

E

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.546 of 2004

Mohd. Jalees Ansari and Others

... Appellan

ts

Versus

Central Bureau of Investigation

.... Respondent

JUDGMENT

Uday U. Lalit, J.

tivities

1. This appeal under Section 19 of the Terrorist and Disruptive Ac

es the

(Prevention) Act, 1987 (hereinafter referred to as TADA Act) challeng

urt

judgment and final order dated 28.02.2004 passed by the Designated Co

n

Ajmer, Rajasthan in TADA Special Case No.6 of 1994. Originally sixtee

ct

accused persons were tried for having committed offences under TADA A

Signature Not Verified

and other enactments. Accused No.6 Irfan Ahmad escaped from custody

Digitally signed by

ASHOK RAJ SINGH

Date: 2016.05.12

11:23:36 IST

Reason:

while the trial was going on and therefore his case was separated. He

was

2

later arrested in June, 2015 and is now being proceeded against separately.

Accused No.12 Mohd. Azeemuddin though convicted and sentenced by the

Designated Court was found to be juvenile on the date of occurrence in this

appeal and as such his case stands separated. All the other accused namely

A-1 to A-5, A-7 to A-11 and A-13 to A-16 are presently in appeal.

2. There were bomb blasts in various trains during the night intervening 5th and 6th of December, 1993.

(i) An explosion occurred around 10:50 p.m. on 05.12.1993 in Rajdhani Express running from New Delhi to Howrah. In that explosion near Kanpur Railway Station, two persons were injured. FIR No.595/1993 (Ext. P-307) of P.S. GRP Kanpur was accordingly registered.

(ii) At about 5 a.m. in the morning of 06.12.1993 an explosion took place in Rajdhani Express running from Howrah to New Delhi in Kanpur Division. However no major injury was suffered by anyone. This led to filing of FIR No.765 of 1993 (Ext. P 426) of P.S. GRP Allahabad which was later re-registered as FIR No.597 of 1993 of P.S. GRP Kanpur.

(iii) An explosion occurred at about 5:15 a.m. on 06.12.1993 in Rajdhani Express running from Mumbai Central to New Delhi near Kota Railway Station which caused injuries to five persons leading to registration of FIR No.174 of 1993 (Ext. P60) of P.S. GRP Kota.

(iv) At about 6 a.m. on 06.12.1993 an explosion took place in Flying Queen running from Surat Railway Station to Mumbai Central, near Bestan Railway Station causing injury to one person. This led to lodging of FIR No.132 of 1993 (Ext. P 150) of P.S. GRP Valsad.

(v) At about 7:05 a.m. on 06.12.1993 a bomb exploded in A.P. Express running from Hyderabad to Nizammudin. This explosion occurred in general compartment while the train was at Moula Ali Railway Station causing death of two persons. This led to registration of FIR No.251/1993 (Ext.D-63) of PS GRP Malkajgiri.

(vi) A device meant to cause explosion was detected by a watchful passenger in Bangalore Kurla Express while the train was near Karjat Railway Station. The device was thrown out of the Railway compartment and as such did not cause any damage. This incident led to registration of FIR No.91 of 1993 (Ext.D-162) of PS GRP Karjat.

3. All the aforesaid six crimes were registered against unknown persons. Out of the aforesaid six incidents, the explosion that occurred at Maula Ali Station in Hyderabad had caused death of two persons. PW 117 P. Chandrashekar Reddy, Superintendent of Police, Ranga Reddy Distt, on

receiving information from Police Control Room reached the site at about 8:30 a.m. on 06.12.1993 and dictated proceedings Ext.P 450 later in the Police Station invoking provisions of TADA Act. Ext.P-450 was to the following effect:-

4

"PROCEEDINGS OF THE SUPRINTENDENT OF POLICE:
RANGA REDDY DIST. PRESENT: SRI. P. CHANDRA
SEKHAR REDDY, IPS.,

No. 251/Camp/SP-RR/93 dated 06.12.1993

Sub:-Cr.No.251/93 of P.S. Malkajgiri

Sri P. Radha Krishna Rao, Sub-Inspector of Police, Malkajgiri P.S., sent the contents of the complaint given by Sri. Ahmed Hussain, which revealed the facts that attracts Section 3, 4 and 5 of TADA besides others Sections of Law. Having satisfied, I am permitting the S.I. to register the case U/s 3, 4 and 5 of TADA besides other Sections of Law.

Sd/-
dated 06.12.1993
Superintendent of Police,
Ranga Reddy District

To
Station House Officer, Malkajgiri P.S.
Copy to S.D. P.O Malkajgiri for inf."

FIR No.251 of 1993 was therefore registered for offences punishable under Sections 3, 4 and 5 of TADA Act besides other provisions. Out of the aforesaid six FIR's only FIR No.251 at 1993 of PS GRP Malkhajgiri was registered for offences under TADA while the provisions of TADA were not initially invoked in rest of the FIR's.

5

4. Vide notifications dated 21.12.1993 and 28.12.1993 the crimes registered by first Five FIR's, where the explosions had in fact occurred were transferred to Central Bureau of Investigation ("CBI", for short) for investigation. The CBI thereafter re-registered the crimes as R.C. No.43(S) / 93 of CBI Lucknow, R.C. No.44 (S)/93 of CBI Lukcnow, R.C. No.37 (S)/93 of CBI Jaipur, RC 43(S)/93 of CBI Ahmedabad and RC No.32 (S)/ 93 of CBI Hyderabad against those registered under Serial No.(i) to (v) respectively of the preceding paragraph. PW 148 R.P. Kaushal was the Investigating Officer as regards both crimes registered at Lucknow. He was also the Investigating Officer regarding the crime registered at Jaipur but was later replaced by PW 150 P.D. Meena. PW 145 K S Nair was the Investigating Officer as regards the crime registered at Hyderabad. He was initially in charge of investigation regarding the crime registered at Ahmedabad as well, but was later replaced by PW 140 V.K. Bindal.

5. PW 145 K.S. Nair reached Ahmedabad on 28.12.1993 and sent a requisition on 29.12.1993 to the Director, FSL, Ahmedabad and received Report Ext. P-506 dated 30.12.1993. From reading of the documents and other case papers he found that the provisions of TADA Act were attracted to the case and therefore prepared Report dated 08.01.1994 seeking approval for adding provisions of TADA Act. He was however required to go to Hyderabad on 11.01.1994. While in Hyderabad, he came to know about arrest of Al Dr. Jalees Ansari on 12.01.1994 in connection with Bombay Blast Case. He, therefore, went to Mumbai on 13.01.1994 and reached STF Office at 7:00 pm. From his interrogation, involvement of said Al Dr. Jalees Ansari in the serial train blasts and that of A3 Habib Ahmed Khan and A4 M. Jamal Alvi was discovered.

6

6. On 13.01.1994 PW 62 H.C. Singh, SP, STF, CBI also came down to Mumbai from New Delhi and PW 145 K.S. Nair had discussion with him in the matter including the result of the interrogation of Al Dr. Jalees Ansari. PW 145 K.S. Nair, who was carrying with him copy of the Report prepared by him on 08.01.1994, submitted it to PW 62 H.C. Singh, whereupon PW 62 H.C. Singh gave his approval for adding the provisions of TADA Act. This Report Ext. P-246 was to the following effect.

"Sub: Investigation of RC 43(S)/93-CBI/Ahmedabad
Case RC 43(S)/93-CBI/Ahmedabad has been registered on 23.12.93 on transfer from the local police authorities u/s 307, 120-B IPC and Sec. 3,4,5 of Explosive Substances Act of 84, and Sec. 3(2) of the Prevention of Damage of Public Properties Act.

Facts in brief are that one bomb exploded in the flying queen train which left Surat Station at 5:30 AM of 6-12-93 for Bombay, in IIInd class compartment No.7392(D-I) the train was bound for Bombay. The explosion took place exactly at 6.00 AM when the illfated train reached Bheistan Rly. Station. One person namely SH. Amish Piyushkar Shah aged about 23 years

7

R/o Vanktash Appartment 7/A Ami Falia Surat, the attendant of the complainant Shy. Ramniklal Malukchand Shah Head Clerk, (Retd.), Rajkot Railway, had suffered head injuries on account of bomb explosion. The victim was seated in seat No.136 of D-1 compartment whereas the explosive device was reportedly kept under the seat "Sadiq" for his journey from Surat to Bombay. Investigation revealed that the said suspect though reserved the seat but did not travel in this train. In all there were reservations for 11 passengers including the suspect and the victim in the said D-1 bogie.

The exhibits have been seized from the scene of occurrence by the local police authorities and sent to the Forensic Laboratory/Ahmedabad for expert opinion. The

seized articles included iron nails, clock pieces and the pieces of Alfa luggage etc. These articles were examined by Sh.SM Darji, Asstt. Director, FSL/Ahmedabad and opined that Amonium and nitrate redicles, (redicles of ammonium nitrate) and the hydro carbons of petrolium oil mixture of high explosive were detected in the exhibits. Sh.B.P., Upadhayay,Asstt. Director/FSL after examining the articles seized from the scene of occurrence concluded that the bomb was kept in "Alfa luggage" with electronic clock machine needle etc. were used to ensure 'delay mechanism'. Investigation also confirmed that the bomb exploded after half-an-hour run from Surat Station. Director/FSL informed that similar explosive devices had been planted in other running trains where similar bomb explosions had taken place on 06.12.1993. The expert opinion clearly indicates that the suspect/suspects had planted the explosive device which comes within the ambit of TADA and the facts reveals so far constitute offence punishable U/Ss 3, 4 & 5 of the TADA (P) Act also.

The sequential nature of the explosions which had occurred in 5 running trains simultaneously clearly indicates that there existed a deep rooted conspiracy to strike terror in the people to cause loss to lives and damage to public properties it is, necessary that Section 3, 4 & 5 of the TADA (P) Act for further investigation in this case. Copy of the expert opinions of FSL/Ahmedabad is attached for perusal.

8

Submitted please.

(K.S. Nair)
DY.SUPDT.OF POLICE
CBI STF NEW DELHI

The facts revealed make out a case u/s 3 & 4 of TADA (P) Act. Inclusion of these Sections of law is approved. 1

Sd/-

ngh

994

lice

.I.

i"

H.C.Si

dated 13.01.1

Supdt. of Po

C.B

New Delh

7. Since the applicability of the provisions of TADA Act was also found to have been made out as regards other crimes, a fax message was sent by PW 62 H.C. Singh to SP CBI Lucknow on 14.01.1994 requesting that provisions of TADA Act be included and that A3 Habib Ahmed Khan and A4 M. Jamal Alvi be arrested. This fax message, Ext. P-247 was as under:-

"FAX MESSAGE

TO SP CBI LUCKNOW

FROM : SP CBI STF NEW DELHI
CAMP: BOMBAY

1

This endorsement was in the handwriting of PW 62 HC Singh who then put his signature below the endorsement.

9

One Dr. Mohd. Jalees Ansari arrested in 1(S)/93/STF/Bombay(Bombay Bomb Blast case) has disclosed that the planning and execution of bomb blasts in Rajdhani Express Trains near Kanpur on 5/6.12.93 was done by Jamal Alvi R/o Chawal Wali Gali, Nakhas Chow, Lucknow and Dr. Habib R/o Kaharon Ka Adda, Rae Bareli. It is requested that these persons be arrested in RC 43 & 44(S)/93/CBI/LUCKNOW and further investigations carried out. CIO Sh. R. P. Kaushal Dy. SP is reaching Lucknow today evening by flight No. IC-835. The disclosures of Dr. Jalees Ansari reveal offences under Sections 3, 4 & 5 of TADA (P) Act. Hence these Sections of TADA (P) Act be included in the case diary.

Sd/-
H.C. Singh
dated 14.1.1994
SP, CBI, STF NEW DELHI
CAMP AT BOMBAY"

8. While PW 148 R.P.Kaushal was at SPE Headquarters at Delhi on 14.01.1994, he received information from PW 62 H.C. Singh who was then camping at Mumbai that he should go to Lucknow immediately. On reaching Lucknow on 15.01.1994 PW 148 R.P. Kaushal came to know that A3 Dr. Habib Ahmed Khan and A4 Jamal Alvi had been arrested on 14.01.1994 by Lucknow Branch of CBI. He also received the aforesaid fax message Ext. 247 regarding addition of Sections 3, 4 and 5 of TADA Act in both the cases. On 15.01.1994, he submitted an application Ext. P-518 under his signature seeking police remand of the arrested accused. In this application, he had included the provisions of Sections 3, 4 and 5 of TADA Act. Another application namely Ext. P-521 was submitted seeking remand for 14 days. This application had also included aforesaid provisions of TADA Act.

10

9. The Investigating Team conducting investigation in connection with the crime registered at Jaipur was apprised of the disclosures coming from the interrogation of A1 Dr. Jalees Ansari that one of the suspects namely A2 Ashfaq Khan lived in Dausa in Rajasthan. Immediately, search of the residence of A2 Ashfaq Khan was effected in which certain documents were seized indicating his complicity in the crime. A2 Ashfaq Khan was called for interrogation. PW 34 Shankar Surolia, SP, CBI, SPE of Jaipur

after having perused the seized documents and being satisfied about the applicability of provisions of TADA Act, issued following order Ext. P-160 on 15.1.1994 directing addition of Sections 3 and 4 of TADA Act in the matter.

"Order

RC No. 37(S)/93 of SPE/CBI/Jaipur dated 15.01.1994

I have gone through the Case Diaries, documents and statement of accused Aspak Khan which clearly indicate that the accused persons Dr. Jalees Ansari, Shameem Ansari R/o Bombay Aspak Khan R/o Dausa and others conspired with each other during the year 1992-93 to commit the terrorist and destructive activities, to the harmony amongst different Sections of people of India by using explosives substances. In persons planted

11

bomb to kill the passengers and damage the Rajdhani Express Train Ex Bombay to New Delhi, in Coach No. C-7, which exploded at about 5.15 AM on 6.12.93 between Indragarh and Amla Stations. The blast caused injuries to the various passengers and damages to the public property. Thus, the accused persons have committed offences punishable u/s 3 & 4 of TADA (P) 1987 in addition to Sections mentioned in the FIR. I therefore, direct Sh. R. D. Kalia, Inspector, CBI, Jaipur to proceed with the investigation accordingly.

Sd/-
Supdt. of Police
SPE, CBI, Jaipur"

The provisions of TADA Act thus stood invoked in all the crimes.

10. When A1 Dr. Jalees Ansari was arrested in connection with Bombay Blast Case, 7 firearms, 2 grenades, 20 detonators, live cartridges, plastic bag containing explosives and timer device were found during search and seizure. At the time of arrest of A2 Ashfaq Khan, visiting card of A1 Dr. Jalees Ansari as well as diary containing name of 'Abdullah' with a phone number was found. Similarly, at the time of arrest of A4 Jamal Alvi, certain arms and explosives were recovered.

11. On 20.01.1994 application Ext.D-198 was moved on behalf of A5 Afaq Khan that said Accused was in illegal detention of CBI, to which a reply was filed in the Court at Lucknow that the Accused was interrogated on 17.1.1994 and was called for further interrogation on 21.01.1994. It may be noted that a telegram was sent on 18.01.1994 to the Hon'ble President of India that said accused was in the confinement of CBI. However according to the Record, A5 Afaq Khan was arrested at 10 p.m. on 20.01.1994 by

Delhi Police in connection with Case no. 46/94 of P.S. Malviya Nagar, New Delhi under Sections 3, 4 and 5 of TADA Act.

12. On 28th and 29th January, 1994, a confessional statement Ext. P 248 of A2 Ashfaq Khan came to be recorded under Section 15 of TADA Act by PW 62 H.C. Singh. The confessing accused was produced before PW 62 H.C. Singh on 28.01.1994, on which date PW 62 H.C. Singh gave him 24 hours time to think over the matter. The confession was recorded the next day. In his confessional statement A2 Ashfaq Khan disclosed how he came in contact with A1 Dr. Jalees Ansari and how he procured explosive material for him.

13. On 02.02.1994 a confessional statement of A5 Afaq Khan, Ext. 241-A under Section 15 of TADA Act was recorded by PW 61 Prabhat Singh, DCP, South Delhi. The first part of the statement was recorded by one Nepal Singh in his handwriting. It was stated in the confession that A5 Afaq Khan was present in a meeting held in the last week of September 1993 which meeting was attended by A1 Dr. Jalees Ansari, A3 Dr. Habib and A4 Dr. Jamal Alvi and others in which it was planned and decided to cause explosion of bombs in long distance prestigious trains. It was further stated by him that he had fixed the circuit and timing in bombs. On the same day, A6 Irfan Khan was produced before PW 61 Prabhat Singh and his confessional statement Ext. P-243 was recorded.

14. On 06.02.1994 as A1 Dr. Jalees Ansari desired to give confessional statement; he was produced in CBI office before PW 62 H.C. Singh, who gave him warning that such statement could be used against him and gave him 24 hours time to reflect over the matter. A1 Dr. Jalees Ansari was again produced the next day i.e. on 07.02.1994, when PW 62 H.C. Singh recorded his confession Ext. P 250. It was stated in the confession that after completing his MBBS, he had initially joined service as Doctor in Public Health Department and later did private practice, that he had planted a bomb in Malegaon for which he was arrested and later released on bail, that during the year 1992-1993 he continued to plant bombs at various places in Mumbai and in trains which claimed some lives, that he met A2 Ashfaq Khan who supplied him detonators and gelatin sticks. He, therefore, narrated

how he and other accused had planned and executed the explosions that occurred on 5th and 6th December 1993.

14

15. On 12.02.1994 A3 Dr. Habib Ahmed Khan was produced before PW 62 HC Singh in his office at New Delhi as he wanted to make a confessional statement. The accused was given 24 hours time to think over the matter. A3 Dr. Habib Ahmed Khan was again produced the next day and his confession Ext. P-251 under Section 15 of TADA Act was recorded.

16. On 16.02.1994 PW 103 K.M. Reddy, Deputy Commissioner of Police Hyderabad recorded confessional statements of A11 Md. Shamsuddin (Ext.P. 427-428) of A12 Md. Azeemuddin (Ext. P. 429-430) and of A13 Md. Yusuf (Ext. P 431-432). These three confessions were recorded in Crime No.336 of 1993, Abid Road Police Station, Hyderabad. In these confessions, the confessing accused stated how they were associated with A1 Dr. Jalees Ansari and how they had assisted in planting bomb at Secundrabad Railway Station in September 1993 and in A.P. Express on the morning of 06.12.1993.

17. On 17.02.1994 A4 M. Jamal Alvi was produced before PW 62 HC Singh as the accused wanted to make a confessional statement. PW 62 HC Singh gave him 24 hours time to think over. He was again produced on 18.02.1994 and PW 62 HC Singh proceeded to record his confessional statement (Ext.P 253).

15

18. On 28.02.1994 A1 Dr. Jalees Ansari was produced before the Designated Court, Bombay with application under Section 169 Cr. P.C. preferred by CBI seeking his discharge from Bombay Bomb Blasts Case. It was stated that after investigation the accused was not found to be connected with Bombay Bomb Blasts case. Accordingly, the Designated Court discharged A1 Dr. Jalees Ansari from Bombay Bomb Blasts case. On the same day an application namely MA 72 of 1994 was preferred by PW 150 PD Meena seeking custody of A1 Jalees Ansari which was given to him by the Designated Court. The material recovered at the time of his arrest and during search and seizure was also made over. Thereafter, on 01.03.1994 A1 Dr. Jalees Ansari was produced in TADA Court, Ajmer, Rajashthan but since the presiding officer was on leave he was produced before Additional

Sessions Judge, Ajmer who gave two days remand. On 04.03.1994 A1 Dr. Jalees Ansari was produced before TADA Court which remanded him to judicial custody.

