REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1778 OF 2008

Manjit Singh @ Mange ………….. Appellant

Versus

CBI, through its S.P. …………..Respondent

WITH

CRIMINAL APPEAL NO. 1826 OF 2008

Om Prakash Shrivastava @ Babloo .... Appellant

Versus

State of U.P. through SP, CBI …………..Respondent

WITH

CRIMINAL APPEAL NO. 1844 OF 2008

K.K. Saini ………….. Appellant

Versus

State of UP, through S.P., CBI, ... Respondent

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WITH

CRIMINAL APPEAL NO. 1336 OF 2009

State of U.P. through S.P., CBI ………….. Appellant

Versus

Om Prakash Shrivastava @ Babloo …………..Respondent

WITH

CRIMINAL APPEAL NOS. 1347-1348 OF 2009

State of U.P. through S.P.,CBI ………….. Appellant

Versus

K.K. Saini and Anr. ……..Respondents

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J U D G M E N T

H.L. Dattu, J.

(1) These appeals are preferred against the common judgment and order passed by the learned Sessions Judge, Designated Court (TADA), Kanpur dated 30.9.2008 in TADA Crl. Case No.3 of

1994 (*State vs. K.K. Saini*), TADA Crl. Case No. 3A of 1994 (*State vs. Manjit Singh @ Mange*) and TADA Crl. Case No.1 of 1995 (*State vs. Om Prakash Shrivastava @ Babloo*). By the impugned judgment of conviction and order of sentence, K.K. Saini, Manjit Singh@ Mange (in short, "Mange") and Om Prakash Shrivastava @ Babloo (in short, "Babloo") have been convicted for offence punishable under Section 302 IPC, Section 302 read with Section 34 IPC and Section 302 read with Section 120B IPC respectively. They have been sentenced to undergo imprisonment for life and to pay fine of `10,000/- each in respect of these offences and in default, undergo rigorous imprisonment for a period of six months each. K.K. Saini and Mange are both acquitted of charges under Sections 3(2) and 3(3) read with Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 [hereinafter referred to as, "TADA Act"]. All the sentences were directed to run concurrently.

(2) The accused have filed appeals under Section 19 of the TADA Act against the impugned judgment and order passed by the Designated Court (TADA), Kanpur. State of Uttar Pradesh

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through CBI has also filed appeals against the judgment and order passed by the Designated Court (TADA) acquitting the accused persons for the offences under Sections 3(2) and 3(3) read with Section 3(1) of the TADA Act and further for the enhancement of sentence imposed under the provisions of IPC to death sentence in view of the seriousness of the offence and the purpose for which it was carried out.

(3) The prosecution case in brief is as follows :-

Shri L.D. Arora, Additional Collector of Customs, Allahabad was assassinated on 24.03.1993 at about 07-07.15 p.m. in the area of P.S. Cantonment, Allahabad. The nephew of the deceased Dr. Satish Arora (PW-2) had lodged the First Information Report at P.S. Cantonment, Allahabad at 20.15 p.m. According to his report, on 24.03.1993, Shri L.D. Arora (Deceased) reached his house at HIG flat No.9, ADA Colony, Circular Road, Allahabad by his car. He had gone to his uncle's house on 24.03.1993 at about 07-07.15 p.m. He saw his uncle's car parked at the same place where he used to park his car regularly. After knocking the door, he had entered his uncle's house. Soon after his arrival, the neighbour told him

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that something has happened to his uncle. He immediately rushed to the place where his uncle had parked his car. Upon arrival at the spot, he saw his uncle was lying unconscious on the driving seat in a pool of blood. He immediately took his uncle to Swaroop Ram Medical Hospital with the help of people from the neighborhood. At the hospital, his uncle was declared brought dead. The investigation was initially taken up by the Cantonment Police Station, Allahabad.

(4) The prosecution has further stated that the post mortem of the dead body was carried out by Dr. A.K. Shrivastav of MLN Hospital on 25.03.1993, who prepared a post mortem report, which was duly countersigned by Dr. S.L. Diwan, Senior Surgeon of the hospital. The post mortem report revealed that there were three entry wounds caused by fire arm and corresponding three exit wounds on the upper parts of the body below the pinna of right ear, below and behind the tip of right mastoid procure and the last was 2 cms below it. The cause of death was ascertained to be ante-mortem head injuries caused by bullets. The time of the death was ascertained to be 7.55 p.m. on 24.03.1993.

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(5) When the investigation by the State Police was still going on, the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India vide Notification No.228/48/93-A.V.D.-JJ dated 12.07.1993 issued with the consent of the Government of Uttar Pradesh, entrusted the investigation of the case to CBI, pursuant to which R.C. (10) (S)/93-S.J.U.V/C.B.I.,1I/New Delhi dated 13.07.1993 under Section 302 of IPC was registered in SIC.II Branch of CBI. During the course of investigation, offences under Section 120-B of IPC and Sections 3(2) and 3(3) read with Section 3(1) of the TADA Act were added with the permission of Superintendent of Police, CBI, New Delhi.

(6) The prosecution further states that one Mohd. Dosa, Tahir Shah @ Tappu and Babloo entered into criminal conspiracy to eliminate L.D. Arora to strike terror among the customs officials with a view from preventing anyone from passing on information about their smuggling activities or their involvement in the Bombay Blasts on March 12, 1993. Pursuant to this conspiracy hatched, Babloo instructed K.K. Saini and Mange on 20.03.1993, who were with him in Krishna

Nagar, Nepal, to assassinate the deceased L.D. Arora. Mange was further informed that one Alimuddin @ Baba would be available at Hotel Finero, Allahabad. Babloo gave them `10-12,000/-, one 9 mm Pistol, 12 cartridges and a Maruti Car, bearing registration No. DNH 8440, to accomplish the task. Thereafter, K.K. Saini and Mange left Nepal with the above mentioned fire arms in the said car. They reached Allahabad and checked into the above mentioned Hotel Finero in Room No.7 and entered their names as A.K. Singh and Harjeet Singh respectively in the hotel register. Thereafter, Alimuddin also checked into Room No. 5 of the same hotel along with a lady named Smt. Arshi. On the same day, there was a meeting between K.K. Saini, Mange and Alimuddin in Room No.7 to chalk out the strategy to kill the deceased on the morning of 24.03.1993, i.e. the next day. All three of them reached the office and residence of the deceased on a scooter and conducted a thorough survey. Babloo further contacted K.K. Saini over telephone installed at the hotel in Allahabad, instructing him to kill the deceased that very day as he might leave for Bombay on the next day to disclose information he had gathered regarding

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the Mumbai serial blasts of 1993. Persuant to these instructions, at around 6.45 p.m., K.K. Saini, Mange and Alimuddin waited near the ADA Colony, Circular Road, Allahabad for the arrival of the deceased in his car. As soon as the car of the deceased was spotted in the vicinity, all three of them took up positions and when the deceased entered the ADA Colony through the main gate in the eastern boundary wall and was about to park his car, K.K. Saini took out his pistol and fired three shots at the deceased, as a result of which, the deceased sustained fatal injuries and collapsed in his seat.

(7) It is further case of the prosecution that during the course of the investigation, they recovered three empty cartridges and one lead from the car of the deceased and one lead from the ground, where the car was parked. The Ballistic Expert of F.S.L., Lucknow opined that the three empty cartridges were fired from the same 9 mm pistol. Investigations disclosed that Mohd. Dosa had entered into criminal conspiracy with Tahir Shah and Babloo to kill the deceased L.D. Arora so that their involvement in the Bombay Bomb Blasts were not revealed. After killing the deceased, the information was relayed to

Babloo and later, Mange and K.K. Saini returned to Nepal on 25.03.1993 by crossing the Indo-Nepal border at Krishna Nagar by paying an amount of Rs. 600/- in Nepal currency towards octroi/tax for vehicle No.DNH 8440. The course of investigation further led to information that one Virendra Pant and Sanjay Khanna met Babloo in Al-Rigu Apartments in Dubai where Babloo made an extra judicial confession that he had got the deceased killed through the concerned people as he had information about the activities of Mohd. Dosa and Tahir Shah especially in the smuggling of RDX, weapons and explosives used in the Bombay Bomb Blasts. For this job, he was paid `6,00,000/- by Tahir Shah, out of which `50,000/- was given to K.K. Saini.

