

Sanjay Dutt vs State Of Maharashtra Tr.Cbi,Bombay on 21 March, 2013

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Bench: P. Sathasivam, B.S. Chauhan

APPEALS FILED UNDER ARMS ACT/EXPLOSIVE SUBSTANCES ACT

PART-6

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1060 of 2007

Sanjay Dutt (A-117)

.... Appellant(s)

vs.

The State of Maharashtra,
through CBI (STF), Bombay

... Respondent(s)

WITH

Criminal Appeal No. 1102 of 2007

Yusuf Mohsin Nulwalla (A-118)

.... Appellant(s)

vs.

The State of Maharashtra,
through CBI (STF), Bombay

... Respondent(s)

AND

Criminal Appeal No. 1687 of 2007

Kersi Bapuji Adajania (A-124)

.... Appellant(s)

vs.

The State of Maharashtra,
through CBI (STF), Bombay

... Respondent(s)

WITH

Criminal Appeal No. 596 of 2011

WITH

Criminal Appeal No. 1104 of 2007

AND

Criminal Appeal No. 1026 of 2012

WITH

Criminal Appeal No. 1001 of 2007

AND

Criminal Appeal No. 392 of 2011

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... Respondent(s)

P. Sathasivam, J.

1) Mr. Harish Salve, Mr. Surendra Singh, Mr. B.H. Marlapalle learned senior counsel appeared for A-117, A-118, A-124 respectively and Mr. Raval, learned ASG duly assisted by Mr. Satyakam, learned counsel appeared for the respondent-CBI.

2) The abovesaid appeals are directed against the final judgment and order of conviction and sentence dated 28.11.2006 and 31.07.2007 respectively by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

3) A common charge of conspiracy was framed against all the co-conspirators including the appellants. 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, handgrenades 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, handgrenades 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 off the same as need arises. To organize training camps in Pakistan and in India to import and undergo weapons 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 (1-A), (1-B)(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 above-said principal charge of conspiracy, the appellants were also charged on other counts which are as under:

Sanjay Dutt (A-117):

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 handgrenades, 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.

Yusuf Nulwalla (A-118):

At head Secondly; The appellant acquired AK-56 Rifles and its cartridges and one 9mm pistol and its cartridges which were smuggled into the country for committing terrorist acts and destroyed the said AK-56 Rifle with the assistance of Kersi Adajania (A-124) and entrusted him the 9mm pistol and its cartridges for safe custody and thereby committed an offence punishable under Section 3(3) of TADA.

At head Thirdly; The appellant acquired the abovementioned arms and ammunitions from the house of Sanjay Dutt (A-117) and possessed the same, unauthorisedly, in a notified area of Greater Bombay and thereby committed an offence punishable under Section 5 of TADA.

At head Fourthly; The appellant acquired and possessed the abovementioned arms and ammunitions and failed to give information to Police/Magistrate with an intent to aid terrorists 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.

At head Sixthly; The appellant caused destruction of the abovementioned arms and ammunitions with an intention to screen him and other co-conspirators from legal punishment and thereby committed an offence punishable under Section 201 of the IPC.

Kersi Adajania (A-124):

At head Secondly; The appellant aided and abetted Yusuf Nulwalla (A-

118) in destroying AK-56 rifle and disposing of 9mm pistol and its cartridges which were smuggled into the country for committing terrorist acts and thereby committed

an offence punishable under Section 3(3) of TADA.

At head Thirdly; In the first week of April, 1993, the appellant had in his possession one AK-56 rifle, one 9 mm pistol and its rounds in a notified area of Bombay and thereby committed an offence punishable under Section 5 of TADA.

At head Fourthly; The appellant possessed the said arms and ammunitions with an intention to aid terrorists and thereby committed an offence punishable under Section 6 of TADA.

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

At head Sixthly; The appellant caused destruction of the abovementioned AK-56 rifle, 9mm pistol and its ammunitions which were smuggled into the country for commission of terrorist acts with the intention of screening himself and the other co-conspirators from legal punishment and thereby committed an offence punishable under Section 201 of the IPC.

4) The appellants have been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

Sanjay Dutt (A-117):

A-117 has been convicted for the offence punishable under Sections 3 and 7 read with Sections 25(1-A), (1-B)(a) of the Arms Act, 1959 and sentenced to suffer RI for 6 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months. However, the appellant was not found guilty of all other offences for which he was charged and, accordingly, acquitted for all the said offences.

Yusuf Mohsin Nulwalla (A-118):

(i) A-118 has been convicted for the offence punishable under Sections 3 and 7 read with Sections 25(1-A), (1-B)(a) of the Arms Act, 1959 and sentenced to RI for 5 years along with a fine of Rs. 25,000/-, in default, to further undergo RI for a period of 6 months.

(ii) The appellant has been further convicted for the offence punishable under Section 201 of IPC and sentenced to suffer RI for 2 years. However, the aforesaid accused being found not guilty of all other offences for which he was charged at trial.

Kersi Bapuji Adajania (A-124):

(i) A-124 has been convicted for the offence punishable under Sections 3 and 7 read with Sections 25(1-A), (1-B)(a) of the Arms Act, 1959 and sentenced to suffer RI for 2 years alongwith a fine of Rs. 25,000/-, in default, to suffer further RI for a period of 6 months.

