Copy of Supreme Court Judgement against bhullar

AIR 2002 SUPREME COURT 1661 “Devender Pal Singh v. State N.C.T. of Delhi”

= 2002 AIR SCW 1586

Coram : 3 M. B. SHAH, B. N. AGRAWAL AND A. PASAYAT, JJ.

Criminal Appeal No. 933 of 2002 with Death Ref. Case (Cri.) No. 2 of 2001*, D/- 22 -3 -2002.

Devender Pal Singh, Appellant v. State N.C.T. of Delhi and another, Respondents.

(A) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confession – Cannot be used against accused unless it is voluntary – At that stage question whether it is true or false does not arise.

Per Majority (Shah, J. contra) law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary. At that stage question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt.(Para 4)

(B) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confession of accused – Can be relied upon for the purpose of conviction, and no further corroboration is necessary if it relates to the accused himself. (Per majority Shah, J. contra) (Para 5)

(C) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confessional statement – Found to be voluntary – It would not be proper to hold then that the police has incorporated certain aspects in the confessional statement which were gathered in the investigation conducted earlier. (Per Arijit Pasayat, J. – B. N. Agrawal, J. concurring) (Para 6)

(D) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confessional statement – Validity – Confessional statement sent directly to Designated Court before producing accused before Metropolitan Magistrate – Not a suspicious circumstance – No grievance made by accused about any duress or coercion – Non-despatch of confessional statement to Metropolitan Magistrate – Would be of no consequence in absence of any prejudice to accused – In any event the prescription regarding despatch is directory and not mandatory. (Per Arijit Pasayat, J. – B. N. Agrawal, J. concurring) (Para 8)

(E) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confession – Manner of recording – Merely because the confessional statement was recorded in a computer – Cannot be ground for holding that the confessional statement was not voluntary. (Per Arijit Pasyat, J. – B. N. Agrawal, J. concurring) (Para 9)

(F) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15(3)(b) – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confessional statement – Manner of recording – Requirement of certificate of Police Officer 'under his own hand' – Police Officer giving certificate in typing – Not illegal.

(Per majority :- Shah, J. contra) Where Police Officer had given certificate as required by R. 15 in typing when requirement under R. 15 was that the certificate has to be 'under his own hand,' it would not be illegal. It would be too technical to discard the confessional statement or doubt its authenticity on that score. This is merely a procedural requirement. The non-observance does not cause any prejudice to the accused. Procedure is handmade and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, the requirement of recording "under his own hand" demands an approach which would be rational and practical and not otherwise. Such minor deficiency, if any, cannot be considered to be a fatal factor so far as prosecution case is concerned. (Para 9)

(G) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – Terrorist and Disruptive Activities (Prevention) Rules (1987), R.15 – TERRORIST AND DISRUPTIVE ACTIVITIES – CONFESSION – Confessional statement – Validity – Mere statement that requisite procedures and safeguards were not observed or that statement was recorded under duress or coercion – Is of no consequence – Presumption that a person acts honestly applies as much in favour of a police officer as of other persons. (Per Arijit Pasayat, J. – B. N. Agrawal, J. concurring)

Evidence Act (1 of 1872), S.114(e). (Para 9)

(H) Penal Code (45 of 1860), S.120B – CRIMINAL CONSPIRACY – CONFESSION – Criminal conspiracy – Acquittal of co-accused on ground of non-corroboration of confessional statement – Prosecution case regarding conspiracy does not get demolished. (Per Arijit Pasayat, J. – B. N.

Agrawal, J. concurring)

Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15. (Para 27)

(I) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.15 – CONFESSION – Confessional statement – Challenge as to, on ground of failure of prosecution to place any material to show as to why accused would make confessional statement immediately on return to India – No proof can be expected in all cases as to how mind of the accused worked in a particular situation. (Per Arijit Pasayat, J. – B. N. Agrawal, J. concurring) (Para 28)

(J) Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.3(2)(i) – TERRORIST AND DISRUPTIVE ACTIVITIES – DEATH SENTENCE – Death sentence – Terrorist acts – Nine persons killed and several others injured – Number of vehicles catching fire and destroyed – Held, on facts, death sentence is most appropriate sentence (Per majority :- Shah, J. contra) (Para 31)

(K) Criminal P.C. (2 of 1974), S.432(2) – TERRORIST AND DISRUPTIVE ACTIVITIES – SENTENCE REMISSION – DEATH SENTENCE – Remission of sentence – Considerations – Death sentence under TADA – Confirmed by Supreme Court by majority judgment – Minority judgment however, holding accused innocent while deciding question of sentence – Held, if motion is made for remission of sentence, factors which weighed with minority judgment can be duly taken note of in the context of S. 432(2). (Per Arijit Pasayat, J. – B. N. Agrawal, J. concurring)

Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.3(2)(i).

Ramdeo v. State of Assam, 2001 AIR SCW 2159 : AIR 2001 SC 2231 : 2001 Cri LJ 2902, Foll. (Para 33)

Cases Referred : Chronological Paras

Ramdeo Chauhan v. State of Assam, AIR 2001 SC 2231 : 2001 AIR SCW 2159 : 2001 Cri LJ 2902 : (2001) 5 SCC 714 (Foll.) (Pt. K) 32

Jayawant Dattatray Suryarao v. State of Maharashtra, AIR 2002 SC 143 : 2001 AIR SCW 4717 : 2002 Cri LJ 226 1, 5, 8

State v. Nalini, AIR 1999 SC 2640 : 1999 AIR SCW 1889 : 1999 Cri LJ 3124 : (1999) 5 SCC 253 3, 4, 5

Gurdeep Singh v. State (Delhi Admn.), AIR 1999 SC 3646 : 1999 AIR SCW 3667 : 1999 Cri LJ 4573 : (2000) 1 SCC 498 3, 5, 53, 54

Sahib Singh v. State of Haryana, AIR 1997 SC 3247 : 1997 AIR SCW 2330 : 1997 Cri LJ 3956 :

(1997) 7 SCC 231 3

State of Maharashtra v. Som Nath Thapa, AIR 1996 SC 1744 : 1996 AIR SCW 1977 : 1996 Cri LJ 2448 22

E. K. Chandrasenan v. State of Kerala, AIR 1995 SC 1066 : 1995 AIR SCW 1079 21

Kartar Singh v. State of Punjab, 1995 AIR SCW 2698 : AIR 1995 SC 1726 : 1994 Cri LJ 3139 : (1994) 3 SCC 569 51

Wariam Singh v. State of U.P., AIR 1996 SC 305 : 1995 AIR SCW 4090 : 1996 All LJ 77 : (1995) 6 SCC 458 8

S. C. Bahri v. State of Bihar, AIR 1994 SC 2420 : 1994 AIR SCW 3420 : 1994 Cri LJ 3271 20

Hitendra Vishnu Thakur v. State of Maharashtra, AIR 1994 SC 2623 : 1994 AIR SCW 3699 : 1995 Cri LJ 517 : (1994) 4 SCC 602 2

State of U.P. v. Ashok Kumar Srivastava, AIR 1992 SC 840 : 1992 AIR SCW 640 : 1992 Cri LJ 1104 : 1992 All LJ 1115 25