(8) Prosecution further states that K.K. Saini, while in police custody, during the period from 06.04.1994 to 04.05.1994 made a confessional statement under Section 15 of the TADA Act, wherein he confessed his own involvement as well as involvement of others in the killing of L.D. Arora. Based on his confession and information, the Maruti Car bearing No. DNH 8440, the vehicle used in the commission of the offence,

was also recovered. Later, K.K. Saini refused to join the Test Identification Parade and his refusal was recorded by Shri Rakesh Kapoor, Metropolitan Magistrate, Delhi. The confessional statement of Mange was also recorded on 11.07.2001 by S.P., CBI, Delhi. Accordingly, charge sheet against K.K. Saini and Mange was filed in the Designated Court both under the provisions of the IPC and the TADA Act on 26.11.2001, which was registered as Criminal Case No.3 of 1994 and Criminal Case No.3A of 1994. It is also relevant to notice that Babloo was arrested in Singapore on 21.04.1995 in response to look out notice issued by Interpol, India. On the request of Govt. of India, he was extradited by the Govt. of Singapore. The Extradition Treaty signed between the two countries provided that the person being extradited could only be tried for criminal acts recognized as offences in both the countries. Since, there was no law in Singapore which corresponds to the TADA Act, though Babloo was extradited, he could only be tried under Section 120-B and 302 of the IPC and, therefore, no charge under Section 3 of the TADA Act was framed against Babloo. After completion of investigation,

the investigating agency filed charge sheet before the Designated Court (TADA) for the offences under Section 302 IPC against K.K. Saini and Mange for offences under Section 302 read with Section 34 of the IPC and against Babloo under Section 302 read with Section 120B IPC. K.K. Saini and Mange were also charged under Section 3(2) and 3(3) read with Section 3(1) of the TADA Act. To prove the charges, the prosecution had examined 88 witnesses in the leading criminal case No. 3 of 1994 and 85 witnesses in criminal case No. 3A of 1994 during the trial and relied upon various documents including confessional statements recorded during investigation. All the accused persons abjured their guilt and pleaded innocence and stated that they have been falsely implicated in this case.

(9) The Designated Court (TADA) had framed nearly eleven issues for its consideration. The Court, relying on Section 12 of TADA Act, has held that Babloo was rightly charged for an offence under Section 302 read with Section 120B of the IPC and tried him jointly with the accused K.K. Saini and Mange and for technical reason, he could not be charged under the

TADA Act. The Court has further held that since the investigation was handed over to Superintendent of Police, CBI, by the State of Uttar Pradesh by issuing notification, prior approval from S.P., CBI, was sufficient compliance of Section 20A of the TADA Act. On the issue of the admissibility of the confessional statement of the accused K.K. Saini and Mange against the co-accused Babloo, the learned Designated Judge, after noticing the language employed in Section 12 and Section 15 of the TADA Act, has concluded that merely due to technicality in the Extradition Treaty, Babloo was not charged under TADA Act. However, in the light of the provisions and the decisions of this Court, the confessional statements were held to be admissible against the co-accused even when he was not charged under the TADA Act, but was tried jointly for offences under other law by the Designated Court (TADA). The Designated Court (TADA) did not find any merit in the contention that the confession statements of K.K.Saini and Mange were not recorded voluntarily. The Designated Judge (TADA), after carefully considering the evidence on record, has held that the prosecution has successfully proved the recovery

of Maruti Car No. DNH 8440 on the information furnished by K.K. Saini. As regards the issue of proving charges of conspiracy under Section 120B of IPC, it was held that from the facts and circumstances and prosecution evidence, it was clear that the three accused namely, K.K. Saini, Babloo and Mange hatched conspiracy to kill L.D. Arora and all the three accused were involved in the conspiracy. Hence, all the three accused were held liable for conviction for the charge under Section 120B read with Section 302 of the IPC. As regards the last issue of proving the guilt of all the three accused and the sufficiency of the evidence other than confessional statement, it was observed that the prosecution has proved the same by producing both oral and documentary evidence. The Designated Court (TADA), after considering the material evidence on record, including the Post Mortem Report and the statements made by the accused persons under Section 313 of the Criminal Procedure Code, has concluded that the prosecution has adduced sufficient, reliable oral and documentary evidence, which corroborates the confessional statement of both the accused namely, K.K. Saini and Mange and further concluded

that there is enough evidence, other than the confessional statement against Babloo, which proves the prosecution case in so far as charges framed under the provisions of the IPC.

(10) We have heard Shri K.T.S. Tulsi, learned senior counsel for Mange and Babloo and Shri Amrendra Sharan, learned senior counsel for K.K. Saini and Shri P.P.Malhotra, learned Additional Solicitor General for the CBI.

(11) As these appeals are preferred against the judgment and order of learned Designated Court (TADA) under Section 19 of the TADA Act, therefore, we have to consider these appeals both on facts as well as on question of law for our conclusion and decision.

(12) The learned senior counsel Shri K.T.S. Tulsi and Shri Amrendra Sharan submitted that K.K. Saini and Mange were charged under the TADA Act and not Babloo. It is argued that since there was no terror caused in the society by the acts of the accused, they cannot be charged under Section 3(1) and 3(2) of the TADA Act and, therefore, they could only be tried for committing offence of murder under Section 302 of the IPC. Further, it was argued that prior approval was required to be

taken from the Superintendent of Police of the District, as required under Section 20-A of the TADA Act, to try the accused for the offences under the TADA Act and the Superintendent of Police, CBI was not the competent authority to give such permission. It is further submitted that the confessional statements of K.K. Saini and Mange were recorded in complete defiance of provisions of the TADA Act and the rules framed thereunder and that mandatory provisions have not been followed. Therefore, the confessional statement is to be completely eschewed from consideration. It is also contended that there is no sufficient and reliable evidence against Babloo except the confessional statement of K.K. Saini and Mange and the prosecution has therefore failed to prove the conspiracy between the accused tried in the present case. Shri K.T.S. Tulsi, learned senior counsel, who also appears for Babloo, submitted that the confessional statement of the co-accused K.K. Saini and Mange recorded under Section 15 of the TADA Act cannot be used against Babloo as he is not charged under the provisions of the TADA Act and also because no prior approval from the prescribed authority, as

required under Section 20A of the TADA Act, had been obtained. He also submitted that the penal provisions require to be strictly construed. In support of his submission, the learned senior counsel has placed reliance on several decisions of this Court. We will make reference to the submissions and the decisions while considering the issues raised in these appeals.

(13) Shri P.P. Malhotra, learned Additional Solicitor General, submitted that when the investigation is transferred to the CBI, with the consent of the State, the CBI takes over further investigation of the case. Therefore, Superintendent of Police, CBI, was competent to record the confession made by a person and the same is admissible in the trial of such person for an offence under the TADA Act. He further submits that the aforesaid officer, before recording the confession under Section 15(1) of the TADA Act, had followed the safeguards provided under sub Section (2) of Section 15 of the TADA Act. It is further submitted that the confessional statement of K.K. Saini and Mange recorded before S.P., C.B.I., was admissible in evidence vide Section 15 of the TADA Act, which provides for the recording of the confessional statements before the police

officer, not lower in the rank than Superintendent of Police, and it is made admissible even against co-accused, abettor or conspirator and the bar under the Evidence Act and Criminal Procedure Code will not come into play. It was further submitted that the confessions made by K.K. Saini and Mange are admissible as substantive evidence against Babloo. It was also submitted by the learned ASG that there was sufficient evidence adduced by the prosecution to support the correctness of the confessional statements of the two co-accused persons. He further submitted that the Section takes special care to ensure that no court shall take cognizance of any offence under the Act without the previous sanction of the Inspector General of Police or the Commissioner of Police. The safeguard so provided under the Act would protect the rights of an accused of any offence under the Act.

(14) The issues that would arise in these appeals filed by appellants-accused for our consideration and decision are as under :-

(I) Whether the confessional statement of the co-accused is admissible against Babloo, who was not charged under the TADA Act.

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(II) If for any reason, confession of the co-accused is eschewed against Babloo, whether there is any other evidence against him to sustain the conviction and sentence under Section 302 read with Section 120-B IPC.

