

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

DEATH REFERENCE CASE NO.1 OF 1998 (@ D.NO.1151 OF 1998)

State through Superintendent of Police,
CBI/SIT Appellant
:versus:
Nalini and others Respondents
WITH

CRIMINAL APPEAL NO.321 OF 1998

T. Suthenthiraraja @ Santhan & ors. Appellants

:versus:

State by D.S.P., CBI, SIT, Chennai Respondents

AND

CRIMINAL APPEAL NO.322 OF 1998

P. Ravichandran & ors. Appellants
:versus:

State by D.S.P., CBI, SIT, Chennai Respondents

AND

CRIMINAL APPEAL NO.323 OF 1998

Robert Payas & ors. Appellants
:versus:

State by D.S.P., CBI, SIT, Chennai Respondents

AND

CRIMINAL APPEAL NO.324 OF 1998

S. Shanmugavadivelu Appellant

:versus:

State by D.S.P., CBI, SIT, Chennai Respondents

AND

CRIMINAL APPEAL NO. 325 OF 1998

S. Nalini & ors. Appellants

:versus:

State by D.S.P., CBI, SIT, Chennai Respondents

J U D G E M E N T

THOMAS, J

Rajiv Gandhi, a former Prime Minister of India was assassinated on 21-5-1991 at a place called Sriperumpudur in Tamil Nadu. The assassin was an adolescent girl named Thanu who was made into a human bomb and she got herself exploded at 10.19 P.M. at very close proximity to the visiting former Prime Minister. In a trice the life of Rajiv Gandhi was snuffed out and his body was smashed into smithereens. As for the assassin nothing except a few pieces of charred limbs and her sundered head were left behind. In the explosion lives of 18 others also got extinguished. Investigation pointed to a minutely orchestrated cabal, masterminded by some conspirators to extirpate the former Prime Minister from this terrestrial terrain. In the final charge-sheet made by the Central Bureau of Investigation (CBI) all the 26 appellants now before us, were arraigned as members of the conspiracy which targeted, inter alia, Rajiv Gandhi. The Special Judge who tried the case found all the 26 appellants guilty of various offences charged, the gravamen of them being Section 302 read with Section 120-B IPC. All of them were hence convicted of those offences and all of them were sentenced to death.

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

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

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

When Sri Lankan Government found it difficult to meet the situation by them, the Government sought assistance from Government of India for tackling the problem. This was reciprocated by the Government

of India. Some parleys took place between the diplomats of both nations in 1987. The President of Sri Lanka (Mr. Jayawardhane) and the Prime Minister of India (Sri Rajiv Gandhi) met together at New Delhi and Velluppillai Piribhakaran was also invited to be involved. An accord was signed by the aforesaid three persons by which Indian Government agreed, inter alia, to form a cadre called Indian Peace Keeping Force (IPKF for short). One of the tasks assigned to the force was to disarm LTTE militants. Pursuant to the terms of the accord Government of India despatched large number of IPKF personnel to Sri Lanka. While discharging their duties the IPKF committed many excesses which became inhuman conduct towards the followers of LTTE. Consequently hostility developed in the minds of LTTE cadre towards IPK Force. To register their protest against such excesses one of the LTTE hardcore activists by name Dileepan undertook a fast and he succumbed to it after a few days.

Skirmishes became rampant between members of the IPK Force and LTTE activists. In October 1987, a vessel carrying 17 LTTE functionaries was intercepted by the Sri Lankan navy while patrolling on the high seas and the passengers were held captives. Leaders of LTTE made a bid to save them by appealing to the Indian Government to intervene, but there was no response. 12 out of 17 captives committed suicide by consuming Potassium Cyanide. There was counter attack on IPK Force when LTTE commandos captured a ship carrying provisions for the army, and in the encounter which ensued 11 Indian soldiers were killed.

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

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

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

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

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

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

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

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

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

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

Pursuant to the scheme of the conspirators, photos of Fort St. George, Madras Police Headquarters and a few other police stations were taken and forwarded them to the top leaders of LTTE at Sri Lanka. A sketch of Vellore Fort was drawn up which too was despatched to the island.

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

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

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

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

On 20-5-1991, Arivu (A-18) purchased a 9-Watt golden power battery from a shop. Sivarasan deputed Kanagasabapathy (A-7) to go to Delhi to fix up a house as a hide-out to be used during the days after accomplishing the target. Sivarasan confabulated with Nalini (A-1), Murugan (A-3), Arivu (A-18) and Haribabu at the house of Jayakumar (A-10). Sivarasan instructed Nalini to take half a day's leave under some pretext or the other. Arivu (A-18) and Bhagyanathan (A-20) procured a Kodak film and

supplied it to Haribabu who was a freelance photographer.

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

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

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

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

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

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

personal security men, besides Thanu and Haribabu. Many others who sustained injuries in the explosion, however, survived.

Thus the conspirators perpetrated their prime target achievement at 10.19 P.M. on 21-5-1991 at Sriperumpudur in Tamil Nadu.

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

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

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

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

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

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

On 11-6-1991 Bhagyanathan (A-20) and Padma (A-21) were arrested by the police. Three days later Nalini (A-1) and Murugan (A-3) were arrested. The said development was communicated by Sivarasan to the LTTE Headquarters at Sri Lanka and thereafter he in the company of Suba and Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) and one LTTE activist by name Nehru had skulked

to Bangalore and concealed themselves in a house at Indira Nagar. Irumborai (A-19) was already accommodated in that house. On 16-8-1991 they shifted to another house situated at Kananakunte in Bangalore.

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

On completion of the investigation the CBI laid charge-sheet against all the 26 appellants besides Veluppillai Piribakaran (the Supremo of LTTE), Pottu Omman (the Chief of intelligence wing of LTTE) and Akila (Deputy Chief of intelligence) for various offences including the main offence under Section 302 read with Section 120-B and Sections 3 & 4 of the TADA. In the charge-sheet names of 12 other persons were also mentioned as co-conspirators. Among them two had died at the spot (Thanu and Haribabu) and the remaining 10 persons died subsequently. Their names are: (1) Sivarasan @ Raghavan (2) Suba @ Nitya @ Mallika (3) Nehru @ Nero (4) Suresh Master (5) Amman @ Gangai Kumar (6) Driver Anna @ Keerthy (7) Jamuna @ Jamila (8) Shanmugham (9) Trichy Santhan @ Gundu Santhan (10) Dixon.

All steps taken to apprehend three of the main accused (1) Veluppillai Piribakaran (2) Pottu Omman and (3) Akila did not succeed and hence they were proclaimed as absconding offenders. Remaining 26 persons (who are appellants before us) were charged for offences under Section 302 and Sections 326, 201, 212 and 316 read with Section 120-B of IPC; Section 3 sub-section either (2) or (3) or (4) of the TADA. Ravichandran (A-16) and Suseendran (A-17) were, in addition, charged under Section 5 of the TADA. Less serious offences under certain provisions of Explosive Substance Act, Arms Act, Passport Act, Foreigners Act and Wireless Telegraphy Act were indicted on a few accused. (It is not necessary to pinpoint the different offences mentioned in the charge-sheet against each accused as the same shall be referred to when we consider the liability of the each accused.)

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

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

To constitute any offence under sub-section (2) or sub-section (3) of Section 3 of TADA the accused should have either committed a terrorist act or have done something concerning a terrorist act which is

sine qua non for convicting the accused under either of the sub-sections. If terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law. But if any such crime should be dealt with under TADA it must be inter-linked with "terrorist act" as defined thereunder.

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

"(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 explosivesubstances 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.

