



2025:AHC:198106-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2063 of 2013

Mohd. Ilyas

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Anand Kumar Mishra, Arbaz Danish, Rajiv Kumar Mishra, Zia Naz Zaidi.
Counsel for Respondent(s)	: Government Advocate.

Reserved on 27.08.2025
Pronounced on 10.11.2025

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

(Per:- Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard Sri Irshad Mohammad, learned counsel for the appellant, Sri Shushil Kumar Pandey, learned A.G.A. for the State respondents and perused the record.

2. Instant criminal appeal has been preferred by the appellant Mohammad Ilyas against the judgment and order dated 15.04.2013 passed in S.T. 1663 of 2000 (Mohammad Ilyas Vs. State) connected with S.T. No.457 of 2006, arising out of Case Crime No.177 of 1996, under Sections 302, 307, 427, 109, 120-B, 121-A, 124A, 114 IPC and Section 4/5 of Explosive Substances Act, and Section 12 of Foreigners Act, P.S. Modi Nagar, District Ghaziabad.

3. By the impugned judgment and order, learned trial court has acquitted co-accused Tasleem from all charges, and convicted the appellant Mohammad Ilyas and co-accused Abdul Mateen alias Iqbal

alias Usuf alias Farukh alias Mussaiv and Mohd. Ilyas for charge under Sections 302/34, 307/34, 427/34, 120-B, 121-A, 124-A IPC and Section 4/5 of Explosive Substances Act. Learned trial court has sentenced the appellant and co-accused with imprisonment of life alongwith fine Rs.50,000/- for charge under Section 302/34 and 120-B IPC; and rigorous imprisonment for 10 years alongwith Rs.25,000/- fine for charge under Section 307/34, 120-B IPC; two years rigorous imprisonment alongwith Rs.10,000/- fine for charge under Sections 427/34 IPC; ten years rigorous imprisonment alongwith Rs.25,000/- fine for charge under Sections 121-A IPC; life imprisonment alongwith Rs.50,000/- fine for charge under Sections 124-A IPC; five years rigorous imprisonment alongwith Rs.10,000/- fine for charge under Sections 4/5 of Explosive Substance Act. All the sentences were directed to run concurrently and the period undergone in jail was directed to be set-off.

4. No State/ Government Appeal appears to be preferred against acquittal of Tasleem, in view of a query made in this regard, no information could be brought on record as to whether other co-convict and main accused Abdul Mateen@ Iqbal has filed any criminal /jail appeal against impugned judgment and order. Thus, instant appeal has been heard in respect of appellant Mohammad Ilyas.

5. The prosecution case in nutshell as culled out from FIR and other material appearing on record is that one Hari Niwas Singh son of Chottan, R/o village Nawal Surajpur, P.S. Kithore, District Meerut filed written report as Ext. Ka-1 at P.S. Modi Nagar, District Ghaziabad stating that on 27.04.1996, he was operating Roadways Bus Registration No. UP15A6693 of Roorkee Bus Depot from Delhi. The bus started from Delhi at 15:55 hours, taking 53½ passengers on board to Roorkee. On the way bus stopped at Mohan Nagar Check Post and 14 passengers also boarded in the bus therefrom. When the bus crossed Modi Nagar, Police Station, slightly prior to bus stand, an explosion occurred in the bus at 17:00 hours on the front side, which resulted in death of 10 passengers including driver of the bus on the spot. Many passengers

including the informant got injured, the condition of some of them were very serious. By the time the police arrived at the spot, a large crowd had already gathered and the people were taking the injured to hospital. The front portion of the bus was badly damaged, the incident appeared to be a result of a terrorist act.

6. On the basis of said written report, an FIR was drawn by Head Moharir 54 Satyaveer Singh on 27.04.1996 at 17:00 hours vide Case No. 177 of 1996 under Section 302/307 IPC and Section 3/4 of TADA Act and Section 4/5 of Explosive Substance Act, against unknown persons. The Station House Officer, P.P.S. Chauhan took investigation of the case and six more persons died during the course of treatment resulting in total number of dead persons in the diabolic and dastardly incident to sixteen and number of passengers who get injured but could be saved was 48. The bus in which explosion was caused was released by orders of court in favour of Junior Central Incharge District Roorkie (Haridwar) of UPSRTC. On application filed by Naresh Chandra Tyagi an Official of UPSRTC, (Roorkie) Haridwar vide order dated 24.05.1996 during investigation, this fact surfaced that in the said terrorist attack in the form of a bomb explosion, one Abdul Mateen @ Iqbal R/o Chakar Karaunchi Mohalla Mirpur, Mathailu, P.S. Mirpur District Chotvi Sindh Babu Pakistan was involved as a Master Mind who conspired with Mohammad Ilyas a resident of Ludhiana and one Tasleem, R/o Pahalki at P.S. Jansatganj, District Muzaffar Nagar.

7. This fact also also surfaced that accused Mohammad Ilyas was original resident of District Muzaffar Nagar, who was temporarily residing in Ludhiana. Accused Mohammad Ilyas was arrested in the intervening night of 08.06.1997 from house No.743/4 Street No. 4, Mohalla Janakpuri, P.S. Division No.6, Ludhiyana City (Punjab). His statement was recorded by investigating officer in the presence of his father and brother on 08.06.1997 in an audio cassette, in which he allegedly admitted that he, alongwith co-accused Abdul Mateen, planted bomb in Delhi in the bus in which explosion was caused, before its departure for Roorkie on the fateful day. The police also recovered a

diary and rail tickets on his personal search and he was brought to Modi Nagar Ghaziabad and sent to Delhi. He was granted police custody remand on application of investigating officer by CJM Ghaziabad on 10.06.1997, but nothing incriminating could be recovered from the custody of the appellant. Accused Mohammad Ilyas was released on bail by orders of this Court dated 08.05.1998. During investigation, this fact came into light that main accused Abdul Mateen @ Iqbal is a citizen of Pakistan and was held in jail custody at Jaipur in Central Jail, Gandhi Nagar, Jainpur (Rajasthan) in a case under Foreigners Act, as he entered India without proper immigration papers. He was summoned by Chief Judicial Magistrate, Ghaziabad on 'B' warrant. In the present case accused Tasleem, son of Washeer, was also remanded to custody in the present case by Magistrate. He was arrested on 09.01.1997. This fact also surfaced that one Saleem Kari, who is brother of Tasleem, is a teacher of Arabi language in Koopwara, Mirpur (State of Jammu and Kashmir) where he imparts theological education to children and incites communal sentiments. Tasleem and Mohammad Ilyas both were influenced by him. Saleem had asked Mohammad Ilyas to bring RDX from doctor Abdul Hamid, R/o Firozabad. No recovery of explosive substance could be effected on arrest of the accused Mohammad Ilyas. After much efforts of CJM, Ghaziabad and investigating agency, the accused Abdul Mateen could be brought before Ghaziabad court from Jaipur Jail and was subsequently sent to jail in present case. The explosive substance recovered from bus and place of incident were sent for basaltic examination to State Forensic Science Laboratory Agra. A team of FSL also inspected the bus which was parked in market after incident on 27.04.1996, which observed that explosive substance was kept in the front part of the bus in left side, beneath the seat of the driver. It also appeared that explosive was kept in the left side of bonnet of charge engine, which is also apparent from effect of explosive on body of the driver whose left side of face, chest and left side of abdomen was badly affected. In report of FSL dated 30.04.1996, it is concluded that in the bus registration No. UP15A6693, mixture of RDX and carbon was

kept, which resulted in explosion. It was kept in the front portion of the bus, above bonnet or its left side. The recovery of copper wire (Ext. 7) fortifies this proposition that explosion was caused by remote switch, but no cell or any other wire could be recovered.

8. During investigation this fact also surfaced that the Pakistani national Mateen @ Iqbal had entered India to cause terrorist activities by use of explosive substances and he successfully carried out his plan on the fateful day by hatching conspiracy with accused Mohammad Ilyas and Tasleem, which resulted in large scale loss of life of passengers and many more got seriously injured. Abdul Mateen was convicted for charge under Section 14 of Foreigners Act by court in Jaipur (Rajasthan) on 22.04.2000 in S.T. No.8 of 1998 vide judgment dated 22.04.2000 for making entry in India in unauthorized manner without migration papers. All of three accused were in constant touch with each other prior to the incident to carry out the nefarious design of Abdul Mateen. Mohammad Ilyas used to visit Jammu and Kashmir to meet Abdul Saleem Kari, the brother of Tasleem, who was also connected with Kashmiri and Pakistani terrorists. Abdul Saleem Kari was also connected with the main accused Abdul Mateen @ Iqbal. Abdul Mateen stayed in Anantnag, Kashmir. He was District Commander of Terrorist outfit, Harkat-ul-Ansar. Mohammad Ilyas was running a furniture shop at Ludhiyana at that time. The investigating officer, after collecting evidence, filed a chargesheet against Abdul Mateen @ Iqbal under Sections 302, 307, 427, 109, 120-B, 121-A, 124A, 114, 34 IPC and Section 4/5 of Explosive Substances Act, and Section 14 of Foreigners Act and Section 3/4 Prevention of Damage to Public Property Act, by charge-sheet No.55-A dated 29.06.1999. When he was held in jail custody in Jaipur, another charge-sheet was filed against Mohammad Ilyas and Tasleem under same sections bearing charge-sheet No.55/97 on 05.09.1997. The investigating officer obtained permission of District Magistrate, Ghaziabad on 05.11.1997 for prosecution of all the three accused persons for charge under Section 4/5 of Explosive Substances Act, which is Ext. Ka-96 on record.

