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(1999) 5 Supreme Court Cases 253

(BEFORE K.T. THOMAS, D.P. WADHWA AND SYED SHAH MOHAMMED QUADRI, JJ.)

Death Reference Case No. 1 of 1998 (@ D. No. 1151 of 1998)

STATE THROUGH SUPERINTENDENT OF POLICE, CBI/SIT .. Appellant;

Versus

NALINI AND OTHERS .. Respondents.

With

Criminal Appeal No. 321 of 1998

T. SUTHENDRARAJA ALIAS SANTHAN AND OTHERS .. Appellants;

Versus

STATE BY D.S.P., CBI, SIT, CHENNAI .. Respondents.

And

Criminal Appeal No. 322 of 1998

P. RAVICHANDRAN AND OTHERS .. Appellants;

Versus

STATE BY D.S.P., CBI, SIT, CHENNAI .. Respondents.

And

Criminal Appeal No. 323 of 1998

ROBERT PAYAS AND OTHERS .. Appellants;

Versus

STATE BY D.S.P., CBI, SIT, CHENNAI .. Respondents.

And

Criminal Appeal No. 324 of 1998

S. SHANMUGAVADIVELU .. Appellant;

Versus

STATE OF D.S.P., CBI, SIT, CHENNAI .. Respondents.

And

Criminal Appeal No. 325 of 1998

S. NALINI AND OTHERS .. Appellants;

Versus

STATE BY D.S.P., CBI, SIT, CHENNAI .. Respondents.

Death Reference Case No. 1 of 1998 (@ D. No. 1151 of 1998)† with Criminal Appeals No. 321 of 1998 with No. 322 of 1998 with No. 323 of 1998 with No. 324 of 1998 with No. 325 of 1998, decided on May 11, 1999

A. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 3, 4 & 15 — Penal Code, 1860 — S. 302 r/w S. 120-B — Criminal Procedure Code, 1973 — Ss. 354(3) & 235(2) — Evidence Act, 1872 — Ss. 10 & 30 —**

† Under Section 366 Criminal Procedure Code

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Rajiv Gandhi assassination case — Charges framed against 26 accused-appellants under TADA, IPC and other Acts viz. Foreigners Act, Explosive Substances Act, Arms Act, Passport Act, Wireless Telegraphy Act — Incident result of a criminal conspiracy — Confession made by an accused under S. 15 TADA Act is admissible as against co-accused also — Offences under Ss. 3 and 4 of TADA Act not made out — Even so confession of the accused recorded under S. 15 will continue to be admissible in trial for offences under S. 302 r/w S. 120-B IPC as well as under other laws — S. 10 of Evidence Act not applicable on facts — But offence under S. 302 r/w S. 120-B IPC made out against 7 out of 26 accused-appellants and their conviction thereunder confirmed — Conviction under other laws not challenged by the accused — Though Designated Court sentenced all the accused to death, but having regard to the crime and the criminals as also aggravating and mitigating circumstances, death sentence awarded to four of the seven convicted accused (including a woman) confirmed — Sentence of the remaining 3 convicts altered to life imprisonment

On the night of 21-5-1991 Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb. With him 15 persons including 9 policemen died and 43 suffered grievous or simple injuries. Assassin Dhanu, an LTTE (Liberation Tigers of Tamil Eelam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer (and also a conspirator) engaged to take photographs of the horrific sight, also died in the blast. This incident was a result of a conspiracy.

While in office as Prime Minister of India, Shri Rajiv Gandhi, to bring about a settlement of disputes between Tamil-speaking ethnic minority and Government of Sri Lanka, signed the Indo-Sri Lankan Accord on 22-7-1987 under which the Government of India took upon itself certain role. LTTE was among the signatories to that Accord. In discharge of its obligation under the Accord, the Government of India sent the Indian Peace-Keeping Force (IPKF) to Sri Lanka to disarm LTTE. This fact together with the alleged atrocities of IPKF against Tamilians in Sri Lanka and non-cooperation of Government of India with LTTE, at what is termed as the hour of their need, gave rise to grouse which culminated in plotting of a conspiracy to assassinate Shri Rajiv Gandhi, which was put through on the fateful day, 21-5-1991.

The camera which Haribabu had, was found intact on his body at the scene of the crime. The film in the camera when developed led to unfolding of the dastardly act committed by the accused and others. A charge of conspiracy for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946, and the Indian Wireless Telegraphy Act, 1933 was laid against 41 persons, 12 of whom were already dead having committed suicide and three absconded. Remaining 26 faced the trial before the Designated Court. They were: A-1 (S. Nalini), A-2 (T. Suthendraraja @ Santhan), A-3 (Sriharan @ Murugan @ Thas @ Indu Master), A-4 (Shankar @ Koneswaran @ Russo), A-5 (D. Vijayanandan @ Hari Ayya), A-6 (Sivaruban @ Suresh @ Suresh Kumar @ Ruban), A-7 (S. Kanagasabapathy @ Radhayya), A-8 (A. Chandralekha @ Athirai @ Sonia @ Gauri @ Sasikala), A-9 (B. Robert Payas @ Kumaralingam), A-10 (S. Jayakumar @ Jayakumaran @ Jayam), A-11 (J. Shanthi), A-12 (S. Vijayan @ Perumal Vijayan Veedu), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran @

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Velayudam), A-15 (S. Shanmugavadivelu @ Thambi Anna), A-16 (P. Ravichandran @ Ravi @ Pragasam @ Prakash), A-17 (M. Suseendran @ Mahesh), A-18 (G. Perarivalan @ Arivu), A-19 (S. Irumborai @ Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram @ Subba Sundaram), A-23 (K. Dhanasekaran @ Raju @ K. Prakash), A-24 (N. Rajasuriya @ Rangan), A-25 (T. Vigneswaran @ Vicky), A-26 (J. Ranganath). Thirteen of these accused are Sri Lankans and an equal number comprises of Indians. Three absconding accused are (*1*) Prabhakaran, (*2*) Pottu Omman @ Shanmuganathan Sivasankaran and (*3*) Akila @ Akilakka. Prabhakaran is alleged to be the supreme leader of LTTE who along with Pottu Omman, Chief of Intelligence Wing of LTTE, Akila, Deputy Chief of Women Wing of LTTE, and others designed the criminal conspiracy to assassinate Rajiv Gandhi and commit other offences in pursuance thereof.

Prosecution case is that Prabhakaran, Pottu Omman, Akila and Sivarasan masterminded and put into operation the plan to kill Rajiv Gandhi which was executed by Sivarasan, and Dhanu, one of the two assassins (other being Suba), with the back-up of other accused, who conspired and abetted them in the commission of the crime which included providing them a safe haven before and after the crime. Charge of conspiracy states that 26 accused and those absconding, deceased and others, are charged with having entered into criminal conspiracy between July 1987 and May 1992 at various places in Sri Lanka and India to do or cause to be done illegal acts, namely:

1. to infiltrate into India clandestinely,
2. to carry and use unauthorised arms, ammunition and explosives,
3. to set up and operate unauthorised wireless sets to communicate with LTTE leaders in Sri Lanka from time to time,
4. to cause and carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India by use of bombs, explosives and lethal weapons so as to scare and create panic by such acts in the minds of the people and thereby to strike terror in the people,
5. in the course of such acts to assassinate Rajiv Gandhi, former Prime Minister of India and others, who were likely to be with him,
6. to cause disappearance of evidence thereof and to escape,
7. to screen themselves from being apprehended,
8. to harbour the accused and escape from the clutches of law, and
9. to do such other acts as may be necessary to carry out the object of the criminal conspiracy as per the needs of the situation,

and in pursuance of the said criminal conspiracy and in furtherance of the same to carry out the object of the said criminal conspiracy:

(I) Santhan (A-2), Murugan (A-3), Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Athirai (A-8), Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13), Bhaskaran (A-14), Rangan (A-24) and Vicky (A-25) along with the deceased accused Sivarasan, Dhanu, Suba, Nero, Gundu (Trichy) Santhan, Suresh Master, Dixon, Amman, Driver Anna and Jamuna infiltrated into India from Sri Lanka clandestinely and otherwise on different dates during the said period of criminal conspiracy;

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(II) Shanmugham (DA) amongst them arranged to receive, accommodated and rendered all assistance to the members of the conspiracy;

(III) Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) after having come over to India secured houses at Porur and Kodungaiyur in Madras at the instance of Sivarasan (DA) for accommodating one or the other co-conspirators from time to time and for chalking out the modalities of the course of action to be followed for the achievement of the object of the said criminal conspiracy;

(IV) Nero (DA) established contacts with Prabhakaran (absconding) through Pottu Omman (absconding) through illegally operated wireless sets brought into India by Sivarasan (DA) through illicit channel from the house of Vijayan (A-12);

(V) Kanagasabapathy (A-7) and Athirai (A-8) came to India through illicit channel and set up hideouts in Delhi;

(VI) Sivarasan (DA) brought Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with the deceased accused Dhanu, Suba, Nero and Driver Anna to Kodiakkarai and got them all accommodated in several places in Tamil Nadu to be of assistance in carrying out the object of criminal conspiracy;

(VII)(*a*) Arivu (A-18) visited Jaffna and other places in Sri Lanka along with Irumborai (A-19) clandestinely in June 1990, purchased a Kawasaki motorcycle on 4-5-1991 at Madras to facilitate quick movement of himself and one or the other of the co-conspirators,

(*a*-1) arranged payment for printing the compilation described as *Satanic Force* and sent one copy of the same to Prabhakaran (absconding) through Sivarasan (DA) and another set through Murugan (A-3),

(*b*) purchased and provided a battery for operating the wireless apparatus and other two battery cells, which were used as detonator in the belt bomb used by Dhanu (DA) for the murder of Rajiv Gandhi and 15 others;

(VIII) Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with Driver Anna (DA) rendered all assistance necessary therefor;

(IX) Sivarasan decided to murder Rajiv Gandhi, former Prime Minister of India in the public meeting to be held at Sriperumbudur on 21-5-1991 on learning that Rajiv Gandhi was to address the meeting on the said day and finalised the method of operation to murder him by enlisting the services of Nalini (A-1) to be of help at the scene of crime;

(X) Arivu (A-18) handed over the film roll for the purposes of taking photographs of the events to Haribabu (DA), who also purchased a sandalwood garland from Poompuhar Handicrafts, Mount Road, Madras to be used for garlanding Rajiv Gandhi at the scene of occurrence by Dhanu (DA) so as to gain access to the VVIP under the guise of garlanding;

(XI) Dhanu equipped herself with the necessary apparel in order to hide a belt bomb and detonator attached thereto for detonating the same when she was in close proximity to Rajiv Gandhi;

(XII) Haribabu (DA) met Subha Sundaram (A-22) on 21-5-1991 and thereafter took a Chinon camera from a friend for taking photographs at the scene of offence and loaded the camera with the film already provided by Arivu (A-18);

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(XIII) Nalini (A-1) along with the deceased accused Sivarasan, Dhanu and Suba met Haribabu at Parry's Corner, Broadway Bus-Stand and proceeded to the venue of the public meeting at Sriperumbudur on the evening of 21-5-1991 where Nalini (A-1) provided cover to Dhanu and Suba and when Rajiv Gandhi arrived at the scene of occurrence at about 10.10 p.m. Dhanu gained nearer access to Rajiv Gandhi and while in close proximity to Rajiv Gandhi, Dhanu detonated the improvised explosive device kept concealed in her waist belt at about 10.20 p.m. resulting in the blast and assassinated Rajiv Gandhi and 15 others and also killed herself (Dhanu) and also caused the death of Haribabu accused and caused injuries to 43 persons;

(XIV) Nalini (A-1) along with the deceased accused Sivarasan and Suba immediately fled from the scene of occurrence, reached the house of Jayakumar (A-10) and Shanthi (A-11) and took shelter in Jayakumar's (A-10) house;

(XV) Subha Sundaram (A-22) attempted to retrieve the camera used by Haribabu from the scene of occurrence, caused destruction of documents and material objects linking Haribabu in this case and arranged to issue denial in the press about any connection of the said Haribabu with LTTE;

(XVI) Bhagyanathan (A-20) and Padma (A-21) rendered all assistance and harboured the deceased accused Sivarasan and Suba, Murugan (A-3) and Arivu (A-18);

(XVII) Nalini (A-1), Murugan (A-3) and Padma (A-21) accompanied the deceased accused Sivarasan and Suba to Tirupathi, where Nalini (A-1) did "Angapradakshanam";

(XVIII) Nalini (A-1) and Murugan (A-3) hid themselves in different places in Tamil Nadu and Karnataka State in order to evade arrest;

(XIX) Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) harboured the deceased accused Sivarasan, Suba and Nero by transporting them and concealing them inside a tanker lorry bearing No. TN-27-Y-0808 belonging to Dhanasekaran (A-23) from Madras to Bangalore;

(XX) Nero (DA) operated the wireless set and communicated with the absconding accused Prabhakaran and Pottu Omman and conveyed the developments on behalf of the accused Sivarasan;

(XXI) the deceased accused Nero, Gundu Santhan, Suresh Master, Dixon, Amman and Driver Anna rendered all assistance to the deceased accused Sivarasan;

(XXII) Rangan (A-24) rendered all assistance to Sivarasan and others by transporting them in a Maruti Gypsy to Bangalore and other places in Karnataka purchased by Dhanasekaran (A-23) using LTTE funds;

(XXIII) Ranganath (A-26) harboured the accused Rangan (A-24) and the deceased accused Sivarasan, Suba, Nero, Suresh Master, Amman, Driver Anna and Jamuna at Konanakunte, Bangalore and on 19-8-1991 the deceased accused Sivarasan, Suba, Nero, Suresh Master, Amman, Driver Anna and Jamuna committed suicide;

(XXIV) Shanmugavadivelu @ Thambi Anna (A-15) rendered financial assistance to Sivarasan and to one or the other of the co-conspirators to carry out the object of conspiracy and abetted the commission of the said offence;

(XXV) Nalini (A-1) to Ranganath (A-26) caused the disappearance of evidence of murder of Rajiv Gandhi;

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and thereby Nalini (A-1) to Ranganath (A-26) committed offences punishable under Section 120-B of IPC read with Sections 302, 326, 324, 201, 212 and 216 of IPC; Sections 3, 4 and 5 of the Explosive Substances Act of 1908; Section 25 of the Arms Act of 1959; Section 12 of the Passport Act, 1967; Section 14 of the Foreigners Act, 1946; Section 6(1-A) of the Wireless Telegraphy Act, 1933 and Sections 3, 4 and 5 of TADA of 1987.

To bring home the guilt of the accused in respect of the charges framed against each of them, the prosecution placed on record confessions of seventeen accused and also a plethora of evidence. Confessions were recorded purportedly under Section 15 of TADA by the Superintendent of Police, CBI/SPG who was deputed in the Special Team of Investigation.

The Designated Court, on consideration of the material placed before it, found all the twenty-six accused guilty of all the charges framed against them and awarded punishment of fine of varying amounts, rigorous imprisonment of different periods and sentenced all of them to death. The Designated Court referred the case to the Supreme Court for confirmation of death sentence of all the convicts. The convicts filed appeals against their conviction for various offences and the sentence awarded to them. These cases were heard together.

The Senior Advocate who appeared for all the accused except Shanmugavadivelu @ Thambi Anna (A-15) submitted that he was not challenging the convictions of various accused under the Foreigners Act, Passport Act, Explosive Substances Act, Indian Wireless Telegraphy Act, Arms Act and Sections 212 and 216 IPC. This he said was on account of the fact that for offences under these Acts the accused were awarded sentence of imprisonment for two years or for a period less than two years which in any case had to be set off under Section 428 of the Code as they had been under detention throughout the period during trial. Thus only offences under Sections 120-B IPC, 302/34 IPC, 326/34 IPC, 324/34 IPC and under Sections 3, 4 and 5 of TADA are to be considered.

ORDER OF THE COURT

The conviction and sentence passed by the trial court of the offences of Section 3(3), Section 3(4) and Section 5 of the TADA Act are set aside in respect of all those appellants who were found guilty by the trial court under the said counts. (Para 732)

The conviction and sentence passed by the trial court of the offences under Sections 212 and 216 of the Indian Penal Code, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substances Act, Section 12 of the Passport Act and Section 6(1-A) of the Wireless Telegraphy Act, 1933, in respect of those accused who were found guilty of those offences, are confirmed. If they have already undergone the period of sentence under those counts it is for the jail authorities to release such of those against whom no other conviction and sentence exceeding the said period have been passed. (Para 733)

The conviction for the offence under Section 120-B read with Section 302 Indian Penal Code as against A-1 (Nalini), A-2 (Santhan @ Raviraj), A-3 (Murugan @ Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran @ Ravi) and A-18 (Perarivalan @ Arivu) is confirmed.

(Para 734)

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The conviction and sentence of the offences under Section 302 read with Section 120-B passed by the trial court on the remaining accused are set aside. (Para 735)

The sentence of death passed by the trial court on A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed. The death sentence passed on A-9 (Robert), A-10 (Jayakumar) and A-16 (Ravichandran) is altered to imprisonment for life. The Reference is answered accordingly. (Para 736)

In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu), all the remaining appellants shall be set at liberty forthwith. (Para 737)

I. TADA ACT, 1987

B. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 15 & 21 — Evidentiary value of confession recorded by Police Officer under S. 15 against its maker and against a co-accused, abettor or conspirator — Effect of non obstante clause in S. 15(1) — S. 30 of Evidence Act whether excluded thereby — Effect of addition of words "or co-accused, abettor or conspirator" in sub-section (1) of S. 15 and deletion of cls. (c) and (d) of S. 21 by Amending Act 43 of 1993 — Words 'substantive evidence' — Meaning of — Words "shall presume" in S. 21(1) — Connotation of — Held, (per majority, Thomas, J. contra) confession of an accused is admissible as a substantive evidence against himself as well as against a co-accused, abettor or conspirator — But as a matter of prudence court should require some corroboration of confession when used against a co-accused — Decision in *Kalpnath Rai* v. *State* overruled — Words and phrases — Evidence Act, 1872, S. 30 — Confession under S. 15 TADA Act**

C. **Evidence Act, 1872 — S. 30 — Conditions for applicability of — Difference between S. 30 and S. 15 of TADA Act**

It was contended by the defence counsel that even if the confession of an accused is admissible under Section 15 of TADA it is not a substantive piece of evidence and cannot be used against a co-accused unless it is corroborated in material particulars by other evidence. Confession of one accused cannot corroborate the confession of another. In support of his submission, he referred to another two-Judge Bench decision in *Kalpnath Rai* v. *State*, (1997) 8 SCC 732 where the Supreme Court said that confession under Section 15 of TADA cannot be used as substantive evidence and that it has only corroborative value. The Additional Solicitor General submitted that the statement of law as spelled out in para 75 of the judgment in *Kalpnath Rai case* needs reconsideration. He said that what Section 15 contains is a non obstante clause and it applies notwithstanding the provisions of the Evidence Act and the Code.

Held :

Per Wadhwa, J.

Section 15 TADA starts with a non obstante clause. It says that neither the Evidence Act nor the Code of Criminal Procedure will apply. This is certainly a departure from the ordinary law. When the legislature enacts that the Evidence Act would not apply, it would mean all the provisions of the Evidence Act including Section 30. By judicial interpretation or judicial rigmarole, the court cannot again bring into operation Section 30 of the Evidence Act and any such attempt would not appear to be quite warranted. TADA was enacted to meet extraordinary situation existing in the country. Its departure from the law relating to confession as contained in the Evidence Act is deliberate. Law has to respond

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to the reality of the situation. What is admissible is the evidence. Confession of the accused is admissible with the same force in its application to the co-accused who is tried in the same case. It is primary evidence and not corroborative. It must, therefore, be held that under Section 15 of TADA confession of an accused is admissible against a co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached to a confession will fall within the domain of appreciation of evidence. As a matter of prudence, the court may look for some corroboration if confession is to be used against a co-accused though that will again be within the sphere of appraisal of evidence. (Paras 415 to 417, 421 and 424)

Kashmira Singh v *State of M.P.*, AIR 1952 SC 159 : 1952 SCR 526, *Haricharan Kurmi* v. *State of Bihar*, AIR 1964 SC 1184 : (1964) 6 SCR 623, *referred to*

Kalpnath Rai v. *State*, (1997) 8 SCC 732, *doubted*

Bhuboni Sahu v *R.*, AIR 1949 PC 257 : 50 Cri LJ 872, *distinguished*

Nathu v *State of U.P.*, AIR 1956 SC 56 : 1956 Cri LJ 152, *cited*

Per Quadri, J. (concurring)

An analysis of sub-section (1) of Section 15 shows that it has two limbs. The first limb bars application of provisions of the Code of Criminal Procedure and the Indian Evidence Act to a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by him in any of the modes noted in the section. The second limb makes such a confession admissible, dehors the provisions of the Evidence Act in the trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act or rules made thereunder provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused. The import of Section 15(1) is that insofar as the provisions of CrPC and the Evidence Act come in conflict with either recording of a confession of a person by a police officer of the rank mentioned therein, in any of the modes specified in the section, or its admissibility at the trial, they will have to yield to the provision of Section 15(1) of the TADA Act as it is given overriding effect. (Para 675)

Thus, Sections 162, 164, 281 and 463 of the Code of Criminal Procedure which have a bearing on the question of recording of statement/confession of a person and Sections 24 to 30 of the Evidence Act which deal with various aspects of confession of an accused stand excluded vis-à-vis Section 15(1) of the TADA Act and cannot be called in aid to invalidate recording of confession of an accused by a police officer of the specified rank and/or its admissibility in the trial of the co-accused, abettor or conspirator charged and tried in the same case together with the accused for an offence under the TADA Act or rules made thereunder. It must be made clear that the non obstante clause in Section 15(1) of the TADA Act does not exclude the application of all the provisions of the CrPC and the Indian Evidence Act in the trial of offences under the TADA Act. (Para 676)

Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording the confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act. (Para 688)

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Kalpnath Rai v. *State*, (1997) 8 SCC 732 : 1998 SCC (Cri) 134, *dissented from*

There is no provision in the Evidence Act for making confession of an accused relevant or admissible against the co-accused. In the setting of those provisions Section 30 of the Evidence Act is enacted which is a clear departure from the principles of English law. A plain reading of Section 30 of the Evidence Act discloses that when the following conditions exist, namely, (*i*) more persons than one are being tried jointly; (*ii*) the joint trial of the persons is *for the same offence*; (*iii*) a confession is made by one of such persons (who are being tried jointly for the same offence); (*iv*) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); and (*v*) such a confession is proved in court, *the court may take into consideration such confession against the maker thereof as well as against such persons* (who are being jointly tried for the same offence). The expression "may take into consideration" means that the use of the evidence of confession of an accused may be used for purposes of corroborating the evidence on record against the co-accused and that no conviction can be based on such confession.

(Paras 692, 685 and 697)

There is difference between Section 30 of the Indian Evidence Act and Section 15(1) of the TADA Act. Though both Section 30 of the Evidence Act as well as Section 15 of the TADA Act require joint trial of the accused making confession and the co-accused, abettor or conspirator, but whereas the former provision requires that the maker of the confession and others should be tried jointly for the *same offence*, the latter provision does not require that joint trial should be for the same offence. Another point of distinction is that under Section 30 of the Evidence Act, the court is given discretion *to take into consideration the confession against the maker as well as against those who are being tried jointly for the same offence*, but Section 15(1) of the TADA Act mandates that confession of an accused recorded thereunder *shall be admissible in the trial of the maker of confession or co-accused, abettor or conspirator*, provided the co-accused, abettor or conspirator is charged and tried with the accused in the same case. (Para 687)

Bhuboni Sahu v. *R.*, AIR 1949 PC 257 : 50 Cri LJ 872; *Kashmira Singh* v. *State of M.P.*, AIR 1952 SC 159 : 1952 SCR 526; *Haricharan Kurmi* v. *State of Bihar*, AIR 1964 SC 1184 : (1964) 6 SCR 623, *relied on*

It has to be presumed that Parliament was aware of the interpretation placed by the courts including the Privy Council and the Supreme Court on Section 30 of the Evidence Act but chose to frame Section 15 differently obviously intending to avoid the meaning given to the phrase "the court may take into consideration such confession as against such other person ..." used in Section 30 of the Evidence Act. On the language of Section 15(1), it is clear that the intention of Parliament is to make the confession of an accused substantive evidence both against the accused as well as the co-accused.

(Paras 701, 679 to 682)

Before the amendment of Sections 15 and 21, the sweep of the legal presumption contained therein was that in a prosecution for any offence under sub-section (1) of Section 3 of the TADA Act on proof of the facts mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (1) of Section 21, it was mandated that the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence. The presumption is, however, rebuttable so the burden of showing that the offence was not committed would shift to the

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accused. The normal presumption in criminal cases is that till it is proved to the contrary the accused will be deemed to be innocent and that position is altered by Section 21(1). After deletion of clauses (*c*) and (*d*) by Act 43 of 1993 the statutory presumption under Section 21(1) will not apply to situations where a confession is made by a co-accused that the accused had committed the offence [clause (*c*)] or where the accused himself made a confession of the offence to any person other than a police officer [clause (*d*)] and the normal rule of presumption of innocence of the accused will apply. What was in the realm of "as proved" has after the amendment become only substantive evidence admissible as against the co-accused. "Substantive evidence" of a fact by itself does not amount to "proof of that fact". There is no presumption in law that substantive evidence of a fact has to be treated as proof of that fact.
(Paras 698, 700 and 702)

After the amendment of Section 21(1), the confession of an accused recorded by the police officer under Section 15(1) of the TADA Act is in the same position as that recorded by a Magistrate under Section 164 CrPC and it cannot be placed on a higher pedestal in regard to its evidential value. If that be so, in a trial under the TADA Act when there are two categories of confessions — one a judicial confession recorded by a Magistrate under Section 164 CrPC and the other by a police officer under Section 15(1) of the TADA Act, the court will have to give the same evidential value to such confessions as against the co-accused. (Para 703)

If the expression "substantive evidence" is understood in the sense of evidence of a fact in issue or a relevant fact and not proof of what it contains and that it has to be evaluated by the court like any other category of evidence no difficulty arises. The difficulty will, however, arise if "substantive evidence" is equated with the position flowing from the application of legislative mandate by incorporating "shall presume" as brother Thomas, J. has indicated in his judgment as that will, in my view, nullify the effect of legal presumption in Section 21(1) of the TADA Act. I, therefore, respectfully differ from the view taken by the Bench in *Kalpnath Rai case* and brother Thomas, J. in his judgment in this case and in respectful agreement with the view expressed by brother Wadhwa, J. in his judgment that a confession of an accused under Section 15(1) of the TADA Act is substantive evidence against the co-accused, abettor or conspirator jointly tried with the accused. (Para 704)

Black's Law Dictionary, p. 1597; *Words and Phrases*, Vol. 40, *relied on*

Wigmore on Evidence, para 866, Third Edn., *Treatise on the Law of Evidence*, Vol. 1, Twelfth Edn , by Taylor in para 865: *Principles and Digest of the Law of Evidence*, Vol. 1, New Edn , *relied on*

State v Wallace, NCA pp. 283 SE 2d 404, 407; *Zimmerman* v. *Superior Court In and For Maricopa County*, 402 P 2d 212, 215, 98, Ariz 85, 18 ALR 3d 900, *cited*

Kalpnath Rai v *State*, (1997) 8 SCC 732, *dissented from*

But I wish to make it clear that even if confession of an accused as against a co-accused tried with the accused in the same case is treated as "substantive evidence" understood in the limited sense of fact in issue or relevant fact, the rule of prudence requires that the court should examine the same with great care keeping in mind the following caution given by the Privy Council in *Bhuboni Sahu case* which has been noted with approval by the Supreme Court in *Kashmira Singh*: "This tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions, and it is very difficult for the court to guard the danger." (Para 705)

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Bhuboni Sahu v. *R.*, AIR 1949 PC 257 : 50 Cri LJ 872; *Kashmira Singh* v. *State of M.P.*, AIR 1952 SC 159 : 1952 SCR 526, *relied on*

It is also to be borne in mind that the evidence of confession of a co-accused is not required to be given on oath, nor is it given in the presence of the accused, and its veracity cannot be tested by cross-examination. Though the evidence of an accomplice is free from these shortcomings yet an accomplice is a person who having taken part in the commission of offence, to save himself, betrayed his former associates and placed himself on a safer plank — "a position in which he can hardly fail to have a strong bias in favour of the prosecution", the position of the accused who has given confessional statement implicating a co-accused is that he has placed himself on the same plank and thus he sinks or sails along with the co-accused on the basis of his confession. For these reasons, insofar as use of confession of an accused against a co-accused is concerned, rule of prudence cautions the judicial discretion that it cannot be relied upon unless corroborated generally by other evidence on record. (Para 706)

Per Thomas, J. (dissenting)

The amendment carried out in Section 15(1) and in Section 21(1) was in one package. It was done with a definite purpose. Before the amendment the Designated Court had a duty to presume that an accused had committed the offence if his co-accused had, in a confession, involved the former. The words "shall presume" in Section 21(1) denoted that it was the duty of the court to draw such presumption. (*See* Section 4 of the Evidence Act.). This means the court should have treated the confession of one accused as against a co-accused to be substantive evidence against the latter, and in the absence of proof to the contrary, the Designated Court would have full power to base a conviction of the co-accused upon the confession made by another accused. But after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled:

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

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

Before amendment the Designated Court had no such restriction as the confession of an accused could have been used against a co-accused whether or not the latter was charged or tried together with the confessor. Thus the amendment in 1993 was a clear climbing down from a draconian legislative fiat which was in the field of operation prior to the amendment insofar as the use of one confession against another accused was concerned. The contention that the amendment in 1993 was intended to make the position more rigorous as for a co-accused is, therefore, untenable. (Paras 88 to 91)

The effect of the non obstante clause in Section 15(1), when read with the words "shall be admissible in the trial of such person or a co-accused or abettor or conspirator" would only mean that the confession made to a police officer under Section 15(1) shall also become a confession like other admissible confessions under the Evidence Act. But it was not even in the legislative contemplation of Parliament to elevate a confession made to a police officer to a status even higher than a judicial confession recorded by a magistrate. (Para 95)

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While considering the evidentiary value of a confession made by one accused as against another accused apart from Section 30 of the Evidence Act, it has to be borne in mind that any confession, when it is sought to be used against another, has certain inherent weaknesses. First is, it is the statement of a person who claims himself to be an offender, which means, it is the version of an accomplice. Second is, the truth of it cannot be tested by cross-examination. Third is, it is not an item of evidence given on oath. Fourth is, the confession was made in the absence of the co-accused against whom it is sought to be used. (Para 96)

It is well-nigh settled, due to the aforesaid weaknesses, that confession of a co-accused is a weak type of evidence. A confession can be used as a relevant evidence against its maker because Section 21 of the Evidence Act permits it under certain conditions. But there is no provision which enables a confession to be used as a relevant evidence against another person. It is only Section 30 of the Evidence Act which at least permits the court to consider such a confession as against another person under the conditions prescribed therein. If Section 30 was absent in the Evidence Act no confession could ever have been used for any purpose as against another co-accused until it is sanctioned by another statute. So, if Section 30 of the Evidence Act is also to be excluded by virtue of the non obstante clause contained in Section 15(1) of TADA, under what provision can a confession of one accused be used against another co-accused at all? It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case. (Para 97)

Thus the established position which gained ground for a very long time is that while a confession is substantive evidence against its maker it cannot be used as substantive evidence against another person even if the latter is a co-accused, but it can be used as a piece of corroborative material to support other substantive evidence. The non obstante words in Section 15(1) of TADA are not intended to make it substantive evidence against the non-maker, particularly after amendments were brought about in the sub-section through Act 43 of 1993. (Para 99)

Bhuboni Sahu v. *R.*, AIR 1949 PC 257 : 50 Cri LJ 872; *Kashmira Singh* v. *State of M.P.*, AIR 1952 SC 159 : 1952 SCR 526; *Haricharan Kurmi* v. *State of Bihar*, AIR 1964 SC 1184 : (1964) 6 SCR 623, *relied on*

Kalpnath Rai v. *State*, (1997) 8 SCC 732, *relied on*

D. **Terrorist and Disruptive Activities (Prevention) Rules, 1987 — R. 15(3) — Confession — Omission to affix signature on the last two pages of the 18-page confession statement — How that omission affected the defence of the accused not shown — Confession corroborated in material particulars by independent evidence apart from the evidence of co-accused — Confession statement promptly sent to CJM and Designated Court — Held, confession duly made and recorded and failure to obtain signature of the accused on the last two pages would not be fatal on the ground of violation of R. 15(3) — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 15 — Criminal Procedure Code, 1973, Ss. 164 and 463**

Contention in the case of Nalini (A-1) was that the mandatory provisions of Rule 15(3) had been violated as confession was in 18 pages out of which only pp. 1 to 16 bore her signatures while pp. 17 and 18, which were crucial to the

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confession, did not bear her signatures. The police officer had appended his certificate at the end of the confession but his recording of the certificate was immaterial if the accused did not append his signatures at the end of the confession. Omission of signatures of Nalini (A-1) cannot cure the defect and her confession had to be rejected in its entirety. The Superintendent of Police, who recorded the confession, merely stated in the examination-in-chief that his not getting the signatures of Nalini (A-1) was an omission. No explanation had been given as to why the omission occurred and it was not for the accused to bring out in cross-examination as to the circumstances under which signatures of Nalini (A-1) could not be obtained at the end of the confession. It was also not relevant if each page of the confession was signed, signature had to be put on the last page at the end of the confession and only then endorsement by the police officer recording the confession has a meaning. Both the signatures at the end of the confession and the certificates of the police officer must go together. Rule 15 provided an assurance that confession recorded is as per prescribed provisions.

Held :

Per Wadhwa, J.

When the requirement of law is that confession should be signed by the person making it, it would mean his signatures at the end of the confession. It has not been suggested or brought on record as to how not getting signatures of Nalini (A-1) on the last pages of the confession had injured her in her defence on the merits of the case. The confession has been corroborated in material particulars by means of independent evidence even if the confessions of the co-accused are set apart. Confession of Nalini (A-1) was recorded on 7-8-1991 and was sent to the Court of the Chief Judicial Magistrate on the following day and on 9-8-1991, it was sent to the Designated Court. The confession was duly made and the objection that Rule 15(3) of the TADA Rules has been violated cannot be accepted. (Para 404)

Abdul Razak Shaikh v. *State of Maharashtra*, 1988 Cri LJ 382 : 1987 Mah LJ 863 (Bom); *Neharoo Mangtu Satnami* v. *Emperor*, AIR 1937 Nag 220 : 38 Cri LJ 642, *overruled*

Nazir Ahmad v. *King-Emperor*, AIR 1936 PC 253 (2) : 63 IA 372, *explained*

E. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 15 — Voluntary confession — Sufficient time given to accused for reflection before making confession — Merely because confession was recorded a day or so before the police remand was to expire would not make it involuntary (Per Wadhwa, J.)** (Para 405)

F. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 3 — Conditions for applicability — Mens rea and criminal act — Commission of terrorist act is a sine qua non — Test to determine whether the offence is a terrorist act falling under the Act — Act must be committed with the intention to cause any of the four effects viz. to overawe the Govt., to strike terror in people, to alienate any section of the people or to adversely affect the harmony amongst sections of the people — Intention distinguished from consequence — Assassination of a former Prime Minister of India by explosion of a human bomb thereby also killing several other persons around him including security personnel — Held on facts, (per majority) prosecution failed to establish on evidence that there was any intention to cause any of the aforesaid effect — Incident was the result of personal animosity of LTTE cadre — (Per Quadri, J.) Charges framed against the accused had no mention about such intention**

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G. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 4(3) & 4(1) — Disruptive activity — All acts preceding the killing such as advocating, advising, inciting etc. of killing of a public servant or any person bound by oath and not the act of killing itself would amount to disruptive activity — When such preceding acts were done to kill a former Prime Minister of India who being at that time not even an elected Member of Parliament was not bound by oath and were not done to kill any public servant, held, S. 4(3) was not attracted — There was also no disruption of sovereignty of India within S. 4(1)**

The Additional Solicitor General contended that the intention of the conspirators was to overawe the Government of India. His contention was that the assassination of Rajiv Gandhi was a follow-up action for restraining the Government from proceeding with the implementation of the India-Sri Lanka Accord. In other words, the focus of the conspirators was the Government of India and Rajiv Gandhi was targeted to deter that focal point. It was also contended that the case fell within the ambit of sub-section (3) of Section 4 of TADA. Further it was contended that the conspirators intended to disrupt the sovereignty of India. To support the said contention, the Court's attention was drawn to the confessional statement of A-3 (Murugan), A-18 (Arivu) and the photographs which were seized from the bag of A-3 (Murugan). The said items of evidence show that photos of Fort St. George, Madras (which houses the Government Secretariat of Tamil Nadu and the Legislative Assembly and Legislative Council), Police Headquarters, Central Jail within Vellore Fort etc. had been taken and despatched to the LTTE top brass of Sri Lanka. On the other hand it was contended by the defence counsel that there was no evidence against any of the accused to bring home charge either under Section 3 or Section 4 of TADA, yet the prosecution wrongly alleged that there was conspiracy to commit acts of terrorism and disruptive activities under TADA and in that process Rajiv Gandhi was killed. He said that apart from the killing of Rajiv Gandhi no other terrorist act had been shown to have been committed or disruptive activity shown to have been committed.

Held :

Per Thomas, J.

To constitute any offence under sub-section (2) or sub-section (3) of Section 3 of TADA the accused should have either committed a terrorist act or have done something concerning a terrorist act which is the sine qua non for convicting the accused under either of the sub-sections. If terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law. But if any such crime should be dealt with under TADA it must be interlinked with "terrorist act" as defined thereunder. (Para 42)

Under sub-section (1) of Section 15 of the TADA Act the person who does any act by using any of the substances enumerated in the sub-section in any such manner as are specified in the sub-section, cannot be said to commit a terrorist act unless the act is done "with intent" to do any of the four things:

(*1*) to overawe the Government as by law established; or

(*2*) to strike terror in people or any section of the people; or

(*3*) to alienate any section of the people; or

(*4*) to adversely affect the harmony amongst different sections of the people.

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When the law requires that the act should have been done "with intent" to cause any of the above four effects such requirement would be satisfied only if the dominant intention of the doer is to cause the aforesaid effect. It is not enough that the act resulted in any of the four consequences. Therefore, 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. (Paras 44, 45 and 51)

Kartar Singh v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899; *Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087; *Girdhari Parmanand Vadhava* v. *State of Maharashtra*, (1996) 11 SCC 179 : 1996 SCC (Cri) 159; *Mohd. Iqbal M. Shaikh* v. *State of Maharashtra*, (1998) 4 SCC 494 : 1998 SCC (Cri) 1064, *relied on*

Niranjan Singh Karam Singh Punjabi v. *Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47, *cited*

It is true, LTTE leaders were bitterly critical of "the India-Sri Lanka Accord" which was signed on 22-7-1987. Anyone who criticised the policy of a Government could not be dubbed as a terrorist unless he had done any of the acts enumerated with the object of deterring the Government from doing anything or to refrain from doing anything. In the facts and circumstances of the case, it is not possible to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established. Nor can it be held that the conspirators ever entertained an intention to strike terror in the people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in the people. It is true that the aftermath of the carnage at Sriperumbudur had bubbled up waves of shock and terror throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and it is not possible to attribute an intention to the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India it is not possible to sustain the conviction of offences under Section 3 of TADA. (Paras 53, 59 to 61)

The killing of a public servant or killing of any other person bound by oath would be an offence under the Indian Penal Code. But such killing, as such, is not a disruptive activity. Certain type of actions which preceded such killing alone is regarded as a disruptive activity through the legal fiction created by sub-section (3). Such actions include advocating, advising, suggesting, inciting, predicting, prophesying, pronouncing or prompting the killing of such persons. In other words, all the preceding actions directed positively towards killing of such persons would amount to disruptive activity, but not the final result namely, the act of killing of such persons. (Paras 65 and 66)

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If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence, it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel. However, there is a plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But Rajiv Gandhi was not then "a person bound by oath under the Constitution to uphold the sovereignty and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament. Therefore, none of the conspirators can be caught in the dragnet of sub-section (3) of Section 4 of TADA. (Paras 67 to 69)

It is true there was evidence showing that photos of Fort St. George, Madras (which houses the Government Secretariat of Tamil Nadu and the Legislative Assembly and Legislative Council), Police Headquarters, Central Jail within Vellore Fort etc. had been taken and despatched to the LTTE top brass of Sri Lanka. But it is too much a strain to enter a finding, on such evidence, that the above activities were unmistakably aimed at disrupting the sovereignty of India. The sketch of Vellore Fort (which houses the Central Jail) was drawn up, most probably, for planning some operation to rescue the prisoners (belonging to LTTE who had been interned therein). That of course would be an offence but not an activity which falls within the purview of Section 4 of TADA. Therefore, it is not possible to sustain the conviction of the appellants for offences under Section 3 or Section 4 of TADA. (Paras 70 to 72)

Per Wadhwa, J. (concurring)

Sub-section (1) of Section 3 can be analysed as under:

(1) Whoever *with intent*

(*i*) to overawe the Government as by law established; or

(*ii*) to strike terror in the people or any section of people; or

(*iii*) to alienate any section of the people; or

(*iv*) to adversely affect the harmony amongst different sections of the people

does any act or thing by using

(*a*) bombs, dynamite, or

(*b*) other explosive substances, or

(*c*) inflammable substances, or

(*d*) firearms, or

(*e*) other lethal weapons, or

(*f*) poisons or noxious gases or other chemicals, or

(*g*) by any other substances (whether biological or otherwise) of a hazardous nature

in such a manner as to cause

(*i*) death of, or

(*ii*) injuries to any person or persons, or

(*iii*) loss of, or damage to or destruction of property, or

(*iv*) disruption of any supplies, or

(*v*) services essential to the life of the community, or

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detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act commits a *terrorist act.* (Para 546)

In the present case evidence does not reflect that any of the accused entertained any such intention or had any of the motive to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabhakaran, supreme leader of LTTE had personal animosity against Rajiv Gandhi and the LTTE cadre developed hatred towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA. State of Tamil Nadu was notified under TADA on 23-6-1991 and LTTE was declared an unlawful association on 14-5-1992 under the provisions of the Unlawful Activities (Prevention) Act, 1967. Apart from killing of Rajiv Gandhi no other terrorist act has been alleged in the State of Tamil Nadu. Charge may be there but there is no evidence to support the charge. When there is no evidence, inference cannot be drawn that the act of killing of Rajiv Gandhi was to overawe the Government. Even though there is no bar to the examination of the accused under Section 313 of the Code by the Supreme Court in these proceedings but then what is required to be put to the accused is to enable him to personally explain any circumstance appearing in the evidence against him and when there is no evidence, there is no necessity to examine the accused at this stage as that would be a futile exercise. When the prosecution during the course of the trial, which lasted over a number of years, had taken the stand that killing of Rajiv Gandhi was a terrorist act, it cannot now turn about and say that killing itself was not a terrorist act but was committed to achieve the object of conspiracy which was to overawe the Government. Under Section 3(1) of TADA overawing the Government cannot be the consequence but it has to be the primary object. There is nothing on record to show that the intention to kill Rajiv Gandhi was to overawe the Government. Reference to the Indo-Sri Lankan Accord is merely by way of narration. Further, support to the struggle of LTTE in Sri Lanka was from Tamil Nadu and it does not appeal to reason that LTTE would commit any act to overawe the Government. It is a matter of common knowledge that all terrorist acts are publicised and highlighted which is fundamental to terrorism. Whenever a terrorist act is committed some organisation or the other comes forward to claim responsibility for that. In the present case LTTE tried to conceal the fact that it was behind the murder of Rajiv Gandhi. Terrorism is synonymous with publicity and it was sheer personal animosity of Prabhakaran and other LTTE cadre developed against Rajiv Gandhi which resulted in his assassination. LTTE would not do any act to overawe the Government in Tamil Nadu or in the Centre as otherwise their activities in this country in support of their struggle in Sri Lanka would have been seriously hampered. (Paras 547, 554 to 556)

Jumman v. *State of Punjab*, AIR 1957 SC 469 : 1957 Cri LJ 586; *Rama Shankar Singh* v. *State of W.B.* AIR 1962 SC 1239 : 1962 Supp (1) SCR 49, *relied on*

Charge of disruptive activities under Section 4(3) of TADA is against Nalini (A-1) and Arivu (A-18). There is no charge under Section 3(3) of TADA against Rangan (A-24), Vicky (A-25) and Ranganath (A-26). They are charged under Section 3(4) of TADA. Charge under Section 3(3) is against A-1 to A-23. If one such charge is examined, say Charge 235 against A-21 which says that she in pursuance of the criminal conspiracy referred to in Charge 1 and in course of the

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same transaction during the period from January 1991 to June 1991 at Madras and other places in Tamil Nadu, had actively associated with and assisted other conspirators in carrying out the object of criminal conspiracy and thus she knowingly facilitated the commission of terrorist act or any act preparatory to terrorist act and which was committing the terrorist act by detonating the improvised explosive device concealed in the waist belt of Dhanu and thereby A-21 committed an offence punishable under Section 3(3) of TADA. But that could not be established. (Para 557)

Thus no offence either under Section 3 or Section 4 of TADA has been committed and as such charges under Sections 3(3), 3(4) and 4(3) of TADA must also fail against all the accused. (Para 559)

Per Quadri, J. (concurring)

Section 3(1) TADA Act, embodies the principle expressed in the maxim "*actus non facit reum, nisi mens sit rea*"; both "mens rea" and a criminal act are the ingredients of the definition of "terrorist act". The mens rea required is the intention (*i*) to overawe the Government as by law established; or (*ii*) to strike terror in the people or any section of the people; or (*iii*) to alienate any section of the people; or (*iv*) to adversely affect the harmony amongst different sections of the people. The actus reus should comprise of doing any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detaining any person and threatening to kill or injure such persons in order to compel the Government or any other person to do or abstain from doing any act. (Para 650)

In the present case the argument that as the acts which are committed by the accused persons have the potentiality to overawe the Government and to strike terror in the people or any section of the people, the required mens rea has to be inferred cannot be sustained since a perusal of the charges discloses that the intention to overawe the Government is not mentioned therein. The question here does not relate to the defect in the charge but to the content of the charge and without the said germane words in the charge, it cannot be said that the charge includes the intention to overawe the Government. The charge framed is confined only to those acts which are referred to therein. Therefore, the conviction recorded by the Designated Court in the judgment under appeal for offences, under Sections 3, 4 and 5 of the TADA Act cannot be maintained. (Para 651)

Tulsi Ram v *State of U.P.*, AIR 1963 SC 666 : 1963 Supp (1) SCR 382; *Willie (William) Slaney* v *State of M.P.*, AIR 1956 SC 116 : (1955) 2 SCR 1140; *R.S. Pandit* v. *State of Bihar*, 1963 Supp (2) SCR 652 : (1964) 2 Cri LJ 65; *Chittaranjan Das* v. *State of W.B.*, AIR 1963 SC 1696 : (1964) 3 SCR 237; *Jaswantrai Manilal Akhaney* v. *State of Bombay*, AIR 1956 SC 575 : 1956 SCR 483, *referred to*

H. **Terrorist and Disruptive Activities (Prevention) Act, 1987 — Ss. 15 and 12 — Confession under S. 15 — Where accused is tried for offences under Ss. 3 and 4 of the Act as well as under other laws (IPC etc.) even if offences under Ss. 3 and 4 are not made out, held, confession made under S. 15 will continue to be admissible in his trial for offences under the other laws — *Bilal Ahmed Kaloo* decision, being per incuriam, overruled**

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The counsel for the defence sought to exclude the confessional statements from the purview of admissibility in this case on the premise that no offence under TADA could be found against any of the accused and hence the confessional statements would be inadmissible and consequently it cannot be used for offences outside TADA, In support of his submissions, he referred to a two-Judge Bench decision of the Supreme Court in *Bilal Ahmed Kaloo* v. *State of A.P.*, (1997) 7 SCC 431

Held :

Per Thomas, J.

Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was only a trial for such other offence under any other law. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial. The aforesaid implications of Section 12 vis-à-vis Section 15 of TADA have not been adverted to in *Bilal Ahmed Kaloo case*. Hence the observations therein (at SCC p. 434, para 5) that "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA" cannot be followed. (Paras 80 to 82)

Bilal Ahmed Kaloo v. *State of A.P.*, (1997) 7 SCC 431 : 1997 SCC (Cri) 1094, *overruled*

Per Wadhwa, J. (concurring)

While holding the confession to be inadmissible in a trial when the accused is acquitted of offences under Section 3 or Section 4 of TADA, provisions of Section 12 of TADA were not taken into consideration by the Supreme Court in *Bilal Ahmed Kaloo case*. This judgment, which was rendered by two learned Judges of the Supreme Court, does not lay a good law on this aspect of the matter. (Paras 408 and 409)

Bilal Ahmed Kaloo v. *State of A.P.*, (1997) 7 SCC 431: 1997 SCC (Cri) 1094, *overruled*

Per Quadri, J. (concurring)

In view of Section 12 of TADA Act confessions recorded under Section 15 of the TADA Act and admitted in the trial of offences under the TADA Act and under Section 120-B read with Section 302 IPC can be relied upon to record the conviction of the appellants for the said offences under IPC even though they are acquitted of offences under the TADA Act. *Kaloo case* does not lay down the correct law. (Para 670)

Bilal Ahmed Kaloo v. *State of A.P.*, (1997) 7 SCC 431: 1997 SCC (Cri) 1094, *overruled*

Suggested Case Finder Search Text (*inter alia*) :

tada

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II. EVIDENCE ACT, 1872, SECTION 10

I. Evidence Act, 1872 — S. 10 — Scope and conditions for applicability of — Held, principle of agency between every conspirator and his associate underlies this provision — Statement made by one conspirator is admissible as against another conspirator only during the period of subsistence of agency — Normally a conspirator's connection with the conspiracy is snapped after his arrest but it is not always so — Existence of conspiracy — How to prove — (Per Thomas, J.) Prosecution should adduce prima facie evidence in that regard — (Per Wadhwa, J.) Prosecution need not prove it beyond a reasonable doubt — Held, on facts (per majority: Quadri, J. expressing no opinion) prosecution failed to establish that the accused persons continued to be members of the conspiracy even after their arrest — Hence S. 10 inapplicable

It was contended on behalf of the prosecution that even if it is held that the confession under Section 15 TADA can be admitted only if there is corroboration, under Section 10 of the Evidence Act the confession of an accused can nevertheless be a substantive evidence against a co-accused if it satisfies the requirement of that section. It was contended that the width of Section 10 of the Evidence Act is so large as to render any statement made by a conspirator as substantive evidence if it has succeeded in conforming with the other conditions of the section.

Held :

Per Thomas, J.

The contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 if it was made "in reference" to the common intention, is too broad a proposition for acceptance. (Para 108)

The first condition which is almost the opening lock of Section 10 of the Evidence Act 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. (Para 107)

Sardar Sardul Singh Caveeshar v. *State of Maharashtra*, AIR 1965 SC 682 : (1964) 2 SCR 378, *relied on*

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 under Section 10. (Para 108)

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Mirza Akbar v. *King-Emperor*, AIR 1940 PC 176 : 41 Cri LJ 871; *Sardul Singh Caveeshar* v. *State of Bombay*, AIR 1957 SC 747 : 1958 SCR 161; *State of Gujarat* v. *Mohd. Atik*, (1998) 4 SCC 351 : 1998 SCC (Cri) 936, *relied on*

Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. Normally a conspirator's connection with the conspiracy would get snapped after he is nabbed by the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Of course there are rare cases in which a conspirator would continue to confabulate with the other conspirators and persist with the conspiracy even after his arrest. That is precisely the reason why it is said that it may not be possible to lay down a proposition of law that one conspirator's connection with the conspiracy would necessarily be cut off with his arrest. (Para 111)

In this case, prosecution could not establish that the accused who were arrested continued to conspire with those conspirators remaining outside. Prosecution cannot contend that the confession made by one accused in this case can be substantive evidence against another accused under Section 10 of the Evidence Act. At any rate it is not possible to uphold the contention that confessions made by an accused can be used as substantive evidence against another co-accused on the principle enunciated in Section 10 of the Evidence Act. (Para 112)

The conclusion on the above score is that confessional statement made by an accused after his arrest, if admissible and reliable, can be used against a confessor as substantive evidence, but its use against the other co-accused would be limited only for the purpose of corroboration of other evidence. (Para 13)

Per Wadhwa, J. (concurring)

It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (*1*) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross-examined in court by the co-conspirator, and (*2*) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate a co-conspirator. But then precisely under Section 10 Evidence Act, statement of a conspirator is admissible against a co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. (Para 581)

A statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act. Similarly, a statement made after the conspiracy has been

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terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator. Fixing the period of conspiracy is, thus, important as provisions of Section 10 would apply only during the existence of the conspiracy. However, it is not that immediately after the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of *res gestae* as contained in Section 6 of the Evidence Act will continue to apply. It may be in a given case that once the conspirator is nabbed that would be an end to the conspiracy and Section 10 would be inapplicable. But it is not of universal application. If the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of criminal conspiracy is there and Section 10 of the Evidence Act applies. Prosecution in the present case has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest. In the present case, there is no evidence to support the charge as regards the period of conspiracy. (Paras 575 and 579)

Sardar Sardul Singh Caveeshar v. *State of Maharashtra*, AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*; *Mirza Akbar* v. *King-Emperor*, AIR 1940 PC 176 : 41 Cri LJ 871; *State of Gujarat* v. *Mohd. Atik*, (1998) 4 SCC 351 : 1998 SCC (Cri) 936, *relied on*

Emperor v. *Ganesh Raghunath Vaishampayan*, ILR (1932) 55 Bom 839 : 33 Cri LJ 76; *Emperor* v. *Abani Bhushan Chuckerbutty*, ILR (1910) 38 Cal 169 : 11 Cri LJ 710, *cited*

The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When it is said that court has to guard itself against readily accepting the statement of a conspirator against a co-conspirator what, it meant is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark. (Para 581)

Per Quadri, J.

To apply Section 10 of the Evidence Act, it has to be shown that (*1*) there is reasonable ground to believe that two or more persons have conspired together; and (*2*) the conspiracy is to commit an offence or an actionable wrong. If these two requirements are satisfied then anything said, done or written by any one of such persons after the time when such intention was entertained by any one of them in furtherance of their common intention, is a relevant fact against each of the persons believed to be so conspiring as well as for the purpose of proving the existence of conspiracy and also for the purpose of showing that any such person is a party to it. (Para 665)

Suggested Case Finder Search Text (*inter alia*) :

evidence 10 conspir*

III. PENAL CODE, 1860

J. Penal Code, 1860 — Ss. 120-A, 120-B and 302 — Criminal conspiracy — Ingredients of — Meeting of minds of conspirators has to be inferred from proved circumstances — Principles governing law of conspiracy summarised — Rajiv Gandhi assassination case — On appreciation of evidence conviction of 7 accused under S. 302 r/w S. 120-B confirmed

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Per Thomas, J.

On appreciation of evidence relating to the main offence under Section 302 read with Section 120-B IPC, the conviction of the offence under Section 120-B read with Section 302 IPC is confirmed as against A-1 (Nalini), A-2 (Santhan @ Raviraj), A-3 (Murugan @ Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran @ Ravi) and A-18 (Perarivalan @ Arivu). However, the conviction and sentence passed on all the accused under Section 120-B of IPC read with all the other counts of offences (except Section 302 IPC) are set aside. Except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) all the remaining appellants shall be set at liberty forthwith. (Paras 337 to 339)

Per Wadhwa, J.

Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain – *A* enrolling *B*, *B* enrolling *C*, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

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5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and

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growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime. (Para 583)

Major E.G. Barsay v. *State of Bombay*, AIR 1961 SC 1762 : (1962) 2 SCR 195; *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*, AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*; *Noor Mohd. Mohd. Yusuf Momin* v. *State of Maharashtra*, (1970) 1 SCC 696; *Yash Pal Mittal* v. *State of Punjab*, (1977) 4 SCC 540 : 1978 SCC (Cri) 5; *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*, (1980) 2 SCC 465 : 1980 SCC (Cri) 493; *Mohd. Usman Mohd. Hussain Maniyar* v. *State of Maharashtra*, (1981) 2 SCC 443 : 1981 SCC (Cri) 477; *State of H.P.* v. *Krishan Lal Pardhan*, (1987) 2 SCC 17 : 1987 SCC (Cri) 270; *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609 : 1988 SCC (Cri) 711; *Ajay Aggarwal* v. *Union of India*, (1993) 3 SCC 609 : 1993 SCC (Cri) 961; *State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820; *R.* v. *Ardalan*, (1972) 1 WLR 463 : (1972) 2 All ER 257 (CA); *United States* v. *Falcone et al.*, 109 Federal Reporter (2d Series) 579; *United States of America* v. *Salvatore Falcone*, 85 L ED 128 : 311 US 205 (1940); *Bhagwandas Keshwani* v. *State of Rajasthan*, (1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647, *relied on*

R. v. *Jones*, (1832) 4 B & Ad 345 : 110 ER 485; *Mulcahy* v. *R.*, (1868) 3 HL 306; *Quinn* v. *Leathem*, 1901 AC 495, 528 : (1900-03) All ER Rep 1; *Director of Public Prosecutions* v. *Doot*, 1973 AC 807 : (1973) 1 All ER 940 (HL), *referred to*

In the present case the conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120-B read with Section 302 IPC is confirmed. Conviction of Nalini (A-1) under Section 302 IPC read with Section 34 IPC on various counts is upheld and so also of Arivu (A-18) under Sections 109 and 302 IPC. Conviction and sentence of Nalini (A-1) under Section 326 IPC read with Section 34 IPC, Section 324 IPC read with Section 34 IPC and that of Arivu (A-18) under Sections 109 and 326 IPC and Sections 109 and 324 IPC are maintained. Conviction and sentence of the accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under all other charges are maintained. Conviction and sentence of all the accused under Section 120-B IPC read with all other counts is set aside except conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120-B read with Section 302 IPC. Shanthi (A-11), Selvaluxmi (A-13) and Shanmugavadivelu (A-15) are to be released forthwith. All other accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) would also be entitled to be released forthwith as they have already undergone imprisonment for a period of more than the sentence of imprisonment awarded to them. In case they are not required to be detained in any other case they shall also be released forthwith.

(Paras 625, 623, 622 and 624)

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Per Quadri, J.

The ingredients of the offence of criminal conspiracy are: (*i*) an agreement between two or more persons; (*ii*) the agreement must relate to doing or causing to be done either (*a*) an illegal act; or (*b*) an act which is not illegal in itself but is done by illegal means. (Para 655)

Though the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy, yet in the very nature of the offence which is shrouded with secrecy no direct evidence of the common intention of the conspirators can normally be produced before the court. Having regard to the nature of the offence, such a meeting of minds of the conspirators has to be inferred from the circumstances proved by the prosecution, if such an inference is possible. It may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator.

(Paras 656 and 663)

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences. I consider it appropriate to record my respectful agreement with the reasoning and conclusion arrived at by Thomas, J. in confirming the conviction of A-1, A-2, A-3, A-9, A-10, A-16 and A-18 for the aforementioned offences. (Paras 662 and 709)

Sardar Sardul Singh Caveeshar v. *State of Maharashtra*, AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*; *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*, (1980) 2 SCC 465 : 1980 SCC (Cri) 493; *Mohd. Usman Mohd. Hussain Maniyar* v. *State of Maharashtra*, (1981) 2 SCC 443 : 1981 SCC (Cri) 477; *State of H.P.* v. *Krishan Lal Pardhan*, (1987) 2 SCC 17 : 1987 SCC (Cri) 270; *State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820, *relied on*

Suggested Case Finder Search Text (*inter alia*) :

ipc 120 conspir*

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K. **Penal Code, 1860 — Ss. 120-B and 302 — Rajiv Gandhi assassination case — Spouses or relatives of conspirators providing food, shelter, medicine or transport — No other evidence of their involvement in the criminal conspiracy — *Held, such persons cannot be held guilty of the* conspiracy to assassinate — So also merely being active members of LTTE and its work, without more, would not make such members part of the criminal conspiracy to assassinate Rajiv Gandhi — Mere association with one of the conspirators or even knowledge of the conspiracy not enough — Agreement essential for offence of conspiracy — (Per Thomas, J. paras 174, 175, 178, 179, 183, 188, 193, 194, 214, 222, 223, 227, 231, 255, 286, 299, 301, 309, 317, 320, 321, 324, 331, 335; Per Wadhwa, J. paras 597, 598, 599, 600, 602, 605, 607, 609, 611, 616, 617, 618)**

IV. SENTENCE

L. **Penal Code, 1860 — S. 302 r/w S. 120-B — Criminal Procedure Code, 1973 — Ss. 354(3) & 235(2) — Death sentence or life imprisonment — Test of rarest of the rare case — Court has to take into account both the crime and the criminal as also aggravating as well as mitigating circumstances — Special reasons for awarding death sentence has to be determined having regard to the facts and circumstances of each case — Rajiv Gandhi assassination case — Having regard to all the relevant aspects, held (per majority) four out of seven accused must be sentenced to death — Though one of the four sentenced to death was a woman and mother of a child (born during captivity) but having regard to the active role played by her in the crime no special consideration need be shown to her**

The award of sentence of death to all the 26 appellants by the Designated Court was stated by the defence counsel as amounting to judicial massacre. A fervent appeal was made to the Court that the high profile of the celebrity dimension of the targeted victim should not colour the Court's judicial vision in determining the sentencing extent. But the other side of the picture was etched by pleading that the Court cannot adopt a Nelson's eye to the stark reality that the target of the dastardly intrigue was a leader who represented a bulk of the nation's population in whom the nation had reposed its faith and trust for a full term.

Held :

Per Thomas, J.

The Constitution Bench of the Supreme Court in *Bachan Singh case* made it impermissible to award death sentence except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed. The court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. Three such circumstances which the Supreme Court was told about are the following:

(*1*) The age of the accused — if the accused is young or old the sentence of death should be avoided.

(*2*) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(*3*) That the accused acted under duress or domination of another person. (Paras 344 and 346)

Bachan Singh v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580, *relied on*

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Rajendra Prasad v. *State of U.P.*, (1979) 3 SCC 646 : 1979 SCC (Cri) 749, *referred to*

Bearing the above principle in mind it has to be determined whether the death sentence passed by the trial court should be confirmed or not in respect of the seven accused whose conviction of the offence under Section 302 read with Section 120-B have been confirmed. There can be no two opinions that looking at the crime conspectus of what was perpetrated at Sriperumbudur it was most dastardly to the superlative degree. Those who machinated to bring about such a horrendous crime cannot normally escape the extreme penalty of law. (Para 347)

Apart from the nature of crime, the Court is duty-bound to look at the criminals also. The conspirators in the Rajiv Gandhi assassination case can be vivisected into four broad categories:

First, those who formed the hard-core nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth, those among the conspirators who participated in the actual commission of murder. (Para 348)

Persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction. Veluppillai Prabhakaran, Pottu Omman, Akila, Sivarasan and Trichy Santhan have been described as persons falling within the radius of the first category. As they were not tried for the offences so far it is not necessary to observe anything concerning them in the sphere of sentencing exercise. (Para 349)

However, A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) belonged to the second category even if they slip out of the first. They were not merely carrying out the orders of the first category personnel but they made others work according to their directions in order to achieve the target. The role played by them was prominently direct and active. They were in the leadership layer among the conspirators. There is nothing extenuating as for the said three persons in their activities for implementation of the decisions of the cabal. (Para 350)

A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration, death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any dominating role. She was persistently brainwashed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Dhanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women and girls of Tamil origin in Sri Lanka. By such indoctrinative exercises she would have honestly believed in the virtue of offering her help to the task undertaken by the conspirators. In the confessional statement made by her brother A-20 (Bhagyanathan) he revealed one fact i.e. A-1 (Nalini) had confided to him on 23-5-1991 itself that as a matter of fact she realised only at Sriperumbudur that Dhanu was going to kill Rajiv Gandhi. Perhaps that may be a true fact. But she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible

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for a woman like A-1 (Nalini) to get herself extricated. She knew how Sivarasan and Santhan had liquidated those who did not stand by them. Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company, the mere fact that she became obedient to all the instructions of Sivarasan need not be used for treating her conduct as amounting to "rarest of the rare cases" indicated in *Bachan Singh case*. (Para 352)

Another consideration which it is difficult to overlook is — she is the mother of a little female child who would not have even experienced maternal cuddling as that little one was born in captivity. Of course the maxim "*justitia non novit patrem nec matrem*" (justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As the death sentence passed on the father of that small child is confirmed, an effort to save its mother from the gallows may not militate against *jus gladii* so that an innocent child can be saved from imposed orphanhood. (Para 353)

Thus, on an evaluation of the plus and minus, pros and cons it is decided to save A-1 (Nalini) from the gallows. Hence the sentence passed on her is altered to one of imprisonment for life. (Para 354)

What remains is the case of A-9 (Robert Payas), A-10 (Jayakumar), and A-16 (Ravichandran). They do not belong to the first or even to the second category. They were LTTE followers and they just obeyed the commands of leaders like Sivarasan who had the capacity to dominate over them. Their sentence has to be altered from death penalty to imprisonment for life. (Para 355)

Per Wadhwa, J.

It is not that Nalini (A-1) did not understand the nature of the crime and her participation. She was a willing party to the crime. Both the crime and the criminal have to be seen. Nalini (A-1) in her association with Murugan (A-3) and others developed great hatred towards Rajiv Gandhi and wanted to have revenge. Merely because Nalini (A-1) is a woman and a mother of the child who was born while she was in custody cannot be the ground not to award the extreme penalty to her. She is an educated woman and was working as a stenographer in a private firm. She was living alone away from her mother, sister and brother since April 1990 and had started living in a rented apartment from October 1990. She became friendly to Murugan (A-3) when she was introduced to him in her office by her sister Kalyani and Bharathi (PW 233). Before this date also she was close to some of the LTTE activists. She developed fondness towards Murugan (A-3) and in fact wanted to marry him. He, however, declined as he said he was a committed LTTE activist and as per code of LTTE he could not marry. They were, however, having sexual relations and when they returned from their trip to Tirupathi after the assassination of Rajiv Gandhi it was found that Nalini (A-1) was pregnant. Subsequently while both of them were in custody they were married from earlier date. It was in July 1991 that she gave birth to the girl child. (Para 636)

As regards the crime, it was found that along with Rajiv Gandhi, 15 others had also lost their lives. It is not disputed that these persons died on account of the bomb blast and others suffered grievous and simple injuries on that account. What about their families, one may ask. Cruelty of the crime committed has known no bounds. The crime sent shock waves in the country. General elections

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had to be postponed. It was submitted more than once that principal perpetrators in the present case are already dead but then for the support which Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) afforded for commission of the crime it could not have been committed. Each one of these four accused had a role to play. Crime was committed after previous planning and executed with extreme brutality. There were as many as two dry runs as to how to reach Rajiv Gandhi after penetrating the security cordon. A former Prime Minister of the country was targeted because this country had entered an agreement with a foreign country in exercise of its sovereign powers. Rajiv Gandhi being the head of the Government at that time was signatory to the Accord which was also signed by the head of the Government of Sri Lanka. The Accord had the approval of Parliament. It was not that Rajiv Gandhi had entered into the Accord in his personal capacity or for his own benefit. Though it has been held that object of the conspiracy was not to commit any terrorist act or any disruptive activity, nevertheless murder of a former Prime Minister for what he did in the interest of the country was an act of exceptional depravity on the part of the accused, an unparalleled act in the annals of crimes committed in this country. In a mindless fashion not only was Rajiv Gandhi killed but along with him others died and many suffered grievous and simple injuries. It is not that intensity of the belt bomb strapped on the waist of Dhanu was not known to the conspirators as after switching on the first switch on her belt bomb Dhanu asked Sivarasan to move away. Haribabu was so keen to have close-up pictures of the crime that he met his fate in the blast itself. It is not possible to find any mitigating circumstance to upset the award of sentence of death on the accused. (Para 636)

This is a case where all these — Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) deserve extreme penalty. Award of sentence of death on them is confirmed. (Para 637)

Bachan Singh v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580; *Masalti* v. *State of U.P.*, AIR 1965 SC 202 : (1964) 8 SCR 133; *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220 : 1994 SCC (Cri) 358; *Bheru Singh* v. *State of Rajasthan*, (1994) 2 SCC 467 : 1994 SCC (Cri) 555; *Natwarlal Sakarlal Mody* v. *State of Bombay*, (1963) 65 Bom LR 660 (SC); *Payne* v. *Tennessee*, 111 S Ct 2597 (1991); *R.* v. *Howells*, (1999) 1 All ER 50 (CA), *relied on*

Booth v. *Maryland*, 482 US 496 : 96 L Ed 2d 440 (1987); *South Carolina* v. *Gathers*, 490 US 805 : 104 L Ed 2d 876 (1988), *referred to*

Furman v. *Georgia*, 33 L Ed 2d 346 : 408 US 238 (1972), *cited*

Per Quadri, J.

Discretion of the court in awarding punishment when conviction is for an offence punishable with death or with imprisonment for life is controlled by Section 354(3) CrPC; so if the court proposes to impose capital punishment it must record "special reasons" for so doing. What constitutes special reasons cannot be stated with any precision and that has to be determined having regard to the facts and circumstances of each case. If a case falls in the category of "rarest of the rare case" it would justify the requirement of special reasons. But again in deciding whether a case falls within "rarest of the rare case", the court has to consider both aggravating as well as the mitigating circumstances in each case. (Para 716)

Bachan Singh v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580; *Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470 : 1983 SCC (Cri) 681 : (1983) 3 SCR 413; *Kehar Singh* v. *State (Delhi Admn.)*, (1988) 3 SCC 609 : 1988 SCC (Cri) 711, *relied on*

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It ill behoves a person to order the death of another. He who gives life alone has the authority to take life. In dispensing justice a Judge is not only discharging a sovereign function but he is also doing a divine function. Even so the most difficult task for a Judge is to choose the punishment of death in preference to the punishment of life imprisonment for he is conscious of the fact that once the life of a person is taken away by a judicial order it cannot be restored by another judicial order of the highest authority in this world. Having taken upon himself the onerous responsibility of doing justice according to the Constitution and the laws, the Judge must become independent of his conviction and ideology to maintain the balance of scales of justice. A-1 is a woman and is the mother of a small girl who was born during the period of her confinement in jail. She is very young. She has also subsequently regretted her act and her participation was the result of indoctrination by A-3. She did not play any major role. These are indisputably the mitigating circumstances. Surely in our culture a woman has to be treated with beneficence and kindness. But then in this case the person Dhanu who opted to become a human bomb was a woman. Suba who gave moral support to sacrifice her life on the anvil of some ideology and to end up by annihilating others' lives, was also a woman. About the role of A-1 (Nalini), it is not a case where she was caught up in a sudden situation and became a mute comrade, the mind not towing the body. It was indeed the other way round. Facts strongly suggest that her participation was not the result of helplessness but a well-designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy, the facts of this case are uncommon. A crime committed on Indian soil against the popular national leader, a former Prime Minister of India, for a political decision taken by him in his capacity as the head of the executive and which met with the approval of Parliament, by persons running political organisation in a foreign country and their agents in concert with some Indians for the reason that it did not suit their political objectives and of their organisation, cannot but be a "rarest of the rare" case. In such a case the part played by A-1 (Nalini) is a candid participation in the crime of conspiracy to assassinate Shri Rajiv Gandhi who was himself a young and popular leader so much loved and respected by his fellow citizens and had been the Prime Minister of India. The conspirators including A-1 (Nalini) had nothing personal against him but he was targeted for the political decision taken by him as the Prime Minister of India. She in spite of being an Indian citizen joined the gang of conspirators and engaged herself in pursuit of common intention to commit the crime only because she was infatuated by the love and affection developed for A-3 (Murugan), and thus played her part in the execution of the conspiracy which resulted in the assassination of Shri Rajiv Gandhi and death of many police officers and innocent citizens including a small girl. For a person like A-1, taking into consideration all the mitigating circumstances, in my view, there is no room for any leniency, kindness and beneficence. On the facts of this case, once A-1 (Nalini) is found to fall in the rarest of the rare case, declining to confirm the death sentence will, in my view, stultify the course of law and justice. The sentence of imprisonment for life is inadequate and there is no alternative but to confirm the death sentence awarded by the Designated Court to A-1 (Nalini). Therefore, with respect I concur with brother Wadhwa, J. in confirming the death sentence of the first appellant A-1 (Nalini) awarded by the Designated Court. (Paras 719, 720, 723 to 725, 727)

Mahesh v. *State of M.P.*, (1987) 3 SCC 80 : 1987 SCC (Cri) 379, *relied on*

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In the result I agree with brother Thomas, J. and set aside the conviction of all the appellants recorded by the Designated Court for offences under the TADA Act and also the conviction of A-4 (Shankar @ Koneswaran), A-5 (D. Vijayanandan @ Hari Ayya), A-6 (Sivaruban @ Suresh @ Suresh Kumar @ Ruban), A-7 (S. Kanagasabapathy @ Radhayya), A-8 (A. Chandralekha @ Athirai @ Sonia @ Gauri), A-11 (J. Shanthi), A-12 (S. Vijayan @ Perumal Vijayan Veedu), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran @ Velayudam), A-15 (S. Shanmugavadivelu @ Thambi Anna), A-17 (M. Suseendran @ Mahesh), A-19 (S. Irumborai @ Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran @ Raju @ K. Prakash), A-24 (N. Rajasuriya @ Rangan), A-25 (T. Vigneswaran @ Vicky), A-26 (J. Ranganath) for the offences under Section 120-B read with Section 302 IPC. Their appeals are accordingly allowed. Agreeing with brother Thomas, J. I confirm the conviction of A-1 (Nalini), A-2 (Santhan) and A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) finding them guilty of offences under Section 120-B read with Section 302 IPC. On the facts and in the circumstances, I am also of the same view as expressed by brother Thomas, J. that it is not a fit case to confirm the death sentence awarded to A-9 (Robert Payas), A-10 (Jayakumar) and A-16 (Ravichandran) and their death sentence is commuted to life imprisonment and their appeals are allowed to this extent. The death sentence awarded to A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed — the death sentence of A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) agreeing with Thomas, J. as well as Wadhwa, J. and the death sentence of A-1 (Nalini) agreeing with Wadhwa, J. Their appeals are dismissed and Death Reference is accordingly answered.

(Paras 728 to 731)

Suggested Case Finder Search Text (*inter alia*) :

death (penalty or sentence) rare*

V. MISCELLANEOUS

M. **Criminal Procedure Code, 1973 — S. 300 — Scope — Double jeopardy — Maxim "*nemo debet bis vexari pro eadem causa*" — S. 300 compared with Art. 20(2) of the Constitution — Second trial, on mere ground that some more allegations were not made in the first trial, cannot be allowed — Constitution of India, Art. 20(2)**

Held :

Per Thomas, J.

The well-known maxim "*nemo debet bis vexari pro eadem causa*" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 CrPC is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts. (Para 236)

Though Article 20(2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 CrPC. If there is no punishment for the offence as a result of the prosecution, Article 20(2) has no

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application. While clause (2) of Article 20 embodies the principle of *autrefois convict* Section 300 CrPC combines both *autrefois convict* and *autrefois acquit*. (Para 237)

Manipur Admn. v. *Thokchom Bira Singh*, AIR 1965 SC 87: (1965) 1 Cri LJ 120, *relied on*

Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) CrPC, or he could have been convicted for such other offence under Section 221(2) CrPC. (Para 238)

As the contours of the prohibition are so widely enlarged it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial. (Para 239)

Suggested Case Finder Search Text (*inter alia*) :

"double jeopardy" or autrefois

N. **Criminal Procedure Code, 1973 — Ss. 215 & 465 — Charges — Defects in, alleged — Powers of Reference Court are wide — What has to be seen is whether there was any irregularity in the charge which prejudiced the accused — Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 11 (Per Wadhwa, J.)** **(Para 540)**

O. **Criminal Procedure Code, 1973 — S. 313 — Improper examination of accused under S. 313 — Allegation regarding, has to be considered from the angle whether any prejudice was caused to the accused thereby — If there is any error on this account that can also be corrected by the Reference Court by again examining the accused (Per Wadhwa, J.)** **(Para 540)**

P. **Wireless Telegraphy Act, 1933 — S. 6(1-A) — Unauthorised possession of unlicensed transmitter or illegal transmission — Spouses or members of household also cannot be held guilty (Per Wadhwa, J., paras 607 and 617)**

R-M/ATZM/21106/CR

Advocates who appeared in this case :

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The Judgments of the Court were delivered by

THOMAS, J.— Rajiv Gandhi, a former Prime Minister of India was assassinated on 21-5-1991 at a place called Sriperumbudur in Tamil Nadu. The assassin was an adolescent girl named Dhanu who was made into a human bomb and she got herself exploded at 10.19 p.m. at a very close proximity to the visiting former Prime Minister. In a trice the life of Rajiv Gandhi was snuffed out and his body was smashed into smithereens. As for the assassin, nothing except a few pieces of charred limbs and her sundered head were left behind. In the explosion lives of 18 others also got extinguished. Investigation pointed to a minutely orchestrated cabal, masterminded by some conspirators to extirpate the former Prime Minister from this terrestrial terrain. In the final charge-sheet made by the Central Bureau of Investigation (CBI) all the 26 appellants now before us were arraigned as members of the conspiracy which targeted, inter alia, Rajiv Gandhi. The Special Judge who tried the case found all the 26 appellants guilty of various offences charged, the gravamen of them being Section 302

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read with Section 120-B IPC. All of them were hence convicted of those offences and all of them were sentenced to death.

2. These appeals by right are under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA for short). The Special Judge submitted the records to this Court for confirmation of the death sentence. We heard all the above matters together at great length, perhaps the longest heard criminal appeal in this country. Shri Altaf Ahmed, Additional Solicitor General who was assisted by a team of advocates argued the prosecution side adroitly and with great dedication. The accused's side was represented by Shri N. Natarajan, Senior Counsel who was assisted by an array of counsel with meticulous preparation and admirable resourcefulness.

3. We were verily benefited by the remarkable contribution made by the counsel for both sides. We record our uninhibited thanks to them.

4. We may narrate, as briefly as possible, the events which preceded and succeeded the assassination as they would unfurl the conspectus of the case. The genesis can be traced to a movement which burgeoned in Sri Lanka for ventilating the grievances of the people of Tamil origin and for making certain demands for the Tamil-speaking people of the island. Under the leadership of one Veluppillai Prabhakaran, a militant organisation called "Liberation Tigers of Tamil Eelam" (hereinafter referred to as 'LTTE' as the abbreviation) came into existence in the island. When the movement became belligerent, the Government of Sri Lanka adopted sterner measures to curb their activities. Eventually a series of confrontations took place between the Government of Sri Lanka and the activists of LTTE.

5. When the Sri Lankan Government found it difficult to meet the situation by themselves, it sought assistance from the Government of India for tackling the problem. This was reciprocated by the Government of India. Some parleys took place between the diplomats of both the nations in 1987. The President of Sri Lanka (Mr Jayawardane) and the Prime Minister of India (Shri Rajiv Gandhi) met together at New Delhi and Veluppillai Prabhakaran was also invited to be involved. An accord was signed by the aforesaid three persons by which the Indian Government agreed, inter alia, to form a cadre called Indian Peace-Keeping Force (IPKF for short). One of the tasks assigned to the Force was to disarm LTTE militants. Pursuant to the terms of the accord the Government of India despatched a large number of IPKF personnel to Sri Lanka. While discharging their duties, IPKF committed many excesses which became an inhuman conduct towards the followers of LTTE. Consequently hostility developed in the minds of LTTE cadre towards IPK Force. To register their protest against such excesses one of the LTTE hard-core activists by name Dileepan undertook a fast and he succumbed to it after a few days.

6. Skirmishes became rampant between the members of IPK Force and LTTE activists. In October 1987, a vessel carrying 17 LTTE functionaries was intercepted by the Sri Lankan navy while patrolling on the high seas and the passengers were held captives. Leaders of LTTE made a bid to save them

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by appealing to the Indian Government to intervene, but there was no response. 12 out of 17 captives committed suicide by consuming potassium cyanide. There was a counter-attack on IPK Force when LTTE commandos captured a ship carrying provisions for the army, and in the encounter which ensued, 11 Indian soldiers were killed.

7. In the meanwhile one Varadaraja Perumal who was an accredited leader of a rival organisation called Eelam Peoples' Revolutionary Liberation Front (EPRLF) got elected from the Northern Zone as a follow-up step of the terms of the Sri Lanka-India Accord to which reference was made above. Later the Indian Government under the leadership of Rajiv Gandhi agreed for making a gradual deinduction of IPK Force from Sri Lanka.

8. In the general elections which were held in 1989, a new Government headed by Shri V.P. Singh as the Prime Minister came to power in India. The new Government accelerated the process of deinduction of IPK Force. However, the said Government did not last long and another Government with Shri K. Chandrashekhar as the Prime Minister assumed office. That Government too did not last long and the political changes in India reached a stage when the Lok Sabha was dissolved and the President of India issued a notification for fresh elections. Rajiv Gandhi started campaigning for the Congress (I) Party. He made his views public when a correspondent of *Amrita Bazar Patrika* interviewed him which was published in the Sunday Magazine of the newspaper on 12-8-1990 and 19-8-1990. The pith of the interview, concerning Sri Lankan policy, was that Rajiv Gandhi did not favour withdrawal of IPK Force from Sri Lanka and he was critical of the approach made by the V.P. Singh Government towards Sri Lanka.

9. In the election manifesto published by Congress (I) for the ensuing general elections, the party reiterated its commitment to the India-Sri Lanka Agreement of July 1987 as the basis for the settlement of outstanding issues relating to the Tamil population of Sri Lanka and assured to ensure the territorial integrity of Sri Lanka.

10. The events which took place subsequent thereto were so intertwined with the above-narrated political developments that this case cannot be understood without etching the afore-presented backdrop. We may now proceed to describe the prosecution case.

11. A criminal conspiracy was hatched and developed by the hard-core LTTE cadre which spread over a long period of 6 years commencing from 6-7-1987 and stretching over till May 1992. The main objects of the conspiracy were: (*1*) to carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India during the course of which to assassinate Rajiv Gandhi and others, (*2*) to cause disappearance of evidence thereof, (*3*) to harbour all the conspirators living in India, and (*4*) to escape from being apprehended and to screen all those who were involved in the conspiracy from legal consequences.

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12. As a follow-up step of the conspiracy during the first half of its period LTTE commandos arrived on the Indian shore in different batches. The first batch arrived on 12-9-1990 which consisted of Perumal Vijayan (12th accused) and his wife Selvaluxmi (13th accused) and Bhaskaran (14th accused). They were seen off at Jaffna in Sri Lanka by one of the top-ranking hard-core LTTE leaders by the name of Sivarasan.

13. It is appropriate to mention now itself that the said Sivarasan would have been one of the most seriously involved accused in this case, but he is not alive now as he abruptly ended his life when he was sure of being nabbed by the police. Among the conspirators nobody else seems to have played a greater role on the Indian soil than what Sivarasan had played. Sivarasan reached India sometime in December 1990 and in collaboration with those who arrived in the first batch he managed to secure a house building in a locality called Kodungaiyur at Madras.

14. The next batch consisted of Robert Payas (9th accused), his wife and sisters and Jayakumar (10th accused) together with his wife Shanthi (11th accused). They arrived in India in September 1990. They took another house on rent at a more secluded locality in Kodungaiyur as suggested by Sivarasan who too started residing therein. The third batch consisting of Ravichandran (16th accused) and Suseendran (17th accused) came to India on 17-12-1990. Murugan (3rd accused) reached India in January 1991 and Radhayya (7th accused) and Chandralekha @ Athirai @ Gauri (8th accused) reached India in April 1991. In the meantime two persons, Arivu (18th accused) and Irumborai (19th accused) went back to Sri Lanka in the company of another important LTTE activist called Baby Subramaniam. They collected instructions from Veluppillai Prabhakaran. Sivarasan was shuttling between India and Sri Lanka quite often during the above-mentioned period.

15. The final arrivals were the most dedicated hard-core LTTE commandos who were brought on the Indian soil by Sivarasan on 1-5-1991. That batch consisted of the girl Dhanu (who offered herself to become the human bomb) and her close friend Suba besides Santhan (2nd accused), Shankar (4th accused), Vijayanandan (5th accused) and Sivaruban @ Ruban (6th accused). They were seen off at Sri Lanka by a man called Pottu Omman (who was described as the Chief of the Intelligence Wing of LTTE).

16. The targets of the conspiracy, according to the prosecution, were Fort St. George at Madras (which houses the Government Secretariat of Tamil Nadu and a lot of other important State Government buildings), Tamil Nadu Police Headquarters and other police stations, Vellore Fort (in which the Central Jail is situate), Krishna Raja Sagar Dam (Karnataka) and Vidhan Soudha at Bangalore. Among the persons the targets were Rajiv Gandhi, Varadaraja Perumal and certain other unspecified but identified personage.

17. Pursuant to the scheme of the conspirators, photos of Fort St. George, Madras Police Headquarters and a few other police stations were

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taken and forwarded to the top leaders of LTTE at Sri Lanka. A sketch of Vellore Fort was drawn up which too was despatched to the island.

18. Sivarasan sheltered Suba and Dhanu for a few days in the house of Jayakumar (A-10) and shifted them to the house of Vijayan (A-12). As instructed by Sivarasan a wireless set was installed in the house of Vijayan (A-12) and fitted with operational facilities as Station No. 910. Another wireless set was installed in the house of Robert Payas (A-9). In October 1990, a house was taken on rent by Nalini (A-1) at High Court Colony, Villiwakkam, Madras. Murugan (A-3), Suba and Dhanu used to see Nalini and Sivarasan. In March 1991, another house was taken on rent by Rangan (A-24) at Park Avenue, Madras and one more house was taken by him at Bangalore. Both houses were taken on rent as per the instructions given by Sivarasan.

19. When information reached that Rajiv Gandhi was addressing a meeting at Marina Beach, Madras on 18-4-1991 four persons — Nalini (A-1), Murugan (A-3), Subha Sundaram (A-22) and one Haribabu went to the meeting place. The conspirators thought of conducting a trial for the purpose of assassinating Rajiv Gandhi. When they got information that V.P. Singh, a former Prime Minister, was addressing a meeting at Madras on 7-5-1991 Sivarasan took Suba and Dhanu to that place (Nandanam in Madras). Nalini (A-1), Murugan (A-3), Arivu (Perarivalan) and Haribabu also accompanied them. The idea was to give advance training to Suba and Dhanu as to how to go near the former Prime Minister. V.P. Singh arrived at the meeting place only during the wee hours of 8-5-1991. Before V.P. Singh could address the gathering, Nalini (A-1), Dhanu and Suba made a bid to garland the visiting former Prime Minister on the rostrum of the meeting. The success of the aforesaid trial emboldened Suba and Dhanu and they on 9-5-1991 conveyed their confidence in achieving the target to Akila who was the Deputy Chief of the Intelligence Wing of LTTE. (Akila was also put in charge of the Women Wing of the organisation).

20. With the success they felt achieved in the trial run the main conspirators started acting swiftly. On 11-5-1991, Nalini (A-1) took Suba and Dhanu to a tailoring shop and purchased some clothes including a salwar-kameez. On 17-5-1991, Sivarasan and Santhan (A-2) sent Sivaruban (A-6) to Jaipur to find out a hideout for the conspirators and to take the same on rent under a pseudonymous name.

21. The tour programme of Rajiv Gandhi was published in the local newspapers on 19-5-1991 and then Sivarasan came to know that Rajiv Gandhi would address a meeting at Sriperumbudur on 21-5-1991. Sivarasan was determined not to miss that opportunity. He ascertained all about Sriperumbudur from Nalini (A-1) and then he told Nalini that the target was only Rajiv Gandhi.

22. On 20-5-1991, Arivu (A-18) purchased a 9-watt golden-power battery from a shop. Sivarasan deputed Kanagasabapathy (A-7) to go to Delhi to fix up a house as a hideout to be used during the days after

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accomplishing the target. Sivarasan confabulated with Nalini (A-1), Murugan (A-3), Arivu (A-18) and Haribabu at the house of Jayakumar (A-10). Sivarasan instructed Nalini to take half day's leave under some pretext or the other. Arivu (A-18) and Bhagyanathan (A-20) procured a Kodak film and supplied it to Haribabu who was a freelance photographer.

23. On 21-5-1991, Haribabu bought a garland made of sandalwood presumably for using it as a camouflage (for murdering Rajiv Gandhi). He also secured a camera. Nalini (A-1) wangled leave from her immediate boss (she was working in a company as PA to the Managing Director) under the pretext that she wanted to go to Kanchipuram for buying a saree. Instead she went to her mother's place. Padma (A-21) is her mother. Murugan (A-3) was waiting for her and on his instruction Nalini rushed to her house at Villiwakkam (Madras). Sivarasan reached the house of Jayakumar (A-10) and he got armed himself with a pistol and then he proceeded to the house of Vijayan (A-12).

24. Sivarasan directed Suba and Dhanu to get themselves ready for the final event. Suba and Dhanu entered into an inner room. Dhanu was fitted with a bomb on her person together with a battery and switch. The loosely stitched salwar-kameez which was purchased earlier was worn by Dhanu and it helped her to conceal the bomb and the other accessories thereto. Sivarasan asked Vijayan (A-12) to fetch an auto-rickshaw.

25. The auto-rickshaw which Vijayan (A-12) brought was not taken close to his house as Sivarasan had cautioned him in advance. He took Suba and Dhanu in the auto-rickshaw and dropped them at the house of Nalini (A-1). Suba expressed gratitude of herself and her colleagues to Nalini (A-1) for the wholehearted participation made by her in the mission they had undertaken. She then told Nalini that Dhanu was going to create history by murdering Rajiv Gandhi. The three women went with Sivarasan to a nearby temple where Dhanu offered her last prayers. They then went to "Parry's Corner" (which is a starting place of many bus services at Madras). Haribabu was waiting there with the camera and garland.

26. All the 5 proceeded to Sriperumbudur by bus. After reaching there they waited for the arrival of Rajiv Gandhi. Sivarasan instructed Nalini (A-1) to provide necessary cover to Suba and Dhanu so that their identity as Sri Lankan girls would not be disclosed due to linguistic accent. Sivarasan further instructed her to be with Suba and to escort her after the assassination to the spot where Indira Gandhi's statue is situate and to wait there for 10 minutes for Sivarasan to reach.

27. Nalini (A-1), Suba and Dhanu first sat in the enclosure earmarked for ladies at the meeting place at Sriperumbudur. As the time of arrival of Rajiv Gandhi was nearing Sivarasan took Dhanu alone from that place. He collected the garland from Suba and escorted Dhanu to go near the rostrum. Dhanu could reach near the red carpet where a little girl (Kokila) and her mother (Latha Kannan) were waiting to present a poem written by Kokila on Rajiv Gandhi.

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28. When Rajiv Gandhi arrived at the meeting place Nalini (A-1) and Suba got out of the enclosure and moved away. Rajiv Gandhi went near the little girl Kokila. He would have either received the poem or was about to receive the same, and at that moment the hideous battery switch was clawed by the assassin herself. Suddenly the pawn bomb got herself blown up as the incendiary device exploded with a deadening sound. All human lives within a certain radius were smashed to shreds. The head of a female, without its torso, was seen flinging up in the air and rolling down. In a twinkle, 18 human lives were turned into fragments of flesh among which was included the former Prime Minister of India Rajiv Gandhi and his personal security men, besides Dhanu and Haribabu. Many others who sustained injuries in the explosion, however, survived.

29. Thus the conspirators perpetrated their prime target achievement at 10.19 p.m. on 21-5-1991 at Sriperumbudur in Tamil Nadu.

30. After hearing the sound of explosion Nalini (A-1) and Suba ran across and reached the statue of Indira Gandhi. Sivarasan joined them without delay. He confirmed to them that Rajiv Gandhi was killed and conveyed that their comrade Haribabu was also killed in the blast. Then they proceeded to a nearby house, took water therefrom and then escaped in an auto-rickshaw. They reached the house of Jayakumar (A-10).

31. Sivarasan transmitted wireless message to the LTTE supremo in Sri Lanka regarding the killing of Rajiv Gandhi. Pottu Omman, the Chief of Intelligence of LTTE confirmed receipt of the message and in reply sent certain queries.

32. The next phase of activities of the conspirators consisted of attempts to abscond, to screen the offenders and to destroy the evidence regarding the conspiracy.

33. On 24-5-1991 the newspapers published a photograph of Dhanu holding a garland in her hand at Sriperumbudur in the company of a few other females waiting for the arrival of Rajiv Gandhi. On seeing it Pottu Omman sent a wireless query to Sivarasan whether Dhanu was identifiable in the photo. Sivarasan, Suba, Nalini (A-1), her husband Murugan (A-3) and her mother Padma (A-21) proceeded to Tirupathi to offer thanksgiving worship to the Lord, and they returned to Madras on the next day. Sivarasan thereafter moved from place to place and Suba was shifted to different houses.

34. In the first week of June 1991, Sivarasan felt that he was within the penumbra of suspicion of the police. Thereupon he entrusted the remaining work to be carried out to Murugan (A-3). Though Sivarasan advised Nalini to escape to Sri Lanka she did not do so for practical reasons known to her. She and her husband Murugan (A-3) again proceeded to Tirupati on 9-6-1991 incognito. Murugan got his head tonsured by way of redeeming a vow.

35. By the middle of June, photographs of Nalini (A-1) and Suba appeared in the newspapers. Sivarasan kept Pottu Omman informed of the developments in India through wireless transmissions.

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36. On 11-6-1991 Bhagyanathan (A-20) and Padma (A-21) were arrested by the police. Three days later Nalini (A-1) and Murugan (A-3) were arrested. The said development was communicated by Sivarasan to LTTE Headquarters at Sri Lanka and thereafter he, in the company of Suba and Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) and one LTTE activist by the name of Nehru skulked to Bangalore and concealed themselves in a house at Indira Nagar. Irumborai (A-19) was already accommodated in that house. On 16-8-1991 they shifted to another house situated at Konanakunte in Bangalore.

37. The police got some scent regarding the above hideout and they rushed to that place. But by the time the police could trace them out, Sivarasan, Suba, Nehru and Amman and the other LTTE activists, who too were hiding in the same house, ended their lives by committing suicide. The remaining accused were arrested on different days at different places.

38. On completion of the investigation the CBI laid charge-sheets against all the 26 appellants besides Veluppillai Prabhakaran (the supremo of LTTE), Pottu Omman (the Chief of Intelligence Wing of LTTE) and Akila (Deputy Chief of Intelligence) for various offences including the main offence under Section 302 read with Section 120-B and Sections 3 and 4 of TADA. In the charge-sheet names of 12 other persons were also mentioned as co-conspirators. Among them two had died on the spot (Dhanu and Haribabu) and the remaining 10 persons died subsequently. Their names are:

(*1*) Sivarasan @ Raghuvaran
(*2*) Suba @ Nitya @ Mallika
(*3*) Nehru @ Nero
(*4*) Suresh Master
(*5*) Amman @ Gangai Kumar
(*6*) Driver Anna @ Keerthy
(*7*) Jamuna @ Jamila
(*8*) Shanmugham
(*9*) Trichy Santhan @ Gundu Santhan
(*10*) Dixon.

39. All steps taken to apprehend three of the main accused (*1*) Veluppillai Prabhakaran, (*2*) Pottu Omman, and (*3*) Akila did not succeed and hence they were proclaimed as absconding offenders. The remaining 26 persons (who are appellants before us) were charged for offences under Section 302 and Sections 326, 201, 212 and 316 read with Section 120-B of IPC; Section 3 sub-section either (2) or (3) or (4) of TADA. Ravichandran (A-16) and Suseendran (A-17) were, in addition, charged under Section 5 of TADA. Less serious offences under certain provisions of the Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946 and Wireless Telegraphy Act, 1933 were indicted on a few accused. (It is not necessary to pinpoint the different offences mentioned in the charge-

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sheet against each accused as the same shall be referred to when we consider the liability of each accused.)

40. The Special Judge, after a marathon trial, convicted all the 26 accused of all the main offences charged against each of them. He sentenced all of them to the extreme penalty under law (i.e. death) for the principal offence under Section 302 read with Section 120-B IPC. In addition thereto A-1 was again sentenced to death under Section 3(1)(*ii*) of TADA. Ravichandran (A-16) and Suseendran (A-17) were further convicted under Section 5 of TADA and were sentenced to imprisonment for life. For other offences of which the accused were convicted the trial court awarded sentences of lesser terms of imprisonment.

41. Before we proceed to discuss the evidence relating to the main offence under Section 302 read with Section 120-B of IPC it would be advantageous to consider whether prosecution could sustain offences under TADA [except the offence under Section 5 thereof which was fastened only against Ravichandran (A-16) and Suseendran (A-17) as that can be dealt with separately].

42. To constitute any offence under sub-section (2) or sub-section (3) of Section 3 of TADA the accused should have either committed a terrorist act or have done something concerning a terrorist act which is the sine qua non for convicting the accused under either of the sub-sections. If terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law. But if any such crime should be dealt with under TADA it must be interlinked with "terrorist act" as defined thereunder.