(2) Whoever commits a terrorist act, shall,

(i) - if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall be liable to fine;

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

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

A reading of the first sub-section shows that the person who does any act by using any of the substances enumerated in the sub-section in any such manner as are specified in the sub-section, cannot be said to commit a terrorist act unless the act is done "with intent" to do any of the four things: (1) to overawe the Government as by law established; or (2) to strike terror in people or any section of the people; or (3) to alienate any section of the people; or (4) to adversely affect the harmony amongst different sections of the people.

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

It must be recapitulated now that the constitutional validity of Section 3 of TADA was challenged in this Court and a Five-Judge Bench has upheld the provisions in *Kartar Singh vs. State of Punjab* (1994 3 SCC 569) by striking a note of caution that since provisions of TADA tend to be very harsh and drastic containing stringent provisions they must be strictly construed. The Bench approved the observations made by Ahmadi, J (as the learned Chief Justice then was) in *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijaya & ors.* (1990 4 SCC 76).

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

(para 8)

Dealing with the facts of that case where the accused was alleged to have killed one Raju and another Keshav for gaining supremacy in the under-world this Court has stated that "a mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them cannot constitute an offence under Section 3(1) of the Act" and then observed thus:

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

A Two-Judge Bench of this Court has considered the distinction between the act done with the requisite intent and another act which had only ensued such consequences. In *Hitendra Vishnu Thakur & ors. vs. State of Maharashtra & ors.* (1994 4 SCC 602) Dr. Anand, J (as the learned Chief Justice then was) has stated thus:

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

(para 11)

The further reasoning contained in the Judgment is the following:

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

(para 11)

The Bench on the aforesaid reasoning, concluded thus:

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

(emphasis supplied)

(para 15)

Two other decisions rendered by a Two-Judge Bench of this Court were cited before us. In Girdhari Parmanand Vadhava vs. State of Maharashtra (1996 11 SCC 179) it has been pointed out that the intention of the wrong doer can be inferred from the circumstances. After referring to the case law i.e. Hitendra Vishnu Thakur (supra) the Bench had held that "terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country. In the instant case, the intention to strike terror in the minds of the people can be reasonably inferred because Birju declared such intention in no uncertain terms by indicating that Vaibhav should be killed in order to send the message to the people in the locality that if the demand of Birju and his associates was not met, extreme consequence of killing of an innocent person would be resorted to."

In Mohd. Iqbal M. Shaikh & ors. vs. State of Maharashtra (1998 4 SCC 494) the same combination of learned Judges reiterated the principle by reference to Hitendra Vishnu Thakur and inferred from the facts of the case that the offence fell under Section 3 of TADA.

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

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

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

Velupillai Piribhakaran addressed a meeting on 4-8-1987, the text of the speech was published which is marked in this case as Ext.354. In the said speech he used strong language to criticise "India-Sri Lanka accord" and the manner in which it was made. But no word of hatred was expressed towards the Government of India though he aired his opposition towards Sri Lankan Government which he described as "Sinhala racist government". He also spoke bitterly against the Sri Lankan Tamil leaders who supported the Accord. About the Indian Government and its Prime Minister the LTTE supremo said the following:

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

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

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

come to political power in the North-Eastern Province."

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

In this context it is important to point out what Velupillai Piribhakaran, who went underground in Sri Lanka and resurfaced on 1-4-1990 after a period of 32 months of disappearance had said. (The news about his re-emergence was published in the newspaper - a copy of which has been marked as Ext.363). The LTTE supremo had told the newsmen then as follows:

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

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

From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established.

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

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

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

under Section 3 of TADA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is too much a strain to enter a finding, on such evidence, that the above activities were

unmistakably aimed at disrupting the sovereignty of India. The sketch of Vellore Fort (which houses the Central Jail) was drawn up, most probably, for planning some operation to rescue the prisoners (belonging to LTTE who have been interned therein). That of course would be an offence but not an activity which falls within the purview of Section 4 of TADA.

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

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

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

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

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

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

We may also record at this stage that the two points which are seriously disputed by the learned counsel for the appellants are the following: (1) Assassination of Rajiv Gandhi was not the only focal point of the conspiracy. (2) Appellants were participants in the conspiracy.

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

For deciding the aforesaid major area of dispute, prosecution heavily relies on the statements allegedly made by a number of appellants and recorded purportedly under Section 15 of TADA. (Such statements will, hereinafter, be referred to, for convenience, as confessional statements of the accused). Such confessional statements were recorded by the Superintendent of Police, CBI/SPG who was deputed in the Special Team of Investigation. Every one of such confessional statements has

been signed by the person who is shown as the maker thereof. Such confessional statement consists of inculpatory admissions, narrations which are neither inculpatory nor exculpatory, and incriminating roles attributed to other co-accused. It was not disputed before us that all such confessional statements, if duly recorded, are admissible in evidence in view of Section 15 of TADA. It is necessary to extract that Section which reads thus:

"15. Certain confessions made to police officers to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or 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.

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

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

Learned counsel for the defence made a bid to exclude the confessional statements from the purview of admissibility in this case on the premise that no offence under TADA could be found against any of the accused and hence the confessional statements would wiggle into the can of inadmissibility and consequently it cannot be used for offences outside TADA. To buttress up the said contention, learned counsel invited our attention to the following observations made by a two-Judge Bench of this Court in Bilal Ahmed Kaloo vs. State of A.P. (1977 7 SCC 431):

"While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence."

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

afresh.

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

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

The aforesaid implications of Section 12 vis-a-vis Section 15 of TADA have not been adverted to in Bilal Ahmed's case (supra). Hence the observations therein that "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it, since he was acquitted of the offences under TADA" cannot be followed by us. The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial.

While it is not disputed that a duly recorded confessional statement is substantive evidence in a trial of offences under TADA as against the maker thereof, learned counsel for the defence contended that its use against the co-accused (which was tried in the same case) is only for a limited purpose, i.e. to be used for corroborating other evidence. In support of the contention learned counsel relied on the decision of a two-Judge Bench of this Court in Kalpnath Rai vs. State (1997 8 SCC 732). The ratio of that decision, on this point, is that "a confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

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

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

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

After the amendment in 1993 the sub-section reads in the present form (which has been extracted supra). The main changes in the sub-section, after the amendment, are addition of the words "or co-accused, abettor or conspirator", and insertion of a new proviso to the sub-section as "Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

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

"21. Presumption as to offences under Section 3.- (1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved-

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence or

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

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

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

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

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

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

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

But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute book. In other words, after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso. After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled: (1) The co-accused should have been charged in the same case along with the confessor. (2) He should have been tried together with the confessor in the same case.

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

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

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

"admissible" in the trial of such person or the co-accused etc.

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

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

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

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

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

Sir John Beaumont speaking for five law lords of the Privy Council in Bhuboni Sahu vs. The King (AIR

1949 PC 257) had made the following observations :

"Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in s.3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case: it can be put into the scale and weighed with the other evidence."

(para 9)

The above observations had since been treated as the approved and established position regarding confession vis-a-vis another co-accused. Vivian Bose J, speaking for a Three-Judge Bench in Kashmira Singh vs. State of Madhya Pradesh (1952 SCR 526) had reiterated the same principle after quoting the aforesaid observations. A Constitution Bench of this Court has followed it in Hari Charan Kurmi and Jogia Hajam vs. State of Bihar(1964 (6) SCR 623). Gajendragadkar, J (as he then was) has stated the legal principle thus :

"The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under s. 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused persons, the Court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the Court has to adopt in dealing with these two types of evidence is thus clear, well-understood and well-established."

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

Having set the legal position thus, we have now to consider the legal evidence to see whether prosecution

has proved the disputed points.