9. Learned Additional Session Judge, Court No.5, Ghaziabad framed charges against accused Tasleem under Section 4/5 of Explosive Substances Act as well as under Sections 302/34, 307/34, 109, 427/34, 120-B, 121-A, 124-A and 114 IPC on 05.06.2006 in two parts.
10. On commencement of trial, District Magistrate, Ghaziabad, Sri B.S. Bhullar granted sanction to prosecute all the three accused persons Mohammad Ilyas, Mohammad Tasleem, Abdul Mateen alias Iqbal under Sections 4/5 of Explosive Substantive Act on 05.11.1997. On being satisfied after perusal of case diary, other records, report of Joint Director FSL, Agra dated 30.04.1996 and report of SPO, Ghaziabad dated 03.11.1997, the Investigating Officer filed chargesheet against accused Abdul Mateen alias Iqbal alias Usuf after concluding investigation under Sections 302, 307, 427, 109, 120-B, 121-A, 124A, 114, 34 IPC, Section 14 of Foreigners Act, Section 4/5 of Explosive Substances Act and Section 3/4 Prevention of Damage to Public Property Act, on which Learned Magistrate took cognizance on 03.07.1998. The Investigating Officer filed charge-sheet against accused Mohd. Ilyas and Tasleem under Sections 302, 307, 124-A, 114, 109, 34, 120-B IPC, Section 14 of Foreigners Act, Section 4/5 of Explosive Substances Act and Section 3/4 Prevention of Damage to Public Property Act vide charge-sheet No.55/1997 on 05.09.1997. At the time of filing of chargesheet, Abdul Mateen alias Iqbal was held in jail custody in Jaipur and accused Tesleem was held in jail custody in Tihar Jail, Delhi. The learned Magistrate committed the case of accused Abdul Mateen and Mohd. Ilyas to court of session, as offences are triable by court of session and the sessions case was registered as S.T. No. 1663 of 2000. The case of accused Tasleem was subsequently committed and he was tried in S.T. No.457 /2006. The accused Abdul Mateen alias Iqbal and Mohammad Ilyas were charged on 07.10.2006 under Sections 302, 307, 427, 109, 120-B, 121-A, 124A, 114 IPC and Section 4/5 of Explosive Substances Act.
11. Accused Mohd. Ilyas was charged *inter alia* under Section 14 of Foreigners Act,. Accused Tasleem was charged by trial court in S.T.

No.457/2006, under Sections 302, 307, 427, 109, 120-B, 121-A, 124A, 114 IPC and Section 4/5 of Explosive Substances Act. Accused persons denied the charge and claimed to be tried. At the stage of prosecution evidence, PW-1 Smt. Kamlesh a traveller in the fateful bus on the date of incident dated 27.04.1996, PW-2 Bhopal Singh, a traveller in said bus, PW-3 Hari Niwas Singh, the conductor of the bus on the date of said incident, PW-4 Virendra Singh a traveller in the said bus and also injured PW-5 Deepak Jyoti Ghildiyal, Additional Superintendent of Police and Investigating Officer of the case, PW-6 Subarati, the witness of fact to whom accused Mohd. Ilyas allegedly confessed the guilt of Abdul Mateen and himself, PW-7 Alok Ratudi, a passenger in the said bus and also an injured PW-8 Head Constable Satveer Singh, the author of chick FIR of present case vide Case Crime No.177 of 1996 under Sections 302, 307,3/4 of TADA Act, on 27.04.1996 at P.S. Modi Nagar, District Ghaziabad and author of GD of P.S. concerned regarding registration of case on 27.04.1996. PW-9 Ahsan to whom the accused Mohd. Ilyas allegedly confessed involvement of Abdul Mateen and himself in the said offence, were examined.

12. PW-10 Raees is the witness of fact in whose shop accused persons allegedly used to sit prior to the incident. PW-11 Sri Sunil Kumar Saxena, Sector Officer (CBCID), is main Investigating Officer of the case, who arrested accused Mohd. Ilyas from his residence at Ludhiyana and recorded his confessional statement and prepared an audio casettee of his statement. PW-12 V.P.S. Chauhan, is then SHO, P.S. Modi Nagar, District Ghaziabad in whose presence the FIR in the present case was lodged at Police Station on 27.04.1996.

13. PW-13, Surendra Rai Singh, collected the belongings of the deceased and injured persons found in the bus on the spot of the incident and prepared its inventory. PW-14 S.P. Pratap Singh, who was posted as Circle Officer on 12.06.1997 and assisted the Investigating Officer; Sunil Kumar Saxena. PW-15 Ranvijay Singh Vishnoi, who was interested as petitioner of the case on 30.04.1996. PW-16 Neeraj, Dr. Shri Ram conducted postmortem examination of one unknown boy aged

around seven years, deceased Guddi wife of Rama Tiwari, Maga Ram S/o Om Prakash, Phool Singh S/o Hriday Singh. who conducted postmortem examination of one unknown, deceased boy, Guddi wife of Rama Tiwari, Ganga Ram son of Om Prakash. According to the witness, the timing of death of these persons might be around 5 p.m. on 27.04.1996.

14. PW-16 Dr. Shri Ram also proved postmortem examination of an unknown dead body of a male, aged about 40 years. According to the doctor, two metallic pieces were found from inside of dead body due to which it is probable that the injuries were caused by blast. Prosecution also examined PW-17 Dr. Omkar Singh Tomar who conducted postmortem examination on dead body Premwati wife of Babu Ram, Mahendra Singh Chauhan son of Hari Singh Chauhan and one dead body of unknown Muslim Male aged about 35 years and one dead body of a male aged about 30 years and also dead body of Muslim aged about 37 years, dead body of Eash Mohan Kala and dead body of a Hindu Male about 30 years on 28.04.1996.

15. PW-17 also proved postmortem report of deceased Kanhaiya Lal; PW-18 S.I. Raees Pal Singh conducted inquest proceedings on dead body of unknown male and females; PW-19 S.I. Alok Prabhakar Awasthi who carried out inquest proceedings on dead body of Vijay son of Jagdish and another unknown person aged about 45 years on 28.04.1996; PW-20 Duli Chand is an eye witness of the incident; PW-21 Manoj Kumar Kansal is General Store shopkeeper near the place of incident; PW-22 Subhash Chand is served as conductor of fateful bus on the date of incident from Roorkee to Meerut; PW-23 Gulshan is also an eye witness of the incident. PW-24 Javed Ali is a passenger in fateful bus boarded the bus on interstate bus stand Delhi to travel to Roorkee; PW-25 Sita Devi is passenger an injured; PW-26 Mahendra Pal Singh was Section Officer, CBCID, Bareilly who took over investigation of the case on 12.06.1996; PW-27 Inspector Umesh Chandra Joshi conducted inquest on dead body of Mahendra Singh Chauhan; PW-28 Inspector Vijay Pal, conducted inquest on dead body on 27.04.1996 as well as

dead body of Eash Mohan Kala on 27.04.1996; PW-29 SI Prem Pal Singh carried on inquest on dead body of unknown person aged about 30 years, as well as Smt. Guddi daughter of Rama on 27.04.1996; PW-30 Barkat Ali is the witness of fact; PW-31 Kareem Uddin is also witness of fact; PW-32 Vijendra is one of the bus passengers and injured in the case; PW-33 SI Ram Asrey Yadav is the Deputy S.P. in CBCID, Section Office Meerut obtained 'B' warrant for production of accused Mateen from the Court of ACJM-II, Jaipur.

16. PW-34 Sub Inspector Janarrdhan Arora who was team leader with Section Officer CBCID, in investigation of present case, has proved sanction order of prosecution of the accused persons for charge under Sections 4/5 of Explosive Substance Act, issued by District Magistrate, as Ext. Ka-96.

17. As the case of co-accused Tasleem was committed subsequent to case of accused Abdul Mateen and Mohd. Ilyas on his production from jail, his case was committed to court of Session in the year 2006 and he was tried in S.T. No.457 of 2006. Subsequently, S.T. No. 457/2006 was merged in ST No. 1663 of 2000 relating to co-accused Mohd. Ilyas and Abdul Mateen vide order dated 05.11.2007.

18. The post-mortem reports of as many as ten deceased persons are placed on record, which have been proved by the respective doctors who conducted post-mortems on the dead bodies and got them exhibited. This is an undisputed fact that the sixteen persons lost their lives in the gruesome terrorist attack due to a blast by explosive substance in the fateful bus and around forty-eight persons got injured. In the post-mortem report of the deceased persons, pieces of metal were found, and the cause of death was shock and haemorrhage due to excessive bleeding. In the opinion of the doctors, the death of the deceased persons was possible by some firearm or bomb blast. However, the witnesses of the inquest proceedings opined that the deceased persons died as a result of a bomb blast in the bus at Modinagar District, Ghaziabad? The descriptions of witnesses produced by the prosecution during trial are as follows:

(i) P.W.-1 Smt. Kamlesh, P.W.-2 Gopal Singh, P.W.-4 Virendra Singh, P.W.-7 Alok Singh, P.W.-24 Javed Ali, P.W.-25 Sitaram, P.W.-32, Vijendra, P.W.-22 Subhash Chand, all injured passengers who were travelling in the bus at the time of the incident.

(ii) P.W.-3 Hari Niwas Singh, the first informant, who proved the written reported dated 27/04/1996 as Ex. Ka-1, on the basis of which the first information report Ex.Ka-2 was lodged at police station.

(iii) P.W.-6, Subrati, P.W.-9, Ahsan, P.W.-10 Raees, P.W.-20 Duli Chand, P.W.-21 Manoj Kumar Kansal, P.W.-23 Gulram, P.W.-30 Barkat Ali and P.W.-31 Kareemuddin – all the witnesses of locality who saw the incident of blast in the bus, which resulting a heavy casualty of human life and an injury.

(iv) Witnesses of the inquest: - P.W.-19, Sub-Inspector Alok Prabhakar Awasthi, P.W.-27 Inspector Mahesh Chand Joshi, P.W.-28, Inspector Vijay Pal, P.W.-29, Sub Inspector Prempal Singh, P.W.-18, Inspector Raees Pal Singh.

