SUPREME COURT OF INDIA

Seeni Nainar Mohammed

Vs.

State Rep. By Deputy Superintendent of Police

Crl.A.No.498 of 2012

(Pinaki Chandra Ghose and Rohinton Fali Nariman,JJ.,)

27.04.2017

JUDGMENT

Pinaki Chandra Ghose,J.,

1. These two appeals are directed against the judgment and order dated 8th September, 2011 passed by the Court of Designated Judge for TADA Cases, Tirunelveli, in TADA Case No. 1/1997, whereby the learned Designated Judge found the appellants herein guilty for offences punishable under Section 120(B) read with Sections 302, 147, 148 & 149 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Sections 3(2), 3(3) & 3(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "TADA") and sentenced them to life imprisonment.

2. The facts of the case have been elaborately discussed by the learned Special Judge of the Designated Court for adjudication of TADA cases. We need not, therefore, recapitulate the entire factual backdrop in which the appellants were tried, found guilty and sentenced, excepting where it is absolutely necessary to do so. There are six accused in this case, namely, Sahul Hameed (A-1), Raja Hussain (A-2), Zubeir (A-3), Zakir Hussain (A-4), Azeez (A-5) and Seeni Nainar Mohammed (A-6). On 10th October, 1994, at about 06:30 a.m., A-1 to A-6 in pursuance of the conspiracy hatched amongst them, went to the house of one Rajagopalan (since deceased), who was President of Hindu Munnani Association, with a motive to kill him. A day before the incident, A-6 Seeni Nainar Mohammed had advised his brother Raja Hussain (A-2) to meet him after completing the task of murdering Rajagopalan. When Rajagopalan, after taking the newspapers from a newspaper sub-agent Saravanam (PW-3), was going through the newspapers facing East at his house, accused persons came from left hand side of Rajagopalan and while A-1 caught hold of the neck of Rajagopalan from behind, A-3 and A-4 took out knives and stabbed on his stomach. A-5 showing a sickle threatened the public to run away and repeatedly attacked the said Rajagopalan and thereafter they ran away towards west. On hearing the noise, PW-1 Krishnaveni wife of the deceased came out of the house and saw that her husband was lying down in a pool of blood. The occurrence was witnessed by PW-1, PW-3, PW-4, PW-5 & PW-6. PW-1 informed about the

incident to the Market Police Station on telephone. Upon receiving the information, PW-2 Inspector of Market Police Station rushed to the spot and enquired from PW-1 who gave a written complaint to him.

3. Law was set into motion when PW-2 Stalin Michael, Inspector registered the FIR Ext.P2 at 07:30 a.m. at Police Station Thilagar Ground, Madurai District, under Sections 147, 148 and 302 of IPC in Crime No.2490/1994. On the orders of DGP, the case was transferred from local Police to CBCID and Shri Rajagopal, DSP (PW-24) took up the investigation, went to the place of occurrence, examined the witnesses and recorded their statements. Since PW-24 was holding additional charge, he could not accomplish the task of investigation and further investigation was taken up by Shri Jones, DSP (PW-30) and after receiving prior approval from Superintendent of Police (PW-26), registered the case under TADA. The records of the case were transferred to the learned Designated Judge for TADA Cases and after trial, the learned Designated Judge vide his judgment and order dated 08.09.2011 convicted all the accused in TADA Case No.1/1997 holding that the prosecution has proved the first charge as against A-1 to A-6. A-1 to A-5 were convicted under Section 3(2) read with Section 3(1) of TADA read with Section 149 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each, and in default of payment of fine, to undergo rigorous imprisonment for 1 year. However, A-6 was convicted under Section 3(2) read with 3(1) of the TADA read with Section 109 of IPC and under Section 3(4) of TADA and sentenced to undergo life imprisonment and also to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 1 year. However, all the sentences were directed to run concurrently. Hence, the present appeals under Section 19 of TADA read with the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Criminal Appeal No.498 of 2012 has been filed by A-6 while Criminal Appeal No.867 of 2012 has been filed by A-1 to A-5.