Gurbachan Singh v. Satpal Singh, AIR 1990 SC 209 : 1990 Cri LJ 562 25

Kehar Singh v. State (Delhi Admn.), AIR 1988 SC 1883 : 1989 Cri LJ 1 22

State of U.P. v. Anil Singh, AIR 1988 SC 1998 : 1989 Cri LJ 88 26

State of Bihar v. Paramhans, 1986 Pat LJR 688 : 1987 BLJR 127 22

Machhi Singh v. State of Punjab, AIR 1983 SC 957 : 1983 Cri LJ 1457 : (1983) 3 SCC 470 30

Shivanarayan Laxminarayan Joshi v. State of Maharashtra, AIR 1980 SC 439 : 1980 Cri LJ 388 23

Bachan Singh v. State of Punjab, AIR 1980 SC 898 : 1980 Cri LJ 636 30

Maru Ram v. Union of India, AIR 1980 SC 2147 : 1980 Cri LJ 1440 : (1981) 1 SCC 107 32

Inder Singh v. State (Delhi Admn.), AIR 1978 SC 1091 : 1978 Cri LJ 766 26

Baburao Bajirao Patil v. State of Maharashtra, (1971) 3 SCC 432 : 1971 SCC (Cri) 680 23

R. v. Harz, R. v. Power, (1966) 3 All ER 433 : (1966) 3 WLR 1241 3

Bhagwan Swarup v. State of Maharashtra, AIR 1965 SC 682 : (1965) 1 Cri LJ 608 15

Topandas v. State of Bombay, AIR 1956 SC 33 : 1956 Cri LJ 138 57

Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426 9

Stirland v. Director of Public Prosecution, 1944 AC 315 (PC) 26

Ibrahim v. Regem, 1914 AC 599 : 111 LT 20 3

R. v. Plummer, (1902) 2 KB 339 : 71 LJ KB 805 58

Wood v. Boworn, (1866) 2 QB 21 3

Regina v. Murphy, (1837) 173 ER 502 : 8 Car and P 297 19

State of Mullin, 85 NW 2d 598 : 249 Iown 10 3

Commonwealth v. Chin Kee, 186 NE 253 : 283 Mass 248 3

Ms. Nitya Ramkrishnan and Ms. Neeru Vaid, Advocates, for Appellant; Anoop G. Chaudhary, Sr. Advocate, Ms. Sunita Sharma, Avtar Singh Rawat and D. S. Mehra, Advocates with him, for Respondents.

* From the judgement and order, D/-24-8-2001 of the Designated Court, New Delhi in S. C. No. 4 of 2000.

Judgement

ARIJIT PASAYAT, J. :-Notwithstanding my profound respect of Brother Shah's erudition, I am unable to agree with his conclusions. While dealing with an accused tried under the TADA, certain special features of the said Statute need to be focused. It is also necessary to find out the legislative intent for enacting it. It defines "terrorist acts" in S. 2(h) with reference to S. 3(1) and in that context defines a terrorist. It is not possible to define the expression 'terrorism' in precise terms. It is derived from the word 'terror.' As the Statement of Objects and Reasons leading to enactment of the TADA is concerned, reference to the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the 'old Act') is AIR 2002 SC 143 : 2002 CriLJ 226 necessary. It appears that the intended object of the said Act was to deal with persons responsible for escalation of terrorist activities in many parts of the country. It was expected that it would be possible to control the menace within a period of two years, and life of the Act was restricted to the period of two years from the date of its commencement. But noticing the continuance of menace, that too on a larger scale TADA has been enacted. Menace of terrorism is

not restricted to our country, and it has become a matter of international concern and the attacks on the World Trade Centre and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is. TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case. As was noted in Jayawant Dattatray Suryarao etc. etc. v. State of Maharashtra etc. etc. (2001 AIR SCW 4717), for finding out the intention of the accused, there would hardly be a few cases where there would be direct evidence. It has to be mainly inferred from the circumstances of each case.

2. In Hitendra Vishnu Thakur and others v. State of Maharashtra and others (1994 (4) SCC 602), this Court observed that "the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under Act or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity is to be one that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. It is in essence a deliberate and systematic use of coercive intimidation." As was noted in the said case, it is a common feature that hardened criminals today take advantage of the situation and by wearing the cloak of terrorism, aim to achieve acceptability and respectability in the society; because in different parts of the country affected by militancy, a terrorist is projected as a hero by a group and often even by many misguided youth. As noted at the outset, it is not possible to precisely define "terrorism." Finding a definition of "terrorism" has haunted countries for decades. A first attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agreed-upon definition. Terminology consensus would, however, be necessary for a single comprehensive convention on terrorism, which some countries favour in place of the present 12 piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Cynics have often commented that one State's "terrorist" is another State's "freedom fighter." If terrorism is defined strictly in terms of attacks on non-military targets, a number of attacks on military installations and soldiers' residences could not be included in the statistics. In order to cut through the Gordian definitional knot, terrorism expert A. Schmid suggested in 1992 in a report for the then UN Crime Branch that it might be a good idea to take the existing consensus on what constitutes a "war crime" as a point of departure. If the core of war crimes – deliberate attacks on civilians, hostage taking and the killing of prisoners – is extended to peacetime, we could simply define acts of terrorism as "peacetime equivalents of war crimes." AIR 1994 SC 2623 : 1994 AIR SCW 3699 : 1995 CriLJ 517

1. League of Nations Convention (1937) :

"All criminal acts directed against a State along with intended or calculated to create a statute of

terror in the minds of particular persons or a group of persons or the general public.”

(GA Res. 51/210 measures to eliminate international terrorism)

“1. Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whom soever committed;

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

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

Act of Terrorism – Peacetime Equivalent of War Crime

4. Academic Consensus Definition :

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

Definitions :

Terrorism by nature is difficult to define. Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those affected by the fear) as well as in the practitioners. Even the U.S. Government cannot agree on one single definition. The old adage, “one man’s terrorist is another man’s freedom fighter” is still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of Investigation.

Terrorism is the use or threatened use of force designed to bring about political change. -Brian Jenkins

Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted. -Walter Laqueur

Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience. -James M. Poland

Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a Government, individuals or groups, or to modify their behaviour or politics. -Vice-President's Task Force, 1986

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

3. The main plea of accused-appellant is that there was no corroboration to the alleged confessional statement. Various circumstances, according to him, clearly show that it was not voluntary. Strong reliance is placed in State v. Nalini and others (1999 (5) SCC 253) to contend that corroboration is necessary. It is to be noted that Legislature has set different standards of admissibility of a confessional statement made by an accused under the TADA from those made in other criminal proceedings. A confessional statement recorded by a Police Officer not below the rank of Superintendent of Police under S. 15 of the TADA is admissible, while it is not so admissible unless made to the Magistrate under S. 25 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). It appears consideration of a confessional statement of an accused to a police officer except to the extent permitted under S. 27 of the Evidence Act is not permissible. These aspects are noted by this Court in Sahib Singh v. State of Haryana (1997 (7) SCC 231) and Gurdeep Singh's case (supra). There is one common feature, both in S. 15 of the TADA and S. 24 of the Evidence Act that the confession has to be voluntary. Section 24 of the Evidence Act interdicts a confession, if it appears to the Court to the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. Section 15 of the TADA also requires the confession to be voluntary. Voluntary means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but AIR 1999 SC 2640 : 1999 AIR SCW 1889 : 1999 CriLJ 3124

AIR 1997 SC 3247 : 197 AIR SCW 2330 : 1997 CriLJ 3956

AIR 1999 SC 3646 : 1999 AIR SCW 3667 : 1999 CriLJ 4573

Paras 20, 21, 22, and 23

the truth. As per Stroud's Judicial Dictionary, 5th Edn. at p. 2633, threat means :

"It is the essence of a threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed (per Lush, J., Wood v. Bowron (1866) 2 QB 21) cited Intimidate)."