19. On 08.03.1994 A8 Mohd. Saleem Ansari was produced before PW 9 K.V. Reddy, Deputy Commissioner of Police, North Zone, Hyderabad in connection with Crime No.151 of 1993 registered under TADA Act and other offences, as the accused desired to give a confessional statement. In the confession (Ext.P-444) recorded by PW 109 K.V. Reddy, the confessing accused accepted his role in Bomb Blasts of Humayun Nagar Police Station and Abid Road Police Station and that he was also associated in planting the Bomb on 06.12.1993 in A.P. Express. 16

20. On the same day a confessional statement (Ext.P 445) of A 10 Mohd. Nissarudin was also recorded by PW 109 K.V. Reddy in connection with Crime No.336 of 1993, Abid Road Police Station, Hyderabad. The confessing accused in said confessional statement accepted his role in planting of Bomb in the compartment of A.P. Express on 06.12.1993 and that he was also having two other Bombs which were meant for use in K.K. Express on the same day but because of his ill health he could not use them.

21. On 26.04.1994 an order was passed clubbing all five cases as they were found to be outcome of a single conspiracy. The order dated 26.04.1994 (Ext.P 259) was to the following effect:-

"ORDER

Investigations in the under mentioned cases relating bomb blasts in prestigious trains on 5/6. 12.93, which were registered in concerned Branches of the CBI have revealed that these bomb blasts were outcome of a single conspiracy. Hence , for better appreciation of facts and through investigation of the cases, the investigation in these cases STF, New Delhi will be the C.I.O of these cases. The present arrangement of CIO'S

from STF and Assisting IO's from the concerned branches for these cases will, however, continue.

- (i) RC 32(S)/93/CBI/Hyderabad.
- (ii) RC 43(S)/93/CBI/Ahmedabad
- (iii) RC 37 (S)/93/CBI/Jaipur
- (iv) RC 43 (S)/93/CBI/Lucknow
- (v) RC 44(S)/93/CBI/Lucknow

En dt. No. 8/94/STF/BB/1396 Dt. 26.4.1994 (Arun Bhagat)
Addl. Director CBI(S)"

22. On 01.07.1994 a confessional statement (Ext.P 434-435) of A9 Mohd. Zaheeruddin was recorded by PW 105 Rajeev Trivedi in connection with Crime No.636 of 1996, Abid Road, P.S., Hyderabad. In this confessional statement the accused stated about his association with A1 Dr. Jalees Ansari and about his acts of planting bomb at Humayun Nagar, Abid Road, P.S. and Secundrabad Railway Reservation Complex and also about his role in planting a bomb in the unreserved compartment of A.P. Express on 06.12.1993.

23. On 26.07.1994 A7 Fazlur Rehman was produced before PW 62 H.C. Singh in the office of Superintendent of Police, CBI, Jaipur as the accused wanted to make a confessional statement. PW 62 H.C. Singh gave him 24 hours time to think over the matter. The accused was again produced on 27.07.1994 on which date his confessional statement Ext.P 255 was recorded. In his confessional statement the accused stated about his association with A1 Jalees Ansari.

18

24. On 28.08.1994, PW 107 K. Vijaya Rama Rao, Inspector General of Police and Director CBI accorded sanction (Ext.P 437) under Section 20 A (2) of TADA Act to prosecute accused Nos. 1 to 13 for offences punishable under TADA Act and other enactments. A Charge-sheet Ext.P 266 dated 25.08.1994 was thereafter filed in the court of Designated Court, Ajmer, Rajasthan against accused Nos.1 to 13. The charge-sheet also included sanction order dated 19.09.1994 passed by the Deputy Commissioner of Police, Mumbai under Arms Act in respect of various arms recovered from A1 Dr. Jalees Ansari and sanction order dated 22.07.1994 passed by Distt. Magistrate, Lucknow in respect of Arms and Explosives recovered from A4 M. Jamal Alvi.

25. After filing of the aforesaid charge-sheet A14 Md. Amin was apprehended. He having desired to give confessional statement, was produced before PW 62 H.C. Singh on 17.11.1994. PW 62 H.C. Singh gave him time of 24 hrs. to think over the matter. The accused was again produced on 18.11.1994 on which date the confessional statement of the accused Ext.P 257 came to be recorded. In his confessional statement the accused disclosed his association with A1 Dr. Jalees Ansari and how the said

19

accused was taught by him to make bomb devices.

26. A supplementary charge-sheet (Ext P-267) dated 18.04.1995 was thereafter filed against A14 Mohd. Amin in the Designated Court. This was preceded by order of sanction (Ext. P-438) under Section 20 A (2) of TADA Act by PW 107 V. Rana Rao.

27. On 21.05.1996, Metropolitan Sessions Judge, Hyderabad, Designated Court under TADA Act ordered discharge of accused under the provisions of TADA Act in four cases namely Sessions Case Nos.438 of 1994, 584 of 1994, 13 of 1995 and 14 of 1995. Sessions Case No.438 of 1994 arose from FIR No.336 of 1993 of Police Station Abid Road in which confessions of present accused Nos.9, 10, 11, 12 and 13 were recorded. Apart from present accused Nos.9, 10, 11, 12 and 13, A1 Dr. Jalees Ansari, A8 Saleem Ansari and others were also accused in those Sessions Cases. It was observed by the Designated Court that none of the FIRs in those four cases was registered under any of the provisions of TADA Act. It found that there was no prior approval in writing to invoke the provisions of TADA Act and as such the entire case had to be transferred under Section 18 of TADA Act to

20

the competent Court for disposal. It further found that sanctions to prosecute under Section 20 A (2) of TADA Act were also invalid.

28. This decision of the Designated Court dated 21.05.1996 was challenged by State of Andhra Pradesh by preferring Criminal Appeal Nos. 2010-2013 of 1996 in this Court. By its order dated 17.04.2001 2, this Court was prima facie of the opinion that the exercise of power under Section 20 A (2) of TADA Act by the then Commissioner of Police was in a very casual manner and as such this Court deemed it appropriate to issue notice to the concerned Commissioner to show cause why adverse remarks against him be not made in the judgment by which the appeal was to be disposed of. The record indicates that thereafter on 17.07.2001, at the request of State of Andhra Pradesh, the aforesaid appeals were allowed to be withdrawn and consequently notice issued to the then Commissioner of Police stood discharged. With the withdrawal of appeals, the order passed by the Designated Court holding the invocation of TADA Act under Section 20 A (1) in respect of four crimes including one under FIR No.336 of 93 to be

invalid, attained finality.

2

2001 (3) Crimes 389 (SC)

21

29. A15 Aizaz Akbar who was apprehended sometime in 1997, desired to make confessional statement. He was therefore produced on 01.06.1997 before PW1 O.P. Chhatwal who gave him 24 hours time to think over the matter. The accused was thereafter produced on 02.06.1997 before PW1 O.P.Chhatwal who recorded his confession (Ext. P-1). In his confession, the accused stated that he used to work as Computer Operator with M/s Tawakkal Travels, Mumbai, that he was associated with Al Dr. Jalees Ansari and that he had gone to Hyderabad alongwith Al Dr. Jalees Ansari and had planted bomb at Humayun Nagar, Police Station and at Habib Road, Police Station in August, 1993. He further stated how he had planted bomb in Bangalore-Kurla Express.

30. On 26.07.1997 second supplementary charge sheet (Ext.D-53) was filed against A15 Aizaz Akbar and six other absconding accused. This was preceded by order of sanction Ext.P-471 dated 25.07.1997 under Section 20A (2) of TADA Act accorded by PW 130 R.C. Sharma, Inspector General of Police and Director CBI, New Delhi.

31. Thereafter A16 Abre Rehmat Ansari was arrested. Since he desired to make a confessional statement, he was produced before PW 1 O.P. Chhatwal on 01.01.1998 on which date he was given 24 hours time to think over the matter. The accused was again produced on 02.01.1998 when his confessional statement Ext. P-4 was recorded under Section 15 of TADA Act. In his confession, A16 stated his full name to be Abre Rehmat Ansari and that he was also known by name 'Kari'. It was stated that he had received training in Pakistan where they were instigated to indulge in subversive activities, that he participated in four firing incidents at CRPF/BSF bunkers, that in Aug-Sep 1993 he was introduced to A4 M. Jamal Alvi, that he had supplied him arms and explosives in Oct-Nov 1993 and that he had also supplied 5kg of explosives, 4 detonators and 4 timers to A4 M. Jamal Alvi.

22

32. A third supplementary chargesheet Ext.P-513 was filed on 23.03.1998 against A16 Abrey Rehmat Ansari. Sanction under Section 20A(2) dated 27.02.1998 (Ext.P 469) for such prosecution was accorded by PW 128 D.R. Karthikeyan, Inspector General of Police and Director CBI, New Delhi.

33. On 13.10.1999 the Designated Court passed Order framing charges against Accused Nos.1 to 16. Accordingly they were charged for having committed offences punishable under TADA Act and other enactments. For facility, paragraphs 86 to 92 of the judgment of the Designated Court which set out charges against the Accused, are quoted as under:

23

"86. After hearing both the parties, accused (A-1) Dr. Mohd. Jalees Ansari, (A-11) Mohd.Shamsuddin @ Painter Baba, (A-14) Mohd. Amin were charged u/s 120-B IPC, Sections 3(3), 5 & 6 of TADA Act, Sections 4(a) & 4(b) of Explosive Substances Act and Section 9(B) of Explosive Act. These accused have also been charged u/s 3(2), 5 and 6 of TADA Act, Section 3, 4(a) and 4(b) of Explosive Substances Act. Section 9(B) of Explosive Act, Section 4 of Prevention of Damages to Public Property Act, Sections 150 & 151 of Indian Railways Act and Sections 302, 307, 326, 324 & 436 IPC with each offence.

87. Accused (A-2) Ashfaq Khan, (3) Dr. Habib Ahmed Khan, (A-5) Mohd. Afaq Khan, (A-9) Mohd. Zahiruddin Ahmed @ Ahmed, (A-10) Mohd.Nissaruddin @ Mujju, (A-16) Abre Rehmat Ansari @ Kari, were charged u/s 120-B IPC, Section 3(3) & 6 of TADA Act, Sections 4(a) and 4(b) of Explosive Substances Act, Section 9(B) of Explosive Act. These accused have also been charged u/s 3(2), 5 & 6 of TADA Act, Section 3, 4(a) and 4(b) of Explosive Substances Act, Section 9(B) of Explosives Act. Section 4 of Prevention of Damages to Public Property Act, Sections 150 & 151 of Indian Railways Act, Sections 302, 307, 324, 326 and 436 r/w Section 120-B IPC with each offence.

88. Accused (A-4) Mohd. Jamal Alvi was charged u/s 120-B IPC, Sections 3(3), and 6 of TADA Act, Sections 4(a) and 4(b) of Explosive Substances Act, Section 9(b) of Explosives Act, Section 25(1-B) Arms Act. This accused was also charged u/s 3(2), 5 and 6 of TADA Act, Sections 3, 4(a) and 4(b) of Explosive Substances Act, Section 9(B) Explosives Act, Section 4 of Prevention of Damages to Public Property Act, Sections 150 & 151 of Indian Railways Act, Sections 302, 307, 324, 326 and 436 IPC r/w Section 120-B of IPC with each offence.

89. Accused (A-6) Irfan Ahmed, (A-15) Mohd. Aizaz Akbar were charged u/s 120-B, 307 IPC, Section 3(2), 3(3), 6 of TADA Act, Section 4(a), 4(b) Explosive Substances Act, Section 9(B) Explosives Act, Section 150 of Indian Railways

24

Act. These accused have also been charged u/s 3(2), 5 & 6 of TADA Act, Sections 3, 4(a) & 4(b) of Explosive Substances Act, Section 9(b) of Explosives Act, Section 4 of Prevention of Damages to Public Property Act, Section 150 & 151 of Indian Railways Act, Section 302, 307, 326, 324 and 436 IPC r/w Section 120-B IPC with each offence.

90. Accused (A-7) Fazlur Rehman Sufi @ Shamin was charged u/s 120-B, 307, 324, 326 and 436 IPC, Sections 3(2),

3(3), 5 & 6 of TADA Act, Sections 3, 4(a) and 4(b) of Explosive Substances Act, Section 9(B) of Explosives Act, Section 4 of Prevention of Damages to Public Property Act. Sections 150 & 151 of Indian Railways Act. He had also charged u/s 3(2), 5 & 6 of TADA Act, Sections 3, 4(a) and 4(b) of Explosive Substances Act, Section 9(B) of Explosives Act, Section 4 of Prevention of Damages to Public Property Act, Sections 150 & 151 of Indian Railways Act, Sections 302, 307, 324, 326 & 436 IPC r/w Section 120-B of IPC with each offence.

91. Accused (A-8) Mohd. Saleem Ansari was charged u/s 120-B, Section 3(3) of TADA Act. He was also charged u/s 3(2), 5 & 6 of TADA Act, Sections 3, 4(a) and 4(b) of Explosive Substances Act, Section 9(B) of Explosives Act, Section 4 of Prevention of Damages to Public Property Act. Sections 150 & 151 of Indian Railways Act. Sections 302, 307, 324, 326 and 436 IPC r/w Section 120-B of IPC with each offence.

92. Accused(A-12) Mohd. Azeemuddin @ Azeem and (A-13) Mohd. Yusuf were charged u/s 120-B, 307, 324, 326 & 436 IPC, Sections 3(2), 3(3) and 6 of TADA Act. Section 3, 4(a), 4(b) Explosive Substances Act, Section 9(B) Explosive Act, Section 4 Prevention of Damages to Public Property Act. Sections 150 & 151 of Indian Railways Act. These accused were also charged u/s 3(2), 5 and 6 of TADA Act, Sections 3, 4(a), 4(b) Explosive Substances Act. Section 9(B) Explosives Act, Section 4 Prevention of Damages to Public Property Act, Section 150 & 151 Indian Railways Act, Sections 302, 307,

25

324, 326 & 436 IPC r/w Section 120-B IPC with each offence."

34. In support of its case, the Prosecution examined 150 witnesses, exhibited documents Ext.P-1 to Ext.P-535, produced and marked 23 articles and relied upon confessions of Accused A1 to A16. A6 having absconded, Accused A1 to A5 and A7 to A16 were examined under Section 313, Cr.P.C. All the accused denied the case of the Prosecution and submitted that their confessions were not voluntary. The accused produced twenty witnesses namely DW-1 Mohammed Jalees Ansari (A-1), DW-2 Mohammed Yusuf (A-13), DW-3 Mohd. Azeemuddin (A-12), DW-4 Mohd. Nisaruddin Ahmed (A-10), DW-5, Mohd. Zaheeruddin Ahmed (A-9), DW-6 Mohiuddin Jamal Aliv (A-4), DW-7 Abre Rehamt Ansari, (A-16), DW-8 Mohammed Anis Ansari, DW-9 Javed Akhtar Ansari, DW-10 Jekahullah Ansari, DW-11 Mohamed Amin (A-14), DW-12 Rabani Aliv, DW-13 Sarafuddin, DW-14 Mohd. Saleem Ansari (A-8), DW-15 Mohd. Aizaz Akbar (A-15), DW-15 Anwar Jamal Alvi, DW-17 Asharfi Fazlur Rehman (A-7), DW-18 Mohammed Afaq (A-5), DW-19 Mohd. Shamsuddin (A-11), DW-20 Yusuf Khan. The accused exhibited 204 documents in defence.

26

35. After considering the entire material on record and hearing rival

submissions, the Designated Court considered the matter in the light of following points:

"(i) Whether prior approval to apply the provisions of TADA Act as required under Section 20-A (1) of the TADA Act and sanction to take cognizance of the offence as required under Section 20-A(2) of the TADA Act is valid?

(ii) Whether accused A-1 Dr. Mohd. Jalees Ansari, A-2 Ashfaq Khan, A-3 Dr. Habib Ahmed Khan, A-4 M. Jamal Alvi, A-5 Mohd. Afaq Khan, A-6 Irfan Ahmed, A-7 Fazlur Rehman Sufi @ Asharfi E Shamin, A-8 Mohd. Saleem Ansari, A-9 Mohd. Zaheeruddin Ahmed @ Ahmed, A-10 Mohd. Nissaruddin @ Mujju, A-11 Mohd. Shamsuddin @ Painter Baba, A-12 Mohd. Azeemuddin @ Azeem, A-13 Mohd. Yusuf, A-14 Mohd. Amin, A-15 Mohd. Aizaz Akbar, A-16 Abare Rehmat Ansari @ Kari along with the absconding accused Sayed Abdul Karim, Mohd. Tuffail, Mohd. Hamir -Ul Uddin @ Hamid, Mohd. Saleem, Nisar Ahmed Ansari @ Tahir Ahmed, during the year 1993-94 on various dates entered into criminal conspiracy at Bombay, Lucknow, Kanpur, Dausa, Baroda, Surat, Kota Hyderabad, Gulbarga and other places to terrorize the Government of India, to strike terror in the people, to adversely affect the harmony amongst Hindus and Muslims by keeping bombs, explosives substances on 5.12.1993 and 6.12.1993 in important trains of India viz. Rajdhani Express trains from Mumbai to New Delhi, New Delhi to Howrah, Howrah to New Delhi, Flying Queen Express from Surat to Bombay, Andhra Pradesh Express from Hyderabad to New Delhi, train from Bangalore to Kurla, to commit terrorist acts to cause train bomb blasts and thereby to cause death, grievous injuries to person travelling in the said trains, to cause damage, destruction to railway, public property and also to send, procure, manufacture explosives substances and also to attack 'Samna Press' of Shiv Sena on 15.1.1994 and to commit terrorist act at Delhi on 26.1.1994?

27

(iii) Whether accused A-1 to A-16 along with absconding accused during the year 1993-94, at above mentioned places in pursuance of the criminal conspiracy intentionally made available bombs, explosive substances to co-accused which were to be used for terrorist acts for causing bomb blasts in the above mentioned trains?

(iv) Whether in pursuance of the criminal conspiracy accused A-1 to A-16 procured explosive substances and explosives and kept the explosive substances unauthorisedly in their possession in a notified area for which they had no licence and manufactured bombs for unlawful objects and were kept unlawfully and maliciously to endanger life and property and for causing bomb blasts in the above mentioned trains for which the accused A-1 to A-16 are liable as members of the said criminal conspiracy?

(vi) Whether in pursuance of the said conspiracy the accused on 5-6/12/1993 kept bomb devices at Kanpur, Baroda railway stations in Rajdhani Express Trains from Howrah to New Delhi, from New Delhi to Howrah, from Bombay to New Delhi, respectively which exploded causing injuries to six passengers. Further, bomb device was kept at Hyderabad Railway Station in Andhra Pradesh Express from Hyderabad to New Delhi, which exploded resulting in death of two passengers Abdul Majid and Smt. Jeevan Jyoti and injuries to fourteen passengers, bomb device was also kept at Surat Railway station in Flying Queen Express from Surat to Bombay which exploded causing injuries to one passenger and further bomb device was kept at Pune Railway Station in Bangalore - Kurla Express train for causing explosion. The bomb explosions in the above trains caused

damage to railway-public property and for the above acts accused A-1 to A-16 are liable as members of the said criminal conspiracy?"

