

AHMED HUSSEIN VALI MOHAMMED SAIYED & ANR. A

v.

STATE OF GUJARAT

(Criminal Appeal Nos. 2-5 of 2003)

MAY 12, 2009 B

[K.G. BALAKRISHNAN, C.JI. AND P. SATHASIVAM AND
J.M. PANCHAL, JJ.]

PENAL CODE, 1860:

Section 320 r/w 120-B – Murder – Conviction and sentence by designated court relying on confessional statements, dying declaration and other materials – Correctness of – Held: Correct – Conviction and sentence confirmed – TADA Act, Section 5, 15 – Arms Act, Section 25(1)(b), 27. C D

TADA ACT, 1987:

Section 15 – Confession statement under – Recording of – Procedure and safeguards – Discussed – On facts Held: All the confession statements reliable and Designated Court rightly relied on them. E

SENTENCING:

Principles governing sentencing – Discussed – On facts, Held: Sentence awarded by Designated Court appropriate – No ground to modify the same. F

The designated court has convicted the accused-appellants under s.302 r/w 120-B IPC, Sections 25(1)(c) of the Arms Act and Section 5 of the TADA Act and sentenced them under different counts of punishment including life imprisonment. In the appeal against the abovesaid order, the main contention was that conviction G

- A based on confessional statements of the appellants without any corroborative evidence is not sustainable.

Dismissing the appeals, the Court

- B HELD:1.1. This Court has carefully perused and verified the confessional statements. The perusal of their statements show that all of them were informed about the fact that there was no need and compulsion to make a statement and the same would be used against them in future in the very same case. It is also clear that all of
C them understood the entire procedure and made voluntary statement to the competent authority that was authorized to record their statement. Apart from narrating the gang rivalry between Hansraj Trivedi and Abdul Latif in respect of sale of liquor in Ahmedabad city, they also
D highlighted the number of persons involved in the conspiracy in the murder of Hansraj Trivedi and others. Most of the accused mentioned the appellants and others who involved in the conspiracy and the ultimate killing of Hansraj Trivedi and others. [Para 22] [744-F-H; 745-A-
E C]

- 1.2. The statements of the appellants/accused recorded on various dates demonstrate the conspiracy to eliminate the business rivalry, and killing of other gang leader, Hansraj Trivedi and others and how they executed
F the same on 03.08.1992 in the premises of Radhika Gymkhana Club. [Para 23] [745-C-D]

- 1.3. TADA Act, being a special Act, which permits recording of confessional statement by a police officer
G not below the rank of Superintendent of Police and the same is also admissible in evidence. However, it is the duty of the prosecuting agency and the trial court/special court to see that strict compliance are adhered to while recording the confessional statement and relying on the
H same. [Para 24] [745-D-E]

Kartar Singh vs. State of Punjab, (1994) 3 SCC 569, A
relied on.

2.1. The confession made by an accused if it is voluntary and true, then it is admissible against co-accused as a substantive piece of evidence. It is also clear that while recording confessional statement, if there is omission to obtain signature of the accused at the end of the confession, the same is admissible and the omission made by the competent officer is curable in view of the provision contained in Section 463 Cr.P.C. In the same manner, the Court has held even if there was any omission in respect of the certificate which the competent officer is required to append under sub-rule (3) at the foot of the confession, it can be cured as provided under Section 463 of the Cr.P.C. Such approach is permissible in view of Section 463 of the Cr.P.C. in regard to the omission in recording confession under Section 164 Cr.P.C., the Court has clarified that the same approach can be adopted in respect of confession recorded under Section 15 of the TADA Act. It is true that in the case of confessional statements, though signature of the accused and the officer who recorded their statement are available, the certificate in terms of Rule 15(3) was not appended. However, as explained in *Nalini's* case, the officers - PWs 25, 26, 49 & 51 who recorded their statement deposed before the Court, identified and explained the course adopted while recording their statement as well as contents therein. [Para 26] [747-C-H; 748-A-C] B C D E F

2.2. In order to show that the confessional statements of a number of accused persons irrespective of separate certificate are valid, the prosecution has examined the respective competent officers who were authorized to record confessional statements which satisfied sub-rule (3) of Rule 15. [Para 27] [748-C-D] G H

A 2.3. All the recording officers have deposed in the trial with all the relevant facts and the question of tampering with the confessional statements can be done away with accordingly as has been rightly done by the Designated Court. [Para 34] [753-B-C]

B 2.4. All the confessional statements which have been considered by the Designated Court to arrive at the judgment are having similar depiction of facts regarding gang rivalry between Latif's Gang and Hansraj Trivedi, plotting of the criminal conspiracy by the members of C Latif's gang, the details of the activities made by the Latif's gang members on 03.08.1992 i.e. the day of commission of the crime in Radhika Gymkhana, identification of the name of the accused present or participated at the time of the commission of the crime, the description of arms D and cars used in the commission of the crime and how the gang members escaped to Dariyapur after the occurrence of the crime. There is no striking difference or discrepancy or ambiguity regarding the depiction of fact in each of the confessional statements that has been E considered by the court and they are very much able to corroborate the confessional statement made by A-27. It is also to be remembered that all the confessions are made almost right after the accused got apprehended so the delay in recording the same is quite reasonable. [Para F 35] [753-C-G]

Kartar Singh vs. State of Punjab, (1994) 3 SCC 569 and *State [through Superintendent of Police, CBI/SIT] vs. Nalini*, (1999) 5 SCC 253 - relied on.

G *Bharatbhai vs. State of Gujarat*, (2002) 8 SCC 447 and *State of Rajasthan v. Ajit Singh*, (2008) 1 SCC 601, referred to.

3. According to PW6 after making the statement

H

Badshahkhan became unconscious. Though this dying declaration is incomplete, it does not reject completely the idea of the presence of other accused as detailed in the confessional statements of the accused and thus it does not negate the admissibility of the confessional statements. The evidence of PW-6 shows that he had recorded the dying declaration as narrated by the deceased. If the prosecution had been out to implicate all accused falsely in the case, the dying declaration would have been so recorded. However, the evidence of PW-6 shows that he stopped recording dying declaration as soon as he realized that the maker was losing consciousness. The reliable dying declaration though incomplete, materially corroborates the confessional statement made by Accused No.27 and is rightly relied on by the Designated Court. [Para 37] [755-A-D]

4.1. Apart from confessional statement of the accused, the prosecution had also relied on various other witnesses and the Designated Court has rightly accepted the same. [Para 39] [756-B-C]

4.2. If one considers the other relevant acceptable materials coupled with reliable dying declaration recorded by PW-6 and recovery of pistol as well as revolver and considering the factual aspects of this case, the objection raised by the appellants with regard to sub-rule (5) of Rule 15 is to be rejected. Evidence of PW-53, PW-54, PW-55, PW-57 and PW-58 clearly prove the purchase of pistol and revolver by A-28 at Ahmedabad who in turn supplied the same to Latif and members of his gang, the recovery of all those weapons were duly identified by the person concerned. Further, A-28 purchased the revolver which was used in the commission of offence from Keval Kishore Sharma of Delhi and the same is reflected in his confessional statement. Thus the purchase of the weapons and use

A thereof by accused concerned were all duly proved by
the prosecution. [Para 47] [759-C-F]

B 4.3. Though the complainant was not examined,
however, the prosecution adduced materials in the form
of oral evidence, confessional statements of the accused,
documentary evidence, dying declarations and test
identification parade. From the perusal of all the
materials, this Court is satisfied that the prosecution has
established the involvement of the accused in the
commission of offence, gang rivalry between Hansraj
C Trivedi and Latif, their conspiracy to eliminate Hansraj
Trivedi, medical evidence connecting the bullet injuries
as cause of death and seizure of two cars used for the
commission of offence. [Para 48] [759-G-H; 760-A-B]