(v) Medical witnesses who authored the post-mortem reports of the deceased:- P.W.-16, Dr. Sri Ram, P.W.-17, Dr. Onkar Singh Tomar.

(vi) Investigating Officers: P.W.-5 Deepak Jyoti Ghildiyal, P.W.-8 Head Constable Police-54, Satveer Singh, P.W.-11 Suneel Kumar Saxena, P.W.-12, Inspector V.P.S. Chauhan, P.W.-13 S.N. Singh, P.W.-14 Pratap Singh, P.W.-15 Ranveer Singh Vishnoi, P.W.-26 Mahendra Pal Singh, P.W.-33 Ram Singh Yadav and P.W.-34 Zanardan Arora.

19. Apart from that, during the earlier trial of the accused Tasleem in ST No.457 of 2006, which was later on merged with ST No. 1663 of 2006. The following witnesses have been examined:

P.W.-1 Hari Niwas Singh, First Informant;

P.W.-2 Alok, Injured, bus traveller;

P.W.-3 Subrati;

P.W.-4 Bhopal Singh;

P.W.-5 Ahsan;

P.W.-7 Yamin;

P.W.-8 Yasin

P.W.-6 Sub Inspector, S.N. Singh.

20. Documentary Evidence in ST No.1663 of 2000: The following documents were proved and exhibited by the prosecution and accepted as exhibits:

Ex. Ka-1 written report, Ex. Ka-2: Chik FIR, Ex. Ka-3 Arrest memo, Ex. Ka-4 to Ex. Ka-11 Site plan, Ex. Ka-12 Inventory of planeearth, Ex. Ka-13 Inventory of pieces of tin, Ex. Ka-14 Inventory of copper and coil, which were taken in possession, Ex. Ka-15 Taking of possession of articles, Ex. Ka-16 to Ka.-25, Ex. Ka-26 Inquest, Ex. Ka-27 Inventory of search of accused, Ex. Ka-28: Sample seal, Ex. Ka-29 Inventory of sample seal PS Kabirnagar, Ex. Ka-30 Picture of dead body (photo lash), Ex. Ka-31 Letter RI, Ex. Ka-32 Copy GD, Ex. Ka-33 Report police station, Ex. Ka-34, Report police station, Ex. Ka-35 Inquest, Ex. Ka-36 Post mortem report, Ex. Ka-37 Inquest, Ex. Ka-38: Post mortem report, Ex. Ka-39 Post mortem report, Ex. Ka-40 Post mortem report, Ex. Ka-41 Inquest, unknown dead

body, Ex. Ka-42 Report PS Sihanigate, Ex. Ka-43 Photo lash, Ex. Ka-44: Report PS Sihanigate, Ex. Ka-45 Police form, Ex. Ka-46 Sample seal, Ex. Ka-47 Inquest of unknown dead body, Ex. Ka-48 Report PS Kotwali, Ex. Ka-49 Sample seal, Ex. Ka-50 Photo lash, Ex. Ka-51 Letter police, Ex. Ka-52 Inquest of unknown dead body, Ex. Ka-53 Sample seal, Ex. Ka-54 Photo lash, Ex. Ka-55 Letter RI, Ex. Ka-56 Inquest, Ex. Ka-57 Report police station Kotwali, Ex. Ka-58 Police form, Ex. Ka-59 Photo lash, Ex. Ka-60 Sample seal, Ex. Ka-61 Inquest, Ex. Ka-62 Letter RI, Ex. Ka-63 Photo lash, Ex. Ka-64 Sample seal, Ex. Ka-65 Inquest, Ex. Ka-66 Report Police Station Saibaba, Ex. Ka-67: Police form, Ex. Ka-68, Photo lash, Ex. Ka-69 Sample seal, Ex. Ka-70 Inquest report of Kanhaiya Lal, Ex. Ka-71 Photo lash Kanhaiya Lal, Ex. Ka-72 Sample seal, Ex. Ka-73 Police form, Ex. Ka-74 Report PS Kotwali, Ex. Ka-75 deceased Samar Abbas, Ex. Ka-76 Police form, Ex. Ka-77 Photo lash, Ex. Ka-78, Sample seal, Ex. Ka-79 Inquest of unknown dead body, Ex. Ka-80 Letter RI, Ex. Ka-81 Sample seal, Ex. Ka-82 Copy inquest of an unknown body, Ex. Ka-83 Letter RI, Ex. Ka-84 Photo lash, Ex. Ka-85 Report PS Saibaba, Ex. Ka-86 Inquest Parvati Devi, Ex. Ka-87 Letter RI, Ex. Ka-88 letter RI, Ex. Ka-89 Photo lash, Ex. Ka-90 Sample seal, Ex. Ka-91 Post mortem report, Ex. Ka-92 Post mortem report, Ex. Ka-93 Copy inquest report of Mangeram, Ex. Ka-94 Inquest unknown body, Ex. Ka-95 Post mortem report of Rajkumar, Ex. Ka-96 Sanction of prosecution by the District Magistrate for prosecution of accused persons under Section 4/5 of the Explosive Substances Act.

21. The accused/appellant stated in his statement under Section 313 Cr.P.C. that he is acquainted with P.W.-5 (Ahsan) but his statement is wrong. He has been falsely implicated in this case. He is an innocent and

is not connected in any manner with the incident. P.W.-11 Additional Superintendent of Police (Suneel Kumar Saxena) has given wrong evidence against him.

22. The accused persons had not examined any witness in support of the defence version. Their defense is of denial.

23. Learned counsel for the appellant submits that he was in no way connected with accused Tasleem or Abdul Matin, a Pakistani national, he has been falsely implicated in the case only due to suspicion. He was framed in the case by police. There is no legal evidence to connect him with the offence in question. None of the witnesses of fact have supported the prosecution version against the appellant. There is no evidence at all in support of the allegation that the appellant conspired with co-accused Tasleem and Abdul Matin and planted a bomb in the bus on the fateful day which resulted in a blast at the Modinagar bus stop, causing large scale casualties of human life and also loss of property. The diary allegedly recovered by the police from the possession of the appellant at the time of his arrest from Ludhiyana from his personal search in no manner connects him with the present offence. There is no incriminating entry in the said diary. The railway tickets of Jammu allegedly recovered from personal search of the appellant also does not connect in any manner the accused appellant with this dastardly a terrorist act. The appellant is a resident of the District Muzaffarnagar, in Uttar Pradesh, and he used to reside temporarily in Ludhiana, as he was engaged there in furniture business. None of the witnesses have tendered any evidence against him which could establish his complicity in the offense. The only evidence relied upon by the trial court against the appellant is alleged confessional statement of the appellant recorded by police in presence of the Additional SP, Ghaziabad, which is stated to be preserved in an audio cassette and was recorded in presence of his father and brother. The said statement is not admissible in evidence in view of the legal impediment created under Section 25 of the Indian Evidence Act, which provides that a confessional statement before police cannot be proved against the accused. This is an absolute bar and may not be

diluted, even if it is recorded in presence of family members or preserved in some electronic device like CD/ cassette, pen drive etc. The said statement is a result of inducement and threat and not voluntary statement of the appellant. Therefore, the learned trial court has committed a great legal error while placing reliance on audio cassette of alleged recorded confessional statement of the appellant in presence of police. If this evidence is excluded, there is absolutely no evidence against the appellant in support the charge. The witnesses of the extrajudicial confession of the appellant and co-accused regarding their involvement in the offense have turned hostile during the trial and not supported the prosecution's case.

24. The evidence of any witness of fact recorded during separate trial of a co-accused, Tasleem, who was later acquitted by the trial court, can not be read against the appellant as the evidences were recorded in absence of the appellant, and only that evidence is admissible for the purpose of the merits of the case of prosecution in connection with the appellant which was recorded during the trial of the appellant or after merger of the trial of the co-accused Tasleem with the present trial, which initially commenced in respect of the appellant and co-accused Abdul Mateen only.

25. This is an important aspect of the case that the only evidence on which reliance has been placed by the learned trial court for recording conviction of the appellant for alleged offense and charges is confessional statement of the appellant recorded by police in presence of P.W.-11, Additional SP, CBCID, Ghaziabad who arrested the appellant from his temporary residence at Ludhiana. During the investigation of the present case, allegedly recorded a confessional statement in presence of father and brother in which he admitted that he conspired to plant a bomb in the bus with co-accused Tasleem and Mohd. Abdul Matin, as he was indoctrinated by Salim Kari, a resident of Kupwara, state of Jammu and Kashmir and later, he came in contact with Mohd. Abdul Matin a Pakistani national who entered Indian territory without valid

immigration documents. Coaccused Tasleem was later acquitted by the trial court.

26. He also contended that the appellant confessed in his statement under Section 161 CrPC, recorded by the police, that he and Abdul Mateen had planted an explosive substances near the bonnet of the bus to create terror and a huge loss of life of passengers who were travelling in the bus. The police officials in whose presence the statement was recorded, tried to prove the confessional statement recorded in a audio cassette before the trial court, which formed basis of conviction of the appellant and co-accused Abdul Mateen ignoring the mandate of law provided under Section 25 of Evidence Act that confession of an accused before the police cannot be proved against the maker. This case is based on circumstantial evidence but important links of chain of circumstances are missing in this case. The FIR has been lodged against unknown perons and name of the appellant and co-accused surfaced during investigation.

27. The Supreme Court in **Aghnoo Nagesia versus State of Bihar** reported in **AIR 1966 SC 119** elaborated and discussed the provisions of Sections 24, 25, 26 and 27 of the Indian Evidence Act, 1872 to showcase the ambit and scope of confession of accused before police vis-à-vis the legal bar which operates inadmissibility of such confession before police by a person who is an accused of an offence. Hon'ble Court observed as under:

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in sections 24 to 30 of the Evidence Act and sections 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in sections 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It

covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by Section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by sections 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence Order investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of section 27 of the Evidence Act. The words of section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by section 27 of the Evidence Act, a confession by an accused to a police officer- is absolutely protected under section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by section 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

*10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under section 157 of the Evidence Act or to contradict him under section 145 of the Act, if the informant is called a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under section 21 of the Evidence Act and is relevant, see *Faddi v. State of Madhya Pradesh* explaining *Nisar Ali v. State of**

U.P.(2) and Dal Singh v. King Emperor.. But a confessional first information report to a police officer cannot be used against the accused in view of Section 25 of the Evidence Act.

