when

she asked those persons reason for killing Rajiv Gandhi they said that they had to kill him because he sent IPKF to Sri Lanka and was responsible for several atrocities committed on women and children. On the morning of 18.8.1991 there was a news item that 12 LTTE cadres had been killed in Muthathi which is in suburban of Bangalore. Mrudulla (PW-65) told her husband that it was not safe to stay any longer with those people. When she and her husband tried to go out of the house Sivarasan confronted them suddenly and asked where they were going. Ranganath (A-26) told Sivarasan that Mrudulla (PW-65) was not well and they would consult a doctor and that they decided to vacate Puttanhalli house. While returning to Puttanhalli they saw Suresh Master and Rangam (A-24). They also questioned as to where Ranganath (A-26) and Mrudulla (PW-65) were going. Again reply was that to consult a doctor. At Puttanhalli they loaded all their household goods in a van. R. Jayasankar (PW-229), a friend of Ranganath (A-26), helped them in this process. From Puttanhalli they went to Mrudulla's (PW-65) brother's house in Vijayanagar. On the way both Ranganath (A-26) and R. Jayasankar (PW-229) got out of the van saying that they had to make a phone call. At about 4.30 P.M. Mrudulla (PW-65) said that after unloading the articles she left the house to give sarees for dry wash but while going to the shop four or five people in civil dress approached her and told her that she should accompany them to Vijayanagar police station. She said she would talk only to Asstt. Commissioner, Dy. Commissioner or Commissioner of Police. She told them that the persons whom they were searching for were in Konunkunte house. She asked if full security would be provided to her she would show the persons whom they searching for. That time there were Deputy Commissioner of Police, Assistant Commissioner of Police and a lady constable with her. She pointed to Konankunte house from a distance. Then they all returned to Vijayanagar police station. Security was provided to Mrudulla (PW-65) and she was taken to her parents house. Officers of CBI examined her. She said they were talking in Tamil among themselves and to her. She knew little Tamil. Her statement was recorded by the Magistrate under Section 164 Cr.P.C. (Exh.P-220). She identified all the persons who stayed in her house and at Konankunte either in photographs or their being present in the Court.

524. K. Premkumar (PW-227) is a friend of Ranganath (A-26). He said he met Ranganath (A-26) near Nanda Theatre in Vijayanagar on 18.8.1991. From there he took him to Vijayanagar. That was his wife's house. From there they went to another place called 'West of Guard'. No one was in the house. He and Ranganath (A-26) went to that house in search of Mrudulla (PW-65). She was not there. They took a lodge at about 10 or 11 O'clock in the night. They stayed in the lodge on the night of 18/19.8.1991. K. Premkumar (PW-227) said on the morning of 19.8.1991 at 7 O'clock Ranganath (A-26) took him to Konankunte. They went in an auto. Ranganath (A-26) made him stand in a place and then himself went in the auto. Somebody in the public came saying "this is a man, this is a man". K. Premkumar (PW-227) said they were caught at Konankunte. He was put in jail and interrogated by CBI.

525. Suba Sundaram (A-22) is the proprietor of Subha News Photo Services at a place in Royapettah. He is a free lance photographer. He was associated with D.K. and a strong supporter of LTTE. Arivu (A-18), Bhagyanathan (A-20), K. Ravi Shankar (PW-151) and Haribabu (DA) took training in photography from him. At his studio various persons belonging to LTTE cadre used to meet. Some of them were Baby Subramaniam, Irumborai (A-19/), Muthuraja, Arivu (A-18), Bhagyanathan (A-20), Haribabu (DA) and others. During the period 1989-90 Haribabu was working for Subha Studio at a monthly salary of Rs. 350/- . For short while he joined Vignesh Video studio but he kept on visiting to Subha Studio. On 21.5.1991 Haribabu went to Studio of K.Ravi Shankar (PW-151) with a packet containing sandalwood garland which he had purchased from Poompuhar Handicrafts in the morning of that day. Haribabu borrowed a camera (Chinon) (MO-1) from K. Ravi Shankar (PW-151) telling him that he was going to attend the public meeting of Rajiv Gandhi at Sriperumbudur. Thereafter Haribabu went to Subha Studio and met Suba Sundaram (A-22). On 22.5.1991 after the bomb blast at Sriperumbudur in which Haribabu died S. Santhana Krishnan (PW-108), a friend of Haribabu, V.T. Sundaramani (PW-120), his father and K. Ravi Shankar (PW-151), another friend, went to the studio of Suba Sundaram (A-22). It is stated that Suba Sundaram (A-22) exclaimed that only the previous day he had seen Haribabu. Two letters, one (Exh.P-548) dated 18.1.1991 written by Suba Sundaram (A-22) to LTTE leader Kittu and other (Exh.P-544) addressed by Suba Sundaram (A-22) to Prabhakaran as younger brother, were seized from his studio contents of which showed deep involvement of Suba Sundaram (A-22) with LTTE activities. In one of the letters he had criticized the activities of IPKF.

526. T. Ramamurthy (PW-72), a journalist, had also attended the public meeting at Sriperumbudur on 21.5.1991. At mid night he was returning home and as there was chaos and confusion he stayed that night at police station, Poonamallee. At mid night Suba Sundaram (A-22) contacted Meena (PW-74), wife of T. Ramamurthy (PW-72) and asked her whether her husband returned home. She replied in the negative.

527. In her statement Meena (PW-74) said that at the mid night on 21.5.1991 one Anand Viswanathan rang her up to say that Rajiv Gandhi and some others had died due to bomb blast at Sriperumbudur. K. Ravi Shankar (PW-151) then rang her up and asked her whether T. Ramamurthy (PW-72) had come. After a few minutes Suba Sundaram (A-22) rang her up and inquired about T. Ramamurthy (PW-72). Suba Sundaram (A-22) also told Meena (PW-74) that photographer Babu, who was sent by him had also not yet come. At about 1.00 O'clock in the night T. Ramamurthy (PW-72) rang up his wife Meena (PW-74) and said that he was in Poonamallee police station and gave her phone number of the police station. She told her husband about the phone calls received from various persons. She told him that Suba Sundaram (A-22) was asking about his photographer on which T. Ramamurthy (PW-72) said that one photographer sent by Suba Sundaram (A-22) had died. After ten or fifteen minutes later Suba Sundaram (A-22) again rang her up and asked her whether T. Ramamurthy (PW-72) had come. She told him that he was in Poonamallee police station and gave him the telephone number.

528. T. Ramamurthy (PW-72) described the scene at Sriperumbudur public meeting when bomb blast took place. He said while he was at Poonamallee police station Suba Sundaram (A-22) rang him up. He asked him "what Ramamoorthy, Have you taken the photographs?" T. Ramamurthy (PW-72) replied that he did take some photographs and had given those to magazine the 'Dhinamalar' and that he would give photographs to him in the morning. T. Ramamurthy (PW-72) said he stayed in the police station as there were riots on the way. T. Ramamurthy (PW-72) also told Suba Sundaram (A-22) "what, Sundaram, your photographer died in the bomb-blast". Then Suba Sundaram (A-22) asked T. Ramamurthy (PW-72) who it was. T. Ramamurthy (PW-72) said that since he did not know the name of the photographer who died at the place of the occurrence he gave Suba Sundaram (A-22) the identification marks of the deceased photographer. He then asked whether it was Haribabu and wanted to be certain if he had died. T. Ramamurthy (PW-72) told him that the photographer was lying on his back and the camera was lying on his chest and on that account he said he must have died. Suba Sundaram (A-22) persisted and told T. Ramamurthy (PW-72) over the phone that he should have brought the camera. T. Ramamurthy (PW-72) said he replied him that a great VVIP had been assassinated and things which were there might be important material objects and it was wrong to touch them. Suba Sundaram (A-22) then told him to contact him the next day on his reaching Madras. In the morning Suba Sundaram (A-22) again rang up T. Ramamurthy (PW-72) and asked him to give him some photographs and said he would send his son for the purpose. T. Ramamurthy (PW-72) first went to 'Dhinamalar', from there to the studio of Suba Sundaram (A-22), who again asked the details of the occurrence. Again he told T. Ramamurthy (PW-72) that he should have brought the camera and "we could have used the photographs in it". When T. Ramamurthy (PW-72) again said that it was wrong to remove the evidence from that place Suba Sundaram (A-22) said that they could have managed by stating anything and that it was not wrong to have done like that between photographers.

529. On 22.5.1991 when V.T. Sundaramani (PW-120), father of Haribabu (DA) and K. Ravi Shankar (PW-151) went to Subha Studio after making inquiries about the place where Haribabu's dead body was kept, Suba Sundaram (A-22) told V.T. Sundaramani (PW-120) to remove all the papers connected with Haribabu from the house. V.T. Sundaramani (PW-120) on reaching home removed all the papers of Haribabu from his house and kept them in his daughter's house which was close-by. P. Ramalingam (PW-198) is the son-in-law of V.T. Sundaramani (PW-120) and brother-in-law of Haribabu.

530. Arulmani (PW-128) knew the family of V.T. Sundaramani (PW-120) as his house was situated opposite to his house. When death of Rajiv Gandhi took place Arulmani (PW-128) was in Madurai and was on a bus to Madras. Due to disturbance he could reach Madras at 4.30 a.m. on 23.5.1991. When he reached home he was told that Haribabu was dead at the Rajiv Gandhi's function. He went to their house with his father. Mother of Haribabu was crying and Arulmani (PW-128) thought of extending some help. He asked

Haribabu's mother to show him papers connected with LIC agency as in April Haribabu had told him that he had joined an agent in LIC. Haribabu's mother told him that all the papers were kept in a box and placed at the house of P. Ramalingam (PW-198), husband of Haribabu's elder sister. Arulmani (PW-128) went to the house of P. Ramalingam (PW-198) and wanted to see the box. It was concealed in the loft under the roof. In the box there were many letters, Prabhakaran's photo, negatives, love letters written by a girl S. Sundari (PW-171). P. Ramalingam (PW-198) told Arulmani (PW-128) that he was asked to burn those things. Since Arulmani (PW-128) suspected that there was something wrong as V.T. Sundaramani (PW-120) had instructed P. Ramalingam (PW-198) to burn the papers. He thought of giving those to the police as national leader had died. There was also news in the papers that LTTE had a hand in the assassination of Rajiv Gandhi. Arulmani (PW-128) asked the mother of Haribabu if Haribabu was connected with LTTE and she stated that it was because of those 'sinners' that his son was like that. Ultimately police took into possession all those papers.

531. Suba Sundaram (A-22) again tried to retrieve the camera through K. Ramamurthi (PW-258). On 22.5.1991 at about 9 or 10 p.m. he contacted K. Ramamurthi (PW-258), who was in Delhi on phone and told him that "my boy one Haribabu had been to Sriperumbudur for taking photographs and he had not returned. It was not known as to what happened to my camera" and he asked K. Ramamurthi (PW-258) whether he could inquire about that. Yet again on 23.5.1991 at 10 or 11.00 a.m. Suba Sundaram (A-22) asked K. Ramamurthi (PW-258), who was still in Delhi about the camera. At that time Suba Sundaram (A-22) told K. Ramamurthi (PW-258) that Haribabu was dead and that his camera had been seized by the police and asked him whether the said camera could be got back by talking to someone. On 25.5.1991 Hindu newspaper (Exh.P-550) published a news item connecting Haribabu with LITE. Suba Sundaram (A-22) immediately asked V.T. Sundaramani (PW-120), father of Haribabu to come to his studio and asked him to stoutly deny the news item connecting Haribabu with LTTE by issuing a denial statement to the press. Suba Sundaram (A-22) himself dictated the denial statement which was taken down by M. Girija Vallaban (PW-116). The original denial statement prepared by Suba Sundaram (A-22) was seized (Exh.P-543). A copy of Exh.P-543 - denial statement - was seized by the police from Subha studio of Suba Sundaram (A-22). Suba Sundaram (A-22) thereafter asked V.T. Sundaramani (PW-120) to take 12 of 13 copies of the denial statement and to give that to all the newspapers. On 26.5.1991 the denial statement was published in Hindu (Exh.P-551). When V.T. Sundaramani (PW-120) told Suba Sundaram (A-22) about cassette 'Pasarai Padagal', which contained LTTE propaganda Suba Sundaram (A-22) told him to destroy that immediately.

532. A. Parimalam (PW-205)- said Haribabu was brother-in-law of her brother-in-law P. Ramalingam (PW-198). She said on 25th morning they came to the house of Haribabu to inquire about his death. There was no male member. A boy came there with a chit containing number 867229 and said that Haribabu's father had asked his younger brother Kalyankumar to contact him at that number. Since Kalyankumar was not at home mother

of, Haribabu asked A. Parimalam (PW-205) to telephone to that number. When the phone was picked up on the other side A. Parimalam (PW-205) asked if Haribabu's father was there. The person on the other side asked who was speaking. A. Parimalam (PW-205) said she was Haribabu's elder sister. On the other side the person said that he was Suba Sundaram (A-22) speaking and said that there would be an audio cassette in the house and if there are any papers connected with Haribabu those may be taken away and destroyed. Saying that he put down the receiver abruptly.

533. In letter (Exh.P-128) dated 7.9.1991 written by Trichy Santhan (DA) to Irumborai (A-19) there is mention of Suba Sundaram (A-22) relevant portion of which has already been quoted above.

534. V T. Sundaramani (PW-120), father of Haribabu said that Santhan (A-2) stayed in his house for some time. Haribabu had told that he was his friend. He said on 20.5.1991 Murugan (A-3) came to his house. Haribabu was not present at that time. Murugan (A-3) had earlier been coming to his house. V.T. Sundaramani (PW-120) in his deposition said Murugan (A-3) told them to inform Haribabu to call on him at Royapettah. He asked V.T. Sundaramani (PW-120) to send Haribabu as soon as he came. V.T. Sundaramani (PW-120) said that Haribabu came and was given the message. He went out that evening. V.T. Sundaramani (PW-120) said Haribabu told his mother at about 2.30 p.m. on 21.5.1991 that he was going out to take photographs and would return by night itself. He did not return that night. In the morning newspapers V.T. Sundaramani (PW-120) read about the assassination of Rajiv Gandhi. In the afternoon he came to know through a newspaper that Haribabu, photographer, was dead. He immediately left his house. V.T. Sundaramani (PW-120) said after some time S. Santhana Krishnan (PW-108), a friend of Haribabu and also one Veeraraman came to his house. They told that Haribabu was dead and, therefore, they had to find him out as whereabouts of Haribabu were not known by that time. V.T. Sundaramani (PW-120) said that then Suba Sundaram (A-22) came to his mind and he sent S. Santhana Krishnan (PW-108) and other man to Subha Studio to find out the actual position. Kanan, a photographer, told V.T. Sundaramani (PW-120) that he had seen Haribabu with Sandalwood garland at Sundaram's (A-22) office at 3.00 O'clock at Royapettah. V.T. Sundaramani (PW-120) also came to know that Haribabu had taken a camera from K. Ravi Shankar (PW-151). V.T. Sundaramani (PW-120) went to the studio of Suba Sundaram (A-22) and asked how it had happened and also asked him whether he had sent Haribabu. Suba Sundaram (A-22) replied in the negative. This part of the statement of V.T. Sundaramani (PW-120) may be quoted:

When I reached there I asked him how it had happened and I also asked him whether he sent him, he said No. Yesterday he came to his photo studio at 3 O'clock. He also invited us for taking photos. Haribabu had asked Subha Sundaram whether anybody else was coming from his studio for taking photos. For that he has replied that nobody is coming and that he has sent him for taking photos. Subha Sundaram told me that he did not know who has taken Haribabu.

V.T. Sundaramani (PW-120) told Suba Sundaram (A-22) that Haribabu was dead and asked him in which hospital he was kept and requested him to do the needful. V.T. Sundaramani (PW-120) said that he met Suba Sundaram (A-22) on 22.5.1991 in his office. He talked to him separately in his office and when asked him with whom Haribabu had gone; who had taken him; and whether there might be any link with LTTE; and whether he had gone alone since Suba Sundaram (A-22) told him that he had seen Haribabu. Suba Sundaram (A-22) told V.T. Sundaramani (PW-120) not to worry himself and said that Haribabu might have gone alone. Suba Sundaram (A-22) asked V.T. Sundaramani (PW-120) to discard all the papers in the house relating to Haribabu on reaching home. V.T. Sundaramani (PW-120) asked his wife to remove all the papers connected with Haribabu to their daughter's house. V.T. Sundaramani (PW-120) said on 23.5.1991 early in the morning at 5.00 a.m. Arulmani (PW-128) with his father came to his house. He corroborated as to what Arulmani (PW-128) said about the box kept in the house of P. Ramalingam (PW-198). V.T. Sundaramani (PW-120) also said on 23.5.1991 at 3.00 p.m. one person calling himself Bhagyanathan (A-20) came to his house and introduced himself as a friend of Haribabu and told wife of V.T. Sundaramani (PW-120) that nothing had happened to Haribabu and that he would have sustained injuries and gave Rs. 1000/- to her towards medical expenses of Haribabu. Since wife of V.T. Sundaramani (PW-120) refused to receive the amount he gave that to Vijayarevathi, their daughter. When there was news item in Hindu connecting Haribabu with LTTE and V.T. Sundaramani (PW-120) was called to the studio of Suba Sundaram (A-22). V.T. Sundaramani (PW-120) said Suba Sundaram (A-22) told him that he was thinking of arranging monetary help/assistance from K. Ramamurthy (PW-258) and at that juncture he must issue a counter-statement. He said that counter-statement must be issued in the newspapers since he was making arrangements to help V.T. Sundaramani (PW-120) monetarily for his son's loss. Since V.T. Sundaramani (PW-120) said he did not know how to give counter statement and to whom to give Suba Sundaram (A-22) helped him in writing the same and asked V.T. Sundaramani (PW-120) to put his signature. That counter statement is Exh.P-543.

535. We have set out in sufficient details the confessions and the evidence linking the accused with each other as projected by the prosecution.