(ii) The appellant has been further convicted for the offence punishable under Section 201 of IPC mentioned at head sixthly and sentenced to suffer RI for 2 years. However, the aforesaid accused also being not found guilty of all other offences for which he was charged at trial.

Brief Facts:-

5) Before advertng to the detailed analysis of the evidence and the contentions urged, the story of the prosecution is as under:

(a) Babri Masjid at Ayodhya was demolished on 06.12.1992. After its demolition, violence broke out throughout the country. Tiger Memon (AA) and Dawood Ibrahim (AA), a resident of Dubai, in order to take revenge of the said demolition, formulated a conspiracy to commit terrorist act in the city of Bombay. In pursuance of the said object, Dawood Ibrahim agreed to send arms and ammunities from abroad. Tiger Memon, in association with his men, particularly, the accused persons, received those arms and ammunities through sea-coasts of Bombay. The evidence on record establishes that the said consignment was a result of a conspiracy between Dawood Ibrahim Kaskar, Mohammed Dosa and Tiger Memon (all three absconding accused).

(b) On 15.01.1993, Samir Hingora (A-53), Hanif Kandawala (A-40), Ibrahim Musa Chauhan@Baba (A-41) and Abu Salem (A-139) - then absconding, came to the residence of the appellant (A-117) at Pali Hill, Bandra, Bombay and told him that they would deliver the weapons tomorrow i.e., on 16.01.1993.

On 16.01.1993, A-53, A-41 and A-139 delivered 3 AK-56 Rifles and 250 rounds of ammunities and some handgrenades at the residence of A-117. On 18.01.1993, out of the abovesaid 3 AK-56 Rifles and ammunities, 2 rifles and some ammunition were taken away by co-accused persons including one Mansoor Ahmed (A-89).

(c) On 12.03.1993, bomb explosions took place at various places in Bombay causing death of 257 persons, injuries to 713 and destruction of property worth about Rs. 27 crores.

(d) On 18.04.1993, A-89 was taken in police custody whereas A-117 was arrested from the Mumbai International Airport on 19.04.1993 upon his arrival from Mauritius. On the same day, at about 15:30-15:40 hrs., he made a statement to the police that the rifle and the pistol and its rounds thereof have been kept with A-118 and that he would identify him and his house in Dongri, Umarkhari. He also led the police party to the house of A- 118 at 15:45 hrs. When wherebaouts of A-118 were searched, it was found that he was detained by the Dongri Police Station in connection

with the non-renewal of Arms licence.

(e) A-118 was summoned from Dongri Police Station and produced before DCB- CID. He made a statement mentioning the name of A-124 and led the police party to his house.

(f) During investigation, A-124 produced a spring and a rod remanent of the burnt AK-56 and also made a further statement regarding 9mm pistol and led the police party to A-125. A-125 made a statement and after that the police party proceeded to the house of A-120.

(g) A-120 produced a bag containing box wherein the pistol and its cartridges were found. His statement was recorded and the articles were seized and a Panchnama was drawn.

(h) All the above facts form part of the complaint culminated into the registration of a Local Act Case (LAC) bearing No. 21 of 1993 in respect of the abvoesaid 5 persons, namely, A-117, A-118, A-124, A-125 and A-120. The said complaint mentioned that the investigation being carried out in furtherance of C.R. No. 70 of 1993. The sequence of events after the arrest of A-117 till the recovery of pistol from A-120 formed part of an unbroken chain inseparably connected with each other.

(i) On 22.04.1993, Mr. Krishan Lal Bishnoi, the then DCP (PW-193), who was investigating Worli Blast from 13.03.1993 was withdrawn from investigation. On 26.04.1993, A-117 expressed his desire to make a confession and, accordingly, he was produced before PW-193, who after recording the preliminary statement (First part), awarded him a period of 48 hours for cooling off.

(j) On 27.04.1993, the confession of A-118 was recorded by Mr. Bishnoi (PW-193) in first part and a further time for reflection was awarded to him.

(k) On 28.04.1993, PW-193 recorded the second part of the confession of A-

117. Similarly, on 29.04.1993, the confession of A-118 was recorded by PW- 193 which remained un-retracted.

(l) On 03.05.1993, A-117 was sent to the judicial custody. On 05.05.1993, A-117 filed a writ petition before the Bombay High Court and the High Court released him on interim bail with the direction that the bail granted to A-117 would continue till the filing of charge sheet in the Designated Court and after that the said Court would consider his bail application.

(m) Between 18th and 20th May, 1993, and 24th and 26th May, 1993, confessions of A-53 and A-89 respectively were recorded by PW-193.

(n) On 04.11.1993, a consolidated charge sheet was filed against all the accused persons including the appellants (A-117, A-118 and A-124). On 19.06.1994, A-117 applied for bail before the Designated Court. By order dated 04.07.1994, the Designated Court dismissed the said application.