43. "Terrorist act" is defined in Section 2(1)(*h*) of TADA by giving "the meaning assigned to it in sub-section (1) of Section 3" and the expression "terrorist" is mandated to be construed accordingly. It is therefore necessary to look at Section 3(1) more closely. We may extract the first three sub-sections of Section 3:

> "3. (1) Whoever with intent to overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.
>
> (2) Whoever commits a terrorist act, shall,—
>
> (*i*) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

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

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

44. A reading of the first sub-section shows that the person who does any act by using any of the substances enumerated in the sub-section in any such manner as are specified in the sub-section, cannot be said to commit a terrorist act unless the act is done "with intent" to do any of the four things:

(*1*) to overawe the Government as by law established; or

(*2*) to strike terror in people or any section of the people; or

(*3*) to alienate any section of the people; or

(*4*) to adversely affect the harmony amongst different sections of the people.

45. When the law requires that the act should have been done "with intent" to cause any of the above four effects such requirement would be satisfied only if the dominant intention of the doer is to cause the aforesaid effect. It is not enough that the act resulted in any of the four consequences.

46. It must be recapitulated now that the constitutional validity of Section 3 of TADA was challenged in this Court and a five-Judge Bench has upheld the provisions in *Kartar Singh* v. *State of Punjab*[1] by striking a note of caution that since the provisions of TADA tend to be very harsh and drastic containing stringent provisions they must be strictly construed. The Bench approved the observations made by Ahmadi, J. (as the learned Chief Justice then was) in *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya*[2]: (SCC p. 86, para 8)

"Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

47. Dealing with the facts of that case where the accused was alleged to have killed one Raju and another Keshav for gaining supremacy in the underworld this Court has stated (at SCC p. 88, para 10) that

"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 under Section 3(1) of the Act".

and then observed thus: (SCC p. 88, para 10)

1 (1994) 3 SCC 569 : 1994 SCC (Cri) 899

2 (1990) 4 SCC 76 : 1991 SCC (Cri) 47

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"The consequence of such violence is bound to cause panic and fear but the intention of committing the crime cannot be said to be to strike terror in the people or any section of the people."

48. A two-Judge Bench of this Court has considered the distinction between the act done with the requisite intent and another act which had only ensued such consequences. In *Hitendra Vishnu Thakur* v. *State of Maharashtra*[3] Dr Anand, J. (as the learned Chief Justice then was) has stated thus: (SCC p. 621, para 11)

"Thus, unless the act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the *intention* as envisaged by that section *by means of the weapons* etc. as are enumerated therein *with the motive* as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA."

The further reasoning contained in the judgment is the following: (SCC p. 621, para 11)

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

The Bench on the aforesaid reasoning concluded thus: (SCC pp. 623-24, para 15)

"*15.* Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed *with the intention* as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the *motive* as postulated by the said section. *Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA.*"

(emphasis supplied)

3 (1994) 4 SCC 602 : 1994 SCC (Cri) 1087

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49. Two other decisions rendered by a two-Judge Bench of this Court were cited before us. In *Girdhari Parmanand Vadhava* v. *State of Maharashtra*[4] it has been pointed out that the intention of the wrongdoer can be inferred from the circumstances. After referring to the case-law i.e. *Hitendra Vishnu Thakur*[3] the Bench had held that: (SCC p. 194, para 39)

> "Terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country. In the instant case, the intention to strike terror in the minds of the people can be reasonably inferred because Birju declared such intention in no uncertain terms by indicating that Vaibhav should be killed in order to send the message to the people in the locality that if the demand of Birju and his associates was not met, extreme consequence of killing of an innocent person would be resorted to."

50. In *Mohd. Iqbal M. Shaikh* v. *State of Maharashtra*[5] the same combination of learned Judges reiterated the principle by reference to *Hitendra Vishnu Thakur*[3] and inferred from the facts of the case that the offence fell under Section 3 of TADA.

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

52. Learned Additional Solicitor General endeavoured to show that the intention of the conspirators was to overawe the Government of India. His contention was that the assassination of Rajiv Gandhi was a follow-up action for restraining the Government from proceeding with the implementation of the India-Sri Lanka Accord. In other words, the focus of the conspirators was the Government of India and Rajiv Gandhi was targeted to deter that focal point, according to learned Additional Solicitor General. This contention can be examined by a reference to the evidence in this case.

53. It is true, LTTE leaders were bitterly critical of "the India-Sri Lanka Accord" which was signed on 22-7-1987. Anyone who criticised the policy of a Government could not be dubbed as a terrorist unless he had done any of the acts enumerated with the object of deterring the Government from doing anything or to refrain from doing anything.

54. Veluppillai Prabhakaran addressed a meeting on 4-8-1987; the text of the speech was published which is marked in this case as Ext. 354. In the said speech he used strong language to criticise "the India-Sri Lanka Accord" and the manner in which it was made. But no word of hatred was

4 (1996) 11 SCC 179 : 1996 SCC (Cri) 159

3 *Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087

5 (1998) 4 SCC 494 : 1998 SCC (Cri) 1064

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expressed towards the Government of India though he aired his opposition towards the Sri Lankan Government which he described as "Sinhala racist Government". He also spoke bitterly against the Sri Lankan Tamil leaders who supported the Accord. About the Indian Government and its Prime Minister, the LTTE supremo said the following:

> "The Indian Prime Minister offered me certain assurances. He offered a guarantee for the safety and protection of our people. I do have faith in the straightforwardness of the Indian Prime Minister and I do have faith in his assurances. We do believe that India will not allow the racist Sri Lankan State to take once again to the road of genocide against the Tamils. It is only out of this faith that we decided to hand over our weapons to the Indian Peace-Keeping Force."

55. It must be remembered that political changes which occurred in India thereafter had brought a new Government under the leadership of V.P. Singh as the Prime Minister in 1989. IPKF inducted into Sri Lanka was gradually withdrawn in a phased manner, which process was commenced during the Prime Ministership of Rajiv Gandhi himself and continued during the Prime Ministership of V.P. Singh. The attitude of LTTE towards the Government of India, during the aforesaid period, can be seen from what their own official publication *Voice of Tigers* had declared in its editorial column in the issue of the said journal dated 19-1-1990 (which is marked as Ext. 362). The editorial reads as follows:

> "In the meantime, the defeat of Rajiv's Congress Party and the assumption to power of the National Front alliance under Vishwanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Eelam. LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively according to Mr Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister in Madras are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh Government will act in the interests of the Tamil-speaking people by creating appropriate conditions for LTTE to come to political power in the North-Eastern Province."

56. The above editorial is a strong piece of material for showing that LTTE till then did not contemplate any action to overawe the Government of India. Of course the top layer of LTTE did not conceal their ire against Rajiv Gandhi who was then out of power.

57. In this context it is important to point out what Veluppillai Prabhakaran, who went underground in Sri Lanka and resurfaced on 1-4-1990 after a period of 32 months of disappearance, had said. (The news about his re-emergence was published in the newspaper — a copy of which

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has been marked as Ext. 363.) The LTTE supremo had told the newsmen then as follows:

> "We are not against India or the Indian people but against the former leadership in India who is against the Tamil liberation struggle and LTTE."

58. Nothing else is proved in the case either from the utterances of the top brass of LTTE or from any writings edited by them that any one of them wanted to strike fear in the Government either of the Centre or of any State.

59. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established. Nor can we hold that the conspirators ever entertained an intention to strike terror in the people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in the people. We have no doubt that the aftermath of the carnage at Sriperumbudur had bubbled up waves of shock and terror throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention to the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.

60. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.

61. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.

62. The next endeavour is to see whether the conspirators did any "disruptive activities" so as to be caught in the dragnet of Section 4(1) of TADA. The sub-section reads thus:

> "4. (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

63. "Disruptive activity" is defined in sub-section (2). It is extracted below:

> "4. (2) For the purposes of sub-section (1), 'disruptive activity' means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

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(*i*) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(*ii*) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union."

64. An attempt was made to bring the case within the ambit of sub-section (3) of Section 4 of TADA on the strength of the assassination of Rajiv Gandhi and also on the strength of death of a number of police personnel at Sriperumbudur on the fateful night. Sub-section (3) reads thus:

"4. (3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which—

(*a*) advocates, advises, suggests or incites; or

(*b*) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section."

65. The killing of a public servant or killing of any other person bound by oath would be an offence under the Indian Penal Code. But it must be noted that such killing, as such, is not a disruptive activity. Certain type of actions which preceded such killing alone is regarded as a disruptive activity through the legal fiction created by sub-section (3). Such actions include advocating, advising, suggesting, inciting, predicting, prophesying, pronouncing or prompting the killing of such persons.

66. In other words, all the preceding actions directed positively towards killing of such persons would amount to disruptive activity, but not the final result namely, the act of killing of such persons.

67. If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence, it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel.

68. However, there is a plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But unfortunately Rajiv Gandhi was not then "a person bound by oath under the Constitution to uphold the sovereignty and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament.

69. The inevitable fallout of the above situation is that none of the conspirators can be caught in the dragnet of sub-section (3) of Section 4 of TADA.

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70. What remains to be considered for Section 4(1) of TADA is whether any disruptive activity falling within the ambit of the definition in sub-section (2) has been established. The attempt which the prosecution has made in that regard is to show that the conspirators intended to disrupt the sovereignty of India. To support the said contention, our attention was drawn to the confessional statement of A-3 (Murugan), A-18 (Arivu) and the photographs proved as MOs 256 to 259 which were seized from the bag of A-3 (Murugan). The said items of evidence show that photos of Fort St. George, Madras (which houses the Government Secretariat of Tamil Nadu and the Legislative Assembly and Legislative Council), Police Headquarters, Central Jail within Vellore Fort etc. had been taken and despatched to the LTTE top brass of Sri Lanka.

71. It is too much a strain to enter a finding, on such evidence, that the above activities were unmistakably aimed at disrupting the sovereignty of India. The sketch of Vellore Fort (which houses the Central Jail) was drawn up, most probably, for planning some operation to rescue the prisoners (belonging to LTTE who had been interned therein). That of course would be an offence but not an activity which falls within the purview of Section 4 of TADA.

72. We are, therefore, unable to sustain the conviction of the appellants for offences under Section 3 or Section 4 of TADA.

73. Now we have to proceed to consider whether the prosecution has succeeded in establishing the remaining offences found against the appellants.

74. We may put on record the following concessions made by the learned counsel for all the appellants at the Bar:

(I) Prosecution has successfully established that Rajiv Gandhi was assassinated at 10.19 p.m. on 21-5-1991 at Sriperumbudur by a girl named Dhanu who became a human bomb and got herself exploded in the same event; and that altogether 18 persons, including the above two, died in the said explosion.

(II) There is an overwhelming evidence to show that the assassination of Rajiv Gandhi resulted from a conspiracy to finish him.

(III) It is also established by the prosecution beyond doubt that Sivarasan @ Raghuvaran who was a top brass of LTTE was one of the kingpins of the said conspiracy.

75. We may also record at this stage that the two points which are seriously disputed by the learned counsel for the appellants are the following:

(*1*) Assassination of Rajiv Gandhi was not the only focal point of the conspiracy.

(*2*) Appellants were participants in the conspiracy.

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76. In other words, the defence contended that the conspiracy was made only to assassinate Rajiv Gandhi and that none of the appellants had participated in the conspiracy.

77. For deciding the aforesaid major area of dispute, the prosecution heavily relied on the statements allegedly made by a number of appellants and recorded purportedly under Section 15 of TADA. (Such statements will, hereinafter, be referred to, for convenience, as confessional statements of the accused.) Such confessional statements were recorded by the Superintendent of Police, CBI/SPG who was deputed in the Special Team of Investigation. Every one of such confessional statements has been signed by the person who is shown as the maker thereof. Such confessional statements consist of inculpatory admissions, narrations which are neither inculpatory nor exculpatory, and incriminating roles attributed to other co-accused. It was not disputed before us that all such confessional statements, if duly recorded, are admissible in evidence in view of Section 15 of TADA. It is necessary to extract that section which reads thus:

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

78. Learned counsel for the defence made a bid to exclude the confessional statements from the purview of admissibility in this case on the premise that no offence under TADA could be found against any of the accused and hence the confessional statements would wiggle into the can (*sic* ken) of inadmissibility and consequently it cannot be used for offences outside TADA. To buttress up the said contention, learned counsel invited our attention to the following observations made by a two-Judge Bench of this Court in *Bilal Ahmed Kaloo* v. *State of A.P.*[6]: (SCC p. 434, para 5)

> "5. While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is

6 (1997) 7 SCC 431 : 1997 SCC (Cri) 1094

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inadmissible in evidence as for these offences *and hence it is fairly conceded* that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence."

(emphasis supplied)

79. Shri Altaf Ahmed, learned Additional Solicitor General submitted that the above observations do not lay down the correct proposition of law and it requires reconsideration, more so because the two-Judge Bench did not advert to Section 12 of TADA. That apart, the Bench adopted that view partly because the counsel for the respondents in that case had conceded to the said position. We are inclined to consider the position afresh.

80. Section 12 of TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the Code of Criminal Procedure. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law, it does not mean that there was only a trial for such other offence under any other law.

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

82. The aforesaid implications of Section 12 vis-à-vis Section 15 of TADA have not been adverted to in *Bilal Ahmed case*[6]. Hence the observations therein (at SCC p. 434, para 5) that

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

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

83. While it is not disputed that a duly recorded confessional statement is substantive evidence in a trial of offences under TADA as against the maker thereof, learned counsel for the defence contended that its use against

6 *Bilal Ahmed Kaloo* v. *State of A P*, (1997) 7 SCC 431 , 1997 SCC (Cri) 1094

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the co-accused (who was tried in the same case) is only for a limited purpose, i.e., to be used for corroborating other evidence. In support of this contention, learned counsel relied on the decision of a two-Judge Bench of this Court in *Kalpnath Rai* v. *State (Through CBI)*[7]. The ratio of that decision, on this point, is that: (SCC p. 754, para 75)

> "75. A confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

84. Shri Altaf Ahmed, learned Additional Solicitor General pleaded for reconsideration of the aforesaid legal position adumbrated in the said decision and contended that the non obstante limb in Section 15(1) of TADA ("notwithstanding anything in the Code or the Indian Evidence Act") is a clear legislative indicator to permit a confession made by an accused against a co-accused to be used with the same force as it can be used against the confessor himself. He further contended that the position became clearer after the sub-section was amended by Act 43 of 1993.

85. We shall first examine whether the amendment as per Act 43 of 1993 has improved the position from the pre-amendment position. Before the amendment sub-section (1) of Section 15 read thus:

> "15. *Certain confessions made to police officers to be taken into consideration.*—(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder."

After the amendment in 1993 the sub-section reads in the present form (which has been extracted *supra*). The main changes in the sub-section, after the amendment, are addition of the words "or co-accused, abettor or conspirator", and insertion of a new proviso to the sub-section as:

> "Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

86. In this case we may refer to another provision in TADA (Section 21) which also underwent much changes as per the same amending Act. That provision has a perceptible bearing on Section 15(1) of TADA. That provision, in specific terms, empowered the Designated Court to draw certain presumptions. Section 21(1), as it stood before the 1993 amendment, read thus:

> "21. *Presumption as to offences under Section 3.*—(1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved—
>
> (*a*) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there

7 (1997) 8 SCC 732

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is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(*b*) that by the evidence of an expert the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(*c*) that a confession has been made by a co-accused that the accused had committed the offence; or

(*d*) that the accused had made a confession of the offence to any person other than a police officer,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence."

87. Act 43 of 1993 has snipped out clause (*c*) which contained the words "that a confession has been made by a co-accused that the accused had committed the offence" and clause (*d*) which contained the words "that the accused had made a confession of the offence to any person other than a police officer" of Section 21(1).

88. No doubt, the amendment carried out in Section 15(1) and in Section 21(1) was in one package. It was done with a definite purpose. Before the amendment the Designated Court had a duty to presume that an accused had committed the offence if his co-accused had, in a confession, involved the former. The words "shall presume" in Section 21(1) denoted that it was the duty of the court to draw such presumption. (*See* Section 4 of the Evidence Act.)

89. This means the court should have treated the confession of one accused as against a co-accused to be substantive evidence against the latter, and in the absence of proof to the contrary, the Designated Court would have full power to base a conviction of the co-accused upon the confession made by another accused.

90. But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute-book. In other words, after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso? After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled:

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

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

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

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

92. While considering the effect of the non obstante limb we can see that Section 15(1) of TADA was given protection from any contrary provision in the Evidence Act, 1872. But what is it that Parliament did through Section 15(1) regarding a confession made to a police officer? It has only made such confession "admissible" in the trial of such person or the co-accused etc.

93. There are provisions in the Indian Evidence Act which prohibited admissibility of certain confessions, e.g. Section 25 of the Evidence Act prohibited proving any confession made by an accused to a police officer. Section 26 prohibited proving any confession made by an accused to any person while that accused was in the custody of police. Section 27 permitted only a very limited part of the information supplied by the accused to a police officer, whether it amounts to a confession or not.

94. What Section 15(1) of TADA has done was to remove the said ban against admissibility of confessions made to a police officer and bring it on a par with any other admissible confessions under the Evidence Act. A confession made to a magistrate is admissible under the Evidence Act, and a confession made by an accused to any person other than a police officer, if the accused was not in police custody, is also admissible under the Evidence Act.

95. The upshot of the above discussion is that the effect of the non obstante clause, when read with the words "shall be admissible in the trial of such person or a co-accused or abettor or conspirator" would only mean that the confession made to a police officer under Section 15(1) shall also become a confession like other admissible confessions under the Evidence Act. But it was not even in the legislative contemplation of Parliament to elevate a confession made to a police officer to a status even higher than a judicial confession recorded by a magistrate.

96. What is the evidentiary value of a confession made by one accused as against another accused apart from Section 30 of the Evidence Act? While considering that aspect we have to bear in mind that any confession, when it is sought to be used against another, has certain inherent weaknesses. First is, it is the statement of a person who claims himself to be an offender, which means, it is the version of an accomplice. Second is, the truth of it cannot be tested by cross-examination. Third is, it is not an item of evidence given on oath. Fourth is, the confession was made in the absence of the co-accused against whom it is sought to be used.

97. It is well-nigh settled, due to the aforesaid weaknesses, that confession of a co-accused is a weak type of evidence. A confession can be used as a relevant evidence against its maker because Section 21 of the Evidence Act permits it under certain conditions. But there is no provision

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which enables a confession to be used as a relevant evidence against another person. It is only Section 30 of the Evidence Act which at least permits the court to consider such a confession as against another person under the conditions prescribed therein. If Section 30 was absent in the Evidence Act no confession could ever have been used for any purpose as against another co-accused until it is sanctioned by another statute. So, if Section 30 of the Evidence Act is also to be excluded by virtue of the non obstante clause contained in Section 15(1) of TADA, under what provision can a confession of one accused be used against another co-accused at all? It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case.

98. Sir John Beaumont speaking for five Law Lords of the Privy Council in *Bhuboni Sahu* v. *R.*[8] had made the following observations:

> "Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3, 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 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, makes 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."

99. The above observations had since been treated as the approved and established position regarding confession vis-à-vis another co-accused. Vivian Bose, J., speaking for a three-Judge Bench in *Kashmira Singh* v. *State of M.P.*[9] had reiterated the same principle after quoting the aforesaid observations. A Constitution Bench of this Court has followed it in *Haricharan Kurmi* v. *State of Bihar*[10]. Gajendragadkar, J. (as he then was) has stated the legal principle thus:

> "The point of significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and

8 AIR 1949 PC 257 : 50 Cri LJ 872
9 AIR 1952 SC 159 : 1952 SCR 526
10 AIR 1964 SC 1184 : (1964) 6 SCR 623

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may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.

The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well established."

Thus the established position which gained ground for a very long time is that while a confession is substantive evidence against its maker it cannot be used as substantive evidence against another person even if the latter is a co-accused, but it can be used as a piece of corroborative material to support other substantive evidence. The non obstante words in Section 15(1) of TADA are not intended to make it substantive evidence against the non-maker, particularly after amendments were brought about in the sub-section through Act 43 of 1993.

100. Having set the legal position thus, we have now to consider the legal evidence to see whether prosecution has proved the disputed points.

101. The prime aim of the conspiracy, in this case, was to assassinate Rajiv Gandhi. The stand of the prosecution is that the Sri Lanka-India Accord (signed on 22-7-1987) was resented against by the LTTE top brass for reasons more than one. The acrimony was further fomented up with the LTTE repressives heaped up by IPKF. The editorials published in the *Voice of Tigers* (the main publication of LTTE) and the articles reproduced in the compilation made under the nomenclature *Satanic Force* were replete with vituperative epithets expressed by LTTE activists against the said Accord and the actions which IPKF did against them. Rajiv Gandhi was not spared from the vitriolic onslaughts made through such publications. PW 75 (Basant Kumar) said that he was assigned with the work of preparing *Satanic Force* by LTTE top brass Veluppillai Prabhakaran, Pottu Omman and another person called Balasingam, containing strong criticism against IPKF and Rajiv Gandhi. PW 75 (Basant Kumar) accepted the work on a payment of Rs 2000 per month.

102. We have pointed out earlier that LTTE was very much concerned about the general elections to the Lok Sabha in the year 1991. They felt that if Rajiv Gandhi came back to power, IPKF would again go to Sri Lanka which meant lot more atrocities being heaped upon LTTEs and the goal "Tamil Eelam" would again elude them like a mirage.

103. In all probabilities a criminal intent to kill Rajiv Gandhi would have sprouted in the minds of LTTE top brass at the aforementioned stage. There is not even a speck of doubt in our minds that the criminal conspiracy to murder Rajiv Gandhi was hatched by at least 4 persons comprising of Veluppillai Prabhakaran, Pottu Omman, Sivarasan and Akila. It could have

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been the scheme of the conspirators to enlist more persons in the field for the successful implementation of their targets.

104. We have no doubt from the circumstantial evidence in this case that Dhanu, the girl who transformed herself into a human bomb, and her friend Suba were unflinchingly committed commandos of LTTE and they were also brought into the conspiracy ring by the top brass of LTTE. Circumstances proved in this case regarding the aforesaid core points are too many. However, we are spared from the task of enumerating all such circumstances as learned counsel for the accused have fairly conceded about the sufficiency of circumstances which have been proved in this case to establish the aforesaid points.

105. Learned counsel for the appellants have focussed their attack on the indictment against individual accused. They endeavoured to show that none of the appellants was involved in the criminal conspiracy to assassinate Rajiv Gandhi. Hence that is the most disputed point in this case.

106. Before proceeding to discuss the evidence, we have to deal with yet another legal point canvassed by Shri Altaf Ahmed, learned Additional Solicitor General regarding the amplitude of Section 10 of the Evidence Act. Such a decision is necessary to decide what exactly is the evidence of conspiracy. Learned Additional Solicitor General contended that the width of the provision is so large as to render any statement made by a conspirator as substantive evidence if it has succeeded in conforming with the other conditions of the section. Such a contention became necessary for him to bring the confessional statement of one conspirator against another conspirator as substantive evidence if there is any legal hurdle in doing so under Section 15 of TADA, as we have already found that confession of one accused is not substantive evidence against another though it can be used for corroborative value. Section 10 of the Evidence Act can, in this context, be extracted below:

> "10. *Things said or done by conspirator in reference to common design.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

107. 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

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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 *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*[11]).

108. But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 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 under Section 10.

109. Way back in 1940, the Privy Council had considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in *Mirza Akbar* v. *King-Emperor*[12] had stated the legal position thus: (AIR Headnote)

> "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."

110. In *Sardul Singh Caveeshar* v. *State of Bombay*[13] a three-Judge Bench has reiterated that the rule of agency is the founding principle of Section 10 of the Evidence Act. A two-Judge Bench of this Court in *State of Gujarat* v. *Mohd. Atik*[14] has followed the said position and held thus: (SCC p. 356, para 14)

> "It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a

11 AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*

12 AIR 1940 PC 176 : 41 Cri LJ 871

13 AIR 1957 SC 747 : 1958 SCR 161

14 (1998) 4 SCC 351 : 1998 SCC (Cri) 936

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former conspirator thereafter cannot be regarded as one made 'in reference to their common intention'."

111. Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. Normally a conspirator's connection with the conspiracy would get snapped after he is nabbed by the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Of course we are not unmindful of rare cases in which a conspirator would continue to confabulate with the other conspirators and persist with the conspiracy even after his arrest. That is precisely the reason why we said that it may not be possible to lay down a proposition of law that one conspirator's connection with the conspiracy would necessarily be cut off with his arrest.

112. In this case, prosecution could not establish that the accused who were arrested continued to conspire with those conspirators remaining outside. Prosecution cannot contend that the confession made by one accused in this case can be substantive evidence against another accused under Section 10 of the Evidence Act. At any rate we cannot uphold the contention that confessions made by an accused can be used as substantive evidence against another co-accused on the principle enunciated in Section 10 of the Evidence Act.

113. The conclusion on the above score is that confessional statement made by an accused after his arrest, if admissible and reliable, can be used against a confessor as substantive evidence, but its use against the other co-accused would be limited only for the purpose of corroboration of other evidence.

The case against A-1 (Nalini)

114. A-1 (Nalini) is the sole surviving conspirator who participated in the assassination, if the prosecution case is correct. The principal item of evidence available in this case is her own confessional statement (Ext. P-77) recorded on 9-8-1991. (She was arrested on 14-6-1991). She was aged 27 during the relevant period and has passed MA degree. She is the daughter of another co-accused (A-21 Padma) and sister of yet another co-accused (A-20 Bhagyanathan). She had fallen in love with one Murugan (who is Accused 3) during the period of conspiracy and it is claimed that their marriage was solemnised on 21-4-1991 (within 9 months thereof she gave birth to a female child). She was working as Private Secretary to the Managing Director of a private company — M/s Anabante Silicons.

115. The evidence in this case shows that A-1 (Nalini), much before her marriage, quarrelled with her mother and brother and shifted her residence to No. 11, High Court Colony, Villiwakkam, Madras. It was during the said time that A-3 (Murugan) got acquainted with her and gradually the familiarity grew into a love affair between them. A-3 (Murugan) was a committed LTTE member. In April 1991, A-1 (Nalini) came into contact with Sivarasan.

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116. Ext. P-77 confessional statement contains the following facts as to have been stated by A-1 (Nalini): when she was contemplating the idea of vacating the house at Villiwakkam she was dissuaded from doing so by A-3 (Murugan) as Sivarasan was expected to bring two girls from Sri Lanka. On 2-5-1991 Sivarasan brought those two girls (Suba and Dhanu) to her house. Her mind-changing process started thereafter as Murugan, Suba and Dhanu narrated various acts of atrocities which IPKF heaped on LTTE followers in Sri Lanka. Suba told Nalini of a horrendous story of how 7 little girls were raped and killed by the soldiers of IPKF. She was made to believe that Rajiv Gandhi was the person responsible for all such atrocities. She developed a vengeful attitude towards Rajiv Gandhi and she too agreed to retaliate. She realised that the two girls were brought for the purpose of carrying out a very dangerous retaliatory step. Sivarasan had told Nalini to play the role of a chaperone to Suba and Dhanu wherever they went.

117. In Ext. P-77, A-1 (Nalini) is alleged to have further stated that on 7-5-1991 she took Suba and Dhanu under the instructions of Sivarasan to Nandanam (Madras) where V.P. Singh (a former Prime Minister) was addressing a meeting. Suba and Dhanu tried to garland V.P. Singh. Later Sivarasan scolded A-1 (Nalini) for not taking the girls to the rostrum. It was then that Nalini realised as to how the murder was planned to be perpetrated.

118. In the confessional statement A-1 (Nalini) is alleged to have stated that on 11-5-1991 she chaperoned Suba and Dhanu to a ready-made garments' shop at Puruswakkom (Madras) and bought a chooridar suit (orange and green coloured) and a dupatta. On 17-5-1991, Sivarasan told her of Rajiv Gandhi's Tamil Nadu programme and asked her to attend one of the meetings. She confessed in her statement (Ext. P-77) that by then it was certain for her that Rajiv Gandhi was going to be killed. Sivarasan collected the details of the topography of Sriperumbudur from her and warned her not to divulge the contents of that conversation to anyone else. She was instructed to take leave from her office on 21-5-1991 under some false pretext.

119. She had narrated in the confessional statement the events which happened on the day of the assassination and also on its preceding day. According to her, Sivarasan met her on 20-5-1991 at 6.00 p.m. and told her that the venue of the meeting was at Sriperumbudur and she should take half day's casual leave and not more and that she should make herself available in the house at 3.00 p.m. on the next day for being picked up for escorting Suba and Dhanu. On 21-5-1991 Nalini took half day's leave and she went to her mother's house at Royapettah (Madras) where A-3 (Murugan) was waiting who told her to hurry up lest Sivarasan would be annoyed. So she reached her house at about 3.00 p.m. A little while thereafter Sivarasan reached the same house with Suba and Dhanu. According to her, Dhanu was then wearing an orange and green coloured chooridar and was hiding something in her dress. Suba told Nalini that Dhanu was going to create history by murdering Rajiv Gandhi. At 4.00 p.m. Nalini took Suba and

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Dhanu to the bus-stop. On the way Haribabu also joined them. He had a garland with him.

120. It is further stated in Ext. P-77 that A-1 (Nalini) along with Suba, Dhanu, Haribabu and Sivarasan reached the place of occurrence at 7.30 p.m. They stopped at the spot where there was a statue of Indira Gandhi. Sivarasan gave instructions to A-1 (Nalini) about the role to be performed by her just before and after the murder, if successful. Following the said instructions, she along with Suba ran across Indira Gandhi's statue and waited for Sivarasan. Within a few minutes Sivarasan rushed to them and said that Rajiv Gandhi and Dhanu had died and Haribabu had also died. Sivarasan gave Nalini a pistol which she handed over to Suba. They hurriedly left the place and on the way got some water to drink from a roadside house and then they went in an auto-rickshaw and reached Kodungaiyur at 1.30 a.m. in the night.

121. The rest of the confessional statement (in Ext. P-77) relates to the hectic movements made by her in association with the other accused. It is further recorded therein that on 13-6-1991, A-1 (Nalini) and A-3 (Murugan) went to Davangere (in Karnataka) and stayed in the house of Shashikala (PW 132). A-1 (Nalini) told Shashikala of what all happened regarding Rajiv Gandhi's assassination.

122. The above were the statements said to have been made by A-1 (Nalini) in Ext. P-77. The Designated Court acted on the said confessional statement as valid and proved and reliable.

123. A threefold attack was made against Ext. P-77 by Shri N. Natarajan, learned Senior Counsel for the accused. First is that the confession was not signed as provided in Rule 15 of the TADA Rules, 1987. Second is that it was not certified as required by the rules. Third is that the confession was extracted by coercive methods and is therefore unreliable.

124. Rule 15(3) says that the confession shall be signed by its maker and also the police officer who recorded it. Further, the police officer shall

> "certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person".

125. Ext. P-77 was recorded in as many as 18 pages. All the first 16 pages contain the signatures of A-1 (Nalini) but the last two pages don't have the signatures. The requirement that a confessional statement shall be signed by the maker has been substantially complied with despite the slip in obtaining the signatures in the last two pages. According to PW 52 — the Superintendent of Police who recorded it — the said slip was an inadvertent omission. But that omission does not mean that the confession was not signed by her at all. The certificate which is required by Rule 15(3) has also been made at the foot of Ext. P-77, but that happened to be made on one of the two pages where the signature of A-1 is absent.

126. On the facts we are not persuaded to uphold the contention that Rule 15(3) has not been complied with. That apart, even if there was such an

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omission the question is whether it would have injured the accused in her defence. Section 463 of the Code permits such an approach to be made in regard to the omissions in recording the confession under Section 164 of the Code. That approach can be adopted in respect of the confession recorded under Section 15 of TADA as well. The resultant position is that the said omission need not be countenanced since it was not shown that the omission has caused any harm to the accused.

127. The contention that the confession was extracted by coercive methods is not supported by any material. We may point out that when A-1 (Nalini) was produced before the Judicial Magistrate soon after recording the confession she did not even express any complaint regarding the conduct of any personnel of the Special Investigation Team. Ext. P-77 had, in fact, reached the Judicial Magistrate on the next day itself and thereafter it was kept under sealed cover.

128. The confessional statement of A-1 (Nalini) in Ext. P-77, according to Shri Altaf Ahmed, learned Additional Solicitor General is corroborated by other substantive evidence and also by the confessional statements made by a number of other accused in this case. PW 132 (Shashikala) who is a teacher said that she got acquainted with A-1 in 1990 and A-1 visited her in the school when she was teaching, on 13-6-1991. Then A-3 (Murugan) was also with her. A-1 (Nalini) introduced A-3 (Murugan) as her brother by the name of Das. PW 132 further stated that when they (three persons) went to her house A-1 told her that her husband, a Sri Lankan citizen, had brought two girls to Madras. PW 132 has also stated in her evidence that Nalini told her that it was she who took those girls to the meeting place at Sriperumbudur where Rajiv Gandhi came and in the incident which happened there, one of the girls died. PW 132, on hearing the said news, became frightened. Then both A-1 and A-3 implored her not to disclose it to anybody else.

129. The aforesaid evidence of PW 132 — a teacher, was fully believed by the trial Judge. We have no reason to take a different view on that evidence. Its corroborative value is unassailable because A-1 herself admitted in her confessional statement that she made such a disclosure to PW 132.

130. Another item of corroborative evidence is MO 144 video cassette. (It was viewed on video in the trial court as well as by us in the Supreme Court.) It was the video cassette of the meeting held at Nandanam (Madras) in the early hours of 18-5-1991 which was addressed by V.P. Singh. PW 93 (Suyambu) said in his evidence that he attended the said meeting. When he was shown the video cassette replayed in the Court he identified Sivarasan who was sitting at the meeting place, just left to the said witness. It was videographed by PW 81 (Manivanam) as instructed by PW 77 (Ganani). PW 77 also identified Sivarasan in the video. We have noticed the presence of A-1 (Nalini) in the meeting when MO 144 was displayed in this Court, with the

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help of a photograph in which A-1's figure could be discerned by us and admitted by the defence counsel to be correct.

131. On the next day of the said meeting i.e. 9-5-1991, two letters were sent by Suba and Dhanu jointly to Sri Lanka, one to Pottu Omman and the other to Akila. They are Ext. P-96 and Ext. P-95 respectively. Prosecution has proved that they were the letters written by the aforesaid two girls. We do not deem it necessary to refer to all the materials made available to prove the authorship of those letters because they are no more.

132. In Ext. P-96, the girls wrote to Pottu Omman

> "we are confident that we would be successful in completing the job for which we came as we expect a similar opportunity ...".

In Ext. P-95 they wrote to Akila like this:

> "We are confident that the work for which we came would be finished promptly as we are expecting another appropriate opportunity.... It would be implemented during this month itself.... Every word which you (Akila) had said to us would remain in our mind till the last."

133. The aforesaid telling circumstances confirm the truth of what A-1 has divulged in Ext. P-77.

134. PW 179 (Gunathilal Soni) said in his evidence that he was the manager of a retail textile shop called "Queen Corner" at Puruswakkom and that on 11-5-1991, a chooridar (in orange and green colour) was sold to three ladies one of whom was A-1 (Nalini). From the photograph shown to the witness he identified the other lady as Dhanu. The cash book which he maintained was marked as Ext. P-899 and the copy of the bill for the said chooridar was marked as Ext. P-900.

135. It could be argued that it was not possible for any textile retail seller to identify the person who had purchased the goods only once. That may be so. But here PW 179 gave one reason for remembering A-1 (Nalini) and the girls — that they insisted on quick delivery of the stitched goods on the same day itself and then PW 179 took measurements of Dhanu. Within a few days the witness saw the photograph of Dhanu in newspapers wearing the chooridar of that colour. That apart, the investigating officer could trace out PW 179 only because A-1 (Nalini) told him of the place wherefrom the chooridar was purchased. That portion was admitted in evidence under Section 27 of the Evidence Act. The cumulative effect is that the testimony of PW 179 can be treated as true evidence. It is a highly corroborating material.

136. PW 96 (Sujaya Narayan) was an officer in M/s Anabante Silicons Private Ltd. where A-1 (Nalini) was working as a Private Secretary to the Managing Director. He gave evidence that A-1 (Nalini) took half day's leave on 21-5-1991 saying that she wanted to go to Kanchipuram to purchase sarees and left office by 12 noon.

137. One of the most striking corroborative evidence for A-1's confession regarding her participation in the assassination scene of Rajiv

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Gandhi is the testimony of PW 32 (Anusuya). She is a woman Sub-Inspector who was deputed to do duty at the venue of the meeting to be addressed by Rajiv Gandhi at Sriperumbudur. She was one of the injured in the bomb blast. Nobody can dispute that she was on duty because she had come in the photo MO 33. It was taken just before the occurrence. Pointing out Dhanu in the photograph PW 32 (Anusuya) said in her evidence that she was found moving with two male persons at the scene of occurrence before the arrival of Rajiv Gandhi. One of them, on being questioned by PW 32, claimed to be a press photographer (it is with reference to Haribabu). The witness identified the other person as Sivarasan. PW 32 identified A-1 Nalini (who was present in the trial court) as one of the ladies who attended the meeting place. She identified A-1 from the photograph when MO 32 photograph was shown to her. There was no dispute about the genuineness of the abovesaid photograph. We have absolutely no reason to doubt the correctness of MO 32.

138. PW 215 (Samundeeswari) said in her evidence that she is a resident at Sriperumbudur and that on 21-5-1991, while she was standing outside her house at about 10.45 p.m. waiting for her son to return, she found two ladies and one male getting into her house and they asked for water to drink. She gave them water. The witness identified A-1 as one of the ladies and identified Sivarasan and Suba with the help of MO 105 photograph. The witness said that she had a dialogue with those visitors. After giving them water she asked them about Rajiv Gandhi's arrival and they replied to her that Rajiv Gandhi died even before reaching 7 feet away from the meeting place. The witness said that after drinking water the said three persons went towards Madras side. The significance of the evidence of PW 215 is that the investigating officer succeeded in discovering her house on the information supplied by A-1 (Nalini).

139. PW 183 is an equally important witness. He is an auto-rickshaw driver at Thiruvallur. He said in his evidence that he took some persons in his auto-rickshaw and dropped them at the place of the meeting to be addressed by Rajiv Gandhi. As he parked the vehicle a little away he overheard the announcement through a loudspeaker that Rajiv Gandhi was arriving, but within a short while a bomb blast took place and all were found running helter-skelter. He also escaped from the place riding his auto-rickshaw. According to him, on the way two ladies and one male got into his auto-rickshaw and he took them right up to Madras and dropped them at Teynampet. The witness identified A-1 (Nalini) as one of the ladies and the male who travelled in his auto-rickshaw as Sivarasan and the other lady as Suba. MO 183 and MO 105 photographs were shown to the witness to help him identify Sivarasan and Suba. He had sufficient opportunity to identify them as all of them were talking about many things in their long distant drive in the auto-rickshaw.

140. It is unnecessary to refer to the remaining evidence which the prosecution pointed out as further corroborating the confessional statements

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of A-1 (Nalini) in Ext. P-77, as we think that in view of the already large number of items of evidence the truth of the confession stands established.

141. From the above, we come to the conclusion that prosecution has succeeded in proving, beyond reasonable doubt, that A-1 (Nalini) was one of the conspirators and she participated in the act of assassination of Rajiv Gandhi by playing a very active role.

A-2 Santhan @ Raviraj

142. Santhan (A-2) is a Sri Lankan citizen. He was aged 22 during the relevant time. The evidence shows that he was a card-holder of the Intelligence Wing of LTTE. He studied up to 5th standard in a school at Jaffna. He came in contact with Sivarasan and they eventually became close to each other. In February 1988, Sivarasan suggested to him to continue his studies at Madras and LTTE would meet his expenses. Pursuant thereto he came to India in February 1990 and secured admission at Madras Institute of Engineering Technology. His educational expenses were met by LTTE. He was arrested in connection with Rajiv Gandhi murder case on 22-7-1991. His confessional statement was recorded on 17-9-1991 by the Superintendent of Police as per Section 15 of TADA. It is marked as Ext. P-104. The incriminating admissions contained in Ext. P-104 are the following:

Sivarasan persuaded A-2 (Santhan) to join him for liquidating one Padmnabha who was the leader of EPRLF which was considered to be a rival organisation of Sri Lankan Tamils. A-2 (Santhan) accepted the assignment and began closely following the movements of Padmnabha and transmitted the information from time to time to Sivarasan. With the help of such information Sivarasan succeeded in getting Padmnabha gunned down on 19-6-1990 through some assassins. On the next day Sivarasan and A-2 (Santhan) left India and on arrival at Sri Lanka A-2 (Santhan) was profusely praised by Pottu Omman and Veluppillai Prabhakaran for the role he played in achieving the target of finishing Padmnabha.

143. By the last week of April 1991 Pottu Omman gave a directive to A-2 (Santhan) to proceed to Tamil Nadu in the group led by Sivarasan. On 1-5-1991 the group reached Kodingyoor in India. The said group consisted of Sivarasan, Suba, Dhanu, A-6 (Sivaruban) and Nehru etc. besides A-2 himself.

144. On the evening of 9-5-1991, Sivarasan took A-2 (Santhan) to Marina Beach, Madras and introduced him to photographer Haribabu (who died in the bomb explosion at Sriperumbudur), A-3 (Murugan) and A-18 (Arivu). In the night he was taken to the residence of A-10 (Jayakumar). On the next day he was taken to the house of photographer Haribabu where he (A-2) stayed for about a week. During this period Sivarasan gave Rs 1000 to him for buying clothes.

145. On 15-5-1991, A-2 (Santhan) met a top LTTE leader called Kanthan and handed over to him a letter sent by Sivarasan. Kanthan entrusted A-2 with a sum of Rs 5 lakhs to be handed over to Sivarasan. A-2

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handed over the amount to Sivarasan in instalments as and when the latter asked for it. It was on 16-5-1991 that Sivarasan divulged to A-2 (Santhan) that Veluppillai Prabhakaran had great confidence in A-2 (Santhan) particularly after his performance in the murder of Padmnabha. Sivarasan also disclosed to him that Suba and Dhanu were brought for the purpose of assassinating Rajiv Gandhi.

146. Next day Sivarasan collected Rs 10,000 from A-2 (Santhan) and on the succeeding day Sivarasan again collected another Rs 10,000 out of the balance amount. Under Sivarasan's instructions A-2 (Santhan) gave Rs 4000 to A-6 (Sivaruban). Next evening A-2 (Santhan) took A-6 (Sivaruban) to Marina Beach where Sivarasan was waiting.

147. On 21-5-1991, which was the day of the assassination of Rajiv Gandhi, A-2 (Santhan) met Sivarasan and saw the latter preparing himself. A pistol was concealed by him beneath his kurta and Sivarasan checked up with A-2 (Santhan) whether it was visible from outside. A-2 gave a nod that nothing was visible and then Sivarasan left the place. It was on the said night that Sivarasan told him that Rajiv Gandhi was murdered. He also said that Dhanu too had died. It was only on the next day that Sivarasan revealed to A-2 (Santhan) that Haribabu had also died. On 27-5-1991 Sivarasan moved to Madras and instructed A-2 (Santhan) to hand over Rs 5000 to A-10 (Jayakumar). A-2 (Santhan) was moving from place to place thereafter and finally on 30-5-1991 he went to Sundara Lodge. PW 111 (Vijayendran) conveyed to A-2 a message from Sivarasan that the latter should meet him. Pursuant to that, A-2 (Santhan) met Sivarasan on the next day. By that time Sivarasan had removed his moustache.

148. Sivarasan told A-2 (Santhan) that thenceforth it was A-3 (Murugan) who would look after the work which Sivarasan was to continue in India. A-2 booked three bus tickets to Coimbatore in pseudonymous names.

149. On 7-6-1991 Sivarasan and Suba met A-2 (Santhan) and asked him to hand over a cover to A-3 (Murugan). A-2 (Santhan) learnt from A-3 (Murugan) that Sivarasan had instructed A-3 to murder one Chandrahasan. When A-3 (Murugan) asked A-2 (Santhan) as to the cause for which Chandrahasan was to be murdered A-2 (Santhan) replied that such a murder was planned for diverting the attention of CBI.

150. In the further portion of the confessional statement Ext. P-104, A-2 (Santhan) has narrated those occasions when he and Sivarasan met. Among them an important meeting was on 11-5-1991 at 7.00 p.m. They met at the house of A-5 (Vijayanandan).

151. Sivarasan wanted A-2 to keep his two bags and conceal the same at Kollivakkom. It was done so on the succeeding day itself. On 28-6-1991, Suresh Master (an LTTE leader) directed A-2 (Santhan) to shift A-8 (Athirai) to some other place to escape from the hands of the police. Pursuant thereto A-2 (Santhan) took A-8 (Athirai) to a house at Pammal and stayed there for a night. Next day A-2 (Santhan) handed over the wireless set to Suresh Master at the house of Vijayanandan.

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152. The aforesaid are the prominent incriminating circumstances narrated in Ext. P-104. If the aforesaid confession is true it would be a justifiable inference that A-2 (Santhan) was very much involved in the conspiracy. The vivid details which Ext. P-104 contains would, in all probabilities, have been supplied by A-2 (Santhan) himself because he alone knew what all he did and where all he went and whom all he met.

153. Regarding the truth of the contents of Ext. P-104 we may verify whether it is corroborated by other evidence.

154. PW 120 (Sundarmani) is the father of photographer Haribabu. He said in his evidence that on 6-5-1991 his son Haribabu brought A-2 (Santhan) to his house and he stayed there for one week, for which Haribabu had to implore his mother because there was lack of space in the house and other female members of the family were also residing there. PW 111 (Vijayendran) is a cinema actor. He has a Doctorate from a US university. He deposed that Sivarasan came into contact with him pretending to be his admirer and on 8-5-1991 visited him along with A-2 (Santhan). Those items of evidence can be seen as details mentioned by A-2 (Santhan) in his confessional statement.

155. PW 285 (R. Sivaji) was a Superintendent of Police who arrested A-2 (Santhan). In his evidence it has come out that when A-2 (Santhan) was questioned, the police officer got the information regarding the place where 3 plastic bags and one cloth bag were kept. The particular portion of the statement, it was admitted in evidence, has been marked as P-1396. Those bags were actually given to A-2 (Santhan) by Sivarasan after returning from Tirupathi. Those articles were seized pursuant to the information for which Ext. P-1397 mahassar was drawn up. MO 1083 is a bag which was identified as containing the clothes and cosmetics and other materials belonging to Suba. MO 1129 is a bag which contained articles of Sivarasan including a diary maintained by him.

156. PW 62 (Vimla), a teacher by profession, narrated how she and her daughters were duped by Sivarasan when he brought Athirai (A-8) to their house under some false pretext without knowing that they were the persons involved in the assassination of Rajiv Gandhi. PW 62 (Vimla) was closely associated with A-8 (Athirai). PW 62 in her evidence said that A-2 (Santhan) was visiting A-8 (Athirai) and that once A-2 (Santhan) told the witness that CBI might perhaps search her house also. A-2 (Santhan) took A-8 (Athirai) away from the house of PW 62 (Vimla) on the direction of Sivarasan. We have absolutely no reason to disbelieve the evidence of PW 62. She said that the moment she came to know that those persons were suspected by the police in the Rajiv Gandhi murder case she screamed and implored to spare her and her daughters.

157. From the above corroborative items of evidence we are assured of the truth of the confession made by A-2 (Santhan) as recorded in Ext. P-104. We are hence of the view that prosecution has succeeded in proving that A-2

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(Santhan) was also one of the conspirators in the Rajiv Gandhi assassination conspiracy.

A-3 Murugan @ Das

158. Murugan was aged 21 at the time of the occurrence in this case. He belongs to Sri Lanka. He was a committed LTTE follower. After working for his organisation at Jaffna for a considerable period he was deputed by the LTTE top brass to India for carrying out "an important mission". He was arrested in connection with the Rajiv Gandhi murder case on 14-6-1991. Prosecution relies on the confessional statement said to have been given by him on 9-8-1991 to the Superintendent of Police. It is marked in this case as Ext. P-81.

159. In that confessional statement it is said that he joined the "Suicide Squad" of LTTE and came to India in January 1991. He was received by Sivarasan at Kodiakkarai. He got sketches of Fort St. George, Madras and Vellore Fort prepared under the instructions of his bosses in Sri Lanka. Photographer Haribabu went with him to Vellore Fort for that purpose and he got it photographed. Besides that, certain other government buildings were also photographed by the said Haribabu. It was A-3 (Murugan), according to his own confession, who persuaded A-1 (Nalini) to associate with LTTE work by giving her repeated narrations of atrocities committed by IPKF soldiers on LTTE members. He made Nalini become revengeful towards Rajiv Gandhi. He said that he had knowledge that Sivarasan and other top brass of LTTE were planning to murder an important personage of India. He knew it from the conversation he had had with Sivarasan.

160. In Ext. P-81, A-3 (Murugan) has further stated that Sivarasan told him to find a girl from India for garlanding Rajiv Gandhi at a public meeting. This happened during the last week of March 1991. Then he realised that Rajiv Gandhi was the target. He believed that Rajiv Gandhi was responsible for all the atrocities which IPKF committed in Sri Lanka. He said that it was in April 1991 that Sivarasan brought Suba and Dhanu to India. Then A-3 suggested that services of Nalini could be utilized for concealing the Sri Lankan identity of the girls. He further confessed that on 18-4-1991, he along with Nalini and Haribabu attended the public meeting which Rajiv Gandhi addressed at Marina Beach, Madras during which Haribabu took photos of Rajiv Gandhi and supplied the photos to him and Sivarasan.

161. He also confessed in Ext. P-81 that on 7-5-1991 he attended the public meeting at Madras addressed by V.P. Singh and that A-1 (Nalini), the two girls (Dhanu and Suba), Sivarasan and Haribabu were also with him then. He further confessed that the said function was attended by them for the purpose of conducting a trial as to how far the two girls would be able to go near the rostrum and garland the former Prime Minister. He mentioned in Ext. P-81 that Sivarasan scolded them for the failure to click the camera when the former Prime Minister was garlanded.

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162. In Ext. P-81 he also referred to a letter written by Baby Subramaniam to Bhagyanathan (A-20) and two other letters written by Dhanu and Suba to Pottu Omman and Akila (Ext. P-95 and Ext. P-96). A-3 (Murugan) further confessed in Ext. P-81 that on 20-5-1991 Sivarasan visited him and alerted him to be ready for the meeting to be addressed by Rajiv Gandhi the next day. On 21-5-1991, A-3 (Murugan) alerted A-1 (Nalini) to move fast and reminded her that Sivarasan, Suba and Dhanu might be waiting for her.

163. In the further portion of the confessional statement A-3 (Murugan) stated that Sivarasan expressed to him that he had accomplished his work though Haribabu and Dhanu had died in it. He stated further that on 25-5-1991 he along with A-1 (Nalini) and Suba accompanied Sivarasan to Tirupathi to visit the Temple of Lord Venkateshwara. During that trip Sivarasan told him that it was with the help of a belt bomb connected to two switches that Dhanu could explode the bomb and that it was Veluppillai Prabhakaran's decision to utilise the girls to retaliate against Rajiv Gandhi because IPKF atrocities were done mostly on women. He also confessed that on 7-6-1991 he himself, Sivarasan, Suba and A-2 (Santhan) met together at Astataka Temple and took a decision to go back to Sri Lanka.

164. In substance A-3 (Murugan) has admitted in Ext. P-81 that he rendered a lot of help in carrying out the target of conspiracy i.e. the assassination of Rajiv Gandhi, though he did not go to Sriperumbudur. Except for the general criticism made against the prosecution case that all confessions were extracted by coercive methods no specific criticism has been raised as against Ext. P-81. We have no reason to think that Ext. P-81 is tainted due to any reason whatsoever.

165. Nonetheless, we can act on Ext. P-81 only if we are assured by other corroborative evidence. Prosecution has placed reliance on the confession of A-1 (Nalini) to be used as a corroborative version. Learned counsel for the defence cautioned us that the version of one accomplice should not be used to corroborate the version of another accomplice. Be that as it may, we have come across several other items of evidence which are of great corroborative value.

166. PW 120 (Sundarmani) who is the father of photographer Haribabu, said in his evidence that on 20-5-1991 A-3 (Murugan) went to his house in search of Haribabu and as the latter was not available A-3 (Murugan) instructed the witness to inform Haribabu about the visit, and that no sooner than Haribabu was told about it he left the house.

167. Ext. P-521 is a forged press accreditation card in the name of A-3 (Murugan) containing his photo also. This was seized from the house which A-3 (Murugan) had taken on rent. Evidently it was a preparation to attend public meetings addressed by persons like the Prime Minister or a former Prime Minister.

168. After the arrest of A-3 (Murugan) PW 282 (Inspector of CBI) seized six baggages which were buried in a pit. The baggage contained,

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among other things, Ext. P-95 and Ext. P-96 (letters written by Suba and Dhanu to Pottu Omman and Akila after attending the meeting addressed by V.P. Singh on 17-5-1991). PW 86 (Mariappan) said in his evidence that he was staying in the house of one Shanmugham at Kodiakkarai opposite to which some Sri Lankan people were staying and A-3 (Murugan) was one among them. PW 86 stated that one day A-3 (Murugan) told him to hand over a box to the witness and asked him to keep it till he returned from Madras. After A-3 (Murugan) left he was asked by his master (Shanmugham's brother) to bury the box. It contained six items. He collected those six items and tied them together in a plastic bag and buried them. It must be remembered that PW 86 was pointed out by A-3 when the CBI Inspector (PW 282) questioned him after the arrest.

169. PW 233 (Bharathi) said that she was staying at Royapettah, Madras and in the same house another family consisting of A-20 (Bhagyanathan) and his mother A-21 (Padma) were residing. She said about the number of occasions when Sivarasan and A-3 (Murugan) frequented the house. She further said that she saw A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) in association with photographer Haribabu visiting the house and food was prepared for them. Sivarasan was also seen visiting them.

170. There is much evidence to prove that A-3 (Murugan) went to Tirupathi in the company of Sivarasan, Suba and Nalini on 25-5-1991. In this context we took into consideration that confession made by A-1 (Nalini) in which she has narrated her association with A-3 (Murugan) and the places which they visited together. We have dealt with those aspects earlier.

171. With the above corroborative items of evidence we are confident in relying on the confessional statement of A-3 (Murugan), as recorded in Ext. P-81, to be a true version. The active and positive involvement of A-3 (Murugan) in the conspiracy for assassinating Rajiv Gandhi looms large in the said confession. We have therefore no doubt that A-3 was also one of the conspirators.

172. A-4 to A-8 can be considered at a stretch, among them A-7 and A-8 can be considered together. Unlike the earlier considered accused, A-4 to A-7 did not give any confessional statement to any person. Though A-8 gave a confessional statement his involvement, if at all any, in the conspiracy, cannot be seen different from that of A-7. So the first effort is to find out whether there is any circumstance or other evidence to prove the complicity of any one of those accused. Of course the trial court found all of them to be members of the conspiracy and convicted them of it.

A-4 Shankar

173. A-4 (Shankar) has two other names, one is Koneswaran and the other is Russo. The circumstances unfurled in evidence as against him are these:

(*1*) He was a full-fledged LTTE member and came to India on 1-5-1991 in the group of 9 persons including Sivarasan, Suba and Dhanu.

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(*2*) Ext. P-1062 (a sheet of paper) shows that A-4 (Shankar) would have met A-3 (Murugan) at Kodiakkarai and then the phone number of A-1 (Nalini) would have been supplied to him.

(*3*) On 21-5-1991 he was staying at Esware Lodge which was a place frequented by Sivarasan.

(*4*) In Ext. P-401 (a wireless message sent by Sivarasan to Pottu Omman on 9-6-1991) it was mentioned:

> "I got news that one of my associates was caught at Nagapattinam and he has told all the news about me."

(*5*) When the news of the arrest of A-4 was published Sivarasan communicated that fact to Pottu Omman.

(*6*) In Ext. P-1253, a diary, Sivarasan has mentioned having paid a sum of Rs 10,000 to A-4.

(*7*) In Ext. P-439, Sivarasan has mentioned payment of Rs 5000 to A-4 (Shankar).

174. The Special Judge of the Designated Court reached a conclusion on the strength of the above-narrated circumstances that A-4 (Shankar) was a member of the conspiracy. It was contended by the learned counsel for the defence that the above circumstances may, at the most, show that A-4 (Shankar) was actively involved in LTTE work because there is nothing to suggest that he ever knew that Rajiv Gandhi was going to be murdered. Of course the first among those circumstances has a strong tendency to create suspicion in our minds against A-4 (Shankar) but in the total absence of anything to show that the 9 passengers in the boat had talked about the assassination programme of Rajiv Gandhi or at least that Sivarasan or Suba or Dhanu would have divulged it to others, there is great practical difficulty to fix up a premise that all of them shared any intention to murder Rajiv Gandhi when they set out on voyage from that island to India. It must be remembered that LTTE had several activities, even apart from murdering Rajiv Gandhi. So merely because a person is shown to be an active worker of LTTE that by itself would not catapult him into the orbit of the conspiracy mesh to murder Rajiv Gandhi. It cannot be forgotten that a conspiracy for that purpose would be strictly confined to a limited number of persons, lest any tiny leakage is enough to explode the entire bubble of the cabal.

175. At any rate, we find it difficult to concur with the conclusion reached by the Special Judge that the aforesaid circumstances would unerringly point to the involvement of A-4 (Shankar) as a conspirator to assassinate Rajiv Gandhi. The worst that could be concluded from the aforementioned circumstances, assuming that they are all proved by the prosecution in this case, is that A-4 (Shankar) was also an ardent LTTE votary having close acquaintance with Sivarasan. But from that step of conclusion it is not legally permissible to ascend on to the highest tier and reach the final conclusion that he too was in the conspiracy to murder Rajiv Gandhi.

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A-5 Vijayanandan

176. As against A-5 (Vijayanandan) the circumstances established are the following:

(*1*) He too was in the 9-member group which clandestinely came to India on 1-5-1991. He had only a forged passport.

(*2*) He stayed in Komala Vilas Lodge, Madras on 8-5-1991 and 9-5-1991 by showing a false address and also on a false pretext "to attend a marriage".

(*3*) PW 75 said that A-5 stayed in his house and since then he was fuming with acerbity towards Rajiv Gandhi.

(*4*) In a diary of Sivarasan (MO 180) there is an entry showing that an amount of Rs 50,000 was given to "Hari Ayyah" on 8-5-1991.

177. In the first place we may point out that there is no substantive evidence in this case to show that A-5 (Vijayanandan) had another alias name as Hari Ayyah. Of course it is seen stated so by A-2 (Santhan) in the confessional statement but it has not been put to A-5 (Vijayanandan) when he was questioned under Section 313 of the Code. Even if it was put it is doubtful whether the said entry in the diary could have been used against A-5. However, the trial court upon the said circumstances reached the conclusion that he too was a member of the conspiracy.

178. It must be borne in mind that LTTE was a proscribed organisation in Sri Lanka and its members were indulging in secret activities for attaining a goal of an independent Tamil Eelam in Sri Lanka. There were many, who were members of LTTE, living in India without exposing themselves lest they would be caught by the Sri Lankan authorities. Even prosecution has no case that all those who were members of LTTE were also members of the conspiracy to murder Rajiv Gandhi. So the mere fact that someone was shown to be an LTTE votary and acquainted with the other accused persons in this case by itself would not entangle him in the cobweb of the conspiracy to murder Rajiv Gandhi.

179. As in the case of A-4 (Shankar) the circumstances arrayed by the prosecution against A-5 (Vijayanandan) may, at the worst, show him to be an active LTTE votary. But beyond that stage the circumstances would not push him into the dragnet of the conspiracy.

A-6 Sivaruban

180. A-6 (Sivaruban) was a boy in his teens when the incident took place. He also belongs to Sri Lanka. His left leg was amputated. Nevertheless he was an active LTTE member. The circumstances pitted against him by the prosecution are the following:

(*1*) He was one among the 9 persons who arrived in India from Sri Lanka on 1-5-1991 in the company of Sivarasan. It was a clandestine voyage.

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(*2*) He was sent to Jaipur on 19-5-1991 by Sivarasan at the expense of LTTE. Though it was ostensibly for fixing up an artificial leg for him there is no evidence to show that the leg was fixed at Jaipur.

(*3*) He stayed in Golden Hotel, Jaipur from 19-5-1991 to 23-5-1991 and then he shifted to Vikram Hotel, Jaipur.

(*4*) MO 667 series which were seized from the house occupied by A-3 (Murugan) on 15-6-1991 contained a folio showing the telephone number and the address of A-6 (Sivaruban) at Jaipur. In a search conducted by the Inspector of CBI, Jaipur at Vikram Hotel on 20-6-1991 telephone numbers of A-15 (Thambi Anna) as well as A-9 (Robert Payas) were found out among the materials seized therefrom.

(*5*) Ext. P-1200 is a letter which A-2 (Santhan) had written to A-6 (Sivaruban) dated 18-6-1991 in which A-6 was asked to shift from Vikram Hotel immediately.

181. The Special Judge of the Designated Court highlighted two features. First is, why should A-6, who is not a senior leader of LTTE, be sent to Jaipur when artificial leg could have been fixed at places like Madras and Bangalore. Second is, during the long period when he was in Jaipur he could not get the artificial leg fixed. Learned Special Judge took into account those features along with the circumstances enumerated above and came to the conclusion that there is force in the prosecution contention that A-6 (Sivaruban) was deputed to Jaipur for finding out a hideout for Sivarasan and Suba to escape after assassination of Rajiv Gandhi.

182. There is no justification for reaching such a rash inference on the said evidence. If A-6 (Sivaruban) required an artificial leg is it not a proper query — why he could not have got it fixed at any other place? (It is an admitted fact that the institute at Jaipur for providing artificial legs is a very renowned one.) Why one is preferring a particular centre to a less renowned place for such reparative devices, is too difficult a question for another person to answer. That apart, we do not know whether a period of one month is too long for completing the process of artificial leg attachment or whether any work was in progress at the centre. At any rate no material has been placed in regard to those aspects.

183. A circumstance which created suspicion in the mind of the investigating agency was that A-6 (Sivaruban) also came to India along with the other 8 persons on 1-5-1991. That might be the reason why the associates of A-6 cautioned him that he too would be caught by the police and advised him to shift to another place. No doubt that is an incriminating circumstance against A-6 (Sivaruban). But it is too much a strain to jump to the conclusion, with the help of the aforesaid circumstance, that A-6 (Sivaruban) was also a conspirator for assassinating Rajiv Gandhi.

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A-7 Kanagasabapathy and A-8 Athirai

184. While considering the involvement of A-7 (Kanagasabapathy) it would be expedient to consider the case of A-8 Athirai @ Sonia (also called Gauri). Such a course was adopted by the trial court and we too feel that such a course would be advantageous. In fact the learned counsel for the defence addressed arguments as for A-7 and A-8 together.

185. It must first be pointed out that no confessional statement was recorded by any person from A-7. A confessional statement attributed to A-8 is marked as Ext. P-97. We will refer to the said confessional statement before proceeding to other evidence concerning the said two accused.

186. A-8 is a girl hailing from Sri Lanka. She was in her teens during the days of the conspiracy. Two of her sisters are now in Switzerland living with their husbands. A-8 (Athirai) had a love affair with a boy named Anand, but he died in a raid conducted by IPKF during 1989. She was recruited in LTTE at the age of 16 and she was given a training in shooting. It was from her confessional statement that we got the idea of placement of Dhanu and Suba in LTTE ranking. The former was a member of "Black Women Tiger" and the latter was a member of the Army Branch of LTTE. The following facts are also mentioned in Ext. P-97:

When she was studying in 6th standard LTTE people visited her school and started the campaign for enlisting support from school children. She was then aged only 13. After reading a lot of literature on freedom struggle, Tamil culture etc. she decided to join LTTE when she was aged 16. She was christened by Veluppillai Prabhakaran. She learnt shooting with AK-47. She was made to believe that IPKF, instead of protecting the Tamils was fighting against them and committing all sorts of atrocities on the innocent Tamilians of Sri Lanka.

187. In March 1991, Pottu Omman told her that if she would go to India LTTE would meet all her expenses. She was introduced to A-7 (Kanagasabapathy). She understood that her work in India was to collect information about certain marked places in Delhi for facilitating the work of LTTE. She and A-7 (Kanagasabapathy) together left Sri Lanka and they reached India by boat in April 1991 and they stayed together in the house of a relative of A-7. Sivarasan helped her with money. After the murder of Rajiv Gandhi Sivarasan told her that thenceforth she would be looked after by A-2 (Santhan) as Sivarasan was apprehending arrest.

188. We have not found out any material whatsoever from the aforesaid confessional statement regarding her involvement in the conspiracy for Rajiv Gandhi's murder. That young girl could not be attributed with even any knowledge that Rajiv Gandhi would be murdered. The worst that could be found against her is that her young mind was transformed into a stormy petrel of LTTE through brainwashing. That does not mean that she should necessarily have been cobbled into the conspiracy.

189. Over and above the circumstances pitted against A-7 on a par with A-8 (Athirai) it is proved that A-7 had gone to Delhi on 20-5-1991 with the

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money supplied by Sivarasan. He was accompanied by a person called Vanan and they both stayed in Delhi till 30-5-1991. The trial court drew an inference that Sivarasan would have sent A-7 (Kanagasabapathy) to New Delhi for fixing up a hideout. Even if it was so, where is the evidence to show that A-7 was ever conspired with for the murder of Rajiv Gandhi?

190. In this connection reference has to be made to the testimony of two witnesses. PW 109 (Jai Kumari) is the niece of A-7 (Kanagasabapathy). She has stated in court that she has seen her uncle A-7 in the company of A-8 (Athirai) visiting "Higginbothams" (the famous bookseller) at Mount Road, Madras. They bought a map of Delhi and they were found enquiring for a book containing the addresses of VIPs. On 2-5-1991 Sivarasan was found talking with them and a few days thereafter they went away with Sivarasan, though A-7 used to visit her again infrequently. The witness said that when she saw the photo of Sivarasan connecting him with the murder of Rajiv Gandhi she asked her uncle about it. Then A-7 answered thus:

> "You are simply imagining many things. For Heaven's sake don't entertain any bad things about me and A-8. Otherwise you have to face God's punishment."

191. The Special Judge of the Designated Court drew an inference from the above talk of A-7 that he would have had the knowledge of the object of conspiracy. The above words said to have been used by A-7 to his niece could as well have been said as he was certain that he was not involved in the murder of Rajiv Gandhi. But the trial court took it the other way round.

192. PW 62 (Vimla) who is a teacher has stated in her evidence that it was Sivarasan who brought A-8 (Athirai) to her house and requested for accommodating her also in the house. (The witness has narrated how she came into acquaintance with Sivarasan.) PW 62 further said that Sivarasan visited her house a couple of days after Rajiv Gandhi was killed and he talked with A-8 (Athirai). But later when the witness happened to see the photo of Sivarasan in the newspapers connecting him with the murder of Rajiv Gandhi she asked A-8 (Athirai) whether there was any truth in the news. A-8 strongly repudiated it and said that Sivarasan was a press reporter and he would have gone there to make a report of the function. Sivarasan visited A-8 in the same afternoon and then PW 62 (Vimla) requested Sivarasan to take A-8 away from that house. Sivarasan then said that he would not visit that house again. At the same time he warned the witness like this:

> "If anybody would identify him and give information about him he would meet the same fate as Padmnabha had."

Thereafter Sivarasan did not visit PW 62 at all. It was A-2 (Santhan) who later took A-8 (Athirai) away from that house.

193. We have no reason to disbelieve the testimony of PW 62 or that of PW 109. We have no doubt from the aforesaid evidence that A-7 and A-8 were very close to Sivarasan who had taken much interest in them. But the question is, will that alone lead us to the conclusion that A-7 and A-8 were

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also associated with Sivarasan in the conspiracy to murder Rajiv Gandhi? In this connection it is well to remember that all those who worked for the LTTE cause were familiar with Sivarasan. It is true that all the conspirators had worked in unison with Sivarasan and they were all ardent LTTE personnel. But the converse cannot be a necessary inference i.e. all those LTTE personnel who associated with Sivarasan should have been brought within the radius of the conspiracy to murder Rajiv Gandhi as participants thereof.

194. We entertain genuine doubt, in spite of the association that A-7 and A-8 had with the LTTE movement and also with Sivarasan, whether those two accused would have conspired with others in murdering Rajiv Gandhi.

A-9 Robert Payas

195. Robert Payas was aged 25 during the relevant period. While he was in Sri Lanka he associated himself with LTTE work. He arrived in India on 20-9-1990. He was arrested in connection with Rajiv Gandhi murder case on 18-6-1991. Ext. P-85 is said to be the confessional statement given by him to the Superintendent of Police on 15-8-1991.

196. It has been narrated in Ext. P-85 that IPKF caught A-9 (Robert Payas) and detained him for 15 days along with some others, and during that time the army men committed a lot of atrocities in the houses of the detained persons. A suckling child of A-9 died in the army action. A-9 and his colleagues developed bitter hatred towards IPKF and the other rival organisations headed by Padmnabha.

197. The incriminating statements in Ext. P-85 are the following:

A-9 was in close contact with Kanthan (a senior LTTE leader) and Sivarasan, who came to India for carrying out a certain dreaded act. LTTE was bearing all the expenses of A-9 and his family and Sivarasan used to visit him frequently. In February 1991, Sivarasan and A-3 (Murugan) went to the house of A-9 and stayed there for a couple of days. A-2 (Santhan), Sivarasan and Kanthan used to chalk out plans for their movements while staying in the house of A-9. In the beginning of May 1991, Sivarasan brought Santhan to the house of A-9. On 5-5-1991 Sivarasan and A-2 (Santhan) had a talk with Haribabu, A-3 (Murugan), A-18 (Arivu) and A-9 (Robert Payas) at Marina Beach, Madras. Between 15-5-1991 and 20-5-1991, Kanthan, A-2 (Santhan) and two other persons of LTTE used to meet each other in the house of A-9 and while they were in dialogue Sivarasan was keeping them in close contact through phone.

198. It is further stated in Ext. P-85 that A-9 remained in his house on 21-5-1991 from the afternoon till next day expecting some message from Sivarasan. On 24-5-1991 Sivarasan went to the house of A-9 riding a motorcycle but he felt that he could not see Kanthan in A-9's house. A-9 told that fact to Kanthan on the next day. On 27-5-1991, A-9 and A-2 (Santhan) decided between themselves to escape from the police. So he with his wife and sisters proceeded to Thiruchandur and from there they moved to other places incognito.

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199. From the above confessional statement recorded in Ext. P-85 it can be seen that A-9 had a serious involvement in the conspiracy with Sivarasan and others for assassinating Rajiv Gandhi. But the question is whether Ext. P-85 can be treated as a reliable evidence. So our next effort is to find out whether there is other corroborating evidence.

200. Prosecution relied on the evidence of PW 197 (Dr Claud Fernandez) who is a Dental Surgeon. He said in his evidence that he was residing just in front of the building where A-9 was residing. According to him, on the next day of the assassination of Rajiv Gandhi crackers were exploded in the house of A-9. The witness well remembers that A-9 and A-3 together visited his clinic. The aforesaid evidence of PW 197 has some corroborative value. There is no contention that the witness is speaking falsehood.

201. PW 59 (Raghu) has a photo studio at St. Thomas Mount, Madras. He said that A-9 and Sivarasan went to his studio on 15-9-1990 and got two photographs taken. Sivarasan then wrote his name and address in the records of the studio as follows:

> "R. Subaraj,
> 85, Gangai Amman Street,
> Kodambakkam (Madras)"

His version is supported by documentary evidence such as Exts. P-176 to P-184 (all are records kept in the studio).

202. In MO 180 diary, which is proved to be the diary of Sivarasan, there are umpteen entries showing various amounts paid to A-9. It is not disputed that the said diary belonged to Sivarasan and the entries were made at his instance.

203. In Ext. P-81 confessional statement, A-3 (Murugan) stated that a wireless set was installed in the house of A-9 at Porur by LTTE militant Kanthan. It was from that wireless set Sivarasan used to contact Pottu Omman at Sri Lanka.

204. The aforesaid items of evidence proved in this case have rendered the confessional statement made by A-9 in Ext. P-85 as wholly true. We therefore concur with the finding of the Special Judge that A-9 (Robert Payas) was very much involved in the conspiracy to assassinate Rajiv Gandhi.

A-10 Jayakumar

205. Jayakumar is the brother-in-law of A-9 (Robert Payas). (His sister Prema is A-9's wife.) A-10 was lead into the LTTE movement. He was sent to India in September 1990. He was arrested in connection with the Rajiv Gandhi murder case on 26-6-1991. A confessional statement which is marked as Ext. P-91 is attributed to A-9. The incriminating statements in it are the following:

As IPKF committed lots of atrocities on LTTE people A-10 (Jayakumar) along with others felt very much annoyed. (A-9's little child died in one such

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IPKF action.) So LTTE had decided to teach the leaders concerned a lesson. On 20-9-1990 A-10 reached India and met a hard-core LTTE personnel Nishananthan (who was also called Nixon). A house was arranged at a place called Porur for which an amount of Rs 5000 was paid to the owner. Kanthan (another top-ranking LTTE leader) used to supply money to A-10 and also to his brother-in-law A-9. A wireless set was installed by Kanthan inside the house of A-10 in order to facilitate the hard-core LTTE personnel to contact their Sri Lankan counterparts. Once he was told by Kanthan that a high-ranking LTTE leader (Sivarasan) would be arriving in India for carrying out a dangerous plot. A similar information was passed on to him by his brother-in-law Robert Payas also. As Kanthan told him that a house was to be arranged for Sivarasan it was so arranged at Kodungaiyur. In December 1990, Sivarasan was brought to A-10's house by his brother-in-law. He was directed to render all help to Sivarasan and he knew very well that the mission of Sivarasan was to execute a dangerous plot. Sivarasan used to supply enough money to A-10 (Jayakumar). Once Sivarasan brought a suitcase consisting of his diary, dress, a pistol and one AK-47 gun besides plenty of bullets. The pistol was concealed in a book in which a cavity was made out for containing the firearm. Sivarasan used to carry the suitcase wherever he went. Once he went to Sri Lanka and on his return he brought Suba and Dhanu. This was on 2-5-1991. A-10 knew that Sivarasan brought those two girls for accomplishing the retaliatory plot. A-10 understood that Rajiv Gandhi was the focus of their hatred. He asked his wife to stitch a cloth cover for keeping the pistol of Sivarasan.

206. Regarding the activities on 21-5-1991, A-10 (Jayakumar) is said to have confessed in Ext. P-91 that he saw Sivarasan keeping the pistol concealed and setting out for the public meeting at Sriperumbudur. By midnight Sivarasan returned with Suba and Nalini and it was confirmed that Rajiv Gandhi was killed by Dhanu. He saw Sivarasan going upstairs to talk with Santhan.

207. The further incriminating portions in Ext. P-91 are:

On 22-5-1991 A-10 prepared meals for Sivarasan, Suba and Nalini and it was only on 23-5-1991 that Sivarasan left the house. Before leaving Sivarasan kept all his things in the suitcase, (except the pistol) and entrusted the pistol to A-10. The suitcase was put in a pit dug by A-10. As instructed by Sivarasan the pit was closed with a concrete slab and a painting was given on its surface.

208. The above is the substance of the confession contained in Ext. P-91. If that statement can be accepted as reliable we have no doubt that it would afford enough material for concluding that A-10 (Jayakumar) was actively involved in the conspiracy to assassinate Rajiv Gandhi. In order to verify the truth of it we have to turn to other evidence which prosecution has adduced for corroboration purposes.

209. The first corroborative material pressed into service by the prosecution is the confessional statement made by his brother-in-law Robert

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Payas (A-9) in Ext. P-85. We have earlier found it acceptable and hence it can be regarded as a material to ensure confidence about the truth of the statement contained in Ext. P-91. Another item of evidence is the testimony of PW 63 (Smt Kottammal). She is an employee of the Tamil Nadu State Electricity Board. She said that when she completed the construction of the house at Kodungaiyur it was rented out to A-10 (Jayakumar) and his wife Shanthi. Ext. P-217 is the rent agreement executed for the said purpose. PW 85 (Swaminathan) who is a nearby resident has stated that by the third week of December 1990 he saw A-10 and his wife occupying the new house of Kottammal. He also said that Sivarasan used to visit that house frequently and A-2 (Santhan) was also staying in that house from 6-5-1990 onwards. The witness remembers that Sivarasan started staying in that house from 22-5-1991 onwards. He remembers the date because he knew that Rajiv Gandhi was murdered on the previous day. Nalini and Suba were also with Sivarasan. PW 85 further said that he noticed distribution of sweets in the house of A-10 by noon on 22-5-1991.

210. PW 200 (Smt Meera) who is another neighbouring resident gave evidence almost in the same manner as PW 85. What she further said was that Sivarasan was a regular visitor to the house of A-10 from January 1990 onwards and the witness noted Sivarasan bringing two girls in the first week of May 1991.

211. Testimony of those witnesses was believed by the trial court and we have no reason to take a different view. It is clear that the aforesaid items of evidence are of much corroborative value.

212. There is yet another circumstance which gives assurance about the involvement of A-10 with the conspiracy. When he was arrested and interrogated by PW 288 (Raghauthamam — one of the chief investigating officers) the accused gave the information that he had buried the suitcase and on the strength of the said statement the suitcase was unearthed. Ext. P-437 is the mahassar which was prepared for it. (The statement which A-10 made pursuant to which the suitcase was unearthed was separately marked as Ext. P-1436.) The articles contained were the diaries of Sivarasan, the Sri Lankan passport of A-2 (Santhan) besides some live cartridges and MO 157 (which is a Tamil dictionary in which a cavity was carved out for keeping a pistol). PW 85 is a witness to the unearthing of the suitcase. He has stated that fact in his evidence.

213. Over and above the afore-narrated corroborative pieces of evidence, prosecution has produced still further items of evidence. But we do not think it necessary to refer to all of them since we are fully satisfied even with the evidence already discussed above that the confessional statement contained in Ext. P-91 was made by A-10 and it is a true confession. We therefore conclude without hesitation that prosecution has succeeded in proving that A-10 (Jayakumar) was an active participant in the conspiracy for the assassination of Rajiv Gandhi.

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A-11 Shanthi

214. She is the wife of A-10 (Jayakumar). Except the fact that she accompanied her husband from Sri Lanka in September 1990 and continued to live with him in India we are unable to find any involvement of her in the conspiracy to murder Rajiv Gandhi. Learned Special Judge has considered her case, tagging it with her husband's case. We may point out in this context that no confession could be recorded from her under Section 15 of TADA. We have not come across any material, apart from her living with her husband A-10 (Jayakumar), to suggest that she had any role in the conspiracy. It is very unfortunate that for the role played by her husband she has been sentenced to death under Section 302 read with Section 120-B of the Indian Penal Code.

A-12 Vijayan @ Perumal Vijayan

215. Vijayan was arrested on 8-7-1991 in connection with the Rajiv Gandhi murder case. Ext. P-101 is a confessional statement said to have been recorded from him on 3-9-1991 by the Superintendent of Police as per Section 15 of TADA. We will first refer to the following incriminating passages in Ext. P-101:

A-12 (Vijayan) was conducting a workshop in Sri Lanka, but with the commencement of IPKF operation in the island the workshop ran into doldrums. That was a time when his wife was pregnant. He therefore thought of going to India for availing themselves of medical facilities, but then he found a hurdle that every Sri Lankan Tamil citizen wanting to leave the island had to pay Rs 1500 and two gold sovereigns to the LTTE movement. As A-12 (Vijayan) was in penury he approached LTTE leaders for exonerating him from the financial liability in crossing over to India.

216. He was then introduced to Sivarasan by a close relative. Sivarasan offered to meet all his expenses of going to India on a condition that he should work for LTTE. A-12 accepted the condition. On 12-9-1990, he, his wife (A-13) and his father-in-law (A-14) reached Rameshwaram. After getting themselves registered as Sri Lankan refugees they moved to Tuticorin.

217. In December 1990, Sivarasan visited them at Tuticorin and persuaded A-12 to shift his residence to Madras and take a house on rent so that the new arrivals of LTTE could also be accommodated therein. Sivarasan paid him Rs 10,000. So he and his family shifted to Madras.

218. On 2-5-1991 Sivarasan brought a suitcase containing a wireless set and wanted A-12 (Vijayan) to keep it in his house. One person by the name of Nehru was also present along with Sivarasan. Sivarasan told A-12 that two girls would be brought from Sri Lanka for an important work and requested to keep that information secret. Sivarasan paid him Rs 10,000 again.

219. After 3 days, Sivarasan brought Suba and Dhanu to the house of A-12. He directed A-12 to dig a pit for keeping the wireless set as well as some guns. A-12 obeyed and he was helped by Nehru in digging the pit. On

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21-5-1991 Sivarasan visited A-12's house at 12.30 noon and asked Dhanu and Suba to get ready. Then the two girls went inside a room and after about an hour came out dressed up for going out. Sivarasan took the girls in an auto-rickshaw and left. On the next day Sivarasan reached A-12's house and disclosed to him that Rajiv Gandhi was murdered. He asked Nehru to transmit the message to Sri Lanka.

220. The remaining part of the confessional statement in Ext. P-101 contains the directives which Sivarasan gave to A-12 (Vijayan) which the latter had obeyed. But there is nothing in Ext. P-101 to show that A-12 ever knew before 22-5-1991 that Rajiv Gandhi would be murdered. Of course, he could have inferred that the important work which Sivarasan suggested would be some criminal activity but that does not mean he should necessarily have inferred that Sivarasan was targeting Rajiv Gandhi and was contemplating his assassination.

221. No doubt A-12 was very much used by Sivarasan without letting him know of his plan to murder Rajiv Gandhi. Nor did anyone else tell A-12 about it. Even from among the articles which PW 281 a police officer recovered from his house (as per Ext. P-1359 mahassar) nothing could be attributed to A-12 regarding his knowledge that Sivarasan was planning to murder Rajiv Gandhi.

222. But after the murder of Rajiv Gandhi A-12 (Vijayan) had helped Sivarasan very much to escape from being caught. In that endeavour he helped Suba also. It might be that Sivarasan could secure such assistance from A-12 on the strength of the financial assistance which he lavishly gave to A-12 and his family at the time of need. But we are unable to stretch the inference further backward to think that A-12 played any part in the conspiracy to murder Rajiv Gandhi.

A-13 Selvaluxmi

223. Selvaluxmi is the wife of A-12 (Vijayan). Except that she was living with her husband she had no other role apart from what her husband did. She was arrested on 16-5-1992. The trial court dealt with the case of A-13 in conjunction with that of her husband A-12 (Vijayan). We note that the investigating agency could not elicit any confession from her. The result is that there is practically nil evidence to show that A-13 was ever involved in the conspiracy to assassinate Rajiv Gandhi.

A-14 Bhaskaran

224. Bhaskaran is the father-in-law of A-12 (Vijayan) and father of A-13 (Selvaluxmi). His involvement in the conspiracy was considered by the trial court conjointly with the discussion pertaining to A-12 and A-13. As from him also the investigating agency could not elicit any confession under Section 15 of TADA.

225. Though there is no evidence to show that he had any prior knowledge of the plan to murder Rajiv Gandhi there is evidence to show that

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after A-14 (Bhaskaran) came to know of the assassination he tried to protect Sivarasan and others from being caught or detected.

226. PW 97 (Chokkanathan) is the brother-in-law of A-14 (Bhaskaran). That witness has said in his evidence that on 21-6-1991 his brother-in-law (A-14) expressed a desire to have a larger house on rent by saying that such a house was necessary to accommodate certain important persons. A-14 (Bhaskaran) initially hesitated to divulge the identity of those important persons to PW 97, but later he disclosed that the house was meant for Sivarasan and Suba who were involved in the Rajiv Gandhi murder case. PW 97 said that on hearing the said information he refused to help his brother-in-law, but his brother-in-law became very angry and gave a threat that if the information is divulged to the police he (PW 97) might have to meet his end. Next morning A-14 left the house of PW 97.

227. Shri Altaf Ahmed, learned Additional Solicitor General contended that the aforesaid conduct of A-14 is enough to draw the inference that A-14 was also privy to the conspiracy. But we are unable to stretch the inference to such a farthest extent. The evidence of PW 97 would certainly indicate that A-14 was interested in securing a safe place for Sivarasan and Suba to escape from police detection and also to save them from being caught by the police. It is quite possible that he would have been persuaded to help Sivarasan and Suba on the strength of the help which Sivarasan rendered to the family. It may be possible to go one more step further that perhaps Sivarasan would have disclosed to A-14 that Rajiv Gandhi was murdered at his behest and sought the help of A-14 to escape from police detection.

228. We can only conclude that A-14 would have harboured Sivarasan and Suba and also tried to screen them from being caught by the police.

A-15 Shanmugavadivelu @ Thambi Anna

229. He was arrested on 16-5-1992. The Superintendent of Police recorded a statement on 17-5-1992. Claiming that it is a confessional statement it was marked by the prosecution as Ext. P-139. But its admissibility was resisted on the ground that it does not contain any passage which incriminates him. We will just reproduce the contents of what he said in Ext. P-139.

230. In the year 1987, he and his wife with two children and his nephew left Sri Lanka and reached India. He had to get permission from LTTE for leaving Sri Lanka and Kittoo (LTTE leader) helped him in that regard. In the first week of May 1991, Sivarasan and A-2 (Santhan) sought his help to get an introduction to PW 62 (Vimla) — a teacher. He obliged them. Later A-2 met him and requested him to keep some good amount in safe custody. As he agreed to do so A-2 (Santhan) gave him Rs 1.25 lakhs on one occasion (which was about a week prior to the murder of Rajiv Gandhi) and on a subsequent occasion A-2 (Santhan) entrusted Rs 3.20 lakhs to him. About 4 days prior to Rajiv Gandhi's murder A-2 (Santhan) collected Rs 70,000 from him and a week after the assassination A-2 collected Rs 3.12 lakhs from him and after some days the balance amount was also collected. A couple of days

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later A-8 Athirai visited him, by which time the photo of Sivarasan appeared in newspapers as being involved in the Rajiv Gandhi murder case. Thereupon A-15's wife resented any LTTE people visiting the house. A-15, in fact, asked A-2 (Santhan) as to why the photo of Sivarasan appeared in newspapers as being involved in the Rajiv Gandhi murder case. A-2 explained that there is nothing to worry about it.

231. The above are the important contents in Ext. P-139. It is needless to point out that the said statement is lacking any inculpative admissions. On the contrary, it is mostly exculpative. Even apart from that, prosecution could not adduce any tangible evidence against A-15 (Shanmugavadivelu), not even to doubt that he had any involvement in the conspiracy to murder Rajiv Gandhi. Of course, the conspirators would have found A-15 as a reliable person for keeping their money. We must not forget the fact that A-15 hailed from Sri Lanka and he got some help from the LTTE people for going away from the island to India. The mere fact that A-2 (Santhan) had chosen A-15 as a safe person to keep money is hardly sufficient to conclude that he was involved in the Rajiv Gandhi murder conspiracy.

A-16 Ravichandran and A-17 Suseendran

232. In dealing with the case against the above two accused we have necessarily to delink the offences under Sections 3(3), 3(4) and 5 of TADA and Section 5 of the Explosive Substances Act and Section 3(1) of the Arms Act for a certain obvious reason. It is an admitted fact that A-16 and A-17 were tried in another criminal case for the aforesaid offences read with Section 120-B of the Indian Penal Code, inter alia, certain other counts of offences. A-16 and A-17 and a host of some other persons were arrayed in CC-7 of 1992 before a Designated Court, Poonamallai, Chennai (Madras). As per judgment dated 23-1-1998 they were convicted of those offences and sentenced to varying terms of imprisonment. It is also an admitted fact that the said judgment has become final and the convicted persons involved therein have undergone the punishment period.

233. Shri N. Natarajan, learned Senior Counsel for A-16 and A-17 contended that those accused are not liable to be tried again for the said offences since the facts now stated by the prosecution were substantially the same as were involved in CC-7 of 1992. Shri Altaf Ahmed, learned Additional Solicitor General made a strong bid to show that as the said trial was not in connection with the assassination of Rajiv Gandhi the facts cannot be regarded as the same. We have no doubt that A-16 and A-17 cannot use the judgment in CC-7 of 1992 as a shield against the charge under Section 302 read with Section 109-B and under Section 212 of IPC. But the other offences found against them were based on the same facts for which they were tried for such offences in CC-7 of 1992. This can be discerned from the narration of facts in the aforesaid case.

234. Learned counsel for the accused had produced a certified copy of the judgment in CC-7 of 1992. A-16 (Ravichandran) in this case was arrayed as A-2 in that case and A-17 (Suseendran @ Mahesh) in this case was

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arrayed as A-3 in that case. Relevant portion showing the facts in that case appearing in para 2 of the judgment is extracted here:

> "A-1 to A-32 together and in separate groups at various places such as Palaly, Jaffna in Sri Lanka, Coimbatore, Udumalpet, Pollachi, Madras, Vaniyambadi, Palani, Kaniyur, Dindigul and Pudukkottai conspired together and agreed to do illegal acts by illegal means like forming an armed force by name 'Tamil National Retrieval Troop' with an intention to overawe the Government established by law, cessation of Tamil Nadu from Indian Union and to strike terror in people and to exhort members of TNRT to indulge in disruptive activities and make preparations for the same to fulfil their object, to achieve their object by procuring arms, ammunition, bombs, wireless sets and other explosive substances, to loot police armouries in Tamil Nadu for the said purpose, to aid, abet, advise and knowingly render assistance for acts preparatory to terrorist and disruptive activities and to harbour terrorists and disruptionists and persons who conspire or attempt to commit or advocate, abet, advise or incite or knowingly facilitate the commission of a terrorist or disruptive activity. Everyone did their best at different stages to achieve their common design."

235. The period of the aforesaid activities, as involved in that case, covered the period from 1987 to end of 1991. Section 300(1) of the Code of Criminal Procedure contains the ban against a second trial of the same offence against the same person. Sub-section (1) reads thus:

> "300. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof."

236. The well-known maxim "*nemo debet bis vexari pro eadem causa*" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Criminal Procedure Code is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.

237. Though Article 20(2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 of the Criminal Procedure Code. It was held by this Court in *Manipur Admn.*

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v. *Thokchom Bira Singh*[15] that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the clause embodies the principle of *autrefois convict* Section 300 of the Criminal Procedure Code combines both *autrefois convict* and *autrefois acquit*.

238. Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) of the Code, or he could have been convicted for such other offence under Section 221(2) of the Code. In this context it is useful to extract Section 221 of the Criminal Procedure Code:

> "221. *Where it is doubtful what offence has been committed.*—(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.
>
> (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

239. As the contours of the prohibition are so widely enlarged it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial. We have absolutely no doubt that the offences which we have indicated above were fully covered by the trial in CC-7 of 1992, and therefore the prosecution is debarred in this case from proceeding against A-16 and A-17 for the aforesaid offences. Consequently the conviction and sentence passed by the Designated Court as per the impugned judgment for offences under Sections 3(3), 3(4) and 5 of TADA and also Section 5 of the Explosive Substances Act as well as Section 3(1) of the Arms Act on A-16 and A-17 are hereby set aside.

240. Now we have to consider the case of A-16 (Ravichandran) for the offences under Section 302 read with Section 120-B of IPC as a member of the criminal conspiracy to assassinate Rajiv Gandhi.

241. A-16 (Ravichandran) is a Sri Lankan citizen. He was arrested on 20-10-1991 in connection with the Rajiv Gandhi murder case. The Superintendent of Police (CBI) has recorded a statement which is said to contain the confession made by A-16 on 14-2-1992. It is marked in this case as Ext. P-121. The incriminating statements, as for this case contained in Ext. P-121, can be extracted after excluding the facts which were the subject-matter of CC-7 of 1992.

242. A-16 (Ravichandran) and his companion A-17 (Suseendran) reached India in December 1990. He met Sivarasan as instructed by him

15 AIR 1965 SC 87 (1965) 1 Cri LJ 120

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near Devi Theatre. A few days hence Sivarasan handed over to A-16 a sum of Rs 1.5 lakhs for buying any kind of vehicle for the use of the LTTE movement. Sivarasan gave A-16 a contact number (2343402) for any urgent need which might arise. A-16 went to the house of A-10 Jayakumar at Kodungaiyur along with Sivarasan and on his instructions went to the airport at Madras to know how security arrangements were in force when a VIP arrived. A-16 reported to Sivarasan that the first gate of the old airport could be used for sneaking in. A-16 reminded Sivarasan that three months had already elapsed since they reached India but still A-16 did not know of the target. Sivarasan then replied: "We need not go in search of the target but the target would come in search of us." Sivarasan further assured A-16 that the crucial situation would arrive very soon.

243. The further incriminating statements in Ext. P-121 are the following:

Sivarasan asked A-16 to start a make-believe travel agency at Delhi. A-16 collected Rs 2 lakhs from Sivarasan and a few days later collected a further sum of Rs 5 lakhs for the said purpose. However, Sivarasan cautioned him to start the travel agency only after getting definite instructions from him. Pottu Omman (one of the topmost LTTE hard core) supplied a particular code number to A-16 for transmitting wireless messages. They are: No. A-9 for A-17, and No. PO 91 for Pottu Omman. On 1-5-1991 or 2-5-1991, A-16 met Sivarasan near Shanti Theatre (Madras) as directed in a letter which he got from his aunt (Lokmatha). On 13-5-1991 or 14-5-1991, A-3 (Murugan) reached the same place with a suitcase. In the presence of A-16 one of the LTTE petrel "Sokkan" asked A-3 (Murugan) "why the work of Sivarasan has not yet reached the target?" and A-3 gave the following reply: "Why worry, it would take place and it must happen." Thereafter A-16 kept silence without putting further questions.

244. On 20-5-1991, A-16 was in the house opposite to Shanmugham's house. At 12.30 in the night the news that Rajiv Gandhi was killed was communicated to them. Then he and others left the place. Sokkan later told A-16 that death of Rajiv Gandhi was advantageous for the LTTE movement.

245. The remaining portion of the confession in Ext. P-121 relates to the joint activities of himself, Sivarasan, Suba and A-17. When much later he heard that Sivarasan and Suba died by consuming capsules he felt very sad. The rest of the statement relates to his continued contacts with Pottu Omman and other leaders of LTTE.

246. If the aforesaid confession is true and reliable it can be treated as a safe foundation for resting a finding that A-16 was involved in the conspiracy to murder Rajiv Gandhi. True, A-16 did not divulge in so many words in that confession about the identity of the target of Sivarasan. But it is very clear from Ext. P-121 that A-16 knew about it. In December 1990, he was deputed to India to carry out the execution of an "important mission" and he was instructed to obey the direction of Sivarasan for that purpose. When he knew that Rajiv Gandhi was the target he wanted to get that

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confirmed from Sivarasan and that is why he asked Sivarasan in plain language — whether it was Rajiv Gandhi. The silence adopted by Sivarasan helped him to confirm it. All the activities done by him thereafter were in facilitation of the aforesaid common design. It has now to be considered whether the confessional statement made by A-16 has been corroborated in material particulars.

247. PW 206 (Lokmatha), the aunt of A-16 has said in her evidence that Sivarasan was found contacting A-16 in March 1991, and on another occasion Sivarasan entrusted one letter to her for handing over to A-16. The witness said that when the letter was given to A-16 he read it and immediately went out of the house. On 23-5-1991 Sivarasan again visited her house, but when he found that A-16 was absent he gave one more letter to the witness to be handed over to A-16. A couple of days thereafter PW 206 handed over that letter to A-16. He left the house and from the next day she found Sivarasan and A-16 in her house and both of them left together.

248. PW 217 is the husband of PW 206 and gave evidence substantially in tune with the version of his wife.

249. PW 133 (Karpagam) and her husband Shanmugham Sundaram (PW 208) said in their evidence that A-17 (Suseendran) visited them on 28-5-1991 along with Suba, and A-17 introduced her as his wife by the name of Mallagi whom he recently married. Both the witnesses believed that representation to be true and thought that a wedding gift should be presented to them. They purchased a wristwatch and gave it to A-17 as a wedding present. Later A-17 and Suba paid Rs 1000 as price of the wristwatch saying that they were in need of it. They stayed in the house of those witnesses. In their evidence they said that on 2-6-1991 Sivarasan together with A-16 visited A-17. Later the witness saw the photo of Suba in the newspaper connecting her with the Rajiv Gandhi murder. When A-17 was asked about it he first denied it and later admitted it and said that her name was Suba. However, A-17 gave a warning to both the witnesses not to disclose such things to anyone else.

250. Ext. P-149 is the diary of Sivarasan in which there is an entry showing that Sivarasan met A-16 near Devi Theatre. PW 56 (Utham Singh) said that he was running a grocery shop under the name "Ebenezer Stores" at Porur. The telephone number of his shop is 2343402. The witness said that some Sri Lankans who were residing nearby were availing themselves of the said telephone facility for calling outside. He mentioned Sivarasan, A-2 (Santhan), Kanthan etc. among those who used the telephone. It was the said number which Sivarasan had supplied to A-16 as a contact number.

251. Ext. P-411 dated 16-6-1991, Ext. P-417 dated 19-6-1991, Ext. P-419 dated 20-6-1991 and Ext. P-423 dated 21-6-1991 are all wireless messages sent by Pottu Omman. Those messages contain exhortations that A-16 should help Sivarasan to escape to Sri Lanka.

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252. The above items of evidence which corroborate the confessional statement of A-16 give us confidence to believe that Ext. P-121 is a true version of A-16's involvement in Rajiv Gandhi's murder. So it can safely be concluded that A-16 was also a member of the criminal conspiracy.