Words and Phrases, Permanent Edition, Vol. 44, p. 622, defines “voluntary” as :

” ‘Voluntary’ means a statement made of the free will and accord of accused, without coercion, whether from fear of any threat of harm, promise, or inducement or any hope of reward State v. Mullin (85 NW 2d 598, 600, 249 lown 10).”

At p. 629, “confession” is defined as :

“where used in connection with statements by accused, words ‘voluntary’ and ‘involuntary’ import statements made without constraint or compulsion by others and the contrary. Commonwealth v. Chin Kee (186 NE 253, 260, 283 Mass 248).”

In Words and Phrases by John B. Saunders, 3rd Edn., Vol. 4, p. 401, “voluntary” is defined as :

“. . . . . .The classic statement of the principle is that Lord Sumner in Ibraim v. Regem (1914 AC 599) (at p. 609) where he said, “It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to be a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale.” However, in five of the eleven textbooks cited to us. . . . . . support is to be found for a narrow and rather technical meaning of the word “voluntary”. According to this view “voluntary” means merely that the statement has not been made in consequence of (i) some promise of advantage or some threat (ii) of a temporal character (iii) held out or made by a person in authority, and (iv) relating to the charge in the sense that it implies that the accused’s position in the contemplated proceedings will or may be better or worse according to whether or not the statement is made.” R. v. Harz, R. v. Power (1966) 3 All ER 433 (at pp. 454, 455) per Cantley, V.”

So the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one’s own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

4. As was observed in Nalini’s case (supra) TADA was enacted to meet extraordinary situation existing in the country. Its departure from the law relating to confession as contained in the Evidence Act is deliberate. Section 24 of the Evidence Act deals with confession caused by inducement, threat or promise, which is irrelevant in criminal proceedings. The expression “confession” has not been defined in the Evidence Act. Broadly speaking it is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. Law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act,

and Ss. 162 and 164 of the Code of Criminal Procedure, 1898 (hereinafter described as “old Code”) corresponding to identical provisions of Code of Criminal Procedure, 1973 (described as “Code” hereinafter). Confession is a species of admission. A confession or admission is evidence against maker of it, if its admissibility is not excluded by some provision of law. Law is clear that a confession cannot be used against an accused persons unless the Court is satisfied that it was voluntary. At that stage question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. In Principle and Digest of Law of Evidence, Volume 1, New Edition by Chief Justice M. Monir, after noticing conflicting views and discussing various authorities, the learned author summarized the position as follows :

“The rule may therefore, be stated to be that whereas the evidence in proof of a AIR 1999 SC 2640 : 1999 AIR SCW 1889 : 1999 CriLJ 3124

confession having been made is always to be suspected the confession, if once proved to have been made and made voluntarily, is one of the most effectual proofs in the law.”

5. As was noted in Gurdeep Singh’s case (supra), whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for it has to prove that all requirements under S. 15 of TADA and R. 15 of Terrorist and Disruptive Activities (Prevention) Rules, 1987 (hereinafter referred to as “Rules”) have been complied with. Once this is done the prosecution discharges its burden and then it is for the accused to show and satisfy the Court that the confessional statement was not made voluntarily. The confessional statement of the accused can be relied upon for the purpose of conviction, and no further corroboration is necessary if it relates to the accused himself. It has to be noted that in Nalini’s case (supra), by majority it was held that as a matter of prudence the Court may look for some corroboration if confession is to be used against a co-accused though that will be again within the sphere of appraisal of evidence. It is relevant to note that in Nalini’s case (supra), the Court was considering the permissibility of conviction of a co-accused on the confessional statement made by another accused. In this case, we are concerned with the question as to whether the accused making the confessional statement can be convicted on the basis of that alone without any corroboration. The following observations in Jayawant Dattatray’s case (supra) are relevant : AIR 1999 SC 3646 : 1999 AIR SCW 3667 : 1999 CriLJ 4573

AIR 1999 SC 2640 : 1999 AIR SCW 1889 : 1999 CriLJ 3124

AIR 2002 SC 143 : 2001 AIR SCW 4717 : 2002 CriLJ 226

“Confessional statement before the police officer under S. 15 of the TADA is substantive evidence

and it can be relied upon in the trial of such person or co-accused, abettor or conspirator for an offence punishable under the Act or the Rules. The police officer before recording the confession has to observe the requirement of sub-section (2) of S. 15. Irregularities here and there would not make such confessional statement inadmissible in evidence. If the Legislature in its wisdom has provided after considering the situation prevailing in the society that such confessional statement can be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under duress or was not recorded truly by the concerned officer in whom faith is reposed. It is true that there may be some cases where the power is misused by the concerned authority. But such contention can be raised in almost all cases and it would be for the Court to decide to what extent the said statement is to be used. Ideal goal may be :- confessional statement is made by the accused as repentance for his crime but for achieving such ideal goal there must be altogether different atmosphere in the society. Hence, unless a fool-proof method is evolved by the society or such atmosphere is created, there is no alternative, but to implement the law as it is.

(Underlined for emphasis)

6. Learned counsel for the appellant has tried to show that the witnesses examined have given lie to some parts of the confessional statement, like hiring of the room, purchase of the car etc. It is true that the witnesses have not spoken about the role of the appellant in the alleged transactions. But, as was rightly submitted by learned counsel for the respondent, the very fact that these witnesses have stated about the identity given by the perspective tenants, the purchase of the car are factors which do not go in favour of the appellant, but against him. Otherwise, how would the accused-appellant in his confessional statement state about the identity disclosed by the perspective tenant and purchase of the car. Learned counsel for the appellant contended that these facts had come to knowledge of the police prior to the apprehension of the accused-appellant and, therefore, they have utilized their previous knowledge and put it in the confessional statement. Such a contention has to be noticed to be rejected. Once it is held that the confessional statement is voluntary, it would not be proper to hold that the police has incorporated certain aspects in the confessional statement which were gathered in the investigation conducted earlier. It is to be noted further that the appellant’s so-called retraction was long after he was taken into judicial custody. While he was taken to judicial custody on 24-3-1995, after about a month, he made a grievance about the statement having been forcibly obtained. This is clearly a case of afterthought. Since the confessional statement was voluntary, no corroboration for the purpose of its acceptance is necessary.

7. Three other aspects were highlighted to raise doubt about authenticity of prosecution version. They are : (i) circumstances about the alleged attempt to swallow the cyanide pill, (ii) non-despatch of the confessional statement to the ACMM or the CJM and (iii) the typed certificate given by the officer recording the evidence, when under R. 15(3)(b) of the Rules, requirement is a certification “under his own hand”.