(III) Since the TADA Act, being a special statute enacted for a specific purpose and object, whether the interpretation of provisions of the TADA Act requires any specific mode of interpretation.

(IV) Whether there is breach of mandatory requirements provided in Section 20A(1) of the TADA Act while recording the commission of an offence under the Act.

(V) Whether the conviction of K.K. Saini and Mange for the offences under the provisions of the I.P.C. are sustainable with the available evidence on record.

(VI) Whether the learned Designated Judge (TADA) was justified in acquitting all the accused persons

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for the offences charged and tried under the TADA Act.

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(15) The object and purpose of the TADA Act is explained by this Court in number of decisions. Therefore, it is not necessary for us to repeat and reiterate the same. We will only notice the relevant provisions which are necessary for the purpose of this case.

(16) Section 12 of the TADA Act speaks of the power of the Designated Courts with respect to other offences. By virtue of this Section, the Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence. Sub-section (2) further empowers the Designated Court that in the course of the trial under the TADA Act of any offence, if it is found that the accused person has committed any other offence under the TADA Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorized under this Act or such rule or such other

law for the punishment thereof. A Designated Court constituted under Section 9 of the TADA Act or a transferee Designated under Section 11 of the TADA Act is vested with the jurisdiction to try all the offences punishable under the provisions of the TADA Act. While trying such offence, if the accused is charged for offence punishable under the provisions of any other law connected with such offence, the Designated Court has power to try the accused in such offence also during trial, if it is found that the accused has also committed other offence punishable under any other law, the Designated Court can convict the accused for such offence also. The Designated Court can pass any sentence, on conviction of the accused, as authorized in the respective statute for punishment of such offence.

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(17) Section 15 of the TADA Act commences with a non obstinate clause by stating that notwithstanding anything contained in the IPC or the Evidence Act, the confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such Police Officer in writing etc., shall be admissible in the trial of such person, co-accused,

abettor or conspirator for an offence under the TADA Act or rules made thereunder. The proviso appended to the Section carves out an exception to the main Section. It says that the confession made by a person accused of an offence under the Act or the rules framed thereunder can be used against co-accused, abettor or conspirator, provided he is charged for any offence under the Act or the rules framed thereunder and tried in the same case together with the accused. It was contended by Shri K.T.S. Tulsi, that Babloo was not charged under the provisions of the TADA Act or the rules framed thereunder. Therefore, the confession statement made by co-accused i.e. K.K. Saini and Mange cannot be used against Babloo and if the confessional statement of the co-accused is eschewed, then there is no other evidence to implicate Babloo for the offence alleged to have been committed under the Indian Penal Code and, therefore, the conviction and sentence imposed by the Designated Court cannot be sustained.

(18) The main question before us is whether the confessional statement made by K.K. Saini and Mange can be used against co-accused Babloo in the light of the fact that Babloo was not

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charged and tried for any offence under the TADA Act or the rules framed thereunder.

(19) This issue was raised before the learned Designated Judge (TADA). The learned Judge has answered the issue and in his opinion, Babloo was not tried for offences under the TADA Act, only due to the extradition terms that were agreed by Union of India with Singapore Government. He has further stated that it was only due to this technicality that Babloo was not tried for offences under the Act, though his actions fully justified a trial for offences under the Act. It is this reasoning of the learned Designated Judge that was commented and taken exception to by learned senior counsel Shri K.T.S. Tulsi. We have already noticed that the submission of the learned senior counsel is that confession made by the co-accused charged under the TADA Act cannot be used against co-accused who is not charged and tried under the TADA Act. The learned senior counsel, while relying on the observations made by this Court in the case of *Baba Peer Paras Nath vs. State of Haryana,* (1996) 10 SCC 500, in aid of his submission, would further contend that this Court in the case of *State vs. Nalini,* (1999) 5

SCC 253 and the Constitution Bench decision of this Court in the case of *Prakash Kumar@Prakash Bhutto vs. State of Gujarat,* (2005) 2 SCC 409, did not deal with the admissibility of a confession statement made by an accused under the TADA Act against co-accused not charged under the Act or the rules framed thereunder and therefore not applicable to the facts of the case.

(20) Shri P.P. Malhotra, learned Additional Solicitor General, submits that all the three accused were being tried in the same case by the Designated Court (TADA). Therefore, the confession of the accused K.K. Saini and Mange, charged for the offence under the TADA Act, could be used against Babloo, who was charged for the offence under Section 302 read with Section 120B of the IPC. The learned ASG would further contend that Section 15 of the Act is a rule of procedure and no one has any vested rights in the procedural provisions.

(21) We are of the view that the issue raised needs to be appreciated in the light of several decisions of this Court and principles of statutory interpretation. For appreciating the contention of the learned counsel Shri K.T.S. Tulsi, firstly we need to notice the

provision which empowers the police officer to record the confessional statement of the accused.

(22) Section 15 of the TADA Act was amended by Act No. 43 of 1993 with effect from 22.05.1993. By this amendment, not only some changes are brought in the main Section but also the proviso is added to sub-section (1) of Section 15. The amended provision reads:

> *"15. Certain confessions made to police officers to be taken into consideration – (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:*
>
> *Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.*
>
> *(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."*

(23) Under the amended provision of Section 15 of the TADA Act, the confession of a co-accused recorded under Section 15 of the TADA Act is made admissible subject to certain conditions. The confession recorded under Section 15 of the TADA Act by a co-accused could be made use of against that accused provided the co-accused is charged and tried in the same case together with the accused. Section 15 of the TADA Act is amended by Act No. 43 of 1993, which clearly stipulates that the confession recorded under Section 15 of the TADA Act is admissible only if the confessor is charged and tried in the same case together with the co-accused. After the amendment of 1993, the addition of the words 'co-accused, abettor or conspirator is charged or tried together with the accused' clearly shows that the confession could be considered by the Court only when the co-accused, who makes the confession, is charged and tried along with the other accused.

(24) This Court in the case of *Kartar Singh vs. State of Punjab,* (1994) 3 SCC 569 considered the validity of Section 15 of the TADA Act. While considering the question whether the

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procedural law is oppressive and violates the principles of just and fair trial offending Article 21 of the Constitution and is discriminatory violating the equal protection of laws offending Article 14 of the Constitution, and therefore, whether Section 15 of the TADA Act needs to be struck down, this court held Section 15 of the TADA Act stands good on the test of constitutional validity as the classification of offenders and offences to be tried by the Designated Court under the TADA Act or by the Special Courts under the Act of 1984 are not left to the arbitrary and uncontrolled discretion of the Central Govt., but the Act itself has made a delineated classification of the offenders as terrorists and disruptionists in the TADA Act and the terrorists under the Special Courts Act, 1984 as well as classification of offences under both the Acts. This Court also stated that the Act also provides for procedural safeguards to be followed by the police officers with regard to mode of recording the confession and, therefore, Section is not liable to be struck down as it does not offend either Article 14 or 21 of the Constitution of India. The Court further observed as under :-

> *"255. As the Act now stands after its amendment consequent upon the decision of Section 21(1)(c), a confession made by a person before a police officer can be made admissible in trial of such person not only against the person but also against the co-accused, abettor or conspirator, provided that co-accused, abettor or conspirator is charged in the same case together with the accused, namely the maker of the confession. The present position is in conformity with Section 30 of the Evidence Act."*

(25) The scope of Section 15 of the TADA Act was considered by a three Judge Bench of this Court in *State vs. Nalini (supra)*. The three learned Judges were pleased to deliver three separate judgments. We shall extract the relevant portion of the judgments. While answering this question, K.T. Thomas, J. opined:

> "81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trail of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."

> "…The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too

were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial." (Para 82)

"…In other words, after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso? After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled:

(1) The co-accused should have been charged in the same case along with the confessor.

(2) He should have been tried together with the confessor in the same case." (Para 90)

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

"…It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case." (Para 97)

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(26) In other words, Thomas, J. took the view that the confession of another person is weak evidence and hence the confession made by one co accused was admissible in evidence against another, but would be conclusive only if the same was corroborated, even if such person was acquitted of charges under the TADA Act in joint trial. It must be noted that the majority view is not in concurrence with this opinion.

(27) Now we will notice the observations made by D.P. Wadhwa, J.