11. The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Article 22 of Stephen's Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in Pakala Narayanaswami v. The King Emperor. Lord Atkin observed :-

"...no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

These observations received the approval of this Court in Palvinder Kaur v. The State of Punjab. In State of U.P. v. Deoman Upadhyaya, Shah, J. referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See Hanumant v. State of U.P. and Palvinder Kaur v. The State of Punjab. The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non- confessional statement. Each

part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as section 24, section 25 and section 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as section 27 of the Evidence Act. Little substance and content would be left in sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

15. Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under section 304-A of the Indian Penal Code and a statement made by him to a police officer that "I was drunk; I was driving a car at a speed of 80 miles per hour; I could see A on the road at a distance of 80 yards; I did not blow the horn; I made no attempt to stop the car; the car knocked down A." No single sentence in this statement amounts to a confession, but the statement read as a whole amounts to a confession of an offence under section 304-A of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a non- confessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him." In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the India Penal Code. Unless he brings his case within one of the recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defenses. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or pro- mise as contemplated by section 24 of the Evidence Act, the whole of the confession is excluded by section 24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by section 24. To hold that the proof of the admission of other incriminating facts is not barred by section 24 is to rob the section of its practical utility-and content. It may be suggested that

the bar of Section 24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to- this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of s. 24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, sections. 25 and 26 bar not only proof of admissions of an offence by an accused to a police officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the offence.

17. A little reflection will show that the expression "confession" in Sections 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Sections 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of Sections 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, s. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.

28. Hon'ble Supreme Court in a recent judgement in Criminal Appeal Nos. 64-65 of 2022 (Ramanand @ Nandlal Bharti versus State of Uttar Pradesh) dated, 13.10.2022 has observed as under:

"80. Confessions may be divided into two classes, i.e. judicial and extra judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the CrPC or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra judicial confessions,

two questions arise: (i) were they made voluntarily? And (ii) are they true? As the Section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Evidence Act. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors at the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion, the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See *R. V. Warwickshall*: (1783) *Lesch* 263]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So, where the statement is made as a result of the harassment and

continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words 'appear to him' in the last part of the section refer to the mentality of the accused. (See State of Rajasthan v. Raja Ram, (2003) 8 SCC 180)

81. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial

confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

*82. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. **If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.***

83. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments, in Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403, this Court held as under:

“15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10)

“10. An extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

X x x x

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extrajudicial confession, this Court in State of Rajasthan v. Raja Ram [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)

“19. An extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court further expressed the view that: (SCC p. 192, para 19)

“19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”

X x x x

15.6. *Accepting the admissibility of the extrajudicial confession, the Court in Sansar Chand v. State of Rajsathan [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29-30)*

“29. There is no absolute rule that an extrajudicial confession can never be the basis of a conviction, although ordinarily an extrajudicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore] [(1970) 2 SCC 105 : 1970 SCC (Cri) 320], Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219], Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari vs. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]]””

[Emphasis supplied]

84. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another, (1992) 3 SCC 204, this Court after referring to Piara Singh and Others v. State of Punjab, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

85. The sum and substance of the aforesaid is that an extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession.”

29. In another judgment in case of **Harish Kahar versus State reported in 2017 Supreme (All) 2141**, wherein a Division Bench of Allahabad High Court held that as per provision Section 25 of the Indian Evidence Act 1872, “no confession made to a police officer, shall be proved as against a person accused of any offense”. Therefore, confessional statement of accused before the police is not admissible as evidence against the accused. It is very unfortunate and strange that

without any evidence, only on the basis of the confessional statement of co-accused, before police, which is not admissible as evidence against the accused, the appellant had been arrested by the police, remanded by the Magistrate under section 167 Cr.P.C. and police report under Section 173 Cr.P.C. has also been submitted before the Magistrate. The Magistrate has taken cognizance and committed the case to the Court of Sessions. The learned Sessions Judge has framed charges against him, and ultimately, he has been convicted under Section 412 IPC and sentenced to 7 years' rigorous imprisonment. It is also unfortunate that the appellant has completed his sentence for an offence in which there was no evidence against him.

30. On the contrary, learned AGA placed reliance on the judgment passed in the case of **State (CBI) v. Mohd. Salim Zargar, 2025 SCC OnLine SC 591** in which Hon'ble Apex Court held that sum and substance of Section 15 of the TADA Act is that a confessional statement made voluntarily by a person before a police officer not below the rank of SP shall be admissible in the trial of such person for an offence under the TADA Act. Para 14 of the judgment passed in Mohd. Salim Zargar (Supra) reads as under :-

“14. Rule 15 of the TADA Rules lays down the procedure regarding recording of confession made to police officers. Rule 15 reads thus:

15. Recording of confession made to police officers.—

(1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession.

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

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

(b) by the police officer who shall certify under his own hand that such confession was taken in his presence and recorded by him and

that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:

'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Sd/-

Police Officer'

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) insofar as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence.

14.1 *While sub-rule (1) mandates that the confession under Section 15 of the TADA Act should be recorded in the language in which the confession is made, but if that is not practical, then it should be recorded in the language used by such police officer for official purposes or in the language of the designated court. In any case, the confessional statement shall form part of the record.*

14.2 *As per sub-rule (2), the confession so recorded shall be shown, read or played back to the person concerned. If he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands. At that stage, the person making the confession shall be at liberty to explain or add to his confession.*

14.3 *The requirement of sub-rule (3) is that the confession if it is in writing shall be signed by the person who makes the confession as well as by the police officer. Additionally, the police officer shall certify under his own hand that such confession was taken in his presence and recorded by him. He shall also certify that the record contains a full and true account of the confession made by the person. At the end of the confession, the police officer is required to make a memorandum, the substance of which is that the police officer had explained to the person concerned that he is not bound to make a confession but if he does so, the same may be used against him as evidence. The memorandum should contain a*

certificate of the police officer that he believes that the confession was made voluntarily in his presence and recorded by him; that it was read over to the person concerned who admitted the same to be correct containing a full and true account of the statement made by him.

14.4 Sub-rule (4) deals with a situation where the confession is recorded on any mechanical device. Since in the present case, the confessional statements were not recorded on any mechanical device, this provision may not have much relevance.

14.5 Sub-rule (5) mandates that every confession recorded under Section 15 of the TADA Act shall be sent forthwith to the jurisdictional Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, who shall forward the recorded confession so received to the designated court (special court) which may take cognizance of the offence.

14.6 Thus, Rule 15 deals with the procedural aspect regarding recording of confession made to police officers under Section 15.”

31. Learned AGA also places reliance on the judgment of Supreme Court in **Devender Pal Singh v. State (NCT of Delhi), (2002) 5 SCC 234** which is a case under Sections 3(2)(i) of TADA, Sections 120-B, 302, 307, 326, 324, 323, 436, 427 IPC, then famous case of assassination attempt of Mr. Maninderjeet Singh "Bitta", President Indian Youth Congress on 11.09.2001 near 5, Raisina Road, New Delhi in which nine persons were killed in the terrorist attack caused by bomb blast and twenty nine other persons sustained injuries. The plot was outcome of criminal conspiracy hatched by members of Kashmir Liberation Front (KLF), a terrorist organisation. The majority opinion was given by Justice Arijit Pasayat for himself and for Mr. B.N. Agarwal. Hon'ble Supreme Court held that it is to be noted that legislature has set different standards of admissibility of a confessional statement made by an accused under the TADA from those made in other criminal proceedings. A confessional statement recorded by a police officer not below the rank of Superintendent of Police under Section 15 of the TADA is admissible, while it is not so admissible unless made to the Magistrate under Section 25 of the Indian Evidence Act, 1872. It mandates that consideration of a confessional statement of an accused to a police officer except to the extent permitted under Section 27 of the Evidence Act is not permissible.

These aspects are noted by Supreme Court in *Sahib Singh v. State of Haryana* [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049] and *Gurdeep Singh case* [(2000) 1 SCC 498 : 2000 SCC (Cri) 449]. There is one common feature, both in Section 15 of TADA and Section 24 of the Evidence Act that the confession has to be voluntary. Section 24 of the Evidence Act interdicts a confession, if it appears to the court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. Section 15 of TADA also requires the confession to be voluntary. “Voluntary” means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but the truth. As per *Stroud's Judicial Dictionary*, 5th Edn., at p. 2633, threat means: “It is the essence of threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed (per Lush, J., *Wood v. Bowron* [(1866) 2 QB 21] , cited Intimidate).”

32. So, the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

33. Hon'ble Court while confirming conviction passed by the trial court dismissed the appeal filed by the accused-appellant and the death reference was accordingly answered. Hon'ble Supreme Court further observed as under :-

44. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal

conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

49. *The conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. (See E.K. Chandrasenan v. State of Kerala [(1995) 2 SCC 99 : 1995 SCC (Cri) 329 : AIR 1995 SC 1066] .)*

50. *In Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883] (AIR at p. 1954) this Court observed : (SCC pp. 732-33, para 275)*

“275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.”

Conspiracy can be proved by circumstances and other materials. (See State of Bihar v. Paramhans Yadav [1986 Pat LJR 688] .)

“[T]o establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborators would do, so long as it is known that the collaborator would put the goods or services to an unlawful use.” (See : State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : 1996 Cri LJ 2448] , Cri LJ at p. 2453, SCC at p. 668, para 24.)

