Mohd. Khalid Vs State of West Bengal

Court: Supreme Court of India

Date of Decision: Sept. 3, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 309
Evidence Act, 1872 â€" Section 10, 24, 25, 3, 30
Explosive Substances Act, 1908 â€" Section 3, 4, 5
Penal Code, 1860 (IPC) â€" Section 120A, 120A(2), 120

Citation: (2002) 2 ALD(Cri) 610 : (2003) 1 ALT(Cri) 37 : (2002) 6 JT 486 : (2003) 2 LW(Cri) 858 : (2002) 6 SCALE 238 : (2002) 7 SCC 334 : (2002) 2 SCR 31 Supp : (2002) 2 UC 714

Hon'ble Judges: B. N. Kirpal, C.J; K. G. Balakrishnan, J; Arijit Pasayat, J

Bench: Full Bench

Advocate: Rajendra Singh, Sushil Kumar and K.T.S. Tulsi, S. Muralidhar, S.M. Shreyas Jayasimha, Md. Abubakar Dhali, Adolf Mathew, R.P. Wadhwani, Raj Kumar Gupta, Sheo Kumar Gupta, A. N. Bardiyar, N.R. Chodhary, Somnath Mukherjee, Rishi Malhotra, Ashok Bhakshi, Gaurav Sharma, H.K. Puri, S. K. Puri, Ujjwal Banerjee, Anindita Gupta and Shakil Ahmed Syed, for the appearing partie, for the Appellant;

Final Decision: Dismissed

Judgement

Arijit Pasayat, J.
No religion propagates terrorism or hatred. Love for all is the basic foundation on which almost all religions are founded.

Unfortunately, some fanatics who have distorted views of religion spread messages of terror and hatred. They do not understand and realize what

amount of damage they do to the society. Sometimes people belonging to their community or religion also become victims. As a result of these

fanatic acts of some misguided people, innocent lives are lost, distrust in the minds of communities replaces love and affection for others. The

devastating effect of such dastardly acts is the matrix on which the present case to which these appeals relate rests. On 16th March, 1993, just

before the stroke of mid-night, people in and around B.B. Ganguly Street in the Bow Bazar Area of Calcutta heard deafening sounds emanating

from thundering explosions which resulted in total demolition of a building and partial demolition of two other adjacent buildings situated at 267,

266 and 268A, B.B. Ganguly Street. Large number of people were trapped in and buried under the demolished buildings. It was indeed a very

ghastly sight and large number of people died because of the explosions" impact and/ or on account of the falling debris. Human limbs were found

scattered all around the area. Those who survived tried to rescue the unfortunate victims, police officers arrived at the spot immediately. The first

information report was lodged at Bow Bazar Police Station for alleged commission of offence punishable under Sections 120B, 436, 302, 307

326 of the Indian Penal Code, 1860 (in short "the IPC") and Sections 3 and 5 of the Explosive Substances Act, 1908 (in short "The Explosive

Act").

2. Considering the seriousness and gravity of the incident, the Commissioner of Police set up a special investigating team. On investigation 8

persons including the six appellants were found linked with the commission of offences. Arrests were made. While rescue operations were on,

there was further explosion on 18.3.1993. The exploded bomb was handed over to the police officer after its examination on the spot by a Military

Officer. Meanwhile, the pay loader picked up a gunny bag containing 22 live bombs. Afterwards, they were defused after examination. Certain

materials were seized by the investigating team from the site of the occurrence and on examination, it was found that nitro-glycerin explosives were

involved in the explosion. Large number of witnesses were examined.

3. Two of the accused persons, Pannalal Jaysoara (accused-appellant in Criminal Appeal No. 299/2002) and Mohd. Gulzar (accused-appellant in

Criminal Appeal No. 494/2002) were arrested on 29.3.1993 and 13.5.1993 respectively. As they wanted to make their confessions, those were

to be recorded before the Judicial Magistrate. Accordingly, their confessional statements were recorded by the magistrates (PWs. 81 and 82).

Some of the accused persons were also identified by witnesses in the Test Identification Parade. On 11.6.1993, the Commissioner of Police on

examination of the case diary, statement of witnesses, reports of the experts and confessional statements came to the conclusion that provisions of

Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short The TADA Act") were applicable. Accordingly, sanction was accorded for

prosecution of the accused persons under the said statute. Charge sheet was submitted on 14.6.1993.

4. Accused persons filed a writ application before the Calcutta High Court challenging the validity of the sanction and the order whereby the

Designated Court took cognizance of the offences under the TADA Act. The High Court quashed the order of sanction and taking of cognizance.

The matter was challenged before this Court by the prosecution. The appeal was allowed and the Designated Court was directed to proceed with

the case in accordance with law with utmost expedition. [See: 286019 . The Designated Court framed charges under Sections 120B, 436/34,

302/34 IPC, Sections 3 and 5 of the Explosive Act and under Sections 3(2)(1) and 3(3) of the TADA Act. As the accused persons facing trial

pleaded innocence, trial was conducted.