8. It is to be noted that Ex. P.W. 83/B is the copy of the personal search memo of the accused and Serial No. 6 refers to cyanide capsules. Merely because no statement has been made by witnesses about the attempt to swallow the cyanide, that does not, in any way, dilute the evidence recording seizure of a cyanide capsule from the accused-appellant. Mention about the cyanide capsule in the confessional statement goes a long way to show that the statement was truthful. So far as the alleged non-despatch of the confessional statement is concerned, evidence of P.W. 133 B. B. Chaudhary, ASJ is significant. On 24-1-1995, he was working as ACM, New Delhi. An application Ex. P.W. 133/A was put up before him by ACP Shri K. S. Bedi (P.W. 130) regarding request for recording statement under S. 15 of the TADA made by of the accused-appellant. He was also produced before the ACM, who asked him whether his confessional statement was recorded on 23-1-1995 by DCP Shri B. S. Bola (P.W. 121). He answered in the affirmative and his signatures were also obtained on the application in confirmation of his admission having made a statement before the DCP. When the accused was produced before the ACM, he did not make any grievance that his confessional statement was not in fact recorded as claimed or that his signatures were obtained on blank pieces of paper as claimed later. Such a plea was raised after a long passage of time. It is further relevant to note that when the accused was produced in Court, he never made any grievance about any duress or coercion. It is to be noted that the confessional statement was sent directly to the Designated Court and was received at 12.45 p.m. Merely because the report was sent directly to the Designated Court, it does not become a suspicious circumstance. Rather, it adds to the authenticity of the document. It has been noted by the learned trial Judge that the accused was produced in Court only at 2.00 p.m. and the confessional statement had reached the Designated Court before that time. The purpose of the confessional statement being sent to the Court by producing the accused for confirmation of the statement is to ensure that interpolation or manipulation is ruled out at a later date. As noted above, the confessional statement in this case had been sent to the Designated Court before producing the accused before the ACMM. That being so, in the absence of any prejudice to the accused, non-despatch of the confessional statement to the ACM is really of no consequence. In any event the prescription regarding despatch is directory and not mandatory. In Jayawant Dattaray’s case (supra) a similar contention was rejected. It was observed that as per R. 15 what is mandatory is that the confessional statement should be forwarded to the Designated Court, which may take cognizance of the offence. Violation, if any, in the matter of dispatch to the Chief Judicial Magistrate cannot be held to be incurable illegality. (See Re : Wariyam Singh and others v. State of U.P. (1995 (6) SCC 458). AIR 2002 SC 143 : 2001 AIR SCW 4717 : 2002 CriLJ 226 AIR 1995 SC 305 : 1995 AIR SCW 4090 : 1996 All LJ 77

9. The other aspect on which great emphasis has been laid by learned counsel for the appellant is regarding the manner of recording of the confessional statement. Evidence of P.W. 131 ASI Kamlesh is of great importance. The confessional statement runs into 9 pages. The witness has categorically stated that she had recorded the confessional statement on computer as per the dictation of the DCP. In her cross-examination, she has stated that the time taken was 6 hours. The

accused has taken a stand that his signatures were taken on blank papers. As noted above, the accused never made a grievance about any deficiency in the confessional statement till 19-4-1995. That is of great significance. Merely because the confessional statement was recorded in a computer, it cannot be a ground for holding that the confessional statement was not voluntary. Similarly, as DCP has given a certificate in typing when the requirement is that certificate has to be "under his own hand" that is urged to be illegal. It would be too technical to discard the confessional statement or doubt its authenticity on that score. This is merely a procedural requirement. The non-observance does not cause any prejudice to the accused. It has not been shown as to how the accused was prejudiced by the certificate having been typed. Procedure is handmade and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, the requirement of recording "under his own hand" 1956 Cri LJ 426 demands an approach which would be rational and practical and not otherwise. Such minor deficiency, if any, cannot be considered to be a fatal factor so far as prosecution case is concerned. There is one more important aspect which needs to be noted. Admittedly, the accused was a fugitive and was on the run. At the Indira Gandhi International Airport he was arrested for travelling on a forged passport, it has been accepted by the accused in his statement recorded under S. 313 of the Code that he had sought asylum in Germany and was deported from there on refusal of asylum. As the records reveal Shri K. S. Bedi (P.W. 130) brought to the notice of Shri B. S. Bhola (P.W. 121) that on 22-1-1995 the accused wanted his statement to be recorded under S. 15 of the TADA and requested Shri B. S. Bhola (P.W. 121) to do the needful. Shri Bhola talked to the accused after sending everyone except his P.A. (P.W. 131) out of the room, and asked him whether he was making a statement without any fear or duress etc. He was also intimated that the statement could be used in evidence against him. Despite that, the accused wanted his statement to be recorded. Shri Bhola had given time to the accused till 23-1-1995. The I.O. was directed to produce the accused on the next date at 2.00 p.m. On 23-1-1995 the accused was again produced in the office of Operation Cell, Lodhi Estate. He was asked whether the statement was voluntary or under pressure. After ensuring that all procedures and safeguards have been observed the statement was recorded. A mere statement that requisite procedures and safeguards were not observed or that statement was recorded under duress or coercion, is really of no consequence. Such a stand can be taken in every case by the accused after having given the confessional statement. It could not be shown as to why the officials would falsely implicate the accused. There is a statutory presumption under S. 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of S. 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds there for. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration. (See Aher Raja Khima v. State of Saurashtra (AIR 1956 SC 217).

10. It has been highlighted by the accused that because of co-accused's acquittal the case of conspiracy highlighted by the prosecution gets demolished.

11. Section 120-B, I.P.C. is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in S. 120-A reads as follows :

"120-A. When two or more persons agree to do or cause to be done-

(1) an illegal act, or

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

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

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

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

act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

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

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

15. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. (See Bhagwan Swarup etc. etc. v. State of Maharashtra (AIR 1965 SC 682 at p. 686)). 1965 (1) CriLJ 608

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

17. The provisions of Ss. 120-A and 120-B, I.P.C. have brought the law of conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. Russel on Crime (12Ed. Vol. 1, p. 202) may be usefully noted-

“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.”

18. Glanville Williams in the “Criminal Law” (Second Ed. P. 382) states-

“The question arose in an low a case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P. told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for ‘concert of action,’ no agreement to ‘co-operate’.

19. Coleridge, J. while summing up the case of Jury in Regina v. Murphy (1837) 173 ER 502 at p. 508) states :

“I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is – Had they this common design, and did they pursue it by these common means the design being unlawful.”

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

Bihar (AIR 1994 SC 2420)). 1994 AIR SCW 3420 : 1994 CriLJ 3271

21. The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. (See E. K. Chandrasenan v. State of Kerala (AIR 1995 SC 1066)). 1995 AIR SCW 1079

22. In Kehar Singh and others v. State (Delhi Administration) (AIR 1988 SC 1833 at p. 1954), this Court observed- 1989 CriLJ 1 “Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Conspiracy can be proved by circumstances and other materials. (See State of Bihar v. Paramhans (1986 PatLJR 688)). To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawfu use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use (See State of Maharashtra v. Som Nath Thapa (1996 Cri LJ 2448 at p. 2453 (SC)). AIR 1996 SC 1744 : 1996 AIR SCW 1977

23. Where trustworthy evidence establishing all links of circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. (See Baburao Bajirao Patil v. State of Maharashtra (1971 (3) SCC 432)). It can in some cases be inferred from the acts and conduct of parties. (See Shivanarayan Laxmi-narayan Joshi and others v. State of Maharashtra and others (AIR 1980 SC 439)). 1980 CriLJ 388

24. It is submitted that benefit of doubt should be given on account of co-accused’s acquittal.

25. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or

lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh and others (AIR 1990 SC 209). Prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava (AIR 1992 SC 840)). 1990 CriLJ 562

1992 AIR SCW 640 : 1992 CriLJ 1104 : 1992 All LJ 1115

26. If a case is proved perfectly it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Inder Singh and another v. State (Delhi Administration) (AIR 1978 SC 1091)). Vague hunches cannot take place of judicial evaluation. “A Judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.” (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998)). 1978 CriLJ 766

1988 CriLJ 88

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

28. It has been pleaded that prosecution has failed to place any material to show as to why accused would make a confessional statement immediately on return to India. Acceptance of such a plea would necessarily mean putting of an almost impossible burden on the prosecution to show something which is within exclusive knowledge of the accused. It can be equated with requiring the prosecution to show motive for a crime. One cannot normally see into the mind of another. What is the emotion which impels another to do a particular act is not expected to be known by another. It is quite possible that said impelling factors would remain undiscoverable. After all, the factors are psychological phenomenon. No proof can be expected in all cases as to how mind of the accused worked in a particular situation. Above being the position, learned trial Judge has rightly held the appellant to be guilty.