D 4.4. The materials placed by the prosecution clearly
show that there was a gang rivalry between the Latif's
gang and Hansraj Trivedi. Both the gang leaders with the
group members were engaged in selling liquor in
Ahmedabad city when the same is prohibited. Both the
E groups were also engaged or involved in forcing people
to vacate the plots and kidnapping etc. Prosecution has
also proved that the appellants and the other accused
persons actively participated in conspiring and chalking
out the plan to eliminate Hansraj Trivedi and other
F members of his gang by resorting to firing. By such
arrangement, they committed brutal murder of nine
persons and created a terror in the minds of public in and
around the area. All those actions were highlighted
before the Designated Court and by analyzing each and
every material and considering the totality of all the
G events, the Court found the appellants herein guilty in
respect of the charges and awarded appropriate
punishment. [Para 49] [760-B-E]

H 5. It is expected that the courts would operate the

sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong. With these principles, it is relevant to note that while awarding sentence, the Designated Judge observed that A-1 was the main accused in brutally murdering the nine persons who were playing cards in the Radhika Gymkhana and that was the reason to sentence him with extreme penalty which would meet the ends of justice. While awarding life imprisonment, the Designated Judge imposed a condition that it shall not be less than 20 years. Since it was he who entered the room where Hansraj and others were playing cards and fired at them along with the absconding accused Sharifkhan killing nine persons, it is appropriate and there is no ground to modify the same. The sentence in respect of others is also proportionate to the proved charges and cannot be claimed as excessive. [Para 50] [760-G-H; 761-A-F]

Case Law Reference:

- A (2002) 8 SCC 447 referred to Para 25
 (1999) 5 SCC 253 relied on Para 26
 (2008) 1 SCC 601 referred to Para 36

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 Nos. 2-5 of 2003.

From the Judgment & Order dated 21.10.2002 of the
 Designated Judge Court No. 3 at Ahmedabad in TADA Case
 Nos. 8/1993, 144/1993, 2/1996 and 4/1996.

C WITH

Crl. A. Nos.13-14, 216-217, & 8-11 of 2003.

D Sushil Kumar, Nitya Ramakrishnan, Trideep Pais, Nikhil
 Nayyar, R.P. Wadhwani, Kamini Jaiswal, Shomila Bakshi,
 Sudhir Nandrajog, Saahila Lamba, Sanjay Jain, Noor Mohd.
 Shaikh, Aditya Kumar, Anmol Thakral and Vinay Arora for the
 Appellants.

E Yashank Adhyaru, Hemantika Wahi, Pinky Behara and
 Somnatha Padhan for the Respondents.

The Judgment of the Court was delivered by

F **P. SATHASIVAM, J.** (1) All the above appeals were filed
 before this Court under Section 19 of the Terrorist and
 Disruptive Activities (Prevention) Act, 1987 (hereinafter referred
 to as "the TADA Act") against the order dated 21.10.2002 of
 the Designated Court at Ahmedabad in TADA Case Nos. 8/
 1993, 144/1993, 2/1996, 4/1996 & 38/1996 whereby the
 G learned Judge convicted the appellants under Section 302 read
 with Section 120-B I.P.C., Sections 25(1)(c) and 27 of the Arms
 Act and Section 5 of the TADA Act and sentenced them under
 different counts of punishment including life imprisonment.

(2) The brief facts leading to the filing of the present appeals are as follows: A

According to the prosecution, on 03.8.1992, the accused formed an unlawful assembly and conspired together along with the absconding accused Sharifkhan, Resulkhan, Aminkhan Mojkhan and Imtiyaz and launched an attack on the deceased Hansraj Shivgopal Trivedi and other persons who were with him. In pursuance of the same, nine persons were killed and three persons were injured by indiscriminate firing resorted to by the appellants/accused with revolvers and automatic guns. Accused Nos. 1,2,3,4 and 20 went to Radhika Gymkhana near Gauri Cinema, Odhav on 03.08.1992 in a Maruti Fronti Car. Accused No. 1, Liyakathussein and absconding accused Sharifkhan fired on Hansraj and other seven persons resulting in their death. Both of them also resorted to indiscriminate firing on the witnesses Vrujlal and Mohan Meghnath which caused serious injuries to them. Accused No. 25 – Abdul Latif Abdul Wahab Shaikh, who was the gang leader, was accompanied by Accused Nos.26 – Sabbirhussein Husseinmiya Shaikh, and 27 – Tajammulhasan Alihasan Ansari, with a view to get rid of Hansraj. The complaint was given by Laxmansinh Madansinh Bhadoria on 3.8.1992 in the Odhav Police Station bearing 1-CR No. 254 of 1992. On the strength of the complaint, various offences were registered against the accused persons. The accused persons were arrested by the police and after submission of charge-sheet, necessary charges were framed by the Trial Court. On 21.12.1992, after conducting the trial in which 62 witnesses were examined by the prosecution and 139 documents were exhibited including the confessional statements of various accused, the Designated Judge convicted the accused under various sections of the I.P.C., Arms Act and TADA Act. In addition to the sentence, the Designated Judge also directed the accused persons to pay fine separately. All the sentences were ordered to run concurrently. Aggrieved by the conviction and sentence imposed by the Designated Judge, Ahmedabad, the appellants B
C
D
E
F
G
H

A filed the above appeals before this Court.

(3) Heard Mr. Sushil Kumar, learned senior counsel, Ms. Nitya Ramakrishnan and Ms. Kamini Jaiswal learned counsel, appearing for the appellants/accused, Mr. Yashank Adhyaru, learned senior counsel appearing for the State and perused the relevant materials including oral and documentary evidence adduced before the Designated Court.

(4) Learned counsel appearing for the appellants mainly contended that the conviction based on confessional statements of the appellants without any corroborative evidence is not sustainable. It was also pointed out that even those alleged confessional statements of the accused are not admissible as not fulfilling the conditions prescribed under Rule 15(3)(b) of TADA Rules. They also pointed out that without a certificate by the competent person in clear categorical terms about his satisfaction or belief as to the voluntary nature of the confession recorded by him would be fatal to the admissibility and the same cannot be cured by placing any other material. It was further submitted that no contemporaneous record to support the confessions were produced. They also pointed out that the alleged confessions were not sent to the Magistrate within a reasonable time and the same is in violation of Rule 15(5) of TADA Rules. According to them, some confessional statements in original are missing and some are typed copies without signatures of the accused. They also highlighted that even dying declarations cannot be relied as being contradictory and are liable to be rejected. There is no corroboration at all to the confessional statement of Accused No.27.

(5) On the other hand, learned senior counsel appearing for the State while supporting the conviction and sentence imposed by the Designated Court submitted that, though, in some of the confessional statements, the certificate was not enclosed in clear terms, however, in view of the fact that recording officer has orally testified about the confessions of

H

the accused and the defect, if any, is cured. He pointed out that most of the statements of the accused were accompanied by a certificate. Insofar as the confessional statements of Accused Nos. 27 and 28 are concerned, they were recorded post 1993 Amendment, hence, they can be used against the co-accused. He also pointed out that the prosecution has also relied on several other acceptable materials in support of their charge.

(6) In the light of the above contentions and the materials placed before the Designed Court and statutory provisions, let us consider whether the prosecution has established its charges leveled against the accused and the Designated Court is right in convicting the appellants and justified in awarding appropriate sentence.