4. We have carefully perused the impugned judgment and the material on record and have also meticulously examined the testimonies of the witnesses and other relevant evidence produced. Since the appellate jurisdiction against any judgment passed by the Designated Court for TADA cases lies with this Court only, we would consider the peculiar circumstances of the present case to appropriately discuss every relevant issue in question before us.

5. The very first issue which falls for our determination as pressed by the learned senior counsel for the accused-appellants herein is whether the approval in the present case can be said to be sufficient compliance of the provisions of Section 20-A of TADA which reads as under:-

> "20-A Cognizance of offence.- (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."

6. We have considered the fact that after the investigation, PW-30 DSP of CBI approached PW-28 IG on 13th September, 1997 seeking sanction for prosecution against A-1 to A-5 for offences under TADA Act. PW-28 on 16th September, 1997 granted the sanction (Ext.P-46) for prosecution against A-1 to A-5 under TADA Act. It is stated by PW-28, IG that he perused all the records placed by PW-30, along with requisition, seeking for sanction containing the Inquest Report, Post-mortem Report, 164 Statements of eye-witnesses and 161 Statements of other witnesses, confession of A-1 and other materials and granted sanction for prosecution against A-1 to A-5 under Section 3 of the TADA Act, 1987. It is also to be noted that in the course of investigation, the confession of A-6 (Ext.P-43) dated 25.10.1994 was recorded by PW-26 SP, on the basis of the requisition given by PW-24 DSP, CBCID. The case was subsequently transferred to CBI in July, 1996 and on transfer, PW-30 CBI, DSP took up the investigation on 17.07.1996.

7. We have also noted that the sanction (Ext.P-46) granted on 16.09.1997 by PW-28 IG, referred to A-1's confession (Ext.P-41) only recorded on 3.04.1997 but it does not refer to the confession of A-6 (Ext.P-43) which was recorded on 25.10.1994. This was the only document which revealed that A-6 addressed and advised A-1 to A-5 to commit the murder of Rajagopalan, with intention to create terror in the minds of public at large in Tamil Nadu. Therefore, the confession of A-6 (Ext.P-43) is the only document which refers to the intention to create terror as required under Section 3 of TADA Act. No other material or no other witness speaks about the intention of the accused to commit the murder with intention to create terror in the minds of public which is main ingredient for invoking the TADA Act. Unfortunately, the said document (Ext.P-41) has neither been referred to nor relied upon by the Sanctioning Authority in the sanction order (Ext.P-46).

8. We have also noticed that the confession of A-1 (Ext.P-41) is totally contradictory to the confession of A-6 (Ext.P43). It appears from the facts that the Investigating Officer suppressed the material document by not placing the same before the Sanctioning Authority. We have further noticed that the TADA Court convicted the accused under the TADA Act on the basis of confession of A-6 and not on the basis of any other material. The other point which we have noted is that the Sanctioning Authority (PW-28) admitted in his deposition that he did not know Tamil and did not go through the entire records which were in Tamil. Therefore, it is clear that the Sanctioning Authority has not applied his mind to the records in its entirety and granted sanction only after considering certain documents which were in English. Therefore, we have to accept the contention of the appellants that the Sanctioning Authority without perusing the relevant documents issued the order of sanction and thereby it has to be accepted that the sanction was granted mechanically.

9. The confessions of A-1 and A-6 are not voluntary as has been evidenced by us from the materials since those confessions were not recorded in a free atmosphere thereby it violated

the directions given by this Court. Further, the said confessions could not be relied upon as they contradicted with each other.

10. We, without hesitation, are of this considered opinion that the answer to this question is in the negative for settled principle of non-application of mind by sanctioning authority while granting approval for taking cognizance under TADA Act and undermining the objective of the Act. This relevant provision was inserted by Act 43 of 1993 which came into force on 23.05.1993 which is prior to the date of commission of the offence i.e., 10.10.1994 disputed in instant appeal which makes it crystal clear that Section 20-A(1) of TADA must be construed by indicating that prior approval from the competent authority is mandatory for taking cognizance of offence punishable under TADA. However, it shall always be borne in mind by the sanctioning authority that application of such provisions which forms part of penal statues requires strict interpretation and failure to comply with the mandatory requirement of sanction before cognizance is taken, as mentioned in TADA, may vitiate the entire proceedings in the case. In the recent past, it has been observed by this Court in respect of Section 20-A of TADA in the case of *Hussein Ghadially @ M.H.G.A Shaikh & Ors. Vs. State of Gujarat*[1], at para 21, as follows:

> "A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the Police without the prior approval of the District Superintendent of Police."

