

Jayawant Dattatray Suryarao Vs State of Maharashtra

Court: Supreme Court of India

Date of Decision: Nov. 5, 2001

Acts Referred: Arms Act, 1959 â€” Section 27, 5
Criminal Procedure Code, 1973 (CrPC) â€” Section 164, 401, 433, 433
Penal Code, 1860 (IPC) â€” Section 114, 120, 34
Prisons Act, 1894 â€” Section 59
Terrorist and Disrupt

Citation: (2002) 1 ACR 42 : (2001) 9 AD 313 : AIR 2002 SC 143 : (2001) AIRSCW 4717 : (2002) 4 BOMLR 714 : (2002) CriLJ 226 : (2002) 1 Crimes 31 : (2001) 9 JT 605 : (2001) 8 SCALE 36 : (2001) 10 SCC 109 : (2001) 8 Supreme 362

Hon'ble Judges: R. P. Sethi, J; M. B. Shah, J

Bench: Division Bench

Advocate: ALTAF AHMED, ARUN K. SINHA, G. B. SETHI, K. L. TANEJA, MINAKSHI SAKHARDANDE, N. M. SAKHARDANDE, NARENDER CHAUDHARY, NITIN PRADHAN, RAJIV B. MASODKAR, RAVI P. VADHVANI, ROHINI SALIAN, RUBY AHUJA, S. D. KHOT, S. S. SHINDE, S. V. DESHPANDEY, SANJAY JAIN, SUDIP PASBOLA, SUSHIL KARANJKAR, SUSHIL KUMAR, V. B. JOSHI

Final Decision: Dismissed

Judgement

Shah, J.

These appeals have been filed against the judgment and order dated 7.8.2001 passed in TADA Special Case No.31 of 1993

passed by the Designated Court for Greater Bombay at Bombay. By the impugned judgment and order, out of 24 accused, the Designated Court

convicted A-6 Subhashsingh Shobhnathsingh Thakur. A-2 Jaywant Dattatraya Suryarao and A-7 Shamkishor Shamsharma Garikapatti for the

various offences as under:-

1. A. Subhashsingh Shobhnathsingh Thakur-

(a) u/s 3(2)(i) of TADA (P) Act and is sentenced of death and to pay a fine of Rs.500/-, in default of payment of fine to undergo rigorous

imprisonment for one month more;

(b) u/s 120B IPC and is sentenced to death;

(c) u/s 3(2)(ii) of the TADA (P) Act and is sentenced to suffer imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to

undergo rigorous imprisonment for one month more;

(d) u/s 3(3) of the TADA (P) Act and is sentenced to suffer imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to

undergo rigorous imprisonment for one month more;

(e) u/s 5 of the TADA (P) Act and is sentenced to suffer imprisonment for a term of 10 years and to pay a fine of Rs.100/-, in default of payment

of fine to undergo rigorous imprisonment for one month more;

(f) u/s 6 of the TADA (P) Act and is sentenced to suffer imprisonment for 10 years and to pay a fine of Rs.100/-, in default of payment of fine to

undergo rigorous imprisonment for one month more;

(g) u/s 302 of Indian Penal Code for causing the death of Shailesh Shankar Haldankar and is sentenced to death and to pay a fine of Rs.500/- only,

in default of payment of fine to undergo rigorous imprisonment for one month more;

(h) u/s 302 of Indian Penal Code for causing the death of Police Head Constable C.G. Javsen, B.No.18005 and is sentenced to death and to pay

a fine of Rs.500/- only, in default of payment of fine to undergo rigorous imprisonment for one month more;

(i) u/s 302 of Indian Penal Code for causing the death of Police Constable K.B. Bhanawat, Buckle No.22579 and is sentenced to death and to

pay a fine of Rs.500/- only, in default of payment of fine to undergo rigorous imprisonment for one month more;

(j) u/s 307 read with 34 of Indian Penal Code for attempting to commit the murder of PW9 Police Constable Vijay Krishna Nagare. PW42 PSI

K.G. Thakur, PW11 Shankar Ganpat Sawant, PW54 Shankar Ramachandra Jadhav and is sentenced to suffer imprisonment for life;

(k) u/s 27 of the Arms Act and is sentenced to death:

2. A-2 Jayawant Dattatray Suryarao-

(a) u/s 3(4) of the TADA (P) Act and is sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.500/-, in default of

payment of fine to undergo rigorous imprisonment for one month;

(b) u/s 212 of IPC and is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/-, in default of payment of fine to

undergo rigorous imprisonment for one month;

3. A-7 Shamkishor Shamsharma Garikapatti-

(a) u/s 3(4) of the TADA (P) Act and is sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.500/- only, in default of

payment of fine to undergo rigorous imprisonment for one month;

(b) u/s 212 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/-, in default of payment

of fine to undergo rigorous imprisonment for one month.

2. A-1 Jahur Ismile Faki, A-3 Mehaboobi Aziz Khan. A-4 Anil Amarnath Sharma, A-8 Ahmed Mohmed Yasin Mansoori, A-9 Jaiprakashsingh

Shivcharansingh @ Bacchisingh and A-10 Prasad Ramakant Khade were acquitted for the offences for which they were charged. For A-11 to

24, it has been stated that some were shot dead during the trial and some were absconding. Therefore, the trial of the accused, present in the

court, was separated.

Against the said judgment and order-

(a) A-2, Jayawant Dattatraya Suryarao has preferred Criminal Appeal NO.975 of 2000;

(b) A-6 Subhashsingh Shobhnathsingh Thakur was preferred Criminal appeal NO.966 of 2000; and as he was sentenced to death, there is Death

Reference Case No.1 of 2000.

(c) A-7 Shamkishor Shamsharma Garikapatti has preferred Criminal Appeal No.956 of 2000.

(d) The State has preferred Criminal Appeal No.1101 of 2000 against the acquittal of A-1 Jahur Ismile Faki, A-3 Mehaboobi Aziz Khan, A-1

Anil Amarnath Sharma, A-8 Ahmed Mohmed Yasin Mansoori, A-9 Jaiprakashsingh Shivcharansingh @ Bacchisingh and A-10 Prasad Ramakant

Khade.

3. It is prosecution version that on 12.9.1992 at about 03:20 hours and incident of shoot out took place in J.J. Hospital Campus at Mumbai, which

is a Government Hospital having occupancy of 1500 beds. It is alleged that having made preparation, such as procuring sophisticated weapons like

AK-17 rifles, pistols, revolvers, dynamites and hand-grenades and by firing the shots through the said weapons, accused have committed murder

of (1) Prisoner Shailesh Shankar Haldankar, who was undergoing treatment in Ward No.18 in the said hospital; (2) Police Head Constable

Chaintaman Gajanan Javsen; and (3) Police Constable Kawalsingh Baddu Bhanawat. The two policemen were on guard duty of prisoner Shailesh

Shankar Haldankar. It is also alleged that they attempted to commit murder of six other persons including PW11 Shankar Ganapat Sawant - a

patient undergoing treatment in ward no.18, Yunus Mohamed Dadarkar - a relative of a patient, PW54 Shankar Ramchandra Jadhav - watchman

on duty, PW9 Constable on guard duty, Vijay Krishna Nagare, PW42 PSI Thakur, the Police Officer on duty to exercise the supervision over the

guard and a staff nurse Smt. Chandrakala Vithal Vinde, who was on duty. Thus, it is alleged that all the accused have committed the offence

punishable under Sections 120B of IPC read with 3(2)(i), 3(2)(ii), 3(3), 3(4), 5 and 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987

(hereinafter referred to as the "TADA") and Section 302 read with section 34 in the alternative section 302 read with section 114, in the

alternative read with Sections 149, 307 read with section 34, in the alternative section 307 read with section 114 in the alternative section 307

read with section 149 of the Indian Penal Code and Section 27 read with section 5 of the Arms Act.

4. It is prosecution case that in Mumbai City, criminal gangs operate and they commit organized crime and cover large sum from industrialists,

businessmen, professional, hoteliers etc. As ""khandani"" (protection money). It is also stated that sister of Dawood Ibrahim (a gangster) had married

one Ibrahim Parker who was man of confidence of Dawood Ibrahim. Ibrahim Parker was shot dead at his residence on 26.7.1992 in Nagpada

locality and an offence, under Crime No.589/93, u/s 302 IPC was registered in that connection. Deceased Shailesh Haldankar was suspected to

have pointed him out. It is also alleged that the said Shailesh Haldankar was a person belonging to the gang of Arun Gawali, the arch rival of

Dawood Ibrahim. On the night between 30.8.1992 and 31.8.1992 Shailesh Haldankar Bipin Shere, Raju Batata and Santosh Patil had fired shots

at one Masukh Rawat in the Kumbharawada locality and therefore the offence (at Crime No.460/92) u/s 307 IPC was registered against them

and as such Shailesh Haldankar. Bipin Shere and Raju Batata were wanted accused in the crime. On 2.9.1992 at about 8.00 a.m. or so, Shailesh

Haldankar and Bipin Shere and their associate Raju Batata (now deceased) were noticed by some one in Kumbharawada locality and the police

was informed. On information, police party chased them and noticing police party they tried to scare away the police by brandishing the weapons

i.e. the swords and choppers. Somehow or the other, the police succeeded in overpowering Shailesh Haldankar and Bipin Shere. Third person

Raju Batata managed to escape in the melee. At the same time, number of persons who had gathered there, on seeing the commotion man-handled

Shailesh Haldankar and Bipin Shere. The police successfully persuaded the members of the public to maintain peace and thereafter Shailesh

Haldankar and Bipin Shere were removed to J.J. Hospital for treatment of injuries sustained by them. They were transferred to J.J. Hospital and

kept in Ward No.18 on the third floor. A guard comprising of one head constable and two constables was posted on duty to prevent the escape

of prisoners.

5. It is prosecution version that on 12.9.1992 at about 2.00 a.m. PW42 PSI Thakur had gone for guard duty check at the J.J. Hospital. After

checking guard of Bipin Shere, he went to ward no.18 to check the guard of the prisoner Shailesh Haldankar. In the said ward, Shailesh

Haldankar and other patient (PW10) Siddiq Ahmed Amin were sleeping on cots. Police Constable Nagare (PW9) was sitting on the stool

between the cots. Head constable Javsen and PC Bhanawat were sitting on the very same cot on which Sailesh Haldankar was lying. Shailesh

Haldankar was handcuffed. PSI Thakur went inside the cabin and sat on the said cot.

6. It is alleged that all the accused came from the room of absconding accused Nazir Jariwala by two fiat cars. Accused no.8 Ahmed Mansoori

and deceased Sunil Sawant went ahead on scooter. They were followed by cars. The blue car was in front and was occupied by accused no.6

Subhashsingh and others. Other car was occupied by other accused. Both the cars entered through the western side gate of J.J. Hospital. Some

accused took their position near the staircase and accused no.6 and others went upstairs. It is alleged that accused no.6 made a show by catching

the collar of absconding accused Ravi Sorte and played a hoax that he was the police man who had caught the criminal by uttering the words

saale tumhare baki satthi dikhao". PW54 Shankar Ramchandra Jadhav, a watchman on duty, who was standing near the staircase in the main

building in front of the lift at the ground, after noticing the weapons in the hands of accused, suspected that probably they might be the policemen.

However, when he attempted to go ahead to make an enquiry, A-10 Khade caught him and threatened him that he should not move and at the

same time accused no.9 Bacchisingh hit him by the revolver butt on his face. It is stated that PW54 Shankar Jadhav fell down in semi-conscious

state and re-gained consciousness late on when he was taken to casualty ward.