253. As for A-17 a confessional statement is attributed to him claiming that it was recorded under Section 15 of TADA (Ext. P-123). Here also we have to exclude those portions which relate to the offences covered by CC-7 of 1992. The remaining incriminating statements in Ext. P-123 are the following:

In December 1990, he met Sivarasan. Pottu Omman asked him to go to Tamil Nadu. He went to Madras and met A-16 at Marina Beach (Madras) and A-16 asked him to recruit more people to LTTE. He then set out on a tour to Pollachi, Coimbatore, Palani, and reached Madras on 26-5-1991. He met A-16 at Madras. When he met Sivarasan at Thiruvallur Bus-Stand (Madras), Suba was introduced to him. They all went to Trichi.

254. A-17 has further said that he went with A-16 and Suba to Pollachi where he and Suba stayed in the house of PW 208 by pretending that Suba was his wife called Mallagi and Sivarasan was her brother.

255. It is not necessary to reproduce the further portion of the confessional statements as they relate to the efforts to save Sivarasan and Suba. We have no doubt that A-17 would have got information as to how Rajiv Gandhi was murdered at least when he met Suba and Sivarasan. But there is nothing in the confessional statement to indicate that he knew it at any time before the assassination. Nor is there any material which points to A-17's knowledge prior to 21-5-1991 about Sivarasan's target. Of course Ext. P-121 and the evidence of PW 206, PW 217, PW 133, PW 208 and PW 181 as also the recovery of the walkie-talkie as per Ext. 1172 would show that A-17 was actively helping Sivarasan and Suba to escape from the clutches of law. But that is not enough to credit him with the advance knowledge of Rajiv Gandhi's murder. It is equally possible that he, on coming to know of the predicament of LTTE personnel like Sivarasan and Suba, would have developed a desire to help them. But that is not enough to conclude that he had prior knowledge that Rajiv Gandhi would be murdered.

A-18 Perarivalan @ Arivu

256. He was aged 20 during the relevant period. He is the son of a Tamil poet called "Kuyildasan". He was arrested on 18-6-1991 in connection with the murder of Rajiv Gandhi. PW 52 (Superintendent of Police, CBI) has recorded a confessional statement attributed to him. It is marked as Ext. P-87.

257. The following inculpatory passages in Ext. P-87 are said to be the confessions made by him. He had close association with LTTE people from 1989 onwards. He was selling LTTE publications such as *Tamil Eelam* and *Urumal*. While he was in Sri Lanka he had an opportunity to meet Veluppillai Prabhakaran and other leaders of LTTE. The former sought A-18's help for LTTE services. It excited him. When he learnt that Tamil

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people in Sri Lanka were suffering a lot due to the atrocities committed by IPKF he developed a vengeful attitude towards Rajiv Gandhi. In the second week of October 1990 he and A-19 (Irumborai) reached India by boat along with some other LTTE people. From February 1991 onwards he was residing with A-20 (Bhagyanathan) in a house at Royapettah, Madras. A-3 (Murugan) was also staying there. In March 1991, A-18 accompanied A-3 (Murugan) to Vellore for preparing a sketch of the Fort because LTTE prisoners were interned there. Blasting of Vellore Fort for rescuing LTTE prisoners was one of the programmes of LTTE in India.

258. In the further portion of Ext. P-87 it is stated that Kanthan, Sivarasan and Nixon were visiting A-3 (Murugan) occasionally and from their conversation A-18 understood that they were planning to carry out a very dangerous task. A-18 had his own reasons to think that the target of the said dangerous task was Rajiv Gandhi. In fact, Sivarasan asked him in April 1991 whether A-18 could work in unison with him and then A-18 agreed to do so. After this Sivarasan went to Sri Lanka.

259. After Sivarasan came back from Sri Lanka he asked A-18 to get a large-sized car battery and some clips etc. A-18 bought a battery from a shop near LIC building at Madras by giving a false name "Rajan" and a false address. He bought some wires and other accessories from another shop near Midland Theatre. A-18 took Sivarasan to a motor shop on 4-5-1991 and bought a motorcycle in his own name but giving a wrong address. He also bought two batteries (9-volt Golden Power battery) and handed them over to Sivarasan for using to blast the bomb.

260. On 7-5-1991 he attended the public meeting addressed by V.P. Singh at Madras along with Suba, Dhanu, A-3 (Murugan) and A-1 (Nalini). He bought a multimeter from a shop at Richie Street, Mount Road, Madras as Sivarasan wanted it.

261. He further confessed that on 20-5-1991, he went to A-20 Bhagyanathan's house. There he found Sivarasan, A-1 (Nalini), A-3 (Murugan) and Haribabu. Sivarasan divulged to them about the public meeting which Rajiv Gandhi might address on the next day. A-18 (Arivu) thereupon gave a colour film (Kodak) to Haribabu.

262. On 21-5-1991, A-18 (Arivu) and A-20 (Bhagyanathan) went to see a film at 9.30 p.m. While returning he came to know that Rajiv Gandhi was murdered. So on the next day he packed up his things including the TV and VCR and kept them in the house of a friend of his. On 23-5-1991, Sivarasan met him and gave full details of the incident in which Rajiv Gandhi died. Sivarasan conveyed to them that Haribabu also died in the bomb blast. Sivarasan then asked A-18 (Arivu) to make all efforts to retrieve the dead body of Haribabu.

263. As days passed A-18 (Arivu) felt that he would be caught by the police. He therefore left his friends and stayed with his parents at Jolarpet. It

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was during the said period that Sivarasan's photo was published in the newspapers connecting him with Rajiv Gandhi's murder.

264. If the above incriminating portions in Ext. P-87 can be relied on as true confession they would uphold the prosecution case for convicting A-18 of criminal conspiracy to murder Rajiv Gandhi.

265. One of the contentions raised against the said confession is that A-18 (Arivu) was not given any time for reflection after eliciting that he was prepared to give a confession. But a perusal of the proceedings which led to the recording of Ext. P-87 shows that on 14-8-1991 preliminary questions were put to him by PW 52 (Superintendent of Police, CBI) but no confession was recorded on that date. It was on 15-8-1991 that PW 52 called him again. Even from the first question put to A-18 (Arivu) it is clear that the interval was intended to afford a period of reflection for A-18. The Superintendent of Police, CBI (PW 52) has also said the same thing in his evidence. In such a situation there is no scope for contending that A-18 was not afforded sufficient opportunity for reflection.

266. It seems there are a lot of circumstances to assure the truth of the statements in Ext. P-87.

267. MO 49 is the sketch of the Vellore Fort which is said to be prepared by A-18 (Arivu). PW 75 (Basant Kumar — a freelance artist) has said in his evidence that he was engaged by LTTE people for printing books. He said that A-18 met him in February 1991 and gave him certain telephone numbers. One was that of Kittoo who was then in London. It was intended for effecting payments regarding the printing charges. The witness further said that A-18 gave him a letter of Veluppillai Prabhakaran in which receipt of the books printed by him was acknowledged. By the beginning of May 1991, A-18 took this witness to Trichi and introduced him to A-2 (Santhan). The witness further said that A-18 was found fuming with hatred towards Rajiv Gandhi for the atrocities which IPKF committed in Sri Lanka. On 10-5-1991, A-18 went to this witness's house with Sivarasan. We have no reason to disbelieve the above testimony of PW 75.

268. PW 233 (Bharathi — a nurse) is the sister of A-20 (Bhagyanathan). She said in her evidence that A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) were staying in the same house. MO 286 — a diary of Sivarasan contains the entry regarding the amount paid to A-18.

269. PW 149 (Latha) said that she had acquaintance with LTTE people through A-20 (Bhagyanathan). She identified A-18 as one of the LTTE strongmen. The witness said that she saw A-18 (Arivu) and A-20 (Bhagyanathan) conversing with each other at the press where this witness was working.

270. PW 91 (Moideen) is a salesman in Hindustan Training Company, Royapettah High Road, Madras. He said in his evidence that during the second week of May 1991, A-18 (Arivu) had purchased two batteries from his shop. He mentioned a reason for remembering that it was A-18 who

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purchased the batteries. Whatever be the reason, the fact remains that it was on the strength of the information supplied by A-18 that the investigating officer (PW 266 Venkateswaran) came to know of PW 91's shop. The inference is therefore irresistible that A-18 would have pointed out the shop and PW 91, the salesman as the person from whom A-18 had purchased two "9-volt Golden Power" batteries.

271. In this context it is significant to note that a little portion of one battery was recovered from the place of occurrence. When that was tested at the Forensic Laboratory it was found to be the portion of a 9-volt Golden Power battery.

272. Another item of evidence to corroborate the confession of A-18 is the further portion of the testimony of PW 266. The witness said that from the interrogation of A-18 he came to know of PW 88 (Dalip Chodia) who is a dealer of a firm called "International Tyre Service" at Mount Road, Madras. The copy of a cash bill was proved through PW 88 as Ext. P-447. It is in respect of a bill issued in the name of one Rajan, Door No. 6, Lady Madhavan Street, Mahabalipuram, Madras. The bill is in respect of selling an Exide Battery No. EM-3878.

273. PW 281 (M. Narayanan) is the Deputy Superintendent of Police, CBI. He said in his evidence that when he interrogated A-18 on 2-8-1991, he got the information that LTTE books and literature and cassettes were kept by A-18 in the house of PW 210. Pursuant to the said information 49 items were recovered from the said house. Ext. 1344 is the mahassar prepared for that purpose. It contains the list of the articles which is consistent with the statement made by A-18.

274. We have no reason to disbelieve or reject the above items of evidence. It is not necessary to refer to yet other items of evidence which prosecution has presented for corroborating the confessional statement of A-18 (Arivu) because even with the help of those which we have adverted to above we are satisfied that A-18's confession in Ext. P-87 has been corroborated in material particulars.

275. We therefore reach the conclusion that A-18 (Arivu) was actively involved in the criminal conspiracy to assassinate Rajiv Gandhi.

A-19 Irumborai

276. Irumborai is an Indian citizen. His original name was Duraisingam. After he joined the Rationalists' Organisation of Dravida Kazhagam he changed his name to Irumborai. In a meeting of Dravida Kazhagam held in 1985 a resolution was adopted to give full support to the Tamil liberation movements in Sri Lanka.

277. A-19 (Irumborai) was arrested on 9-10-1991. The most important item of evidence placed by the prosecution against him is Ext. P-117 which is a statement recorded by PW 52 (Superintendent of Police, CBI) on 3-12-1991 under Section 15 of TADA which is said to be a confessional statement. No doubt Ext. P-117 contains inculpatory statements about A-19 trying to screen the offenders in the Rajiv Gandhi murder case and to

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harbour some of them. But on the crucial question whether he was a party to the conspiracy to assassinate Rajiv Gandhi, the following portion of the statement would throw light.

278. He was in contact with A-2 (Santhan), Suresh Master and some other leaders of LTTE. In the second week of May 1991 he went to Trichi as per the instructions of Suresh Master (a leader of LTTE) and collected an amount of Rs 15,000 from A-2 (Santhan) to be delivered over to Suresh Master. Then he was told by A-2 (Santhan) that LTTE was making arrangements to kill "an important leader quickly".

279. It is clear that A-19 (Irumborai) did not then understand who that leader was because A-19 then asked A-2 (Santhan) whether that leader could be "Vazhappadi". A-2 (Santhan) in his answer did not confirm it or deny it but expressed ignorance about the identity of the person and also about the manner by which it was to be accomplished. A-19 (Irumborai) further said in the confessional statement that when he heard the above answer from A-2 (Santhan) he did not talk with anybody else on that subject. He also said that he knew that Rajiv Gandhi was murdered in a bomb blast only on 22-5-1991. On hearing the news he became frightened.

280. The rest of the confessional statement relates to the help rendered by him to Sivarasan, Suba, Nehru, Vicky etc. to hide themselves from police catch.

281. Thus it is not discernible from the confessional statement whether he knew that Rajiv Gandhi was going to be murdered. But his own thinking was that it was Vazhappadi (a local leader of Tamil Nadu) who was the target. When that doubt was eliminated there is no material to show that he knew that the target of the plotters was Rajiv Gandhi. Prosecution relies on a letter which Trichy Santhan (a top-ranking LTTE personnel) had written to A-19. That letter is dated 7-9-1991 and is marked as Ext. P-128. (It is not necessary to embark on a discussion regarding the proof of Ext. P-128 — a letter written by Trichy Santhan, as the defence counsel has agreed that it can be taken as proved.) In Ext. P-128 an advice seems to have been given to A-19 (Irumborai) like this: "Don't say that Rajiv incident was known before."

282. It is admitted that Trichy Santhan died later. Prosecution wants to press into service the aforesaid advice of Trichy Santhan to prove that as a matter of fact A-19 knew about the Rajiv Gandhi incident earlier and that is why he was advised not to say so.

283. There are two hurdles before we take up that piece of evidence into consideration. First is that it was a statement made by a person who is now dead. It does not relate to any transaction of the circumstances which resulted in his death. So the statement would not fall within the ambit of Section 32 of the Evidence Act. Second is that if the statement has to be brought within the ambit of Section 10 of the Evidence Act the precondition has to be satisfied that we must have reason to believe that A-19 and Trichy Santhan were members of the conspiracy to murder Rajiv Gandhi. Even

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assuming that the said statement can be brought under Section 10 of the Evidence Act, the question is — will it be a conclusive inference therefrom that the sendee of the letter knew that fact earlier? It could be an advice given to A-19 (Irumborai) that he should not talk loosely that he knew about Rajiv Gandhi's murder earlier. It does not necessarily mean that A-19 (Irumborai) knew about it earlier.

284. Even taking the alternative interpretation, the worst is that the sender of the letter (Trichy Santhan) would have believed that the sendee had advance knowledge of Rajiv Gandhi's murder. Could it not have been possible for A-19 to clarify to Trichy Santhan that there was no need to give such an advice because he in fact did not know about it earlier.

285. In whatever way it is looked at, we have difficulty to credit A-19 (Irumborai) with the advance knowledge of Rajiv Gandhi's murder on such a fragile material.

286. We are therefore inclined to extend to A-19 the benefit of reasonable doubt regarding his involvement in the conspiracy for assassinating Rajiv Gandhi though we are fully satisfied that he was involved in helping the offenders to escape from the police.

A-20 Bhagyanathan

287. Bhagyanathan is an Indian citizen. He is the brother of A-1 (Nalini) and son of A-21 (Padma). During the relevant period he was aged 25. He has passed B.Com. degree examination. He and his mother were residing in the nurses' quarters of "Kalyana Nursing Home", Madras where his mother was working. His father was a Sub-Inspector of Police.

288. He was arrested on 10-6-1991 in connection with the Rajiv Gandhi murder case. PW 52 Superintendent of Police, CBI recorded a statement from him which is marked as Ext. P-69. Prosecution wants to treat it as a confessional statement recorded under Section 15 of TADA. The following are said to be the inculpative statements in Ext. P-69.

289. In 1988, A-20 (Bhagyanathan) got himself acquainted with Muthuraja who was an important person in LTTE and they became friends. Through him A-20 secured friendship with Baby Subramaniam — another LTTE senior leader. A-20 was allured to the LTTE movement by Muthuraja. In course of time he became friendly with A-18 (Arivu). Muthuraja arranged a press to be transferred to A-20 and he agreed to print LTTE publications at that press.

290. According to A-20, he and his family shifted the residence to a house at Royapettah on 26-1-1991. He accommodated A-3 (Murugan) also to stay in the said house as Muthuraja requested him to do so. His mother raised objections to the said accommodation but he prevailed upon her to agree. Muthuraja went back to Sri Lanka in February 1991.

291. The further contents in Ext. P-69 are that A-3 (Murugan) brought Sivarasan to the house of A-20 in the month of April 1991. He sent a letter to Baby Subramaniam on 9-5-1991 offering full cooperation for the cause of

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Tamil liberation in Sri Lanka. The letter was sent per A-3 (Murugan). On 20-5-1991, Haribabu visited the house of A-20 at Royapettah. A Kodak film was obtained from Arivu and A-20 gave it to Haribabu.

292. Regarding the activities on the day of the assassination of Rajiv Gandhi A-20 (Bhagyanathan) has stated in Ext. P-69 that on 21-5-1991 he and A-18 (Arivu) went to the house of Muthuraja. A-18 who returned to the house at 9.30 p.m., after seeing a cinema show, came to know of Rajiv Gandhi's murder. The other confessions in Ext. P-69 are that on 23-5-1991 Sivarasan reached the house and informed them that Haribabu had also died; and on 24-5-1991, A-20 (Bhagyanathan) compelled his mother to go along with Sivarasan, Suba and A-1 (Nalini) to Tirupathi. The confession shows that A-20 (Bhagyanathan) destroyed LTTE stickers which remained with him. When he saw the photograph of Sivarasan in the newspapers connecting him with the Rajiv Gandhi murder case A-20 became very much bewildered.

293. The above statement of A-20 (Bhagyanathan) cannot be taken as a confession. He did not know that Rajiv Gandhi was going to be assassinated. He did not say anything in Ext. P-69 which would have at least impliedly connected him with Rajiv Gandhi's murder or the conspiracy. He was, of course, a strong sympathiser of LTTE.

294. Even assuming that the statement recorded in Ext. P-69 is a confessional statement there is no confession that A-20 ever knew that Rajiv Gandhi was going to be assassinated.

295. One of the materials which prosecution has pressed into service as a circumstance involving A-20 (Bhagyanathan) with the conspiracy is Ext. P-128 letter which is said to have been written by Trichy Santhan to A-19 (Irumborai) on 7-9-1991. We have already discussed about the proof of that letter and so we proceed on the assumption that the letter was written by Trichy Santhan. The following passage in the letter is made use of by the prosecution as against A-20 (Bhagyanathan):

> "Speaking about the mistakes of Raghuvaran's people like Arivu, Baby Anna Press, Haribabu and Subha Sundaram, such things would not have occurred if our own people were utilised as was done in the case of Padmnabha."

296. It is not disputed that the reference to Raghuvaran means Sivarasan, Baby Anna means A-20 (Bhagyanathan), Subha Sundaram means A-22 and Arivu means A-18.

297. The first question is how far is that reference in Ext. P-128 admissible as against A-20. The writer of that letter Trichy Santhan is now no more. The letter does not speak of any transaction of the circumstances which resulted in his death. Nor has the cause of his death come into question in this case. Hence, the said reference cannot fall under the purview of Section 32 of the Evidence Act.

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298. But the greater effort made was to bring it within the ambit of Section 10 of the Evidence Act. The primary condition to invoke the said section is the existence of "reasonable ground to believe" that Trichy Santhan and A-20 (Bhagyanathan) had conspired together to commit an offence. When the very question whether A-20 was a party to the conspiracy, is being considered the aforesaid primary hurdle forecloses the use of the contents of Ext. P-128 as against A-20 (Bhagyanathan).

299. Barring the above materials we are unable to find that A-20 was a party to the conspiracy to assassinate Rajiv Gandhi.

A-21 Padma

300. She is the mother of A-1 (Nalini) and A-20 (Bhagyanathan). As pointed out earlier she is a nurse. She was arrested on 10-6-1991 in connection with Rajiv Gandhi's assassination.

301. We may say at the outset, regarding A-21 (Padma), that it is very unfortunate that she too was convicted as a conspirator in the Rajiv Gandhi murder case and was sentenced to hanging. We are unable to find anything which involves her in the conspiracy. Of course there is some evidence to show that A-21 (Padma) is privy to accommodate some of the offenders in the Rajiv Gandhi murder case. At the most she is liable to be convicted of that offence.

302. Ext. P-73 is said to be a confessional statement given by A-21 on 7-8-1991 and that too was recorded under Section 15 of TADA. A-21 is said to have confessed the following.

303. Muthuraja brought A-3 (Murugan) to her house in February 1991. A-21 (Padma) was not willing to accommodate him in the house. But she was prevailed upon by A-3 (Murugan) not to raise any objection. A-3 (Murugan) used to help the family with money. Sivarasan was brought to her house by A-3 in March or April 1991. On 20-5-1991, Sivarasan brought Suba and Dhanu to her house. Till then they were in the house of A-1 at Villiwakkam. Some medicines were given by A-21 to Dhanu as she had a sprain in the leg.

304. A-21 (Padma) has further said in Ext. P-73 that in the morning of 21-5-1991 she went to her Nursing Home as usual and returned in the evening. Late in the night she came to know of the assassination of Rajiv Gandhi when A-18 and A-20 told her about it.

305. In the further portion of Ext. P-73 she has stated that on 23-5-1991, she came to know from her daughter (A-1 Nalini) the details of the killing of Rajiv Gandhi at Sriperumbudur. According to A-21 she became frightened on hearing the said information and at the same time she started worrying about her daughter (A-1 Nalini) and her son-in-law (A-3 Murugan). When the photo of Dhanu appeared in the newspapers A-21 (Padma) started entertaining a fear that she too would be embroiled in the case.

306. The above is the substance of her statement in Ext. P-73. A reading of it would show that A-21 had no inkling whatsoever that Rajiv Gandhi was

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going to be murdered. Of course, as a mother it was a matter of concern for her when she knew that her daughter (A-1) and her son-in-law (A-3) were wanted by the police in connection therewith.

307. The only inculpative statement in Ext. P-73 is that she harboured the offenders in her house after coming to know that they were involved in the murder of Rajiv Gandhi. She is liable to be convicted of that.

A-22 Subha Sundaram

308. He is a photographer. He was running a photo studio by the name of "Subha News Photo Service" at Madras. Haribabu was a cameraman attached to the said photo studio. (Haribabu died along with Dhanu during the bomb blast at Sriperumbudur.) No confessional statement was elicited from A-22 which could be used under Section 15 of TADA. Hence prosecution had to depend upon certain circumstances alone for establishing the charge against him. Such circumstances are the following:

(*1*) Ext. P-544 is an article prepared by A-22 on 5-8-1989. (It was written in the handwriting of PW 116 — Girija Vallabhan on the dictation given by A-22.) Ext. P-544 contains a scathing criticism of the activities of IPKF in Sri Lanka.

(*2*) The camera which Haribabu carried to the scene of occurrence belonged to A-22.

(*3*) On 22-5-1991, A-22 told some others that he and Haribabu met together on 21-5-1991. (PW 108 Santhana Krishna, PW 120 Sundarmani and PW 151 Ravisankaran are the witnesses who spoke about it.)

(*4*) When a search was conducted by the police in the photo studio of A-22 on 5-6-1991, LTTE literature and cassettes were recovered. Ext. P-1354 is the search list prepared then.

(*5*) In a letter which Trichy Santhan wrote to A-19 (Irumborai) on 7-9-1991 (Ext. P-128) he criticised the supporters of Sivarasan. Among such supporters the name of A-22 was mentioned by Trichy Santhan.

(*6*) PW 172 (Ramamurthy), another photographer who happened to be at the place of occurrence said in his evidence that A-22 asked him whether he could have brought back the camera of Haribabu from the scene of occurrence.

(*7*) PW 205 (Smt Parimalam) a cousin of Haribabu said that she got a phone call in the name of A-22 advising her to remove all the papers and cassettes from the house of Haribabu.

(*8*) PW 258 (Vazhappari Ramamurthy) said that A-22 told him on 23-5-1991 and also on 27-5-1991 to enquire about the camera which Haribabu carried to Sriperumbudur.

(*9*) A-22 persuaded the father of Haribabu to issue a press statement that Haribabu had no knowledge of the Rajiv Gandhi murder case. In fact A-22 drafted that statement for the witness.

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The trial court found that all the above 9 circumstances were proved and are reliable. On that basis the Special Judge further found that A-22 was a member of the conspiracy and that he had harboured the offenders. Learned counsel for A-22 contended that even if all the above circumstances are found to be legal evidence it would not form a complete chain for the Court to draw any conclusive inference.

309. We too are of the definite view that the aforesaid circumstances, even if all of them are assumed to be legal evidence, would hardly be sufficient to prove the involvement of A-22 in the conspiracy to murder Rajiv Gandhi.

310. That apart, if the circumstances are individually analysed, many of them cannot be treated as incriminating circumstances at all. A-22 would have been a critic of IPKF activities in Sri Lanka. He would have been a sympathiser of the LTTE movement. Those two premises are discernible from the aforesaid circumstances.

311. Of course there is one circumstance which, if found reliable, would be incriminating to A-22. It was spoken to by PW 205 (Parimalam) that A-22 phoned her up and advised her to remove the incriminating articles from the house of Haribabu. But the difficulty regarding that evidence is that PW 205 (Parimalam) never knew A-22 and she had never heard his voice earlier. So her evidence is hardly sufficient for holding that A-22 called her over the phone. Anybody else could have called her in the name of A-22.

312. Most probably A-22 was the owner of the camera which Haribabu took to Sriperumbudur. So A-22's concern was to get his valuable property back. He would have sought the help of others for that purpose. The conduct of A-22 can only show that he evinced much interest in securing his property. But that can hardly be a circumstance which is consistent only with the guilt of the accused.

313. We cannot therefore concur with the finding of the trial court that A-22 was a member of the conspiracy to assassinate Rajiv Gandhi.

A-23 Dhanasekaran @ Raju

314. He was arrested on 13-10-1991 in connection with Rajiv Gandhi's murder. He was conducting a motor transport company at Tuticorin. Ext. P-113 is the record containing his statement which PW 52 (Superintendent of Police, CBI) recorded on 4-11-1991. It is sought to be used as his confessional statement.

315. But the difficulty with Ext. P-113 is, it shows clearly that A-23 had absolutely no knowledge about the murder of Rajiv Gandhi. The following passage in Ext. P-113 would bear testimony to it:

> "On 21-5-1991, I was in my house at Mettur. Then only I heard the news that Rajiv Gandhi died due to bomb explosion at Sriperumbudur. The news was flashed through newspapers and television. Later, I came to know that LTTE organisation is the main cause for that assassination and Sivarasan, Suba and Dhanu were involved in that murder."

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Of course, his statement thereafter in Ext. P-113 shows that he too was involved in helping the offenders to escape. It is not necessary to refer to those passages in Ext. P-113 because learned counsel for the accused has fairly conceded that he is not attacking the finding of the trial court regarding the offence under Section 212 of IPC.

316. One circumstance which the trial court used against A-23 is that he purchased a Maruti Gypsy (MO 540) on 14-11-1990. There is evidence to prove that fact. There is also evidence to prove that the said vehicle was used by Sivarasan, Suba and others for moving from one place to another, but all such travels were subsequent to the assassination of Rajiv Gandhi. The trial court concluded on the strength of the aforesaid evidence like this:

> "Thus MO 540 Maruti Gypsy purchased in November 1990 in Salem before the assassination of Rajiv Gandhi was used by A-24, and Sivarasan, Suba and A-26 and other accused after the assassination of Rajiv Gandhi. The close association between these accused is thus proved by the prosecution beyond doubt. Purchase of MO 540 Maruti Gypsy and its subsequent use by the members of the conspiracy also proves the involvement of A-23 in the accomplishment of the object of conspiracy."

317. The aforesaid leap jump to such a conclusion is impermissible and contrary to the well-established principles governing circumstantial evidence. We therefore dissent from the trial court's conclusion regarding A-23's involvement in the conspiracy to murder Rajiv Gandhi.

A-24 Rajasuriya @ Rangan

318. He is a Sri Lankan citizen. He was aged 27 during the relevant time. He was arrested on 29-8-1991 in connection with Rajiv Gandhi's murder. PW 52 (Superintendent of Police, CBI) recorded his confessional statement on 23-10-1991 as per Section 15 of TADA. It is marked as Ext. P-109.

319. A-24 (Rangan) has stated in Ext. P-109 that he was working for LTTE in Sri Lanka and he reached India in 1989 and that he stayed at Thiruvaniyoor. He was conducting a travel agency business without obtaining the required permission for it. He said that he was making fake travel documents for his clients and he was closely associated with the LTTE movement in India. He further stated that in April 1991, he got acquainted with Trichy Santhan and Suresh Master and A-18 (who were all senior leaders of LTTE). A-24 (Rangan) was given an assignment to look after the injured LTTE fighting men. In Ext. P-109 he further said that in May 1991 he was asked by Suresh Master to arrange transportation of LTTE men to different places. But A-24 did not say that he had any knowledge about Rajiv Gandhi's murder before the assassination took place. In June 1991, A-24 himself gave hospitality to Sivarasan, Suba and Suresh Master and thereafter they were helped to escape by a tanker lorry.

320. It is not necessary to extract the further portion in the confessional statements as they contain his admissions regarding the activities which he

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carried on for helping Sivarasan and others to escape from police nabbing. We have no doubt that A-24 had harboured the offenders and helped them to escape from the police net.

321. But regarding the crucial fact whether A-24 had any involvement in the conspiracy to assassinate Rajiv Gandhi, the confessional statement is of no help because it does not even indicate that he had any prior knowledge about the same.

322. PW 65 (Mridula) is the wife of A-26 (Ranganath). She said in her evidence that on 2-8-1991 her husband brought A-24 and some other persons who are accused in the Rajiv Gandhi murder case. Suba was also among such persons. On the next day, a green Maruti Gypsy van reached their house. When she watched the television programme she knew that Sivarasan and Suba were wanted by the police in connection with the aforesaid case. PW 230 (Selvaraj) was the person who drove the tanker lorry. PW 22 (Sathyamoorthy) said that on 8-8-1991 A-24 brought a Maruti Gypsy for painting. The witness painted it in white colour.

323. The above items of evidence would also help in finding that A-24 was actively helping the accused to escape from the police. Learned Additional Solicitor General argued that considering the fact that he was an active LTTE votary and also considering his activities during the post-assassination days it is possible to draw an inference that he too was involved in the conspiracy to murder Rajiv Gandhi.

324. Such an inference is not a necessary inference, for, it is equally possible to think that A-24 being an active LTTE votary, would have decided to help other LTTE people to escape from the police clutches though he knew about their involvement in the assassination of Rajiv Gandhi only after he himself came to know that the former Prime Minister was assassinated.

A-25 Vigneswaran @ Vicky

325. He is a Sri Lankan citizen. He was aged 28 during the relevant period. He was, by profession, a cleaner of vehicles. He was arrested on 4-2-1992 in connection with the Rajiv Gandhi murder case. A statement was elicited from him on 24-2-1992 which has been marked as Ext. P-127. Prosecution treated it as a confessional statement under Section 15 of TADA.

326. A-25 (Vicky) has admitted in Ext. P-127 that he was working for the LTTE movement from 1985 onwards. He moved to India when his house was destroyed by the Sri Lankan army in 1987. He was acquainted to Trichy Santhan by the middle of 1990. Another LTTE member called Dixon was introduced to him. When he was staying in Trichy he was doing some business in medicines for which Trichy Santhan extended financial help to him.

327. In the further portion of Ext. P-127 he has stated that 2 days after the murder of Rajiv Gandhi he was told by Trichy Santhan not to venture to stay in Trichy any more. Hence he decided to shift to Coimbatore and agreed to take over all the medicines for which Trichy Santhan had placed orders.

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He came to know of Sivarasan only after the newspapers published the photo of that person though he had seen him before.

328. The rest of the statements in Ext. P-127 contain clear admissions of the activities of A-25 (Vicky) for helping Sivarasan, Suba etc. to escape from the police. However, there is absolutely no statement of him in the document which could be used to involve him in the conspiracy to murder Rajiv Gandhi. Apart from his role in helping some of the accused who were wanted by the police in the Rajiv Gandhi murder case there is no evidence to suggest that A-25 (Vicky) had even the knowledge that Rajiv Gandhi would be murdered by anyone whom he knew.

329. The trial court, after referring to various items of evidence, concluded in para 2373 of the judgment that "A-25 was also instrumental in the transportation of Sivarasan, Suba and Nehru from Madras to Bangalore in MO 543 tanker lorry driven by PW 230 Selvaraj". It is a conclusion which needs no interference.

330. But thereafter learned Special Judge proceeded to mention that A-25 identified the photo of the tanker lorry and also the photos of Sivarasan, Suba and Nehru and even the photos of dead bodies of Suba, Suresh Master and Sivarasan. The trial court adverted to his association with Trichy Santhan. After making reference to such facts learned Special Judge made a long leap to reach the next conclusion like this:

> "All the above evidence and circumstances would go to establish the active part played by A-25 in consonance with the directions of Trichy Santhan in furtherance of the object of the conspiracy."

331. We are unable to uphold the second conclusion regarding A-25 (Vicky) for want of any evidence and also for the reasons set out by us in the preceding paragraphs.

A-26 Ranganath

332. The trial court at the close of the discussion of evidence against A-26 has entered the following finding in para 2419 of the judgment:

> "From the foregoing discussion and analysis of evidence proved by the prosecution it has to be concluded that A-26 harboured Sivarasan and Suba, who were proclaimed offenders and the other accused A-24 Rangan, Nehru, Suresh Master, Driver Anna and Amman in his house at Puttanahalli and subsequently at Konanakunte voluntarily and willingly without any fear to his life."

333. The above is the only finding on facts which the learned trial Judge appears to have made regarding the role of A-26. Thereafter no discussion is seen made about his activities. But learned Judge had held in para 2451 that A-26 is also guilty of the offence under Section 120-B read with Section 302 IPC and rest of the offences included in the charge.

334. We have no difficulty to concur with the finding of the trial court that A-26 (Vicky *sic* Ranganath) is guilty of offences under Sections 212 and 216 of the Indian Penal Code. In this context we may point out that PW 65 is

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the wife of A-26, and apart from her evidence the testimony of PW 218 (Anjanappa), PW 223 (Rajan) and PW 229 (Jayasankar) were read out to us. In the trial court a plea was made on behalf of A-26 that he is protected by Section 94 of the Indian Penal Code. We do not think it necessary to advert to that plea now in view of the concession made by the learned counsel for A-26 that the appeal as for A-26 is not pressed regarding the offences under Sections 212 and 216 of IPC because the accused concerned had already undergone the sentence of imprisonment awarded by the trial court as for those two counts.

335. But at the same time we have to point out that there is absolutely no evidence whatsoever for connecting A-26 with the conspiracy to assassinate Rajiv Gandhi. In fact, the prosecution did not even bother to establish that A-26 had no knowledge that anybody would be plotting to murder Rajiv Gandhi. It is very unfortunate that the trial court has convicted A-26 also of the offence under Section 120-B read with Section 302 IPC and sentenced him to be hanged.

336. Now, we come to the stage of deciding who all are liable to be convicted and of which offences. We may point out that learned counsel for the accused submitted at the Bar that it is not worthwhile, at this distance of time, to press the appeal of the appellants as against the conviction under Sections 212 and 216 of IPC, Section 14 of the Foreigners Act, 1946, Section 6(1-A) of the Wireless Telegraphy Act, 1933, Section 3 of the Wireless Act and Section 5 of the Explosive Substances Act, 1908 as well as Section 12 of the Passport Act, 1967.

337. For the reasons set out in the preceding paragraphs of this judgment we confirm the conviction of the offence under Section 120-B read with Section 302 IPC as against A-1 (Nalini), A-2 (Santhan @ Raviraj), A-3 (Murugan @ Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran @ Ravi) and A-18 (Perarivalan @ Arivu). We shall deal with the question of sentence for the said offence separately. However, we set aside the conviction and sentence passed on all the accused under Section 120-B of IPC read with all the other counts of offences (except Section 302 IPC). We also set aside the conviction and sentence passed by the trial court on those appellants who were convicted of offences under Section 3(3), Section 3(4) and Section 5 of TADA.

338. We confirm the conviction passed by the trial court for the offences under Sections 212 and 216 of IPC, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substances Act, Section 12 of the Passport Act and Section 6(1-A) of the Wireless Telegraphy Act, 1933, in respect of those accused who were found guilty of those offences. However, as the sentence awarded by the trial court in respect of those offences did not exceed imprisonment for a period of two years we are not disposed to disturb the sentence passed by the trial court on those counts. It is for the jail authorities to consider the question of releasing those accused who have already undergone the period of rigorous

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imprisonment for two years, and against whom there is no conviction confirmed under any other counts of offence, as they are entitled to be set at liberty forthwith.

339. In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) all the remaining appellants shall be set at liberty forthwith.

Sentence regarding offence under Section 302 read with Section 120-B of IPC

340. Now we have reached the proximity of the terminus of a long journey. But the remaining stage is the hardest and the most tedious sector — to decide on the sentence passed for the offence under Section 302 read with Section 120-B IPC.

341. We have before us only two alternatives — death or life term. The trial Judge opted to award the former to all the 26 appellants. This was dubbed as amounting to judicial massacre by the defence counsel, while the Additional Solicitor General endeavoured to justify the imposition of extreme penalty.

342. A fervent plea was made to us that the high profile of the celebrity dimension of the targeted victim should not colour our judicial vision in determining the sentencing extent. But the other side of the picture was etched by pleading that the Court cannot adopt a Nelson's eye to the stark reality that the target of the dastardly intrigue was a leader who represented a bulk of the nation's population in whom the nation reposed its faith and trust for a full term. Be such factors as they may, we would proceed to discharge the task as law enjoins.

343. Both sides cited a number of decisions of this Court in support of their respective pleas — one for retention of the sentence and the other for choosing the next alternative. Decisions which held the field before the introduction of the Code of Criminal Procedure, 1973 do not afford any help because the Criminal Procedure then obliged the court to pass death sentence for murder as a general proposition and the alternative sentence could be awarded only in exceptional cases for which the court was then required to advance special reasons. After 1973, there was a complete reversal to the approach. Thereafter, life imprisonment was made the normal sentence for murder and death penalty was allowed to be passed only in exceptional cases The criminal courts were required to state special reasons for choosing the latter. But the decisions rendered during the aforesaid second stage were divided into two categories with the pronouncement of the decision of this Court in *Bachan Singh* v. *State of Punjab*[16].

344. During the pre-Bachan Singh period the Sessions Court was free to choose death penalty in any case where special reasons could be advanced. But during the post-Bachan Singh period even that was drastically changed as the Constitution Bench made it impermissible to award death sentence

16 (1980) 2 SCC 684 1980 SCC (Cri) 580

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except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed.

345. As the law which has been pronounced in such unreserved language on the subject holds the field ever thereafter, we are required to remind ourselves of the legal position adumbrated by the Constitution Bench in *Bachan Singh case*[16]. The following is the ratio which emerged after making a detailed analysis of various viewpoints on the sustainability of the provision empowering the court to pass death sentence: (SCC p. 751, para 209)

> "It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

346. The Constitution Bench, however, did not agree with the approach adopted by a three-Judge Bench of this Court in *Rajendra Prasad* v. *State of U.P.*[17] that focus of special reasons has shifted from the crime to the criminal. On that part, the majority view in *Bachan Singh*[16] is the following: (SCC p. 748, para 201)

> "As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case."

Their Lordships accepted the broad contours of the circumstances cited before them by one of the learned counsel as having mitigating impact. The Constitution Bench has observed, on the aforesaid submission of the counsel, as follows: (SCC p. 750, para 207)

> "*207.* We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence."

Three such circumstances which the Court was told about are the following:

> (*1*) The age of the accused — if the accused is young or old the sentence of death should be avoided.
>
> (*2*) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

16 *Bachan Singh* v *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580
17 (1979) 3 SCC 646 : 1979 SCC (Cri) 749

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(*3*) That the accused acted under duress or domination of another person.

347. Bearing the above principles in mind we have now to determine whether the death sentence passed by the trial court should be confirmed or not in respect of the 7 accused whose conviction of the offence under Section 302 read with Section 120-B we have confirmed. There can be no two opinions that looking at the crime conspectus of what was perpetrated at Sriperumbudur it was most dastardly to the superlative degree. Those who machinated to bring about such a horrendous crime cannot normally escape the extreme penalty of law. As the law enjoins that we have to look at the criminals also we are duty-bound to look at it from that perspective also.

348. The conspirators in the Rajiv Gandhi assassination case can be vivisected into four broad categories:

First, those who formed the hard-core nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth, those among the conspirators who participated in the actual commission of murder.

349. Persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction. Veluppillai Prabhakaran, Pottu Omman, Akila, Sivarasan and Trichy Santhan have been described as persons falling within the radius of the first category. As they were not tried for the offences so far we refrain from observing anything concerning them in the sphere of sentencing exercise.

350. However, we can hold with certainty that A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) belonged to the second category even if they slip out of the first. They were not merely carrying out the orders of the first category personnel but they made others to work according to their directions in order to achieve the target. The role played by them was prominently direct and active. They were in the leadership layer among the conspirators. We are not able to find out anything extenuating as for the said three persons in their activities for implementation of the decisions of the cabal.

351. We therefore confirm the extreme penalty imposed by the trial court on A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) for the offence under Section 302 read with Section 120-B of IPC.

352. A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration, death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any

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dominating role. She was persistently brainwashed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Dhanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women and girls of Tamil origin in Sri Lanka. By such indoctrinative exercises she would have honestly believed in the virtue of offering her help to the task undertaken by the conspirators. In the confessional statement made by her brother A-20 (Bhagyanathan) he revealed one fact i.e. A-1 (Nalini) had confided to him on 23-5-1991 itself that as a matter of fact she realised only at Sriperumbudur that Dhanu was going to kill Rajiv Gandhi. Perhaps that may be a true fact. But she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini) to get herself extricated. She knew how Sivarasan and Santhan had liquidated those who did not stand by them. Padmnabha's episode would have been a lesson for her. Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company, the mere fact that she became obedient to all the instructions of Sivarasan need not be used for treating her conduct as amounting to "rarest of the rare cases" indicated in *Bachan Singh case*[16].

353. Another consideration which we find difficult to overlook is — she is the mother of a little female child who would not have even experienced maternal cuddling as that little one was born in captivity. Of course the maxim "*justitia non novit patrem nec matrem*" (justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As we have confirmed the death sentence passed on the father of that small child, an effort to save its mother from the gallows may not militate against *jus gladii* so that an innocent child can be saved from imposed orphanhood.

354. Thus, on an evaluation of the plus and minus, pros and cons we persuade ourselves to save A-1 (Nalini) from the gallows. Hence the sentence passed on her is altered to one of imprisonment for life.

355. What remains is the case of A-9 (Robert Payas), A-10 (Jayakumar), and A-16 (Ravichandran). They do not belong to the first or even to the second category. They were LTTE followers and they just obeyed the commands of leaders like Sivarasan who had the capacity to dominate over them. We are inclined to alter their sentence from death penalty to imprisonment for life. We order so.

356. The appeals filed by all the 26 accused and the proceedings submitted by the Special Judge of the Designated Court under Section 366 of the Code of Criminal Procedure are disposed of in the aforementioned terms.

D.P. WADHWA, J.— I have studied the draft judgment prepared by my learned and noble brother K.T. Thomas, J. It is a judgment so well written, but, regrettably, I find myself unable to agree with him entirely both on certain questions of law and conviction and sentence proposed by him on

16 *Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580

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some of the accused. Moreover, keeping in view the fact that since sentence of death passed on the 26 accused by the Designated Court has been submitted to this Court for confirmation, evidence needs to be considered in somewhat greater detail, I venture to render a separate judgment.

358. On the night of 21-5-1991 a diabolical crime was committed. It stunned the whole nation. Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb. With him 15 persons including 9 policemen perished and 43 suffered grievous or simple injuries. Assassin Dhanu, an LTTE (Liberation Tigers of Tamil Eelam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer (and also a conspirator) engaged to take photographs of the horrific sight, also died in the blast. As in any crime, criminals leave some footprints. In this case it was a camera which was found intact on the body of Haribabu at the scene of the crime. The film in the camera when developed led to unfolding of the dastardly act committed by the accused and others. A charge of conspiracy for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946, and the Indian Wireless Telegraphy Act, 1933 was laid against 41 persons, 12 of whom were already dead having committed suicide and three absconded. Out of these, 26 faced the trial before the Designated Court. Prosecution examined 288 witnesses and produced numerous documents and material objects. Statements of all the accused were recorded under Section 313 of the Code of Criminal Procedure (Code). They denied their involvement. The Designated Court found them guilty of the offences charged against them. Thereafter all the accused were heard on the question of sentence. The Designated Court awarded death sentence to all of them on the charge of conspiracy to murder. "A judicial massacre", bemoaned Mr Natarajan, learned Senior Counsel for the accused, and rightly so in our opinion. The Designated Court also sentenced each of the accused individually for various offences for which they had been separately charged.

359. In view of the provisions of Section 20 of TADA, the Designated Court submitted the sentence of death to this Court for confirmation. The accused also filed appeals under Section 19 of TADA challenging their conviction and sentence.

360. The accused have different alias and while mentioning the accused's names it may not be necessary to refer to them with all their respective alias and alias of an accused will be indicated wherever necessary. There is no dispute about these alias. For proper comprehension of the facts it will be appropriate to refer to the appellants as accused.

361. Three absconding accused are (*1*) Prabhakaran, (*2*) Pottu Omman @ Shanmuganathan Sivasankaran and (*3*) Akila @ Akilakka. Prabhakaran is alleged to be the supreme leader of Liberation Tigers of Tamil Eelam (LTTE) — a Sri Lankan Tamil organization, who along with Pottu Omman, Chief of Intelligence Wing of LTTE, Akila, Deputy Chief of Women Wing of LTTE, and others designed criminal conspiracy to assassinate Rajiv Gandhi and commit other offences in pursuance thereof.

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362. Deceased accused (DA) who are alleged to be the members of the conspiracy and died either by consuming cyanide or in the blast or by hanging are:

1. S. Packiachandran @ Raghuvaran @ Sivarasan
2. Dhanu @ Anbu @ Kalaivani
3. Suba @ Nitya
4. S. Haribabu
5. Nehru @ Nero @ Gokul
6. N. Shanmugham @ Jayaraj
7. Trichy Santhan @ Gundu Santhan
8. Suresh Master
9. Dixon @ Kishore
10. Amman @ Gangai Kumar
11. Driver Anna @ Keerthy
12. Jamuna @ Jamila

The accused who are put on trial and are appellants before us are:

A-1 S. Nalini
A-2 T. Suthendraraja @ Santhan
A-3 Sriharan @ Murugan @ Thas @ Indu Master
A-4 Shankar @ Koneswaran
A-5 D. Vijayanandan @ Hari Ayya
A-6 Sivaruban @ Suresh @ Suresh Kumar @ Ruban
A-7 S. Kanagasabapathy @ Radhayya
A-8 A. Chandralekha @ Athirai @ Sonia @ Gauri
A-9 B. Robert Payas @ Kumaralingam
A-10 S. Jayakumar @ Jayakumaran @ Jayam
A-11 J. Shanthi
A-12 S. Vijayan @ Perumal Vijayan
A-13 V. Selvaluxmi
A-14 S. Bhaskaran @ Velayudam
A-15 S. Shanmugavadivelu @ Thambi Anna
A-16 P. Ravichandran @ Ravi @ Pragasam
A-17 M. Suseendran @ Mahesh
A-18 G. Perarivalan @ Arivu
A-19 S. Irumborai @ Duraisingam
A-20 S. Bhagyanathan
A-21 S. Padma
A-22 A. Sundaram @ Subha Sundaram
A-23 K. Dhanasekaran @ Raju
A-24 N. Rajasuriya @ Rangan
A-25 T. Vigneswaran @ Vicky
A-26 J. Ranganath

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363. Prosecution case is that Prabhakaran, Pottu Omman, Akila and Sivarasan masterminded and put into operation the plan to kill Rajiv Gandhi which was executed by Sivarasan, and Dhanu, one of the two assassins (other being Suba), with the back-up of other accused, who conspired and abetted them in the commission of the crime which included providing them a safe haven before and after the crime. Charge of conspiracy is quite complex and when analysed it states that 26 accused before us, and those absconding, deceased and others, are charged with having entered into criminal conspiracy between July 1987 and May 1992 at various places in Sri Lanka and India to do or cause to be done illegal acts, namely:

1. to infiltrate into India clandestinely,
2. to carry and use unauthorised arms, ammunition and explosives,
3. to set up and operate unauthorised wireless sets to communicate with LTTE leaders in Sri Lanka from time to time,
4. to cause and carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India by use of bombs, explosives and lethal weapons so as to scare and create panic by such acts in the minds of the people and thereby to strike terror in the people,
5. in the course of such acts to assassinate Rajiv Gandhi, former Prime Minister of India and others, who were likely to be with him,
6. to cause disappearance of evidence thereof and to escape,
7. to screen themselves from being apprehended,
8. to harbour the accused and escape from the clutches of law, and
9. to do such other acts as may be necessary to carry out the object of the criminal conspiracy as per the needs of the situation,

and in pursuance of the said criminal conspiracy and in furtherance of the same to carry out the object of the said criminal conspiracy:

(I) Santhan (A-2), Murugan (A-3), Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Athirai (A-8), Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13), Bhaskaran (A-14), Rangan (A-24) and Vicky (A-25) along with the deceased accused Sivarasan, Dhanu, Suba, Nero, Gundu (Trichy) Santhan, Suresh Master, Dixon, Amman, Driver Anna and Jamuna infiltrated into India from Sri Lanka clandestinely and otherwise on different dates during the said period of criminal conspiracy;

(II) Shanmugham (DA) amongst them arranged to receive, accommodated and rendered all assistance to the members of the conspiracy;

(III) Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) after having come over to India secured houses at Porur and Kodungaiyur in Madras at the instance of Sivarasan (DA) for accommodating one or the other co-conspirators from time to time and for chalking out the modalities of the

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course of action to be followed for the achievement of the object of the said criminal conspiracy;

(IV) Nero (DA) established contacts with Prabhakaran (absconding) through Pottu Omman (absconding) through illegally operated wireless sets brought into India by Sivarasan (DA) through illicit channel from the house of Vijayan (A-12);

(V) Kanagasabapathy (A-7) and Athirai (A-8) came to India through illicit channel and set up hideouts in Delhi;

(VI) Sivarasan (DA) brought Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with the deceased accused Dhanu, Suba, Nero and Driver Anna to Kodaikkarai and got them all accommodated in several places in Tamil Nadu to be of assistance in carrying out the object of criminal conspiracy;

(VII)(*a*) Arivu (A-18) visited Jaffna and other places in Sri Lanka along with Irumborai (A-19) clandestinely in June 1990, purchased a Kawasaki motorcycle on 4-5-1991 at Madras to facilitate quick movement of himself and one or the other of the co-conspirators,

(*a*-1) arranged payment for printing the compilation described as *Satanic Force* and sent one copy of the same to Prabhakaran (absconding) through Sivarasan (DA) and another set through Murugan (A-3),

(*b*) purchased and provided a battery for operating the wireless apparatus and other two battery cells, which were used as detonator in the belt bomb used by Dhanu (DA) for the murder of Rajiv Gandhi and 15 others;

(VIII) Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with Driver Anna (DA) rendered all assistance necessary therefor;

(IX) Sivarasan decided to murder Rajiv Gandhi, former Prime Minister of India in the public meeting to be held at Sriperumbudur on 21-5-1991 on learning that Rajiv Gandhi was to address the meeting on the said day and finalised the method of operation to murder him by enlisting the services of Nalini (A-1) to be of help at the scene of crime;

(X) Arivu (A-18) handed over the film roll for the purposes of taking photographs of the events to Haribabu (DA), who also purchased a sandalwood garland from Poompuhar Handicrafts, Mount Road, Madras to be used for garlanding Rajiv Gandhi at the scene of occurrence by Dhanu (DA) so as to gain access to the VVIP under the guise of garlanding;

(XI) Dhanu equipped herself with the necessary apparel in order to hide a belt bomb and detonator attached thereto for detonating the same when she was in close proximity to Rajiv Gandhi;

(XII) Haribabu (DA) met Subha Sundaram (A-22) on 21-5-1991 and thereafter took a Chinon camera from a friend for taking photographs at

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the scene of offence and loaded the camera with the film already provided by Arivu (A-18);

(XIII) Nalini (A-1) along with the deceased accused Sivarasan, Dhanu and Suba met Haribabu at Parry's Corner, Broadway Bus-Stand and proceeded to the venue of the public meeting at Sriperumbudur on the evening of 21-5-1991 where Nalini (A-1) provided cover to Dhanu and Suba and when Rajiv Gandhi arrived at the scene of occurrence at about 10.10 p.m. Dhanu gained nearer access to Rajiv Gandhi and while in close proximity to Rajiv Gandhi Dhanu detonated the improvised explosive device kept concealed in her waist belt at about 10.20 p.m. resulting in the blast and assassinated Rajiv Gandhi and 15 others and also killed herself (Dhanu) and also caused the death of Haribabu accused and caused injuries to 43 persons;

(XIV) Nalini (A-1) along with the deceased accused Sivarasan and Suba immediately fled from the scene of occurrence, reached the house of Jayakumar (A-10) and Shanthi (A-11) and took shelter in Jayakumar's (A-10) house;

(XV) Subha Sundaram (A-22) attempted to retrieve the camera used by Haribabu from the scene of occurrence, caused destruction of documents and material objects linking Haribabu in this case and arranged to issue denial in the press about any connection of the said Haribabu with LTTE;

(XVI) Bhagyanathan (A-20) and Padma (A-21) rendered all assistance and harboured the deceased accused Sivarasan and Suba, Murugan (A-3) and Arivu (A-18);

(XVII) Nalini (A-1), Murugan (A-3) and Padma (A-21) accompanied the deceased accused Sivarasan and Suba to Tirupathi, where Nalini (A-1) did "Angapradakshanam";

(XVIII) Nalini (A-1) and Murugan (A-3) hid themselves in different places in Tamil Nadu and Karnataka States in order to evade arrest;

(XIX) Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) harboured the deceased accused Sivarasan, Suba and Nero by transporting them and concealing them inside a tanker lorry bearing No. TN-27-Y-0808 belonging to Dhanasekaran (A-23) from Madras to Bangalore;

(XX) Nero (DA) operated the wireless set and communicated with the absconding accused Prabhakaran and Pottu Omman and conveyed the developments on behalf of the accused Sivarasan;

(XXI) the deceased accused Nero, Gundu Santhan, Suresh Master, Dixon, Amman and Driver Anna rendered all assistance to the deceased accused Sivarasan;

(XXII) Rangan (A-24) rendered all assistance to Sivarasan and others by transporting them in a Maruti Gypsy to Bangalore and other places in Karnataka purchased by Dhanasekaran (A-23) using LTTE funds;

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(XXIII) Ranganath (A-26) harboured the accused Rangan (A-24) and the deceased accused Sivarasan, Suba, Nero, Suresh Master, Amman, Driver Anna and Jamuna at Konanakunte, Bangalore and on 19-8-1991 the deceased accused Sivarasan, Suba, Nero, Suresh Master, Amman, Driver Anna and Jamuna committed suicide;

(XXIV) Shanmugavadivelu @ Thambi Anna (A-15) rendered financial assistance to Sivarasan and to one or the other of the co-conspirators to carry out the object of conspiracy and abetted the commission of the said offence;

(XXV) Nalini (A-1) to Ranganath (A-26) caused the disappearance of evidence of murder of Rajiv Gandhi;

and thereby Nalini (A-1) to Ranganath (A-26) committed offences punishable under Section 120-B of IPC read with Sections 302, 326, 324, 201, 212 and 216 of IPC; Sections 3, 4 and 5 of the Explosive Substances Act of 1908; Section 25 of the Arms Act of 1959; Section 12 of the Passport Act, 1967; Section 14 of the Foreigners Act, 1946; Section 6(1-A) of the Wireless Telegraphy Act, 1933 and Sections 3, 4 and 5 of TADA of 1987.

364. Including the charge of conspiracy, which is Charge 1, there are 251 other charges framed against the accused for having committed various offences in pursuance of the conspiracy under Charge 1. Out of these Nalini (A-1) has been charged on 121 different counts. Second charge against her is that in pursuance of the conspiracy and in the course of the same transaction and in furtherance of the common intention of the accused she and the deceased accused Sivarasan, Dhanu, Suba and Haribabu did

"commit murder of Rajiv Gandhi and others, who were likely to be with him on 21-5-1991 at about 10.20 p.m. at Sriperumbudur in the public meeting where Nalini (A-1) was physically present at the scene of crime and provided the assassin Dhanu [deceased accused (DA)] the necessary cover from being detected as a foreigner, which enabled the assassin to move freely at the scene of crime and gain access nearer to Rajiv Gandhi to accomplish the object of conspiracy, where Dhanu did commit murder and intentionally caused the death of Rajiv Gandhi by detonating the improvised explosive device which was kept concealed in her waist belt when she was in close proximity to Rajiv Gandhi and thereby she (Nalini) committed an offence punishable under Section 302 read with Section 34 IPC".

365. Charges 3 to 17 are also under Section 302 read with Section 34 IPC for having caused the death of persons, who were in close proximity to Rajiv Gandhi. Charges 18 to 34 are under Sections 326/34 IPC for voluntarily causing grievous hurt to the persons who were in close proximity to Rajiv Gandhi at the time of explosion. Charges 35 to 60 are under Section 324 read with Section 34 IPC for voluntarily causing hurt to the persons at the same time. Charges 61 to 119 are under Section 3(2) TADA read with Section 34 IPC. In these charges under Section 3(2) TADA it is mentioned that Nalini (A-1) committed terrorist acts by providing cover to Dhanu (DA) who detonated the improvised explosive device resulting in the bomb blast

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and in the murder of Rajiv Gandhi and others. Charge 120 is for offence under Section 3(3) TADA and this charge is as under.

366. That Nalini (A-1) in pursuance of the said criminal conspiracy referred to in Charge 1, and in the course of the same transaction she in furtherance of the common intention, proceeded to Sriperumbudur along with Sivarasan, Suba, Dhanu and Haribabu on the night of 21-5-1991 at about 10.20 p.m. to the public meeting having knowledge of the commission of the terrorist act viz., explosion of bomb for killing Rajiv Gandhi and others and causing injuries to those who were likely to be around him, and also striking terror in the people and rendered assistance to the terrorists Dhanu, Sivarasan and Suba prior to the terrorist act by taking them to the bus, the hotel, the venue of the public meeting and the like and intentionally aided the said terrorist act by being present on 21-5-1991 at Sriperumbudur in the public meeting, where the terrorist act was committed by Dhanu by detonating the improvised explosive device kept concealed in her waist belt resulting in the bomb blast, and with intent to aid and facilitate the commission of the said terrorist act Nalini (A-1) provided a cloak to Dhanu and Suba to prevent them from being easily identified as Sri Lankan Tamils at the scene of crime and also facilitated the escape of the abovesaid accused concerned in the crime, and thus Nalini (A-1) abetted the commission of the terrorist act and acts preparatory to the terrorist act or knowingly facilitated the commission of the terrorist act and acts preparatory to the terrorist act and thereby Nalini (A-1) committed the offence punishable under Section 3(3) of TADA of 1987.

367. The last charge against Nalini (A-1) is under Section 4(1) TADA read with Section 34 IPC for having committed offence under Section 4(3) TADA of killing nine police officials, who were public servants and were at that time with Rajiv Gandhi on duty.

368. Santhan (A-2) has been charged for an offence under Section 3(3) TADA and Section 14 of the Foreigners Act (Charges 122 and 123). Other accused have also been similarly charged. As to how all the accused have been charged and whether found guilty or not and the sentences passed against them by the Designated Court can be best illustrated by the table given hereunder:

CHARGES

Common to all 26 accused

Charge No.	*Offence u/s*	*Finding*	*Sentence*
1	120-B r/w 302, 326, 324, 201, 212, 216 of IPC 3, 4 and 5 of Explosive Substances Act 25 of Arms Act 12 of Passport Act 14 of Foreigners Act 6(1-A) of Wireless Telegraphy Act 3, 4 & 5 TADA	Guilty	Death

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Nalini (A-1)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
2 to 17	302 r/w 34 IPC	Guilty	Death (16 counts)
18 to 34	326 r/w 34 IPC	Guilty	3 years' RI (13 counts)
35 to 40	324 r/w 34 IPC	Guilty	1 year's RI (6 counts)
41 to 60	324 r/w 34 IPC	Not guilty	Acquitted (20 counts)
61 to 76	3(2)(*i*) TADA r/w 34 IPC	Guilty	Death (16 counts)
77 to 99	3(2)(*ii*) TADA r/w 34 IPC	Guilty (not guilty for Charges 79, 82, 84, 93 acquitted for four counts)	Life (19 counts)
100 to 119	3(2)(*ii*) TADA r/w 34 IPC	Not guilty	Acquitted (20 counts)
120	3(3) TADA	Guilty	Life (life imprisonment)
121	4(3) TADA and 4(1) r/w 34 IPC	Guilty	Life

Santhan (A-2)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
122	3(3) TADA	Guilty	Life
123	14 of Foreigners Act	Guilty	2 years' RI

Murugan (A-3)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
124	3(3) TADA	Guilty	Life
125	14 of Foreigners Act	Guilty	2 years' RI
126	6(1-A) of Indian Wireless Telegraphy Act	Guilty	2 years' RI

Shankar (A-4)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
127	3(3) TADA	Guilty	Life
128	14 of Foreigners Act	Guilty	2 years' RI

Vijayanandan (A-5)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
129	3(3) TADA	Guilty	Life
130	14 of Foreigners Act	Guilty	2 years' RI

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Ruban (A-6)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
131	3(3) TADA	Guilty	Life
132	14 of Foreigners Act	Guilty	2 years' RI

Kanagasabapathy (A-7)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
133	3(3) TADA	Guilty	Life
134	3(4) TADA	Guilty	Life
135	212 IPC	Guilty	2 years' RI
136	14 of Foreigners Act	Guilty	2 years' RI

Athirai (A-8)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
137	3(3) TADA	Guilty	Life
138	3(4) TADA	Guilty	Life
139	212 IPC	Guilty	2 years' RI
140	14 of Foreigners Act	Guilty	2 years' RI

Robert Payas (A-9)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
141	3(3) TADA	Guilty	Life

Jayakumar (A-10)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
142	3(3) TADA	Guilty	Life
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years' RI
145	3(1) & 25(1-B)(*a*) of Arms Act	Guilty	2 years' RI

Shanthi (A-11)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years' RI
145	3(1) & 25(1-B)(*a*) of Arms Act	Guilty	2 years' RI
146	3(3) TADA	Guilty	Life

Vijayan (A-12)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
147	3(3) TADA	Guilty	Life
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years' RI
150	6(1-A) of Indian Wireless Telegraphy Act	Guilty	2 years' RI

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Selvaluxmi (A-13)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years' RI
150	6(1-A) of Indian Wireless Telegraphy Act	Guilty	2 years' RI
151	3(3) TADA	Guilty	Life

Bhaskaran (A-14)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years' RI
152	3(3) TADA	Guilty	Life

Shanmugavadivelu (A-15)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
153	3(3) TADA	Guilty	Life

Ravi (A-16)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
154	3(3) TADA	Guilty	Life
155	3(4) TADA	Guilty	Life
156	212 IPC	Guilty	2 years' RI
157	5 of TADA	Guilty	Life
158	5 of Explosive and Substances Act	Guilty	2 years' RI
159	3(1) and 25(1-B)(*a*) of Arms Act	Guilty	2 years' RI

Suseendran (A-17)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
160	3(3) TADA	Guilty	Life
161	3(4) TADA	Guilty	Life
162	212 IPC	Guilty	2 years' RI
163	5 of TADA	Guilty	Life
164	5 of Explosive Substances Act	Guilty	2 years' RI
165	3(1) & 25(1-B)(*a*) of Arms Act	Guilty	2 years' RI

Arivu (A-18)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
166	3(3) TADA	Guilty	Life
167 to 182	109 and 302 IPC	Guilty	Death (16 counts)
183 to 199	109 and 326 IPC	Guilty (13 counts) 183, 184, 186, 187, 189, 191 to	3 years' RI (13 counts)

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		198, 200 to 205, 226 to 228 acquitted of Charges 185, 188, 190 and 199 (4 counts)	
200 to 225	109 and 324 IPC	Guilty (6 counts) 200 to 205 acquitted on 20 counts (206 to 225)	1 year's RI
226	6(1-A) of Wireless Telegraphy Act and 109 IPC	Guilty	2 years' RI
227	12 of Passport Act	Guilty	3 months' RI
228	4(3) TADA punishable u/s 4(1) TADA and 109 IPC r/w 34 IPC	Guilty	Life

Irumborai (A-19)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
229	3(3) TADA	Guilty	Life
230	3(4) TADA	Guilty	Life
231	212 IPC	Guilty	2 years' RI
232	12 of Passport Act	Guilty	3 months' RI

Bhagyanathan (A-20)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
233	3(3) TADA	Guilty	Life
234	212 IPC	Guilty	2 years' RI

Padma (A-21)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
235	3(3) TADA	Guilty	Life
236	212 IPC	Guilty	2 years' RI
237	6(1-A) of Wireless Telegraphy Act	Guilty	2 years' RI

Subha Sundaram (A-22)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
238	3(3) TADA	Guilty	Life
239	201 IPC	Guilty	2 years' RI

Dhanasekaran (A-23)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
240	3(3) TADA	Guilty	Life

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241	3(4) TADA	Guilty	Life
242	212 IPC	Guilty	2 years' RI

Rangan (A-24)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
243	3(4) TADA	Guilty	Life
244	212 IPC	Guilty	2 years' RI
245	14 of Foreigners Act	Guilty	2 years' RI

Vicky (A-25)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
246	3(4) TADA	Guilty	Life
247	212 IPC	Guilty	2 years' RI
248	14 of Foreigners Act	Guilty	2 years' RI

Ranganath (A-26)

Charge No.	*Offence u/s*	*Finding*	*Sentence*
249	3(4) TADA	Guilty	Life
250	216 IPC	Guilty	2 years' RI
251	212 IPC	Guilty	2 years' RI

369. Before we consider the evidence and the arguments advanced by both the parties it may be more appropriate to set out various provisions of law which are the subject-matter of the charges against the accused.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

"2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(*a*)-(*c*) * * *

(*d*) 'disruptive activity' has the meaning assigned to it in Section 4, and the expression 'disruptionist' shall be construed accordingly;

(*e*)-(*gg*) * * *

(*h*) 'terrorist act' has the meaning assigned to it in sub-section (1) of Section 3, and the expression 'terrorist' shall be construed accordingly;

* * *

3. *Punishment for terrorist acts.*—(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption or any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

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

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

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

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

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

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

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

4. *Punishment for disruptive activities.*—(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of sub-section (1), 'disruptive activity' means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

(*i*) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(*ii*) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(*a*) 'cession' includes the admission of any claim of any foreign country to any part of India, and

(*b*) 'secession' includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which—

(*a*) advocates, advises, suggests or incites; or

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(*b*) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

5. *Possession of certain unauthorised arms, etc., in specified areas.*— Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III(*a*) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

6. *Enhanced penalties.*—(1) If any person with intent to aid any terrorist or disruptionist, contravenes any provision of, or any rule made under, the Arms Act, 1959 (54 of 1959), the Explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908), or the Inflammable Substances Act, 1952 (20 of 1952), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to 'imprisonment for life' shall be construed as a reference to 'imprisonment for ten years'.

* * *

15. *Certain confessions made to police officers to be taken into consideration.*—(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him

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and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

* * *

25. *Overriding effect.*—The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

* * *

28. *Power to make rules.*—(1) Without prejudice to the powers of the Supreme Court to make rules under Section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(*a*) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(*b*) the entry into, and search of,—

(*i*) any vehicle, vessel or aircraft; or

(*ii*) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in Section 3 or Section 4 or for manufacturing or storing anything for the commission of any such offence;

(*c*) conferring powers upon,—

(*i*) the Central Government;

(*ii*) a State Government;

(*iii*) an Administrator of a Union Territory under Article 239 of the Constitution;

(*iv*) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(*v*) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(*d*) the arrest and trial of persons contravening any of the rules or any order thereunder;

(*e*) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

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(*f*) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (*e*) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority."

TADA RULES

"15. *Recording of confession made to police officers.*—(1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession.

(3) The confession shall, if it is in writing, be—

(*a*) signed by the person who makes the confession; and

(*b*) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect—

'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Sd/-

Police Officer.'

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) insofar as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence."

INDIAN PENAL CODE (IPC)

"120-A. *Definition of criminal conspiracy.*—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

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(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.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B. *Punishment of criminal conspiracy.*—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

34. *Acts done by several persons in furtherance of common intention.*—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

302. *Punishment for murder.*—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

326. *Voluntarily causing grievous hurt by dangerous weapons or means.*—Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

324. *Voluntarily causing hurt by dangerous weapons or means.*—Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

201. *Causing disappearance of evidence of offence, or giving false information to screen offender.*—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the

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commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.

[*if a capital offence*] shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

[*if punishable with imprisonment for life*] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

[*if punishable with less than ten years' imprisonment*] and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

212. *Harbouring offender.*—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

[*if a capital offence*] shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

[*if punishable with imprisonment for life, or with imprisonment*] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

'Offence' in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 482, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

216. *Harbouring offender who has escaped from custody or whose apprehension has been ordered.*—Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an

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offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

[*if a capital offence*] if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

[*if punishable with imprisonment for life, or with imprisonment*] if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

'Offence' in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended."

EXPLOSIVE SUBSTANCES ACT, 1908

"3. *Punishment for causing explosion likely to endanger life or property.*—Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. *Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.*—Any person who unlawfully and maliciously—

(*a*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property; or

(*b*) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which

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fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. *Punishment for making or possessing explosives under suspicious circumstances*.—Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added."

ARMS ACT, 1959

"3. *Licence for acquisition and possession of firearms and ammunition*.—[(1)] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

* * *

25. (1-B) Whoever—

(*a*) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3;

* * *

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year."

PASSPORT ACT, 1967

"12. *Offences and penalties*.—(1) Whoever—

(*a*) contravenes the provisions of Section 3; or

(*b*) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(*c*) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(*d*) knowingly uses a passport or travel document issued to another person; or

(*e*) knowingly allows another person to use a passport or travel document issued to him,

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shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1-A) Whoever, not being a citizen of India,—

(*a*) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(*b*) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1-A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence."

THE FOREIGNERS ACT, 1946

"14. *Penalties.*—If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (*f*) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid.

3. (2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(*a*)-(*e*) * * *

(*f*) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(*g*) * * *

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act."

INDIAN WIRELESS TELEGRAPHY ACT, 1933

"6. (1-A) Whoever possesses any wireless transmitter in contravention of the provisions of Section 3 shall be punished with imprisonment which

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may extend to three years, or with fine which may extend to one thousand rupees, or with both.

3. *Prohibition of possession of wireless telegraphy apparatus without licence.*—Save as provided by Section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act."

INDIAN EVIDENCE ACT, 1872

"10. *Things said or done by conspirator in reference to common design.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

* * *

30. *Consideration of proved confession affecting person making it and others jointly under trial for same offence.*—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—'Offence' as used in this section, includes the abetment of, or attempt to commit, the offence."

370. Having set out the provisions of law we may refer to the preliminary submissions of Mr N. Natarajan, Senior Advocate who appeared for all the accused except Shanmugavadivelu @ Thambi Anna (A-15). He submitted that he is not challenging the convictions of various accused under the Foreigners Act, Passport Act, Explosive Substances Act, Indian Wireless Telegraphy Act, Arms Act and Sections 212 and 216 IPC. This he said was on account of the fact that for offences under these Acts the accused were awarded sentence of imprisonment for two years or for a period less than two years which in any case has to be set off under Section 428 of the Code as they had been under detention throughout the period during trial. We are thus left to consider offences under Sections 120-B IPC, 302/34 IPC, 326/34 IPC, 324/34 IPC and under Sections 3, 4 and 5 of TADA.

371. Opening his arguments Mr Natarajan submitted that the first charge gives the overall view of the case of the prosecution. In brief he said there were five facets of the conspiracy alleged by the prosecution against the accused, namely, (*1*) clandestine infiltration into India, (*2*) hiring of safe accommodation for the conspirators, (*3*) unauthorised wireless operation by them, (*4*) assassination of Rajiv Gandhi and others on 21-5-1991, and (*5*) harbouring of offenders in order to escape from India and disappearance of evidence. The prosecution evidence propounds a criminal conspiracy. Mr Natarajan was right in his submissions when he said it would be futile to

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contend that there was no conspiracy. The questions that arise for consideration are as to what is the object of that conspiracy, who were members of the conspiracy, whether any offence under TADA is made out and whether it was a case of conspiracy to murder and causing grievous and simple hurt by use of bombs. Assuming that whatever prosecution evidence has led to be admissible and reliable, there is no conspiracy to commit any offence under TADA and the conspiracy is only to commit the murder of Rajiv Gandhi. On the question of motive of the crime, we find, there is no dispute. For the past couple of years there has been unrest in the northern part of Sri Lanka, a neighbouring country which area is inhabited mostly by Tamils. These Tamils or Tamilians complained of atrocities committed by the majority community of Sinhalese inhabiting in the south of Sri Lanka. To protect the rights of the Tamils various organizations came up in Sri Lanka, foremost being the Liberation Tigers of Tamil Eelam (LTTE). This organization claimed to be the only representative body of the Tamils. For the independence of Tamil area in Sri Lanka, armed struggle started between LTTE and Sri Lankan army. On this account there was turmoil in Sri Lanka resulting in the influx of Tamil refugees to India from Sri Lanka and by 1987 the problem, it appeared, was getting out of hand. During the armed struggle LTTE was having a free field in India. To support its struggle against Sri Lankan army a cadre of LTTE had been operating from the Indian soil for the purpose of arms training, treatment of injured LTTE people, supply of medicines and other provisions, collection of funds, printing and publishing of propaganda material, buying of provisions like petrol, diesel, wireless equipments, explosives and even clothes.

372. An Indo-Sri Lankan Agreement to establish peace and normalcy in Sri Lanka was entered into on 22-7-1987. It was signed by Rajiv Gandhi, Prime Minister of the Republic of India and J.R. Jayawardane, President of the Democratic Socialist Republic of Sri Lanka. After the agreement was signed Prime Minister Rajiv Gandhi made a statement in the Rajya Sabha on the Agreement which he said aimed "at bringing to an end the difficult conflict which has afflicted our friendly neighbour Sri Lanka for years" and that the conflict had assumed acute dimensions over the last four years endangering the very stability, unity and integrity of Sri Lanka. The agreement among other things envisaged lifting of emergency in the eastern and northern provinces of Sri Lanka by 15-8-1987, holding of elections, constitution of interim council, etc. Cessation of hostilities was to come into effect all over the island within 48 hours of the signing of the Agreement and all arms presently held by Tamil militant groups were to be surrendered, in accordance with an agreed procedure, to authorities to be designated by the Government of Sri Lanka. Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism Act and other emergency laws. Para 2.16 of the Agreement provided as under:

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2.16 These proposals are also conditional to the Government of India taking the following actions if any militant groups operating in Sri Lanka do not accept this framework of proposals for a settlement, namely,

(*a*) India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.

(*b*) The Indian Navy/Coastguard will cooperate with the Sri Lankan Navy in preventing Tamil militant activities from affecting Sri Lanka.

(*c*) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals, the Government of India will cooperate by giving to the Government of Sri Lanka such military assistance as and when requested.

(*d*) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there, concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.

(*e*) The Government of India and Sri Lanka will cooperate in ensuing the physical security and safety of all communities inhabiting the northern and eastern provinces.

The Indo-Sri Lankan Accord had thus the following features:

1. It contains a package for the devolution of political power recognising the northern and eastern provinces of Sri Lanka as the traditional homeland of the Tamils.

2. It gives to India a "guarantor" role in the implementation of the devolution package and the other provisions within the framework of "United Sri Lanka".

3. It takes account of India's security concerns in the area.

373. In pursuance of the Agreement Indian forces called the Indian Peace-Keeping Force (IPKF) went to Sri Lanka on 29-7-1987. After the initial somewhat reluctance to acceptance, LTTE got disillusioned with the Accord which is reflected from the following factors:

1. The Accord ruled out separate Tamil Eelam in Sri Lanka and so went against the objectives of LTTE to form an independent Tamil Eelam.

2. LTTE looked towards India with certain expectations under the Accord, which, according to it, were not fulfilled. It was the way the Tamil refugees of Sri Lanka were rehabilitated by the Sri Lankan Government which was not to the satisfaction of LTTE.

3. In the interim council to be formed under the Accord LTTE was given less seats though it claimed to be the sole representative body of Sri Lankan Tamils.

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4. On 15-9-1987 one Dileepan of LTTE went on hunger strike in Sri Lanka. He took fast against the atrocities committed by IPKF and for the Government of India not acting properly. He died fasting on 26-9-1987.

5. 17 important functionaries of LTTE were captured by Sri Lankan Navy in the first week of October 1987. They were being taken to Colombo for interrogation. LTTE approached the Government of India for their release. The Government of India did not vigorously pursue the matter and while it was negotiating with the Sri Lankan Government to secure their release, 12 of them committed suicide by consuming cyanide.

6. In the night of 3-10-1987/4-10-1987 when an IPKF convoy was carrying ration it was attacked by LTTE and 11 Indian soldiers were killed. It was the flashpoint of breach between IPKF and LTTE and active confrontation between the two started. Prabhakaran, supreme leader of LTTE, went underground.

7. The Agreement or the Accord, as it is normally called ultimately, did not find favour with LTTE and in spite of the Agreement activities of LTTE on the Indian soil continued growing substantially.

374. LTTE became opposed to the Accord and also against IPKF. Prabhakaran at one stage even said that they were stabbed in the back by agreeing to the Accord and had been betrayed. There was more influx of refugees to India. Now LTTE complained of atrocities committed by IPKF on the Tamils in Sri Lanka and accused IPKF of torture, rape, murder, etc. As to what led India to enter into the Accord with the Sri Lankan Government and the background of the ethnic trouble in Sri Lanka and also reservations expressed on the Accord, there is the statement of R.M. Abhyankar (PW 173), Joint Secretary in the Ministry of External Affairs, Government of India. Two volumes of the book *Satanic Force* (MO 124 and MO 125) were published in India at the behest of LTTE which contained compilation of speeches of Prabhakaran and other articles and photographs showing the atrocities committed by IPKF on Tamils in Sri Lanka after the Accord and the animosity which Prabhakaran developed towards Rajiv Gandhi. The book was compiled by N. Basant Kumar (PW 75). He is an artist by profession. The printing and publishing of the book was authorised and financed by LTTE. It was published in January 1991 and contains information up to March 1990. In his statement Brig. Vivek Sapatnekar (PW 186), who was earlier in charge of IPKF operations in Sri Lanka, also stated that the Accord was not having the support of LTTE. MO 125 (Vol. 2 of *Satanic Force*) contained the news item published in the *Indian Express* of April 1990 which quotes the speech by Prabhakaran saying that he was against the former leadership in India and that LTTE was not against India or Indian people. These two volumes of *Satanic Force* contain over 1700 pages. No article or writing has been pointed out from *Satanic Force* from which it could be inferred that it was ever in the contemplation of Prabhakaran or any other functionary of LTTE questioning the sovereignty

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and territorial integrity of India; rather they identified Rajiv Gandhi with the Accord and the atrocities committed by IPKF. In the editorial in the official journal of LTTE *Voice of Tigers* dated 19-1-1990 the following comment appears:

> "In the meantime, the defeat of Rajiv's Congress Party and the assumption to power of the National Front alliance under Vishwanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Eelam. LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively accrediting to Mr Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. The LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister in Madras, are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh Government will act in the interests of the Tamil-speaking people by creating appropriate conditions for LTTE to come to political power in the north-eastern province."

375. It may be noted that in the general elections in India the Congress was defeated and a new Government under V.P. Singh as Prime Minister had taken over. Withdrawal of IPKF from Sri Lanka was completed on 24-3-1990. In March 1991 general elections in India were again announced. First phase of elections was over on 20-5-1991 and the next phase was to be held on 23-5-1991. This second phase was postponed for 15 days on account of assassination of Rajiv Gandhi on 21-5-1991.

376. Aveek Sarkar (PW 255) had an interview with Rajiv Gandhi which was published in the Sunday Magazine issue of 12-8-1990/19-8-1990. The interview is dated 30-7-1990/31-7-1990. In the interview Rajiv Gandhi supported the Accord and criticised V.P. Singh in withdrawing IPKF. He said there was no rationale behind the withdrawal and as things till then had not stabilised and the Accord had not been fully implemented. In the Congress manifesto which was released in 1991 for the Lok Sabha elections, the Congress supported the Accord. This manifesto was brought on record in the statement of K. Ramamurthy (PW 258), who was the President of Tamil Nadu Congress Committee at the relevant time.

377. Rajiv Gandhi in August 1990 predicted general elections in the country in early 1991. In the writings and articles in the two volumes of *Satanic Force* there were scathing attacks on Shri Rajiv Gandhi, who was projected as the perpetrator of the sufferings of Tamils in Sri Lanka by sending IPKF. Prabhakaran, when he came out of his hiding after about two-and-a-half years, made a statement in April 1990 that he was against the former leadership, namely, Rajiv Gandhi. Though the Congress led by Rajiv Gandhi was out of power in 1990 there was clear indication of mid-term poll and perceptible upswing in the popularity of Rajiv Gandhi. LTTE apprehended the reversal of the Government of India's policy of non-

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interference towards Sri Lanka and the possibility of return of Rajiv Gandhi as Prime Minister. Rajiv Gandhi stood for territorial integrity of Sri Lanka and for the role of various Tamil organizations in Sri Lanka for any Tamil solution. LTTE on the other hand claimed to be the sole representative body of Tamils there.

378. It was on this account, submitted Mr Natarajan, that there was conspiracy to eliminate Rajiv Gandhi in order to prevent him from coming back to power. He said LTTE perceived the Accord as an object to stop the creation of a separate Tamil Eelam which went against the basic objective of LTTE. The creation of a separate Tamil Eelam was thwarted by the induction of IPKF and in the fight with IPKF more Sri Lankan Tamils died than they died fighting Sri Lankan army. IPKF committed atrocities on Tamils in Sri Lanka. LTTE thus turned against the Government of India and the former leadership as it identified Rajiv Gandhi and his Government as bringing the struggle of Sri Lankan Tamils to square one. Rajiv Gandhi and the Congress manifesto supported the Accord even after IPKF had been withdrawn from Sri Lanka. Mr Natarajan said that the motive was not to overawe the Government of India or to create terror as was being alleged by the prosecution. Animosity of LTTE was only against Rajiv Gandhi who was identified with the Accord. Prabhakaran, the supreme leader of LTTE, had clearly stated more than once that he was not against the Indian Government and the Indian people.

379. According to prosecution conspiracy was activated with the publication of an interview of Rajiv Gandhi in the Sunday Magazine and now the conspiracy was put into operation. First group of conspirators to achieve the object of conspiracy arrived in India on 12-9-1990. This group consisted of Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14). Bhaskaran (A-14) is the father of Selvaluxmi (A-13). They arrived at Rameshwaram in India like other refugees from Sri Lanka and got themselves registered. At Jaffna in Sri Lanka they were seen off by deceased accused Sivarasan without paying any toll to LTTE. It is in evidence that anyone leaving Sri Lanka from the area in the control of LTTE had to pay two sovereigns of gold and Rs 1500. The reason for not paying the toll was that they had left for India to take a house on rent for the work of LTTE. From Rameshwaram they were sent to the refugee camp at Tuticorin. Sivarasan visited them there on two occasions — once in December 1990 and a second time in the first week of April 1991. Sivarasan during his visit in December 1990 told Vijayan (A-12) that he was to take a house on rent in Madras at the time when he would be so told. In April 1991 Sivarasan gave instructions to Vijayan (A-12) to go to Madras and to take a house on rent with the help of Vijayan's cousin Munusamy. At that time Sivarasan also told Vijayan (A-12) that he would be meeting him on 10-4-1991 at the house of Munusamy. Vijayan (A-12) was given Rs 1000 towards expenses for the purpose by Sivarasan. Sivarasan did meet Vijayan (A-12) at Munusamy's house as promised. Sivarasan wanted that the house which was to be taken on rent should be in a secluded place as "he thought that the movements of

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LTTE men are not known to the neighbours". House of J. Duraisamy Naidu (PW 82) at No. 12, Eveready Colony, Kodungaiyur, Madras (Kodungaiyur house) was thus taken on rent by Vijayan (A-12). He, thereafter brought his family [Selvaluxmi (A-13) and Bhaskaran (A-14)] from the refugee camp at Tuticorin and started living in this Kodungaiyur house from 20-4-1991.

380. Second group comprising Robert Payas (A-9), his wife Prema, his sister Premlatha, Jayakumar (A-10) and his wife Shanthi (A-11) came to India from Sri Lanka on 20-9-1990 as refugees and reported at Rameshwaram. Shanthi (A-11) is an Indian Tamil while Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. This group was similarly exempted from paying toll to LTTE and was sent for taking a house on rent for the work of LTTE. They registered themselves at the refugee camp there. They left for Madras on their own and on reaching there stayed with the relatives of Shanthi (A-11). From 1-10-1990 the house of G.J. Shrinivasan (PW 252) bearing No. 26, Sabari Nagar Extn., Porur, Madras (Porur house) was taken on rent in the name of Jayakumar (A-10). It was taken through M. Utham Singh (PW 56), a property agent and proprietor of Ebenezer Stores. Sivarasan (deceased accused) and Kanthan (not named accused) used to visit them in their Porur house. Telephone No. 2343402 installed at Ebenezer Stores, Porur was used by Sivarasan, Robert Payas (A-9) and others to contact one another. A wireless set was installed in the Porur house, which was numbered as Station No. 95. Till December 1990 families of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) stayed together in this house. Sivarasan then wanted Robert Payas (A-9) to take another independent house at a secluded place for him (Sivarasan) to stay. This third house was taken on rent in the name of Ramasamy, father-in-law of Jayakumar (A-10) [father of Shanthi (A-11)]. The house was owned by K. Kottammal (PW 63) and was at No. 153, Muthamil Nagar, Kodungaiyur, Madras (Muthamil house). On 18-12-1990, Jayakumar (A-10), Shanthi (A-11) and their child moved to this house and Sivarasan also started staying with them.

381. Third group comprising Ravi (A-16) and Suseendran (A-17) along with Sivarasan arrived in India from Sri Lanka in the end of December 1990. Both Ravi (A-16) and Suseendran (A-17) are Indian Tamils. This group was seen off at Sri Lanka by Pottu Omman. They were instructed by Pottu Omman to follow the instructions of Sivarasan. Both Ravi (A-16) and Suseendran (A-17) had gone to Jaffna and took training in LTTE camp in arms and in their indoctrination regarding atrocities committed by IPKF on Tamils in Sri Lanka and to enlist more people in Tamil Nadu in India for the movement of LTTE and for the creation of a Tamil State separate from India.

382. Fourth group comprising Arivu (A-18) and Irumborai (A-19) came to India in October 1990. They had gone to Sri Lanka in May 1990 with Baby Subramaniam where they had met Prabhakaran.

383. In the fifth group there is only one person — Murugan (A-3), who arrived in India clandestinely in the third week of January 1991 with the

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directions from Pottu Omman. He reached Kodaikkarai on the Indian coast where Sivarasan was waiting to receive him. They thereafter went to the house of one Mahalingam, a Sri Lankan Tamil, residing in Kodaikkarai. Then they came to Madras and went to the Porur house where now Robert Payas (A-9) was staying with his family. Murugan (A-3) stayed there for a few days. Muthuraja, an LTTE activist took Murugan (A-3) to the house of Padma (A-21), who was staying there with her son Bhagyanathan (A-20). This house is situated at No. 22, Muthiah Garden Street, Royapettah, Madras (Royapettah house).

384. Sixth group comprising Kanagasabapathy (A-7) and Athirai (A-8) came to India on 23-4-1991 and was seen off by Pottu Omman with certain specific instructions in an LTTE boat with an escort. They reached Kodaikkarai on the coast of India and were received by Chokan, an LTTE helper, who took them to the house of V. Kantha Raja (PW 60). After staying there for two days Kanagasabapathy (A-7) and Athirai (A-8) left for Madras and stayed in the house of Jai Kumari (PW 109), niece of Kanagasabapathy (A-7). Sivarasan met them there on 2-5-1991 as per the prior arrangement fixed by Pottu Omman.

385. Seventh and the last group consisting of nine persons under the leadership of Sivarasan arrived at Kodaikkarai on 1-5-1991 in an LTTE boat. This group was seen off by Pottu Omman on 27-4-1991. The boat in which they were travelling developed a snag and had to return. They left the shore of Sri Lanka on 30-4-1991 when again Pottu Omman was there to see them off. Nine persons were Sivarasan, Santhan (A-2), Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Suba, Dhanu, Nero and Keerthy. Last four and Sivarasan are deceased accused. On 2-5-1991 Sivarasan took Suba and Dhanu to the house of Jayakumar (A-10) (Muthamil house) and Nero to the house of Vijayan (A-12) (Kodungaiyur house). On 6-5-1991 Sivarasan took Suba and Dhanu also to the Kodungaiyur house. A wireless set, which belonged to Sivarasan, was installed by Nero in the Kodungaiyur house which is Station No. 910 and started communicating with LTTE Headquarters in Sri Lanka. On 3-5-1991 Santhan (A-2) and Ruban (A-6) went to Porur house of Robert Payas (A-9) at Madras. Shankar (A-4) stayed at Kodaikkarai till 15-5-1991. Then he came to Madras and stayed at Esware Lodge uptil 23-5-1991. Vijayanandan (A-5) went to Trichi where he stayed till 7-5-1991 and then came to Madras and stayed at Komala Vilas Lodge, Madras. Arivu (A-18) also came to Madras on 9-5-1991 and took Vijayanandan (A-5) to meet N. Basant Kumar (PW 75) on the instructions of Sivarasan. Keerthy @ Driver Anna, who was also in the nine-member group, who had come to India on 1-5-1991, was later found dead along with Sivarasan, Suba and others in the house at Konanakunte, Bangalore on 20-8-1991. There is nothing on record as to where Keerthy stayed from the time of his arrival in India till he was found dead.

386. When Murugan (A-3) met Shankar (A-4) at Kodaikkarai on 14-5-1991 he gave him a slip of paper (Exh. P-1062) containing the names of Nalini (A-1) and Thas [also pronounced as Das by which name Murugan

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(A-3) was well known] and telephone number 419493, which was the phone number of the office of Nalini (A-1). Before Santhan (A-2) arrived in India in the nine-member group on 1-5-1991 at Kodaikkarai Shanmugavadivelu (A-15) (also described as *Thambi Anna*) had made arrangements with P. Veerappan (PW 102), a travel agent and C. Vamadevan (PW 114), a Sri Lankan travel agent, for getting an Indian passport and travel documents for him [Santhan (A-2)] in the last week of April 1991 for Santhan (A-2) to go abroad.

387. Sivarasan has been travelling between India and Sri Lanka though clandestinely during the period February 1990 to May 1991. Evidence shows his presence in these two countries as follows:

1.	15-2-1990	Arrives in India along with Santhan (A-2)
2.	21-6-1990	Went to Sri Lanka
3.	Last week of December 1990	Sivarasan, Ravi (A-16) and Suseendran (A-17) arrive in India
4.	February 1991	Went to Sri Lanka
5.	24-4-1991	He was at Madras in the house of Vijayan (A-12)
6	27-4-1991	He was at Jaffna in Sri Lanka
7.	1-5-1991	Reached Kodaikkarai

388. Uptil now we have referred to that part of the evidence as to how different groups arrived in India to achieve the object of conspiracy. They were all LTTE activists or its ardent supporters and were to act under the instructions of Sivarasan. It is not disputed, however, that existence of LTTE was already in India.

389. The first step was to hire places for the shelter of the conspirators and this was achieved by hiring houses — one at Porur and two at Kodungaiyur. Fourth house is that of Padma (A-21). Nalini (A-1) was living with her mother. Since October 1990 she started living separately in a house at No. 11, High Court Colony, Villiwakkam, Madras. On 7-3-1991 Rangan (A-24) took on rent a house at No. 3, Park Avenue, Alwar Tirunagar, Madras, purportedly for the stay of LTTE men. The house belonged to Nageswara Rao (PW 178). On 21-3-1991 a house at Indira Nagar, Bangalore was taken on rent in the name of Sivapackiam, wife of K. Jagannathan (PW 211) at the instance of Dhanasekaran (A-23) for the alleged purpose of serving as a hideout for the conspirators.

390. Of the remaining accused facing trial, Subha Sundaram (A-22) owned a studio and had trained deceased accused Haribabu in photography. Haribabu was assigned the role of taking photographs of the scene of crime. Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) transported the deceased accused Sivarasan, Suba, etc., who were proclaimed offenders, from Madras to Bangalore in a tanker owned by Dhanasekaran (A-23). Ranganath (A-26) harboured proclaimed offenders Sivarasan, Suba and others.

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391. According to prosecution, steps to achieve the object of conspiracy had already started even prior to arrival in India on 1-5-1991 of the assassins Dhanu and Suba accompanied by Sivarasan and six others. Houses for the use of LTTE persons had already been hired. In March 1991 Arivu (A-18), Bhagyanathan (A-20) and deceased accused Haribabu removed certain incriminating material of LTTE from the house of M. Sankari (PW 210) and kept them in the house of V. Radhakrishnan (PW 231). Baby Subramaniam, an LTTE activist was staying in the house of M. Sankari (PW 210). Arivu (A-18) purchased a Kawasaki Bajaj motorcycle (MO 82) on 4-5-1991. Vijayan (A-12) purchased two bicycles for use of Suba and Dhanu. A Maruti Gypsy (MO 540) had already been purchased by Dhanasekaran (A-23) in November 1990 in the name of Mohan. This Maruti Gypsy was driven by Rangan (A-24) and was used by deceased accused Sivarasan, Suba, Nero, Suresh Master and Keerthy for their movements in Bangalore after the crime. On 3-5-1991 Arivu (A-18) purchased a 12-volt Exide car battery (MO 209) for use in the house of Vijayan (A-12) to operate the wireless set installed there (Station No. 910). During the second week of May 1991 Arivu (A-18) purchased two 9-volt Golden Power batteries and gave them to Sivarasan. These Golden Power batteries are alleged to have been ultimately used to detonate the belt bomb on 21-5-1991 killing Rajiv Gandhi and others. Various conspirators had been meeting each other under the charge of Sivarasan for communicating amongst themselves. While at Madras they used telephone numbers of Ebenezer Stores (2343402), Nalini (A-1) (419493) and of Shanmugavadivelu (A-15) (864249). An OYT telephone connection was applied for on 8-4-1991 in the name of Shanthi (A-11) for the shop premises hired in her name for coffee powder machine. On 11-5-1991 Nalini (A-1) took Suba and Dhanu to the shop of M. Gunathilal Soni (PW 179), gave him the measurement of Suba for stitching a loose salwar kameez from the material bought from the shop itself. This salwar kameez was used by Dhanu for concealing the improvised explosive device. On 18-4-1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and Subha Sundaram (A-22) and deceased accused Haribabu attended the meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras. On the night between 7-5-1991/8-5-1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and deceased accused Sivarasan, Suba, Dhanu and Haribabu attended the meeting of Prime Minister V.P. Singh at Nandanam, Madras, where they conducted a "dry run" by securing access to V.P. Singh for garlanding him. On 16-5-1991/17-5-1991 Vijayan (A-12), Sivarasan and Nero dug a pit in the kitchen room of the house of Vijayan (A-12) for the purpose of concealing wireless set and gun. On 17-5-1991 Ruban (A-6) along with Vijayendran (PW 111) was sent to Jaipur for the purported purpose of fixing an artificial limb on the leg of Ruban (A-6) but in fact for hiring safe accommodation. Similar role has been assigned to Robert Payas (A-9) and Athirai (A-8) for hiring a place at Delhi for LTTE activists. All the payments for hiring accommodation, buying vehicles and expenses of Ruban (A-6) and going to Jaipur, etc. were borne by Sivarasan. On 19-5-1991 tour programme of Rajiv Gandhi to Tamil

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Nadu for 21-5-1991 and 22-5-1991 was published in local newspapers. When Nalini (A-1), Suba and Dhanu after visiting Mahabalipuram came to the house of Nalini (A-1) at Villiwakkam they found Sivarasan waiting for them. He showed the clipping of the Tamil newspaper in which the visit of Rajiv Gandhi to Tamil Nadu for election campaign was published. Sivarasan told Nalini (A-1) to take two days' leave. On 19-5-1991 itself Sivarasan went to the house of N. Basant Kumar (PW 75) where Vijayanandan (A-5) was staying and shifted him to the house of one Vanan. On 20-5-1991 Kanagasabapathy (A-7) along with Vanan went to Delhi by flight to fix a house there. One house in Delhi was secured at Moti Bagh belonging to K. Thiagarajan (PW 57). On 20-5-1991 Sivarasan visited the house of Bhagyanathan (A-20) where Bhagyanathan (A-20), Murugan (A-3), Arivu (A-18) and deceased accused Haribabu were present. A message had already been left at the house of Haribabu when he was not there by Murugan (A-3) to go to the house of Bhagyanathan (A-20). Nalini (A-1) also joined the group. Sivarasan told Nalini (A-1) to apply for half day's casual leave on 21-5-1991 as the venue of the public meeting, which Rajiv Gandhi was to address, was at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu. This Kodak colour film was to be used by Haribabu to take pictures of the scene of crime. On 21-5-1991 Haribabu purchased a sandalwood garland from Poompuhar Handicrafts. He then went to the studio of K. Ravisankaran (PW 151) and borrowed his camera (MO 1). In the afternoon he went to the studio of Subha Sundaram (A-22) when he was having the garland packet in his hands. On 21-5-1991 Nalini (A-1) got permission from her office to leave early and told her colleague N. Sujaya Narayan (PW 96) that she was going to Kanchipuram for buying sarees. She went to her mother's house at Royapettah where Murugan (A-3) was present. He directed her to rush to her Villiwakkam house where Sivarasan would be waiting for her or else he would be angry. From there Nalini (A-1) immediately went to her house at Villiwakkam. It was about 3.00 p.m.