536. Mr. Natarajan at the outset submitted that the charges of conspiracy and other charges framed against the accused were highly defective and did not show in what manner the accused had to answer these charges. He said that it was not enough if a statutory provision is merely incorporative charged. He said prosecution may rely on Sections 464 and 465 of the Code to overcome his objections to the charge but these two sections did not completely bar the argument that charge is defective and had prejudiced accused in their defence. He said charge No. 1 was so complicated and conspiracy spread over a number of years and the accused who allegedly joined the conspiracy after the object of conspiracy had been achieved, were all tried together, which in itself caused great prejudice to them in their defence. Mr. Altaf Ahmad, however, quickly interposed

to say that Section 215 of the Code would protect any error in the charge and that the finding arrived at by the Designated Court could not be reversed in view of Section 465 of the Code even if argument of Mr. Natarajan is accepted. We, however, do not think that we should dilate on this objection by Mr. Natarajan as powers of Reference Court are quite wide and we have to examine the evidence regarding conspiracy and to see if there is any irregularity in the charge, which has prejudiced the accused. Mr. Natarajan also said that there has not been proper examination of the accused under Section 313 of the Code inasmuch as long and complex questions have been put to them and not much thought has been given by the Designated Court in properly examining the accused under Section 313 of the Code. Mr. Natarajan appears to be right to an extent. We have, however, again to consider this from the angle of prejudice to the accused. But then if there is any error on this account that can also be corrected by the Reference Court by again examining the accused. Apart from alleging prejudice to the accused, no instance has been pointed out to show if any prejudice has, in fact, been caused to the accused in either understanding the charge or in their defence. We find that the accused had been well represented and they extensively cross-examined the witnesses. At no stage during the trial they complained of any prejudice. We are, therefore, unable to agree to the submission of Mr. Natarajan that any prejudice has been caused to the accused in their defence during the conduct of the trial before the Designated Court.

537. Mr. Natarajan said that there was no evidence against any of the accused to bring home charge either under Section 3 or Section 4 of TADA, yet the prosecution wrongly alleged that there was conspiracy to commit acts of terrorism and disruptive activities under TADA and in that process Rajiv Gandhi was killed. He said apart from the killing of Rajiv Gandhi no other terrorist act had been shown to have been committed or disruptive activity shown to have been committed. There is no such act till May, 1991 though the prosecution has alleged the period of conspiracy being 1987 to 1992. Killing of Rajiv Gandhi could not be a terrorist act under Section 3 of TADA. Also there is no disruptive activity falling under Section 4 of TADA. Only Nalini (A-1) and Arivu (A-18) have been charged for offence under Section 4 of TADA. Charge No. 121 is against Nalini (A-1) and it says that in pursuance of the criminal conspiracy referred to in charge No. 1 and in furtherance of the common intention of Nalini (A-1) and deceased accused Sivarasan, Dhanu, Subha and Haribabu to commit disruptive activity at a public meeting at Sriperumbudur, where Nalini (A-1) was physically present at the scene of crime and provided assassin Dhanu (since deceased) with necessary cover from being detected as a foreigner, which enabled the assassin to move freely in the scene of crime and gained access nearer to Rajiv Gandhi where she (Dhanu) detonated the improvised explosive device concealed in her waist belt resulting in the bomb blast and killing of nine police officials who were public servants and who were at that time with Rajiv Gandhi on duty and Nalini (A-1) thereby committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA read with Section 34, IPC.

538. Charge No. 228 is against Arivu (A-18) and it is alleged against him that in pursuance to the criminal conspiracy and in course of the same transaction he abetted the commission of disruptive activity by purchasing two golden power battery cells during the first week of May, 1991, which were used by Dhanu (since deceased) to detonate improvised explosive device at Sripurumbudur on 21.5.1991 resulting in bomb blast and killing of nine police officials, who were public servants and were on duty at that time with Rajiv Gandhi and Arivu.(A-18) committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA and Section 109, IPC.

539. Mr. Natarajan said these two charges 121 and 228 showed as to how the court considered the disruptive activity and there is no mention in these charges if it was the killing of Rajiv Gandhi which could be termed as disruptive activity. Charges referred to the killing of police officers on duty. He said there is no discussion whatsoever in the judgment of the Designated Court as to how it considered that the case fell under Section 4(3) of TADA. There is no evidence to show propagation of anything as mentioned in Section 4(3) of TADA. Under Section 4(3) of TADA an accused can be said to have committed disruptive activity if he in any way (a) advocates, etc. or (b) predicts, etc. the killing or destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant. The charges do not name Rajiv Gandhi as at the time he was killed he was not bound by any oath under the Constitution. He was not the Prime Minister. He was not an M.P. as Parliament stood dissolved and general elections in the country were in process. There is no evidence on record to show that Rajiv Gandhi was bound by any oath under the Constitution in any capacity whatsoever. As regards nine police officers who were killed they were not killed on account of any of the grounds mentioned in Clauses (a) or (b) of Sub-section (3) of Section 4 of TADA. Sub-section (2) of Section 4 of TADA defines disruptive activity and, in so far as it is relevant to Sub-section (1), means any action taken whether by act or by speech or through any other media or in any other manner whatsoever which questions, disrupts or intended to disrupt directly or indirectly the sovereignty and territorial integrity of India. Mr. Altaf Ahmad said that the accused did question the sovereignty and integrity of India inasmuch as they expressed their resentment to the Indo-Sri Lankan Accord which had been approved by the Parliament. But then questioning or disapproving the Indo-Sri Lankan Accord would not mean that that would be questioning the sovereignty and integrity of India. When a member of the Opposition whether in Parliament or outside criticizes the Accord in public it could not be said that he is questioning the sovereignty and integrity of India. According to Mr. Altaf Ahmad the accused had chosen the target being Rajiv Gandhi and struck the target thus questioning the very ability of the country to take sovereign decisions. Mr. Natarajan said that death of Rajiv Gandhi as target did not find mention in any charge under Section 4 of TADA and no such question was put to any accused under Section 313 of the Code. Death of nine police officers though public servants was not on account of any of the grounds mentioned in Sub-sections (2) or (3) of Section 4 of TADA but since target was Rajiv Gandhi and the intensity of the blast was so vast that the police officers died and so also the assassin Dhanu and

photographer Haribabu. Mr. Natarajan, in our view, is right in his submission that no case under Section 4 of TADA has been made out in the case.

540. Under Section 3 of TADA in order there is a terrorist act three essential conditions must be present and these are contained in Sub-section (1) of Section 3 - (1) criminal activity must be committed with the requisite intention or motive, (2) weapons must have been used, and (3) consequence must have ensued. It was contended by Mr. Natarajan that in the present case though the evidence may show that weapons and consequence as contemplated by Section 3(1) is there it is lacking so far as the intention is concerned. Prosecution had to prove that the act was done with the intention to overawe the Government or to strike terror in people or any section of people or to adversely affect the harmony amongst different sections of people. There is no evidence that any of the accused had such an intention.

541. As to what is a terrorist act and what is the intention contemplated under Section 3 of TADA reference may be made to a decision of this Court in Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. MANU/SC/0526/1994: 1995 Cri LJ 517. In this judgment Section 3(1) of TADA has been analyzed. It would be useful to quote from the judgment in extenso:-

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 civilized society. Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorist" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society

because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is, therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated by Section 3(1) of the Act by use of such weapons as have been enumerated in Section 3(1) and which cause or are likely to result in the offences as mentioned in the said section.

"Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that section by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the intention as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a consequence of the criminal act that fear, terror or/and panic is caused but the intention of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the intention to achieve the result as envisaged by the section and not merely where the consequence of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the intention to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision. Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw alone between the crime punishable

under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied.

542. Sub-section (1) of Section 3 can be analyzed as under:

(1) Whoever with intent

(i) to overawe the Government as by law established; or

(ii) to strike terror in the people or any section of people; or

(iii) to alienate any section of the people; or

(iv) to adversely affect the harmony amongst different sections of the people

does any act or thing by using

(a) bombs, dynamite, or

(b) other explosive substances, or

(c) inflammable substances, or

(d) fire-arms, or

(e) other lethal weapons, or

(f) poisons or noxious gases or other chemicals, or

(g) by any other substances (whether biological or otherwise) of a hazardous nature

in such a manner as to cause

(i) death of, or

(ii) injuries to any person or persons, or

(iii) loss of, or damage to or destruction of property, or

(iv) disruption of any supplies, or

(v) services essential to the life of the community, or

detains any person and threatens to kill or injure such person

in order to compel the Government or any other person to do or abstain from doing any act commits a terrorist act.

542-A. In the present case applying the principles set out above on the interpretation of Section 3(1) and analyses of this subsection of the TADA we do not find any difficulty in concluding that evidence does not reflect that any of the accused entertained any such intention or had any of the motive to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabhakaran, supreme leader of LTTE had personal animosity against Rajiv Gandhi and LTTE cadre developed hatred towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA. State of Tamil Nadu was notified under TADA on 23.6.1991 and LTTE were declared an unlawful association on 14.5.1992 under the provisions of the Unlawful Activity (Prevention) Act, 1957. Apart from killing of Rajiv Gandhi no other terrorist act has been alleged in the State of Tamil Nadu. Charge may be there but there is no evidence to support the charge. Mr. Natarajan said that prosecution might refer to the killing of Padmanabhan in Tamil Nadu, leader of EPRLF, which fact finds mention in the confession statement of Santhan (A-2). But then he said it was not a terrorist act. It was killing of a rival Sri Lankan and in any case killing of Padmanabhan is not a charge in the case before this Court. Mr. Altaf Ahmad said that when he earlier mentioned the killing of Padmanabhan, it was only to show that LTTE was an organization which brook no opposition and anyone opposing its objective was eliminated. Mr. Natarajan said it was the case of the prosecution itself that Prabhakaran had personal animosity against Rajiv Gandhi developed over a period of time and had motive to kill him.

543. Mr. Altaf Ahmad realised the difficulty he had to face to show that any offence under Sections 3 and/or 4 of TADA had been committed. He submitted that charges in the present case showed the dimension of the conspiracy and the nature of the crime committed on 21.5.1991. He said the object of the conspiracy was to commit terrorist act and use of bomb, etc. was the means to achieve that object and that the consequence was to overawe the Government and to create terror in the minds of the public and it was with that object that Rajiv Gandhi and others were killed. He said object of the conspiracy was not accomplished on the killing of Rajiv Gandhi but it continued even after his death as LTTE targeted places and persons spread across the country. There is no evidence that blasting of the buildings like Vellore Fort, police headquarters, was the object of conspiracy or that was to be done with intention to overawe the Government or to create terror among the public. Charge does not specify any such intention or the places. Similar

is the position regarding unspecified -targets in Delhi. According to him conspiracy was not abandoned and did not culminate with the assassination of Rajiv Gandhi though the assassination of Rajiv Gandhi over-shadowed other activities. He said to continue with the object of conspiracy the accused had to retain their identity in order to commit further acts and thus for the purpose of self-preservation they had to live and for that they committed acts of escapades, screening, destruction of evidence, etc. Charge framed against the accused described their various roles and the offence committed by them. He said ingredients of Sections 3, 4 and 5 of TADA are part of the charge and there is evidence to prove these charges. He said it may be that particulars of all the sections had not mentioned in the charge but that was a curable irregularity and no prejudice has been shown to have been caused to the accused. It would appear that the argument of Mr. Altaf Ahmad is based on the submission that under Section 3 of TADA conspiracy was also to overawe the Government. Reference was made to the definition of 'overawe' in Black's Law Dictionary to mean "to sub judicator or restrain by and or profound reference". Realising the difficulty that there was no charge of conspiracy to overawe the Government Mr. Altaf Ahmad said that since it was a case of reference this Court could return the finding as there was evidence to overawe the Government and it could not be said that the accused would be prejudiced by adopting such a course. He said it was enough if section describing the offence is mentioned in the charges and all the ingredients of the offence need not be in the charge. According to him charge thus gives notice of accusation to the accused and the requirement of law is fulfilled. But then in the present case when some particulars of a charge have been given the accused can certainly assume that they are not being charged with other ingredients of the offence given in a particular section. If we now take into consideration those ingredients as well prejudice would certainly be caused to the accused.

544. Mr. Altaf Ahmad said that Rajiv Gandhi was targeted as he was the Prime Minister when the Indo-Sri Lankan Accord was entered into and his name was synonymous with the Accord. LTTE took it that it was entered into contrary to their aspirations. In an interview before the general elections Rajiv Gandhi did support his stand on the Accord which had been ratified by the Parliament. He said that action of the accused in killing Rajiv Gandhi struck at the sovereign powers of the country and it was to intimidate the Government. That the country was in the midst of election and on account of the assassination of Rajiv Gandhi elections were postponed and formation of the Government was delayed. A notification dated 22.5.1991 was issued by the Election Commission of India postponing the elections. It was mentioned in the Notification that the country had suffered a great tragedy in the death of Sri Rajiv Gandhi at the assassins hands. Country was thus in trauma. Intention of the accused in killing Rajiv Gandhi was that India as sovereign country could not take sovereign decisions. Prime Minister is the pivot of the Parliamentary system and if he is killed because he was party to an Accord entered into in exercise of sovereign powers of the country and even though he may not be the Prime Minister at the relevant time his killing would send shock waves all over the country and to the Government in power and the Government to be. He said

conspiracy to kill Rajiv Gandhi was thus with intent to overawe the Government as by law established. Since there was no such charge, no finding, and no question put to the accused under Section 313 of the Code, it was pointed out to Mr. Altaf Ahmad that unless he referred to any relevant provision of law or any decision of this Court on the powers of this Court in Reference, his argument could not be taken note of. Mr. Altaf Ahmad said that powers of the Court while considering the Reference are wider than that of the appellate court. Under Sub-section (1) of Section 366 of the Code it is for the Supreme Court to confirm the death sentence and under Sub-section (1) of Section 367 of the Code, the Supreme Court, if it thinks that a further inquiry should be made into or additional evidence taken upon any point bearing on the killing or innocence of the accused it may make such inquiry or such trial itself or direct it to be made or taken by the Designated Court. With these powers being there Mr. Altaf Ahmad said that though the approach of the Designated Court may have been different in construing the charge and it may not accord with the submissions made now before us and if we construe the charge of our own it is that the accused had committed a terrorist act on the soil of India and in the course of that killed Rajiv Gandhi in order to overawe the Government established by law not to pursue the Indo-Sri Lankan Accord. It was, however, not suggested as to what inquiry or additional evidence is contemplated by the prosecution. From the arguments of Mr. Altaf Ahmad it would appear that he is seeking amendment of the charge and if that is done it would require additional evidence or even retrial may have to be ordered. We do not think we should adopt any such course. The question before us is to consider the charge in its proper way and to examine the evidence with reference to that. Quite a number of judgments on the question of power of Reference Court were cited, principal of these being two judgments in Jumman and Ors. v. The State of Punjab MANU/SC/0110/1956: 1957 Cri LJ 586 and Ram Shankar Singh and Ors. v. State of West Bengal MANU/SC/0143/1961: 1962 Supp. (1) SCR 49.

545. In Jumman and Ors. v. State of Punjab MANU/SC/0110/1956: 1957 Cri LJ 586 this Court considered scope of the reference under Section 374 and 375 of the old Code (Section 366 and 367 of the new Code) and powers of the High Court in its disposal. Statement of law has been laid in paras 11 and 12 of the judgment which is as under:

(11) Before we propose to discuss the evidence on which reliance has been placed by the counsel in this Court, it is necessary to advert to a circumstance which calls for some comment. Along with the appeals filed by the accused, there was before the High Court, a reference under Section 374, Criminal P.C., by the Sessions Judge, submitting to the High Court the proceedings before him for confirmation of the sentences of death passed by him, Under Section 375, Criminal P.C., the High Court has power to direct further inquiry to be made or additional evidence to be taken in such matters and according to Section 376, Criminal P.C., the High Court has to confirm the sentence, or pass any other sentence warranted by law, or alternatively it may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge or the High Court may acquit the accused

person. Section 377, Criminal P.C., provides that the confirmation of the sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

(12) It is clear from a perusal of these provisions that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal under 0.41, Civil P.C., an appellate Court has to find whether the decision arrived at by the Court of first instance is correct or not on facts and law; but there is a difference when a reference is made under Section 374, Criminal P.C., and when disposing of an appeal under Section 423, Criminal P.C., and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own.

546. In *Ram Shankar Singh and Ors. v. State of West Bengal* 1962 Suppl. (1) SCR 49 this Court held that powers under Section 374 (1) and Section 376 of the Old Code were manifestly of wide amplitude and exercised thereof was not restricted by the provisions of Section 418(1) and Section 423 of the old Code. Irrespective of whether the accused, who is sentenced to death prefers an appeal, High Court is bound to consider the evidence and arrive at an independent conclusion as to the guilt or innocence of the accused and this the High Court must do even if the trial of the accused was held by jury. Indeed, duty is imposed upon the High Court to satisfy itself that the conviction of the accused is justified on the evidence, and that the sentence of death in the circumstances of the case, is the only appropriate sentence.

547. These are the basic judgments on the scope of reference and the powers of the High Court while disposing of the same. Other judgments of this Court on this aspect reiterate the principles laid in these two judgment. It is, therefore, not necessary for us to refer to all those judgments.

548. We have certainly kept in view principles laid in these judgments.

549. Prosecution case now made out before us is that the object of conspiracy was to commit terrorist acts during the period 1987 to 1992; that the assassination of Rajiv Gandhi was one of such acts with the intention to overawe the Government and to strike

terror; and the assassination was an act which struck terror and was also a disruptive activity. As to how it was intended to overawe the Government it was submitted that it was on account of Indo-Sri Lankan Accord, which the Government of India was to honour and that did not suit the aspirations of LTTE and thus the conspiracy was hatched to eliminate the person who was the author of the Accord and to threaten the successive Governments not to follow the Accord, otherwise that Government would also meet the same fate. But then, as noted above that there was a conspiracy to overawe the Government is nowhere in the charge. Though it could be said that terror was struck by assassination of Rajiv Gandhi but the question is if striking of terror was intended and for that again there is no evidence. Apart from the assassination of Rajiv Gandhi no other act which could be termed as terrorist act has been suggested. The Designated Court in its impugned judgment does not record any such argument now advanced before us. There is no discussion in the judgment and there is no evidence to which judgment refers to hold that there was any terrorist act intended to overawe the Government or to strike terror. The Designated Court has clearly held that on the assassination of Rajiv Gandhi object of conspiracy was successfully accomplished. Even if thus examining the proceedings in reference our decision has to be made on the basis of the evidence on record. When there is no evidence inference cannot be drawn that act of killing of Rajiv Gandhi was to overawe the Government. Even though there is no bar to the examination of the accused under Section 313 of the Code by this Court in these proceedings but then what is required to be put to the accused is to enable him to personally explain any circumstance appearing in the evidence against him and when there is no evidence, there is no necessity to examine the accused at this stage as that would be a futile exercise. When the prosecution during the course of the trial, which lasted over a number of years, had taken the stand that killing of Rajiv Gandhi was a terrorist act, it cannot now turn about and say that killing itself was not a terrorist act but was committed to achieve the object of conspiracy which was to overawe the Government. As a matter of fact in the statement of Kasi Anandhan (PW-242), who was a member of the Central Committee of LTTE, it has come on record that he met Rajiv Gandhi in March, 1991 when Rajiv Gandhi supported the stand of LTTE and had admitted that it was his mistake in sending IPKF to Sri Lanka and wanted LTTE to go ahead with its agitation. That being the evidence brought on record by the prosecution there is no question of it now contending that there was conspiracy to overawe the Government. Its stand throughout has been that it was the personal motive of Prabhakaran and others to commit terrorist act by killing Rajiv Gandhi. Under Section 3(1) of TADA overawing the Government cannot be the consequence but it has to be the primary object. There is nothing on record to show that the intention to kill Rajiv Gandhi was to overawe the Government. Reference to the Indo-Sri Lankan Accord is merely by way of narration.