> *"415. When Section 15 TADA says that confession of an accused is admissible against a co-accused as well, it would be substantive evidence against the co-accused as well, it would be substantive evidence against the co-accused. It is a different matter as to what value is to be attached to the confession with regard to the co-accused as that would fall in the realm of appreciation of evidence."*

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(28) The learned Judge further went on to observe that the confession made by the accused can be used as a substantive piece of evidence against another accused in the light of Section 15 of the TADA Act. This view was supported by S.S.M. Qadri, J. in a concurring opinion. In other words, this Court took the view that even if a person is acquitted of the TADA

charges, the confession recorded under Section 15 of the TADA Act would be admissible.

(29) The majority view in this case is that confessional statement is a substantive piece of evidence and can be used against the co-accused. The decision in *Nalini's* case was considered in *S.N. Dube vs. N.B. Bhoir*, (2000) 2 SCC 254. The Court observed that Section 15 of the TADA Act is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it and that correct legal position is that a confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also, if held to be admissible, voluntary and believable.

(30) In *Jameel Ahmed vs. State of Rajasthan*, AIR 2004 SC 588, it is observed:

> "*. ....Herein it is relevant to note that S.15 of TADA Act by the use of non-obstante clause has made confession recorded under S.15 admissible notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure. It also specifically provides that the confession so recorded shall be admissible in the trial of a co-accused for offence committed and*

tried in the same case together with the accused who makes the confession."

(31) In *Esher Singh* vs. *State of A.P*. (2004) 11 SCC 585, it is stated:

> *"19. Crucial words in the provision are "charged and tried". The use of the expression "charged and tried" imposes cumulative conditions. Firstly, the two persons who are the accused and the co-accused in the sense used by the legislature under Section 15, must be charged in the same trial, and secondly, they must be tried together. Kalpnath Rai case has been overruled in Nalini case making the position clear that the confession of a co-accused is substantive evidence.*
>
> *20. Section 2(b) of the Code of Criminal Procedure, 1973 (in short "the Code") defines "charge" as follows:*
>
> *"2. (b) 'charge' includes any head of charge when the charge contains more heads than one;"*
>
> *The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC.*

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21. Chapter XVII of the Code deals with "charge". Section 211 thereof deals with content of charge. Section 273 appearing in Chapter XXIII provides that evidence is to be taken in the presence of the accused. The person becomes an accused for the purpose of trial after the charges are framed. The expression used in Section 15 of TADA is "charged and tried". The question of having a trial before charges are framed does not arise. Therefore, the only interpretation that can be given to the expression "charged and tried" is that the use of a confessional statement against a co-accused is permissible when both the accused making the confessional statement and the co-accused are facing trial after framing of charges. In State of Gujarat v. Mohd. Atik this position was highlighted. Unless a person who is charged faces trial along with the co-accused the confessional statement of the maker of the confession cannot be of any assistance and has no evidentiary value as confession when he dies before completion of trial. Merely because at some stage there was some accusation, unless charge has been framed and he has faced trial till its completion, the confessional statement, if any, is of no assistance to the prosecution so far as the co-accused is concerned. In fact, in para 10 in Mohd. Atik case it was observed that when it was impossible to try them together the confessional statement has to be kept out of consideration.

22. So far as application of Section 30 of the Evidence Act is concerned, in Nalini case this question was examined and it was held in SCC pp. 306-07, paras 90 and 91 as follows:

"90. But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute-book. In other words, after the amendment a Designated Court could not

do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso? After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled:

(1) The co-accused should have been charged in the same case along with the confessor.

(2) He should have been tried together with the confessor in the same case.

Before amendment the Designated Court had no such restriction as the confession of an accused could have been used against a co-accused whether or not the latter was charged or tried together with the confessor.

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

(32) A two Judge Bench of this Court, doubting the correctness of the decision in *State vs. Nalini* (supra), had referred the matter to three Judge Bench of this Court. Since *Nalini's* case (supra) was decided by three Judge Bench of this Court, the three Judge Bench had referred

the matter to Constitution Bench in *Prakash Kumar @ Prakash Bhutto vs. State of Gujarat*, (2005) 2 SCC 409. The primary question referred to the Bench, as noticed by the Constitution Bench itself is, as to whether confessional statement duly recorded under Section 15 of the TADA Act would continue to remain admissible as for the offences under any other law which were tried along with TADA offences under Section 12 of the Act, notwithstanding the fact that the accused was acquitted of offences under the TADA Act in the said trial.

> *"**18.** The questions posed before us for the determination are no more res integra. In our view, the same have been set at rest by the three-Judge Bench decision rendered in Nalini. The rigours of Sections 12 and 15 were considered in Nalini case and a finding rendered in paras 80, 81 and 82 (SCC p. 304) as under:*
>
> *"80. Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence 'with which the accused may be charged' as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence 'under any other law' if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not*

mean that there was only a trial for such other offence under any other law.

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

82. The aforesaid implications of Section 12 vis-à-vis Section 15 of TADA have not been adverted to in Bilal Ahmed case. Hence the observations therein (at SCC p. 434, para 5) that

'while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA'

cannot be followed by us. The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial."(emphasis supplied)

We are in respectful agreement with the findings recorded by a three-Judge Bench in Nalini case.

*40**.** For the reasons aforestated, we are of the view that the decision in Nalini case has laid down correct law and we hold that the confessional statement duly recorded under Section 15 of TADA and the Rules framed thereunder would continue to remain admissible for the offences under any*

> *other law which were tried along with TADA offences under Section 12 of the Act, notwithstanding that the accused was acquitted of offences under TADA in the same trial."*

(33) In view of the decisions rendered by this Court in the aforementioned cases, it is settled law that the confession of an accused can be used against him as well as other co-accused, even if they are acquitted for offences under the TADA Act.

(34) In the present case, the question that needs to be answered is the admissibility of such confession against the co-accused not charged under the TADA Act. Shri K.T.S. Tulsi brought to our notice the decision of this Court in the case of *Baba Peer Paras Nath (supra)*, wherein the issue that was considered was whether the confessional statement of the co-accused is admissible against co-accused if not tried for offences under TADA Act. This Court distinguished the Constitutional Bench decision of *Kartar Singh vs. State of Punjab,* (1994) 3 SCC 569 stating that the observation of this Court in that decision is not about the admissibility of the confessional statement recorded under Section 15 of the TADA Act against an accused when such accused is tried with the other co-accused, abettor or

conspirator but such accused is not charged for any offence under the TADA Act. Thus, the principle in this case which was upheld was that confessional statement recorded under Section 15 of the TADA Act was admissible against co-accused, abettor or conspirator provided such accused tried with the other co-accused or abettor or conspirator in the same trial in respect of offence under the TADA Act and not otherwise.

(35) In the present case, Babloo was not charged under the TADA Act, but tried in the same trial along with K.K. Saini and Mange, who were tried under the TADA Act. The question raised by Shri K.T.S. Tulsi is whether it is permissible to use the confession statement of K.K. Saini and Mange against Babloo, when he is not charged for the offence under the TADA Act to convict him, especially, when there is no other evidence available against him.

(36) In the case of *Baba Peer* (*supra)*, this Court held that in view of the language employed in Section 15 of the TADA Act, the confession recorded under the aforesaid provision is admissible only if the co-accused is charged and tried in the same case together with the confessor.

(37) In the case of *Nalini* (*supra*), the Court held that the confession recorded shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused that makes the confession. Plain language of Section 15 of the TADA Act excludes the application of the provisions of the Evidence Act and the Criminal Procedure Code. In view of the language of Sub-Section (1) of Section 15, a confession of an accused is made admissible evidence as against all those charged and tried with him. This view of the Bench of three learned Judges in *Nalini's* case is approved by Constitution Bench of this Court in *Prakash Kumar's* case. The Constitution Bench decision is binding on us.