392. On that very day Sivarasan dressed in white kurta pyjama left the house of Jayakumar (A-10). Santhan (A-2) was also present there at that time. Sivarasan was armed with a pistol. Sivarasan then went to the house of Vijayan (A-12) and talked to Suba and Dhanu. Both Suba and Dhanu went inside the room and after about 30 to 40 minutes came out. Dhanu was wearing the orange-coloured salwar kameez. Sivarasan, Suba and Dhanu went to the house of Nalini (A-1) at Villiwakkam in an auto-rickshaw. Sivarasan had asked Vijayan (A-12) to hire the auto-rickshaw and had told him to stop at a distance from his house. Suba told Nalini (A-1) that Dhanu was going to create history by assassinating Rajiv Gandhi and they would be happy if she participated in that. Nalini (A-1) agreed. Nalini (A-1) also saw that some apparatus was concealed underneath the dress of Dhanu. All four of them, namely, Sivarasan, Suba, Dhanu and Nalini (A-1) went in the auto-rickshaw to a nearby temple where Dhanu offered prayers. They then went to Parry's Corner where Haribabu was waiting for them with a camera and the sandalwood garland. All five then left for Sriperumbudur by bus and

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reached there at about 7.30 p.m. Near Indira Gandhi's statue, Sivarasan directed Nalini (A-1) to give cover to Suba and Dhanu at the place of meeting before the occurrence and after the occurrence had taken place to take care of Suba and to wait for him near the statue of Indira Gandhi for about ten minutes and if he failed to turn up they could proceed as already planned. They then proceeded towards the place of meeting. Sivarasan and Haribabu went towards the stage. Nalini (A-1), Suba and Dhanu sat in the women's enclosure. Sivarasan then came to the women's enclosure, got the garland parcel from Suba and took with him Dhanu towards the stage. Nalini (A-1) saw Dhanu standing in between a young girl (Kokila) and a lady (Lata Kannan) near the red carpet. It was about 9.30 p.m. Thereafter Rajiv Gandhi arrived. Nalini (A-1) and Suba got up from the women's enclosure and moved away. There was a loud explosion. Nalini (A-1) and Suba ran across to Indira Gandhi's statue and waited for Sivarasan. Sivarasan came there and told them that Rajiv Gandhi and Haribabu had died in the blast and that it was unfortunate that Haribabu died. Dhanu of course exploded herself. All this has come in the confession of Nalini (A-1) the admissibility of which has been challenged by Mr Natarajan.

393. After the occurrence prosecution led evidence of harbouring, escaping and removal and destruction of incriminating evidence.

394. Dhanu is already dead in the blast. She was a human bomb. Principal perpetrators of the crime and others met their end during the course of investigation. They are all dead. They committed suicide. They are Sivarasan, Suba, Haribabu, Nero, Shanmugham, Trichy Santhan, Suresh Master, Dixon, Amman, Driver Anna @ Keerthy and Jamuna @ Jamila, all Sri Lankan nationals.

395. First information report of the crime was lodged at 1.15 a.m. on 22-5-1991 under Sections 302, 307, 326 IPC and Sections 3 to 5 of the Indian Explosives Act. Camera (MO 1) was found lying on the dead body of Haribabu without any damage. Ten photographs taken by Haribabu before he died at the scene of crime showed the presence of the accused Sivarasan, Dhanu, Suba and Nalini (A-1). One photograph also showed the event of the explosion itself. (Exh. P-735 is the exposed part of the film and MO 542 is the unexposed part of the film.) During the course of investigation the accused were arrested on various dates and confessions of all the accused except Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Shanthi (A-11), Selvaluxmi (A-13), Bhaskaran (A-14), Subha Sundaram (A-22) and Ranganath (A-26) were recorded. Their dates of arrest, confession and nationality are as under:

Name	*Nationality*	*Date of arrest*	*Date of confession*
Nalini (A-1)	Indian	14-6-1991	9-8-1991
Santhan (A-2)	Sri Lankan	22-7-1991	17-9-1991
Murugan (A-3)	Sri Lankan	14-6-1991	8-8-1991
Shankar (A-4)	Sri Lankan	19-5-1992	No confession

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Vijayanandan (A-5)	Sri Lankan	16-5-1992	No confession
Ruban (A-6)	Sri Lankan	16-5-1992	No confession
Kanagasabapathy(A-7)	Sri Lankan	4-7-1991	No confession
Athirai (A-8)	Sri Lankan	5-7-1991	29-8-1991
Robert Payas (A-9)	Sri Lankan	18-6-1991	15-8-1991
Jayakumar (A-10)	Sri Lankan	26-6-1991	22-8-1991
Shanthi (A-11)	Indian	16-5-1992	No confession
Vijayan (A-12)	Sri Lankan	8-7-1991	4-9-1991
Selvaluxmi (A-13)	Indian	16-5-1992	No confession
Bhaskaran (A-14)	Indian	8-7-1991	No confession
Shanmugavadivelu (A-15)	Sri Lankan	16-5-1992	17-5-1992
Ravi (A-16)	Indian	6-1-1992	14-2-1992
Suseendran (A-17)	Indian	6-1-1992	14-2-1992
Arivu (A-18)	Indian	19-6-1991	15-8-1991
Irumborai (A-19)	Indian	9-10-1991	3-12-1991
Bhagyanathan (A-20)	Indian	11-6-1991	5-8-1991
Padma (A-21)	Indian	11-6-1991	7-8-1991
Subha Sundaram (A-22)	Indian	2-7-1991	No confession
Dhanasekaran (A-23)	Indian	13-10-1991	4-11-1991
Rangan (A-24)	Sri Lankan	28-8-1991	23-10-1991
Vicky (A-25)	Sri Lankan	4-2-1992	24-2-1992
Ranganath (A-26)	Indian	28-8-1991	No confession

396. The immediate fallout of the assassination of Rajiv Gandhi was that general elections in India got postponed. A notification was issued by the Election Commission of India on 22-5-1991 stating that earlier notification dated 19-4-1991 had been issued under Section 30 of the Representation of the People Act, 1951 fixing 20-5-1991, 23-5-1991 and 26-5-1991 as the dates on which poll shall be held in the parliamentary constituencies in India and that "the country has suffered a great tragedy in the death of Shri Rajiv Gandhi at the assassins' hands". The Election Commission directed that election to the constituencies fixed for 22-5-1991 shall be held on 12-6-1991 and that fixed for 26-5-1991 shall be held on 15-6-1991.

397. During the course of investigation, prosecution as stated above, arrested the accused on various dates, recorded their confessions, recorded the statements of witnesses, collected documents and other material and submitted challan under Section 173 of the Code for offences punishable under Section 120-B IPC read with Sections 302, 326, 324, 201 and 212 IPC; Sections 3, 4 and 5 of the Explosive Substances Act; Sections 25 and 27 of the Arms Act; Section 12 of the Passport Act; Section 14 of the Foreigners Act; Section 6(1-A) of the Wireless Telegraphy Act and Sections 3(3), 4(2), 4(3) of TADA, 1987. Specific offences committed by each of the accused in pursuance of the criminal conspiracy were also stated.

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398. Mr Natarajan took us through the evidence. He understood the futility of the arguments, and in our opinion rightly, to challenge the very existence of a conspiracy. From the evidence led by the prosecution he did not dispute that reasonable grounds existed to believe that there was a conspiracy to commit an offence. According to him the object of conspiracy was to assassinate Rajiv Gandhi and not to commit any terrorist act or disruptive activity falling under Sections 3 and 4 of TADA as contended by the prosecution. Having accepted the existence of conspiracy he said it was only to be seen as to what was the object of the conspiracy and who were the members of the conspiracy. Confessions of the accused have been recorded under Section 15 of TADA. Rule 15 of the TADA Rules framed under Section 28 of TADA prescribes the conditions for recording of confession made to the police officer. He said confessions were not voluntary and have been retracted by the accused. Under Section 20 of TADA certain modified provisions of the Code are applicable. Except for Shanmugavadivelu (A-15), who was taken into custody on 16-5-1992 and his confession recorded on the following day, in the case of other accused confessions have been recorded only a day or so when the police remand was to expire which was for 60 days. No sufficient time was granted to the accused to reflect if they wanted to make confession. In the case of Nalini (A-1) and Arivu (A-18) mandatory safeguards have been violated. Confession of one accused could not be used for corroboration of the confession of another accused.

399. Mr Natarajan said that confessions of the accused could not be taken into consideration. His arguments were:

(*1*) All these confessions have been retracted by the accused having been taken under coercion and under police influence;

(*2*) Sufficient time was not given to the accused before recording of the confession. They were given only a few hours to reflect if they wanted to make any confession;

(*3*) Under the provisions of the Code as amended by TADA, the police took full remand of the accused for 60 days and when a day or so before the remand was to expire the accused were made to give their confessions. There is, thus, every possibility of the confessions being extracted. It cannot also be ruled out that the confessions were obtained by causing physical harm to the accused and playing upon their psychology;

(*4*) Confessions of Nalini (A-1) and Arivu (A-18) are otherwise inadmissible as mandatory provisions contained in Section 15 of TADA and Rule 15(3) of the TADA Rules have been violated;

(*5*) All the accused were kept together in a building called Malagai situated at Green Pass Road, Madras which were the headquarters of CBI. Firstly, remand was taken for one month but no confession came to be recorded. Further remand of one month was taken. During this period, Poonamallai Sub-Jail was denotified as jail and handed over to CBI and converted into police station. All the accused were transferred

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there and again kept together under the control of special investigating team of CBI. Legal principles required that the accused should have been kept separate and sufficient time should have been given to them for their minds to reflect if they wanted to make a clean breast of the whole thing;

(*6*) It is settled law that confession of an accused cannot be used for corroboration of the confession made by co-accused. The rule of prudence so requires; and

(*7*) All these confessions are post-arrest confessions and confession of one accused cannot be used against the other even with reference to Section 10 of the Evidence Act. It could not be said that object of conspiracy was not accomplished by the assassination of Rajiv Gandhi and that the conspiracy was still in existence.

400. Coming to the confession of Nalini (A-1), it was submitted by Mr Natarajan that she, in her confession, referred to Murugan (A-3), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-21) among the accused now arraigned before the Court. She also referred to Jayakumar (A-10) though he comes in the picture after the act of assassination had been completed. Nalini (A-1) who was present at the scene of the crime is the sole surviving accused of the group that had gone to Sriperumbudur in furtherance of the conspiracy to assassinate Rajiv Gandhi. Nalini (A-1) has denied in her statement under Section 313 of the Code that her confession was voluntary. She said blank papers were got signed from her. This confession does not satisfy the requirement of law under Section 15 of TADA and Rule 15(3) of the TADA Rules though it is not disputed that all the confessions are recorded by V. Thiagarajan (PW 52), Superintendent of Police.

401. It was submitted that the certificate required to be recorded under Rule 15(3) of the Rules of TADA is on the same lines as given in Section 164(4) of the Code. Section 164(4) of the Code is as under:

"164. (4) Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect—

'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.
Magistrate.' "

402. It is unnecessary to refer to the provisions of Section 281 of the Code as it is not disputed that otherwise the confessions of the accused have been properly recorded. Contention in the case of Nalini (A-1) is that the mandatory provisions of Rule 15(3) have been violated as it is not signed by Nalini (A-1) whose signatures are required at the end of the confession. It

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was thus submitted that since the confession does not bear the signatures of Nalini (A-1) it could not be said to be a valid confession. It is important that the accused signs the confession at the end. In that way he comprehends that he has made confession. Confession of Nalini (A-1), it was submitted, has to be rejected in its entirety. Confession is said to be in 18 pages out of which only pp. 1 to 16 bear her signatures while pp. 17 and 18, which are crucial to the confession, do not bear her signatures. It may be said that the police officer has appended his certificate at the end of the confession but his recording of the certificate is immaterial if the accused did not append his signatures at the end of the confession. Omission of signatures of Nalini (A-1) cannot cure the defect. V. Thiagarajan (PW 52), who recorded the confession, merely stated in the examination-in-chief that his not getting the signatures of Nalini (A-1) was an omission. No explanation has been given as to why the omission occurred and it was not for the accused to bring out in cross-examination as to the circumstances under which signatures of Nalini (A-1) could not be obtained at the end of the confession. It is also not relevant if each page of the confession is signed, signature has to be put on the last page at the end of the confession and only then endorsement by the police officer recording the confession has a meaning. Both the signatures at the end of the confession and the certificates of the police officer must go together. Rule 15 provided an assurance that confession recorded is as per prescribed provisions. In support of the submission Mr Natarajan referred to a Constitution Bench decision of this Court in *Kartar Singh* v. *State of Punjab*[1] where this Court considered constitutional validity of the provisions of Section 15 of TADA and Rule 15 of the TADA Rules. It was submitted that the constitutional validity of TADA was upheld because of the safeguards provided by Rule 15 for recording confession by police officer which under ordinary law is impermissible. In *Kartar Singh case*[1] the Court said: (SCC p. 680, para 254)

> "*254.* In view of the legal position vesting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, we state that there should be no breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement and there should be no room for hypercriticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability as it could be ironically put that when a Judge remarked, 'Am I not to hear the truth', the prosecution giving a startling answer, 'No, Your Lordship is to hear only the evidence'."

This is how this Court analysed Section 15 and Rule 15: (SCC pp. 681-82, paras 257-62)

> "*257.* As per Section 15(1), a confession can either be reduced into writing or recorded on any mechanical device like cassettes, tapes or soundtracks from which sounds or images can be reproduced. As rightly

1 (1994) 3 SCC 569 : 1994 SCC (Cri) 899

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pointed out by the learned counsel since the recording of evidence on mechanical device can be tampered, tailored, tinkered, edited and erased, etc., we strongly feel that there must be some severe safeguards which should be scrupulously observed while recording a confession under Section 15(1) so that the possibility of extorting any false confession can be prevented to some appreciable extent.

258. Sub-section (2) of Section 15 enjoins a statutory obligation on the part of the police officer recording the confession to explain to the person making it that he is not bound to make a confession and to give a statutory warning that if he does so it may be used as evidence against him.

259. Rule 15 of the TADA Rules imposes certain conditions on the police officer with regard to the mode of recording the confession and requires the police officer to make a memorandum at the end of the confession to the effect that he has explained to the maker that he was not bound to make the confession and that the confession, if made by him, would be used as against him and that he recorded the confession only on being satisfied that it was voluntarily made. Rule 15(5) requires that every confession recorded under Section 15 should be sent forthwith either to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and the Magistrate should forthwith forward the recorded confession received by him to the Designated Court taking cognizance of the offence.

260. For the foregoing discussion, we hold that Section 15 is not liable to be struck down since that section does not offend either Article 14 or Article 21 of the Constitution.

261. Notwithstanding our final conclusion made in relation to the intendment of Section 15, we would hasten to add that the recording of a confession by a Magistrate under Section 164 of the Code is not excluded by any exclusionary provision in the TADA Act, contrary to the Code but on the other hand the police officer investigating the case under the TADA Act can get the confession or statement of a person indicted with any offence under any of the provisions of the TADA Act recorded by any Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate of whom the two latter Magistrates are included in Section 164(1) by sub-section (3) of Section 20 of the TADA Act and empowered to record confession.

262. The net result is that any confession or statement of a person under the TADA Act can be recorded either by a police officer not lower in rank than a Superintendent of Police, in exercise of the powers conferred under Section 15 or by a Metropolitan Magistrate or Judicial Magistrate or Executive Magistrate or Special Executive Magistrate who are empowered to record any confession under Section 164(1) in view of sub-section (3) of Section 20 of the TADA Act."

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Reference was also made to a Division Bench decision of the Bombay High Court in *Abdul Razak Shaikh* v. *State of Maharashtra*[18] which relying on a decision of the Privy Council in *Nazir Ahmad* v. *King-Emperor*[19] held

> "that the provision that the Magistrate after recording confession should obtain the signature of the accused thereon is a salutary provision and has been specially provided for, for safeguarding the interest of the accused and, therefore, it is mandatory".

The High Court said that this omission cannot be cured by examining the Magistrate under Section 463 of the Code. Section 463 of the Code is as under:

> "463. *Non-compliance with provisions of Section 164 or Section 281.*— (1) If any court before which a confession or other statement of an accused person recorded, or purporting to be recorded under Section 164 or Section 281, is tendered, or has been received, in evidence finds that any of the provisions of either or such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in Section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.
>
> (2) The provisions of this section apply to Courts of Appeal, reference and revision."

In *Nazir Ahmad* v. *King-Emperor*[19] the Magistrate, who purportedly recorded the confession, was called as a witness. He said that the accused made a full confession of his participation in the crime. The Magistrate said that he made rough notes of what he was told and, after dictating to a typist memorandum from the rough notes, destroyed them. The Board then noticed:

> "He produced, and there was put in evidence, a memorandum, called a note, signed by him, containing the substance but not all of the matter to which he spoke orally. The note was signed by him and at the end, above the signature, there was appended a certificate somewhat to the same effect as that prescribed in Section 164, and in particular stating that the Magistrate believed that 'the pointing out and the statements were voluntarily made'. But it was not suggested that the Magistrate, though he was manifestly acting under Part 5 of the Code, either purported to follow or in fact followed the procedure of Sections 164 and 364 (old Code). Indeed, as there was no record in existence at the material time, there was nothing to be shown or to be read to the accused, and nothing he could sign or refuse to sign. The Magistrate offered no explanation of why he acted as he did instead of following the procedure required by Section 164."

18 1988 Cri LJ 382 : 1987 Mah LJ 863 (Bom)
19 AIR 1936 PC 253 (2) : 63 IA 372

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403. The Board did not express any opinion in this case on the question of the operation or scope of Section 533 (old) corresponding to Section 463 of the present Code. It was conceded that the Magistrate neither acted nor purported to act under Section 164 or Section 364 (old) and nothing was tendered in evidence as recorded or purporting to be recorded under either of the sections. The Board then went on to hold as under:

> "On the matter of construction Sections 164 and 364 must be looked at and construed together, and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. Upon the construction adopted by the Crown, the only effect of Section 164 is to allow evidence to be put in a form in which it can prove itself under Sections 74 and 80, Evidence Act. Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case."

In *Abdul Razak Shaikh case*[18] the Bombay High Court also relied on a decision of the Nagpur High Court in *Neharoo Mangtu Satnami* v. *Emperor*[20] where also the Nagpur High Court relying on the aforesaid decision of the Privy Council in *Nazir Ahmad* v. *King-Emperor*[19] held that the evidence of the Magistrate, who recorded the confession of the accused and did not obtain his signatures thereon, was inadmissible. The Magistrate also while recording the confession of the accused did not follow the provisions of Sections 164 and 364 of the Code (old) and did not record the confession of the accused with required care and formality. He also did not record the certificate as required by Section 164 and also failed to obtain the signature of the accused. The Magistrate subsequently went into the witness box for the prosecution and deposed that the confession was made by the accused voluntarily. In these circumstances the High Court held that the evidence of the Magistrate was inadmissible and the confession recorded by him was ineffective.

18 *Abdul Razak Shaikh* v *State of Maharashtra*, 1988 Cri LJ 382 : 1987 Mah LJ 863 (Bom)
20 AIR 1937 Nag 220 . 38 Cri LJ 642
19 AIR 1936 PC 253 (2) 63 IA 372

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404. In the case before the Bombay High Court contention was that

> "as per the provisions of sub-section (4) of Section 164 CrPC it is mandatory for the Magistrate, after recording the confession, to obtain the signature of the accused thereon and as in the present case the learned Judicial Magistrate failed to obtain the signature of the accused on the confession recorded by him, that confession could not be admitted in evidence and the defect could not be cured by invoking the provisions of Section 463 CrPC".

This contention was upheld by the High Court relying on the aforesaid two decisions, one of the Privy Council and the other of the Nagpur High Court. We do not think the view taken by the Bombay High Court and the Nagpur High Court is correct. It may be noted that the Privy Council did not consider the scope and applicability of Section 463 in the circumstances of the case before it. In that case it was conceded that the confessions were not recorded either under Section 164 or Section 281 of the Code. The view taken by the Bombay High Court appears to us to be rather too technical and if we accept this view it would be almost making Section 463 of the Code ineffective. Confession of Nalini (A-1) runs into 18 pages. The certificate as required by Rule 15(3) of the TADA Rules in the form prescribed has been appended by V. Thiagarajan (PW 52), SP, at the end of the confession. Signatures of Nalini (A-1) appear on pp. 1 to 16. In his testimony V. Thiagarajan (PW 52) has submitted that his not getting signatures of Nalini (A-1) at the end of the confession is an omission. There is no cross-examination of V. Thiagarajan (PW 52) as to why the omission occurred. It has not been suggested that the omission was deliberate. Statement of V. Thiagarajan (PW 52) is forthright. There could certainly be a human error but that would not mean that Section 463 of the Code becomes inapplicable. Mr Natarajan is correct in his submission that when the requirement of law is that confession should be signed by the person making it, it would mean his signatures at the end of the confession. What Section 463 requires is that evidence could be led of police officer recording the confession as to why provisions of Rule 15(3) could not be complied with while recording the confession. It has not been suggested or brought on record as to how not getting signatures of Nalini (A-1) on the last pages of the confession has injured her in her defence on the merits of the case. The confession has been corroborated in material particulars by means of an independent evidence even if the confessions of the co-accused are set apart. Confession of Nalini (A-1) was recorded on 7-8-1991 and was sent to the Court of the Chief Judicial Magistrate on the following day and on 9-8-1991 it was sent to the Designated Court. We find that the confession was duly made, which was recorded by V. Thiagarajan (PW 52). We are, therefore, inclined to admit the confession of Nalini (A-1) overruling the objection that Rule 15(3) of the TADA Rules has been violated.

405. We think sufficient time was given to the accused in the circumstances of the case for them to reflect if they wanted to make confession. Merely because confession was recorded a day or so before the

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police remand was to expire would not make the confession involuntary. No complaint was made before the trial court that confession was the result of any coercion, threat or use of any third-degree methods or even playing upon the psychology of the accused.

406. In the case of Arivu (A-18) it was submitted that when he was produced before V. Thiagarajan (PW 52) on 14-8-1991 his statement was recorded that he wanted to give confession statement voluntarily. But then while giving time to him for reflection V. Thiagarajan (PW 52) recorded that

> "the accused Shri Payas @ Kumaralingam has been made to remain alone in his apartment for the purpose of reflection in order to further make up his mind as to whether he should make a confessional statement or not".

Argument was that it was not Arivu (A-18) who was called on 14-8-1991, rather it was accused Payas (A-9). We do not think that this submission has any merit as on the following day, i.e., 15-8-1991, confession dated 15-8-1991 of Arivu (A-18) was duly recorded. We have examined the proceedings of 14-8-1991 and of 15-8-1991 and we have no doubt in our minds that these refer to the accused Arivu (A-18) and that the name of Payas (A-9) was merely a typing error and no advantage can be drawn from that.

407. Mr Natarajan said that evidence in the present case does not show if any offence under Section 3 or Section 4 of TADA has been made out and when there is no offence under TADA, provisions of Section 15 of TADA would not apply and all the confessions would become inadmissible in evidence as all these were made before a police officer. In support of his submissions, he referred to a decision of this Court in *Bilal Ahmed Kaloo* v. *State of A.P.*[6] In that case, the accused was challaned before the Designated Court at Hyderabad for offences under Sections 124-A, 436, 153-A and 505(2) IPC and under Sections 3, 4 and 5 of TADA and also under Section 25 of the Arms Act. The Designated Court acquitted him of the offences under TADA but convicted him of the offences under IPC and also under Section 25 of the Arms Act. In these circumstances, this Court said that confession made by the accused before the police officer was inadmissible in respect of the offences under IPC. The Court observed as under: (SCC p. 434, para 5)

> "5. While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence."

6 (1997) 7 SCC 431 : 1997 SCC (Cri) 1094

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408. As to whether any offence under Section 3 or Section 4 of TADA is made out in the present case, we will consider at subsequent stage of the judgment. In view of the decision of this Court in *Bilal Ahmed Kaloo case*[6] contention of Mr Natarajan is rather correct. However, it appears to us that while holding the confession to be inadmissible in a trial when the accused is acquitted of offences under Section 3 or Section 4 of TADA, provisions of Section 12 of TADA were not taken into consideration by this Court in the said judgment. Section 12 reads as under:

> "12. *Power of Designated Courts with respect to other offences.*—(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.
>
> (2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

409. It is apparent that provisions of Section 12 of TADA were not brought to the notice of the Court in *Bilal Ahmed Kaloo case*[6]. This judgment which was rendered by two learned Judges of this Court, does not lay a good law on this aspect of the matter. Continuing, Mr Natarajan said that even if the confession of an accused is admissible under Section 15 of TADA it is not a substantive piece of evidence and cannot be used against a co-accused unless it is corroborated in material particulars by other evidence. Confession of one accused cannot corroborate the confession of another. In support of his submission, he referred to another two-Judge Bench decision in *Kalpnath Rai* v. *State (Through CBI)*[7] where this Court said that confession under Section 15 of TADA cannot be used as substantive evidence and that it has only corroborative value. This is how this Court considered this question: (SCC pp. 753-54, paras 70-75)

> "*70.* Section 15 of TADA provides that 'notwithstanding anything in the Code or in the Indian Evidence Act ... a confession made by a person before a police officer not lower in rank than a Superintendent of Police ... shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder; provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused'. In this context we may point out that the words 'or co-accused, abettor or conspirator' in the proviso were not in the section until the enactment of Act 43 of 1993 by which those words were inserted. By the same Amendment Act Section 21 was also recast which, as it originally stood, enabled the Designated Court to draw a legal presumption that the accused had committed the offence 'if

6 *Bilal Ahmed Kaloo* v. *State of A.P.*, (1997) 7 SCC 431 : 1997 SCC (Cri) 1094
7 (1997) 8 SCC 732

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it is proved that a confession has been made by a co-accused that the accused had committed the offence'.

71. The legal presumption linked to an accused vis-à-vis a confession made by a co-accused has been deleted by Parliament through Act 43 of 1993 and as a package inserted the words mentioned above in Section 15.

72. What is the effect of such deletion from Section 21 and addition to Section 15 of TADA? It should be remembered that under Sections 25 and 26 of the Evidence Act no confession made by an accused to a police officer, or to any person while he was in police custody could be admitted in evidence, and under Section 162 of the Code no statement made by any person during investigation to a police officer could be used in a trial except for the purpose of contradiction. In view of the aforesaid ban imposed by the legislature Section 15 of TADA provides an exception to the ban. But it is well to remember that other confessions which are admissible even under the Evidence Act could be used as against a co-accused only upon satisfaction of certain conditions. Such conditions are stipulated in Section 30 of the Evidence Act, which reads thus:

> '30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.'

73. The first condition is that there should be a confession i.e. inculpatory statement. Any exculpatory admission is not usable for any purpose whatsoever as against a co-accused. The second condition is that the maker of the confession and the co-accused should necessarily have been tried jointly for the same offence. In other words, if the co-accused is tried for some other offence, though in the same trial, the confession made by one is not usable against the co-accused. The third condition is that the confession made by one accused should affect him as well as the co-accused. In other words, if the confessor absolves himself from the offence but only involves the co-accused in the crime, while making the confession, such a confession cannot be used against the co-accused.

74. Even if no conditions are satisfied the use of a confession as against a co-accused is only for a very limited purpose i.e. the same can be taken into consideration as against such other person. It is now well settled that under Section 30 of the Evidence Act the confession made by one accused is not substantive evidence against a co-accused. It has only a corroborative value, (vide *Kashmira Singh* v. *State of M.P.*[9], *Nathu* v. *State of U.P.*[21] and *Haricharan Kurmi* v. *State of Bihar*[10]).

9 AIR 1952 SC 159 · 1952 SCR 526
21 AIR 1956 SC 56 1956 Cri LJ 152
10 AIR 1964 SC 1184 (1964) 6 SCR 623

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75. A confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

410. Mr Altaf Ahmed, learned Additional Solicitor General submitted that the statement of law as spelled out in para 75 of the judgment in *Kalpnath Rai case*[7] needs reconsideration. He said that what Section 15 contains is a non obstante clause and it applies notwithstanding the provisions of the Evidence Act and the Code.

411. Section 21 of TADA was amended by the amending Act 43 of 1993 and clauses (*c*) and (*d*) were omitted. Section 21 before deletion of clauses (*c*) and (*d*) was as under:

"21. *Presumption as to offences under Section 3.*—(1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved—

(*a*) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(*b*) that by the evidence of an expert the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(*c*) that a confession has been made by a co-accused that the accused had committed the offence; or

(*d*) that the accused had made a confession of the offence to any person other than a police officer,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section."

412. By the same amending Act words "or co-accused, abettor or conspirator" were introduced in Section 15 TADA after the words "shall be admissible in the trial of such person". Now this section reads as under:

"15. *Certain confessions made to police officers to be taken into consideration.*—(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person *or co-accused, abettor or conspirator* for an offence under this Act or rules made thereunder:

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

7 *Kalpnath Rai* v. *State (Through CBI)*, (1997) 8 SCC 732

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(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily." (emphasis supplied)

413. In *Kalpnath Rai case*[7] this Court said that Sections 25 and 26 of the Evidence Act were excluded and not Section 30. The question that arises for consideration is as to what is the effect of deletion of clauses (*c*) and (*d*) in Section 21 and addition of words in Section 15.

414. Mr Altaf Ahmed said that the provisions of Sections 15 and 21 after their amendment provided that a confession of an accused is now admissible in evidence against the co-accused. It is the substantive evidence against the co-accused as well. Concept of drawing presumption though as was earlier mentioned in Section 21 now no more existed.

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

416. The term "admissible" under Section 15 has to be given a meaning. When it says that confession is admissible against a co-accused it can only mean that it is substantive evidence against him as well as against the maker of the confession.

417. Mr Natarajan said that the confession may be substantive evidence against the accused who made it but not against his co-accused. He reasoned that the confession was not that of the co-accused and it was not the evidence; it is the confessor who owned his guilt and not the co-accused; it is not evidence under Section 3 of the Evidence Act; it is not tested by cross-examination; and lastly, after all it is the statement of an accomplice. According to him it can have only corroborative value and that is a well-established principle of the evidence even though Section 3 and Section 30 of the Evidence Act be ignored. But then Section 15 TADA starts with non obstante clause. It says that neither the Evidence Act nor the Code of Criminal Procedure will apply. This is certainly a departure from the ordinary law. But then it was also the submission of Mr Natarajan that the bar which is removed under Section 15 is qua Sections 24, 25 and 26 of the Evidence Act and not that all the provisions of the Evidence Act have been barred from its application. He, therefore, said that the view taken by this Court in *Kalpnath Rai case*[7] that Section 30 of the Evidence Act was in any case applicable, was correct. We think, however, that the view expressed in that case needs reconsideration.

418. If we analyse Section 15, the words which have been added by the amending Act, 1993 have to be given proper meaning and if we accept the argument of Mr Natarajan these words will be superfluous which would be

7 *Kalpnath Rai* v *State (Through CBI)*, (1997) 8 SCC 732

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against the elementary principles of interpretation of statute. For the confession of an accused to be admissible against a co-accused, proviso to Section 15 says that they should be tried together. That is also Section 30 of the Evidence Act. Clauses (*c*) and (*d*) of Section 21 were deleted which raised a presumption of guilt against the co-accused. According to Mr Natarajan, that provision made the confession of a co-accused a substantive evidence and Parliament did not think it proper that it should be so. But then why add the words in Section 15?

419. "Admissible" according to *Black's Law Dictionary* means:

> "Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding."

420. It defines "admissible evidence" as:

> "As applied to evidence, the term means that the evidence introduced is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced at trial. To be 'admissible' evidence must be relevant, and, inter alia, to be 'relevant' it must tend to establish material proposition...."

If we again refer to *Black's Law Dictionary* "substantive evidence" means:

> "That adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (i.e. showing that he is unworthy of belief), or of corroborating his testimony."

421. TADA was enacted to meet extraordinary situation existing in the country. Its departure from the law relating to confession as contained in the Evidence Act is deliberate. Law has to respond to the reality of the situation. What is admissible is the evidence. Confession of the accused is admissible with the same force in its application to the co-accused who is tried in the same case. It is primary evidence and not corroborative. When the legislature enacts that the Evidence Act would not apply, it would mean all the provisions of the Evidence Act including Section 30. By judicial interpretation or judicial rigmarole, as we may put it, the court cannot again bring into operation Section 30 of the Evidence Act and any such attempt would not appear to be quite warranted. Reference was made to a few decisions on the question of interpretation of Sections 3 and 30 of the Evidence Act, foremost being that of the Privy Council in *Bhuboni Sahu* v. *R.*[8] and though we note this decision, it would not be applicable because of the view which we have taken on the exclusion of Section 30 of the Evidence Act. In *Bhuboni Sahu case*[8] the Board opined as under:

> "Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3, 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

8 AIR 1949 PC 257 : 50 Cri LJ 872

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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, makes 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. Their Lordships think that the view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct."

422. In *Kashmira Singh* v. *State of M.P.*[9] one of the questions was how far and in what way the confession of an accused person can be used against a co-accused. The Court relied on the observations made by the Privy Council in *Bhuboni Sahu case*[8] and said that testimony of an accomplice can in law be used to corroborate another though it ought not to be used save in exceptional circumstances and for reasons disclosed.

423. In *Haricharan Kurmi* v. *State of Bihar*[10] this Court again relied on its earlier decision in *Kashmira Singh case*[9] and on the decision of the Privy Council in *Bhuboni Sahu case*[8]. It said that technically construed, definition of evidence as contained in Section 3 of the Evidence Act will not apply to confession. Even so, Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the court, it is 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 a 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.

424. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made and under Section 15 of TADA confession of an accused is admissible against a co-accused as a substantive evidence. Substantive evidence, however, does not necessarily mean substantial evidence. It is the quality of evidence that matters. As to what value is to be attached to a confession will fall within the

9 AIR 1952 SC 159 · 1952 SCR 526
8 *Bhuboni Sahu* v. *R.*, AIR 1949 PC 257 · 50 Cri LJ 872
10 AIR 1964 SC 1184 . (1964) 6 SCR 623

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domain of appreciation of evidence. As a matter of prudence, the court may look for some corroboration if confession is to be used against a co-accused though that will again be within the sphere of appraisal of evidence.

425. Having thus held the confessions to be voluntary and admissible we proceed to examine these confessions and other evidence but before that it may be useful to have a look at the witnesses and the nature of the evidence produced. Rajiv Gandhi had come to Sriperumbudur to address an election meeting for Maragatham Chandrasekar, who was contesting election on Congress ticket as MP from Sriperumbudur Constituency. She is herself a witness (PW 29) and was injured in the blast. PWs 1 to 51 give evidence of the tour programme of Rajiv Gandhi, his arrival at the venue at Sriperumbudur, security arrangements by the police and eyewitnesses to the blast being Congress party workers, photographers and journalists. We are not concerned with the tour programme of Rajiv Gandhi and the security arrangements made for him. His addressing the meeting at Sriperumbudur on 21-5-1991 was published in local newspapers and was known to some of the conspirators. All the security arrangements could not save his life from the human suicide bomb. Many bystanders and police personnel died along with him or suffered grievous or simple injuries. One such person was a young girl Kokila of 14 years who had come with her mother Lata Kannan to recite a poem to Rajiv Gandhi which she had written in Hindi. She was talking to Rajiv Gandhi when the blast occurred. She died and so did her mother. In one of the photographs in the camera (MO 1) Kokila with her mother Lata Kannan is seen standing next to Dhanu, the human bomb. Some of the persons who suffered hurt have been examined. Of these 51 witnesses, who are not in the list of injured, one is C.S. Ganesh (PW 18), Music Director, who was giving his programme at the meeting before the arrival of Rajiv Gandhi; and Sundararajan Murali (PW 34) and Subramaniyan (PW 35) who gave opinion regarding the motive of LTTE against Rajiv Gandhi. In the photographs found in the camera (MO 1) and other photographs taken at the site by other witnesses Dhanu, Suba, Nalini (A-1), Sivarasan and Haribabu are identified at the scene of the crime. The witnesses gave a gory picture of the scene of the crime. There is no dispute that death of Rajiv Gandhi and 15 others was homicidal and grievous and simple hurt was caused to 43 on account of the blast. There is also no dispute about the identity of the accused. Dr Cecelia Cyril (PW 121), Dr M.N. Damodaran (PW 124) to Dr Jishnu Mohan (PW 127), Dr N. Ramasamy (PW 129), Dr B. Santhakumar (PW 130), Dr Veerapandian (PW 134) to Dr T.S. Koshy (PW 146), Dr Raja Venkatesh (PW 150), Dr Kanagaraj (PW 155), Dr A. Srinivasan (PW 162), Dr E.V. Yuvaraj (PW 163), Dr Ponnusamy (PW 165), Dr K. Poongothai M.S. (PW 166), Dr Saraswathi (PW 169) and Dr Ramesh Kumar Sharma (PW 182) are medical officers who conducted post-mortem and examined the injured. Dr L. Thirunavukkarasu (PW 243), Dr S. Rajendran (PW 244), Dr S. Maghivanan (PW 246) and Dr T. Shankughavel Samy (PW 247) are the medical officers who conducted the post-mortem on the dead bodies of the deceased accused who committed suicide during

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investigation. Dr Amrit Patnaik (PW 147) is the medical officer who conducted the post-mortem on the dead body of Dhanu.

426. We may now examine the confessions given by the accused and other evidence led by the prosecution to see how each confession corroborates the other and how the evidence corroborates the confessions.

427. Nalini (A-1) is the only accused who was present at the scene of the crime. She is the sister of Bhagyanathan (A-20) and daughter of Padma (A-21). During 1991 she was working as a PA to the Managing Director of Anabante Silicons Pvt. Ltd. at Adyar, Madras. Her office telephone number was 419493. N. Sujaya Narayan (PW 96) was her colleague and was acquainted with her handwriting. Baby Subramaniam, an LTTE leader, was running a printing press in Madras which was bought by Bhagyanathan (A-20) and named BPL All Rounders. Till January 1991 Padma (A-21) was staying in Kalyani Nursing Home quarters where she was working. Thereafter she rented Royapettah house in January 1991. She was living with her three children Bhagyanathan (A-20), Nalini (A-1) and Kalyani, another daughter. When Nalini (A-1) started living separately, she for a short while lived with M. Sankari (PW 210), who is the sister of Muthuraja, an LTTE activist. This Muthuraja was a friend of Bhagyanathan (A-20). Nalini (A-1) thereafter rented a house in Villiwakkam. Muthuraja was working with Baby Subramaniam, who was a top leader of LTTE. Family of Bhagyanathan (A-20) was introduced to M. Sankari (PW 210) by her brother Muthuraja. Baby Subramaniam used one room in the house of M. Sankari (PW 210) and kept his belongings such as books and papers there. Bhagyanathan (A-20), Arivu (A-18), Haribabu (DA) and Irumborai (A-19) used to visit the room occupied by Baby Subramaniam and meet him. In February 1991 Irumborai (A-19) and Suresh Master (DA) met M. Sankari (PW 210) and told her that they had come from Jaffna and wanted her to take them to the house of Bhagyanathan (A-20) which she did. Muthuraja had told M. Sankari (PW 210) that he was working in Subha Sundaram Studio but for how long he worked there she did not know. This studio belonged to Subha Suba Sundaram (A-22). Muthuraja had left for Jaffna in February 1991. He was a professional photographer and was recording video cassettes and he did that work for LTTE movement.

428. Bhagyanathan (A-20) also had a job in Subha Sundaram Studio of Subha Suba Sundaram (A-22) which job Padma (A-21) had arranged for him. Subha Suba Sundaram (A-22) was known to Padma (A-21) as she attended the delivery of the wife of the former at Kalyani Nursing Home. Bhagyanathan (A-20) was introduced to Baby Subramaniam by Muthuraja. Arivu (A-18) also became a friend of Bhagyanathan (A-20). Like Muthuraja, Arivu (A-18) used to gather news and photographs. He used to compile Tamil and English news, record in video cassettes, edit them and send them to LTTE Headquarters in Sri Lanka. He was staying in the house of Padma (A-21) since February 1991. For the purpose of recording news on video

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cassettes he had bought a National colour TV and video deck. In the first week of February 1991 Muthuraja introduced Murugan (A-3) to the family of Padma (A-21). He belonged to LTTE organization. Padma (A-21) at first did not like Murugan (A-3) to stay in her house but she agreed when Muthuraja told her that police were keeping a watch over his house and he could not keep him there. Murugan (A-3) used to provide financial help to Padma (A-21). He helped Bhagyanathan (A-20) by giving him money as well. One K. Bharathi (PW 233), a nurse, was a friend of Kalyani. She also stayed in the house of Padma (A-21) since February 1991. On one occasion in February 1991 K. Bharathi (PW 233) found Murugan (A-3) in the house of Padma (A-21). On enquiry Padma (A-21) told her that he had come from Tirunelveli and that Muthuraja had sent him to learn English.

429. In the second week of February 1991 Kalyani, sister of Nalini (A-1), accompanied by K. Bharathi (PW 233) and Murugan (A-3) came to the office of Nalini (A-1). Nalini (A-1) was introduced to Murugan (A-3) and was told that he was staying in the house of her mother Padma (A-21). Murugan (A-3) started coming to the office of Nalini (A-1) regularly thereafter and she was quite infatuated with him. Haribabu (DA) and Robert Payas (A-9) were friends of Murugan (A-3) and they also used to come to the office of Nalini (A-1) and used her telephone to talk to their friends. After some time Murugan (A-3) told Nalini (A-1) that he was an important member of LTTE and had been sent to India by Pottu Omman, Intelligence Chief of LTTE. Murugan (A-3) also told Nalini (A-1) that in India he was working under the charge of Sivarasan (DA), who was in charge of the operations of LTTE in India. On 18-4-1991 Nalini (A-1) attended the election meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras along with Murugan (A-3). She went there at the instance of Murugan (A-3). In the month of April 1991 when Nalini (A-1) was in the house of her mother Padma (A-21) she met Sivarasan. Murugan (A-3) told her that he (Sivarasan) was his boss and that it was under his instructions that he was carrying out his work. Nalini (A-1) wanted to vacate her Villiwakkam residence but was persuaded by Murugan (A-3) to stay on there for some more time. He told her that Sivarasan was bringing two girls from Sri Lanka for LTTE operations and those girls would be staying with her. Nalini (A-1) agreed. On 2-5-1991 Sivarasan brought Suba and Dhanu to her house. They, however, did not stay with Nalini (A-1) and used to visit her on some days. They told her that they were staying in Kodungaiyur house. Nalini (A-1) learnt that both Suba and Dhanu were committed LTTE tigresses and committed to the cause of LTTE. Murugan (A-3) had told Nalini (A-1) that they were working under Pottu Omman and Akila. During their discussions Nalini (A-1) was told by Murugan (A-3), Suba and Dhanu about the atrocities committed by IPKF on Sri Lankan Tamils. They said Rajiv Gandhi was responsible for sending troops to Sri Lanka who killed Tamils, raped and humiliated their women. Nalini (A-1) was also told about the suicide committed by 12 Tamil activists who were detained by the Sri Lankan Navy.

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All this led Nalini (A-1) to have strong feelings of disgust against Rajiv Gandhi. She also read the book *Satanic Force* and developed extreme hatred for Rajiv Gandhi. Since Suba and Dhanu had come to India for the first time, they were finding it difficult to communicate and thus required a natural cover to facilitate their movements. Nalini (A-1) by this time was mentally prepared by Sivarasan, Murugan (A-3), Suba and Dhanu for any kind of retaliatory action including killing of leaders. On 2-5-1991 when Sivarasan brought Suba and Dhanu to the house of Nalini (A-1) and she was told that they were going to garland Indian leaders while addressing public meetings Nalini (A-1) felt instinctively that they were going to assassinate some leader. They had, however, not discussed about it. Sivarasan was of the view that in order to acquaint themselves with the method by which they could bypass the police security and reach the leaders addressing the meetings, they should attend those meetings. He said it was very important that Suba and Dhanu reached very close to the VIP for garlanding him at the meeting. Sivarasan told Nalini (A-1) that her role was a very important one because being an Indian nobody would suspect Suba and Dhanu if she accompanied them. At the instance of Sivarasan Nalini (A-1), Suba and Dhanu attended the election meeting addressed by V.P. Singh, the then Prime Minister. Sivarasan briefed them in advance as to how they should try to go to the dais. Dhanu and Suba were to carry garlands. Haribabu, who had also been briefed, was to be present at the dais to take photographs and was to be a part of the rehearsal. Murugan (A-3) gave Nalini (A-1) a camera and told her that she should try to take photographs. Before going to the meeting they purchased two rose garlands from a nearby shop. Nalini (A-1), Suba and Dhanu were unable to go to the dais as the organisers did not permit them to go there. They were all standing near the staircase leading to the dais and when V.P. Singh reached there Suba and Dhanu managed to hand over garlands to him. Nalini (A-1) tried to take photographs but could not operate the camera. Haribabu also for some reason could not take photographs. After the meeting when they all assembled failure of Dhanu and Suba to reach the dais was considered. It was also thought that some donations or bribes should be offered to party workers and the security people in order to go to the dais. Now by this time Nalini (A-1) was convinced that they had a definite mission to perform. The meeting of V.P. Singh was also attended by Arivu (A-18) but separately.

430. On 9-5-1991 Murugan (A-3) told Nalini (A-1) that he was to go to Sri Lanka on instructions received from there as conveyed to him by Sivarasan. He left for Sri Lanka on 11-5-1991. Sivarasan gave him two letters written by Dhanu and Suba to Pottu Omman and Akila. Bhagyanathan (A-20) also wrote a letter (Exh. P-453) on 9-5-1991 to Baby Subramaniam and gave that to Murugan (A-3) to be delivered to Baby Subramaniam at Sri Lanka. These two letters dated 9-5-1991 are Exh. P-95 and Exh. P-96 and were subsequently seized during the course of investigation. These are in

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Tamil. Though these are written by Suba, they were sent on behalf of both Suba and Dhanu. English translation of these two letters is as under:

Exh. P-95

"Tamil Eelam
9-5-1991.

Dear Akila sister,

We are well and we shall be confident until the fulfilment of the job we came here. Here it is very hot and hence we cannot proceed to any place in the noon.

We are confident that the work for which we came would be finished in a proper manner. Because we were expecting another opportunity appropriately it would be executed within this month.

Otherwise, the state of this country is very bad. We have to practise only to speak. Otherwise there is no problem for us. It is necessary to enact a drama. Akila sister's every word shall remain in our mind until last.

The remaining, if we meet. Is everybody well?

Yours
sd/-
Suba-Dhanu"

Exh. P-96

"Tamil Eelam
9-5-1991

To,
Pottanna,

We are confident and well. I am confident that we will be successful in the attempt of the job for which we came.

Because we expected a similar opportunity (we went very near to Singh).

We will be confident until last.

Yours
sd/-
Suba-Dhanu"

431. On 7-5-1991 Sivarasan sent a coded wireless message from Madras to Pottu Omman in Sri Lanka (Exh. P-392) which, when decoded, reads as under:

"She is the eldest daughter in the house of Indu Master. Moving closely. Our intention is not known to anybody except we three. I have told her that it is to have the support of the party who will be coming to power. Here V.P. Singh is coming. We are receiving. Like that we are receiving all the leaders.

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I am slowly approaching. If I tell our intention there is no doubt that she will stand firmly on our side.

We are moving with her closely, have full satisfaction. Girls are telling that the intention can be revealed to her she can be believed.

If I return I will return as your man. We are strong in powder business."

432. Here reference to "eldest daughter" is to Nalini (A-1) and Indu Master is Murugan (A-3). On 11-5-1991 Suba and Dhanu came to Nalini (A-1) and all three went for shopping. They purchased a set of "chooridar" in orange colour with designs, green colour "kameez" (shirt) and a green "duppatta" from a shop in Puruswakkom. These purchases were made for Dhanu. Her measurements were required but she said she need not give any measurement as she wanted a very loose kurta. It was Suba who gave measurements on her behalf. From another shop a pair of slippers ("chappals") was also purchased for Dhanu. S. Chinnamani (PW 203) is a salesman working in the shop called Metro Square in Pondy Bazaar, Madras, who testified to having sold chappals to Dhanu and identified the same as worn in the foot in the photograph (MO 527). He said that at that time there were two more ladies with her. M. Gunathilal Soni (PW 179) testified having sold the "chooridar" to Dhanu from his shop. He has identified the dress sold by him and worn by Dhanu in the photograph (MO 31). M. Gunathilal Soni (PW 179) identified Suba and Nalini (A-1) in photograph (MO 105) and also Nalini (A-1) in the court as one of the two women who came along with Dhanu.

433. In the morning of 19-5-1991 Nalini (A-1), Suba and Dhanu went to Mahabalipuram and returned in the evening when they found that Sivarasan was waiting for them in the house of Nalini (A-1). He showed them the clipping of an evening Tamil newspaper in which the visit of Rajiv Gandhi to Tamil Nadu in connection with the election campaign was published. Nalini (A-1) found Sivarasan tense and excited. He said that "they had come only for that and that we should attend his meeting on 21st or 22nd, whether at Pondicherry or Sriperumbudur". He asked Nalini (A-1) to apply for two days' leave. Sivarasan's presence at the house of Nalini (A-1) at that odd hour, his excitement and his command gave Nalini (A-1) a feeling of terror. She, however, managed to tell him that it would be difficult to apply for two days' leave and go to Pondicherry and that she would be able to visit the nearest point. Sivarasan said that he would decide about the venue the next day. Nalini (A-1) now had a strong feeling that Rajiv Gandhi was their final target. Sivarasan again came to the house of Nalini (A-1) in the morning of 20-5-1991 and said that he would inform her about the venue in the evening. He told her to go to Royapettah house in the evening at about 6.30 p.m. He asked her where Sriperumbudur was and when she told him that she would make enquiries and let him know he said sternly that on no account she should discuss that matter with anyone and that he would himself find out about Sriperumbudur. Sivarasan told Nalini (A-1) to apply for leave on some

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pretext but not for Sriperumbudur meeting. Then he left along with Dhanu and Suba. Nalini (A-1) went to Royapettah house in the evening. Sivarasan also came there and told her that the venue was Sriperumbudur and that she need take only half day's leave on 21-5-1991 and should be available at her house positively at 3.00 p.m. sharp. He said he would come along with Dhanu and Suba and pick her up. At that time Haribabu had also come to Royapettah house since a message was left at his house by Murugan (A-3) to go there. Murugan (A-3) was also present as he had returned to Madras and told Nalini (A-1) that he could not go to Sri Lanka. After getting instructions to return to Sri Lanka on 11-5-1991 Murugan (A-3) after purchasing certain articles and getting letters from Suba and Dhanu (Exh. P-95 and Exh. P-96) and from Bhagyanathan (A-20) (Exh. P-453) went to Kodaikkarai. He also carried a dress given by Arivu (A-18) for Baby Subramaniam and negatives of photographs of Chennai Fort, DGP Office. At Kodaikkarai he had met Shankar (A-4) and while returning he gave him a piece of paper containing his name and that of Nalini (A-1) and also her telephone number 419493. He waited there till 17-5-1991 and as no boat came from Sri Lanka he returned to Madras after leaving his articles in boxes at Kodaikkarai. These boxes contained the two letters by Suba and Dhanu and the one written by Bhagyanathan (A-20) to Baby Subramaniam. Murugan (A-3) reached Madras on 18-5-1991.

434. When the meeting disbursed Haribabu told Nalini (A-1) that he was also coming to Sriperumbudur the next day, i.e., 21-5-1991. After Murugan (A-3) returned from Kodaikkarai on 18-5-1991 he was staying with Nalini (A-1).

435. On the morning of 21-5-1991 while Nalini (A-1) went to her office Murugan (A-3) went to Royapettah house. In the meeting Arivu (A-18) and Bhagyanathan (A-20) were also present. Arivu (A-18) gave a Kodak colour film to Haribabu.

436. Nalini (A-1) told her boss that she wanted half day's leave. She was told that she need not take leave and could go after finishing her work. She, however, told her colleague N. Sujaya Narayan (PW 96) that she was going to Kanchipuram for buying sarees. Sriperumbudur is midway between Madras and Kanchipuram. After Nalini (A-1) left her office at about 2.00 p.m. she went to Royapettah house. She found only Murugan (A-3) was present there. Murugan (A-3) told her to hurry and go to her house otherwise Sivarasan would get annoyed. Nalini (A-1) reached her house at 3.00 p.m. At 3.45 p.m. Sivarasan came there along with Suba and Dhanu. He was wearing a loose white "kurta" and narrow "pyjama" and was carrying a note pad and a camera in his hand. Suba was wearing a green coloured saree which had been purchased earlier. Dhanu was wearing a loose fitting green coloured "kameez", orange coloured "chooridar" and a green coloured dupatta which had been purchased earlier from the market. Suba told Nalini (A-1) that Dhanu was going to create history that day by assassinating Rajiv Gandhi and they would be very happy if Nalini (A-1) also participated in that. Nalini (A-1) agreed. She could see that Dhanu was concealing an

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apparatus under her dress. Nalini (A-1) wore a saree. At about 4.00 p.m. they all left in an auto-rickshaw. Dhanu said that she would go to the temple for her final prayers. They went to Pillayar Temple near Nadamuni Theatre and Dhanu offered prayers. Before leaving the house Nalini (A-1) left her keys with Rani (PW 90), her neighbour, whom she told that she was going to Vellore. They went to Parry's Corner and reached Thiruvallur Bus-Stand around 5.00 p.m. Haribabu was already there. He had purchased a sandalwood garland which was wrapped in a brown cover. This garland was purchased in the morning by Haribabu from Poompuhar Handicrafts, Madras. It was sold to him by A.K. Anbalagan (PW 94). He was also having a camera. This was the camera (MO 1) which was found at the scene of the crime and had been borrowed from K. Ravisankaran (PW 151). Thereafter they boarded a bus for Sriperumbudur. For all five, tickets were purchased by Sivarasan. They reached Sriperumbudur at about 7.30 p.m. They purchased flowers. Dhanu purchased kanakambaram, Suba and Nalini (A-1) purchased jasmine. They ate their dinner and started towards the meeting point where Rajiv Gandhi was to address a meeting. On the way they stopped near Indira Gandhi's statue and discussed their roles. Nalini (A-1) was to help Suba after the assassination to take refuge in some city till Sivarasan gave further instructions. Haribabu was to take photographs of the assassination scene. Nalini (A-1) was also to provide cover to both Suba and Dhanu during the event. After the event Nalini (A-1) and Suba were to wait for ten minutes near Indira Gandhi's statue for Sivarasan. If he did not come they would push off as instructed before. Suba, Dhanu and Nalini (A-1) went to the ladies' enclosure in the meeting and sat there. Haribabu and Sivarasan went separately towards the stage. Music programme of C.S. Ganesh (PW 18) was going on at that time. After surveying the scene Sivarasan came and called Dhanu. Suba, who was having the garland parcel given to her by Haribabu, handed over the same to Dhanu. She opened the parcel and took out the garland. Dhanu and Sivarasan then went back near the dais. Nalini (A-1) could see them with Haribabu. Sivarasan was also trying to put Dhanu in the crowd of people who were waiting to greet Rajiv Gandhi. There were a mother and daughter sitting in the women's enclosure behind where Suba and Nalini (A-1) were sitting. The mother was telling that her daughter had written a poem which she would recite to Rajiv Gandhi. After some time both daughter and mother were seen standing near Dhanu who was talking to the daughter and appeared to befriend her. At about 9.30 p.m. there was an announcement that all persons who were waiting to garland and greet Rajiv Gandhi might make a queue near the carpet. Dhanu was standing between the mother and daughter. After some time announcement was made that Rajiv Gandhi was coming. Thereafter Rajiv Gandhi arrived. Suba and Nalini (A-1) got up from the ladies' enclosure and moved away. Suba was holding the hand of Nalini (A-1) and was nervous. There was a loud explosion. Dhanu exploded herself. Nalini (A-1) and Suba ran across to the statue of Indira Gandhi as instructed earlier by Sivarasan and waited for him. Soon thereafter Sivarasan came running there. He told that both Rajiv Gandhi and

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Dhanu had died and said that unfortunately Haribabu had also died. Sivarasan took out a pistol wrapped in a white cloth and gave it to Nalini (A-1) to be given to Suba. Nalini (A-1) handed over that pistol to Suba. They came to the bus-stand and saw there was a bus but they were told that that bus would not be leaving. They ran further down the road and saw a lady Samundeeswari (PW 215) who was standing outside a house. They requested her and were given water to drink. They were able to reach Madras by changing two auto-rickshaws. The last auto-rickshaw was driven by K. Vardarajan (PW 183). They reached Kodungaiyur at 1.30 a.m. in the night of 21-5-1991/22-5-1991. Jayakumar (A-10) and his wife Shanthi (A-11) were in the house. Nalini (A-1) met them for the first time. They spent the night there. Nalini (A-1) and Suba were quite upset that Haribabu had also died unexpectedly in the blast. Suba told Nalini (A-1) that it was she who had personally prepared Dhanu to put the belt on her waist containing the bomb. The bomb had two switches and for it to explode Dhanu had pressed one switch after another. The bomb contained a small battery for electric circuit. On the morning of 22-5-1991 Santhan (A-2) brought some newspapers. At about 7.30 a.m. they all went to the house of D.J. Swaminathan (PW 85), a neighbour, to watch the TV news. They spent the whole day in the house of Jayakumar (A-10).

437. On the morning of 23-5-1991 Sivarasan left the house and came back at about 8.30 a.m. on a red Kawasaki Bajaj motorcycle. He dropped Nalini (A-1) at her office on the motorcycle. Since the office on that day was not working Nalini (A-1) went to Royapettah house to her mother. She learnt that in the morning Sivarasan had come there and had given details of the incident to Murugan (A-3) and Bhagyanathan (A-20). In the evening Nalini (A-1) accompanied by Murugan (A-3) went to her house at Villiwakkam. She got the key of the house from Rani (PW 90).

438. On the morning of 25-5-1991 Sivarasan told Nalini (A-1) that they all should go out of Madras and go to Tirupathi. Nalini (A-1) and Murugan (A-3) after locking the house and handing over the key to Rani (PW 90) went to Royapettah house. In the afternoon Sivarasan, Nalini (A-1), Murugan (A-3), Padma (A-21) and Suba went in a tourist taxi to Tirupathi. They returned on the next day. In Tirupathi Nalini (A-1) did Angapradakshanam. Rooms in Tirupathi were taken in the name of taxi driver V. Ramasamy (PW 107). Taxi was arranged by Bhagyanathan (A-20) from Shriram Travels of R. Shankar (PW 117) and S. Vaidyanathan (PW 104). It was on the suggestion of Sivarasan that nobody would suspect if Padma (A-21) also accompanied them to Tirupathi. Before leaving for Tirupathi Nalini (A-1) went to her neighbour Gajalakshmi (PW 189) and told her that she had arranged for Abhishekam at Pillayar Temple for 26-5-1991 and that as she would not be available Gajalakshmi (PW 189) might attend the Abhishekam. While going to Tirupathi Sivarasan and Suba were picked up from Parry's Corner and on return they were dropped there. Padma (A-21) went to her Royapettah house. Murugan (A-3) and Nalini (A-1) went to Villiwakkam house where they packed up their belongings and

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came to stay at the Royapettah house. Murugan (A-3) arranged a house for himself at Madipakkam on 28-5-1991 where Nalini (A-1) and he could hide. However, he started staying in the press of Bhagyanathan (A-20). Nalini (A-1) continued to attend her office till 7-6-1991. On 7-6-1991 she gave a plastic cover containing Rs 25,000 to her colleague N. Sujaya Narayan (PW 96) and requested her to keep the same in her table drawer. Three days earlier Murugan (A-3) had come to the office of Nalini (A-1) and took her to a lady doctor to know if Nalini (A-1) was pregnant. That day they stayed in Madipakkam house. On 6-6-1991 Nalini (A-1) asked her sister Kalyani to go to Villiwakkam house and settle the rent arrears with the landlord there. On 7-6-1991 as per earlier programme Nalini (A-1) and Murugan (A-3) went to Ashtalaxmi Temple at Besant Nagar where Suba and Sivarasan also came. Sivarasan said that CBI was making detailed enquiries and invited Nalini (A-1) to go to Sri Lanka with him. Nalini (A-1) declined. He then told her to take Suba to a doctor as she was very weak. Nalini (A-1) took Suba to Asian Hospital at Besant Nagar and the doctor advised her to take rest and prescribed some medicines. Sivarasan and Suba then left by an auto. Nalini (A-1) and Murugan (A-3) also returned. Nalini (A-1) went to see the lady doctor who confirmed that she was pregnant.

439. On the morning of 8-6-1991 Nalini (A-1) suggested to her mother that they all should commit suicide. This was because of the fear that CBI was looking for them. Nalini (A-1) brought some poison from a nearby shop but then they decided not to commit suicide. She and Murugan (A-3) decided to go out of Madras. On the morning of 9-6-1991 Nalini (A-1) went to her office. It was a Sunday. She took out the amount of Rs 25,000 kept by N. Sujaya Narayan (PW 96) in her table drawer. Nalini (A-1) then wrote a resignation letter (Exh. P-471) on a slip of paper and kept it on the table of N. Sujaya Narayan (PW 96). She handed over the key of her office to the maidservant of N. Sujaya Narayan (PW 96). She did not attend the office from 10-6-1991. Murugan (A-3) and she left for Tirupathi by bus and stayed there in a lodge. The lodge was taken in an assumed name "Lalitha with one other". Murugan (A-3) tonsured his head. On 11-6-1991 they left Tirupathi and went to Madurai and stayed in the house of R. Ravi Srinivasan (PW 115). Nalini (A-1) was known to R. Ravi Srinivasan (PW 115) as she had worked with him as his steno. Before coming to the house of R. Ravi Srinivasan (PW 115) Nalini (A-1) had called him up from Tirupathi on phone and asked him whether she could stay with her husband in his house for a few days. Nalini (A-1) told R. Ravi Srinivasan (PW 115) that she had married one Sri Lankan citizen and introduced Murugan (A-3) as her brother-in-law by name Raju. While they were all sitting for breakfast a telephone call came for Muthupandian, who was sub-inspector of police. R. Ravi Srinivasan (PW 115) sent his maidservant to call Muthupandian. He was, however, not in his house. Nalini (A-1) was quite perplexed when she asked R. Ravi Srinivasan (PW 115) how he knew the police. He told her that Muthupandian was his neighbour and he had given the telephone number of R. Ravi Srinivasan (PW 115). He then asked Nalini (A-1) as to why she was

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afraid of police to which she replied that since she had married a Sri Lankan and her parents did not like that, they had lodged a complaint with the police.

440. On the morning of 12-6-1991 Nalini (A-1) woke up and told R. Ravi Srinivasan (PW 115) that they were going to Meenakshi Temple and would come back later. When the newspapers came that day R. Ravi Srinivasan (PW 115) found a notice published with the caption "Do you know these women who are connected with Rajiv's assassination". In that notice there was description of Nalini (A-1) mentioned. R. Ravi Srinivasan (PW 115) gave information on telephone to SIT at about 10.00 a.m. Nalini (A-1) and Murugan (A-3), however, did not return from the temple. Murugan (A-3) had left his cap (MO 395) in the house which R. Ravi Srinivasan (PW 115) handed over to the police. From Madurai Nalini (A-1) and Murugan (A-3) went to Villupuram and then to Davangere near Bangalore on 13-6-1991 and stayed there in the house of Shashikala (PW 132). There Nalini (A-1) introduced Murugan (A-3) as her brother-in-law Thas (Das) to Shashikala (PW 132). Shashikala (PW 132) had met Nalini (A-1) earlier in a common acquaintance's house and had conversed with her. Nalini (A-1) told Shashikala (PW 132) that she was two months pregnant. The husband of Shashikala (PW 132) came to the house in the evening. He asked Nalini (A-1) how and when she got married. Nalini (A-1) said it was a long story and it would take time to narrate. While she was narrating her story Murugan (A-3) stopped her midway and said they had to go to Madras urgently. During the course of their stay Nalini (A-1) told Shashikala (PW 132) that her husband was a Sri Lankan citizen and that he had brought two girls to see Madras. Shashikala (PW 132) in her statement then says as under:

> "Then Nalini told me that she showed them the beach and market. Then Nalini told me that those girls told her that they had to see Rajiv Gandhi's meeting which was to be held at Sriperumbudur on 21-5-1991 and so she took them to Rajiv Gandhi's meeting and one girl died in it. Nalini told me that since the police had suspected her husband, he gave a sum of rupees twenty-five thousand and asked her to go with his brother and later he would come and bring her. She told me that her husband told her that he would come and take her after the election was over and there would be tight police security on the seashore. Nalini told me that since the police suspected them, they came to this area. On hearing this I was frightened. Then my husband came to our house I told him about this matter, separately. He was also frightened. Then Thas told us that we should not tell about this to anybody else."

Both Nalini (A-1) and Murugan (A-3) left for the bus-stand and were dropped there by the husband of Shashikala (PW 132). While at Shashikala's (PW 132) place they bought new clothes. Nalini (A-1) left behind in the house of Shashikala (PW 132) her old dress which was seized by CBI (Exh. P-634) and later identified in court by Shashikala (PW 132) as that of Nalini (A-1). Shashikala (PW 132) identified both Nalini (A-1) and

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Murugan (A-3) as the persons who stayed in her house. Shashikala (PW 132) also said that Nalini (A-1) told her that her husband had brought two girls from Sri Lanka to Madras for sightseeing. After being dropped at the bus-stand Nalini (A-1) and Murugan (A-3) went to Bangalore. From there they picked up a bus for Villupuram and from Villupuram to Madras. It was on 14-6-1991 when they got down at Saidapet Bus-Stand, Madras they were arrested.

441. Confession of Bhagyanathan (A-20) bears out what Nalini (A-1) said in her confession. Apart from the fact that we find truthfulness in the version given by Nalini (A-1), it also stands corroborated by material particulars. We may briefly note what Bhagyanathan (A-20) said in his confession. In 1988 he got acquainted with Muthuraja, an Indian and strong LTTE sympathiser. It was through Muthuraja that Baby Subramaniam became known to Bhagyanathan (A-20) when he was working at Subha Studio. Various persons connected with LTTE used to come to Subha Studio to meet Baby Subramaniam. In the course of time Bhagyanathan (A-20) was also attracted towards LTTE. In 1989 Bhagyanathan (A-20) used to stay in the house of Muthuraja during nights. He then came in contact with Arivu (A-18), a diploma-holder in Electronics and Communications. Arivu (A-18) was meeting Baby Subramaniam everyday. He was selling books and collecting news for the political propaganda wing of LTTE. Baby Subramanian was a senior member of LTTE and was in charge of the Political Wing of LTTE in Tamil Nadu. At the suggestion of Muthuraja, Bhagyanathan (A-20) purchased the press being run by Baby Subramaniam in 1990. He bought it for a petty sum of Rs 5000 though he purportedly bought it for Rs 51,000. He was told not to pay the balance amount and instead he was required to print monthlies of *Tamil Eelam* and *Urumal* which were being published from the press. Baby Subramaniam left for Sri Lanka in the end of May 1990. Arivu (A-18) and Irumborai (A-19) also went along with him. They, however, returned after about four or five months. Irumborai (A-19) came to be known to Bhagyanathan (A-20) through Baby Subramaniam as he was also in the Political Wing of LTTE.

442. During last months of 1990 the State Government had taken strong steps against LTTE because of the killing of EPRLF leader Padmnabha and his associates at Madras. It had become difficult for LTTE to operate freely in India and now they were doing so clandestinely. Arivu (A-18) and Irumborai (A-19) when on their return came from Sri Lanka brought with them photographs and literature published by LTTE showing weapons seized by LTTE from IPKF. These were distributed by Arivu (A-18) to Tamil magazines and to various supporters of LTTE movement. LTTE was having an office of its political wing in Madras which was sealed and some persons were arrested by the police. That was around November 1990. According to Bhagyanathan (A-20) it was at the instance of Muthuraja that he allowed Murugan (A-3) to reside with their family at Royapettah house though that was initially objected to by Padma (A-21). Murugan (A-3) told Bhagyanathan (A-20) that he had come to India to learn English.

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Subsequently, however, he told him that he belonged to the Intelligence Wing of LTTE under the charge of Pottu Omman. Bhagyanathan (A-20) was put in fear since the time he purchased the press from Baby Subramaniam that he and his family might have to face the consequences if he operated against LTTE.

443. When Murugan (A-3) needed a person to assist him Bhagyanathan (A-20) introduced Haribabu to him. Haribabu had also worked with Subha Sundaram (A-22) as a photographer. He was also known to Muthuraja and was interested in LTTE. He would come to the meetings conducted in support of LTTE, take photographs and give them to Subha Sundaram (A-22) and Muthuraja. He was being paid anything from Rs 100 to Rs 1000 a month.

444. In April 1991 there was change of Government and LTTE men were searched and arrested with the result that Arivu (A-18) also started residing in Royapettah house. Murugan (A-3) joined English-speaking course in an institute in Madras. At the request of Muthuraja LTTE publications, photographs and posters were shifted, which were kept in the house of M. Sankari (PW 210), then in the house of V. Radhakrishnan (PW 231) (MOs 594 to 632). The material which was shifted included the *Black Book* (B.B.) in three volumes. In the third volume (MO 609) there was a diagram of an electric circuit. Prosecution has tried to infer that the electric circuit used in the waist belt bomb to kill Rajiv Gandhi was identical to the diagram in MO 609. The material was shifted by Arivu (A-18), Bhagyanathan (A-20) and Haribabu. P. Vadivelu (PW 202) is a tempo driver in whose tempo the material was shifted from the house of M. Sankari (PW 210) to the house of V. Radhakrishnan (PW 231). V. Radhakrishnan (PW 231) is working in the Customs Department of the State Government. He was familiar with Arivu (A-18) and Subha Sundaram (A-22). In January 1991 Arivu (A-18) had asked him for a house for keeping his books. V. Radhakrishnan (PW 231) told him that he was not having any house at Madras but had one in his village. Arivu (A-18) agreed for that house and in March, he sent his books in a tempo with two persons. When the books were being kept there Arivu (A-18) had also come. After seeing that the books related to LTTE movement V. Radhakrishnan (PW 231) asked Arivu (A-18) to remove those books on which Arivu (A-18) said that he would do so within a month or two months' time. A sum of Rs 50 was paid by him to the mother of V. Radhakrishnan (PW 231) towards rent. All this material was subsequently seized by the police.

445. Various persons connected with LTTE activities in Tamil Nadu came to be known to Bhagyanathan (A-20) since they used to come either to meet Subha Sundaram (A-22) or Baby Subramaniam or Murugan (A-3). In his letter (Exh. P-453) Bhagyanathan (A-20) said to Baby Subramaniam that he was running the press properly though he had shifted the press to another place and that he had informed Arivu (A-18) about that and he was keeping contact with him. He also described the working of the press. The letter was recovered during the course of investigation. Bhagyanathan (A-20) learnt about the attending of the meeting of Rajiv Gandhi and Jayalalitha and of

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V.P. Singh and also about Suba and Dhanu from his sister Nalini (A-1). Bhagyanathan (A-20) in his confession said that around 7.00 p.m. on 20-5-1991 Haribabu came to their house when K. Bharathi (PW 233), his other sister Kalyani, Nalini (A-1), Murugan (A-3), Arivu (A-18) and he were there in the house. He said that at the instance of Haribabu he did get from Arivu (A-18) a Kodak colour roll which he handed over to Haribabu. But there is no charge against Bhagyanathan (A-20) that he handed over the film roll to Haribabu. Rather this charge is against Arivu (A-18) of handing over the Kodak colour film roll to Haribabu. According to Bhagyanathan (A-20) on 23-5-1991 when Nalini (A-1) came to the Royapettah house she told him as to how Sivarasan asked her to take leave on 21-5-1991; how they all went to Sriperumbudur by bus when during travel from Madras to Sriperumbudur Nalini (A-1) came to know that Dhanu was about to assassinate Rajiv Gandhi; how after reaching the place of meeting Sivarasan took Dhanu with him and by paying Rs 500 to a woman constable they moved to the front row and Haribabu took photos; and finally how they escaped after the blast. On 21-5-1991 Bhagyanathan (A-20) and Arivu (A-18) had gone to see a movie at 9.30 p.m. and when they returned they came to know that Rajiv Gandhi had been assassinated. After reaching home they informed Murugan (A-3) and others about this. Murugan (A-3) did not express any surprise or shock. Next morning video and audio cassettes belonging to Arivu (A-18) were removed from the Royapettah house and taken to the house of Veeramani, a friend of Arivu (A-18).

446. On 23-5-1991 Sivarasan came to the Royapettah house and informed about the death of Haribabu. Arivu (A-18) and Murugan (A-3) were there at that time. Bhagyanathan (A-20) and Arivu (A-18) went to Subha Studio to get the address of Haribabu. Murugan (A-3) sent Rs 1000 to the family of Haribabu which was handed over by Bhagyanathan (A-20) there. At this stage Bhagyanathan (A-20) also learnt that Haribabu had taken a camera from K. Ravisankaran (PW 151) to get photograph of garlanding Rajiv Gandhi as was told by Haribabu to K. Ravisankaran (PW 151). When Bhagyanathan (A-20) told this fact to Subha Sundaram (A-22) he said not to open his mouth in this regard. But Ravisankaran (PW 151) does not talk of any conversation he had with Haribabu when he took the camera (MO 1). Bhagyanathan (A-20) said that he compelled his mother Padma (A-21) to go to Tirupathi along with Nalini (A-1), Murugan (A-3), Sivarasan and Suba in the car arranged by him. He burnt LTTE stickers and Prabhakaran's stickers.

447. On 25-5-1991 Dhanu's photo, which had been taken by Haribabu, was published in the papers. On 26-5-1991 Sivarasan's photo was published. On 27-5-1991 Murugan (A-3) asked Bhagyanathan (A-20) to meet Sivarasan at Mount Road Post Office. They both went by an auto. Sivarasan gave Bhagyanathan (A-20) the motorcycle key and a bag containing documents of the motorcycle and asked him to take away the motorcycle (MO 82) and conceal it, which had been parked nearby. He warned them that even though he was not there they may be watched by somebody. He also said that he would arrange a cyanide capsule for Nalini (A-1). Fearing arrest by the

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police Bhagyanathan (A-20) allowed Murugan (A-3) to stay in his press for four or five days. Thereafter he was arrested by the police.

448. MO 82 Kawasaki Bajaj motorcycle used by Sivarasan was subsequently seized by the police during investigation from the press of Bhagyanathan (A-20).

449. We may at this stage note a letter (Exh. P-128) dated 7-9-1991 written by Trichy Santhan (deceased accused) to Irumborai (A-19) when he was on his way to Sri Lanka. This letter was seized from Irumborai (A-19). In this Trichy Santhan gave instructions to Irumborai (A-19) what he was to tell Prabhakaran in Sri Lanka. Photocopy of this letter is Exh. P-131. But another letter (Exh. P-129) which was seized from Irumborai (A-19) was one addressed by Trichy Santhan to Prabhakaran. He is complaining about the mishandling of the whole affair by Sivarasan and about other things. Letter of Irumborai (A-19) gives him instructions as to what he should tell Prabhakaran and what he should not. Some of these instructions are:

— "Don't speak as though you knew in advance about Rajiv's incident.

— Speak about the persons who are monthly paid, because we are caught only while going to make payments to them.

— Speak about the prevailing political situation/also about the leader.

— Speak in details about the mistake committed in our association with the supporters of Raghuvaran like Arivu/person connected with the press of Baby Anna/ Haribabu/Subha Sundaram. Name of the movement would not have come to light, had it been done through our own people as done in Padmnabha's case. Movement behind Arivu, Subha Sundaram and presence of our emblems in the press, are these not evidence?"

450. From these instructions prosecution wants to infer that Irumborai (A-19) was a member of the conspiracy to kill Rajiv Gandhi and so were Trichy Santhan (DA), Arivu (A-18), Haribabu, Subha Sundaram (A-22) and perhaps Bhagyanathan (A-20), who was running the press earlier run by Baby Subramaniam. We, however, do not think that advantage can be drawn by the prosecution from this letter. It is a post-conspiracy letter. It does not show if Trichy Santhan was a conspirator. There is no evidence of Trichy Santhan being a member of the conspiracy to kill Rajiv Gandhi. He was one of the persons who committed suicide in Bangalore. Then any knowledge of the conspiracy is not enough to implicate a person as a member of the conspiracy.

451. Padma (A-21) did not know that Murugan (A-3) was an LTTE activist when he came to stay in her house at the instance of Muthuraja, who told her that his house was being watched by the police. Only later on she came to know that Murugan (A-3) was an LTTE activist. He helped her financially as financial condition of Padma (A-21) was not sound. Padma (A-21) had even borrowed money from M. Chandra (PW 214) (Rs 4000),

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who was working as a maid in the neighbourhood of Kalyani Nursing Home, where Padma (A-21) was working and where her employer had been admitted. This amount Padma (A-21) returned three months prior to the death of Rajiv Gandhi. Padma (A-21) had also borrowed money from R. Janaki (PW 226) whom she knew. This amount she returned in the month of March 1991. From the notebook of Murugan (A-3) (MO 286), which was seized during the course of investigation, the amounts paid by him to Padma (A-21) have been mentioned. Padma (A-21) introduced Murugan (A-3) to K. Bharathi (PW 233) as the boy who had been sent by Muthuraja and had come from Tirunelveli to learn English. Whenever Sivarasan came to the house of Padma (A-21) she found that Sivarasan, Murugan (A-3), Arivu (A-18) and Bhagyanathan (A-20) "used to discuss matters in a low tone". On 20-5-1991 a day before the assassination of Rajiv Gandhi Dhanu had a sprain in her leg. Nalini (A-1) suggested Sivarasan to take Suba and Dhanu to Kalyani Nursing Home for treatment of Dhanu where her mother Padma (A-21) was working. K. Rajalakshmi (PW 76), who was working as a pharmacist in Kalyani Medical Centre, stated on the basis of the records maintained in the Centre that six tablets of Brufen were given to Padma (A-21) on 20-5-1991. Sivarasan asked Padma (A-21) to prescribe medicine for Dhanu as she was having a sprain in her leg. Dhanu, however, refused to show her leg. She asked for painkiller. She was given six Brufen tablets. Later in the evening at about 8.30 p.m. on 20-5-1991 when Padma (A-21) came back home she learnt through Kalyani, K. Bharathi (PW 233) and Arivu (A-18) that Nalini (A-1), Murugan (A-3) and Haribabu had come and after finishing their dinner they had left. Sivarasan also met Nalini (A-1) in the house. Next day Padma (A-21) returned from her duty at 4.00 p.m. After Arivu (A-18) and Bhagyanathan (A-20) came back from the late night show they told her that Rajiv Gandhi had been assassinated in a bomb blast. On 23-5-1991 when Nalini (A-1) came to the Royapettah house, she informed Padma (A-21) that she had gone along with Sivarasan, Suba, Dhanu and Haribabu to Sriperumbudur on the night of 21-5-1991 for Rajiv Gandhi's assassination. This made Padma (A-21) worried. She was more concerned about Nalini (A-1) and Murugan (A-3). When on the morning of 24-5-1991 Dhanu's photo was published in the papers Padma (A-21) was frightened and was in fear of her arrest. On 26-5-1991 after returning from Tirupathi Nalini (A-1) vacated her Villiwakkam house and she and Murugan (A-3) came to the house of Padma (A-21). From 27-5-1991 onwards Nalini (A-1) was going to her office while Murugan (A-3) was staying in the house. On 27-5-1991 Murugan (A-3) gave Padma (A-21) one code-sheet belonging to LTTE, meant for transmitting secret messages through wireless, so that it might not be seized by the police. He asked her to keep that safely hidden. Padma (A-21) gave that code-sheet to her co-nurse Devasena Raj (PW 73) for safe custody. Devasena Raj (PW 73) in her statement said that it was on the morning of 7-5-1991 when she was going for duty that Padma (A-21) asked her to keep one brown cover in her locker. Padma (A-21) said it was important. MO 106 is the brown cover and papers which were in the cover

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are MO 107 and MO 108. These were taken into possession by the police during investigation. Both Padma (A-21) and Bhagyanathan (A-20) were arrested on 12-6-1991. There is a wireless message dated 12-6-1991 sent by Sivarasan from Wireless Station No. 910 to Station No. 91 of Pottu Omman which reads "the brother of office girl, her mother were arrested". Reference to office girl is to Nalini (A-1).

452. Murugan (A-3) is a Sri Lankan national. He joined LTTE movement in 1988. He is a hard core LTTE activist. He took training in shooting, drill, political classes and weaponry. He used to train new entrants. He spent two months in Yalpanam (Jaffna) Fort and was also guarding the prison there. He subjected prisoners to torture in order to elicit information. Over thirty persons died due to the torture inflicted on them by various methods. Murugan (A-3) in his confession described the set-up of LTTE. He said, among them, Prabhakaran (absconding accused) was the world leader, Mathiah was the political leader, Pottu Omman (absconding accused) was the leader of Spy Wing and the man in charge of military was Palraj. Shanthi was in charge of the Intelligence Wing of Women in LTTE and her next-in-command was Akila (absconding accused). Murugan (A-3) told Pottu Omman that he did not like the job he was doing. Pottu Omman asked him to go to India for an important job. In January 1991 Murugan (A-3) joined the Suicide Squad of LTTE. He was given the job of procuring the sketch of the interior of Chennai Fort, Police Headquarters at Chennai and various other police stations with their locations. He was also asked to take photographs and videographs of those places. He was given two gold biscuits weighing one kilo each and a sum of Rs 2000 in cash. He was told that when he reached Indian soil he would be met by Sivarasan who would take him to Kanthan at Madras. Kanthan would arrange a house for him and if any news were to be given by Murugan (A-3), these were to be sent through the wireless set of Kanthan and if any further amount was required Kanthan was to give the same. In the third week of January 1991 Murugan (A-3) reached Kodaikkarai on Indian soil. Along with him one Mukunthan came, who was a smuggler. Sivarasan met him there. He told him that though his name was Raghuvaran he was having the name of Sivarasan in India and should be called by that name. From there both Sivarasan and Murugan (A-3) came to Madras and went to the house of Robert Payas (A-9). Kanthan met Murugan (A-3) in the house of Robert Payas (A-9). He was having a red Yamaha motorcycle. Kanthan and Sivarasan were quite close to each other. One Nishananthan was assisting Kanthan. After staying in the house of Robert Payas (A-9) for five days, in the first week of February 1991 arrangements for his stay in Royapettah house of Padma (A-21) were made. This was as per plan of Muthuraja as stated by Murugan (A-3). Here Murugan (A-3) came in contact with Nalini (A-1) and other members of the family. Murugan (A-3) did go to an institute for learning English for two or three days and thereafter he stopped. Because of his influence Nalini (A-1) became very much attracted to LTTE movement. In March 1991 Sivarasan asked Murugan (A-3) to find out from Padma (A-21)

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if she would come with him to Delhi to arrange a house for their stay. Padma (A-21) did not agree. When Sivarasan asked Murugan (A-3) about this he felt that there was some plan for a serious act like murder. However, he did not ask for any details from Sivarasan. On his request Bhagyanathan (A-20) introduced Haribabu as his confidential man to Murugan (A-3). In the third week of February 1991 Murugan (A-3) and Haribabu went to Vellore and saw the fort where certain persons belonging to LTTE were arrested and detained. Haribabu on his own went to Vellore three or four times and collected the structure of the jail interiors and maps as desired by Murugan (A-3). These were sent to Pottu Omman through Kanthan's code message. Murugan (A-3) was snubbed that he should do that work only which was entrusted to him at Madras and he was to do his duty without questioning. Pottu Omman told Murugan (A-3) that if he was asked to watch a particular shop he should not watch the next shop. Haribabu was doing the job of taking photographs and videograph of St. George Fort, Chennai, fort buildings, DGP Office, police stations and their locations. Murugan (A-3) asked Bhagyanathan (A-20) and Arivu (A-18) also to take photographs of these places. After collecting the same he sent them to Sri Lanka. In the last week of March 1991 Sivarasan asked Murugan (A-3) that he had planned to garland Rajiv Gandhi for the first time in a public meeting and asked him if he could arrange for an Indian girl for that purpose. When the name of Rajiv Gandhi was mentioned Murugan (A-3) understood that the next target was Rajiv Gandhi. As Rajiv Gandhi was responsible for the atrocities committed by IPKF, there were strong feelings among the womenfolk to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi but Sivarasan neither told that nor confirmed about that to Murugan (A-3). Murugan (A-3) said he would arrange for an Indian girl. Nalini (A-1) was thus thought of. Again in the first week of May 1991 Sivarasan told Murugan (A-3) that he had brought two girls Suba and Dhanu from Sri Lanka and he required an Indian girl for him to finish the job as both Suba and Dhanu would speak Tamil in Sri Lankan dialect and in order to mix with the crowd without any suspicion he felt the need of an Indian Tamil girl. They then decided to make use of Nalini (A-1). Murugan (A-3) knew Suba and Dhanu as the women working with LTTE. Murugan (A-3) attended public meeting of Rajiv Gandhi and Jayalalitha on 18-4-1991 along with Nalini (A-1) at Madras. Haribabu had also come to that meeting and took photographs of Jayalalitha and Rajiv Gandhi. Murugan (A-3), Suba, Dhanu, Haribabu and Nalini (A-1) went to the public meeting of V.P. Singh on 7-5-1991. That was to rehearse if Dhanu and Suba could go to the dais and garland V.P. Singh. Nalini (A-1) was assigned to take photographs. This was a "dry run". A fabricated press accredited card prepared by Haribabu was given to Murugan (A-3) (Exh. P-521). This press accredited card with Murugan's (A-3) photo and name was seized from the house taken on rent by Murugan (A-3) at Madipakkam. Forged press accreditation photo card was also given by Haribabu to Sivarasan. This was for them to gain access to the VIP. When Murugan (A-3) got instructions to go to Sri Lanka

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he purchased some articles and got collected other things. He reached Kodaikkarai on the Indian soil on 14-5-1991 and stayed there up to 17-5-1991. Since no boat came he returned to Madras. The boxes which he was carrying he left at Kodaikkarai with M. Mariappan (PW 86), an employee of Shanmugham (DA). Those were subsequently recovered and seized and letters written by Suba, Dhanu and Bhagyanathan (A-20) (Exhs. P-95, P-96 and P-453) were found. Two volumes of *Satanic Force* (MOs 125 and 126), video cassettes showing various parts of Fort St. George (MO 323), photographs of DGP Office etc. (MOs 256-259) were also found. Murugan (A-3) reached Madras on 18-5-1991 and stayed with Nalini (A-1). While at Kodaikkarai, Murugan (A-3) met Shankar (A-4) and gave him a slip of paper (Exh. P-1062) containing the name: "Nalini-Thas-419493". On 20-5-1991 Sivarasan came to the Royapettah house to instruct them to be ready for the meeting of Rajiv Gandhi on the next day. Murugan (A-3) went to the house of Haribabu and since Haribabu was not available he asked his sister to tell Haribabu to go to the Royapettah house. On the night of 21-5-1991 Murugan (A-3) was in the Royapettah house. When Arivu (A-18) and Bhagyanathan (A-20) came at 1.30 a.m. after seeing a late night show they told him about Rajiv Gandhi's assassination by a human bomb. From this Murugan (A-3) understood that Sivarasan had finished his task. Now he was anxious about Nalini (A-1). While at Tirupathi on 25-5-1991 Sivarasan told Murugan (A-3) about the belt bomb. He told him there were two switches and after switching the first switch on, Dhanu asked Sivarasan to go away. Murugan (A-3) when asked Sivarasan the reasons for killing Rajiv Gandhi he replied that Kasi Anandhan (PW 242) had met Rajiv Gandhi at Delhi and was told that the meeting was very cordial there and if Rajiv Gandhi came to power he would help LTTE movement. Prabhakaran showed the letter written by Kasi Anandhan (PW 242) suggesting cordial relations to Pottu Omman and said that people like Kasi Anandhan (PW 242) should be removed from the movement. When Sivarasan met Prabhakaran he told him that "we must teach a lesson to Rajiv Gandhi through the girls since IPKF dishonoured women". From this Murugan (A-3) understood that the decision to assassinate Rajiv Gandhi was taken by Prabhakaran. When on 7-6-1991 Murugan (A-3) met Sivarasan at Ashtalaxmi Temple it was decided that Murugan (A-3) would continue the task of Sivarasan and these tasks were to take care of old Vijayanandan (A-5) living in the house of Vanan; to send Arivu (A-18) to Delhi and also to contact Santhan (A-2). Sivarasan also said that they must go back to Sri Lanka on or before 10-6-1991/11-6-1991 and that he was arranging the boat for the purpose from Nagapattinam.

453. Santhan (A-2) is a Sri Lankan national. He knew Sivarasan as they both belonged to the same town in Sri Lanka. According to Santhan (A-2) important decisions like murder of anybody could be taken only by Prabhakaran. Santhan (A-2) knew that Sivarasan was a member of Military Wing of the LTTE movement. He knew the set-up of LTTE, its activities and its skirmishes with IPKF. In February 1988 Sivarasan asked Santhan (A-2) if he wished to continue his education at Madras, LTTE would make

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arrangements for that. Santhan (A-2) accepted the offer. He and Sivarasan came to India on 15-2-1990. They reached Kodaikkarai by boat and stayed overnight in the house of Shanmugham (DA). Next day they went to Madras and to the house of one Nagarajan, a smuggler and a Sri Lankan Tamil. Sivarasan, Nagarajan and Shanmugavadivelu (A-15) took Santhan (A-2) to Madras Institute of Engineering Technology where he got admission. Nagarajan was introduced as the uncle of Santhan (A-2). Fees and expenses were paid by Sivarasan. Santhan (A-2) was residing in the hostel. Santhan (A-2) in his confession has described as to how Padmnabha, leader of EPRLF and other leaders of EPRLF were killed by Sivarasan and other LTTE tigers David, Danial @ Dinesh Kumar and Ravi on 19-6-1990 and how they were able to effect the escape back to Sri Lanka. Santhan (A-2) though himself did not take part in the killing was entrusted with the duty to watch the place where meeting of EPRLF was being held and to give that information to Sivarasan. He also escaped with Sivarasan and other Sri Lankans. Pottu Omman welcomed them and praised them by patting their shoulders. Prabhakaran also met them and shook hands with David, who was in charge of Padmnabha's murder. Because of this incident Santhan (A-2) discontinued his studies. P.S. Padmanabhan (PW 187) was a student of Madras Institute of Engineering Technology. He identified Santhan (A-2) as Raja who was studying in that Institute. He said Santhan (A-2) studied in the Institute only for a couple of days and thereafter he did not see him. In the last week of April 1990 Pottu Omman called him and asked him to get ready on 27-4-1991 to go to Tamil Nadu with a group under the leadership of Sivarasan. On the morning of 1-5-1991 Santhan (A-2) along with a group comprising of nine arrived at Kodaikkarai in a boat from Sri Lanka. They stayed for a short while in the house of deceased accused Shanmugham. Then all these persons left for various places after arriving on the Indian soil. Santhan (A-2) stayed in the house of Robert Payas (A-9) at Porur till 5-5-1991. On 5-5-1991 Santhan (A-2) was introduced to Haribabu, Murugan (A-3) and Arivu (A-18) by Sivarasan. Sivarasan asked Haribabu to take Santhan (A-2) to his residence for Santhan (A-2) to stay there. That evening Sivarasan also took Santhan (A-2) to the residence of Jayakumar (A-10) where he met Jayakumar (A-10) and his wife Shanthi (A-11). That night Santhan (A-2) stayed in the house of Jayakumar (A-10) with Sivarasan. Next day Santhan (A-2) went to the house of Haribabu. When Haribabu's mother asked Santhan (A-2) his native place he told her that he was from Pariyakulam, Madurai. Santhan (A-2) stayed in the house of Haribabu for about a week. On 12-6-1991 Santhan (A-2) met Sivarasan who enquired from him about his Switzerland visit. Santhan (A-2) said he had enquired about that from a travel agent P. Veerappan (PW 102) who told him that his passport would be ready within a week. Sivarasan remarked that if he did not go to Switzerland LTTE would suffer a loss of Rs 1,00,000.

454. P. Veerappan (PW 102) said that he was doing the job of getting passports and renewal of old passports and also getting visas. He knew C. Vamadevan (PW 114) who started the business of brokerage of letting

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houses on rent. In that connection Vamadevan (PW 114) came in contact with Shanmugavadivelu (A-15). In the end of April, Shanmugavadivelu (A-15) met Vamadevan (PW 114) and asked him if he could suggest some agent to send his brother-in-law to a foreign country. Vamadevan (PW 114) thought of P. Veerappan (PW 102) and took Shanmugavadivelu (A-15) to him. When P. Veerappan (PW 102) asked Shanmugavadivelu (A-15) as to which country his brother-in-law belonged he replied that he belonged to Madras only. P. Veerappan (PW 102) told him that he had a friend who would arrange for his brother-in-law to go to a foreign country. He asked Shanmugavadivelu (A-15) to bring necessary documents such as passport, ration card, school certificate, etc. and his brother-in-law should also come along with him. Shanmugavadivelu (A-15) was told that the expenses of visa, ticket and foreign exchange for the purpose would be Rs 80,000 and Rs 50,000 were required in advance. In the first week of May 1991 Shanmugavadivelu (A-15) brought his brother-in-law and introduced him to P. Veerappan (PW 102). He asked him certain questions. After two or three days C. Vamadevan (PW 114) and Shanmugavadivelu (A-15) came to P. Veerappan (PW 102) and gave him Rs 50,000. Shanmugavadivelu (A-15) said that he would bring the other documents within a few days. Shanmugavadivelu (A-15) again met P. Veerappan (PW 102) two/three times and told him that necessary documents were getting ready. In the second week of July 1991 the brother-in-law of Shanmugavadivelu (A-15) came to P. Veerappan (PW 102) and asked him if papers were ready for his foreign trip. He told that documents have still not been given to him. P. Veerappan (PW 102) identified Santhan (A-2), who was introduced to him as the brother-in-law by Shanmugavadivelu (A-15). P. Veerappan (PW 102) was, however, unable to identify if Shanmugavadivelu (A-15) was the person who brought Santhan (A-2) to him though Vamadevan (PW 114) identified both Santhan (A-2) and Shanmugavadivelu (A-15) in court.

455. Santhan (A-2) told Sivarasan that he was not comfortable staying in the house of Haribabu. Sivarasan then took him to the house of Jayakumar (A-10) on 13-5-1991. On 15-5-1991 Sivarasan gave a letter to Santhan (A-2) and asked him to give it to Kanthan, who was in Robert Payas's (A-9) house. Santhan (A-2) gave the letter to Kanthan who in turn gave him Rs 5 lakhs and asked him to give the sum to Sivarasan. Santhan (A-2) accordingly paid the amount to Sivarasan who took Rs 2 lakhs and asked him to keep the balance with him. On 17-5-1991 Sivarasan and Santhan (A-2) went to Esware Lodge and met Shankar (A-4). Sivarasan took Rs 10,000 from Santhan (A-2) and gave that to Shankar (A-4). On 18-5-1991 Sivarasan again got Rs 20,000 from Santhan (A-2). He asked Santhan (A-2) to go to the house of Robert Payas (A-9) where he gave Rs 4000 to Ruban (A-6). Then both Robert Payas (A-9) and Santhan (A-2) went to Pondy Bazaar and purchased clothes and a watch for Ruban (A-6). Ruban (A-6) came to stay at Robert Payas's (A-9) house only a day before. At the instance of Sivarasan, Santhan (A-2) brought Ruban (A-6) to Marina Beach on 19-5-1991. Sivarasan and Ruban (A-6) talked to each other and then all three went to the

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house of Vijayendran (PW 111), a Sri Lankan national. After that all four of them and one more boy went to the Central Railway Station. A send-off was given to Ruban (A-6), Vijayendran (PW 111) and the boy on a train to Delhi on the way to Jaipur.

456. Santhan (A-2) said that Ruban (A-6) had lost one of his legs in a bomb blast and that the journey was to take treatment for that. More money was given by Kanthan to Santhan (A-2) who in turn gave that back to Sivarasan. Sivarasan asked Santhan (A-2) to furnish him the account of money he received from Kanthan which account Sivarasan had to give to a man going to Sri Lanka. The account which Santhan (A-2) wrote as told to him by Sivarasan was as under:

"*Income*

Received from Kanthan through Santhan	Rs 9,50,000
Received from Kanthan by Sivarasan	Rs 9,50,000

Expenditure

To X Y	Rs 3,00,000
Delta (Murugan)	Rs 25,000
	Rs 5000
A.T.	Rs 1,00,000
	Rs 3,50,000
	Rs 1,00,000
To Y X through Delta	Rs 5,00,000
To self (Sivarasan)	Rs 15,000"

457. Sivarasan then asked Santhan (A-2) as to why he had not shown the amount of Rs 50,000 which was given to Santhan (A-2). He asked Santhan (A-2) that out of that amount Rs 25,000 be paid to Murugan (A-3) and Rs 5000 each to Jayakumar (A-10) and Keerthy. These amounts Santhan (A-2) paid as directed after the assassination of Rajiv Gandhi. On 20-5-1991 Santhan (A-2), Jayakumar (A-10) and Sivarasan were in the house of Jayakumar (A-10). Before that on 16-5-1991 Sivarasan had told Santhan (A-2) that Prabhakaran had paid special attention to Santhan (A-2) after the murder of Padmnabha and important works were allotted to him and all this was on account of the cooperation given by Santhan (A-2) in Padmnabha case. Santhan (A-2) said that Sivarasan also told him that he was going to help Suba and Dhanu to finish Rajiv Gandhi. In Jayakumar's (A-10) house Santhan (A-2) stayed up to 28-5-1991. D.J. Swaminathan (PW 85) in his deposition said that Santhan (A-2) stayed in the house of Jayakumar (A-10) from 16-5-1991 to 26-5-1991.