550. Support to the struggle of LTTE in Sri Lanka was from Tamil Nadu and it does not appeal to reason that LTTE would commit any act to overawe the Government. It is matter of common knowledge that all terrorist acts are publicized and highlighted which is fundamental to terrorism. Whenever a terrorist act is committed some organisation or

the other comes forward to claim responsibility for that. In the present case LTTE tried to conceal the fact that it was behind the murder of Rajiv Gandhi. The object to assassinate Rajiv Gandhi was kept a closely guarded secret. In the wireless message dated 7.5.1991 (Exh. P-392) from Sivarasan to Pottu Amman he conveyed that "our intention is not known to anybody except we three" meaning thereby himself, Subha and Dhanu. There is another wireless message dated 22.5.1991 (Exh. P-396) from Pottu Amman to Sivarasan that "even to our people in higher places we informed that we have no connection with this" meaning thereby that the assassination of Rajiv Gandhi a day before was not carried out by LTTE. LTTE was not owning the assassination of Rajiv Gandhi and it cannot, therefore, be said that it was done to overawe the Government. LTTE did not want publicity and wanted to keep friendly relations with India and the people of India. Pottu Amman even cautioned Sivarasan in his wireless message dated dated 22.5.1991 (Exh. P-396) not to send long messages as "it will create suspicion" meaning thereby that LTTE might be suspected to be behind the assassination. Two letters of Subha and Dhanu to Akila and Pottu Amman dated 9.5.1991 which were carried by Murugan (A-3) did not spell out their mission. Trichy Santhan (deceased accused) in his letter dated 7.9.1991 (Exh.P-129) to Prabhakaran, which was recovered from Irumburai (A-19) complained about the operation of Sivarasan which led to the name of LTTE being publicized as behind the assassination of Rajiv Gandhi and further about the illicit relationship that developed between Murugan (A-3) and Nalini (A-1), He wrote that due to Murugan (A-3) incident the press was writing ridiculously about the movement and the newspapers were magnifying that Murugan (A-3) and Nalini (A-1) were lovers and that Nalini (A-1) was pregnant of five months.

550A. We accept the argument of Mr. Natarajan that terrorism is synonymous with publicity and it was sheer personal animosity of Prabhakaran and other LTTE cadre developed against Rajiv Gandhi which resulted in his assassination. LTTE would not do any act to overawe the Government in Tamil Nadu or in the center as otherwise their activities in this country in support of their struggle in Sri Lanka would have been seriously hampered.

551. Charge of disruptive activities under Section 4(3) of TADA is against Nalini (A-1) and Arivu (A-18). There is no charge under Section 3(3) of TADA against Rangam (A-24), Vicky" (A-25) and Ranganath (A-26). They are charged under Section 3(4) of TADA. Charge under Section 3(3) is against A-1 to A-23. If we examine one such charge, say charge No. 235 against A-21 which says that she in pursuance to the criminal conspiracy referred to in charge No. 1 and in course of same transaction during the period between January 91 and June, 1991 at Madras and other place in Tamil Nadu she had actively associated with and assisted other conspirators for carrying out the object of criminal conspiracy and thus she knowingly facilitated the commission of terrorist act or any act preparatory to terrorist act and which was committing the terrorist act by detonating the improvised explosive device concealed in waist belt of Dhanu and thereby A-21 committed an offence punishable under Section 3(3) of TADA.

551A. Designated Court held that hatred which developed in the minds of Prabhakaran, further developed into animosity against Rajiv Gandhi in view of the events which took place after IPKF was inducted in Sri Lanka.

552. Thus examining the whole aspect of the matter we are of the opinion that no offence either under Sections 3 or 4 of TADA has been committed. Since we hold that there is no terrorist act and no disruptive activity under Sections 3 and 4 of TADA, charges under Section 3(3), 3(4) and 4(3) of TADA must also fail against all the accused.

553. Arguments were then addressed as to what is nature of conspiracy made out from the evidence on record and the applicability of Section 10 of the Evidence Act. Various judgments of this Court were cited on the nature, scope and existence of criminal conspiracy under Section 120A and 120B, IPC. We may refer to some of them.

554. In Major E.G. Barsay v. The State of Bombay MANU/SC/0123/1961: 1961 Cri LJ 828 this Court said:

The gist of the offence of criminal conspiracy under Section 120A IPC is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

555. In Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a reference of which was made while considering the impact of Section 10 of the Evidence Act, the Court said that the essence of conspiracy was that there should be an agreement between persons to do one or other of the other of the acts described in Section 120A IPC. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties.

556. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra MANU/SC/0157/1970: 1971 Cri LJ 793 it was held that Section 120B IPC makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. It differs from other offences where mere agreement is made an offence even if no steps are taken to carry out that agreement.

In Yash Pal Mittal v. State of Punjab MANU/SC/0169/1977: 1978 Cri LJ 189 the Court said as under:

9. The offence of criminal conspiracy under Section 120A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. 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-participants 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. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

557. In Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra MANU/SC/0241/1979: 1980 Cri LJ 388 this Court said that it was manifest "that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

558. Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra MANU/SC/0180/1981: 1981 Cri LJ 588 this Court again asserted:

It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120B, 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.

559. In State of Himachal Pradesh v. Kishan Lal Pardhan and Ors. MANU/SC/0290/1987: 1987 Cri LJ 709 the Court said that everyone of the conspirators need not have taken active part in the commission of each and every one of the conspiratorial acts for the offence of conspiracy to be made out. It added that:

The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

560. In Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988: 1989 Cri LJ 1 the Court said that the most important ingredient of the offence of conspiracy is agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. It further added as under:

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 inquire whether the two persons are independently pursuing the same end or they have come together in 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 requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of 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. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement. It is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object: there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done".

561. In Ajay Aggarwal v. Union of India and Ors. MANU/SC/0265/1993: 1993 Cri LJ 2516 this Court considering the ingredients of the offence of conspiracy said:

Section 120A of the IPC defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy". No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120B of the IPC prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of

the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects.

The Court then considered the common law definition of 'criminal conspiracy' and for that referred to statement of law by Lord Denman in King v. Jones 1832 B & AD 345 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 (1868) LR 3 HL 306 and the House of Lords in unanimous decision reiterated in Quinn v. Leathern 1901 AC 495:

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 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 the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.

The Court also referred to another decision of English House of Lords in Director of Public Prosecutions v. Doot 1973 AC 807 where Lord Pearson held that:

[A] conspiracy involved an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding because it is unlawful. But as an agreement it has its three stages, namely, (1) making or formation; (2) performance or implementation; (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirator can be prosecuted even though no performance had taken place. But the fact that the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its performance or by abandonment or frustration or, however, it may be.

The Court then considered the question whether conspiracy is a continuing offence and said as under:-

Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, in our considered view, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Government. All of them need not be present in India nor continue to remain in India.

Finally the Court said as under:

Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or techniques to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of some one or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country A to kill D in country B with explosive substance. As far as conspiracy is concerned, it is complete in country A. One of them pursuant thereto carried the explosive substance and hands it over to them pursuant thereto carried the explosive substance and hands it over to third one in the country B who implants at a place where D frequents and got exploded with remote control. D may be killed or escape or may be got exploded with remote control. D may be killed or escape or may be diffused. The conspiracy continues till it is executed in country B or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country B though first two are liable to murder with aid of Section 120B and the last one is liable under Section 302 or 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text

on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of autrefois convict or acquit would extend to such offences. The comity of nations are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud.

25. A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa.

562. In State of Maharashtra and Ors. v. Som Nath Thapa and Ors. MANU/SC/0451/1996: 1996 Cri LJ 2448 this Court referred to its earlier decision in Ajay Aggarwal case MANU/SC/0265/1993: 1993 Cri LJ 2516) and said:

The aforesaid decisions, weighty as they are, lead us to conclude that 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, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

563. In Regina v. Ardalan and Ors. (1972) 1 WLR 463 the appellants were charged and convicted for the offence of conspiracy. On appeal, reference of the Trial Judge to "the cartwheel type of conspiracy"; about "sub-conspiracies" and also about "the chain type of conspiracy" was criticised. The Appeal Court said that care must be taken that words and phrases such as "wheels", "cartwheels", "chain", "sub-conspiracies" and so on are used only to illustrate and to clarify the principle and for no other purpose. It said:

It is right to say that these epithets, or labels, such as "cartwheels" (or wheel without rim) and "chains" have a certain respectable ancestry and have been used in a number of conspiracy cases that from time to time have come before the courts. Metaphors are

invaluable for the purpose of illustrating a particular point or a particular concept to a jury, but there is a limit to the utility of a metaphor and there is sometimes a danger, if metaphors are used excessively, that a point of time arises at which the metaphor tends to obscure rather than to clarify.

564. In United States v. Falcone et al. 109 Federal Reporter (2d Series) 579 (Circuit Court of Appeals - the Second Circuit)], the appellants were convicted for a conspiracy to operate illicit stills. Case against the appellant and others who constituted one set of conspirators was that they supplied sugar etc. to the other group of conspirators who were operating illicit stills. The question before the court was whether the sellers of goods, in themselves innocent, became conspirators with the buyer because they knew that the buyer meant to use the goods to commit a crime. Judge Learned Hand speaking for the Court said:

There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that from which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders. That there are opportunities of great oppression in such a doctrine is very plain, and it is only by circumscribing the scope of such all comprehensive indictments that they can be avoided. We may agree that morally the defendants at bar should have refused to sell to illicit distillers; but, both morally and legally, to do so was toto cockle different from joining with them in running the stills.

Falcon and similarly situated appellants were acquitted of the charge of conspiracy.

565. United States then moved the Supreme Court for a writ of certiorari to review the aforesaid judgment of the Circuit Court setting aside the conviction of the respondents Falcone and others. The Government, however, did not argue that the conviction of conspiracy could rest on proof alone of knowingly supplied an illicit distillers who are not conspiring with others. It was conceded that the act of supplying or some other proof must import an agreement or concert of action between buyer and seller which admittedly was not present in the case. United States of America v. Salvatore Falcone, and Ors. 85 L d. (311 US) 205.

566. In the present case, there is no evidence to support the charge as regards the period of conspiracy. It is as important to know the period as to ascertain the object of conspiracy. It appears that period of conspiracy in the charge from July 1987 to May 1992 has been mentioned as the Indo-Sri Lankan Accord was entered into in July 1987 and LTTE was declared an unlawful association by notification dated May 14, 1992 issued under the

Unlawful Activities (Prevention) Act, 1987. There is, however, no evidence that the conspiracy was hatched immediately on entering into the accord and was terminated only on the issue of the notification. A statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act. Similarly, a statement made after the conspiracy has been terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator. Fixing the period of conspiracy is, thus, important as provisions of Section 10 would apply only during the existence of the conspiracy. We have held that object of the conspiracy was the killing of Rajiv Gandhi. It is not that immediately the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of res gestae as contained in Section 6 of the Evidence Act will continue to apply.

567. Principle of law governing Section 10 has been succinctly stated in a decision of this Court in Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a where this Court said:

before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120A of the Indian Penal Code defines the offence of criminal conspiracy thus:

When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. 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 evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the conspirators co-conspirators. The said section reads:

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have

conspired together to commit an offence or an actionable wrong, that is to say, there should be a *prima facie* evidence that a person was a party to the conspiracy before his acts can be used against his conspirators, co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" 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; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (1) There shall be a *prima facie* evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.

568. Then in *State of Gujarat v. Mohammed Atik and Ors.* MANU/SC/0267/1998: 1998 Cri LJ 2251 this Court said as under:

It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, 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, a 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.

569. In *Mirza Akbar v. King Emperor* MANU/PR/0037/1940 the Privy Council said the following on the scope of Section 10:

This being the principle, their Lordships think the words of Section 10 must be construed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, the words "common intention" signify a common intention existing at the time when the thing was said, done or written by the 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. There is then no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment Section 10 embodies this principle. That is the construction which has been rightly applied to Section 10 in decisions in India, for instance, in 55 Bom 839 and 38 Call 69. In these cases the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past.

570. It was submitted that once the conspirator is nabbed that would be an end to the conspiracy and Section 10 would be inapplicable. That may be so in a given case but is not of universal application. If the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of criminal conspiracy is there and Section 10 of the Evidence Act applies. Prosecution in the present case has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest.

571. Though we have held that confession of an accused recorded under Section 15 of TADA is substantive evidence against co-accused we may take note of an alternative argument of Mr. Altaf Ahmad. He said even if it is held that the confession under Section 15 TADA can be admitted only if there is corroboration, under Section 10 of the Evidence Act the confession of an accused can nevertheless be a substantive evidence against co-accused if it satisfies the requirement of that Section.

572. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against co-conspirator is not confronted or cross-examined in Court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 Evidence Act statement of a conspirator is admissible against co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce

independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The Court is, however, to guard itself against readily accepting the statement of a conspirator against the co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done ultimately it is the appreciation of evidence on which the court has to embark.

573. In *Bhagwandas Keshwani and Anr. v. State of Rajasthan MANU/SC/0107/1974: 1974 Cri LJ 751*, this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

574. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

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

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

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

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

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

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

conspiracy all those who have been associated in any degree whatever with the main offenders".

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

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

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

575. Having thus held that the object of the conspiracy was to kill Rajiv Gandhi; that no offence under Sections 3 or 4 of TADA had been committed and after having considered the principles regarding the ingredients of criminal conspiracy; appreciation of evidence in a case of conspiracy; submissions of Mr. Natarajan that he is not challenging the convictions and sentence passed on the accused under the provisions of the Arms Act, Explosives Substance Act, Indian Wireless and Telegraphy Act, Passport Act, Foreigners Act and Sections 201, 212 and 216 IPC, we proceed to consider as to whether all or any

one of the accused before us were members of the criminal conspiracy, still keeping in view the following aspects:-

1. Presence of LTTE on Indian soil before and after Indo-Sri Lankan Accord is undisputed. Its activities went ostensibly underground after the Accord. LTTE was having various activities in India and some of these were (1) printing and publishing of books and magazines for LTTE propaganda, (2) holding of camps for arms training in India and various other places in Tamil Nadu (This was done openly till the Indo-Sri Lankan Accord), (3) collection and raising of funds for its war efforts in Sri Lanka, (4) treatment of injured LTTE cadres in India, (5) medical assistance and (6) transporting of goods like petrol, diesel, lungies, medicines, wireless equipments and explosives and even provisions to Sri Lanka.
2. Hiring of houses in Tamil Nadu was for various activities of the LTTE, which included houses for the treatment of injured LTTE cadres.
3. Sivarasan was having other activities in Tamil Nadu. He was to make arrangements for Santhan (A-2) to go to Switzerland and for Kangasabapathy (A-7) and Athirai (A-8) to go to Delhi and from there to Germany. He was to make arrangement to recruit persons to impart arms training in Sri Lanka through Ravi (A-16) and Suseendran (A-17) and to arrange houses at Madras through Robert Payas(A-9), Jayakumar (A-10) and Vijayan (A-12) for the stay of LTTE cadres not necessarily for conspirators. He financed Vijayanandan (A-5) in Madras for purchase of books for LTTE library in Jaffna. Shanmugham (DA) in his confession (Exh.P-1300) stated that Sivarasan with others stayed in a house at Kodiakkarai and they were arranging to send petrol and diesel oil by boat to LTTE in Sri Lanka.
4. In case of some of the accused including deceased accused there is no evidence whatsoever that they were members of the conspiracy. Prosecution has been unfair to charge them with conspiracy.
5. There is no evidence that all the nine persons, who arrived in India by boat on 1.5.1991, namely, Sivarasan, Subha, Dhanu, Nero, Dixoh, Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruben (A-6), were members of the conspiracy. In this group there was Ruben (A-6), who came to India to have an artificial leg fixed which he had lost in a battle with Sri Lankan army.
6. Prosecution also named Jamuna alias Jameela (DA) as a conspirator, who had also come to India for fixing an artificial limb, which she had also lost in a battle with Sri Lankan army. There is not even a whisper in the whole mass of evidence that she had even knowledge of any conspiracy to kill Rajiv Gandhi. Simply because she was found dead having committed suicide along with Sivarasan, Subha and others at Bangalore, could not make her a member of the conspiracy.

7. From frequent and unexplained meetings of some of the accused with others, who have been charged with conspiracy, it cannot be assumed that they all were members of the conspiracy. This is particularly so when LTTE was having various activities on Indian soil for its war efforts in Sri Lanka. Notebook (Exh.P-1168) seized by the police gives bio-data of some LTTE cadre working in India though that list is not extensive. It also contains the bio-data of Irumborai (A-19).

8. All the persons, who came from Sri Lanka during the strife, did not come through authorized channels. It is also to be seen if the accused now charged with conspiracy and alleged to have come to India in the guise of refugees were not in fact refugees. Rather evidence shows that Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) as one group and Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) as the second group, were in fact wanting to come to India due to conditions prevailing in Sri Lanka. They had no money to pay to LTTE. They were exempted from paying any toll to LTTE on their agreeing to hire houses in Tamil Nadu for stay of LTTE cadre and on their being promised help by LTTE. When they so agreed they were not aware that what was the object behind their hiring the houses. Evidence regarding providing shelter to the conspirators either before or after the object of the conspiracy has been achieved, is not conclusive to support the charge of conspiracy against them.

9. Robert Payas (A-9), Jayakumar (A-10) and Vijayan (A-12) were hard-core LTTE activists. They were living in Sri Lanka with their families and suffered because of the turmoil there. They may be sympathizers of LTTE having strong feelings against IPKF. Consider the background in which they accepted the offer of LTTE to meet their expenses in India. It could be that they themselves fell into the trap because of the circumstances in which their families were placed in Sri Lanka and the conditions prevailing there.