11. The most important factor for determination before the sanctioning authority was that the acts done by a person must fall within the ambit of terrorist activity and the accused must be a terrorist as defined in Section 3(1). This position of law was discussed by this Court in the case of *Kalpnath Rai Vs. State (Through CBI)*[2]*, as follows*:

> "34. Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution 'no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence'. So it is not enough that one was member of a terrorists' gang before 23-5-1993.
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> 35. There are two postulates in Sub-section (5). First is that the accused should have been a member of 'a terrorists gang' or 'terrorists organisation' after 23.5.1993. Second is that the said gang or organisation should have involved in terrorist acts subsequent to 23.5.1993. Unless both postulates exist together Section 3(5) cannot be used against any person.
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> 36. 'Terrorist act' is defined in Section 2(h) as having the meaning assigned to it in Section 3(1). That sub-section reads thus:

'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 fire-arms 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.'

37. The requirements of the sub-section are: (1) the person should have done an act in such a manner as to cause, or as is likely to cause death or injuries to any person or damage to any property, or disruption of any supplies; (2) doing of such act should have been by using bombs, dynamites etc.; (3) or alternatively he should have detained any person and threatened to kill or injure him in order to compel the Government or any other person to do or abstain from doing anything."

12. Mr. Karpaga Vinayagam, learned senior counsel appearing for the appellants submitted that the Prior Approval for investigating the case under TADA, granted by PW-26 in the present case, is bad in law as the same has been granted by PW-26 mechanically, without going through the records and without recording his satisfaction. A careful perusal of the requisition given by PW-24 to PW-26 for seeking prior approval (Ext.P-35) reveals that a single murder on 10.10.1994 was mentioned therein but no act of murder with intent to create terror and panic in the minds of public, which is the main ingredient of the offence under TADA Act, was mentioned. The incident prior to this murder relating to objections raised by Hindus on the construction of mosque near Hindu temple in Madurai was mentioned in the deposition of PW-24, which could nowhere be referred or connected to act of murder. Admittedly, as per his deposition, till 19.10.1994, none gave any complaint that there was any commotion or violence at the place of occurrence, resultantly connecting the case under IPC to be a prima facie case under TADA leading to seeking prior approval, which if granted, would be bad in the eyes of law.

13. We have also noticed that the Sanctioning Authority under Section 20-A(2) of TADA, i.e. PW28 - IG, CBI in present case, had granted permission to file a case under TADA on 16.09.1997 vide permission order being Ext.P.46 and in his deposition PW-28 stated that I verified the TADA Rules very carefully. Upon perusing the said documents as I was satisfied that there are ample evidences to file a case against A1 to A5, namely Shahul Hameed, Raja Hussain, Subair, Zahir Hussain and Aziz alias Abdul Aziz under the TADA Act, I issued orders granting permission to file a case under section 3 of the TADA Act." . We may straightaway observe that the sanctioning authority did not have necessary material before him to show that the alleged act of causing death of the deceased was done with intent to

create terror in the minds of public at large. Had there been any such terror in the minds of people, then as an aftermath of the death of the deceased there would have been an adverse effect on the harmony amongst different sections of people in the vicinity of the place of incident. However, no such incident of striking terror in the minds of people or adverse effect on the harmony amongst any section of society was reported. The alleged act of causing death of an individual was only an attack by the accused-appellants with weapons on the deceased who later succumbed to the injuries.

14. We have noticed that sanction under Section 20-A(2) of TADA in respect of A-6 was granted by PW-29 on 16.09.1998, which was delayed due to time consumed in the investigation against him. In our considered opinion, the same is also unlawful for the reasons mentioned above. Furthermore, cross examination of PW-30 is also reflecting the non-application of mind when after specifically stating about relationship of the accused-appellants herein with Alumma organization, it was deposed by him that he did not collect any evidence or document to show that accused belonged to that organization. In our considered opinion, the said sanctions, which have not been proved by the depositions of these witnesses, are not as per the mandate of law laid down by this Court in the case of *State of Maharashtra Vs. Mahesh G. Jain*[3]*, and Kootha Perumal Vs. State*[4].