52. *It is submitted that benefit of doubt should be given on account of the co-accused's acquittal.*

53. *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh [(1990) 1*

SCC 445 : 1990 SCC (Cri) 151 : AIR 1990 SC 209] .) Prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : AIR 1992 SC 840] .)

54. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn.) [(1978) 4 SCC 161 : 1978 SCC (Cri) 564 : AIR 1978 SC 1091] .] Vague hunches cannot take the place of judicial evaluation.

“A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. ... Both are public duties....” (Per Viscount Simon in Stirland v. Director of Public Prosecution [1944 AC 315 : (1944) 2 All ER 13 : 113 LJKB 394] quoted in State of U.P. v. Anil Singh [1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] , SCC p. 692, para 17.)

55. When considered in the aforesaid background, the plea that acquittal of the co-accused has rendered the prosecution version brittle, has no substance. Acquittal of the co-accused was on the ground of non-corroboration. That principle as indicated above has no application to the accused himself.”

34. However, Justice MB Shah, in his minority opinion after discussing the matter at length, held that when rest of the accused who are named in the confessional statement are not convicted or tried, this would not be a fit case for convicting the appellant solely on the basis of the so called confessional statement recorded by the police officer.

31. Learned AGA places reliance on judgment of Supreme Court passed in **Mohd. Khalid v. State of W.B., (2002) 7 SCC 334** which also a case of terrorist attack by bomb explosion in which 69 people died in a bomb blast. The case was accused-appellant was found guilty by Designated Court, Kolkata under Section 120-B, 302/34, 436/34 IPC, Sections 3/5 Explosive Substance Act and Sections 3 and 4 of TADA. The conviction was affirmed by Calcutta high Court.

35. The Supreme Court in above case dealt with anti-terrorist legislation and criminal conspiracies against nation. The key issues involved were the validity of the sanction, the prosecution of the TADA, the admissibility of confessional evidence and the standards for providing criminal conspiracy under Section 120-B IPC and Explosive

Substances Act. The case also established legal principles regarding confession made during an investigation. The issue was admissibility of confessional statement made by the accused, which was obtained under TADA. The Supreme Court addressed the circumstances under which the confessions were made to determine if they were voluntary and admissibility of these in Court. The Court addressed the issues noting that it can be established through direct or circumstantial evidence and that proof of a conspiracy is enough to convict under Section 120-B IPC without an over-tight proof if the crime is of serious nature as contemplated under TADA. The judgment reinforces that confession must be voluntary through admissibility and highlighted the safeguards necessary to protect the rights of the accused during interrogation.

36. In this case, the misuse of religion for propagating terrorism and hatred was considered. It's a leading case for understanding how courts evaluate evidence, particularly confessional statements in anti-terrorist cases, and how the charge of criminal conspiracy is proved under laws like TADA. The case involved a bomb blast under TADA and the admissibility of confessional statements. The Supreme Court held the statements valid, finding they were made voluntarily. The terrorist activity resulted in 69 deaths, many injuries, and damage to public property as a result of these acts. Hon'ble Court observed as under :-

“31. A confessional statement is not admissible unless it is made to the Magistrate under Section 25 of the Evidence Act. The requirement of Section 30 of the Evidence Act is that before it is made to operate against the co-accused the confession should be strictly established. In other words, what must be before the court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it being the confession of the maker, it is not to be treated as evidence within the meaning of Section 3 of the Evidence Act against the non-maker co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with the crime and that too as a corroborative piece. It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect (sic) him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of the co-accused cannot be considered under Section 30 of the Evidence Act, where he was not tried jointly with the

*accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of a co-accused does not come within the definition of evidence contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. The legislature provides that his statement may be considered against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence. This position has been clearly explained by this Court in *Kashmira Singh v. State of M.P.* [(1952) 1 SCC 275 : AIR 1952 SC 159 : 1952 Cri LJ 839] The exact scope of Section 30 was discussed by the Privy Council in the case of *Bhuboni Sahu v. R.* [AIR 1949 PC 257 : 50 Cri LJ 872 : 76 IA 147] The relevant extract from the said decision which has become locus classicus reads as follows : (AIR p. 260, para 9)*

Section 30 applies to confessions, and not to statements which do not admit the guilt of the confessing party. ... But a confession of a co-accused is obviously evidence of a very weak type. ... It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction.

32. *Kashmira Singh [(1952) 1 SCC 275 : AIR 1952 SC 159 : 1952 Cri LJ 839] principles were noted with approval by a Constitution Bench of this Court in *Haricharan Kurmi v. State of Bihar* [AIR 1964 SC 1184 : (1964) 6 SCR 623 : (1964) 2 Cri LJ 344] . It was noted that the basis on which Section 30 operates is that if a person makes a confession implicating himself, that may suggest that the maker of the confession is speaking the truth. Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly. So Section 30 provides that such a confession may be taken into consideration even against the co-accused who is being tried along with the maker of the confession. It is significant, however, that like other evidence which is produced before the court, it is not obligatory on the court to take the confession into account.*

*When evidence as defined by the Evidence Act is produced before the court, it is the duty of the court to consider that evidence. What weight should be attached to such evidence is a matter in the discretion of the court. But the court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the court in dealing with a confession because Section 30 merely enables the court to take the confession into account. Where, however, the court takes it into confidence, it cannot be faulted. The principle is that the court cannot start with confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidences, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on some other evidence. That is the true effect of the provision contained in Section 30. We may note that great stress was laid down on the so-called retraction of the makers of the confession. Apart from the fact that the same was made after about two years of the confession, PWs 81 and 82 have stated in court as to the procedures followed by them, while recording the confession. The evidence clearly establishes that the confessions were true and voluntary. That was not the result of any tutoring, compulsion or pressurization. As was observed by this Court in *Shankaria v. State of Rajasthan* [(1978) 3 SCC 435 : 1978 SCC (Cri) 439 : 1978 Cri LJ 1251] the court is to apply a double test for deciding the acceptability of a confession i.e. (i) whether the confession was perfectly voluntary, and (ii) if so, whether it is true and trustworthy. Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the court to have been caused by any inducement, threat or promise, such as mentioned in Section 24 of the Evidence Act, it must be excluded and rejected *brevi manu*. If the first test is satisfied, the court must before acting upon the confession reach the finding that what is stated therein is true and reliable. The Judicial Magistrate, PWs 81 and 82 have followed the requisite procedure. It is relevant to further note that complaint was lodged before the Magistrate before his recording of the confessional statement of accused Md. Gulzar. The complaint was just filed in court and it was not moved. The name of the lawyer filing the complaint could not be ascertained either. This fact has been noted by the Designated Court.*

33. *In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under Section 164 of the Code has to be given greater credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for the accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. In *State of Gujarat v. Mohd. Atik* [(1998) 4 SCC 351 : 1998 SCC (Cri) 936] it was held that the principle is no longer *res integra* that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words,*

the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

37. Learned AGA placing reliance on aforesaid judgments contended that the incident took place on 27.04.1996 when fire caused in the bus due to bomb blast resulted in death of 16 passengers and about 48 passengers got injuries. This incident was caused by a terrorist act in which high intensity explosives were planted in a bus which was bound to Roorkie from Delhi. The incident occurred at around 05 p.m. in the jurisdiction of Police Station - Modinagar, District - Ghaziabad. Appellant-Muhammad Ilyas has hatched conspiracy with Abdul Mateen, a Pakistani citizen and co-accused Muhammad Tasleem and in pursuance of this criminal conspiracy, the appellant and co-accused Abdul Mateen planted the bomb on fateful day in a bus when it was parked at ISBT Delhi and blast occurred near Modinagar. Prosecution examined as many as 34 witnesses in respect of its case. Some witnesses turned hostile and did not support the prosecution version. However, the incident has been proved by evidence of the conductor of the bus and the injured passengers who were travelling in the bus on fateful day. As the explosive was planted prior to the start of the bus from Delhi Bus Terminal, the witnesses, who were passengers in the bus, could not identify the persons who had planted the bomb and caused the bomb blast. It was indeed a time bomb. However, the passengers in the bus and onlookers at the point when the blast occurred, have supported the incident in their evidence. Witnesses produced in support of charge of criminal conspiracy and extrajudicial confession of the appellant and co-accused Abdul Mateen were won over by the accused persons and they had not testified against them.

38. He next submitted that the learned Trial Court has rightly placed reliance on the confessional statement which was recorded in an audio cassette as the confessional statement of the appellant which was recorded when he was arrested from his temporary residence from Ludhiana where he was working in some furniture manufacturing industry. At the time of arrest from his residence, his father and brother

were present and in their presence the Investigating Officer ASP Suneel Kumar Saxena recorded his confessional statement and by a tape recorder, who prepared an audio cassetted of the said recording and he proved this confessional statement by his evidence as PW 11 during trial. This confessional statement of the appellant was voluntary and without any inducement, threat or promise and such confessional statement recorded and preserved in an audio cassette before the senior police officer is admissible in evidence.

39. He next submitted that it is very difficult to procure direct evidence in such type of terrorist attacks and the learned Trial Court has rightly placed reliance on evidence of PW 11 - the Investigating Officer of the case who proved the confessional statement of the appellant by playing the audio cassette of his statement recorded by him after his arrest at Ludhiana from where he was brought by police to the jurisdictional court in Uttar Pradesh and was remanded to custody. The diary procured from appellant reveals name and addresses of Salim Kari a teacher based in Kupwara in State of Jammu and Kashmir who is brother of co-accused Tasleem and a member of society in the case. The railway tickets procured from his personal search also reveal that he had travelled to Kashmir where he came into contact with co-accused Abdul Mateen and he was on friendly terms with Tasleem who was acquitted in the trial. If the Appellant is acquitted he will join the active terrorist group once again which will be detrimental to the safety and security of the country, therefore, the appeal has no substance and deserves to be dismissed.