(7) According to the prosecution, the incident took place on 03.08.1992 at about 7.45 p.m. at the Radhika Gymkhana situated in the Odhav Area, Ahmedabad which has been declared as a notified area in terms of Section 2(f) of the TADA Act. To show that the said area has been declared as a notified area in terms of TADA Act, the prosecution has placed Exh. 572 and examined their Investigating Officer-PW-59. All the accused along with absconding accused hatched the conspiracy to eliminate the rival gang under the leadership of Hansraj Trivedi. There was long standing enmity between the two gangs in the sale of liquor. Because of this gang rivalry of Hansraj with Abdul Latif and the members of his gang, the enmity developed between two of them and in furtherance of conspiracy hatched initially, in the afternoon of 03.08.1992, Abdul Latif's gang went to the office of Hansraj but Hansraj was not available there, therefore, the members of Abdul Latif's gang returned to Madh's Mohalla, Dariapur. Thereafter, again in the evening, Abdul Latif received an information that Hansraj and other members are playing game of cards in Radhika Gymkhana at around 8 'O' Clock and on the strength of the said information, the plan was chalked out to launch an assault on Hansraj Trivedi and other members and to eliminate Hansraj

- A Trivedi. In pursuance thereof, they reached in two cars at Radhika Gymkhana and they verified that Hansraj Trivedi and other members are playing game of cards and thereafter the members of Abdul Latif's gang resorted to firing in an indiscriminate manner and killed Hansraj Trivedi and eight other
- B persons. Two persons of the Abdul Latif's gang waited near the staircase and used weapons with a view to disperse the crowd which had gathered near the Gymkhana. The said two accused also forced the shopkeepers to down their shutters. According to the prosecution, the said act of the accused
- C terrorized people living in the locality and it resulted in the death of nine persons viz. Kantibhai Jethabhai Solanki, Ramkumar Rajaram Upadhyay, Hansraj Shivgopal Trivedi, Gatu Valnath Jogi, Shailesh Amrutlal Panchal, Dinesh Dayalji Desai, Has Mukh Gandabhai Patel, Asharafkhan alias Badashahkhan Pathan and Jayantibhai Joitaram Patel. In support of the same,
- D the prosecution examined 62 witnesses. Out of 62 witnesses, some turned hostile and not supported the prosecution case. As per the charge-sheet in respect of TADA Case No. 8 of 1993 and TADA Case No. 144 of 1993, 24 persons were shown as accused. Out of the aforesaid accused, accused Nos.
- E 1, 2, 3, 4 and 20 were charged under Section 5 of the TADA Act as well as under Section 25(1)(c) and Section 27 of the Arms Act. They were also charged under Section 120-B of the IPC and all the accused were charged under Section 120-B read with Section 302/149 IPC. As accused were members of
- F unlawful assembly, the charge under Section 148 of IPC was also framed against them. In TADA Case Nos. 2 and 4 of 1996, the charge was framed against A-25 to A-28. Accused Nos. 25, 26 and 27 were charged under Section 5 of the TADA Act as well as under Section 25(1)(c) and Section 27 of the Arms
- G Act and also under Section 120-B of the IPC. They were also charged for the offences under Section 120-B read with Section 302 and under Section 149 read with Section 302 of the IPC while accused No. 28 was charged under Section 302 read with Section 120-B of the IPC and Section 5 of the TADA Act
- H and Sections 23(1)(c) and 27 of the Arms Act. They were also

charged with Section 148 of the IPC. In TADA Case No. 38 of 1996, the charge was framed against the accused Aminkhan Alamkhan Mojkhan Pathan under Section 120 read with Section 302 and Section 149 read with Section 302 and also under Section 120-B read with Section 302 and 149 of the IPC and Section 5 of the TADA Act and Sections 25(1)(b) and 27 of the Arms Act. A B

(8) After framing the charges as mentioned above, joint trial was held and the evidence was recorded in TADA Case No. 8 of 1993. C

(9) Before going into the confessional statements of the accused, it is relevant to mention Section 15 of the TADA Act which 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, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder: D E

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

(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, G H

A he has reason to believe that it is being made voluntarily.”

The above provision makes it clear that any confessional statement of a person under the TADA Act can be recorded either by a police officer not lower in rank than of 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) of Cr.P.C. in view of sub-section (3) of Section 20 of the TADA Act.

C (10) In exercise of the powers conferred by Section 28 of the TADA Act, the Central Government framed Rules namely, the Terrorist and Disruptive Activities (Prevention) Rules, 1987. Rule 15 prescribes method for recording of confession made to the police officer which reads as under:

E *“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.*

F (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.

G (3) The confession shall, if it is in writing, be –

(a) signed by the person who makes the confession; and

H (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:- A

"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 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 and full and true account of
the statement made by him. B
C

Sd/- Police Officer."

- (4) Where the confession is recorded on any
mechanical device, the memorandum referred to in
sub-rule(3) in so far 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. D
E
- (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." F
G

(11) The provisions of the TADA Act, more particularly,
Section 15 and Rule 15 were considered by a Constitution
Bench of this Court in *Kartar Singh vs. State of Punjab*, (1994)
3 SCC 569. After holding that the TADA Act is constitutionally H

- A valid, the Bench laid down the following guidelines to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with the well-recognized and accepted aesthetic principles and fundamental fairness:

“(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

- C (2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

- E (3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

- F (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

- H This is necessary in view of the drastic provisions of this Act, more so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorize only a police officer of

a specified rank to investigate the offences under those specified Acts. A

(5) The police officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody; B

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure." C

The Constitution Bench has made it clear that though it is entirely for the Court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must, while so deciding the question should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled. D E

(12) In the light of the above statutory provisions and the safeguards as enunciated in the Constitution Bench decision, let us analyze the evidence relied on by the prosecution. Though several persons were implicated in the commission of offence, we are concerned about eight persons who alone filed the above appeals challenging their conviction. They are as follows: F

G

H

A	S.No.	CrI. A. No.	Name of the appellant/Accused
B	1.	No.2-5 of 2003 (Tada Case 8/93, 144/93, 2/96 and 4/96)	Ahmed Hussein Vali Mohammed Saiyed (A8) Tajammulhasan Ali Hasan Ansari (A27)
C	2.	No. 8-11 of 2003 (Tada Case 8/93, 144/93, 2/96 and 4/96)	Liyakat Hussein @ Master Khudabax Shaikh (A1) Mohammed Taqlim @ Kalu Md. Umar Shaikh [A2] Jawedkhan @ Jaeed Azizkhan Pathan [A3] Musarrafkhan Gorekhan Pathan (A14]
D	3.	No.13-14 of 2003 (TaTada Ca (Tada Case No. 2/96 & 4/96	Jahangir Mazarban Patel [A28]
E	4.	No.216-217 of 2003 (Tada Case 8/93 & 144/93	Abdul Khurdush Abdulgani Shaikh [A20]

F Apart from these factual details, it is relevant to mention that Mohammed Shafi @ Sabbu Hajiahmed Maniar [A4], Iqbal Khan Jabbar Khan Pathan [A7] and Abdul Latif Abdul Wahab Shaikh [A25] were reported dead during the trial, hence the charge against them stood abated. Asharaf Khan Ajabkhan Pathan [A6] and Abdul Hamid @ Babu Battery Gulam Nabi [A24] had absconded and the Designated Court separated their case holding that the trial would be held separately on apprehending them. On appreciation of all the materials, the Special Judge acquitted A5,6,9,10,11,12,13,15,16,17,18,19,

H

21,22,23,24 and 29 for which they were charged. Though several accused made confessional statement implicating other accused persons, the prosecution heavily relied on the confessional statement of the following appellants/accused:

1. Liyakat Hussein @ Master Khudabax Shaikh (A1)
2. Jawedkhan @ Jaeed Azizkhan Pathan [A3]
3. Tajammulhasan Ali Hasan Ansari (A27)
4. Mohammed Taqlim @ Kalu Md. Umar Shaikh [A2]
5. Abdul Khurdush Abdulgani Shaikh [A20]
6. Jahangir Mazarban Patel [A28]

Here again, before going into the veracity and acceptability of the confessional statements, it is to be noted that confessional statements are to be recorded by following procedure and supported by memorandum as required under Rule 15(3) of the Rules. Learned counsel appearing for the appellants/accused pointed out that Section 15 as well as Rule 15 being mandatory, failure to comply with the same result in rejection of those statements. On the other hand, learned senior counsel appearing for the State submitted that the entire procedures and safeguards were fully complied with while recording the confessional statements of the accused. He also pointed out that though some of the statements/memorandum were not enclosed with the confessions as required under Rule 15(3)(b), some were fully complied with and there is no flaw, hence the Designated Court has rightly relied on the same. He further pointed out that even the said defect is cured, if the recording officer orally testifies and explains the safeguards and procedures followed at the time of recording the statement. According to him, in the case on hand, those safeguards and procedures were fully complied with and the officer who recorded their statement testified before the court explaining

- A the same. He further pointed out that inasmuch as some of the statements were recorded post-1993 amendment to the TADA Act, the same can be used against the co-accused.