7. PW6 Police Constable Anant More, an unarmed constable attached to Police Head Quarter, Thane, on 12.9.1992, was on guard duty in Ward

No.18 of J.J. Hospital because one of the accused, who was lodged in Kalyan Prison was admitted in that ward for treatment. His duty hours were

from 3.00 a.m. to 6.00 a.m., he noticed three persons duly armed entering the said ward at about 3.40 a.m. two of them were having AK-47

rifles. He rushed to the southern side wall of the ward. There was a door in that wall and the shots were being fired at that door itself and,

therefore, he could not fire from his weapon in retaliation. The prisoner whom they were guarding had taken shelter underneath the cot. He went in

left side room, wherein another prisoner was admitted, who was being guarded by a guard from Mumbai and noticed that the accused and two

policemen were lying in the pool of blood on the ground in the said room. His statement was recorded by Byculla Police Station Staff. It is also

stated that the staff nurse Ms. Chandrakala Vithal Vinde was on duty in ward no.18. After the accused entered the aid ward all of a sudden WP42

PSI Thakur head the words ""hands up, do not move, else we will kill you"". At that time, PW9 PC Nagare attempted to close the door but it was

not fully closed. Further PSI Thakur heard four rounds having been fired on the door which was sought to be closed and noticed that a person was

standing outside the door at a distance of 1-1/2 or 2 feet. It is stated that PSI Thakur fired from the revolver and also saw one person having

weapon like AK-17. He went out from the southern side of the cabin. At the time, deceased Shailesh was uttering ""release me, they have come to

kill me"". PW9 PC Nagare and the other constables became alert. PSI Thakur went out through the southern door of cabin and rushed towards the

another door which connected the main ward to the eastern gallery of the ward No. 18. Then he noticed that the person who was standing outside

the western door was in the same position and one or two persons were there at a distance of about 7/8 feet behind that person. He also noticed 3-

4 other persons in the ward. He fired one shot in the direction of the said person. He fired one more shot and then receded through the very same

door back to the veranda. He receded in the southern veranda and when he was rushing towards the bath room through the verandah, he heard

somebody saying "udharse bhaga maro saleko" meaning (the person) had run away by that side, kill the bastard". Before rushing towards the bath

room he had closed the said southern door of the ward and no sooner the aforesaid utterances were heard, he noticed that a number of shots were

fired on that door. He went inside the bathroom. PW9 PC Nagare who had become alert and who had taken the position with the rifle in his hand

noticed very same person whom he had seen inside the ward earlier coming towards the southern door of the cabin, therefore, he fired one shot

through his rifle in his direction. It is his say that before he could fire second round, the bullet which the said person had fired hit him on his right

thigh. Therefore, he receded a little and fell down by the side of the cot. Thereafter, that person entered inside the room and fired shots

indiscriminately towards Shailesh Haldankar. HC Javsen and PC Bhanawat were also hit by those bullets. At the time, he heard hear any cry in the

ward. Because of the injury sustained on his thigh, he felt giddy. PW9 PC Nagare has identified the person who was seen by him in the ward, who

had uttered the word "hands-up, hilo mat nahi to maar dalenge", and who had entered the cabin and fired the shots at Shailesh Haldankar, HC

Javsen and PC Bhanawat to be the accused No.6 Subhashsingh Thakur. Other facts stated by the prosecution witnesses are not relevant and,

therefore, they are not narrated. After completion of the investigation, accused were tried for various offences and convicted as stated above.

Relevant Part of Evidence:

8. To prove the story, the prosecution has relied upon confessional statements, evidence of injured witnesses and other corroborative evidence.

We would first refer to the relevant part of the confessional statements of A-2, A-6 and A-7 and thereafter other evidence led by the prosecution

to connect the accused with the crime.

CONFESSIONAL STATEMENT OF A-2

9. Suryarao (A-2) has disclosed that A-7 Shamkishore was known to him since year 1988 and was frequently visiting his residence in Shanti

Niketan Society on LBS Road, Ghatkopar. He had sold his motor Car No.MP-09-D09634 to one Sanjay Shetty through A-7 in July, 1992. It is

further disclosed that his disclosed that his election to the post of President was not liked by his political rivals and the aid rivals lost no time in

mobilising a campaign against him for no confidence motion. In the month of July, 1992 the news had appeared in the ""Navashakti"" Marathi Daily

that he had sent Shamkishor Garikapatti (A-7) to the residence of R.C. Patil (PW61 President of Thane District Congress Party) to tell him to stop

the campaign against him and that Dawood Ibrahim had telephoned to R.C. Patil asking him to stop the campaign against him. Thereafter, he had

issued a press-note denying these allegations. On 2.9.1992 at the behest of A-7, A-2 accompanied with his wife Priti and PW34 Himmat Raval

had gone to Seema Holiday Resort in car belonging to Shri Palsule, driven by Driver Halim (PW62). He requested Pappu Kalani to ask R.C. Patil

(PW61) to stop the campaign against him. Pappu Kalani promised him to do the needful through his contacts and further told him that A-7 was the

man of his confidence and he should help him. Next day, he contacted A-7 on phone and enquired with him as to whether he had received any

message from Pappu Kalani. Then A-7 replied in negative and told him that he was doubtful whether Pappu Kalani had gone to Delhi.

10. He further disclosed that on 12.9.1992 at 6.30 a.m., he got a telephone call from A-7 asking him to see him before 9.30 a.m. with an air-

conditioned car. At 8.45 a.m. again A-7 telephoned him. Thereafter, he accompanied by bodyguard PC Laxman Vishe (PW12) left for Bombay

in the Contests Car No. MH-04-A-1445 driven by PW17 Shripad Tambe. When he reached at the residence of A-7 at Ghatkopar, A-7 told him

that early in the morning Arun Gavli's men had fired at his friend and he is to be taken for medical treatment to the hospital and he should make

arrangements for his transportation. A-7 asked him to use his official vehicle as it would be safer and he accepted the said suggestion. Thereafter.

A-7 asked him to go to Sagar Hotel at Nagpada where a person would meet him and take him to the injured and after meeting the said injured he

should take the injured to Goregaon in his official car. A-7 also informed him that a he has booked suite in a Hotel in Juhu where he could relax.

Then the car was driven to Sagar Hotel and from there with the assistance of a young Muslim boy it was brought towards Bombay Central Area in

from of a chawl. The said boy took him to the building where he saw one person with a bandage around his abdomen, having height of 5.6"" , slim

built and a shallow complexion. He met another person there who gave his name as DR. Bansal. Subhashsingh Thakur (A-6) was also present

there. He was knowing A-6 because he met him twice before at the instance of A-7 at Seema Holiday Resort owned by Pappu Kalani situated at

Varap village on Kalyan Murbad Road. He then enquired about the condition of the patient with Dr. Bansal. The injured was brought to the

Contessa Car by Dr. Bansal with the help of two other persons. Dr. Bansal as well as then injured sat in the car along with him and then the car

was driven to Hotel Centaur at Juhu. From there the car was taken Hotel Holiday Inn at Juhu because there was none to receive them at Hotel

Centaur. He got down from the car alongwith his body guard P.C. Vishe (PW12) and asked driver Tambe (PW17) to take the injured to the

hospital as per the directions of Dr. Bansal. One person namely Vijay, met him there in the Hotel Holiday Inn and told him that he was sent by A-

7. He led him and the police constable PW12 Vishe to suite No.315. Thereafter, Vijay made telephone call and left the said room. Sometime

thereafter, A-7 telephoned him and requested him to go back to Bombay Central where he had gone before. At about 1.00 p.m. driver Tambe

returned from the hospital when he asked him as to whether he had left Dr. Bansal and the injured and he told him that he dropped them at

Goregaon. Thereafter, he and PW12 PC Vishe sat in the car and at his behest driver Tambe drove the car to Hotel Sagar where the very same

Muslim young boy who had helped him in the previous visit to lead to place, was waiting for them. A-6 came down and sat by his side and then

asked the driver to proceed towards the Petrol Pump situated opposite to J.J. Hospital. A-6 asked the driver to stop the car there telling that

Savtya"" was coming. After a few minutes ""Savtya"" came there and then A-6 asked him as to where he was going and he told him that he was

going towards hotel Holiday Inn. When the car reached near Lido Cinema in Santacruz locality at about 2.30 p.m., A reached near Lido Cinema

in Santacruz locality at about 2.30 p.m., A- 6 asked the driver to stop the car in front of a petrol pump and then A- 6 and Sunil Sawant got down

and walked away. When they were travelling in the car, A-6 opened the zip of the airbag and showed him a stengun and four revolvers. Then they

went to Hotel Holiday Inn and he collected the keys of room no 315 from the receptionist. It is his further say that near the Reception counter, he

heard someone talking about the shoot out incident in J.J Hospital and he realised that he had helped the gangsters of Dawood Ibrahim in fleeing.

He became restless and returned to Bhiwandi at 6.00 p.m. On 13.9.1992 at 10.00 a.m., he received a telephone call from A-7 and then he

complained to him that he had unnecessarily put him in trouble but A-7 got annoyed and threatened him and asked to keep quiet on the issue and

forget about it.

11. It is further stated that on 13.9.1992 at the instance of A-7, he met Pappu Kalani and A-7 at Seema Holiday Resort and then Pappu Kalani

told him that he should not tell anybody about the removing of the injured persons and others in his official car failing which he would finish him and

his family. On 14.9.1992 at about 9.00 a.m., when he was about to leave his residence. Baba Gabriel and one unknown person met him and

informed him that A-7 had asked him to come at his residence with his official car. At that time, A-7 also telephoned him and asked him in a

threatening tone to bring the car otherwise his family would be butchered. He got frightened and asked driver Badruddin Chimkar to get Maruti

1000 car bearing No.MH-04-A-5353. The bodyguard police constable was also with him. A-7 then asked him to bring Himmat Raval, who was

known to A-7 and he was also taken from his residence. The car was then brought to the residence of A-7 at Ghatkopar and then A-7 boarded

the said car and it was brought to Vile Parle. In a flat on the ground floor, he met a male person aged about 30/35 years. Himmat Raval got down

from the car and stayed behind and the said male person then boarded the said car and asked the driver to proceed towards Pali Hill side. On

reaching there, Vijay who had met them earlier at Hotel Holiday Inn came there. He had come there in a white coloured Maruti Car alongwith 2/3

persons. They were Carrying their suits cases with them. At about 2.00 p.m. at the behest of A-7, driver Badruddin Chimkar drove the car

towards Santacruz and when the car reached one locality, probably Daulatnagar in Santacruz area, A-7 asked him to stop the car and went in a

multi-story building. He saw A-6 there with one more person. A-6 sat in the car and A-7 asked to proceed towards Manor. At about 4.30 p.m.,

they stopped at Sagar Petrol Pump on Western Express Highway as asked by A-7. In the meanwhile two blue coloured Maruti cars arrived there.

One of the cars bearing No.Mp 09 D-9634 identified by him and he saw Satish Rao, Ms. Meena Rao and his friend Himmat Raval getting down

from the car. He also noticed other 5 to 6 persons getting down from another car. He took A-7 aside and requested him to relieve him because he

did not want to go ahead with them. A-7 agreed to relieve him on the condition that he should give him Maruti 1000 car bearing No.MH-04-A-

5353 belonging to Bhiwandi-Nizampura Municipal Council with the policeman on duty. He agreed to spare the said car with out a policeman. A-7

agreed and also gave him Maruti car No.MP-09-D-9634 for their return. He his bodyguard and Himmat Rawal sat in the said car and came back

to Bhiwandi. Mr. and Mrs. Rao, A-6 Subhashsingh, and others went ahead in the Maruti 1000 motor car and the other vehicle. On the sam day,

at 7.30 p.m., he returned to Bhiwandi and left the motor car MP-09-D-9634 at the residence of Himmat Raval. Thereafter, he took another car of

his friend Mohan Amre and visited Kalava to see Rajaram Salvi, Agripada Leader. He also met Shri Anand Dighe, Thane district Shivsena Chief.