458. On 21-5-1991 Santhan (A-2) saw Sivarasan in white kurta-pyjama. Sivarasan inserted a white cloth bag containing a pistol in his hip pocket and asked Santhan (A-2) whether the gun was protruding outside the dress. To

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this Santhan (A-2) replied in the negative. The pistol was Czechoslovakia make. Cloth bag was stitched by Shanthi (A-11) two days earlier. A pistol (MO 79) was seized by P.P. Chandrasekara Nair (PW 271) from the house at Konanakunte (Bangalore) where Sivarasan, Suba and others committed suicide. Sivarasan then went out and returned around midnight when Santhan (A-2) was sleeping. Sivarasan woke him up and told him that Rajiv Gandhi and Dhanu had died. He also told that he had brought one sister who was a helper of LTTE. His reference was to Nalini (A-1). Next morning Sivarasan, Suba and Nalini (A-1) went to the house of a neighbour to watch TV. On 28-5-1991 Santhan (A-2) went to Tirupathi in the assumed name of Kumaresan. On his return journey from Tirupathi he saw the picture of Sivarasan in kurta-pyjama in a newspaper. He went to the house of Robert Payas (A-9) and not to the house of Jayakumar (A-10). On 30-5-1991 Robert Payas (A-9), his wife Prema, sister Latha and Santhan (A-2) went to Thiruchandur and planned to stay in a cottage there. The receptionist there, on hearing Santhan (A-2), asked him his address. He gave the address as No. 30, Vanniar Street, Choolaimedu. Santhan (A-2) then left the place fearing that they would be trapped if the receptionist asked the PIN code of Choolaimedu. From Thiruchandur they came to Madurai and after staying there for a while left for Madras reaching there early morning. Robert Payas (A-9) and his family returned to Porur house while Santhan (A-2) went to K.K. Nagar. In between he had been meeting Sivarasan and getting instructions from him. He said Sivarasan told him that thereafter Murugan (A-3) would look after his work and that of Kanthan, i.e., to send Keerthy to Colombo, Athirai (A-8) to Delhi, to send money to Ruban (A-6); provision of a house for Shankar [Shankar (A-4)] and arranging money for such works. Sivarasan was frantically trying to escape to Sri Lanka. Santhan went to the house of P. Thirumathi Vimla (PW 62) to meet Athirai (A-8) who was staying there. He took Shanmugavadivelu (A-15) along with him.

459. P. Thirumathi Vimla (PW 62) said that Santhan (A-2) did come to her house and said that he was acquainted with Athirai (A-8); that he knew her already and that he had come to see her. She told him that she was having problem and asked him to take away Athirai (A-8) immediately. He said he would do that. He wanted a letter for Dixon (DA) who was staying in Gowri Karunakaran's house, a relative of P. Thirumathi Vimla (PW 62). That letter was delivered at Gowri Karunakaran's house. Santhan (A-2) got a reply while he was still in the house of P. Thirumathi Vimla (PW 62). At his request Santhan (A-2) was taken to the house of Gowri Karunakaran. When he met Dixon he knew that he was a member of LTTE. A few days later Santhan (A-2) again came to the house of P. Thirumathi Vimla (PW 62) and told her that Shanmugavadivelu's (A-15) house had been searched by CBI and had caught him and that perhaps CBI would come to the house of P. Thirumathi Vimla (PW 62) also since Athirai (A-8) who was staying there was not holding a passport and that it would be a problem for her. He said he had, therefore, come to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went along with Santhan (A-2). Before leaving, Athirai (A-8) left

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Rs 8000 with P. Thirumathi Vimla (PW 62). Around 1-7-1991 when P. Thirumathi Vimla (PW 62) came to her house she found Santhan (A-2) and Athirai (A-8) waiting for her. Athirai (A-8) wanted her money back. P. Thirumathi Vimla (PW 62) said that she never expected them to come back immediately and that she had already spent Rs 1500 out of that money for certain purchases and was left with Rs 6500. They said it was alright and asked her to give that money to them. Then they left. Kanagasabapathy (A-7) had also come along with Santhan (A-2) and Athirai (A-8) but afterwards had left before P. Thirumathi Vimla (PW 62) returned to her house.

460. Santhan (A-2) then received a message from Dixon that he wanted to meet him. Dixon told Santhan (A-2) that all their wireless messages were spied by the Tamil Nadu police. Santhan (A-2) took Athirai (A-8) to the Pammal house where he also stayed. On the night of 1-7-1991 Santhan (A-2) made Athirai (A-8) get in the train at the Central Railway Station to Delhi and then went to the Pammal house and stayed there. Though Santhan (A-2) in his confession said that he saw off Athirai (A-8) at the Central Railway Station but evidence shows that he saw off both Kanagasabapathy (A-7) and Athirai (A-8) on 1-7-1991 to New Delhi.

461. In letter (Exh. P-129) dated 7-9-1991 written by deceased accused Trichy Santhan to Prabhakaran he mentioned that arrest of Santhan (A-2) was a great danger to LTTE and that members of the movement had been captured alive and that the members had made disclosure right from Padmnabha incident.

462. Confession statement of Shanmugavadivelu @ Thambi Anna (A-15) was recorded on 18-5-1992 while he was arrested on 16-5-1992. He is a Sri Lankan national and gives his family background. He was owning a lorry along with another in Sri Lanka and doing business there. However, his business was hit because of war between LTTE and Sri Lankan army. His house was damaged in 1987 by a bomb lodged by the Sri Lankan army. He then decided to stay in India. Since 1985 while in Sri Lanka LTTE had started collecting money from each family for its war efforts. He left Colombo on 19-6-1987 and came to Madras with his wife and two children and his sister's son. Initially he stayed with his elder sister's son Dr Thiru Vadivel (Dentist). Then he rented a house where he started living with his family. In 1988 Dr Thiru Vadivel went back to Sri Lanka hoping that the situation would normalise after the presence of IPKF in Sri Lanka. Shanmugavadivelu (A-15) got the telephone No. 864249 of Dr Thiru Vadivel installed in his house. That telephone always remained in the name of Dr Thiru Vadivel. Shanmugavadivelu (A-15) started lorry service along with his wife's brother Arvinda Das. One Karunakaran was working as a lorry contractor in Madras harbour. 35% of the profit was taken by Karunakaran and the rest 65% was shared between Shanmugavadivelu (A-15) and Arvinda Das. According to Shanmugavadivelu (A-15) Arvinda Das was disbursing money to Sri Lankan Tamils there from lorry service. He was also receiving money from Sri Lanka at times for distribution as per instructions

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received on telephone by him. Shanmugavadivelu (A-15) knew P. Thirumathi Vimla (PW 62) from Sri Lanka. She had come to India three or four years earlier to Shanmugavadivelu (A-15). She shifted to her house at Royapettah in 1990. P. Thirumathi Vimla (PW 62) was known to the wife of Shanmugavadivelu (A-15). They were on visiting terms. One child was born to Shanmugavadivelu (A-15) while in India. One day two persons by the name of Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and wanted to give a letter to P. Thirumathi Vimla (PW 62). Shanmugavadivelu (A-15) took them to the house of P. Thirumathi Vimla (PW 62). When Sivarasan and Santhan (A-2) expected some money from Shanmugavadivelu (A-15) he told them that that matter was attended to by Arvinda Das. Sivarasan said that whenever Santhan (A-2) would come and ask for money it should be given to him. When Shanmugavadivelu (A-15) took them to P. Thirumathi Vimla's (PW 62) house she was not at home. He, however, introduced Sivarasan to her daughters who were aged 15 and 16 years. After four or five days Santhan (A-2) again came to the house of Shanmugavadivelu (A-15) and asked to be taken to the house of P. Thirumathi Vimla (PW 62) which again Shanmugavadivelu (A-15) did. At that time also P. Thirumathi Vimla (PW 62) was not at home. One week before Rajiv Gandhi's assassination Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and gave him a bundle containing Rs 1.25 lakhs for safe custody. Shanmugavadivelu (A-15) had helped Santhan (A-2) to get admission in MIET Institute through Nagarajan. After four or five days Santhan (A-2) again came and this time gave Rs 3.20 lakhs to Shanmugavadivelu (A-15). This money Santhan (A-2) took back subsequently. One day when he came to get some money from Shanmugavadivelu (A-15), by that time photo of Sivarasan connected with the assassination of Rajiv Gandhi was published in newspapers. Shanmugavadivelu (A-15) asked Santhan (A-2) about Sivarasan and his photo appearing in newspapers to which Santhan (A-2) said that he need not worry. Before the assassination of Rajiv Gandhi one day P. Thirumathi Vimla (PW 62) with her daughter and Athirai (A-8) came to the house of Shanmugavadivelu (A-15). Athirai (A-8) said that she expected a phone call from a foreign country and told Shanmugavadivelu (A-15) that she might be informed about that. Daughter of P. Thirumathi Vimla (PW 62) told Shanmugavadivelu (A-15) that Athirai (A-8) was Sivarasan's person. Next day when the phone call came which was attended to, the person who spoke on the phone said that he was Athirai's (A-8) brother. He asked to call Athirai (A-8) and said that he would call again within an hour. Shanmugavadivelu (A-15) went and called Athirai (A-8). After one hour the phone call came but Shanmugavadivelu (A-15) did not know what they were talking about. On 30-5-1991/31-5-1991 Athirai (A-8) again came to the house of Shanmugavadivelu (A-15) to receive a phone call about which Shanmugavadivelu (A-15) did not know. The wife of Shanmugavadivelu (A-15) did not like Athirai (A-8) when she came to know that she was an LTTE person. The wife of Shanmugavadivelu (A-15) had strong dislike for

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LTTE because on one occasion they had kidnapped their son aged four years and on another two brothers-in-law including Arvinda Das were kidnapped. LTTE used to ask for money before releasing the kidnapped but no one did make any complaint about that. The wife of Shanmugavadivelu (A-15) had thus developed a great hatred for LTTE. When Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) for the first time they had noted his phone number. Shanmugavadivelu (A-15) does not talk of any help rendered by him to Santhan (A-2) to go abroad and for that purpose to get passport and visa for him or about any conversation between him and P. Veerappan (PW 102) and C. Vamadevan (PW 114). In one of the papers seized from Ruban (A-6) at Jaipur telephone number of Shanmugavadivelu (A-15), 864249 is mentioned. From this prosecution seeks to draw an inference that Ruban (A-6) was sent to Jaipur by Santhan (A-2) and Sivarasan on 17-5-1991 for fixing a hideout and he was given the telephone number of Shanmugavadivelu (A-15) as his contact number. Shanmugavadivelu (A-15) was known to Sivarasan and Santhan (A-2) as early as 1990 and he had helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.

463. There is no confession of Ruban (A-6). Vijayendran (PW 111) is a Sri Lankan national. He came to India in 1979, studied here, wrote many books and acted in films. Sivarasan met Vijayendran (PW 111) in the second week of April 1991 at the railway platform bookstall and introduced himself. During conversation Sivarasan told him that he was leaving for Sri Lanka in a week's time. Vijayendran (PW 111) had not received any letter from his home in Sri Lanka for more than one-and-a-half years. He asked Sivarasan to hand over his letter to his mother, brothers and also to receive a reply to that. Sivarasan after two days of the meeting came to the house of Vijayendran (PW 111) to collect the letter. Sivarasan again met him on 11-5-1991 bringing to him reply dated 8-5-1991 to his letter. He addressed Vijayendran (PW 111) as brother. Vijayendran (PW 111) expressed gratitude to Sivarasan for his help. Once Sivarasan came to the house of Vijayendran (PW 111) with Santhan (A-2). Sivarasan requested Vijayendran (PW 111) to accompany Ruban (A-6), who was introduced as Suresh Kumar, to Jaipur to fix an artificial limb as he did not have his left leg. Vijayendran (PW 111) asked whether there was no doctor available in Madras but Sivarasan said that in India Dr Sethi was a specialist in that medical field and was based in Jaipur and he wanted treatment for Ruban (A-6) from him. Vijayendran (PW 111) agreed. He, however, told Sivarasan that he would take another person along with him as he himself did not know Hindi. Sivarasan gave him Rs 15,000 in cash to meet the medical expenses and the conveyance charges. He asked Vijayendran (PW 111) to buy tickets of GT Express for Delhi leaving on 17-5-1991. The railway tickets were got reserved by Vijayendran (PW 111) on 14-5-1991. Ruban (A-6), Vijayendran (PW 111) and a boy called Ajas Ali left by GT Express on 17-5-1991. Sivarasan and Santhan (A-2) had come to see them off. Sivarasan told Vijayendran (PW 111) that Santhan (A-2) would come to him to receive any letter which might be given

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to him by Ruban (A-6) on his return. Vijayendran (PW 111) said that Sivarasan asked him to use his name as Maharaja in which name he was writing his poems. After arriving at Delhi the group then went to Jaipur on the evening of 19-5-1991. They stayed in Golden Lodge in the names of Ajas Ali, Suresh Kumar and Maharaja. Next day they went to meet the doctor. While at Jaipur on 22-5-1991 Vijayendran (PW 111) came to know about the assassination of Rajiv Gandhi at Sriperumbudur. He said they got into panic as they could be suspected as Tamilians. Ruban (A-6) suggested to vacate the Lodge. Next day in the evening they shifted to Vikram Lodge. Vijayendran (PW 111) met Mr Rajan, Manager of the Lodge and asked him to help Ruban (A-6) for getting treatment as Dr Sethi had given them appointment for 13-6-1991. He along with Ajas Ali left Jaipur on 24-5-1991 for Madras reaching there on the night of 27-5-1991. Ruban (A-6) told him that he would write letter to him addressed as Maharaja and asked him to hand over that to Santhan (A-2). Ruban (A-6) gave him a letter which had already been written by him. Vijayendran (PW 111) saw the photo of Sivarasan published in a newspaper on 29-5-1991 with announcement that his whereabouts be informed as he was the main person involved in the assassination of Rajiv Gandhi. That shook Vijayendran (PW 111). On 30-5-1991 Sivarasan came to him and enquired whether Ruban (A-6) had given any letter. The letter which Ruban (A-6) had written was handed over to Sivarasan. Vijayendran (PW 111) asked about his picture published in the newspapers. At this he gave a sarcastic smile and told him in an authoritative tone that he was going to Sri Lanka and would return after three months and then left. One more letter was received from Ruban (A-6) by Vijayendran (PW 111) on 3-6-1991/4-6-1991. On 7-6-1991 Santhan (A-2) came to collect that letter. As seen above Santhan (A-2) gave Vijayendran (PW 111) a sum of Rs 2000 and asked him to send it to Ruban (A-6) by telegraphic money order. Entries in the lodge registers at Jaipur were made by Vijayendran (PW 111) (Exhs. P-111 and 523).

464. Ruban (A-6) was one of the nine persons who had clandestinely landed on Indian soil in a boat from Sri Lanka on 1-5-1991. In his confession Robert Payas (A-9) said that he met an LTTE boy who had come to his house along with Indrankutti on 9-5-1991. He said the name of that boy was Ruban @ Suresh. He had lost one of his legs in a bomb blast in Sri Lanka and had come to India along with Sivarasan for his treatment.

465. Y.R. Nagarajan (PW 106) was working as a receptionist in Golden Lodge in Jaipur. He has testified to the stay of Vijayendran (PW 111), Ruban (A-6) and Ajas Ali. He said Ruban (A-6) did not have his left leg. Ruban (A-6) stayed in Jaipur till 20-6-1991 when he was arrested. Search was effected in the room in the Lodge where Ruban (A-6) was staying. One of the documents seized is a telephone index book (MO 659) containing telephone numbers of Robert Payas (A-9) and Shanmugavadivelu (A-15). In a bunch of papers (MO 667) seized on 15-6-1991 from the house of Murugan (A-3) at Madipakkam, in one of the papers there was the Jaipur address of Ruban (A-6). A letter (Exh. P-1200) dated 18-6-1991 written by

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Santhan (A-2) to Ruban (A-6) at Vikram Lodge address was also recovered from the Lodge. In this letter Santhan (A-2) had advised Ruban (A-6) to again shift from his present place of stay to another safe place. This is an inland letter written after the death of Rajiv Gandhi. This letter is stated to have been handed over by Rajan, Manager of Vikram Lodge, to Police Inspector R.D. Kalia (PW 236). It is not the original letter — rather a xerox copy. Original is stated to have been lost in the court and as such secondary evidence was allowed to be led. This document is proved by the Handwriting Expert K. Ramakrishnan (PW 262) but only the address is said to be in the writing of Santhan (A-2). There is no evidence about the contents of the letters as if written by Santhan (A-2). In the notebook (MO 159) there is an entry (Exh. P-439) giving details of expenses incurred for Ruban (A-6). In the confession of Irumborai (A-19) he has mentioned about the deceased accused Jamuna @ Jamila, an injured LTTE tigress staying in Neyveli in Tamil Nadu for getting an artificial leg fixed as she had lost her leg in a fight at Jaffna against the army. Ruban (A-6) did not get an artificial limb in Jaipur and it was fixed in Madras itself while he was in judicial custody.

466. Arivu (A-18) was little less than 20 years of age on the date of the assassination of Rajiv Gandhi. He was a sympathiser of LTTE movement. In 1986 he took part in an agitation and was imprisoned for 15 days in Madras. Subha Sundaram (A-22) was known to his father. Arivu (A-18) joined his studio (Subha Studio) in May 1989. Muthuraja and Baby Subramaniam used to visit Subha Studio. Arivu (A-18) became close to them and started working for LTTE. He started selling and distributing LTTE literature. He used to sell these books in public meetings. In Subha Studio he also came in contact with Bhagyanathan (A-20) and deceased accused Haribabu, who were also working there. Even after they had left Subha Studio they used to come there. On account of the influence of Baby Subramaniam and his assistant Muthuraja both Bhagyanathan (A-20) and Haribabu were attracted towards LTTE movement and got involved there. When Arivu (A-18) came to Madras in May 1989 he started staying with Bhagyanathan (A-20) and also with Muthuraja. Place of Muthuraja was used by LTTE people. In connection with LTTE work Arivu (A-18) used to visit Bangalore quite often. Arivu (A-18) also came in contact with Suresh Master (DA) and Trichy Santhan. Both were having an important place in LTTE. Arivu (A-18) was being paid by Trichy Santhan for the work done by him for LTTE. He was getting a fixed amount every month. After the shooting incident of killing of Padmnabha and others by LTTE at Madras, offices of LTTE were closed and thereafter it was an underground movement. Arivu (A-18) went to Sri Lanka with Baby Subramaniam in June 1990. Irumborai (A-19) also went with them. In Sri Lanka Arivu (A-18) met Prabhakaran and other leaders and assured them to give full support for LTTE movement. During his stay in Sri Lanka there was a war between LTTE and the Sri Lankan army. Then he learnt about the atrocities committed by IPKF and a feeling of revenge came to his mind. He and Irumborai (A-19) came back to India in

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the second week of October 1990 with other wounded LTTE soldiers. Now he was a full-fledged worker of LTTE. It was from February 1991 that Arivu (A-18) started staying with Bhagyanathan (A-20). It was on account of the fact that President rule was extended in January 1991 and police was taking strong action against LTTE. Arivu (A-18) left his own residence and went to stay with Bhagyanathan (A-20). After Muthuraja went to Sri Lanka his job was taken over by Arivu (A-18). He was getting money from deceased accused Suresh Master and Trichy Santhan for meeting his expenses and was also paying to M. Sankari (PW 210), sister of Muthuraja. Arivu (A-18) in his confession statement said that Murugan (A-3) had come to Tamil Nadu from Sri Lanka for an important work of LTTE and in this work Haribabu was helping him and for that Haribabu had been receiving monthly salary from Murugan (A-3). Murugan (A-3) had been appointed in the Spy Wing of LTTE. Arivu (A-18) was recording TV news in VCR in Royapettah house. In March 1991 he went with Murugan (A-3) to Vellore for LTTE work as in Vellore Fort and Jail Sri Lankan Tamils and LTTE personnel were kept in custody. Blast of Vellore Fort and Jail and releasing of LTTE militants was one of the LTTE works in India. Various people connected with LTTE would come to the house of Bhagyanathan (A-20). Arivu (A-18) said that when these people were talking among themselves he understood that it was for a very important and dangerous act and he had a strong suspicion that the target would be Rajiv Gandhi.

467. In April 1991 when Sivarasan came to the house of Padma (A-21) he asked Arivu (A-18) if he was prepared to work with him. Arivu (A-18) agreed to work for him as Sivarasan was a senior LTTE member. Bhagyanathan (A-20) had already accepted to work for Sivarasan. Before going to Sri Lanka Muthuraja had handed over his work to Arivu (A-18) and also instructed Bhagyanathan (A-20) to give all help to Arivu (A-18) as may be needed for the movement. Muthuraja had also requested Nalini (A-1) to provide all help to Arivu (A-18) in his absence. Photos and publications of LTTE movement and other books which were with Muthuraja were kept by Arivu (A-18). In March 1991 he shifted them to the house of V. Radhakrishnan (PW 231), a friend of Arivu (A-18). These contained a 3-volume *Black Book* and in the 3rd volume of the book there was a diagram of an electric circuit similar to the one used for the belt bomb by the assassin Dhanu. Arivu (A-18) said that when the material was being transported Bhagyanathan (A-20) was also with him. On 3-5-1991 Arivu (A-18) met Sivarasan in India and at that time deceased accused Gokul @ Nero and Murugan (A-3) were also with him. Sivarasan asked Arivu (A-18) to buy a large-size car battery, clips and other articles. Arivu (A-18) went to a shop along with Nero and bought battery, wire and other articles. Apart from other things the battery was meant for a wireless set which Sivarasan wanted to install, by which he would contact LTTE Headquarters in Sri Lanka. While buying battery he gave his name as Rajan and also a wrong address. Sivarasan also told Arivu (A-18) that he wanted a motorcycle to facilitate his travel and for the purpose he had come to India. He asked Arivu (A-18) to

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make arrangements for it as he himself did not want his name to be exposed. Arivu (A-18) arranged one Kawasaki Bajaj motorcycle (Registration No. TN-07-A-5203). He took Sivarasan to the showroom on 4-5-1991 and bought the motorcycle in his own name but giving a wrong address. With the same wrong address Arivu (A-18) had also opened a bank account in the bank. Sivarasan had given money for the purchase of the motorcycle. Arivu (A-18) also bought a 9-volt battery (Golden Power) and gave that to Sivarasan. Arivu (A-18) said in his confession that Sivarasan used this (battery) only to blast the bomb. On 7-5-1991 Arivu (A-18) had also gone to attend the public meeting of V.P. Singh and there he saw Nalini (A-1), Suba, Dhanu and Murugan (A-3). These three women were trying to step on towards the stage. Nalini (A-1) was requesting the organisers of the meeting and the police while Suba and Dhanu were standing with rose garlands in their hands. Haribabu was also seen on the stage. Arivu (A-18) did not see Sivarasan. Arivu (A-18) knew that Suba and Dhanu were lady tigresses of LTTE brought from Jaffna in Sri Lanka by Sivarasan for his job and they were "going and coming with Nalini (A-1)". After the end of the public meeting Murugan (A-3) gave a colour film roll to Arivu (A-18) for developing. None of the pictures had come out clearly. Arivu (A-18) also bought a multimeter for Sivarasan for use to test the electrical equipments. He had also bought earth wire. Sivarasan asked Arivu (A-18) to look after Vijayanandan (A-5), who was a senior LTTE leader. Vijayanandan (A-5) had come to India along with Sivarasan in the group of nine persons arriving on 1-5-1991. Vijayanandan (A-5) was staying in Komala Vilas Lodge. Arivu (A-18) met him and took him to the house of N. Basant Kumar (PW 75). Vijayanandan (A-5) was to buy some books for the LTTE movement. In his confession Arivu (A-18) described N. Basant Kumar (PW 75) as his partner. He also described N. Basant Kumar (PW 75) as an LTTE member and close to Sivarasan. Once he said he had gone with N. Basant Kumar (PW 75) to the house of Trichy Santhan (DA). N. Basant Kumar (PW 75) was involved in publishing the LTTE propaganda book *Satanic Force* which contained articles relating to atrocities committed by IPKF. It was Trichy Santhan (DA) who was giving finance for that. On 20-5-1991 Arivu (A-18) learnt that in the evening when Nalini (A-1), Murugan (A-3) and Haribabu were in the house of Bhagyanathan (A-20) Sivarasan had a talk with Nalini (A-1) and Haribabu. Padma (A-21) had also come back from the hospital at 8.00 p.m. According to Arivu (A-18) Sivarasan had a talk regarding the public meeting of Rajiv Gandhi to be held on the next day at Sriperumbudur. He gave a Kodak colour film roll to Haribabu. After having their food Haribabu, Murugan (A-3) and Nalini (A-1) left. On 21-5-1991 Arivu (A-18) and Bhagyanathan (A-20) went to see a late night movie and when they returned from the show they heard the news that Rajiv Gandhi was murdered. Murugan (A-3) confirmed it. On 22-5-1991 Arivu (A-18) packed his goods from the house of Padma (A-21) and cleared them one by one and kept them at the houses of his friends. On 23-5-1991 Sivarasan came to the house of Padma (A-21) in the morning and gave details about the incident resulting in

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the assassination of Rajiv Gandhi. He also told them about the unexpected death of Haribabu in the bomb blast. He asked Arivu (A-18) to go to Subha Sundaram (A-22) to see the progress in getting the body of Haribabu. That evening Nalini (A-1) also came to the house of Padma (A-21) late in the evening and told her about the murder of Rajiv Gandhi. Arivu (A-18) did not feel safe in the house of Bhagyanathan (A-20). Murugan (A-3) had already hidden himself at Bhagyanathan's press. Arivu (A-18) had a fear that he might be found so he then went and stayed with his parents at Jolarpet. Before going to Jolarpet Murugan (A-3) had asked Arivu (A-18) to come to Gandhi Beach on 10-6-1991 in the evening at 7 o'clock to discuss about further proceedings. Arivu (A-18) came to Gandhi Beach but Murugan (A-3) was not there. He also searched for Bhagyanathan (A-20) the next day but again could not meet him. After a few days Arivu (A-18) was arrested.

468. N. Basant Kumar (PW 75) is an artist. In 1984 he met a person by the name of Raghavan in a bookshop who came to the shop to buy books for LTTE. When Raghavan came to know that N. Basant Kumar (PW 75) was an artist he asked him if he would print books for LTTE organization. N. Basant Kumar (PW 75) agreed. Raghavan introduced himself to Baby Subramaniam and Nithyanandam, President of LTTE Propaganda Committee. N. Basant Kumar (PW 75) was promised Rs 1000 for his labour in getting the books printed for LTTE. In his deposition N. Basant Kumar (PW 75) has described as to how he had become close to top-rank leaders of LTTE including Pottu Omman, Prabhakaran, Kasi Anandhan and others. He also visited LTTE training camp near Mettur in Tamil Nadu. N. Basant Kumar (PW 75) in partnership with Basheer Ahmad also published a magazine called *Pudhu Yugam*. The publication was stopped after two issues. In 1988 N. Basant Kumar (PW 75) was engaged to print calendars and some other pamphlets for LTTE at a monthly salary of Rs 1500. He got printed various pamphlets like *Indian Military Offensive*, *An unjust war against Tamils*, *Indo-Sri Lanka Accord*, *LTTE point of view*, etc. In 1989 when DMK came to power in Tamil Nadu Baby Subramaniam was moving about openly in all places in an auto. He met N. Basant Kumar (PW 75) and asked him to print a book by the name of *Socialistic Tamil Ezham*. That book gave the political programme of LTTE. The book was got printed by N. Basant Kumar (PW 75) and his work was appreciated by Prabhakaran. Later Baby Subramaniam asked N. Basant Kumar (PW 75) to publish a big book by the name of *Satanic Force* containing the atrocities of IPKF and other articles criticising Rajiv Gandhi. N. Basant Kumar (PW 75) was promised Rs 2000 per month for the work of printing the book. A separate flat was hired for the purpose. All expenses of printing the book and hiring the flat, etc. were met by Baby Subramaniam. The material for the book *Satanic Force* was supplied by Baby Subramaniam. The book contained statements of LTTE leaders, news published in India and foreign countries, essays, comments, advertisements, cartoons and statements of Sri Lankan Tamilians who had suffered. The book also contained collections of photographs. N. Basant Kumar (PW 75) designed the book. Paper for the book was

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purchased in the name of Ramesh, a member of LTTE for Rs 3,20,000. N. Basant Kumar (PW 75) had also gone with Ramesh to buy the paper. Ramesh gave a bogus address to the shopkeeper for preparation of the bill. *Satanic Force* is in two parts which contained information up to March 1990. N. Basant Kumar (PW 75) said he used to often meet Baby Subramaniam in Subha Studio. Arivu (A-18) and Irumborai (A-19) were always with Baby Subramaniam. Since the book *Satanic Force* was against Indian Peace-Keeping Force and Rajiv Gandhi, it was thought not to mention that it was printed in India. Baby Subramaniam asked N. Basant Kumar (PW 75) to show that the book was printed in U.K. Some copies of the book when finished were sent to Sri Lanka to Baby Subramaniam and the mode of transportation was informed to Baby Subramaniam. Thereafter Baby Subramaniam went to Jaffna in Sri Lanka accompanied by Arivu (A-18) and Irumborai (A-19). N. Basant Kumar (PW 75) then described the attempt made by him to get the payment of the book to be made to various parties. Four sets of the books were printed and ready. Two sets were kept by N. Basant Kumar (PW 75) and two sets were given by him to Arivu (A-18). N. Basant Kumar (PW 75) said he received a letter from Prabhakaran appreciating his work who told him that he had written a letter to Trichy Santhan (DA) who was in charge at Trichi to make the payment for the book. Prabhakaran also wrote that N. Basant Kumar (PW 75) could come to Sri Lanka whenever he wished. He said he tore the letter after reading that. On 2-5-1991 or 3-5-1991 N. Basant Kumar (PW 75) and Arivu (A-18) went to Trichi to get payment from Trichy Santhan. In the morning Arivu (A-18) took N. Basant Kumar (PW 75) to a house at Ramalinga Nagar where Irumborai (A-19) was also present along with some other workers. At about 11.00 a.m. Trichy Santhan (DA) came. Arivu (A-18) introduced N. Basant Kumar (PW 75) to him. Trichy Santhan (DA) paid Rs 90,000 to N. Basant Kumar (PW 75) and promised to pay the balance through Arivu (A-18). They then returned to Madras. In the first week of May 1991 Arivu (A-18) came to the house of N. Basant Kumar (PW 75) with Vijayanandan (A-5). Arivu (A-18) asked him to help Vijayanandan (A-5) in purchasing the books for LTTE library. N. Basant Kumar (PW 75) made Vijayanandan (A-5) stay in his adjoining flat. Vijayanandan (A-5) told N. Basant Kumar (PW 75) that he was a supporter of LTTE and that Pottu Omman had called him and had asked him to take charge of the library and for that purpose he had come to purchase the books. He also told him that about seven or eight days ago he had come to Kodaikkarai with eight other persons illegally in an LTTE boat. When N. Basant Kumar (PW 75) asked him if he had the list of books to be purchased, he replied that he did not have the list and that he would purchase the books directly. N. Basant Kumar (PW 75) sent Basheer Ahmad for helping Vijayanandan (A-5) in purchasing the books. Vijayanandan (A-5) had purchased about 400 books. Vijayanandan (A-5) used to talk about the atrocities committed by IPKF in Sri Lanka and his hatred towards Rajiv Gandhi. He gave him a book *Alisiya* and its Tamil manuscript and told N. Basant Kumar (PW 75) that Pottu Omman had asked him to print three

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thousand copies of the book in the letter press. Vijayanandan (A-5) for that purpose gave Rs 10,000 and again Rs 20,000. He also gave N. Basant Kumar (PW 75) a list of books which he could not purchase and asked him to purchase those books and for that purpose also he gave N. Basant Kumar (PW 75) Rs 5500. On 10-5-1991 Arivu (A-18) came to meet N. Basant Kumar (PW 75) with Sivarasan on a Kawasaki Bajaj motorcycle. Sivarasan had come to see Vijayanandan (A-5). All three of them talked for about ten minutes and then Arivu (A-18) and Sivarasan left. N. Basant Kumar (PW 75) wanted to visit Moogambigai on 19-5-1991. He, therefore, asked Arivu (A-18) to take Vijayanandan (A-5) with him. Arivu (A-18) promised that he would come and take him. On 17-5-1991 early in the morning at 6.00 a.m. Irumborai (A-19) came to the house of N. Basant Kumar (PW 75) and enquired about Arivu (A-18). When told that Arivu (A-18) had not come Irumborai (A-19) left leaving a message for Arivu (A-18) to meet him urgently. Later when Arivu (A-18) came N. Basant Kumar (PW 75) informed him accordingly. Again he asked Arivu (A-18) to take Vijayanandan (A-5) with him. On the morning of 18-5-1991 Sivarasan came on a motorcycle and took Vijayanandan (A-5) with him. He asked Vijayanandan (A-5) if he had purchased the books. Vijayanandan (A-5) replied that he had purchased everything. Sivarasan told Vijayanandan (A-5) that he would give him an address where he could stay and asked him to leave immediately. Vijayanandan (A-5) packed his dresses and left. While leaving he told N. Basant Kumar (PW 75) that he would take the books later. On the morning of 19-5-1991 Arivu (A-18) again came to the house of N. Basant Kumar (PW 75) and told him that Trichy Santhan had sent Rs 75,000 for the book *Satanic Force*. N. Basant Kumar (PW 75) told him that since he was leaving for the tour the money could be given by Arivu (A-18) to Balcon Press. N. Basant Kumar (PW 75) after his tour with his family and friends returned to Madras. While away he learnt about the assassination of Rajiv Gandhi through news broadcast on radio on the morning of 22-5-1991 by a bomb blast at Sriperumbudur while attending the meeting. On 29-5-1991 picture of Sivarasan was published in *The Hindu* newspaper. N. Basant Kumar (PW 75) recognized Sivarasan who had been brought to his house by Arivu (A-18). On 30-5-1991 Arivu (A-18) again came to meet N. Basant Kumar (PW 75) and gave him Rs 25,000. He was asked about the photo of Sivarasan and his whereabouts and whether Arivu (A-18) was having any connection with the murder. At this Arivu (A-18) laughed sarcastically and left without any reply. Due to fear N. Basant Kumar (PW 75) did not inform the matter to anybody. At Balcon Press where Arivu (A-18) had gone to hand over Rs 75,000 he came to know that the police were in search of him. He was afraid and left Madras and went to his friend at Neyveli. In his absence on 4-6-1991 Vijayanandan (A-5) had come to his house and given his wife a bag, Rs 5000 and three sarees and told her that he would come and collect the same later. N. Basant Kumar (PW 75) returned from Neyveli and then with his family left Madras and stayed at a place outside the city. At this point of time he learnt the name of Sivarasan though earlier he was

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never introduced to him by that name. On 18-1-1992 one CBI inspector came to meet N. Basant Kumar (PW 75) and asked him to appear at Malagai Police Station where he identified the book *Satanic Force* got printed by him. N. Basant Kumar (PW 75) identified various materials got printed by him from time to time. He identified the notes regarding the books, etc. purchased by Vijayanandan (A-5) when he had come to the house of N. Basant Kumar (PW 75) and N. Basant Kumar (PW 75) had seen him writing (Exh. P-351). He also identified the book *Alisiya* and its Tamil manuscript (MOs 113 and 114). He also identified various other documents and the articles recovered from the house.

469. Dilip Chodia (PW 88) is a dealer of tyres and batteries. The name of his firm is International Tyres Service from whose shop Arivu (A-18) purchased the battery. He identified the battery (MO 209) sold to one Rajan on 3-5-1991. Battery (MO 209) was seized by M. Narayanan (PW 281), DSP from the pit dug in the kitchen of the house occupied by Vijayan (A-12). Mohanraj (PW 254), Wireless Expert, stated that a wireless set could be operated using the 12-volt battery like MO 209. Wireless set was installed in the house of Vijayan (A-12) by making use of battery MO 209 for communication with LTTE leaders in Sri Lanka which was operated by deceased accused Nero, who was a wireless operator and came to India in a nine-member group on 1-5-1991.

470. R. Ravichandran (PW 95) is a salesman of the showroom from where the Kawasaki Bajaj motorcycle (MO 82) bearing Registration No. TN-07-A-5203 was purchased by Arivu (A-18). The address which Arivu (A-18) gave while buying the motorcycle was the address of Padma (A-21) when she was staying in Kalyani Nursing Home quarters. At the relevant time of purchase of the motorcycle she was, however, staying in Royapettah house.

471. N. Moideen (PW 91) was working as a salesman in a shop at Royapettah High Road. He said that in the second week of May 1991 he sold two Golden Power batteries for Rs 46. He was asked if he could identify the man whom the police officers had brought to the shop as the person to whom he sold the batteries. He identified Arivu (A-18).

472. G.J. Shrinivasan (PW 252), Assistant Director, Tamil Nadu Forensic Science Laboratory, Madras after examining the portion of 9-volt Golden Power battery (MO 678) recovered from the scene of the crime gave opinion that these were the portions of 9-volt Golden Power battery.

473. Lt. Col. Manik Sabharwal (PW 157), Bomb Expert and Dr P. Chandrasekaran (PW 280), Director, TNFSL, Madras gave opinion that 9-volt Golden Power battery was used as power source in the belt bomb used by Dhanu. From the statement of N. Basant Kumar (PW 75) it was seen that Arivu (A-18) was connected with the printing and publication of propaganda material for LTTE including the book *Satanic Force*. Dr R. Kuppusamy (PW 194) said in his statement after examining the exposed frames of negatives used by Haribabu at the scene of crime (Exh. P-735) that these

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were from Kodak colour film and that it was used for camera (MO 1). The unexposed portion of the Kodak colour film is MO 542 which was cut and removed from Exh. P-735. The material which had been removed by Arivu (A-18) from the house of Padma (A-21) after learning about the assassination of Rajiv Gandhi was subsequently recovered on the basis of disclosure statement (Exh. P-1343). In his letter (Exh. P-128) written by Trichy Santhan to Irumborai (A-19) he mentioned about the mistake committed by LTTE with the supporters of Sivarasan like Arivu (A-18) connected with Baby Anna.

474. Athirai (A-8) is a Sri Lankan national. At the very young age of 13 years she got involved in the LTTE movement. She learnt how to prepare code-sheets for conveying messages, making of bombs and driving. In the military camp she got training to use AK-47 rifle. She also got training in photography and videography. Her brothers and sisters are settled in Germany or Switzerland. In her confession she said that one of the principles of LTTE is that it does not brook any opposition and the undisputed leader of LTTE is Prabhakaran. She gave the names of various LTTE leaders in whose contacts she came. She said Pottu Omman is in charge of the Intelligence Branch of LTTE and sister Shanthi and Akila are also in that branch. Athirai (A-8) said that her friend, who was 24 years of age and an LTTE wireless operator, died in fight with IPKF in 1988. Her own boyfriend also died in 1989 in a raid by IPKF. Athirai (A-8) also got training in the Political Wing of LTTE. She had been explained as to how Prabhakaran was compelled to sign the Indo-Sri Lankan Accord and how IPKF instead of protecting Tamilians in Sri Lanka was fighting against them and committing atrocities on the innocent Tamilians there. She said about the organizations of Black Tigers and Black Women Tigers whose members would sacrifice their lives in daring acts like suicide. Athirai (A-8) said she was able to recognize all the persons in the LTTE organization. Dhanu, she said, belonged to Suicide Squad. She was a Black Woman Tiger. She did not wear spectacles but for the purpose of not being identified in Rajiv Gandhi murder case she wore spectacles. Suba also belonged to Army Branch of LTTE. Both had received the same training in the military camp of LTTE in Sri Lanka. Suba might have come along with Dhanu to encourage her and to give training to her and to tie the belt bomb. In March 1991 Athirai (A-8) met Pottu Omman who introduced her to Kanagasabapathy (A-7). Pottu Omman told her that Kanagasabapathy (A-7) was a helper in LTTE and would be coming with her to Delhi to make arrangements for her stay. The arrangement was that Athirai (A-8) would go to Delhi purportedly to learn Hindi or computer. She understood that the arrangement was with a view to gather information regarding certain marked places in Delhi and the work was in connection with the organization, and further that if persons belonging to LTTE came to Delhi they would be staying there in her house and would finish their work without any suspicion.

475. Relatives of Kanagasabapathy (A-7) were in Madras. He had already been to Delhi earlier. Athirai (A-8) and Kanagasabapathy (A-7)

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came to India in the end of April 1991. They came in a fully-armed boat of LTTE. On reaching Indian soil they went to the house of V. Kantha Rao (PW 60) @ Chokan, another LTTE sympathiser. That place was Kodaikkarai. From there V. Kantha Rao (PW 60) took them to Madras and they went to the house of Jai Kumari (PW 109) who was a relative of Kanagasabapathy (A-7). While they were staying in the house of Jai Kumari (PW 109) Sivarasan came to meet her which was a pre-arranged meeting earlier by Pottu Omman. Sivarasan gave money to Athirai (A-8) for expenses and for her stay in Delhi. It appeared to Athirai (A-8) that Sivarasan was in charge of her. Athirai (A-8) said in her confession that later on she came to understand that when occasion would arise Sivarasan and other LTTE people would come for their purposes to Delhi and would be staying in the house taken by her. Sivarasan also gave money to Kanagasabapathy (A-7) for expenses. Once when Sivarasan came to the house of Jai Kumari (PW 109), Athirai (A-8) told him that there were all male members in the house of Jai Kumari (PW 109). He, therefore, took her to the house of P. Thirumathi Vimla (PW 62). Athirai (A-8) said that that house was arranged through Shanmugavadivelu (A-15) as both P. Thirumathi Vimla (PW 62) and Shanmugavadivelu (A-15) are sympathisers of LTTE. Athirai (A-8) would either go to the house of Shanmugavadivelu (A-15) or Thangam Stores, a store nearby, to telephone her elder brothers in Germany. P. Thirumathi Vimla (PW 62) or her daughter would accompany her. Athirai (A-8), P. Thirumathi Vimla (PW 62), her family members and her father then went outside Madras on excursion from 8-5-1991 to 14-5-1991. P. Thirumathi Vimla (PW 62) in her statement said that on 5-5-1991 Shanmugavadivelu (A-15) with some other person had come to her house in her absence. That person had brought a letter from her mother in Sri Lanka for her. The letter (Exh. P-209) was left in the house. Next day a boy aged about 22 or 23 years came to her house. He was wearing pant and shirt and was also wearing spectacles. P. Thirumathi Vimla (PW 62) said she could not find if that person was having an artificial left eye. By the time that person came she had read the letter. Shanmugavadivelu (A-15) was not there at that time. That person introduced himself as Raghu (Sivarasan). On account of the letter from her mother P. Thirumathi Vimla (PW 62) asked Sivarasan what help she could offer him. Sivarasan said that he brought a lady with him who had to go to Germany and that her name was Gauri [Athirai (A-8)] and he wanted a secure place for her to stay. Sivarasan told P. Thirumathi Vimla (PW 62) that she being a mother of daughters might accept his request to allow Athirai (A-8) to stay in her house. He said Athirai (A-8) would leave within a month. P. Thirumathi Vimla (PW 62) agreed. On 7-5-1991 Sivarasan brought Athirai (A-8) along with him to stay with P. Thirumathi Vimla (PW 62). On 16-5-1991 Sivarasan again came to meet Athirai (A-8) and gave her Rs 10,000 to meet her expenses. In between Sivarasan asked Kanagasabapathy (A-7) to make efforts to arrange the house for himself [Kanagasabapathy (A-7)] and for Athirai's (A-8) stay at Delhi and for this purpose he gave Rs 23,000 to him. Kanagasabapathy (A-7)

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accompanied by one Vanan, whom she did not know, left for Delhi on 20-5-1991. Sivarasan came to meet Athirai (A-8) one day after the assassination of Rajiv Gandhi and told her that it was difficult to take charge of her as the police might arrest him. He told her that Santhan (A-2) would take charge of her. Speaking about the assassination of Rajiv Gandhi Sivarasan laughed. After his return from Delhi Kanagasabapathy (A-7) did not meet Athirai (A-8). He, therefore, shifted from the house of Jai Kumari (PW 109) due to police surveillance. Sivarasan met Athirai (A-8) on 3-6-1991. Thereafter Santhan (A-2) used to visit her frequently. Sivarasan, Kanagasabapathy (A-7), Manju, daughter of P. Thirumathi Vimla (PW 62) and Athirai (A-8) used to meet at Marina Beach and talk about the status of Sri Lankan Tamilians as compared to status of Tamilians in India. In one of these meetings Kanagasabapathy (A-7) told Athirai (A-8) that he had arranged a double-bedroom house at Delhi. They decided to go to Delhi on 1-7-1991. Three days before that day Santhan (A-2) came and told Athirai (A-8) that police was interrogating Shanmugavadivelu (A-15) and it would be better for her not to stay with P. Thirumathi Vimla (PW 62) any further. He took Athirai (A-8) to the house of one Rajagopal at Pammal and introduced her to him as Sasikala. Santhan (A-2) himself went in hiding. Athirai (A-8) went to the house of P. Thirumathi Vimla (PW 62) for taking leave of her that she and Kanagasabapathy (A-7) were going to Trichi as they did not like to be caught by the police. Rajagopal and Santhan (A-2) then took them to the railway station from where they boarded a train for Delhi. At Delhi they were taken into police custody.

476. On the morning of 15-5-1991 Athirai (A-8), who was staying with P. Thirumathi Vimla (PW 62) wanted to make a phone call from the house of Shanmugavadivelu (A-15). Anju, daughter of P. Thirumathi Vimla (PW 62) went along with her but found the house of Shanmugavadivelu (A-15) locked and came back. P. Thirumathi Vimla (PW 62) then took Athirai (A-8) again to the house of Shanmugavadivelu (A-15) for making a phone call but the house was locked at that time too. She then advised that they could make a call from Thangam Stores which was near to her house. Athirai (A-8) said that they gave their address to the shopkeeper who would immediately come and inform them if there was a call for Athirai (A-8). On 21-5-1991 Athirai (A-8) was still staying with P. Thirumathi Vimla (PW 62). When P. Thirumathi Vimla (PW 62) saw the photograph of Sivarasan in the newspaper with the news that he was connected with the murder of Rajiv Gandhi she told this to Athirai (A-8). P. Thirumathi Vimla (PW 62) asked Athirai (A-8) if Sivarasan was the person connected with the murder of Rajiv Gandhi and whether he brought Athirai (A-8) along with him. Athirai (A-8) said it was not so and that Sivarasan was a newspaper reporter and that he might have gone there (Sriperumbudur) and that by mistake his photograph would have been published. Athirai (A-8) told P. Thirumathi Vimla (PW 62) that she need not get scared about that and that it would not be so. On 3-6-1991 when P. Thirumathi Vimla (PW 62) came back from her school in the afternoon and was climbing the stairs to go to her house

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Sivarasan and Athirai (A-8) were coming down from the upper stairs talking to each other. P. Thirumathi Vimla (PW 62) was shocked and scared and asked Sivarasan as to why he acted in that way. She said her children and grandfather at home were crying bitterly and that he should take away Athirai (A-8) from there and asked him not to come to her house any further. Sivarasan said that he would not come thereafter and that persons who would identify him and give information about him would meet with the same fate as Padmnabha and that it would apply to whomsoever it might be. Saying this he went away and did not come thereafter. P. Thirumathi Vimla (PW 62) told Athirai (A-8) also not to stay there any further and asked her to go away. At this Athirai (A-8) cried and said she did not have anyone else other than P. Thirumathi Vimla (PW 62) and that Sivarasan had already gone away. She pleaded that she be permitted to stay on. P. Thirumathi Vimla (PW 62) kept quiet. She read in the newspapers that all Sri Lankan refugees were required to get their names registered. Since Athirai (A-8) was not having any passport or any other document P. Thirumathi Vimla (PW 62) sent her daughter Manju along with Athirai (A-8) to get Athirai (A-8) registered as a refugee. They returned and said it had been done. Application form requesting for issuance of identification card for Athirai (A-8) is Exh. P-214 and the application for getting the name registered is Exh. P-215. These were filled and signed by Athirai (A-8) and bear her photograph fixed on it. One day when P. Thirumathi Vimla (PW 62) returned from her school she was told by her children that uncle of Athirai (A-8) by the name of Kanagasabapathy had come. At this P. Thirumathi Vimla (PW 62) confronted Athirai (A-8) that from where her uncle had come when she earlier had told her that she had no one to go to. She said that her uncle had come from Trichi and she knew about that only when he came. Next day Kanagasabapathy (A-7) again came and P. Thirumathi Vimla (PW 62) accordingly asked him as to why they were hatching conspiracy at her house and that photograph of the person who brought Athirai (A-8) had been published in the newspapers. She asked him to take away Athirai (A-8). Kanagasabapathy (A-7) said that he was going to Trichi and would come back again and take her away. After a few days Santhan (A-2) came. P. Thirumathi Vimla (PW 62) asked him also to take away Athirai (A-8). A few days thereafter Santhan (A-2) had come to the house of P. Thirumathi Vimla (PW 62) and informed her that CBI had come to the house of Shanmugavadivelu (A-15) and conducted search there and had caught him. He said CBI might come to her house also and since Athirai (A-8) was not holding a passport it would be a problem for her and therefore he had to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went with Santhan (A-2).

477. Kanagasabapathy (A-7) is a Sri Lankan national. He did not make any confession. He came to India in the last week of April 1991 along with Athirai (A-8). He was having a genuine passport (MO 558) which was seized from him. He did not come to India through a proper channel but landed at Kodaikkarai with Athirai (A-8). Jai Kumari (PW 109), who is also

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a Sri Lankan national, came to India in 1986 through proper channel. In between she went to Sri Lanka after her marriage and again returned to India in March 1988. At that time Kanagasabapathy (A-7) who is her uncle (her mother's sister's husband) had also come along with her. Kanagasabapathy (A-7) went back to Sri Lanka in August 1988. In September 1989 he again came to India to attend his son's wedding and then returned to Sri Lanka. On the morning of 26-4-1991 he came to the house of Jai Kumari (PW 109) along with a young girl, Athirai (A-8) and another person. Kanagasabapathy (A-7) told Jai Kumari (PW 109) that Athirai's (A-8) name was Gauri and she belonged to Sri Lanka and that her mother had expired in a military attack and that she had come to study computer and journalism at Delhi. He also said that Athirai (A-8) would not talk much due to the grief of her mother's death. He did not introduce the other person but addressed him as brother, who left in the afternoon. The following day Kanagasabapathy (A-7) and Athirai (A-8) went to a book shop at Mount Road to buy some books. They purchased a Delhi road map there. They were also searching for a book containing addresses of VIPs but it was not available. On 2-5-1991 that person who had come with Kanagasabapathy (A-7) and Athirai (A-8) on 26-4-1991 came with Sivarasan. On 7-5-1991 Sivarasan again came and took Athirai (A-8) with him. Before leaving Athirai (A-8) told Jai Kumari (PW 109) that she would be staying at her brother's place and later she would go to Delhi. On 10-5-1991 Sivarasan again came on a motorcycle and took along with him Kanagasabapathy (A-7). Later Kanagasabapathy (A-7) came back to the house and took his briefcase, etc. and told Jai Kumari (PW 109) that he was leaving for Delhi and would return after a week. On 30-5-1991/31-5-1991 Kanagasabapathy (A-7) with two more persons came to the house of Jai Kumari (PW 109) in an auto. He stayed in the house while the other two left. Jai Kumari (PW 109) informed Kanagasabapathy (A-7) that the police was searching the houses of Sri Lankans stating that Sri Lankans were involved in Rajiv Gandhi murder case and she asked him to register in the police station. He declined and left the house at about 9.00 p.m. He left behind a briefcase which Jai Kumari (PW 109) opened and found that it contained airline tickets and a letter written by a person from Tamil Nadu House, Delhi. This letter was written to a person serving in Delhi Airport Authority to assist Kanagasabapathy (A-7). Kanagasabapathy (A-7) kept coming to the house of Jai Kumari (PW 109). He asked her to give the telephone number of Athirai (A-8). Jai Kumari (PW 109) knew earlier that Sivarasan was having one eye and when it was published in the newspaper in the second week of June 1991 that a person connected with the murder of Rajiv Gandhi was having one eye, she enquired from Kanagasabapathy (A-7) about Sivarasan and his connection with him. Kanagasabapathy (A-7) told her that she was imagining things and if she entertained in her mind anything harmful to Kanagasabapathy (A-7) or Athirai (A-8) God would punish her. Jai Kumari (PW 109) did give the telephone number of Athirai (A-8) to Kanagasabapathy (A-7) and said he was putting them in unnecessary problem. He said he would not come if she

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gave him the telephone number. It is only through newspapers that Jai Kumari (PW 109) came to know the name of the person as Sivarasan, who had come to her house for the first time on 2-5-1991. Athirai (A-8) telephoned Jai Kumari (PW 109) on 17-6-1991 and gave a telephone number as 8250228 and told her to give the number to Kanagasabapathy (A-7). That number was given by Jai Kumari (PW 109) to Kanagasabapathy (A-7). On 29-6-1991 Kanagasabapathy (A-7) again came to the house of Jai Kumari (PW 109), took his belongings and said that he was leaving for Delhi from where he would go to Johannesburg. When on 30-5-1991/31-5-1991 Kanagasabapathy (A-7) with two other persons came they told her that they had come from Delhi by air. Kanagasabapathy (A-7) opened an account in Canara Bank and he gave the address of Jai Kumari (PW 109). The account-opening form is Exh. P-516.

478. On 20-5-1991 Kanagasabapathy (A-7) went to Delhi by flight with one Vanan and stayed in Hotel Krishna there. K. Thiagarajan (PW 57) helped Kanagasabapathy (A-7) to get a house on rent at Moti Bagh in Delhi on monthly rent of Rs 2000 and an advance of Rs 6000. He was also staying in Krishna Hotel, Delhi. That Kanagasabapathy (A-7) and Vanan travelled by air is evident by flight coupons of Indian Airlines (Exh. P-1329 and Exh. P-1330). In the notebook (MO 159), diaries (MO 180 and Exh. P-1253), which are of Sivarasan, amounts have been shown to have been paid to Kanagasabapathy (A-7) and Athirai (A-8) and also to Vanan. In the wireless message (Exh. P-407) dated 14-6-1991 Sivarasan informed Pottu Omman that there was no news of Kanagasabapathy (A-7) who had gone to Delhi. This wireless message had been intercepted by T.P. Sitther (PW 78) and decoded by S. Mani (PW 84). On both the occasions at Delhi Kanagasabapathy (A-7), first time with Vanan and second time with Athirai (A-8), stayed in Krishna Hotel. Ramkumar (PW 196), partner of Krishna Hotel has given statement with reference to the registers of arrival and departure (Exh. P-931) kept in the hotel. He had identified Kanagasabapathy (A-7) and Athirai (A-8). According to his record K. Thiagarajan (PW 57) along with Rajiv Pant stayed in the hotel from 19-5-1991 to 1-6-1991 and Kanagasabapathy (A-7) and Vanan stayed from 20-5-1991 to 29-5-1991. Entry in the hotel register on 3-7-1991 was made by Kanagasabapathy (A-7). They declared their nationality as Indian. Purpose of visit of Kanagasabapathy (A-7) was mentioned as business and that of Athirai (A-8) as studies and the place from where they arrived was mentioned as Madras. On 4-7-1991 both Kanagasabapathy (A-7) and Athirai (A-8) were arrested by CBI at Krishna Hotel, Delhi.

479. Vijayanandan (A-5) is a Sri Lankan national. He came to India on 1-5-1991 and was one of the members of the nine-member group. He made no confession. A forged passport (MO 559) was recovered from him and seized during investigation. P.G. Abeykoon Bandara (PW 185) who was Deputy Controller, Dept. of Immigration and Emigration, Sri Lanka had testified that the passport (MO 559) was a forged document. On arrival from Sri Lanka Vijayanandan (A-5) stayed in Komala Vilas Lodge, Madras. He

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made entry (Exh. P-497) in the arrival register of the Lodge (Exh. P-496). He wrote that he had come from Madurai and was a teacher by profession. The reason which he gave for coming to Madras was "wedding". This had been testified by A. Ravindra Reddy (PW 100), Manager of Komala Vilas Lodge. Document Exh. P-351 is a slip of paper recovered from the residence of N. Basant Kumar (PW 75). This slip of paper has been marked as Exh. P-351 in the statement of N. Basant Kumar (PW 75) when he said that he could identify the document regarding the books, etc. purchased by Vijayanandan (A-5) when he was staying in his house. It is doubtful if such a statement is enough to prove the document. This document was put to the accused in his statement under Section 313 CrPC which he denied. This document shows the arrival of Vijayanandan (A-5) at Kodaikkarai on Indian soil on 1-5-1991 and then his coming to stay in Komala Vilas Lodge. In diary (MO 180) of Sivarasan seized from the house of Jayakumar (A-10) it is mentioned that a sum of Rs 50,000 was paid to Vijayanandan (A-5) on 8-5-1991. There is also an entry in this diary which shows that Sivarasan was to meet Vijayanandan (A-5) on 18-5-1991 in the morning from 9 to 12. That he did come to the house of N. Basant Kumar (PW 75) has been spoken to by N. Basant Kumar (PW 75).

480. Shankar (A-4) is a Sri Lankan national. He is also one of the nine-member group who came to India in a boat on 1-5-1991. At Kodaikkarai where the boat came Shankar (A-4) stayed with one Jagadeesan till 15-5-1991 and then came to Madras and stayed at Esware Lodge from 16-5-1991 to 23-5-1991. Before coming over to Madras Shankar (A-4) met Murugan (A-3) at Kodaikkarai when Murugan (A-3) was leaving for Jaffna but could not leave as the boat had not arrived from Sri Lanka. Murugan (A-3) gave him a slip of paper (Ext. 1062) containing his name "Thas" and the name of Nalini (A-1) and her telephone number 419493. Santhan (A-2) and Sivarasan met Shankar (A-4) at Esware Lodge and gave him Rs 10,000. Santhan (A-2) and Sivarasan knew the place of stay of Shankar (A-4). On 23-5-1991 Shankar (A-4) sought help of S. Kalyan Krishnan (PW 58), owner of Esware Lodge to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 of Ebenezer Stores. Shankar (A-4) was arrested on 7-6-1991 at Thiruthuraipoondi near Nagapattinam. Exh. P-401 is a wireless message from Sivarasan to Pottu Omman dated 9-6-1991 which reads: "... There is news that one of my associates was caught at Nagapattinam and he has told all the news, things about me...." In letter (Exh. P-129) dated 7-9-1991 from Trichy Santhan (DA) to Prabhakaran it was mentioned that CBI had caught Shanmugham (DA) only after it was disclosed by Shankar (A-4) that Murugan (A-3), Robert Payas (A-9) and Santhan (A-2) had all come (from Sri Lanka) and landed at Shanmugham's place. In diary (Exh. P-1253) of Sivarasan the fact that Rs 10,000 was paid to Shankar (A-4) was mentioned. In notebook (MO 159) of Sivarasan there is again a mention of payment of Rs 5000 by Sivarasan to Shankar (A-4) (Exh. P-439). Ch. Gandhi (PW 267) is a handwriting expert and has proved the handwriting of Sivarasan.

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481. S. Kalyan Krishnan (PW 58) is running Esware Lodge. With reference to his guest register maintained in his Lodge he said that on the evening of 16-5-1991 one Jagadeesan came to his Lodge to take a room. He said he was a regular customer for the past about 20 or 25 years. He said later a guest whose name he came to know was Shankar (A-4) joined Jagadeesan. Though Jagadeesan left, Shankar (A-4) continued to stay in the Lodge. On 23-5-1991 Shankar (A-4) told S. Kalyan Krishnan (PW 58) that he was vacating the room and was going to his native place. He wanted to make a phone call. He gave a slip of paper on which it was written in ink as "Payas House, Sivarasan," and a telephone number was also mentioned. S. Kalyan Krishnan (PW 58) telephoned on that number and was told that Payas House was situated at a distance of about 1½ furlongs and message could not be conveyed. He, however, got the address of Robert Payas (A-9) and made a note of that on the slip of paper given by Shankar (A-4). That slip of paper (Exh. P-164) was identified by S. Kalyan Krishnan (PW 58). The address in pencil on the slip (Exh. P-164) was in the hand of S. Kalyan Krishnan (PW 58). This slip he kept with him and wrote another slip (Exh. P-1645) giving the details of the address of Robert Payas's (A-9) house to Shankar (A-4). S. Kalyan Krishnan (PW 58) also explained to Shankar (A-4) a route to go to Robert Payas's (A-9) house. There is, however, nothing in the evidence to show that Shankar (A-4) did go to the house of Robert Payas (A-9).

482. Robert Payas (A-9), his wife Prema, sister Premlatha, brother-in-law Jayakumar (A-10), his wife Shanthi (A-11) and some other 30 or 35 Tamils had come to India in September 1990 from Sri Lanka and got themselves registered as refugees on 20-9-1990. As noted above Prema, wife of Robert Payas (A-9) and Jayakumar (A-10) are brother and sister. Shanthi (A-11) is an Indian national. Others are all Sri Lankan nationals. Shanmughalingam is the father of Prema and Jayakumar (A-10). In his confession Robert Payas (A-9) said that he had been helping LTTE since 1985 during war — first with Sri Lankan army and thereafter with Indian army, IPKF. He said a rival organization EPRLF betrayed them to IPKF which caught hold of them and kept them in custody for 15 days. IPKF also raided their houses and beat up the ladies severely. He said that at that time due to the action of IPKF his son aged 1½ months died. He said they had developed hatred towards IPKF and even EPRLF. According to him IPKF was subjecting common people to great sufferings like committing murders, rape and other kinds of ill-treatment and harassment. Jayakumar (A-10) was a frequent visitor to Tamil Nadu. Porur house of Jayakumar (A-10) was rented through M. Utham Singh (PW 56), proprietor of Ebenezer Stores who was paid commission. Jayakumar (A-10) also shifted to another house in Kodungaiyur. These two houses were arranged in such a way as to accommodate LTTE people comfortably. In the Porur house many LTTE personnel came to visit or even to stay there. Robert Payas (A-9) opened a savings bank account in Central Bank of India in his name. He said Kanthan had purchased one red Yamaha motorcycle bearing Registration No. TN-09-

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A-8213 in the name of Raja. Nishananthan had made arrangement for purchase of the motorcycle while Kanthan made the payment. Kanthan, Nishananthan and Sivarasan were making use of the motorcycle. Robert Payas (A-9) said that he knew that Sivarasan and Kanthan had come to India for some dreaded jobs and it was a known fact about LTTE's activities and its hand in assassinating Padmnabha and his friends in Madras. After some time Sivarasan started staying in the house of Jayakumar (A-10). Sivarasan used to come over to the residence of Robert Payas (A-9) frequently and to meet Kanthan and Santhan (A-2). In February 1991 Sivarasan had come to Porur house along with Murugan (A-3), who stayed with Robert Payas (A-9) for two days and thereafter went to stay at Royapettah house. Murugan (A-3) was a frequent visitor to the house of Robert Payas (A-9). He would come over there along with Sivarasan or of his own. He would come to take money from Kanthan or even to see Sivarasan. They used to assemble in the house of Robert Payas (A-9) and plan works for their "movement" and then they would execute those works as per their plans. LTTE members would have contacts with Sivarasan, Kanthan, Nishananthan through the telephone number 2343402 installed in Ebenezer Stores of M. Utham Singh (PW 56). Even calls would come from Colombo, Canada and England. T. Soundara Pandian (PW 54), who was working in Ebenezer Stores, would bring the messages. In the absence of Sivarasan, Kanthan and Nishananthan those messages would be received by Robert Payas (A-9) to help them. Kanthan only used to arrange for the money and give them to all for the conspiratorial work of LTTE. He would bring gold biscuits, encash them and give money to Sivarasan, Murugan (A-3) and other LTTE members. Indrankutti, another LTTE activist, would come from Trichi quite frequently. He would also help persons like Sivarasan and Kanthan. In the beginning of May 1991 Sivarasan brought Santhan (A-2) to the house of Robert Payas (A-9). Santhan (A-2) stayed there for two days and then at Haribabu's house. On 5-5-1991 Robert Payas (A-9), Santhan (A-2), Murugan (A-3), Haribabu, Arivu (A-18) and Sivarasan all met at Marina Beach. On 9-5-1991 Indrankutti came to Robert Payas (A-9) with Ruban (A-6) who had lost one of his legs in a bomb blast in Sri Lanka and had come to India with Sivarasan for medical treatment. Robert Payas (A-9) helped Sivarasan to get a learning licence for motorcycle. He could not get a regular licence as he had lost one of his eyes. A week before the assassination of Rajiv Gandhi Sivarasan and Kanthan had come to the residence of Robert Payas (A-9) and they had a conference. Kanthan gave money to Sivarasan. Robert Payas (A-9) said that that money was used for their conspiracy work. Between 15-5-1991 and 21-5-1991 Santhan (A-2) came to the residence of Robert Payas (A-9) three times — first time when he came Kanthan gave him Rs 2 lakhs to hand over the same to Sivarasan who was staying at the residence of Jayakumar (A-10), second time Santhan (A-2) got Rs 5 lakhs and went away. One or two days later Robert Payas (A-9) and Santhan (A-2) went to the market to make certain purchases for Ruban (A-6) which were needed for his journey to Jaipur and back. Ruban (A-6) was staying with Robert Payas (A-9). Robert Payas (A-9)

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also mentioned the name of Vanan being an LTTE member. He said that in the month of May he had gone to the residence of Vanan. There he met Vijayanandan (A-5) who had come to India in the boat along with Sivarasan, Santhan (A-2) and others in the beginning of May 1991. According to Robert Payas (A-9) Sivarasan and Santhan (A-2) would also be going over to the residence of Vanan. On his first visit to Delhi, Kanagasabapathy (A-7) had gone along with Vanan. This Vanan has not been examined. Robert Payas (A-9) said in his confession that between 15-5-1991 and 20-5-1991 Ramanan, Santhan (A-2), Rangan and Kanthan had come to his residence several times in connection with the LTTE conspiracy and they used to receive phone calls from Sivarasan through Ebenezer Stores. On 21-5-1991 Robert Payas (A-9) was at his residence. On 22-5-1991 he got the news of Rajiv Gandhi's assassination. He did not leave his residence on 23-5-1991 expecting a message from Sivarasan. On 24-5-1991 Sivarasan came to his house on his Kawasaki Bajaj motorcycle to meet Kanthan but Kanthan was not there. On 25-5-1991 when Kanthan came on his red Yamaha motorcycle Robert Payas (A-9) told him that Sivarasan had come the previous day looking for him. On 27-5-1991 Santhan (A-2) came to the residence of Robert Payas (A-9) and they all decided to leave Madras in order to escape from the police. On 28-5-1991 they bought tickets in assumed names and went to Thiruchandur by night bus on 29-5-1991. They did not check into any lodge in Thiruchandur and on 30-5-1991 again by night bus came to Madurai on 31-5-1991. Robert Payas (A-9) said they took ladies with them to avoid any suspicion. For Madurai also they took night bus and reached Madras on 1-6-1991. Santhan (A-2) went to some other place. Robert Payas (A-9) sent his wife and his younger sister to the residence of his uncle in Vadapalani and he himself went to the residence of one Loga in Nasapakkam to hide. On 3-6-1991 he went to Vadapalani and brought back his family to the Porur house. He did not receive any information either from Sivarasan or Kanthan and in a few days he was arrested by CBI. According to Robert Payas (A-9) all his expenses were met by Kanthan who also paid for the expenses of other LTTE members staying in his house.

483. Jayakumar (A-10), who is the husband of Shanthi (A-11) gave a confession. He also talks of war first between Sri Lankan army and LTTE and then LTTE and IPKF. He said that Robert Payas (A-9), his sister's husband, was helping LTTE in his native village. In one raid made by IPKF Robert Payas (A-9) and Jayakumar (A-10) were caught and kept in a camp. Jayakumar (A-10) was released after a few days but not Robert Payas (A-9). Lives had become miserable because of raids by IPKF. They were now having close contacts with LTTE movement who were providing them even financial help. In September 1990 Jayakumar (A-10) said LTTE "people" told him and Robert Payas (A-9) to go and stay in Madras with instructions to keep houses ready for their purpose. He said on account of the atrocities committed jointly by IPKF and EPRLF, LTTE movement had thought of teaching a lesson to the leaders in India and to the persons belonging to EPRLF hiding in Madras. Since they were sent by LTTE

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movement to India they did not give two sovereigns of gold and pay Rs 1500 for each of the persons coming to India which LTTE was charging. After getting themselves registered at Rameshwaram as refugees they all went to stay at Madras. Nishananthan, Saravanan, Raja @ Kalapathy, all LTTE people, arranged Porur house which was rented out in the name of Jayakumar (A-10). Nishananthan and Kumaradoss stayed in Porur house with the families of Robert Payas (A-9) and Jayakumar (A-10). After about one week of stay in Porur house another LTTE activist Kanthan also came and stayed in the house. Since both Jayakumar (A-10) and Robert Payas (A-9) were unemployed Kanthan was giving them money. In fact Kanthan was providing money for all the matters of LTTE movement in Madras. A wireless set was installed at Porur house after Kanthan had come to stay there. He and Nishananthan @ Nixon used to talk to the movement at Jaffna by wireless. Another supporter of LTTE Indrankutti also used to come to Porur house in white Maruti van bearing Registration No. TAY-9444 from Trichi. He would also get money from Kanthan. Jayakumar (A-10) also talked of buying a motorcycle by Kanthan in the name of Shanmugaraja, an LTTE man through Sarvanan and Kalapathy @ Raja. Jayakumar (A-10) said that Robert Payas (A-9) and Kanthan told him that a high-ranking person from the movement would come to India during the second week of December and that his name was Sivarasan and he was coming to India with a dangerous plot. It was decided that another house should be arranged by Jayakumar (A-10) for his stay. It was so thought that since Jayakumar (A-10) would be staying with family nobody would have suspicion on Sivarasan. Kanthan also told Jayakumar (A-10) that Sivarasan would give him the required money for all the expenses. Accordingly Kodungaiyur house was rented with the help of Ramaswamy, father-in-law of Jayakumar (A-10). The house was taken in the name of Ramaswamy. Jayakumar (A-10) moved with his family to that house in December 1990 and after a fortnight or so Robert Payas (A-9) brought Sivarasan to his house and told him that Sivarasan would stay there. Jayakumar (A-10) was told that he should be helpful to Sivarasan and to all the activities of the movement. Jayakumar (A-10) said "that Sivarasan was sent to India by the movement to fulfil a dangerous plot". Sivarasan had brought a suitcase with him in which he kept his dresses, AK-47 rifle, a diary and a pistol. Whenever he would go out he would take the pistol with him kept concealed in a thick book in which he had made a cavity. From January to April 1991 Sivarasan went to Sri Lanka two or three times and returned. On 2-5-1991 when he returned from Sri Lanka he brought two LTTE lady tigresses Dhanu and Suba. Jayakumar (A-10) said it was known to him that "Sivarasan had brought those two LTTE movement lady tigresses with a murder plan". He said it was also known to him that Sivarasan and lady tigresses had decided to wreak vengeance for the atrocities committed by IPKF. After staying in the house of Jayakumar (A-10) for a day or so those two girls went to stay in the house of Vijayan (A-12) and Bhaskaran (A-14), his father-in-law. Sivarasan also bought one red Bajaj Kawasaki motorcycle which he kept in the house of

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Vijayan (A-12). Suba and Dhanu would often come to the house of Jayakumar (A-10). Shanthi (A-11) would go with them for shopping. Sivarasan would visit the house of Vijayan (A-12) daily. One day when Sivarasan came to stay in the house of Jayakumar (A-10), he brought Santhan (A-2), who was his "partner". Jayakumar (A-10) said that he knew that Santhan (A-2) was in connivance with Sivarasan in all the activities and that Santhan (A-2) was assisting Sivarasan "for the dangerous work which he would carry out". Since Jayakumar (A-10) had no work Sivarasan gave him Rs 35,000 and asked him to start a business of grinding coffee seeds. On 19-4-1991 Jayakumar (A-10) paid Rs 20,000 as advance and took a shop on rent in the name of his wife Shanthi (A-11) at a monthly rent of Rs 450. He bought coffee seeds grinding machine also for Rs 15,000. Then he applied for a telephone connection paying Rs 8000 for his shop. He applied for telephone connection in the name of his wife Shanthi (A-11). Telephone connection was applied for the convenience of Sivarasan and other persons of LTTE movement to contact among themselves. Whenever Suba and Dhanu came to the house of Jayakumar (A-10) Sivarasan would take them separately and talk to them secretly. A few days before the assassination of Rajiv Gandhi Sivarasan told Jayakumar (A-10) to stitch a cloth cover for his pistol which Shanthi (A-11) did. If the gun was put in the cover it would not be visible to others. Then Sivarasan also got one kurta and pyjama. The measurements were provided by Jayakumar (A-10) as Sivarasan was not willing to go to the tailoring shop. One day Shanthi (A-11) also took Suba to a nearby tailoring shop and got dresses stitched for her. Jayakumar (A-10) was quite often visiting the house of Robert Payas (A-9). In the month of May 1991 he had seen Sivarasan, Kanthan, Santhan (A-2) and Murugan (A-3) in that house. There they would confer about the plot. Then Jayakumar (A-10) added "about a week before the murder of Rajiv Gandhi, Sivarasan had talked with Santhan (A-2) about his murder plan". Sivarasan left the house of Jayakumar (A-10) on the morning of 21-5-1991 and returned at 1 o'clock and went to his room. He changed his dress and now he wore kurta-pyjama. He hid a pistol in his dress. He was supposed to go to the public meeting of Rajiv Gandhi at Sriperumbudur. From the house of Jayakumar (A-10) he went to the house of Vijayan (A-12). He returned at 12.30 in the night with Suba and Nalini (A-1). It was confirmed that Rajiv Gandhi was murdered by Dhanu. Sivarasan then went upstairs to talk about the incident with Santhan (A-2). In the morning of 22-5-1991 Santhan (A-2) went out and bought a newspaper. Afterwards Suba and Nalini (A-1) went to watch news on TV to the neighbour's house [D.J. Swaminathan (PW 85)] while Sivarasan went to the house of Vijayan (A-12). On 23-5-1991 in the morning Sivarasan went out with Nalini (A-1) and then took Suba and left her at the house of Vijayan (A-12). When he came back in the night he said that he had decided to leave within a day or two. He kept all his things in a suitcase which included his clothes and that of Suba, two big dictionaries and notebooks which Sivarasan was keeping, took the pistol separately and packed the bullets in a separate parcel. In the notebooks Sivarasan used to

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write about his income and expenses. In the suitcase he also kept photos, passports, cassettes and the artificial eye which he used to wear. On his directions Jayakumar (A-10) dug a pit in the corner of the kitchen where he placed the suitcase and parcel of bullets and covered the pit with a concrete slab that he had bought, again on the instructions of Sivarasan. Jayakumar (A-10) then painted the area in such a way that nobody could find out. All these things were seized on 26-6-1991 as disclosed in the confession statement of Jayakumar (A-10). Sivarasan then left but Santhan (A-2) kept on staying in the house for two or three days. Then he also left as Sivarasan had instructed Jayakumar (A-10) to change the house. Before leaving he gave Rs 5000 to Jayakumar (A-10). On the same day or the following day Nero (DA), another partner of Sivarasan, came and received a bag from Jayakumar (A-10) as per instructions of Sivarasan. Earlier also Nero had come to the house of Jayakumar (A-10). He was connected with the LTTE movement and was a helper of Sivarasan.

484. M. Utham Singh (PW 56) is the owner of Ebenezer Stores in Porur locality. T. Soundara Pandian (PW 54) was working as assistant in his shop. Telephone number 2343402 was installed in his shop premises. One person by the name of Shanmugham got acquainted with M. Utham Singh (PW 56) as he had been buying provisions from his shop. Rajakalapathy and his wife, father-in-law and mother-in-law were also residing with Shanmugham. In September 1990 two Sri Lankan Tamilians came to M. Utham Singh (PW 56) on a red Yamaha motorcycle and asked him whether there was any house available on rent. House of Dr G.J. Shrinivasan (PW 252) in the said locality was newly built. Dr G.J. Shrinivasan (PW 252) wanted the house to be let out and for that purpose he had kept a key with M. Utham Singh (PW 56) for him to show the house to anyone who wanted to take the same on rent. When M. Utham Singh (PW 56) asked those two persons if they would give the name of any acquaintance in the area they told him about Rajakalapathy. When M. Utham Singh (PW 56) asked them to bring Rajakalapathy he came with them. The house in question was shown and they liked the same. Those two persons, who came on the motorcycle, were Sarvanan and Nishananthan @ Nixon. Rate of rent and the advance amount payable was agreed to during discussion with Dr G.J. Shrinivasan (PW 252). On the request of Dr G.J. Shrinivasan (PW 252) as to how many members would be staying in that house Sarvanan furnished the list of seven members on a white piece of paper (Exh. P-153), who were K. Kumaralingam, K. Kumaradoss, K. Premlatha, K. Nishananthan, S. Jayakumar, J. Shanthi and K. Prema. Families of Robert Payas (A-9) and Jayakumar (A-10) then occupied the house. They used to purchase provision from the shop of M. Utham Singh (PW 56). Robert Payas (A-9) told M. Utham Singh (PW 56) that his relatives were living abroad and requested him that if they made any phone call for Robert Payas (A-9) he might call him. To this M. Utham Singh (PW 56) agreed. Jayakumar (A-10) also used to receive calls from Germany and Robert Payas (A-9) from Italy and Denmark. Robert Payas (A-9) also introduced Kanthan to M. Utham Singh

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(PW 56), who also requested for the facility of receiving phone calls. M. Utham Singh (PW 56) said that when these persons used to attend the calls they would speak only in cerebral "yes", "correct", "OK" and sometimes "I will come". Either M. Utham Singh (PW 56) or his assistant T. Soundara Pandian (PW 54) would go to the house of Robert Payas (A-9) to tell them of the receipt of the call. On 22-5-1991 M. Utham Singh (PW 56) did not open the shop because of some ceremony in his house. On 23-5-1991 T. Soundara Pandian (PW 54) came to open the shop in the morning at 7.00 a.m. M. Utham Singh (PW 56) himself did not go. At about 12.30 noon M. Utham Singh (PW 56) made a call to the shop and asked how was the business. T. Soundara Pandian (PW 54) told him that it was on an average. M. Utham Singh (PW 56) instructed him to close the shop and go home since riots had broken out in certain areas. At about 1.30 p.m. T. Soundara Pandian (PW 54) came to the house of M. Utham Singh (PW 56) and told him that he had received a call from one Shankar, who was staying in some lodging house and had requested him to call Robert Payas (A-9) or Sivarasan to which T. Soundara Pandian (PW 54) had replied that he was the only person in the shop and could not go to give the message. He said after two minutes of that call Shankar again called him and asked him to give the address of the shop. According to M. Utham Singh (PW 56) neither Robert Payas (A-9) nor Jayakumar (A-10) was engaged in any work. In December 1990 Jayakumar (A-10) shifted from Porur house though still he would be visiting the shop of M. Utham Singh (PW 56) to purchase provisions. Rent agreement was executed bearing signatures of Dr G.J. Shrinivasan (PW 252) and M. Utham Singh (PW 56). In fact there were two agreements, one for rent (Exh. P-154) and one for fitting and fixtures (Exh. P-155).

485. T. Soundara Pandian (PW 54) employee of M. Utham Singh (PW 56) said that Robert Payas (A-9) and Jayakumar (A-10) used to get phone calls from the shop Ebenezer Stores of which M. Utham Singh (PW 56) was the proprietor. The phone calls used to come from foreign countries and local calls were also received. Apart from Robert Payas (A-9) and Jayakumar (A-10) Kanthan, Sivarasan and Nixon also used to come to the shop to receive phone calls. Sometimes T. Soundara Pandian (PW 54) would go to Porur house to leave a message that telephone call had come. He said that on the second day of the death of Rajiv Gandhi he came to the shop as usual. There was a telephone call and the person who called wanted him to call either Sivarasan or Robert Payas (A-9). When T. Soundara Pandian (PW 54) declined because of riots nearby the phone was disconnected. After two or three minutes again a phone call came and the caller identified himself as Shankar and he said that he was the person who spoke earlier and wanted him to call Sivarasan or Robert Payas (A-9) urgently. T. Soundara Pandian (PW 54) told him that he was alone in the shop and could not go to call them. That person (Shankar) said he was speaking from a lodge and he wanted to have the address of Robert Payas's (A-9) house. T. Soundara Pandian (PW 54) told him that he did not know the number of the house of Robert Payas (A-9) but that house was next to

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Ebenezer Stores. He, therefore, gave the address of Ebenezer Stores. He said that he told M. Utham Singh (PW 56) about this call of Shankar.

486. Robert Payas (A-9) and Sivarasan had gone to Studio Memory Makers of S. Raghu (PW 59) on 15-12-1990 for getting passport-size photographs. They also went to Kavitha Driving School of T. Panneer Selvam (PW 61) on 4-4-1991 and 9-5-1991 to take driving licence. Robert Payas (A-9) lived in the neighbourhood of Dr Claud Fernandez (PW 197), a dentist. Dr Claud Fernandez (PW 197) knew Robert Payas (A-9) as he was the President of the Residents' Association of that area. Robert Payas (A-9) and his friend had come to the clinic of Dr Claud Fernandez (PW 197) for treatment. The name of his friend was Ramanan. Second time he came with another friend whose name was Murugan (A-3). On 23-7-1991 police had come from Malagai CBI Headquarters to the residence of Robert Payas (A-9) and recovered his passport and other small items. Dr Claud Fernandez (PW 197) was a witness of the recovery. He said that assassination of Rajiv Gandhi took place on 21-5-1991 and "when we were feeling sad, on 22nd evening at about 6 or 7 p.m. we heard a sound of blast from the house of Robert Payas (A-9). That was the sound of crackers". He said he could not see the persons when he came out but above the house of Robert Payas (A-9) it was filled with smoke.

487. K. Kottammal (PW 63) is the owner of Kodungaiyur house where Jayakumar (A-10) and Shanthi (A-11) started living from 18-12-1990. As noted above the house was taken on rent in the name of Ramaswamy, father of Shanthi (A-11). Rent agreement is Exh. P-217, which bears the signature Ramaswamy as the husband of K. Kottammal (PW 63). K. Kottammal (PW 63) identified the signature of her husband.

488. D.J. Swaminathan (PW 85) was living in House No. E-152, Kodungaiyur. It was next to the house of Jayakumar (A-10) and Shanthi (A-11) which is House No. E-153. He met Sivarasan who was staying in that house and who told him that he lost his left eye in an accident. In the first week of May 1991 he saw Sivarasan and two girls coming in an auto to the house of Jayakumar (A-10). Their names were Suba and Dhanu. They stayed for about two days and thereafter D.J. Swaminathan (PW 85) said he did not see them while Sivarasan continued to stay in the house. In the first week of May 1991 Sivarasan came on a new Kawasaki Bajaj bike. The bike was driven by another person. That was without a registration number. Both these persons stayed in the house of Jayakumar (A-10). He stayed there till 26-5-1991. On the morning of 22-5-1991 when D.J. Swaminathan (PW 85) turned on the TV to hear the news about Rajiv Gandhi's assassination Sivarasan, Nalini (A-1) and Suba also came to his house. After the news was over someone in the family of D.J. Swaminathan (PW 85) remarked that it would be the work of Liberation Tigers only. Sivarasan asked how could they say so. The reply was given that Tamil people could not do such kind of job. Sivarasan then left the place without saying anything. The witness said that they [presumably Sivarasan, Suba and Nalini (A-1)] were telling that not even rice was available for cooking. Since all the shops were closed on

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account of assassination of Rajiv Gandhi the witness told them that "I will give rice, if wanted". They declined the offer. At about 12.00 noon they distributed sweets mixed with grated coconut which made the witness wonder. On the morning of 23-5-1991 Sivarasan took Nalini (A-1) on his bike. D.J. Swaminathan (PW 85) said that he did not see Suba thereafter. Sivarasan stayed in that house for three days. He saw Santhan (A-2) till 26-5-1991. He saw the photograph of Dhanu on television in the end of May 1991. When he had seen Dhanu for the first time she did not wear spectacles. Initially, therefore, the witness said that he could not identify her in the photograph if it was Dhanu. Two days thereafter Sivarasan's photograph was shown on TV. Now D.J. Swaminathan (PW 85) got suspicious. On 2-6-1991 he dialled telephone number 100 and gave the information. When he told the person receiving the call that Sivarasan and Dhanu stayed in the house of Jayakumar (A-10) no one made any enquiry. He did not give his address. Again in the second week of June 1991 he himself went to the Office of CBI Headquarters, Malagai and stated the facts he knew. His statement was recorded. On 26-6-1991 house of Jayakumar (A-10) was searched. At that time Shanthi (A-11) and her father Ramaswamy were there in the house. Various articles were seized. On 7-7-1991 CBI officers with Jayakumar (A-10) came to his Kodungaiyur house. They were not having the key of the house. Lock was broken open. Jayakumar (A-10) entered the house and showed the place in the kitchen at the left side. A slab at that place was removed and it was found that there was a pit 2½ feet deep. From that pit Jayakumar (A-10) took out a plastic bag and a suitcase (Aristocrat make). In that bag one belt and two packets of bullets containing 25 and 18 bullets were found. From the suitcase a dictionary was taken out which was cut out from inside so that a pistol could be kept there. There was one article like an artificial eye and five recorded small microcassettes, photographs (MO 163 to MO 166), passport (MO 161) in the name of Thillaiambalam Suthendraraja, notebooks (MO 158, MO 159 and MO 160) and diaries were also found and recovered. A list was prepared (Exh. P-437) which bears the signatures of the witness D.J. Swaminathan (PW 85). D.J. Swaminathan (PW 85) has identified the photograph of Sivarasan in colour photographs (MO 163 and MO 164) and black and white photographs (MO 165 and MO 166). Colour photograph (MO 169) and black and white photographs (MO 170 and MO 171) are the photographs of Santhan (A-2).

489. S. Meera (PW 200) was living in the neighbourhood of Jayakumar (A-10) in the same locality. She and Shanthi (A-11) became friends and were visiting each other. When S. Meera (PW 200) asked Shanthi (A-11) as to who was the person wearing spectacles, she said he was her uncle and had a welding shop at Kodungaiyur. Jayakumar (A-10) was not doing any work and was sitting idle at home. Sometime in the first week of May 1991 Sivarasan and two women came in an auto at 8.00 p.m. One day in the first week of May itself Sivarasan brought a car battery on his cycle to the house of Jayakumar (A-10). He, however, took away that battery the same evening itself. The two girls Suba and Dhanu used to come to the house of

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Jayakumar (A-10) on ladies' bicycle now and then. S. Meera (PW 200) said that she did not know the names of Sivarasan, Suba and Dhanu in the first instance but she came to know only when their names were published in the newspapers or telecast on TV. She said many people kept on coming and going in the month of May 1991 to the house of Jayakumar (A-10). One such person was the husband of Jayakumar's (A-10) younger sister as told to S. Meera (PW 200) by Shanthi (A-11). S. Meera (PW 200) said she was not staying in her house from 7-5-1991 to 23-5-1991 and that she had gone to her mother-in-law's house.

490. M. Janarthanam (PW 71) said that he let out his shop to Shanthi (A-11), wife of Jayakumar (A-10) in Kodungaiyur and received Rs 20,000 as advance though he executed the agreement for Rs 4500 only in the month of April 1991. The purpose of letting was to run a coffee-grinding shop. On 25-7-1991 M. Janarthanam (PW 71) was called to Malagai office of CBI Headquarters where he handed over the agreement (Exh. P-338). He had also given a letter of consent (Exh. P-339) to Shanthi (A-11) for installing the coffee-grinding machine in the shop, which he also handed over to the police. During his statement M. Janarthanam (PW 71) was asked to identify Jayakumar (A-10), who had approached him for running the shop along with his brother-in-law Damodaran. M. Janarthanam (PW 71) identified Bhagyanathan (A-20) as Jayakumar (A-10). M. Janarthanam (PW 71) said that on 29-1-1992 Ramaswamy, father of Shanthi (A-11) came to the shop and removed the grinding machine and other equipments. He also asked for refund of the advance of Rs 20,000 which the witness did not give. Shanthi (A-11) wrote a letter (Exh. P-343) on 13-8-1992 to M. Janarthanam (PW 71) from the prison for the purpose but M. Janarthanam (PW 71) said that letter from Jayakumar (A-10) should also come. Then Shanthi (A-11) and Jayakumar (A-10) wrote a letter (Exh. P-344) to M. Janarthanam (PW 71) from the prison. In his statement M. Janarthanam (PW 71) further stated that the Judge questioned him in the court to which he replied that he did receive Rs 20,000 advance and said that he had no objection to return that back. The Judge passed the order on 3-11-1992 that the settlement might be made out of court. M. Janarthanam (PW 71) said that afterwards Ramaswamy called on him and obtained receipt (Exh. P-342) from him on 26-12-1992 and he returned the amount of Rs 20,000.

491. V. Kannan (PW 199) sold the coffee-grinding machine for Rs 15,000. Receipt showing the coffee-grinding machine is Exh. P-971. Both Jayakumar (A-10) and Shanthi (A-11) had come to V. Kannan (PW 199) to buy the machine.

492. Sowmya Narayanan (PW 70) is one of the staff members from the Telecom Department and he has identified application for telephone connection (Exh. P-336) by Shanthi (A-11) in OYT scheme for the shop premises. The application was registered on 22-4-1991. A sum of Rs 8000 is shown to have been paid with the application.

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493. In the diary (MO 180) of Sivarasan seized from the house of Jayakumar (A-10) there is mention of a sum of Rs 10,000 on 11-4-1991 for telephone.

494. Jayakumar (A-10) is stated to have made a disclosure statement to the police on 9-7-1991 (Exh. P-1436) on the basis of which it is stated that Jayakumar (A-10) took the police to Kodungaiyur house and recoveries made. The trial Judge has strongly commented on the conduct of the police in recording the disclosure statement to boost its case and has criticised the investigating officer in adopting such a course. In the disclosure statement Jayakumar (A-10) said that on 21-5-1991 Sivarasan had dug a pit in the kitchen and kept a briefcase and a plastic bag and then covered the same with a cement slab. He said Sivarasan told him not to disclose that to anyone and not to give the material placed in the pit to anyone except him.

495. Vijayan (A-12), whose confession was recorded, was a lorry driver in Sri Lanka. He started his own workshop and during the period 1987-89 he used to repair vehicles of LTTE. When IPKF came to Sri Lanka his work was affected. Selvaluxmi (A-13) is his wife. She is the daughter of Velayudam @ Bhaskaran (A-14). Vijayan (A-12) decided to come to India in 1990 as his wife was pregnant and he thought that in India she would get necessary medical facility. One Kutty told him that he would make arrangements for him to go to India without making any payment to LTTE. Kutty introduced Vijayan (A-12) to Sivarasan who told him that if he worked for LTTE his expenses would be looked after by LTTE. Sivarasan told him to take a house on rent and to stay there and that persons belonging to LTTE would come and stay in that house for their work. While staying at Tuticorin, Vijayan (A-12) worked in Tuticorin Port Trust and at SPIC at daily wages earning Rs 20 to Rs 30 per day. His wife gave birth to a son on 17-10-1990. After Vijayan (A-12) settled in his house in Madras as described earlier Sivarasan along with Chokan @ Sabapathi and Munusamy, LTTE workers, came to his house. Sivarasan told Vijayan (A-12) that in the first week of May 1991 he would bring some LTTE men for an important work and he asked him to make necessary arrangements for their stay. He was also cautioned by him not to tell that to anybody. Sivarasan again came on 2-5-1991 with Gokul @ Nero, an LTTE activist. Both came with a suitcase containing wireless set and other things. Sivarasan then informed Vijayan (A-12) that he would bring two LTTE women to the house. He gave him Rs 10,000 for his expenses. After three or four days Sivarasan took him to a place nearby and gave him a big car battery and asked him to take that to his house. The battery was for fixing a wireless set. Vijayan (A-12) gave that battery to Nero. Same day Sivarasan brought a black and white TV and kept the same in the house. He said that he had bought this for the family of Vijayan (A-12). Sivarasan asked Nero to have a link with Sri Lanka through wireless which Nero was able to achieve within two/three days. Whenever Nero spoke on the wireless he used to say from 910 to 91. Vijayan (A-12) bought a battery charger from a shop at Mount Road, Madras and also other articles of furniture. Sivarasan paid for all. On 6-5-1991 Sivarasan brought

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Dhanu and Suba to Vijayan's (A-12) house. That day his father-in-law Bhaskaran (A-14) had also come from Tuticorin. These two women would keep their important things in a black bag and would always carry that whenever they went out. Sivarasan gave money to Vijayan (A-12) to buy two cycles for the women. Suba and Dhanu would go out on Friday and would come on Monday morning. On 16-5-1991/17-5-1991 Sivarasan asked Vijayan (A-12) to dig a pit in the kitchen to hide the wireless set and guns. Vijayan (A-12), Sivarasan and Nero dug the pit. On the morning of 21-5-1991 Sivarasan came to the house of Vijayan (A-12). He gave some message to Nero to be transmitted on wireless. Then he said something to Suba and Dhanu who got ready by 12 o'clock after having their lunch. Sivarasan again came at 12.30 p.m. wearing a kurta-pyjama with a camera in his hand. He asked Dhanu and Suba to get ready. Vijayan (A-12) said usually his wife would help Suba to wear saree. On that day, however, Suba and Dhanu both closed the door of their room and got dressed. They took about half an hour to dress. Suba was wearing a saree; Dhanu was wearing an orange coloured kurta and green coloured dupatta. She was wearing spectacles. Generally she did not wear spectacles in the house. A photo session started. 10 photographs were taken among themselves with the camera Sivarasan had brought. Vijayan (A-12) took photographs of Suba, Dhanu and Sivarasan together. Dhanu had put on over make-up on her face. Sivarasan asked Vijayan (A-12) and Nero to go and bring an auto. He told them not to bring the auto near the house and to stop that near the bus-stand away from the house. This arrangement was made so that the auto driver would not be able to identify the house. They brought the auto as instructed. Sivarasan, Suba and Dhanu walked up to the auto. Nero went with them but came back and then gave some message through wireless. He used to speak daily through wireless once in the morning and once in the evening. On the morning of 22-5-1991, Sivarasan came to the house of Vijayan (A-12) and said that the work was over and that Rajiv Gandhi was murdered. He asked Nero to send the message to Sri Lanka through wireless and he himself went to sleep. Sivarasan would write on a piece of paper in a language which was not understandable and would give that to Nero to send that message through wireless. After lunch Sivarasan went away. On 23-5-1991 he came on a cycle, took the motorcycle and again went away. He used to keep the motorcycle in the house of Vijayan (A-12). From the evening of 23-5-1991 Sivarasan, Suba and Nero were staying in the house of Vijayan (A-12). Nero used to keep his gun (AK-47) always ready. All these three used to watch carefully if the police was coming. This watching started from the day Dhanu's photograph appeared in the newspapers. Sivarasan used to go out with his pistol. While sleeping he used to keep it under his pillow. He and Suba went to Tirupathi on 25-5-1991 and came back the next day in the night. Vijayan (A-12) said that Sivarasan used to say that if the police would come to arrest him he would kill a dozen policemen and then only he would be caught. On 27-5-1991 he took out the motorcycle and hid it somewhere. Vijayan (A-12) did not see the motorcycle afterwards. In the end of May

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1991 Sivarasan's photo also appeared in the newspapers. Vijayan (A-12) used to buy all the newspapers which Nero would read and tell Sivarasan the progress of investigation made by the police in the case. One day Sivarasan took off his moustache. Movements of Sivarasan got limited after his photo appeared in the newspapers. He used to go out on foot and would give messages to LTTE men. One day in the first week of June 1991, Sivarasan said that Nero had spoken to Jaffna through wireless and arrangements were made for their escape from India by boat. Sivarasan took Suba somewhere and returned on 10-6-1991. He said they had gone to Coimbatore. That day Nero told Sivarasan that he spoke through wireless and that there was some problem and that boat won't be coming from Jaffna. By this time photo of Suba also appeared in the newspapers which scared her. Sivarasan then put Suba's dresses in a black bag and took that out somewhere and hid it. On that day only Santhan (A-2), who was a close companion of Vijayan (A-12), came for the first time. On 12-6-1991 Sivarasan came to Vijayan's (A-12) house and told him that it was very difficult to stay like that. They should buy photos of Rajiv Gandhi, M.G.R. and Jayalalitha and keep them in front of the room and in that way nobody would doubt them. This Vijayan (A-12) did. Sivarasan paid him Rs 100 for that. After a few days Sivarasan asked Bhaskaran (A-14) to get help from his relative to arrange for some other house. Bhaskaran (A-14) went to his relative N. Chokkanathan (PW 97) to look for some other house but said that N. Chokkanathan (PW 97) was of no use and it was difficult to get another house. Sivarasan said he would seek help of some other person to see the house. On 23-6-1991 he gave a message to Nero to be transmitted through wireless. Nero told Sivarasan that that was the last message to be given. After that Sivarasan and Nero took off the antenna and wires and kept the wireless set in the pit which had been dug in the kitchen. After a day or two Santhan (A-2) brought another person to take Sivarasan and Suba with him. Later, Vijayan (A-12) came to know that his name was Suresh Master (DA). In the evening they brought an auto. The plan was that Sivarasan, Suba, Nero and Suresh Master would all go together. Thereafter Vijayan (A-12) said he did not see all of them. Vijayan (A-12) and family then decided to go to Tuticorin and after staying for one week returned to their house to take the things and to vacate the house but by that time the police came and arrested Vijayan (A-12).

