

## **Why Sanjay Dutt was punished by the Supreme Court of India?**

On Thursday 21st of March 2013 the Bench of Supreme Court of India, headed by Hon'ble Justice Sathasivam convicted actor Sanjay Dutt to undergo an imprisonment of 5 years. So many people felt so bad including a Former Judge of the Supreme Court of India. Many of the people of India might also have been got confused since great and popular people have started canvassing and arguing for Sanjay Dutt out of the Court. Let us understand the facts and law before forming our opinion. The following are the charges framed by The Court against Sanjay Dutt.

### **Sanjay Dutt (Accused -117 in the Bombay Blast case):**

At head Secondly; The appellant, in pursuance of the aforesaid criminal conspiracy and during the period from January, 1993 to April, 1993, agreed to keep in his possession and acquired 3 AK-56 rifles and its ammunition, one 9mm pistol and its cartridges and hand grenades, unauthorisedly, which were part of the consignments smuggled into the country by Dawood Ibrahim Kaskar and his associates knowingly and intentionally that these were smuggled into the country for the purpose of committing terrorists acts and that he thereby committed an offence punishable under Section 3(3) of TADA.

At head Thirdly; The appellant, by doing the aforesaid act, unauthorisedly, in Greater Bombay which is specified as a Notified Area under Clause (f) of Sub Section (1) of Section 2 of TADA and thereby committed an offence punishable under Section 5 of TADA.

At head Fourthly; The appellant possessed the above mentioned arms and ammunitions with an intent to aid terrorists and contravened the provisions of the Arms Act, 1959 and the Arms Rules, 1962, the Explosive Substances Act, 1908 and the Explosives Rules, 2008 and thereby committed an offence punishable under Section 6 of TADA.

At head Fifthly; The appellant, by doing the aforesaid act, committed an offence punishable under Sections 3 and 7 read with Sections 25(1-A) (1-B)(a) of the Arms Act, 1959.

**Sanjay Dutt confessed the purchase of dangerous weapons from the Accused persons and the guns purchased by him were part of the Arms illegally brought into the country by Dawood Ibrahim and group:**

“(i) I am having three valid license for fire arms and possess 3 fire arms as mentioned below:

- (a) 270 Rifle of BRUNO make;
- (b) 375 Magnum Double barrelled Rifle; and
- (c) 12 Bore Gun of Double Barrel.

(ii) I purchased these weapons due to my fondness for hunting. I normally go for hunting with one friend of mine, viz., Mr. Yusuf Nullwala as he is an experienced hunter. I also know one friend of Yusuf Nullwala by name Kersi Bapuji Adajenia and met him three times.

(iii) In December, 1991, I had given dates for shooting to actor producer Firoz Khan for his film Yalgar. He had taken the whole unit for shooting in Dubai. During one of the shootings, Firoz Khan introduced me to one Mr. Daud Ibrahim and also to his brother Anees during another shooting session. After that, Anees used to visit us regularly during the shootings and also at the place of our stay.

(iv) Since Anees used to come frequently, I become well acquainted with him.

(v) I also know the proprietors of Magnum Video, namely Hanif Kandawala and Samir Hingora. I also signed for acting in one of their film Sanam. Samir is treasurer of Indian Motion Picture Association (IMPA). Hanif and Samir used to come quite frequently to my house for taking dates for shooting from my Secretary.

(vi) Hanif told me that if I so desire, he would make immediate arrangements to provide an automatic fire arm to me for my protection. Initially, I did not show any interest but when Hanif and Samir started repeatedly telling me to acquire a firearm from them; I gradually fell prey to their persistent suggestion and expressed my desire to Hanif and Samir. They said that they would immediately provide me with an automatic fire arm.

(vii) One day, in mid Jan., in the evening, around 9.00 to 9.30 p.m., Hanif and Samir came to my house along with one person by name Salem. I had met this Salem once or twice earlier also.

(viii) Then these 3 fellows told me that they were coming tomorrow morning with the weapons to be delivered to you. Then they went away.

(ix) Next day morning Samir, Hanif and Salem all three came to my house along with one other person who is not known to me.