40. While re-appreciating the evidence of witnesses adduced during trial by prosecution in the present appeal, we find that PW3 -Harinivas Singh, informant of the case, proved the written report being in his handwriting and signature and during his examination it was marked as Ex.Ka.1. The witness stated that he was the conductor in the bus which has registration No. UP15 A 6693 which belongs to Roorkee Depot, he moved in the bus from Delhi at 15:55 hours taking fifty-three and half passengers. The bus was bound to Roorkee, 14 passengers also boarded

on the way near Mohan Nagar Check Post. When the bus crossed Modi Nagar Police Station, the blast occurred at 5 p.m, just prior to the bus stand towards the front side. Ten persons died on the spot including the driver of the bus and a large number of passengers got injured. The police reached on the spot just after the incident and a large crowd of the people assembled there, the injured were taken to hospital by the public. The front portion of the bus got badly damaged in the blast. He apprehends that this was the handiwork of terrorists. He had taken the bus on the fateful day from Meerut and reached Delhi around 03:20 p.m.. When he got the bus checked after unboarding the passengers, no unclaimed goods were detected. He went to the city after parking the bus and when he reached back he found that passengers were sitting in the bus. He was not aware who planted the bomb in the bus. The witness stated that he had not seen co-accused Abdul Mateen keeping a bomb in the bus.

41. PW1-Smt. Kamlesh, PW2-Bhopal Singh and PW4-Virendra Singh are bus passengers who testified the incident as eye witnesses but have not given any evidence against the appellant and co-accused.

42. PW5-Deepak Jyoti Ghildiyal is the second Investigating Officer of the case, who took over the investigation as second Sector Officer/Additional SP, CB-CID on 29.06.1998 from earlier Investigating Officer. He stated that after collecting sufficient evidence, he submitted the charge sheet no. 55A against accused Abdul Matin, Mohammad Ilyas which is marked as Ex.Ka.2. In cross-examination, witness stated that he submitted the charge sheet against Mohammad Ilyas on the basis of evidence collected by an earlier Investigating Officer.

43. PW6- Subrati is a resident of Village and Thana - Mirapur, District - Muzaffarnagar and acquaintance of the appellant who stated that Mohammad Ilyas works in a furniture factory in Punjab. In 1996 on the occasion of Eid, he had not met Mohammad Ilyas. Ilyas had not introduced Abdul Mateen with him. They did not confess before him that on 27.04.1996 they had planted a bomb in the bus in which blast occurred. The witness was declared hostile by prosecution as this

witness was produced by prosecution in support of his perpetuated statement under Section 161 CrPC before Investigating Officer that on the occasion of Eid the accused Ilyas who is localite of Mirapur, Muzaffarnagar met him and introduced co-accused Abdul Mateen and both had confessed the guilt of attack. In cross-examination, he disowned his statement under Section 161 CrPC and stated that he did not depose anything before ASP; how he has recorded such statement, he is not aware. His sister Shehnaaz is a tenant in the house of mother of Ilyas. He used to visit his sister but could not meet Ilyas. He sometimes met Ilyas on the way. He has no friendly relation with him. It is wrong to say that he was doing furniture work with Ilyas. The mother of Ilyas is Sharifan and his father's name is Sirajuddin. Ilyas lives in his Kasba - Mirapur District Muzaffarnagar whereas the witness lives in Parsapara. There is a distance of 0.5 km between the two, where a mosque is situated. It is wrong to say that he used to offer namāz in the mosque. He used to offer namāz of Eid at Eidgah not at mosque. It would be wrong to say that accused Ilyas introduced Abdul Mateen with him on the occasion of Eid at Eidgah. He belongs to the caste of Ilyas. It would be wrong to say that Ilyas and Abdul Mateen had confessed their guilt before him.

44. PW7- Alok Ratudi is also a passenger of the bus on fateful day who was travelling to Dehradun from Noida and boarded the bus at around 4:15 p.m. at Mohan Nagar stated that near Modi Nagar Police Station, the blast occurred in which he suffered injuries. Members of both Hindu and Muslim communities were travelling in the bus. He had not seen any person planting the bomb in the bus.

45. PW8-Head Constable Satveer Singh is author of chick FIR, Ex.Ka.2, on the basis of Ex.Ka.1, he had drawn chick FIR and registered vide CC No. 177/1996 vide GD entry No. 35 dated 27.04.1996 time, 17:05 hours. The witness produced the original GD and compared its extracts placed on record and found it correct which was exhibited as Ex.Ka.3.

46. PW9- Ahsan is also a resident of Mirapur, District Muzaffarnagar, the native place of the appellant. He stated that he was acquainted with Ilyas, his neighbour, and used to interact with his mother. He went to offer Eid and thereafter went to meet Ilyas, but Ilyas didn't discuss anything about the bus bomb blast incident with him. Accused Abdul Mateen who was present in court during his testimony, was not accompanied with Ilyas at that time. This witness also turned hostile. He was cross-examined by prosecution but didn't give any inculpatory evidence against appellant Ilyas and co-accused. He disowned his statement under Section 161 CrPC recorded by the Investigating Officer. He denied prosecution's suggestion that Ilyas introduced him to co-accused Abdul Mateen and Tasleem.

47. PW 10-Raees stated he works as a spray painter at a shop in Kasba Mirapur, but accused Ilyas, Abdul Maten and Tasleem wouldn't sit in his shop. A big mosque is situated in front of his shop, but he didn't see the three interacting with each other in the mosque. This witness also turned hostile, disowning his statement under Section 161 CrPC recorded by the Investigating Officer, and didn't testify against appellant and co-accused.

48. PW 11 - Sunil Kumar Saxena, earlier investigated the case when posted as Sector Officer, CB-CID on 29.05.1997, taking over from Dy. SP Ratan Singh. He stated sections of T.A.D.A. were deleted as the act was not operational then. He received secret information on 03.06.1997 that wanted accused Ilyas, son of Sirajuddin, from Kotla Kasba, Mirapur, Muzaffarnagar, and Tasleem Village Mehtaki, Jansath, Muzzafarnagar, involved in the blast, were in contact with Harkatam-ul-Ansar, a Jammu Kashmir terrorist outfit, and Salar, the outfit's Gujarat chief, who provided explosives. He led a team to Ludhiana on 04.06.1997, keeping the accused under surveillance. In the intervening night of 07/08.06.1997, Mohammad Ilyas was arrested from House No. 743/4, Gali No.4, Ludhiana, and on personal search recovered a diary and 3 railway tickets. A recovery memo was prepared by his team and Inspector S.C. Pachori, signed by him, with a copy given to Ilyas. The witness proved the recovery memo

as Ex.Ka.3 and produced the diary and tickets in court. The witness produced an audio cassette (T-series) with a sealed cover, opened in court, bearing CB No. 318/96, dated 08.06.1997. The diary recovered from appellant Ilyas had entries like Kari Salim and code numbers of Kupwara, State of Jammu & Kashmir. Ilyas confessed the diary entries were in his handwriting, and two tickets related to his travel from Muzaffarnagar to Jammu Tawi, and one from Muzaffarnagar to Ludhiana. Material exhibits were marked on the tickets and diary during PW 11's evidence. Material Exhibits 1-18 were marked on items recovered from Ilyas' personal search, like diary pages and railway tickets. Exhibit 19 was marked on the audio cassette cover, and Exhibit 20 and 21 were marked on the audio cassette and cloth. The audio cassette was played in court during PW 11's evidence, which contained Ilyas confessional statement recorded in the presence of his father Sirajuddin and brother Rizwan. The audio cassette was played before the court at the time of evidence of PW-11 in which his confessional statement recorded in presence of his father Sirajuddin and brother Rizwan was preserved. According to the witness, accused Ilyas was brought from Ludhiana to Ghaziabad on 09.06.1997, his medical examination was done on 10.06.1997. The accused Mohammad Ilyas was brought to PCO near Haji Aftab Agah Shahi Mosque, he told on reaching the shop that he visited the PCO along with Salim Kari. The Investigating Officer made a site plan of the PCO at pointing out of the accused, Ex.Ka.4 was marked. The witness also visited utensil shop of Pramod Kumar Sharda on pointing out of the accused Ilyas, from where he stated to have purchased a steel box of 5 kg in which explosives were installed. The witness also stated that he also visited the shop of Yameen on pointing out of the accused Ilyas, from where he purchased a timer and cell which was used in installing the bomb in the bus. He prepared a site plan of both the shops on which Ex.Ka.5 and 6 were marked. According to the witness, accused Ilyas confessed that he and Abdul Mateen planted the bomb in the bus and reached Vaishali Bus Stop. The witness visited the place and prepared a site plan, marked as

Ex.Ka.8. Tasleem was arrested, interrogated, and his statement recorded on 16.06.1997. The witness visited ISBT Delhi on 30.06.1997, where the bomb was planted, and prepared a site plan, marked as Ex.Ka.10. He recorded statements of Sharda Prasad, Yameen, Raturi, and others, mentioning them in the case diary. He recorded statement of accused Mateen in case diary. He also recorded statement of witness Subrati and others and submitted the charge sheet on which Ex.Ka.11 was marked. He submitted chargesheet against accused Ilyas under his writing and signature on which Ex. Ka-11 is marked.

49. PW12 - Sub Inspector VPS Chauhan collected remains of explosive substances used in the bomb blast from the bus and the spot. In his writing and signatur, he prepared a recovery memo on which Ex.Ka.13 and 14 were marked. He was the first to receive information of the incident. On the date of incident he visited the spot and prepared the site plan and proved the same by his evidence.

50. PW13- Sub Inspector Surendra Rai Singh the unclaimed belongings of the deceased and the injured persons lying in the bus on which exhibits were marked on their production before the court.