(o) Against the said order, A-117 filed a special leave petition before this Court and prayed for grant of bail. After hearing the bail petition, this Court, by order dated 18.08.1994 in Sanjay Dutt vs. State (I), (1994) 5 SCC 402, referred the matter to the Constitution Bench on the question of interpretation and construction of the provisions of TADA, namely, Section 5 as well as Section 20. By order dated 09.09.1994, the said reference was answered by the Constitution Bench in Sanjay Dutt vs. State (II), (1994) 5 SCC 410. After the reference was answered, the matter was placed before the regular Bench for consideration of the bail application. By order dated 23.09.1994, this Court rejected the application for bail filed by A-

117. On 09.11.1994, A-117 filed a detailed retraction.

(p) In June, 1995, in view of the directions of this Court in Kartar Singh vs. State of Punjab, (1994) 3 SCC 569, the Central and State Government set up a Review Committee in order to individually review the cases of the accused persons involved in the Bombay bomb blasts case to consider whether or not the provisions of TADA are applicable against individual accused persons and whether or not any of the accused persons ought to be entitled to bail? On 08.08.1995, the report of the Review Committee recommended that the public prosecutor, on certain parameters, may recommend certain cases for bail. The case of A-117 was one such case that was considered for grant of bail by the public prosecutor. The said report was filed by the prosecution before the trial Court on 09.08.1995. The CBI, in M.A. No. 312 of 1995, filed an application before the Designated Court stating that they have no objection for grant of bail to A- 117 and 11 others.

(q) On 11.09.1995, in view of the report of the Review Committee, A-117 renewed his prayer for bail before the Designated Court but the Designated Court again dismissed the said application. In September, 1995, challenging the said order, A-117 filed Criminal Appeal No. 1196 of 1995 before this Court and prayed for grant of bail. On 16.10.1995, this Court granted bail to him till the completion of his trial. (1995 (6) SCC 189).

(r) By order dated 28.11.2006 and 31.07.2007, the appellants (A-117, A- 118 and A-124) were convicted and sentenced by the Designated Court as mentioned earlier.

Evidence

6) The prosecution relied on the following evidence which is in the form of:-

(i) the evidence of their own confessions;

(ii) confessions made by other co-conspirators; (co-accused)

(iii) Deposition of Prosecution witnesses, viz., – Shri Krishan Lal Bishnoi (PW-193), the then DCP, Pandharinath H. Shinde (PW-218)- who was on guard duty at the bungalow of Sunil Dutt, Manohar Vasudev Shirdokar (PW-219)-Sr. Inspector of Police, Suresh S. Walishetty (PW-680), Rajaram Ramchandra Joshi (PW-475), API, Panch Witness Shashikant Rajaram Sawant (PW-211), Gangaram Bajoji

(PW-265)-independent witness and Karmegam Algappan, PW-472 attached with computer cell of MTNL, Malabar Hill and;

(iv) documentary evidence.

Submissions made by Mr. Harish Salve, learned senior counsel for the appellant (A-117)

7) Mr. Harish Salve, learned senior counsel for A-117, at the foremost, submitted that reliance on the confessional statement made by A-117 is impermissible. He pointed out that the contention that the judgments of this Court have held that the prosecution can rely on the confession of an accused made before a police officer in every case where the accused is charged of a TADA offence, as long as the trial is joint, has been misconceived. He also pointed out that if the language of the provisions led to a situation that a confession to the police becomes admissible irrespective of the fate of the TADA charge, then it would lead to invidious discrimination between the accused, who were charged (but acquitted) under TADA along with other offences and those who were accused only of non-TADA offences.

8) Mr. Harish Salve further pointed out that in *Prakash Kumar @ Prakash Bhutto vs. State of Gujarat* (2005) 2 SCC 409, it was contended before the Court that “rigours of Section 12 are discriminatory and attract the wrath of Articles 14 and 21 of the Constitution as it empowers the Designated Court to try and convict the accused for the offences committed under any other law along with the offences committed under TADA thereby depriving the rights available to the accused under the ordinary law.” This contention was rejected by holding that “Section 12 is to take care of the offences connected with or incidental to terrorist activities. The other offences being connected and inextricably intertwined with the terrorist act.”

9) He further pointed out that a Bench of five Judges of this Court in *Sanjay Dutt vs. State* (1994) 5 SCC 410, had observed in paragraph 14 that “the construction made of any provision of this Act must therefore be to promote the object of its enactment to enable the machinery to deal effectively with the persons involved in, and the associated with, terrorist and disruptive activities while ensuring that any person not in that category should not be subject to the rigors of the stringent provisions of theAct. It must, therefore, be borne in mind that any person who is being dealt with and prosecuted in accordance with the provisions of the TADA must ordinarily have the opportunity to show that he does not belong to the category of persons governed by TADA. Such a course would permit exclusion from its ambit of persons not intended to be covered by it.....” In paragraph 17, this Court cited with approval an earlier decision, viz., *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj BijayaI*, (1990) 4 SCC 76 in which it was observed that “when a law visits a person with serious penal consequences, extra care must be taken to ensure that those whom the Legislature did not intend to become by the express language of the Statute are not roped in by stretching the language of the law.” This Court read down the provisions of Section 5 of TADA and held that the presumption under the said section in relation to possession of weapons was a rebuttable presumption and an accused could always establish his innocence in relation to that statute.