B (13) Inasmuch as these appeals were filed against the conviction and sentence of the Designated Court in terms of Section 19 of the Act, this Court being an Appellate Court, we verified all the confessional statements and other connected materials which are applicable to the appellants before us with the assistance of the counsel on either side.

- C (14) Among the confessional statements of the accused as pointed out, let us consider the statement of Tajammulhasan Alihasan Ansari [A-27] recorded on 18.03.1996 by the competent officer empowered under the Act. The perusal of his statement makes it clear that before recording his confessional statement, he was informed that he was not bound to make the confessional statement and the same could be used against him in future. The recorded statement also shows that the officer has not used any force or coercion against him to give the confessional statement and thereafter, that is on 19.03.1996,
- E his confessional statement was recorded as per his statement. He explained that in 1991-92, when he was working in the factory of Taufiqkhan Pathan, Hansraj Trivedi used to sell liquor near Ajit Mill and in that way he came in contact with him. After the intervention of police, Hansraj Trivedi closed the business
- F there and for the purpose of Varli Mataka Gambling he used to go to Sabbu Haji's Quarter situated at Gomtipur and there he came in contact with Sabbu Haji and one Isharaq Pahelvan who was known to Sabbu Haji. He used to sell empty plastic bags which remained at the liquor den. He also explained about
- G the gang rivalry between Hansraj Trivedi and Latif. Being a member of the Latif gang, he enquired the whereabouts of Hansraj Trivedi at his office and ultimately found that he used to go to Radhika Gymkhana to play cards. Sabbu Haji was given information about Hansraj Trivedi who in turn gave the information to Abdul Latif. On the date when Hansraj Trivedi
- H

was murdered, first he went to Hansraj Trivedi's office at 4 'o' A
clock in the afternoon but finding that he was not there he went
to Radhika Gymkhana situated near Gauri Cinema. When he
reached Gymkhana, Hansraj Trivedi, Badashahkhan Pathan
and other 12-15 persons were playing game of cards. On B
hearing this information, all the appellants came in two cars and
kept the same near Gauri Cinema. 5 to 6 persons came out
from the car and they were having revolver and automatic
machine guns. According to him, Sharifkhan was having
automatic machine gun. Two persons stood near the staircase
of Gymkhana and Sharifkhan, Jawedkhan, Abdulkhurdush and C
Liyakat Master were shown Hansraj Trivedi who was playing
game of cards in the room. When Hansraj Trivedi saw them in
the room with weapons, he tried to escape. On seeing his
conduct, indiscriminate firing was resorted to killing several
persons. On hearing the gun firing, the public gathered near D
Gymkhana, the gangmen of Latif rushed to their cars and
returned to their place.

(15) A perusal of his statement (A-27) shows that he
disclosed the names of Sharifkhan, Jawedkhan, Abdul E
Khurdush and Liyakat Master and about their plan going to
Gymkhana in two maruti vans to eliminate the rival gang leader
Hansraj Trivedi and others and started indiscriminate firing
killing Hansraj Trivedi and others. At the end of his statement,
he also put his thumb impression and Deputy Commissioner
of Police, Ahmedabad city who recorded his statement F
authenticated the document by putting his signature. The
statement also shows that a proper certificate in terms of Rule
15(3) was appended along with it.

(16) Jahangir Mazarban Patel (A-28) has made a G
confessional statement before the Competent Officer which
was recorded on 06.04.1996. He was also cautioned about the
fact that his statement could be used against him in future. The
statement also shows that there was no threat or intimidation
given to him. He narrated that he used to purchase liquor from H

A Abdul Latif since 1992 because his father had a liquor permit. He used to visit Abdul Latif two or three times in a week. Abdul Latif had purchased 38 revolvers, 17 pistols and 5 NP Bore rifles without licence from him. He used to purchase revolvers and pistols from one Keval Kishore Sharma, an Arms and
B Ammunition Dealer from New Delhi in the year 1991. He also narrated various instances of firing and killing of persons, use of Arms and Ammunitions supplied by him. His confessional statement was signed by him and necessary certificate has been appended by the Competent Officer.

C (17) Aminkhan Alamkhan Mojkhan Pathan (A-29) has also made a confessional statement before the competent officer. Though he was acquitted by the Designated Court, let us consider his statement how he implicated these appellants. This was recorded on 29.08.1996 and 30.08.1996. In his case also,
D at the time of recording his confessional statement, the Competent Officer has taken all necessary precautions and due care, to ascertain from him as to whether any threat or coercion was used against him at the time of recording his confessional statement. In turn, the accused informed him in
E clear terms that he was aware of the consequences in making such statement including the fact that the same would be used against him. He narrated the incident which took place in Radhika Gymkhana on 03.08.1992. He also highlighted the enmity between Hansraj Trivedi and Latif in respect of sale of
F country liquor. He also explained that Hansraj Trivedi used to receive threat from Latif for not purchasing liquor from him. In spite of warning and threat, since Hansraj Trivedi was not acceding to the directions of the Latif gang, a plan was chalked out to get rid of Hansraj Trivedi and, therefore, the attempt was
G made to locate the presence of Hansraj. The attack was planned to kill him and other members of his gang. In his statement, he mentioned in categorical terms that Abdul Latif, Sharifkhan, Jawedkhan, Liyakat Master, Abdul Khurdush, Sabbu Haji and Musharraf went to Radhika Gymkhana and
H resorted to firing. He also mentioned that some of the accused

were arrested by the police. After making such statement, he put his signature at the bottom and necessary certificate was appended by the Competent Officer as provided under Rule 15(3) of TADA Rules. As rightly pointed out by the Designated Court, his statement naming several persons corroborates the confessional statement given by Tajammulhasan Alihasan Ansari (A-27). In our opinion, though A-29 was a member of Latif's gang, his direct involvement in the said incidence as well as commission of the offence was not proved by the prosecution case resulting in his acquittal by the Designated Court.

(18) The first accused, namely, Liyakathussein Alias Master Khudabax Shaikh (A1) – His confessional statement was recorded on 06.09.1992. In his case also, the Competent Officer, who recorded his statement, cautioned him that there is no need to make any statement and it would be used against him. His statement also shows that there was no coercion or force while recording his statement. After all these formalities, his confessional statement was recorded. He narrated that the members of Abdul Latif gang used to sell liquor in Ahmedabad and used to force everyone to purchase liquor from the members of Latif Gang and on refusal, they used to give threat and intimidation to them. Hansraj Trivedi, who was having his liquor den in Soni's Chawl situated at Odhav area was also selling liquor. In spite of several threats, he never used to purchase liquor from the members of Latif Gang which resulted in bitter enmity between the members of Latif Gang and Hansraj Trivedi. On 03.08.1992, he went to the office of Hansraj Trivedi along with Sharifkhan, Jawedkhan, Abdul Khurdush Rasul Party, Musharrafkhan, Mohammed Tasalim and Imtiyaz. After return to the garage of Latif at about 7 'O' Clock on receiving information that Hansraj Trivedi was playing game of cards in Radhika Gymkhana, members of Latif Gang i.e. Sharifkhan, Javedkhan, he himself, Abdul Khurdush, Sabbu Haji Maniar and Mohammed Tasalim went to Gymkhana. Sabhu Haji also came in Maruti Fronti Car wherein Musharraf, Ahmed Hussein, Abdul

A Latif, Sabbirhussein and other two persons were sitting while Imtiyaz came on the scooter at Radhika Gymkhana. Sharifkhan was driving the car in which he was traveling and another car was driven by Musharrafkhan. The number plates of both the cars were removed. Thereafter, they went to Radhika
B Gymkhana where Imtiyaz was present. He further stated that Sharifkhan and Javedkhan both were having AK-56 rifle. He was in possession of revolver. Abdul Khurdush was having pistol and Sabbu Haji Mania and Mohammed Tasalim were having revolver in their possession. Thereafter, he went to the
C first floor of Gymkhana and he himself, Sharifkhan, Jawedkhan and Abdul Khurdush were standing near the door of the room, Imtiyaz had shown Hansraj Trivedi and thereafter all the four persons started firing. Badashahkhan was also fired upon. Mohammed Tasalim was standing near the stair case of
D Gymkhana with revolver. After resorting to firing, they immediately went down stairs and came to Dariapur with their weapons. Latif and other members also came to Dariapur in another car. He came to know that when the firing was resorted to in the Club, several persons had gathered near the Club and Mohammed Tasalim and Sabbu Haji also fired on them. Their
E weapons were kept in the car of Abdul Latif. Subsequently, he came to know that due to the firing, six to seven persons were killed in the Gymkhana. His statement was recorded by the Deputy Police Commissioner, South Zone and the accused put his signature below his statement.