12. On 15.9.1992 at about 1.30 hrs., he saw Maruti Car No.MH-04-A-5353 near Pious High School. He intercepted it and found it to be

occupied by Mr. Satish Rao and his wife Mrs. Meena Rao, A-7 and Driver Badruddin Chimkar. he asked driver Badruddin Chimkar to come

next day morning at 9.a.m. On the same day at 9.00 a.m. A7 telephoned him and asked him for his car with the policeman to be sent at his

residence but he refused to oblige him.

13. On 16.9.1992 at 9.00 a.m.m A-7 telephoned him and informed him that he has done the job without his help (probably the reference was for

not providing the car with a policeman). A-7 was rude on phone saying that he could do anything and nobody can stop him. At that time, he got

frightened and tore two pages from the logbook of Contessa Car bearing no. MH-04-A-1445 regarding the entries of his movements on

12.9.1992. Thereafter, as instructed by him driver Tambe (PW-17) re-wrote the logbook. The said two pages were kept by him at his residence

and were recovered by the police at his instance on 16.10.1992.

14. It is his further say that on 19.9.1992, when he learnt that Mumbai police had come to Bhiwandi and were making inquiries of the motor car

bearing No.MH-04-A-1445 and its driver. he got frightened and contacted A-7 on telephone and informed him accordingly. A-7 advised him to

send driver Tambe out of Bombay for 3/4 days and int he meantime he would try to subside the matter through the sources of Pappu Kalani. He

also advised him to make efforts to subside the matter through his sources. Thereafter, he paid an amount of Rs. 1000/- to driver Tambe and sent

him to A-7 at Ghatkopar with his nephew Bhimsen in his private white coloured Ambassador car no. MAS-300. He also called Smt. Tambe wife

of PW17 Tambe) and paid her an amount of Rs.500/- for domestic expenses and told her that her husband had gone out of Bhiwandi and would

return after 3-4 days. Finally, he was arrested on 21.9.1992.

Confessional Statement of A-6;

15. A-6 Subhashsingh Thakur was arrested by Delhi Police in the last week of July, 1993 and that his statement was recorded on 6.11.93. In his

confessional statement, he has narrated history of his anti social activities in detail. For our purpose, it is necessary to refer to relevant part of shoot

out incident at the J.J. Hospital. He stated that he murdered one Paul "Newman", belonging to Arun Gavli's gang. After the murder he started

staying with Sunil Sawan at Kathmandu, Nepal. During that period, he used to often come to Delhi, Gonda and Bombay. When he was in

Kathmandu, one Kim Bahadur Thapa, a Corporator (who was his mentor) was killed by members of Chhota Rajan gang. To avenge the killing of

Kim Bahadur Thapa, he killed Sanjay Raggad, Diwakar Churi and one Amar Juker, all belonging to Chhota Rajan gang with the help of his

associated Brijeshsingh (Absconding accused) and others. It is his say that after previous involvement in murder cases, he was living at Delhi with

one Brijeshsingh. Deceased Sunil Sawant Suggested him that since number of days, they have not participated in any "game" and they should go to

Bombay. Thereafter, they came to Bombay and started living in flat in Queens View Apartment near Lido Cinema at Juhu owned by deceased

Manish Gangaram Lala. On 11.9.1992 he was informed by Sunil that In J.J. Hospital the killer of brother-in-law of Dawood Ibrahim was admitted

and he was required to be murdered. Sunil was taking instructions from Dawood Ibrahim by contacting him on telephone. It is his say that Sunil

informed him that everything was set and when they would reach at the hospital, at the point of AK-47 rifle policemen should be asked to raise

their hands and thereafter remove the bullets from their rifles and then go in the ward, finish the killers and return. At about 1.00 or 1.30 a.m., Sunil

informed Brijeshsingh to go along with some persons of Nazir at J.J. hospital to find out the situation. After one hour he was informed that one

police constable was on duty and it would be case to carry out the work. At about 3.30 a.m. on 12.9.1992, he alongwith other persons went to

J.J. Hospital. He was having 9mm pistol with magazines. Others were also having loaded pistol or revolver. Pradhan and Brijesh were also having

AK-47 rifles with extra magazines. They went in two fiat cars. When they entered the gate, they saw one watchman was standing near the

staircase. Najir and his man caught the colour of Ravi Sorte to make a show as if a policeman was talking an accused. On seeing them, the

policemen who was on guard only closed the door for entry to the ward. Then Brijeshsingh knocked the door put none opened. At that time, he

felt that there was no setting and, therefore, he asked Brijeshsingh that they all should go back. During that time, Brijeshsingh fired three to four

times from his AK-47 rifle on the closed door. Again He asked Brijeshsingh to return. Meantime, someone else fired at them from the opposite

door. Thereafter, they all moved towards the side from where they were fired. During that time, policemen continued to fire towards them from

one door or other and they also retaliated. Thereafter, Brijeshsingh came towards him quickly and told that he has killed all the persons inside the

ward and asked them to move from that place. Finally they reached at the house of Najir Jariwala. There they found that Pradhan was having

bullet injury in his abdomen and Ravi was injured on his hand. They contacted Chhota Shakeel at Dubai who gave them assurance for arranging a

doctor and that he would be giving information to Dawood. After half an hour. Dawood made call and informed that one doctor would be reaching

shortly. One doctor thereafter came and gave injections to Pradhan and Ravi. Doctor informed him that treatment to Pradhan is not possible.

Doctor also informed on telephone to Chhota Shakeel that Pradhan is required to be operated. Chhota Shakeel thereafter informed that he will

send some other doctor. Another doctor came and told that operation of Pradhan is required to be done urgently and he was not having operation

accessory. Thereafter, he contacted Kishore-A-7 for making some arrangement and informed him that Pradhan has sustained bullet injury.

Thereafter, A-7 informed that Suryarao has left Bhiwandi and would be reaching there within a short time. When Suryarao came alongwith Najir"s

boy, he introduced himself to Suryarao and told him that due to internal conflict one of his persons has sustained a bullet injury and was required to

be taken to hospital immediately. Suryarao enquired where he was to be taken. Then he told Suryarao to take him in Hotel Holiday Inn where a

boy named Vijay would meet him to make further arrangement. At about 12.00 noon he received telephone call from Sunil and Pradhan has

reached hospital of Dr. Mohan Gedam and Vijay was present there and that in a short while the car would be going back to Hotel Holiday Inn. He

telephoned Suryarao (A-2) in Hotel Holiday Inn and asked him to bring back the car to the residence of Najir Jariwala. Suryarao agreed. After

sometime, Suryarao came there alongwith Brijeshsingh. He asked Brijeshsingh to leave alongwith one boy of Najir and thereafter he sat in the car

alongwith Suryarao. Najir"s boy took them near a petrol pump. Suryarao thereafter left the place and they left for the flat of Manishlala. On

14.9.1992, he informed Kishore that he wanted to leave Bombay and whether he could arrange car of Suryarao. Finally, Kishore was asked to

come in the car of Suryarao at BSES guest house by 4.00 p.m. In the car of Suryarao, they reached at Sagar Petrol Pump, Vasai. it is his say that

finally he reached to Delhi and thereafter went to other places. For the purpose of this appeal, other part of the statement is not required to be

narrated.

Confessional Statement of A-7

16. A-7 has also revealed the detailed facts about the incident and that he was arrested on 18.7.1993 by Delhi Police. It is his say that he is a

resident of Shanti Niketan, Ghatkopar (W), Bombay. He is B.Sc. and that after graduation he started business of transportation of liquid

chemicals. In January, 1985 he was playing a cricket match at Shell colony ground in the morning. At about 10.30 a.m. or so, he noticed one

person running across the ground and he was profusely bleeding. While running, he collapsed on the ground. He was identified as Subhashsingh

Thakur (Accused no.6) by Mangesh More and Mahboob Kunji. They took him to Dr. Lad's hospital, Dhar. Bombay. Dr. Lad examined him and

removed bullet from his body and informed him that it was a police case. He asked him to inform the police or remove the injured to government

hospital, otherwise he would inform it to police. He got frightened and left the hospital. Next day, he came to know that accused no.6 had fired at

police and in relation police had fired at him and he had sustained bullet injuries. In the year 1987 Subhashsingh Thakur asked him to help in the

said case. Subhashsingh was acquitted from the said case. Thereafter, he has narrated other incidents wherein A-6 Subhashsingh was involved. It is

his say that while he was having meeting with Subhashsingh, Himmat Raval, the then Vice President of Bhiwandi Nagar Parishad, introduced him

with Suryarao (A-2). Thereafter, Suryarao sought his help as his political rival Shri R.C. Patil was to bring no-confidence motion against him and

that he promised to help through Pappu Kalani. A-2 and Himmat Raval met Pappu Kalani at Seema Holiday Resort twice in the month of August,

1992. At that time, Pappu Kalani told Suryarao that he should help him (A-7 Kishore). On 12.9.1992, at about 6.00 a.m., he got a telephone call

from Subhashsingh Thakur who told him that there was firing at J.J. Hospital and one of his friends was badly injured in the incident and he wanted

to remove him immediately and safely out of Bombay and asked him to call official vehicle of Suryarao (A-2) and to send the same to Sagar Hotel

at Nagpada with his official car. Subhashsingh Thakur once again telephoned him at his residence and informed that on 12th September, 1992, in

the early morning at about 4.00 a.m., he alongwith Sunil Sawant, Brijeshsingh, Pradhan, Nirmalsingh, Prasad Khade, Bacchisingh, Pappu, Babloo

and two three muslim boys of Nazir stormed into ward no. 18, J.J. Hospital and fired at Shailesh Haldankar in which Shailesh Haldankar and two

policemen were injured and died subsequently. He also informed him that Suryarao had come with his car and removed the injured. At about 2.00

p.m., he received telephone call from Suryarao. Who informed him that he dropped the injured at Andheri and that he was leaving for Bhiwandi.

17. Thereafter on 14.9.1992, Subhashsingh rang him and informed that he wanted to leave Bombay and asked him for the same vehicle which

removed the injured. He again contacted Suryarao and asked him to come at his residence with his official vehicle. At 10.00 a.m. Suryarao came

to his residence with white colour Maruti 1000 Car No.MII-04-A-5353. He was accompanied by Himmat Raval, his driver and a police

constable in uniform. Thereafter they went at And Sharma"s house. Anil Sharma took them at the Guest House, where he met Manishlal, who

informed him that Subhashsingh was intending to leave Bombay for Gujarat.

18. Thereafter he was narrated in detail how they reached upto Sagar Petrol Pump. It is his say that as Suryarao was having some work, he

returned to Bhiwandi in another vehicle of Satish Rao (PW22) with Himmat Raval and his driver. He kept Maruti 1000 car. Subsequently, from

Vapi they returned to Bhiwandi and left the car at Suryarao"s house. Thereafter. He has narrated that finally he left Bombay and went to other

places including Delhi and Vaishnodevi.

Independent Corroboration to the Aforesaid Statements.