The prime aim of the conspiracy, in this case, was to assassinate Rajiv Gandhi. The stand of the prosecution is that the Sri Lanka-India Accord (signed on 27.7.1987) was resented against by the LTTE top brass for reasons more than one. The acrimony was further fomented up with the LTTE repressives heaped up by the IPKF. The editorials published in the "Voice of Tigers" (the main publication of LTTE) and the articles reproduced in the compilation made under the nomenclature "Satanic Force" were replete with vituperative epithets expressed by LTTE activists against the said Accord and the actions which IPKF did against them. Rajiv Gandhi was not spared from the vitriolic onslaughts made through such publications. PW-75 (Basant Kumar) accepted the work on payment of Rs. 2000/- per month.

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

In all probabilities a criminal intent to kill Rajiv Gandhi would have sprouted in the minds of LTTE top brass at the afore-mentioned stage. There is not even a speck of doubt in our mind that the criminal conspiracy to murder Rajiv Gandhi was hatched by at least 4 persons comprising of Velupillai Piribhakaran, Pottu Omman, Sivarasan and Akila. It could have been the scheme of the conspirators to enlist more persons in the field for the successful implementation of their targets.

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

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

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

can, in this context, be extracted below :

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

The first condition which is almost the opening lock of that provision is the existence of "reasonable ground to believe" that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy . If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement" in reference to their common intention". Under the corresponding provision in the English Law the expression used is "in furtherance of the common object". No doubt, the words" in reference to their common intention" are wider than the words used in English Law (vide *Sardar Sardul Singh Caveeshar vs. State of Maharashtra*, 1964 (2) SCR 378).

But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 if it was made "in reference" to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlines in Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under Section 10.

Way back in 1940, the Privy Council has considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in *Mirza Akbar vs. King-Emperor* (AIR 1940 PC 176) has stated the legal position thus:

"The words 'common intention' signify a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party."

(page 180)

In *Sardul Singh Caveeshar vs. The State of Bombay* (1958 SCR 161) a Three-Judge Bench has reiterated

that the rule of agency is the founding principle of Section 10 of the Evidence Act. A Two-Judge Bench of this Court in State of Gujrat vs. Mohammed Atik and ors. (1998 (4) SCC 351) has followed the said position and held thus:

"It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made 'in reference to their common intention'."

(para 14)

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

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

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

THE CASE AGAINST A-1 (NALINI) :

A-1 (Nalini) is the sole surviving conspirator who participated in the assassination, if the prosecution case is correct. The principal item of evidence available in this case is her own confessional statement (Ext.P-77) recorded on 9.8.1991. (She was arrested on 14.6.1991). She was aged 27 during the relevant period and has passed M.A. degree. She is the daughter of another co-accused (A21 - Padma) and sister of yet another co-accused (A20 - Bhagyanathan). She had fallen in love with one Murugan (who is accused No.3) during the period of conspiracy and it is claimed that their marriage was solemnised on 21.4.1001 (within 9 months thereof she gave birth to a female child). She was working as Private Secretary to the Managing

Director of a private company - M/s. Anabante Silicons.

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

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

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

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

She had narrated in the confessional statement the events which happened on the day of assassination and also on its preceding day. According to her, Sivarasan met her on 20-5-1991 at 6.00 P.M. and told her that the venue of the meeting was at Sriperumpudur, and she should take half day casual leave and not more and that she should make herself available in the house at 3.-00 P.M. on the next day for being picked up for escorting Suba and Thanu. On 21st May, 1991 Nalini took half a day's leave and she went to her mother's house at Roypetta (Madras) where A-3 (Murugan) was waiting who told her to hurry up lest Sivarasan would be annoyed. So she reached her house at about 3.00 P.M. A little while thereafter Sivarasan reached the same house with Suba and Thanu. According to her, Thanu was then wearing an orange/green coloured chooridar and was hiding something in her dress. Suba told Nalini that Thanu was going to create history by murdering Rajiv Gandhi. At 4.00 P.M. Nalini took Suba and Thanu to the bus stop. On the way Haribabu also joined them. He had a garland with him.

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

The rest of the confessional statement (in Ext.P-77) relates to the hectic movements made by her in association with other accused. It is further recorded therein that on 13.6.1991, A-1 (Nalini) and A-3 (Murugan) went to Davangere (in Karnataka) and stayed in the house of Shashikala (PW-132). A-1 (Nalini) told Shjashikala of what all happened regarding Rajiv Gandhi's murder.

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

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

Rule 15(3) says that the confession shall be signed by its maker and also the police officer who recorded it. Further, the police officer "shall certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person".

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

On the facts we are not persuaded to uphold the contention that Rule 15 (3) has not been complied with. That apart, even if there was such an omission the question is whether it would have injured the accused in her defence. Section 463 of the Code permits such an approach to be made in regard to the omissions in recording the confession under Section 164 of the Code. That approach can be adopted in respect of the confession recorded under Section 15 of the TADA as well. The resultant position is that the said omission

need not be countenanced since it was not shown that the omission has caused any harm to the accused.

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

The confessional statement of A-1 (Nalini) in Ext.P-77, according to Shri Altaf Ahmad learned Additional Solicitor General, is corroborated by other substantive evidence and also by the confessional statements made by a number of other accused in this case. PW-132 (Shashikala) who is a teacher said that she got acquainted with A-1 in 1990 and A-1 visited her in the school when she was teaching, on 13.6.1991. Then A-3 (Murugan) was also with her. A-1 (Nalini) introduced A-3 (Murugan) as her brother by name - Das. PW-132 further stated that when they (three persons) went to her house A-1 told her that her husband, a Sri Lankan citizen, had brought two girls to Madras. PW-132 has also stated in his evidence that Nalini told her that it was she who took those girls to the meeting place at Sriperumpudur where Rajiv Gandhi came and in the incident which happened there, one of the girls died. PW-132, on hearing the said news, became frightened. Then both A-1 and A-3 implored her not to disclose it to anybody else.

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

Another item of corroborative evidence is M.O. 144 Video Cassette. (It was viewed on the video in the trial court as well as by us in the Supreme Court). It was the video cassette of the meeting held at Nandavanam (Madras) in the early hours of 18-5-1991 which was addressed by V.P. Singh. PW-93 (Suyambu) said in his evidence that he attended the said meeting. When he was shown the video cassette replayed in the court he identified Sivarasan who was sitting at the meeting place, just left to the said witness. It was videographed by PW-81 (Manivanam) as instructed by PW-77 (Ganani). PW-77 also identified Sivarasan in the video. We have noticed the presence of A-1 (Nalini) in the meeting when M.O. 144 was displayed in this court, with the help of a photograph in which A-1's figure could be discerned by us and admitted by the defence counsel to be correct.

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

In Ext.P-96, the girls write to Pottu Omman 'we are confident that we would be successful in completing the job for which we came as we expect a similar opportunity.....". In ext. P-95 they wrote to Akila like this: "We are confident that the work for which we came would be finished promptly as we are expecting another appropriate opportunity It would be implemented during this month itself Every word

which you (Akila) had said to us would remain in our mind till last."

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

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

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

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

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

PW-215 (Slamundeeswari) said in her evidence that she is a resident at Sriperumpudur and that on 21-5-1991, while she was standing outside her house at about 10.45 P.M. waiting for her son to return, she found two ladies and one male getting into her house and they asked for water to drink. She gave them water. The witness identified A-1 as one of the ladies and identified Sivarasan and Suba with the help of M.O. 105 photograph. The witness said that she had a dialogue with those visitors. After giving them water she asked them about Rajiv Gandhi's arrival and they replied to her that Rajiv Gandhi died even before

reaching 7 feet away from the meeting place. The witness said that after drinking water the said three persons went towards Madras side. The significance of the evidence of PW-215 is that Investigating Officer succeeded in discovering her house on the information supplied by A-1 (Nalini).