F (19) Mohammed Taslim alias Kalu Mohammed Ummer Shaikh (A2) – His confessional statement was recorded on 08.09.1992 by the Deputy Commissioner of Police, Western Division, Ahmedabad City. This statement shows that he was
G very well aware of the fact that the same would be used against him. The officer has also followed the strict procedure and the accused voluntarily made the confessional statement. He also explained about the gang rivalry between Latif and Hansraj Trivedi in respect of sale of liquor. He mentioned the name and
H other details of 26 persons as members of Latif Gang who

were involved in the matter of conspiring to murder Hansraj Trivedi. After narrating what had happened in the forenoon of 03.08.1992, he explained that in the evening he was sitting along with his other gang members. After getting a message, Latif instructed them to kill Hansraj Trivedi who was present in Gymkhana. Thereafter, they went to Gymkhana in two white Maruti Fronti cars. He explained that in the Fronti car of Latif, himself (A2), Sharifkhan, Javedkhan, Liyakat Master, Abdul Khurdush, Sabu Haji and in the second Maruti Fronti Car, Mussarafkhan, Ahmed Hussain Kaliyo, Abdul Latif, Sabir Hussain, Latif's known person (name not mentioned) and Sharifkhan's known person (name not mentioned). He also mentioned that at the place of occurrence, Sharifkhan had kept the automatic rifle with him, Javedkhan had taken the second automatic rifle, Liyakat had taken the revolver, Khurdush had pistol and Sabu had revolver. He also had a revolver. On reaching the spot, he himself, Javedkhan, Sharifkhan and Abdul Khurdush had entered the Gate and Imtiaz had gone into Radhika Gymkhana by the stairs ahead of them and others followed. He had stood down near the stairs. All the four went inside Gymkhana and there were sounds of firing. He had also fired towards the people. The four persons who had gone upstairs came down speedily and reached the car and returned to their workshop of Latif. He also stated that on the next day, he came to know that where they had fired at Radhika Gymkhana, eight to nine persons were dead including Hansraj Trivedi and his man Badshahkhan. After committing the said crime, they were hiding in Dariyapur. After narrating all these events, he signed his name and the officer who had taken down also put his signature. However, no certificate was appended.

(20) Jawedkhan Azizkhan Pathan (A3) – His statement was recorded on 21.09.1992. His statement also shows about the compliance of procedure and the fact that there was no need to make such statement. In his statement, he also explained the business of Hansraj Trivedi and the rivalry between him and Latif. He highlighted that he and other gang

- A members of Latif held meeting and chalked out the plan to eliminate Hansraj Trivedi. He also explained how he and his gang men went to Gymkhana in two Maruti Fronti Cars. He explained that Sharifkhan and he had taken machine gun and rifle. Liyakat Master was having revolver. Abdul Khurdush was having pistol and Sabu Haji and Mohammed Tasalim were having revolver in their possession. All of them went to the first floor of the Club and when Sharifkhan opened the door and Hansraj Trivedi was shown, firing was started. After firing, all of them went to Dariapur. He also stated that the car in which Latif was sitting was having 30 rifles and Abdul Khurdush and Rasulkhan party used to make arrangements for the weapons. He came to know that nine persons had died in the firing and three sustained injuries. During the course of raid, Sharifkhan and he were arrested with revolver and pistol. His confessional statement was signed by him as well as the Competent Officer.

- D (21) Abdul Khurdush Abdul Gani Shaikh (A20) – His statement was recorded on 10.03.1993. All the safeguards and procedures were followed before recording his statement. He also mentioned about the rivalry, going in two Maruti Cars, indiscriminate firing in the first floor of the Gymkhana Club, killing of Hansraj Trivedi and others. He also implicated Sharifkhan, Mohammed Tasalim, Musharrafkhan, Javedkhan, Rasulkhan Party and Imtiyaz Ahmed. He also mentioned the weapons that were carried by himself and others. Like others, he also stated that after firing and killing of Hansraj Trivedi and others, they returned to their cars and went to Madh's Mohalla.

- G (22) We have carefully perused and verified the confessional statements of Liyakat Hussein @ Master Khudabax Shaikh (A1), Jawedkhan @ Jaeed Azizkhan Pathan [A3], Abdul Khurdush Abdulgani Shaikh [A20] and Aminkhan Alamkhan Mojikhan Pathan from the original records. The perusal of their statements show that all of them were informed about the fact that there was no need and compulsion to make a statement and the same would be used against them in future

in the very same case. It is also clear that all of them understood the entire procedure and made voluntary statement to the competent authority that was authorized to record their statement. Apart from narrating the gang rivalry between Hansraj Trivedi and Abdul Latif in respect of sale of liquor in Ahmedabad city, they also highlighted the number of persons involved in the conspiracy in the murder of Hansraj Trivedi and others. Most of the accused mentioned the appellants and others who involved in the conspiracy and the ultimate killing of Hansraj Trivedi and others.

(23) The statements of the appellants/accused recorded on various dates demonstrate the conspiracy to eliminate the business rivalry, and killing of other gang leader, Hansraj Trivedi and others and how they executed the same on 03.08.1992 in the premises of Radhika Gymkhana Club.

(24) We have already pointed out that the TADA Act, being a special Act, which permits recording of confessional statement by a police officer not below the rank of Superintendent of Police and the same is also admissible in evidence. However, it is the duty of the prosecuting agency and the trial court/special court to see that strict compliance are adhered to while recording the confessional statement and relying on the same.

(25) Mr. Sushil Kumar, learned senior counsel and Ms. Nithya Ramakrishnan and Ms. Kamini Jaiswal, learned counsel appearing for the appellants, vehemently contended that in the light of the safeguards provided in Section 15 of the Act and Rule 15 of the Rules, in the absence of specific certificate by the officer who recorded confession as provided in Sub-rule (3) of Rule 15, they are inadmissible in evidence and cannot be relied upon. They also relied on judgment of this Court in *Bharatbhai vs. State of Gujarat*, (2002) 8 SCC 447. In view of the fact that TADA Act has been upheld by Constitution Bench of this Court in *Kartar Singh's* case (*supra*), the confessional statement recorded under Section 15 by a police officer

- A authorized therein is admissible in evidence. It is also no more res integra that a confession recorded under Section 15 is a substantive piece of evidence. That statement is also substantive evidence against his co-accused. However, in the case of co-accused, though taken as substantive evidence as
- B a rule of prudence, the court would look upon corroborative evidence as well. In the judgment relied on i.e. *Bharatbhai* (supra), this Court has held that (a) Writing the certificate and making the memorandum under Rule 15(3)(b) is mandatory. (b) The language of the certificate and the memorandum is not
- C mandatory. (c) In case the certificate and memorandum is not prepared but the contemporaneous record shows substantial compliance with what is required to be contained therein, the discrepancy can be cured if there is oral evidence of the recording officer based on such contemporaneous record. (d)
- D In the absence of contemporaneous record, discrepancy cannot be cured by oral evidence based on the memory of the recording officer. It is true that the said decision makes it clear that the certificate and making the memorandum are mandatory, subject to certain conditions.
- E (26) In *State [through Superintendent of Police, CBI/SIT] vs. Nalini*, (1999) 5 SCC 253, a three-Judge Bench considered the evidentiary value of confessional statements of the accused as well as Section 15 of the Act and Rule 15 of the Rules. After analyzing those provisions, this Court held that the Court is free
- F to treat 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. Rule 15(3) makes it
- G clear that the confession shall be signed by the maker and also by the police officer who recorded it. Further, it mandates the police officer to 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
- H by the person. The following conclusion in para 424 is relevant:

"424. In view of the above discussions, we hold the A
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, B
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 C
be used against a co-accused though that will again be
within the sphere of appraisal of evidence."