29. Coming to the question of sentence of death as awarded by the learned trial Judge, the same has to be judged in the background of what was stated by this Court in several cases.

30. From Bachan Singh v. State of Punjab (AIR 1980 SC 898) and Machhi Singh and others v. State of Punjab (1983 (3) SCC 470), the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining

death penalty, same can be awarded. It was observed : 1980 CriLJ 636

AIR 1983 SC 957 : 1983 CriLJ 1457 Paras 32 and 34

“The community may entertain such sentiment in the following circumstances :-

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of bride burning or dowry deaths or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.”

31. As the factual scenario of the present case shows, at least nine persons died, several persons were injured, a number of vehicles caught fire and were destroyed on account of the perpetrated acts. The dastardly acts were diabolic in conception and cruel in execution. The “terrorists” who are sometimes described as “death merchants” have no respect for human life. Innocent persons lose their lives because of mindless killing by them. Any compassion for such persons would frustrate the purpose of enactment of TADA, and would amount to misplaced and unwarranted sympathy. Death sentence is the most appropriate sentence in the case at hand, and learned trial Judge has rightly awarded it.

32. However, a question arises as to the effect of Brother Shah, J. holding the accused innocent, while deciding the question of sentence. Observations made by this Court in Ramdeo Chauhan v. State of Assam (2001 (5) SCC 714) are relevant. It was inter alia observed as follows :- AIR 2001 SC 2231 : 2001 AIR SCW 2159 : 2001 CriLJ 2902 paras 54, 55, 56 and 57

"But, a question that remains to be considered further is the effect of conclusion arrived at by my learned brother Mr. Justice Thomas. Is the accused remediless; that remains to be seen. Few provisions in the Code of Criminal Procedure (for short "the Code") and others in the Constitution deal with such situation. Sections 432, 433 and 433-A of the Code and Arts. 72 and 161 of the Constitution deal with pardon. Article 72 of the Constitution confers upon the President power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute sentence of any person of any offence. The power so conferred is without prejudice to the similar power conferred on the Governor of the State. Article 161 of the Constitution confers upon the Governor of a State similar powers in respect of any offence against any law relating to a matter to which the executive power of the State extends. The power under S. 72 and Art. 161 of the Constitution is absolute and cannot be fettered by any statutory provisions such as Ss. 432, 433 and 433-A of the Code or by any prison rules.

Section 432 of the Code empowers the appropriate Government to suspend or remit sentences. The expression "appropriate Government" means the Central Government in cases where the sentences or order relates to the matter to which the executive power of the Union extends, and the State Government in other cases. The release of the prisoners condemned to death in exercise of the powers conferred under S. 432 and Art. 161 of the Constitution does not amount to interference with due and proper course of justice, as the power of the Court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. Similar power as that contained in S. 432 of the Code or Art. 161 of the Constitution can be exercised before, during or after trial. The power exercised under S. 432 of the Code is largely an executive power vested in the appropriate Government and by reducing the sentence, the authority concerned thereby modifies the judicial sentence. The section confines the power of the Government to the suspension of the execution of the sentence or remission of the whole or any part of the punishment. Section 432 of the Code gives no power to the Government to revise the judgment of the Court. It only provides power of remitting the sentence. Remission of punishment assumes the correctness of the conviction and only reduces punishment in part or whole. The word "remit" as used in S. 432 is not a term of art. Some of the meanings of the word "remit" are "to pardon, to refrain from inflicting to give up." It is, therefore, no obstacle in the way of the President or Governor, as the case may be in remitting the sentence of death. A remission of sentence does not mean acquittal.

The power to commute a sentence of death is independent of S. 433-A. The restriction under S. 433-A of the Code comes into operation only after power under S. 433 is exercised. Section 433-A is applicable to two categories of convicts : (a) those who could have been punished with sentence of death, and (b) those whose sentence has been converted into imprisonment for life under S.

433. It was observed in Maru Ram v. Union of India (1981 (1) SCC 107) that S. 433-A does not violate Art. 20(1) of the Constitution. AIR 1980 SC 147 : 1980 Cri LJ 1440

In the circumstances, if any motion is made in terms of Ss. 432, 433 and 433-A of the Code and/or Art. 72 or Art. 161 of the Constitution as the case may be, the same may be appropriately dealt with. It goes without saying that at the relevant stage, the factors which have weighed with my learned brother Mr. Justice Thomas can be duly taken note of in the context of S. 432(2) of the Code."

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

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

35. B. N. AGRAWAL, J. :- I respectfully agree with Brother Pasayat, J.

36. ORDER OF THE COURT :-. The conviction and sentence passed by the trial Court stands confirmed by dismissal of the appeal filed by the accused-appellant and the death reference is accordingly answered.

37. **SHAH, J.** :- By judgment and order dated 24/25-8-2001, in Sessions Case No. 4 of 2000, the Designated Court-I, New Delhi convicted the appellant for the offence punishable under S. 3(2)(i) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') and S. 120-B read with Ss. 302, 307, 326, 324, 323, 436 and 427 of the Indian Penal Code and sentenced him to death and also to pay a fine of Rs. 10,000/-. He was also sentenced to suffer rigorous imprisonment for five years for the offence punishable under Ss. 4 and 5 of TADA and to pay a fine of Rs. 10,000/-. Against that judgment and order, the appellant has filed Criminal Appeal No. 993 of 2001 and for confirmation of death sentence, the State has filed Death Reference Case (Crl.) No. 2 of 2001 before this Court.

38. It is the prosecution version that on 11-9-1993 Mr. M. S. Bitta, the then President of Indian Youth Congress (I) was in his office at 5. Raisina Road, New Delhi. At about 2.30 p.m., Mr. Bitta left the office and the car in which he was travelling came out of the main gate of 5, Raisina Road and one pilot car, in which security personnel provided to him were sitting, was ahead of his car. The pilot car slowed down in order to take right turn on Raisina Road. In the meantime, one bus came on Raisina Road, from the side of Windsor Palace. At that time, there was an explosion in a car parked outside 5, Raisina Road. Though, Mr. Bitta was not hurt badly, a number of other vehicles parked on the road and footpath caught fire. Because of the bomb blast nine persons succumbed to the injuries and 29 other persons sustained injuries. During the course of investigation, it was learnt that Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria, all members of KLF, a terrorist organisation, were behind this blast and their aim

was to assassinate Mr. Bitta.