496. Mangaleswaran (PW 234) and Rose D. Nayagam (PW 235) respectively were in charge of Rameshwaram and Tuticorin refugee camps and they have testified to the registration of stay of Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-law Bhaskaran (A-14) in the refugee camps, as refugees coming from Sri Lanka.

497. J. Duraisamy Naidu (PW 82) is the owner of the house which was taken on rent by Vijayan (A-12). Tenant agreement (Exh. P-426) was executed. The house was occupied on 23-4-1991. The tenant agreement bears signature of Vijayan (A-12) for Plot No. 12, Eveready Colony, No. 12 at Kodungaiyur. Rent agreement was taken into possession by the police.

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498. Esylen Mantel (PW 99), who was living in Plot No. 14, Eveready Colony, Kodungaiyur, said that Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-law Bhaskaran (A-14) were staying in the neighbouring house. Esylen Mantel (PW 99) said in the first week of May 1991 two auto-rickshaws had come to the house of Vijayan (A-12). In one auto there were two ladies and in the other there were two gents. The girls' names came to be known to Esylen Mantel (PW 99) as Suba and Dhanu and the gents' as Sivarasan and Nero. Esylen Mantel (PW 99) said they also brought a TV to the house of Vijayan (A-12) and fixed the antenna on the terrace. They also fixed two casuarina tree posts on the terrace and connected the black wire between the posts with the wire connection inside the house of Vijayan (A-12). On 21-5-1991 at about 2.00 p.m. Esylen Mantel (PW 99) saw Sivarasan, Suba and Dhanu standing at the bus-stand at Kodungaiyur. Next day the witness came to know about the assassination of Rajiv Gandhi on TV news. Esylen Mantel (PW 99) saw Sivarasan, Suba and Nero at Vijayan's (A-12) house on 24-5-1991 but did not see Dhanu. Same day Dhanu's photograph was published in the newspapers. Esylen Mantel (PW 99) suspected that it was the same girl who was seen by her at the bus-stand. On 29-5-1991 Sivarasan's photo was also published. Now it was confirmed to Esylen Mantel (PW 99) that all these persons were involved in the assassination of Rajiv Gandhi. She developed fear on that account. Vijayan (A-12) came to the house of Esylen Mantel (PW 99) in the second week of June 1991 and borrowed a driller stating that he wanted to fix a regulator for the fan. Since he did not return the driller the same day Esylen Mantel (PW 99) went to the house of Vijayan (A-12). On reaching there she saw Sivarasan standing in the hall with one left eye closed. Earlier Esylen Mantel (PW 99) had seen him wearing spectacles. Now he was not wearing spectacles. When she asked Selvaluxmi (A-13) as to what happened to the eye of Sivarasan she told her that he lost his eye while playing. One day Esylen Mantel (PW 99) saw Sivarasan sitting on the steps of the house of Vijayan (A-12). She went near him, wished him and asked him if he was employed somewhere. Sivarasan said he was unemployed and was trying to get a job in Dubai. At that time she noticed he had two eyes. The left eye looked like an artificial eye. Now he did not even have moustache and did not wear spectacles. Mother of Esylen Mantel (PW 99) went to the CBI Office at Malagai to give information. But because of fear of LTTE she did not do so. She said they should watch the house to collect more clues and then to inform CBI. Thereafter they were keeping watch on Vijayan's (A-12) house and noticing the movements in that house. On 26-6-1991 at 7.30 a.m. Esylen Mantel (PW 99) saw Vijayan (A-12) taking Bhaskaran (A-14) on a cycle. While passing in front of her house Bhaskaran (A-14) told Esylen Mantel (PW 99) that he was going to Madurai. That day Sivarasan was not in the house of Vijayan (A-12). Vijayan (A-12) said Sivarasan had gone to Madurai to get a job and would return in a month or so. At that time there was a black boy in the house who was later identified as Santhan (A-2). Vijayan (A-12) introduced Santhan (A-2) as his brother who was a driver

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and was trying for a job in Dubai. On 1-7-1991 again at 7.30 a.m. Esylen Mantel (PW 99) saw Vijayan (A-12) and Santhan (A-2) going on a cycle. After ten minutes Vijayan (A-12) came back alone and now he had changed his dress too. Vijayan (A-12) told Esylen Mantel (PW 99) while passing through her house that he was leaving for Madurai since he received a telegram from his father-in-law. Vijayan (A-12) also said that he would come back after one-and-a-half-months or so. That day Vijayan (A-12) also told her that Sivarasan would not be coming back as he was the most wanted person by CBI. On 2-7-1991 Esylen Mantel (PW 99) informed CBI about the incident. She was examined by the police and identified Santhan (A-2), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) in the row of accused and Sivarasan, Suba and Dhanu in photographs.

499. In diary (MO 180) of Sivarasan it was mentioned against date 6-4-1991 "Vijayan (A-12) Veedu (house) — 15,000" meaning that Sivarasan had paid Rs 15,000 to Vijayan (A-12) for getting a house on rent in Madras.

500. L.D.N.J. Wijesinghe (PW 67), Senior Superintendent of Police, Sri Lanka has spoken about the wireless network of LTTE. He intercepted LTTE wireless transmissions. He said Nero was using Wireless Stations No. 910 and 91 while communicating with LTTE leaders in Jaffna. Wireless Station No. 91 belonged to Pottu Omman in Sri Lanka and Station No. 910 was the wireless station belonging to Sivarasan in India.

501. T.P. Sitther (PW 78) is the wireless operator of the Government of India in the Ministry of Home Affairs. He has also testified regarding wireless messages monitored during the period from 1988. He also deposed that Station No. 91 belonged to Pottu Omman and Station No. 910 was used by Sivarasan.

502. Hashmuth S. Setal (PW 98) is the owner of Barathi Cycle Company and Barathi Cycle Agency. He sold BSA Delux cycle to one P. Vijayan of Plot No. 12, Muthamizh Nagar, Kodungaiyur, Madras as per bill (Exh. P-491). The cycle was sold on 8-5-1991. He identified that cycle (MO 390). Another cycle BSA SLR was also sold to Vijayan (A-12) on 8-5-1991 as per bill (Exh. P-493) having the same address.

503. Mohanraj (PW 254) was working as officer-in-charge of International Monitoring Station at Perungudi, Madras. He has testified that wireless transceivers (MO 770) could be operated by using 12-volt D.C. battery like MO 209.

504. N. Chokkanathan (PW 97) is a distant relation of Bhaskaran (A-14). In his deposition he said that he had met Bhaskaran (A-14) in the year 1952 when he went to Sri Lanka to seek a job. Then suddenly on 20-6-1991 Bhaskaran (A-14) called on him. He entertained him and discussed about family matters. They went for an evening movie show. That day Bhaskaran (A-14) slept in the house of N. Chokkanathan (PW 97). After they had supper Bhaskaran (A-14) asked N. Chokkanathan (PW 97) to get a big house rented for him in an outer area at a monthly rent of Rs 2000 to Rs 3000. N. Chokkanathan (PW 97) was surprised and said that a house at the rate of

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Rs 300 per month would be sufficient for his family. Bhaskaran (A-14) said the house was not for him but was required for some important persons. When N. Chokkanathan (PW 97) enquired who those important persons were Bhaskaran (A-14) said it would create some problem if he disclosed to him their names. N. Chokkanathan (PW 97) said that unless he revealed the names of the important persons he would not take any step to search for a house. Then Bhaskaran (A-14) told him that the house was meant for Sivarasan and Suba who were involved in Rajiv Gandhi assassination case and whose photographs had been exhibited in TV and posters. N. Chokkanathan (PW 97) said he was shocked and asked what was the relation between him and those persons. Bhaskaran (A-14) said that at that time he was residing in a house in Kodungaiyur area and that those persons were residing there. When N. Chokkanathan (PW 97) refused to give any help, Bhaskaran (A-14) then pleaded with N. Chokkanathan (PW 97) to at least permit Suba to stay in his house for some time as a family member. N. Chokkanathan (PW 97) again refused. That made Bhaskaran (A-14) angry. He refused to eat and threatened N. Chokkanathan (PW 97) that he would kill him if he gave any information to the police about him or Sivarasan or Suba. Bhaskaran (A-14) then left the house. Next day, i.e., 22-6-1991 with the assistance of his relative, one Srinivasan, with whom N. Chokkanathan (PW 97) discussed the matter, they went to the office of Malagai CBI Headquarters. N. Chokkanathan (PW 97) gave his statement to the police. They sent him back saying that they would call him after four days. He was again called by the CBI officials on 28-6-1991 when he was interrogated and his statement was recorded.

505. M. Narayanan (PW 281) is DSP, CBI and one of the investigating officers. As far as Bhaskaran (A-14) was concerned he said his presence was secured on 7-7-1991 but how that was done he was unable to say. He said he was brought to the Office of CBI on that day but who brought him again he was unable to tell. When he was taken to the house of Vijayan (A-12) and was about to break open the lock of the house Vijayan (A-12) and Selvaluxmi (A-13) with their child came there. They were identified by Bhaskaran (A-14). Vijayan (A-12) had the key with which he opened the house. Thereafter seizure was effected. Vijayan (A-12) voluntarily pointed out the space in the kitchen from which signal-making articles were recovered. M. Narayanan (PW 281) said that Vijayan (A-12) voluntarily pointed out towards the pit otherwise that place could not have been found. He said N. Chokkanathan (PW 97) came to his office on 23-6-1991 and was accompanied by Srinivasan. Statement of N. Chokkanathan (PW 97) was not recorded at that time because immediate action was to be taken to locate the house and to make attempt to apprehend Bhaskaran (A-14). Statement of N. Chokkanathan (PW 97) was recorded on 28-6-1991. As per witness M. Narayanan (PW 281) the recovery was effected on 8-7-1991 on the basis of the disclosure statement made by Vijayan (A-12) (Exh. P-1358). It has come on record during the course of examination of the witness that recovery had already been effected on 7-7-1991 (Exh. D-63). The trial court

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has accepted Exh. D-63 and has rejected Exh. P-1358 and has adversely commented on the conduct of the witness, the investigating officer, in allegedly manipulating the recovery.

506. Ravi (A-16) is an Indian national. He made confession. He was attracted towards LTTE. He got training in military camp run by LTTE on Indian soil. He joined LTTE movement and got deeply involved in it. In his confession he described the details of the training he got and the oath he took. Ravi (A-16) also described some of the activities of LTTE. He went to Sri Lanka as well where also he got further training in military operations. Ravi (A-16) then came back to Madras before the Indo-Sri Lankan Accord was signed in 1987. In Madras he continued his operation. During holidays, however, he would meet various LTTE personnel like Kittoo, Baby Subramaniam, etc. in the LTTE Office at Indira Nagar in Madras. When war started between IPKF and LTTE he said he was eager to go to Sri Lanka to take part in the war operations against IPKF. He was kept under house arrest in the month of June-July, 1988. On 8-8-1988, he along with 89 others, belonging to LTTE cadre, was arrested and kept in lock-up in Madras Central Jail. From there all these persons were sent to Sri Lanka by an Indian Air Force plane. Ravi (A-16) said he was sent to Sri Lanka because it was thought that he was a Sri Lankan national. In Sri Lanka, firstly they were kept in Indian Army camp. They learnt about the rapes, murders and other atrocities committed by IPKF. They developed a strong feeling of revenge. Ravi (A-16) was released in 1989. He went to LTTE camp in Sri Lanka where he met various leaders. There he was indoctrinated to start a movement so that entire Tamil people in the world joined hands. Ravi (A-16) said that when he asked about his role he was told to go to Tamil Nadu and to select youths who had got some feeling for the Tamil race and tell them about the struggle of LTTE and the traitorous acts committed by India. Ravi (A-16) said that India thus became their enemy and they were to fight for Tamils' nation. He was advocated for armed revolution to establish a separate Tamil nation. Ravi (A-16) was given a letter and was told that if he gave that letter to the seashore-in-charge in India he would be given money for his expenses. After coming to India Ravi (A-16) went to Salem along with other LTTE people. He gave that letter to one Richard in Salem, who after reading the letter gave him Rs 15,000. From there Ravi (A-16) went to Madras and was told to go to Subha Studio at Royapettah to meet Muthuraja. It was in the second week of January 1990 that he came to Madras and met Muthuraja in Subha Studio and apprised him about the instructions he got in Sri Lanka. He met Suseendran (A-17), who was a member of Dravida Kazhagam. He was also told about the need of armed revolutions in Tamil Nadu and LTTE support of that. Initially they were to collect youths. In his confession Ravi (A-16) further described as to how ten persons were collected by Suseendran (A-17) and arrangements were made for their training in Sri Lanka. Ravi (A-16) also went to Sri Lanka. He further described his activities in India for LTTE. He met Suseendran (A-17) again in May 1990 at Coimbatore and asked him to enrol more youths. By

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this time war had started between LTTE and Sri Lankan Army. During these training days in Sri Lanka Ravi (A-16) had met Pottu Omman as well who explained that to carry on the work assigned to Ravi (A-16) and others it had to be done in three phases — (*1*) to arrange houses for the stay of LTTE cadre personnel, (*2*) to enrol more people and impart training to them, and (*3*) to develop seashore linkage and to form separate boatline, if possible. Training in wireless operation was also given. In the month of December 1990 Ravi (A-16), Suseendran (A-17) and two others were brought to a house in Jaffna by Pottu Omman for the purpose of their return to Tamil Nadu. In this house Sivarasan was introduced to Ravi (A-16) by Pottu Omman. Pottu Omman separately called Ravi (A-16) and told him that Sivarasan was also going with them to Tamil Nadu and that he might be contacted if there was any need for money for selection of personnel for the movement and it would be useful to get suggestions from him. Pottu Omman also reminded him of the incident of Padmnabha case in Tamil Nadu and said that some important matters were going to occur there and for that his role must be a prominent one. He was, therefore, told to follow the instructions of Sivarasan and consult him in case of any doubt. They all were seen off by Pottu Omman. While they were waiting in the boat Ravi (A-16) asked Sivarasan "about this is what work and how many persons". He said "lesser men bigger target". Ravi (A-16) further enquired whether it would be a big shot in Tamil Nadu politics and to that Sivarasan replied that it was something bigger than that. Again when Ravi (A-16) asked whether it could be Rajiv Gandhi Sivarasan did not give any reply directly and told him that they were going to perform and that "we will see later" and the talk ended. In the training camp in Sri Lanka, Ravi (A-16) said people would often speak about Rajiv Gandhi and IPKF and showed their hatred and emotion and that was the reason why he asked Sivarasan whether it was Rajiv Gandhi to which he replied that it was a big target. Ravi (A-16) further in his confession said that there was no direct reply coming out. Sivarasan, however, spoke his words in such a way that he confirmed his suspicion. Ravi (A-16) gave his aunt's (Lokmatha) (PW 206) address to Sivarasan if he was to be contacted. They reached Kodaikkarai on Indian soil in the last week of December 1990. Sivarasan said that he would give his address and telephone number to Ravi (A-16) in a few days' time. Firstly, they stayed in the house of Shanmugham (DA). Sivarasan gave him Rs 2000 out of which he gave Rs 500 each to Suseendran (A-17) and two others. After ten days of their arrival they met again in Madras as arranged earlier. Sivarasan gave Rs 3 lakhs to Ravi (A-16), 1.5 lakhs each on two different occasions and told Ravi (A-16) to buy a vehicle if required for the movement. Sivarasan gave his contact telephone number 2343402 to Ravi (A-16) to contact him if there was any urgent need and in case he was not there to contact Robert Payas (A-9) and to give him the message. Sivarasan again gave him Rs 50,000 out of which he gave Rs 5000 each to Suseendran (A-17) and two others. At the end of March 1991 there was a message lying in the house of Lokmatha (PW 206) for Ravi (A-16) to meet Sivarasan. There was a wireless set

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brought by LTTE cadre and Sivarasan asked Ravi (A-16) to come with him to receive the set. They then went to the house of Jayakumar (A-10). After taking the food while they were sleeping on the terrace, Ravi (A-16) said that Sivarasan had once told him to find out the airport security when a VIP would come. He said he did not remember the name of the VIP. That night Sivarasan asked about the VIP security and Ravi (A-16) told him that when great leaders come, first gate of the old airport was used and that it was a narrow road and that the "place is advantageous for us". Ravi (A-16) asked Sivarasan that three months had elapsed since they had come to India and that nothing was done about the target. Sivarasan told him that "we must not go in search of target and that target would come searching us and we shall see at that time". He also said that it might take place in the near future if the election is declared. Sivarasan said that in order to make wireless set function to contact Sri Lanka, two or three places on the shore had to be separately arranged. Sivarasan then told Ravi (A-16) to start a travel agency in Delhi and then asked him to send some person to collect the details to Delhi. When Ravi (A-16) said that that would be an expensive proposition Sivarasan replied that expenses need not be bothered about. Ravi (A-16) received another sum of Rs 2 lakhs from Sivarasan. After 15 days when Ravi (A-16) again met Sivarasan he gave him Rs 5 lakhs to start a travel agency in Delhi. He, however, said that travel agency need not be started immediately but it was enough if arrangements were made. In his confession Ravi (A-16) described the enrolment of some youths for training and for making arrangements for them to go to Sri Lanka by boat for the purpose. Then he described about the attempt to get wireless connection with Sri Lanka. Again on one visit to Kodaikkarai when Ravi (A-16) was staying in the house of Shanmugham (DA), Murugan (A-3) came there with a big Aristocrat suitcase. It was on 13-5-1991/14-5-1991. Then he said that when he, Murugan (A-3), and one other person Chokan were sitting separately Chokan asked that work of Sivarasan had not yet occurred. Murugan (A-3) said that "where would it go without occurring and it ought to occur". Nobody then talked about it later. Since the boat did not come Murugan (A-3) went back to Madras. Ravi (A-16) was to go to Sri Lanka. The boat did come on 20-5-1991 but Chokan did not allow Ravi (A-16) to go in that boat as that boat was to carry goods for Sri Lanka.

507. On the night of 21-5-1991 while Ravi (A-16) was sleeping in a hut opposite to the house of Shanmugham (DA), in the midnight servant of Shanmugham told him that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died including Moopanar and Vazhappari Ramamurthy. He said that message came by telephone to Shanmugham and he advised that Ravi (A-16) should not remain there. Next day when Ravi (A-16) met Chokan he said that the assassination of Rajiv Gandhi was advantageous to LTTE. Since it was not certain that boat would come from Sri Lanka for Ravi (A-16) and others to return he gave his bag and Murugan's (A-3) suitcase to Chokan and asked him to give them to Shanmugham and went to Trichi. He gave a message to Suseendran (A-17)

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to meet him at Madras on 26-5-1991. He himself reached Madras on 24-5-1991. When he went to his aunt's [Lokmatha (PW 206)] house he was given a letter from Sivarasan dated 23-5-1991 addressed in the name of "Prakash". One day after, Sivarasan came and took Ravi (A-16) out. He asked Ravi (A-16) why he had not gone to Sri Lanka. Then Ravi (A-16) gave him the details. Sivarasan asked him if the shore was clear and added that suspicion had arisen on LTTE and there might be some problems for Sri Lankan Tamils. Sivarasan wondered how the police came in possession of his photograph and was searching for him in connection with the murder of Rajiv Gandhi. That being so he said that there would be problem for Suba and it would be better if she was kept in the custody of Ravi (A-16) in the house of some Indian Tamil family. When Ravi (A-16) met Suseendran (A-17) on 26-5-1991 he brought the problem to his notice. Suseendran (A-17) said that if it was for a few days there was no problem in keeping Suba in his custody. Ravi (A-16) and Suseendran (A-17) met Sivarasan in the evening. Then Ravi (A-16), Suseendran (A-17), Sivarasan and Suba gathered at 9.00 p.m. at the bus-stand from where Ravi (A-16) took leave. After returning he informed Pottu Omman through wireless that Sivarasan had left Suba in his and Suseendran's (A-17) custody. Ravi (A-16) sent a message to Sivarasan that the shore was now clear. Ravi (A-16) along with Sivarasan went to the house of Karpagam (PW 133), relative of Suseendran (A-17) at Pollachi where Suba had been taken. Both Suseendran (A-17) and Suba were there. Ravi (A-16), Suseendran (A-17), Sivarasan, Suba, Kanthan and Murugesan collected at the seashore to take a boat for Sri Lanka. That was 10-6-1991. A message was, however, received that the boat got hit in the sea near Jaffna and all 11 persons who were coming to India died. Yet another attempt was made to leave India from another shore. Sivarasan said that security would now be tightened. At this Ravi (A-16) told him that "we would try, if not 'consume the capsule'." Ravi (A-16) said that problem of leaving from Indian shore would get aggravated if there was any further delay. In his confession then Ravi (A-16) described the attempts of the group to leave India and their inter se meetings to achieve that purpose and the difficulty faced by them because of war in Sri Lanka. Ravi (A-16) thought that their position should be explained to Pottu Omman. He, therefore, contacted Suseendran (A-17) for forming a wireless set connection and for that purpose to arrange a house. In the last week of July 1991 Suseendran (A-17) arranged a house at Dindigul. Kanthan gave his wireless set to Ravi (A-16) telling him to keep that safe. Through wireless set they could reach Jaffna and sent information that CBI was searching for Kanthan and his picture had been published in newspapers and asked them to arrange for a boat urgently. Later, Ravi (A-16) along with Kanthan and another went to the house of Robert Payas (A-9). While Ravi (A-16) stood outside Kanthan went inside the house through back entry and came out after a few minutes. He told Ravi (A-16) that inmates of the house asked him not to come to their house since the police was searching for him. Later Kanthan went to a lonely house in Porur and when he returned he said that the old man in that house had been

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arrested by CBI. On 20-7-1991 or 21-7-1991 Suseendran (A-17) went to Dindigul and gave information to Pottu Omman about the latest position. In his confession Ravi (A-16) had shown his various attempts for himself and others to leave the country and his being in constant touch with Pottu Omman through wireless set installed at Dindigul. On 28-7-1991 Ravi (A-16) along with Kanthan and Ramanan went to Sri Lanka and met Pottu Omman. Ravi (A-16) said that when Pottu Omman asked as to the position in Tamil Nadu he told him that there was no place even to stand in the existing circumstances. Pottu Omman then asked him as to why Sivarasan went to Bangalore. Ravi (A-16) said he did not know about Sivarasan's going to Bangalore and that he had earlier informed Pottu Omman that he was not in contact with Sivarasan. Ravi (A-16) gave Pottu Omman an up-to-date position of the investigation and the arrest of various persons. Ultimately Ravi (A-16) stated that he returned to India. He left Sri Lanka on 10-8-1991 with various weapons, 12 gold biscuits and 15 code-sheets. The weapons included 2 SMG, 10 grenades, 1350 rounds and 5 pistols. Pottu Omman told Ravi (A-16) that now weapons had been handed over to him, time had come for starting the struggle and to fight against a very big superpower and asked him to be careful. He told Ravi (A-16) to decide targets and then suggested many other things as to how to go about and use the arms and ammunition. They came to India through a boat. He contacted Suseendran (A-17). 1350 rounds, 2 SMG and 5 grenades were dumped in a place by two LTTE men on the direction of Ravi (A-16). Next morning they came to Dindigul with 2 walkie-talkies, 12 gold biscuits (each weighing 120 grams), code-sheets and 3 pistols. Jaffna was informed through wireless set of Kanthan. Ravi (A-16) gave 6 biscuits, 2 grenades, one pistol and code-sheets to Suseendran (A-17) and asked him to keep them. One pistol Ravi (A-16) kept with him and one he gave to one Sukumar. 6 gold biscuits were given to one Charles. On 12-8-1991 Ravi (A-16) left Dindigul and reached Madras on the next day. There he got the news in newspapers that weapons hidden in the ground at Nambuthalai had been taken by the Customs. Pottu Omman was informed of this seizure. On 21-8-1991 Ravi (A-16) was arrested by the police. He was shown the letters and other diaries of Sivarasan to identify the handwriting of Sivarasan. He identified various persons in LTTE cadre, they being Chokan, Arivu (A-18), Yogi @ Yoga Ratnam, Shanmugham, Haribabu, Sivarasan, Aruna, Subha Sundaram (A-22), Avadi Manoharan, Robert Payas (A-9), Ramanan, Jayakumar (A-10), Kanthan, Murugan (A-3), Chinna Shanthan, Gundappa, Dixon and Irumborai (A-19).

508. Suseendran (A-17) is another Indian Tamil living in Tamil Nadu. He also became an LTTE sympathiser and had been working for LTTE. He came into contact with Muthuraja, Baby Subramaniam and Kasi Anandhan (PW 242) and other persons belonging to LTTE. In 1989 he went to Sri Lanka and organized there a procession in support of LTTE. In the end of January 1990 he came to know Ravi (A-16). They both discussed the creation of a separate Tamil Nadu and its liberation. Suseendran (A-17) did

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not consider this offer seriously. After a few days Ravi (A-16) again talked to him to which Suseendran (A-17) replied that though he felt confident but asked as to how it was going to be attained. Ravi (A-16) said youths who were interested in getting a separate Tamil Nadu could be organized and involved in the struggle and that LTTE would help in giving arm training to them. Suseendran (A-17) said he got interested and decided to collect persons interested in a separate Tamil Nadu. In his confession Suseendran (A-17) then described the attempt to organise youths and then to make arrangements for them to go to Sri Lanka for training. In Sri Lanka he met Pottu Omman as well. He came to the training camp where Suseendran (A-17) and others were getting training. He told them that they should always be ready at the right time to attack important places in Tamil Nadu and that weapons and money required for the struggle would be given by LTTE. He said that they must fight as one under the leadership of Ravi (A-16). The movement which was to be started by Ravi (A-16) and Suseendran (A-17) was called Tamil National Retrieval Troops (as translated in English). In the end of December 1990 Pottu Omman took him, Ravi (A-16) and others to Jaffna. He took Ravi (A-16) separately and talked to him. In the house there was one person whose name was Sivarasan. Then Sivarasan, Pottu Omman and Ravi (A-16) talked together for a while. They then left for Indian soil on boat and were seen off by Pottu Omman. In his further confession Suseendran (A-17) described his meeting with various persons connected with LTTE and the expenses met by Sivarasan. He was involved in organising the youths and went to places like Pollachi. As per earlier arrangement he met Ravi (A-16) at Madras on 26-5-1991. Sivarasan also came there. At that time Ravi (A-16) told him to have a lady tigress stay with him for one week since the police problem was too much at Madras. He requested that the girl could stay in the house of a supporter whom he knew. Sivarasan, Suba, Ravi (A-16) and Suseendran (A-17) then gathered at bus-stop at 9 o'clock when Ravi (A-16) left leaving them there. That lady was introduced to Suseendran (A-17) as Mallika. Suseendran (A-17) said that later he came to know that her name was Suba. He, Sivarasan and Suba left for Trichi reaching there in the morning. From there they went to Pollachi. He said that there they stayed in the house of D. Shanmugham Sundaram (PW 208). He introduced Mallika as his wife and sister of Sivarasan. Karpagam (PW 133), wife of D. Shanmugham Sundaram (PW 208), was a distant relative of Suseendran (A-17). Sivarasan then left saying that he would come back and take Mallika in 5 days. Meanwhile Sivarasan's photo was published in the newspapers. Sivarasan did not come. Suseendran (A-17) thought that it was not right to stay in that house any further as that would give unnecessary trouble to D. Shanmugham Sundaram (PW 208). He, therefore, with Mallika left the place saying that they were going to Bangalore. When they reached Pollachi Bus-Stand Suseendran (A-17) told Suba that they would go to Madras. She refused. She said that Sivarasan would definitely come within a day or two. For the purpose of hiding, Suseendran (A-17) took her to Trichur by bus, from there to a place at

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Cochin and went to Trivandrum and then came back to Pollachi after visiting various places and reaching Pollachi by 10 o'clock in the night. They again went to D. Shanmugham Sundaram's (PW 208) house and told him that they were unable to go to Bangalore and returned after staying at another friend's house. He was informed that Sivarasan had come and searched for him and Suba. That night they stayed there. He said Suba would often talk to him about the lady tigress organization named as "freedom birds" (English translation). He also saw her once writing poem in coloured autograph-book (Exh. P-480). She also read some crime novels which were purchased by Suseendran (A-17). Sivarasan came after about two days and same night Suseendran (A-17), Suba and Sivarasan went to Madras by bus. They got down at Saidapet Bus-Stop. While Sivarasan and Suba went away, Suseendran (A-17) returned to Pollachi itself. After about ten days Suseendran (A-17) went to Palani where he met Ravi (A-16). Suseendran (A-17) made arrangement for installing the wireless set in a place near Coimbatore. Then he took a house on rent at Dindigul. In his confession Suseendran (A-17) described further activities connected with LTTE and attempt to go to Sri Lanka. On 27-8-1991 LTTE boat came by night in which Ravi (A-16), Ramanan and Kanthan went to Sri Lanka. In the first week of September 1991 a message was received from Jaffna to identify the coast for the boat in which Suseendran (A-17) was coming. Suseendran (A-17) identified the coast and informed Pottu Omman by wireless. On 10-9-1991 Ravi (A-16) arrived by boat in the night. Four more persons also came with him, who had completed their training. Ravi (A-16) brought two wooden boxes containing weapons. In the same boat which had come four more persons were sent to Jaffna for training. Ravi (A-16) and Suseendran (A-17) came to Dindigul. Jaffna was informed by wireless. Ravi (A-16) gave a walkie-talkie, three grenades, one nine mm pistol, 6 gold biscuits, code-sheets and eight cyanide capsules to Suseendran (A-17) and asked him to keep them safely. Ravi (A-16) also gave him Rs 30,000 and told him to buy sockets for the wireless. Ravi (A-16) also told Suseendran (A-17) to make arrangement for buying of petrol and diesel and to send them to Jaffna. He told Suseendran (A-17) that in future they had to make arrangement for the petrol needed for the boat to send the weapons and persons. In the month of October 1991 Suseendran (A-17) went to Pollachi. All the things which Ravi (A-16) gave him he kept locked in a suitcase and gave that to a friend K. Periasami (PW 213) and told him that he would come and collect that later. He then went to Kodaikkarai and gave Rs 30,000 to his friend Jothi Venkatachalam and asked him to arrange for diesel. He gave Jothi's mother one walkie-talkie and two grenades wrapped in plastic paper and told her that he would come and take them afterwards. When he came back to Dindigul again, police arrested him.

509. In his disclosure statement (Exh. P-1323) made on 20-1-1992 Suseendran (A-17) with respect to part of weapons which were given to him by Ravi (A-16) said that if he was taken to the place and to the person with

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whom he kept the articles he would be able to identify those persons, their residences and the articles which he gave them.

510. K.S. Madhavan (PW 273), Sub-Inspector of Police of Tamil Nadu State Police, testified to the disclosure statement made by Suseendran (A-17) (Exh. P-1323) and the recoveries made on that basis both at Pollachi and Kodaikkarai as aforementioned.

511. K. Periasami (PW 213) was involved in Dravida Kazhagam (DK) political organization. He got acquainted with Suseendran (A-17). That was since 1985. In the second week of October 1991 in the morning Suseendran (A-17) came to his house with one suitcase in his hand. He said he was going out of station and asked him to keep the suitcase with him carefully. That suitcase was locked. He, however, did not come back. He was arrested within two weeks from that time in connection with LTTE. After he read the news of his arrest in newspapers K. Periasami (PW 213) thought that there might be some articles in the suitcase, which Suseendran (A-17) gave, connected with LTTE. Using a screwdriver he opened the suitcase and found one walkie-talkie, three aerials of walkie-talkie, one rifle, 18 bullets, one hand grenade, five cyanide bottles and six gold biscuits. K. Periasami (PW 213) after seeing the articles was terrified. He threw all the things except the six gold biscuits inside a well at the back side of his house and also threw the suitcase in a nearby thorny bush. Thereafter Suseendran (A-17) came with CBI to his house on 22-1-1992 and asked for the box which he had given him. K. Periasami (PW 213) said he had kept the gold biscuits concealed in the false ceiling of his room. He took Suseendran (A-17) and the police officers near the well and gave them details of the articles which he found in the suitcase. Services of fire brigade were requisitioned and they brought out all the articles from the well. Articles (MOs 582-87) were seized by Mahazar Exh. P-1003. Six gold biscuits (collectively MO 588) were seized as per Mahazar Exh. P-1004. The suitcase, however, could not be found.

512. Nagarathinam (PW 260) said he was resident of Kodaikkarai. He is in laundry business. He said Sundaramoorthy Pillai and his wife Valliamai were residing in the house next door. Later on they got their own house and shifted. About four years back five policemen had come nine days after Pongal festival. There were two pits in the western side of the house of Pillai. In one there were two explosives (MO 754 and MO 755) and in the other one walkie-talkie (MO 777). Valliamai was showing those objects to the police. A seizure memo was prepared taking into possession the articles (Exh. P-1172). Walkie-talkie and two explosives were kept by Suseendran (A-17) with Valliamai, who is the mother of Jothi Venkatachalam, a friend of Suseendran (A-17).

513. M. Mariappan (PW 86) was working in the household of Shanmugham (DA) at Kodaikkarai. He was living in the house of Shanmugham's (DA) elder brother. At that time he said that some Sri Lankan people were coming and going. There was a tent in front of

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Shanmugham's brother's house where they used to stay. One day one Murugan (A-3) came there from Madras. He stayed in the tent for four days and since no boat came from Sri Lanka he returned to Madras. He gave M. Mariappan (PW 86) six items — two boxes and four bags and said he would take back those on his return from Madras. Shanmugham's brother told M. Mariappan (PW 86) and Shanmugham to bury and conceal the items. This he did. Police made enquiry from M. Mariappan (PW 86) and he after digging unearthed the hidden things and gave them to Tahsildar of the area. M. Mariappan (PW 86) said he and his brother Govindan buried those six items. He identified those two boxes (MOs 198 and 199) and four boxes (MOs 200 to 203), which Murugan (A-3) had given him and he had buried.

514. Karpagam (PW 133), whose husband is D. Shanmugham Sundaram (PW 208), said that she knew Suseendran (A-17). He was her husband's senior in college and she came to know him after marriage. One day on 28-5-1991 Suseendran (A-17) came to their house. He introduced the girl accompanying him as his wife Mallika and said she was a Sri Lankan refugee and it was a love marriage between them. The person with beard, who was also accompanying them, was introduced as Mallika's brother. Suseendran (A-17) said that since it was a love marriage her parents were opposed to it and they would stay for three or four days. The person who had a beard went away. When D. Shanmugham Sundaram (PW 208) came home in the evening she gave him the details. Karpagam (PW 133) also bought one HMT watch as gift for the newly-weds with the consent of her husband. Mallika also bought a chappal. Karpagam (PW 133) then bought some sarees for Mallika on the request of Suseendran (A-17). Suseendran (A-17), however, gave Rs 1000 to D. Shanmugham Sundaram (PW 208), which was the cost of the watch. He said the watch was a gift but Suseendran (A-17) said it was not necessary in the condition they were. They, however, kept the watch. On 1-6-1991 Suseendran (A-17) told D. Shanmugham Sundaram (PW 208) that he was taking Mallika to Bangalore where he had got a house to live. On 2-6-1991 they left the house. Next day Mallika's brother (Sivarasan) came to the house of Karpagam (PW 133) whom she informed that Suseendran (A-17) had taken Mallika to Bangalore. Karpagam (PW 133) identified the photo of Sivarasan (MO 470) as the person who was introduced as the brother of Mallika by Suseendran (A-17). There was another person who had come with Sivarasan. Karpagam (PW 133) identified him as Ravi (A-16). On 3-6-1991 Suseendran (A-17) and Mallika came back and when D. Shanmugham Sundaram (PW 208) asked them whether they had gone to Bangalore, Suseendran (A-17) replied that they could not get the tickets and had stayed at a friend's house. Mallika was told that her brother had come a day before. Suseendran (A-17) left the house on 4-6-1991 and came back the next day. After some time Sivarasan came and then all three left. They did not tell Karpagam (PW 133) as to where they were going. After about ten days Suseendran (A-17) came to the house of Karpagam (PW 133) and when she enquired about Mallika's health he said she was fine and asked her to come to Bangalore where they were staying in

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a separate rented house. After one month suddenly on one night Suseendran (A-17) came again and told D. Shanmugham Sundaram (PW 208) that the
a woman who had stayed in their house was Suba and if they disclose that to anybody they would be put in trouble and also said that he would not be responsible for that. Saying that he went away. Karpagam (PW 133) said that they were afraid and did not divulge about their stay to anybody. When Mallika @ Suba was presented with a new watch the old Citizen watch (MO 471), which she was wearing, she left in the house of Karpagam (PW 133).
b Suseendran (A-17) had left a Philips radio (MO 472). Police took these articles into possession by seizure memo Exh. P-635. Police also took into possession bill for the purchase of the HMT watch (Exh. P-636). There was also a guarantee card of the watch (Exh. P-637). Karpagam (PW 133) identified both Sivarasan and Suba in the photograph and she also identified Ravi (A-16) and Suseendran (A-17). D. Shanmugham Sundaram (PW 208),
c husband of Karpagam (PW 133), corroborated the statement of his wife in all respects.

515. Irumborai (A-19) is an Indian national. He developed interest in the party Dravida Kazhagam (DK) and became Secretary of Pudukkottai District Youth Forum of the party in 1978. In a conference of DK held at Trichi in 1985 a resolution was passed to give full support to LTTE in their struggle.
d Public meetings were arranged in support of LTTE and funds collected. Irumborai (A-19) took part in arranging the meetings. He met many persons of LTTE cadre one of whom was Kasi Anandhan (PW 242). For two years, 1986 and 1987, nobody came to collect the funds from Sri Lanka. Then one Ramesh of LTTE cadre was introduced to Irumborai (A-19). He was organising the providing of medical treatment to the injured LTTE cadre
e who were injured in war in Sri Lanka and had come to India for treatment. He took Irumborai (A-19) to hospital to assist him in looking after the patients who were getting treatment there. During the meeting organized by DK Irumborai (A-19) also met Baby Subramaniam. In the end of 1989 or beginning of 1990 Irumborai (A-19) and Ramesh went to LTTE Headquarters at Indira Nagar, Madras where they met Baby Subramaniam.
f Irumborai (A-19) was meeting Baby Subramaniam quite often in public meetings and also at his press at Madras. In his confession Irumborai (A-19) said he also used to cut the news relating to LTTE published in newspapers and paste them in a notebook which he would hand over to Baby Subramaniam who in turn would send that to Jaffna. Irumborai (A-19) said that he also used to go to the photo studio run by Subha Sundaram (A-22)
g along with Baby Subramaniam. Baby Subramaniam would bring copies of video and audio cassettes relating to LTTE to the studio of Subha Sundaram (A-22), which related to LTTE camps in Sri Lanka and the affected places and persons. At the studio of Subha Sundaram (A-22), Irumborai (A-19) also said that he got acquainted with Bhagyanathan (A-20) but he did not see either his sister or his mother. Whenever Irumborai (A-19) came to Madras
h he would stay in a room near the water tank, rent of which was paid by Baby Subramaniam. Irumborai (A-19) had also seen Arivu (A-18) in DK

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conferences. He also got acquainted with Muthuraja through Baby Subramaniam, who was a strong supporter of LTTE. Muthuraja and Arivu (A-18) had also been staying in the room near water tank in Indira Nagar. Irumborai (A-19) said he and others did not accept the policy of Indian Government and specially the action of IPKF. In June 1990 Irumborai (A-19), Arivu (A-18) and Baby Subramaniam went to Trichi. When they were staying in a house, Trichy Santhan (DA) came there in a Maruti van. They along with some other LTTE persons went to a place near the coast by van and from there to Jaffna in Sri Lanka by a boat. After spending some days there Irumborai (A-19) and others decided to return to India but by that time a conflict had started between LTTE and Sri Lankan army with the result that they could not return. Irumborai (A-19) did the same work there in the press of Baby Subramaniam. He met senior members of LTTE. He was also introduced to Prabhakaran. For five months Irumborai (A-19) was in Sri Lanka and he met many women and children who were affected by the conflict with IPKF. That moved Irumborai (A-19). In November 1990, Irumborai (A-19), Arivu (A-18), Suresh Master and two injured ladies came to India by boat. He met one Kripan who was also the organiser for giving treatment to the injured boys. In March Irumborai (A-19) came to Madras and he met one Kumar, who was the organiser for Political Wing of LTTE. Irumborai (A-19) went with Suresh Master (DA) to see the boys who were under treatment in various hospitals. During February 1991 police arrested those persons who were in the house at Adyar. Kripan was also arrested. Irumborai (A-19) said he stayed in Y.V.K. Hospital and Vijaya Hospital and one day in the month of March 1991 he and Suresh Master (DA) went to Trichi and met Trichy Santhan (DA), who had just then returned from Jaffna. They discussed about the arrest of Kripan and the problem that was being faced in raising funds. Trichy Santhan (DA) said that he would provide the necessary funds. After that they returned to Madras. Suresh Master (DA) hired a house in Alwar Tirunagar in Madras. The house had already been hired by Amman, who was staying there. Other injured LTTE boys were also there. Irumborai (A-19) said he was continuously doing the hospital work and apart from that he also met the LTTE persons who were in prisons at Trichi and Vellore and helped them in getting necessary things. As per instructions of Suresh Master (DA) one day in the second week of May 1991, Irumborai (A-19) said, he went to Trichi and told Trichy Santhan (DA) that Suresh Master (DA) asked for money for his expenses. Trichy Santhan gave Rs 15,000 to Irumborai (A-19). At that time Trichy Santhan (DA) told Irumborai (A-19) that LTTE was making arrangements to kill an important leader shortly, and that Suresh Master (DA), the injured boys and others be asked to be careful. At this Irumborai (A-19) asked Trichy Santhan (DA) whether they were going to kill "(Vazhappari) K. Ramamurthy" (PW 258) of Rajiv Congress to which Trichy Santhan said he did not know the details of the persons and place and alerted all of them to be careful. Irumborai (A-19) then returned to Madras and gave money to Suresh Master and also told him the details told by Trichy Santhan. Irumborai (A-19) said in his confession

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that after that he did not talk with anyone about that. On 21-5-1991 Irumborai (A-19) said he and Suresh Master went to a place called Luz Corner. Arivu (A-18) and Bhagyanathan (A-20) were also there. They all went to M. Sankari's (PW 210) house. Thereafter Irumborai (A-19) and Suresh Master went to Anna Nagar by an auto. Suresh Master got down saying that he was going to see Kasi Anandhan (PW 242). Irumborai (A-19) went home and took a boy Anand to a dentist. He came back by 10 o'clock in the night. Suresh Master also came. Next day on 22-5-1991 in the morning there was news of Rajiv Gandhi being murdered in a bomb blast in Sriperumbudur as announced on TV and in newspapers. Irumborai (A-19) said everybody got frightened and did not go out for two days. He thought Rajiv Gandhi's murder was a brave deed and an act of revenge. On the third day he and Suresh Master went to Anna Nagar to meet Kasi Anandhan (PW 242). Suresh Master told him that he needed some money. Next day when they again went to meet Kasi Anandhan (PW 242) as told by him he gave money to Suresh Master. Irumborai (A-19) then said that in the last week of May 1991 he went to Neyveli to see whether an artificial leg had been fitted to a girl Jamuna who was admitted by Irumborai (A-19) in the hospital. Irumborai (A-19) then returned to Madras and as told by Suresh Master went to Salem to get money from Trichy Santhan but he was not available. In the first week of June 1991 Irumborai (A-19) again went to Salem to meet Trichy Santhan. That night he stayed with him and they discussed about the photos of murderers which were published in the newspapers and who were involved in the murder of Rajiv Gandhi. Both returned to Madras. Trichy Santhan got down at Saidapet and said he was going to Adyar and told Irumborai (A-19) to inform Suresh Master to come and meet him. Irumborai (A-19) went to the house at Alwar Tirunagar and conveyed the message to Suresh Master who then went to Adyar and returned late in the night. Suresh Master then sent the injured boys in pairs to Bangalore. At that time a person named Rangan (A-24) from Thiruvaniyoor was frequently coming to meet Suresh Master. In the second week of June 1991 Irumborai (A-19) again went to Neyveli to see if the artificial leg was fitted to Jamuna, a girl of 16-17 years of age and who was an LTTE woman tigress. She had lost her leg in war with militants in the Fort at Jaffna. He met her this time and he found that the artificial leg had been fitted to Jamuna. Now, when he returned to Madras he was told by Suresh Master that his photo had been seized by the police and they were in search of him. Suresh Master advised Irumborai (A-19) not to go anywhere from the house. After about three or four days in the third week of June 1991 Suresh Master arranged a Maruti van through Rangan (A-24) and asked Irumborai (A-19) to go to Bangalore. Irumborai (A-19) went to Bangalore with Rangan (A-24) and stayed in a house at Indira Nagar. In that house injured LTTE boys were already there. Irumborai (A-19) said he came to know later that that house was arranged by K. Jagannathan (PW 211). In the end of June 1991 Trichy Santhan (DA) came there and told Irumborai (A-19) to bring Jamuna to Bangalore. He also told Irumborai (A-19) to have

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contacts with Andhra Naxalites and also to find out if boat transport could be available at a place Malliapattinam near Pudukkottai. Irumborai (A-19) then went to Neyveli and told Jamuna to be ready. He also enquired about the boat transport to Sri Lanka and was told that because of security being tightened and there being patrolling by Navy it was not possible. Irumborai (A-19) then accompanied with Jamuna returned to Bangalore. Two days later Trichy Santhan also came to Bangalore. He said Sivarasan and Suba were not able to go to Jaffna and that he had received an order to look after them and he said he would accompany them to Bangalore within two days. Then one day in the end of June 1991 at about 6.30 in the morning Sivarasan, Suba and Nero came to the house at Indira Nagar where Irumborai (A-19) was staying. Along with them Vicky (A-25), Rangan (A-24) and Dhanasekaran (A-23) also came. Irumborai (A-19) asked Trichy Santhan how they had come and he told that they had come to Bangalore from Madras by hiding in a tanker lorry of Dhanasekaran (A-23). After four days of their arrival Vicky and Dixon also came to that house in Indira Nagar. Trichy Santhan (DA) and Dixon were discussing as to how to send Sivarasan and Suba to Jaffna. They were looking for a safe place to leave Indian soil. In the house at Indira Nagar, Sivarasan told Irumborai (A-19) that police were informed about their identity only because of the photo taken by Haribabu and the affairs between Murugan (A-3) and Nalini (A-1). A week or 10 days thereafter Suba, Nero and Sivarasan shifted to another house. Then news came that in the last week of July 1991 Vicky (A-25) and Raghu were caught in Coimbatore by the police and Dixon (DA) had died. Since Vicky (A-25) knew the place in Indira Nagar at Bangalore it was decided to shift from that place. All the injured LTTE boys in the first house at Indira Nagar were shifted to the second house. There were about 20 to 30 of them. Suresh Master suggested that a separate house should be arranged for Sivarasan, Suba and Nero. Then Irumborai (A-19) in his confession described as to how he moved about, shifting some of the injured LTTE cadre to other places and getting news of suicide committed by some of LTTE cadre while consuming cyanide. Both Irumborai (A-19) and Trichy Santhan themselves went in hiding from one place to another. They then heard the news of 12 LTTE boys having died by consuming cyanide in Indira Nagar. Trichy Santhan (DA) then directed Irumborai (A-19) to go to his native place. Within two or three days news came that Sivarasan, Suba, Suresh Master (DA), Nero and Jamuna died in Bangalore. In the first week of July 1991 Irumborai (A-19) again met Trichy Santhan who told him that he was short of funds and since police was making efforts to search him he could not go to Jaffna. He asked Irumborai (A-19) to somehow make arrangements to go to Jaffna to meet Baby Subramaniam and then to meet Prabhakaran directly and to inform him about the political situation in India at that time and other things. Ultimately arrangements for Irumborai (A-19) to go to Sri Lanka were made and he was told to be ready on 29-9-1991, Sunday night at a particular place. He conveyed the news to Trichy Santhan (DA). Trichy Santhan sent a cover with a letter written by him to

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Prabhakaran and also a letter written by him to Irumborai (A-19) and some other letters written by other LTTE persons for being taken to Sri Lanka. In the cover addressed to Prabhakaran it was superscribed as "very important to the leader". There was another letter which Trichy Santhan (DA) wrote to Irumborai (A-19). It was dated 7-9-1991 and was in two pages. A boat which was to take Irumborai (A-19) and other LTTE persons came from Rameshwaram near a place "Vil Oondi Theertham" near the seashore as arranged earlier. They got into the boat. When the boat was moving in the sea at about 1.30 in the night Navy men who were patrolling surrounded the boat. Three LTTE persons, who were in the boat, took cyanide. Two died and one in serious condition was taken to the hospital. On the morning of 3-10-1991 Irumborai (A-19) and others, who were also in the boat were handed over to the police at Rameshwaram. The letters which were written by Trichy Santhan (DA) to Prabhakaran and Irumborai (A-19) (Exhs. P-128 and 129) and other letters were also seized from him. P.V. Francis (PW 172), Commander in Indian Navy, and P.P.S. Dhillon (PW 239), Flight Commander of the Helicopter Unit of Port Blair, both testified to the capturing of boat taking the LTTE personnel and seizure of letters Exhs. P-128 and P-129.

516. Dhanasekaran (A-23) is in lorry business with his brother. They had been taking loan from Sundaram Finance Ltd. for purchase of lorries. Two buses were bought in his name which were plying on two different routes in Tamil Nadu. There was separation in the family business and to his and his elder brother Krishnamurthi's share one bus and six lorries were allotted. They named the bus service allotted to them as D.K. Transporters (D. for Dhanasekaran and K. for Krishnamurthi). In the year 1985, through an advocate friend Dhanasekaran (A-23) visited the LTTE camp situated in the garden of Kollathur Mani in Tamil Nadu. Dhanasekaran (A-23) got attracted to the LTTE movement and used to visit the LTTE camp quite often. He came in contact with various important persons of LTTE. He would go and look after the LTTE boys, who got injured in the struggle with Sri Lankan army and had come to India for treatment. By the passage of time he developed strong connections with LTTE persons. In his confession Dhanasekaran (A-23) said that of the LTTE boys he was looking after, two of them, namely, Murthy and Vardhan, died after taking cyanide at Bangalore. One Kripan of LTTE asked him once if he knew anyone to purchase a Maruti Gypsy vehicle. For this purpose Dhanasekaran (A-23) and two other LTTE persons went to Union Motors, Salem. They met V.P. Raghunathan (PW 153), Manager of Union Motors. He told them that the vehicle would be delivered within three months if full amount was paid in cash. That money was provided by LTTE people. Dhanasekaran (A-23) along with two others again visited Union Motors to make payment but V.P. Raghunathan (PW 153) said that he would not accept cash and that payment might be made by a bank demand draft. Accordingly a demand draft was obtained from Indian Bank. Similarly Dhanasekaran (A-23) was again approached for purchase of two more Maruti Gypsy vehicles. He again got

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two demand drafts through his account from Vijaya Bank, Mettur and got the vehicles booked at Union Motors, Salem. In November 1990, he received a phone call from Union Motors that all the Gypsy vehicles were ready for delivery and that delivery would be made at Trichi. Dhanasekaran (A-23) said that he would have the vehicles delivered at Salem itself. He got one Maruti Gypsy delivered in the name of K. Prakash by signing as K. Prakash. Similarly two other vehicles were delivered. Dhanasekaran (A-23) said this way he booked six Maruti Gypsy vehicles under various names for LTTE. During December 1990 he took two seriously injured persons in a Maruti van from Mettur to Bangalore for treatment. K. Jagannathan (PW 211) and another person belonging to LTTE helped him and also came with them up to Bangalore and a house was arranged in Bangalore through K. Jagannathan (PW 211). Of the injured persons so transferred one died. His body was brought and buried at the side of the LTTE camp. In April 1991 Trichy Santhan (DA) and an important member of LTTE came along with Rangan (A-24) whom Dhanasekaran (A-23) already knew as a driver. He was also known to Trichy Santhan as he met him in Gokulam Hospital at Salem where LTTE persons were getting treatment. Trichy Santhan told Dhanasekaran (A-23) that more boys of LTTE movement were in prison in Tamil Nadu and he had come to Tamil Nadu to look after them and wanted to see Kollathur Mani where the LTTE camp was situated. After some days Dhanasekaran (A-23) got a message to meet Trichy Santhan at Salem. He went there. Trichy Santhan asked him to meet Kollathur Mani and to remind him to send him money. Dhanasekaran (A-23) said that on 21-5-1991 he was in his house at Mettur when he heard the news of Rajiv Gandhi's death due to a bomb explosion at Sriperumbudur. He got the news through newspapers and television. He said that later he came to know that it was the LTTE cadre who was mainly responsible for the assassination of Rajiv Gandhi and that Sivarasan, Suba and Dhanu were involved in the same. He saw their photographs in the magazine and on TV. Dhanasekaran (A-23) then said that on 23-6-1991 when he went to attend a marriage he again got a message from Kollathur Mani to meet Trichy Santhan at Salem and to help him to transfer two persons to another place. Dhanasekaran (A-23) along with K. Jagannathan (PW 211) went to Salem. He met Trichy Santhan separately. There he instructed him to take Sivarasan, Suba and Nero from Madras to Bangalore. He gave the idea that they could be taken in an empty tanker lorry by hiding them in the tanker after cleaning it. He gave that idea as nobody would search the empty tanker lorry usually. He said that tanker lorry be arranged in two or three days itself otherwise those three persons would be arrested by the police. Dhanasekaran (A-23) said he selected a tanker lorry bearing Registration No. TN-27-Y-0808, which he had bought after obtaining loan from Sundaram Finance Ltd. The loan had not been discharged and to avoid seizure by Sundaram Finance Dhanasekaran (A-23) changed the lorry number to TAM-8998. The lorry having Registration No. TAM-8998 was kept in garage as it had met with an accident and Dhanasekaran (A-23) had already received the insurance amount after

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completing the formalities. After changing the registration plate of the tanker lorry as TAM-8998, Dhanasekaran (A-23) along with driver R. Selvaraj (PW 230) and cleaner Vijayan left Mettur on 27-6-1991 at 1.00 p.m. and reached Salem. From Salem Dhanasekaran (A-23) left for Madras along with Vicky (A-25), Amman (DA), driver R. Selvaraj (PW 230) and cleaner Vijayan. The lorry was driven by R. Selvaraj (PW 230). The tanker was filled with water on the way. Fuel (diesel) was taken for Rs 1000 from an Indian Oil petrol pump. Water was released near Sriperumbudur. Next day on 28-6-1991 they arrived at 6 o'clock at Poonamallee. Amman (DA) alighted near Iyyappan Thangal. They further stopped the lorry near Poonamallee bypass road. They sent away driver R. Selvaraj (PW 230) and cleaner Vijayan. In the night Amman (DA) came with Rangan (A-24) and asked Dhanasekaran (A-23) and Vicky (A-25) to go with them. Vicky (A-25), Amman (DA), Rangan (A-24) and Dhanasekaran (A-23) took the tanker and halted it at a certain place after crossing Porur. Vicky (A-25), Amman (DA) and Rangan (A-24) went out and returned along with Suresh Master (DA) who was introduced to Dhanasekaran (A-23). By that time three persons, namely, Sivarasan, Suba and Nero came there with three bags with them. They entered inside the tanker after Vicky (A-25) opened the cap of the container. Vicky (A-25), Amman (DA) and Rangan (A-24) were seated along with Dhanasekaran (A-23) in lorry cabin. It was driven by Dhanasekaran (A-23). Driver R. Selvaraj (PW 230) and cleaner Vijayan boarded the lorry at Poonamallee. They drove the vehicle straight on the Bangalore Road. At two places messages were sent to Bangalore that they were reaching there. They reached Bangalore in the morning at about 7 o'clock on 29-6-1991. Tanker lorry was stopped a little away from Indira Nagar. Driver R. Selvaraj (PW 230) and cleaner Vijayan were again sent away to have tea. Vicky (A-25) was left in the vehicle and Dhanasekaran (A-23) and Rangan (A-24) went to the house at Indira Nagar. There they saw Trichy Santhan and Irumborai (A-19). More injured persons of LTTE cadre were also there. Dhanasekaran (A-23) further said that he took the Fiat car to a place where the tanker lorry was parked as directed by Trichy Santhan (DA). Sivarasan, Suba and Nero exited from the tanker and were brought to Indira Nagar house in the Fiat car. Confession of Dhanasekaran (A-23) is silent about Amman (DA) after the tanker reached Bangalore. Dhanasekaran (A-23) then went to the tanker again by an auto and drove the tanker lorry to Madras along with driver R. Selvaraj (PW 230) and cleaner Vijayan. Tanker lorry was loaded from SPIC Chemicals and reached Mettur. This tanker lorry was seized by Sundaram Finance Ltd. after a month. Dhanasekaran (A-23) then said that he again went to the house at Indira Nagar on 24-7-1991 and saw Sivarasan. He had a conversation with him for nearly half an hour. When Dhanasekaran (A-23) asked him as to why he murdered Rajiv Gandhi, his answer was that "he did it in accordance with the instructions by their leader". Then Dhanasekaran (A-23) asked why Suba accompanied him and his answer was that she was for an alternative arrangement. After he learnt that police was looking for him he went in hiding for some time and

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consulted his advocate in Madras. He was advised to return to his house. Later he was arrested at Mettur on 13-10-1991.

517. Rangan (A-24) is a Sri Lankan national. In 1983 he joined the LTTE movement. He got military training. He took part in the war with the Sri Lankan army in 1984. He was injured and after he got the treatment he did not go for military duty and instead was given the work of transport. In Jaffna he met various important persons belonging to LTTE. He came to know Sivarasan. He also met Prabhakaran. In 1989 he came to India where, he said, he was running a travel agency without permit. In his confession he said he prepared passports and other documents for Sri Lankans who wanted to go abroad. He said he used to prepare fake documents through a travel agency in Adyar in Madras and made good income. In December 1990 he got links with LTTE movement in India. He also got acquainted with Amman (DA) who was a driver and was working under Trichy Santhan (DA) and his assistant Suresh Master (DA), who belonged to the Political Wing of LTTE. Rangan (A-24) said he helped Amman and sent Sri Lankan Tamilians abroad during December 1990 and January 1991. He brought one Maruti van TN-04-A-0337 in the name of Ramesh who also arranged a house for him. He said he came to know Trichy Santhan (DA), Suresh Master (DA) and Irumborai (A-19) through Amman (DA). Rangan (A-24) said that Prabhakaran had entrusted Trichy Santhan with the responsibility of looking after the work such as political activities of LTTE in India, necessary supplies to Sri Lanka, arranging for treatment of injured "tigers", arranging houses for the persons of the LTTE movement and to take them from place to place. A house at Alwar Tirunagar was arranged by Amman (DA) for the stay of LTTE persons. That house was independent and situated in a remote place and was convenient for LTTE men to come and go without being noticed. Rangan (A-24) said that Suresh Master (DA) told him in the beginning of May 1991 that police would take action very soon and that LTTE men should be shifted to some other place. Rangan (A-24) said that he was taking LTTE men, who were injured, continuously in his Maruti van. Some of them stayed in the house at Alwar Tirunagar, some in Vijaya Nursing Home and some were taking treatment in Asian Hospital. He removed those injured persons from those places in his van and dropped them in places like Thiruvallur Bus-Stand and Parry's Corner. From there Trichy Santhan, Suresh Master and Irumborai (A-19) would take them to different places by bus. In his confession Rangan (A-24) further said that during 18-5-1991/21-5-1991 he was busy in sending the Sri Lankan Tamilians abroad. But after the assassination of Rajiv Gandhi situation became bad. Photograph of Sivarasan was published in the newspapers and so Rangan (A-24) said he was actively working at that time to send LTTE men out of Madras with the help of Suresh Master and Irumborai (A-19). In June 1991 Rangan (A-24) went to Bangalore to the house of K. Jagannathan (PW 211) at Indira Nagar. His address was given to him by one Balaguru in Madras whom he met in Vijaya Nursing Home. While going to Bangalore Sudha, an LTTE activist and mother of Balaguru, and one Ravi went in his

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van to Bangalore. K. Jagannathan (PW 211) arranged to get treatment for the injured LTTE persons. Rangan (A-24) said that he also met one Vasanthan, who was a partner of Trichy Santhan and working under his leadership. He was actively doing the work of LTTE like arranging safe houses for their mission. In the end of June 1991 Suresh Master (DA) told Rangan (A-24) that he was being given an important work. At that time Dixon (DA), another LTTE man, was also present. Suresh Master (DA) told Rangan (A-24) to wait in a remote place at Alwar Tirunagar at 7.30 in the evening on the following day. At about 8 o'clock in the night Suresh Master (DA) along with Sivarasan, Suba and Nero came in an auto. They all stayed in the house at Alwar Tirunagar while Rangan (A-24) went to his house in Thiruvaniyoor. Sivarasan, Suba and Nero stayed there for about four or five days. Suresh Master then told Rangan (A-24) that they should be taken to some place outside Madras. Amman (DA) took him to a place at Porur-Poonamallee Road where a tanker was parked. Amman (DA) told Rangan (A-24) that Trichy Santhan had arranged that tanker to take Sivarasan and others to Bangalore. One person by the name of Dhanasekaran (A-23) with another small boy to assist him by the name of Vicky (A-25) was with him. While Dhanasekaran (A-23) stayed in the tanker Rangan (A-24) took Sivarasan, Suba and Nero from their place of stay and made them get into the tanker through the hole at the back of the tanker. Sivarasan and others were having AK-47 gun and also a pistol with them. Rangan (A-24), Vicky (A-25) and Amman (DA) sat in the front portion of the tanker and they left for Bangalore by 9 o'clock in the night. Two more boys who were working with Dhanasekaran (A-23) were also taken in the tanker on their way. Vicky (A-25) telephoned Bangalore from a PCO while they were going to Bangalore and informed Trichy Santhan about their arrival. They reached Bangalore early in the morning. Then Rangan (A-24) in his confession corroborates what Dhanasekaran (A-23) said. On the same day, Rangan (A-24) said, he returned to Madras and shifted the remaining injured LTTE persons to some other places like lodges, etc. He vacated his house at Thiruvaniyoor. He went to stay with Suresh Master (DA) in Vijaya Nursing Home. In the third week of July 1991 Rangan (A-24) again went to Bangalore on the instructions of Suresh Master. He went by night bus. Suresh Master also reached Bangalore by that time. There they went to the house at Indira Nagar where Sivarasan and others were hiding. Rangan (A-24) met some other LTTE men in that house. After hearing that Vicky (A-25) had been arrested in Coimbatore the house at Indira Nagar was vacated and they all moved to another house nearby. Some LTTE persons were already staying in that house. Trichy Santhan gave Rangan (A-24) a Maruti Gypsy which Rangan (A-24) was driving. Rangan (A-24) then said that when CBI raided the house at Indira Nagar, two of the LTTE persons committed suicide and other injured persons went to different places. He said, in the meanwhile Suresh Master (DA) arranged the house of Ranganath (A-26) for Sivarasan and others to stay. That house was in Puttanahalli. Rangan (A-24) took Sivarasan, Suba, Nero, Suresh Master (DA) and Amman (DA) to that house. They moved to that

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house in the beginning of August 1991. After some days Ranganath (A-26) arranged another house in Anaikkal for treatment of LTTE persons. Rangan (A-24) and Ranganath (A-26) shifted LTTE persons in a Maruti Gypsy to that house in Anaikkal. In the meanwhile an LTTE person was arrested by local police. After that it was decided to change the colour of the Fiat car and Maruti Gypsy. Rangan (A-24) with the help of a mechanic, who was arranged by Ranganath (A-26) went and got repainted the colour of the vehicles, Gypsy from green to white and Fiat car from sky blue to white. Ranganath (A-26) arranged two houses outside Bangalore in two villages called Beroota and Muthathi where injured persons from Anaikkal were shifted. Yet another house was arranged by Ranganath (A-26) in Konanakunte for Sivarasan, Suba and Nero to hide. Around 16-8-1991 Rangan (A-24) said they moved their residence from Puttanahalli to Konanakunte. Rangan (A-24) took Sivarasan, Suba and Nero in the Maruti van. Ranganath (A-26) and his wife also went to that house. Thereafter Rangan (A-24) said he went to look after the injured LTTE persons in G.G. Hospital. From there he took one injured LTTE woman Jamuna (DA) to the house at Konanakunte. In that house only Sivarasan, Suba, Nero, Amman, Suresh Master, Driver Anna and Keerthy were staying. On the evening of 18-8-1991 when Rangan (A-24) came to the house in Konanakunte he found that the police had surrounded that house from all sides. He turned back. Next day he took the Gypsy van and arrived at Madras on the morning of 20-8-1991. He went to Balaguru and handed over the key of the vehicle to him after parking the Gypsy in Vijaya Nursing Home. Since police was looking for him he asked Balaguru to arrange a house for him at Avadi. One day when he went to Adyar Travel Agency, police caught him.

518. Vicky (A-25) is a Sri Lankan national. His father was having a shop selling cloths. That shop was destroyed in a raid by Sri Lankan Air Force in the year 1985. Vicky (A-25) thereafter came to India illegally by boat carrying with him video cassettes, audio cassettes, sarees, VCP, etc. which he sold in India. Instead he carried lungis and food articles and returned back to Sri Lanka and earned some money by way of selling those articles in Sri Lanka. By Sri Lankan military one of their houses was completely damaged in a bomb blast in the year 1987. His family resided at certain places as refugees. In 1990 he again came to India to start some business here. Then he met an LTTE activist who said he had come to India for treatment of his wounds and now he was looking (*sic*) those wounded in Sri Lanka and had come to India for treatment. Vicky (A-25) also met the LTTE boys who had been injured and were getting treatment in the hospitals in India. Vicky (A-25) assisted that LTTE activist in getting medicines and acted as his helper. In the middle of 1990, Vicky (A-25) said in his confession that he was introduced to Trichy Santhan. He further said that in the month of 'Panguni', 1991 Trichy Santhan met him and told him that he was in need of medicines and that those should be purchased urgently and sent to Sri Lanka. Trichy Santhan gave him Rs 2 lakhs and a list of medicines to be purchased. Trichy Santhan also introduced Vicky (A-25) to Dixon (DA), who was also a

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member of the LTTE movement. Vicky (A-25) then described his meeting with various LTTE activists. The medicines which had been purchased were given to LTTE activist Bharatham who left for Sri Lanka with the medicines. In a rented house Vicky (A-25) was stocking the medicines in bundles which he had purchased. He said two days after the assassination of Rajiv Gandhi Trichy Santhan met him and told that it was now impossible to stay in Trichi and said he would go to Coimbatore and again asked him to purchase all those medicines ordered by him. He further told Vicky (A-25) that if any one of Sivarasan's men wanted to go to their home town they should be told to go to Indrankutti's house. It was only after Rajiv Gandhi's assassination, Vicky (A-25) said in his confession, that he came to know that his name was Sivarasan. Vicky (A-25) then in his confession described the instructions for him from Trichy Santhan and his coming to Madras and ultimately his going in the tanker lorry with others to Bangalore. He also described his helping the injured LTTE personnel. After leaving Bangalore Vicky (A-25) went to Coimbatore where he was arrested by the police.

519. V.P. Raghunathan (PW 153) was Manager of Union Motors, Salem. He has testified about the four Gypsies being purchased by Dhanasekaran (A-23) in different names on 14-11-1990. He produced delivery receipts and documents connected with the sale of these four Gypsies. Maruti Gypsy, which was purchased in the name of R. Mohan, was subsequently used by Rangan (A-24) to transport Sivarasan, Suba, Nero and other activists to Bangalore. This Gypsy (MO 540) was seized during investigation.

520. S. Syed Ibrahim (PW 232) is an insurance surveyor, who surveyed the damaged tanker bearing Registration No. TAM-8998.

521. S.V. Krishnan (PW 168) is from Sundaram Finance Ltd., who had financed the lorry tanker bearing Registration No. TN-27-Y-0808 and which was used with fake registration plate (TAM-8998) to transport Sivarasan, Suba, Nero and others from Madras to Bangalore. Since the vehicle was under hire-purchase agreement with Sundaram Finance Ltd. it was taken into possession by S.V. Krishnan (PW 168). Subsequently during investigation this tanker lorry (MO 543) was seized by the police.

522. R. Selvaraj (PW 230) was the driver of the tanker lorry (MP 540) and Vijayan was the cleaner. In his statement R. Selvaraj (PW 230) said that he drove the tanker lorry on 27-6-1991 from Mettur to Madras. On the way it was filled with water. The purpose was to clean the tanker. The tanker was also filled with diesel for fuel. Prosecution has produced S. Vasudevan (PW 245) to testify that 238 litres of diesel was put in the tanker lorry (MO 543) on 27-6-1991. R. Selvaraj (PW 230) then said that at Sriperumbudur tanker was emptied of water and cleaned from inside. They reached Poonamallee on 28-6-1991 in the morning where he and Vijayan got down. Now it was Dhanasekaran (A-23) who drove the vehicle with Amman (DA) and Vicky (A-25) sitting in the tanker lorry. When the tanker came back to Poonamallee R. Selvaraj (PW 230) and Vijayan got into the vehicle and the vehicle proceeded towards Bangalore. It was being driven by Dhanasekaran

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(A-23). On the way Vicky (A-25) got down and made a telephone call on STD. That a call was made has been proved by A. Selvaraj (PW 256). Call was made on telephone number 541824 of Bangalore. In further statement R. Selvaraj (PW 230) said that when the tanker lorry reached Bangalore again he and cleaner Vijayan went away for tea but Vicky (A-25) remained in the tanker, while Dhanasekaran (A-23) and Rangan (A-24) went by an auto-rickshaw. Afterwards Dhanasekaran (A-23) came back in an auto where tanker lorry was parked. Tanker lorry now proceeded towards Madras with Dhanasekaran (A-23), R. Selvaraj (PW 230) and Vijayan in the vehicle. In the notebook (Exh. P-1012), regularly maintained by R. Selvaraj (PW 230), there were entries of the trips and other expenses incurred. Notebook (Exh. P-1012) showed that R. Selvaraj (PW 230) drove tanker lorry (MO 543) from Mettur to Salem where a new mattress was purchased and kept on the top of the cabin of the vehicle. The vehicle left for Madras and at Poonamallee both R. Selvaraj (PW 230) and Vijayan got out. When they again brought in the vehicle at Poonamallee R. Selvaraj (PW 230) did not find the mattress. At Bangalore similarly when R. Selvaraj (PW 230) and cleaner Vijayan came back to the vehicle the mattress was again found in the cabin. This mattress was thrown in the river near Hosur when tanker lorry was going back to Madras. Prosecution seeks to draw inference from this that the mattress was kept inside the tanker lorry for the comfortable sitting of Sivarasan, Suba and Nero and when its use was over it was thrown away in the river.

523. Rangan (A-24) had purchased a Maruti van in the name of his friend V. Ramesh, bearing Registration No. TN-4-A-0037 (MO 950). A. Nageswara Rao (PW 178) is the owner of House No. 13, Park Avenue, Velan Nagar Extension, Alwar Tirunagar, Madras which was taken on rent by Rangan (A-24) in March 1991. Lease documents were also executed (Exhs. P-895 to P-897). Rangan (A-24) vacated the house in the first week of July 1991. Before their escape to Bangalore Sivarasan, Suba, Nero and others were staying in this house. That Maruti Gypsy (MO 540) was being driven by Rangan (A-24) in Bangalore has also been testified by Mridula (PW 65), wife of Ranganath (A-26). K.N. Mohan (PW 222) is the owner of the workshop where Maruti Gypsy was repainted from green to white.

524. Ranganath (A-26) is an Indian national settled in Bangalore. Mridula (PW 65) is his wife. At the relevant time he was without any job. In March 1991 he was staying with his wife at a house in Puttanahalli which was owned by E. Anjanappa (PW 218).

525. R. Rajan (PW 223) in his deposition said that he was friendly to one Vasanthan who was a Tamilian and whose native place was Jaffna, Sri Lanka. Both knew each other from Tamil Association in Bangalore. On 29-7-1991 Vasanthan asked R. Rajan (PW 223) that a house was required for stay of four or five persons urgently. After two days Vasanthan again met R. Rajan (PW 223) for the purpose. He told him that no house was available. On 1-8-1991 Jagadish, a friend of R. Rajan (PW 223) met him and told him that he wanted to buy a lathe machine. A lathe machine was owned by

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Ranganath (A-26) who wanted to sell the same. In that connection R. Rajan (PW 223) met Ranganath (A-26) in his house. R. Rajan (PW 223) introduced Ranganath (A-26) to Vasanthan telling him that he was an LTTE activist and asked Ranganath (A-26) to arrange a house for him. R. Rajan (PW 223) said that he knew Ranganath (A-26) since 1990 as he was a friend of Jagadish. R. Rajan (PW 223) said on 2-8-1991 that at about 5.30 or 6.30 p.m. he and Vasanthan met near Sivaji Circle, Bangalore. At that time two more persons had come with Vasanthan and those two persons and Vasanthan talked to Ranganath (A-26) privately and left. On 2-8-1991 in the night at 10 o'clock Ranganath (A-26) brought Sivarasan, Rangan (A-24), Suresh Master, Driver Anna and Amman to his house through front door and then brought Suba and Nero through back door. All these seven persons continued to stay in the house at Puttanahalli with Ranganath (A-26) till 16-8-1991. They would remain confined in a room and would not come out. While staying in the house only Rangan (A-24) was driving Maruti Gypsy (MO 540) for buying vegetables and taking Mridula (PW 65) and Ranganath (A-26) for outside work.

526. K.N. Mohan (PW 222) was a car mechanic and was running a garage in Bangalore. He said he did the painting work of green Gypsy of Ranganath (A-26). He painted the Gypsy white. Ranganath (A-26) had brought the Maruti Gypsy to the garage on 8-8-1991 and got its delivery back on 10-8-1991 after paying total charges of Rs 2200. On 16-9-1991 Ranganath (A-26) again came to the garage with Premier Fiat car bearing Registration No. CAU 6492. That Fiat car was also painted white though its original colour was sky blue. For the work done on the Fiat car K.N. Mohan (PW 222) charged Rs 2500. That car was still lying in the garage when K.N. Mohan (PW 222) said that on 28-8-1991 Ranganath (A-26) came to the garage with 4 CBI officers. Ranganath (A-26) had pointed the Fiat car to the CBI officers. The car was taken into possession by CBI.

527. Mridula (PW 65), wife of Ranganath (A-26), is a teacher. She was married to Ranganath (A-26) in June 1986. She said on 2-8-1991 around 10 o'clock in the night Ranganath (A-26) came with a person who said there were more persons with him and they would stay in the house for four days. The person who came with Ranganath (A-26) was Suresh Master (DA). Ranganath (A-26) and Suresh Master both went out and brought four persons with them, who were Sivarasan, Rangan (A-24), Driver Anna and Amman (DA). Two persons entered the house from the back door and they were Suba and Nero. Next morning Mridula (PW 65) said she saw a green Maruti Gypsy van in front of the house which was covered with tarpaulin. She could not see the number plate of the vehicle. Ranganath (A-26), Suresh Master and Rangan (A-24) went out on the morning of 3-8-1991. When Suresh Master and Rangan (A-24) returned it was about 2.30 p.m. They had brought provisions. Her husband did not come at that time. Mridula (PW 65) said that when her husband returned in the night she told him that the persons, who were staying, were hesitating to go out and she said something was fishy. He replied that they would stay for two or three days and would

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leave. On the fifth day Mridula (PW 65) watched the news on TV and saw the pictures of Suba and Sivarasan. Mridula (PW 65) identified Suba. Suba also knew that she had been identified by Mridula (PW 65). In the evening Mridula (PW 65) told her husband about this fact who said not to ask any question. Suba afterwards became familiar with Mridula (PW 65). She told Mridula (PW 65) that she was eager to return to Jaffna to meet her leader Prabhakaran. Once Mridula (PW 65) saw Sivarasan fixing a lens on his left eye. Mridula (PW 65) asked Suba as to why did they kill Rajiv Gandhi, and her reply was that Rajiv Gandhi was responsible for sending IPKF to Sri Lanka and they had "spoiled" many women and children. She was wearing a cyanide capsule in a thread around her neck. Persons staying in the house were having arms as well and Mridula (PW 65) said that they used to threaten them that "if this was reported to somebody they will kill us". Mridula (PW 65) then described the stay of those persons in her house and sometimes their moving out and meeting certain people. Those persons stayed in the house uptil 16-8-1991. On 16-8-1991 Ranganath (A-26) told Mridula (PW 65) that he had fixed a house in Konanakunte at a rent of Rs 800 per month and advance of Rs 10,000 was to be paid. They all went to the Konanakunte house with provisions. After performing pooja they returned. Mridula (PW 65) said that while in her house at Puttanahalli she noticed AK-47 rifle in Nero's hand and a pistol in Suba's hand. Again when she asked about that they said that if she told anything about that to anybody they would not spare her. At 10.30 p.m. Ranganath (A-26), Mridula (PW 65), Suresh Master (DA), Nero, Suba, Amman, Driver Anna, Sivarasan left for Konanakunte house. They went by a Gypsy van. They also carried gas stove and other articles with them to that house. Mridula (PW 65) said she refused to accompany them but she was forcefully taken. They all spent that night there. In Konanakunte house Mridula (PW 65) saw some papers which had the sketches of K.R.S. Dam and Vidhan Soudha. They were also having pictures of the blast that killed Rajiv Gandhi. Again when she asked those persons reason for killing Rajiv Gandhi they said that they had to kill him because he sent IPKF to Sri Lanka and was responsible for several atrocities committed on women and children. On the morning of 18-8-1991 there was a news item that 12 LTTE cadres had been killed in Muthathi which is in the suburban area of Bangalore. Mridula (PW 65) told her husband that it was not safe to stay any longer with those people. When she and her husband tried to go out of the house Sivarasan confronted them suddenly and asked where they were going. Ranganath (A-26) told Sivarasan that Mridula (PW 65) was not well and they would consult a doctor and that they decided to vacate Puttanahalli house. While returning to Puttanahalli they saw Suresh Master and Rangan (A-24). They also questioned as to where Ranganath (A-26) and Mridula (PW 65) were going. Again reply was that to consult a doctor. At Puttanahalli they loaded all their household goods in a van. R. Jayasankar (PW 229), a friend of Ranganath (A-26), helped them in this process. From Puttanahalli they went to Mridula's (PW 65) brother's house in Vijayanagar. On the way both Ranganath (A-26) and R.

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Jayasankar (PW 229) got out of the van saying that they had to make a phone call. At about 4.30 p.m. Mridula (PW 65) said that after unloading the articles she left the house to give sarees for dry wash but while going to the shop four or five people in civil dress approached her and told her that she should accompany them to Jayanagar Police Station. She said she would talk only to Assistant Commissioner, Deputy Commissioner or Commissioner of Police. She told them that the persons whom they were searching for were in Konanakunte house. She asked if full security would be provided to her she would show the persons whom they were searching for. That time there were Deputy Commissioner of Police, Assistant Commissioner of Police and a lady constable with her. She pointed to Konanakunte house from a distance. Then they all returned to Jayanagar Police Station. Security was provided to Mridula (PW 65) and she was taken to her parents' house. Officers of CBI examined her. She said they were talking in Tamil among themselves and to her. She knew little Tamil. Her statement was recorded by the Magistrate under Section 164 CrPC (Exh. P-220). She identified all the persons who stayed in her house and at Konanakunte either in photographs or their being present in the court.

528. K. Premkumar (PW 227) is a friend of Ranganath (A-26). He said he met Ranganath (A-26) near Nanda Theatre in Jayanagar on 18-8-1991. From there he took him to Vijayanagar. That was his wife's house. From there they went to another place called "West of Guard". No one was in the house. He and Ranganath (A-26) went to that house in search of Mridula (PW 65). She was not there. They took a lodge at about 10 or 11 o'clock in the night. They stayed in the lodge on the night of 18-8-1991/19-8-1991. K. Premkumar (PW 227) said that on the morning of 19-8-1991 at 7 o'clock Ranganath (A-26) took him to Konanakunte. They went in an auto. Ranganath (A-26) made him stand in a place and then himself went in the auto. Somebody in the public came saying "this is a man, this is a man". K. Premkumar (PW 227) said they were caught at Konanakunte. He was put in jail and interrogated by CBI.

529. Subha Sundaram (A-22) is the proprietor of Subha News Photo Services at a place in Royapettah. He is a freelance photographer. He was associated with DK and a strong supporter of LTTE. Arivu (A-18), Bhagyanathan (A-20), K. Ravisankaran (PW 151) and Haribabu (DA) took training in photography from him. At his studio various persons belonging to LTTE cadre used to meet. Some of them were Baby Subramaniam, Irumborai (A-19), Muthuraja, Arivu (A-18), Bhagyanathan (A-20), Haribabu (DA) and others. During the period 1989-90 Haribabu was working for Subha Studio at a monthly salary of Rs 350. For a short while he joined Vignesh Video Studio but he kept on visiting Subha Studio. On 21-5-1991 Haribabu went to studio of K. Ravisankaran (PW 151) with a packet containing sandalwood garland which he had purchased from Poompuhar Handicrafts in the morning of that day. Haribabu borrowed a camera (Chinon) (MO 1) from K. Ravisankaran (PW 151) telling him that he was going to attend the public meeting of Rajiv Gandhi at Sriperumbudur.

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Thereafter Haribabu went to Subha Studio and met Subha Sundaram (A-22). On 22-5-1991 after the bomb blast at Sriperumbudur in which Haribabu died S. Santhana Krishna (PW 108), a friend of Haribabu, V.T. Sundarmani (PW 120), his father and K. Ravisankaran (PW 151), another friend, went to the studio of Subha Sundaram (A-22). It is stated that Subha Sundaram (A-22) exclaimed that only the previous day he had seen Haribabu. Two letters, one (Exh. P-548) dated 18-1-1991 written by Subha Sundaram (A-22) to LTTE leader Kittoo and other (Exh. P-544) addressed by Subha Sundaram (A-22) to Prabhakaran as younger brother, were seized from his studio contents of which showed deep involvement of Subha Sundaram (A-22) with LTTE activities. In one of the letters he had criticised the activities of IPKF.

530. T. Ramamurthy (PW 72), a journalist, had also attended the public meeting at Sriperumbudur on 21-5-1991. At midnight he was returning home and as there was chaos and confusion he stayed that night at Police Station Poonamallee. At midnight Subha Sundaram (A-22) contacted Meena (PW 74), wife of T. Ramamurthy (PW 72) and asked her whether her husband returned home. She replied in the negative.

531. In her statement Meena (PW 74) said that in the midnight on 21-5-1991 one Anand Viswanathan rang her up to say that Rajiv Gandhi and some others had died due to bomb blast at Sriperumbudur. K. Ravisankaran (PW 151) then rang her up and asked her whether T. Ramamurthy (PW 72) had come. After a few minutes Subha Sundaram (A-22) rang her up and enquired about T. Ramamurthy (PW 72). Subha Sundaram (A-22) also told Meena (PW 74) that photographer Babu, who was sent by him had also not yet come. At about 1.00 o'clock in the night T. Ramamurthy (PW 72) rang up his wife Meena (PW 74) and said that he was in Poonamallee Police Station and gave her phone number of the police station. She told her husband about the phone calls received from various persons. She told him that Subha Sundaram (A-22) was asking about his photographer on which T. Ramamurthy (PW 72) said that one photographer sent by Subha Sundaram (A-22) had died. After ten or fifteen minutes later Subha Sundaram (A-22) again rang her up and asked her whether T. Ramamurthy (PW 72) had come. She told him that he was in Poonamallee Police Station and gave him the telephone number.

532. T. Ramamurthy (PW 72) described the scene at Sriperumbudur public meeting when bomb blast took place. He said while he was at Poonamallee Police Station Subha Sundaram (A-22) rang him up. He asked him "what Ramamurthy, have you taken the photographs?". T. Ramamurthy (PW 72) replied that he did take some photographs and had given those to the magazine *Dhinamalar* and that he would give photographs to him in the morning. T. Ramamurthy (PW 72) said he stayed in the police station as there were riots on the way. T. Ramamurthy (PW 72) also told Subha Sundaram (A-22) "what Sundaram, your photographer died in the bomb blast". Then Subha Sundaram (A-22) asked T. Ramamurthy (PW 72) who it was. T. Ramamurthy (PW 72) said that since he did not know the name of

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the photographer who died at the place of the occurrence he gave Subha Sundaram (A-22) the identification marks of the deceased photographer. He then asked whether it was Haribabu and wanted to be certain if he had died. T. Ramamurthy (PW 72) told him that the photographer was lying on his back and the camera was lying on his chest and on that account he said he must have died. Subha Sundaram (A-22) persisted and told T. Ramamurthy (PW 72) over the phone that he should have brought the camera. T. Ramamurthy (PW 72) said he replied him that a great VVIP had been assassinated and things which were there might be important material objects and it was wrong to touch them. Subha Sundaram (A-22) then told him to contact him the next day on his reaching Madras. In the morning Subha Sundaram (A-22) again rang up T. Ramamurthy (PW 72) and asked him to give him some photographs and said he would send his son for the purpose. T. Ramamurthy (PW 72) first went to *Dhinamalar* Office, from there to the studio of Subha Sundaram (A-22), who again asked the details of the occurrence. Again he told T. Ramamurthy (PW 72) that he should have brought the camera and "we could have used the photographs in it". When T. Ramamurthy (PW 72) again said that it was wrong to remove the evidence from that place Subha Sundaram (A-22) said that they could have managed by stating anything and that it was not wrong to have done like that between photographers.

533. On 22-5-1991 when V.T. Sundarmani (PW 120), father of Haribabu (DA) and K. Ravisankaran (PW 151) went to Subha Studio after making enquiries about the place where Haribabu's dead body was kept, Subha Sundaram (A-22) told V.T. Sundarmani (PW 120) to remove all the papers connected with Haribabu from the house. V.T. Sundarmani (PW 120) on reaching home removed all the papers of Haribabu from his house and kept them in his daughter's house which was close by. P. Ramalingam (PW 198) is the son-in-law of V.T. Sundarmani (PW 120) and brother-in-law of Haribabu.

534. Arulmani (PW 128) knew the family of V.T. Sundarmani (PW 120) as his house was situated opposite to his house. When death of Rajiv Gandhi took place Arulmani (PW 128) was in Madurai and was on a bus to Madras. Due to disturbance he could reach Madras at 4.30 a.m. on 23-5-1991. When he reached home he was told that Haribabu was dead at Rajiv Gandhi's function. He went to their house with his father. Mother of Haribabu was crying and Arulmani (PW 128) thought of extending some help. He asked Haribabu's mother to show him papers connected with LIC agency as in April Haribabu had told him that he had joined an agent in LIC. Haribabu's mother told him that all the papers were kept in a box and placed at the house of P. Ramalingam (PW 198), husband of Haribabu's elder sister. Arulmani (PW 128) went to the house of P. Ramalingam (PW 198) and wanted to see the box. It was concealed in the loft under the roof. In the box there were many letters, Prabhakaran's photo, negatives, love letters written by a girl S. Sundari (PW 171). P. Ramalingam (PW 198) told Arulmani (PW 128) that he was asked to burn those things. Since Arulmani (PW 128)

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suspected that there was something wrong as V.T. Sundarmani (PW 120) had instructed P. Ramalingam (PW 198) to burn the papers. He thought of giving those to the police as a national leader had died. There was also news in the newspapers that LTTE had a hand in the assassination of Rajiv Gandhi. Arulmani (PW 128) asked the mother of Haribabu if Haribabu was connected with LTTE and she stated that it was because of those "sinners" that his son was like that. Ultimately police took into possession all those papers.

535. Subha Sundaram (A-22) again tried to retrieve the camera through K. Ramamurthy (PW 258). On 22-5-1991 at about 9 or 10 p.m. he contacted K. Ramamurthy (PW 258), who was in Delhi on phone and told him that "my boy, one Haribabu, had been to Sriperumbudur for taking photographs and he had not returned. It was not known as to what happened to my camera" and he asked K. Ramamurthy (PW 258) whether he could enquire about that. Yet again on 23-5-1991 at 10 or 11.00 a.m. Subha Sundaram (A-22) asked K. Ramamurthy (PW 258), who was still in Delhi about the camera. At that time Subha Sundaram (A-22) told K. Ramamurthy (PW 258) that Haribabu was dead and that his camera had been seized by the police and asked him whether the said camera could be got back by talking to someone. On 25-5-1991 *The Hindu* newspaper (Exh. P-550) published a news item connecting Haribabu with LTTE. Subha Sundaram (A-22) immediately asked V.T. Sundarmani (PW 120), father of Haribabu to come to his studio and asked him to stoutly deny the news item connecting Haribabu with LTTE by issuing a denial statement to the press. Subha Sundaram (A-22) himself dictated the denial statement which was taken down by M. Girija Vallabhan (PW 116). The original denial statement prepared by Subha Sundaram (A-22) was seized (Exh. P-543). A copy of Exh. P-543 — denial statement — was seized by the police from Subha Studio of Subha Sundaram (A-22). Subha Sundaram (A-22) thereafter asked V.T. Sundarmani (PW 120) to take 12 or 13 copies of the denial statement and to give that to all the newspapers. On 26-5-1991 the denial statement was published in *The Hindu* (Exh. P-551). When V.T. Sundarmani (PW 120) told Subha Sundaram (A-22) about cassette "Pasarai Padalgal", which contained LTTE propaganda, Subha Sundaram (A-22) told him to destroy that immediately.

536. A. Parimalam (PW 205) said Haribabu was the brother-in-law of her brother-in-law P. Ramalingam (PW 198). She said on 25th morning they came to the house of Haribabu to enquire about his death. There was no male member. A boy came there with a chit containing number 867229 and said that Haribabu's father had asked his younger brother Kalyankumar to contact him at that number. Since Kalyankumar was not at home mother of Haribabu asked A. Parimalam (PW 205) to telephone on that number. When the phone was picked up on the other side A. Parimalam (PW 205) asked if Haribabu's father was there. The person on the other side asked who was speaking. A. Parimalam (PW 205) said she was Haribabu's elder sister. On the other side the person said that he was Subha Sundaram (A-22) speaking

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and said that there would be an audio cassette in the house and if there are any papers connected with Haribabu those may be taken away and destroyed. Saying that he put down the receiver abruptly.

537. In letter (Exh. P-128) dated 7-9-1991 written by Trichy Santhan (DA) to Irumborai (A-19) there is mention of Subha Sundaram (A-22) relevant portion of which has already been quoted above.

538. V.T. Sundarmani (PW 120), father of Haribabu said that Santhan (A-2) stayed in his house for some time. Haribabu had told that he was his friend. He said on 20-5-1991 Murugan (A-3) came to his house. Haribabu was not present at that time. Murugan (A-3) had earlier been coming to his house. V.T. Sundarmani (PW 120) in his deposition said that Murugan (A-3) told them to inform Haribabu to call on him at Royapettah. He asked V.T. Sundaramani (PW 120) to send Haribabu as soon as he came. V.T. Sundarmani (PW 120) said that Haribabu came and was given the message. He went out that evening. V.T. Sundarmani (PW 120) said Haribabu told his mother at about 2.30 p.m. on 21-5-1991 that he was going out to take photographs and would return by night itself. He did not return that night. In the morning newspapers V.T. Sundarmani (PW 120) read about the assassination of Rajiv Gandhi. In the afternoon he came to know through a newspaper that Haribabu, photographer, was dead. He immediately left his house. V.T. Sundarmani (PW 120) said after some time S. Santhana Krishna (PW 108), a friend of Haribabu and also one Veeraraman came to his house. They told that Haribabu was dead and, therefore, they had to find him out as whereabouts of Haribabu were not known by that time. V.T. Sundarmani (PW 120) said that then Subha Sundaram (A-22) came to his mind and he sent S. Santhana Krishna (PW 108) and another man to Subha Studio to find out the actual position. Kanan, a photographer, told V.T. Sundarmani (PW 120) that he had seen Haribabu with sandalwood garland at Subha Sundaram's (A-22) office at 3.00 o'clock at Royapettah. V.T. Sundarmani (PW 120) also came to know that Haribabu had taken a camera from K. Ravisankaran (PW 151). V.T. Sundarmani (PW 120) went to the studio of Subha Sundaram (A-22) and asked how it had happened and also asked him whether he had sent Haribabu. Subha Sundaram (A-22) replied in the negative. This part of the statement of V.T. Sundarmani (PW 120) may be quoted:

> "When I reached there I asked him how it had happened and I also asked him whether he sent him, he said no. Yesterday he came to his photo studio at 3 o'clock. He also invited us to take photos. Haribabu had asked Subha Sundaram whether anybody else was coming from his studio for taking photos. For that he had replied that nobody was coming and that he had sent him for taking photos. Subha Sundaram told me that he did not know who has taken Haribabu."

V.T. Sundarmani (PW 120) told Subha Sundaram (A-22) that Haribabu was dead and asked him in which hospital he was kept and requested him to do the needful. V.T. Sundarmani (PW 120) said that he met Subha Sundaram

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(A-22) on 22-5-1991 in his office. He talked to him separately in his office and then asked him with whom Haribabu had gone; who had taken him; and whether there might be any link with LTTE; and whether he had gone alone since Subha Sundaram (A-22) told him that he had seen Haribabu. Subha Sundaram (A-22) told V.T. Sundaramani (PW 120) not to worry himself and said that Haribabu might have gone alone. Subha Sundaram (A-22) asked V.T. Sundarmani (PW 120) to discard all the papers in the house relating to Haribabu on reaching home. V.T. Sundarmani (PW 120) asked his wife to remove all the papers connected with Haribabu to their daughter's house. V.T. Sundarmani (PW 120) said on 23-5-1991 early in the morning at 5.00 a.m. Arulmani (PW 128) with his father came to his house. He corroborated as to what Arulmani (PW 128) said about the box being kept in the house of P. Ramalingam (PW 198). V.T. Sundarmani (PW 120) also said on 23-5-1991 at 3.00 p.m. one person calling himself Bhagyanathan (A-20) came to his house and introduced himself as a friend of Haribabu and told the wife of V.T. Sundarmani (PW 120) that nothing had happened to Haribabu and that he would have sustained injuries and gave Rs 1000 to her towards medical expenses of Haribabu. Since the wife of V.T. Sundarmani (PW 120) refused to receive the amount he gave that to Vijayarevathi, their daughter. When there was news item in *The Hindu* connecting Haribabu with LTTE, V.T. Sundarmani (PW 120) was called to the studio of Subha Sundaram (A-22). V.T. Sundarmani (PW 120) said Subha Sundaram (A-22) told him that he was thinking of arranging monetary help/assistance from K. Ramamurthy (PW 258) and at that juncture he must issue a counter-statement. He said that counter-statement must be issued in the newspapers since he was making arrangements to help V.T. Sundarmani (PW 120) monetarily for his son's loss. Since V.T. Sundarmani (PW 120) said he did not know how to give counter-statement and to whom to give Subha Sundaram (A-22) helped him in writing the same and asked V.T. Sundarmani (PW 120) to put his signature. That counter-statement is Exh. P-543.

539. We have set out in sufficient details the confessions and the evidence linking the accused with each other as projected by the prosecution.

540. Mr Natarajan at the outset submitted that the charges of conspiracy and other charges framed against the accused were highly defective and did not show in what manner the accused had to answer these charges. He said that it was not enough if a statutory provision is merely incorporatively charged. He said prosecution may rely on Sections 464 and 465 of the Code to overcome his objections to the charge but these two sections did not completely bar the argument that charge is defective and had prejudiced the accused in their defence. He said Charge 1 was so complicated and conspiracy spread over a number of years and the accused who allegedly joined the conspiracy after the object of conspiracy had been achieved were all tried together, which in itself caused great prejudice to them in their defence. Mr Altaf Ahmed, however, quickly interposed to say that Section 215 of the Code would protect any error in the charge and that the finding

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arrived at by the Designated Court could not be reversed in view of Section 465 of the Code even if argument of Mr Natarajan is accepted. We, however, do not think that we should dilate on this objection by Mr Natarajan as powers of Reference Court are quite wide and we have to examine the evidence regarding conspiracy and to see if there is any irregularity in the charge, which has prejudiced the accused. Mr Natarajan also said that there has not been proper examination of the accused under Section 313 of the Code inasmuch as long and complex questions have been put to them and not much thought has been given by the Designated Court in properly examining the accused under Section 313 of the Code. Mr Natarajan appears to be right to an extent. We have, however, again to consider this from the angle of prejudice to the accused. But then if there is any error on this account that can also be corrected by the Reference Court by again examining the accused. Apart from alleging prejudice to the accused, no instance has been pointed out to show if any prejudice has, in fact, been caused to the accused in either understanding the charge or in their defence. We find that the accused had been well represented and they extensively cross-examined the witnesses. At no stage during the trial they complained of any prejudice. We are, therefore, unable to agree to the submission of Mr Natarajan that any prejudice has been caused to the accused in their defence during the conduct of the trial before the Designated Court.