The above decision makes it clear that the confession made
by an accused if it is voluntary and true, then it is admissible
against co-accused as a substantive piece of evidence. It is D
also clear that while recording confessional statement, if there
is omission to obtain signature of the accused at the end of
the confession, the same is admissible and the omission made
by the competent officer is curable in view of the provision
contained in Section 463 Cr.P.C. In the same manner, the E
Court has held even if there was any omission in respect of the
certificate which the competent officer is required to append
under sub-rule (3) at the foot of the confession, it can be cured
as provided under Section 463 of the Cr.P.C. Such approach
is permissible in view of Section 463 of the Cr.P.C. in regard F
to the omission in recording confession under Section 164
Cr.P.C., the Court has clarified that the same approach can be
adopted in respect of confession recorded under Section 15 G
of the TADA Act. We have already narrated the confessional
statements of various accused, among them, the statements
of A-27 and A-28 satisfied Rule 15(3) in all aspects. Apart from
narration of the events, conspiracy to eliminate other gang
leader and its members, indiscriminate firing at Gymkhana,
supply of Arms and Ammunitions etc., both A-27 and A-28
subscribed their signature at the end of it and the officer who
recorded their confession apart from putting his signature also H

A appended a certificate in clear terms and in accordance with Rule 15(3). It is true that in the case of confessional statements, though signature of the accused and the officer who recorded their statement are available, the certificate in terms of Rule 15(3) was not appended. However, as explained in *Nalini's* case (supra) and rightly pointed out by the State counsel, the officers - PWs 25, 26, 49 & 51 who recorded their statement deposed before the Court, identified and explained the course adopted while recording their statement as well as contents therein.

C (27) In order to show that the confessional statements of a number of accused persons irrespective of separate certificate are valid, the prosecution has examined the respective competent officers who were authorized to record confessional statements which satisfied sub-rule (3) of Rule 15.

D One Anupam Shrikrishna Suroliya, who was working as Deputy Police Commissioner, Ahmedabad was examined as P.W. 24. According to him, on 05.09.1992, the accused Liyakat who was involved in the incident which took place in Radhika Gymkhana was produced before him as he wanted to make the confessional statement. The other two accused, namely, Sharifkhan and Javedkhan were also produced to record their confession as requested by them in his evidence. Suroliya explained the consequence of their making statement and he also asserted that he fully complied with all the formalities. He

F stated that all the three accused made their voluntary statement and thereafter they put their signature. However, he admitted that the certificate was not appended to their statement.

G (28) One Natvarlal Veljibhai Patel, who was working as DCP, Controller was examined as P.W. 25. He deposed that during his duty on 18.03.1996, one accused Tajammulhasan Alihasan Ansari (A-27) was produced before him by the Competent Officer to record his statement. He also verified from the accused that no force and threat was used against him to give confessional statement. Thereafter, he recorded his

H

statement and he had put his thumb impression below his statement. He also put his signature. On 19.03.1996, the said accused was again called for the purpose of recording his confessional statement. According to him, once again after following the procedure he recorded his statement and the same was kept in the sealed cover.

(29) One Jasbhai Chootabhai Patel, Deputy Commissioner of Police, Western Zone, was examined as P.W. 26. According to him, on 07.09.1992, the Investigating Officer had produced accused by name Mohammed Tasalim Alias Kalu Mohammed (A-2) for the purpose of recording his confessional statement. He satisfied that the accused was not forced to make any statement and no threat or force or coercion was used against him to give confessional statement. Subsequently, he was given time to consider and on the next date, he was called to record the confessional statement. Again after following the procedure, he recorded his statement and thereafter, his signature was obtained below the same. He had also put his signature. The original copy of the confessional statement was transmitted to the Magistrate. On 09.03.1993, when he was working as Deputy Commissioner of Police, the Investigating Officer had produced Abdul Khurdush Abdul Gani Shaikh for the purpose of recording his confessional statement. He recorded his statement as requested by him. In his case also, he followed all the procedure. In the cross-examination, he had stated that he had recorded nine confessional statements. The accused No.5 Maksud Ahmed Fateh Mohammed Shaikh had given the confessional statement on 20.11.1992. The officer had explained that he had also followed the same procedure and recorded his statement as per his statement. The confessional statement of Musharrafkhan Gorekhan, Iqbal Hussein Alias Lalo Son of Kasambhai Faqirbhai, Mohammed Uwesh Son of Gulam Mohammed, Amirmiya, Hafizuddin Kadari, Mohammed Amin Alias Chotely was recorded by the competent officer and all the formalities which was expected from the competent officer was performed

- A by him prior to recording the confessional statement and thereafter the confessional statement of all the accused were recorded as requested by him. But the Designated Court has considered the confessional statement of A-2 only as admissible evidence amongst all the nine confessional statements recorded by him.
- B

- (30) One Jitendra Narayan Rajgor, Deputy Commissioner of Police, Crime Branch was examined as P.W. 49. In his testimony, he deposed that on 26.03.1993, one accused Mohammed Farooq Alias Farooq Bawa Allarakha Shaikh was produced by the Police Superintendent Mr. A.M. Desai for the purpose of recording confessional statement. After ascertaining that he was free and no force or coercion was used to give confessional statement and after giving sufficient time, his statement was recorded. He further deposed on 04.04.1993 and 20.05.1993 the accused Mohammed Shafi Abdul Rehman Shaikh and Abdul Hamid Alias Babu Battery Gulam Nabi were produced before him for the purpose of recording their confessional statements by following all the procedure and affording sufficient time. Their statements were recorded and obtained their signature below their confessional statements. He also put his signature. He admitted that necessary certificate was not issued below the confessional statement of the accused.
- C
- D
- E

- (31) Ashish Satyapal Bhatia, Superintendent of Police, was examined as P.W. 51. In his testimony, he has stated that on 05.04.1996 one accused Jahangir Mazarban Patel(A-28) was produced before him for the purpose of recording the confessional statement. He also deposed that after following the procedure he recorded his confessional statement and the same was read over to the accused and thereafter his signature was obtained. He also put his signature. He asserted that necessary certificate was appended to the confessional statement given by the accused. He also identified the accused during recording of his evidence. He informed the court that after
- F
- G
- H

recording the statement the sealed cover in which confessional statement was placed along with the accused was handed over to the Investigating Officer for the purpose of transmitting the same to the Court of Metropolitan Magistrate, Ahmedabad. A

(32) It is also relevant to note that one Khushpalsing Nathulal Doshi, Deputy Commissioner of Police, Law and Order, Ahmedabad was examined as P.W. 61. He deposed that on 29.08.1996 one accused Aminkhan Mojkhan (A-29) was produced before him from the ATS Office for the purpose of recording his confessional statement. According to him, he explained that his statement could be used against him and there was no compulsion to make such statement. After following the procedure, he recorded his statement and it was kept in the sealed cover and sent it to Metropolitan Magistrate. B C

(33) Though, learned counsel appearing for the accused heavily commented the recording of confessional statements of various accused and their evidentiary value in the light of provisions of the TADA Act and Rules, as mentioned above, we are of the view that there is no valid reason to reject the confessional statements of A-27 and A-28. It is the assertion of the competent officers, who recorded their statements, that they explained to them that their statements would be used against them, they were given sufficient time to think over and after following the procedure those officers have recorded their statement. It is not in dispute that both A-27 and A-28 put their thumb impression/signature at the end of their statements and the competent officers were also put their signature. The certificate as stated in sub-rule (3) of Rule 15 was also appended in both their statements. Though A-28 was punished only under Arms Act, there is no reason to reject his statement in the light of compliance of the requirements. We also adverted to other confessional statements, except small variation most of them have implicated the persons involved from the stage of conspiracy till the firing which took place on the first floor of Radhika Gymkhana. Equally though all of them either put their D E F G H