10) According to him, only where the transactions in respect of which an accused is convicted are interrelated inextricably with the transactions which fall under TADA, then Section 12 would enable the prosecution to rely upon the confession of the accused made to a police officer. He further pointed out that it would be a travesty to apply this principle in the present case.

11) By pointing out the confession of the appellant (A-117), learned senior counsel contended that even if we believe the statements made, it would simply establish a case of violation of the Arms Act, there is no suggestion of any terrorist act. On the contrary, the act was the resultant of the personal as well as the security need of the family of the appellant. He further contended that judicial notice must be taken of the state of affairs in Bombay during the post Babri Masjid demolition period, particularly, in January, 1993. It is further pointed out that the Legislature did not intend to cover such persons ever in a law dealing with terrorism. The victims of terrorism of a kind (vicious communal riots) cannot and should not be treated at par with perpetrators.

12) He further pointed out that the unchallenged finding of the trial Court in the present case is that the alleged acquisition of 2 illegal weapons by the appellant (A-117) was at a different point of time, much before even the conspiracy in relation to the Bombay blasts was commenced. He further contended that the provocation for the alleged acquisition was not the conspiracy or any act or omission related to the Bombay blasts, but related to an entirely different event, i.e., the riots in January 1993 and the appellant (A-117) allegedly, out of fear for his own life and for the security of his family, acquired those weapons. Under such circumstances, the question of any connection leave alone the acquisition of weapons or any act or omission relating to the Bombay blasts is conspicuous by its absence.

13) With regard to the evidence in order to establish that the appellant was in conversation with Anees over phone, learned senior counsel contended that the alleged confession of Samir Hingora (A-53) as well as of Hanif Kandawala (A-40) (his partner) to the effect that the appellant (A-117) was in conversation with Anees relates to A-53's visit to the house of the appellant (A-117) on the night of 15th January whereas the call records relied on were of 16th January, 1993.

14) Learned senior counsel also pointed out that the prosecution has not appealed the findings of the Designated Court and the alleged confession which suggested that the appellant (A-117) was in conversation with Anees is, in fact, unbelievable. One significant reason for the same is that it does not explain as to how Samir could have known that the appellant was in conversation with someone on a landline telephone which was inside his house. This attempt of the prosecution to unnecessarily create prejudice against the appellant (A-117) is baseless and, therefore, merits summary rejection. The judgment of this Court in Sanjay Dutt's case (supra) dealt with a pure interpretation of Section 5 of TADA. It clearly lays down that the possession of a weapon is not per se a TADA offence. Section 5 merely raises a presumption that a person, who is in possession of unauthorized arms or ammunitions of the specified variety, would be liable to be punished under TADA. According to him, this Court, in fact, read down the plain language of Section 5 to make it applicable only as a presumptive rule of evidence. This issue is no longer open because it has been conclusively found that the alleged acquisition of the weapon had absolutely nothing to do with any of the alleged terrorist activities of the other accused in the conspiracy. Learned senior counsel for the appellant

further contended that the State has not filed an appeal in the matter, hence, stands concluded.

15) In addition to the above arguments, Mr. Surendra Singh, learned senior counsel for A-118 contended that everything was manufactured at the Crime Branch Police Station. He further contended that even if A-118 was having possession of AK 56 rifle, memorandum for the same was not signed by him and Sections 12 and 15 of TADA have no application in his case. He further submitted that his confession is hit by Section 25 of the Evidence Act, 1872 and his alleged statement is compelled one which is hit by Article 21 of the Constitution.

16) Similar to the contentions of Mr. Salve and Mr. Singh, Mr. B.H. Marlapalle, learned senior counsel for A-124 also contended that there was no constructive possession of any weapon and A-124 was not having any knowledge about it. He also contended that he was charged only under the Arms act and IPC which has nothing to do with TADA and the offence against him, if any, ought to have been referred to the normal criminal court and for that reason, the confession recorded under TADA ought to have been erased. He also very much relied on the decisions of this Court in Sanjay Dutt (supra), Prakash Kumar (supra) and Mohd. Amin vs. CBI (2008) 15 SCC

49.

17) Learned ASG met all the contentions and took us through the relevant materials relied on by the prosecution.

Confessional Statement of Sanjay Dutt (A-117)

18) The confessional statement of A-117 was duly recorded under Section 15 of TADA on 26.04.1993 at 15.30 hrs. (First Part) and on 28.04.1993 at 1600 hrs. (Second Part) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The following extracts from the confession of the appellant are pertinent:

“(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 barreled 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 dickey 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 abovesaid confession highlighted the crime for which the appellant-Sanjay Dutt has been charged. The following facts emerge from the abovesaid 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 abovesaid confession has been duly recorded by PW-193 who has proved the compliance with the provisions of law while recording the confession. The abovesaid 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. Confessional statement of Baba @ Ibrahim Musa Chauhan (A-41) Confessional statement of A-41 was recorded under Section 15 of TADA on 23.04.1993 (12:45 hrs.) and 25.04.1993 (13:05 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confession shows that:

(i) A-41 was introduced to Anees Ibrahim Kaskar (AA)-brother of Dawood Ibrahim and Abu Salem when he had been to Dubai and, thereafter, he developed good acquaintance with both of them.