39. It is the further prosecution version that secret information was received that appellant-Devender Pal Singh who was in custody of German authorities was to come to Delhi from Frankfurt on the night of 18/19-1-1995. On his arrival, he was handed over to IGI Airport police authorities by Lufthansa Airlines Staff. Immediately upon his arrest, he tried to swallow cyanide capsule. However, he was prevented.

40. Other accused-Daya Singh Lahoria, who was extradicted from USA to India was also arrested. He was also tried along with the appellant but was acquitted by the

Designated Court on the ground that there was no evidence against him and that he has not made any confessional statement. The Court also observed that there was no iota of material on record to corroborate confessional statement made by accused-Devender Pal Singh against his co-accused-Daya Singh Lahoria and prudence requires that in absence of corroboration benefit should go to Daya Singh Lahoria.

41. In this appeal, learned counsel for the appellant submitted that except the so-called confessional statement, there is no other evidence against the appellant and the said confessional statement is neither voluntary nor true and in any case there is no corroborative evidence. Hence, the judgment and order passed by the Designated Court convicting the appellant requires to be set aside.

42. For appreciating the contention raised by the learned counsel for the appellant, the relevant evidence led by the prosecution is required to be considered. It is the say of P.W. 37 Inspector Severaia Kujur that on 19-1-1995 he was posted at Immigration Airport and at the time of clearance of flight LH-760 at about 2.30 a.m., the staff of LH flight handed over Devender Pal Singh who was deported from Germany. He was interrogated by PRO Vigilance and SB Branch and it was found that he was having forged passport, so he made a rukka under Ss. 419, 420, 468, 471, I.P.C. and S. 12 of the Passport Act. Further, P.W. 83 Inspector Tej Singh Verma, Operation Cell, Lodhi Colony, New Delhi, has also stated that on 19-1-1995 he was posted at IGI Airport as Sub-Inspector and that accused-Devender Pal who was deported from Germany was arrested in case FIR No. 22 of 1995 for the offences punishable under Ss. 419, 420, 468 and 471 of the I.P.C. and S. 12 of the Passport Act. During the course of interrogation, in the said case, he made a disclosure statement. He has also stated that personal search was conducted and that travelling documents were recovered from the accused. Along with the disclosure statement and personal search memo, he was handed over to ACP K. S. Bedi who conducted the investigation of this case. In cross-examination, he has denied that Devender Pal Singh had not made any disclosure statement and that his signatures were obtained on blank sheets.

43. Now, as against this, we have to consider the evidence of P.W. 130 Mr. K. S. Bedi, ACP. It is his say that on the relevant date he was posted in Operation Cell, Lodhi Colony. He received

information that an KLF extremist namely Devenderpal Singh alias Deepak has been detained in Germany in the last week of December, 1994, he was trying to get released from there and that he would proceed to Pakistan or he may be deported to India. He along with other officers went to IGI Airport to check the incoming passengers from Frankfurt, Germany. At 2.30 a.m. Lufthansa Airlines Staff handed over the accused who was having forged travelling documents to P.W. 37. He tried to swallow a capsule in plastic foil which was caught and after this he disclosed that his name was Devender Pal Singh. On that basis, IGI airport staff registered a case vide FIR No. 22 dated 19-1-1995. It is his further say that on that date he made disclosure statement describing his involvement in many cases including a bomb blast at 5, Raisina Road. Therefore, he collected the copy of the disclosure statement Ex. P.W. 83-A and made his formal arrest in the present case. He produced the accused before Shri B. B. Chaudhary, ACMM, New Delhi and secured his police remand for 10 days. He was interrogated on 21-1-1995 and accused again made a disclosure statement in which he admitted his involvement in the bomb blast at Raisina Road. On 22-1-1995, he gave in writing that he wanted to make confession. Thereafter, he informed Mr. B. S. Bola, DCP (P.W. 121) for recording the confessional statement. Mr. Bola after following the procedure recorded his confessional statement on 23rd January, 1995. On 24th January, 1995, he was produced before the Court of ACMM, New Delhi before the expiry of police custody remand and from there the accused was taken by the Punjab Police. In cross-examination, Mr. Bedi has stated that he was not having any prior information that accused was being deported from Germany to India but he had gone to IGI Airport for checking the passengers coming from Germany in the expectation that the accused might have been deported. He also admitted that in pursuance of the disclosure statement Ex. P.W. 83/1, no article was recovered from the accused or at his pointing out. He further stated that there is no recovery memo pertaining to the car recovered from Bulandshahar on the judicial file. However, there is a reference about the car in a photocopy of DD No. 69 dated 30-10-1993 of PS Bulandshahar. This DD was not brought by him. He denied the suggestion that the involvement of the accused persons was within the knowledge of police prior to 19-1-1995. He also admitted that on 23-1-1995, the DCP used the computer installed in his office for recording the statement of the accused. He also admitted that he had given a wireless message informing the Punjab Police that accused would be produced before the Court on 24-1-1995 and that is how the Punjab Police had sought his police remand. He has denied the suggestion that accused was forced to make a false confessional statement before the DCP and the accused was deliberately produced prior to the expiry of police remand and was sent to Punjab. He admits that thereafter accused remained in police custody for more than two months in Punjab. In further cross-examination, he has stated that he had not produced the copy of the confessional statement or the original before the learned ACMM when the accused was produced before him. He also admitted that before the accused was produced before ACMM on 24-1-1995, he was formally arrested by the police of Police Station Sriniwaspuri. He also admitted that Investigating Officers of the case pertaining to P.S. Sriniwaspuri and Punjab Police were present inside the Court when the accused was produced before the ACMM. He has denied the suggestion that accused was put under fear and duress or that he was warned not to reveal the true circumstances under which the confessional statement was recorded or that in case he so reveals, he would be done to death by Punjab Police.

44. P.W. 121 Mr. B. S. Bola, DCP recorded the confessional statement of accused. In the cross-examination, he has admitted that he was aware about the entire facts of the case prior to the recording of the statement of the accused under Section 15 of TADA.

45. The prosecution also led the evidence of P.W. 131 ASI Kamlesh who recorded the confessional statement on the computer as per the dictation of accused which is running into nine pages. She has admitted in cross-examination that during the period of six hours when his statement was recorded accused was not provided any water or snacks and the matter typed out on the computer was not saved nor it was taken on a floppy.

46. The prosecution has also examined P.W. 133 Mr. B. B. Chaudhary, ASJ, Tis Hazari, Delhi, who was ACMM, New Delhi at the relevant time stated that accused was produced before him when he was in police custody. He asked only one question to the accused whether his statement was recorded by DCP on 23-1-1995? To that, accused answered in affirmative and his signatures were obtained on the application in confirmation of his admission of having made a statement before the DCP. He admitted that he had not asked any other question. It is his say that he did not think it necessary to take the accused to his chamber to assess his mental state. He also admitted that at that time no statement of accused was produced before him.

47. From the aforesaid evidence led by the prosecution, questions that arise for consideration are- (i) whether the confessional statement is true and voluntary? and (ii) whether there is any corroboration to the said statement?