541. Mr Natarajan said that there was no evidence against any of the accused to bring home charge either under Section 3 or Section 4 of TADA, yet the prosecution wrongly alleged that there was conspiracy to commit acts of terrorism and disruptive activities under TADA and in that process Rajiv Gandhi was killed. He said that apart from the killing of Rajiv Gandhi no other terrorist act had been shown to have been committed or disruptive activity shown to have been committed. There is no such act till May 1991 though the prosecution has alleged the period of conspiracy being 1987 to 1992. Killing of Rajiv Gandhi could not be a terrorist act under Section 3 of TADA. Also there is no disruptive activity falling under Section 4 of TADA. Only Nalini (A-1) and Arivu (A-18) have been charged for offence under Section 4 of TADA. Charge 121 is against Nalini (A-1) and it says that in pursuance of the criminal conspiracy referred to in Charge 1 and in furtherance of the common intention of Nalini (A-1) and deceased accused Sivarasan, Dhanu, Suba and Haribabu to commit disruptive activity at a public meeting at Sriperumbudur, where Nalini (A-1) was physically present at the scene of crime and provided assassin Dhanu (since deceased) with necessary cover from being detected as a foreigner, which enabled the assassin to move freely on the scene of crime and gain access nearer to Rajiv Gandhi where she (Dhanu) detonated the improvised explosive device concealed in her waist belt resulting in the bomb blast and killing of nine police officials who were public servants and who were at that time with Rajiv Gandhi on duty and Nalini (A-1) thereby committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA read with Section 34 IPC.

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542. Charge 228 is against Arivu (A-18) and it is alleged against him that in pursuance of the criminal conspiracy and in course of the same transaction he abetted the commission of disruptive activity by purchasing two Golden-Power battery cells during the first week of May 1991, which were used by Dhanu (since deceased) to detonate improvised explosive device at Sriperumbudur on 21-5-1991 resulting in bomb blast and killing of nine police officials, who were public servants and were on duty at that time with Rajiv Gandhi and Arivu (A-18) committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA and Section 109 IPC.

543. Mr Natarajan said that these two Charges 121 and 228 showed as to how the court considered the disruptive activity and there is no mention in these charges if it was the killing of Rajiv Gandhi which could be termed as disruptive activity. Charges referred to the killing of police officers on duty. He said there is no discussion whatsoever in the judgment of the Designated Court as to how it considered that the case fell under Section 4(3) of TADA. There is no evidence to show propagation of anything as mentioned in Section 4(3) of TADA. Under Section 4(3) of TADA an accused can be said to have committed disruptive activity if he in any way (*a*) advocates, etc. or (*b*) predicts, etc. the killing or destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant. The charges do not name Rajiv Gandhi as at the time he was killed he was not bound by any oath under the Constitution. He was not the Prime Minister. He was not an MP as Parliament stood dissolved and general elections in the country were *in process*. There is no evidence on record to show that Rajiv Gandhi was bound by any oath under the Constitution in any capacity whatsoever. As regards nine police officers who were killed they were not killed on account of any of the grounds mentioned in clause (*a*) or clause (*b*) of sub-section (3) of Section 4 of TADA. Sub-section (2) of Section 4 of TADA defines disruptive activity and, insofar as it is relevant to sub-section (1), means any action taken whether by act or by speech or through any other media or in any other manner whatsoever which questions, disrupts or intends to disrupt directly or indirectly the sovereignty and territorial integrity of India. Mr Altaf Ahmed said that the accused did question the sovereignty and integrity of India inasmuch as they expressed their resentment to the Indo-Sri Lankan Accord which had been approved by Parliament. But then questioning or disapproving the Indo-Sri Lankan Accord would not mean that that would be questioning the sovereignty and integrity of India. When a member of the opposition whether in Parliament or outside criticises the Accord in public it could not be said that he is questioning the sovereignty and integrity of India. According to Mr Altaf Ahmed the accused had chosen the target as Rajiv Gandhi and struck the target thus questioning the very ability of the country to take sovereign decisions. Mr Natarajan said that death of Rajiv Gandhi as the target did not find mention in any charge under Section 4 of TADA and no such question was put to any accused under Section 313 of the Code. Death of nine police officers, though public servants, was not on account of any of the grounds

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mentioned in sub-sections (2) or (3) of Section 4 of TADA but since the target was Rajiv Gandhi and the intensity of the blast was so vast that the police officers died and so also the assassin Dhanu and photographer Haribabu. Mr Natarajan, in our view, is right in his submission that no case under Section 4 of TADA has been made out in the case.

544. Under Section 3 of TADA in order there is a terrorist act three essential conditions must be present and these are contained in sub-section (1) of Section 3 — (*1*) criminal activity must be committed with the requisite intention or motive, (*2*) weapons must have been used, and (*3*) consequence must have ensued. It was contended by Mr Natarajan that in the present case though the evidence may show that weapons and consequence as contemplated by Section 3(1) is there it is lacking so far as the intention is concerned. Prosecution had to prove that the act was done with the intention to overawe the Government or to strike terror in people or any section of people or to adversely affect the harmony amongst different sections of people. There is no evidence that any of the accused had such an intention.

545. As to what is a terrorist act and what is the intention contemplated under Section 3 of TADA reference may be made to a decision of this Court in *Hitendra Vishnu Thakur* v. *State of Maharashtra*[3]. In this judgment Section 3(1) of TADA has been analysed. It would be useful to quote from the judgment in extenso: (SCC pp. 618-19 and 621-22, paras 7 and 11)

> " '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 civilized 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 tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fallout 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

3 (1994) 4 SCC 602 : 1994 SCC (Cri) 1087

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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. It is, therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the legislature that every criminal should be tried under TADA, where the fallout of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the *requisite intention* as contemplated by Section 3(1) of the Act by *use* of such weapons as have been enumerated in Section 3(1) and which *cause* or are likely to *result in* the offences as mentioned in the said section.

* * *

Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the *intention* as envisaged by that section *by means of the weapons* etc. as are enumerated therein *with the motive* as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the *intention* as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a *consequence* of the criminal act that fear, terror or/and panic is caused but the *intention* of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the *intention* to achieve the result as envisaged by the section and not merely where the *consequence* of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the *requisite intention* as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the *intention* to cause terror or panic or to alienate a section of the people or to disturb the harmony

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etc. it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision. Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied."

546. Sub-section (1) of Section 3 can be analysed as under:

(1) Whoever *with intent*

(*i*) to overawe the Government as by law established; or

(*ii*) to strike terror in the people or any section of people; or

(*iii*) to alienate any section of the people; or

(*iv*) to adversely affect the harmony amongst different sections of the people

does any act or thing by using

(*a*) bombs, dynamite, or

(*b*) other explosive substances, or

(*c*) inflammable substances, or

(*d*) firearms, or

(*e*) other lethal weapons, or

(*f*) poisons or noxious gases or other chemicals, or

(*g*) by any other substances (whether biological or otherwise) of a hazardous nature

in such a manner as to cause

(*i*) death of, or

(*ii*) injuries to any person or persons, or

(*iii*) loss of, or damage to or destruction of property, or

(*iv*) disruption of any supplies, or

(*v*) services essential to the life of the community, or

detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act commits a *terrorist act*.

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547. In the present case applying the principles set out above on the interpretation of Section 3(1) and analysis of this sub-section of TADA we do not find any difficulty in concluding that evidence does not reflect that any of the accused entertained any such intention or had any of the motive to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabhakaran, supreme leader of LTTE had personal animosity against Rajiv Gandhi and the LTTE cadre developed hatred towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA. State of Tamil Nadu was notified under TADA on 23-6-1991 and LTTE was declared an unlawful association on 14-5-1992 under the provisions of the Unlawful Activities (Prevention) Act, 1967. Apart from killing of Rajiv Gandhi no other terrorist act has been alleged in the State of Tamil Nadu. Charge may be there but there is no evidence to support the charge. Mr Natarajan said that prosecution might refer to the killing of Padmnabha in Tamil Nadu, leader of EPRLF, which fact finds mention in the confession statement of Santhan (A-2). But then he said it was not a terrorist act. It was killing of a rival Sri Lankan and in any case killing of Padmnabha is not a charge in the case before this Court. Mr Altaf Ahmed said that when he earlier mentioned the killing of Padmnabha, it was only to show that LTTE was an organization which brooked no opposition and anyone opposing its objective was eliminated. Mr Natarajan said it was the case of the prosecution itself that Prabhakaran had developed personal animosity against Rajiv Gandhi over a period of time and had motive to kill him.

548. Mr Altaf Ahmed realised the difficulty he had to face to show that any offence under Sections 3 and/or 4 of TADA had been committed. He submitted that charges in the present case showed the dimension of the conspiracy and the nature of the crime committed on 21-5-1991. He said the object of the conspiracy was to commit terrorist act and use of bomb, etc. was the means to achieve that object and that the consequence was to overawe the Government and to create terror in the minds of the public and it was with that object that Rajiv Gandhi and others were killed. He said that the object of the conspiracy was not accomplished on the killing of Rajiv Gandhi but it continued even after his death as LTTE targeted places and persons spread across the country. There is no evidence that blasting of the buildings like Vellore Fort, police headquarters, was the object of conspiracy or that was to be done with the intention to overawe the Government or to create terror among the public. The charges do not specify any such intention or places. Similar is the position regarding unspecified targets in Delhi. According to him conspiracy was not abandoned and did not culminate with the assassination of Rajiv Gandhi though the assassination of Rajiv Gandhi overshadowed other activities. He said that to continue with the object of conspiracy the accused had to retain their identity in order to

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commit further acts and thus for the purpose of self-preservation they had to live and for that they committed acts of escapades, screening, destruction of evidence, etc. Charge framed against the accused described their various roles and the offences committed by them. He said ingredients of Sections 3, 4 and 5 of TADA are part of the charge and there is evidence to prove these charges. He said it may be that particulars of all the sections had not been mentioned in the charge but that was a curable irregularity and no prejudice has been shown to have been caused to the accused. It would appear that the argument of Mr Altaf Ahmed is based on the submission that under Section 3 of TADA conspiracy was also to overawe the Government. Reference was made to the definition of "overawe" in *Black's Law Dictionary* to mean "to subjugate or restrain by awe, or profound reverence". Realising the difficulty that there was no charge of conspiracy to overawe the Government Mr Altaf Ahmed said that since it was a case of reference this Court could return the finding as there was evidence to overawe the Government and it could not be said that the accused would be prejudiced by adopting such a course. He said that it was enough if the section describing the offence is mentioned in the charges and all the ingredients of the offence need not be in the charge. According to him charge thus gives notice of accusation to the accused and the requirement of law is fulfilled. But then in the present case when some particulars of a charge have been given the accused can certainly assume that they are not being charged with other ingredients of the offence given in a particular section. If we now take into consideration those ingredients as well prejudice would certainly be caused to the accused.

549. Mr Altaf Ahmed said that Rajiv Gandhi was targeted as he was the Prime Minister when the Indo-Sri Lankan Accord was entered into and his name was synonymous with the Accord. LTTE took it that it was entered into contrary to their aspirations. In an interview before the general elections Rajiv Gandhi did support his stand on the Accord which had been ratified by Parliament. He said that action of the accused in killing Rajiv Gandhi struck at the sovereign powers of the country and it was to intimidate the Government. That the country was in the midst of election and on account of the assassination of Rajiv Gandhi elections were postponed and formation of the Government was delayed. A notification dated 22-5-1991 was issued by the Election Commission of India postponing the elections. It was mentioned in the notification that the country had suffered a great tragedy in the death of Shri Rajiv Gandhi at the assassins' hands. The country was thus in trauma. Intention of the accused in killing Rajiv Gandhi was that India as a sovereign country could not take sovereign decisions. Prime Minister is the pivot of the parliamentary system and if he is killed because he was party to an Accord entered into in exercise of sovereign powers of the country and even though he may not be the Prime Minister at the relevant time, his killing would send shock waves all over the country and to the Government in power and the Government to be. He said conspiracy to kill Rajiv Gandhi was thus with intent to overawe the Government as by law established. Since there was no such charge, no finding, and no question put to the accused

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under Section 313 of the Code, it was pointed out to Mr Altaf Ahmed that unless he referred to any relevant provision of law or any decision of this Court on the powers of this Court in Reference, his argument could not be taken note of. Mr Altaf Ahmed said that powers of the Court while considering the Reference are wider than that of the appellate court. Under sub-section (1) of Section 366 of the Code it is for the Supreme Court to confirm the death sentence and under sub-section (1) of Section 367 of the Code, the Supreme Court, if it thinks that a further enquiry should be made into or additional evidence taken upon any point bearing on the killing or innocence of the accused it may make such enquiry or such trial itself or direct it to be made or taken by the Designated Court. With these powers being there Mr Altaf Ahmed said that though the approach of the Designated Court may have been different in construing the charge and it may not accord with the submissions made now before us and if we construe the charge on our own it is that the accused had committed a terrorist act on the soil of India and in the course of that killed Rajiv Gandhi in order to overawe the Government established by law not to pursue the Indo-Sri Lankan Accord. It was, however, not suggested as to what enquiry or additional evidence is contemplated by the prosecution. From the arguments of Mr Altaf Ahmed it would appear that he is seeking amendment of the charge and if that is done it would require additional evidence or even retrial may have to be ordered. We do not think we should adopt any such course. The question before us is to consider the charge in its proper way and to examine the evidence with reference to that. Quite a number of judgments on the question of power of the Reference Court were cited, principal of these being two judgments in *Jumman* v. *State of Punjab*[22] and *Rama Shankar Singh* v. *State of W.B.*[23]

550. In *Jumman* v. *State of Punjab*[22] this Court considered scope of the reference under Sections 374 and 375 of the old Code (Sections 366 and 367 of the new Code) and powers of the High Court in its disposal. Statement of law has been laid in paras 11 and 12 of the judgment which are as under:

> "*11*. Before we propose to discuss the evidence on which reliance has been placed by the counsel in this Court, it is necessary to advert to a circumstance which calls for some comment. Along with the appeals filed by the accused, there was before the High Court, a reference under Section 374, CrPC, by the Sessions Judge, submitting to the High Court the proceedings before him for confirmation of the sentences of death passed by him. Under Section 375, CrPC, the High Court has power to direct further enquiry to be made or additional evidence to be taken in such matters and according to Section 376, CrPC, the High Court has to confirm the sentence, or pass any other sentence warranted by law, or alternatively it may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him, or order

22 AIR 1957 SC 469 : 1957 Cri LJ 586
23 AIR 1962 SC 1239 : 1962 Supp (1) SCR 49

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a new trial on the same or an amended charge or the High Court may acquit the accused person. Section 377, CrPC, provides that the confirmation of the sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

12. It is clear from a perusal of these provisions that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal under Order 41, CPC, an appellate court has to find whether the decision arrived at by the court of first instance is correct or not on facts and law; but there is a difference when a reference is made under Section 374, CrPC, and when disposing of an appeal under Section 423, CrPC, and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own."

551. In *Rama Shankar Singh* v. *State of W.B.*[23] this Court held that powers under Section 374(1) and Section 376 of the old Code were manifestly of wide amplitude and exercise thereof was not restricted by the provisions of Section 418(1) and Section 423 of the old Code. Irrespective of whether the accused, who is sentenced to death, prefers an appeal, the High Court is bound to consider the evidence and arrive at an independent conclusion as to the guilt or innocence of the accused and this the High Court must do even if the trial of the accused was held by jury. Indeed, duty is imposed upon the High Court to satisfy itself that the conviction of the accused is justified on the evidence and that the sentence of death in the circumstances of the case is the only appropriate sentence.

552. These are the basic judgments on the scope of reference and the powers of the High Court while disposing of the same. Other judgments of this Court on this aspect reiterate the principles laid down in these two judgments. It is, therefore, not necessary for us to refer to all those judgments.

553. We have certainly kept in view principles laid down in these judgments.

23 AIR 1962 SC 1239 : 1962 Supp (1) SCR 49

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554. Prosecution case now made out before us is that the object of conspiracy was to commit terrorist acts during the period 1987 to 1992; that the assassination of Rajiv Gandhi was one of such acts with the intention to overawe the Government and to strike terror; and the assassination was an act which struck terror and was also a disruptive activity. As to how it was intended to overawe the Government it was submitted that it was on account of the Indo-Sri Lankan Accord, which the Government of India was to honour and that did not suit the aspirations of LTTE and thus the conspiracy was hatched to eliminate the person who was the author of the Accord and to threaten the successive Governments not to follow the Accord, otherwise that Government would also meet the same fate. But then, as noted above that there was a conspiracy to overawe the Government is nowhere in the charge. Though it could be said that terror was struck by the assassination of Rajiv Gandhi but the question is if striking of terror was intended and for that again there is no evidence. Apart from the assassination of Rajiv Gandhi no other act which could be termed as terrorist act has been suggested. The Designated Court in its impugned judgment does not record any such argument now advanced before us. There is no discussion in the judgment and there is no evidence to which the judgment refers to to hold that there was any terrorist act intended to overawe the Government or to strike terror. The Designated Court has clearly held that on the assassination of Rajiv Gandhi object of conspiracy was successfully accomplished. Even if thus examining the proceedings in reference, our decision has to be made on the basis of the evidence on record. When there is no evidence, inference cannot be drawn that the act of killing of Rajiv Gandhi was to overawe the Government. Even though there is no bar to the examination of the accused under Section 313 of the Code by this Court in these proceedings but then what is required to be put to the accused is to enable him to personally explain any circumstance appearing in the evidence against him and when there is no evidence, there is no necessity to examine the accused at this stage as that would be a futile exercise. When the prosecution during the course of the trial, which lasted over a number of years, had taken the stand that killing of Rajiv Gandhi was a terrorist act, it cannot now turn about and say that killing itself was not a terrorist act but was committed to achieve the object of conspiracy which was to overawe the Government. As a matter of fact in the statement of Kasi Anandhan (PW 242), who was a member of the Central Committee of LTTE, it has come on record that he met Rajiv Gandhi in March 1991 when Rajiv Gandhi supported the stand of LTTE and had admitted that it was his mistake to send IPKF to Sri Lanka and he wanted LTTE to go ahead with its agitation. That being the evidence brought on record by the prosecution there is no question of it now contending that there was conspiracy to overawe the Government. Its stand throughout has been that it was the personal motive of Prabhakaran and others to commit terrorist act by killing Rajiv Gandhi. Under Section 3(1) of TADA overawing the Government cannot be the consequence but it has to be the primary object. There is nothing on record to show that the intention to kill Rajiv Gandhi

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was to overawe the Government. Reference to the Indo-Sri Lankan Accord is merely by way of narration.

555. Support to the struggle of LTTE in Sri Lanka was from Tamil Nadu and it does not appeal to reason that LTTE would commit any act to overawe the Government. It is a matter of common knowledge that all terrorist acts are publicised and highlighted which is fundamental to terrorism. Whenever a terrorist act is committed some organisation or the other comes forward to claim responsibility for that. In the present case LTTE tried to conceal the fact that it was behind the murder of Rajiv Gandhi. The object to assassinate Rajiv Gandhi was kept a closely-guarded secret. In the wireless message dated 7-5-1991 (Exh. P-392) from Sivarasan to Pottu Omman he conveyed that "our intention is not known to anybody except we three" meaning thereby himself, Suba and Dhanu. There is another wireless message dated 22-5-1991 (Exh. P-396) from Pottu Omman to Sivarasan that "even to our people in higher places we informed that we have no connection with this" meaning thereby that the assassination of Rajiv Gandhi a day before was not carried out by LTTE. LTTE was not owning the assassination of Rajiv Gandhi and it cannot, therefore, be said that it was done to overawe the Government. LTTE did not want publicity and wanted to keep friendly relations with India and the people of India. Pottu Omman even cautioned Sivarasan in his wireless message dated 22-5-1991 (Exh. P-396) not to send long messages as "it will create suspicion" meaning thereby that LTTE might be suspected to be behind the assassination. Two letters of Suba and Dhanu to Akila and Pottu Omman dated 9-5-1991 which were carried by Murugan (A-3) did not spell out their mission. Trichy Santhan (deceased accused) in his letter dated 7-9-1991 (Exh. P-129) to Prabhakaran, which was recovered from Irumborai (A-19) complained about the operation of Sivarasan which led to the name of LTTE being publicised as behind the assassination of Rajiv Gandhi and further about the illicit relationship that developed between Murugan (A-3) and Nalini (A-1). He wrote that due to Murugan (A-3) incident the press was writing ridiculously about the movement and the newspapers were magnifying that Murugan (A-3) and Nalini (A-1) were lovers and that Nalini (A-1) was five months pregnant.

556. We accept the argument of Mr Natarajan that terrorism is synonymous with publicity and it was sheer personal animosity of Prabhakaran and other LTTE cadre developed against Rajiv Gandhi which resulted in his assassination. LTTE would not do any act to overawe the Government in Tamil Nadu or in the Centre as otherwise their activities in this country in support of their struggle in Sri Lanka would have been seriously hampered.

557. Charge of disruptive activities under Section 4(3) of TADA is against Nalini (A-1) and Arivu (A-18). There is no charge under Section 3(3) of TADA against Rangan (A-24), Vicky (A-25) and Ranganath (A-26). They are charged under Section 3(4) of TADA. Charge under Section 3(3) is against A-1 to A-23. If we examine one such charge, say Charge 235 against A-21 which says that she in pursuance of the criminal conspiracy referred to

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in Charge 1 and in course of the same transaction during the period from January 1991 to June 1991 at Madras and other places in Tamil Nadu, had actively associated with and assisted other conspirators in carrying out the object of criminal conspiracy and thus she knowingly facilitated the commission of terrorist act or any act preparatory to terrorist act and which was committing the terrorist act by detonating the improvised explosive device concealed in the waist belt of Dhanu and thereby A-21 committed an offence punishable under Section 3(3) of TADA.

558. The Designated Court held that hatred which developed in the mind of Prabhakaran further developed into animosity against Rajiv Gandhi in view of the events which took place after IPKF was inducted in Sri Lanka.

559. Thus examining the whole aspect of the matter we are of the opinion that no offence either under Section 3 or Section 4 of TADA has been committed. Since we hold that there is no terrorist act and no disruptive activity under Sections 3 and 4 of TADA, charges under Sections 3(3), 3(4) and 4(3) of TADA must also fail against all the accused.

560. Arguments were then addressed as to what is the nature of conspiracy made out from the evidence on record and the applicability of Section 10 of the Evidence Act. Various judgments of this Court were cited on the nature, scope and existence of criminal conspiracy under Sections 120-A and 120-B IPC. We may refer to some of them.

561. In *Major E.G. Barsay* v. *State of Bombay*[24] (SCR at p. 228) this Court said:

> "The gist of the offence (of criminal conspiracy under Section 120-A IPC) 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 not 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. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

562. In *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*[11] reference of which was made while considering the impact of Section 10 of the Evidence Act, the Court said that the essence of conspiracy was that there should be an agreement between persons to do one or other of the acts described in Section 120-A IPC. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties.

24 AIR 1961 SC 1762 : (1962) 2 SCR 195

11 AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*

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563. In *Noor Mohd. Mohd. Yusuf Momin* v. *State of Maharashtra*[25] it was held that Section 120-B IPC makes the criminal conspiracy a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. It differs from other offences where mere agreement is made an offence even if no steps are taken to carry out that agreement.

564. In *Yash Pal Mittal* v. *State of Punjab*[26] the Court said as under: (SCC p. 543, para 9)

> "9. The offence of criminal conspiracy under Section 120-A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. 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. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy."

565. In *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*[27] this Court said (at SCC p. 468, para 14) that it was manifest

> "that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design".

566. In *Mohd. Usman Mohd. Hussain Maniyar* v. *State of Maharashtra*[28] this Court again asserted: (SCC p. 453, para 30)

> "*30.* It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120-B, the prosecution need not necessarily prove

25 (1970) 1 SCC 696
26 (1977) 4 SCC 540 : 1978 SCC (Cri) 5
27 (1980) 2 SCC 465 : 1980 SCC (Cri) 493
28 (1981) 2 SCC 443 : 1981 SCC (Cri) 477

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that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication."

567. In *State of H.P.* v. *Krishan Lal Pardhan*[29] the Court said that every one of the conspirators need not have taken active part in the commission of each and every one of the conspiratorial acts for the offence of conspiracy to be made out. It added that: (SCC pp. 20-21, para 8)

> "The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences."

568. In *Kehar Singh* v. *State (Delhi Admn.)*[30] the Court said that the most important ingredient of the offence of conspiracy is agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence and is punishable. It further added as under: (SCC pp. 732-33, para 275)

> "*275.* 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 in 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 require some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition:
>
> > 'Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object; there need never have been an express verbal agreement, it being

29 (1987) 2 SCC 17 : 1987 SCC (Cri) 270
30 (1988) 3 SCC 609 : 1988 SCC (Cri) 711

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sufficient that there was "a tacit understanding between conspirators as to what should be done".' "

569. In *Ajay Aggarwal* v. *Union of India*[31] this Court considering the ingredients of the offence of conspiracy said: (SCC pp. 616-17, para 8)

> "Section 120-A of IPC defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as 'criminal conspiracy'. 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 furtherance thereof. Section 120-B of IPC prescribes punishment for criminal conspiracy. It 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 Court then considered the common law definition of "criminal conspiracy" and for that referred to the statement of law by Lord Denman in *R.* v. *Jones*[32] 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. *R.*[33] and the House of Lords in unanimous decision reiterated in *Quinn* v. *Leathem*[34] (AC at p. 528):

> "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 rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced if lawful; and punishable if for a criminal object, or for the use of criminal means."

The Court also referred to another decision of English House of Lords in *Director of Public Prosecutions* v. *Doot*[35] where Lord Pearson held that:

> "A conspiracy involves an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding, because it is unlawful. But as an agreement it has its three stages, namely (*1*) making or formation (*2*) performance or implementation (*3*) discharge or

31 (1993) 3 SCC 609 : 1993 SCC (Cri) 961
32 (1832) 4 B & Ad 345 : 110 ER 485
33 (1868) 3 HL 306
34 1901 AC 495, 528 : (1900-03) All ER Rep 1
35 1973 AC 807 : (1973) 1 All ER 940 (HL)

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termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirators can be prosecuted even though no performance has taken place.... But the fact that the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its performance or by abandonment or frustration or however it may be."

The Court then considered the question whether conspiracy is a continuing offence and said as under: (SCC pp. 618-19, para 11)

"Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, in our considered view, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Government. All of them need not be present in India nor continue to remain in India."

Finally the Court said as under: (SCC pp. 625-26, paras 24-25)

"*24.* Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or techniques to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the

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globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country *A* to kill *D* in country *B* with explosive substance. As far as conspiracy is concerned, it is complete in country *A*. One of them pursuant thereto carried the explosive substance and hands it over to third one in the country *B* who implants at a place where *D* frequents and got exploded with remote control. *D* may be killed or escape or may be diffused. The conspiracy continues till it is executed in country *B* or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country *B* though first two are liable to murder with aid of Section 120-B and the last one is liable under Section 302 or Section 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of *autrefois convict* or *acquit* would extend to such offences. The comity of nations are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud.

25. A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it

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intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa."

570. In *State of Maharashtra* v. *Som Nath Thapa*[36] (SCC at p. 668) this Court referred to its earlier decision in *Ajay Aggarwal case*[31] and said: (SCC p. 668, para 24)

"*24*. The aforesaid decisions, weighty as they are, lead us to conclude that 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 long as it is known that the collaborator would put the goods or service to an unlawful use."

571. In *R.* v. *Ardalan*[37] the appellants were charged and convicted for the offence of conspiracy. On appeal, reference of the trial Judge to "the cartwheel type of conspiracy"; about "sub-conspiracies" and also about "the chain type of conspiracy" was criticised. The Appeal Court said that care must be taken that words and phrases such as "wheels", "cartwheels", "chain", "sub-conspiracies" and so on are used only to illustrate and to clarify the principle and for no other purpose. It said:

"It is right to say that these epithets, or labels, such as 'cartwheels' (or wheel without rim) and 'chains' have a certain respectable ancestry and have been used in a number of conspiracy cases that from time to time have come before the courts. Metaphors are invaluable for the purpose of illustrating a particular point or a particular concept to a jury, but there is a limit to the utility of a metaphor and there is sometimes a danger, if metaphors are used excessively, that a point of time arises at which the metaphor tends to obscure rather than to clarify."

572. In *United States* v. *Falcone et al.*[38] (Circuit Court of Appeals — the Second Circuit), the appellants were convicted for a conspiracy to operate illicit stills. Case against the appellant and others who constituted one set of conspirators was that they supplied sugar etc. to the other group of

36 (1996) 4 SCC 659 : 1996 SCC (Cri) 820

31 *Ajay Aggarwal* v. *Union of India*, (1993) 3 SCC 609 : 1993 SCC (Cri) 961

37 (1972) 1 WLR 463 : (1972) 2 All ER 257 (CA)

38 109 Federal Reporter (2d Series) 579

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conspirators who were operating illicit stills. The question before the Court was whether the sellers of goods, in themselves innocent, became conspirators with the buyer because they knew that the buyer meant to use the goods to commit a crime. Learned Judge Hand speaking for the Court said:

> "There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that from which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders. That there are opportunities of great oppression in such a doctrine is very plain, and it is only by circumscribing the scope of all such comprehensive indictments that they can be avoided. We may agree that morally the defendants at the Bar should have refused to sell to illicit distillers; but, both morally and legally, to do so was toto coelo different from joining with them in running the stills."

573. Falcon and similarly situated appellants were acquitted of the charge of conspiracy.

574. The United States then moved the Supreme Court for a writ of certiorari to review the aforesaid judgment of the Circuit Court setting aside the conviction of the respondents Falcon and others. The Government, however, did not argue that the conviction of conspiracy could rest on proof alone of knowingly supplying to illicit distillers who are not conspiring with others. It was conceded that the act of supplying or some other proof must import an agreement or concert of action between buyer and seller which admittedly was not present in the case. (*United States of America* v. *Salvatore Falcone*[39].)

575. In the present case, there is no evidence to support the charge as regards the period of conspiracy. It is as important to know the period as to ascertain the object of conspiracy. It appears that period of conspiracy in the charge from July 1987 to May 1992 has been mentioned as the Indo-Sri Lankan Accord was entered into in July 1987 and LTTE was declared an unlawful association by notification dated 14-5-1992 issued under the Unlawful Activities (Prevention) Act, 1967. There is, however, no evidence that the conspiracy was hatched immediately on entering into the Accord and was terminated only on the issue of the notification. A statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act.

39 85 L ED 128 : 311 US 205 (1940)

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Similarly, a statement made after the conspiracy has been terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator. Fixing the period of conspiracy is, thus, important as provisions of Section 10 would apply only during the existence of the conspiracy. We have held that object of the conspiracy was the killing of Rajiv Gandhi. It is not that immediately after the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of *res gestae* as contained in Section 6 of the Evidence Act will continue to apply.

576. Principle of law governing Section 10 has been succinctly stated in a decision of this Court in *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*[11] where this Court said:

> "Before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120-A of the Indian Penal Code defines the offence of criminal conspiracy thus:
>
> > 'When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.'
>
> The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. 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 evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. The said section reads:
>
> > 'Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.'
>
> This section, as the opening words indicate, will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence

11 AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*

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that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression 'in reference to their common intention' 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; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only 'as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it'. It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (*1*) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (*2*) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (*3*) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (*4*) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (*5*) it can only be used against a co-conspirator and not in his favour."

577. Then in *State of Gujarat* v. *Mohd. Atik*[14] this Court said as under: (SCC p. 356, para 14)

"It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, 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, a post-arrest statement made to a police officer, whether it is a confession or

14 (1998) 4 SCC 351 : 1998 SCC (Cri) 936

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otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act."

578. In *Mirza Akbar* v. *King Emperor*[12] the Privy Council said the following on the scope of Section 10:

"This being the principle, their Lordships think the words of Section 10 must be construed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, 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. There is then no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment Section 10 embodies this principle. That is the construction which has been rightly applied to Section 10 in decisions in India, for instance, in *Emperor* v. *Ganesh Raghunath Vaishampayan*[40] and *Emperor* v. *Abani Bhushan Chuckerbutty*[41]. In these cases the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past."

579. It was submitted that once the conspirator is nabbed that would be an end to the conspiracy and Section 10 would be inapplicable. That may be so in a given case but is not of universal application. If the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of criminal conspiracy is there and Section 10 of the Evidence Act applies. Prosecution in the present case has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest.

580. Though we have held that confession of an accused recorded under Section 15 of TADA is substantive evidence against a co-accused we may take note of an alternative argument of Mr Altaf Ahmed. He said that even if it is held that the confession under Section 15 TADA can be admitted only if there is corroboration, under Section 10 of the Evidence Act the confession

12 AIR 1940 PC 176 : 41 Cri LJ 871
40 ILR (1932) 55 Bom 839 : 33 Cri LJ 76
41 ILR (1910) 38 Cal 169 : 11 Cri LJ 710

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of an accused can nevertheless be a substantive evidence against a co-accused if it satisfies the requirement of that section.

581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (*1*) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross-examined in court by the co-conspirator and (*2*) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 of the Evidence Act, statement of a conspirator is admissible against a co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against a co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark.

582. In *Bhagwandas Keshwani* v. *State of Rajasthan*[42] (SCC at p. 613), this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an

42 (1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647

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illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – *A* enrolling *B*, *B* enrolling *C*, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other

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conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new

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member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

584. Having thus held that the object of the conspiracy was to kill Rajiv Gandhi; that no offence under Sections 3 or 4 of TADA had been committed and after having considered the principles regarding the ingredients of criminal conspiracy, appreciation of evidence in a case of conspiracy; submissions of Mr Natarajan that he is not challenging the convictions and sentence passed on the accused under the provisions of the Arms Act, Explosive Substances Act, Indian Wireless Telegraphy Act, Passport Act, Foreigners Act and Sections 201, 212 and 216 IPC, we proceed to consider as to whether all or any one of the accused before us were members of the criminal conspiracy, still keeping in view the following aspects:

1. Presence of LTTE on Indian soil before and after the Indo-Sri Lankan Accord is undisputed. Its activities went ostensibly underground after the Accord. LTTE was having various activities in India and some of these were (*1*) printing and publishing of books and magazines for LTTE propaganda, (*2*) holding of camps for arms training in India and various other places in Tamil Nadu (This was done openly till the Indo-Sri Lankan Accord), (*3*) collection and raising of funds for its war efforts in Sri Lanka, (*4*) treatment of injured LTTE cadres in India, (*5*) medical assistance and (*6*) transporting of goods like petrol, diesel, lungies, medicines, wireless equipments and explosives and even provisions to Sri Lanka.

2. Hiring of houses in Tamil Nadu was for various activities of LTTE, which included houses for the treatment of injured LTTE cadres.

3. Sivarasan was having other activities in Tamil Nadu. He was to make arrangements for Santhan (A-2) to go to Switzerland and for Kanagasabapathy (A-7) and Athirai (A-8) to go to Delhi and from there to Germany. He was to make arrangement to recruit persons to impart arms training in Sri Lanka through Ravi (A-16) and Suseendran (A-17) and to arrange houses at Madras through Robert Payas (A-9), Jayakumar (A-10) and Vijayan (A-12) for the stay of LTTE cadres, not necessarily for conspirators. He financed Vijayanandan (A-5) in Madras for purchase of books for LTTE library in Jaffna. Shanmugham (DA) in his confession (Exh. P-1300) stated that Sivarasan with others stayed in a

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house at Kodaikkarai and they were arranging to send petrol and diesel by boat to LTTE in Sri Lanka.

4. In case of some of the accused including the deceased accused there is no evidence whatsoever that they were members of the conspiracy. Prosecution has been unfair to charge them with conspiracy.

5. There is no evidence that all the nine persons who arrived in India by boat on 1-5-1991, namely, Sivarasan, Suba, Dhanu, Nero, Dixon, Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) were members of the conspiracy. In this group there was Ruban (A-6) who came to India to have an artificial leg fixed which he had lost in a battle with the Sri Lankan army.

6. Prosecution also named Jamuna @ Jamila (DA) as a conspirator, who had also come to India for fixing an artificial limb, which she had also lost in a battle with the Sri Lankan army. There is not even a whisper in the whole mass of evidence that she had even knowledge of any conspiracy to kill Rajiv Gandhi. Simply because she was found dead having committed suicide along with Sivarasan, Suba and others at Bangalore, could not make her a member of the conspiracy.

7. From frequent and unexplained meetings of some of the accused with others, who have been charged with conspiracy, it cannot be assumed that they all were members of the conspiracy. This is particularly so when LTTE was having various activities on Indian soil for its war efforts in Sri Lanka. Notebook (Exh. P-1168) seized by the police gives biodata of some LTTE cadre working in India though that list is not extensive. It also contains the biodata of Irumborai (A-19).

8. All the persons who came from Sri Lanka during the strife did not come through authorized channels. It is also to be seen if the accused now charged with conspiracy and alleged to have come to India in the guise of refugees were not in fact refugees. Rather evidence shows that Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) as one group and Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) as the second group, were in fact wanting to come to India due to conditions prevailing in Sri Lanka. They had no money to pay to LTTE. They were exempted from paying any toll to LTTE on their agreeing to hire houses in Tamil Nadu for the stay of LTTE cadre and on their being promised help by LTTE. When they so agreed they were not aware what was the object behind their hiring the houses. Evidence regarding providing shelter to the conspirators either before or after the object of the conspiracy has been achieved, is not conclusive to support the charge of conspiracy against them.

9. Robert Payas (A-9), Jayakumar (A-10) and Vijayan (A-12) were hard-core LTTE activists. They were living in Sri Lanka with their families and had suffered because of the turmoil there. They may be sympathisers of LTTE having strong feelings against IPKF. Consider the background in which they accepted the offer of LTTE to meet their

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expenses in India. It could be that they themselves fell into the trap because of the circumstances in which their families were placed in Sri Lanka and the conditions prevailing there.

585. Now, we proceed to examine individual cases keeping in view the evidence and law on the subject.

Dhanasekaran (A-23), Rangan (A-24), Vicky (A-25) and *Ranganath (A-26)*

586. The object of the conspiracy was achieved on 21-5-1991. There is no evidence against Dhanasekaran (A-23), an Indian national, Rangan (A-24), a Sri Lankan national, Vicky (A-25), a Sri Lankan national and Ranganath (A-26), an Indian national, that they were members of the conspiracy. They came in the picture after the object of the conspiracy had been achieved. However, they knowing that Sivarasan and Dhanu had committed the offence of murder of Rajiv Gandhi, intentionally screened them from legal punishment. Evidence against Dhanasekaran (A-23) shows that he was fully aware of the involvement of Sivarasan and Suba in the murder of Rajiv Gandhi and with that full knowledge he transported them in an oil tanker (MO 543) owned by him from Madras to Bangalore to evade their arrest. In his confession Dhanasekaran (A-23) described how he was able to transport Sivarasan, Suba and Nero hidden in his tanker lorry. His confession is corroborated amongst others by S. Syed Ibrahim (PW 232), Insurance Surveyor, S. Vasudevan (PW 245), cashier of a petrol pump and his driver R. Selvaraj (PW 230).

587. Similarly, Rangan (A-24) was having knowledge of the offence of murder committed by Sivarasan and Suba and he helped and assisted Dhanasekaran (A-23) and Vicky (A-25) in transporting them from Madras to Bangalore. At Bangalore also he transported Sivarasan, Suba and others in a Maruti Gypsy (MO 540), which had been purchased with the help of Dhanasekaran (A-23) and was given by Trichy Santhan (deceased accused) to Rangan (A-24). This Maruti Gypsy was green in colour but then in order to avoid its detection by the police Rangan (A-24) gave this vehicle to a workshop at Bangalore for changing its colour. Rangan (A-24) thus also made efforts to destroy evidence besides harbouring and sheltering Sivarasan, Suba and Nero with full knowledge that they were involved in the assassination of Rajiv Gandhi. In the last week of June 1991 he was directed by Trichy Santhan (deceased accused) to meet Dhanasekaran (A-23) for shifting Sivarasan, Suba and Nero from Madras to Bangalore. Confession of Rangan (A-24) is corroborated by Mridula (PW 65), wife of Ranganath (A-26), R. Selvaraj (PW 230), driver and K.N. Mohan (PW 222), mechanic of the workshop, who repainted the Maruti Gypsy.

588. Vicky (A-25) was also aware that Sivarasan and Dhanu were involved in the assassination of Rajiv Gandhi. He accompanied Dhanasekaran (A-23) and Rangan (A-24) in the tanker lorry (MO 543) for shifting Sivarasan, Suba and Nero from Madras to Bangalore. He had opened the top lid of the tanker for Sivarasan, Suba and Nero to help them get into the tanker. This was done with a view to evade the arrest of

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Sivarasan, Suba and Nero. Evidence against Vicky (A-25) is the same as against Dhanasekaran (A-23) and Rangan (A-24) and his case is similar to them. He had come to India for the first time in 1985 and again in 1990. He was given the task of looking after wounded LTTE personnel, who had come to India for treatment.

589. Ranganath (A-26) gave shelter to Sivarasan, Suba, Nero and others in his house knowingly that both Sivarasan and Suba were involved in the assassination of Rajiv Gandhi. He helped Rangan (A-24) to take the Maruti Gypsy (MO 540) and Fiat car (CAU 6492) to the workshop for changing the colours of the vehicles from green to white and sky blue to white respectively. After the colour of the Maruti Gypsy had been changed he took delivery of the same. He got the Fiat car recovered from the workshop during investigation. His conduct in getting the colour of the vehicle changed showed his total involvement in harbouring of Sivarasan, Suba and others. He then helped the accused in renting a house for them under a false name. In the case of Ranganath (A-26), his wife Mridula (PW 65) has deposed against him. There is no evidence to show that Ranganath (A-26) was under any threat and that on that account he had harboured accused Sivarasan, Suba and others. Other evidence against Ranganath (A-26) are that of E. Anjanappa (PW 218), landlord of his house, his three friends R. Rajan (PW 223), R. Jayasankar (PW 229) and K. Premkumar (PW 227) and the car mechanic K.N. Mohan (PW 222).

590. These four accused Dhanasekaran (A-23), Rangan (A-24), Vicky (A-25) and Ranganath (A-26) have been rightly convicted for that offence under Section 212 IPC. The Designated Court sentenced each of them to undergo rigorous imprisonment for two years. Ranganath (A-26) has also been convicted for an offence under Section 216 IPC and sentenced to undergo rigorous imprisonment for two years. Rangan (A-24) and Vicky (A-25) being foreign nationals have also been convicted and sentenced for an offence under Section 14 of the Foreigners Act inasmuch as they came to India through illicit channel without holding any valid travel documents and unauthorisedly stayed in India. Conviction and sentence under all these charges have not been challenged.

Nalini (A-1)

591. Nalini (A-1) in her confession has implicated herself. We have rejected any challenge to her confession being involuntary. She linked many others in the chain of conspiracy. Her confession gives her pivotal role in the conspiracy. She made extra-judicial confession to Shashikala (PW 132) and Ravi (PW 115). Ravi (PW 115) is not expressive about the extra-judicial confession given to him. Shashikala (PW 132) gives details of the extra-judicial confession. Confession of Nalini (A-1) also stands corroborated in material particulars by other evidence. Nalini (A-1) is educated. She is a postgraduate. In her association with Murugan (A-3), Sivarasan, Suba and Dhanu she developed extreme hatred against IPKF and Rajiv Gandhi. She got associated with LTTE activities sometime in February

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1991. She did have a lurking feeling that some action was in contemplation by Sivarasan, Suba and Dhanu. On 7-5-1991 she got a positive feeling that they were planning to kill certain leaders. However, wireless message (Exh. P-392), which was sent on 7-5-1991 by Sivarasan to Pottu Omman and which was intercepted and decoded, showed that till this date Nalini (A-1) had no knowledge about any conspiracy to kill Rajiv Gandhi. Further that till 7-5-1991 only three persons Sivarasan, Suba and Dhanu knew the object of the conspiracy to kill Rajiv Gandhi. On 19-5-1991 she got a strong feeling that Rajiv Gandhi was the target but she continued to associate with them. It was on 21-5-1991 that she agreed to associate herself with the killing of Rajiv Gandhi and became a member of the conspiracy. On that day she went with the group comprising Sivarasan, Suba and Dhanu from her house to achieve the object of the conspiracy. Haribabu also joined them on way to Sriperumbudur where Rajiv Gandhi was to address the public meeting. She had been given a role. She had to give cover to Suba and Dhanu so that they may not be identified as Sri Lankan Tamils and when the explosion occurred she acted as per instructions. She took Suba with her to a particular place, performed the role assigned to her and then went into hiding. She was fully involved in the crime. When she absconded and went to the house of Ravi (PW 115) with Murugan (A-3) after the assassination of Rajiv Gandhi she introduced Murugan (A-3) as her brother-in-law by the name Raju. To Shashikala (PW 132) she introduced Murugan (A-3) as her brother-in-law by the name of Das (Thas). No doubt if she had the knowledge that a conspiracy was afoot to kill Rajiv Gandhi that would not make her a part of the conspiracy. But then she became a conspirator only when she agreed with the group to go ahead and kill Rajiv Gandhi and became a part of the group. Confession of Nalini (A-1) finds corroboration from the confessions of her co-accused, extra-judicial confession of Shashikala (PW 132), witnesses and exhibits including photographs. Her presence at the scene of crime could not be disputed. Confessions are of her mother Padma (A-21), brother Bhagyanathan (A-20), Arivu (A-18) and Murugan (A-3) and statements of witnesses (PW 96) N. Sujaya Narayan, a colleague of Nalini (A-1) in Anabante Silicons, who deposes to her association with Murugan (A-3); (PW 233) Bharathi, friend of Kalyani, a sister of Nalini (A-1), who deposes to Nalini's (A-1) association with LTTE cadre; (PW 210) Sankari (sister of Muthuraja, an LTTE activist) who also deposes Nalini's (A-1) association with LTTE; (PW 90) Rani and (PW 189) Gajalakshmi [neighbours of Nalini (A-1) at Villiwakkam] who depose regarding visits of Sivarasan, Suba, Dhanu and Murugan (A-3) to the house of Nalini (A-1); (PW 93) I. Suyambu (news correspondent) who identified the video cassette and Sivarasan in the cassette taken of V.P. Singh's public meeting held on 7-5-1991 at Nandanam; (PW 77) Sankaran or Ganani (journalist) who talks about Sivarasan's presence at the public meeting of V.P. Singh on 7-5-1991 at Nandanam; (PW 81) Manivanam (videographer) who made video coverage of public meeting of V.P. Singh on 7-5-1991 at Nandanam;

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(PW 179) Gunathilal Soni (shopkeeper) who identified Nalini (A-1) as one of the girls who came to his shop with assassin Dhanu; (PW 94) K.K. Anbalagan (employees of Poompuhar Handicrafts, Tamil Nadu Government Sales Store) who deposes sale of sandalwood garland on 21-5-1991; (PW 27) Shanmugham (Congress Partyman) who is an eyewitness and identifies Dhanu in photograph (MO 16); (PW 32) Anusuya (Sub-Inspector of Police, Security) an eyewitness to the occurrence, who identifies Sivarasan, Suba, Dhanu, Nalini (A-1) and Haribabu in the photograph; (PW 28) Bhagawan Singh (journalist), also an eyewitness, who has seen Sivarasan, Haribabu and the girl [Nalini (A-1)] and identifies Sivarasan in MO 2 and Haribabu in MO 17; (PW 19) D. Lakshmi Albert (Congress Party member) an eyewitness, who identifies Nalini (A-1), Suba in MO 188, Dhanu, Sivarasan in MO 16 and Haribabu in MO 17; (PW 20) Dr Ramadevi (another Congress Party member and eyewitness) who identified Nalini (A-1), and Suba in MO 18 (photograph), Dhanu and Sivarasan in MO 16 and Haribabu in MO 17; (PW 215) Samundeeswari (native of Sriperumbudur), who deposes that she had given water to Nalini (A-1), Suba and Sivarasan on the night of 21-5-1991; (PW 183) Vardarajan K. (auto driver at Thiruvallur) who transported Sivarasan, Suba, Nalini (A-1) from Sriperumbudur to Madras and is also a spot witness who heard the sound of blast from the parking lot; (PW 195) R. Nagarajan (Congress Party member of Thiruvallur) who travelled in the auto of PW 183 to Sriperumbudur; (PW 85) D.J. Swaminathan [neighbour of Jayakumar (A-10) at Kodungaiyur] who deposes about the visits of Sivarasan, Suba, Dhanu, Robert Payas (A-9), Santhan (A-2) and about Nalini (A-1), Suba and Sivarasan watching TV on 23-5-1991 in his house and distribution of sweets by them; (PW 104) S. Vaidyanathan (clerk of Sriram Travels) who deposed regarding hiring of a car for Tirupathi by Bhagyanathan (A-20); (PW 117) R. Shankar (proprietor of Sriram Travels) who also deposes about the trip to Tirupathi by Nalini (A-1), Murugan (A-3), Padma (A-21), Sivarasan and Suba; (PW 107) Ramasamy (car driver, who states regarding the trip to Tirupathi and about the stay of Nalini (A-1) and Murugan (A-3) at Tirupathi; (PW 115) Ravi Srinivasan [a friend of Nalini (A-1)] who deposes about the stay of Nalini (A-1) and Murugan (A-3) at his house at Madurai after the occurrence; and (PW 288) Raghauthaman K. (DSP, CBI, SIT, Chief Investigating Officer). These witnesses also prove various documents and material objects which fully corroborate the confession made by Nalini (A-1). Her being a member of the conspiracy to murder Rajiv Gandhi stands fully proved.

Santhan (A-2)

592. Santhan (A-2), a Sri Lankan national, in his confession talks of his role in the elimination of Padmnabha, EPRLF leader and others in Madras but that is not the subject-matter of the charge and it is no terrorist act. Santhan (A-2) was one of the nine persons, who came from Sri Lanka on a boat arriving at the shore of India on 1-5-1991. His leader was Sivarasan. On

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the direction of Sivarasan he first stayed in the house of Robert Payas (A-9), then in the house of Haribabu and then with Murugan (A-3) and with Arivu (A-18).

593. Earlier he had come to India with Sivarasan on 15-2-1990. They reached Kodaikkarai by boat. They came to Madras on 16-2-1990 when Sivarasan took him to the house of one Nagarajan, a Ceylon Tamilian, who indulged in smuggling. Sivarasan took Santhan (A-2) to MIET (Madras Institute of Engineering Technology) along with Shanmugavadivelu (A-15) and Nagarajan and got him admitted there. He paid a sum of Rs 2300. Nagarajan was introduced as the uncle of Santhan (A-2). Sivarasan got clothes and other materials purchased for Santhan (A-2). He took the responsibility to meet all the hostel and other expenses of Santhan (A-2). After the murder of Padmnabha in June 1990 Santhan (A-2) returned to Sri Lanka.

594. On 16-5-1991 Sivarasan had told him that he was going to help Suba and Dhanu finish Rajiv Gandhi. He was also told that Prabhakaran had paid special attention to him [Santhan (A-2)] after the murder of Padmnabha and important works were allotted to him and the reason for all that was the cooperation given by him [Santhan (A-2)] in the matter of killing of Padmnabha. Earlier it was Kanthan, an LTTE activist, who was handling the finances of Sivarasan and now it was Santhan (A-2), who had taken the charge from Kanthan. On 15-5-1991 on the strength of the letter from Sivarasan addressed to Kanthan, he was given a sum of Rs 5 lakhs by Kanthan to be handed over to Sivarasan. Sivarasan took Rs 2 lakhs out of that and asked Santhan (A-2) to keep the balance with him. On 17-5-1991 Santhan (A-2) and Sivarasan went to Esware Lodge to meet Shankar (A-4), who had also come with them in the boat carrying nine persons on 1-5-1991. Out of the money lying with Santhan (A-2) Sivarasan gave Rs 10,000 to Shankar (A-4). On 18-5-1991 Santhan (A-2) gave another sum of Rs 20,000 to Sivarasan. Same day in the afternoon Santhan (A-2) on the instructions of Sivarasan went to the house of Robert Payas (A-9) and gave Rs 4000 to Ruban (A-6), who was there at that time. Another sum of Rs 1 lakh was given to Santhan (A-2) to be handed over to Sivarasan. Santhan (A-2) in his confession said that he in all received Rs 9.50 lakhs which money he gave to Sivarasan. Out of that Sivarasan gave him Rs 50,000 to meet his expenses. He also gave account to Sivarasan. Santhan (A-2) gave monies to Murugan (A-3), Jayakumar (A-10), and deceased accused Keerthy. That was after the assassination of Rajiv Gandhi. When Santhan (A-2) was in the house of Jayakumar (A-10) on 20-5-1991 Sivarasan was also there. On the following day, i.e., 21-5-1991 Santhan (A-2) went to see the morning show of a movie in the cinema hall. When he returned home he saw Sivarasan was wearing a white kurta-pyjama. He saw Sivarasan inserting a white cloth bag containing a pistol at his hip and asked him whether the gun was protruding outside his dress or not. Santhan (A-2) said it was not. Sivarasan went out alone that day and returned around midnight. He woke up Santhan (A-2) and told him that Rajiv Gandhi and Dhanu had died and also told that he had brought Nalini

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(A-1) with him, who was a helper of LTTE. This may show that till that time Santhan (A-2) did not know Nalini (A-1). Thereafter the role of Santhan (A-2) was that of dodging the police and harbouring the fellow co-accused. Santhan (A-2) before, during and after the assassination of Rajiv Gandhi consciously and willingly associated with Sivarasan in achieving the object of conspiracy. He said that even after confirming that Sivarasan, Suba and Dhanu were going to kill Rajiv Gandhi he continued to associate with them and after the assassination of Rajiv Gandhi he made strenuous efforts to shift Sivarasan out of Madras with a view to evade arrest. Santhan (A-2) had a strong association with Sivarasan. He remained associated with Sivarasan even after he came to know of his plan to murder Rajiv Gandhi. He paid money to Sivarasan to finance his criminal syndicate. It is not necessary for us to determine how much money given by Santhan (A-2) to Sivarasan was utilized by him to achieve the object of conspiracy but we can impart knowledge to Santhan (A-2) that some of it was so used and from this and other circumstances we can safely infer his participation in the crime and his being a member of the conspiracy to kill Rajiv Gandhi. No doubt as originally planned Santhan (A-2) was to go abroad from India and for that purpose attempt was being made to get him passport, visa, etc. but was not successful, but then in the meanwhile he became a member of the conspiracy being a confidante of Sivarasan. It is an agreement, which is sine qua non of the offence of conspiracy which is quite discernible in the case of Santhan (A-2).

Murugan (A-3)

595. Murugan (A-3) is a Sri Lankan national and a hard-core LTTE activist. He was a member of the Suicide Squad of LTTE which he joined in January 1991. In January 1991 itself he came to India on the direction of absconding accused Pottu Omman and was given specific jobs of preparing sketches of the interior of Madras Fort, Police Headquarters at Madras and various other police stations and their locations. He was also asked to take photographs and videographs of these places When he arrived at the Indian shore he was received by Sivarasan. In the course of time he came in contact with Bhagyanathan (A-20), his mother Padma (A-21) and then with Nalini (A-1). He was introduced to Haribabu (deceased accused) by Bhagyanathan (A-20). He gave financial help to the family of Padma (A-21). Murugan (A-3) in his confession statement said that earlier there was a plan to establish a household in Delhi by taking Padma (A-21) there but that plan did not proceed. Sivarasan in his wireless message (Exh. P-378) dated 22-3-1991 to Pottu Omman said that "if it is Delhi, a lot of time and lots of effort will be required". In March 1991 when Sivarasan asked Murugan (A-3) to go to Delhi and also to find out if Padma (A-21) would come with him he felt that plans were being made for a serious act like murder. In Madras Murugan (A-3) joined Vivekananda Kalvi Nilayam Institute in the name of Rajan @ Das. After some time he joined Sabari College. This was done to show that he was staying in Madras to learn English, etc. Murugan (A-3) started visiting Nalini (A-1) at her office and at her house at Villiwakkam. He fully

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indoctrinated her and told her about the activities of LTTE in Sri Lanka and the atrocities committed by IPKF and their hatred towards Rajiv Gandhi. When Nalini (A-1) expressed her desire to vacate her house in Villiwakkam, Murugan (A-3) persuaded her not to do so. He told her that Sivarasan was bringing two LTTE tigresses from Sri Lanka for LTTE operations who would be staying with her and that she should accommodate them in her house. Nalini (A-1) agreed to the persuasion of Murugan (A-3) and did not vacate the house. Nalini (A-1) was infatuated with Murugan (A-3) and wanted to marry him. He, however, did not agree as that was against the LTTE code of conduct. He was, however, having sexual relations with Nalini (A-1) at her house. In this house Suba and Dhanu also used to visit Nalini (A-1) after they had come to India. Blasting of Vellore Fort and releasing of the LTTE militants detained there was one of the LTTE works in India as confessed by Murugan (A-3). In the end of March 1991 Sivarasan told Murugan (A-3) that he would garland Rajiv Gandhi in a public meeting and asked Murugan (A-3) whether he could arrange an Indian girl for the purpose. Murugan (A-3) at that time understood that the next target was Rajiv Gandhi since he was responsible for the atrocities committed by IPKF and there were lots of feelings to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi. Murugan (A-3) said that he would arrange an Indian girl and introduced Nalini (A-1) to Sivarasan telling her that he was his boss. Murugan (A-3) and Nalini (A-1) attended the public meeting at Marina Beach, which was addressed by Rajiv Gandhi and Jayalalitha.

596. Then in April 1991 Sivarasan told Murugan (A-3) that he had to bring two girls Suba and Dhanu from Sri Lanka and that in order to finish the job he required an Indian girl as both Suba and Dhanu would speak Tamil in Sri Lankan dialect and in order to mingle in the group without anyone suspecting there was need of an Indian Tamil girl. Sivarasan and Murugan (A-3) then decided to make use of Nalini (A-1). On 7-5-1991 Murugan (A-3) along with Nalini (A-1), Suba, Dhanu, Sivarasan, Haribabu and Arivu (A-18) attended the public meeting addressed by V.P. Singh, former Prime Minister of India, at Nandanam, Madras. This operation was a "dry run" operation. Rajiv Gandhi was also the former Prime Minister of India. Security arrangements would be same for both V.P. Singh and Rajiv Gandhi. These accused therefore conducted rehearsal at the public meeting for the purpose of gaining access to the VIP under the guise of garlanding him. Now Murugan (A-3) was sure that Rajiv Gandhi would be the target. In order to gain access to V.P. Singh in the public meeting press accreditation cards were forged, which were prepared by Haribabu for Murugan (A-3) and Sivarasan. Forged press accreditation card with the photograph of Murugan (A-3) (Exh. P-521) was seized from the house rented by Murugan (A-3) at Madipakkam after the assassination of Rajiv Gandhi. After this dry run was completed on 7-5-1991/8-5-1991 Suba and Dhanu wrote two letters, one addressed to absconding accused Pottu Omman (Exh. P-95) and the other to the absconding accused Akila (Exh. P-96). Both these letters are dated 9-5-

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1991 and were handed over to Murugan (A-3) for their being delivered in Sri Lanka. Another letter (Exh. P-453) written by Bhagyanathan (A-20) to Baby Subramaniam was also given to Murugan (A-3). By this time Murugan (A-3) had received instructions through Sivarasan to go to Sri Lanka. These letters and other materials were carried by Murugan (A-3) to Kodaikkarai in the second week of May 1991. He waited there for the boat to arrive from Sri Lanka. Since the boat did not arrive he handed over six baggages (boxes) to M. Mariappan (PW 86), an employee of the deceased accused Shanmugham and returned to Madras. These six baggages (boxes) were subsequently recovered on the information given by Murugan (A-3), which were kept concealed in a pit near the house of Shanmugham by M. Mariappan (PW 86). These were seized by Velliapandi (PW 282), Inspector, CBI, on 25-7-1991. In the articles so recovered from these baggages (boxes) there were also two volumes of the book *Satanic Force* (MO 124 and MO 125), video cassettes showing various parts of Fort St. George (MO 323) and photographs of DGP's Office, Fort St. George (MOs 256 to 259), etc. Murugan (A-3) was present in the house of Padma (A-21) on 20-5-1991 when Sivarasan came there. It was at that time that final plan was discussed and worked out for carrying out the object of the conspiracy to kill Rajiv Gandhi at the public meeting at Sriperumbudur. On 21-5-1991 when Nalini (A-1) came to the house of her mother Padma (A-21) Murugan (A-3) reminded her to go to her house at Villiwakkam before 3.00 p.m. where Sivarasan, Suba and Dhanu were to meet her as from there they were to proceed towards Sriperumbudur where Rajiv Gandhi was to address the public meeting. On 20-5-1991 on the instructions of Sivarasan, Murugan (A-3) had gone to the house of Haribabu and told the sister of Haribabu to inform him to go to the house of Padma (A-21) that day. It was Murugan (A-3), who at the instance of Sivarasan arranged for Nalini (A-1), an Indian girl for accompanying Suba and Dhanu to act as their cover so as not to expose their identity. Conduct of Murugan (A-3) before and after the assassination of Rajiv Gandhi leaves no doubt in our minds that he had agreed to achieve the object of conspiracy which was to murder Rajiv Gandhi. On 7-6-1991 Murugan (A-3) gave two code-sheets (MO 107 and MO 108), meant for communicating secret messages through wireless set, to Padma (A-21) and asked her to keep them in safe custody. She gave those two sheets to her colleague Devasena Raj (PW 73), which were subsequently seized from her by the police. There is sufficient evidence on record to show as to how after the assassination of Rajiv Gandhi Murugan (A-3) and Nalini (A-1) absconded and took refuge at various places including Tirupathi, Madurai and Davangere in the State of Karnataka and the fact that identity of Murugan (A-3) was concealed by them. Confession of Murugan (A-3) stands corroborated with the confessions of his co-accused Nalini (A-1), Santhan (A-2), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-21) and by independent witnesses showing his being a member of the criminal conspiracy with the object of killing Rajiv Gandhi.

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Shankar (A-4)

597. Shankar (A-4) is a Sri Lankan national. He came to India on 1-5-1991 in the group of nine. This group of nine persons had come to Kodaikkarai on the Indian coast. Up to 15-5-1991 Shankar (A-4) stayed with one Jagadeesan and thereafter from 16-5-1991 to 23-5-1991 at Esware Lodge, Madras. While at Kodaikkarai he happened to meet Murugan (A-3) who gave him the telephone number of Nalini (A-1) on a slip (Exh. P-1062). While at Esware Lodge Santhan (A-2) and Sivarasan met Shankar (A-4) and gave him Rs 10,000. It was during his stay at Esware Lodge that he learnt about the assassination of Rajiv Gandhi on 21-5-1991. On 23-5-1991 he tried to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 installed at Ebenezer Stores but was unable to do so. Shankar (A-4) was arrested on 7-6-1991 near Nagapattinam. News of his arrest was flashed in newspapers. Sivarasan sent a wireless message to Pottu Omman on 9-6-1991 (Exh. P-401) which reads: "There is news that one of my associates was caught at Nagapattinam. He has told things/news about me." That is all the evidence against Shankar (A-4). Accepting all this evidence to be correct it merely shows that Shankar (A-4) had association with Sivarasan, Santhan (A-2), Robert Payas (A-9) and other members of LTTE. This is far from showing that Shankar (A-4) had even any knowledge of the plan to murder Rajiv Gandhi, the object of conspiracy. Simply because he came to India on 1-5-1991 in the group of nine along with Sivarasan and the assassins it will not be enough to impart even knowledge to him of the conspiracy with the object to kill Rajiv Gandhi. Apart from the general charge of conspiracy Shankar (A-4) has also been charged for an offence under Section 3(3) of TADA and for offence punishable under Section 14 of the Foreigners Act, 1946. Charge under Section 3(3) of TADA must fail in view of what we have said earlier that no offence under TADA has been made out against the accused. As regards the offence under Section 14 of the Foreigners Act he has been convicted and sentenced as he entered India unauthorisedly. In fact his conviction and sentence on this charge have not been challenged.

Vijayanandan (A-5)

598. He is a Sri Lankan national and is also a senior member of LTTE. He was one of the members of the group of nine who arrived in India on 1-5-1991 by the boat reaching Kodaikkarai on the coast of India. He was found in possession of forged passport (MO 559), which was seized during the investigation. In Madras he stayed at Komala Vilas Lodge on 8-5-1991 and 9-5-1991. In the guest register of the Lodge (Exh. P-496) he described himself as an Indian hailing from Madurai in Tamil Nadu. In the column "purpose of visit" he mentioned the same as "marriage" and profession as "teacher". On 9-5-1991 Arivu (A-18) met him in the Lodge and took him to the house of N. Basant Kumar (PW 75) where he stayed. In his statement N. Basant Kumar (PW 75) said that while Vijayanandan (A-5) was staying in his house he used to express his hatred towards Rajiv Gandhi and IPKF and was also narrating the atrocities committed by IPKF in Jaffna. N. Basant Kumar (PW 75) also said that Vijayanandan (A-5) brought with him a book titled *Alisiya* with Tamil translation (MO 113) for printing. This book, he

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said, dealt with the life of a Jewish lady who sacrificed her life for her nation. In his diary (MO 180) Sivarasan mentioned on the date 8-5-1991 about payment of Rs 50,000 to Vijayanandan (A-5). It has come in evidence that the purpose of Vijayanandan (A-5) coming to India was to buy books for LTTE library and in fact books were recovered and seized. In his confession Arivu (A-18) does state about the purchasing of books by Vijayanandan (A-5). There is no evidence to show that Vijayanandan (A-5) had even knowledge of any conspiracy to kill Rajiv Gandhi. Merely association with Sivarasan or Arivu (A-18) would not make Vijayanandan (A-5) a member of the conspiracy alleged against him. Since he came to India clandestinely through illicit channel he has been charged with an offence punishable under Section 14 of the Foreigners Act, 1946. There is no challenge to his conviction and sentence to this charge. The other charge against him is under Section 3(3) of TADA, which stands dismissed.

Ruban (A-6)

599. Ruban (A-6) is a Sri Lankan Tamil and is an LTTE militant. He was again one of the members of the group of nine which arrived at Kodaikkarai on Indian soil on 1-5-1991 from Sri Lanka. He had lost one of his legs during the fight with the Sri Lankan army. He went to Jaipur via Delhi from Madras by train on 17-5-1991 in the company of Vijayendran (PW 111) and an attendant. He was seen off at the railway station by Santhan (A-2) and Sivarasan. Before his departure for Jaipur his clothes and other necessities had been purchased by Santhan (A-2) and Robert Payas (A-9). Both Robert Payas (A-9) and Santhan (A-2) said in their confessional statements that Ruban (A-6) had come to India for getting an artificial limb fixed. Vijayendran (PW 111) in his statement said that in the second week of April 1991 Sivarasan introduced himself and helped Vijayendran (PW 111) in delivering his letters to his relatives in Sri Lanka and then getting back replies from them. Sivarasan requested Vijayendran (PW 111) to accompany Ruban (A-6) to Jaipur to get an artificial limb fixed as he had no left leg. When Vijayendran (PW 111) said to Sivarasan that doctors were available at Madras itself his reply was that in India Dr Sethi, who was based in Jaipur, was a specialist in this field and he wanted the treatment from him only. Sivarasan gave Rs 15,000 in cash to Vijayendran (PW 111), which was to meet the medical and conveyance expenses. Vijayendran (PW 111) reserved three seats in G.T. Express going to Delhi — in his own name, that of Suresh Kumar, which was one of the alias of Ruban (A-6) and another attendant Ajas Ali. Sivarasan asked Vijayendran (PW 111) to use his name as Maharaja which was the pseudonym used by him in his poems. In Jaipur they stayed in Golden Lodge where they had arrived on 19-5-1991. On 22-5-1991 Vijayendran (PW 111) said he read the news of Rajiv Gandhi's assassination at Sriperumbudur. He said they were in panic as they could be suspected being Tamilians and in that situation Ruban (A-6) suggested to vacate the Lodge. On 23rd evening they shifted to Vikram Lodge. Vijayendran (PW 111) said he met Rajan, Manager of the Lodge, and asked him to assist him in taking treatment for Ruban (A-6) as the date of

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appointment by Dr Sethi was given for 13-6-1991 only. He and Ajas Ali came back to Madras on 27-5-1991, having left Jaipur on 24-5-1991, while Ruban (A-6) stayed in Jaipur. On the morning of 29-5-1991 Vijayendran (PW 111) saw the picture of Sivarasan published in the English newspaper and he was stunned. Ruban (A-6) was arrested at Jaipur on 26-5-1991. On account of his association with Santhan (A-2) and Sivarasan prosecution seeks to draw inference that he was a member of the conspiracy and that the real purpose of his going to Jaipur was to arrange for a hideout and that the ostensible purpose was given as fixing an artificial limb. It is difficult to accept the version advanced by the prosecution as Ruban (A-6) had admittedly lost one of his legs. Vijayendran (PW 111) supports the case that Ruban (A-6) did in fact go to Jaipur for fixing an artificial leg and in particular for the treatment to be given by Dr Sethi, a renowned person in the line. Simply because Sivarasan was looking after the interest of Ruban (A-6) and meeting his expenses would certainly not impart him with the knowledge of the conspiracy and even if he had the knowledge there is no evidence to show that he agreed or was a party to the object of the conspiracy. Charge against Ruban (A-6) under Section 3(3) of TADA has to be dismissed. The other individual charge against him is under Section 14 of the Foreigners Act, 1946 since he came to India clandestinely through illicit channel and without any valid document. His conviction and sentence have not been challenged on this charge.

Kanagasabapathy (A-7) and Athirai (A-8)

600. Kanagasabapathy (A-7) is a Sri Lankan Tamil and an LTTE helper. His son Radha, who was an LTTE Area Commander, Jaffna, died in an encounter with the Sri Lankan army in 1987. Kanagasabapathy (A-7) was also thus called Radhayya. He along with Athirai (A-8), a hard-core LTTE militant girl, came to India in the last week of April 1991 in an LTTE boat from Sri Lanka. Athirai (A-8) in her confession said that she got specialised training in LTTE camps. She was assigned the work of gathering intelligence on the operations and movements of Sri Lankan army and other rival organisations like EPRLF, PLOT, etc. Reports, she prepared, would be handed over by her to Muthiah, another LTTE leader. Athirai (A-8) was introduced to Kanagasabapathy (A-7) by Pottu Omman sometime in March 1991. She was told that she would go to Delhi with Kanagasabapathy (A-7) for making arrangements for her stay under the guise of learning Hindi or computer. From this she understood that the purpose of this arrangement was to collect information about some targeted places in Delhi relating to the work of the organisation and that if LTTE people came to Delhi they could stay in her house without causing any suspicion. There is nothing to show that she even had the inkling of the object of conspiracy. Kanagasabapathy (A-7) was having a passport (MO 558) issued by the Sri Lankan Government but he did not use the passport to come to India through an authorised channel. After arriving at Kodaikkarai on Indian soil Kanagasabapathy (A-7) and Athirai (A-8) came to Madras to stay with Jai Kumari (PW 109), a relative of Kanagasabapathy (A-7). Sivarasan met them

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in the house of Jai Kumari (PW 109). From this fact prosecution seeks to contend that only because Kanagasabapathy (A-7) and Athirai (A-8) were to accomplish the object of conspiracy Sivarasan met them and took care of them and he was also to meet their expenses in India. Simply because Sivarasan was looking after them is not enough to infer their being members of the criminal conspiracy. From 7-5-1991 till 1-7-1991 Athirai (A-8) stayed with P. Thirumathi Vimla (PW 62). She was persuaded by Sivarasan to let Athirai (A-8) stay with her. Sivarasan had brought P. Thirumathi Vimla (PW 62) a letter from her mother in Sri Lanka. On 16-5-1991 Sivarasan gave Rs 10,000 to Athirai (A-8) for expenses. He also gave Rs 20,000 to Kanagasabapathy (A-7) and asked him to go to Delhi to arrange an accommodation. On 20-5-1991 Kanagasabapathy (A-7) accompanied by one Vanan went to Delhi and arranged for a house. From this also an inference is sought to be drawn by the prosecution to which also we are unable to agree, that it was Sivarasan who sent Kanagasabapathy (A-7) to Delhi one day before the object of the conspiracy was to be accomplished to fix a house there as otherwise there was no necessity for Kanagasabapathy (A-7) to go to Delhi. From the notebook (MO 159) and diary (MO 180) of Sivarasan payments made to Kanagasabapathy (A-7) and Athirai (A-8) are recorded. Kanagasabapathy (A-7) came back from Delhi on 30-5-1991. In spite of the advice of Jai Kumari (PW 109) he did not get his name registered with the police as a refugee from Sri Lanka. It was said that this was on account of his fear of exposure of his identity. When Jai Kumari (PW 109) asked Kanagasabapathy (A-7) about Sivarasan whose photograph had been published in the newspapers he told her that it was her imagination and Sivarasan was not involved. He told Jai Kumari (PW 109) that if she betrayed Kanagasabapathy (A-7) and Athirai (A-8) God will not forgive her. There is a wireless message (Exh. P-407) from Sivarasan to Pottu Omman dated 14-6-1991 where Sivarasan informed Pottu Omman that there was no news of Kanagasabapathy (A-7) who had gone to Delhi. Similarly when P. Thirumathi Vimla (PW 62) asked Athirai (A-8) about Sivarasan whose photo had been published, she said that Sivarasan was not connected with the assassination of Rajiv Gandhi and that he was a newspaper reporter and that he might have gone to Sriperumbudur to cover the public meeting and his photo might have been published by mistake. Kanagasabapathy (A-7) and Athirai (A-8) went to New Delhi by train on 1-7-1991. They were seen off by Santhan (A-2) where they were arrested. Prosecution has not examined Vanan with whom Vijayanandan (A-5) had also stayed and no explanation is forthcoming as to why it was not done. From the facts narrated above prosecution seeks to draw inference that both Kanagasabapathy (A-7) and Athirai (A-8) were members of the conspiracy. It is difficult to reach any such conclusion. The evidence only shows their association with Sivarasan and nothing more. Charges under Sections 3(3) and 3(4) of TADA against Kanagasabapathy (A-7) and Athirai (A-8) fail and they, like other co-accused, are acquitted of these charges. There is nothing on the record to show that Kanagasabapathy (A-7) and Athirai (A-8) went to Delhi in order

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to fix a hideout for screening the accused involved in the assassination of Rajiv Gandhi. Charge under Section 212 against both of them must also fail and they are acquitted. However, charge punishable under Section 14 of the Foreigners Act, 1946 is sustained against both of them as they clandestinely came to India through illicit channels without any valid travel document. Their conviction and sentence under Section 14 of the Foreigners Act is upheld.

Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11)

601. Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. Shanthi (A-11) is an Indian Tamil married to Jayakumar (A-10). Wife of Robert Payas (A-9) is the sister of Jayakumar (A-10). From the confession of Robert Payas (A-9) and other evidence the prosecution seeks to contend that:

(*a*) he had knowledge about the conspiracy to kill Rajiv Gandhi;

(*b*) since Shanthi (A-11) was an Indian Tamil this group was sent by Pottu Omman to go to Tamil Nadu to fix a house for Sivarasan and other members of the conspiracy to accomplish the object of conspiracy inasmuch as Robert Payas's (A-9) one-and-a-half months' old son had been killed in an action by IPKF and he had developed great hatred towards IPKF and Rajiv Gandhi. He viewed Rajiv Gandhi as responsible for his sufferings and of all other Tamilians in Sri Lanka by IPKF;

(*c*) this group of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) was allowed to come to India without paying any tax to LTTE as they had agreed to take houses at Madras to accommodate LTTE militants to accomplish the object of conspiracy;

(*d*) they came to India in the guise of refugees but left the refugee camp and immediately came to Madras;

(*e*) Porur house was taken in the name of Jayakumar (A-10) where wireless set was installed by Kanthan and Nishananthan, who were communicating through this wireless set with LTTE Headquarters in Jaffna;

(*f*) Murugan (A-3) was communicating with LTTE Headquarters through this wireless set;

(*g*) Robert Payas (A-9) was associated with Sivarasan closely with a view to achieve the object of conspiracy as Sivarasan was meeting all the expenses of Robert Payas (A-9);

(*h*) Porur house was used for accommodating LTTE militants, who came to India for accomplishing the object of conspiracy;

(*i*) Robert Payas (A-9) burst crackers on 22-5-1991 after the assassination of Rajiv Gandhi;

(*j*) while staying in his house he was anxiously waiting for the news from Sivarasan on 23-5-1991;

(*k*) his association with Sivarasan continued even after the assassination of Rajiv Gandhi;

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(*l*) Shankar (A-4) tried to contact him on phone on 23-5-1991 though without success; and

(*m*) on 27-5-1991 Robert Payas's (A-9) family with Santhan (A-2) went to Thiruchandur to evade arrest. They took bus tickets in assumed names but did not stay there and came back to Madras.

602. From all these circumstances even if taken to be correct it is difficult to conclude that Robert Payas (A-9) was a member of the conspiracy. His association with Sivarasan or even his knowledge about the conspiracy cannot make him a conspirator. It is the agreement which is the sine qua non of the offence of conspiracy. Suspicion howsoever strong does not take the place of proof. Wireless messages are transmitted and received in coded language. It is nobody's case that Robert Payas (A-9) knew the nature or the contents of the messages. It must not be lost sight of that LTTE had various activities and all LTTE men were not necessarily involved in achieving the object of conspiracy. Evidence shows that other LTTE activists who had come to India were also engaged in arranging houses for various purposes like housing the injured LTTE cadre, storing of medicines, etc.

603. In the case of Jayakumar (A-10) it is alleged that he fixed a house in Kodungiyar for his family to stay which was taken in the name of Ramaswamy, father of Shanthi (A-11). This house was in fact for the stay of Sivarasan. It is alleged by the prosecution that it could be inferred that Jayakumar (A-10) and Shanthi (A-11) were members of the conspiracy having the object to kill Rajiv Gandhi from the following circumstances that:

(*a*) they were selected by Pottu Omman along with Robert Payas (A-9) to go to India to hire houses for the stay of LTTE militants and they did not pay any tax to LTTE for coming to India;

(*b*) after Jayakumar (A-10) had taken a separate house in fact for the stay of Sivarasan, he in the first week of May 1991 brought Suba, Dhanu and Nero to that house;

(*c*) Sivarasan was meeting the expenses of Jayakumar (A-10) since Jayakumar (A-10) and Shanthi (A-11) were not having any income;

(*d*) Sivarasan paid Rs 20,000 as advance for renting a shop in the name of Shanthi (A-11) for her to run a coffee-grinding shop. The machine was purchased for Rs 15,000, payment of which was also made by Sivarasan. He also made payment for registration of a telephone under OYT scheme in the shop in the name of Shanthi (A-11) to be used for conspiratorial work;

(*e*) Jayakumar (A-10) and Shanthi (A-11) were aware of "the dangerous mission" for which Sivarasan had come to India;

(*f*) Jayakumar (A-10) would have definitely told his wife Shanthi (A-11) about the purpose for which Sivarasan, Suba and Dhanu had come to the house;

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(*g*) even having the knowledge that Suba and Dhanu had been brought by Sivarasan with the planning of an assassination Jayakumar (A-10) and Shanthi (A-11) still continued to associate with Sivarasan and accommodated him in their house;

(*h*) it was in the house of Jayakumar (A-10) that Sivarasan changed his dress to white kurta-pyjama and from where he went to the house of Vijayan (A-12) which was nearby to pick up Suba and Dhanu before going to Sriperumbudur;

(*i*) before that a day or so earlier Shanthi (A-11) had stitched a cloth pouch for concealing the pistol of Sivarasan;

(*j*) it was in the house of Jayakumar (A-10) on 7-5-1991 that Sivarasan informed Santhan (A-2) that he was going to help two LTTE tigresses at Sriperumbudur to kill Rajiv Gandhi;

(*k*) when Sivarasan left the house of Jayakumar (A-10) on 21-5-1991 for Sriperumbudur Santhan (A-2) was present in the house;

(*l*) Jayakumar (A-10) and Shanthi (A-11) continued to associate with Sivarasan even after the assassination of Rajiv Gandhi;

(*m*) on 22-5-1991 Sivarasan, Suba and Nalini (A-1) came to the house of Jayakumar (A-10) when he told Jayakumar (A-10) that the job was done and that Rajiv Gandhi was murdered by Dhanu;

(*n*) even after having come to know that Dhanu had killed Rajiv Gandhi by becoming a human bomb Jayakumar (A-10) and Shanthi (A-11) accommodated Sivarasan, Suba and Nalini (A-1) in their house;

(*o*) after the assassination of Rajiv Gandhi Jayakumar (A-10) and Sivarasan dug a pit in the kitchen in the house and concealed arms, ammunition and other articles and things belonging to Sivarasan;

(*p*) it is only because Jayakumar (A-10) was involved in the assassination of Rajiv Gandhi along with Sivarasan, Suba and Dhanu that he helped Sivarasan in concealing the incriminating articles; and

(*q*) Shanthi (A-11) would certainly have known all this as the pit was dug in the kitchen where she must have been working all the time.

604. There is nothing on record to show that Jayakumar (A-10) and Shanthi (A-11) knew of the "dangerous mission" or for whose assassination Suba and Dhanu were brought by Sivarasan. True the couple was in dire financial needs and with the promise of financial help and to start some business in India away from the turmoil in Sri Lanka they agreed to come to India and hire a house for LTTE militants to stay and they did rent a house where Sivarasan could stay. But they did not know what Sivarasan was up to.

605. From all these circumstances it is difficult to infer any agreement to make Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) members of the conspiracy having the object to kill Rajiv Gandhi. As a matter of fact there is hardly any circumstance against Shanthi (A-11) to make her a member of the conspiracy. These accused may have a strong feeling against

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Rajiv Gandhi and they may have strong suspicion that Sivarasan, Suba and Dhanu had come for some dangerous mission but there is no evidence to infer that that would make them members of the conspiracy. It is correct that Jayakumar (A-10) harboured Sivarasan, Nalini (A-1) and Suba after having come to know their involvement in the assassination of Rajiv Gandhi but from that again it cannot be inferred that he was a member of the conspiracy. No charge can be levied against Shanthi (A-11) of harbouring merely because she was living in the house with her husband Jayakumar (A-10). Charges under Section 3(3) and Section 3(4) of TADA against Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) are not made out and their conviction and sentence under these charges are set aside. Charge under Section 212 IPC is, however, made out against Jayakumar (A-10) but not against Shanthi (A-11). She is acquitted of this charge while conviction and sentence of Jayakumar (A-10) is maintained. Jayakumar (A-10) and Shanthi (A-11) had also been charged for an offence punishable under Section 25(1-B)(*a*) of the Arms Act, 1959 as they were found in unauthorised possession of arms and ammunition without a valid licence, concealed in a pit dug in the kitchen in the house of Shanthi (A-11). No such charge can be fastened on Shanthi (A-11) though it has to be upheld against Jayakumar (A-10). His conviction and sentence, therefore, under Section 25(1-B)(*a*) of the Arms Act is maintained. Shanthi (A-11) is acquitted of the charge of offence under Section 25(1-B)(*a*) of the Arms Act and her conviction and sentence set aside.

Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14)

606. Vijayan (A-12) is a Sri Lankan Tamil and a helper of LTTE. Selvaluxmi (A-13) is his wife and Bhaskaran (A-14) is the father of Selvaluxmi (A-13). Selvaluxmi (A-13) and Bhaskaran (A-14) are Indian Tamils. Vijayan (A-12) has made a confession. According to prosecution physical manifestation of their being members of the criminal conspiracy was when they came to India on 12-9-1990 and were sent by Sivarasan at the instance of Pottu Omman. They came to India without paying any tax to LTTE as they had agreed to take a house on rent to accommodate LTTE militants coming to India to accomplish the object of conspiracy. They came to India in the guise of refugees. While they were staying at refugee camp at Tuticorin Sivarasan met them there. In April 1991 Vijayan (A-12) was directed by Sivarasan to go to Madras and to fix a house in a secluded place on the outskirts of Madras. As per direction Vijayan (A-12) rented a house. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) moved in that house in the last week of April 1991. All the expenses for paying advance rent, etc. were met by Sivarasan. On 2-5-1991 Sivarasan brought Nero, Suba and Dhanu to this house. Arivu (A-18) purchased a 12-volt car battery on 3-5-1991 for operating the wireless set installed in the house. With this Nero started communicating with the LTTE leaders in Jaffna. This wireless station installed in the house of Vijayan (A-12) is of Sivarasan being Station No. 910 and was communicating with Station No. 91 in Jaffna of Pottu Omman. Thus the prosecution alleges that the house of Vijayan (A-12) was used by

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Sivarasan to keep informed LTTE leaders in Jaffna through wireless messages as to the progress made by him in the execution of the object of conspiracy. Purchase of two cycles by Vijayan (A-12) is also being taken as part of the conspiracy as these were used by Suba, Dhanu and others for meeting the members of the conspiracy. While Sivarasan stayed in the house of Jayakumar (A-10), Suba and Dhanu were staying in the house of Vijayan (A-12). As to why Suba and Dhanu were staying in the house of Vijayan (A-12) it was said that it was on account of the fact that both Selvaluxmi (A-13) and Bhaskaran (A-14) were Indian Tamils and as such stay of Suba and Dhanu would not raise any suspicion in the minds of the neighbours. On 16-5-1991/17-5-1991 Vijayan (A-12), Sivarasan and Nero on the instruction of Sivarasan had dug a pit in the kitchen in the house of Vijayan (A-12) for the purpose of concealing the wireless set, its accessories and other materials used by Sivarasan. This showed according to the prosecution that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were not genuine refugees and the conduct of Vijayan (A-12) would show his knowledge of the object of conspiracy and the purpose for which Suba and Dhanu were brought to India by Sivarasan. It is also alleged that the fact of concealment of the wireless set in a pit dug in the kitchen could not have been done without the knowledge of Selvaluxmi (A-13) who used to cook food for her family and for Suba and Dhanu. On 21-5-1991 Sivarasan came to the house of Vijayan (A-12) and asked Nero to send the wireless message to Jaffna. He also gave instructions to Suba and Dhanu and left the house. At about 12.30 p.m. Sivarasan dressed in a white kurta-pyjama came and took Suba and Dhanu with him. When Sivarasan asked Vijayan (A-12) to bring an auto-rickshaw for him, Suba and Dhanu to go, he specified to A-12 not to bring the auto-rickshaw near the house and this was done so that the house where they were staying be not identified. Prosecution then alleges that on 21-5-1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were aware that Sivarasan, Suba and Dhanu had gone to attend Rajiv Gandhi's meeting at Sriperumbudur. On 22-5-1991 Sivarasan came to the house of Vijayan (A-12) and told him that "the work was finished and that Rajiv Gandhi had been killed". This has come in the confession of Vijayan (A-12). Prosecution poses a question as to why Sivarasan should tell Vijayan (A-12) that the work was finished and provides the answer that it could be so only because Vijayan (A-12) was aware of the object of conspiracy and he was anxiously waiting for the result from Sivarasan and also that he was fully aware that Rajiv Gandhi was killed by Dhanu by becoming a human bomb. The fact that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) continued to be associated with Sivarasan and Suba even after the assassination of Rajiv Gandhi and accommodated them would be another circumstance to show their knowledge about the object of conspiracy. They are also guilty of having harboured Sivarasan and Suba knowing fully well that they were the persons involved in the killing of Rajiv Gandhi. After the assassination Sivarasan was staying in the house of Vijayan (A-12) along with Suba and regularly sending messages to Pottu Omman through wireless explaining the

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developments. Association of Bhaskaran (A-14) is also alleged but this did not end with the harbouring of Sivarasan and Suba as he made efforts to get another accommodation for the hiding of Sivarasan and Suba for which he sought the help of his relative N. Chokkanathan (PW 97). It is also the case of the prosecution that Bhaskaran (A-14), who was all along staying in the house of Vijayan (A-12) and Selvaluxmi (A-13), was also fully aware that Sivarasan, Suba and Dhanu had gone to Sriperumbudur and killed Rajiv Gandhi and when particularly Dhanu did not return. Relying on the confession of Vijayan (A-12) lastly the prosecution said that one or two days after 23-6-1991 Santhan (A-2) came with deceased accused Suresh Master and took Sivarasan and Suba. On 23-6-1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) went to Tuticorin and again returned to Madras after a week. While Vijayan (A-12) and Bhaskaran (A-14) were arrested on 8-7-1991 Selvaluxmi (A-13) was arrested on 16-5-1992.

607. We have carefully gone through the evidence against Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) and the submissions of the prosecution as to how they are members of the conspiracy with the object to kill Rajiv Gandhi. The evidence at the most merely shows that they associated with Sivarasan. The evidence that they had knowledge of the conspiracy is lacking. Their knowledge about the murder of Rajiv Gandhi by Sivarasan, Suba and Dhanu was acquired by them only after Rajiv Gandhi was killed. As we have repeatedly said in any case mere knowledge of the existence of conspiracy is not enough. One has to agree to the object of conspiracy to be guilty of the offence under Section 120-A IPC. Vijayan (A-12) would not know the nature of the messages which were transmitted or received from the wireless set installed in his house as all these were in coded language. Two code-sheets were given by Murugan (A-3) to Padma (A-21) to be kept in safe custody. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) have been charged for offence under Section 3(3) of TADA and have been jointly charged for offence under Section 3(4) TADA but these charges must fail and they are acquitted of these charges. Then Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) are charged for an offence under Section 212 IPC for having harboured Sivarasan, Suba and Nero in order to screen them from legal punishment knowing that they had committed murder of Rajiv Gandhi and others. They all have been convicted and sentenced. Vijayan (A-12) and Selvaluxmi (A-13) are also charged for offence under Section 6(1-A) of Wireless Telegraphy Act, 1933 for having unauthorised possession of unlicensed wireless transmitter used for transmitting messages by Sivarasan and Nero using code-sheets for such transmissions to other conspirators residing in Sri Lanka, namely, absconding accused Prabhakaran and Pottu Omman and they have been convicted and sentenced for this offence. Though in our view Vijayan (A-12) and Bhaskaran (A-14) have been rightly convicted and sentenced under these charges but these charges cannot stand against Selvaluxmi (A-13). All members of the household cannot be charged like this without more. A-13, being the wife of A-12, was living with her husband A-12 and merely on

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that account knowledge and intention cannot be attributed to her, particularly when no overt act is alleged against her. She is acquitted of all these charges and her conviction and sentence set aside.

Shanmugavadivelu (A-15)

608. Shanmugavadivelu (A-15) is a Sri Lankan Tamil. He is living in India since 1987. As to how he was a member of the conspiracy with the object to kill Rajiv Gandhi the prosecution relies on the following circumstances:

1. From the papers seized from Ruban (A-6) at Jaipur on 20-6-1991 in one of the folios the name "Thambi Anna" is written with telephone number 864249, which in fact is the telephone number of Shanmugavadivelu (A-15).

2. Shanmugavadivelu (A-15) was known to Santhan (A-2) and Sivarasan in early 1990 when Shanmugavadivelu (A-15) helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.

3. When Sivarasan came to India in a group of nine on 1-5-1991 he brought a letter dated 27-4-1991 (Exh. P-209) addressed to P. Thirumathi Vimla (PW 62) from her mother. To locate the house of P. Thirumathi Vimla (PW 62) Shanmugavadivelu (A-15) took Santhan (A-2) and Sivarasan to her house in the first week of May 1991. In his confession Shanmugavadivelu (A-15) said that P. Thirumathi Vimla (PW 62) was the teacher of his son in a school and was at that time living in the same colony. P. Thirumathi Vimla (PW 62) says that Shanmugavadivelu (A-15) was her distant relative and came from the same place in Sri Lanka.

4. Arrival of Santhan (A-2) in India in May 1991 was known to Shanmugavadivelu (A-15) even in April 1991 and that would be so from the statement of P. Veerappan (PW 102) when Shanmugavadivelu (A-15) approached him towards the end of April 1991 to send Santhan (A-2) abroad. Further that Shanmugavadivelu (A-15) represented that Santhan (A-2) was an Indian national when he knew that he was a Sri Lankan Tamil.

5. Both P. Veerappan (PW 102) and Vamadevan (PW 114) have stated that they demanded Rs 80,000 from Shanmugavadivelu (A-15) for sending Santhan (A-2) abroad.

6. During the trial in the Designated Court, Santhan (A-2) filed an application for return of the amount of Rs 80,000 paid by him through Shanmugavadivelu (A-15) to P. Veerappan (PW 102). On this application Shanmugavadivelu (A-15) made an endorsement that he had no objection to the return of the said amount to Santhan (A-2).

7. Shanmugavadivelu (A-15) was keeping money given to him by Santhan (A-2) and giving him back as and when required by him. That was before the assassination of Rajiv Gandhi.

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8. Even after the photo of Santhan (A-2) was published in the newspaper in connection with the murder of Rajiv Gandhi Shanmugavadivelu (A-15) continued to associate with him who was a close associate of Sivarasan. One week after the murder of Rajiv Gandhi Santhan (A-2) came to Shanmugavadivelu (A-15) and took Rs 3,10,000 from him. One day he came again and took Rs 40,000 leaving the balance amount with Shanmugavadivelu (A-15). By this time photo of Sivarasan was published in the newspapers and when Shanmugavadivelu (A-15) enquired from Santhan (A-2) about Sivarasan he told him not to worry about him and left. On this count it is alleged that Shanmugavadivelu (A-15) was acting as a financier of the LTTE organization.

9. Athirai (A-8) was regularly visiting Shanmugavadivelu (A-15) which proves her association with him, Santhan (A-2) and Sivarasan.

609. In his confession Shanmugavadivelu (A-15) does not talk of the fact that he approached P. Veerappan (PW 102) and Vamadevan (PW 114) for sending Santhan (A-2) abroad. It is wrong on the part of the prosecution to allege on the basis of evidence that Athirai (A-8) had been regularly visiting Shanmugavadivelu (A-15). There is no such evidence. There is nothing in the evidence to suggest even remotely that when Santhan (A-2) asked Shanmugavadivelu (A-15) to keep a certain amount with him and took that amount back on certain dates Shanmugavadivelu (A-15) had even an inkling that there was any conspiracy afoot or that Santhan (A-2) and Sivarasan were members of that conspiracy. It is difficult to accept the prosecution case that arrival of Santhan (A-2) was known to Shanmugavadivelu (A-15) even before his arrival in India. When P. Veerappan (PW 102) said that it was in the end of April 1991 that Shanmugavadivelu (A-15) approached him it could be the 1st week of May 1991 as well. P. Veerappan (PW 102) was not keeping any record of the visit of Shanmugavadivelu (A-15) with him and his statement in court was recorded years later. It appears to us that prosecution is looking at every circumstance with the proverbial jaundiced eye. From what the prosecution alleges no case whatsoever of Shanmugavadivelu (A-15) being a member of the conspiracy has been made out. We do not find any basis in the prosecution to prosecute Shanmugavadivelu (A-15) for the offence alleged against him. Rather evidence shows his and his wife's hatred for LTTE and its men. Apart from the charge of conspiracy Shanmugavadivelu (A-15) has also been charged for offence under Section 3(3) of TADA which again stands failed against him. He is acquitted of the charges and his conviction and sentence are set aside.

Ravi (A-16) and Suseendran (A-17)

610. Following circumstances have been alleged by the prosecution to make Ravi (A-16) and Suseendran (A-17) members of the conspiracy:

1. Both Ravi (A-16) and Suseendran (A-17) though Indian Tamils, became strong LTTE activists. Ravi (A-16) had been a frequent visitor to

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Sri Lanka to meet LTTE leaders there. Because of the atrocities committed by IPKF both developed hatred against it.

2. Ravi (A-16) was indoctrinated by Pottu Omman, who asked him to go to India and make arrangements for initiating armed revolution in Tamil Nadu. Ravi (A-16) involved Suseendran (A-17) in his attempt to start an armed revolution with the support of LTTE.

3. Suseendran (A-17) started collecting youths and they were taken to Jaffna for training by LTTE for the purpose of constituting a force for armed revolution in India.

4. Once when in Sri Lanka, Ravi (A-16) was introduced to Sivarasan by Pottu Omman, who told him that he should keep close contacts with Sivarasan. Pottu Omman also made reference to an important event that was going to take place in Tamil Nadu for which he said that role of Ravi (A-16) would be a prominent one.

5. While Ravi (A-16), Suseendran (A-17) and Sivarasan were waiting in Sri Lanka for a boat to go to India, Ravi (A-16) pointedly asked if it was Rajiv Gandhi. Sivarasan did not give any reply directly but Sivarasan had uttered words in such a fashion as to confirm the suspicion of Ravi (A-16) that the target was Rajiv Gandhi.

6. Ravi (A-16) was in touch with Sivarasan, who also provided finance to him.

7. Ravi (A-16) was also given the task of finding about the airport security by Sivarasan on the arrival of a VIP there. In March 1991 Ravi (A-16) asked Sivarasan that three months had gone by since they arrived from Sri Lanka but nothing had been done about the work mentioned by Pottu Omman. The reply of Sivarasan was "we should not go in search of the target and that the target should come to us" and further "it may take place in the near future if election is declared".

8. On 10-5-1991 Ravi (A-16) was at Kodaikkarai where Murugan (A-3) also came and another LTTE helper Chokan was also present. When Chokan asked Murugan (A-3) in the presence of Ravi (A-16) as to "why the work of Sivarasan has not yet been completed". To this Murugan (A-3) answered "how could that not be completed. It has to take place".

9. On the night of 21-5-1991 Ravi (A-16) was sleeping in the hut opposite to the house of Shanmugham (DA) at Kodaikkarai. At midnight he was told by a servant of Shanmugham that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died and that a message has been received that Shanmugham and others should not remain there.

10. Ravi (A-16) and Suseendran (A-17) harboured Suba and Sivarasan after the assassination of Rajiv Gandhi knowing that they had committed the offence of murder. Ravi (A-16) was making all attempts for Sivarasan and Suba to escape from India after the assassination of Rajiv Gandhi.

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11. Ravi (A-16) went to Sri Lanka in September 1991 and came back with arms and ammunition and other articles given to him by Pottu Omman. Some of the arms and ammunition he handed over to Suseendran (A-17).