51. PW14- Deputy SP Pratap Singh, then Deputy SP has stated that he joined the investigation of the case on 12.06.1997. He was directed to assist Sector Officer PW11-Sunil Kumar Saxeina in investigation of the case. He was present at the time of examination of accused Ilyas and visited utensil and clock shops pointed by him along with Investigating Officer Sunil Kumar Saxena.

52. PW15-Ranveer Singh is also one of the investigating officers of the case who recorded statements of injured witnesses in the hospital. He also assisted PW11 in the investigation of the case.

53. PW16- Dr. Sri Ram and PW17- Dr. Onkar Singh Tomar had carried out postmortem examination of 10 deceased persons who died on the spot and prepared their postmortem examination reports in their handwriting and signature and proved the same by their evidence before the court.

54. PW18- Inspector Raees pal Singh conducted inquest of some deceased persons and proved their inquest reports which were marked as exhibits in evidence during the court.

55. PW 19- SI Alok Prabhakar Awasti carried out inquest proceedings of dead bodies of four accused persons and prepared report on which Ex.26 to 29 were marked.

56. PW20- Duli Chand is owner of the general merchant shop who is an eyewitness of the incident of blast.

57. PW21- Manoj Kumar Kansal is also a general store merchant owner near the place of occurrence who proved the incident but in statements of these persons nothing incriminating could emerge against the accused persons.

58. PW22- Subhash Chand is conductor of the bus who stated that he is posted in Roorkee Depot. He stated that his duty terminated at Meerut from where second conductor Hari Niwas took over the charge. The conductor Hari Niwas and Driver Phool Singh took the bus to Delhi on that day. He went to his home after completing his duty in Meerut. On the next date 28.04.1996 he came to know that a blast occurred in the bus. In cross examination he stated that he travelled Roorkee to Hrishikesh on 27.4.1996 at 6:10 PM, He had checked the bus when he left Roorkee and he left the bus in Meerut and checked it and no explosive was found to be there. He handed over the duty of bus conductor to Hariniwas and driver in Meerut.

59. PW23-Gulshan has stated that at the place of incident where the blast occurred, he was running Chat Thela and had seen the incident but he did not identify any accused persons.

60. PW24-Javed Ali is also a passenger who suffered injuries in the blast but could not identify the accused persons and stated that in the incident his eardrums got burst.

61. PW-25 Sita Devi is also a passenger of the bus along with her husband and 2 years old grandson who suffered injuries in the incident but she also could not identify the accused person

62. PW26-Mahendra Pal Singh was posted as Section Officer, CB-CID, Bareilly on the date of incident and by orders of SP, CB-CID dated 10.06.1996 investigation was entrusted to him. He stated that prior to him the case was investigated by Inspector Lala Ram Kathoria, he has taken investigation on 12.06.1996. He has added 13 leafs of investigation in case diary but could not get any substantial or useful information in regard to the offence.

63. PW-27 Inspector Umesh Chandra Joshi conducted inquest on dead body of Mahendra Singh Chauhan on 28.04.1996 and prepared inquest report. He proved inquest report as Ex.Ka.41. He also stated that he prepared necessary police forms and sent the dead body through two constables for postmortem. He proved the inquest report as Ex.Ka.4 and police forms related to postmortem as Ex.Ka.42 to 46.

64. PW28 Inspector Vijay Pal was posted as Sub-Inspector at Police Station Kotwali Ghantaghar, District Ghaziabad on 27.04.1996 and conducted postmortem of bodies related to present incident and prepared the inquest report and necessary forms papers on which Ex.Ka.47 and 52 respectively was marked. He also prepared necessary police papers like photo lash, report CMO, report RI for postmortem examination of these two dead bodies and sent the dead bodies for postmortem. He proved these police papers by his evidence as Ex.Ka.47, 48 and 49. He also conducted inquest of deceased- Ish Mohan on 28.04.1996 and proved his report as Ex.Ka.56 and police papers as Ex.Ka.57-60. He also proved inquest reports of some dead bodies by secondary evidence in absence of their author.

65. PW29 - Sub Inspector Prempal Singh was posted as Sub Inspector at Police Station Sahibabad, District Ghaziabad on 27.04.1996. He stated that he has received information of this incident on 27.04.1996 through RT set. The dead bodies were kept in mortuary. He was directed to

conduct inquest of two dead bodies. He conducted inquest of two dead bodies and sent them for postmortem for preparing necessary police papers. He proved these inquest reports and police papers by his evidence on which Ex.Ka.61 and 65 have been marked.

66. PW30 - Barkat Ali a resident of Kasba, Mirapur, native place of the appellant. He stated that he carries out denting and painting work. A mosque namely Madina mosque situated in his Kasba Mirapur. He works in the shops of the mosques. However, the witness stated that he had not seen Abdul Mateen and Tasleem communicating together. He is not acquainted with them. He is not aware about their conversation or movements. This witness was also turned hostile. And in his cross examination he stated that people of CB-CID visited his shop and inquired from him about the incident, however, he has denied the prosecution version that he made a statement before the police that he had seen appellant and co-accused Abdul Mateen and Tasleem at Kasba Mirapur nearby Madina Mosque before 1¼ month of the incident. It is wrong to say that these people would sit in nearby shops and would communicate together.

67. PW31-Kareemuddin has also stated that he carries out denting and painting work in the shop of Madina Mosque but he did not identify the appellant and stated that he had never seen the accused persons (Abdul Matin and Tasleem) nearby Madina Mosque and talking together. This witness was also turned hostile but nothing incriminating could be elicited by prosecution in his cross-examination.

68. PW32 - Vijendra is a passenger who boarded the bus on the fateful day on the date of incident and suffered injuries. He stated that he was hospitalized for one day and next day he was discharged. He did not see any person planting any bomb in the bus. He did not see three accused persons present in the court on the place of occurrence. He was coming from Delhi on that day by bus.

69. PW33 - Ram Singh Yadav then Deputy SP, CB-CID has stated that he was directed to assist in the investigation of the case. He moved an

application before the court for issuing 'B' warrant against Abdul Mateen which was issued on 06.10.1997. He filed 'B' warrant in Jaipur court on 28.10.1997. Then PW-11 Sunil Kumar Saxena, Sector Officer (CBCID) had filed charge sheet against Mohammad Ilyas and Tasleem under Sections 302, 307 IPC. Sanction for prosecution was taken under Sections 4/5 Explosive Substances Act from District Magistrate Ghaziabad on an application of Inspector Janardan Arora. In cross examination, he clarified that he was not the investigating officer of the case but he was a member of the investigating team. He did not record statement of any witness.

70. PW34-Inspector Janardan Arora then Inspector CB-CID has proved prosecution sanction granted by District Magistrate against accused persons for charge under Sections 4/5 Explosive Substances Act granted by District Magistrate on 05.11.1997.

71. It is noteworthy that before amalgamation of trial of co-accused Tasleem that is Session Trial No. 457 of 2006 with Session Trial No. 1663 of 2000, the trial of accused Tasleem for said charges was conducted separately as the case was committed on 09.01.1997 separately by Chief Judicial Magistrate, Ghaziabad. In his separate trial till amalgamation of his trial with Session Trial No. 1663 of 2000, witnesses were examined as follows:

PW1-Hariniwas, the conductor of the bus and the informant, whose statement was recorded on 17.07.2006.

PW2-Alok Raturi, a passenger, who boarded the fateful bus on date of incident and got injured, whose statement was recorded on 06.10.2006.

PW3-Subrati, a witness of so called extra-judicial confession made by the accused to him, whose statement was recorded on 01.12.2006 has supported prosecution version during examination-in-chief but outrightly denied the fact that the appellant and co-accused ever confessed to them their involvement in the present case.

PW4-Bhopal Singh, a passenger, who boarded the bus on date of incident and got injured, whose statement was recorded on 14.12.2006.

PW-5 Ahsan whose statement was recorded on 08.02.2007 to whom the appellant confessed involvement in the offence along with Abdul Mateen.

PW6-Surendra Nath Singh, whose statement was recorded on 22.03.2007.

PW7-Mohammad Yameen, whose statement was recorded on 10.10.2007 and who was produced by the prosecution in support of this version that he identified the accused persons in jail and he runs a clock shop at Mirapur from where the appellant purchased a clock and timer, has also not supported his alleged statement recorded during investigation.

PW8-Mohammed Shahid, a witness, who was examined on 10.10.2007 in support of prosecution version has testified that he had not seen the appellant and co-accused nearby Madina Mosque in Kasba, Mirapur together nearby Madina Mosque at Kasba, Mirapur and neighboring places.

72. Except PW3-Subrati, none of the witnesses were examined during separate trial of acquitted Mohammed Tasleem supported prosecution case. PW7 has denied the prosecution version that accused Tasleem had purchased a clock from his shop prior to this incident. He also denied the fact that he along with Pramod Kumar Sharma, a person who runs a utensil shop at Kasba Mirapur had identified the accused persons in Muzaffarnagar jail and they were brought there by police.

73. Thus, so far as PW3-Subrati is concerned, he stated in his examination-in-chief that after the incident on the occasion of Eid, he had gone to meet his sister and brother-in-law. He had also visited the place of Ilyas on the occasion of Eid and found there that Iqbal and Abdul Mateen were sitting along with him. He has acquainted with Ilyas.

Ilyas told him that he would have heard about the incident of bomb blast in Modinagar which was carried out by him along with Tasleem and Iqbal. In turn also admitted there in any this incident. In turn, also admitted their hand in this incident. However, in the same stretch and on the same day when he was cross-examined, the witness flatly deviated from this statement in examination-in-chief and stated that in the house of Ilyas, his sister and brother-in-law were tenants. He would visit his sister and brother-in-law, but he did not know Tasleem or Iqbal. They were never introduced to him by Ilyas. None of the accused persons ever mentioned this incident of bomb blast to him. The Daroga Ji had not taken his statement.