5. The case of the prosecution, in short, is that the accused persons conspired and agreed to manufacture bombs illegally by using explosive to

strike terror in the people, particularly, in the mind of the people living in Bow Bazar and its adjacent areas to adversely affect communal harmony

amongst members of Hindu and Muslim communities. Pursuant to this criminal conspiracy and in pursuance of the common intention, they caused

complete/partial destruction of properties by using the explosive substances. They committed murders knowing fully well that illegal manufacture of

bombs by explosive substances in most likelihood would result in deaths or bodily injuries, by causing explosion. In causing explosion by unlawful

and malicious user of explosive substances which was likely to endanger life or to cause serious injury to properties, they committed offences in

terms of Sections 3 and 5 of the Explosive Act. The fact that they possessed explosive substances gave rise to a reasonable suspicion that such

possession and control of the explosive substances were not for lawful object. Provisions of the TADA Act were applied on the allegation that

pursuant to the conspiracy and in pursuance of the common intention they prepared bombs with huge quantities of explosive substances and highly

explosive materials with intent to strike terror in the mind of the people adversely affecting communal harmony amongst the people belonging to

Hindu and Muslim religions. Their terrorist activities resulted in the death of 69 persons, injuries to a large number of persons and destruction and

damage to properties. As a result of these acts, commission of terrorist acts was facilitated.

6. Out of the 165 witnesses examined, three witnesses were picked up as star witnesses to prove the conspiracy and the connected acts. They are

PW. 40 (Md. Sabir @ Natu), PW. 67 (Santosh Hazra) and PW 68 (Kristin Chow @ Kittu). By a detailed judgment, the Designated Court found

the accused appellants guilty of offences punishable under Sections 120B IPC, Sections 3 and 5 of the Explosive Act and Section 3(2)(1) and

3(3) of the TADA Act read with Section 34 IPC. However, they were found not guilty of the offences in terms of Sections 302 and 436 read with

Section 34 IPC. After hearing on the question of sentence, the accused appellants were sentenced to undergo rigorous imprisonment for life and to

pay a fine of Rs. 3000/- each for commission of offences u/s 3(2)(1) of the TADA act read with Section 34 IPC, to undergo rigorous

imprisonment for five years and to pay a fine of Rs. 500/- each for commission of offence u/s 3(3) of the TADA Act. They were further sentenced

to undergo rigorous imprisonment for 10 years to pay a fine of Rs. 1,000/- each for commission of offence u/s 6 of the Explosive Act and to suffer

an imprisonment for one year and to pay a fine of Rs. 300/- each for commission of offence u/s 5 of the Explosive Act. Each of them were also

sentenced to imprisonment for life and to pay a fine of Rs. 3000/- each for commission of offence u/s 120B of IPC.

7. These appeals relate to the common judgment of the Designated Court. While the accused appellants have questioned the legality of the

conviction and sentences imposed, the State has questioned the propriety of acquittal in respect of the offences in terms of Sections 302/34 and

436/34 IPC. Learned counsel for the accused appellants have submitted, inter alia, that the so-called star witnesses are persons with doubtful

antecedents. They were rowdy elements who were under the thumb of police officers and the possibility of their having deposed falsely at the

behest of police officers cannot be ruled out, and this is more probable. Referring to the evidence of PWs 40, 67 and 68, it was submitted that

their evidence suffers from innumerable fallacies. PW-40 claimed to have heard the accused-appellant, Rashid asking the accused-appellant,

Pannalal Joysoara about the preparation of bombs. He was the witness who was available immediately after the incident. But his statement was

recorded two days after without any explanation being offered as to why he was examined two days after. Similarly, PWs. 67 and 68, were also

examined after two days. In Court, they made embellished and highly ornamented statements. It was pointed out that evidence of PW-67, in

particular, is full of holes. According to his own testimony, he was only connected with satta games. It was, therefore, highly improbable that he

was allowed to go up and notice all those materials which were lying in the rooms and the activities being carried out. It was highly improbable that

nobody stopped him. Many independent witnesses were not examined though their presence is accepted by the prosecution. A grievance is made

that some of the persons who were available to be examined have not been so done. Particular reference has been made to Nausad and Osman. It

is stated that the prosecution case is that Nausad was the owner of one of the premises and PW-68 told Osman about the consipiracy. Non-

examination of these material and independent witnesses rendered the prosecution version suspect. There was no reliable evidence of conspiracy.

There was no design to commit any act even if it is accepted that there was any explosion. That was an accident. In fact, no importance can be

attached to the so-called judicial confessions because two accused persons who allegedly made the confession had made retraction subsequently

on 3.2.1995. They were terrorized, threatened and were compelled to make the confession. Even if, according to them, the prosecution case is

accepted in its toto, it only proves that the Muslims were trying to protect themselves in the event of a possible attack of Hindus on them. In the

bomb blast which took place in Bombay a few months earlier, the police was totally ineffective and could not save the lives of number of Muslims

and were silent onlookers. That spread message of fear in the mind of Muslims and as the prosecution version itself goes to show, they were

preparing to protect themselves as a matter of exercise of their right of private defence, in the most likely event of attack by the Hindus on them.