36. The Designated Court found prior approval under Section 20A(1) of TADA Act in the present matter, namely Ext.P-45-, P-246, P-247 and P-160 and Orders of Sanction under Section 20A(2) namely Ext.P-437, P-438, P-469 and P-471 to be valid and in accordance with law. In view of the confessional statement and other prosecution evidence, it found that it was proved beyond reasonable doubt that Accused Nos.1 to 5 and Accused Nos.7 to 16 had conspired and caused terrorist acts by causing bomb blasts in six trains on 5th & 6th December, 1993 and found A1 to A5 and A7 to A14 and A16 guilty of the offences punishable under Section 3(3) of TADA Act while A15 was found guilty of the offence punishable under Section 3(3) of TADA Act read with Section 120-B IPC. 28

37. The Designated Court by its judgment and final order dated 28.02.2004 convicted and sentenced the accused for various offences as detailed in following paragraphs 537 to 543 of its judgment:

"537: Accused A-1 Dr. Mohammed Jalees Ansari, A-9 Mohd. Zaheeruddin Ahmed @ Ahmed, A-11 Mohammed Shamsuddin @ Painter Baba, A-12 Mohammed Azeemuddin @ Azeem, A-13 Mohammed Yusuf are guilty of the offences punishable u/s 120-B I.P.C., Section 3(2) (i), 3(2) (ii), 3(3), 5, 6(1) TADA Act, 1987 Sections 302, 307, 326, 324, 436 I.P.C., Sections 3,4 Explosive Substances Act, Sec. 9-B Explosives Act, Sections 150, 151 Railways Act, Section 4 prevention of Damage to Public Property Act.

Under Section 120-B I.P.C. Sec. 3(2) (I) TADA Act, Sec. 3(3) TADA Act, Sec.302 I.P.C., each of the above accused are sentenced to life imprisonment and a fine of Rs.5000/- on each 29

count. In default of payment of fine each of them shall further undergo rigorous imprisonment for one year.

Under Section 150 Railways Act, each of the above accused are sentenced to life imprisonment.

Under Section 3(2)(ii), 5, 6(1) TADA Act, Sec. 307 I.P.C. Sections 3 & 4, Explosive Substances Act, each of the above accused are sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine each of them shall further undergo rigorous imprisonment for six months.

Under Section 9-B Explosives Act, each of the accused are sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of payment of fine each of them shall further undergo rigorous imprisonment for six months.

Since, each of the above accused has been sentenced u/s 307

I.P.C., Section 150 Railways Act, no separate 151 Railways Act, Sec. 4 Prevention of Damage to Public Property Act, is awarded.

538. Accused A-2 Ashfaq Khan is guilty of the offences punishable u/s 120-B I.P.C., Sec. 3(2) (I) TADA Act r/w Sec.120-B I.P.C., Sec. 3(2) (ii) TADA Act r/w Sec. 120-B I.P.C., Sections 3(3), 5,6(1) TADA Act, Sec.302 r/w Sec.120-B I.P.C., Sec.307 r/w 120-B I.P.C., Sec.326 r/w 120-B I.P.C., Sec. 324 r/w Sec.120-B, Sec.436 r/w Sec. 120-B I.P.C., Sec.3 Explosive Substances Act r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, Sec.9-B Explosives Act, Sec.150 Railways Act r/w Sec.120-B I.P.C., Sec.151 Railways Act r/w Sec.120-B I.P.C., Sec.4 Prevention of Damage to Public Property Act r/w Sec.120-B I.P.C.

a) Under Section 120-B I.P.C., Sec. 3(2) (i) TADA Act r/w Sec. 120-B I.P.C., Sec. 3 (3) TADA Act, Sec.302, r/w Sec.120-B I.P.C. A-2 is sentenced to life imprisonment and fine

30

of Rs.5,000/- on each count. In default of payment of fine A-2 shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act r/w Sec.120-B I.P.C. A-2 is sentenced to life imprisonment.

c) Under Section 3(2) (ii) TADA Act r/w Section120-B I.P.C., Section 5,6(1) TADA Act, Sec.307 r/w Sec.120-B I.P.C., Sec.3 Explosive Substances Act, r/w Sec.120-B I.P.C., Section4 Explosive Substances Act, A-2 is sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine A-2 shall further undergo rigorous imprisonment for six months.

d) Under Section 9-B Explosive Act A-2 is sentenced to two years rigorous imprisonment and a fine of Rs.2500/- in default of payment of fine A-2 shall further undergo rigorous imprisonment for six months.

e) Since, A-2 has been sentenced under Section 307 r/w Sec.120-B I.P.C., Section 150 Railways Act r/w Sec.120-B I.P.C., no separate sentence u/ss 326, 324, 436 I.P.C., Sec.151 Railways Act, Sec.4 Prevention of Damage of Public Property Act, all r/w Sec.120-B I.P.C. is awarded.

539. Accused A-3 Dr. Habib Ahmed Khan, A-5 Mohammed Afaq Khan, A-10 Mohammed Nissaruddin @ Mujju, A-16 Aore Rehmat Ansari @ Kari, are guilty of the offences punishable u/s 120-B I.P.C., Sec. 3(2) (1) TADA Act r/w Sec. 120-B I.P.C., Sec. 3(2) (ii) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act r/w Sec.120-B I.P.C., Sec.302 r/w Sec.120-B I.P.C., Sec. 307 r/w Sec.120-B I.P.C., Sec.326 r/w Sec.120-B I.P.C., Sec.324 r/w Sec.120-B I.P.C., Sec.436 r/w Sec.120-B I.P.C., Sec.3 Explosive Substances Act r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, Sec.9-B Explosives Act, Sec.150 Railways Act r/w Sec.120-B I.P.C., Sec.151 Railways Act r/w Sec.120-B I.P.C., Sec.4 Prevention of Damage of Public Property Act r/w Sec.120-B I.P.C.:

31

a) Under Section 120-B I.P.C., Sec. 3(2) (i) TADA Act R/w Sec.120-B I.P.C. Sec. 3(3) TADA Act, Sec. 302 r/w Sec.120-B I.P.C. Sec.3(3) TADA Act, Sec.302 r/w Sec.120-B I.P.C. each of the above accused are sentenced to life imprisonment and a fine of Rs.5000/- on each count. In default of payment of fine each of them shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act r/w Sec.120-B I.P.C.

each of the above accused are sentenced to life imprisonment.

c) Under Section 3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act, r/w Sec.120-B I.P.C., Sec.307 I.P.C. r/w Sec.120-B I.P.C., Sec.3 Explosive Substances Act, r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, each of the above accused are sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine each of them shall further undergo rigorous imprisonment for six months.

d) Under Section 9-B Explosives Act, each of the accused are sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine each of them shall further undergo rigorous imprisonment for six months.

e) Since, each of the above accused have been sentenced u/s 307 r/w Sec.120-B I.P.C., Sec.150 Railways Act r/w Sec.120-B I.P.C., no separate sentence u/s 326, 324, 436 I.P.C., Section 151 Railways Act, all r/w Sec.120-B I.P.C. is awarded.

540. Accused A-4 N. Jamal Alvi is guilty of the offences punishable u/s 120-B I.P.C., Sec. 3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.3(2) (ii), 3(3) TADA Act, Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act r/w Sec.120-B I.P.C., Sec.302 r/w Sec.120-B I.P.C., Sections 307, 326, 324, 436 I.P.C., Sections 3,4 Explosive Substances Act, Sec.9-B Explosive Act, Sections 150, 151 Railways Act, Sec.4 Prevention of Damage to Public Property Act, Sec.25(1-B) (a) Arms Act.

32

a) Under Section 120-B I.P.C. Sec.3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec. 3(3) TADA Act, Sec.302 r/w Sec.120-B I.P.C., A-4 is sentenced to life imprisonment and fine of Rs.5000/- on each count. In default of payment of fine A-4 shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act A-4 is sentenced to life imprisonment.

c) Under Section 3(2) (ii) TADA Act, Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act r/w Sec.120-B I.P.C., Sec.307 I.P.C., Sec.3,4 Explosive Substances Act, A-4 is sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine A-4 shall further undergo rigorous imprisonment for six months.

d) Under Section 9-B Explosives Act, A-4 is sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine A-4 shall further undergo rigorous imprisonment for six months.

e) Since A-4 has been sentenced under Section 307 I.P.C., Sec.150 Railways Act, no separate sentence u/Ss 326, 324, 436 I.P.C., Sec.151 Railways Act, Sec.4 Prevention of Damage of Public Property Act, is awarded.

f) Under Section 25 (1-B) (a) Arms Act, A-4 is sentenced to three years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine A-4 shall further undergo rigorous imprisonment for six months.

541. Accused A-7 Fazlur Rehman Sufi @ Shamim, A-14 Mohammed Amin are guilty of the offences punishable u/s 120-B I.P.C., Sec.3(2) (i) TADA Act r/w Sec.120-B I.P.C. Sec.3(2) (ii), 3(3), 5,6 (1) TADA Act, Sec.302 r/w 120-B I.P.C., Sections 307, 326, 324, 436 I.P.C. Sections 3,4 Explosive

Substances Act, Sec.9-B Explosive Act, Sec.9-B Explosive Act, Sections 150, 151 Railways Act, Sec.4 Prevention of Damage of Public Property Act.

33

a) Under Section 120-B I.P.C., Sec.3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, Sec.302 I.P.C. r/w Sec.120-B I.P.C. each of the above accused are sentenced to life imprisonment and a fine of Rs.5000/- on each count. In default of payment of fine each of them shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act, each of the above accused are sentenced to life imprisonment.

c) Under Section 3(2) (ii) TADA Act, Sec.5,6 (1) TADA Act Sec.307 I.P.C., Sec.3,4 Explosives Substances Act, each of the above accused are sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine each of them shall further undergo rigorous imprisonment for six months.

d) Under Section 9-B Explosives Act, each of the accused are sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine each of them shall further undergo rigorous imprisonment for six months.

e) Since, each of the above accused have been sentenced u/s 307, Sec.150 Railways Act no separate sentence u/s 326, 324, 436 I.P.C., Section 151 Railways Act, Sec.4 Prevention of Damage to Public Property act is awarded.

542. Accused A-8 Mohammed Saleem Ansari is guilty of the offences punishable u/s 120-B I.P.C., Sec.3(2) (1) TADA Act r/w Sec.120-B I.P.C., Sec.3(2) (ii) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6 (1) TADA Act r/w Sec.120-B I.P.C., Sec.302 r/w Sec.120-B I.P.C., Sec.307 r/w Sec.120-B I.P.C., Sec.326 r/w Sec.120-B I.P.C., Sec.324 r/w Sec.120-B I.P.C., Sec.436 r/w Sec.120-B I.P.C., Sec.3 Explosive Substances Act r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, r/w Sec.120-B I.P.C., Sec.9-B Explosive Act r/w Sec.120-B I.P.C., Sec.150 Railways Act r/w Sec.120-B I.P.C., Sec.151 Railways

34

Act r/w Sec.120-B I.P.C., Sec. Prevention of Damage to Public Property Act r/w Sec.120-B I.P.C.

a) Under Section 120-B I.P.C., Sec. 3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, Sec.302 r/w Sec.120-B I.P.C, Under Section 120-B I.P.C., Sec.3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, Sec.302 r/w Sec.120-B I.P.C., A-4 is sentenced to life imprisonment and fine of Rs.5000/- on each count. In default of payment of fine A-4 shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act A-4 is sentenced to life imprisonment, A-8 is sentenced to life imprisonment and fine of Rs.5000/- on each count. In default of payment of fine A-8 shall further undergo rigorous imprisonment for one year.

c) Under Section 150 Railways Act r/w Sec.120-B I.P.C. A-8 is sentenced to life imprisonment.

d) Under Section 3(2) (ii) TADA Act r/w Sec.120-B I.P.C., Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act, r/w Sec.120-B I.P.C., Sec.307 I.P.C. r/w Sec.120-B I.P.C., Sec. 3 Explosive Substances Act, r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, A-8 is sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count.

In default of payment of fine A-8 shall further undergo rigorous imprisonment for six months.

e) Under Section 9-B Explosive Act r/w Sec.120-B I.P.C., A-8 is sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine A-8 shall further undergo rigorous imprisonment for six months.

f) Since A-8 has been sentenced under Section 307 r/w Sec.120-B I.P.C., Sec.150 Railways Act r/w Sec.120-B I.P.C., no separate sentence u/Ss 326, 324, 436 I.P.C. Sec.151 Railways Act, Sec.4 Prevention of Damage to Public Property Act, all r/w Sec.120-B I.P.C. is awarded.

35

543. Accused A-15 Mohammed Aizaz akbar is guilty of the offences punishable u/s Sec.120-B I.P.C., Sec.3(2) (I) TADA Act r/w Sec.120-B I.P.C., Sec.3(2) (ii) TADA r/w Sec.120-B I.P.C, Sec.3(3) TADA Act r/w Sec.120-B I.P.C., Sec.5 TADA Act r/w Sec.120-B I.P.C., Sec.6(1) TADA Act r/w Sec.120-B I.P.C., Sec.302 r/w Sec.120-B I.P.C., Sec.307, Sec. 326 r/w Sec.120-B I.P.C., Sec.324 r/w Sec.120-B I.P.C., Sec.436 r/w Sec.120-B I.P.C., Sec.3 Explosive Substances Act r/w Sec.120-B I.P.C., Sec.4 Explosive Substances Act, Sec.9-B Explosives Act Sec. 150 Railways Act r/w Sec.120-B I.P.C., Sec.151 Railways Act r/w Sec.120-B I.P.C., Sec.4 Prevention of Damage to Public Property Act r/w Sec.120-B I.P.C..

a) Under Section 120-B I.P.C., Sec.3(2) (i) TADA Act r/w Sec.120-B I.P.C., Sec.3(3) TADA Act, r/w Sec.120-B I.P.C., Sec.302, r/w Sec.120-B I.P.C. A-15 is sentenced to life imprisonment and fine of Rs.5000/- on each count. In default of payment of fine A-15 shall further undergo rigorous imprisonment for one year.

b) Under Section 150 Railways Act r/w Sec.120-B I.P.C. A-15 is sentenced to life imprisonment.

c) Under Section 3(2) (ii) TADA Act r/w Sec.120-B I.P.C., Section 5 TADA Act, r/w Sec.120-B I.P.C, 6(1) TADA Act, r/w Sec.120-B I.P.C., Sec.307, Sec.3 Explosive Substances Act, r/w Sec.120-B I.P.C., Section 4 Explosive Substances Act, A-15 is sentenced to ten years rigorous imprisonment and a fine of Rs.2500/- on each count. In default of payment of fine A-15 shall further undergo rigorous imprisonment for six months.

d) Under Section 9-B Explosives Act A-15 is sentenced to two years rigorous imprisonment and a fine of Rs.2500/-. In default of payment of fine A-15 shall further undergo rigorous imprisonment for six months.

e) Since, A-15 has been sentenced under Section 307 I.P.C., Section 150 Railways Act r/w Sec.120-B I.P.C., no separate sentence u/ss 326, 324, 436, I.P.C. Sec.151 Railways Act, Sec.4

36

Prevention of Damage to Public Property Act, all r/w Sec.120-B I.P.C. is awarded."

38. Cases of accused Nos. 6 and 12 having been separated, this appeal on behalf of remaining 14 accused takes exception to the aforesaid judgment of conviction and sentence passed by the Designated Court. Mr. Ratnakar Dash, Learned Senior Advocate, appeared for A1 Dr. Jalees Ansari, A4 Jamal Alvi, A5 Afaque Khan, A7 Fazlur-Rehman, A8 Saleem Ansari, A14 Mohd Amin and A16 Abre Rehmat Ansari. Mr. R.S. Sodhi, Learned Senior

Advocate appeared on behalf of A2 Ashfaque Khan. Mr. Sanjay Hegde, Learned Senior Advocate appeared for A3 Habib Ahmed Khan. Ms. Nitya Ramkrishnan, learned Advocate appeared on behalf of A9 Md. Zaheeruddin, A10 Md. Nisaruddin, A11 Md. Shamsuddin, A13 Md. Yusuf and A15 Aizaz Akbar. Mr. P.K. Dey, Learned Advocate for CBI. We are grateful for the assistance rendered by learned counsel.

39. The submissions advanced on behalf of the accused can be broadly put under following five points:-

A. There was no valid invocation of provisions of TADA Act as required under Section 20 A (1) of TADA Act. The documents/orders of invocation as alleged in the present matter were not contemporaneous but fabricated later in point of time.

B. The prosecution was seeking to rely upon confessions of the accused recorded in other crime(s). Though permissible in law, such reliance was not in conformity with the principles laid down by this Court.

C. Confessions recorded in the present matter were not voluntary. They were extracted while the accused were in police custody and in most cases the confessions were recorded by PW 62 H.C. Singh while other competent Officers were available.

D. In any case, such confessions could not be relied upon as substantive evidence to bring home the charge against the confessing accused and for that matter against the co-accused.

E. There was no evidence independent or otherwise which could support the case of prosecution. Further, there was no material on record even to lend support or corroboration to the confessions relied upon by the prosecution.

40. Since the validity of confessions recorded in the present case is quite crucial in the present case, the following chart would facilitate the assessment of issues involved in the matter. The chart indicates that confessions of A1, A5, A8, A9, A10 and A13 were recorded in crimes other than the present ones. We have not dealt with confessions of A6 and A12.

38

Acc- Name of Confession recorded in Exhibit No. & Recorded

used No	accused	Case No.	Date recording	of	by
A-2	Ashfaque Khan	RC 37(S)/93, CBI, Jaipur	Ex P-248 28&29/01/1994		By PW 62 H.C. Singh
A-5	Afaq Khan	Case No 46/94, P.S. Malviya Nagar, New Delhi	Ex P-241A 02/02/1994		By PW 61 Prabhat Singh
A-1	Mohd Jalees Ansari	RC 1(S)/93, Bombay Bomb blast case	Ex P-250 6&7/2/94		By PW 62 H.C. Singh
A-3	Habib Ahmed Khan	RC 43-44(S)/93 CBI, Lucknow	Ex P-251 12&13/02/1994		By PW 62 H.C. Singh
A-11	Md. Shamsuddin	Crime No. 336/93, Abid Road Police Station, Hyderabad	Ex P-427-28 16/02/1994		By PW 103 K.M. Reddy
A-13	Md. Yusuf	Crime No. 336/93, Abid Road Police Station, Hyderabad	Ex P-431-32 16/2/1994		By PW 103 K.M. Reddy
A-4	M. Jamal Alvi	RC 43-44(S)/93 CBI, Lucknow	Ex P-253 17&18/02/1994		By PW 62 H.C. Singh
A-8	Saleem Ansari	Case Crime No. 151/93, CCS, Hyderabad	Ex P-444 08/03/1994		By PW 109 K.V. Reddy
A-10	Md. Nisaruddin	Crime No. 336/93, Abid Road Police Station Hyderabad	Ex P-445 08/03/1994		By PW 109 K.V. Reddy
A-9	Md. Zaheeruddin	Crime No 336/93, Abid Road Police Station Hyderabad	Ex P-434-35 01/07/1994		By PW 105 Rajeev Trivedi
A-7	Fazlur-Rehman	RC 37(S)/93, CBI, Jaipur	Ex P-255 26&27/07/1994		By PW 62 H.C. Singh
A-14	Mohd Amin	RC 37(S)/93, CBI, Jaipur	Ex P-257 17&18/11/1994		By PW 62 H.C. Singh
A-15	Aizaz Akbar	RC 37(S)/93, CBI, Jaipur	Ex P-1 1&2/6/97		By PW 1 O.P. Chhatwal
A-16	Abre Rehmat Ansari	RC 37(S)/93, CBI, Jaipur	Ex P-4 1&2/01/1998		By PW 1 O.P. Chhatwal

39

41. Section 20A was brought on the Statute by way of amendment vide Act 43 of 1993. Section 20A is as under :-

"Section 20-A. Cognizance of offence . - (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."