(38) The language of Section 12 clearly states that in the course of any trial under the TADA Act of any offence, if it is found that the accused person has committed any other offence either under this Act or any other law, the Designated Court (TADA) may convict such person of such other offence and pass any sentence authorized by this Act or such other law, for the punishment thereof. Section 15 of the TADA Act, after its amendment, authorizes the Designated Court to use the

confession statement of one accused against another accused only when the co-accused is charged in the same case along with the confessor and is tried together with the confessor in the same case. The language of these two Sections is clear and unambiguous. It is well settled principle of law that the jurisdiction to interpret a Statute can be invoked when the same is ambiguous. This Court in *Nasiruddin and Ors. v. Sita Ram Agarwal,* (2003) 2 SCC 577, observed that:-

> *"38. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."*

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(39) In the case of *Dadi Jagganadhan v. Jammulu Ramulu and Ors.*, AIR 2001 SC 2699, a Constitution Bench of this court observed:-

> *"13.........The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."*

(40) In the case of *Feroze N. Dotivalaz v. P.M Wadhwani and co.*, (2003) 1 SCC 14, this court stated:-

> *"Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined."*

(41) In the case of *Union of India v. Harsoli Devi*, (2002) 7 SCC 273, a Constitution Bench of this court laid down:-

"4. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, CJ in Sussex Peerage case, (1844) 11 Cl &F.85, still holds the field. The aforesaid rule is to the effect:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd. 1955 (2) ALL ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that - "a provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true mat if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the

court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute."

(42) In *Quebec Railway, Light Heat & Power Co. v. Vandray,* AIR 1920 PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless.

(43) In the case of *Standard Chartered Bank and Ors. v. Directorate of Enforcement and ors.* AIR 2005 SC 2622, it was stated:-

> *"It is true that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment."*

This court further added:-

> *"55. The rule of interpretation requiring strict construction of penal statutes does not warrant a narrow and pedantic construction of a provision so as to leave loopholes for the offender to escape*

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[See : Murlidhar Meghraj Loya v. State of Maharashtra:1976CriLJ1527]. A penal statute has to also be so construed as to avoid a lacuna and to suppress mischief and to advance a remedy in the light of the rule in Heydon's case. A commonsense approach for solving a question of applicability of a penal statute is not ruled out by the rule of strict construction. [See : State of Andhra Pradesh v. Bathu Prakasa Rao MANU/SC/0177/1976 : 1976CriLJ1387 and also G. P. Singh on Principles of Statutory Interpretation, 9th Edition, 2004, Chapter 11, Synopsis 3 at pgs. 754 to 756].”

(44) A Three-Judge Bench of this Court in the case of *The Assistant Commissioner, Assessment-II, Bangalore and Ors. v. Valliappa Textiles Ltd. and Ors.,* AIR 2004 SC 86, laid down:-

“22. ....Though Javali (supra) also refers to the general principles of interpretation of statute the rule of interpretation of criminal statutes is altogether a different cup of tea. It is not open to the court to add something to or read something in the statute on the basis of some supposed intendment of the statute. It is not the function of this Court to supply the casus omissus, if there be one. As long as the presumption of innocence of the accused prevails in this country, the benefit of any lacuna or casus omissus must be given to the accused. The job of plugging the loopholes must strictly be left to the legislature and not assumed by the court.”

(45) It is pertinent to note that this Court in the case of *Nalini (supra)* had taken the view that the confessional statement of one of the accused can be used as conclusive evidence against

another accused if they are both tried in the same trial. This has been so held despite the fact that in case of a confessional statement, the incriminated accused cannot cross examine the maker.

(46) When the validity of Section 15 of the TADA Act was challenged in the case of *Kartar Singh (supra)*, the Constitution Bench of this Court held that Section 15 of the TADA was playing the role of Section 30 of the Evidence Act, which makes the confession of an accused admissible in evidence against its maker as well as other co-accused in a criminal trial. The main concern while making such confession admissible is to test the veracity of the confession, as the incriminated co-accused does not get the opportunity to cross examine the maker. However, such evidence must be corroborated in order to determine the guilt of a person. In the event, independent evidence supports the confessional statement then there is no harm in relying upon the confession adding further to the independent incriminating evidence.

(47) In any case, it would lead to absurdity for a court to rely on confessions of the maker against himself, and not against

another person, when such other person features prominently in the confessional statement, in a joint trial of offences for the same criminal act, especially in circumstances when there is independent incriminating evidence.

(48) In view of the above discussion, we hold that the confessional statement made by a person under Section 15 shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession.

(49) The next argument of Shri K.T.S. Tulsi and Shri Amrendra Sharan, learned senior counsel, is with regard to the procedural irregularities in the investigation conducted by the prosecution which, according to them, is not properly appreciated by the learned Designated Court. The learned counsel contends that under Section 20A of the TADA, the sanction of the District Superintendent of Police is required to be obtained before the police record any information about the commission of an offence under the TADA. Since the same has not been obtained, the conviction of the accused cannot be sustained. In the instant case, according to the learned senior

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counsel, the sanction has been obtained from the S.P., C.B.I. It is urged that the Act does not envisage an officer of an equivalent rank, but requires the sanction from the authority that is envisaged in the Statute. It is further urged that the provisions of the TADA Act require to be strictly construed and interpreted, and for this reason also, an officer of S.P., C.B.I. would not mean the Superintendent of Police of the District.

(50) The learned senior counsel relies on several judgments of this court in support of his submissions that penal provisions require to be strictly interpreted and we should not interpret the plain language of the statute or that words having an ordinary meaning cannot be given a different interpretation. It is also brought to our notice that the plain and simple language of a statute best describes the intention of the Legislature. The decision on which reliance was placed are: *Nasiruddin v. Sita Ram Agrawal,* (2003) 2 SCC 577*, Firoz Dotiwala v. P.M. Wadwani,* (2003) 1 SCC 433*, Union of India v. Hansoli Devi,* (2002) 7 SCC 273*, Dadi Jaganadham v. Jamulu Ramulu,* (2001) 7 SCC 71*, Union of India v. Elphinstone Company Ltd.,*

(2001) 4 SCC 139*, Whirpool of India v. ESI Corporation,* (2000) 3 SCC 185*, Mohd. Ali Khan v. CWI,* (1997) 3 SCC 511.

(51) Section 20A of the TADA Act was inserted by Act No. 43 of 1993. The relevant portion of section 20A is as under:

> *"20A. 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."*

(52) Section 20A (1) of TADA Act commences with the words "notwithstanding anything", hence it is a non-obstante clause. As regards non-obstante clause, a Constitution Bench of this court in the case of *Ashwini Kumar Ghosh v. Arabinda Bose and Anr.* AIR 1952 SC 369 opined:-

> *"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."*

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(53) In the case of *Vishin N Khanchandani & Another v Vidya Laxmidas Khanchandani & Another,* (2000) 6 SCC 724, this court laid down:-

> *"The non obstante clause is used to avoid the operation and effect of all contrary provisions. But to attract the applicability of a non obstante clause, the whole of the Section, the scheme, the objects and reasons for the enactment of the Act must be kept in mind."*

(54) We are of the view that the phrase "District SP" has been used in order to take the sanction of a senior officer of the said district, when the prosecution wants to record any commission of a offence under the Act, the reason appears to be that the Superintendent of Police of the District is fully aware of necessity to initiate the proceedings under the stringent criminal law like the TADA Act. In the instant case, the State Government, in exercise of the power conferred by Section 3 of the Delhi Police Special Establishment Act, 1946, has handed over the investigation to CBI. The Superintendent of Police, CBI, has authorized his subordinate officer to record the confessional statements of K.K. Saini and Mange after following the procedure prescribed under the Act and the Rules

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framed thereunder. Since investigation was done by CBI, in our view, Superintendent of Police could authorize the Police to record the information about the commission of the offence under the Act.

(55) In the case of *Ahmad Umar Saeed v. State of U.P* (1996) 11 SCC 61, a similar fact situation arose. In that case, the accused contended that 'cognizance of the offence' as required under Section 20A(1) were not followed as the FIR was recorded by a Sub-Inspector of Police. The accused therein were charged for multiple offences both under the Penal Code and TADA as is the case in the present appeals. This court held that Section 20A(1) does not prohibit the officer from recording the complaint and instituting investigation as a statutory right is conferred on him under the Code with respect to non TADA offences. Hence if the charges are framed with regard to an act, which in the same transaction can be under TADA and any other criminal provisions, then the mere fact that the filing of FIR by anyone other than the District Superintendent would not vitiate the whole process.