15. After going through the records, it appears to us that the accused-appellants had grudge in their minds because the deceased used to organize Vinayaga Chaturthi Celebrations in various places and criticize Muslims and Islam which includes a public notice by the deceased wherein he had demanded protection of Madurai City which, according to the deceased, was being used by Pakistan as the base for spying activity. The issuance of this public notice was proved by PW-11, A.R. Kalidasan. Instances of pelting stones by the appellants herein were proved by the evidence of PW-10, as corroborated by the deposition of PW-13.

16. Mr. P. K. Dey, learned counsel for respondent-CBI has drawn our attention to the decision of this Court in *Kartar Singh Vs State of Punjab*[5], wherein at para 451, this Court observed:

> "Mere possession of arms and ammunition specified in the section has been made substantive offence. It is much serious in nature and graver in impact as it results in prosecution of a man irrespective of his association or connection with a terrorist or terrorist activity. A comparison of this section with Sections 3 and 4 demonstrates the arbitrariness inherent in it. Section 3 operates when a person not only intends to overawe the Government or create terror in people etc. but he uses the arms and ammunitions which results in death or is likely to cause death and damage to property etc. In other words, a person becomes a terrorist or is guilty of terrorist activity when intention, action and consequence all the three ingredients are found to exist. Similarly Section 4 applies to those activities which are directed towards disrupting sovereignty and territorial integrity of the country. Thus a terrorist or a disruptionist and a person possessing any of the arms and ammunition mentioned in the section

have been placed on a par. In Sections 3 and 4 the offence arises on the act having been done whereas in Section 5 it is founded only on possession. Even under sub-section (3) of Section 3 a person is liable to be prosecuted for abetting the offence if he assists or communicates with a terrorist. Sub-sections (5) and (6) inserted by Act 43 of 1993 to Section 3 also require that a person can be prosecuted only if he is found to be a member of a terrorist gang or terrorist organisation etc. The Act, therefore, visualises prosecution of the terrorist or disruptionist for offences under Sections 3 and 4 and of others only if they are associated or related with it. That is in keeping with the objective of the Act. The legislation has been upheld as the legislature is competent to enact in respect of a crime which is not otherwise covered by any Entry in List II of the Seventh Schedule. The definition of the crime, as has been discussed earlier, is contained in Sections 3 and 4 of the Act and it is true that while defining the crime it is open to the legislature to make provision which may serve the objective of the legislation and from a wider point of view one may say that possession of such arms, the use of which may lead to terrorist activity, should be taken as one of the offences as a preventive or deterrent provision. Yet there must be some inter-relation between the two, howsoever, remote it may be. The harshness of the provisions is apparent as all those provisions of the Act for prosecuting a person including forfeiture of property, denial of bail etc., are applicable to a person accused of possessing any arms and ammunition as one who is charged for an offence under Sections 3 and 4 of the Act. It is no doubt true that no one has justification to have such arms and ammunitions as are mentioned in Section 5, but unjustifiable possession does not make a person a terrorist or disruptionist. Even under Ireland Emergency Provisions Act, 1978 on which great reliance was placed by learned Additional Solicitor General there is no such harsh provision like Section 5. Since both the substantive and procedural law apply to a terrorist and disruptionist or a terrorist act or a disruptive act, it is necessary, in my opinion, that this section if it has to be immune from attack of arbitrariness, may be invoked only if there is some material to show that the person who was possessed of the arms intended it to be used for terrorist or disruptionist activity or it was an arm and ammunition which in fact was used."

(emphasis supplied)

17. He further relied upon judgment of this Court in the case of *Girdhari Parmanand Vadhava Vs. State of Maharashtra*[6], wherein it was enunciated that a crime even if perpetrated with extreme brutality may not constitute "terrorist activity" within the meaning of Section 3(1) of TADA. For constituting "terrorist activity", the activity must be intended to strike terror in people or a section of the people or bring about other consequences referred to in Section 3(1). 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 tran¬quillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country.