42. According to sub-Section (1), there must be prior approval of the District Superintendent of Police before any information about the commission of offence under TADA Act could be recorded by the police. This provision has been construed by this Hon'ble Court to be mandatory and going by the negative language employed therein - an absolute imperative, in the absence of which further proceedings taken under TADA Act have been held to be completely invalid and of no consequence. This Court in Hitendra Vishnu Thakur v. State of Maharashtra³ stated as under:-

"12. Of late, we have come across some cases where the Designated Courts have charge-sheeted and/or convicted an accused person under TADA even though there is not even an iota of evidence from which it could be inferred,

3

(1994) 4 SCC 602

40

even prima facie, let alone conclusively, that the crime was committed with the intention as contemplated by the provisions of TADA, merely on the statement of the investigating agency to the effect that the consequence of the criminal act resulted in causing panic or terror in the society or in a section thereof. Such orders result in the misuse of TADA. Parliament, through Section 20-A of TADA has clearly manifested its intention to treat the offences under TADA seriously inasmuch as under Section 20-A(1), notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of an offence under TADA shall even be recorded without the prior approval of the District Superintendent of Police and under Section 20-A(2), no court shall take cognizance of any offence under TADA without the previous sanction of the authorities prescribed therein. Section 20-A was thus introduced in the Act with a view to prevent the abuse of the provisions of TADA."

(emphasis in original)

43. In Rangku Dutta v. State of Assam 4, this Court found the requirement of prior approval under Section 20-A(1) to be mandatory in following words:-

18. It is obvious that Section 20-A(1) is a mandatory requirement of law. First, it starts with an overriding clause and, thereafter, to emphasise its mandatory nature, it uses the expression "No" after the overriding clause. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Reference in this connection can be made to G.P. Singh's Principles of Statutory Interpretation, 12th Edn., at pp. 404-05, the learned author has stated:

4

(2011) 6 SCC 358

41

"... As stated by CRAWFORD: 'Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.' As observed by SUBBARAO, J.: 'Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.' Section 80 and Section 87-B of the Code of Civil Procedure, 1908; Section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; Section 213 of the Succession Act, 1925; Section 5-A of the Prevention of Corruption Act, 1947; Section 7 of the Stamp Act, 1899; Section 108 of the Companies Act, 1956; Section 20(1) of the Prevention of Food Adulteration Act, 1954; Section 55 of the Wild Life (Protection) Act, 1972; the proviso to Section 33(2) (b) of the Industrial Disputes Act, 1947 (as amended in 1956); Section 10-A of the Medical Council Act, 1956 (as amended in 1993), and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory."

We are in respectful agreement with the aforesaid statement of law made by the learned author.

19. So there can be no doubt about the mandatory nature of the requirement of this Section. Apart from that, since the said Section has been amended in order to prevent the abuse of the provisions of TADA, this Court while examining the question of complying with the said provision must examine it strictly.

20. Going by the aforesaid principles, this Court finds that no information about the commission of an offence under the said Act can be recorded by the police without the prior approval of the District Superintendent of Police. Therefore, the requirement of prior approval must be satisfied at the time of recording the information. If a subsequent investigation is carried on without a proper recording of the information by the DSP in terms of Section 20-A(1), that does not cure the inherent defect of recording the information without the prior approval of the District Superintendent of Police.

42

44. In *Ashrafkhan v. State of Gujarat*⁵, the effect of non-compliance of Section 20 A(1) of TADA Act was considered by this Court. This Court also dealt with submission advanced on behalf of the State that once cognizance was taken and the Designated Court had decided to try the case by itself, any prior defects would be rendered irrelevant. This Court stated in clear terms that even if the case is tried by the Designated Court, the non-compliance of Section 20 A(1) can be raised as a ground and it would not prevent the accused to challenge the trial or their conviction on that ground. Paragraph 38 of the judgment of this Court is relevant and is quoted hereunder:-

38. As regards submission of the State that the Designated Court having taken cognizance and decided to try the case by itself in exercise of the power under Section 18 of TADA, the prior defects, if any, are rendered irrelevant and cannot be raised, has only been noted to be rejected. Section 18 of TADA confers jurisdiction on the Designated Court to transfer such cases for the trial of such offences in which it has no jurisdiction to try and in such cases, the court to which the case is transferred, may proceed with the trial of the offence as if it had taken cognizance of the offence. The power of the Designated Court to transfer the case to be tried by a court of competent jurisdiction would not mean that in case the Designated Court has decided to proceed with the trial, any defect in trial, cannot be agitated at later stage. Many ingredients which are required to be established to confer jurisdiction on a Designated Court are required to be proved during trial. At the stage of Section 18 the Designated Court has to decide as to whether to try the case itself or transfer the case for trial to another court of competent jurisdiction. For that, the

5

(2012) 11 SCC 606

43

materials collected during the course of investigation have only to be seen. The investigating agency, in the present case, has come out with a case that prior approval was given for registration of the case and the allegations made do constitute an offence under TADA. In the face of it, the Designated Court had no option than to proceed with the trial. However, the decision by the Designated Court to proceed with the trial shall

not prevent the accused to contend in future that they cannot be validly prosecuted under TADA. We hasten to add that even in a case which is not fit to be tried by the Designated Court but it decides to do the same instead of referring the case to be tried by a court of competent jurisdiction, it will not prevent the accused to challenge the trial or conviction later on.

45. Further, this Court in Ashrafkhan (supra) went on to consider whether confession so recorded could be used, for establishing guilt in respect of offences under other enactments in following words:-

41. We have held the conviction of the accused to have been vitiated on account of non-compliance with Section 20-A(1) of TADA and thus, it may be permissible in law to maintain the conviction under the Arms Act and the Explosive Substances Act but that shall only be possible when there are legally admissible evidence to establish those charges. The Designated Court has only relied on the confessions recorded under TADA to convict the accused for offences under the Arms Act and the Explosive Substances Act. In view of our finding that their conviction is vitiated on account of non-compliance of the mandatory requirement of prior approval under Section 20-A(1) of TADA, the confessions recorded cannot be looked into to establish the guilt under the aforesaid Acts. Hence, the conviction of the accused under Sections 7 and 25(1-A) of the Arms Act and Sections 4, 5 and 6 of the Explosive Substances Act cannot also be allowed to stand.

44

46. In the light of the aforesaid principles, the effect of order dated 21.05.1996 of Metropolitan Sessions Judge, Hyderabad and Designated Court is required to be considered. The Designated Court had found that there was no proper and valid invocation of the provisions of TADA Act while dealing with Sessions Case Nos. 438 of 1994, 584 of 1994, 13 of 1995 and 14 of 1995. Sessions Case No. 48 of 1994 arose from FIR No.336 of 1993 in which crime, confessions of accused Nos. A9, A10, A11 and A13 were recorded. Though the State had preferred an appeal in this Court, on 17.07.2001 at the request of the State, the appeals were allowed to be withdrawn. Consequently, the order of the Designated Court that there was no valid invocation of provisions of TADA Act, attained finality. Not a single witness was examined in the present matter in connection with invocation of TADA Act in said crime No.336 of 1993 nor any document in that behalf was placed on record. What we have on record is only the testimony of those officials who had recorded the confessions of said accused in crime No.336 of 1993 and nothing more. In the face of the order that the provisions of TADA Act were not validity and properly invoked, such confessions on the strength of law declared by this Court in Rangku Dutta and Ashrafkhan cases (Supra), must suffer the inevitable consequence.

As declared by this Court, if there is no valid prior approval under TADA Act, subsequent steps or stages initiated under TADA Act are rendered invalid. Consequently, the confessions of Accused Nos.A9, A10, A11 and A13 are without any legal sanction and cannot be relied upon.

45

47. We now turn to confessions of A5 Afaque Khan recorded in Case No. 46/94 P.S. Malviya Nagar, New Delhi and of A8 Saleem Ansari recorded in Crime No. 151/93, CCS Hyderabad. In both these cases, the officers who recorded the confession namely PW61 Prabhat Singh, PW109 K.V. Reddy have undoubtedly been examined to establish the fact of recording of confession. However, there is nothing on record as regards said two crimes, not even the respective first information reports. Further, there is nothing on record to indicate what was the fate of these two cases. The learned counsel for CBI could not point out anything from record indicating the status of these cases including whether the charges were framed or whether respective Courts had accepted the invocation of TADA or whether the cases had in any way attained finality as one tried for offences under TADA Act. Apart from the Recording Officers' testimony as stated above that the confessions were recorded by them, there is nothing on the record even to lend semblance of support that the matters had been taken to logical culmination in a trial under TADA Act. In the circumstances, it would be extremely difficult to rely on the confessions of A5 Afaque Khan and A8

46

Saleem Ansari. We do not therefore deem it appropriate to rely on the confessions of A5 and A8 as substantive pieces of evidence.

48. The confession of A1 Dr. Jalees Ansari was also not recorded in the present crimes but was recorded in Bombay Bomb Blast case. The record indicates that the accused was produced before the Designated Court, Bombay on 28.02.1994 when on an application moved by CBI, he was discharged from Bombay Bomb Blast case. The fact that Bombay Bomb Blast case culminated in a judgment and order of conviction which was sustained by this Court⁶ as regards some of the accused under the provisions of TADA Act is a fact of which judicial notice can be taken. The counsel appearing for the accused did not even urge that the confession of A1 Dr. Jalees Ansari could not be relied upon for want of requisite approval under

Section 20 A(1) of TADA Act in Bombay Bomb Blast Case but their submission was that he having been discharged from Bombay Bomb Blast case, the confession lost any significance and that for want of valid prior approval under Section 20 A(1) the entire proceedings stand vitiated. It is, therefore, required to be considered whether confession of a person validly and correctly recorded under Section 15 of TADA Act but if that person is subsequently discharged in the very matter in which his confession so

6

(2013) 13 SCC1

47

recorded, could such confession be admissible and relied upon in any other trial of the very same person.

49. The provisions of Section 15 of TADA Act and whether there is any statutory inhibition for using the confession on the premise that it is not recorded during the investigation of the particular offence which is under trial, was considered by this Court in State of Gujarat v. Mohd. Atiq⁷. Relying upon the principle "it is immaterial whether the information was supplied in connection with the same crime or a different crime" as laid down in State of Rajasthan v. Bhoop Singh⁸ this Court in Mohd. Atik (Supra) stated as under:

"5. It is clear from the above Section that a confessional statement recorded in accordance with the requirements contained in the Section becomes admissible in spite of the ban contained in Section 25 of the Evidence Act or Section 162 of the Code of Criminal Procedure. The requirements stipulated in Section 15(1) of the TADA for admissibility of a confession made to a police officer are (1) the confession should have been made to a police officer not lower in rank than a Superintendent of Police (2) it should have been recorded by the said police officer (3) the trial should be against the maker of the confession (4) such trial must be for an offence under TADA or the Rules thereunder. If the above requirements are satisfied the confession becomes admissible in evidence and it is immaterial whether the confession was recorded in one particular case or in a different case.

7

(1998) 4 SCC 351

8

(1997) 10 SCC 675

48

6. When there is no statutory inhibition for using such confession on the premise that it was not recorded during the investigation of the particular offence which is under trial there is no need or reason for the Court to introduce a further fetter against the admissibility of the confessional statement. It often happens that a confessor would disclose very many acts and events including different facets of his involvement in the preparation attempt and commission of crimes including the acts of his co-participants therein. But to expel every other

incriminating disclosure than that under investigation of a particular crime from the ambit of admissibility is not mandated by any provision of law.

7. We have, therefore, absolutely no doubt that a confession, if usable under Section 15 of the TADA, would not become unusable merely because the case is different or the crime is different. If the confession covers that different crime it would be a relevant item of evidence in the case in which that crime is under trial and it would then become admissible in the case.

50. It is neither contended that there was no valid invocation of the provisions of TADA Act in Bombay Bomb Blast case nor it is submitted that on the date when Al Dr. Jalees Ansari made his confession in Bombay Bomb Blast matter he was not accused of having committed offences punishable under TADA Act. Subsequent discharge of the accused at the instance of the prosecution under Section 169 Cr.P.C. would not in any way dilute or diminish the value of such confession, if it is otherwise admissible in law. In our view, therefore, merely because the confession of Al Dr. Jalees Ansari was recorded in a different matter and/or that he was discharged from that matter would not cause any inhibition for using such confession in the present matter, if the confession otherwise passes the test of admissibility in accordance with law.

49

51. Unlike the confessions of accused A9 Md. Zaheeruddin, A10 Md. Nisaruddin, A-11 Md. Shamsuddin and A-13 Md. Yusuf which cannot even be considered for want of legal sanction as described hereinabove, the confession of Al can certainly be taken into account, if it is otherwise admissible in law. At the same time the confessions of A5 Afaque Khan and A8 Saleem Ansari are difficult to be taken into account as substantive piece of evidence for want of any material as discussed hereinabove.

52. We now turn to the issue whether the provisions of TADA Act were validly invoked under Section 20A (1) of TADA Act in the present matter. This issue will have bearing not only on the admissibility and reliability of the confessions of accused recorded during the investigation of the present matter but also as regards the conduct of the proceedings in the present matter.

53. Soon after the blast that occurred at about 7.05 A.M. on 06.12.1993 at Moula Ali Railway Station in A.P. Express, an intimation was received by

PW-117 P. Chandrashekar Reddy Supdt. of Police, Ranga Reddy Distt. from
Police Control Room. He reached the site at about 8.30A.M. and met
Radha Krishna S.H.O. of P.S. Malkajgari. He was appraised of the fact
that statement of an injured was recorded. SHO Radha Krishna sought his
permission to register a case under TADA Act. PW 117 P. Chandrashekhar
Reddy then went to Malkajgiri Police and dictated proceedings Ext. P-450
invoking provisions of TADA Act. The registration of the FIR itself under
the provisions of TADA Act was thus quite prompt. The contemporaneous
documentation shows clear invocation of the provisions of the TADA Act
right at the inception. In fact, when the cases were made over to CBI for
investigation, this was the only crime which already stood registered under
the provisions of TADA Act. The cross-examination of PW 117 P.
Chandrashekar Reddy does not in any manner raise any doubt about the
version coming from PW 117 P. Chandrashekar Reddy. We, therefore,
accept that registration of crime under the provisions of TADA Act in
Hyderabad Crime as valid and proper and that Ext.P-450 was correct
exercise of power.

54. In respect of explosions in question, initially separate crimes were
registered and except the one concerning Hyderabad explosion, provisions
of TADA Act were not invoked. However, after reading Report Ext.P-506
emanating from FSL Ahmedabad and other case papers, PW-145 K.S. Nair
found that the provisions of TADA Act were attracted and, therefore, by his
report dated 08.01.1994 he sought approval for addition provisions of
TADA Act. The report stated that the opinion from FSL department
indicated that explosive devices were planted and the facts constituted
offences punishable under TADA Act. Further, the report goes on to
highlight sequential nature of explosions which had occurred in five
running trains simultaneously indicating existence of a deep rooted
conspiracy. However, before any action could be taken on this report, A-1
Dr. Jalees Ansari was arrested in connection with Bombay Bomb Blast case
on 12.01.1994 and his interrogation revealed his involvement in the blasts
in the present matter. Both PW-145 K.S. Nair and PW-62 H.C. Singh
therefore went to Mumbai. When PW-62 H.C. Singh reached Mumbai,
PW-145 K.S. Nair who had already reached there, disclosed about the

interrogation of A1 Dr. Jalees Ansari and produced a copy of his report dated 08.01.1993 seeking invocation of provisions of TADA Act in RC43(s)/93-Ahmedabad. The endorsement at the foot of that report in the handwriting of PW-62 H.C. Singh which document was exhibited at Ext. P-246 is valid exercise of power invoking the provisions of TADA Act.

55. Immediately on the next date, a fax message Ext. P-247 was sent by H.C. Singh to Lucknow stating that disclosure of A1 Dr. Jalees Ansari revealed that offences were punishable under TADA Act and that Sections of TADA Act be invoked in RC43 and 44(s)/93/CBI/Lucknow. This communication also disclosed the roles of A3 Dr. Habib Ahmed Khan and A4 M. Jamaal Alvi. These two accused were immediately arrested and applications Ext. P-518 and P-521 filed for their remand clearly mention the provisions of Sections 3, 4 and 5 of TADA Act. This contemporaneous material, therefore, fully establishes the invocation of provisions of TADA Act and the existence of Exbs. P-246 and P-247. The record further indicates that on the date when second application Ext. P-521 was preferred, PW-62 H.C. Singh was present in Lucknow and had disclosed the result of interrogation of A1 Dr. Jalees Ansari. The application Ext. P-521 therefore refers to all details and particulars gathered after such interrogation. In the circumstances, we have no hesitation to hold that orders invoking provisions of TADA Act as evident from Ext. P-246 and 247 were perfectly valid. The contemporaneous record also fully establishes and supports this part and the submission that these approvals were brought about subsequently is rejected.

56. We now deal with approval Ext. P-160 dated 15.01.1994. Once it became apparent that the explosions were part of a single conspiracy and the role of various accused became apparent from the interrogation of A1 Dr. Jalees Ansari, the CBI investigating Team at Jaipur was appraised of these developments. PW-34 Shankar Surolia therefore invoked the provisions of TADA Act vide Ext. P-160. This order Ext. P-160 again refers to the disclosure coming from the interrogation of A-1 Dr. Jalees Ansari. We do not find anything on record to doubt the correctness of said order Ext. P-160. Viewed in the perspective that it was the same agency that was investigating into five different crimes where explosions had

occurred in identical way, soon after the disclosure by one of the conspirators it was but natural for any investigating team to deduce that not only were the acts punishable under the provisions of TADA Act warranting invocation of TADA Act but also that these explosions were part of a single conspiracy. It would be natural in the circumstances that the team investigating an individual case would, therefore, be appraised of the development. Ext.P-246 therefore logically led to similar invocation in other cases as well. We thus do not find any inconsistency or infirmity in the invocation of provisions of TADA Act and accept such invocation vide Ext. P450, P246, P247 and P160 to be correct.

57. Having dealt with issues concerning prior approval for invocation of the provisions of TADA Act as well as admissibility of some of the confessions recorded in cases where prior approval was found to be invalid, the orders of sanction issued under Section 20(A) 2 of TADA Act must now be considered. In all there were four orders namely Ext. P 432 dated 20.08.1994 by PW-107 K.Vijaya Rama Rao, Ext. PW- 438 dated 14.04.1995 by PW-107 K.Vijaya Rama Rao, Ext. P 471 dated 25.07.1997 by PW-130 R.C. Sharma and Ext. P 469 dated 27.02.1998 by PW 128 Karthikeyan, who were Directors, CBI at the relevant time. We have gone through the testimony of these witnesses and the orders and we do not find any infirmity in their assessment and exercise of power. In fact these orders of sanction were not seriously questioned by the learned counsel appearing for the accused whose major emphasis was as regards prior approvals as discussed above.