19. Before referring to the other evidence, we would refer to the evidence of some hostile witness who corroborate the above confessional

statements. PW45 Mohd. Hasan Mansoori whose son is Yasin Mansoori (A-8) has stated that he was staying in Mukhtiyar Manzil in room nos.11

and 22. In cross-examination, he stated that Mukhtiyar Manzil is at a distance of 2 minutes walk from the J.J. Junction and J.J. hospital is at a

distance of about 4 minutes walk from J.J. Junction and that in the Mastan Talao locality, there are number of lanes. The J.J. Junction and the

Nagpada Junction are at a distance of about 1/2-3/4 km. from Nagpadu and that Mastan Talao is at the distance of 5 to 10 minutes walk from

Nagpada junction. He has also stated that there are number of mutton shops in mini bazar, near Mastan Talo and that he was not knowing

whereabouts of his son. Similarly, PW66 Sayyed Rais Ahmed Jariwala has stated that he and absconding accused Nazair were staying in room

nos.11 and 12 in Shankar Building, Mastan Tank Lane. Nagpada. This evidence alongwith confessional statements would indicate that accused

before carrying out the target selected a place which was nearby J.J.Hospital.

20. Further, whatever has been confessed by A-2, A-6 and A-7 with regard to their movements on 12th and 14th gets full corroboration from the

evidence of PW12 and PW26. PW12 Laxman Vishe. who was armed police constable attached to Thane Police Head Quarter. was assigned the

duty of regular Guard to A-2 who was the President of Bhiwandi-Nizampur Municipal Council at the relevant time. It is his say that A-2 Suryarao

was having two houses and two wives. One at Najrana Compound in Bhiwandi Town and other in Gokul Nagar. He was having two cars, one

white colour Ambassador car and other Contessa Car having No. MHO-4-1445. It is his further say that on 12.9.1992 at about 8.00 a.m., he

accompanied A-2 in Contessa Car. At that time he was in police uniform. A-2 directed the driver Tambe to take the car to highway via Bhiwandi

Vegetable Market. One person who was standing in the Bhiwandi vegetable market was taken inside by A-2 and that person got down at Thane

highway. After passing one bridge an Old Agra Road, car was taken to a building in Ghatkopar area. A-2 got down from the car and asked him to

wait in the car. After 15/20 minutes A2 returned to the car and directed to drive the car to Sagar Hotel at Nagpada Junction. There, he and A-2

got down from the car. A-2 was looking around nearby and a young body of 20/22 years of age having fair complexion and curly hair approached

A-2. Both the persons after having a talk with each other sat on the rear seat in the Contessa car. After about 5 minutes of driving, the said boy

asked the driver Tambe to stop the car near mutton lane. A-2 and the said boy got down from the car and A-2 asked him to wait near the car.

The two then went through a by lane and disappeared. After 10/15 minutes, A-2 came back followed by 3 persons. One of the three persons was

given support by taking his arms on their shoulders by the other two persons. One more person followed them with a suitcase in his hand. Of the

two persons, one person was the very same person who had met them near Sagar hotel and who had led them to the mutton lane. The person who

was ill and the person who was having briefcase occupied the car along with Suryarao and other two persons went away. Thereafter, they went to

hotel Holiday-Inn in Juhu locality. On enquiry A-2 told him that the patient was son of his friend and that he was suffering from kidney trouble and

required to be taken to the hospital. After half-an hour drive, they reached Hotel Holiday Inn and he alongwith A-2 got down there. One young

person of 25/30 years age led them to room no.315 and thereafter he went down stairs saying that he will be going to the hospital alongwith the

patient. A-2 received a number of telephone calls in the room and also made number of phone calls. After half an hour. A-2 enquired with the

Reception Counter about arrival of Car. Thereafter, they came down and A-2 enquired from the driver as to whether the patient reached safely to

the hospital and the driver Tambe replied affirmatively. A-2 then asked the driver to take the car to Sagar Hotel in Nagpada locality. The very

same person who had met them in the morning in the Sagar Hotel and who guided driver to take the car to mutton lane met them. He occupied the

seat in the rear by the side of A-2 and helped the driver to take the car again to the very same place i.e. the mutton lane. A person having 5'9

height and strong built of about 28/30 years of age came there in a short while and sat on the rear seat by the side of A-2 Suryarao. That person

was subsequently identified by him as accused no.6. That person asked the driver to take the car to the Petrol Pump near J.J. Hospital. The

person who had helped the driver to take the car to mutton lane from Sagar Hotel got down from the car after they reached mutton lane. When the

car reached near the Petrol Pump, one person came there and told the said tall person that the person for whom he was waiting will be reaching

there within a short time. Saving so, the said person went away 5/10 minutes thereafter, a person of about 30/32 years of age came there wearing

a Kurta Pyjama and a Bohara Muslim cap and having a tin of Paan Parag in his hand. The tall person introduced the said person to A-2 as Savtya

(deceased). Thereafter, all of them left for hotel Holiday-Inn. The car was stopped on way in Santacruz locality near a petrol pump at the behest of

Savtya. On the way. Savtya got down from the car and went away in a lane and disappeared. The car was stopped on way in Santacruz locality

near a petrol pump at the behest of Savtya. On the way. Savtya got down from the car and went away in a lane and disappeared. The car was

then brought to hotel Holiday-Inn and there they went to room no.315. They stayed there for half an hour. He then questioned A-2 as to why they

had come to that place. A-2 replied that all the Municipal Members of Bhiwandi-Nizampura Council were expected to come there for a meeting

to be attended by the son of Shiv Sena Leader Bal Thackeray. The Municipal Members as well as the son of Bal Thackeray did not come there.

Thereafter, A-2 asked the driver Tambe to take the car to Thane. A-2 went inside the bungalow of Shiv Sena leader Anand Dighe. Within half an

hour, he returned to the car and then they went to Bhiwandi at the residence of A-2 near Najrana Compound. On 26.9.1992, he was called at the

DCB CID Office for an identification parade held by the Special Executive Magistrate and in that parade he identified the person who met them

near Sagar Hotel and led them to mutton lane as accused no.1 Jahur Ismail Faki. On 22.10.1993, after the arrest of A-6, identification parade was

held and he identified A-6 by saying that he was the very same person who sat in their car when they visited mutton lane second line. He was the

person who asked the driver Tabme to bring the car to the petrol pump near J.J. Hospital and on way to the hotel Holiday Inn, he got down in

Santacruz locality. In his detail cross-examination, nothing material was found so as to disbelieve his evidence and identification made by him

before the Executive Magistrate and in the Dock. He also denied the suggestion that prior to the test identification parade, accused no.6 was

shown to him by the police.

21. Similarly PW26 Ramesh Shankar Patil, who was armed police constable and Guard to accused no.2, corroborates the prosecution version

with regard to travelling of A-2, A-6 and A-7 by Maruti car. It is his say that on 14.9.1992, at 8.30 a.m., he accompanied A-2 Suryarao in a

white coloured Maruti bearing No.MH-04_A-5353, being driven by Badruddin Chimkar driver. There was a metallic nameplate of "President

Bhiwandi. Nizampura Municipal Council" affixed on the front side of the car. A-2 directed the driver Badruddin to take the car to Dhamankar

Naka at Bhiwandi. When they approached Dhamankar Naka, a person was standing there and A-2 asked him to sit inside. On making enquiry, he

came to know that he was Himmatbhai Raval (PW34). A-2 told driver to drive the car towards Bombay via Pipeline. After about 30/35 minutes,

after crossing the Mulund Check Naka along the highway, A-2 asked the driver to take right turn. He realised that they were in Ghatkopar locality.

When the car entered in the compound, A-2 asked the driver to stop the car. A-2 asked him to wait. A-2 alongwith Himmatbhai went away after

15 minutes came back alongwith one another person. At that time, one NE 118 car was there. A-7 occupied the rear seat of Maruti 1000 car and

asked the driver to follow the said NE 118 Car. After some time, both the cars reached a colony, namely Post and Telegraph Employees Colony.

After getting down from the car, Himmatbhai and A-2 went in a building nearby and returned after about 15/20 minutes. Thereafter, after driving

the car for about 20 minutes, the driver stopped the car and Himmatbhai got down from the car and one person (accused no.4) boarded that car.

Then under the guidance of A-4, the car was taken to a place where there was a big garden. There was a gate to the compound. The watchman

on duty was wearing uniform having nameplate reading Bombay Suburban Electricity Supply Company (BSES). The car was taken inside the

compound, where A-2, A-4 and A-7 got down from the car and he continued to wait near the car. All the three went on the first floor of the

building. After half an hour, he alongwith A-7 and driver went to have lunch and thereafter returned to the same place. 10/15 minutes thereafter,

A-2 came there accompanied with one more person, who was having a suitcase and a leather bag, which were kept inside the dicky of the car of

A-2. Then the said person occupied the rear seat with A-7 and directed the driver to drive the car on the High Way. After 20/25 minutes they

reached near the garage on the high way. The car was driven nearby a multi storey building. The car taken inside the compound. Then a tall person

(A6) wearing a salwar-Kamij came there. Thereafter, A-6 accompanied them and led the car to Sagar Petrol Pump at Vasai. There one blue

colour Maruti 800 car was standing at the petrol pump. In that car one woman, one another person and Himmatbhai Raval were there. Occupants

of both the cars got down. A person came there from the petrol pump and led all of them to a first floor room at the petrol pump. He and driver

stayed near the car. The remaining person returned to the car after 30/35 minutes. They all boarded their respective cars for going to Shirsat Fata.

On the way, they all got down from the cars. Persons got down from the blue Maruti 800 Car and took the seat in the Car MH-04-A-5353, A-6

and A-7 also sat in the same car. He alongwith A-2 and Himmatbhai sat in the blue Maruti 800 car. A-2 drove the blue Maruti car and asked his

driver to leave all the occupants of the Car MH-04-A-5353 to Vapi and come back. They came back to Gokul Nagar In Bhiwandi. On

6.9.1993. he was called by the police for test identification parade in the DCB CID Office near Crawford Market at Mumbai. He was shown

10/11 persons in a row. He identified A-4 Anil Amarnath Sharma as the person who had boarded the car near the railway crossing and who had

guided the driver to take the car to BSES guest-house. Likewise, on 21.10.1993 he identified A-7 and A-6. In cross-examination, there is nothing

which would affect the version given by the witness or which may support the accused.

22. Next import witness is PW9 Vijay Nagare, who at the relevant time was posted on the guard duty in the J.J. Hospital in which Shailesh

Haldankar was lodged. It is his say that Shailesh Haldankar was sleeping in a cot having handcuffed with the upper side rod of the cot. Other two

police constables Javsen and Bhanavat were also sitting on the said cot. PSI Thakur came there in mufti to check the guard on duty. He also sat

there on the cot where Shailesh Haldankar was sleeping. At about 3.40 a.m. or there about, he saw one person inside the ward and in front of the

room. He was having firearm like a rifle in his hand. He shouted loudly ""hands up, do not move else we will kill you"". Immediately, shots were fired

like crackers. He tried to close the door but the door was not fully closed. PSI Thakur thereafter fired one shot in the direction of the said person

through his revolver. Thereafter, door was closed. He took his rifle in position to defend himself. Shailesh Haldankar attempted to get up by force t

rescue himself by freeing his hands from the handcuff. At that time, constables Javsen and Bhanavat caught hold of him so that he does not run

away. To that, Shailesh Haldankar pleaded that assailants have come to kill him and they should allow him to go away. He also heard that shots

were being fired on the door which was closed. Thereafter, PSI Thakur receded from another door towards the verandah. He noticed that very

same person whom he had seen inside the ward earlier had come near the southern door of the cabin and thereafter, he fired one shot from the

rifle in his direction and before he could fire the second round, the bullet which the said person had fired hit his right thigh. He receded a little and

fell down by the side of the cot. Very person who was firing from outside entered the room and fired shots indiscriminately at Shailesh Haldankar

as well as other two police constables. It is his say that at that time there was hue and cry in the ward and because of injury he felt giddiness. He

identified A-6 - Subhashsingh Thakur in the test identification parade by stating that he was the person whom he had seen firing the shots

indiscriminately and who uttered the words ""hands up, hilo mat nahi to maar dalenge"". Minor contradictions emphasised by the defence have rightly

been dealt with and are not given any importance by the learned Special Judge. Hence, we are not discussing the same in detail.