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

It is unnecessary to refer to the remaining evidence which prosecution pointed out as further corroborating the confessional statements of A-1 (Nalini) in Ext. P-77, as we think that in view of the already large number of items of evidence the truth of the confession stands established.

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

A-2 SANTHAN @ RAVIRAJ :

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

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

Veluppilli Piribhakaran for the role he played in achieving the target of finishing Padmnabha.

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

On the evening of 9-5-1991, Sivarasan took A-2 (Santhan) to Marina Beach, Madras and introduced him to photographer Haribabu (who died in the bomb explosion at Sriperumpudur), A-3 (Murugan) and A-18 (Arivu). In the night he was taken to the residence of A-10 (Jayakumar). On the next day he was taken to the house of photographer Haribabu where he (A-2) stayed for about a week. During this period Sivarasan gave Rs. 1,000/- to him for buying clothes.

On 15-5-1991, A-2 (Santhan) met a top LTTE leader called Kanthan and handed over to him a letter sent by Sivarasan. Kanthan entrusted A-2 with a sum of Rs. 5 lacs to be handed over to Sivarasan. A-2 handed over the amount to Sivarasan in instalments as and when the latter asked for it. It was on 16-5-1991 that Sivarasan divulged to A-2 (Santhan) that Veluppillai Piribhakaran had great confidence in A-2 (Santhan) particularly after his performance in the murder of Padmnabha. Sivarasan also disclosed to him that Suba and Thanu were brought for the purpose of murdering Rajiv Gandhi.

Next day Sivarasan collected Rs. 10,000/- from A-2 (Santhan) and on the succeeding day Sivarasan again collected another Rs.10,000/- out of the balance amount. Under sivarasan's instructions A-2 (Santhan) gave Rs. 4,000/- to A-6 (Sivaruban). Next day evening A-2 (Santhan) took A-6 (Sivaruban) to Marina Beach where Sivarasan was waiting.

On 21.5.1991, which was the day of assassination of Rajiv Gandhi, A-2 (Santhan) met Sivarasan and saw the latter preparing himself. A pistol was concealed by him beneath his kurta, and Sivarasan checked up with A-2 (Santhan) whether it was visible from outside. A-2 gave a nod that nothing was visible and then Sivarasan left the place. It was on the said night that Sivarasan told him that Rajiv Gandhi was murdered. He also said that Thanu too died. It was only on the next day that Sivarasan revealed to A-2 (Santhan) that Haribabu died. On 27.5.1991 Sivarasan moved to Madras and instructed A-2 (Santhan) to hand over Rs. 5,000/- to A-10 (Jayakumar). A-2 (Santhan) was moving from place to place thereafter and finally on 30.5.1991 he went to Sundara Lodge. PW-111 (Vijayendran) conveyed to A-2 a message from Sivarasan that the latter should meet him. Pursuant to that, A-2 (Santhan) met Sivarasan on the next day. By that time Sivarasan had removed his moustache.

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

On 7-6-1991 Sivarasan and Suba met A-2 (Santhan) and asked him to handover a cover to A-3 (Murugan). A-2 (Santhan) learnt from A-3 (Murugan) that Sivarasan had instructed A-3 to murder one Chandrahasan.

When A-3 (Murugan) asked A-2 (Santhan) as to the cause for which Chandrahasan was to be murdered A-2 (Santhan) replied that such a murder was planned for diverting the attention of CBI.

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

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

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

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

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

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

PW-62 (Vimla), a teacher by profession narrated how she and her daughters were duped by Sivarasan when he brought Athirai (A-8) to their house under some false pretext without knowing that they were the

persons involved in the assassination of Rajiv Gandhi. PW-62 (Vimla) was closely associated with A-8 (Athirai). PW-62 in her evidence said that A-2 (Santhan) was visiting A-8 (Athirai) and that once A-2 (Santhan) told the witness that CBI might perhaps search her house also. A-2 (Santhan) took A-8 (Athirai) away from the house of PW-62 (Vimla) on the direction of Sivarasan. We have absolutely no reason to disbelieve the evidence of PW-62. She said that the moment she came to know that those persons were suspected by the police in the Rajiv Gandhi murder case she screamed and implored to spare her and her daughters.

From the above corroborative items of evidence we are assured of the truth of the confession made by A-2 (Santhan) as recorded in Ext.P-104. We are hence of the view that prosecution has succeeded in proving that A-2 (Santhan) was also one of the conspirators in the Rajiv Gandhi assassination conspiracy.

A-3 MURUGAN @ DAS :

Murugan was aged 21 at the time of the occurrence in this case. He belongs to Sri Lanka. He was a committed LTTE follower. After working for his organisation at Jaffana for a considerable period he was deputed by LTTE top brass to India for carrying out "an important mission". He was arrested in connection with Rajiv Gandhi murder case on 14.6.1991. Prosecution relies on the confessional statement said to have been given by him on 9.8.1991 to the Superintendent of Police. It is marked in this case as Ext.P.81.

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

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

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

mentioned in Ext.P-81 that Sivarasan scolded them for the failure to click the camera when the former Prime Minister was garlanded.

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

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

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

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

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

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

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

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

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

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

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

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

A-4 SHANKAR:

A-4 (Shankar) has two other names, one is Koneswaran and the other is Russo. The circumstances unfurled in evidence as against him are these: (1) He was a fullfledged LTTE member and came to India on Sivarasan, Suba and Thanu. (2) 1-5-1991 in the group of 9 persons including Ext. P-1062 (a sheet of paper) shows that A-4 (Shankar) would have met A-3 (Murugan) at Kodiakkarai and then the phone number of A-1 (Nalini) would have been supplied to him. (3) On 21-5-1991 he was staying at Esware Lodge which was a place frequented by Sivarasan. (4) In Ext.P-401 (a wireless message sent by Sivarasan to Pottu Omman on 9-6-1991) it was mentioned: "I got news that one of my associates was caught at Nagapattinam and he has told all the news about me." (5) When the news of arrest of A-4 was published Sivarasan communicated that In Ext.P-1253, a diary, Sivarasan has mentioned having fact to Pottu

Omman. (6) Sivarasan has mentioned paid a sum of Rs.10,000/- to A-4. (7) In Ext. P-439, payment of Rs.5,000/- to A-4 (Shankar).

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

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

A-5 VIJAYANANDAN:

As against A-5 (Vijayanandan) the circumstances established are the following: (1) He too was in the 9-member group which clandestinely came to India on 1-5-1991. He had only a forged passport. (2) He stayed in Komala Vilas Lodge, Madras on 8th and 9th of May 1991 by showing a false address and also on a false pretext "to attend a marriage". (3) PW-75 said that A-5 stayed in his house and during then he was fuming with acerbity

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

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

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

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

A-6 SIVARUBAN:

A-6 (Sivaruban) was a boy in his teens when the incident took place. He also belongs to Sri Lanka. His left leg was amputated. Nevertheless he was an active LTTE member. The circumstances pitted against him by the prosecution are the following: (1) He was one among the 9 persons who arrived in India from Sri Lanka on 1-9-1991 in the company of Sivarasan. It was a clandestine voyage. (2) he was sent to Jaipur on 19-5-1991 by Sivarasan at the expense of LTTE. Though it was ostensibly for fixing up an artificial leg for him there is no evidence to show that the leg was fixed at and Jaipur. (3) He stayed in Golden Hotel, Jaipur from 19-5-1991 to 23-5-1991 then he shifted to Vikram Hotel, Jaipur. (4) M.O.667 series which were seized from the house occupied by A-3 (Murugan) on 15-6-1991 contained a folio showing Jaipur. In a search at the telephone number and the address of A-6 (Sivaruban) conducted by the Inspector of CBI, Jaipur at Vikram Hotel on 20-6-1991 telephone numbers of A-15 (Thambi Anna) as well as A-9 (Robert Payas) were found out among the materials seized therefrom. (5) Ext.P-1200 is a letter which A-2 (Santhan) had written to A-6 (Sivaruban) dated 18-6-1991 in which A-6 was asked to shift from Vikram Hotel immediately.