This according to them rules out application of the TADA Act. They were not the aggressors and their preparations to protect their rights and

properties in the event of an attack was not to spread a terror or to cause any unlawful act but was an act intended to be used as a shield and not a

weapon. Further, Section 3 of the Explosive Act has no application because there was no material to show that the accused persons had caused

explosion. It was pointed out that several persons who had lost their lives in the explosion were arrayed as accused persons. Even if, they caused

the explosion, they could not save their own lives and it cannot be said that the accused appellants were responsible for the explosion. Coming to

the charge of conspiracy, it was submitted that the statements recorded u/s 164 of the Code of Criminal Procedure, 1973 (in short The Code") of

the two accused persons cannot be used against others unless the prescriptions of Section 30 of the Indian Evidence Act, 1872 (in short "The

Evidence Act") were fulfilled. According to them, confession of a co-accused was not a substantive piece of evidence. It had a limited role to play.

In case other evidence was convincing and credible, as an additional factor, confession of a co-accused for limited purpose can be used in

evidence. The present was not a case of that nature. Finally, it was submitted that accused appellants are in custody since 1993 and a liberal view

on sentence should be taken.

8. In response, Mr. K.T.S. Tulsi, learned senior counsel appearing for the prosecution submitted that the apparent intention of the accused

appellants was to terrorise the people. Large quantity of the explosives and bombs recovered clearly gives a lie to the plea that self-protection Was

the object. Seen in the context of the motive, it is clear that the intention was to terrorise a section of the people and it is not a case that the

accused appellants wanted to exercise their right of private defence for themselves. The real object and the motive were to use it for spreading

communal disharmony under the cover of self-protection and to terrorise people. So far as the confession in terms of Section 164 of the Code is

concerned, it was submitted that the statements were recorded after making the confessors aware that they may be utilized in evidence against

them. The so-called retraction was afterthought. The mere fact that the witnesses were examined after two days does not per se render their

evidence suspect. It has to be noted that there was total chaos after the explosions. Everywhere bodies were lying scattered. There was no

information as to how many were buried under the debris. The first attempt was to save lives of people rendering immediate medical assistance. At

that point of time, recording of evidence was not the first priority. In fact, after the special team was constituted, the process of recording

statements was started on 18.3.1993 and on that date the statements of material witnesses were recorded. With reference of Section 15 of the

TADA Act, it is submitted that though the statements recorded the Magistrate was not strictly in line with Section 15 of the TADA Act, yet it

deserves a greater degree of acceptability under the said Act. It cannot be conceived that the confession recorded by a Police Officer would stand

on a better footing than one recorded by the Judicial Magistrate. Further, it was submitted that the confessional statements recorded clearly come

within the ambit of Section 10 of the Evidence Act and, therefore, no further corroboration was necessary and to that extent Section 30 may not

be applicable. Even otherwise, according to him, there was ample material to connect the accused appellants with the crime and the confessional

statements were the last straw.

9. Responding to the plea that Section 3 of the Explosive Act had no application, it was submitted that the possession of the explosives has been

established; the purpose for which they were stored and the bombs were manufactured has been established. Even if theoretically it is accepted

that the accused appellants did not cause the explosion, but the others did at their behest, their constructive liability cannot be wiped out. They

were the perpetrators of the crime being the brain behind it. Even if, for the sake of arguments it is accepted that the final touch was given by

somebody else, may be the deceased accused persons, as they were the brains behind the whole show, their liability cannot be ignored and ruled

out. In any event, according to him they have been charged with Section 3 of the Explosive Act and could be convicted u/s 4 of the said Act

because the latter constitutes a lesser offence.

10. By ways of rejoinder, it was submitted by learned counsel for the-accused-appellants that Section 10 of the Evidence Act has no application,

because after the act flowing from the conspiracy is over, the relevance of any statement in relation to the conspiracy is of no consequence. After

the explosion, even if the same was the result of conspiracy as alleged, any confessional statement recorded u/s 164 of the Code cannot come

within the ambit of Section 10 of the Evidence Act.

11. First, we shall deal with the plea regarding acceptability of the evidence. It is to be seen as to what is the evidence of PWs 40, 67 and 68 and

how they establish prosecution case. PW-40 had deposed about presence of Murtaza Bhai, Gulzar Bhai, Khalid Bhai, Ukil Tenia, Khursid and

Hansu while they were coming inside Satta Gali carrying two loaded gunny bags. Thereafter, they went upstairs of 267 B.B. Ganguly Street, PW-

40 followed them up. He noticed the aforesaid persons mixing the ingredients of bombs and also manufacturing bombs. He found two drums, few

gunny bags and small containers lying there. Murtaza, Gulzar and Khalid Were shifting and straining the explosive materials after taking it and from

the gunny bags. His nose and eyes got irritated when the process was going on. therefore, he came down. Around 10 to 10.30 p.m. he saw

Rashid, Aziz Zakrin and Lalu coming inside the Satta Gali with an old man wearing spectacles (identified as accused-appellant Pannalal Jaysoara).