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(56) In the instant case, the cognizance/`prior permission' was granted by the S.P. of CBI. The accused contended that the District Superintendent appointed by the concerned State Government cannot be equated to the post of Superintendent of the Central Investigation Bureau who is appointed directly by the Central Government. We have been apprised of the fact that it was at the behest of the State Government, the case was transferred to the CBI and, therefore, this distinction has hardly any relevance. After careful consideration of the submission on the question of equation of rank, we are inclined to hold that in matters concerning national security, as is the case of terrorist acts, the Centre and an autonomous body functioning under it would be better equipped to handle such cases. Therefore, 'prior approval' by the SP of CBI would adequately satisfy the requirements under Section 20A(1). We also note that there is no prejudice caused to the accused as a result of the authorization being granted by the SP of the CBI.

(57) In the case of *Gurdeep Singh alias Deep v. State(Delhi Administration)*, 2000(1) SCC 498, the confessional statement, after it was obtained under Section 15, was not sent to a Chief

Judicial Magistrate as is required under Rule 15(5) of the TADA Rules, 1987. Instead, the confessional statement was forwarded the very next day to the Designated Court. This court refused to interfere with the investigation stating that no prejudice has been caused to the accused and that the whole investigating process could not be vitiated because of a mere technical flaw. Similarly, in the present case, with regard to non-compliance of Section 20A(1), if we are to annul the whole investigation process, on the basis of what at its worst, appears to be a technical flaw, it would result in the purport of the statute being ignored. Furthermore, we take note of the fact that the safeguards provided under Section 15 of the TADA and the rules made thereunder are complied with while recording the confession statement.

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(58) In *S.N Dube v. N.B Bhoir,* (2002) 2 SCC 254, the accused contended that the confession was obtained through *malafide* as the person who recorded the evidence was the Superintendent of Police [Shinde] who was investigating the case. Reversing the finding of the trial court, this court at Para 28 observed:

"The learned trial Judge has also held that it was not fair on the part of Shinde to record the confessions as he was also supervising the investigation. Shinde has clearly stated in his evidence that he had made attempts to find out if any other Superintendent of Police was available for recording the confessions and as others had declined to oblige him he had no other option but to record them. We see no illegality or impropriety in Shinde recording the confessions even though he was supervising the investigation."

(59) In our view, since no prejudice is caused to the accused, we are unable to agree with the contention of Shri. K.T.S. Tulsi and Shri Amarendra Sharan on this aspect of the matter. Having considered the legal arguments advanced in these appeals, now we will examine the evidence against Babloo independently.

60) Prosecution has examined Bharat Singh (PW-30), Smt. Indu Singh (PW-87), Bhushal Lal Shreshtha (PW-68). Bharat Singh (PW 30) has stated in his evidence that he knew Babloo and was in Allahabad on the said day in connection with a matter regarding Lochan Singh. He has further stated that he got a call from Mange saying that he was in Allahabad along with K.K. Saini, and then they discussed about meeting. Subsequently, he got a call from Babloo from Nepal. Babloo told Bharat Singh that it was he who had given the phone number of Bharat Singh to

Mange, and also told him not to meet Mange because Mange was in Allahabad for important work. This is enough to establish that Babloo had the knowledge that K.K. Saini and Mange were in Allahabad for a specific purpose.

(61) Smt. Indu Singh (PW-87) was the owner of the house where Babloo stayed in Nepal. She recognized Babloo when she saw him in the Court and stated that it was the same person who had stayed in her house during the said period. She has stated that she had given the house on rent to Mirza Beg and Rehman, who she came in contact with through the broker, Salim. When asked why she did not object to the sub-letting of the house to Babloo, she was frank enough to state that the only thing she cared about was the rent, which was duly paid. She stated that the telephone with number 410564 was in the name of her son, Parbhajan Singh and the same was installed in the house which was rented by Babloo. She also stated that all the bills for that phone were paid by Babloo. She stated that STD-ISD facility was not there on the number when the phone connection was obtained, but was subsequently taken on request by the tenant.

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(62) Bhushal Lal Shreshtha (PW-68) has stated that he was in the Telecom Department at the relevant date, and on request made by the Nepal police, in the required format, he gave the telephone bills for the number 410564. The telephone records from the telephone number 410564 (being the telephone in Nepal, from which Babloo made calls) and 622452 (being the telephone at Hotel Finero) has been annexed in evidence before us [D 38/40 and D 36/2].

(63) From the above evidence, it can be established that Babloo was living in the house of Smt. Indu Singh in Nepal. He had the phone number 410564 at his disposal. He not only knew that Mange and K.K. Saini were in Allahabad, but also knew the purpose for which they were in Allahabad. This is clear from the testimony of Bharat Singh. From the phone bills, it is clear to us that phone calls were made from the phone number 410564 to the phone number 622452, the phone of Hotel Finero. On a perusal of the phone bills, it is clear that the phone calls were made at the times which have been indicated by the confessional statements of K.K. Saini and Mange. Hence, we may safely conclude that the part of the confessional

statements in question have been corroborated by the other evidence. The evidence that we have on record, without considering the confessional statements, is strong enough to create serious doubts about the conduct of Babloo in this matter. The learned senior counsel Shri K.T.S. Tulsi submits that the prosecution has not examined the owner of the car bearing No.DNH 8440 Shri Ramavar, who is the resident of Delhi, nor the transferee in whose name the registration certificate had been standing at the relevant point of time. In our view, merely because the owner of the car is not examined by the prosecution, it does not weaken the case of the prosecution. In fact, car was recovered on the information furnished by K.K. Saini, one of the co-accused in the case. This would clearly establish the prosecution case that the car bearing No.DNH-8440 was used in committing the offence alleged against the accused. In our view, minor discrepancies, if any, would not be fatal to the entire case of the prosecution.

(64) In this background, the question before us is, even if we have to eschew the confessional statements of K.K. Saini and Mange, whether we can still maintain the conviction and

sentence of Babloo – co-accused for the offence under Section 302 read with Section 120-B of the IPC.

(65) The role played by Babloo in the present case is that of a "king pin". The possibility of having direct evidence against a "king pin" is rather low. In most cases, it may be circumstantial. What we need to see is the chain of events that the prosecution is expected to prove can be linked to the evidence incriminating Babloo.

(66) It has been consistently held by this Court that where the guilt of a person squarely rests on circumstantial evidence, then the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be in coherence of each other and incompatible with the innocence of the accused. These circumstances from which, such inference is to be drawn, must be shown to be closely connected to the facts which are sought to be proved. When the matter depends on the conclusions to be drawn from such circumstances, then the cumulative effect of the circumstances must be to negate the possibility of innocence in any manner. [See *State of UP v. Satish,* (2005) 3 SCC 114*; Liyakat v. State of Uttranchal,* 2008

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Cri LJ 1931 (SC)*; Swamy Sharaddananda v. State of Karnataka,* (2007) 12 SCC 288*; State of Goa v. Sanjay Thekaram,* (2007) 3 SCC 755*]*.

(67) From the evidence on record, it can safely be inferred that Babloo was the mastermind of the whole incident and Mange and K.K. Saini committed the offence at the behest of Babloo. In our view, there is independent incriminating evidence against Babloo, even if we have to eschew the confessional statement of co-accused. Hence, we reject the appeal of Babloo.

Case of K.K. Saini and Mange

(68) We now proceed to examine the evidence against K.K. Saini and Mange independently. It must be noted that the witnesses here shall be referred to by the numbers assigned to them under Criminal Appeal No.3 of 1995.

(69) With regard to K.K. Saini, it must be first mentioned that he has confessed to the crime under Section 15 of the TADA Act. His confession was recorded by Shri. Sharad Kumar SP,

CBI (P.W 47). KK Saini was fully made aware of the consequences of making a confessional statement.