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

There is no justification for reaching such a rash inference on the said evidence. If A-6 (Sivaruban) required an artificial leg it is not a proper query - why he could not have got it fixed at any other place.

(It is an admitted fact that the institute at Jaipur for providing artificial legs is a very renowned one). Why one is preferring a particular Center to a less renowned place for such reparative devices, is too difficult a question for another person to answer. That apart, we do not know whether a period of one month is too long for completing the process of artificial leg attachment or whether any work was in progress at the

Center. At any rate no material has been placed in regard to those aspects.

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

A-7 KANAGASABAPATHY AND A-8 ATHIRAI

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

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

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

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

In March 1991, Pottu Omman told her that if she would go to India the LTTE would meet all her expenses. She was introduced to A-7 (Kanagasabapathy). She understood that her work in India was facilitating to collect information about certain marked places in Delhi for the work of LTTE. She and A-7 (Kanagasabapathy) together left Sri Lanka and they reached India by boat in April 1991

and they stayed together relative of A-7. Sivarasan helped her with money. After the murder of Rajiv Gandhi Sivarasan told her that thenceforth she would be looked after by A-2 (Santhan) as Sivarasan was apprehending arrest.

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

Over and above the circumstances pitted against A-7 on a par with A-8 (Athirai) it is proved that A-7 had gone to Delhi on 20-5-1991 with the money supplied by Sivarasan. He was accompanied by a person called Vanan and they both stayed in Delhi till 30-5-1991. Trial court drew an inference that Sivarasan would have sent A-7 (Kanagasabapathy) to New Delhi for fixing up a hide-out. Even if it was so, where is the evidence to show that A-7 as ever conspired with for the murder of Rajiv Gandhi

In this connection reference has to be made to the testimony of two witnesses. PW-109 (Jai Kumari) is the niece of A-7 (Kanagasabapathy). She has stated in court that she has seen her uncle A-7 in the company of A-8 (Athirai) visiting "Higginboathams" (the famous bookseller) at Mount Road, Madras. They bought a map of Delhi and they were found enquiring for a book containing the addresses of VIPs. On 2-5-1991 Sivarasan was found talking with them and a few days thereafter they went away with Sivarasan, though A-7 used to visit her again infrequently. The witness said that when she saw the photo of Sivarasan connecting him with the murder of Rajiv Gandhi she asked her uncle about it. Then A-7 answered thus: "You are simply imagining many things. For Heaven's sake don't entertain any bad things about me and A-8. Otherwise you have to face God's punishment."

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

(Vimla) who is a teacher has PW-62 stated in her evidence that it was Sivarasan who brought A-8 (Athirai) to her house and requested for accommodating her also in the house. (The witness has narrated how she came into acquaintance with Sivarasan). PW-62 further said that Sivarasan visited her house a couple of days after Rajiv Gandhi was killed and he talked with A-8 (Athirai). But later when the witness happened to see the photo of Sivarasan in the newspapers connecting him with the murder of Rajiv Gandhi she asked A-8 (Athirai) whether there was any truth in the news. A-8 strongly repudiated it and said that Sivarasan was a press reporter and he would have gone there to make a report of the function. Sivarasan visited A-8 on the same afternoon and then PW-62 (Vimla) requested Sivarasan to take A-8 away from that house. Sivarasan then said that he would not visit that house again. At the same time he warned the witness like this: "If anybody would identify him and give information about him he would meet the same fate as Padmnabha had". Thereafter Sivarasan did not visit PW-62 at all. It was A-2 (Santhan) who later took A-8 (Athirai) away from that house.

We have no reason to disbelieve the testimony of PW-62 or that of PW-109. We have no doubt from the aforesaid evidence that A-7 and A-8 were very close to Sivarasan who had taken much interest in them. But ,the question is, will that alone lead us to the conclusion that A-7 and A-8 were also associated with Sivarasan to the conspiracy to murder Rajiv Gandhi? In this connection it is well to remember that all those who worked for LTTE cause were familiar with Sivarasan. It is true that all conspirators had worked in unison with Sivarasan and they were all ardent LTTE personnel. But the converse cannot be a necessary inference i.e.all those LTTE personnel who associated with Sivarasan should have been brought within the radius of the conspiracy to murder Rajiv Gandhi as participants thereof.

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

A-9 ROBERT PAYAS

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

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

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

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

It is further stated in Ext.P-85 that A-9 remained in his house on 21-5-1991 from the afternoon till next day 1991 Sivarasan went to the expecting some message from Sivarasan. On 24th May, house of A-9 riding a motorcycle but he felt that he could not see Kanthan in A-9's house. A-9 told that fact to Kanthan on the

next day. On 27th May 1991, A-9 and A-2 (Santhan) decided between themselves to escape from the police. So he with his wife and sisters proceeded to Thiruchandur and from there they moved to other places in cognito.

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

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

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

"R. Subaraj,

Amman Street, 85 Gangai

Kodambakkam (Madras)"

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

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

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

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

A-10 JAYAKUMAR

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

As IPKF committed lots of atrocities on LTTE people A-10 (Jayakumar) along with others felt very much annoyed. (A-9's little child died in one such IPKF action). So LTTE had decided to teach the leaders concerned a lesson. On 20-9-1990 A-10 reached India and met a hardcore LTTE personnel Nishananthan (who was also called Nixon). A house was arranged at owner. a place called Porur for which an amount of Rs.5,000/- was paid to the Kanthan (another top ranking LTTE leader) used to supply money to A-10 and also to his brother-in-law A-9. A wireless set was installed by Kanthan inside the house of A-10 in order to facilitate the hardcore LTTE personnel to contact was told by Kanthan that a high he their Sri Lankan counterparts. Once ranking LTTE leader (Sivarasan) would be arriving in India for carrying out a dangerous plot. A similar information was passed on to him by his brother-in-law Payas also. As Kanthan told him that a .house was to be arranged for Robert Sivarasan it was so arranged at Kodingayoor. In December 1990, Sivarasan was to render all brought to A-10's house by his brother-in-law. He was directed help to Sivarasan and he knew very well that the mission of Sivarasan was to used to supply enough money to A-10 execute a dangerous plot. Sivarasan (Jayakumar). Once Sivarasan brought a suit-case consisting of his diary, dress, a pistol and one AK-47 gun besides plenty of bullets. The pistol was concealed in a book in which a cavity was made out for containing the firearm.. Sivarasan used to carry the suit-case wherever he went. Once he went to Sri Lanka and on his return he brought Suba and Thanu. This was on the 2nd of May 1991. A-10 knew that Sivarasan brought those two girls for accomplishing the retaliatory plot. A-10 understood that Rajiv Gandhi was the focus of their hatred. He asked his wife to stitch a cloth cover for keeping the pistol of Sivarasan.

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

The further incriminating portions in Ext.P-91 are: On 22-5-1991 A-10 prepared meals for Sivarasan, Suba and Nalini and it was only on 23rd that Sivarasan left the house. Before leaving Sivarasan kept all his things in the suit-case, (except the pistol) and entrusted the pistol to A-10. The suit-case was put in a pit dug by A-10. As instructed by Sivarasan the pit was closed with a concrete slab and a painting was given on its surface.