(x) They came in a Maruti Van and parked it in a Tin shed which is used by us for parking our vehicles. One person was sitting inside the Maruti Van. After about 15-20 min., he took out three rifles and they said it is AK-56 rifles.

(xi) I got some cloth from my house and gave it to them. Salem and the person who has come with him wrapped those rifles in the cloth and gave it to me.

(xii) When I opened and saw it, there were three rifles some magazines and rounds, they have told me that there are 250 rounds. The rounds were kept in another hand bag fetched by me.

(xiii) On seeing three rifles, I got scared and told them that I wanted only one weapon. Then Hanif and Salem told me to keep it for the time being and in case it is not required, we will take away the rest of the two weapons.

(xiv) They have also shown me some brown coloured hand-grenades and asked me whether I want that also. I do not want these grenades and you may please leave my house immediately, I told them.

(xv) I kept these rifles and ammunition in the dicky of my Fiat Car No. MMU 4372 and locked it.

(xvi) On the same night, I removed the three rifles and ammunition, kept the same in a handbag which I kept in my private hall which was on the 2nd floor of our bungalow.

(xvii) Two days thereafter, since I had considerable mental tension, I contacted Hanif Kandawala and requested him to take away the weapons. He said that he would arrange to send somebody to collect the same. After two days, Hanif Kandawala and Samir Hingora along with Salem came to my house in the evening in a car. I returned two AK-56 rifles and a part of the ammunition to them but retained one AK-56 rifle and some ammunitions with me.

(xviii) Around Sept. 1992, during one of my shooting at R.K. Studio, one Kayyum, who is a member of Dawood Ibrahim gang, who had also met me in Dubai at the time of shooting of the film Yalgar approached me with a stranger. They offered me a 9 mm pistol with ammunition. When I saw it, I liked it and had a strong desire to purchase the same. They offered it to me for a sum of Rs.40,000/-. I paid the said amount in cash to them at my house and purchased the same. I do not know the name of that person who was brought by Kayyum. However, he was aged about 35-38 years, apparently, Muslim, dark complexion, height about 5'8", fat built, moustache, medium curly hair, wearing shirt and pant. I will be able to identify him if brought before me. He also handed over 8 rounds of the said pistol.

(xix) On 2nd April, I left for Mauritius for shooting of the film 'Aatish'. There I was informed by a casual contact that Hanif and Samir have been arrested by the Bombay Police for their complicity in bomb blasts.

(xx) On hearing the news, I got frightened as these fellows had given me the AK-56 rifles and they may tell my name to the police to involve me in the bomb blasts case. I contacted my friend Mr. Yusuf Nullwala on telephone and asked him that something is lying in a black coloured bag which is kept in my hall at the second floor of my house and it should be taken away immediately and destroy the things completely which are there in the bag, otherwise, I shall be in a great trouble. By this time, the news about my possession of AK-56 rifles had appeared in the press and on coming to know about this, my father asked me about the truthfulness of this news, but I denied the same. My anxiety about the whole episode became unbearable and I decided to return to Bombay in between. My father informed my flight details to the Police and I was picked up by police as soon as I landed at Bombay and I confessed the whole things to them."

19) The above said confession highlighted the crime for which the appellant-Sanjay Dutt has been charged. The following facts emerge from the above said confession:

- i) He was already having three licensed firearms.
- ii) He developed acquaintance with Anees Ibrahim - brother of Dawood Ibrahim during a film-shooting in Dubai.
- iii) He expressed his desire to Samir Hingora (A-53) and Hanif Kandawala (A-40) to have an automatic fire-arm.

iv) They came with one Salem with whom Sanjay Dutt was already acquainted with and they assured him of the delivery of weapons the next day in the morning.

v) They came in the morning of 16.01.1993 with one other person and delivered 3 AK-56 Rifles and 250 rounds.

vi) After 2 days, he returned 2 AK-56 and ammunitions but retained 1 AK- 56 and some ammunition.

vii) In April, while he was shooting at Mauritius, he heard the news of the arrest of Samir and Hanif, on which, he got frightened and requested his friend Yusuf Nulwalla to destroy the weapons.