(70) The following are the details divulged in his confessional statement. He has stated that he went to Nepal on Babloo's behest where he met Mange. He further stated that he was given the task to kill L.D Arora by Babloo. He also mentions that he was chosen specifically to open fire as he had previously committed four murders. Thereafter, Babloo provided Mange with Maruti car DNH – 8440, a 9 mm pistol several cartridges and `10,000 to 12,000/- for this purpose. On the morning of 23rd March, 1993, K.K. Saini and Mange checked into Hotel Finero under the assumed names of A.K. Singh and Harjeet Singh respectively. Subsequently, they received a phone call from Babloo from Nepal. Babloo told them over the phone that they would meet Alimudeen @ Baba who would help them in the task. Subsequently, Baba met K.K. Saini and Mange in their room. Later in the day, Baba took him on a dark grey Bajaj scooter to show him the office and the house of L.D. Arora. They examined the area and on their return to the hotel, all three of them sat and planned how to execute the task of killing

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L.D. Arora. On the next day in the morning, they received a phone call from Babloo from Nepal who asked them to finish the task the very next day as L.D. Arora was to leave for Bombay to reveal information regarding smuggling of arms and explosives used in the Bombay bomb blasts in the very same year. K.K. Saini then took Mange and showed the office and house and they marked the escape routes. On their return to the hotel, Baba came to the room and told them that they should reach the place around 5.00 PM and that he would come in Maruti car – DNH 8440. KK Saini stated that they left Hotel Finero around 5.00 PM. At around 6.45 – 7.00, Baba came and told them that L.D. Arora would arrive shortly. They waited for his arrival and on seeing Arora's vehicle approach they took their respective positions. When L.D. Arora was parking his car alongside the Southern boundary wall, K.K. Saini emerged from his position near the stair case and opened fire three times at short range. He escaped through the staircase and reached Mange who was waiting near the scooter. They met Baba at the agreed spot and exchanged vehicles. Subsequently, they went back to Hotel Finero, checked out and left for Nepal the very

same evening. They crossed the Nepal border on 25th morning after paying Customs duty for the car.

(71) The testimony of Mange is substantially similar with that of K.K. Saini. The learned senior counsel Shri Amrendra Sharan submits that the confessional statement of Mange was recorded nearly after eight years from the date of incident and the confessional statement of both K.K. Saini and Mange is verbatim the same. Therefore, it casts a serious doubt on the alleged confessional statement. In our view, merely because the confessional statement of both the accused is more or less similar, it cannot be said they are neither normal nor unnatural which would vitiate the probative value of such confessional statement. Therefore, we do not see any merit in this contention of the learned senior counsel.

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(72) Subsequently both KK Saini and Mange retracted their confessional statement before the Designated Court and have categorically denied knowing each other or Babloo. They have also denied ever having gone to hotel Finero, ADA Colony etc. They have stated that the CBI has prevailed upon the witnesses produced on behalf of the prosecution to give false evidence

against them. Keeping in view that the accused has retracted their confession statement, the learned senior counsel Shri K.T.S. Tulsi submitted that the confession of both KK. Saini and Mange, alleged to be given under Section 15 of the TADA Act cannot be used since the prosecution has failed to adduce sufficient corroborative evidence.

(73) A confessional statement given under Section 15 shall not be discarded merely for the reason that the same has been retracted. In *Ravinder Singh v. State of Maharashtra,* (2002) 9 SCC 55, the accused was charged under the provisions of the TADA Act and under Section 302/34, 120B and other provisions of the Explosives Act. The accused thereafter retracted his confession. The court observed:-

> *"There can be no doubt that a free and voluntary confession deserves the highest credit. It is presumed to flow from the highest sense of guilt. Having examined the record, we are satisfied that the confession made by the appellant is voluntary and truthful and was recorded, as already noticed, by due observance of all the safeguards provided under Section 15 and the appellant could be convicted solely on the basis of his confession."*

The court also observed the decision in *State of Maharashtra v. Bharat Chaganlal Raghani,* (2001) 9 SCC 1, wherein the court partially overturned the acquittal of the accused by the Designated Court solely based on the confessional statement of the accused which had later been retracted. In *Bharat Chanlal's* case, the court observed that there was no denial of the fact that judicial confessions made are usually retracted but retracted confessions are held to be good confessions if they are made voluntarily and in accordance with law.

(74) In the case before us, the contest on the validity of the testimony has been multi pronged. Firstly, it was contended that since the procedure under Section 20A (1) had not been followed, the testimony is not valid in law. Secondly, it was asserted that the accused was made to sign on blank papers and that the confession has been concocted by the prosecution. Thirdly, that there is no corroborative evidence given the fact that certain witnesses including Ram Babu (PW-35) and Sanjay Kumar (PW- 36), who were to have witnessed the crime, had been declared hostile by the prosecution.

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(75) The argument pivoted on the requirements under Section 20A(1) not being fulfilled is, in our opinion, has no merit. The learned Additional Solicitor General Shri P.P. Malhotra contends that both K.K. Saini and Mange were produced before the CMM, Delhi to fulfill the requirements under Rule 15 and the accused did not, at that point, claim that they had been made to sign on blank papers. Keeping in mind the possibility of abuse of the process, this court in *Kartar Singh (supra)* laid down certain guidelines whereby the veracity of the confessional statement is ensured, for example, the confession given to a police officer under Section 15 is to be sent to the CMM without delay and if the accused when he is so produced before the CMM alleges torture, he is to be sent for a medical examination. Here the accused were sent to the CMM, Delhi the very next day and they neither alleged that the confession was fabricated, nor that they had been tortured. In the light of these circumstances, we have to give due credence to the confession statement and consider to what extent it has been corroborated by substantive evidence.

(76) In *Ravinder Singh's* case, the Court relying on *Nalini v. State (supra)*, *S.N Dube v. N.B Bhoir* and *Devender Pal Singh v. State of NCT of Delhi,* (2002) 5 SCC 234, held that *"it is well established that a voluntary and truthful confessional statement recorded under Section 15 of TADA requires no corroboration."*

(77) This apposite observation by the bench of two learned Judges in *Ravinder Singh's* case should be considered with measured caution and we believe, taking into account ground realities, it would be prudent to examine the authenticity of a confession on a case to case basis. The problem seems to be the method we follow in ascertaining whether a specific confession is truthful and voluntary. Section 15 and the rules made thereunder prescribe certain guidelines – which if ensured can, to a large extent, point towards the fact that the confession is truthful and voluntary. However, we must not overlook the fact that the TADA prescribes a deviation from the conventional criminal jurisprudence. As a court of record, we are bound to keep in mind situations where despite the procedure being followed, the testimony so obtained under Section 15 is

coloured by suspicion and doubt regarding its veracity. Hence, albeit the procedure is followed, we find it judicious to look into whether the testimony is corroborated by the evidence presented by the prosecution. The life and liberty of a person are at stake and we are of the view that no effort should be spared in such circumstances to see that justice is done. These are after all the safeguards provided in our Constitution and the people have vested their faith in this court to keep vigil and see to it that these hallowed principles are not trampled upon by the necessities of the hour and vicissitudes of time.

(78) The confessional statements of K.K. Saini and Mange are corroborated by the documentary evidence, which are marked in the evidence by the prosecution. Exhibit D-20/Ka 2 is the notebook maintained by Hotel Finero and proves the entry of Maruti car DNH – 8440 against K.K. Saini's assumed name, A.K. Singh on 23/3/93. Exhibit D-19 is the hotel register at Hotel Finero and proves that K.K. Saini and Mange signed in it under fictitious names. Both K.K. Saini and Mange have been recognized by the employees of Hotel Finero. The testimony of Anant Ram Saxena (PW-1) Hotel Manager, Kalidas Jaiswal

(P.W-44) waiter and Jwala Prasad (PW 60) appears to be credible and true and if the same is believed, it corroborates the fact that the accused stayed in the Hotel Finero during the relevant time and was met by Alimudeen @ Baba. The hand writing of the accused in the register has also been proved by the detailed report of Dr. M.A Ali (PW-43), Sr. Scientific Officer produced as Exhibit-D-27. The car used for committing the crime has been recovered at the instance of KK Saini revealing its whereabouts. Recovery Memo dated 23.04.1994 [Exhibit D 16/ Ka 17] records the seizure of the car from Agra. The copy of the Cash Memo seized from the petrol pump Barabanki [Exhibit- D 22/ Ka 27] and the Customs Receipt [D 37/28, Ka 76] corroborates the alleged journey from Krishna Nagar, Nepal to Allahabad and back. The statement issued by the Nepal police reveals that Car bearing No. DNH – 8440 entered Nepal through Krishna Nagar customs and was allowed to stay for a period of one week on payment of Rs 700 Nepal Currency as customs duty. Further, the printouts of call logs on telephone number 622452 installed in Hotel Finero (Exhibits D 38/40 and D 36/2), the report of part of investigation in Nepal

(Exhibits D 37, D 37/28) is read with the statements of Indu Singh (PW 87) (land lady of Babloo in Nepal), Bhushan Lal Shreshtha (PW – 68) [he was Deputy Fiscal Officer, Telecom Dept, Nepal] corroborate the confessional statement of KK. Saini and Mange to a substantial extent. Indu Singh (PW 87) has recognized Babloo in court and stated that he was staying at the house rented out by her in Krishna Nagar, Nepal and that the telephone number from which calls were made to Room No 7 in hotel Finero, where K.K. Saini and Mange were staying, was installed in the same house where Babloo was staying. Harikesh (Harbans) Batra (PW 21) (Inspector MTNL) identified K.K. Saini in court and stated that he had previously been involved in the transfer of a phone in the name of one A.K. Singh. He stated that K.K Saini and A.K. Singh are one and the same. A.K. Singh is the assumed name used by K.K. Saini even at Hotel Finero. K.K Saini had, in his confession, stated that he had obtained the driving license of A.K Singh and substituted the photograph therein with his own.