576. Now, we proceed to examine individual cases keeping in view the evidence and law on the subject.

Dhanasekaran (A-23)

Rangam (A-24)

Vicky(A-25)

Ranganath(A-26)

The object of the conspiracy was achieved on May 21, 1991. There is no evidence against Dhanasekaran (A-23), an Indian national, Rangam (A-24), Sri Lankan national, Vicky (A-25), Sri Lankan National and Ranganath (A-26), Indian national, that they were members of the conspiracy. They came in the picture after the object of the conspiracy had been

achieved. However, they knowingly that Sivrasan and Dhanu had committed the offence of murder of Rajiv Gandhi intentionally screened them from legal punishment. Evidence against Dhanasekaran (A-23) shows that he was fully aware of the involvement of Sivarasan and Subha in the murder of Rajiv Gandhi and with that full knowledge he transported them in an oil tanker (MO-543) owned by him from Madras to Bangalore to evade their arrest. In his confession Dhanasekaran (A-23) described how he was able to transport Sivarasan, Subha and Nero, hidden in his tanker lorry. His confession is corroborated amongst others by S. Syed Ibrahim (PW-232), insurance surveyor, S. Vasudevan (PW-245), cashier of petrol pump and his driver R. Selvaraj (PW-230).

577. Similarly, Rangam (A-24) was having knowledge of the offence of murder committed by Sivarasan and Subha and he helped and assisted Dhanasekaran (A-23) and Vicky (A-25) in transporting them from Madras to Bangalore. At Bangalore also he transported Sivarasan, Subha and others in Maruti Gypsy (MO-540), which had been purchased with the help of Dhanasekaran (A-23) and was given by Trichy Santhan (deceased accused) to Rangam (A-24). This Maruti Gypsy was green in colour but then in order to avoid its detection by the police Rangam (A-24) gave this vehicle to workshop at Bangalore for changing its colour. Rangam (A-24) thus also made efforts to destroy evidence besides harbouring and sheltering Sivarasan, Subha and Nero with full knowledge that they were involved in the assassination of Rajiv Gandhi. In the last week of June, 1991 he was directed by Trichy Santhan (deceased accused) to meet Dhanasekaran (A-23) for shifting Sivarasan, Subha and Nero from Madras to Bangalore. Confession of Rangam (A-24) is corroborated by Mruduila (PW-65), wife of Ranganath (A-26), R. Selvaraj (PW-230), driver and K.N. Mohan (PW-222), mechanic of the workshop, who repainted Maruti Gypsy.

578. Vicky (A-25) was also aware that Sivarasan and Dhanu were involved in the assassination of Rajiv Gandhi. He accompanied Dhanasekaran (A-23) and Rangam (A-24) in tanker lorry (MO-543) for shifting Sivarasan, Subha and Nero from Madras to Bangalore. He had opened the top lid of the tanker for Sivarasan, Subha and Nero to get into the tanker. This was done with a view to evade the arrest of Sivarasan, Subha and Nero. Evidence against Vicky (A-25) is same as against Dhanasekaran (A-23) and Rangam (A-24) and his case is similar to them. He had come to India for the first time in 1985 and again in 1990. He was given the task of looking after wounded LTTE personnel, who had come to India for treatment.

579. Ranganath (A-26) gave shelter to Sivarasan, Subha, Nero and others in his house knowingly that both Sivarasan and Subha were involved in the assassination of Rajiv Gandhi. He helped Rangam (A-24) to take Maruti Gypsy (MO-540-) and Fiat car (CAU 6492) to the workshop for changing colour of the vehicles respectively from green to white and sky blue to white. After colour of Maruti Gypsy had been changed he took delivery of the same. He got the Fiat car recovered from the workshop during investigation. His conduct in getting the colour of the vehicle changed showed his total

involvement in harbouring of Sivarasan, Subha and others. He then helped the accused in renting a house for them in a false name. In the case of Ranganath (A-26), his wife Mruduila (PW-65) has deposed against him. There is no evidence to show that Ranganath (A-26) was under any threat and that on that account he had harboured the accused Sivarasan, Subha and others. Other evidence against Ranganath (A-26) is that of E. Anjanappa (PW-218), landlord of his house, his three friends R. Rajan (PW-223), R. Jayashankar (PW-229) and K. Premkumar (PW-227) and the car mechanic K.N. Mohan (PW-222).

580. These four accused Dhanasekaran (A-23), Dhanasekaran (A-23), Vicky (A-25) and Ranganath (A-26) have been rightly convicted for that offence under Section 212 IPC. The Designated Court sentenced to each of them to undergo rigorous imprisonment for two years. Ranganath (A-26) has also been convicted for an offence under Section 216 IPC and sentenced to undergo rigorous imprisonment for two years, Rangam (A-24) and Vicky (A-25) being foreign nationals have also been convicted and sentenced for an offence under Section 14 of Foreigners Act inasmuch as they came to India through illicit channel without holding any valid travel documents and unauthorisedly stayed in India, Conviction and sentence under all these charges have not been challenged.

Nalini(A-1)

581. Nalini (A-1) in her confession has implicated herself. We have rejected any challenge to her confession being involuntary. She linked many others in the chain of conspiracy. Her confession gives her pivot role in the conspiracy. She made extra judicial confession to Sasikala (PW-132) and Ravi (PW-115). Ravi (PW-115) is not expressive about the extra judicial confession given to him. Sasikala (PW-132) gives details of the extra judicial confession. Confession of Nalini (A-1) also stands corroborated in material particular by other evidence. Nalini (A-1) is educated, She is post-graduate. In her association with Murugan (A-3), Sivarasan, Subha and Dhanu she developed extreme hatred against IPKF and Rajiv Gandhi. She got associated with LTTE activities some time in February, 1991. She did have a lurking feeling that some action was in contemplation by Sivarasan, Subha and Dhanu. On 7.5.1991 she gets a positive feeling that they were planning to kill certain leaders. However, wireless message (Exh.P-392), which was sent on 7.5.1991 by Sivarasan to Pottu Amman and which was intercepted and decoded, showed that till this date Nalini (A-1) had no knowledge about any conspiracy to kill Rajiv Gandhi. Further that till 7.5.1991 only three persons Sivarasan, Subha and Dhanu knew the object of conspiracy to kill Rajiv Gandhi. On 19.5.1991 she got a strong feeling that Rajiv Gandhi was the target but she continues to associate with them. It was on 21.5.1991 that she agreed to associate herself with the killing of Rajiv Gandhi and became member of the conspiracy. On that day she goes with the group comprising Sivarasan, Subha and Dhanu from her house to achieve the object of conspiracy. Haribabu also joins them on way to Sriperumbudur where Rajiv Gandhi was to address the public meeting. She has been given a role. She has to give cover to Subha and Dhanu so that they may not be identified as Sri Lankan

Tamils and when the explosion occurs she acts as per instructions. She takes Subha with her to a particular place, performs the role assigned to her and then goes into hiding. She is fully involved in the crime. When she absconds and goes to the house of Ravi (PW-115) with Murugan (A-3) after the assassination of Rajiv Gandhi she introduced Murugan (A-3) as her brother-in-law by the name Raju. To Sasikala (PW-132) she introduced Murugan (A-3) as her brother-in-law by the name Dass (Thass). No doubt if she had the knowledge that a conspiracy was afoot to kill Rajiv Gandhi that would not make her part of the conspiracy. But then she became a conspirator only when she agreed with the group to go ahead to kill Rajiv Gandhi and became part of the group. Confession of Nalini (A-1) finds corroboration from the confession of her co-accused, extra judicial confession of Sasikala (PW-132), witnesses and exhibits including photographs. Her presence at the scene of crime could not be disputed. Confessions are of her mother Padma (A-21), brother Bhagyanathan (A-20), Arivu (A-18) and Murugan (A-3) and statements of witnesses (PW-96) N. Sujaya Narayan, a colleague of Nalini (A-1) in Anabond Silicones, who deposes to her association with Murugan (A-3); (PW-233) Bharathi, friend of Kalyani, a sister of Nalini (A-1), who deposes to Nalini's (A-1) association with LTTE cadre; (PW-210) Sankari (sister of Muthuraja, an LTTE activist) who also deposes Nalini's (A-1) association with LITE; (PW-90) Rani & (PW-189) Gajalakshimi (neighbours of Nalini (A-1) at Vellivakkam) who depose regarding visits of Sivarasan, Subha, Dhanu and Murugan (A-3) to the house of Nalini (A-1); (PW-93) I, Suyambu (News Correspondent) who identified the video cassette and Sivarasan in the cassette taken of V.P. Singh's public meeting held on 7.5.1991 at Nandanam; (PW-77) Sankaran or Gnani (Journalist) who talks about Sivarasan's presence at the public meeting of V.P. Singh on 7.5.1991 at Nandanam; (PW-81) Manivannan (video graphed) who made video coverage of public meeting of V.P. Singh on 7.5.1991 at Nandanam; (PW-179) Gunanthalalsoni (shopkeeper) who identified Nalini (A-1) as one of the girls who came to his shop with assassin Dhanu; (PW-94) A.K. Anbalagan (employees of Poompuhar, Tamil Nadu Government Sales Store) who deposes sale of sandalwood garland on 21.5.1991; (PW-27) Shanmugam (Congress Partyman) who is an eye witness and identifies Dhanu in photograph (MO-16); (PW-32) Anusuya (Sub-Inspector of Police, Security) an eye witness to the occurrence, who identifies Sivarasan, Subha, Dhanu, Nalini (A-1) and Haribabu in the photograph; (PW-28) Bhagawan Singh (Journalist) also an eye witness, who has seen Sivarasan, Haribabu and the girl (Nalini (A-1)) and identified Sivarasan in MO-2 and Haribabu in MO-17; (PW-19) D. Lakshmi Albert (Congress Party member) an eye witness, who identified Nalini (A-1), Subha in MO-188, Dhanu, Sivarasan in MO-16 and Haribabu in MO-17; (PW-20) Dr. Ramadevi (another Congress Party member and eye witness) who identified Nalini (A-1), and Subha in MO-18 (photograph), Dhanu & Sivarasan in MO-16 and Haribabu in MO-17; (PW-215) Chamundeeswari (Native of Sriperumbadur, who deposes that she had given water to Nalini (A-1), Subha and Sivarasan on the night of 21.5.1991; (PW-183) Varadharajan K. (Auto-driver at Thiruvellore) who transported Sivarasan, Subha, Nalini (A-1) from Sriperumbudur to Madras and is also a spot witness who heard the sound of blast from parking lot; (PW-195) R. Nagarajan (Congress Party member of Thrivellore) who travelled in the auto of

PW-183 to Sriperumbudur; (PW-85) D.J. Swaminathan (Neighbour of Jayakumar (A-10) at Kodungaiyur) who deposes about the visits of Sivarasan, Subha, Dhanu, Robert Payas (A-9), Santhan (A-2) and about Nalini (A-1) Subha and Sivarasan watching TV on 23.5.1991 in his house and distribution of sweets by them; (PW-104) S. Vaidyanathan (Clerk of Sriram Travels) who said regarding hiring of a car for Tirupathi by Bhagyanathan (A-20); (PW-117) R. Shankar (Proprietor of Sriram Travels) who also deposes about the trip to Tirupathi by Nalini (A-1), Murugan (A-3), Padma (A-21), Sivarasan and Subha; (PW-107) Ramasamy (Car driver, who states regarding the trip to Tirupathi and about stay of Nalini (A-1) and Murugan (A-3) at Tirupathi; (PW-115) Ravi Srinivasan (a friend of Nalini (A-1)) who deposes about the stay of Nalini (A-1) and Murugan (A-3) at his house at Madurai after the occurrence; and (PW-288) Raghethaman K. (D.S.P., CBI, SIT, Chief Investigating Officer). These witnesses also prove various documents and material objects which fully corroborate the confession made by Nalini (A-1). Her being a member of the conspiracy to murder Rajiv Gandhi stands fully proved.

Santhan(A-2)

582. Santhan (A-2), a Sri Lankan national, in his confession talks of his role in the elimination of Padmanabhan, EPRLF leader and others in Madras but that is not the subject-matter of the charge and it is no terrorist act. Santhan (A-2) was one of the nine persons, who came from Sri Lanka on a boat arriving at the shore of India on 1.5.1991. His leader was Sivarasan. At the direction of Sivarasan he first stayed in the house of Robert 1 Payas (A-9), then in the house of Haribabu and then with Murugan (A-3) and with Arivu(A-18).

583. Earlier he had come to India with Sivarasan on 15.2.1990. They reached Kodiakarai by boat. They came to Madras on 16.2.1990 when Sivarasan took him to the house of one Nagarajan, a Ceylon Tamilian, who indulged in smuggling. Sivarasan took Santhan (A-2) to MIET (Madras Institute of Engineering Technology) along with Shanmugavadivelu (A-15) and Nagarajan and got him admitted there. He paid a sum of Rs. 2300/- Nagarajan was introduced as uncle of Santhan (A-2). Sivarasan got cloths and other material purchased for Santhan (A-2). He took the responsibility to meet all the hostel and other expenses of Santhan (A-2). After the murder of Padmanabha in June, 1990 Santhan (A-2) returned to Sri Lanka.

584. On 16.5.1991 Sivarasan had told him that he was going to help Subha and Dhanu to finish Rajiv Gandhi. He was also told that Prabhakaran had paid special attention to him (Santhan (A-2))after the murder of Padmanabha and important works were allotted to him and the reason for all that was the cooperation given by him (Santhan (A-2)) in the matter of killing of Padmanabhan. Earlier it was Kanthan, an LTTE activist, who was handling the finances of Sivarasan and now it was Santhan (A-2), who had taken the charge from Kanthan. On 15.5.1991 on the strength of letter from Sivarasan, addressed to Kanthan, he was given a sum of Rs. 5 lakhs by Kanthan to be handed over to Sivarasan.

Sivarasan took Rs. 2 lakhs out of that and asked Santhan (A-2) to keep the balance with him. On 17.5.1991 Santhan (A-2) and Sivarasan went to Easwari Lodge to meet Shankar (A-4), who had also come with them in the boat carrying nine persons on 1.5.1991. Out of the money lying with Santhan (A-2) Sivarasan gave Rs. 10,000/- to Shankar (A-4). On 18.5.1991 Santhan (A-2) gave another sum of Rs. 20,000/- to Sivarasan. Same day in the afternoon Santhan (A-2) on the instructions of Sivarasan went to the house of Robert Payas (A-9) and gave Rs. 4,000/- to Ruben (A-6), who was there at that time. Another sum of Rs. 1 lakh was given to Santhan (A-2) to be handed over to Sivarasan. Santhan (A-2) in his confession said that he in all received Rs. 9.50 lakhs which money he gave to Sivarasan. Out of that Sivarasan gave him Rs. 50,000/- to meet his expenses. He also gave account to Sivarasan. Santhan (A-2) gave monies to Murugan (A-3), Jayakumar (A-10), and deceased accused Keerthi. That was after the assassination of Rajiv Gandhi. When Santhan (A-2) was in the house of Jayakumar (A-10) on 20.5.1991 Sivarasan was also there. On the following day, i.e., 21.5.1991 Santhan (A-2) went to see morning show movie in the cinema hall. When he returned home he saw Sivarasan was wearing white kurta pyjama. He saw Sivarasan inserting a white cloth bag containing a pistol at his hip and asked him whether the gun was protruding outside his dress or not. Santhan (A-2) said it was not. Sivarasan went out alone that day and returned around mid night. He woke up Santhan (A-2) and told him that Rajiv Gandhi and Dhanu had died and also told that he had brought Nalini (A-1) with him, who was helper of LTTE. This may show that till that time Santhan (A-2) did not know Nalini (A-1). Thereafter the role of Santhan (A-2) is that of dodging the police and harbouring the fellow co-accused. Santhan (A-2) before, during and after the assassination of Rajiv Gandhi consciously and willingly associated with Sivarasan in achieving the object of conspiracy. He said even after confirming that Sivarasan, Subha and Dhanu were going to kill Rajiv Gandhi he continued to associate with them and after the assassination of Rajiv Gandhi he made strenuous efforts to shift Sivarasan out of Madras with a view to evade arrest. Santhan (A-2) had a strong association with Sivarasan. He remained associated with Sivarasan even after he came to know of his plan to murder Rajiv Gandhi. He paid money to Sivarasan to finance his criminal syndicate. It is not necessary for us to determine how much money given by Santhan (A-2) to Sivarasan was utilized by him to achieve the object of conspiracy but we can impart knowledge to Santhan (A-2) that some of it was so used and from this and other circumstances we can safely infer his participation in the crime and his being a member of the conspiracy to kill Rajiv Gandhi. No doubt as originally planned Santhan (A-2) was to go abroad from India and for that purpose attempt was being made to get him passport, visa, etc. but was not successful, but then in the meanwhile he became member of the conspiracy being a confidante of Sivarasan. It is agreement, which is sine qua non of the offence of conspiracy which is quite discernible in the case of Santhan (A-2).

Murugan (A-3)

585. Murugan (A-3) is a Sri Lankan national and a hard-core LTTE activist. He was member of the suicide squad of LTTE which he joined in January, 1991. In January, 1991 itself he came to India on the direction of absconding accused Pottu Amman and was given specific jobs of preparing sketches of the interior of Madras Fort, Police Headquarters at Madras and various other police stations and their locations. He was also asked to take photographs and video graphs of these places. When he arrived at the Indian shore he was received by Sivarasan. In the course of time he came in contact with Bhagyanathan (A-20), his mother Padma (A-21) and then with Nalini (A-1). He was introduced to Haribabu (deceased accused) by Bhagyanathan (A-20). He gave financial help to the family of Padma (A-21). Murugan (A-3) in his confession statement said that earlier there was a plan to establish a household in Delhi by taking Padma (A-21) there but that plan did not proceed. Sivarasan in his wireless message (Exh.P-378) dated 22.3.1991 to Pottu Amman said that "if it is Delhi, lot of time and lot of efforts will be required". In March, 1991 when Sivarasan asked Murugan (A-3) to go to Delhi and also to find out if Padma (A-21) would come with him he felt that plans were being made for a serious act like murder. In Madras Murugan (A-3) joined Vivekananda Kalvi Nilayam Institute in the name of Rajan alias Doss. After some time he joined Sabari College. This was done to show that he was staying in Madras to learn English, etc. Murugan (A-3) started visiting Nalini (A-1) at her office and at her house at Villivakkam. He fully indoctrinated her and told her about the activities of LTTE in Sri Lanka and the atrocities committed by IPKF and their hatred towards Rajiv Gandhi. When Nalini (A-1) expressed her desire to vacate her house in Villivakkam, Murugan (A-3) persuaded her not to do so. He told her that Sivarasan was bringing two LTTE tigresses from Sri Lanka for LTTE operations who would be staying with her and that she should accommodate them in her house. Nalini (A-1) agreed to the persuasion of Murugan (A-3) and did not vacate the house. Nalini (A-1) was infatuated towards Murugan (A-3) and wanted to marry him. He, however, did not agree as that was against the LTTE code of conduct. He was, however, having sexual relations with Nalini (A-1) at her house. In this house Subha and Dhanu also used to visit Nalini (A-1) after they had come to India. Blasting of Vellore Fort and releasing of the LTTE militants, detained there, was one of the LTTE works in India as confessed by Murugan (A-3). In the end of March, 1991 Sivarasan told Murugan (A-3) that he would garland Rajiv Gandhi in a public meeting and asked Murugan (A-3) whether he could arrange an Indian girl for the purpose. Murugan (A-3) at that time understood that the next target was Rajiv Gandhi since he was responsible for the atrocities committed by IPKF and there were lot of feelings to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi. Murugan (A-3) said he would arrange an Indian girl and introduced Nalini (A-1) to Sivarasan telling her that he was his boss. Murugan (A-3) and Nalini (A-1) attended the public meeting at Marina Beach, which was addressed by Rajiv Gandhi and Jayalalitha.