58. According to the prosecution the acts in question were part of a single conspiracy which was planned and executed in following stages and manner:-

(i) February 1993 A1, A14 and one Nisar Ahmed Ansari (absconder) formed a group to take revenge for demolition of Babri Masjid.

(ii) June 1993 A15 who used to meet A1, met him in June 1993 when A1 disclosed his intention to take revenge. A15 took his friend A9 and introduced him to A1.

(iii) August 1993 A15 went to Gulbarga and informed A9 that A1 was reaching Gulbarga alongwith A8 the next day. During their meeting

A1 disclosed his plan to cause bomb explosions at various places in Hyderabad. [In execution of such plan the bomb explosions did occur at Humayun Nagar P.S., Abid Road P.S. and Reservation Centre at Secundeabad. Separate crimes including Crime No.336 of 1993 were registered].

(iv) August 1993 A1 acquired 70-80 Gelatine Sticks, 25-30 detonators and 25meter of fuse wire from A2. A14 suggested to cause bomb blasts in important trains on the first anniversary of demolition of Babri Masjid.

(v) Aug-Sep 1993 A4, A 16 and one Mohd. Tufail (absconder) attended a meeting at Srinagar and decided to do terrorist acts in State of Uttar Pradesh. A16 brought arms and ammunitions from Srinagar to Lucknow and delivered the same to A4.

(vi) Sept 1993 A16 also brought seven bombs, a pistol and 7 hand grandes to Lucknow.

(vii) End of September 1993 In a meeting that took place at the house of A4 in Lucknow which was attended by A1, A3, A6, A16 and others, it was decided to cause bomb blasts on 5th and 6th December 1993. A4 took the responsibility to cause bomb blasts in Rajdhani Express trains in State of Uttar Pradesh while A1 took the responsibility to cause bomb blasts in the western and southern parts of the country. A1 also agreed to arrange finances for the purpose.

56

(viii) Oct-Nov 1993 A11 from Gulbarga came to Mumbai, met A15 and informed that A1 had called him. The meeting took place between A1 and A11.

(ix) Nov 1993 A1 informed A14 regarding plans to cause bomb blasts in important trains on 6.12.1993 in association with Mohd. Saleem, Tahir and others. It was decided to cause blasts in trains in Surat and A14 gave Rs. 2000/- to A1.

(x) 14.11.1993 A reservation slip was filled and signed by A1 for reservation of a seat from Baroda to Delhi in Rajdhani Express leaving on 5.12.1993 for A7 in fictitious name "Sameer" and for his return journey on 6.12.1993 in Frontier Mail from Kota to Mumbai.

(xi) 19.11.1993 A1 sent sum of Rs. 3000/- in an insured cover form Mumbai to A3 to be handed over to A4.

(xii) 21.11.1993 At the instructions of A1, Tahir (absconder) went to Baroda for survey and to assess the security in Rajdhani Express. He stayed at Hotel Delux at Baroda.

57

(xiii) 24.11.1993 A3 received Rs. 3000/- through insured envelope sent by and gave the money to A4 who in turn used it for purchase of bomb devices. A3 supplied explosives to A4.

(xiv) End of 1993 A15 along with A9 and A11 went to the house of A1 who gave them bomb material and Rs.1500 in cash.

(xv) 01.12.1993 At the instance of A1 one Md. Saleem (Absconder) went to Surat to survey Flying Queen train by booking a seat in a fictitious name "Sadiq".

(xvi) 02.12.1993 A1 booked three tickets in a bus leaving Mumbai on 4.12.1993 to Baroda.

(xvii) 04.12.1993 As per instructions of A1, A7 along with Md. Saleem (absconder) met A1 at the bus stand. A1 handed over two bombs kept in a brief case and a bag to be planted in Flying Queen and Rajdhani Express. Thereafter A7 and Nisaar boarded the bus and left for Baroda. A14 also left for Baroda by train the same night.

(xviii) 5th -6th December 1993 A4, A6 and one Hameed (absconder) went by bus to Kanpur and stayed in Hindu Apna Hotel. A4 and Hameed went to the station, put a bomb in Delhi Howrah Rajdhani Express while next morning A4, A6 and Hameed put the bomb in Howrah Delhi Rajdhani Express.

58

Around the same time, A9, A10, A11, A12 and A13 went to Hyderabad from Gulbarga, stayed in Deccan lodge A12 and A13 Md. Yusuf planted the bomb in A.P. Express, A15 planted a bomb in Bangalore Kurla Express at Pune.

59. In order to prove its case, the prosecution relies on number of exhibits and testimony of various witnesses. Though there is no direct evidence in the form of version coming from any witness implicating any of the accused clearly as regards any of the material stages as aforesaid, according to the prosecution the confessions of various accused as corroborated by circumstantial evidence are sufficient to establish its case. Confessions are thus the fulcrum of the case of the prosecution which would then require

consideration whether each of those confessions were correctly recorded in a manner known to law and to what extent those confessions can be relied upon.

60. Section 15 (1) of TADA Act expressly makes confession of an accused recorded by a Police Officer admissible. It is settled position in law that confession so recorded under Section 15 (1) of TADA Act in accordance with statutory requirements and conditions in Rule 15 of TADA Rules is admissible against the maker, co-accused, abettor or a conspirator subject to

59

conditions stipulated in a Proviso to Section 15 (1) of the Act. The confession so recorded in accordance with law and guidelines is taken as substantive piece of evidence and can form the foundation or a basis for conviction of the maker, co-accused, abettor or conspirator. Though the confession if found to be recorded in conformity with the requirements of law can certainly form the basis of conviction as against the maker of such confession, the extent of reliability of such confession as against the co-accused has however been treated with caution. In State v. Nalini & Others 9, Wadhwa J. made the following observations:-

"424. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made and under Section 15 of TADA confession of an accused is admissible against a co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached to a confession will fall within the domain of appreciation of evidence. As a matter of prudence, the court may look for some corroboration if confession is to be used against a co-accused though that will again be within the sphere of appraisal of evidence."

Quadri J. struck a note of caution in para 706 as under:-

"706. It is also to be borne in mind that the evidence of confession of a co-accused is not required to be given on oath, nor is it given in the presence of the accused, and its veracity cannot be tested by cross-examination. Though the evidence of an accomplice is free from these shortcomings yet an accomplice is a

99.

999(5) SCC 253

60

person who having taken part in the commission of offence, to save himself, betrayed his former associates and placed himself on a safer plank -- "a position in which he can hardly fail to have a strong bias in favour of the prosecution", the position of the accused who has given confessional statement implicating a co-accused is that he has placed himself on the same plank and thus he sinks or sails along with the co-accused on the basis of his confession. For these reasons, insofar as use of confession of an accused against a co-accused is concerned, rule of prudence

cautions the judicial discretion that it cannot be relied upon unless corroborated generally by other evidence on record."

61. We will now consider confessions given by the Accused (other than A6 and A12 whose cases are separated) alongwith other material against each of them. It must be stated at this stage that in Kartar Singh v. State of Punjab¹⁰ decided on 11.03.1994 this court had laid down certain guidelines in para 263 of its judgment. The confessions recorded after the date of the decision will have therefore to be tested whether they are in keeping with the guidelines.

62. Re- A1 -- Dr. Jalees Ansari:

It was submitted on behalf of the accused that this confession was brought about by coercion and torture and that the accused had retracted his confession on 21.04.1994 (vide Ext. D 154) and later on 09.01.1995 (Ext. D 153). It was further submitted that the accused was produced from the

10

1994 (3) SCC 569

61

Police custody and remained in police custody even after recording of the confession.

The retraction dated 21.04.1994 stated that the accused was tortured, beaten and that his signatures were forcefully taken on empty written and typed sheets under threats. The later retraction dated 09.01.1995 stated that he was forced to sign on certain papers, the written matter was neither described nor shown to him. It is relevant that after obtaining his custody on 28.02.1994 from Designated Court, Bombay, A1 was produced in Ajmer Court on 01.03.1994. Since the Judge presiding over the Designated Court was on leave, he was produced before Additional Sessions Judge who gave him two days remand. The accused was again produced before the Designated Court on 4.03.1994 on which date he was remanded to judicial custody. The proceedings dated 4.03.1994 bear the signature of A1, which fact is admitted by him. On none of these two dates any complaint was made that either the accused was beaten or tortured or that his confession was obtained by exercise of any threat or coercion. The retractions are also much later, the first being on 21.4.1994. Having gone through the confession which records the satisfaction of the recording officer i.e. PW 62

H.C. Singh about the voluntariness of the confession, the certificate appended thereto and the other material circumstances we accept the confession to be correctly recorded and reject the submission that it was not voluntarily recorded. The format of the confession is also consistent with the requirements of Rule 15 of TADA Rules.

62

62.1. Having found the confession to be correctly recorded, we now deal with the confession as it stands. The relevant portions of confession

Ext.P-250 are as under:-

"It was around this time that I met one Ashfaque Khan in the office of my brother-in-law, Shamim Ansari at Ghafoor Manzil. This was in the last week of Dec'90. He was introduced to me as a mining contractor from Rajasthan by Javed Ansari nephew of Shamim Ansari. At that time the atmosphere in Bombay was tense and we discussed about the plight of muslims in the country. Later one day I took Ashfaque Khan to nearby restaurant and enquired from him about the possibility of getting explosives from Rajasthan. He said he would try and arrange some explosive material for me. I noted down his address and telephone number and also gave my telephone number and address. Later after about 1 to 1-1/2 months I telephoned to him and enquired about the explosive materials. He told me that he has not been able to arrange the materials. I told him to try. Later I went to Dausa on my way to Delhi. He was still not able to arrange the material. He however gave me 2-3 detonators which he was having. He also explained to me the use of these detonators. I then went to Delhi and Pilkhwa. On my way back I again halted at Dausa for some time. When I gave my telephone Number and address to Ashfaque I had told him that I may speak to him in the name of Abdullah. I had told him that on telephone he should call for me by the name Abdullah. On my way back I stayed in Dausa for some time and come back to Bombay. Later sometime in June'93 I again telephoned to Ashfaque from Bombay. This time he told me that he had arranged for some material. I then went to him after 10-12 days. Ashfaque Khan gave me about

63

70-80 Gelatine sticks. 25-30 detonators and some fuse wire. I gave him about Rs. 2500/- to 3000/- for this. I had earlier given him about Rs. 800/- during my earlier visit. In all as far as I remember I gave him about Rs. 4000/- in all. These Gelatine sticks were used for the bomb blast at Railways Reservation Centre, Secunderabad, Gamdevi Police Station Bombay, in a local train at Matunga Rly. Stn. And the bomb blast in trains near kota (Rajdhani Exp.), Surat (Flying Queen) and Secunderabad/Hyderabad (A.P. Exp.) on 6.12.1993.

Sometimes in Mid'93 one Aizaz of Gulbarga, who was working with a travel agent Tawakkal travels, became friendly with me. In short period I took him into confidence and discussed my plans with him. He took lot of interest and told me that some of his friends in Gulbarga were also interested in learning the use of explosives and making bombs. He went to Gulbarga and spoke to his friends. He also introduced me to one Ahmed of Gulbarga. Sometime in Aug'93, Saleem r/o Madanpura and myself went to Gulbarga, where we met Aizaz, Ahmed and one Azeem. I taught Aizaz and Ahmed how to make bombs. I then came to Hyderabad with Ahmed and Saleem, where I was introduced to one Shamsuddin @ Baba painter of Gulbarga. We caused two bomb blasts at two Police

Stations in Hyderabad. I had left Hyderabad before the actual bomb blasts took place. Later the bomb blast at Railway Reservation Centre was done by Shamsuddin @Baba Painter on his own. He had taken the material from me in Bombay.

Abdul Karim had once told me that he knows one Dr. Mohd. Habib of Rae Bareilli, who was also interested in taking up the cause of Muslims and some direct action against the Govt. and majority Hindu Community. Abdul Karim had stayed in Rae Bareilli for some time. One Abdul Hamid s/o Hakim Obaidullah who was working in my dispensary also told me that Dr. Habib of Rae Bareilli was his grand uncle (Nana). Sometimes in April, 93 when I was going to my village in UP I went to Rae Bareilli from Lucknow and met Dr. Habib on reference of Abdul Karim. We discussed about the plight of Muslims and the plans of causing disruptive activities which I was having in my mind. I asked him if he could arrange for

64

some weapons and other materials for bombs. Dr. Habib told me that he would introduce me to one Jamal Alvi of Lucknow who was also interested in such activities and can arrange for some materials. I stayed for a night at Rae Bareilli and came to Lucknow with Dr. Habib and met Jamal Alvi at his residence. When Dr. Habib introduced me to Jamal Alvi he told me that he (Jamal Alvi) had earlier met me at a library in Bombay. I however did not recollect this meeting. During our discussions Jamal Alvi told me that he had some links with some people and Organisations in Kashmir who can arrange supply of some weapons. From Lucknow I went to my village and from there I went to Nepal and met Mirza Dilshad Beg, Member of Nepal's Parliament and spoke to him about getting some weapons as I had heard that he was also dealing in such items. Beg did not give much importance. On my return I again met Jamal Alvi at Lucknow. During our meeting we decided to carry out some bomb blast on 31/7/93. Jamal Alvi told me that he would do something on that day at Lucknow. Later I came back to Bombay and could not meet Alvi for a long time. During this period I decided to postpone the date from 31/7/93. Jamal Alvi told me that he would do something on that day at Lucknow. Later I came back to Bombay and could not meet Alvi for a long time. During this period I decided to postpone the date from 31/7/93 to 13/8/93, just a few days before Independence Day so that the bomb blast would attract more attention of the Govt. I sent this message to Alvi at Lucknow who agreed to the proposal. I proceeded with my plans and arranged for bomb blasts at two Police Stations in Hyderabad and Azad Maidan Police Station in Bombay on 13/8/93. I also arranged for a bomb blast in Bombay on 11/8/93. I had used the name "Crush India Force" for these activities.

After this I met Jamal Alvi at Lucknow in Sept'93. I had gone to the residence of Jamal Alvi with Dr. Habib of Rae Bareilli towards the end of Sep'93. During my visit to Jamal Alvi's house a meeting was held in which Jamal Alvi, Dr. Habib, myself and 3-4 other boys of Jamal Alvi's group were present. Two of these boys were Afaq and Tuffail. One Kari, who I later came to know was from a village close to my native village, joined us later. Jamal Alvi had told me Kari stays in

65

Kashmir and is a representative of Hizbul Mujahidben. During the meeting the condition of Muslims particularly after the demolition of Babri Masjid and the attitude of Govt. was discussed and it was decided that something should be done on 6/12/93 to remember the demolition of Babri Masjid one year ago and remind the Govt. that the issue was alive. I suggested that we should cause bomb blasts in prestigious trains like Rajdhani Express so that the upper class of Society which is mostly from Hindu Community is affected. Killing or injuring of some people in trains would terrorize the people and govt.

and attract lot of publicity also. Initially Dr. Habib and Afaq and some others were not agreeable to his as they felt that some innocent lives would be lost. Later, they all agreed as it was felt that demolition of Babri Masjid was an issue on which some lives could be sacrificed and all of us should be united on this issue. During the meeting Jamal Alvi took the responsibility of organizing bomb blasts in prestigious trains like Rajdhani Express in UP. I agreed to organize bomb blasts in trains in other parts of the county. Some of those present also raised the question of funds for purchasing tickets etc. for trains and materials for making bombs. I then offered to contribute Rs. 3000/- and said that I would sent the amount from Bombay either to Jamal Alvi or Dr. Habib. After the meeting Kari showed me one imported pistol which he had brought from Kashmir. He also showed me some packets of explosives. He had kept these in a box in Alvi's house where some books were kept. Later, when Kari and myself came out for tea in a nearby hotel, he (Kari) told me that he was to go to Jaipur to carry out some explosions in Johri Bazar and Hawa Mahal. As he was short of some funds I gave him Rs. 500/-. During this visit I also deposited an application for my passport, with a travel Agent. I was taken there by Afaq who has a training institute in the same building. In the passport application I had given the address of my native village.

After coming back to Bombay I started preparing for the bomb blasts to be carried out on 6.12.1993. I discussed the decision that was taken at Lucknow with Jamal Alvi and others with my associates Shamim, Tahir, Saleem and Amin who were agreeable to the plan. I also spoke to Aizaz who was working in

66

Bombay and through him called for Ahmed of Gulbarga. I discussed the plan with Ahmed when he came to see me at Bombay later. After returning back Ahmed sent Shamsuddin @ Baba Painter to see me at Bombay. I discussed the plan with him. As he was agreeable to the plan I gave him one bomb which was in unfinished condition. He took this to Gulbarga. This was about 15-20 days before 6.12.1993. Later, Shamsuddin came back around 1.12.1993 and asked for one more bomb, which he said he would get planted in a train at Gulbarga through Aizaz, who had by then returned to Gulbarga. Shamsuddin @ Baba had told me that he would plant one bomb in A.P. Express at the same day. I gave one bomb to Shamsuddin on 2.12.1993. He left on the same day. Meanwhile, I had decided to plant Bombs in Rajdhani Express from Bombay to Delhi and Flying Queen from Surat to Bombay. I had decided that Shamim Tahirer and Saleem would plant bombs in these trains. Saleem had gone to Surat and booked a seat for himself in the name Sadiq on 1.12.1993 in 2 nd Class of Flying Queen Express of 6.12.1993. I had also reserved a seat for Shamim in Pantry car of Rajdhani Express Bombay to New Delhi on 5/12/1993. The reservation was in the name of Samir. As per the plan Shamim was to board the train at Baroda and get down at Kota, after putting on the timer device of the bomb. He was to return back from Kota Frontier Mail on 6.2.1993 itself. For this I had purchased a return journey ticket from Kota to Bombay in first class in the name of Samir. The money for these tickets was paid by me. Tahir was to accompany Shamim and Saleem as a helping hand upto Baroda. As per plan I had also booked three tickets in a bus from Bombay to Baroda on 4.12.1993. According to the plan Shamim, Tahir and Saleem left Bombay by bus. I gave them two bombs, one for Rajdhani Express and one for Flying Queen Exp. One bomb was in a Air Bag and the other in a Alfa Brief case. On 4.12.1993 when these persons were to leave Saleem felt that there should be one more person for his help. As Amin was keen to go it was decided that he would assist Saleem. As there was no reservation for him in bus he left for Baroda by train. All the four persons were to meet at a hotel in Baroda. Tahir had earlier

gone to Baroda some days earlier to assess the security in

67

Rajdhani Express. He had then selected a hotel where these persons were to stay.

As per the plan Shamim boarded the Rajdhani Express at Baroda with the bomb. Tahirer returned back after seeing off Shamim. Saleem and Amin travelled upto Surat, Where Saleem planted the bomb in the train at Surat Station. Later, both Saleem and Amin came back to Bombay, Shamim came back to Bombay a day later. I remained at Bombay on 6/12/1993. After returning back Shamim, Tahir and Amin reported the developments to me. I enquired from them whether they were all right.