Other Corroborative Evidence

23. PW 27 Manohar Padarinath Gabdule, a police Naik who was on duty of maintaining EPR register at JJ hospital has stated that at about 1.40

a.m./1.45 a.m., a woman and a man went to the cabin of clerk Borge, PW 21 and enquired about a patient who had met with an accident namely,

Aziz Khan. As there was no one of that name admitted in that hospital, they went away. It is his further say that at about 2.30 a.m. both of them

again came and asked the clerk Borge who supplied the information that generally the patients in accident cases are admitted in the ward Nos. 17,

18 and 19 and both of them had gone upstairs. The witness wrote down the name of the woman and her address whom he has identified as A-3.

He has also identified absconding accused Mohd. Hussain who accompanied her. Confessional statement of A6 that inquiries were made at the

hospital, gets corroboration from the say of PW 27 who was on duty at JJ hospital that one man and woman went to the cabin of clerk Borge for

making inquiries.

24. PW 54 Shankar Ramchandra Jadhav was watchman of the J.J. Hospital and his duty time at the relevant time i.e. on 12.9.1992 was between

10 p.m. to 6 a.m. He was posted at the main gate near the statue of Parsibaba in the new building and his duty was to check the persons entering

the hospital. On that night at about 3.55 a.m. nine persons having weapons like revolvers in their hands, entered through the main gate and came in

the direction of the staircase when one of the persons had caught the collar of another person and they were making enquiry about his other

associates. He guessed that they might be the policemen having come for some enquiry. When he asked them whether they had entry pass with

them, they told him that they are police inspectors and how dare he could ask them for entry pass. Some of those persons went upstairs and some

stayed at the ground. A-10 Khade caught him and dragged to one corner and threatened him that he should not move and at the same time

accused no.9 Bacchisingh hit him by the revolver but on his face and resultantly, he fell down and became unconscious. He regained consciousness

later on when he was taken to casualty ward. In the test identification parade, he identified accused no.6, Subhashsingh Thakur to be the person

who was holding the collar of the person and asking him to show his other associates, and accused no.9 and accused no.10, but refused to identify

them in the dock. Thereafter he was declared hostile. This also corroborates the say of A-6 in his confessional statement.

25. PW 6 Constable Anant More has stated that at about 3.30 a.m. to 3.45 a.m., he noticed three persons entering Ward No. 18 through the

main door. He also noticed that two of them were having AK 47 rifles in hands. The third person was also armed with a weapon. They had

entered the hall by firing shots. He stated that it was nor possible for him to fire at them in the open place and shots were fired in his direction,

therefore, it was not possible to fire in the opposite direction. He rushed to the southern side of the ward, entered the door, shots were fired at that

door, but he could not fire from his weapon in retaliation by the side of the door. He heard the sound of firing. He saw that the patients were

frightened, some of them were taking shelter underneath the cot or in the corners. Some had pulled ""chadder"" on their bodies and kept quiet. The

prisoner, whom he was guarding had taken shelter underneath the cot. After the firing stopped, he went to the gallery, where other constables were

guarding Shailesh Haldankar. He saw Shailesh Haldankar and two policemen lying in the pool of blood on the ground in the said room. He noticed

some 30-35 cartridges lying there. Then the police came there. They took the injured for treatment. In all 6 persons were injured including PWs 9,

10, 11, 42, 54 and one nurse and one Yunus Dadarkar.

26. PW10, Siddiq Ahmed Amin (hostile witness) who was in the same room where deceased Shailesh Haldankar was kept, stated that he heard

some loud shouts of people and therefore, he woke up. One police inspector was there having a revolver in his hand and talking with some one

outside the room. He heard shots being fired. The firing stopped after 2/3 minutes. As he got frightened, took shelter under the cot, and after the

firing stopped, he went to the hall, continued to sit there till policemen came there. He had sneaked in the hall by crawling. He did not identify any

one in the Court and denied having identified accused No. 6, Subhashsingh Thakur in the TI parade and denied giving the description of other two

persons who had followed Subhashsingh Thakur.

Brief halt of A2 and others at Bombay Suburban Electricity Supply Company (BSES) Guest House:

27. PW 63 Arvind Pinge was in charge of a BSES guest house. Marol, Andheri. According to him on 12.9.1992, one Felix Alex D'souza, PW 29

(a hostile witness), came to him and told him that the nephew of Union Minister of Energy, Mr. Kalpanath Rai was staying in BSES guest house

and he would like to introduce him. He has stated that he had brought him at his residence. PW30 Harry Parasaram was the Deputy General

Manager of BSES Guest House in the year 1992. He has stated that they had received a telephone message from Delhi from one S.P. Rai, P.A. of

Kalpanath Rai, the then Minister of Energy for booking the accommodation. Later, he came to know that nine guests were staying in two rooms

and he had asked who these guests were. Later on, he came to know that the guests were involved in shoot out in the JJ Hospital. PW 31

Aravindam Kunjmani (a hostile witness) was working as a cook in the BSES Guest House. He had shown two rooms to the guests and they

stayed in those rooms. He did not identify anyone. This part of the evidence of BSES Guest House is also stated in the confessional statement of

Anil Nirbhay Narayan Sharma A-5.

28. PW 18 Prabhakar Durve, the Chief Security Manager Holiday-Inn establishes that room no.315 was occupied by VIP who arrived there on

12.9.1992 at 11.10 a.m., which was in the name of Suryarao and was signed as S. Rao. Departure was shown on the same date. This also

corroborates the say of A-2 with regard to their going at BSES Guest House and Hotel Holiday Inn.

Injuries to PW 9 and C.A. Reports

29. Evidence of PW 9 gets further corroboration from Ex.128, which is an entry in the MLC register at Sr. No. 7154 dated 12.9.1992. It shows

that a part of the bullet, which was retrieved from the thigh of Vijay Krishna Nagare was put in a bottle and it was handed over to the police. The

same was taken to the Forensic Laboratory by PW 40, head constable Suryakant Kupwadekar. Ex.129 is the injury certificate of PW 9, Nagare

and Ex. 117 is the Chemical Analyses Report. The result of the analysis also gives the reading that 7.62 mm shot rifle cartridge cases, which were

found on the scene of offence are generally fired from either AK 47 rifle of Russian make or Chinese version of the same. The two pieces of bullets

which were retrieved from the body of the deceased police constable K.G. Bhanawat were sent to the Forensic Laboratory by the Police Surgeon

under a covering letter Ex. 97. Ex. 145 is the post mortem notes of the dead body of Shailesh Haldankar. In the Chemical Analyst's report,

Ex.147, the bullet retrieved from the right thigh and the left thigh of deceased Shailesh Haldankar have been opined by the chemical analyser to be

the fragment of 7.62 mm bullets. The CA Ex. 1 is one 303 rifle which was carried by Nagare and Ex. 3 K is the one 303 inch rifle empty and Ex.

7 is four intact 303 rifle cartridges. These facts show that PW 9 Nagare had fired one bullet from 303 rifle and the other four bullets were intact in

the rifle and the result of Analysis shows that Ex. 3K has been fired from Ex. 1 i.e. 303 rifle. These circumstances go to show that PW 9 Nagare

did fire one round aiming at Subhashsingh Thakur (A-6) and the circumstances that Shaliesh Haldankar was shot dead from AK 47 rifle is also

made out from the CA reports. The Chemical Analyser's report on the X-ray plates is Ex. 122. Ex. Nos. 2A to 2D (CA's exhibit) are consistent

with the fire of 7.62 mm rifle bullets. From the CA report, it is evident that the assailants have used 9 mm pistols and AK 47 rifles in the incident.

As per the confessional statements of Subhashsingh Thakur, Bachhisinh A-9, Ex. 239 and Prasad Khade A-10, Ex. 237 in all 12 fire arms like

AK-47 assault rifles, 9 mm pistols, 32 revolvers, 38 revolvers and also two hand grenades were taken by 10 assailants in the J.J. Hospital.

30. Further, PW 42 PSI Krishnavatar Thakur (complainant and hostile witness) has supported the prosecution entirely on the incident, but refused

to identify accused No. 6, Subhashsingh Thakur and admitted identifying one person in the TI parade. He proved Ex. 140, the FIR. He admitted

that he saw a person near the door of the cabin, with a weapon like AK 47 rifle and claimed that he had fired one shot at him and closed the door

by latching it from inside and claimed that 4/5 persons were present in the Ward No. 18 and that he was hiding in the bathroom as he had

exhausted all the six rounds from his revolver. After some time, he went to the cabin, saw constable Bhanawat fallen down by the side of the cot of

Shailesh Haldankar and head constable Javsén lying in the cabin. He also claimed that constable Nagare PW9, was lying underneath the cot of

Shailesh Haldankar. He patted him and gave the call ""Nagare, salvar-Kamij and Nagare opened his eyes for a moment and again closed the eyes.

He noticed the blood and all the bodies were bleeding having fire rem wounds. Thereafter, he went downstairs, notice the blood stains all along the

staircase. He said that doctors examined 4 injured in the casualty ward. Javsén and Bhanawat were declared dead. Constable Nagare, PW 9 had

injury on his leg. Nagare was taken to the operation theatre. He himself had a brushing injury on the left leg and he had noticed the trail of blood

upto the big tree outside the building. He had handed over his service revolver and empty cartridges. In his cross examination, he admitted that he

had submitted his resignation because a cash reward of Rs. 1 lakh was reduced to Rs. 25,000/- which he did not accept as he was not happy

about it. He also stated that he had suffered mental depression was spending sleepless nights and was taking tablets for the same. This incident was

a part and parcel of his worries and was feeling tense about the safety of his family. In the FIR, Ex. 140, he had described two persons, one

person who had fired at the constable and killed them by firing from an automatic rifle and also who had fired at him at the southern side of the

verandah"". He gave the description of the person as aged about 25/26 years, height about 5.8"", strong built, fair complexion, wearing a metal

framed spectacle, round face, wearing white full shirt and pant, shirt tucked in side the coloured pant. Description of the other person who was

holding an automatic weapon was given by him as aged about 22/25 years, medium built, height about 5"6"", wearing snuff coloured shirt, dark

colour pant. The description of the first person tallies with accused No. 6, Subhashsingh Thakur.