586. Then in April, 1991 Sivarasan told Murugan (A-3) that he had to bring two girls Subha and Dhanu from Sri Lanka and that in order to finish the job he required an Indian girl as both Subha and Dhanu would speak Tamil in Sri Lankan dialect and in order to

mingle in the group without anyone suspecting there was need of an Indian Tamil girl. Sivarasan and Murugan (A-3) then decided to make use of Nalini (A-1). On 7.5.1991 Murugan (A-3) along with Nalini (A-1), Subha, Dhanu, Sivarasan, Haribabu and Arivu (A-18) attended the public meeting addressed by V.P. Singh, former Prime Minister of India, at Nandanam, Madras. This operation was a 'dry run' operation. Rajiv Gandhi was also former Prime Minister of India. Security arrangements would be same for both V.P. Singh and Rajiv Gandhi. These accused therefore conducted rehearsal at the public meeting for the purpose of gaining access to the VIP under the guise of garlanding him. Now Murugan (A-3) was sure that Rajiv Gandhi would be the target. In order to gain access to V.P. Singh in the public meeting Press Accreditation Cards were forged, which were prepared by Haribabu for Murugan (A-3) and Sivarasan. Forged Press Accreditation Card with the photograph of Murugan (A-3) (Exh.P-521) was seized from the house rented by Murugan (A-3) at Madipakkam after the assassination of Rajiv Gandhi. After this dry run was completed on 7/8.5.1991 Subha and Dhanu wrote two letters, one addressed to absconding accused Pottu Amman (Exh.P-95) and the other to the absconding accused Akila (Exh.P-96). Both these letters are dated 9.5.1991 and were handed over to Murugan (A-3) for their being delivered in Sri Lanka. Another letter (Exh.P-453) written by Bhagyanathan (A-20) to Baby Subramaniam was also given to Murugan (A-3). By this time Murugan (A-3) had received instructions through Sivarasan to go to Sri Lanka. These letters and other materials were carried by Murugan (A-3) to Kodiakarai in the second week of May, 1991. He waited there for the boat to arrive from Sri Lanka. Since the boat did not arrive he handed over six baggages (boxes) to M. Mariappan (PW-86), an employee of the deceased accused Shanmugham and returned to Madras. These six baggages (boxes) were subsequently recovered on the information given by Murugan (A-3), which were kept concealed in a pit near the house of Shanmugham by M. Mariappan (PW-86). These were seized by Velliapandi (PW-282), Inspector, CBI, on 25.7.1991. In the articles so recovered from these baggages (boxes) there were also two volumes of the book 'Satanic Force' (MO-124 and MO-125), video cassettes showing various parts of Fort St. George (MO-323) and photographs of DGP's office, Fort St. George (MO-256 to 259), etc. Murugan (A-3) was present in the house of Padma (A-21) on 20.5.1991 when Sivarasan came there. It was at that time that final plan was discussed and worked out for carrying out the object of conspiracy to kill Rajiv Gandhi at the public meeting at Sriperumbudur. On 21.5.1991 when Nalini (A-1) came to the house of her mother Padma (A-21) Murugan (A-3) reminded her to go to her house at Vellivakkam before 3.00 p.m. where Sivarasan, Subha and Dhanu were to meet her as from there they were to proceed towards Sriperumbudur where Rajiv Gandhi was to address the public meeting. On 20.5.1991 on the instructions of Sivarasan, Murugan (A-3) had gone to the house of Haribabu and told the sister of Haribabu to inform Haribabu to go to the house of Padma (A-21) that day. It was Murugan (A-3), who at the instance of Sivarasan, arranged Nalini (A-1), an Indian girl for accompanying Subha and Dhanu to act as their cover so as not to expose their identity. Conduct of Murugan (A-3) before and after the assassination of Rajiv Gandhi leaves no doubt in our minds that he had agreed to achieve the object of conspiracy which was to murder Rajiv Gandhi. On 7.6.1991

Murugan (A-3) gave two code sheets (MO-107 and MO-108), meant for communicating secret messages through wireless set, to Padma (A-21) and asked her to keep them in safe custody. She gave those two sheets to her colleague Devasena Raj (PW-73), which were subsequently seized from her by the police. There is sufficient evidence on record to show as to how after the assassination of Rajiv Gandhi Murugan (A-3) and Nalini (A-1) absconded and took refuge at various places including Tirupathi, Madurai and Devengere in the State of Karnataka and the fact that identity of Murugan (A-3) was concealed by them. Confession of Murugan (A-3) stands corroborated with the confessions of his co-accused Nalini (A-1), Santhan (A-2), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-21) and by independent witnesses showing his being a member of the criminal conspiracy with the object of killing Rajiv Gandhi.

Shankar(A-4)

587. Shankar (A-4) is a Sri Lankan national. He came to India on 1.5.1991 in the group of nine. This group of nine persons had come to Kodiakarai on the Indian coast. Up to 15.5.1991 Shankar (A-4) stayed with one Jagadisan and thereafter from 16.5.1991 to 23.5.1991 at Easwari Lodge, Madras. While at Kodiakarai he happened to meet Murugan (A-3), who gave him telephone number of Nalini (A-1) on a slip (Exh.P-1062). While at Easwari Lodge Santhan (A-2) and Sivarasan met Shankar (A-4) and gave him Rs. 10,000/- . It was during his stay at Easwari Lodge that he learnt about the assassination of Rajiv Gandhi on 21.5.1991. On 23.5.1991 he tried to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 installed at Ebenezer Store but was unable to do so. Shankar (A-4) was arrested on 7.6.1991 near Nagapatnam. News of his arrest was flashed in newspapers. Sivarasan sent a wireless message to Pottu Amman on 9.6.1991 (ExhP-401) which reads: "there is news that one of my associates was caught at Nagapatnam. He has told things/news about me". That is all the evidence against Shankar (A-4). Accepting all this evidence to be correct it merely shows that Shankar (A-4) had association with Sivarasan, Santhan (A-2), Robert Payas (A-9) and other members of LTTE. This is far from showing that Shankar (A-4) had even any knowledge of the plan to murder Rajiv Gandhi, the object of conspiracy. Simply because he came to India on 1.5.1991 in the group of nine along with Sivarasan and assassins will not be enough to impart even knowledge to him of the conspiracy with the object to kill Rajiv Gandhi. Apart from the general charge of conspiracy Shankar (A-4) has also been charged for an offence under Section 3(3) of TADA and for offence punishable under Section 14 of Foreigners Act, 1946. Charge under Section 3(3) of TADA must fail in view of what we have said earlier that no offence under TADA has been made out against the accused. As regards the offence under Section 14 of the Foreigners Act he has been convicted and sentenced as he entered India unauthorisedly. In fact his conviction and sentence on this charge have not been challenged.

Vijayanandan(A-S)

588. He is a Sri Lankan national and is also a senior member of LTTE. He was one of the members of the group of nine who arrived in India on 1.5.1991 by the boat reaching at Kodiakarai at the coast of India. He was found in possession of forged passport (MO-559), which was seized during the investigation. In Madras he stayed at Komala Vilas Lodge on 8.5.1991 and 9.5.1991. In the guest register of the lodge (Exh.P-496) he described himself as an Indian hailing from Madurai in Tamil Nadu. In the column 'purpose of visit' he mentioned the same as "marriage" and profession as "teacher". On 9.5.1991 Arivu (A-18) met him in the lodge and took him to the house of N. Vasantha Kumar (PW-75) where he stayed. In his statement N. Vasantha Kumar (PW-75) said that while Vijayanandan (A-5) was staying in his house he used to express his hatred towards Rajiv Gandhi and IPKF and was also narrating the atrocities committed by IPKF in Jaffna. N. Vasantha Kumar (PW-75) also said that Vijayanandan (A-5) brought with him a book titled "Alecia" with Tamil translation (MO-113) for printing. This book, he said, dealt with life of a Jewish lady who sacrificed her life for her nation. In his diary (MO-180) Sivarasan mentioned on the date 8.5.1991 about payment of Rs. 50,000/- to Vijayanandan (A-5). It has come in evidence that the purpose of Vijayanandan (A-5) coming to India was to buy books for LTTE library and in fact books were recovered and seized. In his confession Arivu (A-18) does state about the purchasing of books by Vijayanandan (A-5). There is no evidence to show that Vijayanandan (A-5) had even knowledge of any conspiracy to kill Rajiv Gandhi. Merely association with Sivarasan or Arivu (A-18) would not make Vijayanandan (A-5) a member of the conspiracy alleged against him. Since he came to India clandestinely through illicit channel he has been charged for an offence punishable under Section 14 of the Foreigners Act, 1946. There is no challenge to his conviction and sentence to this charge. The other charge against him is under Section 3(3) of TADA, which stands dismissed.

Ruben (A-6)

589. Ruben (A-6) is a Sri Lankan Tamil and is an LTTE militant. He was again one of the members of the group of nine arrived at Kodiakarai on Indian soil on 1.5.1991 from Sri Lanka. He had lost his one leg during the fight with Sri Lankan army. He went to Jaipur via Delhi from Madras by train on 17.5.1991 in the company of Vijayendran (PW-111) and an attendant. He was seen off at the railway station by Santhan (A-2) and Sivarasan. before his departure for Jaipur his cloths and other necessities had been purchased by Santhan (A-2) and Robert Payas (A-9). Both Robert Payas (A-9) and Santhan (A-2) said in their confessional statements that Ruben (A-6) had come to India for getting an artificial limb fixed. Vijayendran (PW-111) in his statement said in the second week of April, 1991 Sivarasan introduced himself and helped Vijayendran (PW-111) in delivering his letters to his relatives in Sri Lanka and then getting back replies from them. Sivarasan requested Vijayendran (PW-111) to accompany Ruben (A-6) to Jaipur to fix an artificial limb as he had no left leg. When Vijayendran (PW-111) said to Sivarasan that doctors were available at Madras itself his reply was that in India Dr. Sethi, who was based in Jaipur, was a specialist in this field and he wanted the treatment from him only. Sivarasan gave Rs.

15,000/- in cash to Vijayendran (PW-111), which was to meet the medical and conveyance expenses. Vijayendran (PW-111) reserved three seats in G.T. Express going to Delhi in his own name that of Suresh Kumar, which was one of the alias of Ruben (A-6), and other attendant Ajas Ali. Sivarasan asked Vijayendran (PW-111) to use his name as Maharaja which was his pseudo name used by him in his poems. In Jaipur they stayed in Golden Lodge where they had arrived on 19.5.1991. On 22.5.1991 Vijayendran (PW-111) said he read the news of Rajiv Gandhi's assassination at Sriperumbudur. He said they were in panic as they could be suspected being Tamilians and in that situation Ruben (A-6) suggested to vacate the lodge. On 23rd evening they shifted to Vikram Lodge. Vijayendran (PW-111) said he met Rajan, manager of the lodge, and asked him to assist him for taking treatment for Ruben (A-6) as the date of appointment by Dr. Sethi was given for 13th June only. He and Ajas Ali came back to Madras on 27.5.1991, having left Jaipur on 24.5.1991, while Ruben (A-6) stayed in Jaipur. On the morning of 29.5.1991 Vijayendran (PW-111) saw the picture of Sivarasan published in the English newspaper and he was stunned. Ruben (A-6) was arrested at Jaipur, on 26.5.1991. On account of the association with Santhan (A-2) and Sivarasan prosecution seeks to draw inference that he was a member of the conspiracy and that the real purpose of his going to Jaipur was to arrange a hide out and that the ostensible purpose was given as fixing an artificial limb. It is difficult to accept the version advanced by the prosecution as Ruben (A-6) had admittedly lost his one leg. Vijayendran (PW-111) supports the case that Ruben (A-6) did in fact go to Jaipur for fixing an artificial leg and in particular for the treatment to be given by Dr. Sethi, a renown person in the line. Simply because Sivarasan was looking after the interest of Ruben (A-6) and meeting the expenses would certainly not impart him with the knowledge of the conspiracy and even if he had a knowledge there is no evidence to show that he agreed or was a party to the object of the conspiracy. Charge against Ruben (A-6) under Section 3(3) of TADA has to be dismissed. The other individual charge against him is under Section 14 of the Foreigners Act, 1946 since he came to India clandestinely through illicit channel and without any valid document. His conviction and sentence have not been challenged on this charge.

Kangasabapathy (A-7) and Athirai (A-8)

590. Kangasabapathy (A-7) is a Sri Lankan Tamil and an LTTE helper. His son Radha, who was LTTE Area Commander, Jaffna, died in an encounter with the Sri Lankan army in 1987. Kangasabapathy (A-7) was also thus called Radhya Iyyah. He along with Athirai (A-8), a hard-core LTTE militant girl, came to India in the last week of April, 1991 in an LTTE boat from Sri Lanka. Athirai (A-8) in her confession said that she got specialised training in LTTE camps. She was assigned the work of gathering intelligence on the operations and movements of Sri Lankan army and other rival organisations like EPRLF, PLOT, etc. Reports, she prepared, would be handed over by her to Mathiah, another LTTE leader. Athirai (A-8) was introduced to Kangasabapathy (A-7) by Pottu Amman some time in March, 1991. She was told that she would go to Delhi with Kangasabapathy (A-7) for making arrangements for her stay under the guise of learning Hindi or

computer. From this she understood that the purpose of this arrangement was to collect information about some targeted places in Delhi relating to the work of the organisation and that if LTTE people came to Delhi they could stay in her house without causing any suspicion. There is nothing to show that she even had the inkling of the object of conspiracy. Kangasabapathy (A-7) was having a passport (MO-558) issued by Sri Lankan Government but he did not use the passport to come to India through authorised channel. After arriving at Kodiakarai on Indian soil Kangasabapathy (A-7) and Athirai (A-8) came to Madras to stay with Jayakumari (PW-109), a relative of Kangasabapathy (A-7). Sivarasan met them in the house of Jayakumari (PW-109). From this fact prosecution seeks to contend that only because Kangasabapathy (A-7) and Athirai (A-8) were to accomplish the object of conspiracy Sivarasan met them and took care of them and he was also to meet their expenses in India. Simply because Sivarasan was looking after them is not enough to infer their being members of the criminal conspiracy. From 7.5.1991 till 1.7.1991 Athirai (A-8) stayed with P. Thirumathi Vimala (PW-62). She was persuaded by Sivarasan to let Athirai (A-8) stay with her. Sivarasan had brought P. Thirumathi Vimala (PW-62) a letter from her mother in Sri Lanka. On 16.5.1991 Sivarasan gave Rs. 10,000/- to Athirai (A-8) for expenses. He also gave Rs. 20,000/- to Kangasabapathy (A-7) and asked him to go to Delhi to arrange an accommodation. On 20.5.1991 Kangasabapathy (A-7) accompanied by one Vanan went to Delhi and arranged a house. From this also an inference is sought to be drawn by the prosecution to which also we are unable to agree, that it was Sivarasan who sent Kangasabapathy (A-7) to Delhi one day before the object of the conspiracy was to be accomplished to fix a house there as otherwise there was no necessity for Kangasabapathy (A-7) to go to Delhi. From the notebook (MO-159) and diary (MO-180) of Sivarasan payments made to Kangasabapathy (A-7) and Athirai (A-8) are recorded. Kangasabapathy (A-7) came back from Delhi on 30.5.1991. In spite of the advice of Jayakumari (PW-109) he did not get his name registered with the police as refugee from Sri Lanka. It was said that this was on account of his fear of exposure of his identity. When Jayakumari (PW-109) asked Kangasabapathy (A-7) about Sivarasan whose photograph had been published in the newspapers he told her that it was her imagination and Sivarasan was not involved. He told Jayakumari (PW-109) that if she betrayed Kangasabapathy (A-7) and Athirai (A-8) God will not forgive her. There is a wireless message (Exh.P-407) from Sivarasan to Pottu Amman dated 14.6.1991 where Sivarasan informed Pottu Amman that there was no news of Kangasabapathy (A-7), who had gone to Delhi. Similarly when P. Thirumathi Vimala (PW-62) asked Athirai (A-8) about Sivarasan whose photo had been published, she said that Sivarasan was not connected with the assassination of Rajiv Gandhi and that he was a newspaper reporter and that he might have gone to Sriperumbudur to cover the public meeting and his photo might have been published by mistake. Kangasabapathy (A-7) and Athirai (A-8) went to New Delhi by train, on 1.7.1991. They were seen off by Santhan (A-2) where they were arrested. Prosecution has not examined Vanan with whom Vijayanandan (A-5) had also stayed and no explanation is forthcoming as to why it was not done. From the facts narrated above prosecution seeks to draw inference that both Kangasabapathy (A-7) and Athirai (A-8) were members of the conspiracy. It is difficult

to reach any such conclusion. The evidence only shows their association with Sivarasan and nothing more. Charges under Section 3(3) and 3(4) of TADA against Kangasabapathy (A-7) and Athirai (A-8) fail and they like other co-accused are acquitted of these charges. There is nothing on the record to show that Kangasabapathy (A-7) and Athirai (A-8) went to Delhi in order to fix a hide out for screening the accused involved in the assassination of Rajiv Gandhi. Charge under Section 212 against both of them must also fail and they are acquitted. However, charge punishable under Section 14 of the Foreigners Act, 1946 is sustained against both of them as they clandestinely came to India through illicit channels without any valid travel document. Their conviction and sentence under Section 14 of the Foreigners Act is upheld.