During this period I did not know as to how Jamal Alvi had planned for the bomb blast in UP. I only heard the news through the media. After coming back from Lucknow I had sent Rs.3000/- by post to Dr. Habib for passing on the amount to Jamal Alvi at Lucknow for the bomb blast proposed for 6/12/1993 during the meeting at Lucknow in Sept'93. I had sent the amount sometimes in mid Nov'93 but I had not received any information about their exact plan. Around 10/12/1993, Jamal Alvi, came to my house at Bombay and informed me about the bomb blasts in Rajdhani Express trains done by him. I enquired from him whether the blasts were not powerful as no persons had been killed. Later, Shamsuddin and Azim also came to Bombay. They told me the bomb in A.P. Express was planted by Azim as Shamsuddin was not well that day. They also told me that Aizaz had kept one bomb in Bangalore-Kurla Express which did not explode. Later, I came to know that his bomb had been thrown out from the train by passenger.

...Sometimes in early December before the bomb blast in trains on 6/12/93 Abdul Karim had also come to Bombay, I disclosed my plans for 6/12/93, he then told me that we should do something at Delhi on 26/1/94, so that some important persons could be killed for creating terror. I agreed to this and told him that I would do something. Later I got preoccupied with my plans for 15/1/94 and did not give much thought for preparing any plan for 26/1/94.

68

I was arrested by CBI on 13/1/1994. Few days before my arrest I had given on bag containing some arms-revolvers, Kattas, cartridges etc. to my younger brother Laeeq Ansari for safe custody. The remaining arms explosives out of the lot, which I had procured from time to time were in my residence and were seized by CBI."

62.2. The aforesaid confession Ext.P-250 deals with and throws light as regards all stages of the conspiracy as projected by the Prosecution. It further shows the involvement and the important role played by this accused at every stage. He was the mastermind and main architect of the conspiracy. The confession refers to three circumstances in respect of which material is available on record. (1) Amount of Rs.3,000/- sent by A1 to A3 (2) Application for passport made by A1 and (3) Reservation made by him in the name of Sameer in Rajdhani Express.

62.3 The insured envelope in which amount of Rs.3,000/- sent was

brought on record at Ext. P-230 which bears No.0540 and was sent by "Dr. Mohd. Jalees BTT Chawl" addressed to "Dr. Habib, Kaharonka Adda, Rae Bareilly" and bears stamp of "HANSROAD P.O." with date 19.11.1993. PW 55 A.L. Lad, Postal Assistant, Hans Road Post Office Byculla, Mumbai was examined to prove Ext. P-230 and the fact that insured parcel of the value of Rs.3,000/- was sent to Dr. Habib, as aforesaid. Ext.P-172 is a document from Rae Bareili Post Office with endorsement in Hindi, which according to prosecution was in the hand-writing of A 3 Dr. Habib, to the following effect:

"Ek Kita No.540 Kimti 3,000/- (Teen Hajaar) ka seal band Durust Paya."

Sd/-
Dr. Habib

PW 37 Ganga Narayan, Post Man at Head Office, Rae Bareili stated that he had made endorsement at Ext.P-172 after the writing and Signature of A3 Dr. Habib and that the writing and the signature were put by A3 in front of him. PW38 Swami Dayal, who at the relevant time was working as clerk in the Post Office at Rae Bareili also stated that the writing and the signature of A3 as well as the attestation by PW37 Ganga Narayan was done in his presence.

62.4 Application for Passport made by A1 is on record vide Ext.P-187 with the photograph and signatures of A1. The prosecution has also placed on record the receipt dated 28.09.1993 acknowledging receipt of Rs.3,000/- issued by Passport Office Lucknow which is at Ext.P187. PW41 Tahir Raza Abdi, Travel Agent has stated that A1 Dr. Jalees Ansari had come to him around on 27.09.1993 with A5 Afaque Khan with a request to make his passport. The witness further stated that he had obtained signatures of A1 on the photograph and on the application. Relevant documentation namely, the entries in his register at Ext.P-189 with entry regarding A1 was also placed on record. His brother PW42 Sikandar Mirza proved the relevant entries in the register and the fact that he had deposited fee of Rs.300 in the Passport Office on 28.09.1993. The fact that A1 was in Lucknow around 28.09.1993 thus stands established.

62.5 The prosecution has examined PW16 Smt. Vijaya Dev Prakash who was working as Enquiry-cum-Reservation Clerk at Bombay Central Railway

Station at the relevant time. The witness stated that she had issued ticket in the name of "Sameer" on the basis of Reservation Slip Ext.P-59 and the passenger was allotted Seat No.1 in Compartment PC-2.

62.6 The opinion of the hand writing expert at Ext.P-290 and the testimony of PW133 Dr. S.C. Mittal, hand-writing expert further establishes that the writings in question on insured envelope Ext. P230, Passport Receipt Ext.P-187 and Reservation Slip Ext.P-159 were in the hand-writing of A1.

62.7 Further, visiting card Ext.P-159 was recovered from the house of A2 Ashfaque Khan at Dausa vide Seizure Memo Ext.P-158 which seizure was proved through PW32 R.D. Kalia, Inspector, CBI, Jaipur. Visiting Card Ext.P-159 of Dr. Jalees Ansari bears telephone No. "3055704" against "Dr. Abdullah". Both these writings have been found by PW-133 hand-writing expert to be of A1.

These circumstances through documentary evidence on record stand proved and lend sufficient corroboration to the contents of confession Ext. P-250. On the strength of his confession and the corroborating material, the case of the Prosecution stands fully established against A1.

63. Re: A-2 Ashfaque Khan

A2 was arrested on 16.04.1994 and the arrest memo Ext.P-161 shows that the offence was one under the provisions of TADA Act. He was produced on 17.01.1994 and remanded to police custody. After his confession was recorded on 28th and 29th January, 1994 vide Ext.P-248, he was produced on 09.02.1994 and remanded to judicial custody. No objection was taken nor any complaint was made when he was produced before the judicial officer on 09.02.1994 or soon thereafter while he was in judicial custody. His retraction Ext.D-159 is dated 20.08.1995 nearly one and a half year later and states that his signatures were obtained on blank papers after he was badly tortured and that he had never given any confessional statement. Considering the fact no complaint was made on the day he was produced and the retraction for the first time was done nearly one and half year later, we reject the submission that the confession was brought about by torture or coercion. We have gone through the confession and the certificate appended thereto and the examination of PW62 and find

that the confession is completely in conformity with the requirement of law.

We therefore consider the confession Ext.248 to be admissible and reliable.

63.1 The confession Ext.P-248 states inter-alia:

"Dr. Jalees Ansari had enquired about the materials used in mines for the blasting purpose and asked that he needed the explosives used for blasting. He asked me whether I could arrange for the same. I told him that sending the materials was quite difficult. Dr. Jalees Ansari told that even than try to get it . He told me that he, often visited Delhi and will meet me in Dausa. He had taken my address and telephone number. 20803. Jalees Ansari also gave me his card, which has just been shown to me. He has written the word "ABDULLAH' in the card and stated that he will call over phone by name Abdullah. So understand that it was his phone call.

In Bombay when Dr. Jalees Ansari talked about religion and stated that "Islam is in Danger" then I came under his influence and agreed to collect the explosive materials. When I asked him what he will do of it, he told that do not bother about it. There was a talk with Dr. Jalees Ansari in the restaurant and thereafter 2-3 days I came back to Dausa."

"On my reaching Dausa, often about 1 to 1-1/2 month Dr. Jalees Ansari called me to Dausa at my residence over telephone. He enquired about the explosive material. I told him that so far it could not be arranged. He told me to try to get the same and stated that he will be coming to Dausa after a few days. After 15-20 days Dr. Jalees Ansari came to me in Dausa. After coming to Dausa Dr. Jalees Ansari asked me about explosives materials. I told him that so far it could not be

73

arranged. Then he asked about SAMAN and asked me to show it. At that time I was having 2-3 blank damaged TOPI, I showed the same to Dr. Ansari. I told him not to use the TOPI (detonators). These blank TOPIs were taken away by Dr. Jalees Ansari. He gave me approx. Rs.800/- and told that I may continue efforts for the materials. He will again ring me and meet me if he came there.

Dr. Jalees Ansari stayed at my residence for about one night and one day. He had asked not to introduce him to any one. Dr. Jalees Ansari went to Delhi from there. After 1-2 days, while returning from Delhi he again stayed at Dausa. After staying for the night at Dausa he went to Bombay from Jaipur. Again Dr. Jalees was talking about the communal riots held in Bombay while he was in Dausa and instigated my feelings. Due to this I decided to give him the explosive materials."

.....

"I took the above materials and after some days, a telephone call of Dr. Jalees Ansari came from Bombay. He asked me about the explosive materials. I told him that the material had been arranged. Dr. Jalees Ansari told that after some days he would be coming to Dausa. After 10-12 days Dr. Jalees Ansari came to dausa.

.....I gave materials to him which I had bought from village Guddu Chadar. He was having some money in his pocket and gave to me. He told that it was Rs.4000/- including the money which he had given earlier."

.....

"Dr. Jalees Ansari instigated my religious feelings by talking about religion. He used to speak ill of Hindus, that is why I come under his influence. Due to this I collected the explosive materials and gave him. I was knowing from his talks that he was collecting these materials for making bomb etc. and will utilize it for illegal purpose but I came under his influence."

74

63.2 During the search of the house of A2 a visiting card Ext.P-159 and a diary were recovered vide Seizure Memo Ext. P-159. The seizure memo was proved by PW-32 Inspector R.D. Kalia. The Diary Ext.P-157 bears the name and telephone number of "Abdullah". According to the hand writing expert's opinion Ext.P-290 and the testimony of PW-133 Dr. S.C. Mittal Hand Writing Expert this writing in Diary Ext. P-157 was in the hand writing of A2 Ashfaq Khan.

63.3 The recovery of visiting card Ext.P-159 which was found to be having writing of A1 Dr. Jalees Ansari as stated hereinabove and the Diary Ext.P-157 lend sufficient corroboration to the statements made in the confession Ext.P-248. The confession of A2 stands fully corroborated by circumstances on record and by the confession of A1 and the case against him stands fully established.

64. Re: A-3 Dr. Habib Ahmed Khan

Ext. 247 Fax message had named A3 who was then arrested on 14.01.1994 from Rai Bareilly and produced before the Judicial Magistrate of Lucknow. As directed by the Judicial Magistrate, he was then produced before TADA Court on 17.01.1994 which by its orders dated 17.01.1994 and 22.01.1994 remanded him to police custody. While in custody he was taken to Delhi where his confession Ext. P-251 was recorded on 12.02.1994 and 13.02.1994. He was remanded to judicial custody on 19.02.1994. The retraction for the first time was made on 25.08.1994 vide Ext. D 142 and later on 09.01.1995 vide Ext. D157. In his first retraction the accused claimed that he had not given any confessional statement at all. In the subsequent retraction it was alleged that the accused was tortured physically and mentally and that during his remand period he was forced to make some confessional statement and forced to sign on certain written papers and

75

some blank papers. Neither when the accused was presented before the concerned Court which remanded him to judicial custody nor till 09.01.1995, any allegation of physical torture was ever made. We have gone through the confessional statement and the certificate appended thereto and are satisfied that the confession so recorded was in conformity with the requirements of law. We therefore reject submission advanced on behalf of accused and find the confessional statement to be admissible in law.

64.1 The relevant portions of the confession of A3 Dr. Habib Ahmed Khan are as under:-

76

".... I live in Kaharo Ka Adda, Raibareli. I am Homeopathic doctor and practice on my own. I did my High School from Govt. Inter College Rai Bareli in 1954 and registered myself as Registered Medical Practitioner in 1954.

In the last week of Sept. 93 myself and Dr. Ansari met. We both went together to the residence of Jamal Alvi. On that day Tuffail, Afaq, Irfan and one or two more boys were sitting in the house of Jamal Alvi. After sometime, the Kari also joined there. We held a discussion over the atrocities and injustice meted out to Muslims. A discussion was held regarding the insecurity feeling of Muslims after the demolition of Babri Masjid and attitude of the Govt. towards Muslims and it was decided that there should be some action so that the Govt. be terrorized and it should be remembered that the matter of Babri Masjid is alive. Dr. Jalees Ansari suggested that on 6.12.1993, the day when the demolition of Babri Masjid would complete one year, bombs explosion should be caused in important running Rajdhani Trains of the country. So that Govt. will be terrorized. It was the thinking of Jalees Ansari that generally the high class people used to travel by these trains and that too maximum Hindus. It will have more impact when the people of this class will die in bomb explosions and the anger, Muslims are having would get more publicity. Initially myself and some others who were in the meeting, did not agree. It was our suggestion that by doing this some innocent people may lose their lives. But after sometime it was decided that we should be united in this matter concerning Babri Masjid and there should be some action which could terrorize the people of the country and Govt. irrespective of the lives of certain public. At the end we all agreed to the proposal of Dr. Jalees Ansari. Jamal Alvi took the responsibility for causing bomb explosions in trains in other parts of the country. Some members present in the meeting raised the problems of funds for the procurements of explosive for causing explosions and for procurement of tickets and raised the points that from where the money will come to meet the expenditure. Dr. Jalees Ansari told that he will give Rs. 3000/- Dr. Jalees Ansari told that either he will send Rs. 3000/- to Jamal Alvi or to me. Then I also told that I will

77

give money in case it is not collected from anywhere. I told for giving Rs. 3000/-.

We all people dispersed and thereafter Dr. Jalees Ansari sent me Rs. 3000/- by post on around 18-20th Nov. I gave this money to Jamal Alvi in Lucknow. During these days only I met Kari in Lucknow. Kari gave me three packets of explosives and told that it can catch fire after the pouring of acid and it can cause explosions. He told me that it contained some potash and sugar. I gave all the 3 packets to Jamal Alvi after sometime. I

told him how to cause explosion from it. I told him that while keeping the bombs in trains and also keep these packets, because if in case the timing device would fail these packets can cause explosions by getting fire."

64.2 As stated above, insured envelope Ext. P 230 was sent by A1 Dr. Jalees Ansari to this accused and Ext. P 172, a document from Rai Barelli Post Office bears endorsement in Hindi and signature. As regards the receipt on insured envelope. PW 37 Ganga Narayan, PW 38 Swami Dayal have testified that the endorsement in the Hindi appearing at Ext. P 172 was made by A3 who also signed in their presence. PW 132 H.L. Mukhi Hand Writing Expert has deposed that the endorsement and the signature in question were that of A3.

64.3 The aforesaid circumstances lend complete corroboration to the relevant contents of the confessional statement Ext. P251. The confession of A1 also lends complete corroboration. The role and involvement of A3 Dr. Habib Ahmed Khan in the conspiracy thus stands established.

78

65. Re:- A4 M. Jamal Alvi.

This accused was arrested on the same date like A3. He was produced before the Judicial Magistrate on 15.01.1994 who directed that he be produced before the Designated Court, Kanpur which after he was so produced, by its orders dated 17.01.1994 and 22.01.1994 remanded him to police custody. While in custody his confessional statement Ext. P-253 was recorded on 18.02.1994 and 19.02.1994. The accused submitted retraction on 25.8.1994 vide Ext. D 144 and later on 09.01.1995 vide Ext. D-155. These retractions submitted that the confessional statement of the accused was obtained by coercion, misrepresentation, fraud and by using third degree methods. However no complaint or objections was made when the accused was sent to judicial custody on 19.02.1994 or soon thereafter. We have gone through the confessional statement where warning was given to the accused and satisfaction about voluntariness was recorded and through the certificate appended to the confessional statement. In our view there is no infirmity on any count. We therefore reject the submissions advanced on behalf of the accused and hold the confessional statement Ext. P-253 to be admissible and reliable.

79

65.1 The relevant portions of the confessional statement Ext. P 253 are as under:-

"I studied at St. John's College Agra, from where I did M.Com in 1963. Later I went to Bombay and joined as Lecturer in JMC Anjuman College of Commerce, Bombay. After a few years I left the job and started my own business which I left in 1970, after my partner expired. In 1970, I did MA in Political Science from Poona University and in 1973 I did MA in Economics also from Poona University.

About a year back, sometimes in March-April'93, Dr. Habib of Rae Bareilli came to my house at Lucknow with one Dr. Jalees Ansari, who is originally a resident of Distt. Basti and is presently residing at Bombay. On meeting Dr. Jalees Ansari I was reminded of a person similar to Dr. Ansari, whom I had met at Bombay, I told Dr. Jalees that I had earlier met him at Bombay. However Dr. Jalees denied meeting me earlier. During the meeting Dr. Jalees spoke about the plights of muslims in the country and the atrocities committed during the communal riots particularly after the demolition of the Babri Masjid and the need for taking some action to terrorise the Government. He also asked me if I could arrange for some arms and explosives for him. I told him that I know some persons who had links with some militant groups in Kashmir and they may be able to arrange some arms and explosives for him. After a few days Dr. Jalees Ansari again came to me and discussed about his plans to carry out some bomb blasts in Jul-Aug'93. He also wanted me to organize some bomb blasts on fixed dates at Lucknow also.

Later, sometimes towards the end of Sept'93, Dr. Jalees Ansari again came to my residence with Dr. Habib of Rae Bareilli. On that day a number of boys who came to me for coaching or borrowing books for binding etc. were present. Dr. Jalees Ansari started a discussion on the injustice meted out to muslim community on the issue of Babri Masjid, the situation created out of communal riots and the economic condition of the muslims. He wanted me to come out openly against the

80

Govt. and assist him in his terrorist and subversive activities, as my efforts in voicing the grievances of the community and protesting agsint the attitude of the Govt. through articles in Newspapers, magazines and books had failed. Dr. Jalees Ansari also spoke to the boys present during the meeting namely Afaq, Tuffail, Irfan and Hameed, they became very enthusiastic. Dr. Jalees then suggested to all of us present there that something drastic should be done to remind the Govt. that the Shrine of Babri Masjid was alive and injustice was being done to muslims. He also suggested that to start with bomb blasts could be carried out in important trains like Rajdhani Express through out the country on 6.12.1993, the first anniversary of the demolition of the Babri Masjid to terrorise the Govt. and the people and avenge the demolition of Babri Masjid. He said that mostly people from the upper class who are from the majority Hindu community travel in these trains. If some persons from this class are killed or injured, it will create a lot of impact. Initially this proposal was opposed by me and some other present in the meeting, on the ground that by such bomb blasts some innocent people may be killed. By that time 'Kari' had also joined the meeting. He agreed to the suggestion of Dr. Jalees Ansari. He also asked me and others to agree to the suggestion as Babri Masjid was an issue on which everybody should be united. Later, Dr. Jalees Ansari asked me to take up the responsibility of carrying out the bomb blasts in Rajdhani Express trains in UP. And he would organize the bomb blasts in other parts of the country. I was not agreeing to this also, but 'Kari' told me that he will arrange everything and I only have to

supervise the work of the boys, who will carry out the work. He told me not to bother, so I agreed to the suggestion of Dr. Jalees. I also raised the question of funds for organizing these bomb blasts. Dr. Jalees Ansari then offered to give Rs. 3000/-. He said he would send the money either to me or to Dr. Habib who would give the amount to me. Dr. Habib also told us not to bother about money. He said that if funds are not available he would contribute Rs. 3000/-.