- A thumb impression or signed their name, no certificate was appended in terms of sub-rule (3) by the competent officers who recorded their confessional statements. We have already referred to the decision of this Court in *Nalini's* case (*supra*) and the evidence of competent officers explaining all the aspects in detail. It is not only the confessional statements but the prosecution has relied on certain other materials

- (34) In this context it is quite relevant to mention that all the confessional statements which have been considered by the Designated Court have the same opening words which is similar to the subject matter of memorandum to be made at the end of each confession by the respective recording officer as provided under Rule 15(3)(b) of the TADA Rules that the accused making the confession is not bound to make the confession and it was also cautioned that if he does so that very statement can be used as evidence against him. The initial words of each of the confessions also include that they are made voluntarily before the recording officer. It is also necessary to mention that all the confessional statements made in 1992 of A1, A2, A3 and A20 respectively are without the memorandum of the recording officer as required under Rule 15(3)(b) of the Rules. Now according to the guidelines given by the Constitutional Bench in *Kartar Singh* (*supra*) Rule 15 of the TADA Rules has to be strictly complied with to make the confessional statement made before a police officer admissible as evidence. Now this strict compliance is necessary for the confessional statement which needs no corroboration or contemporaneous record to prove its veracity. But here these confessional statements are mainly corroborating the confession made by A-27 which has been made strictly complying with all the required provision of the TADA Act and Rules. As a result the defect, if any, present in these confessional statements gets cured through reliable and trustworthy deposition made by the respective recording officers in the trial before the Designated Court. The said memorandum is required because while recording a confession

the recording officer may forget each different factual details regarding reminding the accused of the nature of the confession made by him as well as all the other statutory caution as each case is different and unique on its own. But this defect can be cured by the deposition of the officer with all the factual details which are present in the present case. All the recording officers have deposed in the trial with all the relevant facts and the question of tempering with the confessional statements can be done away with accordingly as has been rightly done by the Designated Court.

(35) Also here it is important to mention that all the confessional statements which have been considered by the Designated Court to arrive at the judgment are having similar depiction of facts regarding gang rivalry between Latif's Gang and Hansraj Trivedi, plotting of the criminal conspiracy by the members of Latif's gang, the details of the activities made by the Latif's gang members on 03.08.1992 i.e. the day of commission of the crime in Radhika Gymkhana, identification of the name of the accused present or participated at the time of the commission of the crime, the description of arms and cars used in the commission of the crime and how the gang members escaped to Dariyapur after the occurrence of the crime. There is no striking difference or discrepancy or ambiguity regarding the depiction of fact in each of the confessional statements that has been considered by the court and they are very much able to corroborate the confessional statement made by A-27. It is also to be remembered that all the confessions are made almost right after the accused got apprehended so the delay in recording the same is quite reasonable.

(36) The Amendment made by Act 43 of 1993 to Section 15 of the TADA Act included the words "or co-accused, abettor or conspirator" along with the person making the confessional statement to be admissible in the trial of such person as well as them provided that co-accused, abettor or conspirator is

- A charged and tried in the same case together with the accused. The appellants submitted that this Court in *State of Rajasthan v. Ajit Singh*, (2008) 1 SCC 601 has been noted, as the words "or co-accused, abettor or conspirator" were inserted in the Act only in 1993, they could not be applied retrospectively. They
- B have also submitted that herein, the offence was committed on 03.08.1992, before the amendments were made to the TADA Act and as such, confession of a co-accused cannot be used against the appellants herein. It is also contended before us that the confessional statement of A-27 has been made on
- C 19.03.1996 which was after the amended provision of Section 15(1) of the TADA Act came into effect. As far as the admissibility of the confessional statement of A-27 is concerned with regard to his co-accused in this case, it is not vitiated because of the Amendment and it is rightly used as a major
- D evidence for the trial of his co-accused by the Designated Court. As this confessional statement was made complying with all the procedural essentials as provided by the TADA Act and Rules it can be a valid ground for the conviction when corroborated with the confessional statement of the other four
- E accused namely A1, A2, A3 and A20 respectively which have been made prior to the amendment of the Act. Apart from the confessional statement there were also other materials to support the prosecution case which we discuss hereunder.

- (37) On behalf of the appellants, it was also submitted that
- F the dying declaration (Exh. 201) of Badshahkhan which was recorded by PW6, Sukhdevsing Sardarsing Chaudasama, mentions only the name of Sharifkhan and Liyakat Master, (A-1) and the names of other accused who were said to be present upstairs at the time of gun-fire in the Gymkhana in the
- G confessional statement are not present. Badshahkhan told PW6 that he and Hansraj Trivedi and other members were playing game of cards at Radhika Gymkhana at about 8 'o'clock at night, Sharifkhan who was having gun in his possession and Liyakat Master who was having pistol in his
- H possession started firing at him and Hansraj Trivedi and the

others were also fired at. According to PW6 after making this statement Badshahkhan became unconscious. Though this dying declaration is incomplete, it does not reject completely the idea of the presence of other accused as detailed in the confessional statements of the accused and thus it does not negate the admissibility of the confessional statements. The evidence of PW-6 shows that he had recorded the dying declaration as narrated by the deceased. If the prosecution had been out to implicate all accused falsely in case, the dying declaration would have been so recorded. However, the evidence of PW-6 shows that he stopped recording dying declaration as soon as he realized that the maker was losing consciousness. The reliable dying declaration though incomplete, materially corroborates the confessional statement made by Accused No.27 and is rightly relied on by the Designated Court.

(38) It is useful to refer other materials relied on by the prosecution and accepted by the Designated Court. The complaint, Exh. 609, dated 03.08.1992 contains all the materials. The complainant-Laxmansingh Madansingh Bhadoria narrated in his complaint that he knows Hansraj for last eight years. He also mentioned about the animosity between Hansraj and famous bootlegger Latif. He also narrated in his complaint that Hansraj used to go to Radhika Gymkhana to play game of cards which is situated at National Highway No. 8, near Gauri Cinema. He highlighted how these accused persons came in a car and went to the AC room situated in the first floor of Gymkhana where Hansraj and his associates were playing the game of Rami. The complainant had also narrated that on reaching the AC room, he found that 11 persons had sustained injuries due to firing of bullets and they were lying in the pool of blood. It was he who rushed down to the ground floor and informed Rajendrakumar Shivgopal Trivedi, the elder brother of Hansraj. It was further stated that immediately Rajendrabhai came with Fiat NE 118 car and Hansraj and Badshahkhan who had sustained injuries had

- A taken in that car to the Shardaben Hospital for giving immediate treatment. In the meantime, Hansraj succumbed to the injuries. The complaint also describes about the conspiracy hatched as per the Abdul Latif to get rid of Hansraj and others. The said complaint was given to the Police Superintendent. Since
- B complainant was not alive during the trial, therefore, he was not summoned by the prosecution.

- (39) Apart from confessional statement of the accused which we have discussed hereinabove, the prosecution had also relied on various other witnesses and the Designated
- C Court has rightly accepted the same. PW-2, Rajendrakumar Shivgopal Trivedi, brother of deceased Hansraj Shivgopal Trivedi, has deposed before the Court that he had received phone call from Ranjitsinh Ramansinh Rathod at about 8 'O' clock and he had mentioned about the firing which took place
- D in the Gymkhana. On hearing the information over phone, he went in the car to Radhika Gymkhana and when he reached on the first floor of the Gymkhana, he saw his brother Hansraj Shivgopal Trivedi in a pool of blood having sustained serious injuries. Apart from him, other 8 to 9 persons were also lying
- E in the room having sustained serious injuries. He also deposed that his elder brother Rajdev and other persons from the neighborhood arrived at the scene of incident. According to him, with the persons gathered, Hansraj was brought down from the first floor and he was taken to hospital in car.
- F Badashahkhan, who had also sustained injuries was also brought down from the first floor and brought to Shardaben Hospital for treatment. When he was driving the car, Ranjit Singh had asked Badshah Khan about the incident and injuries. Badshah Khan replied that the members of Latif Gang came
- G to the Gymkhana and fired indiscriminately on Hansraj and others whom sustained serious injuries. He also explained the dispute with regard to purchase of liquor between his brother Hansraj and Latif.