31. From the evidence of hostile witness PW25 Girish Kumar Shrinath Singh, who is owner of petrol pump namely "Sagar Auto Dealers" at

Sativali near Vasai, it is apparent that on 14.9.92, at about 3.30 p.m., one lady and two three other persons including one constable came in a car,

having red light on the top, at his petrol pump and while sitting in his cabin they had called tea and drinking water from the nearby hotel. He had

paid the bill. On that day, he had seen only tow cars having come there one after another with the gap of 5/10 minutes. One of those persons tried

to connect some number on telephone but as the phone was not connected, they went away. In his cross-examination, he stated that his brother

Ajay told him that a lady guest has come in a car having the red light on the top and she wanted to go for the toilet. As the lady guest had arrived in

the car having the red light on the top, he though that she might be some VIP and, therefore, he led her to the self-contained room. He also stated

that those persons came at his petrol pump on 14.10.1992 and not on 14.9.1992 and failed to identify accused no.2 and accused o.6. Further,

there is testimony of PW33, Bhiwandi Municipal Council. his statement corroborates to the extent that 55 litres of petrol was taken by PW 17

Tambe in Contessa Car on 10.9.92. He has produced slip Ex. 102.

32. PW17 Shripad Tambe (hostile) was the driver of Contessa Car belonging to Bhiwandi Nizampur Municipal Council. He has stated that he was

shown 2 shoots of papers. On the right corner of both the papers the vehicle number 1445 was entered. Those were the entries of 1.9.92,

10.9.92, 11.9.92 and 13.9.92. He admits that the two pages match the alignment in the said log book so far as they relate to the entries from

1.9.92 to 13.9.92. According to his say the 2 pages appeared to have been torn from the said register the entries on those two sheets are now

pasted together to form one sheet showing column number 1 to 13 mentioning the entries of 11.9.92, 12.9.92 and 13.9.92. He has further

admitted that the entry also indicates that on 1.9.92, 45 litres of petrol was filled up in the tank. The said entry is identical with the entry in the log

book dated 1.9.92 to 7.9.92. He has denied that Suryarao A-2 asked him to adjust the entries of 12.9.92 and 13.9.92 in the register. He has

further denied the suggestion that he managed to procure a false certificate of illness from Dr.Soutakke (PW37). He has admitted that on 20.9.92

he boarded a luxury bus for going to Bangalore along with his 3 friends, Ramesh, Anil and Suresh. He stayed in Bangalore for 2 days and then went

to Mysore.

33. It is in the confessional statement of A-2 that he (A-2) got frightened on 16.9.92 and torn two pages from the logbook of Contessa car

regarding the entries of movement on 12th September, 1992. Driver Tambe re-wrote the logbook at his instance. He advised his driver Tambe to

go out of Bombay because he had learnt that Bombay police was making enquiries with regard to Contessa car on 19th September, 1992. This is

corroborated by aforesaid evidence and that of PW37 Dr. Kantilal Vishnu Sontakke, who gave certificate of illness to Tambe on 19.9.92 when he

visited Indira Gandhi Memorial hospital.

34. Then, there is evidence of PW19, Matatil Damodar Itty who was working as Engineer in Bhiwandi Nizampur Council and was required to

look after the maintenance and repairs of the Municipal vehicles. He stated that each vehicle had got a logbook and a petrol slip book. He has

admitted that the Art.Nos.61 and 60 were the same logbooks, which he had produced before the police under Panchnama. PW20 Subhash

Kadam is a Panch witness. He has stated that the police called one officer from the Municipality and took 2 logbooks in their possession from that

officer. Those books consisted on one log book of Contessa Car and one slip book. He had signed the panchnama Ex.72-A. PW23 Ashok Bagul

is another panch witness. He has stated that he had gone to Crawford market and a policeman came there to call him to be a panch witness.

Accused No.2 Suryarao was present in the DCB, CID office. In his present, he made a statement that he had torn the pages from the log book

and had kept those pages at Bhiwandi and he would produce the said pages from Bhiwandi. Accordingly, the panchnama was drawn. he has

further stated that the police along with Suryarao took them to the house of Suryarao in a jeep. Accused No.2 Suryarao produced some pages

from a book. The police took charge of those papers and put the same in the packet. A detailed panchnama Ex.76A was drawn. He along with

co-punch signed the panchnama.

35. Hostile, witness PW22 Satish Bhujang Rao, an Interior Decorator, resident of Ghatkopar (W), Bombay has stated that he knew accused no.7

Shamkishore and Himmat Ravat (PW31). Shamkishore used to treat his wife as his elder sister. In the year 1989-90, when Shamkishore was

arrested by the police in a case of attempt to murder, he stood surety for Shamkishore. Himmatbhai Raval had entrusted him the job of fixing PVC

tiles at the residence of Suryarao at Gokul Nagar at Bhiwandi and he did the job. He had no occasion to meet Suryarao. Himmatbhai Raval had

paid the amount for the above work. He saw Suryarao only in DCB CID Office. Further, he had no occasion to see accused no.6 Subhashsingh

Thakur and that he has seen him for the first time in the dock. Whenever Shamkishore came to attend the dates in the court in connection with that

case, he used to stay at his house.

36. PW34 Himmat Rupchand Raval, businessman, resident of Bhiwandi, Distt. Thane was also a hostile witness. He has stated that from 1988 he

is in the business of Powerloom Shed construction. In the period between 1988 to 1993, Ratnadeep son of Jayawant Dattatray Suryarao and one

Narayan Bhoir were his partners in the said business. He remained as President and Vice President of Bhiwandi Nizampur Municipal Council. He

stated that he knew accused no.2 Suryarao since 1984, who was sitting in the dock before the court. They were having cordial relationships. He

also knew accused no.7 Shamkishore since 1986, who was sitting in the dock before the court. Thereafter, he has not supported prosecution

version as narrated in his statement u/s 164 Cr.P.C.

37. From the aforesaid evidence led by the prosecution following facts emerge:

1. If the confessional statements of A2, A6 and A7 are taken into consideration as they are, then the Designated Court has rightly convicted them

2. The aforesaid statements are corroborated-

(a) By the confessional statements of other accused as discussed by the Designated Judge.

(b) By the evidence of PW 12 Laxman Vishe and PW 26 Ramesh Patil.

(c) By evidence of PW9 who was an injured witness at the time of incident. There are no reasons to disbelieve the evidence of PW9 who was

police constable on duty in ward no.18. He received bullet injury in the incident.

(d) For the movement of A2, A6 and A7 and 12th and 14th after the incident, there is no reasons to disbelieve the evidence of two independent

witnesses who were bodyguards of A-2, who was President of Bhiwandi Municipal Corporation.

(e) The confessional statement of A-6 gets corroboration from PW27, who has specifically stated that at about 1.40/1.45 p.m. A-3 and

absconding accused Mohd. Hussain went to the clerk Borge and made enquiry about patients. It also gets corroboration from PW54 Shankar

Ramchandra Jadhay.

(f) The statements of A2 and A6 that they stayed at BSES Guest House are corroborated by the evidence of PW63, PW30 and PW37.

(g) Evidence of PW25 Girish Singh, PW17 Tambe and that of PW37 Dr. Sontakke corroborates the statement of A-2 with regard to movement

of car on 12th and 14th as well as asking driver Tambe to go out of city as directed by A-7 as police was making enquiry about movement of car.

The evidence with regard to logbook and tearing of two pages therefrom also reveals guilty consciousness of A-2.

(h) Hostile witnesses PW22 Satish Rao and PW34 Himmat Rawal admitted that they were having relations with A-2 Suryarao and A-7 Kishore

since years.

Submissions:

38. On the basis of the aforesaid evidence, learned counsel for the accused submitted that judgment and order passed by the Designated Court is

illegal and erroneous as-

(a) Provisions of TADA are not applicable.

(b) Confessional statements are not admissible in evidence and in any case are not true, voluntary and reliable.

(c) Identification of A-6 doubtful.

(d) Sanction to prosecute under TADA is without application of mind.

Whether provisions of TADA are applicable ?

39. Learned senior counsel Mr. Rajinder Singh appearing on behalf of accused no.6, Mr. Sushil Kumar appearing for accused no.7 and Mr.

Niteen Pradhan, Advocate appearing for accused no.2 submitted that the present case is one of grand rivalry and the provisions of TADA would

not be applicable: there is nothing on record that accused intended to create any terror and at the most intention to commit the murder of Shailesh

Haldankar could be inferred. For this purpose, it is pointed out that only minor injuries are caused to other persons except the intended men and

the injuries caused to other police constables who were on duty and who are dead were unintentional. It is also submitted that incident took place

at 3:45 a.m. i.e. early in the morning and, therefore, also there was no question of creating any terror in the mind of public at large. For this

purpose, learned counsel referred to 273784 .

40. In the aforesaid case, this Court held that the Designated Court was right in coming to the conclusion that the intention of the accused was to

eliminate Raju and Keshav for gaining supremacy in the underworld and observed thus:

A mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to

oppose them cannot constitute an offence u/s 3(1) of the Act. That may indeed be the fall out of the violent act but that cannot be said to be the

intention of the perpetrators of the crime.

41. In the aforesaid case, the Court has clarified that intention of the accused was only to eliminate Raju and Keshav and, therefore, they killed the

former and caused injury to later and it was not possible to hold that their intention was to strike terror in the people or a section of the people. The

Court thereafter pertinently observed that it would have been a different matter if to strike terror some innocent persons were killed and in such

case the intention could be to strike terror and the killings would be to achieve that objective.

42. Learned counsel further referred to the decision in 297646 . This judgment also does not in any way support their contentions. A three-Judge

Bench of this Court quoted the dictum laid down in 258712 with approval and concluded thus (Para 51 p.298):-

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 overthrow the Government as by law established or to strike terror in the people etc.

43. In *Hitendra Vishnu Thakur* (Supra) dealing with similar contention, this Court held (para 7, p.618) thus:

...A "terrorist" activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must

be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has

shown us that "terrorism" is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the

minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes "terrorism" from other forms of

violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes

advantage of the situation and by wearing the cloak of "terrorism", aims to achieve for himself acceptability and respectability in the society

because unfortunately in the States affected by militancy, a "terrorist" is projected as a hero by his group and often even by the misguided youth...

44. Similarly, in 262627 this Court observed that if an innocent boy is killed only because the demand for reason amount was not met by the family

members, such killing cannot but send a shockwave and bring about terror in the minds of the people of the locality. The Court further held thus:

...It is the impact of the crime and its fallout on the society and the potentiality of such crime in producing fear in the minds of the people or a

section of the people which makes a crime, a terrorist activity u/s 3(1) of TADA.

45. In our view, it is not possible to define "terrorism" by precise words. Whether the act was committed with intent to strike terror in the people

or a section of the people would depend upon facts of each case. Further, for finding out intention of the accuse, there would hardly be a few

cases where there could be direct evidence. Mainly it is to be inferred from the circumstances of each case. In appropriate cases, from the nature

of violent act, inference can be called out. There can also be no doubt that fall out of violent act vary from person to person and society to society

but is well understood by a prudent person and by those who are affected.