Robert Payas (A-9)

Jayakumar (A-10)

Shanthi(A-11)

591. Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. Shanthi (A-11) is Indian Tamil, married to Jayakumar (A-10). Wife of Robert Payas (A-9) is the sister of Jayakumar (A-10). From the confession of Robert Payas (A-9) and other evidence the prosecution seeks to contend that:

- a) he had knowledge about the conspiracy to kill Rajiv Gandhi;
- b) since Shanthi (A-11) was an Indian Tamil this group was sent by Pottu Amman to go to Tamil Nadu to fix a house for Sivarasan and other members of the conspiracy to accomplish the object of conspiracy inasmuch as Robert Payas's (A-9) one and half months son had been killed in an action by IPKF and he had developed great hatred towards IPKF and Rajiv Gandhi. He viewed Rajiv Gandhi as responsible for his sufferings and of all other Tamilians in Sri Lanka by IPKF;
- c) this group of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) was allowed to come to India without paying any tax to LTTE as they had agreed to take houses at Madras to accommodate LTTE militants to accomplish the object of conspiracy;
- d) they came to India in the guise of refugees but left the refugee camp and immediately came to Madras;
- e) Porur House was taken in the name of Jayakumar (A-10) where wireless set was installed by Kanthan and Nishanthan, who were communicating through this wireless set with LTTE headquarters in Jaffna;
- f) Murugan (A-3) was communicating with LTTE headquarters through this wireless set;

- g) Robert Payas (A-9) was associated with Sivarasan closely with a view to achieve the object of conspiracy as Sivarasan was meeting all the expenses of Robert Payas (A-9);
- h) Porur House was used for accommodating LTTE militants, who came to India for accomplishing the object of conspiracy;
- i) Robert Payas (A-9) burst crackers on 22.5.1991 after the assassination of Rajiv Gandhi;
- j) while staying in his house he was anxiously waiting for the news from Sivarasan On 23.5.1991;
- k) his association with Sivarasan was continued even after assassination of Rajiv Gandhi;
- l) Shankar (A-4) tried to contact him on phone on 23.5.1991 though without success; and
- m) on 27.5.1991 Robert Payas's (A-9) family with Santhan(A-2) went to Trichendur to evade arrest. They took bus tickets in assumed names but did not stay there and came back to Madras.

592. From all these circumstances even if taken to be correct it is difficult to conclude that Robert Payas (A-9) was member of the conspiracy. His association with Sivarasan or even his knowledge about the conspiracy cannot make him a conspirator. It is the agreement which is the sine qua non of the offence of conspiracy. Suspicion however strong does not take the place of proof. Wireless messages are transmitted and received in coded language. It is no body's case that Robert Payas (A-9) knew the nature or the contents of the messages. It must not be lost sight of that LTTE had various activities and all LTTE men were not necessarily involved in achieving the object of conspiracy. Evidence shows that other LTTE activists who had come to India were also engaged in arranging houses for various purposes like housing the injured LTTE cadre, storing of medicines, etc.

593. In the case of Jayakumar (A-10) it is alleged that he fixed a house in Kodungiyar for his family to stay which was taken in the name of Ramaswamy, father of Shanthi (A-11). This house was in fact for the stay of Sivarasan. It is alleged by the prosecution that it could be inferred that Jayakumar (A-10) and Shanthi (A-11) were members of the conspiracy having the object to kill Rajiv Gandhi from the following circumstances that:-

- a) they were selected by Pottu Amman along with Robert Payas (A-9) to go to India to hire houses for the stay of LTTE militants and they did not pay any tax to LTTE for coming to India;
- b) after Jayakumar (A-10) had taken a separate house in fact for the stay of Sivarasan, he in the first week of May, 1991 brought Subha, Dhanu and Nero to that house;

- c) Sivarasan was meeting the expenses of Jayakumar (A-10) since Jayakumar (A-10) and Shanthi (A-11) were not having any income;
- d) Sivarasan paid Rs. 20,000 as advance for renting a shop in the name of Shanthi (A-11) for her to run a coffee grinding shop. The machine was purchased for Rs. 15,000/- payment of which was also made by Sivarasan. He also made payment for registration of a telephone under OYT scheme in the shop in the name of Shanthi (A-11) to be used for conspiratorial work;
- e) Jayakumar (A-10) and Shanthi (A-11) were aware of "the dangerous mission" for which Sivarasan had come to India;
- f) Jayakumar(A-10) would have definitely told his wife Shanthi(A-11) about the purpose for which Sivarasan, Subha and Dhanu had come to the house;
- g) even having the knowledge that Subha and Dhanu had been brought by Sivarasan with the planning of an assassination Jayakumar (A-10) and Shanthi (A-11) still continued to associate with Sivarasan and accommodated him in their house;
- h) it was in the house of Jayakumar (A-10) that Sivarasan changed his dress to white kurta-pyjama and from where he went to the house of Vijayan (A-12) which was nearby to pick up Subha and Dhanu before going to Sriperumbudur;
- i) before that a day or so earlier Shanthi (A-11) had stitched a cloth pouch for concealing the pistol of Sivarasan;
- j) it was in the house of Jayakumar (A-10) on 7.5.1991 that Sivarasan informed Santhan (A-2) that he was going to help two LTTE tigresses at Sriperumbudur to kill Rajiv Gandhi;
- k) when Sivarasan left the house of Jayakumar (A-10) on 21.5.1991 for Sriperumbudur Santhan (A-2) was present in the house;
- l) Jayakumar (A-10) and Shanthi (A-11) continued to associate with Sivarasan even after the assassination of Rajiv Gandhi;
- m) on 22.5.1991 Sivarasan, Subha and Nalini (A-1) came to the house of Jayakumar (A-10) when he told Jayakumar (A-10) that the job was done and that Rajiv Gandhi was murdered by Dhanu;
- n) even after having come to know that Dhanu had killed Rajiv Gandhi by becoming human bomb Jayakumar (A-10) and Shanthi (A-11) accommodated Sivarasan, Subha and Nalini (A-1) in their house;

o) after the assassination of Rajiv Gandhi Jayakumar (A-10) and Sivarasan dug a pit in the kitchen in the house and concealed arms, ammunitions and other articles and things belonging to Sivarasan;

p) it is only because Jayakumar (A-10) was involved in the assassination of Rajiv Gandhi along with Sivarasan, Subha and Dhanu that he helped Sivarasan in concealing the incriminating articles; and

q) Shanthi (A-11) would certainly have known all this as the pit was dug in the kitchen where she must have been working all the time.

594. There is nothing on record to show that Jayakumar (A-10) and Shanthi (A-11) knew of the "dangerous mission" or for whose assassination Subha and Dhanu were brought by Sivarasan. True the couple was in dire financial needs and with the promise of financial help and to start some business in India away from the turmoil in Sri Lanka they agreed to come to India and to hire a house for LTTE militants to stay and they did rent a house where Sivarasan could stay. But they did not know what Sivarasan was upto.

595. From all these circumstances it is difficult to infer any agreement to make Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) as members of the conspiracy having the object to kill Rajiv Gandhi. As a matter of fact there is hardly any circumstance against Shanthi (A-11) to make her a member of the conspiracy. These accused may have a strong feeling against Rajiv Gandhi and they may have strong suspicion that Sivarasan, Subha and Dhanu had come for some dangerous mission but there is no evidence to infer that that would make them members of the conspiracy. It is correct that Jayakumar (A-10) harboured Sivarasan, Nalini (A-1) and Subha after having come to know their involvement in the assassination of Rajiv Gandhi but from that again it cannot be inferred that he was a member of the conspiracy. No charge can be levied against Shanthi (A-11) of harbouring merely because she was living in the house with her husband Jayakumar (A-10). Charges under Section 3(3) and Section 3(4) of TADA against Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) are not made out and their conviction and sentence under these charges are set aside. Charge under Section 212 IPC is, however, made out against Jayakumar (A-10) but not against Shanthi (A-11). She is acquitted of this charge while conviction and sentence of Jayakumar (A-10) is maintained. Jayakumar (A-10) and Shanthi (A-11) had also been charged for an offence punishable under Section 25(1-B)(a) of the Arms Act, 1959 as they were found in unauthorized possession of arms and ammunition without a valid licence, concealed in a pit dug in the kitchen in the house of Shanthi (A-11). No such charge can be fastened on Shanthi (A-11) though it has to be upheld against Jayakumar (A-10). His conviction and sentence, therefore, under Section 25(1-B)(a) of Arms Act is maintained. Shanthi (A-11) is acquitted of the charge of offence under Section 25(1-B)(a) of the Arms Act and her conviction and sentence set aside.

Vijayan (A-12)

Selvaluxmi(A-13)

Bhaskaran(A-14)

596. Vijayan (A-12) is Sri Lankan Tamil and a helper of LTTE. Selvaluxmi (A-13) is his wife and Bhaskaran (A-14) is the father of Selvaluxmi (A-13). Selvaluxmi (A-13) and Bhaskaran (A-14) are Indian Tamils. Vijayan (A-12) has made a confession. According to prosecution physical manifestation of their being members of criminal conspiracy was when they came to India on 12.9.1990 and were sent by Sivarasan at the instance of Pottu Amman. They came to India without paying any tax to LTTE as they had agreed to take a house on rent to accommodate LTTE militants coming to India to accomplish the object of conspiracy. They came to India in the guise of refugees. While they were staying at refugee camp at Tuticorin Sivarasan met them there. In April, 1991 Vijayan (A-12) was directed by Sivarasan to go to Madras and to fix a house in an secluded place on the outskirts of Madras. As per direction Vijayan (A-12) rented a house. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) moved in that house in the last week of April, 1991. All the expenses for paying advance rent, etc. were met by Sivarasan. On 2.5.1991 Sivarasan brought Nero, Subha and Dhanu to this house. Arivu (A-18) purchased a 12 volt car battery on 3.5.1991 for operating the wireless set installed in the house. With this Nero started communicating with the LTTE leaders in Jaffna. This wireless station installed in the house of Vijayan (A-12) is of Sivarasan being station No. 910 and was communicating with Station No. 91 in Jaffna of Pottu Amman. Thus the prosecution alleges that the house of Vijayan (A-12) was used by Sivarasan to keep informed LTTE leaders in Jaffna through wireless messages as to the progress made by him in the execution of the object of conspiracy. Purchase of two cycles by Vijayan (A-12) is also being taken as part of the conspiracy as these were used by Subha, Dhatiu and others for meeting the members of the conspiracy. While Sivarasan stayed in the house of Jayakumar (A-10) Subha and Dhanu were staying in the house of Vijayan (A-12). As to why Subha and Dhanu were staying in the house of Vijayan (A-12) it was said that it was on account of the fact that both Selvaluxmi (A-13) and Bhaskaran (A-14) were Indian Tamils and as such stay of Subha and Dhanu would not raise any suspicion in the minds of the neighbours. On 16/17.5.1991 Vijayan (A-12), Sivarasan and Nero on the instruction of Sivarasan had dug a pit in the kitchen in the house of Vijayan (A-12) for the purpose of concealing the wireless set, its accessories and other materials used by Sivarasan. This showed according to the prosecution that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were not genuine refugees and the conduct of Vijayan (A-12) would show his knowledge of the object of conspiracy and the purpose for which Subha and Dhanu were brought to India by Sivarasan. It is also alleged that the fact of concealment of wireless set in a pit dug in the kitchen could not have been done without the knowledge of Selvaluxmi (A-13) who used to cook food for her family and for Subha and Dhanu. On 21.5.1991 Sivarasan came to the house of Vijayan (A-12) and asked Nero to

send the wireless message to Jaffna. He also gave instructions to Subha and Dhanu and left the house. At about 12.30 p.m. Sivarasan dressed in a white kurta-pyjama came and took Subha and Dhanu with him. When Sivarasan asked Vijayan (A-12) to bring an auto- rikshaw for him, Subha and Dhanu to go, he specified A-12 not to bring the auto- rikshaw near the house and this was done so that the house where they were staying be not identified. Prosecution then alleges that on 21.5.1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were aware that Sivarasan, Subha and Dhanu had gone for attending Rajiv Gandhi's meeting at Sriperumbudur. On 22.5.1991 Sivarasan came to the house of Vijayan (A-12) and told him that "the work was finished and that Rajiv Gandhi had been killed". This has come in the confession of Vijayan (A-12). Prosecution poses a question as to why Sivarasan should tell Vijayan (A-12) that the work was finished and provides the answer that it could be so only because Vijayan (A-12) was aware of the object of conspiracy and he was anxiously waiting for the result from Sivarasan and also that he was fully aware that Rajiv Gandhi was killed by Dhanu by becoming a human bomb. The fact that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran^{8:09 AM 2/18/2008} continued to be associated with Sivarasan and Subha even after the assassination of Rajiv Gandhi and accommodated them would be another circumstance to show their knowledge about the object of conspiracy. They are also guilty of having harboured Sivarasan and Subha knowing fully well that they were the persons involved in the killing of Rajiv Gandhi. After the assassination Sivarasan was staying in the house of Vijayan (A-12) along with Subha and regularly sending messages to Pottu Amman through wireless explaining the developments. Association of Bhaskaran (A-14) is also alleged but this did not end with the harbouring of Sivarasan and Subha as he made efforts to get another accommodation for the hiding of Sivarasan and Subha for which he sought the help of his relative N. Chokkanathan (PW-97). It is also the case of the prosecution that Bhaskaran (A-14), who was all along staying in the house of Vijayan (A-12) and Selvaluxmi (A-13), was also fully aware that Sivarasan, Subha and Dhanu had gone to Sriperumbudur and killed Rajiv Gandhi and when particularly Dhanu did not return. Relying on the confession of Vijayan (A-12) lastly the prosecution said that one or two days after 23.6.1991 Santhan(A-2) came with deceased accused Suresh Master and took Sivarasan and Subha. On 23.6.1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) went to Tuticorin and again returned to Madras after a week. While Vijayan (A-12) and Bhaskaran (A-14) were arrested on 8.7.1991 Selvaluxmi (A-13) was arrested on 16.5.1992.

597. We have carefully gone through the evidence against Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) and the submissions of the prosecution as to how they are members of the conspiracy with the object to kill Rajiv Gandhi. The evidence at the most merely shows that they associated with Sivarasan. The evidence that they had knowledge of the conspiracy is lacking. Their knowledge about the murder of Rajiv Gandhi by Sivarasan, Subha and Dhanu was acquired by them only after Rajiv Gandhi was killed. As we have repeatedly said in any case mere knowledge of the existence of conspiracy is not enough. One has to agree to the object of conspiracy to be guilty of the offence under

Section 120A IPC. Vijayan (A-12) would not know the nature of the messages which were transmitted or received from the wireless set installed in his house as all these were in coded language. Two code sheets were given by Murugan (A-3) to Padma (A-21) to be kept in safe custody. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) have been charged for offence under Section 3(3) of TADA and have been jointly charged for offence under Section 3(4) TADA but these charges must fail and they are acquitted of these charges. Then Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) are charged for an offence under Section 212 IPC for having harboured Sivarasan Subha and Nero in order to screen them from legal punishment knowing that they had committed murder of Rajiv Gandhi and others. They all have been convicted and sentenced. Vijayan (A-12) and Selvaluxmi (A-13) are also charged for offence under Section 6(1A) of Wireless Telegraphy Act, 1933 for having in unauthorised possession of unlicensed wireless transmitter used for transmitting messages by Sivarasan and Nero using code sheets for such transmission to other conspirators residing in Sri Lanka, namely, absconding accused Prabhakaran and Pottu Amman and they have been convicted and sentenced of this offence. Though in our view Vijayan (A-12) and Bhaskaran (A-14) have been rightly convicted and sentenced under these charges but these charges cannot stand against Selvaluxmi (A-13). All members of the household cannot be charged like this without more. A-13, being the wife of A-12, was living with her husband A-12 and merely on that account knowledge and intention cannot be attributed to her, particularly when no overt act is alleged against her. She is acquitted of all these charges and her conviction and sentence set aside.

Shanmugavadivelu (A-15)

598. Shanmugavadivelu (A-15) is a Sri Lankan Tamil. He is living in India since 1987. As to how he was a member of the conspiracy with the object to kill Rajiv Gandhi the prosecution relies on the following circumstances:-

1. From the papers seized from Ruben (A-6) at Jaipur on 20.6.1991 in one of the folios the name Thambi Anna' is written with telephone number 864249, which in fact is the telephone number of Shanmugavadivelu (A-15).
2. Shanmugavadivelu (A-15) was known to Santhan (A-2) and Sivarasan in early 1990 when Shanmugavadivelu (A-15) helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.
3. When Sivarasan came to India in a group of nine on 1.5.1991 he brought a letter dated 27.4.1991 (Exh.P-209) addressed to P. Thirumathi Vimala (PW-62) from her mother. To locate the house of P. Thirumathi Vimala (PW-62) Shanmugavadivelu (A-15) took Santhan (A-2) and Sivarasan to her house in the first week of May, 1991. In his confession Shanmugavadivelu (A-15) said that P. Thirumathi Vimala (PW-62) was teacher of his son in a school and was at that time living in the same colony. P. Thirumathi Vimala (PW-62)

says that Shanmugavadivelu (A-15) was her distant relative and came from the same place in Sri Lanka.

4. Arrival of Santhan (A-2) to India in May, 1991 was known to Shanmugavadivelu (A-15) even in April, 1991 and that would be so from the statement of P. Veerappan (PW-102) when Shanmugavadivelu (A-15) approached him towards the end of April, 1991 to send Santhan (A-2) abroad. Further that Shanmugavadivelu (A-15) represented that Santhan (A-2) was Indian national when he knew that he was a Sri Lankan Tamil.

5. Both P. Veerappan (PW-102) and Vamadevan(PW-114)have stated that they demanded Rs. 80,000/- from Shanmugavadivelu (A-15) for sending Santhan (A-2) abroad.

6. During the trial in the Designated Court, Santhan (A-2) filed an application for return of the amount of Rs. 80,000/- paid by him through Shanmugavadivelu (A-15) to P. Veerappan (PW-102). On this application Shanmugavadivelu (A-15) made an endorsement that he had no objection to the return of said amount to Santhan (A-2).

7. Shanmugavadivelu (A-15) was keeping money given to him by Santhan (A-2) and giving him back as and when required by him. That was before the assassination of Rajiv Gandhi.

8. Even after the photo of Rajiv Gandhi was published in the newspaper in connection with the murder of Rajiv Gandhi Shanmugavadivelu (A-15) continued to associate with Santhan (A-2) who was close associate of Sivarasan. One week after the murder of Rajiv Gandhi Santhan (A-2) came to Shanmugavadivelu (A-15) and took Rs. 3,10,000/- from him. One day he again came and took Rs. 40,000/- leaving the balance amount with Shanmugavadivelu (A-15). By this time photo of Sivarasan was published in the newspapers and when Shanmugavadivelu (A-15) inquired from Santhan (A-2) about Sivarasan he told him not to worry about Sivarasan and left. On this count it is alleged that Shanmugavadivelu (A-15) was acting as financier of the LTTE organization.

9. Athirai (A-8) was regularly visiting Shanmugavadivelu (A-15) which proves her association with Shanmugavadivelu (A-15), Santhan (A-2) and Sivarasan.