- H (40) PW-4, Rajdev Gopal Trivedi, another brother of

Hansraj Trivedi, who also rushed to the Gymkhana Club A
narrated what his brother PW-2 has stated before the Court.

(41) One, Shivputra Chandrapal, who was working in the
office of Hansraj was examined as PW-26 before the Court.
He deposed that when he was staying in the office of Hansraj B
at about 7-30 hours in the evening of 03.08.1992, he had
received the message that firing was resorted to in Radhika
Gymkhana Club. On receipt of the said message, he went to
the Club along with the others and on reaching the first floor of
the Club, he noticed seven persons were lying in the pool of C
blood having sustained serious injuries. Apart from Hansraj,
Badshah Khan also sustained injuries during the firing. He also
explained the enmity between the Hansraj group and Latif over
the sale of liquor.

(42) PW-55, Mohanlal Laxmichand Anal, who was having D
his shop dealing in arms and ammunition in New Delhi. The
name of the shop is Anal Armory and according to him at the
relevant time he was having the licence to keep the arms and
ammunitions. He deposed that the order for revolver was given
by Jahangir Patel, A-29. One, Jitendrakumar Ranchhodlal Patel E
was examined as PW-56. Panchnama in respect of recovery
of one pistol and revolver which was lying on the table was
prepared in his presence. He identified A-3, Jawedkhan.
Maharajsinh Kunver Pratapsinh Rajput was examined as PW-
58. According to him, he had been working as a Manager in F
Keval Kishan Sharma Arms and Ammunitions Dealer Shop
since 1989. The office situated in C/6 Lakshminagar Aruna
Park, Delhi. He further explained that on behalf of the B.D. Patel
and Sons, one Jahangir Patel, A-29 used to visit their shop in
connection with the sale of weapons. G

(43) PW-8 to PW-12 – Post Mortem doctors, who
examined the dead bodies, deposed before the Court about
their nature of injuries and the cause of death. Their evidence
clearly support the prosecution case that the deceased were

A gunned to death due to bullet injuries. It is also clear from their evidence that the vital injuries sustained were caused due to the use of the firearm and all the injuries were inflicted prior to the death of the deceased.

B (44) PW-13, Kamaleshkumar Babubhai Modi, who was having a Pan Galla near Gauri Cinema, deposed that he was sitting in his shop on 03.08.1992 and had seen one Maruti car coming from Hotel Dreamland at about 7-30 in the evening. According to him, 5 to 6 persons alighted from the car and they went to Madhuram Park and they were armed with weapons. C He also informed the court that one person from the car came to his shop and asked him in Hindi to close his shop and switch off the light. According to him, pursuant to the threat, he had closed the shop and heard the noise of firing. He also deposed that his statement was recorded by the police on 04.08.1992. D

(45) Apart from the above evidence about the dispute between the two group's firing on 03.08.1992, the evidence of doctors who conducted post-mortem in respect of the deceased also support the case of prosecution.

E (46) PWs-20, 21, 22, 23 and 59 all Executive Magistrates, who conducted the Identification Parade of the some of the accused viz., A-27, A-20, A-3, A-2 and A-1, explained the same in minute details. They also asserted that procedures were fully followed before conducting Identification Parade in respect of those accused. Their statement before the Court cannot be ignored, on the other hand, it supports the prosecution case about the involvement of accused/Appellants in the firing that took place on 03.08.1992 at Gymkhana. F

G (47) Though, the argument was raised that there was no compliance of Rule 15(5) that the confessions recorded were not sent to the Chief Judicial Magistrate or the Magistrate having jurisdiction over the area immediately after recording the same, if we scrutinize the evidence of the recording officers who were H all not below the rank of Superintendent of Police/Dy.

Commissioner that after recording the confessional statements of the accused, particularly, in respect of A-27 and A-28 in accordance with the mandates of Section 15 and Rule 15, they were handed over to the Investigating Officers and in turn, to the concerned Court. As a matter of fact, PW-61, Khushpal Sing Nathulal Doshi, in his evidence asserted in categorical terms that the confessional statement of A-29, Aminkhan Mojkhan Pathan that was recorded by him kept in a sealed cover and sent to the Metropolitan Magistrate. He identified the confessional statement of the accused during the course of his deposition. If we consider other relevant acceptable materials which we have discussed in the earlier part of our judgment coupled with reliable dying declaration recorded by PW-6 and recovery of pistol as well as revolver and considering the factual aspects of this case, the objection raised by the appellants with regard to sub-rule (5) of Rule 15 is to be rejected. Evidence of Shiddharajsing Gulabsing Bhati - PW-53, Anilsing Kanaksing Jadeja, PW-54, Mohanlal Laxmichand Anal, PW-55, Natvarsinh Jagatsinh Champavat, PW-57 and Maharajsinh Rajput, PW-58 clearly prove the purchase of pistol and revolver by Jahangir Marazban Patel, A-28 at Ahmedabad who in turn supplied the same to Latif and members of his gang, the recovery of all those weapons were duly identified by the person concerned. Further, A-28 purchased the revolver which was used in the commission of offence from Keval Kishore Sharma of Delhi and the same is reflected in his confessional statement. Thus the purchase of the weapons and use thereof by accused concerned were all duly proved by the prosecution.

(48) The complaint was made by one Laxmansingh Madansingh Bhadoria, who lodged FIR about the incident. Though the complainant was not examined, however, the prosecution adduced materials in the form of oral evidence, confessional statements of the accused, documentary evidence, dying declarations and test identification parade. From the perusal of all the materials, we are satisfied that the prosecution has established the involvement of the accused in

- A the commission of offence, gang rivalry between Hansraj Trivedi and Latif, their conspiracy to eliminate Hansraj Trivedi, medical evidence connecting the bullet injuries as cause of death and seizure of two cars used for the commission of offence. In those circumstances, we are unable to accept the contentions raised
- B by learned counsel for the appellants and we are in agreement with the conclusion arrived at by the Designated Court.

- (49) The materials placed by the prosecution clearly show that there was a gang rivalry between the Latif's gang and Hansraj Trivedi. Both the gang leaders with the group members
- C were engaged in selling liquor in Ahmedabad city when the same is prohibited. Both the groups were also engaged or involved in forcing people to vacate the plots and kidnapping etc. Prosecution has also proved that the appellants and the other accused persons actively participated in conspiring and
- D chalking out the plan to eliminate Hansraj Trivedi and other members of his gang by resorting to firing. By such arrangement, they committed brutal murder of nine persons and created a terror in the minds of public in and around the area. All those actions were highlighted before the Designated
- E Court and by analyzing each and every material and considering the totality of all the events, the Court found the appellants herein guilty in respect of the charges and awarded appropriate punishment.

- F (50) Finally, one more argument was advanced about the award of sentence to Liyakathussein @ Master Khudabax Shaikh (A-1). The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate
- G sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences
- H

will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong. With these principles, it is relevant to note that while awarding sentence, the learned Designated Judge observed that A-1 was the main accused in brutally murdering the nine persons who were playing cards in the Radhika Gymkhana and that was the reason to sentence him with extreme penalty which would meet the ends of justice. While awarding life imprisonment, the Designated Judge imposed a condition that it shall not be less than 20 years. Since it was he who entered the room where Hansraj and others were playing cards and fired at them along with the absconding accused Sharifkhan killing total nine persons, we feel it is appropriate and find no ground to modify the same. The sentence in respect of others is also proportionate to the proved charges and cannot be claimed as excessive.

(51) In the light of the above discussion, we confirm the conviction and sentence imposed by the Designated Court. If any of the appellants/accused are on bail, steps shall be taken by the Court concerned to serve the remaining period of sentence. All the appeals are, accordingly, dismissed.

G.N.

Appeals dismissed.