46. The prosecution version as revealed from the confessional statements and other evidence is that there are two gangs operating in Mumbai, i.e.

one of Dawood Ibrahim and other of Arun Gavli. Their activities are of eliminating or causing harm or injury to those who do not obey their

dictates and of extortion from builders, hoteliers, industrialists, professionals and other persons. They also indulge in smuggling and drug trafficking

and for undertaking all these activities in organised manner, they employ number of persons. Their code word for such activities is "game". May be

that they are getting some support from the authorities or politicians and a vice versa. Not only this, it would be totally unjust to ignore the ground

reality that these terrorist gangs operate and extort large amount of money. Through terrorism, they acquire or maintain power or control by

intimidation and causing fear and helplessness in the minds of the people at large. They are hardened criminals and take advantage of the situation

and in many cases, police authorities fail to protect victims. As confessed by A-2 Suryarao, President of Bhiwandi Municipal Corporation, he

sought assistance from A-7 and others and thereafter it is his say that he was required to comply with the illegal demand of A-7 of rendering

assistance to A-6 and A-7 after commission of the offence. Further, the intention of the accused could be gathered from their act of shooting the

police guards who were on duty and causing injury to others whosoever came in their way. In such a situation, it could be inferred that the dastardly

act was to administer a terror or a shock wave in the people at large and convey that the fate of all those who did not obey their dictates or oppose

them would be the same as that of Shailesh Haldankar. It further conveys that police guard on duty can not save the victim, but they also may meet

the same fate. Not only this, the crime was perpetuated in a protected place i.e. J.J. Hospital by master-minding the operation of achieving the

target. Necessary information was collected and after equipping themselves with sophisticated weapons they went to the hospital where patients

and staff on duty went helter-skelter, witnesses turned hostile. PW42 PSI Thakur who was police officer on duty could not do anything to protect

anyone and after giving detailed FIR failed to support the same before the Court. How the witnesses are terrorised can be seen from the evidence

of PW42, who had lodged the FIR. He resigned from the evidence of PW42, who had lodged the FIR. He resigned from the post and was

suffering mental depression and spending sleepless nights and was much more worried because of the incident about the safety of his family. At the

time of giving evidence, he was feeling tense even after lapse of seven years of the incident. Similar was the position of PW54 Shankar

Ramchandra Jadhav. Further, PW28 Shrirang Gangaram Uttkar, (hostile witness) a watchman at the gate of J.J. Hospital was so scared that in

the cross-examination, when he was asked about accused no.10 Court noted ""the witness appears to be seared and started looking to the Court

and turning his eyes in various directions"". The Special Judge also observed that, ""from the appearance, the witness appears to be scared and

attempt was made to make him easy but attempt failed and finally witness stated weeping in the witness box"". Further, confession by A-2 reveals

how the persons in clutches of these gangs are terrorised. Hence, there is no substance in the contention of the learned counsel for the accused that

there was no intention on the part of the accused to strike terror and that the crime would not be covered by the terrorist activity as provided u/s

3(1) of TADA. We would again reiterate that whether the crime committed creates terror or not depends upon the facts and circumstances of

each case and cannot be defined by precise words.

Admissibility of Confessional Statements:

47. The next submission raised by the learned counsel for the accused is with regard to the admissibility and evidentiary value of the confessional

statements. It has been contended that confessional statements of the accused were recorded by the police officers when accused were in police

custody: after recording of confessional statements, they were not produced before the Judicial Magistrate and the confessional statements were

sent to the concerned Chief Judicial Magistrate after lapse of time thereby committing breach of Rule 15 of TADA Rules and, therefore, the

confessional statements are not admissible in evidence and, in any case, they are not voluntary, reliable and truthful.

48. In our view, for appreciating this contention we have to bear in mind the provisions of Section 15 which begin with non-obstante clause that

notwithstanding anything contained in the Code or in the Indian Evidence Act, such statements shall be admissible in trial of such persons or co-

accused, abettor or conspirator for an offence under the Act or Rules made thereunder. If we keep in mind that the provisions of the Evidence Act

to the aforesaid extent are to be ignored then there would not be much force in the contention raised by the learned counsel for the appellants.

Under the Act and the Rules, conditions for recording the confessional statements are required to be satisfied. If those conditions are complied

with then the statements are admissible in evidence for connecting the accused or co-accused with the crime. However, this aspect does not

require much discussion as it has been dealt with and considered in various decisions of this Court. In 273068 , this Court has held that in view of

Section 15 of the TADA which lifted the bar provided under the Evidence Act, confessional statement recorded by the police officers is admissible

in evidence, is substantive evidence and during the trial it could be relied upon against the co-accused also. The Court held (in para 23) thus:

Custodial interrogation in such cases is permissible under the law to meet grave situation arising out of terrorism unleashed by terrorist activities by

person residing within or outside the country. The learned counsel further submitted that in the present case the guidelines suggested by this Court

in 281271 were not followed. In our view, this submission is without any basis because in the present case confessional statements were recorded

prior to the date of decision in the said case i.e. before 11.3.1994. Further, despite the suggestion made by this Court in Kartar Singh case, the

said guidelines are neither incorporated in the Act nor in the Rules by the Parliament. Therefore, it would be difficult to accept the contention raised

by learned counsel for the accused that as the said guidelines are not followed, confessional statements even if admissible in evidence, should not

be relied upon for convicting the accuse. Further, this Court has not held in Kartar Singh case that if suggested guidelines are not followed then

confessional statement would be inadmissible in evidence. Similar contention was negated by this Court in 282505 by holding that a police officer

recording the confession u/s 15 is really not bound to follow any other procedure and the rules or the gridlines framed by the Bombay High Court

for recording the confession by a Magistrate u/s 164 Cr.P.C.; the said guidelines do not by themselves apply to recording of a confession u/s 15 of

the TADA Act and it is for the Court to appreciate the confessional statement as the substantive piece of evidence and find out whether it is

voluntary and truthful. Further, by a majority decision in 297646 the Court negated the contentions that confessional statement is not a

substantive piece of evidence and cannot be used against the co-accused unless it is corroborated in material particulars by other evidence and the

confession of one accused cannot corroborate the confession of another, by holding that to that extent the provisions of Evidence Act including

Section 30 would not be applicable. The decision in Nalini case was considered in S.N. Dube case. The Court observed that Section 15 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 the correct legal position is that a confession recorded u/s 15 of the TADA Act is a substantive piece of evidence and can be

used against a co-accused also.

49. In this view of settled legal position, confessional statement is admissible in evidence and is substantive evidence. It also could be relied upon

for connecting the co-accused with the crime. Minor irregularity would not vitiate its evidentiary value. Further, the contention of the learned

counsel for the accused that, because, there was delay in sending the confessional statement to the Chief Judicial Magistrate and it was not sent

forthwith as required under Rule 15 of the TADA Rules, it becomes doubtful and inadmissible in evidence, also requires to be rejected. As per

Rule 15 what is mandatory is that the confessional statement should be forwarded to the Designated Court, which may take cognizance of the

offence. Such violation of the Rule cannot be held to be incurable illegality. 279548 .

50. Learned senior counsel further submitted that confessional statements of other acquitted accused cannot be relied upon for connecting the

accused with the crime. In case of Nalini (Supra), this Court while dealing with the contention that if the accused are acquitted for the offence

punishable under TADA then their confessional statements cannot be relied upon for convicting the accused for other offences, negated the same

and observed (in para 82), "the correct position is that confessional statement duly recorded u/s 15 of TADA would continue to remain admissible

as far as 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". The Court observed that it was undisputed that a duly recorded confessional statement is a substantive

evidence in the trial of offences under TADA.

Evidentiary Value of such Confessional Statements

51. It is true that if the confessional statements are taken as they are, accused can be convicted for the offences for which they are charged as the

said statements are admissible in evidence and are substantive piece of evidence. However, considering the facts of the case, particularly that the

confessional statements were recorded by the police officer during investigation; said statements were not sent to the Judicial Magistrate forthwith;

and that after recording the statements, accused were not sent to judicial custody, in our opinion, unless there is sufficient corroboration to the said

statements, it is not safe to convict the accused solely on the basis of the confessions. Therefore, we have considered confessional statements with

the other evidence connecting the accused with the crime. Learned senior counsel Mr. Sushil Kumar submitted that if we remove the evidence of

PW26 from the scene then it is difficult to maintain the conviction of A-7. It is his contention that A-2 and A-6 were knowing each other as per

their admission in confessional statement. He emphasized minor contradictions and submitted that evidence against A-7 is not sufficient to connect

him with the crime. In our view other evidence as stated above fully corroborates the confessional statements and there is no reason to discard the

evidence of PW26.

52. Learned counsel for A-2 Suryarao submitted that considering the facts, he cannot be held guilty for the offence punishable u/s 3(3) of TADA

as he had no knowledge that A-6 and others were involved in the shoot out at J.J. Hospital. He further submitted that in any set of circumstances,

he was compelled and threatened by A-7 Shamkishore to send the car, otherwise he had his family would meet the same fate as that of Shailesh.

53. It is true that there is no direct evidence that A-2 was knowing that A-7 had called the car for the purpose of moving out other accused who

were involved in the shoot out. However, from his confessional statement, it is apparent that he was not ignorant of the fact that A-7 was involved

in criminal activities. He sought assistance with regard to the no confidence motion which was sought to be moved against him and in return as per

his say, Pappu Kalani had asked him to help A-7 when such help was sought for. Further, as per his own say, A-6 was introduced to him on 12th.

All throughout in a suspicious manner, the official car, with police guard was taken from one place to another. Even after coming to know about the

incident on 12th he on 14th along with his car moved the accused from place to place and aided them in moving out of Bombay. In these

circumstances, it would be difficult to hold that A-2 was not having any knowledge with regard to the fact that A-6 and others were involved in

shoot out at the J.J. hospital or that he was not assisting the said culprits. It is unfortunate that the President of the Bhiwandi Municipal Corporation

who normally would be a respected political leader would be party to such heinous acts.

Identification of A-6

54. Next question is--whether identification of A-6 of PW9 in test identification parade and in the dock could be relied upon for convicting him.

For appreciating this contention it is to be stated that witness has specifically mentioned that A-6 was around 5'8"" in height and having fair

complexion and was well built. Same is the version of PW12 Laxman Vishe and PW26 Ramesh Patil who had seen A-6 while sitting in the car of

A-2 on 12th and 14th.

55. Apart from the contradictions here and there, learned counsel appearing for A-6 vehemently submitted that no reliance can be placed upon the

identification of A-6 by this witness because the incident of firing must have happened within few minutes and in that set of circumstances it is

difficult for a witness to identify the person who fired shots. It is also contended that test identification parade held on 22.10.1993 i.e. after more

than one year, cannot be relied upon as corroborative evidence.

56. No doubt, it is true that incident of firing must have happened within few minutes, at the same time, it is the say of PW9 that he saw A-6 thrice-

-once, when he tried to come in the room from northern gate, again when he came from southern gate and finally when he entered the room and

fired shots indiscriminately. Further, considering the nature of duty of a police constable, there is no reason to doubt his statement. We would also

reiterate that substantive evidence of a witness in his evidence in Court. Identification parade is not primarily meant for the court but is meant for

investigation purposes. It serves two purposes, namely, to enable the witness to satisfy that prisoner whom he suspects is really the one who was

seen by him in connection with the commission of the crime and for satisfying the investigating authority that suspect is the real person whom the

witness had seen in connection with said occurrence. In case when the evidence is cogent, consistent and without any motive, it is no use to

theoretically imagine that as the witness has seen the accused for few minutes it would be difficult for him to identify. It always depends upon one"s

capacity to recapitulate what he has seen earlier. power of perception and memorising differs from man to man and also depends upon situation.

Finally, appreciation of such evidence would depend upon the strength and trustworthiness of witness. 286446], 268922 , 278316 . In the

present case, as stated, PW9 was the police constable who was present in the room, he was injured, he saw accused no.6 coming in the room

thrice and firing indiscriminately and hence, there is no reason to doubt identification by him.