599. In his confession Shanmugavadivelu (A-15) does not talk of the fact that he approached P. Veerappan (PW-102) and Vamadevan (PW-114) for sending Santhan (A-2) abroad. It is wrong on the part of the prosecution to allege on the basis of evidence that Athirai (A-8) had been regularly visiting Shanmugavadivelu (A-15). There is no such evidence. There is nothing in the evidence to suggest even remotely that when Santhan (A-2) asked Shanmugavadivelu (A-15) to keep certain amount with him and took that amount back on certain dates Shanmugavadivelu (A-15) had even an inkling that there was any conspiracy afoot or that Santhan' (A-2) and Sivarasan were members of that conspiracy. It is difficult to accept the prosecution case that arrival of Santhan (A-2) was

known to Shanmugavadivelu (A-15) even before his arrival in India. When P. Veerappan (PW-102) said that it was in the end of April, 1991 that Shanmugavadivelu (A-15) approached him it could be 1st week of May, 1991 as well. P. Veerappan (PW-102) was not keeping any record of the visit of Shanmugavadivelu (A-15) to him and his statement in court was recorded years later. It appears to us that prosecution is looking at every circumstance with the proverbial jaundiced eye. From what the prosecution alleges no case whatsoever of Shanmugavadivelu (A-15) being member of the conspiracy has been made out. We do not find any basis in the prosecution to prosecute Shanmugavadivelu (A-15) for the offence alleged against him. Rather evidence shows his and his wife's hatred for LTTE and its men. Apart from the charge of conspiracy Shanmugavadivelu (A-15) has also been charged for offence under Section 3(3) of TADA which again stands failed against him. He is acquitted of all the charges and his conviction and sentence set aside.

Ravi (A-16)

Suseendran (A-17)

600. Following circumstances have been alleged by the prosecution to make Ravi (A-16) and Suseendran (A-17) members of the conspiracy:

1. Both Ravi (A-16) and Suseendran (A-17) though Indian Tamils, became strong LTTE activists. Ravi (A-16) had been a frequent visitor to Sri Lanka to meet LTTE leaders there. Because of the atrocities committed by IPKF both developed hatred against it.
2. Ravi (A-16) was indoctrinated by Pottu Amman, who asked him to go to India and make arrangements for initiating armed revolution in Tamil Nadu. Ravi (A-16) involved Suseendran (A-17) in his attempt to start armed revolution with the support of LTTE.
3. Suseendran (A-17) started collecting youths and they were taken to Jaffna for training by LTTE for the purpose of constituting a force for armed revolution in India.
4. Once when in Sri Lanka, Ravi (A-16) was introduced to Sivarasan by Pottu Amman, who told him that he should keep close contacts with Sivarasan. Pottu Amman also made reference to an important event that was going to take place in Tamil Nadu for which he said role of Ravi (A-16) should be a prominent one.
5. While Ravi (A-16), Suseendran (A-17) and Sivarasan were waiting in Sri Lanka for a boat to go to India, Ravi (A-16) pointedly asked if it was Rajiv Gandhi, Sivarasan did not give any reply directly but Sivarasan had uttered words in such a fashion as to confirm the suspicion of Ravi (A-16) that target was Rajiv Gandhi.
6. Ravi (A-16) was in touch with Sivarasan, who also provided finance to him.

7. Ravi (A-16) was also given the task of finding airport security by Sivarasan on the arrival of a VIP there. In March, 1991 Ravi (A-16) asked Sivarasan that three months had gone by when they arrived from Sri Lanka but nothing has been done about the work mentioned by Pottu Amman. Reply of Sivarasan was "we should not go in search of target and that the target should come to us" and further "it may take place in near future if election is declared".

8. On 10.5.1991 Ravi (A-16) was at Kodiakkarai where Murugan (A-3) also came and another LTTE helper Chokkanathan was also present. When Chokkanathan asked Murugan (A-3) in presence of Ravi (A-16) as to "why the work of Sivarasan has not yet been completed". To this Murugan (A-3) answered " how could that not be completed. It has to take place".

9. On the night of 21.5.1991 Ravi (A-16) was sleeping in the hut opposite to the house of Shanmugham (DA) at Kodiakkarai. In the mid night he was told by a servant of Shanmugham that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died and that a message has been received that Shanmugham and others should not remain there.

10. Ravi (A-16) and Suseendran (A-17) harboured Subha and Sivarasan after assassination of Rajiv Gandhi knowing that they had committed the offence of murder. Ravi (A-16) was making all attempts for Sivarasan and Subha to escape from India after the assassination of Rajiv Gandhi.

11. Ravi (A-16) went to Sri Lanka in September, 1991 and came back with arms and ammunition and other articles given to him by Pottu Amman. Some of the arms and ammunition he handed over to Suseendran (A-17).

601. From all these factors prosecution seeks to infer that Ravi (A-16) and Suseendran (A-17) had knowledge of the object of conspiracy, had agreed to the same and were thus members of the conspiracy. At one point of time Ravi (A-16) in his confession did say that he had a strong suspicion that the target was Rajiv Gandhi but that would certainly not make him a member of the conspiracy. In wireless message dated 7.5.1991 sent by Sivarasan to Pottu Amman he categorically stated that only three persons, namely, he, Subha and Dhanu knew about the object of conspiracy. Association, however, strong of Ravi (A-16) with Sivarasan and between Ravi (A-16) and Suseendran (A-17) could not make them members of the conspiracy without more.

602. As regards attempts of Ravi (A-16) and Suseendran (A-17) for creation of a separate armed force in Tamil Nadu they have already been tried in CC 7/92 in the Designated Court No. 2 along with others and acquitted of the charge of conspiracy but convicted under Section 5 of TADA. The confession made by Suseendran (A-17) and Ravi (A-16) in

CC 7/92 and the charges framed against them were produced during the course of hearing of this reference and the position in brief is as under-

In C.C. 7/92 there was a general charge of conspiracy against 32 accused including Ravi (A-16) and Suseendran (A-17), who were arraigned as accused Nos. 2 and 3 in CC 7/92. The charge was of conspiracy of doing illegal acts, viz., (1) to create a force in the name of Tamil Nadu Retrieval Force to separate Tamil Nadu from the Union of India and to strike terror in the country by threatening the lawfully established Government and to kill people who had taken oath to safeguard the sovereignty, unity and integrity of India; (2) to instigate and advise people to go and get arms training in Sri Lanka for preparing plan of establishing the force and building up of arms and ammunition having brought them from Sri Lanka without licence and in contravention of various enactments in force in India; and (3) to give refuge to terrorist and in this offence of conspiracy they did commit various illegal acts under TADA, Arms Act, Explosive Substances Act, Arms Act, Wireless & Telegraphy Act, Passport Act and Emigration Act.

Individual charges against Ravi (A-16) were that (1) he recruited co-accused numbering eight, he himself went to Sri Lanka, got training in arms through Pottu Amman, helped in organizing Tamil Nadu Retrieval Force, assisted co-accused by arranging houses, setting up wireless sets at Dindigul, was found in possession of arms and ammunitions, thus committed various terrorist acts punishable under TADA; (2) that he along with other co-accused clandestinely came to India in LTTE boat with bombs and ammunition; and (3) that he went to Jaffna without valid passport for getting training in wireless there.

In the confession made on 12.12.1991 by Ravi (A-16) in that case, he said as under:

In June 1986, he went to Sri Lanka. He was given training for 31/2 months in arms and ammunition. In August 1987 he is in India in his uncle's house at Madipakkam and had joined a school to continue his studies. He, however, keeps on going to LTTE office at Adyar and helping Kittu alias Krishankumar, an LTTE activist. He was put in house arrest in 1988 along with Kittu in a lodge in Madras Central Prison. Then he was taken to IPKF camp in Sri Lanka. After his release from there, he met LTTE leader "Santhan" who was in-charge of Intelligence Wing who told him that if he could bring young people from Tamil Nadu, they will be given training in arms. He gave him letter in February 1990. He comes back to India to Salem and meets Kiruban, another LTTE activist. On that letter being given, he got Rs. 50,000/- . He met Suseendran (A-17) and asked him to recruit persons for arms training to which Suseendran (A-17) agreed. With Suseendran (A-17) and eight (8) others, he again goes to Sri Lanka and they are given training in arms and ammunition. Since war had started, he had to stay in Sri Lanka for 5 months. During his training, he met Pottu Amman, Chief of LTTE Intelligence Wing who instigated him for armed revolution. These 10 people, i.e., he, Suseendran (A-17) and 8 others resolve to form Tamil National Retrieval Troops under his leadership. He and Suseendran (A-17) were given training in wireless as well. In December 1990, he returns to India in LTTE boat with Suseendran (A-17) and others including Sivarasan who told him to meet him

hear Devi Theatre at Madras. When he met Sivarasan, he gave him Rs. 50,000/-. On various dates Sivarasan gave him a total sum of Rs. 6,00,000/-. He sent more persons for arms training to Sri Lanka. After the assassination of Rajiv Gandhi, Sivarasan met him at his Aunt's (Logamatha) house at B-72, Ml Colony Phase II, Agasthiya Nagar, Villivakkam. Sivarasan asked him to protect Suba and to keep her in a safe place. He sent both of them through Suseendran (A-17) to Pollachi. He talks of his other activities. Then he again went to Sri Lanka on 23.8. 1991 when boat arrived from there. Suseendran (A-17) did not accompany him. He met Pottu Amman on 28.8.1991. He gave him further arms and ammunition and also 12 gold biscuits weighing 10 tolas each. He returned to India, on 10.9.1991. These arms and ammunitions were unloaded in two wooden boxes and two gunny bags. On 12.11.1991 Customs, however, seized those wooden boxes and gunny bags. He concealed gold biscuits in the bed room of mother-in-law of Charles, six gold biscuits he gave to Ganesh, an LTTE activist. He asked Suseendran (A-17) to purchase petrol and diesel. He describes his further activities in organising the Force and buying of a Motorcycle etc. He was arrested on 23.10.1991. Police seized from his suitcase one 9 mm pistol, 2 magazines, 29 cartridges, knife and cyanide capsules. On his statement, gold biscuits concealed by him were recovered.

In his confession also recorded on 12.12.1991, Suseendran (A-17) said as under:

He met Ravi (A-16) in May 1990 and they talked about LTTE. Ravi (A-16) asked him if he was ready to go to Sri Lanka for arms and ammunition training to which he agreed. Suseendran (A-17) collected eight (8) more persons and they all 10 went to Sri Lanka. They went to sea-shore by a Maruti Gypsy and Ambassador car of LTTE. There LTTE boat was available to go to Sri Lanka. They were given training in handling of arms and ammunition. Since war had started, they have to stay in Sri Lanka for five more months. Pottu Amman had visited them during their training. This group of 10 resolved to form Tamil National Retrieval Troops and decided to work under the leadership of Ravi (A-16) for the purpose of committing terrorist acts in India and for separation of Tamil Nadu from Indian Union. He and Ravi (A-16) were given training in Wireless operation also. In December 1990, they returned to India along with Sivarasan. Ravi (A-16) told him to meet at Madras after three days. Ravi (A-16) gave him Rs. 500/- and he went to Pollachi. When he met Ravi (A-16) he told him to collect more youngsters to send them to Sri Lanka for arms training.

He and one Paulraj were at Palani when Rajiv Gandhi was killed. After four days, he came to Madras and met Ravi (A-16). Sivarasan was also there. Sivarasan told Ravi (A-16) and him to keep safely an LTTE tigress Subha for some days. He agreed. He went to bus stop and reserved three tickets for him, Sivarasan and Subha. Then they left for Trichy and from there to Pollachi. They stayed at the house of Shanmugasundaram whose wife is his distant relative. He told them that Sivarasan and Subha were husband and wife and asked them to arrange their stay for three days. After five days Sivarasan and Subha left for Madras. He told about his other activities and then he said Ravi (A-16) and others left for Sri Lanka. He bought petrol and diesel to be sent to Sri Lanka. Rs. 60,000/- were given to him by Paulraj as directed by Ravi (A-16). He bought 1,000 litres petrol for Rs. 34,800/-

. The petrol was to be smuggled to Sri Lanka. Earlier also, petrol and diesel including explosives were smuggled to LTTE in Sri Lanka. On the night of 10.9.1991, Ravi (A-16) and others arrived in India with two wooden boxes and two gunny bags filled with arms and ammunition. Ravi (A-16) asked him to conceal wooden boxes and gunny bags in the seashore. He again bought petrol. A car was purchased, When he was in the house of mother-in-law of Theodre Charles at Dindigul, he was arrested by the Police. From him one cyanide capsule, Rs. 30,000/- and some personal articles were seized.

603. It would be seen that a charge under Section 212 IPC for harbouring Subha and Sivarasan could also have been framed against Ravi (A-16) and Suseendran (A-17) but that was not done. Question arises if provision of Section 300 of the Code applies that bars trial of Ravi (A-16) and Suseendran (A-17) for the same offences in the present case.

604. Ravi (A-16) and Suseendran (A-17) have been separately charged in the present case for offence under Section 3(3) and Section 3(4) of TADA. These charges fail against them like against other co-accused and they are acquitted of the same. Ravi (A-16) and Suseendran (A-17) have also been separately charged for offence under Section 212 IPC and have been convicted and sentenced. Similarly they have been separately charged for offence under Section 5 of TADA and convicted and sentenced. That certainly could not have been done as in CC 7/92 they have already been tried for an offence under Section 5 of TADA and convicted and sentenced. Facts constituting the charge under Section 5 of TADA in CC 7/92 and in the present case are the same. Conviction of Ravi (A-16) and Suseendran (A-17) in the present case under Section 5 of TADA is set aside and they are acquitted of this charge. Also they have been separately charged under Section 5 of the Explosive Substance Act and similarly convicted and sentenced. They have then been charged for an offence punishable under Section 25 of the Arms Act and convicted and sentenced. Mr. Natarajan, learned Counsel appearing for them, did not press his argument on the applicability of the provision of Section 300 of the Code inasmuch as he said that since these accused have already undergone the period of their sentence they will not challenge their conviction under the charges under IPC, Explosive Substance Act, Section 5 of TADA and Arms Act. In this view of the matter we need not go into the question if Ravi (A-16) and Suseendran (A-17) could have been tried again for these charges as they have been either charged or could have been charged in CC 7/92 which was decided on 23.1.1998. Charges of conspiracy against both of them and others for constituting a force to separate Tamil Nadu from the Union of India as to strike terror etc. was dismissed in CC 7/92.

605. Now, In the cases of Arivu (A-18), Irumborai(A-19), Bhagyanathan(A-20), Padma (A-21) and Suba Sundaram (A-22), following circumstances appear in evidence.

Arivu (A-18)

- a) Arivu (A-18), an Indian Tamil, joined the LTTE movement and started his propaganda work for LTTE in India and was on its payroll. He came in contact with Bhagyanathan (A-20), Haribabu (DA) and he took training in Suba Studio of Suba Sundaram (A-22).
- b) He went to Sri Lanka along with Irumborai (A-19) and Baby Subramaniam, an LTTE leader, and while there he learnt about the atrocities committed by IPKF. He developed great hatred towards Rajiv Gandhi, whom he held to be responsible for sending IPKF to Sri Lanka.
- c) In March, 1991 Arivu (A-18) went to Vellore with Murugan (A-3) for LTTE work to see Vellore Fort where Sri Lankan Tamils and LTTE personnel were detained. According to Arivu (A-18) blasting of Vellore Fort and jail and releasing of the militants from there was one of the LTTE acts in India,
- d) In April, 1991 on one of his visits to the house of Padma (A-21) Sivarasan asked Arivu (A-18) if he was prepared to work for him. Arivu (A-18) agreed to work for Sivarasan.
- e) Arivu (A-18) purchased a 12 volt car battery (MO-209) for the wireless set which Sivarasan was to install in the house of Vijayan (A-12). Not only the battery but for installation of wireless station Arivu (A-18) also bought wire and other articles. While making the purchases Arivu (A-18) gave his name as Rajan and also a false address. With this wireless set Sivarasan was contacting LTTE headquarters in Jaffna in Sri Lanka. This battery was subsequently recovered from the pit dug in the kitchen of the house of Vijayan (A-12).
- f) Arivu (A-18) purchased a Kawasaki Bajaj Motorcycle (MO-82) for Sivarasan to facilitate his movements.
- g) On 18.4.1991 Arivu (A-18) attended the election meeting addressed by Rajiv Gandhi and Jayalalitha at Marina Beach, Madras, Nalini (A-1) and Murugan (A-3) also attended that meeting.
- h) On 7.5.1991 Arivu (A-18) attended the public meeting of V.P. Singh at Nandanam, Madras where Nalini (A-1), Subha, Dhanu and Murugan (A-3) were also present. He knew Subha and Dhanu, who were the lady tigresses from Jaffna and had been brought by Sivarasan for his job. These two ladies were moving about with Nalini (A-1). Attending the meeting of V.P. Singh was a dry run for some future engagements/acts.
- i) After President's Rule was imposed in Tamil Nadu there were restrictions placed on the movement of LTTE cadre in Tamil Nadu. Persons belonging to LTTE cadre went underground. Arivu (A-18), however, continued his propaganda work for LTTE with the material that was kept in a room occupied by Baby Subramaniam in the house of Sankari(PW-210). These materials were removed by Arivu (A-18) with the help of

Bhagyanathan (A-20) and deceased accused Haribabu in the month of April, 1991 to the house of Radhakrishnan (PW-231), a friend of Arivu (A-18). These were subsequently recovered and seized during the course of investigation and among the articles so recovered there was one black book (MO-609), which depicted the electric circuit identical to the electric circuit in the reconstructed explosive device(IED)(MO-722) used by Dhanu to trigger the blast which killed Rajiv Gandhi and others. Arivu (A-18) is a diploma holder in Electronics and Telecommunication Engineering.

- j) During the second week of May, 1991 Arivu (A-18) purchased two numbers of 9 volt golden power battery (MO-678) and gave the same to Sivarasan. This battery was used in the belt bomb by Dhanu and portions thereof were seized at the scene of the crime. Arivu (A-18) in his confession admitted that 9 volt battery purchased by him was used by Sivarasan to kill Rajiv Gandhi. It is in evidence that components which were left after the blast also contained pieces of 9 volt cell called golden power which was the source of power for exploding the device.
- k) After it was published in the newspapers on 19.5.1991 about the visit of Rajiv Gandhi to Tamil Nadu for 21.5.1991 and 22.5.1991 a meeting was organized on 20.5.1991 in the house of A-21 though she was not a party to that meeting. When Arivu (A-18) came to the house of Padma (A-21) he learnt that Sivarasan had come and had a talk with Nalini (A-1) and Haribabu. He also came to know that that talk was regarding the public meeting of Rajiv Gandhi to be held on the following day at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu in the house of Padma (A-21).
- l) Haribabu used the Kodak film in his camera to take photographs at the scene of crime on 21.5.1991. It has come in evidence that it was that Kodak colour film which was used in the camera by Haribabu.
- m) After Rajiv Gandhi was killed on 21.5.1991 Arivu (A-18) on the following day removed his things from the house of Padma (A-21), like TV, VCR, etc., which were subsequently recovered and seized. On the night of 21.5.1991 Arivu (A-18) had gone to see a movie with Bhagyanathan (A-20).
- n) When Sivarasan came to the house of Padma (A-21) on 23.5.1991 and narrated the happening at Sriperumbudur on 21.5.1991 he sent Arivu (A-18) to the studio of Suba Sundaram(A-22) to check whether arrangements had been made for getting the dead body of Haribabu.
- o) In his letter (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) he complained about Sivarasan associating with him persons like Arivu (A-18) and others.