While moving up the stairs to the upper floor, Rashid asked the oldman to prepare bombs with the materials brought by him. Criticism was leveled

by learned counsel for accused-appellant that the entire conversation alleged to have taken place was disclosed by PW-40 during investigation. On

verification of records, it appears that though the exact words of the conversation were not stated, in substance the same idea was conveyed. PWs

67 and 68 have stated about plan of and preparation for manufacture of bombs. Their statement was to the effect that on 16.3.1993 at about

11.00 p.m. they went to meet Rashid Khan to ventilate their grievance against some of the painkillers disturbing the tranquility of the locality. PW-

67 has deposed that Rashid was standing alone in front of the Satta office. As he and PW-68 were reporting the matter to Rashid, an old man

wearing spectacles (identified as accused Pannalal Jaysoara) and Osman came out of Satta gali. The old man reported to Rashid that it would take

whole night to prepare bombs by using the mixture. On being asked as to what would be done with the bombs, Rashid replied that large number of

bombs were required because of the riot at Bombay between Hindus and Muslims. Statement of PW-68 is to the Similar effect that on 16.3.1993

around 11.00 p.m. accused-appellant Rashid intimated an old man (identified as accused-appellant Pannalal Jaysoara) that preparation of large

number of bombs was required to be used in the event Hindus attacked the Muslims, and it was necessary in view of riots in Bombay. PWs 67

and 68 belonged to the locality and were acquainted with Rashid Khan. Their near relatives were staying in the locality. It is on record that some

relatives of PW-68 have lost their lives in the incident. Confidential statement of accused-appellant, Pannalal Jaysoara was to the effect that he had

asked accused-appellant Rashid as to the urgency for preparing large number of bombs. His reply was that he took the decision of preparing

bombs so that Muslims could fight in the possible riot. In the test identification parade PWs 40, 67 and 68 identified accused-appellant Pannalal

Jaysoara on 15.4.1993. Confessional statement of accused-appellant Gulzar is relevant. He stated that Rashid had reminded them that many

Muslims had been killed in the riot at Bombay and Government did not do anything for the Muslims. If there is a riot, many Muslims may die as the

Government may not do anything. therefore, he took the decision of preparing large quantity of explosives and bombs. PW 67 has deposed that

accused-appellant Rashid directed preparation of large number of bombs overnight. Presence of the accused persons in and around the place of

occurrence has been amply established by the evidence of PWs 40, 67 and 68, as well the confessional statements of Pannalal and Gulzar.

12. In the case at hand, the evidence of PWs. 40, 67 and 68 even after the close scrutiny cannot be termed to be unreliable. Merely because they

were the persons with no fixed avocation, the very fact that they were regular visitors to the place of occurrence described as ''Satta Gali'', makes

their presence nothing but natural. Additionally, we find that relatives of PW-68 have lost lives. Mere delay in examination of the witnesses for a

few days cannot in all cases be termed to be fatal so far as the prosecution is concerned. There may be several reasons. When the delay is

explained, whatever be the length of the delay, the Court can act on the testimony of the witness if it is found to be cogent and credible. In the case

at hand, as has been rightly pointed out by the learned counsel for the respondents, the first priority was rendering assistance to those who had

suffered injuries and were lying under the debris of the demolished buildings. The magnitude of the incident can be well judged from the fact that a

total building collapsed and two other buildings were demolished to a substantial extent, 69 persons lost their lives and large number of persons

were injured. therefore, statement of PW-68 that he was busy in attending to the injured and collecting dead bodies till 18.3.1993 cannot be said

to be improbable. Though, an attempt has been made to show that there is no truth in his statement that he had carried the injured persons to the

hospital by making reference to certain noting in the medical reports to the effect that unknown persons brought the injured to the hospital, that is

really of no consequence. When large number of persons were being brought to the hospital, the foremost duty of the doctors and other members

of the staff was to provide immediate treatment, and not to go about collecting information as to who had brought the injured to the hospital for

treatment. That would be contrary to the normal human conduct. Looked at from any angle, the evidence of PWs. 40, 67 and 68 cannot be said to

be suffering from any infirmity. Their statements along with the confessional statements of the co-accused lend a definite assurance to the

prosecution version.

13. Next comes the accused- appellants" plea relating to non-examination of witnesses.

14. Normally, the prosecution"s duty is to examine all the eyewitnesses selection of whom has to be made with due care, honestly and fairly. The

witnesses have to be selected with a view not to suppress any honest opinion, and due care has to be taken that in selection of witnesses, no

adverse inference is drawn against the prosecution. However, no general rule can be laid down that each and every witness has to be examined

even though his testimony may or may not be material. The most important factor for the prosecution being that all those witnesses strengthening

the case of the prosecution have to be examined, the prosecution can pick and choose the witnesses who are considered to be relevant and

material for the purpose of unfolding the case of the prosecution. It is not the quantity but the quality of the evidence that is important. In the case at

hand, if the prosecution felt that its case has been well established through the witnesses examined, it cannot be said that non-examination of some

persons rendered its version vulnerable.

15. As was observed by this Court in 282540 prosecution is not bound to call a witness about whom there is a reasonable ground for believing

that he will not speak the truth.

16. It has not been shown as to how the examination of persons like Nausad and Osman would have thrown any light on the issues involved.

Whether Usman was the owner of the house or not has no significance when the prosecution has established the conspiracy angle and preparation

of bombs by credible evidence. Similarly, Osman was the person to whom one witness is stated to have told about the conspiracy angle. Since that

witness has been held to be reliable, non-examination of Osman is really of no consequence. A reference was made to some persons who were

parties to the Test Identification Parade. It is pointed out that some of them did not identify all the accused persons. Here again, the non-

examination of these persons cannot be held to be of any consequence. Those persons who have identified the accused persons knew them earlier.

therefore, even if some persons not examined did not identify all the accused persons that does not in any way affect the credibility of the witnesses

who knew them, have identified them and deposed about the conspiracy and the preparation of bombs. Above being the position, no adverse

inference can be drawn.