(ii) On 15.01.993, A-139 telephoned A-41 and asked him to arrange for a garage having facility of closing it by shutter.

(iii) Abu Salem is an extortionist and worked for Anees Ibrahim.

(iv) Thereafter, A-139 went to the office of A-41 and inquired if he had received a phone call from Anees Ibrahim. On replying in the negative, A-139 went to a nearby STD booth and called Anees and then made A-41 talk to him, at that time, A-41 told him that the garages, as required, cannot be arranged by him.

(v) Thereafter, at the behest of Anees Ibrahim (AA), A-41 along with A-

139 went in search for garages in Bandra and Pali Hills area and Samir Hingora (A-53) and Hanif Kandawala (A-40) also joined them.

(vi) Since they did not find any garage, A-139, A-53 and A-41 informed the same to Anees over phone who was in Dubai and it was decided that the work of finding out the garage would be carried out the next day. In the meanwhile, A-139 told A-41 that he will keep 2 to 3 AK-56 rifles with him for 2/3 days.

(vii) On the next day i.e. 16.01.1993, A-139 went to the house of A-41 and told him to take a white coloured Maruti van bearing registration number of Gujarat, which was parked near the Arsha Shopping Centre, and to reach the office of Magnum Video. Accordingly, he went to the said place and from there he along with A-139 and A-53, went to the house of A-117.

(viii) At that time, A-139 introduced A-41 to A-117.

(ix) A-41 parked the above white coloured Maruti Van which he had driven to reach the house of Sanjay Dutt in his garage.

(x) There were 9 AK-56 rifles, 80 hand grenades, 1500/2000 cartridges and 56 magazines in the cavities beneath the rear seat of the aforesaid Maruti Van as well as inside the lining near the front and rear side doors, out of which, 3 rifles, 9 magazines, 450 bullets and 20 hand grenades were asked to be kept by A-139 in Sanjay Dutt's Fiat car.

(xi) Accordingly, A-41 shifted the cartridges and magazines to a sports bag and kept it in Sanjay Dutt's car.

(xii) A-53 packed the above mentioned 20 grenades in another sports bag and kept it in Sanjay Dutt's car and gave another long sports bag to A-41 in which he filled 3 rifles, 16 magazines, 25 hand grenades and 750 cartridges. A-41 took the said bag to his house and hid it beneath his bed and on the next day, A-41 loaded all the bullets in the magazines of the rifles.

Confessional Statement of Manzoor Ahmed Sayyed Ahmed (A-89) Confessional statement of A-89 under Section 15 of TADA was duly recorded on 24.05.1993 (11:15 hrs.) and 26.05.1993 (17:30 hrs.) by Shri Krishan Lal Bishnoi (PW-193) the then DCP, Zone III, Bombay. The said confession reveals as under:

i) A-89 was a good friend of Abu Salem.

ii) He owns a Maruti 1000 bearing No. MP 23 B-9264.

iii) On 22/23rd January, 1993, A-89 met A-139. A-139 gave the keys of his car to A-41 who kept a black bag of weapons in it.

iv) A-139 and A-89 then went to the first floor of 22 Mount Mary, Vidhyanchal Apts. They gave the bag to an old lady, viz., Zaibunisa Anwar Kazi (A-119) and told her that the arms were for the purpose of causing riots, and were sent by Anees Ibrahim - brother of Dawood Ibrahim.

v) A-119 looked at the contents of the bag and then kept it at her residence.

vi) After 8 days, A-139 called A-89 again and together with A-40, they went to the residence of A-117 where he gave them a blue rexin bag and a carton.

vii) Abu Salem and A-89 then went to the house of A-119 and gave the carton and the bag to her. Abu Salem told A-119 to keep those weapons safely as they were to be used for orchestrating bomb blasts.

22) The abovesaid confessional statements of the co-accused clearly establish the case against the appellant-Sanjay Dutt and also corroborate with each other in material particulars. The following facts emerge from the abovesaid confessional statements:-

(i) The appellant had acquired 3 AK-56 rifles and its ammunitions unauthorisedly.

(ii) Samir Hingora (A-53), Hanif Kandawala (A-40) and Salem (A-139) provided the above said arms and ammunitions to the appellant at his residence.

(iii) On being frightened after seeing the weapons, the appellant contacted Hanif Kandawala (A-41) and requested him to take away the weapons.

(iv) Abu Salem came after few days and the appellant returned 2 AK-56 rifles and also ammunitions, but retained one AK-56 rifle and some of its ammunitions.