18. Therefore, it will be very dangerous for us, in the absence of legislative attempt, to provide with an opinion to define whether any activity falls within the definition of terrorist activity or not. After all the legislative intent behind enactment of any statute shall prevail. This Court had opined in the words of Justice Dr. A. S. *Anand in Hitendra Vishnu Thakur & Ors. Vs. State Of Maharashtra & Ors.*[7], that

> "7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and 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 fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of terrorism', aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth 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 fall out 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. "

19. We would, therefore, make it abundantly clear that these relied cases do not help the respondent to make a case under the provisions of TADA in the absence of intention to cause terror in the minds of people or strike on them with terror. Therefore, in our considered opinion, the approvals granted by the Superintendent of Police (PW-26) and the IG, CBI (PW-28), in the facts and circumstances of the present case, were completely invalid lacking compliance of the requirements prescribed under Section 20-A of TADA. Albeit, it can rightly be opined that prior approvals were bad in law in the present case, nevertheless, it cannot be said that the entire proceedings against the accused-appellants under TADA, were vitiated in the light of the judgment in the case of *Ashrafkhan alias Babu Munnekhan Pathan & Anr. Vs. State of Guajrat*[8], wherein this Court observed:

> "33. Now we proceed to consider the submission advanced by the State that non-compliance with Section 20-A(1) i.e. absence of approval of the District Superintendent of Police, is a curable defect under Section 465 of the Code. We do not have the slightest hesitation in holding that Section 465 of the Code shall be attracted in the trial of an offence by the Designated Court under TADA. This would be evident from Section 14 (3) of TADA which reads as follows:
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> '14.Procedure and powers of Designated Courts. (1)-(2) ... (3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.'
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> 34. From a plain reading of the aforesaid provision it is evident that for the purpose of trial Designated Court is a Court of Session. It has all the powers of a Court of Session and while trying the case under TADA, the Designated Court has to follow the procedure prescribed in the Code for the trial before a Court of Session. Section 465 of the Code, which falls in Chapter 35, covers cases triable by a Court of Session also. Hence, the prosecution can take shelter behind Section 465 of the Code. But Section 465 of the Code shall not be a panacea for all error, omission or irregularity. Omission to grant prior approval for registration of the case under TADA by the Superintendent of Police is not the kind of omission which is covered under Section 465 of the Code. It is a defect which goes to the root of the matter and it is not one of the curable defects."

20. We are therefore of this considered opinion that as a result of illegal sanction order the criminal proceedings for prosecution under the TADA Act are vitiated entirely. Suffice it to say that Learned Court under the TADA Act has grossly erred in taking cognizance of the case.

21. Mr. M. Karpaga Vinayagam, learned senior counsel appearing for the appellants advanced three main submissions, apart from challenging the sanction granted by the competent authority which has already been discussed in earlier paragraphs. He submitted

that the eye-witnesses and PW-7 are not reliable. He further submitted that A-1's confession is not voluntary and there has been non-examination of material witnesses. Concluding with his arguments he would say that the Identification Parade is a farce and that there are infirmities in the depositions of the Investigating Officers being PW-2, PW-24 & PW-30.

22. We have reappreciated the evidence on record and considered the arguments advanced by Mr. P.K. Dey, learned counsel appearing for the respondent-CBI. Though we find little difficulty in accepting the view taken by the learned Designated Court in its entirety, as it arises from several notable facts, it is not and cannot be disputed that the deceased was killed at the entrance of his house. The post-mortem report being Ext.P-14, which was duly proved by PW15 - Dr. Thiagarajan, also mentioned the cause of death being shock and haemorrhage due to multiple cut and stab injures sustained by the deceased somewhere near 5 O' clock in the morning on 10.10.1994. We have noticed that PW-1 was never called for identification of the accused-appellants.

23. Apropos question of reliability of the test identification parade in the present case, when admittedly accused were already seen through newspaper, we emphasise on few judgments of this Court before coming to the answer to this question. This Court in the case of *Suresh Chandra Bahri Vs. State of Bihar*[9], has held:

> " 78....From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned also who was a stranger to the accused because in that event the chances of his memory fading away are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of TI parade."