57. The learned counsel for accused no.6 contended that considering the evidence against him, it is doubtful whether he fired at Shailesh Haldankar

and other two police constables because he was accompanied by other injured accused Pradhan, who was also having similar weapon and had

fired. It is also submitted that Pradhan was having bullet injury as per the prosecution version and, therefore, it would be difficult to arrive at the

definite conclusion that identification of A6 by PW9 is reliable. To meet this contention, it has been pointed out that complexion of absconding

accused Pradhan was different from that of A6. For this purpose, reliance is placed upon the evidence of PW48 Dr. Mukund Karia and PW49

Dr. Rajendra Thakare. PW47 Madhukar Yadavrao Shirsat of Athavali Police Station, Surat recorded the statement of injured Pradhan at Surat

and he also described Pradhan as having 5'6" height, medium built and of shallow complexion. PW48 Dr. Karia who had examined Pradhan at

about 2.30 to 2.45 a.m. on 14.9.1992 at the residence of Dr. Kamble at Surat has also described the patient as 28/30 years of age having 5'6

height, shallow complexion, thin built. Same is the version of PW49 Dr. Rajendra Thakare, who retrieved 2 cm long bullet from the body of

Pradhan. As against this, it has come on record that height of A-6 was around 5'8". He was of fair complexion and well built and that is what has

been stated by PW9, PW12 and PW26. Therefore, it would be difficult to hold that PW9 has committed any error or mistake in identifying A-6.

Validity of Sanction

58. Mr. Sushil Kumar, learned senior counsel for accused no.7 submitted that sanction granted by the Commissioner of Police is without

application of mind and thereby illegal. For proving sanction, the prosecution has relied upon the evidence of PW72 Satish Sahni, who at the

relevant time was Commissioner of Police, Mumbai. He has specifically stated that after necessary scrutiny of the papers, sanction to prosecute as

per Ex.266 was granted. In detail cross-examination, he has clarified that he arrived at a definite conclusion for according sanction after perusing

the papers and report of the Chief P.P. covering the legal aspects and the report of the Additional Commissioner of Police. He has also clarified

that incident was certainly designed to spread a wave of terror in the minds of the people by indiscriminate firing with lethal weapons in a place like

hospital. Sanction order Ex.266 also recites that relevant material was perused by him and thereafter he accorded sanction u/s 20A(2) of the

TADA for the offences committed by the accused u/s 3(2), 3(3), 3(4), 3(5), 3(6), 5 and 6 of TADA. Similar is the sanction order Ex.286 dated

5.8.1993. Both these orders are exhaustive and relevant material is referred to. Hence, it cannot be said that there is any illegality or irregularity in

granting sanction to prosecute the accused under the provisions of TADA.

59. From the aforesaid discussion, we arrive at the conclusion that:

1. Learned Designated Judge has rightly tried and convicted the accused for the offences punishable under the TADA. There is no substance in the

contentions raised by the learned counsel for the accused that the shoot out at the J.J. hospital was mere an act of gang rivalry. Shoot out at the J.J.

Hospital, which is a Government Hospital of 1500 beds in Mumbai, at midnight causing death of three persons and injuries to six others was in the

facts of the present case, in nothing but an act of terrorism. It cannot be termed as simple act of gang rivalry. It is true that it is difficult to define

terrorism in precise terms. Whether the criminal violent act was committed with intent to strike terror in people or section or people would always

depend upon facts of each case. For finding out the intention of the accused, there would hardly be any case where there could be direct evidence.

It is to be inferred from the manner and mode adopted while committing the act and its after effect including fear psychosis. From the

circumstances in the present case, irresistible inference can be drawn that crime was committed to create terror and also to take revenge. Such act

creates terror in the minds of the people or section of the people so that the targeted persons would succumb to the dictates or extortion because

of fear for survival. In the present case. PSI who was on duty resigned from his job, suffered mental depression, spent sleepless nights and worried

about the safety of his family after lapse of seven years of incident. A retired army officer deposing before the court appeared to be scared and

started weeping in the witness box. Effect of fear psychosis also can be seen from the statement of President of Bhiwandi Municipal Corporation

(accused) that he was compelled to use his official vehicle along with police constable for the movement of the accused. In such case, we should

accept the ground reality that it would hardly be possible to get evidence of eye-witnesses.

2. Confessional statement before the police officer u/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 Section 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.

3. Sanction to prosecute under TADA granted by the competent authority cannot be said to be in any way illegal or erroneous.

4. Confessional statements of A2, A6 and A7 are corroborated:-

(a) By the confessional statements of other accused as discussed by the Designated Judge.

(b) By the evidence of PW12 Laxman Vishe and PW26 Ramesh Patil.

(c) There is no reason to disbelieve the evidence of PW9 who himself is an injured witness and who was police constable on duty in ward no.18

for the deceased Shailesh Haldankar. He got bullet injury at the relevant time. There is no reason to disbelieve the identification of A-6 by him.

Description given by him gets full corroboration from evidence of PW12, PW26 and PW42.

(d) Evidence of PW25 Girish Singh, PW17 Tambe and that of PW37 Dr. (sic) corroborates the version of A-2 with regard to movement of car

on 12th and 14th as well as asking driver Tambe to go out of city as directed by A-7 because police was making enquiry about movement of car.

The evidence with regard to logbook and tearing of two pages also reveals guilty consciousness of A-2.

60. Hence, in our view, the Designated Court was fully justified in convicting the A2, A6 and A7 and we uphold the same.

SENTENCE

REGARDING A-2:

61. Learned counsel for A-2 submitted that accused has undergone more than six years of imprisonment and considering the fact that he was

required to send the cars under threat. sentence may be reduced to the sentence already undergone. In our view, this submission also does not

merit any consideration. May be that A-2 is a political leader or that there may be some threat or compulsion in using his official vehicle for moving

the accused from one place to another, but that would hardly be a ground for reducing the sentence. As a responsible citizen, he ought to have

informed the concerned police authorities. To this, learned counsel for A-2 submitted that when the police failed to give protection to the person

who was in custody, it would be difficult to imagine that police would have given such protection to him or could have saved him from the wrath of

the gangsters. In our view, it is difficult to hold that police would not have given necessary assistance to A-2 who was President of Bhiwandi

Municipal Corporation. The citizens are not supposed to help the criminals on the assumption that in case of need police would not come to their

rescue and should succumb to illegal demands of the gangsters.

REGARDING A-7.

62. Learned senior counsel Mr. Sushil Kumar submitted that there was no reason to impose sentence of 10-years RI to A-7 while the Designated

Court has imposed sentence of 7-Years RI to A-2. In our view, considering the activities carried out by A-7 as confessed by him, it cannot be

said that sentence imposed by the learned Judge is in any way excessive or discriminatory. From the role played by A-7, it is clear that he was

vitaly involved. At his instance, on 12th and 14th. A-2 was compelled to bring the cars of Bhiwandi Nagarpalika that two with the police guard,

for giving treatment to injured accused and for facilitating further to move from one place to another. Considering the overwhelming evidence

against A-7, particularly the evidence of Pw26 and confessional statements, it cannot be said that learned Judge has committed any error in

convicting A-7 and sentencing him to suffer RI for 10 years.

REGARDING A-6:

Death Reference Case No.1 of 2000:

63. Learned counsel for A-6 submitted that if we take confessional statement as it is, then it is apparent that he has not taken part in shoot out. It is

his say that after going to the hospital as Brijeshsingh knocked the door and none opened, and at that time, he felt that there was no setting and he

asked Brijeshsingh that all should go back. During that time, Brijeshsingh fired 3-4 times from his AK-47 rifle on the closed door. Again he asked

Brijeshsingh to go back from that place. Meantime, someone else fired at them from the opposite door. Subsequently, Brijeshsingh came towards

him quickly and informed that he has killed all the persons inside the ward and asked them to move from that place. It is the contention of the

learned counsel that on the basis of this statement which is substantive evidence brought on record by the prosecution, this would not be a fit case

of sentencing the accused to death.

64. In our view, there is force in the aforesaid submission. Accused no.6. who has confessed his involvement in the crime including the crimes

committed by him previously, has specifically stated that he asked Brijeshsingh to go back from the hospital without firing. He has not confessed

that he has fired any shot during the incident. In this set of circumstances, even though we hold that it was an act of terrorism committed by the

accused, this would not be a fit case for imposing death sentence. However, considering the confessional statement as a whole coupled with the

other evidence and the terror created by the accused, we confirm the conviction but modify the sentence from death penalty to imprisonment for

life -- till rest of life.

65. In 275635 the Court referred to the decision in 286658 and held that a sentence of imprisonment for life does not automatically expire at the

end of 20 years, including the remissions. The Court in Ratan Singh's case has observed that:

4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or

the Rules framed under the Prisons Act the matter is no longer res integra and stands concluded by a decision of this Court in 286053 , where the

Court, following a decision of the AIR 1945 64 (Privy Council) observed as follows:

Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person

sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by

appropriate Government can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code. Code of

Criminal Procedure or the Prisons Act.

* * * * *

A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the

remaining period of the convicted person's natural life.

The Court further observed thus:

But the Prisons Act does not confer on any authority a power to commute or remit sentences, it provides only for the regulation of prisons and for

the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for

rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope or the ambit of the Act.. Under the said

rules the orders of an appropriate Government u/s 401. Criminal Procedure Code, are a pre-requisite for a release. No other rule has been

brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry

of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the

appropriate Government made certain remissions u/s 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We therefore

hold that the petitioner has not yet acquired any right to release.

Similarly in 289387 the Court relied upon the decision in Ratan Singh's case (supra) and observed as under:-

A question may arise--whether in view of the provision of Section 433(b) read with Section 433A Cr.P.C. an accused should be realised on

completion of 14 years of imprisonment. For this purpose, we would make it clear that u/s 433(b) enables the appropriate Government to

commute the sentence of imprisonment for life, for imprisonment of a term not exceeding 14 years or for fine. u/s 433A, there is an embargo on

that power by providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one

of the punishments provided under the law, such person is not to be released from prison unless he had served at least fourteen years of

imprisonment. This question is considered by various decisions rendered by this Court and by the Privy Council and it has been reiterated that a

sentence of imprisonment for life imposed prima facie be treated as imprisonment for the whole of the remaining period of the convicted person's

natural life. It is also established law that rules framed under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for

life.

66. Similar are the observations of this Court in 274521 , 280289 and in 286434 .

67. In this case also, considering the heinous act of terrorism and brutal murder of two police constables who were on duty to guard Shaliesh

Haldankar, even though we hold this would not be a fit case for imposing death sentence, we direct that accused will not be entitled to any

commutation or pre-mature release u/s 433A of Criminal Procedure Code, Prisoners Act, Jail Manual or any other statute and the rules made for

the purpose of commutation and remissions.

68. In the result, Criminal Appeal No.975 of 2000 filed by accused no.2 Jayawant Dattatray Suryarao, Criminal Appeal No.956 of 2000 filed by

accused no.7 Sharnkishore Shamsharma Garikapatti are dismissed and Criminal Appeal No.966 of 2001 filed by accused no.6 Subhashsingh

Shobhanathsingh Thakur is partly allowed as stated above. Death Reference Case No.1 of 2001 stands disposed of accordingly.

Criminal Appeal No. 1101 of 2000

69. Considering the evidence brought on record, the Designated Court rightly acquitted A-1 Jahur Ismail Faki, A-3 Smt. Mehboobi Azizkhan, A-

4 Anil Amarnath Sharma, A-8, Ahmed Mohmed Yasin Mansoori and A-9 Jayprakash Shivcharansing @ Bacchisingh (since dead_ A-10 Prasad

Ramkant Khade. The Court has rightly held that confessional statements without there being sufficient corroborative evidence would not be

sufficient for convicting the accused for the offences for which they are charged. In this view of the matter, it cannot be said that the said part of

judgment and order passed by the Designated Court calls for any interference. Hence, this appeal is also dismissed.