17. It would be appropriate to deal with the question of conspiracy. Section 120B of IPC is the provision which provides for punishment for

criminal conspiracy. Definition of "criminal conspiracy" given in Section 120A reads as follows:

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

(1) an illegal act, or

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

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the

agreement is done by one or more parties to such agreement in pursuance thereof.

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to

accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely

committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the

jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is

complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in

furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law

making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The

encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have

been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and

renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American

Jurisprudence Vol. II See 23, p. 559). For an offence punishable u/s 120-B, prosecution need not necessarily prove that the perpetrators

expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has

its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two

or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry into

effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if

lawful, punishable if for a criminal object or for use of criminal means.

18. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement

between persons who are alleged to conspire and the said agreements should be for doing an illegal act or for doing illegal means an act which

itself may not be illegal. therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved

either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove

conspiracy is rarely available. therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about

the complicity of the accused.

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

Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable

offence of common law, the punishment for which is imprisonment or fine or both in the discretion of the Court. The essence of the offence of

conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The

conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the

combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or

however, it may be. The actus rues in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two

or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus

to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been communication with every other.

20. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or

circumstantial evidence. (See: Bhagwan Swamp Lal Bishan Lal etc. etc. v. State of Maharashtra AIR 1965 SC 682

21. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct

evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not

always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the

formation of the conspiracy, about the object, with the objectors set before themselves as the object of conspiracy, and about the manner in which

the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

22. The provisions of Section 120-A and 120-B, IPC have brought the law of conspiracy in India in line with the English Law by making the overt

act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on crime (12 Ed.

Vol. I, p. 202) may be usefully noted-

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to

do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere

knowledge, or even discussion, of the plan is not, per se, enough.

23. Glanville Williams in the ""Criminal Law"" (Second Ed. P. 382) states-

The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P,

told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own

against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for

''concert of action'', no agreement to ""co-operate''.

Coleridge, J. while summing up the case to Jury in Regina v. Murphy 1837 173 ER 502 states:

I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together

and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not

necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor

common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same

means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at

liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had

they this common design, and did they pursue it by these common means the design being unlawful.

24. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the

agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the

prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with

regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to Sub-section (2) of Section 120A,

then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction u/s

120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not

require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the

essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the

act would fall within the trapping of the provisions contained in Section 120B [See: 259852 .

25. The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the

lack of direct evidence relating to conspiracy has no consequence. [See: 287305 .

26. In 287434 , this Court observed:

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on

evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely

upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire

whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former

does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical

manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is

necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

Conspiracy can be proved by circumstances and other materials. (See: State of Bihar v. Paramhans 1986 PLJR 688. To establish a charge of

conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use

being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a

particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate

offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each

of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or

service to an unlawful use. (See: 292229

27. We may usefully refer to 285203 . It was held:

...

8...If is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they

should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more

persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the

means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law

definition of ''criminal conspiracy'' was stated first by Lord Denman in Jones'' case that an indictment for conspiracy must ""charge a conspiracy to

do an unlawful act by unlawful means"" and was elaborated by Willies, J. on behalf of the judges while referring the question to the House of Lords

in Mulcahy v. Reg and House of Lords in unanimous decision reiterated in Quinn v. Leathem:

''A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act

by unlawful means. So long as such a design rest in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act

in itself, and the1 act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; punishable of for a

criminal object, or for the use of criminal means.

28. This Court in B.G. Barsay v. State of Bombay held:

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal

act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may

comprise the commission of a number of acts. u/s 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by

law.

In 277053 the rule was laid as follows: (SCC p. 543 para 9)

''The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail

of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted

to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real

end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but

there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be

committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must

be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the

conspirators."

In 276820 , it was held that for an offence u/s 120B IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do

or cause to be done the illegal act, the agreement may be proved by necessary implication.

29. Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even

without corroborative evidence can be taken into consideration. [See 283900 . It can in some cases be inferred from the acts and conduct of

parties. [See 287431 .

30. That brings us to another angle i.e. acceptability of the confession. Section 24 of the Evidence Act interdicts a confession if it appears to the

Court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. It must

be the outcome of his own free will inspired by the sound of his own conscience to speak nothing but truth.

31. Words and Phrases, permanent edition, Vol. 44, p. 622 defines ''voluntary'' as:

''Voluntary'' means a statement made of the free will and accord of accused, without coercion, whether from fear of any threat of harm, promise,

or inducement or any hope of reward- State v. Mullin 85NW 2nd 598.

32. Words and Phrases by John B. Saunders 3rd edition, vol. 4, p. 401, voluntary'' is defined as:

...the classic statement of the principle is that of Lord Sumner in Ibrahim v. Regem 1914 AC 599 where he said, ""it has long been established as a

positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to

be a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercise or held out

by a person in authority/The principle is as old as Lord Hale"". However, in five of the eleven textbooks cited to us... support is to be found for a

narrow and rather technical meaning of the word ""voluntary"". According to this view, ""voluntary"" means merely that the statement has not been

made in consequence of (i) some promise of advantage or some threat (ii) of a temporal character (iii) held out or made by a person in authority,

and (iv) relating to the charge in the sense that it implies that the accused''s position in the contemplated proceedings will or may be better or worse

according to whether or not the statement is made. R. v. Power (1966) 3 All ER 433 per Cantley, V.