(79) Bharat Singh (PW-30) [was declared hostile by prosecution] stated on oath that he knows Babloo from his

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University days. Later he met Babloo when he went to meet Chandraswami in connection with his reinstatement into service. He admits to have been involved in solving a few land disputes on Babloo's behalf. He has visited Babloo in Nepal a couple of times. During the time when L.D. Arora was murdered, he was in Allahabad. He stated that he received calls from both Mange and Babloo on March 23 and 24. It was stated by the witness that in the course of conversation, Mange revealed that he had obtained Bharat Singh's number from Babloo. Mange stated that he was presently in Allahabad and that 2-3 people had come with him. Subsequently, he has stated that Babloo called him in relation to a property dispute that Bharat Singh was assisting him with. When Bharat Singh mentioned talking to Mange over the phone to Babloo, the latter had said that he had given Bharat Singh's number to Mange and that he was not to meet Mange. Bharat Singh was declared hostile and cross examined by the prosecution. In the course of cross examination, he has denied having told the investigating officer that Mange had told him that he had come to Allahabad to kill L.D. Arora. However, he admitted that he told the CBI

officer that Babloo told him that Mange was there on a specific task and that is the reason why he should desist from meeting him.

(80) The evidence of Bharat Singh, despite the fact that the prosecution has chosen to treat him as a hostile witness, need not be totally disregarded. Its admissibility should be tested in the light of the surrounding circumstances and other evidence. In *Radha Mohan Singh vs. State of UP,* 2006 Cri LJ 1121 (1125) (SC), this Court has observed:

> *"It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution choose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof."*

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(81) In the present case, testimony of Bharat Singh provides a vital link between the various participants in this crime, the fact that K.K. Saini and Mange were in Allahabad on a 'specific task' assigned to them by Babloo, who was in Nepal. Taken together, the evidence on record presents an unimpeachable

evidence against the accused, clearly indicating the modus operandi and the motive.

(82) In the light of the above discussion, we are of the opinion that the Designated Judge (TADA) was justified in convicting and sentencing K.K. Saini and Mange for the offences under Section 302/34 IPC.

Case of the State

(83) The State has preferred appeals against the judgment of the Designated Court stating that the court was not justified in dismissing the charges under Section 3 of the TADA Act. They have examined numerous witnesses who have stated that the murder of L.D. Arora resulted in fear in the minds of fellow customs officers. It was also stated that the morale of these officers were affected and that a sense of gloom prevailed upon them. It was also stated that L.D. Arora was to leave the very next day for Bombay to furnish details about the smuggling of arms and explosives used in the Bombay bomb blasts.

(84) It would be useful to examine the purport of Section 3 of the TADA. It is under:-

> *"3. **Punishment for terrorist acts**. – (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of*

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

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

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

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

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

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may

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extend to imprisonment for life and shall also be liable to fine.

(5) Any person who is a member of a terrorists gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

(85) Section 3 of the TADA Act gives due importance to the aspect of 'intent'. The person who is alleged to be involved in a terrorist act can be charged under Section 3(1) only when the prosecution has been successful in establishing that the same was committed with the intent to awe the government or to achieve one or the other ends mentioned under Section 3(1). The Designated Court, while dismissing the charges under the TADA Act, cited with approval the decision of this court in *Hitendra Vishnu Thakur vs. State of Maharashtra,* (1994) 4 SCC 602. This Court made a distinction between the incidence of terror as a consequence of a particular act and causing terror being the sole intent

of the same act. It is only in case of the latter that the provisions of Section 3(1) are attracted. It was held that:

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

(86) In *State vs. Nalini (supra)*, a three Judge Bench of this Court has quoted the dictum laid down in *Hitendra Vishnu Thakur (supra)* with approval and concluded thus: (See p.298 Para 51):

> *"51. Thus the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under TADA or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc."*

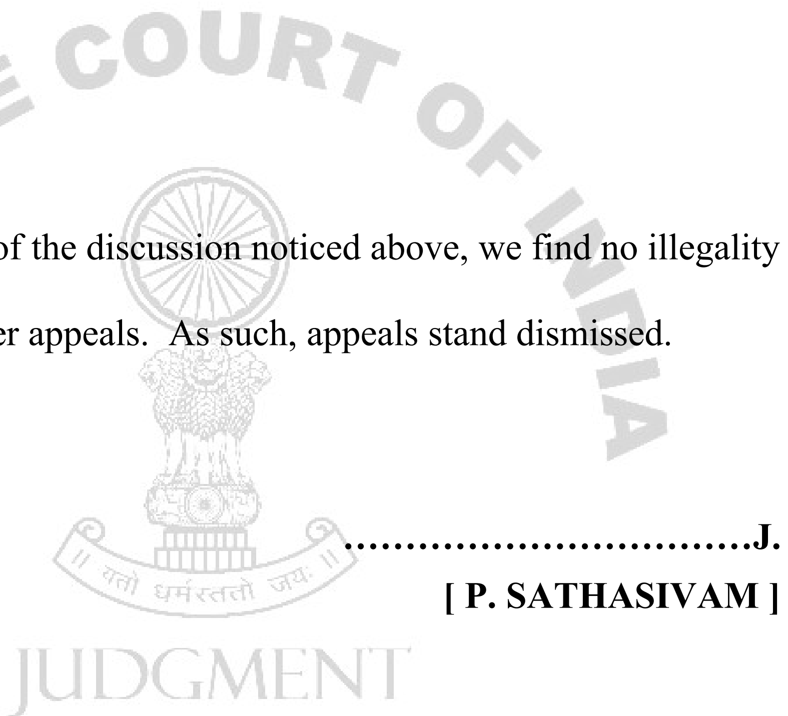
(87) In *State of West Bengal vs. Mohammed Khalid* (1995) 1 SCC 684, referring to Corpus Juris Secundum (A

Contemporary Statement of American Law, Vol 22 at pg 116), the meaning of intent was quoted as under:

> *"Intention- (a) In general (b) Specific or general intent crimes; An actual intent to commit the particular crime towards which the act moves is a necessary element of an attempt to commit a crime. Although the intent must be one in fact, not merely in law, and may not be inferred from the overt act alone, it may be inferred from the circumstances"*

(88) The prosecution in this case has argued that charge under Section 3 is maintainable in the light of the Bombay bomb blasts and the fact that L.D. Arora would have been pivotal in providing information regarding the smuggling of arms and explosives. The case before us concerns the murder of L.D. Arora. The prosecution has not been successful in proving that this particular murder was committed with the intention to cause terror. As mentioned earlier, terror could have been caused as a consequence of the act. The prosecution has stated that the main intention behind the murder of L.D. Arora was to prevent the names of Mohd. Dosa, Tahir Shah and others involved in smuggling of arms and explosives would not come to light during the investigations that followed the Bombay blast. It is therefore evident that the intention of the accused in the present case was not to cause terror but to prevent

information regarding another crime from being divulged. In the light of these facts, we are of the opinion that the TADA Court was justified in dismissing the charges framed under the TADA Act. Therefore, appeals filed by the State for enhancement of sentence require to be dismissed.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(89) In view of the discussion noticed above, we find no illegality in the judgment under appeals. As such, appeals stand dismissed.

…………………………….J.
[P. SATHASIVAM]

…………………………….J.
[H.L. DATTU]

New Delhi,
January 25, 2011.