611. From all these factors prosecution seeks to infer that Ravi (A-16) and Suseendran (A-17) had knowledge of the object of conspiracy, had agreed to the same and were thus members of the conspiracy. At one point of time Ravi (A-16) in his confession did say that he had a strong suspicion that the target was Rajiv Gandhi but that would certainly not make him a member of the conspiracy. In a wireless message dated 7-5-1991 sent by Sivarasan to Pottu Omman he categorically stated that only three persons, namely, he, Suba and Dhanu knew about the object of conspiracy. Association, however strong of Ravi (A-16) with Sivarasan and between Ravi (A-16) and Suseendran (A-17) could not make them members of the conspiracy without more.

612. As regards attempts of Ravi (A-16) and Suseendran (A-17) for the creation of a separate armed force in Tamil Nadu, they have already been tried in CC-7 of 1992 in the Designated Court No. 2 along with others and acquitted of the charge of conspiracy but convicted under Section 5 of TADA. The confession made by Suseendran (A-17) and Ravi (A-16) in CC-7 of 1992 and the charges framed against them were produced during the course of hearing of this reference and the position in brief is as under:

In CC-7 of 1992 there was a general charge of conspiracy against 32 accused including Ravi (A-16) and Suseendran (A-17), who were arraigned as Accused 2 and 3 in CC-7 of 1992. The charge was of conspiracy of doing illegal acts, viz., (*1*) to create a force in the name of Tamil Nadu Retrieval Force to separate Tamil Nadu from the Union of India and to strike terror in the country by threatening the lawfully established Government and to kill people who had taken oath to safeguard the sovereignty, unity and integrity of India; (*2*) to instigate and advise people to go and get arms training in Sri Lanka for preparing the plan of establishing the force and building up of arms and ammunition having brought them from Sri Lanka without licence and in contravention of various enactments in force in India; and (*3*) to give refuge to terrorists and in this offence of conspiracy they did commit various illegal acts under TADA, Arms Act, Explosive Substances Act, Wireless Telegraphy Act, Passport Act and Emigration Act.

Individual charges against Ravi (A-16) were that (*1*) he recruited co-accused numbering eight, he himself went to Sri Lanka, got training in arms through Pottu Omman, helped in organising the Tamil Nadu Retrieval Force, assisted co-accused by arranging houses, setting up wireless sets at Dindigul, was found in possession of arms and ammunition, thus committed various terrorist acts punishable under TADA; (*2*) that he along with other co-accused clandestinely came to

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India in LTTE boat with bombs and ammunition; and (*3*) that he went to Jaffna without a valid passport for getting training in wireless there.

In the confession made on 12-12-1991 by Ravi (A-16) in that case, he said as under:

> In June 1986, he went to Sri Lanka. He was given training for 3½ months in arms and ammunition. In August 1987 he was in India in his uncle's house at Madipakkam and had joined a school to continue his studies. He, however, kept on going to the LTTE Office at Adyar and helped Kittoo @ Krishankumar, an LTTE activist. He was put under house arrest in 1988 along with Kittoo in a lodge in Madras Central Prison. Then he was taken to IPKF camp in Sri Lanka. After his release from there, he met LTTE leader "Santhan" who was in charge of the Intelligence Wing who told him that if he could bring young people from Tamil Nadu, they will be given training in arms. He gave him a letter in February 1990. He came back to India to Salem and met Kripan, another LTTE activist. On that letter being given, he got Rs 50,000. He met Suseendran (A-17) and asked him to recruit persons for arms training to which Suseendran (A-17) agreed. With Suseendran (A-17) and eight (8) others, he again went to Sri Lanka and they are given training in arms and ammunition. Since war had started, he had to stay in Sri Lanka for 5 months. During his training, he met Pottu Omman, Chief of LTTE Intelligence Wing who instigated him for armed revolution. These 10 people, i.e., he, Suseendran (A-17) and 8 others resolved to form Tamil National Retrieval Troops under his leadership. He and Suseendran (A-17) were given training in wireless as well. In December 1990, he returned to India in LTTE boat with Suseendran (A-17) and others including Sivarasan who told him to meet him near Devi Theatre at Madras. When he met Sivarasan, he gave him Rs 50,000. On various dates Sivarasan gave him a total sum of Rs 6,00,000. He sent more persons for arms training to Sri Lanka. After the assassination of Rajiv Gandhi, Sivarasan met him at his aunt's (Lokmatha) house at B-72, MI Colony Phase II, Agasthiya Nagar, Villiwakkam. Sivarasan asked him to protect Suba and to keep her in a safe place. He sent both of them through Suseendran (A-17) to Pollachi. He talked of his other activities. Then he again went to Sri Lanka on 23-8-1991 when the boat arrived from there. Suseendran (A-17) did not accompany him. He met Pottu Omman on 28-8-1991. He gave him further arms and ammunition and also 12 gold biscuits weighing 10 tolas each. He returned to India on 10-9-1991. These arms and ammunition were unloaded in two wooden boxes and two gunny bags. On 12-11-1991 Customs, however, seized those wooden boxes and gunny bags. He concealed gold biscuits in the bedroom of the mother-in-law of Charles. He gave six gold biscuits to Ganesh, an LTTE activist. He asked Suseendran (A-17) to purchase petrol and diesel. He described

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his further activities in organising the force and buying a motorcycle etc. He was arrested on 23-10-1991. Police seized from his suitcase one 9 mm pistol, 2 magazines, 29 cartridges, knife and cyanide capsules. On his statement, gold biscuits concealed by him were recovered.

In his confession also recorded on 12-12-1991, Suseendran (A-17) said as under:

He met Ravi (A-16) in May 1990 and they talked about LTTE. Ravi (A-16) asked him if he was ready to go to Sri Lanka for arms and ammunition training to which he agreed. Suseendran (A-17) collected eight (8) more persons and they all (10) went to Sri Lanka. They went to the seashore by a Maruti Gypsy and Ambassador car of LTTE. There LTTE boat was available to go to Sri Lanka. They were given training in handling of arms and ammunition. Since war had started, they had to stay in Sri Lanka for five more months. Pottu Omman had visited them during their training. This group of 10 resolved to form Tamil National Retrieval Troops and decided to work under the leadership of Ravi (A-16) for the purpose of committing terrorist acts in India and for separation of Tamil Nadu from the Indian Union. He and Ravi (A-16) were given training in wireless operation also. In December 1990, they returned to India along with Sivarasan. Ravi (A-16) told him to meet at Madras after three days. Ravi (A-16) gave him Rs 500 and he went to Pollachi. When he met Ravi (A-16) he told him to collect more youngsters to send them to Sri Lanka for arms training.

He and one Palraj were at Palani when Rajiv Gandhi was killed. After four days, he came to Madras and met Ravi (A-16). Sivarasan was also there. Sivarasan told him and Ravi (A-16) to keep safely an LTTE tigress Suba for some days. He agreed. He went to the bus-stop and reserved three tickets for himself, Sivarasan and Suba. Then they left for Trichi and from there to Pollachi. They stayed at the house of Shanmugham Sundaram whose wife is his distant relative. He told them that Sivarasan and Suba were husband and wife and asked them to arrange their stay for three days. After five days Sivarasan and Suba left for Madras. He told about his other activities and then, he said, Ravi (A-16) and others left for Sri Lanka. He bought petrol and diesel to be sent to Sri Lanka. Rs 60,000 were given to him by Palraj as directed by Ravi (A-16). He bought 1000 litres of petrol for Rs 34,800. The petrol was to be smuggled to Sri Lanka. Earlier also, petrol and diesel including explosives were smuggled to LTTE in Sri Lanka. On the night of 10-9-1991, Ravi (A-16) and others arrived in India with two wooden boxes and two gunny bags filled with arms and ammunition. Ravi (A-16) asked him to conceal the wooden boxes and gunny bags in the seashore. He again bought petrol. A car was purchased. When he was in the house of the mother-in-law of Theodore Charles at

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Dindigul, he was arrested by the police. From him one cyanide capsule, Rs 30,000 and some personal articles were seized.

613. It would be seen that a charge under Section 212 IPC for harbouring Suba and Sivarasan could also have been framed against Ravi (A-16) and Suseendran (A-17) but that was not done. Question arises if the provision of Section 300 of the Code applies that bars the trial of Ravi (A-16) and Suseendran (A-17) for the same offences in the present case.

614. Ravi (A-16) and Suseendran (A-17) have been separately charged in the present case for offences under Section 3(3) and Section 3(4) of TADA. These charges fail against them like against other co-accused and they are acquitted of the same. Ravi (A-16) and Suseendran (A-17) have also been separately charged for offence under Section 212 IPC and have been convicted and sentenced. Similarly they have been separately charged for offence under Section 5 of TADA and convicted and sentenced. That certainly could not have been done as in CC-7 of 1992 they have already been tried for an offence under Section 5 of TADA and convicted and sentenced. Facts constituting the charge under Section 5 of TADA in CC-7 of 1992 and in the present case are the same. Conviction of Ravi (A-16) and Suseendran (A-17) in the present case under Section 5 of TADA is set aside and they are acquitted of this charge. Also they have been separately charged under Section 5 of the Explosive Substances Act and similarly convicted and sentenced. They have then been charged for an offence punishable under Section 25 of the Arms Act and convicted and sentenced. Mr Natarajan, learned counsel appearing for them did not press his argument on the applicability of the provision of Section 300 of the Code inasmuch as he said that since these accused have already undergone the period of their sentence they will not challenge their conviction under the charges under IPC, Explosive Substances Act, Section 5 of TADA and Arms Act. In this view of the matter we need not go into the question if Ravi (A-16) and Suseendran (A-17) could have been tried again for these charges as they have been either charged or could have been charged in CC-7 of 1992 which was decided on 23-1-1998. Charges of conspiracy against both of them and others for constituting a force to separate Tamil Nadu from the Union of India as to strike terror etc. was dismissed in CC-7 of 1992.

615. Now, in the cases of Arivu (A-18), Irumborai (A-19), Bhagyanathan (A-20), Padma (A-21) and Subha Sundaram (A-22), following circumstances appear in evidence.

Arivu (A-18)

The following circumstances exist in the case of Arivu (A-18):

(*a*) Arivu (A-18), an Indian Tamil, joined the LTTE movement and started his propaganda work for LTTE in India and was on its payroll. He came in contact with Bhagyanathan (A-20), Haribabu (DA) and he took training in Subha Studio of Subha Sundaram (A-22).

(*b*) He went to Sri Lanka along with Irumborai (A-19) and Baby Subramaniam, an LTTE leader, and while there he learnt about the

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atrocities committed by IPKF. He developed great hatred towards Rajiv Gandhi, whom he held responsible for sending IPKF to Sri Lanka.

(*c*) In March 1991 Arivu (A-18) went to Vellore with Murugan (A-3) for LTTE work to see the Vellore Fort where Sri Lankan Tamils and LTTE personnel were detained. According to Arivu (A-18) blasting of the Vellore Fort and Jail and releasing of the militants from there was one of the LTTE acts in India.

(*d*) In April 1991 on one of his visits to the house of Padma (A-21) Sivarasan asked Arivu (A-18) if he was prepared to work for him. Arivu (A-18) agreed to work for Sivarasan.

(*e*) Arivu (A-18) purchased a 12-volt car battery (MO 209) for the wireless set which Sivarasan was to install in the house of Vijayan (A-12). Not only the battery but for installation of the wireless station Arivu (A-18) also bought wire and other articles. While making the purchases Arivu (A-18) gave his name as Rajan and also a false address. With this wireless set Sivarasan was contacting LTTE Headquarters in Jaffna in Sri Lanka. This battery was subsequently recovered from the pit dug in the kitchen of the house of Vijayan (A-12).

(*f*) Arivu (A-18) purchased a Kawasaki Bajaj motorcycle (MO 82) for Sivarasan to facilitate his movements.

(*g*) On 18-4-1991 Arivu (A-18) attended the election meeting addressed by Rajiv Gandhi and Jayalalitha at Marina Beach, Madras. Nalini (A-1) and Murugan (A-3) also attended that meeting.

(*h*) On 7-5-1991 Arivu (A-18) attended the public meeting of V.P. Singh at Nandanam, Madras where Nalini (A-1), Suba, Dhanu and Murugan (A-3) were also present. He knew Suba and Dhanu, who were the lady tigresses from Jaffna and had been brought by Sivarasan for his job. These two ladies were moving about with Nalini (A-1). Attending the meeting of V.P. Singh was a dry run for some future engagements/acts.

(*i*) After President's Rule was imposed in Tamil Nadu there were restrictions placed on the movement of LTTE cadre in Tamil Nadu. Persons belonging to LTTE cadre went underground. Arivu (A-18), however, continued his propaganda work for LTTE with the material that was kept in a room occupied by Baby Subramaniam in the house of Sankari (PW 210). These materials were removed by Arivu (A-18) with the help of Bhagyanathan (A-20) and deceased accused Haribabu in the month of April 1991 to the house of Radhakrishnan (PW 231), a friend of Arivu (A-18). These were subsequently recovered and seized during the course of investigation and among the articles so recovered there was one *Black Book* (MO 609), which depicted the electric circuit identical to the electric circuit in the reconstructed explosive device (IED) (MO 722) used by Dhanu to trigger the blast which killed Rajiv Gandhi and others. Arivu (A-18) is a diploma-holder in Electronics and Telecommunication Engineering.

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(*j*) During the second week of May 1991 Arivu (A-18) purchased two numbers of 9-volt Golden Power battery (MO 678) and gave the same to Sivarasan. This battery was used in the belt bomb by Dhanu and portions thereof were seized at the scene of the crime. Arivu (A-18) in his confession admitted that 9-volt battery purchased by him was used by Sivarasan to kill Rajiv Gandhi. It is in evidence that components which were left after the blast also contained pieces of 9-volt cell called Golden Power which was the source of power for exploding the device.

(*k*) After it was published in the newspapers on 19-5-1991 about the visit of Rajiv Gandhi to Tamil Nadu for 21-5-1991 and 22-5-1991 a meeting was organized on 20-5-1991 in the house of A-21 though she was not a party to that meeting. When Arivu (A-18) came to the house of Padma (A-21) he learnt that Sivarasan had come and had a talk with Nalini (A-1) and Haribabu. He also came to know that that talk was regarding the public meeting of Rajiv Gandhi to be held on the following day at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu in the house of Padma (A-21).

(*l*) Haribabu used the Kodak film in his camera to take photographs at the scene of crime on 21-5-1991. It has come in evidence that it was that Kodak colour film which was used in the camera by Haribabu.

(*m*) After Rajiv Gandhi was killed on 21-5-1991 Arivu (A-18) on the following day removed his things from the house of Padma (A-21) like TV, VCR, etc., which were subsequently recovered and seized. On the night of 21-5-1991 Arivu (A-18) had gone to see a movie with Bhagyanathan (A-20).

(*n*) When Sivarasan came to the house of Padma (A-21) on 23-5-1991 and narrated the happening at Sriperumbudur on 21-5-1991 he sent Arivu (A-18) to the studio of Subha Sundaram (A-22) to check whether arrangements had been made for getting the dead body of Haribabu.

(*o*) In the letter (Exh. P-128) written by Trichy Santhan to Irumborai (A-19) he complained about Sivarasan associating with persons like Arivu (A-18) and others.

616. The conduct of Arivu (A-18) before and after the assassination of Rajiv Gandhi leaves no one in doubt that he was a member of the conspiracy. It is not necessary for a conspirator to be present at the scene of the crime to be a member of the conspiracy. Mr Natarajan said that Arivu (A-18) was merely an errand boy and was following the instructions of Sivarasan and he himself had no active role to play. He said Arivu (A-18) bought the car battery and 9-volt Golden Power battery at the instance of Sivarasan and so also the Kawasaki Bajaj motorcycle. He further argued that merely on these counts it cannot be said that Arivu (A-18) had knowledge of the conspiracy and that he himself did not agree to achieve the object of the conspiracy. Circumstances rather show that Arivu (A-18) was in the thick of conspiracy. He knew that to explode the IED power source would be 9-volt battery and that is why he purchased battery of that power which was ultimately used in

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exploding the device killing Rajiv Gandhi and others. Mr Natarajan also said that the version of Arivu (A-18) that this battery was used for explosion of the IED was his knowledge derived after the explosion cannot be accepted. Arivu (A-18) has, therefore, been rightly convicted for various offences charged against him by the Designated Court.

Irumborai (A-19)

Prosecution alleges following circumstances against Irumborai (A-19):

(*a*) Irumborai (A-19) was given this name by LTTE. His original name is Duraisingam.

(*b*) Irumborai (A-19) was assisting Suresh Master (DA) in the treatment of injured LTTE cadres in Tamil Nadu and other places. In his confession Irumborai (A-19) narrated important incidents which took place between him and Trichy Santhan (DA).

(*c*) Irumborai (A-19) had gone to Jaffna in Sri Lanka along with Arivu (A-18) and Baby Subramaniam. He returned in November 1990 along with Suresh Master and two injured ladies.

(*d*) Rangan (A-24) had taken a house on rent in March 1991 in Alwar Tirunagar which was used for the stay of injured LTTE cadre.

(*e*) From the letter dated 7-9-1991 (Exh. P-128) written by Trichy Santhan to Irumborai (A-19) prosecution seeks to draw inference that Irumborai (A-19) had prior knowledge about the killing of Rajiv Gandhi. It is difficult to draw any such inference from this letter that Irumborai (A-19) had knowledge of any conspiracy to kill Rajiv Gandhi.

(*f*) Irumborai (A-19) was present in the house at Bangalore when Sivarasan, Suba and Nero were brought there hidden in a tanker lorry by Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25). Presence of Irumborai (A-19) in that house was not by any prior arrangement but on account of his job to look after the treatment of injured LTTE cadre, who were there. One of such injured cadre was Jamuna @ Jamila, who had been shifted to Bangalore from Neyveli by Irumborai (A-19) where she was getting treatment for fixing of an artificial limb on her leg, which she had lost in a battle with the Sri Lankan army. Irumborai (A-19) had admitted Jamuna @ Jamila in Neyveli for the purpose of fixing an artificial leg. Jamuna was about 16/17 years of age and was an LTTE tigress. It was at the instance of Suresh Master (DA) that Jamuna was brought to Bangalore and was in the house at the time when Sivarasan, Suba and Nero came there. It was Trichy Santhan (DA) who told Irumborai (A-19) as to how Sivarasan, Suba and Nero came to Bangalore hidden in a tanker lorry of Dhanasekaran (A-23).

(*g*) When Irumborai (A-19) learnt from Trichy Santhan in the second week of May 1991 about some impending action of LTTE to kill an important leader he told Suresh Master to inform the injured LTTE boys

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to be careful. Vicky (A-25) was arrested in Coimbatore and accused Dixon died. Since Vicky (A-25) knew about the place at Indira Nagar, Bangalore, where Sivarasan, Suba and Nero and about 20-25 injured LTTE cadre were staying, it was decided to arrange a separate house for Sivarasan, Suba and Nero. Irumborai (A-19) took three LTTE injured boys and left them in a particular house.

(*h*) When Irumborai (A-19) was on his way to Jaffna in Sri Lanka after arranging a boat he was intercepted by the Indian Navy and handed over to the police. Letters (Exhs. P-128 and P-129) were recovered from him.

(*i*) Irumborai (A-19) learnt about the death of Rajiv Gandhi on the morning of 22-5-1991. The death of Rajiv Gandhi seemed to him to be a brave deed and an act of revenge.

But then whatever feeling a person may have that would not make him a member of the conspiracy. Further apart from the fact that Irumborai (A-19) knew certain members of LTTE operating in India there is no evidence whatsoever that he had any knowledge of the conspiracy with the object to kill Rajiv Gandhi. Documents (Exhs. P-128 and P-129) are not admissible in evidence. There is nothing on record to show that Trichy Santhan (DA) was a member of the conspiracy to kill Rajiv Gandhi. Rather evidence shows that he was looking after the injured LTTE cadre in India and supplying various medicines to Sri Lanka to support the war efforts of LTTE there. It also cannot be presumed that since these documents were recovered from Irumborai (A-19) he knew the contents thereof or that the contents were correct. The letters were written much after the object of conspiracy had been achieved and the author dead. Irumborai (A-19) has been charged for offence under Section 3(4) of TADA. This charge against him must fail. He has also been charged for an offence under Section 212 IPC on the allegation that he assisted Sivarasan, Suba and Nero in a house at Indira Nagar to evade their apprehension. He has then been charged for an offence under Section 12 of the Passport Act having contravened Section 3 of that Act. His conviction and sentence under these charges have not been challenged. Though we acquit him of the charge of conspiracy to murder Rajiv Gandhi we confirm his conviction and sentence under Section 212 IPC and Section 3 of the Passport Act.

Bhagyanathan (A-20) and Padma (A-21)

According to prosecution, following circumstances exist against Bhagyanathan (A-20) and Padma (A-21):

(*a*) Bhagyanathan (A-20) and Padma (A-21), son and mother, are Indian Tamils. Nalini (A-1) and Kalyani are daughters of Padma (A-21). Padma (A-21), who was employed in Kalyani Nursing Home, was staying in the quarters of the nursing home till January 1991 when she shifted to Royapettah house.

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(*b*) In this house Murugan (A-3), a hard-core LTTE militant stayed concealing his identity.

(*c*) Bhagyanathan (A-20) purchased LTTE press from Baby Subramaniam at a very nominal cost. That was in May 1990. He had promised to go on printing LTTE publications. He took training in photography from Subha Studio of Subha Sundaram (A-22). Haribabu and Arivu (A-18) had also taken training there. Bhagyanathan (A-20) had been working for LTTE in Tamil Nadu.

(*d*) Bhagyanathan (A-20) and Haribabu helped Arivu (A-18) in shifting LTTE material in March 1991 from the house of Sankari (PW 210). In this material there was one *Black Book* in three volumes (MO 609). There was also a video cassette (MO 143) containing the speech of Sivarasan on the occasion of the second death anniversary of LTTE leader Dileepan, who died while on fast unto death. Bhagyanathan (A-20) was helping Arivu (A-18) for recording news telecast on Doordarshan in Tamil and English and the recorded cassettes were sent to Sri Lanka.

(*e*) Murugan (A-3) had introduced Sivarasan to Bhagyanathan (A-20). When Murugan (A-3) wanted help to engage a photographer and videographer for covering DGP's Office in Tamil Nadu, Fort St. George and other places Bhagyanathan (A-20) introduced him to Haribabu.

(*f*) Bhagyanathan (A-20) was aware that Nalini (A-1), Murugan (A-3), Arivu (A-18), Sivarasan, Suba, Dhanu and Haribabu had attended the meeting of V.P. Singh on 7-5-1991 at Nandanam, Madras. He himself did not attend the meeting.

(*g*) On 20-5-1991 Sivarasan, Murugan (A-3), Arivu (A-18) and Haribabu had come to the house of Padma (A-21). There is, however, no evidence as to what conversation, if any, took place at that time and whether Bhagyanathan (A-20) himself attended the meeting and if so what was his part. It was on 23-5-1991 when Sivarasan and Nalini (A-1) came to the house of Padma (A-21) he was narrated the incident that took place at Sriperumbudur on 21-5-1991.

(*h*) Bhagyanathan (A-20) gave a sum of Rs 1000 to Haribabu's family for meeting the expenses on account of the death of Haribabu, which money was given by Murugan (A-3).

(*i*) After the death of Rajiv Gandhi Bhagyanathan (A-20) helped Arivu (A-18) to shift his TV, VCR, etc. and other LTTE materials from the house of Padma (A-21) to the house of a friend of Arivu (A-18).

(*j*) Knowing fully well that Sivarasan, Suba, Dhanu, Nalini (A-1) and Haribabu had gone to Sriperumbudur on 21-5-1991 and killed Rajiv Gandhi yet Bhagyanathan (A-20) engaged a taxi on 25-5-1991 for Nalini (A-1), Murugan (A-3), Sivarasan, Suba and Padma (A-21) to go to Tirupathi. Padma (A-21), however, was not a willing party initially to go to Tirupathi but was persuaded to go.

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(*k*) When this group returned from Tirupathi on the following day Bhagyanathan (A-20) allowed Murugan (A-3) to hide himself in his press. He also brought food from his house for Murugan (A-3). He also kept the Kawasaki Bajaj motorcycle (MO 82), which was used by Sivarasan.

(*l*) After the assassination of Rajiv Gandhi Murugan (A-3) had handed over two code-sheets (MOs 107 and 108) to Padma (A-21) and asked her to keep them in safe custody. Padma (A-21) in turn handed over those two code-sheets to her colleague in the nursing home, Devasena Raj (PW 73) who in turn kept those in her locker used for keeping uniform. Prosecution has alleged that Padma (A-21) was aware of the importance of the code-sheets used by Murugan (A-3) for communicating with LTTE Headquarters in Jaffna. There is, however, no evidence that Padma (A-21) knew what the code-sheets were about and how she could know their importance.

(*m*) Murugan (A-3) provided financial help to Padma (A-21), who was in debt, with which Padma (A-21) was able to pay off to her creditors but then that was much before the date of the assassination of Rajiv Gandhi.

(*n*) A wireless message was sent by Sivarasan to Pottu Omman that Bhagyanathan (A-20) and Padma (A-21) had been arrested which according to the prosecution would show that both Bhagyanathan (A-20) and Padma (A-21) were part of the conspiracy as otherwise there was no necessity for Sivarasan to send a wireless message.

617. We do not think that all these factors make out any case against either Bhagyanathan (A-20) or Padma (A-21) that they were having any knowledge of the conspiracy or knew of the object of the conspiracy. Pottu Omman did know about Padma (A-21) and Bhagyanathan (A-20) because of Nalini (A-1) and the fact that Murugan (A-3) was staying in their house. No inference of any conspiracy can be drawn from the mere fact that Sivarasan sent the wireless message about the arrest of Bhagyanathan (A-20) and Padma (A-21). Moreover mere association with LTTE hard-core militants or the fact that those militants turned out to be the persons responsible for the killing of Rajiv Gandhi would not make Bhagyanathan (A-20) and Padma (A-21) members of any conspiracy to kill Rajiv Gandhi. There is nothing unusual in Murugan (A-3) providing financial help to Padma (A-21) in view of the fact that he was staying in her house and also his having an affair with Nalini (A-1). Charge of any conspiracy against Padma (A-21) and Bhagyanathan (A-20) must fail. Charge under Section 3(3) TADA against both of them also fails. They, however, have rightly been convicted and sentenced for offence under Section 212 IPC. Their conviction under Section 212 IPC and sentence was not challenged by Mr Natarajan. Padma (A-21) has also been charged for an offence under Section 6(1-A) of the Wireless Telegraphy Act and found guilty and sentenced. This charge against her was that she was in possession of two code-sheets used by Murugan (A-3) which

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was the material used for communicating from India to other conspirators, namely, Prabhakaran and Pottu Omman in Sri Lanka and those sheets were handed over to Padma (A-21) for safe custody. We do not think that there is any evidence to suggest that Padma (A-21) had any knowledge of the code-sheets or what they were about. Padma (A-21) was not aware of the contents of the code-sheets or for what purpose these were put to use by Murugan (A-3). Prosecution also does not tell us the contents of the code-sheets and how these were used by Murugan (A-3). Charge under Section 6(1-A) of the Indian Wireless Telegraphy Act must, therefore, fail.

Subha Sundaram (A-22)

Against Subha Sundaram (A-22) following circumstances are alleged by the prosecution:

(*a*) Subha Sundaram (A-22) is the owner of Subha News Photo Services, also known as Subha Studio. Here Arivu (A-18), Bhagyanathan (A-20), Haribabu and Ravisankaran (PW 151) took training from Subha Sundaram (A-22). Subha Studio was a meeting point for LTTE activists. Subha Sundaram (A-22) was in regular touch with LTTE leaders and was in correspondence with them. In one of the letters he described the absconding accused Prabhakaran as "protector of world Tamils — younger brother General Prabhakaran". In yet another letter (Exh. P-544) he criticised the performance of IPKF in Sri Lanka.

(*b*) Haribabu worked in Subha Studio during 1988-90 at a monthly salary of Rs 350. Though he left Subha Studio he continued visiting the studio regularly.

(*c*) On 21-5-1991 Haribabu first went to Ravisankaran (PW 151) and borrowed a camera (MO 1) from him. At that time he was carrying a parcel containing a sandalwood garland purchased by him from Poompuhar Handicrafts that morning. This garland was subsequently used by Dhanu to go near Rajiv Gandhi with the pretext of garlanding him.

(*d*) After getting the camera (MO 1) Haribabu went to Subha Studio and thereafter left that place for going to Sriperumbudur. Prosecution wants us to infer from this that going of Haribabu to Sriperumbudur for covering the function of Rajiv Gandhi was known to Subha Sundaram (A-22).

(*e*) On the night of 21-5-1991 after the blast Subha Sundaram (A-22) was fervently trying to find out about Haribabu. He was told by T. Ramamurthy (PW 72) that Haribabu had died. Subha Sundaram (A-22) asked T. Ramamurthy (PW 72) as to whether he had taken photographs of the incident. Subha Sundaram (A-22) told T. Ramamurthy (PW 72) that he could have brought the camera used by Haribabu. To that T. Ramamurthy (PW 72) replied that a VVIP had been murdered and all the articles at the scene might be important material objects and it was wrong to touch them. Subha Sundaram (A-22) again

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told T. Ramamurthy (PW 72) that if he could have brought the camera they could have used the photos inside them.

(*f*) Subha Sundaram (A-22) thereafter contacted K. Ramamurthy (PW 258), President of AICC(I) for seeking his help to retrieve the camera of Haribabu.

(*g*) Since Subha Sundaram (A-22) was making strenuous efforts for getting the camera prosecution says that the sole purpose was to destroy any clue that the investigating agency might get from the photographs taken by Haribabu before he died about the role of LTTE and others in the crime. But then it must not be forgotten that Subha Sundaram (A-22) was running a studio and he was keen that he should get the photographs taken by Haribabu and use them for his business.

(*h*) Subha Sundaram (A-22) made all attempts to conceal the identity of Haribabu that he was an LTTE activist and that he had been engaged by Sivarasan and others to take the photographs of the incident.

(*i*) Though he was aware that Haribabu had gone to the public meeting of Rajiv Gandhi and that he was working for LTTE he got the statement issued by the father of Haribabu, V.T. Sundarmani (PW 120), denying that his son was a member of LTTE.

(*j*) Subha Sundaram (A-22) wanted all the materials relating to LTTE lying in the house of Haribabu to be destroyed so that no one could find the link of Haribabu with LTTE.

618. All these factors will not make Subha Sundaram (A-22) a member of the conspiracy with the object to kill Rajiv Gandhi. Even his knowledge of the conspiracy cannot be inferred from the circumstances put at the highest from the prosecution point of view. Subha Sundaram (A-22) has been charged for an offence under Section 3(3) of TADA which charge must fail. He has also been charged for an offence under Section 201 IPC for which he has been found guilty and convicted and sentenced. There is no challenge to his conviction under this charge.

619. Having thus considered the case of each accused now charged before us we have to examine what sentence is to be awarded particularly where charge of murder has been proved against some of the accused.

620. In spite of the concession of Mr Natarajan we have independently examined the evidence with respect to charges against each of the accused. We acquit Shanthi (A-11), Selvaluxmi (A-13) and Shanmugavadivelu (A-15) of all charges. Their conviction and sentence are set aside.

621. None of the accused has committed any offence under Sections 3, 4 or 5 of TADA. Their conviction and sentence under these sections are set aside.

622. Conviction and sentence of the accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under all other charges are maintained. Conviction and sentence of all the accused under Section 120-B IPC read with all other counts as mentioned in Charge 1 is set aside except

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conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120-B read with Section 302 IPC.

623. Conviction of Nalini (A-1) under Section 302 IPC read with Section 34 IPC on various counts is upheld and so also of Arivu (A-18) under Sections 109 and 302 IPC. Conviction and sentence of Nalini (A-1) under Section 326 IPC read with Section 34 IPC, Section 324 IPC read with Section 34 IPC and that of Arivu (A-18) under Sections 109 and 326 IPC and Sections 109 and 324 IPC are maintained.

624. In view of these discussions Shanthi (A-11), Selvaluxmi (A-13) and Shanmugavadivelu (A-15) are to be released forthwith. All other accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) would also be entitled to be released forthwith as it was pointed out to us that they have already undergone imprisonment for a period of more than the sentence of imprisonment awarded to them. In case they are not required to be detained in any other case they shall also be released forthwith.

625. We confirm the conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120-B read with Section 302 IPC.

626. We have been addressed arguments on the question of sentence to be passed against the accused which is the requirement of sub-section (2) of Section 235 of the Code. Section 354 of the Code deals with the contents of the judgment. Sub-section (3) of Section 354 is relevant. It is as under:

> "354. (3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

627. Mr Natarajan said that in case we hold that Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) are guilty, they do not deserve the extreme penalty.

628. In *Bachan Singh* v. *State of Punjab*[16] the Constitution Bench of this Court was considering the constitutional validity of Section 302 IPC. Though holding that Section 302 IPC and Section 354(3) of the Code are constitutionally valid this Court referred to the circumstances both aggravating and mitigating for imposing a sentence of death. It also made observations on Sections 354(3) and 235(2) of the Code. It will be advantageous to quote paras 201, 202 and 209 of the judgment which are as under: (SCC pp. 748-49 & 751)

> "*201.* ... As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and

16 (1980) 2 SCC 684 : 1980 SCC (Cri) 580

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circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

202. Drawing upon the penal statutes of the States in USA framed after *Furman* v. *Georgia*[43] in general, and clauses 2(*a*), (*b*), (*c*) and (*d*) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these 'aggravating circumstances':

> *Aggravating circumstances*: A court may, however, in the following cases impose the penalty of death in its discretion:
>
> (*a*) if the murder has been committed after previous planning and involves extreme brutality; or
>
> (*b*) if the murder involves exceptional depravity; or
>
> (*c*) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—
>
> (*i*) while such member or public servant was on duty; or
>
> (*ii*) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or
>
> (*d*) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.
>
> * * *

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. 'We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.' Nonetheless, it cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty must

43 33 L Ed 2d 346 : 408 US 238 (1972)

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receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

629. Judgment in *Masalti* v. *State of U.P.*[44] was delivered before the new Code i.e., Criminal Procedure Code, 1973 (Act 2 of 1974) came into operation. 40 persons were put on trial before the Additional Sessions Judge under Section 302 read with Section 149 of the Indian Penal Code and other sections for committing murder of five persons with guns. Of them 35 were found guilty and the Additional Sessions Judge sentenced ten of them, who carried firearms, to death and the rest to imprisonment for life. On a reference to the High Court under Section 374 of the old Code and also on appeals filed by the convicted persons, the High Court acquitted seven of the appellants, concurring with the findings of the Additional Sessions Judge and dismissed the appeals of the rest. It confirmed the death sentences passed on the ten accused. This Court said that both the trial court and the High Court were agreed that these sentences of death imposed on ten persons were justified by the circumstances of the case and by the requirements of justice. It said that as a mere proposition of law it should be difficult to accept the argument that the sentence of death could be ultimately imposed only where an accused person was found to have committed the murder himself. This Court then held as under:

> "Whether or not sentences of death should be imposed on persons who are found to be guilty not because they themselves committed the murder, but because they were members of an unlawful assembly and the offence of murder was committed by one or more of the members of such an assembly in pursuance of the common object of that assembly, is a matter which had to be decided on the facts and circumstances of each case. In the present case, it is clear that the whole group of persons belonged to Laxmi Prasad's faction, joined together armed with deadly

44 AIR 1965 SC 202 · (1964) 8 SCR 133

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weapons and they were inspired by the common object of exterminating the male members in the family of Gayadin, 10 of these persons were armed with firearms and the others with several other deadly weapons, and evidence shows that five murders by shooting were committed by the members of this unlawful assembly. The conduct of the members of the unlawful assembly both before and after the commission of the offence has been considered by the courts below and it has been held that in order to suppress such fantastic criminal conduct on the part of villagers it is necessary to impose the sentences of death on 10 members of the unlawful assembly who were armed with firearms. It cannot be said that discretion in the matter has been improperly exercised either by the trial court or by the High Court. Therefore we see no reason to accept the argument urged by Mr Sawhney that the test adopted by the High Court in dealing with the question of sentence is mechanical and unreasonable.

There are, however, three cases in which we think we ought to interfere. These are the cases of Accused 9 Ram Saran who is aged 18; Accused 11 Asha Ram who is aged 23 and Accused 16 Deo Prasad who is aged 24. Ram Saran and Asha Ram are the sons of Bhagwati who is Accused 2. Both of them have been sentenced to death. Similarly, Deo Prasad has also been sentenced to death. Having regard to the circumstances under which the unlawful assembly came to be formed, we are satisfied that these young men must have joined the unlawful assembly under pressure and influence of the elders of their respective families. The list of accused persons shows that the unlawful assembly was constituted by members of different families and having regard to the manner in which these factions ordinarily conduct themselves in villages, it would not be unreasonable to hold that these three young men must have been compelled to join the unlawful assembly that morning by their elders, and so, we think that the ends of justice would be met if the sentences of death imposed on them are modified into sentences of life imprisonment. Accordingly, we confirm the orders of conviction and sentence passed against all the appellants except Accused 9, 11 and 16 in whose cases the sentences are altered to those of imprisonment for life. In the result, the appeals are dismissed, subject to the said modification."

630. In *Dhananjoy Chatterjee* v. *State of W.B.*[45] this Court said: (SCC p. 239, paras 14-15)

"*14.* In recent years, the rising crime rate — particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate

45 (1994) 2 SCC 220 : 1994 SCC (Cri) 358

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making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

631. In *Bheru Singh* v. *State of Rajasthan*[46] this Court relied on its observations on the question of sentence made in *Dhananjoy Chatterjee case*[45] and then in the case of a writ said as under: (SCC p. 481, para 29)

"*29.* The barbaric, gruesome and heinous type of crime which the appellant committed is a revolt against the society and an affront to human dignity. There are no extenuating or mitigating circumstances whatsoever in this case nor have any been pointed out and in our opinion it is a fit case which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant. The plea of his learned counsel for mercy is unjustified and the prayer for sympathy, in the facts and circumstances of the case, is wholly misplaced. We, therefore, uphold the conviction and sentence of death imposed upon the appellant by the courts below for the offence under Section 302 IPC."

632. In *Natwarlal Sakarlal Mody* v. *State of Bombay*[47] this Court said as under:

"While Section 239 of the Code of Criminal Procedure allows a joint trial of persons and offences within defined limits, it is within the discretion of the court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a court allows an innumerable number of offences spread over a long period of time and committed by a large

46 (1994) 2 SCC 467 : 1994 SCC (Cri) 555

45 *Dhananjoy Chatterjee* v. *State of W.B.*, (1994) 2 SCC 220 : 1994 SCC (Cri) 358

47 (1963) 65 Bom LR 660 (SC)

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number of persons under the protecting wing of all-embracing conspiracy, if each or some of the offences can legitimately and properly form the subject-matter of a separate trial; such a joint trial would undoubtedly prolong the trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be simple; it would confuse the accused and cause prejudice to them, for more often than not the accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting. A court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the said conspiracy."

633. In *Payne* v. *Tennessee*[48] the Supreme Court of United States overruled by majority of 6:3 its earlier two decisions in *Booth* v. *Maryland*[49] and *South Carolina* v. *Gathers*[50] and upheld the admission during capital sentencing of evidence relating to the victim's personal characteristics and the emotional impact of crime on the victim or his family or friends. Charisse Christopher, her two-year-old daughter Lacie, and her three-year-old son, Nicholas, were brutally attacked with a butcher's knife in their apartment in Tennessee. Only the son Nicholas survived. The police arrested Payne and a jury found him guilty of two counts of first degree murder and one count of assault with intent to commit murder in the first degree. At the sentencing phase of trial, the State presented the testimony of the mother of Charisse Christopher, who explained how Nicholas continued to be affected by the murders: "He cries for his mom ... and he cries for his sister Lacie." In addition, during his closing argument the prosecutor depicted the continuing impact on Nicholas's life: "His mother will never kiss him goodnight or pat him as he goes off to bed.... He doesn't have anybody to watch cartoons with him...." The jury then sentenced Payne to death. The Supreme Court of Tennessee affirmed the conviction. Despite *Booth*[49] and *Gathers*[50] the Court found the admission of victim-impact evidence "technically irrelevant" but "harmless beyond reasonable doubt". The Court even applauded the admission of such evidence and claimed that

48 111 S Ct 2597 (1991)
49 482 US 496 : 96 L Ed 2d 440 (1987)
50 490 US 805 : 104 L Ed 2d 876 (1988)

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"it is an affront to the civilized members of the human race to say that at sentencing in a capital case, a parade of witnesses may praise ... the defendant ... but nothing may be said that bears upon the character of, or the harm imposed upon, the victims". Although the Tennessee Supreme Court's holding rested on a finding of harmless error, the Supreme Court, upon granting certiorari, specifically asked the parties to address whether *Booth*[49] and *Gather*[50] should be overruled, even though the issue had not been raised in the petition for certiorari or in its response. In a 6:3 opinion, the Supreme Court affirmed the Tennessee Supreme Court's judgment and explicitly overruled *Booth*[49] and *Gathers*[50]. Writing for the majority, Chief Justice Rehnquist noted that *Booth*[49] and *Gathers*[50] were premised on the notion that a capital defendant should be treated as a "uniquely individual human being". This "individualised consideration", he argued, should not occur "wholly apart from the crime" the defendant committed. According to Chief Justice Rehnquist, *Booth*[49] and *Gathers*[50] created an unfairly imbalanced process in which the defendant may introduce all mitigating personal evidence, although "the State is barred from ... offering 'a glimpse of the life' which the defendant 'chose to extinguish' ". (Harvard Law Review, Vol. 105).

634. In *R.* v. *Howells*[51] Criminal Division said that:

> "Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of these things."

635. Mr Natarajan said that Nalini (A-1) got involved in the conspiracy only to please Murugan (A-3) and to be close to him, who was her lover. It was Murugan (A-3) who first indoctrinated her and then used her as a cover. It was not that any idea to assassinate Rajiv Gandhi had originated with her and she became party to the conspiracy only on the day of the incident itself though she might have suspicion or even knowledge about the same. Mr Natarajan further said that Nalini (A-1) did not contribute to the conspiracy but merely acted as a cover as she was only obeying the role assigned to her by Sivarasan whom Murugan (A-3) introduced to her as his boss. It was also submitted that in India no woman had been hanged since India attained independence. He said if we look at the criminal, Nalini (A-1) did not belong to any criminal tribe and that though there is no evidence about her character but nothing has been said about her bad antecedents by the Executive Officer from her office, who appeared as a witness. He said in his confession Nalini (A-1) had already expressed regret and repentance and now she is a chastened woman. She is not any threat or menace to the society. Lastly, he said considering the future of the girl child, who is adolescent and born in

49 *Booth* v *Maryland*, 482 US 496 : 96 L Ed 2d 440 (1987)
50 *South Carolina* v. *Gathers*, 490 US 805 : 104 L Ed 2d 876 (1988)
51 (1999) 1 All ER 50 (CA)

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unfortunate circumstances, Nalini (A-1) may be spared the extreme penalty of death. Santhan (A-2), Mr Natarajan said, came to India in the group of nine with Sivarasan on 1-5-1991 but he had come to India to go abroad. Since arrangements for his passport and visa could not be made till then he continued to stay in India. Otherwise, he would not have been here to be a member of the conspiracy. About Murugan (A-3) Mr Natarajan said that he was summoned to go to Sri Lanka and was on his way there. But since the boat did not arrive from there he had to return to Madras. Had the boat arrived on time from Sri Lanka Murugan (A-3) would not have been here during the crucial period culminating in achieving the object of conspiracy. It was submitted that both Santhan (A-2) and Murugan (A-3) were not involved in any policy-making for LTTE and were not the perpetrators of the crime. They acted under the domination of others and do not deserve the extreme penalty. About Murugan (A-3) Mr Natarajan said that he is also the father of a girl child. Arivu (A-18), he said, was under the complete domination of Sivarasan and did not understand the implications of the various jobs entrusted to him by Sivarasan. He is a youth of 20 years having born on 30-7-1971 and does not deserve extreme penalty for the crime of abetment to murder, being also a paid employee of LTTE.

636. It is not that Nalini (A-1) did not understand the nature of the crime and her participation. She was a willing party to the crime. We have to see both the crime and the criminal. Nalini (A-1) in her association with Murugan (A-3) and others developed great hatred towards Rajiv Gandhi and wanted to have revenge. Merely because Nalini (A-1) is a woman and a mother of the child who was born while she was in custody cannot be the ground not to award the extreme penalty to her. She is an educated woman and was working as a stenographer in a private firm. She was living alone away from her mother, sister and brother since April 1990 and had started living in a rented apartment in Villiwakkam from October, 1990 she became friendly to Murugan (A-3) when she was introduced to him in her office by her sister Kalyani and Bharathi (PW 233). Before this date also she was close to some of the LTTE activists. She developed fondness towards Murugan (A-3) and in fact wanted to marry him. He, however, declined as he said he was a committed LTTE activist and as per code of LTTE he could not marry. They were, however, having sexual relations and when they returned from their trip to Tirupathi after the assassination of Rajiv Gandhi it was found that Nalini (A-1) was pregnant. Subsequently while both of them were in custody they were married from earlier date. It was in July 1991 that she gave birth to the girl child. When we think of the crime we find that along with Rajiv Gandhi 15 others also lost their lives. Many of them were policemen on duty. Fifteen persons who lost their lives in the bomb blast were:

(*1*) P.K. Gupta, Personal Security Officer to Rajiv Gandhi,

(2) Lata Kannan,

(*3*) Kokilavani,

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(*4*) Iqbal, Superintendent of Police,
(*5*) Rajaguru, Inspector of Police,
(*6*) Edward Joseph, Inspector of Police,
(*7*) Ethiraj, Sub-Inspector of Police,
(*8*) Sundararaju Pillai, Police Constable,
(*9*) Ravi, Commando Police Constable,
(*10*) Dharman, Police Constable,
(*11*) Chandra, Woman Police Constable,
(*12*) Santhani Begum,
(*13*) Darryl Peter,
(*14*) Kumari Saroja Devi and
(*15*) Munuswamy.

It is not disputed that these persons died on account of the bomb blast and others suffered grievous and simple injuries on that account. What about their families, one may ask. In the beginning of the judgment we noted that one small girl Kokila wanted to recite a poem to Rajiv Gandhi. In one of the photographs she is shown standing with her mother Lata Kannan next to Dhanu. Both died in the blast. What about the children, wives and husbands of those who died? Cruelty of the crime committed has known no bounds. The crime sent shock waves in the country. General elections had to be postponed. It was submitted more than once that principal perpetrators in the present case are already dead but then for the support which Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) afforded for commission of the crime it could not have been committed. Each one of these four accused had a role to play. Crime was committed after previous planning and executed with extreme brutality. There were as many as two dry runs as to how to reach Rajiv Gandhi after penetrating the security cordon. A former Prime Minister of the country was targeted because this country had entered an agreement with a foreign country in exercise of its sovereign powers. Rajiv Gandhi being the head of the Government at that time was signatory to the Accord which was also signed by the head of the Government of Sri Lanka. The Accord had the approval of Parliament. It was not that Rajiv Gandhi had entered into the Accord in his personal capacity or for his own benefit. Though we have held that object of the conspiracy was not to commit any terrorist act or any disruptive activity, nevertheless murder of a former Prime Minister for what he did in the interest of the country was an act of exceptional depravity on the part of the accused, an unparalleled act in the annals of crimes committed in this country. In a mindless fashion not only was Rajiv Gandhi killed but along with him others died and many suffered grievous and simple injuries. It is not that intensity of the belt bomb strapped on the waist of Dhanu was not known to the conspirators as after switching on the first switch on her belt bomb Dhanu asked Sivarasan to move away. Haribabu was so keen to have close-up pictures of the crime that he met his fate in the blast itself. We are unable to find any mitigating

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circumstance not (*sic*) to upset the award of sentence of death on the accused.

637. This is a case where all these — Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) deserve extreme penalty. We confirm the award of sentence of death on them.

638. We record our appreciation of the assistance given to us by counsel for the parties. Mr Natarajan, Senior Advocate, led the team for all the accused except one. He was ably assisted by Mr Sunder Mohan, Mr B. Gopikrishnan, Mr S. Duraisamy, Mr V. Elangovan, Mr N. Chandrasekharan, Mr T. Ramdass and Mr R. Jayseelan. A heavy burden lay on the shoulders of Mr Natarajan. He carried it with aplomb. His presentation of the case showed his complete mastery on facts and law. It was a pleasure to hear him, not losing his poise even for once. He was fair in his submissions conceding where it was unnecessary to contest. Mr Sivasubramaniam, Senior Advocate assisted by Mr Thanan, who represented the remaining one accused, rendered his bit to support Mr Natarajan. Mr Altaf Ahmed, Additional Solicitor General, was not far behind in any way. He had to face an uphill task defending the sentence of death imposed on all the 26 accused. He in his task was ably assisted by Mr Jacob Baniel, Mr Ranganathan, Mr P. Parameswaran, Mr A.D.N. Rao, Mr Romy Chacko, Mr T.G.N. Nair, Ms Meenakshi Arora, Mr S.A. Matoo and Mr Mariaputham, Advocates. Mr Altaf Ahmed was forthright in his submissions. He presented his case with learning and assiduity. We express our sense of gratitude to all the counsel and admire their profound learning and experience. They did their job remarkably well.

639. We would also like to record our appreciation for the Special Investigation Team (SIT) constituted by the Central Bureau of Investigation to investigate the case. Under the stewardship of Mr D.R. Karthikeyan, SIT did assiduous work and was able to solve the crime within a short time. Investigation was meticulous, loose ends tied to bring out a clear picture of conspiracy and the part played by each of the conspirators. Members of SIT performed their job with dedication and determination. They succeeded in their mission but their only regret perhaps was that they could not capture Sivarasan alive. We have also a word of praise for Mr R.K. Raghavan, who was at the relevant time Inspector General of Police, Forest Cell (CID), Madras and was entrusted with the election arrangements in Chinglepet Range. He was on duty at the time the crime was committed at Sriperumbudur. He immediately realised the gravity of situation. He stayed on at the scene of crime, organised relief and ensured that material evidence was not tampered with. It was he who found the camera (MO 1) on the body of Haribabu which provided a breakthrough in the case.

640. Appeals filed by the accused and the proceeding submitted by the Designated Court to this Court under Section 366 of the Code read with sub-section (6) of Section 20 of TADA are disposed of in the terms mentioned above.

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SYED SHAH MOHAMMED QUADRI, J.— I have had the advantage of going through the draft judgments prepared by my noble and learned brethren, Hon'ble Mr Justice K.T. Thomas and Hon'ble Mr Justice D.P. Wadhwa. In view of different notes struck by them on some aspects, I am expressing my views separately.

642. The facts are stated somewhat exhaustively in their judgments. To recapitulate briefly, it may be noted that 21-5-1991 witnessed a terrible happening — explosion of a human bomb, an unprecedented event in Sriperumbudur (Tamil Nadu) at 10.20 p.m. — which resulted in the extirpation of a national leader, a former Prime Minister of India, Shri Rajiv Gandhi, killing of 18 others and leaving 43 persons seriously injured. This incident was a result of a wickedly-hatched conspiracy which was skilfully planned and horridly executed. While in office as Prime Minister of India, Shri Rajiv Gandhi, to bring about a settlement of disputes between Tamil-speaking ethnic minority and Government of Sri Lanka, signed the Indo-Sri Lankan Accord on 22-7-1987 under which the Government of India took upon itself certain role. A prominent organisation of Tamils —Liberation Tigers of Tamil Eelam (LTTE) — was among the signatories to that Accord. In discharge of its obligation under the Accord, the Government of India sent the Indian Peace-Keeping Force (IPKF) to Sri Lanka to disarm LTTE. This fact together with the alleged atrocities of IPKF against Tamilians in Sri Lanka and non-cooperation of Government of India with LTTE, at what is termed as the hour of their need, gave rise to grouse which culminated in plotting of a conspiracy to assassinate Shri Rajiv Gandhi, which was put through on the fateful day, 21-5-1991. It caused severe blow to the democratic process, sent shock waves throughout the world and the nation had to pass through an excruciating time.

643. The investigation of that horrible incident was entrusted to the Central Bureau of Investigation (CBI)/Special Investigating Team (SIT). On 26-6-1992, after a lengthy investigation, SIT filed charge-sheet in respect of offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code, 1860 (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946 and the Indian Wireless Telegraphy Act, 1933 against 41 persons, 12 of whom died (2 in the blast and 10 having committed suicide) and three were declared absconding. The case was thus tried against the following 26 accused persons: A-1 (S. Nalini), A-2 (T. Suthendraraja @ Santhan), A-3 (Sriharan @ Murugan @ Thas @ Indu Master), A-4 (Shankar @ Koneswaran), A-5 (D. Vijayanandan @ Hari Ayya), A-6 (Sivaruban @ Suresh @ Suresh Kumar @ Ruban), A-7 (S. Kanagasabapathy @ Radhayya), A-8 (A. Chandralekha @ Athirai @ Sonia @ Gauri), A-9 (B. Robert Payas @ Kumaralingam), A-10 (S. Jayakumar @ Jayakumaran @ Jayam), A-11 (J. Shanthi), A-12 (S. Vijayan @ Perumal Vijayan), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran @ Velayudam), A-15 (S. Shanmugavadivelu @ Thambi Anna), A-16 (P. Ravichandran @ Ravi @ Pragasam), A-17 (M. Suseendran @ Mahesh),

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A-18 (G. Perarivalan @ Arivu), A-19 (S. Irumborai @ Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran @ Raju), A-24 (N. Rajasuriya @ Rangan), A-25 (T. Vigneswaran @ Vicky), A-26 (J. Ranganath). Thirteen of these accused are Sri Lankans and an equal number comprises of Indians.

644. The Designated Court framed as many as 251 charges of which Charge 1 is common to all the accused; for the other 250 charges, accused are charged separately under different heads. For the sake of brevity, all charges can be conveniently classified under three categories—

A. Under Section 120-B read with Section 302 IPC;

B. Under Sections 3,4 and 5 of the TADA Act; and

C. (*i*) Under various provisions of IPC;

(*ii*) Under Sections 3, 4 and 5 of the Explosive Substances Act, 1908;

(*iii*) Section 25 of the Arms Act, 1959;

(*iv*) Section 12 of the Passport Act, 1967;

(*v*) Section 14 of the Foreigners Act, 1946;

(*vi*) Section 6(1-A) of the Wireless Telegraphy Act, 1933.

645. To bring home the guilt of the accused in respect of the charges framed against each of them, the prosecution placed on record confessions of seventeen accused and also a plethora of evidence. It examined 288 witnesses and exhibited 1448 documents, marked Exhs. P-1 to P-1448.

646. The Designated Court, on consideration of the material placed before it, found all the twenty-six accused guilty of all the charges framed against them and awarded punishment of fine of varying amounts, rigorous imprisonment of different periods and sentenced all of them to death. The Designated Court referred the case to this Court for confirmation of death sentence of all the convicts, numbered as Death Reference No. 1 of 1998. The convicts filed appeals, Criminal Appeals Nos. 321 to 324 of 1998, against their conviction for various offences and the sentence awarded to them. These cases were heard together.

647. Mr Natarajan, learned Senior Counsel for the appellants (except Appellant 15), assisted by a team of able and thoroughly prepared instructing counsel, Mr Subramaniam for Appellant 15 and Mr Altaf Ahmed, learned Additional Solicitor General for the prosecution, assisted by competent and proficient advocates and departmental officers, very ably and exhaustively argued the cases for over three months.

648. Regarding conviction of the appellants for offences mentioned in Category 'C' noted above, the learned counsel for the appellants submitted that they were not pressing the appeals on that aspect as all the appellants had served out the sentence thereunder.

649. The conviction of the appellants under the provisions of TADA Act, noted in Category 'B' above, had been found to be unsustainable by my

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learned brethren in their separate opinions and I am in respectful agreement with the same.

650. The provisions of sub-sections (2), (3) and (4) of Section 3 of TADA Act would be attracted only when a person accused of the offences under the said provisions has committed "a terrorist act" within the meaning of Section 3(1) of the TADA Act. Section 3(1) reads as under:

> "3. *Punishment for terrorist acts.*—(*1*) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

A perusal of the provision, extracted above, shows that it embodies the principle expressed in the maxim "*actus non facit reum, nisi mens sit rea*"; both "mens rea" and a criminal act are the ingredients of the definition of "terrorist act". The mens rea required is the intention (*i*) to overawe the Government as by law established; or (*ii*) to strike terror in the people or any section of the people; or (*iii*) to alienate any section of the people; or (*iv*) to adversely affect the harmony amongst different sections of the people. The actus reus should comprise of doing any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detaining any person and threatening to kill or injure such persons in order to compel the Government or any other person to do or abstain from doing any act.

651. Mr Altaf Ahmed, learned Additional Solicitor General has developed an ingenious argument that as the acts which are committed by the accused persons have the potentiality to overawe the Government and to strike terror in the people or any section of the people, the required mens rea has to be inferred. A perusal of the charges discloses that the intention to overawe the Government is not mentioned therein. However, Mr Altaf Ahmed relying upon the provisions of Sections 211, 212, 215, 464 and 465 of the Criminal Procedure Code has submitted that omission to mention the ingredients of the charge did not result in misleading the accused persons and though the words "to overawe the Government" were not mentioned in

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the charge, the charge is not bad in law. He relied on *Tulsi Ram* v. *State of U.P.*[52]; *Willie (William) Slaney* v. *State of M.P.*[53]; *R.S. Pandit* v. *State of Bihar*[54]; *Chittaranjan Das* v. *State of W.B.*[55] and *Jaswantrai Manilal Akhaney* v. *State of Bombay*[56] in support of his contentions. In my view, the question here does not relate to the defect in the charge but to the content of the charge and without the said germane words in the charge, it cannot be said that the charge includes the intention to overawe the Government. The charge framed is confined only to those acts which are referred to therein. This is also the view expressed by my learned brethren. Therefore, the conviction recorded by the Designated Court in the judgment under appeal for offences noted in Category 'B' under the TADA Act cannot be maintained. The appellants are accordingly acquitted of the charges under TADA Act.

652. Now remains the charge under Section 120-B read with Section 302 IPC noted in Category 'A' above, which is substantial and important. Brother Thomas, J. in his precise and well-considered opinion found A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) guilty of offence under Section 120-B read with Section 302 IPC and sentenced A-1, A-9, A-10 and A-16 to life imprisonment and A-2, A-3 and A-18 to death, while brother Wadhwa, J., on a very exhaustive consideration, held A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) guilty of the said offence and sentenced them to death.

653. There is no controversy about the horrible occurrence of human bomb blast in Sriperumbudur in the night of 21-5-1991 causing death of Shri Rajiv Gandhi and eighteen others and grievous injuries to 43 persons. The controversy is about who are responsible for this horrendous crime? The question is whether the conviction of the appellants or any of them under Section 120-B read with Section 302 IPC is sustainable in law and in respect of whom the punishment of death sentence can be confirmed.

654. To record conviction under Section 120-B, it is necessary to find the accused guilty of criminal conspiracy as defined in Section 120-A of IPC which reads as under:

> "120-A. *Definition of criminal conspiracy.*—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:

52 AIR 1963 SC 666 : 1963 Supp (1) SCR 382
53 AIR 1956 SC 116 : (1955) 2 SCR 1140
54 1963 Supp (2) SCR 652 : (1964) 2 Cri LJ 65
55 AIR 1963 SC 1696 : (1964) 3 SCR 237
56 AIR 1956 SC 575 : 1956 SCR 483

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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.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

655. The ingredients of the offence of criminal conspiracy are: (*i*) an agreement between two or more persons; (*ii*) the agreement must relate to doing or causing to be done either (*a*) an illegal act; or (*b*) an act which is not illegal in itself but is done by illegal means. The proviso and the explanation are not relevant for the present discussion.

656. Though the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy, yet in the very nature of the offence which is shrouded with secrecy no direct evidence of the common intention of the conspirators can normally be produced before the court. Having regard to the nature of the offence, such a meeting of minds of the conspirators has to be inferred from the circumstances proved by the prosecution, if such an inference is possible.

657. In *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*[11] Subba Rao, J. speaking for himself and his learned colleagues, observed:

"The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties."

658. In *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra*[27] S. Murtaza Fazal Ali, J., speaking for a two-Judge Bench, observed: (SCC p. 468, para 14)

"It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design which has been amply proved by the prosecution as found as a fact by the High Court."

659. In *Mohd. Usman Mohd. Hussain Maniyar* v. *State of Maharashtra*[28] another two-Judge Bench of this Court pointed out: (SCC Headnote)

"For an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do and/or caused to be done the illegal act; the agreement may be proved by necessary implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or

11 AIR 1965 SC 682 . (1964) 2 SCR 378 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*

27 (1980) 2 SCC 465 1980 SCC (Cri) 493

28 (1981) 2 SCC 443 : 1981 SCC (Cri) 477

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caused to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time."

660. In *State of H.P.* v. *Krishan Lal Pardhan*[29] Natarajan, J. observed: (SCC pp. 20-21, para 8)

"In the opinion of Special Judge every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. Such a view is clearly wrong. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences."

661. In *State of Maharashtra* v. *Som Nath Thapa*[36] Hansaria, J., speaking for a three-Judge Bench of this Court after elaborate discussions of the various judgments of this Court, concluded thus: (SCC Headnote)

"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 long as it is known that the collaborator would put the goods or service to an unlawful use."

662. From a survey of cases, referred to above, the following position emerges:

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be

29 (1987) 2 SCC 17 : 1987 SCC (Cri) 270
36 (1996) 4 SCC 659 : 1996 SCC (Cri) 820

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treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

663. The agreement, sine qua non of conspiracy, may be proved either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator.

664. Section 10 of the Evidence Act recognises the principle of agency and it reads as follows:

> "10. *Things said or done by conspirator in reference to common design.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

665. To apply this provision, it has to be shown that (*1*) there is reasonable ground to believe that two or more persons have conspired together; and (*2*) the conspiracy is to commit an offence or an actionable wrong. If these two requirements are satisfied then anything said, done or written by any one of such persons after the time when such intention was entertained by any one of them in furtherance of their common intention, is a relevant fact against each of the persons believed to be so conspiring as well as for the purpose of proving the existence of conspiracy and also for the purpose of showing that any such person is a party to it.

666. To establish the charge of conspiracy to commit the murder of Shri Rajiv Gandhi, reliance is placed mainly on seventeen confessional statements made by the accused persons. The confessions of the accused persons have been recorded under Section 15(1) of the TADA Act. Before adverting to the confessional statements, it is necessary to consider the incidental questions as to whether they can be used against the appellants for the charge under Section 120-B read with Section 302 IPC when the accused are found to be not guilty of various offences under the TADA Act.

667. Mr Natarajan has referred to the judgment of this Court in *Bilal Ahmed Kaloo* v. *State of A.P.*[6] in support of his contention that the confession

6 (1997) 7 SCC 431 : 1997 SCC (Cri) 1094

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recorded under Section 15(1) of the TADA Act cannot be made use of to record the conviction of the appellants under Section 120-B read with Section 302 IPC.

668. Mr Altaf Ahmed, however, submitted that that case could not be treated as authority for the proposition canvassed by the learned counsel for the appellants as Section 12 of the TADA Act has not been considered in that case by this Court.

669. Here, it would be necessary to refer to Section 12 of the TADA Act which is reproduced herein:

> "12. *Power of Designated Courts with respect to other offences.*—(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.
>
> (2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

Section 12(1) authorises the Designated Court to try offences under the TADA Act along with another offence with which the accused may be charged, under CrPC, at the same trial. The only limitation on the exercise of the power is that the offence under the TADA Act is connected with the offence being tried together. Sub-section (2) provides that the Designated Court may convict the accused person of offence under that Act or any rule made thereunder *or under any other law and pass any sentence authorised under that Act or the rules or under any other law*, as the case may be, for the punishment thereof *if in the course of any trial under the TADA Act the accused persons are found to have committed any offence either under that Act or any rule or under any other law*.

670. A perusal of the judgment in *Kaloo case*[6] shows that Section 12 of the TADA Act was not brought to the notice of this Court and moreover the point was conceded by the learned counsel for the State. I concur with my learned brethren that *Kaloo case*[6] does not lay down the correct law. It follows that confessions recorded under Section 15 of the TADA Act and admitted in the trial of offences under the TADA Act and under Section 120-B read with Section 302 IPC can be relied upon to record the conviction of the appellants for the said offences under IPC even though they are acquitted of offences under the TADA Act.

671. The next question that arises for consideration is the ambit of Section 15 of the TADA Act, which is in the following terms:

> "15. *Certain confessions made to police officers to be taken into consideration.*—(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in

6 *Bilal Ahmed Kaloo* v. *State of A.P.*, (1997) 7 SCC 431 : 1997 SCC (Cri) 1094

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writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder.

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

672. Sub-section (1) of Section 15 opens with a non obstante clause — "notwithstanding anything in the Code of Criminal Procedure or in the Indian Evidence Act" — and says that "subject to the provisions of this section", a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under that Act or the rules made thereunder. The admissibility of the confession of an accused in the trial of a co-accused, abettor or conspirator is subject to the condition that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

673. Sub-section (2) incorporates safeguards for the person whose confession is to be recorded under sub-section (1) and it is not necessary to refer to it for the present discussion.

674. Having regard to the provisions of Section 12 of the TADA Act, the confession recorded under Section 15 will be admissible in the trial of a person, co-accused, abettor or conspirator for an offence under the TADA Act or the rules made thereunder and such other offence with which such a person may be charged at the same trial under the provisions of the Criminal Procedure Code provided the offence under the TADA Act or the rules made thereunder is connected with such other offence.

675. An analysis of sub-section (1) of Section 15 shows that it has two limbs. The first limb bars application of provisions of the Code of Criminal Procedure and the Indian Evidence Act to a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by him in any of the modes noted in the section. The second limb makes such a confession admissible, dehors the provisions of the Evidence Act in the trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act or rules made thereunder provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused. The import of Section 15(1) is that insofar as the provisions of CrPC and the Evidence Act come in conflict with either recording of a confession of a person by a police officer of the rank

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mentioned therein, in any of the modes specified in the section, or its admissibility at the trial, they will have to yield to the provision of Section 15(1) of the TADA Act as it is given overriding effect.

676. Thus, Sections 162, 164, 281 and 463 of the Code of Criminal Procedure which have a bearing on the question of recording of statement/confession of a person and Sections 24 to 30 of the Evidence Act which deal with various aspects of confession of an accused stand excluded vis-à-vis Section 15(1) of the TADA Act and cannot be called in aid to invalidate recording of confession of an accused by a police officer of the specified rank and/or its admissibility in the trial of the co-accused, abettor or conspirator charged and tried in the same case together with the accused for an offence under the TADA Act or rules made thereunder. It must be made clear that the non obstante clause in Section 15(1) of the TADA Act does not exclude the application of all the provisions of the CrPC and the Indian Evidence Act in the trial of offences under the TADA Act.

677. What remains to be examined is what is the evidential value of a confession recorded under Section 15 of the TADA Act against the maker thereof and as against a co-accused, abettor or conspirator?

678. Thomas, J. took the view that the confession of an accused is a substantive evidence as against the maker thereof but it is not so as against the co-accused, abettor or conspirator against whom it can be used only as a corroborative evidence. Wadhwa, J. took the contrary view; according to him, confession of an accused is a substantive evidence against himself as well as against the co-accused, abettor or conspirator.

679. Section 3 of the Indian Evidence Act defines, inter alia, the term "evidence" to mean and include all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under the enquiry (which is called "oral evidence") and all documents produced for the inspection of the court (which is called "documentary evidence"). The plea of "guilty" by the accused at the trial cannot, therefore, be treated as falling within the meaning of evidence as it is not a statement made by a witness before the court. The extra-judicial confession made to any person which is allowed to be proved by the court will be a part of the statement of a witness made before the court, so it will be evidence within the meaning of that term. A confession recorded by a Magistrate under Section 164 CrPC also satisfies the requirements of the definition of the term "evidence". A confession recorded under Section 15(1) of the TADA Act is also within the ambit of evidence under Section 3(1) of the Evidence Act and there is no dissension on this.

680. The expression "substantive evidence" is not employed in the Evidence Act. It connotes evidence of a fact in issue or a relevant fact. In *Black's Law Dictionary* (at p.1597), the following meaning is noted:

> "*Substantive evidence.*—That adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of

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discrediting a witness (i.e. showing that he is unworthy of belief), or of corroborating his testimony. Best, Ev. 246, 773, 803."

In *Words and Phrases* (Vol. 40), "substantive evidence" is defined as follows:

> "*Substantive evidence.*—Although subordinate feature of case, certain types of evidence, such as character evidence or prior criminal acts, can be considered as 'substantive evidence' on question of guilt or innocence. *State* v. *Wallace*[57].
>
> 'Substantive evidence' is that offered for purpose of persuading trier of fact as to truth of proposition on which determination of tribunal is to be asked, whereas 'impeachment evidence' is that evidence designed to discredit the witness, i.e. to reduce effectiveness of his testimony by bringing forth evidence explaining why jury should not put faith in his testimony. *Zimmerman* v. *Superior Court in and for Maricopa County*[58]."

Thus, plea of guilty by an accused at the commencement of the trial or in his statement under Section 313 CrPC will not be substantive evidence but extra-judicial confession and confession recorded by a Magistrate under Section 164 CrPC of an accused will be substantive evidence. So also a confession of a person recorded under Section 15 of the TADA Act; I shall elaborate this point presently.

681. In regard to evidential value of confessions both academicians and Judges have expressed conflicting opinions.

682. Blackston described confession as the weakest and most suspicious of all evidence. In *Wigmore on Evidence*, para 866, Third Edn., it is noted:

> "Now, assuming the making of a confession to be a completely proved fact — its authenticity beyond question and conceded, — *then it is certainly true that we have before us the highest sort of evidence.* The confession of crime is usually as much against a man's permanent interests as anything well can be; and, in Mr Starkie's phrase, no innocent man can be supposed ordinarily to be willing to risk life, liberty, or property by a false confession. Assuming the confession as an undoubted fact, it carries a persuasion which nothing else does, because a fundamental instinct of human nature teaches each one of us its significance." (emphasis supplied)

Similar view is expressed in *Treatise on the Law of Evidence*, Vol. 1, Twelfth Edn., by Taylor in para 865:

> "Indeed, all reflecting men are now generally agreed that, deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in the law, their value depending on the sound presumption that a rational being will not make admissions prejudicial

57 NCA pp 283 SE 2d 404, 407
58 402 P 2d 212, 215, 98, Ariz 85, 18 ALR 3d 900

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to his interest and safety, unless when urged by the promptings of truth and conscience."

In *Principles and Digest of the Law of Evidence*, Vol. 1, New Edn., by Chief Justice M. Monir, after noticing conflicting views and discussing various authorities, the learned author stated the rule as follows:

"The rule may, therefore, be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected the confession, if once proved to have been made and made voluntarily, is one of the most effectual proofs in the law."

There is a plethora of case-law holding that confession of an accused recorded in the manner provided under CrPC and admissible under the provisions of the Evidence Act, even if retracted later, is substantive evidence as against the maker thereof.

683. Section 30 of the Evidence Act which deals with consideration of proved confession the affecting person making it and others jointly under trial for the same offence, is quoted below:

"30. *Consideration of proved confession affecting person making it and others jointly under trial for same offence.*—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—'Offence' as used in this section, includes the abetment of, or attempt to commit, the offence."

This section says that when more persons than one are being tried jointly for the same offence and a confession, made by one of such persons affecting himself and some other of such persons, the court *may take into consideration such confession* against the maker of the confession as well as against such other person when such a confession is proved in court.

684. Speaking for a two-Judge Bench of this Court in *Kalpnath Rai* v. *State (Through CBI)*[7] Thomas, J. observed: (SCC. p. 754, para 75)

"75. A confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

685. A plain reading of Section 30 of the Evidence Act discloses that when the following conditions exist, namely, (*i*) more persons than one are being tried jointly; (*ii*) the joint trial of the persons is *for the same offence*; (*iii*) a confession is made by one of such persons (who are being tried jointly for the same offence); (*iv*) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); and (*v*) such a confession is proved in court, *the court may take into consideration such confession against the maker thereof as well as against such persons* (who are being jointly tried for the same offence).

7 *Kalpnath Rai* v *State (Through CBI)*, (1997) 8 SCC 732

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686. It has been noticed above that Section 15(1) of the TADA Act enacts that a confession recorded thereunder *shall be admissible in the trial of the maker of the confession, or co-accused, abettor or conspirator* provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

687. The difference between Section 30 of the Indian Evidence Act and Section 15(1) of the TADA Act may also be noticed here. Whereas the former provision requires that the maker of the confession and others should be tried jointly for the *same offence*, the latter provision does not require that joint trial should be for the same offence. Another point of distinction is that under Section 30 of the Evidence Act, the court is given discretion *to take into consideration the confession against the maker as well as against those who are being tried jointly for the same offence*, but Section 15(1) of the TADA Act mandates that confession of an accused recorded thereunder *shall be admissible in the trial of the maker of confession or co-accused, abettor or conspirator*, provided the co-accused, abettor or conspirator is charged and tried with the accused in the same case. Both Section 30 of the Evidence Act as well as Section 15 of the TADA Act require joint trial of the accused making confession and the co-accused, abettor or conspirator.

688. Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording the confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act.

689. Under Section 15(1) of the TADA Act the position, in my view, is much stronger, for it says,

> "a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused".

On the language of sub-section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him, so it is implicit that the same can be considered against all those tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused.

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690. Therefore, with great respect to the learned Judges, I am unable to agree with the above-quoted observations made in *Kalpnath Rai case*[7] and the view of brother Thomas, J. in his judgment in this case.

691. In support of the said view, Thomas, J. pointed out, in his judgment, that (*i*) a confession can be used as relevant evidence against its maker under and subject to conditions mentioned in Section 21 of the Evidence Act; (*ii*) there is no provision in the Evidence Act except Section 30 which authorises consideration of confession against a co-accused and posed a question that if Section 30 is to be excluded by virtue of the non obstante clause in Section 15(1) of the TADA Act, under what provision could a confession of one accused be used against another co-accused at all? With great respect to my learned brother, I am not persuaded to adopt that view. On an analysis of Section 15(1) of the TADA Act and Section 30 of the Evidence Act, I have reached a different conclusion, noted above.

692. It is true that Section 21 of the Evidence Act declares that admission is relevant and permits its proof against the person who makes it. Even when confessions which are species of admissions are not hit by Sections 24, 25 or 26 and are relevant or when they became relevant under Sections 27, 28 and 29, they can only be proved against the maker thereof. Admittedly, there is no provision in the Evidence Act for making confession of an accused relevant or admissible against the co-accused. In the setting of those provisions Section 30 of the Evidence Act is enacted which is a clear departure from the principles of English Law. It permits taking into consideration of a confession made by one of the persons being tried jointly for the same offence as against the co-accused. It is in such a case a confession of an accused, recorded in accordance with the provisions of CrPC and the Evidence Act, has to satisfy the requirements of Section 30 of the Evidence Act for using it against the co-accused.

693. It is now well settled that the expression "the court may take into consideration such confession" means to lend assurance to the other evidence against the co-accused.

694. Sir John Beaumont, speaking for the Privy Council, in *Bhuboni Sahu* v. *R.*[8] an oft-quoted authority, observed in regard to Section 30 of the Evidence Act, thus: (AIR Headnote)

> "Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3. 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 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

7 *Kalpnath Rai* v. *State (Through CBI)*, (1997) 8 SCC 732

8 AIR 1949 PC 257 50 Cri LJ 872

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court may take the confession into consideration and thereby, no doubt, makes 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 a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction."

About the nature of the evidence of an accomplice, it was pointed out therein:

"The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story-matter which is untrue."

695. In *Kashmira Singh* v. *State of M.P.*[9] this Court approved the principles laid down by the Privy Council in *Bhuboni Sahu case*[8] and observed:

"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 and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

696. In *Haricharan Kurmi* v. *State of Bihar*[10] a Constitution Bench of this Court after referring to *Bhuboni Sahu case*[8] and *Kashmira Singh case*[9] observed:

"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, and so, Section 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession. ... When Section 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals."

It was held that technically construed, the definition of the term "evidence" in Section 3 would not apply to confession. It was observed:

9 AIR 1952 SC 159 : 1952 SCR 526
8 *Bhuboni Sahu* v *R* , AIR 1949 PC 257 : 50 Cri LJ 872
10 AIR 1964 SC 1184 (1964) 6 SCR 623

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"Even so, Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the court, it is 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 a 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."

697. In the cases referred to above, it was held that the confession of a co-accused is not evidence as defined in Section 3 of the Evidence Act and that Section 30 enables the court to take into consideration the confession of a co-accused to lend assurance to other evidence against the co-accused. The expression "may take into consideration" means that the use of the evidence of confession of an accused may be used for purposes of corroborating the evidence on record against the co-accused and that no conviction can be based on such confession.

698. The amendments effected in Section 15(1) and Section 21(1) of the TADA Act by Act 43 of 1993 may be noticed here. The words "co-accused, abettor or conspirator" and the proviso are added in sub-section (1) of Section 15; clauses (*c*) and (*d*) of sub-section (1) of Section 21 are deleted. Before the amendment of Sections 15 and 21, the sweep of the legal presumption contained therein was that in a prosecution for any offence under sub-section (1) of Section 3 of the TADA Act on proof of the facts mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (1) of Section 21, it was mandated that the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence. Clauses (*c*) and (*d*), which are deleted from sub-section (1) of Section 21 by Act 43 of 1993, related to a confession made by a co-accused that the accused had committed the offence and to the confession made by the accused of the offence to any person other than a police officer. The effect of the said clauses was that in the event of the co-accused making confession inculpating the accused or in the event of the accused himself making an extra-judicial confession to any person other than a police officer, the legal presumption that the accused had committed such offence would arise.

699. Section 4 of the Evidence Act defines "shall presume" as follows:

" '*Shall presume*'.—Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

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700. The presumption is, however, rebuttable so the burden of showing that the offence was not committed would shift to the accused. The normal presumption in criminal cases is that till it is proved to the contrary the accused will be deemed to be innocent and that position is altered by Section 21(1). After deletion of clauses (*c*) and (*d*) by Act 43 of 1993 the statutory presumption under Section 21(1) will not apply to situations where a confession is made by a co-accused that the accused had committed the offence [clause (*c*)] or where the accused himself made a confession of the offence to any person other than a police officer [clause (*d*)] and the normal rule of presumption of innocence of the accused will apply. What was in the realm of "as proved" has after the amendment become only substantive evidence admissible as against the co-accused.

701. I have already pointed out the difference in the phraseology of Section 15 of the TADA Act. Parliament used the expression "shall be admissible in the trial of such person or co-accused, abettor or conspirator" in Section 15 which is different from the language employed in Section 30 of the Evidence Act which says that the court may take into consideration such confession as against such other person as well as against the person who makes such confession. It has to be presumed that Parliament was aware of the interpretation placed by the courts including the Privy Council and the Supreme Court on Section 30 of the Evidence Act but chose to frame Section 15 differently obviously intending to avoid the meaning given to the phrase "the court may take into consideration such confession as against such other person ..." used in Section 30 of the Evidence Act. On the language of Section 15(1), it is clear that the intention of Parliament is to make the confession of an accused substantive evidence both against the accused as well as the co-accused.

702. Brother Thomas, J. proceeded on the assumption that under unamended Section 21(1), the confession of an accused as against a co-accused was to be treated by the court as "substantive evidence". But in view of the use of the expression "shall presume" in Section 21(1) of the TADA Act, the confession of one accused as against the other co-accused cannot be said to be "substantive evidence"; such a confession will be regarded as proof of the fact that the accused had committed such offence unless the contrary is proved. In my view, "substantive evidence" of a fact by itself does not amount to "proof of that fact". There is no presumption in law that substantive evidence of a fact has to be treated as proof of that fact.

703. After the amendment of Section 21(1), the confession of an accused recorded by the police officer under Section 15(1) of the TADA Act is in the same position as that recorded by a Magistrate under Section 164 CrPC and that it cannot be placed on a higher pedestal in regard to its evidential value. If that be so, in a trial under the TADA Act when there are two categories of confessions — one a judicial confession recorded by a Magistrate under Section 164 CrPC and the other by a police officer under Section 15(1) of the TADA Act, the court will have to give the same evidential value to such confessions as against the co-accused

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704. If the expression "substantive evidence" is understood in the sense of evidence of a fact in issue or a relevant fact and not proof of what it contains and that it has to be evaluated by the court like any other category of evidence no difficulty arises. The difficulty will, however, arise if "substantive evidence" is equated with the position flowing from the application of legislative mandate by incorporating "shall presume" as brother Thomas, J. has indicated in his judgment as that will, in my view, nullify the effect of legal presumption in Section 21(1) of the TADA Act. I, therefore, respectfully differ from the view taken by the Bench in *Kalpnath Rai case*[7] and brother Thomas, J. in his judgment in this case and in respectful agreement with the view expressed by brother Wadhwa, J. in his judgment that a confession of an accused under Section 15(1) of the TADA Act is substantive evidence against the co-accused, abettor or conspirator jointly tried with the accused.

705. But I wish to make it clear that even if confession of an accused as against a co-accused tried with the accused in the same case is treated as "substantive evidence" understood in the limited sense of fact in issue or relevant fact, the rule of prudence requires that the court should examine the same with great care keeping in mind the following caution given by the Privy Council in *Bhuboni Sahu case*[8] which has been noted with approval by this Court in *Kashmira Singh*[9] and I quote:

> "This tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions, and it is very difficult for the court to guard the danger."

706. It is also to be borne in mind that the evidence of confession of a co-accused is not required to be given on oath, nor is it given in the presence of the accused, and its veracity cannot be tested by cross-examination. Though the evidence of an accomplice is free from these shortcomings yet an accomplice is a person who having taken part in the commission of offence, to save himself, betrayed his former associates and placed himself on a safer plank — "a position in which he can hardly fail to have a strong bias in favour of the prosecution", the position of the accused who has given confessional statement implicating a co-accused is that he has placed himself on the same plank and thus he sinks or sails along with the co-accused on the basis of his confession. For these reasons, insofar as use of confession of an accused against a co-accused is concerned, rule of prudence cautions the judicial discretion that it cannot be relied upon unless corroborated generally by other evidence on record.

707. Now adverting to merits of the appeals, learned brother Thomas, J. having considered the confession of A-20 (S. Bhagyanathan) Exh. P-69, A-21 (S. Padma) Exh. P-73, A-1 (S. Nalini) Exh. P-77, A-3 (V. Sriharan) Exh. P-81, A-9 (Robert Payas) Exh. P-85, A-18 (Arivu) Exh. P-87, A-10

7 *Kalpnath Rai* v. *State (Through CBI)*, (1997) 8 SCC 732

8 *Bhuboni Sahu* v. *R.*, AIR 1949 PC 257 · 50 Cri LJ 872

9 *Kashmira Singh* v *State of M.P.*, AIR 1952 SC 159 : 1952 SCR 526

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(Jayakumar) Exh. P-91, A-8 (Athirai) Exh. P-97, A-12 (Vijayan) Exh. P-101, A-2 (Santhan) Exh. P-104, A-24 (Rangan) Exh. P-109, A-23 (Dhanasekaran) Exh. P-113, A-19 (Irumborai) Exh. P-117, A-16 (Ravichandran) Exh. P-121, A-17 (Suseendran) Exh. 123, A-25 (Vigneswaran) Exh. P-127, A-15 (Thambi Anna @ Shanmugavadivelu) Exh. P-139, meticulously examined other oral and documentary evidence in support of such confessional statement and found A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) guilty of offences under Section 120-B read with Section 302 IPC and altered death sentence of A-1, A-9, A-10 and A-16 to life imprisonment while confirming death sentence of A-2, A-3 and A-18.

708. Brother Wadhwa, J. on consideration of all the aforementioned confessions and other evidence against the appellants confirmed conviction of only A-1, A-2, A-3 and A-18 under Section 120-B read with Section 302 IPC and confirmed death sentence of all of them while acquitting all other appellants.

709. In the view I have taken in the light of the above discussions and on examining the said statements of confession and the evidence, both oral and documentary on record, it would be duplication to record here the same reasoning over again on the question of confirmation of conviction of appellants A-1, A-2, A-3, A-9, A-10, A-16 and A-18. Insofar as the conviction of any other appellant is concerned it would serve no practical purpose and will be only of academic interest and an exercise in futility. I, therefore, consider it appropriate to record my respectful agreement with the reasoning and conclusion arrived at by Thomas, J. in confirming the conviction of A-1, A-2, A-3, A-9, A-10, A-16 and A-18 for the aforementioned offences.

710. The last crux in these cases is the question of punishment. The Indian Penal Code gives a very wide discretion to the court in the matter of awarding punishment. The maximum and the minimum punishments are prescribed under IPC and awarding of appropriate punishment is left to the discretion of the court. There are no general guidelines in IPC but in the exercise of its discretion the courts have to take into consideration the aggravating and mitigating circumstances of each case to determine appropriate sentence commensurate with the gravity of the offence and role of the convict.

711. On the question of awarding the sentence for the offences for which the punishment prescribed is life imprisonment or death sentence, there has been a complete change in the legislative policy which is reflected in sub-section (3) of Section 354 of the Code of Criminal Procedure. It enjoins that in the case in which the court awards sentence of death, the judgment shall state special reasons for such sentence.

712. In *Bachan Singh* v. *State of Punjab*[16] the constitutional validity of Section 354(3) CrPC was considered by a Constitution Bench of this Court.

16 (1980) 2 SCC 684 : 1980 SCC (Cri) 580

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The change in the policy of sentencing is pointed out thus: (SCC p. 733, para 151)

> "*151.* Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception."

It will be useful to note the principles for awarding punishment contained in the following observations: (SCC pp. 748-49, para 201)

> "[F]or making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. ... In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. *And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.*"
>
> (emphasis supplied)

713. In *Machhi Singh* v. *State of Punjab*[59] the following observations of Thakkar, J., speaking for a three-Judge Bench of this Court, are worth noticing. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. In such a situation the community feels that for the sake of self-preservation the killer has to be killed and it may withdraw the protection afforded to him from being killed. It might do so in "rarest of the rare" cases. When its collective conscience is so shocked, it would expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty. The learned Judge catalogued various factors which would bring a case in the "rarest of the rare" cases. Among them is included the case where the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

59 (1983) 3 SCC 470 : 1983 SCC (Cri) 681 (1983) 3 SCR 413

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714. In *Kehar Singh* v. *State (Delhi Admn.)*[30] the security guards of Smt Indira Gandhi, the then Prime Minister of India, assassinated her. This Court confirmed the death sentence of Satwant Singh who actually committed the murder as well as of Kehar Singh who conspired and inspired for commission of the crime. Applying the principles laid down in *Bachan Singh case*[16] and *Machhi Singh case*[59] that case was classified as a "rarest of the rare" case, inter alia, on the ground that the convicts were involved in assassinating a great daughter of India and the Prime Minister of India and that the act of the accused not only took away the life of the popular leader but also undermined our democratic system which had been working so well for the last 40 years.

715. To determine the rarest of the rare case it was suggested that the answers to the following questions would be helpful:

(*a*) Is there something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence?

(*b*) Are the circumstances of the crime such that there is no alternative but to impose death sentence after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

716. The leading cases on the subject suggest that discretion of the court in awarding punishment when conviction is for an offence punishable with death or with imprisonment for life is controlled by Section 354(3) CrPC; so if the court proposes to impose capital punishment it must record "special reasons" for so doing. What constitutes special reasons cannot be stated with any precision and that has to be determined having regard to the facts and circumstances of each case. If a case falls in the category of "rarest of the rare case" it would justify the requirement of special reasons. But again in deciding whether a case falls within "rarest of the rare case", the court has to consider both aggravating as well as the mitigating circumstances in each case in the light of the above-noted principles.

717. In numerous cases these principles are being applied. There is no need to multiply the cases here. It is now time to address to the facts of the case.

718. On applying the well-settled principles laid down by this Court, brother Thomas, J. felt that the confirmation of death sentence awarded by the Designated Court to A-2, A-3 and A-18 is justified whereas brother Wadhwa, J. on the same principles confirmed the death sentence awarded by the Designated Court to A-1, A-2, A-3 and A-18. So far as the confirmation of death sentence of A-2. A-3 and A-18 is concerned both the learned brethren concur and I record my respectful agreement with their conclusions. The difference of opinion between them is with regard to confirmation of

30 (1988) 3 SCC 609 1988 SCC (Cri) 711

16 *Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 · 1980 SCC (Cri) 580

59 *Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470 · 1983 SCC (Cri) 681 : (1983) 3 SCR 413

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death sentence of A-1. It is now my view which determines the result of this issue.

719. I may express my feelings that it ill behoves a person to order the death of another. He who gives life alone has the authority to take life. In dispensing justice a Judge is not only discharging a sovereign function but he is also doing a divine function. Even so the most difficult task for a Judge is to choose the punishment of death in preference to the punishment of life imprisonment for he is conscious of the fact that once the life of a person is taken away by a judicial order it cannot be restored by another judicial order of the highest authority in this world. Having taken upon himself the onerous responsibility of doing justice according to the Constitution and the laws, the Judge must become independent of his conviction and ideology to maintain the balance of scales of justice.

720. Mr Natarajan pleaded for not confirming the death sentence of A-1 highlighting the mitigating circumstances. She is a woman and is the mother of a small girl who was born during the period of her confinement in jail. She is very young. She has also subsequently regretted her act and her participation was the result of indoctrination by A-3. She did not play any major role. These are indisputably the mitigating circumstances and I am not unmindful of these facts. Indeed the dilemma whether sentence of death should be pronounced upon a woman has been troubling my mind for a considerable time. Surely in our culture a woman has to be treated with beneficence and kindness. But then in this case the person Dhanu who opted to become a human bomb was a woman. Suba who gave moral support to sacrifice her life on the anvil of some ideology and to end up by annihilating others' lives, was also a woman. About the role of A-1 (Nalini), it is not a case where she was caught up in a sudden situation and became a mute comrade, the mind not towing the body. It was indeed the other way round.

721. On her own saying she had developed a strong feeling against Shri Rajiv Gandhi and decided that a lesson should be taught for the mass killings and rapes in Sri Lanka and particularly in view of the death of eleven LTTE leaders by consuming cyanide and thought that she was justified in taking any retaliatory action. She admitted that she was mentally prepared by Sivarasan, Murugan, Dhanu and Suba for any kind of retaliatory action including killing of leaders. Even on 2-5-1991, she felt that the said persons were going to assassinate the leaders and she voluntarily participated thereafter and attended the meeting addressed by Shri V.P. Singh on the night of 7-5-1991 in Madras. She had never been free from the feeling that Sivarasan, Murugan, Dhanu and Suba had come for a dangerous mission and after the meeting of Mr V.P. Singh it had become clear to her that Dhanu and Suba had come for a dangerous mission. She was, however, closely associated with them. On 19-5-1991 itself, according to her, Sivarasan came to her house along with a clipping of an evening newspaper of Tamil Nadu in which there was news of the visit of Shri Rajiv Gandhi to Tamil Nadu for election campaign. He said that they had come only for that and that they would attend the meeting. She entertained strong feeling about the danger

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ahead after briefing of Sivarasan about attending the meeting of Shri Rajiv Gandhi at Sriperumbudur on 21-5-1991. On 21-5-1991 at about 3.45 p.m. Suba told her that Dhanu was going to create history that day by assassinating Shri Rajiv Gandhi and that they would be very happy if she also participated in that and she agreed. Before leaving for Sriperumbudur she was aware of the fact that Dhanu was concealing an apparatus inside her dress. Nonetheless she went along with Suba and Dhanu to provide cover to them as planned by Sivarasan for which she had already agreed earlier. She did accompany them and provided the required cover. Without her providing cover to Dhanu and Suba, perhaps they would not have had the confidence for attending the meetings including the fateful meeting. She was actually present at the scene of occurrence along with Dhanu and Suba when Dhanu exploded herself as a human bomb as a result of which Shri Rajiv Gandhi and 18 other persons died and 43 persons were seriously injured which included police officers and innocent persons.

722. Brother Thomas, J. noted that in the confessional statement of A-20 (Bhagyanathan) it is stated that A-1 (Nalini) had confided to him that she realised only at Sriperumbudur that Dhanu was going to kill Shri Rajiv Gandhi. He appears to have been impressed by that statement and observed that perhaps that might be a true fact and if that be so, she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini) to get herself extricated would have been justified.

723. From the facts pointed out above which strongly suggest that her participation was not the result of helplessness but a well-designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy, I am not inclined to place any reliance on that confessional statement of her brother A-20 which is referred to by my learned brother Thomas, J.

724. I am convinced that the facts of this case are uncommon. A crime committed on Indian soil against the popular national leader, a former Prime Minister of India, for a political decision taken by him in his capacity as the head of the executive and which met with the approval of Parliament, by persons running political organisation in a foreign country and their agents in concert with some Indians for the reason that it did not suit their political objectives and of their organisation, cannot but be a "rarest of the rare" case. In such a case the part played by A-1 (Nalini) is a candid participation in the crime of conspiracy to assassinate Shri Rajiv Gandhi who was himself a young and popular leader so much loved and respected by his fellow citizens and had been the Prime Minister of India. The conspirators including A-1 (Nalini) had nothing personal against him but he was targeted for the political decision taken by him as the Prime Minister of India. She in spite of being an Indian citizen joined the gang of conspirators and engaged herself in pursuit of common intention to commit the crime only because she was infatuated by the love and affection developed for A-3 (Murugan), and thus played her part in the execution of the conspiracy which resulted in the

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assassination of Shri Rajiv Gandhi and death of many police officers and innocent citizens including a small girl. For a person like A-1, taking into consideration all the mitigating circumstances, in my view, there is no room for any leniency, kindness and beneficence.

725. On the facts of this case discussed above, once A-1 (Nalini) is found to fall in the rarest of the rare case, declining to confirm the death sentence will, in my view, stultify the course of law and justice.

726. It is apt to quote here the following observations of this Court in *Mahesh* v. *State of M.P.*[60] with which I am in respectful agreement: (SCC Headnote)

> "It will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

727. Thus, I conclude that the sentence of imprisonment for life is inadequate and there is no alternative but to confirm the death sentence awarded by the Designated Court to A-1 (Nalini). Therefore, with respect I concur with brother Wadhwa, J. in confirming the death sentence of the first appellant A-1 (Nalini) awarded by the Designated Court.

728. In the result I agree with brother Thomas, J. and set aside the conviction of all the appellants recorded by the Designated Court for offences under the TADA Act mentioned in Category 'B' and also the conviction of A-4 (Shankar @ Koneswaran), A-5 (D. Vijayanandan @ Hari Ayya), A-6 (Sivaruban @ Suresh @ Suresh Kumar @ Ruban), A-7 (S. Kanagasabapathy @ Radhayya), A-8 (A. Chandralekha @ Athirai @ Sonia @ Gauri), A-11 (J. Shanthi), A-12 (S. Vijayan @ Perumal Vijayan), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran @ Velayudam), A-15 (S. Shanmugavadivelu @ Thambi Anna), A-17 (M. Suseendran @ Mahesh), A-19 (S. Irumborai @ Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran @ Raju), A-24 (N. Rajasuriya @ Rangan), A-25 (T. Vigneswaran @ Vicky), A-26 (J. Ranganath) for the offences under Section 120-B read with Section 302 IPC. Their appeals are accordingly allowed.

729. Agreeing with brother Thomas, J. I confirm the conviction of A-1 (Nalini), A-2 (Santhan) and A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) finding them guilty of offences under Section 120-B read with Section 302 IPC.

730. On the facts and in the circumstances, I am also of the same view as expressed by brother Thomas, J. that it is not a fit case to confirm the death sentence awarded to A-9 (Robert Payas), A-10 (Jayakumar) and A-16

60 (1987) 3 SCC 80 : 1987 SCC (Cri) 379

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(Ravichandran) and their death sentence is commuted to life imprisonment and their appeals are allowed to this extent.

731. The death sentence awarded to A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed — the death sentence of A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) agreeing with Thomas, J. as well as Wadhwa, J. and the death sentence of A-1 (Nalini) agreeing with Wadhwa, J. Their appeals are dismissed and Death Reference is accordingly answered.

ORDER OF THE COURT

732. The conviction and sentence passed by the trial court of the offences of Section 3(3), Section 3(4) and Section 5 of the TADA Act are set aside in respect of all those appellants who were found guilty by the trial court under the said counts.

733. The conviction and sentence passed by the trial court of the offences under Sections 212 and 216 of the Indian Penal Code, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substances Act, Section 12 of the Passport Act and Section 6(1-A) of the Wireless Telegraphy Act, 1933, in respect of those accused who were found guilty of those offences, are confirmed. If they have already undergone the period of sentence under those counts it is for the jail authorities to release such of those against whom no other conviction and sentence exceeding the said period have been passed.

734. The conviction for the offence under Section 120-B read with Section 302 Indian Penal Code as against A-1 (Nalini), A-2 (Santhan @ Raviraj), A-3 (Murugan @ Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran @ Ravi) and A-18 (Perarivalan @ Arivu) is confirmed.

735. We set aside the conviction and sentence of the offences under Section 302 read with Section 120-B passed by the trial court on the remaining accused.

736. The sentence of death passed by the trial court on A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed. The death sentence passed on A-9 (Robert), A-10 (Jayakumar) and A-16 (Ravichandran) is altered to imprisonment for life. The Reference is answered accordingly.

737. In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu), all the remaining appellants shall be set at liberty forthwith.

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