33. A confessional statement is not admissible unless it is made to the Magistrate u/s 25 of the Evidence Act. The requirement of Section 30 of the

Evidence Act is that before it is made to operate against the co-accused the confession should be strictly established. In other words, what must be

before the Court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it

being the confession of the maker, it is not to be treated as evidence within the meaning of Section 3 of the Evidence Act against the non-maker

co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with the crime and that too as a corroborative

piece. It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against

such co-accused if it appears to effect him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it

should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with

regard to such a guilt. The evidence of co-accused cannot be considered u/s 30 of the Evidence Act, where he was not tried jointly with the

accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of a co-accused

does not come within the definition of evidence contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the

presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes

himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. Legislature provides that his statement may be considered

against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person

making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to

approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see

whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not

necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if

believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the

other evidence. This position has been clearly explained by this Court in 272497 . The exact scope of Section 30 was discussed by the Privy

Council in the case of AIR 1949 257 (Privy Council) The relevant extract from the said decision which has become locus classicus reads as

follows:

Section 30 applies to confessions, and not to statements which do not admit the guilt of the confessing party...But a confession of a co-accused is

obviously evidence of a very weak type.... It is a much weaker type of evidence than the evidence of an approver which is not subject to any of

those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, make it evidence

on which the Court may act but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The

confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other

evidence. The confession of the co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction"".

34. Kashmira Singh''s principles were noted with approval by a Constitution Bench of this Court in 280302 . It was noted that the basis on which

Section 30 operates is that if a person makes a confession implicating himself that may suggest that the maker of the confession is speaking the

truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the

maker, it is not likely that the maker would implicate himself untruly. So Section 30 provides that such a confession may be taken into

consideration even against the co-accused who is being tried along with the maker of the confession. It is significant however that like other

evidence which is produced before the Court is not obligatory on the Court to take the confession into account. When evidence as defined by the

Evidence Act is produced before the Court it as the duty of the Court to consider that evidence. What weight should be attached to such evidence

is a matter in the discretion of the Court. But the Court cannot say in respect of such evidence that it will just not take that evidence into account.

Such an approach can however be adopted by the Court in dealing with a confession because Section 30 merely enables the Court to take the

confession into account. Where, however, the Court takes it into confidence, it cannot be faulted. The principle is that the Court cannot start with

confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to

the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt

which the judicial mind is about the reach on some other evidence. That is the true effect of the provision contained in Section 30. We may note

that great stress was laid down on the so-called retraction of the makers of the confession. Apart from the fact that the same was made rafter

about two years of the confession, PWs. 81 and 82 have stated in Court as to the procedures followed by them, while recording the confession.

The evidence clearly establishes that the confessions were true and voluntary. That was not the result of any tutoring, compulsion or pressurization.

As was observed by this Court in 286281 , the Court is to apply double test for deciding the acceptability of a confession i.e. (i) whether the

confession was perfectly voluntary and (ii) if so, whether it is true and trustworthy. Satisfaction of the first test is a sine qua non for its admissibility

in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise, such as mentioned in Section 24 of

the Evidence Act, it must be excluded and rejected brevi manu. If the first test is satisfied, the Court must before acting upon the confession reach

the finding that what is stated therein is true and reliable. The Judicial Magistrate PWs. 81 and 82 have followed the requisite procedure. It is

relevant to further note that complaint was lodged before the Magistrate before his recording of the confessional statement of accused Md. Gulzar.

The complaint was just filed in Court and it was not moved. The name of the lawyer filing the complaint could not be ascertained either. This fact

has been noted by the Designated Court.

35. In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded

u/s 164 of the Code has to be given greater credence even if the confessional statement has not been recorded u/s 15 of the TADA Act.

However, we find substance in the stand of learned counsel for accused-appellants that Section 10 of the Evidence Act which is an exception to

the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement

made during the period when the agency subsisted. In 278750 , it was held that principle is no longer res integra that any statement made by an

accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common

intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common

intention. In other words, the post arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the

conspiracy, would not fall within the ambit of Section 10 of the evidence Act.

36. The first condition which is almost the opening lock of that provision is the existence of ""reasonable ground to believe"" that the conspirators

have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal

conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the

other, provided that should have been a statement ""in reference to their common intention"". Under the corresponding provision in the English law

the expression used is ""in furtherance of the common object"". No doubt, the words ""in reference to their common intention"" are wider than the

words used in English law (vide 283276 .

37. But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility u/s 10 if it was made ""in

reference"" to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlies in

Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy.

Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another

conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of

the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators u/s 10.

38. Way back in 1940, the Privy Council had considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in

AIR 1940 176 (Privy Council) had stated the legal position thus:

The words "common intention" signify a common intention existing at the time when the thing was said, done or written by one of them. Things

said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown

to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after

the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party.

39. Intention is the volition of mind immediately preceding the act while the object is the end to which effect is directed the thing aimed at and that

which one endeavours to attain and carry on. Intention implies the resolution of the mind while the object means the purpose for which the

resolution was made.