Confessional Statement of the appellant - Yusuf Mohsin Nulwalla (A-118)

23) Confessional statement of A-118 under 15 of TADA was recorded on 27.04.1993 at (14:20 hrs.) and 29.04.1993 at (16:00 hrs.) by Shri K.L. Bishnoi, the then DCP, Zone-III, Bombay. The following

extracts from the confession of the appellant are pertinent:-

“Somewhere around the year, 1970, I came in contact with one person by name Azhar Hussain and later on I became very friendly with him. He was cousin of Sanjay Dutt through him I met Sanjay Dutt and developed friendship with him as he was also fond of hunting, fishing and staying in camp life. After this myself and Sanjay Dutt used to go out for hunting with other friends occasionally. I came in contact with Sanjay Dutt’s father and other family members due to my friendship with Sanjay Dutt and his cousin Azhar Hussain. Later on Sanjay Dutt had started taking on drugs and because of this he used to remain out off from us and started avoiding me. However, my contact with Sanjay’s father and other family members was as it is and they normally used to ask me to convince Sanjay to give up the drugs but my convincing and persuasion did not help him.” “Somewhere in the year 1984, Sanjay has taken me out to one of his friend by name Tariq Ibrahim’s place in Kanpur. From there his friend had taken us out of his farm in Tarai and we stayed there for one week. During the stay, I casually mentioned to Tariq Ibrahim that I am quite fond of guns but I am not getting arms license. Then he told me that don’t worry my brother is Supdt. of Police at Ratlam and he will get you arms license as and when you wanted. Later on, I contacted his brother Asif Ibrahim, who was Supdt. of Police, Ratlam to give me arms license, he did it and subsequently he gave me two more arms licenses. After getting these licenses, I was gifted two guns by Sunil Dutt out of which one was 12 Bore DBBL gun and another was 22 Rifle. I purchased the 3rd weapon, which is single barrel 375 Magnum Rifle.” “In the meanwhile, I had come in contact with one Kesi Bapuji Adajenia, who was also in steel fabrication business and was also an old hunter so we became friends. He also used to give me sub contracts for steel fabrication. I had introduced him to Sanjay Dutt also and later on he went with us for hunting to a place near Surat once.” “Later on Sanjay Dutt became quite popular in Hindi movies and most of the times he used to remain busy in his shootings. Many times, I also used to get to the place for shooting to meet Sanjay Dutt. He had taken me to Bangalore, Mysore, Ooty, Kodai Kanal and various other places during this outdoor shooting to these places. Normally, I used to meet Sanjay two to three times in a week either at his house or at the place of shootings.” “In the first week of April, he left for Mauritius and I got busy with my normal business. Then one day, I read in newspaper the news item that “Sanjay dutt is in possession of AK-56 Rifles.” In the same day evening, I received a telephone call at my residential telephone from Sanjay dutty, who was speaking from Mauritius. He told me that there is something which is kept in a black coloured bag kept in his room at his residence (i.e. 58, Pali Hill Bandra, Bombay-50) and I shall take that bag from his room and destroy the things inside it immediately otherwise he will be in a great trouble.

Next day morning, I went to Sanjay’s residence and took the black bag from his second floor room and opened it there only.

When I opened it I found it containing one AK-56 rifle, two empty magazines and approximately two hundred fifty rounds of AK-56, one pistol and one loaded magazines of pistol.

I took out the AK-56 rifle there only and cutted it in pieces with a hexa, which I had taken along with me then I put all the cut pieces in the bag and came to my friend Kersi Bapuji Adajenia's house as he used to keep all the tools of his steel fabrication in the godown in his house.

I told him the whole story and also that Sanju is in great trouble, so I required your help in melting and destroying the cutted pieces of AK- 56 rifles. Both of us came to his godown and I tried to melt the cutted pieces of AK-56 with the help of cutter, but could not succeed, then my friend Adajenia melted all the pieces of AK-56 rifle with the help of gas cutter.

After that I gave the pistol to Kersi Bapuji Adajenia asked him to burn it also after sometime. I collected the melted remains of AK-56 Rifle and threw it in the sea at Marine Drive.

Next day morning, I kept the rounds of AK-56 in two separate bundles wrapped in papers and threw it in the sea in front of Oberoi Towers and returned to my home.

Next day in the early morning, I got telephone call from Sanjay Dutt at my residence No. 3755092 and I informed him that your work is done and had normal talk with Sanjay Dutt.

After this, I spoke to Kersi Bapuji Adajenia once and told him that you burn the pistol also but he told me that you do no worry about this. I will take care of this. Then I stayed at my house and did my normal business till I was picked up by the Police.”

24) From the abovesaid confession, the following facts emerge:

- i) Yusuf Mohsin Nulwalla is an old and well known friend of Sanjay Dutt.
- ii) In the month of April, when Sanjay Dutt was in Mauritius, A-118 was asked to destroy certain objects kept at his residence.
- iii) On reaching there, he discovered AK-56 and a pistol and ammunition.
- iv) He tried to destroy them.
- v) He took all these objects to a friend of his, namely, Kersi Bapuji Adajania (A-124)
- vi) A-124 helped him to destroy the same but he retained the pistol with him.

vii) Upon being reminded about destroying the pistol, A-124 assured A-118 that he would take care of it.

25) In view of the above, it is seen that the appellant (A-118), upon instructions, caused destruction of evidence related to an offence, which were unauthorisedly possessed automatic firearms/weapons in a notified area, attracting the provisions of the Arms Act. The confession of A-118 not only involves and implicates him, but also implicates Kersi Adajania (A-

124). The confession of A-118 corroborates with the confession of A-117 as well as A-124.