48. Before considering the evidence led by the prosecution, it is to be stated that accused in his statement recorded under Section 313, Cr. P. C. stated that he had sought asylum in Germany and was deported from there on refusal of asylum. He has denied recovery of cyanide capsule from him. He has also denied having made the application Ex. PW 121/B expressing desire to make a confessional statement. He has also denied having made the confessional statement before Mr. Bola on 23-1-1995. According to him, he was made to sign some blank and partly written papers under threat and duress and entire proceedings were fabricated upon those documents. He has also stated that before he was produced before the ACMM, he was told that if he made any statement to the Court he would be handed over to Punjab Police who would kill him in an encounter, and as he was under fear, he made a statement before learned ACMM. He has also stated that he was taken to Punjab and brought back after about three months and thereafter he sent an application from jail on 21-4-1995 retracting his confessional statement and clarifying the circumstances under which the said statement was recorded.

49. It is apparent that Investigating Officer Mr. K. S. Bedi has improved his version by stating that accused tried to swallow cyanide capsule when he was arrested. As against this, it is the say of P.W. 37 Severaia Kujur and P.W. 83 Inspector Tej Singh that accused was handed over to them by the staff of Lufthansa Airlines and nowhere they stated that at that time accused tried to swallow any pill. It appears that Mr. K. S. Bedi tried to give colour to the story that appellant tried to swallow

the cyanide pill. If that story was genuine, necessary panchnama of the cyanide pill would have been made at the spot. Further, it is admitted position on record that during the course of investigation of the bomb blast, the police had learnt that Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria, who were members of KLF, a terrorist organisation, were behind the blast. Therefore, it would be difficult to believe that the IO Mr. Bedi had gone to the Airport only for keeping a watch. On the contrary Mr. Bola has admitted that on his instructions, ACP KS Bedi had gone to the Airport to arrest the accused on the basis of intelligence reports of involvement of accused and his group in the bomb blast case. Therefore, the version of Mr. Bedi that he had gone at the IGI Airport to check the incoming passengers from Frankfurt Germany cannot be relied upon. From the evidence of DCP Mr. Bola it is apparent that information was received that accused was coming from Germany and, therefore, a watch at IGI Airport was kept.

50. Apart from the aforesaid improvement, it is difficult to believe that the accused who was arrested for travelling on a forged passport after landing at the airport, would make a disclosure statement involving himself in various crimes including the bomb blast. There was no earthly reason to make such disclosure on 19th itself so that accused could be arrested by Mr. K. S. Bedi for the alleged involvement in the offence under the TADA. It is also admitted that when the accused was produced before ACMM, the confessional statement was not produced for the perusal of the ACMM and the ACMM only asked him the question-whether he admits making confessional statement before DCP B.S. Bola. It would be difficult to accept that if confessional statement was recorded and when the accused was produced before the Magistrate, he would be taken there without the said confessional statement. Rule 15(5) of TADA requires that every confession recorded under Section 15 shall be sent forthwith to the CMM or the CJM having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the confession so received to the Designated Court which may take cognizance of the offence. In this view of the matter, there was no reason to produce the accused before the ACMM without so-called confessional statement.

51. Further sub-section (1) of Section 15 of TADA specifically provides inter alia that in case confession made by a person before the police officer is 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 trial of such person for an offence under this Act or rules made thereunder. The confessional statement was recorded on computer and floppy thereof is not produced in the Court and is admitted to have not been saved in the computer by ASI Kamlesh.

From the aforesaid evidence, it is apparent that the confessional statement of the appellant is recorded by DCP B. S. Bola (P.W. 121) who was the Investigating Officer at the relevant time. Admittedly, the accused was in police custody. Thereafter he was handed over to the Punjab Police. Further, from the record it appears that accused was wanted in bomb blast case since 1993

and as soon as he arrived at the IGI Airport, he was arrested and was handed over to P.W. 130 Mr. K. S. Bedi, ACP. It is stated that Mr. Bedi also recorded the disclosure statement of the appellant on 21-1-1995, wherein he admitted his involvement in the bomb blast case. Thereafter, confessional statement under Section 15 of the TADA was recorded by DCP B. S. Bola. In such state of affairs, doubt may arise-whether the accused has made any confessional statement at all. In Kartar Singh v. State of Punjab, (1994) 3 SCC 569 this Court observed thus :- AIR 1995 SC 1726 : 1995 AIR SCW 2698 : 1994 CriLJ 3139

"Though it is entirely for the Court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must, while so deciding the question should satisfy itself that there was no trap, no track and no importance seeking of evidence during the custodial interrogation and all the conditions required are fulfilled."

52. In such case it would be unsafe to solely rely upon the alleged confession recorded by Investigating Officer. Further, looking at the original confessional statement, there appears to be some substance in what is contended by the accused in his statement under Section 313 Cr. P. C. that his signatures were taken on blank paper. Under Rule 15(3)(b) of the TADA Rules, the police officer who is recording the confession has to certify the same "under his own hand" that the said confession was taken in his presence and recorded by him and at the end of confession, he has to give certificate as provided thereunder. In the present case, the certificate was not given under the hands of D.C.P., but was a typed one.

53. Further, for finding out – whether the statement is truthful or not, – there must be some reliable independent corroborative evidence. In the present case, co-accused Daya Singh Lahoria who was tried together with the appellant was acquitted on the ground that there was no evidence against him and that as he had not made any confessional statement. However, for connecting the appellant, the learned Judge has relied upon the decision in Gurdeep Singh v. State (Delhi Admn.), ((2000) 1 SCC 498) for holding that when the confessional statement is voluntary, corroboration is not required. It appears that the Court has not read the entire paragraph of the said judgment and has missed the previous lines which read thus:- AIR 1999 SC 3647 : 1999 AIR SCW 3667 : 1999 CriLJ 4573Para 27

"For the aforesaid reasons and on the facts and circumstances of this case, we have no hesitation to hold that the confessional statement of the appellant is not only admissible but was voluntarily and truthfully made by him on which the prosecution could rely for his conviction. Such confessional statement does not require any further corroboration. Before reliance could be placed on such confessional statement, even though voluntarily made, it has to be seen by the Court whether it is truthfully made or not. However, in the present case we are not called upon nor is it challenged that the confessional statement was not made truthfully."

54. From the aforesaid judgment, it is clear that before solely relying upon the confessional statement, the Court has to find out whether it is made voluntarily and truthfully by the accused. Even if it is made voluntarily, the Court has to decide whether it is made truthfully or not. But in Gurdeep Singh's case, (supra), there was no challenge made to the fact that it was not made truthfully. AIR 1999 SC 3647 : 1999 AIR SCW 3667 : 1999 CriLJ 4573

55. In the confessional statement it is mentioned that accused hired rooms at Sahibabad, Jaipur and Bangalore. Merely because some house numbers are mentioned in confessional statement, it cannot be held that as house numbers are found by police officers, it is a corroborative piece of evidence. None of the neighbours has deposed before the Court that the accused stayed in the said houses. To write such numbers, is easy for Investigating Officers because they were investigating the case from the date of the bomb blast i.e. since 1993. No independent witnesses or landlord came forward to depose that accused resided in the said premises or took it on lease. No incriminating articles were found from the said house or places mentioned in confession to connect the accused with the crime. Even P.W. 80 Harcharan Singh who sold the car which was seized at the scene of offence in 1993, has not stated that appellant-accused purchased the said car or that acquitted accused Daya Singh purchased the same. P.W. 44 Prehlad Sharma, property dealer of Sahibabad. Ghaziabad, stated that in August, 1993 he had arranged a house on rent basis for two boys, who told themselves to be working as contractor in G.D.A. He, also, failed to identify accused as the boys who came at his shop to take the premises on rent. On 28-9-1993, the police came to him and informed that some RDX was recovered from that house, shown some photographs to him and he identified two photographs of the said persons. However, he has not identified the accused as the boy who came at his shop to take the premises on rent. Similarly, P.W. 69 Nasir Siddiqui, who was running a shop of electrical goods at Lajpat Nagar had sold one water pump to a customer residing in Lajpat Nagar. The police came to his show-room and pointed some photographs for identification of the person who had purchased the water pump. He had identified the photograph of that person. However, in the Court, he refused to identify the accused as the customer who had purchased the water pump from his shop.