24. We accept the contention of the learned senior counsel for the appellants that the test identification parade was a farce as after the pictures of the accused had been published in the newspaper, the identification parade which is a very weak piece of evidence should not have been conducted.

25. Before concluding this judgment, it would be necessary to consider the most important factor to which our attention was invited by the learned counsel for the respondent, i.e., confession of accused and unearthing of conspiracy and recovery of evidences thereafter.

Having regard to observation recorded so far, emphasis on the judgment delivered by this Court in *State (NCT of Delhi) Vs. Navjot Sandhu*[10], is necessary wherein it was observed:

"28. In the Privy Council decision of *Pakala Narayana Swami vs. Emperor*[11], Lord Atkin elucidated the meaning and purport of the expression 'confession' in the following words:

> " [A] confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession..."

29. Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth 'Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law" . (vide Taylor's Treatise on the Law of Evidence Vol. I). However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of confes-
sion. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. So also the authority recording the confession, be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognizing the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to the police officer." In a subsequent para of this relied judgment this Court further observed:

"32. As to what should be the legal approach of the Court called upon to convict a person primarily in the light of the confession or a retracted confession has been succinctly summarized in *Bharat vs. State of U.P*[12]. Hidayatullah, C.J., speaking for a three-Judge Bench observed thus: Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after-thought or advice, the retraction may not

weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an after-thought and that the earlier statement was true. This was laid down by this Court in an earlier case reported in *Subramania Gounden v. The State of Madras*[13]*.*"

26. We are of this considered opinion that the confessions of A-1 and A-6 are involuntary as they were taken in the immediate custody of high security of CBI and a non-voluntary confession cannot form the basis of conviction. We would like to emphasize on another observation made by this Court in Ashrafkhan's case (supra):

> "41. We have held the conviction of the accused to have been vitiated on account of non-compliance with Section 20-A(1) of TADA and thus, it may be permissible in law to maintain the conviction under the Arms Act and the Explosive Substances Act but that shall only be possible when there are legally admissible evidence to establish those charges. The Designated Court has only relied on the confessions recorded under TADA to convict the accused for offences under the Arms Act and the Explosive Substances Act. In view of our finding that their conviction is vitiated on account of non-compliance of the mandatory requirement of prior approval under Section 20-A(1) of TADA, the confessions recorded cannot be looked into to establish the guilt under the aforesaid Acts. Hence, the conviction of the accused under Sections 7 and 25(1-A) of the Arms Act and Sections 4, 5 and 6 of the Explosive Substances Act cannot also be allowed to stand."

27. We would also like to recapitulate observation of this Court in Ashrafkhan's case (supra) which reads as follows:

> "44. The facts of the case might induce mournful reflection how an attempt by the investigating agency charged with the duty of preventing terrorism and securing conviction has been frustrated by what is popularly called a technical error. We emphasize and deem it necessary to repeat that the gravity of the evil to the community from terrorism can never furnish an adequate reason for invading the personal liberty, except in accordance with the procedure established by the Constitution and the laws."

28. In the light of the judgments cited above and the material on record, we have no hesitation in holding that whole proceedings in the present case were vitiated. Therefore, the order of conviction and sentence passed by the Designated Court is hereby quashed and set-aside. The appellants herein be released forthwith, if not required in any other case.

29. In the result, the appeals filed by the accused-appellants are, accordingly, allowed.

Judgment Referred.

[1]*(2014) 8 SCC 0425*
[2]*(1997) 8 SCC 0732*
[3]*(2013) 8 SCC 0119*
[4]*(2011) 1 SCC 0491*
[5]*(1994) 3 SCC 0569*
[6]*(1996) 11 SCC 0179*
[7]*(1994) 4 SCC 0602*
[8]*(2012) 11 SCC 0606*
[9]*(1995) Supp (1) SCC 0080*
[10]*(2005) 11 SCC 0600*
[11]*AIR 1939 PC 0047*
[12]*(1971) 3 SCC 0950*
[13]*(1958) SCR 0428*