Confessional Statement of the appellant - Kersi Bapuji Adajania (A-124)

26) The confessional statement of A-124 under Section 15 of TADA was recorded on 27.04.1993 (15:10 hrs.) and on 30.04.1993 at (16:00 hr.) by Shri K.L. Bishnoi, the then DCP, Zone-III, Bombay. The following extracts from the confession of the appellant-Kersi Bapuji Adajania are relevant:-

“I am Kersi Bapuji Adajania, age 63 years. I stay at 605, Karim Manzil, JSS Road, Bombay-2 with my family. I normally take contracts for steel fabrications and the work is done at the sites of the parties only. I normally keep the equipments and the tools for steel fabrications at the temporary godown in my house and I take these equipments to the sites as and when it is required. Due to the work load, I have purchased two or three sets of all the equipments and tools. Whenever there is a heavy work load, I give the excess work on sub-contracts to other persons. Sometimes, I provide my own tools and equipments to sub-contractors. Yusuf Mohsin Nullwala was my one such sub-contractor. I had come in contact with him about ten years back. Since then, I used to give him sub-contracts regularly.

During the days of my youth, I used to be very fond of hunting and used to go out for hunting occasionally with my friends. But I had given up this hobby (hunting) since 1969 onwards. This, Yusuf Nullwalla was also very fond of hunting and he used to talk a lot about hunting and about his friend cineactor Sanjay Dutt. He introduced me with him about seven years back and they had taken me out once for hunting to a place near Surat, I stayed with Sanjay, Yusuf and three – four their other friends there for two days and we all came back. After that I met Sanjay Dutt for two or three times more.

Somewhere around the end of first week of April, 1993, one day Yusuf Mohsin Nullwalla came to my house around 10.00 a.m. in the morning, he was having a black coloured Rexin bag hung to his shoulder with him and he said to me that Sanjay Dutt had telephoned him saying that on AK-56 rifle and other things are lying at this house and police had come to know about his and he is in great trouble and he has asked me to collect it and destroy it, so I had gone to his house and collected it and I

have also cut it into pieces and now I want gas cutting set to completely destroy it, then he showed me the cut pieces of AK-56 rifle by opening the bag.

Since I have read about Sanjay Dutt's possession of AK-56 rifle and police being after him in the newspaper about a day or two earlier. So initially, I told him that I do not want to get involved in this thing. Then Yusuf said to me that in case he goes out to some other place for destroying it he is likely to be caught and requested me to again to give my gas cutter, so I agreed. Then he went to my godown and started destroying the cut pieces of AK-56 rifle with the help of gas cutter.

I also went to the place to see that no mishap takes place. When I went there I saw that he was fumbling with the gas cutter and was in no position to destroy the pieces properly. Then I adjusted the gas and started melting the pieces of AK-56 rifle myself with the gas cutter. These parts were having lot of grease on them so lot of smoke was coming out. Somehow, I managed to destroy all the parts of AK-56 which he had brought in the bag.

Then he took out one pistol from the bag and wanted me to destroy that also but I was quite tired and had some breathing problem due to the smoke which was coming out while the pieces of AK-56 rifle were being destroyed. So I told him to leave the weapon with me and I will destroy it some other time. Then he collected the mangled remains of AK-56 rifle in a plastic bag, gave the pistol to me for destruction and he went away. After two days, he telephoned me and enquired whether I have destroyed pistol or not. I told him not to worry about that.

As I was to go to Calcutta on 9th April morning so I telephoned and called a friend of mine, by name Rusi Framrose Mulla to my house. He came to my house next day morning and I gave the pistol to him and asked to keep it in his custody as I was going out to Calcutta. I did not tell him anything about the history of the pistol and told him that I will collect it as soon as I come back from Calcutta.

27) From the above confession, the following facts emerge:-

(i) A-118 was a sub-contractor of A-124. A-124 was also acquainted with A-117. All three of them were fond of hunting and, in fact, went together for hunting once.

(ii) A-124 had his workshop in his house where he was keeping all his tools including the gas cutter.

(iii) In or around April, A-118 contacted A-124 in order to destroy an AK-

56 and a pistol belonging to Sanjay Dutt (A-117).

(iv) A-124 permitted him to do so.

(v) A-124 personally destroyed AK-56.

(vi) A-124 kept with himself the pistol.

28) The abovesaid confession establishes the charge framed against A-124 that he knowingly destroyed evidence related to an offence. A-124 was thereafter in unauthorized possession of the fire-arm. The abovesaid confession also corroborates in material particulars, the confession of A-

118.

29) The abovesaid confessions of the appellants, viz., A-117, A-118 and A- 124 have been recorded by PW-193, who has proved that the said confessions were recorded after following the requirements of the provisions of Section 15 of TADA. It is relevant to point out that notwithstanding vigorous cross-examination of the witness (PW-193), he stood firmly without being shaken. A long line of arguments was placed before the Designated Court attacking the voluntariness of the confession on various occasions, which had been considered in detail by the trial Court and we fully agree with the same.