40. In Bhagwan Swamp''s case (supra), it was observed that the expression ''in reference to their common intention'' is wider than the words ''in

furtherance of the common intention'' and this is very comprehensive and it appears to have been designedly used to give it a wider scope than the

words ''in furtherance of in the English Law. But, once the common intention ceased to exist any statement made by a former conspirator thereafter

cannot be regarded as one made ''in reference to the common intention. therefore, a post arrest statement made to the police officer was held to be

beyond the ambit of Section 10 of the Evidence Act.

41. In 282685 , it was held:

The principle underlying the reception of evidence u/s 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against

the other is on the theory of agency. The rule in Section 10 of the Evidence Act confines that principle of agency in criminal matters to the acts of

the co-conspirator within the period during which it can be said that the acts were ''in reference to their common intention'' that is to say ''things

said, done or written while the conspiracy was on foot'' and ''in carrying out the conspiracy''. It would seem to follow that where the charge

specified the period of conspiracy evidence of acts of co-conspirators outside the period is not receivable in evidence.

42. In a given case, however, if the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of a

criminal conspiracy continues and Section 10 of the Evidence Act applies. In other words, it cannot be said to be a rule of universal application.

The evidence in each case has to be tested and the conclusions arrived at. In the present case, the prosecution has not led any evidence to show

that any particular accused continued to be a member of the conspiracy after his arrest. Similar view was expressed by this Court in 297646 .

43. It was urged with some amount of vehemence by the learned counsel for the appellants that no terrorist act was involved.

44. While dealing with an accused tried under the TADA, certain special features of the said Statute need to be focused. It is also necessary to find

out the legislative intent for enacting it. It defines ""terrorist acts"" in Section 2(h) with reference to Section 3(1) and in that context defines a terrorist.

It is not possible to define the expression ''terrorism'' in precise terms. It is derived from the word ''terror''. As the Statement of Objects and

Reasons leading to enactment of the TADA is concerned, reference to the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter

referred to as the ''Old Act'') is necessary. It appears that the intended object of the said Act was to deal with persons responsible for escalation of

terrorist activities in many parts of the country. It was expected that it would be possible to control the menace within a period of two years, and

life of the Act was restricted to the period of two years from the date of its commencement. But noticing the continuance of menace, that too on a

larger scale TADA has been enacted. Menace of terrorism is not restricted to our country, and it has become a matter of international concern and

the attacks on the World Trade center and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December,

2001 shows how grim the situation is, TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary

penal law. Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the

facts of each case. As was noted in 295543 , for finding out the intention of the accused, there would hardly be a few cases where there would be

direct evidence. It has to be mainly inferred from the circumstances of each case.

45. In 258712 , this Court observed that:

the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under TADA or not is whether

it was done with the intent to overawe the Government as by law established or to strike terror in the people etc. A ''terrorist'' activity does not

merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity is to be one that it travels beyond the

capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. It is in essence a deliberate and systematic use of

coercive intimidation"".

46. As was noted in the said case, it is a common feature that hardened criminals today take advantage of the situation and by wearing the cloak of

terrorism, aim to achieve acceptability and respectability in the society; because in different parts of the country affected by militancy, a terrorist is

projected as a hero by a group and often even by many misguided youth. As noted as the outset, it is not possible to precisely define ""terrorism"".

Finding a definition of ""terrorism"" has haunted countries for decades. A first attempt to arrive at an internationally acceptable definition was made

under the League of Nations, but the convention drafted in 1937 never came into existence. The UN Member States still have no agreed-upon

definition. Terminology consensus would, however, be necessary for a single comprehensive convention on terrorism, which some countries favour

in place of the present 12 piecemeal conventions and protocols. The lack of agreement on a definition of terrorism has been a major obstacle to

meaningful international countermeasures. Cynics have often commented that one State''s ""terrorist"" is another State''s ""freedom fighter"". If

terrorism is defined strictly in terms of attacks on non-military targets, a number of attacks on military installations and soldiers'' residence could not

be included in the statistics. In order to cut through the Gordian definitional knot, terrorism expert A. Schmid suggested in 1992 in a report for the

then UN crime Branch that it might be a good idea to take the existing consensus on what constitutes a ""war crime"" as a point of departure. If the

core of war crimes-deliberate attacks on civilians, hostage taking and the killing of prisoners- is extended to peacetime, we could simply define

acts of terrorism as ""peacetime equivalents of war crimes.

League of Nations Convention 91937):

All criminal acts directed against a State along with intended or calculated to create a statute of terror in the minds of particular persons or a group

of persons or the general public"".

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

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

2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for

political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious

or other nature that may be invoked to justify them"".

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

Act of Terrorism = Peacetime Equivalent of War Crime

4. Academic Consensus Definition:

Terrorism is an anxiety-inspiring of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic,

criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human;

victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target

population, and serve as message generators. Threat- and violence- based communication processes between terrorist (organization), (imperiled)

victims, and main targets are used to manipulate the main target (audience (s)), turning it into a target of terror, a target of demands, or a target of

attention, depending on whether intimidation, coercion, or propaganda is primarily sought"" (Schmid, 1988).