606. Conduct of Arivu (A-18) before and after the assassination of Rajiv Gandhi leaves no one in doubt that he was member of the conspiracy. It is not necessary for a conspirator

to be present at the scene of the crime to be a member of the Conspiracy. Mr. Natarajan said that Arivu (A-18) was merely an errand boy and was following the instructions of Sivarasan and he himself had no active role to play. He said Arivu (A-18) bought the car battery and 9 volt golden power battery at the instance of Sivarasan and so also Kawasaki Bajaj motorcycle. He further argued that merely on these counts it cannot be said that Arivu (A-18) had knowledge of the conspiracy and that he himself did not agree to achieve the object of the conspiracy. Circumstances rather show that Arivu (A-18) was in the thick of conspiracy. He knew that to explode the I ED power source would be 9 volt battery and that is why he purchased battery of that power and which was ultimately used in exploding the device killing Rajiv Gandhi and others. Mr. Natarajan also said that the version of Arivu (A-18) that this battery was used for explosion of the I ED was his knowledge derived after the explosion cannot be accepted. Arivu (A-18) has, therefore, been rightly convicted for various offences charged against him by the Designated Court.

607. Irumborai(A-19)

- a) Irumborai (A-19) was given this name by LTTE. His original name is Duraisingam.
- b) Irumborai (A-19) was assisting Suresh Master (DA) in the treatment of injured LTTE cadres in Tamil Nadu and other places. In his confession Irumborai (A-19) narrated important incidents which took place between him and Trichy Santhan (DA).
- c) Irumborai (A-19) had gone to Jaffna in Sri Lanka along with Arivu (A-18) and Baby Subramaniam. He returned in November, 1990 along with Suresh Master and two injured ladies.
- d) Rangam (A-24) had taken a house on renting March, 1991 in Alwarthirunagar which was used for stay of injured LTTE care.
- e) From the letter dated 7.9.1991 (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) prosecution seeks to draw inference that Irumborai (A-19) had prior knowledge about the killing of Rajiv Gandhi. It is difficult to draw any such inference from this letter that Irumborai (A-19) had knowledge of any conspiracy to kill Rajiv Gandhi.
- f) Irumborai (A-19) was present in the house at Bangalore when Sivarasan, Subha and Nero were brought there hidden in a tanker lorry by Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25). Presence of Irumborai (A-19) in that house was not by any prior arrangement but on account of his job to look after the treatment of injured LTTE cadre, who were there. One of such injured cadre was Jamuna alias Jamila, who had been shifted to Bangalore from Neyveli by Irumborai (A-19) where she was getting treatment for fixing of an artificial limb on her leg, which she had lost in battle with Sri Lankan army. Irumborai (A-19) had admitted Jamuna alias Jameela in Neyveli for the purpose of fixing an artificial leg. Jamuna was about 16/17 years of age and was an LTTE tigress. It was at

the instance of Suresh Master (DA) that Jamuna was brought to Bangalore and was in the house at the time when Sivarasan, Suba and Nero came there. It was Trichy Santhan (DA) who told Irumborai (A-19) as to how Sivarasan, Suba and Nero came to Bangalore hidden in a tanker lorry of Dhanasekaran (A-23).

- g) When Irumborai (A-19) learnt from Trichi Santhan in the second week of May, 1991 about some impending action of LTTE to kill an important leader he told Suresh Master to inform the injured LTTE boys to be careful. Vicky (A-25) was arrested in Coimbatore and accused Dixon died. Since Vicky (A-25) knew about the place at Indira Nagar, Bangalore, where Sivarasan, Suba and Nero and about 20-25 injured LTTE cadre were staying it was decided to arrange a separate house for Sivarasan, Suba and Nero. Irumborai (A-19) took three LTTE injured boys and left them in a particular house.
- h) When Irumborai (A-19) was on his way to Jaffna in Sri Lanka after arranging a boat he was intercepted by the Indian Navy and handed over to the Police. Letters (Exh. P-128 and P-129) were recovered from him.
- i) Irumborai (A-19) learnt about the death of Rajiv Gandhi on the morning of 22.5.1991. To him the death of Rajiv Gandhi seemed to be a brave deed and an act of revenge.

But then whatever feeling a person may have that would not make him a member of the conspiracy. Further apart from the fact that Irumborai (A-19) knew certain members of the LTTE operating in India but there is no evidence whatsoever that he had any knowledge of the conspiracy with the object to kill Rajiv Gandhi. Documents (Exh.P-128 and P-129) are not admissible in evidence. There is nothing on record to show that Trichy Santhan (DA) was a member of the conspiracy to kill Rajiv Gandhi. Rather evidence shows that he was looking after the injured LTTE cadre in India and supplying various medicines to Sri Lanka to support the war efforts of LTTE there. It also cannot be presumed that since these documents were recovered from Irumborai (A-19) he knew the contents thereof or that the contents were correct. The letters were written much after the object of conspiracy had been achieved and author dead. Irumborai (A-19) has been charged for offence under Section 3(4) of TADA. This charge against him must fail. He has also been charged for an offence under Section 212 IPC on the allegation that he assisted Sivarasan, Subha and Nero in a house at Indira Nagar to evade their apprehension. He has then been charged for an offence under Section 12 of Passport Act having contravened Section 3 of that Act. His conviction and sentence under these charges have not been challenged. Though we acquit him of charge of conspiracy to murder Rajiv Gandhi we confirm his conviction and sentence under Section 212 IPC and Section 3 of the Passport Act.

608. Bhagyanathan (A-20)

Padma(A-21)

- a) Bhagyanathan (A-20) and Padma (A-21), son and mother, are Indian Tamils. Nalini (A-1) and Kalyani are daughters of Padma (A-21). Padma (A-21), who was employed in Kalyani Nursing Home, was staying in the quarters of the Nursing Home till January, 1991 when shifted to Royapettah house.
- b) In this house Murugan (A-3), a hard-core LTTE militant stayed concealing his identity.
- c) Bhagyanathan (A-20) purchased LTTE press from Baby Subramaniam at a very nominalcost. That was in May, 1990. He had promised to go on printing LTTE publications. He took training in photography from Suba Studio of Suba Sundaram (A-22). Haribabu and Arivu (A-18) had also taken training there. Bhagyanathan (A-20) had been working for LTTE in Tamil Nadu.
- d) Bhagyanathan (A-20) and Haribabu helped Arivu (A-18) in shifting LTTE material in March, 1991 from the house of Sankari (PW-210). In this material there was one black book in three volumes (MO-609). There was also a video cassette (MO-143) containing the speech of Sivarasan on the occasion of second death anniversary of LTTE leader Dileepan, who died while on fast unto death. Bhagyanathan (A-20) was helping Arivu (A-18) for recording news, telecast on Doordarshan in Tamil and English and the recorded the cassettes were sent to Sri Lanka.
- e) Murugan (A-3) had introduced Sivarasan to Bhagyanathan (A-20). When Murugan (A-3) wanted the help to engage a photographer and video graphed for covering DGP's office in Tamil Nadu, Fort St. George and other places Bhagyanathan (A-20) introduced him to Haribabu.
- f) Bhagyanathan (A-20) was aware that Nalini (A-1), Murugan (A-3), Arivu (A-18), Sivarasan, Subha, Dhanu and Haribabu had attended the meeting of V.P. Singh on 7.5.1991 at Nandanam, Madras. He himself did not attend the meeting.
- g) On 20.5.1991 Sivarasan, Murugan (A-3), Arivu (A-18) and Haribabu had come to the house of Padma (A-21). There is, however, no evidence as to what conversation, if any, took place at that time and whether Bhagyanathan (A-20) himself attended the meeting and if so what was his part. It was on 23.5.1991 when Sivarasan and Nalini (A-1) came to the house of Padma (A-21) he got narration of the incident that took place at Sriperumbudur on 21.5.1991.
- h) Bhagyanathan (A-20) gave a sum of Rs. 1,000/- to Haribabu's family for meeting the expenses on account of death of Haribabu, which money was given by Murugan (A-3).

- i) After the death of Rajiv Gandhi Bhagyanathan (A-20) helped Arivu (A-18) to removed his TV, VCR, etc. and other LTTE materials from the house of Padma (A-21) to the house of a friend of Arivu (A-18).
- j) Knowing fully well that Sivarasan, Subha, Dhanu, Nalini (A-1) and Haribabu had gone to Sriperumbudur on 21.5.1991 and killed Rajiv Gandhi yet Bhagyanathan (A-20) engaged a taxi on 25.5.1991 for Nalini (A-1), Murugan (A-3), Sivarasan Subha and Padma (A-21) to go to Tirupathi. Padma (A-21), however, was not a willing party initially to go to Tirupathi but was persuaded to go.
- k) When this group returned from Tirupathi on the following day Bhagyanathan (A-20) allowed Murugan (A-3) to hide himself in his press. He also brought food from his house for Murugan (A-3). He also kept Kawasaki Bajaj Motorcycle (MO-82), which was used by Sivarasan.
- l) After the assassination of Rajiv Gandhi Murugan (A-3) had handed over two code sheets (MO-107 and 108) to Padma (A-21) and asked her to keep them in safe custody. Padma (A-21) in turn handed over those two code sheets to her colleague in the nursing home Devasena Raj (PW-73) who in turn kept those in her locker used for keeping uniform. Prosecution has alleged that Padma (A-21) was aware of the importance of the code sheets used by Murugan (A-3) for communicating with LTTE headquarters in Jaffna. There is, however, no evidence if Padma (A-21) knew what the code sheets were about and how she could know their importance.
- m) Murugan (A-3) provided financial help to Padma (A-21), who was in debt with which Padma (A-21) was able to pay off to her creditors but then that was much before the date of assassination of Rajiv Gandhi.
- n) A wireless message was sent by Sivarasan to Pottu Amman that Bhagyanathan (A-20) and Padma (A-21) had been arrested which according to the prosecution would show that both Bhagyanathan (A-20) and Padma (A-21) were part of the conspiracy as otherwise there was no necessity for Sivarasan to send a wireless message.

609. We do not think all these factors make out any case against either Bhagyanathan (A-20) or Padma (A-21) that they were having any knowledge of the conspiracy or knew of the object of the conspiracy. Pottu Amman did know about Padma (A-21) and Bhagyanathan (A-20) because of Nalini (A-1) and the fact that Murugan (A-3) was staying in their house. No inference of any conspiracy can be drawn from the mere fact that Sivarasan sent the wireless message about the arrest of Bhagyanathan (A-20) and Padma (A-21). Moreover mere association with LTTE hard-core militants or the fact that those militants turned out to be the persons responsible for the killing of Rajiv Gandhi would not make Bhagyanathan (A-20) and Padma (A-21) members of any conspiracy to kill Rajiv Gandhi. There is nothing unusual in Murugan (A-3) providing financial help to

Padma (A-21) in view of the fact that he was staying in her house and also his having affair with Nalini (A-1). Charge of any conspiracy against Padma (A-21) and Bhagyanathan (A-20) must fail. Charge under Section 3(3) TADA against both of them also fails. They, however, have rightly been convicted and sentenced for offence under Section 212 IPC. Their conviction under Section 212 IPC and sentence was not challenged by Mr. Natarajan. Padma (A-21) has also been charged for an offence under Section 6(1A) of Wireless Telegraphy Act and found guilty and sentenced. This charge against her was that she was in possession of two code sheets used by Murugan (A-3) which was material used for communicating from India to other conspirators, namely, Prabhakaran and Pottu Amman in Sri Lanka and those sheets were handed over to Padma (A-21) for safe custody. We do not think that there is any evidence to suggest that Padma (A-21) had any knowledge of the code sheets or what the code sheets were about. Padma (A-21) was not aware of the contents of the code sheets or for what purpose these were put to use by Murugan (A-3). Prosecution also does not tell us the contents of the code sheets and how these were used by Murugan (A-3). Charge under Section 6(1 A) of Indian Wireless and Telegraphy Act must, therefore, fail.

610. Suba Sundaram (A-22)

- a) Suba Sundaram (A-22) is owner of Subha News Photo Services, also known as Suba Studio. Here Arivu (A-18), Bhagyanathan (A-20), Haribabu and Ravishankar (PW-151) took training from Suba Sundaram (A-22). Suba Studio was a meeting point for LTTE activists. Suba Sundaram (A-22) was in regular touch with LTTE leaders and was in correspondence with them. In one of the letters he described the absconding accused Prabhakaran "protector of world Tamils - Younger brother General Prabhakaran". In yet another letter (Exh.P-544) he criticized the performance of IPKF in Sri Lanka.
- b) Haribabu worked in Suba Studio during 1988-90 at a monthly salary of Rs. 350/-. Though he left Suba Studio he continued visiting the studio regularly.
- c) On 21.5.1991 Haribabu first went to Ravishankar (PW-151) and borrowed camera (MO-1) from him. At that time he was carrying a parcel containing a sandalwood garland purchased by him from Poompuhar Handicrafts that morning. This garland was subsequently used by Dhanu to go near Rajiv Gandhi with the pretext of garlanding him.
- d) After getting camera (MO-1) Haribabu went to Subha Studio and thereafter left that place for going to Sriperumbudur. Prosecution wants us to infer from this that going of Haribabu to Sriperumbudur for covering the function of Rajiv Gandhi was known to Suba Sundaram (A-22).
- e) On the night of 21.5.1991 after the blast Suba Sundaram (A-22) was fervently trying to find out about Haribabu. He was told by T. Ramamurthy (PW-72) that haribabu had died. Suba Sundaram (A-22) asked T. Ramamurthy (PW-72) as to whether he had taken

photographs of the incident. Suba Sundaram (A-22) told T. Ramamurthy (PW-72) that he could have brought the camera used by Haribabu. To that T. Ramamurthy (PW-72) replied that a WIP had been murdered and all the articles at the scene might be important material object and it was wrong to touch them. Suba Sundaram (A-22) again told T. Ramamurthy (PW-72) that if he could have brought the camera they could have used the photos inside them.

f) Suba Sundaram (A-22) thereafter contacted K. Ramamurthy (PW-258), President of AICC(1) for seeking his help to retrieve the camera of Haribabu.

g) Since Suba Sundaram. (A-22) was making strenuous efforts for getting the camera prosecution says that the sole purpose was to destroy any clue that the investigating agency might get from the photographs taken by Haribabu before he died about the role of LTTE and others in the crime. But then it must not be forgotten that Suba Sundaram (A-22) was running a studio and he was Keen that he should get the photographs taken by Haribabu and use them for his business.

h) Suba Sundaram (A-22) made all attempts to conceal the identity of Haribabu that he was an LTTE activist and that he had been engaged by Sivarasan and others to take the photographs of the incident.

i) Though he was aware that Haribabu had gone to the public meeting of Rajiv Gandhi and that he was working for LTTE he got the statement issued by father of Haribabu V.T. Sundaramani (PW-120) denying that his son was member of LTTE.

j) Suba Sundaram (A-22) wanted all the material relating to LTTE lying in the house of Haribabu to be destroyed so that no one could find the link of Haribabu with LTTE.

611. All these factors will not make Suba Sundaram (A-22) a member of the conspiracy with the object to kill Rajiv Gandhi. Even his knowledge of conspiracy cannot be inferred from the circumstances put at highest from the prosecution point of view. Suba Sundaram (A-22) has been charged for an offence under Section 3(3) of TADA which charge must fail. He has also been charged for an offence under Section 201 IPC for which he has been found guilty and convicted and sentenced. There is no challenge to his conviction under this charge.

612. Having thus considered the case of each accused now charged before us we have to examine what sentence is to be awarded particularly where charge of murder has been proved against some of the accused.

613. In spite of the concession of Mr. Natarajan we have independently examined the evidence with respect to charges against each of the accused. We acquit Shanthi (A-11),

Selvaluxmi (A-13) and Shanmugavadivelu (A-15) of all charges. Their conviction and sentence are set aside.

614. None of the accused has commuted any offence under Section 3, 4 or 5 of TADA. Their conviction and sentence under these Sections are set aside.

615. Conviction and sentence of the accused except, Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under all other charges are maintained. Conviction and sentence of all the accused under Section 120B IPC read with all other counts as mentioned in charge No. 1 is set aside except conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120B read with Section 302 IPC.

616. Conviction of Nalini (A-1) under Section 302 IPC read with Section 34 IPC on various counts is upheld and so also of Arivu (A-18) under Sections 109 and 302 IPC. Conviction and sentence of Nalini (A-1) under Section 326 IPC read with Section 34 IPC, Section 324 IPC read with Section 34- IPC and that of Arivu (A-18) under Sections 109 and 326 IPC and Sections 109 and 324 IPC are maintained.

617. In view of these discussions Shanthi (A-11), Selvaluxmi (A-13) and Shanmugavadivelu (A-15) are to be released forthwith. All other accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) would also be entitled to be released forthwith as it was pointed out to us that they have already undergone imprisonment for a period of more than the sentence of imprisonment awarded to them. In case they are not required to be detained in any other case they shall also be released forthwith.

618. We confirm the conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120B read with Section 302 IPC.

619. We have been addressed arguments on the question of sentence to be passed against the accused which is the requirement of Sub-section (2) of Section 235 of the Code. Section 354 of the Code deals with the contents of judgment. Sub-section (3) of Section 354 is relevant. It is as under:

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

620. Mr. Natarajan said that in case we hold that Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) are guilty they do not deserve the extreme penalty.

621. In Bachan Singh v. State of Punjab MANU/SC/0055/1982: 1980 Cri LJ 636 the Constitution Bench of this Court was considering the constitutional validity of Section

302 IPC. Though holding that Section 302 IPC and Section 354(3) of the Code are constitutionally valid this Court referred to the circumstances both aggravating and mitigating for imposing a sentence of death. It also made observations on Sections 354(3) and 235(2) of the Code. It will be advantageous to quote paras 201, 202 and 209 of the judgment which are as under:

201 As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia 33 L Ed 2d 346: 408 US 238 [1972], in general, and Clauses 2(a), (b), (c) and (d) of the Indian Penal Code (Amendment) Bill passed In 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

- (a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exceptional depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -
 - (i) while such member or public servant was on duty; or
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member of public servant; or