Later, sometimes in Nov'93, Dr. Habib came to me and gave me Rs. 3000/-, which Dr. Ansari had sent to him. He also gave me three packets containing some explosives, which he

81

said can catch fire after sometime if acid is put in it. He said that this can be used to cause bomb blast in case the timing device fails. During this period 'Kari' had also met me on a number of occasions. I gave him Rs. 3000/- which I have received from Dr. Habib. Sometimes in oct-nov'93 after the meeting in which it was decided to cause bomb blasts in trains on 6.12.1993 'Kari' advised me to administer an oath to the boys who were present in the meeting, to fight against the Govt. and not to disclose the secrets of the group. Accordingly after a few days sometime in Nov'93, I had administered an oath to Afaq, Hameed, Irfan and Tuffail separately by asking them to keep their hands on Koran Sharif and recite the oath. The substance of the oath was 'I will not do anything against the law of Islam, I will not misuse the money given to me for the cause of Islam and I will not disclose the secrets of our group'. During this period Dr. Jalees Ansari had telephoned to me and also written a letter to remind me of the 'work' to be done on 6/12/1993.

Just a few days before 6/12/1993, 'Kari' gave me two bombs in plastic lunch boxes, which he had made. He told me the timings of the Rajdhani Express at Kanpur, and asked me to go to Kanpur, with the boys Irfan and Hamid, to supervise their work. Some circuits for timing had to be fixed in the bomb, I got them fixed by Afaq. On 5.12.1993, Irfan, Hamid and myself left Lucknow for Kanpur, by bus. We had taken the bombs given to us by Kari. I had also taken the packets of explosives given to me by Dr. Habib. The boys had kept the Bombs packets in a plastic bag "Literacy House", which was lying in my house. On reaching Kanpur, we stayed in a Hindu Hotel near railway station. Name of the hotel is Hindu Apna Hotel. I made entries in the Hotel register in the name of 'Ramkumar' and 'Ramesh' as mentioned the address as 'Pakali Ganj, Gonda'. I made entries in the fictitious Hindu name to conceal my identity. In the night at around 10 pm Hamid and myself went to the Railway Station. I remained on the platform and Hamid went inside one coach of Rajdhani Express (going towards Calcutta) when it arrived at the station. It was a pantry car. Hamid planted a bomb in the toilet and came out. Before placing the bomb I had kept the packet of explosives with acid

82

given to me by Dr. Habib. We then went back to our Hotel room. In the morning at about 4:30 AM, Hamid, Irfan and myself left the hotel and went to the Railway Station. When the Rajdhani Express going towards Delhi arrived at the platform. I told Irfan to place the bomb in the toilet of one of the coaches. Accordingly he placed the bomb in the toilet of a coach. This time I forgot to keep the packet of explosive given by Dr. Habib inside the bomb, so I asked Hamid to place this in another coach. Accordingly, he placed it in another coach. I remained on the platform. We had placed the packet of explosives in the bomb as a precaution. In case the timer device fails this packets could cause fire and ignite the bombs. Later, we all came back to Lucknow.

.....I informed him about the bomb blasts carried out by my

group in the trains near Kanpur on 5/6.12.93. Dr. Jalees Ansari enquired from me as to where the bomb blasts were not of high intensity as no person had been killed. He was not very happy as the bomb blasts carried out by us were of low intensity.

Sometimes in Sep'93, just a few days before the meeting, in which decision was taken to plant bombs in prestigious trains on 6.12.93, 'Kari' had come to my house. He had come from Kashmir and had brought a box, which he told me contained some shawls and pashmina materials from Kashmir.

.....When Dr. Jalees Ansari had come to my house and plans for bomb blast in trains on 6.12.93 were decided, 'Kari' had told Dr. Jalees Ansari that he had brought some arms and explosives from Kashmir. He had shown to Dr. Jalees one important 9mm pistol, handgrenade, timers etc. in the box containing shawls etc."

65.2. PW 40 Prem Shankar Pandey, Manager Hindu Apna Hotel was examined by the Prosecution to prove writing and signature in the Hotel Register Ext. P. 184. The report of the Handwriting expert at Ext. P. 292 and the deposition of PW 132 S.L. Mukhi, Handwriting expert prove the writing and signature in the register in question to be that of A4. 83

65.3. At the time of the arrest of A4, large quantity of arms and explosives were recovered.

65.4. The material as above and the circumstances on record as well as the confessions of A1 and A3 lend complete corroboration to the confession of A4 and the case against him stands established.

66. Re: A7 Fazlur Rehman :

This accused was arrested on 14.01.1994 in Mumbai and PW150 P.D. Meena had interrogated him on 04.02.1994. Thereafter, PW-150 P.D. Meena applied before the Designated Court, Ajmer seeking production cum arrest warrant, which was accordingly issued. Thereafter CMM, Mumbai granted custody on 07.07.1994 and the accused was accordingly produced before the Designated Court, Ajmer which granted police custody. Accused having desired to confess PW-150 P.D. Meena informed PW-62 H.C. Singh who thereafter recorded the confession Ex P-255 on 26.07.1994 and 27.07.1994. Soon after recording of the confession the confession was sent to the Court of Chief Judicial Magistrate and A7 was also produced before Chief Judicial Magistrate, in keeping with guidelines issued by this Court in Kartar Singh v. State of Punjab (supra). PW-141 B. M. Gupta, Chief Judicial Magistrate, Jaipur before whom the accused was produced has testified about such 84

production and also that two sets of signatures were taken of this accused in the proceedings before said PW-141. The order sheet, Ext. P-256 bears testimony to such signatures. By subsequent order dated 03.08.1994 the accused was sent to judicial custody. Neither at the stage when he was produced before PW-141 B.M. Gupta on 28.07.1994 nor on 03.08.1994 or soon thereafter any complaint was made or objection was raised about non voluntariness of the confessional statement. The retraction Ext. D-152 was made for the first time on 25.11.1994 followed by another retraction Ext. D-160 dated 06.06.1995. The retractions are in general terms that confessional statement was obtained by physical torture and coercion. Having gone through the material on record including the certification and satisfaction about voluntariness of confession, we are satisfied that the confessional statement Ext. P-255 was in conformity with the recruitments of law and the guidelines laid down by this Court. We, therefore, accept the confession to be correct and valid.

66.1 The relevant portions of the confessional statement Ext. P-255 are as under:-

85

"After this, sometime in Nov'93 Dr. Jalees Ansari met me and told me that he has planned to cause bomb blasts in prestigious trains throughout the country on 6.12.1993, the day Babri Masjid was demolished a year back. He told me that this was to protest against the demolition of Babri Masjid and to take revenge against Hindus. He asked me whether, I was willing to join him in making this successful. As I was deeply hurt over the treatment given to muslims I agreed to join Dr. Jalees Ansari in his plans. Dr. Jalees Ansari first told me to purchase a return ticket from Kota to Bombay for 1 st class in Frontier Mail for 6.12.1993 in the name of 'Sameer'. He told me to write any fake address on the requisition slip. He also gave me about Rs. 600/- to 700/- for the ticket. As per instructions I purchased the ticket for 6.12.1993 in 'Frontier Mail from Kota to Bombay in 1st Class. In the requisition slip I gave a fake address of Vikhroli and returned the balance amount with the ticket to Dr. Jalees Ansari. After few days ,Dr. Jalees Ansari and Saleem came to me. Dr. Jalees Ansari told me that as per his plans for causing bomb blasts in trains on 6.12.1993. One 'Tahir' was to carry out bomb blast in Rajdhani Express, Bombay to Delhi, near Kota. He told me that 'Tahir' was not willing to travel in the train and wanted someone else to travel in the train and carry out the bomb blast. He asked me if I could do this. I agreed to this Dr. Jalees Ansari told me that Tahir would be keeping the bag containing the bomb in the train at Baroda Rly. Stn. I would have to travel in the train and put on the device near Kota and get down. He told me that he has already arranged for ticket in Rajdhani Express. He told me that he would tell me the final programme on 2.12.1993. Dr. Jalees came to me again on 2.12.1993 and asked me to meet him outside Bombay Central Station, iIn the evening on 4.12.1993. Till then I had not known Tahir closely. I only know that he was also residing on Souter

Street.

As instructed by Dr. Jalees Ansari, I reached the stall of National Tours and Travel on 1.12.1993 at about 7 P.M. There I met Dr. Jalees Ansari, Tahir and Saleem. One more person, whom I later came to know was 'Amin' of Madanpura came there after some time. Dr. Jalees Ansari gave me two tickets for

86

journey from Baroda to Kota in Rajdhani Express and return journey from Kota to Bombay by Frontier Mail, which I had purchased earlier. He also gave me Rs. 700/- to Rs. 800/- for my expenses on the way. Dr. Jalees Ansari gave one bomb kept in an air bag of blue colour to Tahir. He gave another bomb contained in an Alfa brief case to Saleem. Dr. Jalees Ansari also pointed out the switch on in the bag and the brief case which were to be put on to put the bomb device into action. Around 8P.M. Tahir, Saleem and myself left for Baroda by a deluxe bus of National Tour & Travels. Bus ticket for bus journey to Baroda had been purchased by Dr. Jalees Ansari and given to Tahir. On the way to Baroda Tahir told me that Saleem will be going to Baroda with us. From there he would go to Surat to carry out a bomb blast in another train.

We reached Baroda at about 6 A.M. Tahir took us to a Hotel which was near a Mosque about 10 minutes walk from the Rly. Stn. At the Hotel, one person by the name Achhu Bhai received Tahir. He was known to Tahir as Tahir had come to Baroda earlier and stayed in this Hotel. Tahir had come to Baroda earlier to survey the area and see the security arrangements at the Rly. Stan. At the time of arrival of Rajdhani Express. Some time after we reached the Hotel, Amin also reached there. He came to Baroda by bus. Tahir told me that he will accompany Saleem to Surat. We stayed in two rooms in the Hotel. The entries in the Hotel Register were made by Tahir for most of the day we stayed in the Hotel. We went out only to offer Namaz and food.

At about 8 P.M. on 5.12.1993, the day we had reached Baroda Tahir, Saleem and myself left the Hotel and came to the Rly. Stn. Saleem stayed outside. I purchased a platform ticket and entered the platform with Tahir. By then Tahir had taken journey ticket to see my coach no. and seat no. We kept waiting on the platform till the Rajdhani Express arrived. When the train arrived Tahir boarded the train and kept the bag containing the bomb in the chair car coach adjoining Pantry Car PC2 in which I had my reservation. After keeping the bag, he came out. Later Tahir and myself boarded the train. He pointed out to me the bag containing the bomb device. It was kept in the

87

Chair Car in the space between the seat and the coach wall. He then gave me the journey ticket. I gave him the platform ticket. I also gave him about Rs. 300/- to clear the Hotel Bill. After Tahir got down I returned to my seat in the Pantry car and occupied the seat.

After the train left Baroda, the Conductor checked the train. He came to me and checked my ticket. Later, he offered me a seat in the adjoining Chair Car. He took me to the seat also but I refused to accept it as I saw the bag containing the bomb, which Tahir had kept in the coach near the seat. I made an excuse to the conductor that it is congested and will not suit me. I came back and occupied my seat but I could not sleep well as I had to switch on the bomb device and get down at Kota. When the coach was nearing Kota Station at about 4.00 A.M. I went to the adjoining coach where Tahir had kept the bag containing the bomb device I quietly switched on the bomb device and got down at Kota station. With a polythene bag in which I had kept my clothes.

When I came out I felt cold as it was the month of December, so I went to a hotel near the railway station. On the main road, I took a room in the Hotel. In the Hotel Register I made an entry in the fake name of "Steven Samuel", a Christian name. I also gave a fake address of Kamanwar Nagar, Vikhroli which I had written. On the requisition slip for reservation for return journey by frontier mail on 6.12.1993 from Kota to Bombay. I stayed in the hotel till around 12:30 P.M. As I could not sleep well I left the Hotel and came to the Rly. Station and waited for the Frontier Mail. On the platform at the railway station. I came to know about the bomb blast in the Rajdhani Express between Kota and Sawaimadhopur Stn. When the Frontier Mail came I boarded the 1 st Class coach in which I had a reservation in the false name of 'Sameer' I travelled under this name and reached Bombay on 7.12.1993. The reservation in the Rajdhani Express from Baroda on 5.12.1993 was also in the

88

name of 'Sameer' I had travelled upto Kota under this name. After reaching Bombay I went straight to my house. "

66.2 Ext. P-10 is a reservation form by which the ticket was booked in the name of "Sameer" from Kota to Mumbai in Frontier Mail leaving 06.12.1993. According to expert opinion Ext. P-291, the writing and the signature appearing on Ext. P-10 reservation form are that of A7 Fazlur Rehman. The testimony of PW-133 S.C. Mittal, Handwriting Expert establishes this fact.

66.3 Similarly, Register Ext. P-7 of Shri Anand Hotel at Kota which was seized vide seizure memo Ext. 523 shows the writing signifying stay of one 'Samuel' with address Kannamwar Nagar, Vikhroli, Mumbai. This entry at Ext. P-7 has also been found by the Handwriting Expert in his opinion Ext. P-291 and subsequent deposition in Court to be that of A7.

66.4 PW 33 Md. Sadiq, Partner of Firm named Faruq Impex where A7 used to work deposed in Court that A7 had not come to the office on 3 rd, 4th, 6th and 7th December, 1993. The Attendance Register Ext. P-164 was also produced on record in support of such assertions.

89

Therefore, the circumstances in the form of reservation form Ext. P-10, Hotel Register Ext. P-7 and the absence from duty signified by Attendance Register Ext. P-164 do support and corroborate the contents of the confessional statement Ext. P-255. The confession of A1 also lends corroboration on material particulars. The case against A7 thus stands fully established.

67. Re: A14 Md. Amin :

This accused was initially arrested in September, 1994 by CBCID Bombay in connection with some other case and having come to know about such arrest PW-150 P.D. Meena moved an application on 10.10.1994 before the Designated Court, Ajmer seeking his production warrant, which was accordingly issued. His custody was thereafter given on 27.10.1994 and the accused was brought to Ajmer and produced before the Designated Court on 28.10.1994 on which date police custody was granted. He having desired to confess PW-150 P.D. Meena produced him before PW-62 H.C. Singh who recorded confessional statement Ext.P-257 on 17.11.1994 and 18.11.1994. Thereafter the accused was sought to be produced before Chief Judicial Magistrate, Jaipur along with covering letter Ext.-258. However, since Chief Judicial Magistrate was on leave, the Additional Chief Judicial Magistrate directed that the accused be produced on 22.11.1994. He was accordingly produced before PW-141 Brij Mohan Gupta, Chief Judicial Magistrate on 22.11.1994. PW-141 opened the sealed envelope containing confession and having asked the accused about the confession, took signatures of the accused in acknowledgement on every page of the confession. He was thereafter sent to judicial custody and the retraction for the first time vide Ext. D-150 was made on 26.08.1995. We have seen the confessional statement Ext. P-257 which bears signatures of confessing accused at every page and the deposition of PW-141 Brij Mohan Gupta, Chief Judicial Magistrate. No complaint at that time was made about any undue influence, coercion or torture or soon thereafter. The contents of the confessional statement as well as the certification completely establish the satisfaction of the Recording Officer about voluntariness of the confession which part is consistent with the requirements in law. We, therefore, accept the confessional statements of Ext. P-257 to be valid and in conformity with the requirements of law and guidelines issued by this Court and accept it to be admissible and reliable.

90

67.1 The relevant portions of the confessional statement Ext. P-257 are as under:-

91

"Dr. Jalees Ansari also taught us to prepare Tiffin box bombs with watch timer device.
Dr. Jalees Ansari had also taught us to make bombs from plumbing pipe.

Sometimes in August 93 when Dr. Jalees Ansari, Tahir and myself were discussing about the ways to take revenge for the demolition of Babri Masjid and create terror among the people. I suggested that we should cause bomb blasts in important trains on the first anniversary of the demolition of Babri Masjid, Dr. Jalees Ansari liked the idea. Later sometimes during November 1993 when I met Dr. Jalees Ansari, he informed me that he was working on a plan to cause bomb blasts in important trains on 6.12.1993. He told me that he had spoken to Mohd Saleem and Tahir also, about it. They would be causing a bomb blast in train near Surat. Dr. Jalees Ansari asked me to provide Rs. 2000/- for this work, which I provided after a few days in cash.

On 4.12.1993 in the evening at about 5:30 P.M. Dr. Jalees Ansari telephoned me at my residence and informed to me that Mohd. Saleem who was to go to Surat for causing bomb blast in train, had not reached the Bombay Central Bus Stand. He told me to go to the residence of Mohd. Saleem to look for him. I then went to the residence of Mohd. Saleem and came to know that he had already left the house for the bus stand. I then went to Bombay Central Bus Stand and met Dr. Jalees Ansari. Mohd. Saleem had already reached there Tahir and one Shamim, whose full name is Fazlur Rehman were also there. At that time, I came to know that Shamim was also involved in the activities of Dr. Jalees Ansari and was to plant a bomb in Rajdhani Express going from Bombay to New Delhi. Tahir was to accompany him upto Baroda Station. Dr. Jalees Ansari asked me to accompany Mohd. Saleem who was to plant a bomb in 'Flying Queen Express' at Surat Railway Station. He told me that initially all of us will have to go to Baroda. I readily agreed to this as I had initially given the idea of causing bomb blasts in train on 6.12.1993. As I was not having a bus ticket for Baroda, I purchased a ticket for the night train and went to my house to collect my clothes. Money for purchasing the ticket was

92

provided by Dr. Jalees Ansari who also accompanied me to the house. Later at the time of boarding the train Dr. Jalees Ansari gave me a slip in which address of Hotel Deluxe, where Tahir Saleem and Shamim were to stay was written. I travelled in the general compartment of the train and reached Baroda at about 6 AM on 5.12.1993. I contacted Tahir, Saleem and Shamim at Hotel Deluxe which was near a Masjid close to the Railway Station. They had taken two rooms. I stayed with Saleem. In the evening Tahir, Saleem and Shamim went to the Railway Station where as per our plan, Tahir planted the bomb device in a bag, given to him by Dr. Jalees Ansari, in Rajdhani Express Train when it arrived at Baroda Station. After keeping the device, Tahir came out of the train and Shamim boarded the train for causing the bomb blast. Tahir and Saleem returned back to the Hotel and informed me that Shamim had left for the target. Thereafter, Tahir cleared the Hotel Bills and we left the Hotel for the bus stand where Tahir boarded the bus for Bombay. Saleem and myself went to Railway Station where we boarded a train for Surat. We travelled in a general compartment. The tickets were purchased by Saleem. Saleem and myself reached Surat at about 4 AM on 6.12.1993. We waited on the platform at the Station for about an hour. Saleem, who was carrying the bomb device, containing in an Alfa brief case given by Dr. Jalees Ansari, then went to the 'Flying Queen Express' train standing at the platform and planted device in a coach. He came out of the coach after connecting the wires and activating the device. Saleem told me that he had reserved a seat in the coach earlier. After Saleem had planted the device we purchased tickets for Bombay and left by a train which was going to Bombay. On reaching Bombay, we came to know that bomb devices planted in Rajdhani Exp. Train and Flying Queen Express by me had exploded injuring few persons and damaging Railway property. The Bomb blasts had also created

a terror in the people.

One or two days after returning to Bombay I met Dr. Jalees Ansari and informed him as to how bombs had been planted as per plan. During my talk with Dr. Jalees Ansari, I came to know that bomb blasts in Rajdhani Express train near

93

Kanpur and A.P. Express near Hyderabad had also been arranged by him through his men."