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

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

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

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

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

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

conspiracy for

A-11 SHANTHI:

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

A-12 VIJAYAN @ PERUMAL VIJAYAN:

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

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

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

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

On 2-5-1991 Sivarasan brought a suit case containing a wireless set and wanted A-12 (Vijayan) to keep it in his house. One person by name Nehru was also present along with Sivarasan. Sivarasan told A-

12 that two girls would be brought from Sri Lanka for an important work and requested to keep that information secret. Sivarasan paid him Rs.10,000/- again.

After 3 days, Sivarasan brought Suba and Thanu to the house of A-12. He directed A-12 to dig a pit for keeping the wireless set as well as some guns. A-12 obeyed and he was helped by Nehru in digging the pit. On 21-5-1991 Sivarasan visited A-12's house at 12.30 noon and asked Thanu and Suba to get ready. Then the two girls went inside a room and after about an hour came out dressed up for going out. Sivarasan took the girls in an auto-rickshaw and left. On the next day Sivarasan reached A-12's house and disclosed to him that Rajiv Gandhi was murdered. He asked Nehru to transmit the message to Sri Lanka.

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

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

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

A-13 SELVALUXMI

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

A-14 BHASKARAN:

Bhaskaran is the father-in-law of A-12 (Vijayan) and father of A-13 (Selvaluxmi). His involvement in the conspiracy was considered by the trial court conjointly with the discussion pertaining to A-12 and A-13.

As from him also the investigating agency could not elicit any confession under Section 15 of TADA.

Though there is no evidence to show that he had any prior knowledge of the plan to murder Rajiv Gandhi there is evidence to show that after A-14 (Bhaskaran) came to know of the assassination he tried to protect Sivarasan and others from being caught or detected.

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

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

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

A-15 SHANMUGAVADIVELU @ THAMBI ANNA

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

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

(Santhan) collected Rs.70,000/- from him and a week after the assassination A-2 collected Rs.3.12 lacs from him and after some days the balance amount was also collected. A couple of days later A-8 Athirai visited him, by which time the photo of Sivarasan appeared in newspapers as having involved in Rajiv Gandhi murder case. Thereupon A-15's wife resented any LTTE people visiting the house. A-15, in fact, asked A-2 (Santhan) as to why the photo of Sivarasan appeared in newspapers as involving in Rajiv Gandhi murder case. A-2 explained that there is nothing to worry about it.

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

A-16 RAVICHANDRAN AND A-17 SUSEENDRAN

In dealing with the case against the above two accused we have necessarily to delink the offences under Sections 3(3) and 3(4) and 5 of TADA and Section 5 of the Explosive Substance Act and Section 3(1) of the Arms Act, for a certain obvious reason. It is an admitted fact that A-16 and A-17 were tried in another criminal case for the aforesaid offences read with Section 120-B of Indian Penal Code, inter alia, certain other counts of offences. A-16 and A-17 and a host of some other persons were arrayed in CC7 of 1992 before a Designated Court, Poonamallai, Chennai (Madras). As per judgment dated 23-1-1998 they were convicted of those offences and sentenced to varying terms of imprisonment. It is also an admitted fact that the said judgment has become final and the convicted persons involved therein have undergone the punishment period.

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

Learned counsel for the accused had produced a certified copy of the judgment in CC 7 of 1992. A-16 (Ravichandran) in this case was arrayed as A-2 in that case and A-17 (Suseendran @ Mahesh) in this case was arrayed as A-3 in that case. Relevant portion showing the facts in that case appearing in paragraph 2 of the judgment is extracted here:

"A.1 to A.32 together and in separate groups at various places such as Palaly, Jaffna in

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

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

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

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

Though Article 20(2) of the Constitution of India embodies a protection against second trial after a conviction of the same offence, the ambit of the sub-article is narrower than the protection afforded by Section 300 of the Procedure Code. It is held by this Court in "Manipur Administration" vs. Thokehom Bira Singh" (AIR 1965 SC 87) that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the sub-article embodies the principle of "autrefois convict" Section 300 of the Procedure Code combines both "autrefois convict" and "autrefois acquit".

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

"221. Where it is doubtful what offence has been committed.-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of

such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of subsection (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

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

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

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

A-16 (Ravichandran) and his companion A-17 (Suseendran) reached India in December 1990. He met Sivarasan as instructed by him near Devi Theatre. A few days hence Sivarasan handed over to A-16 a sum of Rs.1.5 lacs for buying any kind of vehicle for the use of LTTE movement. Sivarasan gave A-16 a contact number (2343402) for any urgent need which might arise. A-16 went to the house of A-10 Jayakumar at Kodingayoor along with Sivarasan and on his instructions went to the Airport at Madras to know how security arrangements were in force when a VIP arrived. A-16 reported to Sivarasan that the first gate of the old Airport could be used for sneaking in. A-16 reminded Sivarasan that three months have already elapsed after they reached India but still A-16 did not know the target. Sivarasan then replied: "We need not go in search of the target but the target would come in search of us." Sivarasan further assured A-16 that the crucial situation would arrive very soon.

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

Sivarasan asked A-16 to start a make-believe Travel Agency at Delhi. A-16 collected Rs.2 lacs from

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

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

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

If the aforesaid confession is true and reliable it can be treated as a safe foundation for resting a finding that A-16 was involved in the conspiracy to murder Rajiv Gandhi. True, A-16 did not divulge in so many words in that confession about the identity of the target of Sivarasan. But it is very clear from Ext.P-121 that A-16 knew about it. In December 1990, he was deputed to India to carry out the execution of an "important mission" and he was instructed to obey the direction of Sivarasan for that purpose. When he knew that Rajiv Gandhi was a target he wanted to get that confirmed from Sivarasan and that is why he asked Sivarasan in plain language - whether it was Rajiv Gandhi. The silence adopted by Sivarasan helped him to confirm it. All the activities done by him thereafter were in facilitation of the aforesaid common design. It has now to be considered whether the confessional statement made by A-16 has been corroborated in material particulars.

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

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

PW-133 (Karpagam) and her husband Shanmugham Sundaram (PW-208) said in their evidence that A-17 (Suseendran) visited them on 28-5-1991 along with Suba, and A-17 introduced her as his wife by name Mallagi whom he recently married. Both the witnesses believed that representation to be true

and thought that a wedding gift should be presented to them. They purchased a wrist watch and gave it to A-17 as wedding present. Later A-17 and Suba paid Rs.1000/- as price of the wrist watch saying that they were in need of it. They stayed in the house of those witnesses. In their evidence they said that on 2-6-1991 Sivarasan together with A-16 visited A-17. Later the witness saw the photo of Suba in the newspaper connecting her with Rajiv Gandhi murder. When A-17 was asked about it he first denied it and later admitted it and said that her name was Suba. However, A-17 gave a warning to both the witnesses not to disclose such things to anyone else.

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

which Sivarasan had supplied to A-16 as a contact number.

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

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

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

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

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

It is not necessary to reproduce the further portion of the confessional statements as they relate to the efforts to save Sivarasan and Suba. We have no doubt that A-17 would have got information as to how Rajiv Gandhi was murdered at least when he met Suba and Sivarasan. But there is nothing in the confessional statement to indicate that he knew it at any time before the assassination. Nor is there any material which points to A-17's knowledge prior to 21-5-1991 about Sivarasan's target. Of course

Ext.P-121 and the evidence of PW-206, PW-217, PW-133, PW-208 and PW-181 as also the recovery of the walkie-talkie as per Ext.1172 would show that A-17 was actively helping Sivarasan and Suba to escape from the clutches of law. But that is not enough to credit him with the advance knowledge of Rajiv Gandhi's murder. It is equally possible that he, on coming to know of the predicament of LTTE personnel like Sivarasan and Suba, would have developed a desire to help them. But that is not enough to conclude that he had prior knowledge that Rajiv Gandhi would be murdered.