20) The appellant (A-117) not only implicates himself in the above said statement but also amongst others the appellant-Yusuf Nulwalla (A-118). The above said confession has been duly recorded by PW-193 who has proved the compliance with the provisions of law while recording the confession. The above said confession is a substantive piece of evidence and it has been held in a series of judgments that the confession can be the sole basis of conviction, if recorded in accordance with the provisions of TADA. Further, the confessional statement establishes the unauthorized possession of weapons in the notified area of Bombay.

#### **Confessional Statements of co-accused:**

21) The confession of the appellant (A-117) is substantiated and corroborated with the confession of other co-accused, namely, Samir Hingora (A-53), Baba @ Ibrahim Musa Chauhan (A-41), Mansoor Ahmed (A-89), Hanif Kandawala (A-40), Yusuf Nulwalla (A-118) and Kersi Bapuji Adajania (A-124) which are as under.

#### **Confessional Statement of Samir Ahmed Hingora (A-53)**

Confessional statement of A-53 under Section 15 of TADA was recorded on 18.05.1993 (17:00 hrs.) and 20.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

i) He started a Video Library and Mustafa Dossa @ Mustafa Majnoo (A-138) - brother of Mohd. Dossa (AA) was a member of his Video Library and he had 2-3 shops in the same market.

ii) Tiger Memon used to work with Mustafa Dossa and became a friend of A- 53.

iii) A-53 started film distribution and production business by the name of 'Magnum' in partnership with Hanif Kandawala (A-40 – since died).

iv) Anis Ibrahim (AA) became a member of his Video Library and was referred to by everyone as Anisbhai since he was the brother of Dawood Ibrahim.

v) A-53 received a payment of Rs. 21.90 lacs from Ayub Memon sent through someone on 13.03.1993 (one day after the blasts) as advance for purchasing rights of films.

vi) A-53 had visited Dubai and met Anis Ibrahim many times and sold the rights of many films to M/s Kings Video, managed by Anis. Anis also controls Al-Mansoor Video Company through Chota Rajan.

vii) On 15.01.1993, A-41 and A-139 met A-53 at his office. Anis Ibrahim called him from Dubai and said that A-41 and A-139 are his men and they have some weapons which have to be delivered to A-117 at his residence.

viii) A-53 and A-139 went to Sanjay Dutt's (A-117) house where he hugged Abu Salem and asked him about the weapons. A-117 then told A-139 to bring the weapons next day at 7 am.

ix) On 16.01.1993, A-53 led A-139 and A-41 to the house of Sanjay Dutt. A-139 and A-41 were in a blue maruti van while A-53 was in his own car.

x) At the residence of A-117, A-53 saw that the blue van was containing 9 AK-56 rifles and hand grenades and they gave 3 AK-56 rifles and some magazines to A-117. A-117 also asked for some hand grenades which were put in a black bag by A-139.

xi) A-139 kept the rifles in a fiat car belonging to A-117. The hand grenades were kept in the car of A-53 and he left the car at A-117's residence and took an auto rickshaw.

xii) A-53 collected his car from A-117's residence after 3 days when he called him and said that grenades have been taken out.

### **Law relating to Confessions under TADA**

30) It is contended on behalf of the appellants that their confessional statements, and the confessional statements of the co-accused relied upon by the prosecution against them, are confessions recorded by a police officer, and it is hence not proper to base the conviction on the basis of the said confessions under Section 15 of TADA. Section 15 of TADA reads as under:

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

### **Charges:**

116) A common charge of conspiracy was framed against all the co- conspirators including the appellant. The relevant portion of the said charge is reproduced hereunder:

"During the period from December, 1992 to April, 1993 at various places in Bombay, District Raigad and District Thane in India and outside India in Dubai (U.A.E.) Pakistan, entered into a criminal conspiracy and/or were members of the said criminal conspiracy whose object was to

commit terrorist acts in India and that you all agreed to commit following illegal acts, namely, to commit terrorist acts with an intent to overawe the Government as by law established, to strike terror in the people, to alienate sections of the people and to adversely affect the harmony amongst different sections of the people, i.e. Hindus and Muslims by using bombs, dynamites, hand grenades and other explosive substances like RDX or inflammable substances or fire-arms like AK-56 rifles, carbines, pistols and other lethal weapons, in such a manner as to cause or as likely to cause death of or injuries to any person or persons, loss of or damage to and disruption of supplies of services essential to the life of the community, and to achieve the objectives of the conspiracy, you all agreed to smuggle fire-arms, ammunition, detonators, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunition and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose of the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapon training in handling of arms, ammunitions and explosives to commit terrorist acts. To harbour and conceal terrorists/co-conspirators, and also to aid, abet and knowingly facilitate the terrorist acts and/or any act preparatory to the commission of terrorist acts and to render any assistance financial or otherwise for accomplishing the object of the conspiracy to commit terrorist acts, to do and commit any other illegal acts as were necessary for achieving the aforesaid objectives of the criminal conspiracy and that on 12.03.1993 were successful in causing bomb explosions at Stock Exchange Building, Air India Building, Hotel Sea Rock at Bandra, Hotel Centaur at Juhu, Hotel Centaur at Santacruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony, Mahim and at Bay-52, Sahar International Airport which left more than 257 persons dead, 713 injured and property worth about Rs.27 crores destroyed, and attempted to cause bomb explosions at Naigaum Cross Road and Dhanji Street, all in the city of Bombay and its suburbs i.e. within Greater Bombay. And thereby committed offences punishable under Section 3(3) of TADA (P) Act, 1987 and Section 120-B of IPC read with Sections 3(2)(i)(ii), 3(3)(4), 5 and 6 of TADA (P) Act, 1987 and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 of Indian Penal Code and offences under Sections 3 and 7 read with Sections 25 (1A), (1B)(a) of the Arms Act, 1959, Sections 9B (1)(a)(b)(c) of the Explosives Act, 1884, Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984 and within my cognizance.”

In addition to the first charge, the appellant (A-119) was also charged for having committed the following offences in pursuance of the criminal conspiracy described as under:

At head Secondly: The appellant, in pursuance of the aforesaid criminal conspiracy, has committed the following overt acts:

(a) The appellant, in connivance with other co-conspirators kept in her possession AK-56 rifles, its ammunitions and hand grenades which she stored at her residence at the instance of Anees Ibrahim Kaskar (AA) which was brought to her residence by wanted accused Abu Salem Qayum Ansari (then absconding now A- 139) and Manzoor Ahmed Sayed Ahmed (A-89) and thereby aided

and facilitated the distribution of firearms, ammunition and explosives smuggled into India by other co-conspirators for committing terrorist acts and thereby committed an offence punishable under Section 3 (3) of TADA.

At head Thirdly: The appellant, in pursuance of the aforesaid criminal conspiracy, had in her possession, unauthorisedly, AK-56 rifles, its ammunitions and hand grenades in Greater Bombay which is specified as a notified area under clause (f) of sub-section (1) of Section 2 of TADA and thereby committed an offence punishable under Section 5 of TADA.

At head Fourthly: The appellant, in pursuance of the aforesaid criminal conspiracy, with an intent to aid terrorists and failed to give information to police/magistrate contravened the provisions of the Arms Act, 1959, the Arms Rules, 1962, the Explosive Substances Act, 1908 and the Explosives Rules, 1983 and thereby committed an offence punishable under Section 6 of TADA.

**Conviction and Sentence:**

117) The appellant (A-119) has been convicted and sentenced as under:

(i) RI for 5 years with a fine of Rs. 25,000/-, in default, to further undergo RI for 6 months under Section 3(3) of TADA (charge secondly)

ii) RI for 5 years along with a fine of Rs. 75,000/-, in default, to further undergo RI for a period of 1 ½ (one and a half) years. (Charge fourthly)

Conclusion: Many a times what looks like wrong to a common man cannot be the correct decision as per the Courts. This is because the Courts have to uphold the law and they do not have power to pardon somebody due to love and affection.