67.2. The confession of A1 lends complete corroboration to the confession of this accused. The role of this accused thus stands firmly established.

68. Re: A-15 Aizaz Akbar

This accused was initially arrested by Bombay Police in connection with some other case. On production warrant issued by the Designated Court, Ajmer pursuant to the application moved by PW145, K.S. Nair, custody of this accused was given on 28.05.1997. The accused was thereafter produced before the Designated Court, Ajmer on 29.05.1997 and police custody was granted. He was brought to Delhi on 30.05.1997 and kept in custody. On 01.06.1997 he having desired to confess, PW-145 K.S. Nair informed PW1 O.P. Chhatwal and produced the accused before him. The confessional statement Ext.P-1 of this accused was recorded on 01.06.1997 and 02.06.1997. He was produced on 03.06.1997 before PW-147 Mr. S.K. Kaushik, Chief Metropolitan Magistrate, Delhi. The proceedings of the Court of CMM, Delhi of 03.06.1997 are marked Ext.P-516. According to PW-147, the confessing accused had admitted that a confessional statement was recorded a day earlier and that it was the same statement. PW-147 thereafter read over to him the confessional statement. The accused was thereafter produced before the Designated Court, Ajmer on 05.06.1997 and was remanded to judicial custody. The retraction came a month later on 05.07.1997 vide Ext.D-2 stating that the confessional statement was obtained by employing third degree method and his signatures were obtained on blank papers. The retraction further stated that the accused was never produced before any magistrate. In the face of the testimony coming from POW-147 Mr. S.K. Kaushik, CMM, the retraction is unacceptable. We have gone through the contents of the confession as well as the certification recording satisfaction about the voluntariness and find the confession to be consistent with the requirement of law and in conformity

94

with the guidelines issued by this Court. We therefore accept confessional statement Ext.P1 to be correctly recorded and admissible in law.

68.1 The relevant contents of confessional statement Ext.P-1 are as under:

"We left for Hyderabad at about 11 PM and reached there at about 7 AM and stayed at President Lodge near Mauzam Jahi Market. The registration formalities were completed by Dr. Jalees Ansari in the lodge. We had breakfast in the market. After some time Dr. Jalees Ansari suggested that we must see the Police Station where bombs should be planted for explosion. Therefore, Dr. Ansari, Shamuiddin and myself left for the market in an auto rickshaw. We asked the driver to take us to market. On way we saw Abid Police Station. Dr. Ansari decided to plant a bomb at this police station. Then we went to

95

Humayun Nagar Police Station as suggested by Dr. Ansari. After surveying, we returned to the lodge.

In the afternoon Dr. Ansari asked me to go to market and purchase nails and plaster of paris. I went by an auto and purchased < Kg nails and 2 Kgs. Plaster of paris. In the lodge Dr. Ansari prepared two bombs, which were covered by Plaster of Paris. He instructed me and Saleem to plant the bomb outside Abid Police Station after connecting two wires. He directed us to go away immediately after planting. Likewise he instructed Shamsuddin and Zaheeruddin to plant a bomb at the Humanyu Nagar Police Station. He asked us to plant the bombs before 10 PM and leave for Gulbarga by 11 PM bus. Dr. Ansari himself left for Bombay by bus at 4:30 P.M. It was in August, 1993.

At about 9PM, I alongwith Saleem went to Abid Police Station in an auto. Outside the Police Station there was an STD Booth. We quietly went near the STD booth and I connected the wires of the bomb and left it by the side of the Booth. Both of us then left for Central Bus Depot, as had been arranged earlier. After 20-25 minutes Shamsuddin and Zaheeruddin also reached there after planting the bomb at Humayun Nagar PS. Then Saleem left for Bombay by bus and we then left for Gulbarga bus at 11 PM. We reached Gulbarga at about 7:30 AM. We went to our houses. Again we met at about 10-11AM at the house of Shamsuddin. We read in newspapers about explosion at both the Police Stations. I stayed at Gulberga for a week and then returned to Bombay. I met Dr. Jalees Ansari and told him about our success in causing explosions. He was very happy and encouraged me. I then continued to work in my office. I was meeting Dr. Jalees Ansari off and on."

...On his return from Bombay in last week of November 1993, Shamsuddin told me that Dr. Jalees Ansari had made plans to cause bomb explosions in prestigious trains. He also conveyed to me this instructions of Dr. Jalees Ansari that I should plant a bomb in Bangalore-Kurla Express at Pune. This was to be done on 6.12.1993 in the memory of demolition of Babri Masjid.

96

...On 04.12.93 I went to the house of Shamsuddin who told me that he was making the bomb and that I should collect it from him on 5.12.93. On 5.12.93 I told my family that I was going to Hamdabad to attend marriage of one of my friends. I left home at about 7.PM and went to the house of Shamsuddin. He gave me a bomb, which kept in a carry-bag.

...I reached Gulbarga Station on 5.12.93 at about 8.15 P.M. The Bangalore-Kurla Express arrived at about 8.30 P.M. I boarded the trains alongwith the bomb in the carry bag. My berth was a lower berth. I could not sleep. At about 04.30 AM

the train reached PUNE Station. I quietly joined the two wires of the bomb and left it below my seat in the same carry bag. I then came out of the train and took an auto from outside the Railway Station and went to Ruby Hospital.

68.2 The confession of this accused is fully supported and corroborated by the confession of A1. The role of this accused in planting a bomb in Bangalore-Kurla express as part of the larger conspiracy stands established. The case of the Prosecution against this accused is fully established.

69. Re: A-16 Abre Rehmat Ansari

One Qamrul Hassan Kashmi was arrested on 17.12.1994 pursuant to warrant of arrest issued by Designated Court, Ajmer. The Designated Court had granted police custody till 07.01.1995 and from 07.01.1995 this accused was remanded to judicial custody. On 01.09.1995 he was released on interim bail. On 18.04.1995 an application under Section 169 Cr.P.C. was moved by PW-150 P.D. Meena that no evidence was found regarding his involvement in the present matters.

It may be mentioned that in the confessional statements of A3 and A4 there is a reference to one "Kari" who attended the meeting of September 1993 and Qamrul Hassan Kashmi was arrested on the suspicion that he was "Kari" as referred to in the confessional statement of A3 and A4. However after it was found that he was not in any way involved in the matter, aforesaid application under Section 169 was moved.

69.1 A-16 Abre Rehmat Ansari was arrested by PW-113 Jai Singh in connection with some other matter and during his interrogation, his involvement in the present serial train blasts came to be known. Said PW113 wrote letter Ext.P3 dated 26.12.1997 to the Superintendent of Police, STF, CBI, New Delhi informing about the arrest of Abre Rehmat Ansari and about his involvement in train bomb blasts cases. An application was thereafter moved by PW-145 K.S. Nair for production of said Abre Rehmat Ansari and the accused was produced on 30.12.1997 and police custody was granted. The accused having expressed desire to confess, PW-145 K.S. Nair produced him before PW1 O.P. Chhatwal on 01.01.1998 and the confessional statement Ext.P-4 was recorded by PW1 O.P. Chhatwal on 01.01.1998 and 02.01.1998. A16 was thereafter produced before PW146 Prem Kumar,

CMM, Delhi. PW-146 Prem Kumar, CMM deposed that he had asked the confessing accused, who admitted the confessional statement to be his, that there was no misconduct or physical torture and that the confessional statement was bearing his signature. The proceeding to that effect Ext.P-514 bear the signature of the confessing accused as well as that of PW-146 Prem Kumar, CMM. The accused was thereafter produced before the Designated Court, Ajmer and was sent to judicial custody. The retraction Ext.D-1 came six months later on 26.06.1998. The retraction stated that the accused was forced to sign some written/plain papers which as far his apprehension could be used as confession. In the face of the deposition of PW-146, Prem Kumar, CMM and proceedings Ext.P-514 dated 03.01.1998, we have no hesitation in discarding said submission. At no stage any complaint was made when the accused was produced before PW-146. We have gone through the certification appended to the confessional statement as well as contents of the confession and are satisfied that the confessional statement is in conformity with the legal requirements. We therefore hold the confessional statement to be admissible.

69.2 Relevant portions of the confessional statement Ext.P-4 are as under:
99

"My full name is Abre Rehmat Ansari. People also call me by name Kari. My father name is Noor Mohd. Ansari.

.....

In Aug-Sep 1993, Illiyas introduced Jamal Alvi, Tuffail and Sufiyan who came from Lucknow. Illiyas called me to meet them at University Ground. It was decided in the meeting that Illiyas would give me the materials, i.e. arms & explosives etc. My job would be to transport the same to Jamal Alvi's residence at Lucknow and rest will be done by other people. After 2-3 days we had again met at the same place and the same talks were repeated. Jamal Alvi had also given his address which was Nakhas Chowk (Old Nakhas, Phool Wali Gali, House No. 29/99), Lucknow. He had given his address in writing. I had kept the said paper safely. Now, it is not with me. After 15-20 days, Illiyas called me in the residence of Papa at Khaniyar and gave me seven plastic tiffin types boxes in which explosives were filled and were made into bombs. Timer and detonators were also fitted with them and for detonating the bombs, the two protruding wires were to be joined. He also gave me one pistol having a magazine with eight rounds. He told me to take all the materials to Lucknow and give it to Jamal Alvi at his residence. He also told me that as it was decided earlier, use these bombs on 6th December, 1993 in trains or some other good places. I was also given Rs. 6000/- for expenditure. I kept all those materials in a steel box alongwith my clothes and reached Jammu by bus. Later on I reached Lucknow by train. I came to Nakhas by cycle rikshaw from Lucknow Station and reached Phool Wali Gali. There I was dropped by someone at Jamal Alvi's residence. I met Jamal Alvi

there. I told him that I had brought the materials and showed him all the materials, which were in my box.

I stayed for around 10 days at Jamal Alvi residence. On my reaching Lucknow, after around 2 days many people came

100

into the house of Jamal Alvi to whom Jamal Alvi introduced myself. Dr. Jalees Ansari was among them who had come from Bombay. Dr. Habib had come from Rai Bareli. Agaue was from Lucknow only. Tuffail and Sufiyan who met me at Kashmir were also there. Irfan was also with them who was from Lucknow. One boy namely Mustaq also met. He was from Allahabad. We all had a meeting in which Jamal Alvi told that he had also brought some materials from Kashmir earlier showed it to us. The said material was black explosive and one pistol. The material I had brought was also told to all people. It was decided in the meeting that Bomb Blast would be caused in trains. Abu Bakar who was studying at Nadwa at Lucknow was also present.

During my stay for 10 days at Jamal Alvi's residence, I used to meet those people whenever they came to Jamal Alvi residence. At day time I also used to go for walk. 2-3 times I also visited Nadwa Hostel alongwith Abu Bakar. I also met there one Abdul Wahid @ Yusuf, who had already studied there. I was told that he is from Kashmir, and connected with militancy. He did not tell his address on asking by me. After living for 10 days I went to my home at Basti. After living for 10-15 days I again went back to Kashmir. I had told Illiyas that I had given all materials to Jamal Alvi, which I had factually handed over to Jamal Alvi.

When I was staying in Lucknow for 10 days, Abu Bakar had advised in the presence of all that bomb blast should be caused in Jaipur at Hawa Mahal and Johiri Bazar. It was also decided that I should first see the place. I was given two notes of 500 rupees each by Abu Bakar for this job. But I did not go Jaipur at that time. It was decided to cause blast in trains for which I had given all materials to Jamal Alvi, and also stated the instructions of Illiyas. It was to be decided by the other person in which trains, blast would be caused. The materials given by me was to be used for causing blast. I had told all the things to Illiyas after going back.

101

In Oct- Nov 1993, Illiyas had asked me for going to Lucknow. He gave me about 5kg explosive (Barood) 04 detonators and 4 timers. He had already fitted the detonators and timers in explosives (Barood), and told me how to keep those in boxes, and how to join the wire, so that it could cause blast. At that time the wires were covered with tape. Illiyas had given me Rs. 2000/- for fare etc. and asked me to give all materials to Jamal Alvi. He also told me to use the materials for causing blasts at appropriate place.

.....

When I came back to Kashmir after getting training from Pakistan then Illiyas kept my name "Kari" and told all his colleagues about it. Thereafter everybody was knowing me by the name 'Kari'."

69.3 It was submitted on behalf of this accused that the Prosecution had arrested Qamrul Hasan Kashmi as Kari and that this accused had nothing to do with present crimes nor was this accused known as Kari. However his statements in the confession, which is admissible, completely negate this

submission. The confession further goes on to narrate his involvement in the crimes.

69.4 The association of this accused with A4 and the fact that this accused had supplied explosive material to him and that this accused was present in the meeting of September 1993 and took active part thereafter stand fully corroborated from the confessions of A4 and other accused. The case of the Prosecution against this accused stands fully established. 102

70. The case of the Prosecution against aforementioned Accused Nos. 1, 2, 3, 4, 7, 14, 15 and 16 thus stands fully established. The confessional statements of each of these accused which are found to be admissible in law, themselves are sufficient to establish the case of the Prosecution against them. Even then we looked for corroboration from circumstances proved on record. The corroboration is also available inter se through the confessions of the other co-accused as well. Consequently, the conviction and sentence recorded by the Designated Court against each of these Accused, namely A1, A2, A3, A4, A7, A14, A15 and A16 is maintained and the appeal at the instance of each of them stands dismissed.

71. We now consider the case of the prosecution and the material against other accused, namely, A5, A8, A9, A10, A11 and A13.

71.1 As regards A5, the confessions of A1, A3, A4 and A16 refer to his role. Confession of A4 discloses that A5 was present in the meeting of September 1993 where all had agreed and responsibility for causing bomb blasts in Northern part of the country was taken by A4. Confession of A4 further states that he had given A5 the responsibility to carry out the activity as agreed and that he had got the circuits fixed from A5. The fact that A5 was present in the meeting of September 1993 is evident from confessions of A1, A3 and A16 as well. PW41 Tahir Raza Abdi, who identified A5 deposed that A5 had come along with A1 Dr. Jalees Ansari for his passport work. This again establishes the presence of A5 at the relevant time. It is true that while considering confession of a co-accused prudence would demand that there must be corroboration coming from material on record. The role of A5 is also evident from the confessions of A1, A3, A4 and A16 which not only 103

lend corroboration to each other but also get support from the testimony of PW41 Tahir Raza Abdi. We therefore hold, even without referring to the confession of A5 Ext.P-241A, that the role of A5 in the present conspiracy stands fully established. This appeal at the instance of A5 is therefore dismissed and his conviction and sentence as recorded by the Designated Court is affirmed.

71.2 As regards A8, apart from reference to his role, as stated in the confession of A1, there is nothing on record as against this accused. No prosecution witness has stated anything against him nor any other confession makes any reference to him. All that we have on record is the confession of A1 who names this accused as his associate including the fact that he had assisted him in planting bombs on other occasions as well. We find it difficult to rely on the confession of A1, a co-accused simplicitor without there being any corroboration coming from any other material on record. Since we have eschewed consideration of confession of A8 himself, we find no material on record to support his conviction and sentence.

71.3 As regards A9, confession of A15 discloses that he introduced A9 to A1 and the confession further records about the role played by A9 and his association in causing bomb blasts at police station in Hyderabad. However those incidents are not the ones for which A9 is presently being tried nor is it the case of the prosecution that those blasts were part of the present conspiracy. Insofar as the present incident is concerned, the confession of A15 is silent about the role played by A9 and therefore that confession is not of any assistance in considering the matter as against A9. We are then left with confession A1 who undoubtedly refers to the role of A9. This confession goes on to say that A1 had taught A9 how to make bombs and also that he had discussed the plan with A9. However in the absence of any other material on record to lend any semblance of corroboration to the confession of A1 we find it extremely difficult to sustain the conviction and sentence of A9 simply on the basis of confession of A1.

71.4 As regards A10 his role is neither referred to in the confession of A1 or A15 nor there is any material other than the confession of A10 himself on record. The conviction and sentence of A10 is therefore completely unsustainable.

71.5 As regards A11 the confession of A15 discloses the involvement and role played by A1 in causing bomb blasts in Hyderabad on previous occasions. As regards the bomb blasts that occurred in A.P. Express on 06.12.1993, the confession of A15 narrates that on 04.12.1993 he had gone to the house of A11 who told him that he was making bomb and that A15 should collect it from him on 05.12.1993. Accordingly A15 went to the house of A11 who gave him a bomb which was kept in a carry bag. It is this bomb kept in a carry bag which A15 had kept below his berth in Bangalore - Kurla Express. A1 in his confession also referred to the role played by A11 in causing bomb blasts in Hyderabad on previous occasions and that he had discussed the plan with A11. As regards the present matter the confession stated that A1 had given one bomb to A11 on 02.12.1993. The confession further stated that after the bomb blasts A11 and A12 had met him in Bombay and he was told that the bomb in A.P. Express was planted by A12 and that A15 had planted the bomb in Bangalore - Kurla Express which did not explode. The confessions of A1 and A15 are thus consistent and show that a bomb was given by A1 to this accused who in turn, gave the bomb that was meant for Bangalore Kurla Express. The association of this accused as stated in the confession of A1 is fully corroborated by the confession of A15. Even without referring to the confession of this accused, for reasons stated hereinabove, the involvement of this accused in the present conspiracy is fully established. We therefore find the case of the prosecution established against this accused.

106

71.6 As regards A13 there is a reference about his role in the confession of A15 to the effect that on 05.12.1993 when A15 had gone to the house of A11, A13 was also present. Apart from this there is no reference to anything about A13. The confession of A1 also does not make any reference nor does it attribute any role to A13. In the circumstances the conviction and sentence of A13 is not sustainable at all.

72. Summing up, the case of the prosecution, in our considered view stands fully established as against A1, A2, A3, A4, A5, A7, A11, A14, A15 and A16. We hold them guilty of the offences with which they were charged and while dismissing their appeals maintain their conviction and sentence as recorded

by the Designated Court. The appeals in so far as Accused Nos. 8, 9, 10 and

107

13 are allowed and their conviction and sentence is set aside. The Accused Nos. 8, 9, 10 and 13 shall be set at liberty, unless their custody is required in any other matter.

73. This appeal is disposed of accordingly.

.....J
(Fakkir Mohamed Ibrahim Kalifulla)

.....J
(Uday Umesh Lalit)

New Delhi
May 11, 2016

108

ITEM NO.1A COURT NO.1 SECTION II
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 546/2004

MOHD.JALEES ANSARI & ORS. Appellant(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION Respondent(s)

Date : 11/05/2016 This appeal was called on for pronouncement of Judgment today.

For Appellant(s)

Mr. P.K. Dey, Adv.
Mr. Andleeb Naqvi, Adv.
Mr. Shreyasi Chakraborty, Adv.
Mr. M.K. Maroria, Adv.

For Respondent(s)

Ms. Nitya Ramakrishnan, Adv.
Mr. Shadan Foresat, Adv.

O R D E R

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla.

The appeal in so far as accused Nos.8, 9, 10 and 13 are allowed and their conviction and sentence is set aside. The accused Nos.8, 9, 10 and 13 shall be set at liberty, unless their custody is required in any other matter.

The appeal is disposed of in terms of the signed reportable judgment.

(Ashok Raj Singh)

Court Master

(Veena Khera)

Court Master

(Signed reportable judgment is placed in the file)