A-18 PERARIVALAN @ ARIVU:

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

The following inculpatory passages in Ext.P-87 are said to be the confessions made by him: He had close association with LTTE people from 1989 onwards. He was selling LTTE publications such as "Tamil Eelam" and "Urumal". While he was in Sri Lanka he had an opportunity to meet Veluppillai Piribhakaran and other leaders of LTTE. The former sought A-18's help for LTTE services. It excited him. When he learnt that Tamil people in Sri Lanka were suffering a lot due to the atrocities committed by IPKF he developed a vengeful attitude towards Rajiv Gandhi. In the second week of October, 1990 he and A-19 (Irumborai) reached India by boat along with some other LTTE people. From February 1991 onwards he was residing with A-20 (Bhagyanathan) in a house at Roypetta, Madras. A-3 (Murugan) was also staying there. In March 1991, A-18 accompanied A-3 (Murugan) to Vellore for preparing a sketch of the Fort because LTTE prisoners were interned there. Blasting of Vellore Fort for rescuing LTTE prisoners was one of the programmes of LTTE in India.

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

After Sivarasan came back from Sri Lanka he asked A-18 to get a large sized car battery and some clips etc. A-18 bought a battery from a shop near LIC Building at Madras by giving a false name "Rajan" and a false address. He bought some wire and other accessories from another shop near Midland Theatre. A-18 took Sivarasan to a motor shop on 4.5.1991 and bought a motorcycle in his own name but giving a wrong address. He also bought two batteries (9-Volt Golden Power Battery) and handed them over to Sivarasan for using to blast bomb.

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

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

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

As days passed A-18 (Arivu) felt that he would be caught by the police. He therefore left his friends and stayed with his parents at Jolarpet. It was during the said period that Sivarasan's photo was published in the newspapers connecting him with Rajiv Gandhi's murder.

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

One of the contentions raised against the said confession is that A-18 (Arivu) was not given any time for reflection after eliciting that he was prepared to give a confession. But a perusal of the proceedings which led to the recording of Ext. P-87 shows that on 14.8.1991 preliminary questions were put to him by PW-52 (Superintendent of Police, CBI) but no confession was recorded on that date. It was on 15.8.1991 that PW-52 called him again. Even from the first question put to A-18 (Arivu) it is clear that the interval was intended to afford a period of reflection for A-18. The Superintendent of Police, CBI (PW-52) has also said the same thing in his evidence. In such a situation there is no scope for contending that A-18 was not afforded sufficient opportunity for reflection.

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

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

testimony of PW-75.

PW-23 (Bharathi - a nurse) is the sister of A-20 (Bhagyanathan). She said in her evidence that A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) were staying in the same house. M.O.286 - a diary of Sivarasam contains the entry regarding the amount paid to A-18

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

PW-91 (Moideen) is a salesman in Hindustan Training Company, Roypetta High Road, Madras. He said in his evidence that during second week of May 1991, A 18 (Arivu) had purchased two batteries from his shop. He mentioned a reason for remembering that it was A-18 who purchased the batteries. Whatever be the reason, the fact remains that it was on the strength of the information supplied by A-18 that the Investigating Officer (PW- 266 Venkateswaran) came to know of PW-91's shops. The inference is therefore irresistible that A-18 would have pointed out the shop and PW-91 the salesman as the person from whom A-18 had purchased two "9-Volt Golden" batteries.

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

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

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

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

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

A-19 IRUMBORAI:

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

A-19 (Irumborai) was arrested on 9-10-1991. The most important item of evidence placed by the prosecution against him is Ext.P-117 which is a statement recorded by PW-52 (Superintendent of Police, CBI) on 3-12-1991 under Section 15 of TADA which is said to be a confessional statement. No doubt Ext.P-117 contains inculpatory statements about A-19 trying to screen the offenders in Rajiv Gandhi murder case and to harbour some of them. But on the crucial question whether he was a party to the conspiracy to assassinate Rajiv Gandhi, following portion of the statement would throw light.

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

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

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

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

before."

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

There are two hurdles before we take up that piece of evidence into consideration. First is that it was a statement made by a person who is now dead. It does not relate to any transaction of the circumstances which resulted in his death. So the statement would not fall within the ambit of Section 32 of the Evidence Act. Second is that if the statement has to be brought within the ambit of Section 10 of the Evidence Act the pre-condition has to be satisfied that we must have reason to believe that A-19 and Trichy Santhan were members of the conspiracy to murder Rajiv Gandhi. Even assuming that the said statement can be brought under Section 10 of the Evidence Act, the question is - will it be a conclusive inference therefrom that the sendee of the letter knew that fact earlier? It could be an advice given to A-19 (Irumborai) that he should not loosely talk that he knew about Rajiv Gandhi's murder earlier. It does not necessarily mean that A-19 (Irumborai) knew it earlier.

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

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

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

A-20 BHAGYANATHAN:

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

He was arrested on 10-6-1991 in connection with Rajiv Gandhi murder case. PW-52 Superintendent of Police, CBI recorded a statement from him which is marked as Ext.P-69. Prosecution wants to treat it as

a confessional statement recorded under Section 15 of the TTADA. The following are said to be the inculpatory statements in Ext.P-69.

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

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

The further contents in Ext. P-69 are that A-3(Murugan) brought Sivarasan to the house of A-20 in the month of April 1991. He sent a letter to Baby Subramaniam on 9-5-1991 offering full co-operation for the cause of Tamil liberation in Sri Lanka. The letter was sent per A-3 (Murugan). On 20-5-1991, Haribabu visited the house of A-20 at Roypetta. A Kodak film was obtained from Arivu and A-20 gave it to Haribabu.

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

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

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

One of the materials which prosecution has pressed into service as a circumstance involving A-20 (Bhagyanathan) with the conspiracy is Ext.P-128 letter which is said to have been written by Trichy Santhan to A-19 (Irumborai) on 7-9-1991. We have already discussed about the proof of that letter and so

we proceed on the assumption that the letter was written by Trichy Santhan. The following passage in the letter is made use of by the prosecution as against A-20 (Bhagyanathan):

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

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

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

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

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

A-21 PADMA:

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

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

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

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

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

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

The above is the substance of her statement in Ext.P-73. A reading of it would show that A-21 had no inkling whatsoever that Rajiv Gandhi was going to be murdered. Of course, as a mother it was a concern for her when she knew that her daughter (A-1) and her son-in-law (A-3) were wanted by the police in connection therewith.

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

A-22 SUBHA SUNDARAM:

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

Ext.P-544 is an article prepared by A-22 on 5.8.1989. (It was written in the handwriting of PW-116 - Girija Vallabhan on the dictation given by A-22). Ext.P-544 contains a scathing criticism of the

activities of IPKF in Sri Lanka.

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

(3) On 22-5-1991, A-22 told some others that he and Haribabu met together on 21.5.1991. (PW-108 Santhana Krishna), PW-120 (Sundaramony) and PW-151 (Ravisankaran) are the witnesses who spoke about it.)

(4) When a search was conducted by the police in the Photo Studio of A-22 on 5.6.1991, LTTE literature and cassettes were recovered. Ext.P-1354 is the Search List prepared then.

(5) In a letter which Trichy Santhan wrote to A-19 (Irumborai) on 7.9.1991 (Ext.P-128) he criticised the supporters of Sivarasan. Among such supporters the name of A-22 was mentioned by Trichy Santhan.

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

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

(8) PW-258 (Vazhappari Ramamurthy) said that A-22 told him on 23.5.1991 and also on 27.5.1991 to enquire about the camera which Haribabu carried to Sriperumpudur.