Definitions:

47. Terrorism by nature is difficult to define. Acts of terrorism conjure emotional responses in the victims (those hurt by the violence and those

affected by the fear) as well as in the practitioners. Even the U.S. government cannot agree on one single definition. The old adage, ""One man''s

terrorist is another man''s freedom fighter"" is still alive and well. Listed below are several definitions of terrorism used by the Federal Bureau of

Investigation.

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

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

Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to

gain a political or tactical advantage, usually to influence an audience. - James M. Poland

Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to

intimidate or coerce a government, individuals or groups, or to modify their behavior or politics.- Vice-President''s Task Force, 1986

Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any

segment thereof, in furtherance of political or social objectives.- FBI Definition

48. Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established

order and are a revolt against a civilised society. ''Terrorism'' has not been defined under TADA nor is it possible to give a precise definition of

''terrorism'' or lay down what constitutes ''terrorism''. It may be possible to describe it as use of violence when its most important result is not

merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the

society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and

reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the

land and its main objective is to overawe the Government or disturb harmony of the society or ''terrorise'' people and the society and not only

those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity.

49. In the background of what we have said about terrorist''s acts (supra), plea of accused-appellants is clearly unacceptable. As was observed by

this Court when earlier the matter was before it in the prosecution''s appeal questioning the quashing of order of sanction and application of TADA,

the preparation of bombs and possession of bombs would tantamount to terrorizing the people. Credible evidence proves it to be a terrorist act.

The explosion of large number of live bombs is a clear indication of conspiracy. It was further held that it cannot be contended that if the bombs

are for self defence there was no mens rea. Preparation and storage of bombs are per se illegal acts.

50. Further question is when the right of private defence arises. It never commences before a reasonable apprehension arises in the mind of the

accused. Here there was no evidence that there was an indication about attack on the Muslims and, therefore, the question of any reasonable

apprehension does not arise. The cover of self-protection when pierced unravels a sinister design to unleash terror.

51. As was observed by this Court in 274546 , the right of self defence commences not before a reasonable apprehension arises in the mind of the

accused.

52. As was observed by this Court in 276777 right is not available if there is sufficient time for recourse to a public authority. There was no scope

for interfering the so-called view of the accused persons that police may not help them. That occasion had not arisen.

53. On the question of applicability of Sections 3 and 4 of the Explosive Act and the true intent, we only need to refer to Corpus Juris Secundum

(A Contemporary Statement of American Law), Volume 22. It is held at page 116 (Criminal Law) as under:

Intention

(a) In general

(b) Specific or general intent crimes

(a) In general.- As actual intent to commit the particular crime toward which the act moves is a necessary element of an attempt to commit a crime.

Although the intent must be one in fact, not merely in law, and may not be inferred from the overt act alone, it may be inferred from the

circumstances.

As regards motive in American Jurisprudence, 2nd Edn., Vol. 21, in Section 133, it is stated as under:

133. Motive- In criminal law motive may be defined as that which leads or tempts the mind to indulge in a criminal act or as the moving power

which impels to action for a definite result.

54. In view of our conclusions that charges under Sections 3(2)(1) and 3(3) of TADA Act and Section 120B IPC are clearly established, we do

not think it necessary to go through a hair splitting approach vis-a-vis Sections 3 and 4 of the Explosive Act. Even if it is accepted that Section 3 of

the Act was not applicable and what was applicable is Section 4 of the Explosive Act yet it can only be the question of sentence which can be

imposed. As the charge is for higher offence, conviction of lesser offence is permissible. As we are upholding the award to life sentence for the

offences under Sections 120B IPC and Section 3(2)(1) and Section 3(3) of the TADA Act, any reduction in Sentence from 10 years to 7 years

(in the background of Sections 3 and 4 of the Explosive Act) is really of no consequence. The appeals filed by the accused persons deserves to be

dismissed, and we so direct.

55. Coming to the appeal filed by the prosecution against the acquittal in respect of charges u/s 302/34 and Section 436/34 IPC, learned counsel

for the prosecution fairly stated, and in our opinion rightly, that the acquittal is justified. Though, it was submitted by Mr. K.T.S. Tulsi that higher

sentences would have been more appropriate in respect of established offences, we do not think it necessary to go into that question in absence of

an appeal by the prosecution in that regard. The appeal filed by the State is accordingly dismissed. In the result, all the seven appeals stand

dismissed.

56. Before parting with the case, we may point out that the Designated Court deferred the cross examination of the witnesses for a long time. That

is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a grievance that accused persons get a time to get

over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code.

When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the Trial Court should not adjourn the matter

on mere asking. These aspects were highlighted by this Court in 275807 and 273966 . In Shambhu Nath Singh"s case (supra) this Court

deprecated the practice of courts adjourning cases without examination of witnesses when they are in attendance with following observations:

9. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the

witnesses could attend the court only at heavy, cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of

income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss

incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from

morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the

presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty.

No sadistic pleasure, in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers,

can be a persuading factor for granting such adjournments lavishly, that too in a casual manner.

57. In N.G. Dastane case (supra) the position was reiterated. The following observations in the said case amply demonstrate the anxiety of this

Court in the matter:

An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate

concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do

so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They

cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate

has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking

adjournments for postponing the examination of the witnesses who are present in court even without making other arrangements for examining such

witnesses is a dereliction of an advocate"s duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if

repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures.

Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.

It would be desirable for the Courts to keep these aspects in view. Appeals are dismissed, as noted above.