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

"I was born in Jullandar on 26-5-65. . . .I completed pre-engineering examination from Layal Pur Khalsa College Jullandhur in 1984 and joined B.E. in the Mechanical at Guru Nanak Engineering College, Ludhiana and completed my degree course in 1988. . . . . .In the month of Nov., 1991, police came to know about the names of the boys who were behind the car bomb attack on SSP/Chandigarh and the police raided the house of Partap Singh where Dr. Hari Singh and Videshi had stayed one day before the blast. Partap Singh further disclosed that they are also known to me. . . . . . .The police raided my house. I was not present in the house. My father and father-in-law were arrested by the police. . . . . .I was told that he along with Partap Singh, Balwant Singh Multani

and Navneet Singh Kadian @ Pal R/o village Kadia Distt. Batala and Mangal Singh are wanted in SSP/Chandigarh bomb blast case. Thereafter, I went under ground and talked to my maternal uncle Shri Sukhdev Singh Sandhu in Vencouver, Canada who advised me that the chances of release of his father are very minimum as the case relates to Sumed Singh Saini and that he should also go under ground.

In August, 1993, plans were chalked out to eliminate M. S. Bitta because Keepa felt that he is speaking too much against their movement and the militants. Keepa along with Charni went to Punjab and took out one quintal of RDX and left it with one Pawan Kumar @ Chajju at Ludhiana. They came back and sent Harnaik @ Chottu to bring this RDX to their Sahibabad hideout. Part of this consignment was brought by Pawan Kumar which was handed over to Kuldeep Keepa at Delhi – Karnal Border. Harnaik @ Chotu got the steel container fabricated for the bombs. Daya Singh Lahora went to purchase an Ambassador Car which was subsequently used in the bomb blast. The cordless telephone was purchased from Ludhiana by Harnaik. On 2nd September, 1993, Kuldeep Keepa and Navneet Kadian conducted the reccee of the office of M. S. Bitta at 5, Rai Sina Road, New Delhi, Next day, Kuldeep Keepa, Navneet, Sulkha @ Sangatpuria, Harnaik, Lahoria and myself again came to the office of Bitta to watch the proceedings. We made two attempts on 6th and 9th September, 1993. On 6th September, 1993, the mechanism did not work and we could not trigger the blast. On 9th September, 1993, MS Bitta did not come to the office. Myself and Kuldeep Keepa fixed the bombs in the rear seat and the dickey and the master receiver of the telephone was placed on the rear seat. The two wires coming out the receiver were connected to the detonators. Around 40 kgs of RDX was used in the blast.

On 11-9-1993, we came to the office of Bitta at around 11 a.m. and the car was parked close to the front gate. Navneet, Keepa and Sangatpuria were waiting in the back side of parking of Meridian Hotel along with Gypsy No. DNC-1790 which was a fake number. I went to Connaught Place to bring Harnaik @ Chotu with whom the time was fixed the previous day. In the meanwhile, MS Bitta went inside his office and we could not trigger off the blast as none of us were in position. We decided to go back, but when we reached Pragati Maidan, Keepa insisted on making another try. We reached Janpath Hotel and connected the wires in the parking area and sent Lahoria to park the car near the gate of the office. The other five of us went in the Gypsy and parked it in the parking area in front of Chelmsford club. Harnaik and myself got down from Gypsy and went towards the office of MS Bitta. I positioned myself on the opposite side of the office and Harnaik positioned himself close to the walls of Jawahar Bhawan to save himself from the blast. When Lahoria came out of the car after parking immediately, thereafter, the cars of MS Bitta started moving out and Lahoria gave a signal to Harnaik who pushed the button of the hand set of the cordless telephone. The security car of MS Bitta was hit and Bitta's car which was behind was not damaged. Since Lahoria was very closed, he was hit by splinters on his back. Harnaik and myself went to the parked Gypsy from where Sukha had already come towards 5 Rai Sina Road, New Delhi to see whether any of us had been injured or not. Kuldeep and Navneet were already sitting in the Gypsy. Four of us left the place and dropped Navneet at the back of Meridian Hotel to come by bus or auto-rickshaw because he was a Sikh and possibility of identification was more strong.

Lahoria went to the hospital in auto rickshaw and registered himself under the name of V. K. Sood and left the hospital immediately after first aid. He went to his hideout which is not known to me."

57. There is nothing on record to corroborate the aforesaid confessional statement. Police could have easily verified the hospital record to find out whether D. S. Lahoria went to the hospital and registered himself under the name of V. K. Sood on the date of incident and left the hospital after getting First Aid. In any set of circumstances, none of the main culprits i.e. Harnaik or Lahoria is convicted. In these set of circumstances, without there being corroborative evidence, it would be difficult to solely rely upon the so-called confessional statement and convict the accused and that too when the confessional statement is recorded by the Investigating Officer. For this purpose, it would be worth-while to refer to the decision in Topandas v. State of Bombay (AIR 1956 SC 33 para 6):- 1956 CriLJ 138

"Criminal conspiracy has been defined in Section 120-A Penal Code:

"When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

By the terms of the definition itself, there ought to be two or more persons who must be parties to such an agreement and it is true to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, 4 named individuals were charged with having committed the offence under Section 120-B, Penal Code, and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No. 1 in the case before us, could never be held guilty of the offence of criminal conspiracy."

58. The Court further discussed the aforesaid question and referred to the decision in R. v. Plummer (1902 (2) KB 339 (C)) and held as under :-

"(1902) 2 KB 339 (C) which is cited in support of this proposition was a case in which, on a trial of indictment charging three persons jointly with conspiring together, one person had pleaded guilty and a judgment passed against him, and the other two were acquitted. It was held that the judgment passed against one who had pleaded guilty was bad and could not stand. Lord Justice Wright observed at p. 343:

"There is much authority to the effect that, if the applicant had pleaded not guilty to the charge of conspiracy, and the trial of all three defendants together had proceeded on that charge, and had resulted in the conviction of the appellant and the acquittal of the only alleged co-conspirators, no judgment could have been passed on the appellant, because the verdict must have been regarded as repugnant in finding that there was a criminal agreement between the appellant and the others and none between them and him : see – Harison v. Errington, (1627) Poph 202 (D), where upon an indictment of three for not two were found not guilty and one guilty, and upon error brought it was held a "void verdict", and said to be "like to the case in 11 Hon 4 c. 2, conspiracy against two, and

only one of them is found guilty, it is void, for one alone cannot conspire.”

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

60. Finally, such type of confessional statement as recorded by the Investigating Officer cannot be the basis for awarding death sentence.

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

62. In view of the above, Death Reference Case (Crl) No. 2 of 2001 would not survive and stands disposed of accordingly.

Order accordingly.