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

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

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

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

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

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

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

A-23 DHANASEKARAN @ RAJU:

He was arrested on 13.10.1991 in connection with Rajiv Gandhi's murder. He was conducting a Motor Transport Company at Tuticorin. Ext.P-113 is the record containing his statement which PW-52 (Superintendent of Police, CBI) recorded on 4.11.1991. It is sought to be used as his confessional statement.

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

"On 21st May, I was in my house at Mettur. Then only I heard the news that Rajiv Gandhi died due to bomb explosion at Sriperumbuthur. The news was flashed through papers and television. Later, I came to know that LTTE organisation is the main cause for that assassination and Sivarasan, Subha and

Thanu were involved in that murder."

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

One circumstance which the trial court used against A-23 is that he purchased a Maruti Gypsy (M.O.540) on 14.11.1990. There is evidence to prove that fact. There is also evidence to prove that the said vehicle was used by Sivarasan, Suba and others for moving from one place to other, but all such travels were subsequent to the assassination of Rajiv Gandhi. The trial court concluded on the strength of the aforesaid evidence like this:

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

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

A 24 RAJASURIYA @ RANGAN

He is a Sri Lankan citizen. He was aged 27 during the relevant time. He was arrested on 29.8.1991 in connection with Rajiv Gandhi murder. PW-52 Superintendent of Police, CBI) recorded his confessional statement on 23.10.1991 as per Section 15 of TADA. It is marked as Ext.P-109.

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

It is not necessary to extract the further portion in the confessional statements as they contain his admissions regarding the activities which he carried on for helping Sivarasan and others to escape from police nabbing. We have no doubt that A-24 had harboured the offenders and helped them to escape from the police net.

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

PW-65 (Mridula) is the wife of A-26 (Ranganath). She said in her evidence that on 2.8.1991 her husband brought A-24 and some other persons who are accused in the Rajiv Gandhi murder case. Suba was also among such persons. On the next day, a green Maruti Gypsy van reached their house. When she viewed the television programme she knew that Sivarasan and Suba were wanted by the police in connection with the aforesaid case. PW-230 (Selvaraj) was the person who drove the Tanker Lorry. PW-22 (Sathyamoorthy) said that on 8.8.1991 A-24 brought a Maruti Gypsy for painting. The witness painted it with white colour.

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

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

A-25 VIGNESWARAN @ VICKY

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

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

In the further portion of Ext.P-127 he has stated that 2 days after the murder of Rajiv Gandhi he was told by Trichy Santhan not to venture to stay in Trichy any more. Hence he decided to shift to Coimbatore and agreed to take over all the medicines for which Trichy Santhan had placed orders. He came to know of Sivarasan only after the newspapers published the photo of that person though he had seen him before.

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

The trial court, after referring to various items of evidence, concluded in paragraph 2373 of the Judgment that "A-25 was also instrumental in the transportation of Sivarasan, Suba and Nehru from Madras to Bangalore in M.O. 543 Tanker-Lorry driven by PW-230 Selvaraj". It is a conclusion which needs no interference.

But thereafter learned Special Judge proceeded to mention that A-25 identified the photo of the Tanker-Lorry and also the photos of Sivarasan, Suba and Nehru and even the photos of dead body of Suba, Suresh Master and Sivarasan. The trial court adverted to his association with Trichy Santhan. After making reference to such facts learned Special Judge made a long leap to reach the next conclusion like this: "All the above evidence and circumstances would go to establish the active part played by A-25 in consonance with the directions of Trichy Santhan in furtherance of the object of the conspiracy."

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

A-26 RANGANATH

The trial court at the close of the discussion of evidence against A-26 has entered the following finding in paragraph 2419 of the Judgment:

"From the foregoing discussion and analysis of evidence proved by the prosecution it has to be concluded that A-26 harboured Sivarasan and Suba, who were proclaimed offenders and the other accused A-24 Rangan, Nehru, Suresh Master, Driver Anna and Amman in his house at Puttanahalli

and subsequently at Konanakunte voluntarily and willingly without any fear to his life."

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

We have no difficulty to concur with the finding of the trial court that A-26 (Vicky) is guilty of offences under Sections 212 & 216 of the Indian Penal Code. In this context we may point out that PW-65 is the wife of A-26, and apart from her evidence the testimony of PW-218 (Anjanappa), PW-223 (Rajan) and PW-229 (Jayasankar) were read out to us. In the trial court a plea was made on behalf of A-26 that he is protected by Section 94 of the Indian Penal Code. We do not think it necessary to advert to that plea now in view of the concession made by the learned counsel for A-26 that the appeal as for A-26 is not pressed regarding the offences under Sections 212 & 216 of the IPC because the accused concerned had already undergone the sentence of imprisonment awarded by the trial court as for those two counts.

But at the same time we have to point out that there is absolutely no evidence whatsoever for connecting A-26 with the conspiracy to assassinate Rajiv Gandhi. In fact, the prosecution did not even bother to establish that A-26 had no knowledge that anybody would be plotting to murder Rajiv Gandhi.

It is very unfortunate that the trial court has convicted A-26 also of the offence under Section 120-B read with Section 302 IPC and sentenced him to be hanged.

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

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

We confirm the conviction passed by the trial court for the offences under Secs.212 & 216 of the IPC, Sec.14 of the Foreigners Act, 1946, Sec.25(1-B) of the Arms Act, Sec.5 of the Explosive Substance Act, Sec.12 of the Passports Act, and Sec.6(1-A) of the Wireless and Telegraph Act, 1933, in respect of those accused who were found guilty of those offences. However, as the sentence awarded by the trial court in respect of those offences did not exceed imprisonment for a period of two years we are not disposed to disturb the sentence passed by the trial court on those counts. It is for the jail authorities to consider the

question of releasing those accused who have already undergone the period of rigorous imprisonment for two years, and against whom there is no conviction confirmed under any other counts of offence, as they are entitled to be set at liberty forthwith.

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

SENTENCE REGARDING OFFENCE UNDER SECTION 302 READ WITH SECTION 120-B OF IPC :

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

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

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

Both sides cited a number of decisions of this Court in support of their respective pleas - one for retention of the sentence and the other for choosing the next alternative. Decisions which held the field before the introduction of the Code of criminal Procedure, 1973 do not afford any help because the Criminal Procedure then obliged the court to pass death sentence for murder as a general proposition and the alternative sentence could be awarded only in exceptional cases for which the court was then required to advance special reasons. After 1973, there was a complete reversal to the approach. Thereafter, life imprisonment was made the normal sentence for murder and death penalty was allowed to be passed only in exceptional cases. The criminal courts were required to state special reasons for choosing the latter. But the decisions rendered during the aforesaid second stage were divided into two categories with the pronouncement of the decision of this Court in *Bachan Singh vs. State of Punjab*" (1980 2 SCC 684).

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

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

As the law which has been pronounced in such unreserved language on the subject, holds the field ever thereafter we are required to remind ourselves of the legal position adumbrated by the Constitution Bench in Bachan Singh's case (supra). The following is the ratio which emerged after making a detailed analysis of various view points on the sustainability of the provision empowering the court to pass death sentence:

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

(para 209)

The Constitution Bench, however, did not agree with the approach adopted by a three-Judge Bench of this Court in Rajendra Prasad vs. State of U.P. (1979 3 SCC 646) that focus of special reasons has shifted from the crime to the criminal. On that part, the majority view in Bachan Singh is the following:

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

(para 201)

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

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

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

The age of the accused - if the accused is young or old the sentence of death should be avoided.

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

That the accused acted under duress or domination of another person.

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

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

First, those who formed the hardcore nucleus which took the decision to assassinate Rajiv Gandhi.

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

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

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

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

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

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

A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any dominating role. She was persistently brain-washed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Thanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women

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

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

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

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

We order so.

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

.....J

(K.T. THOMAS)

New Delhi
May 11, 1999