74. Thus, Subrati, a witness of extra-judicial confession made by the accused, has also not supported prosecution version. His evidence is also not of significance for the purpose of present case. Even if his examination-in-chief during separate trial of acquitted accused Tasleem is taken on its face value, the same cannot be read against present appellant as the appellant was not present at the time of recording of this evidence. In the Session Trial No. 1663 of 2000 the same witness i.e. Subrati has not given any statement against the appellant or any co-accused. Thus, the witness has given two statements in respect of the same offence regarding the role played by the accused persons and legally no credence can be given on his testimony in respect of present appellant.

75. However, no reliance can be placed on his evidence as even during separate trial of Tasleem he has not testified against any of the accused during cross examination.

76. On the basis of meticulous examination of documentary and oral evidence the incident as shown in FIR is proved and the prosecution has been able to prove the FIR version that on 27.04.1996 a roadways bus of Roorkee Depot bearing registration number UP15A6693, some bomb explosive substance was planted by terrorist with a view to cause explosion in the bus and the explosive substance blasted. Fifty three and half passengers boarded the bus and 14 more persons boarded on the

way from Mohan Nagar Check Post. When bus crossed Modi Nagar Police Station District Ghaziabad the blast occurred at 1700 hours. 10 people died on the spot in the blast due to bomb blast and a large number of passengers suffered serious and other injuries the police reached the spot and injured persons were carried to the hospital. The front portion of the bus got badly damaged. Subsequently since more persons died during treatment in the hospital inasmuch as 14 percent had suffered injuries in the incident. FIR of the case was lodged promptly without any delay by conductor of the bus who was himself injured in the incident.

77. None of the witnesses of fact produced by the prosecution to establish complicity of the appellant in the offence have supported the prosecution version. The witnesses PW6-Subrati, PW9-Ahsan are key witnesses of prosecution who were produced to prove alleged extra-judicial confession made by the appellant and co-accused regarding their complicity in the offence but they have outrightly disowned their statements recorded by Investigating Officer under Section 161 CrPC and have given exculpatory evidence against the appellant with regard to the present offence. These witnesses have only admitted that they are acquainted with the appellant-Mohammed Ilyas as he resides in their locality i.e. Mirapur, Muzaffarnagar, but they have nowhere stated in Session Trial No.1663 of 2000, during trial of appellant, that the appellant and co-accused had ever confessed to them their involvement in the offence to them. The only evidence on which reliance has been placed by the learned AGA is the confessional statement of the appellant- Mohammad Ilyas, which was recorded by PW-11 Snil Kumar Saxena, Sector Officer, CB-CID Meerut. PW-11 arrested the appellant Mohammad Ilyas in intervening night of 08.06.1997 from house No.743/4 Street No.4, Mohalla Janakpuri, P.S. Division No.6, Ludhiyana City (Punjab), on the basis of secret information. On his personal search, a diary and three railway tickets were recovered, as discussed above. PW-11 prepared a recovery memo of the diary and railway tickets recovered from his possession, and a copy thereof was provided to the appellant. He proved the recovery

memo as Ex.Ka.3. PW-11 has stated that he recorded the statement of Mohammad Ilyas on his arrest in the presence of his brother and father, in which he confessed his guilt. The statement was recorded and preserved in an audio cassette (T-series). The witness produced Audio Cassette bearing CB No. 318/96, dated 08.06.1997 No.CV-33 dated 08-10-1993. The railway tickets recovered from the personal search of the appellant consisted of two tickets related to his travel from Muzaffarnagar to Jammu Tawi, and one from Muzaffarnagar to Ludhiana. The audio cassette was played before the court during the statement of PW-11, in which he confessed that he was involved in the present bomb blast along with co-accused AbdulMatin and acquitted Tasleem. The appellant also confessed the *modus operandi* of procuring and planting the bomb in the bus which resulted in death of many passengers and a large number of them got injured. Accused-appellant Ilyas was produced before Ludhiana Court after his arrest and after getting two days transit remand he was produced before Ghaziabad Court from where he was sent to jail. No public witness has joined the alleged arrest and recovery of Ilyas.

78. It is noteworthy that the device by which alleged confessional statement of appellant Muhammad Ilyas was recorded in an audio cassette i.e. tape recorder was not produced before the court as a material exhibit. Therefore, even otherwise, it may be held that the confessional statement of Muhammad Ilyas recorded by and before the police is not duly proved and could not be proved in view of legal bar created by Section 25 of Evidence Act.

79. Inasmuch as confessional statement of the accused-appellant Muhammad Ilyas are not reproduced during sworn testimony of PW11 who is main Investigating Officer, who recorded the statement of accused-appellant.

80. In spite of the fact that the said audio cassette was exhibited by the PW11 in which confessional statement of the appellant Muhammad Ilyas was recorded where he gave inculpatory evidence against himself as well as against accused-Abdul Mateen and that the said confessional

statement was recorded in presence of his brother and father, the absolute bar created under Section 25 of the Indian Evidence Act, 1872 as stated above in various judgments of Hon'ble Supreme Court cannot be lifted and the confession is not admissible as evidence

81. Section 25 of the Evidence Act, 1872 provides in no uncertain terms that "no confession made to a police officer, shall be proved as against a person accused of any offence." Whereas Section 26 provides that "no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person." No discovery has been made in terms of Section 27 of the Indian Evidence Act, 1872 on pointing information divulged by the appellant-Mohammad Ilyas. Thus, Section 27 of the Indian Evidence Act, 1872 which creates an exception to Section 25 of the Indian Evidence Act, 1872, is not applicable. The diary and railway tickets recovered from the personal search of the appellant will not come within the purview of Section 27 of the Indian Evidence Act, 1872 as the same has not been recovered or discovered in consequence of any information received from the appellant who was accused of the offence at that time. In **P.N. Swami Vs.Emperor, AIR 1939 PC 47** it was held that *Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation.* Section 24 of the Indian Evidence Act, 1872 provides that "a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." Section 24 of the Indian Evidence Act, 1872 bars any confession obtained by any inducement, threat or promise. Section 25 of the Indian Evidence Act, 1872 creates an absolute bar on confessions made to a

police officer. Section 15 of Terrorist and Disruptive Activities (Prevention) Act, 1987 creates an exception to Section 25 of the Indian Evidence Act, 1872 which provides that notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder. Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused. 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.

82. In the present case in FIR, Section 3/4 of Terrorist and Disruptive Activities (Prevention) Act, 1987 was invoked inter-alia provisions of IPC, Explosive Substances Act against accused persons as name of appellant, co-accused Tasleem and Abdul Mateen surfaced during investigation. However, Terrorist and Disruptive Activities (Prevention) Act, 1987 was allowed to lapse in 1995 due to allegations of misuse and as the present offence was registered on 27.04.1996 i.e. after 1995 when provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 were lifted during investigation. Therefore, in the present case, the confession recorded by the Senior Police Officer PW 11 posted as Sector Officer, CB-CID at the time of investigation will not be permitted to be proved under law due to embargo created by Section 25 of Indian Evidence Act, 1872. The provision of Section 15 TADA which allows admissibility of a confession recorded by a Senior Police Officer is not applicable to present case.

83. It is noticeable that no charge sheet was filed against the appellant for charge under Sections 3/4 of Terrorist and Disruptive Activities (Prevention) Act, 1987. The mere fact that 3 railway tickets recovered from the appellant and was proved by PW11 in his evidence, which showed that he travelled from Muzaffarnagar to Jammu Tawi two times and from Muzaffarnagar to Ludhiana at one point of time prior to the incident, cannot form the basis that he was involved in the present offence. Similarly, in diary recovered from the possession of the appellant, the name and description of Salim Kari, a resident of Kupwara, Jammu & Kashmir, and brother of co-accused Tasleem, is hardly sufficient to connect the appellant with the offence. Consequently, after excluding the confessional statement of the appellant recorded by PW11-Sector Officer, CBCID who is the main investigating officer of the case due to the embargo created by Section 25 of the Indian Evidence Act, 1872, no incriminating material appears against the appellant which could prove his complicity in the offence. Therefore, the trial court's findings against the appellant for the charges under Sections 302/34, 307/34, 427/34, 120-B 121-A, 124-A IPC and Sections 4/5 of Explosive Substances Act are not found to be sustainable and prosecution has failed to prove the guilt of the appellant beyond reasonable doubt due to want of legally admissible evidence against him.

84. We are recording acquittal in this case with heavy heart as the case is of such propensity that it shock the conscience of the society as 18 innocent persons lost their life in the terrorist plot.

85. The prosecution has miserably failed to prove the charges that the appellant conspired to plant a bomb along with co-accused to create a bomb explosion in the bus which resulted in large number of loss of lives and injuries to the passengers and damage to public property i.e. this bus. The findings of conviction recorded by the trial court and the sentence awarded to the appellant are accordingly liable to be set aside.

86. Accordingly, the judgment and order dated 15.04.2013 so far as it relates to the appellant, whereby the appellant has been convicted and sentenced under Sections 302/34, 307/34, 427/34, 120-B 121-A, 124-A

IPC and Sections 4/5 of Explosive Substances Act is **set aside**. The appeal is accordingly **allowed**.

87. The appellant is **acquitted** of aforesaid charges. He has been in jail custody during pendency of the appeal, therefore, a release order will be issued by the trial Court in pursuance of the present judgment immediatley, to secure his release from jail custody, if he is not wanted in any other case.

88. Appellant is directed to furnish a personal bond and two sureties in each like amount to the satisfaction of the trial Court within two weeks of actual release from jail in terms of Section 437-A CrPC with undertaking to appear before appellate court as and when appeal is filed against this judgment and he is required to appear before the court.

89. An authenticated copy/certified copy of this order shall be sent along with trial court record to the trial Court for necessary action.

90. A copy of this judgment be sent to the trial court through Registrar (Compliance) forthwith.

91. The trial Court to send compliance report within four weeks.

(Ram Manohar Narayan Mishra,J.) (Siddharth, J.)

November 10, 2025

Ashish/KR/Mohit/Sharif