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 thereunder:

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

31) In Jayawant Dattatray Suryarao vs. State of Mharashtra, (2001) 10 SCC 109, this Court considered in detail the evidentiary value and admissibility of a confessional statement recorded under Section 15 of TADA and held that it is settled legal position that a confessional statement recorded by a police officer is in fact, substantive evidence, and that the same can be relied upon in the trial of such person or of a co-accused, an abettor or a conspirator, so long as the requirements of Section 15 and

of the TADA rules are complied with. It was observed:

“60. Confessional statement before the police officer under Section 15 of the TADA is substantive evidence and it can be relied upon in the trial of such person or co-accused, abettor or conspirator for an offence punishable under the Act or the Rules. The police officer before recording the confession has to observe the requirement of sub-section (2) of Section 15. Irregularities here and there would not make such confessional statement inadmissible in evidence. If the legislature in its wisdom has provided after considering the situation prevailing in the society that such confessional statement can be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under duress or was not recorded truly by the officer concerned in whom faith is reposed.” It was further held by this Court, that minor irregularities do not make the confessional statement inadmissible as substantive evidence and observed as under:

”50. In this view of settled legal position, confessional statement is admissible in evidence and is substantive evidence. It also could be relied upon for connecting the co-accused with the crime. Minor irregularity would not vitiate its evidentiary value.....”

32) In *Ravinder Singh @ Bittu vs. State of Maharashtra*, (2002) 9 SCC 55, this Court, while considering the reliability of a confession recorded under Section 15 of TADA against the maker, as well as the co-accused, held that after *State vs. Nalini, Kalpnath Rai vs. CBI*, it does not reflect the correct position of law. It was observed:

“13. In *Kalpnath Rai v. State* (through CBI) it was observed that the confession made by one accused is not substantive evidence against a co-accused. It has only a corroborative value. In the present case, we are, however, primarily concerned with the confession made by the maker i.e. the appellant himself. Besides this confession, there is also a confession made by co-accused Nishan Singh which too implicates the appellant in commission of the offence of the bomb blast in the train. The observations made in *Kalpnath Rai* case were considered in *State through Supdt. of Police, CBI/SIT v. Nalini*, a decision by a three-Judge Bench. It was held that the confession recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. In this view, the observations in *Kalpnath Rai* case do not represent the correct position of law.

17. It is thus well established that a voluntary and truthful confessional statement recorded under Section 15 of the TADA Act requires no corroboration. Here, we are concerned primarily with the confessional statement of the maker. The weight to be attached to the truthful and voluntary confession made by an accused under Section 15 of the TADA Act came to be considered again in a recent three-Judge Bench

decision in *Devender Pal Singh v. State of NCT of Delhi*. It was held in the majority opinion that the confessional statement of the accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself.

18. There can be no doubt that a free and voluntary confession deserves the highest credit. It is presumed to flow from the highest sense of guilt. Having examined the record, we are satisfied that the confession made by the appellant is voluntary and truthful and was recorded, as already noticed, by due observance of all the safeguards provided under Section 15 and the appellant could be convicted solely on the basis of his confession.”

33) In *Mohmed Amin vs. Central Bureau of Investigation*, (2008) 15 SCC 49, it was observed:

“28. In *Devender Pal Singh* case majority of three-Judge Bench made a reference to *Gurdeep Singh* case and *Nalini* case and held (at SCC pp. 261-62, para 33) that whenever an accused challenges the voluntary character of his confession recorded under Section 15(1) of the Act, the initial burden is on the prosecution to prove that all the conditions specified in that section read with Rule 15 of the Rules have been complied with and once that is done, it is for the accused to show and satisfy the court that the confession was not made voluntarily. The Court further held that the confession of an accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself. However, as a matter of prudence the court may look for some corroboration if confession is to be used against a co-accused though that will be again within the sphere of appraisal of evidence.

29. In *Jameel Ahmed* case a two-Judge Bench after discussing, considering and analysing several precedents on the subject, including *Devender Pal Singh* case, culled out the following propositions:

(*Jameel Ahmed* case, SCC pp. 689-90, para 35) “(i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-

accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement.”

30. In Abdulvahab Abdul Majid Shaikh case this Court rejected the argument raised on behalf of the appellant that the confession made by him cannot be treated as voluntary because the same had been retracted and observed:

“9. ... The police officer was empowered to record the confession and in law such a confession is made admissible under the provisions of the TADA Act. The mere fact that A-9 Musakhan @ Babakhan retracted subsequently is not a valid ground to reject the confession. The crucial question is whether at the time when the accused was giving the statement he was subjected to coercion, threat or any undue influence or was offered any inducement to give any confession. There is nothing in the evidence to show that there was any coercion, threat or any undue influence to the accused to make the confession.”

31. The ratio of the abovenoted judgments is that if a person accused of an offence under the Act makes a confession before a police officer not below the rank of Superintendent of Police and the same is recorded by the officer concerned in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, then such confession is admissible in the trial of the maker as also the co-accused, abettor or conspirator not only for an offence under the Act but also for offence(s) under other enactments, provided that the co-accused, abettor or conspirator is charged and tried in the same case along with the accused and the court is satisfied that requirements of the Act and the Rules have been complied with. Whether such confession requires corroboration depends on the facts of the given case. If the court is convinced that the probative value of the confession is such that it does not require corroboration then the same can be used for convicting the maker and/or the co-accused under the Act and/or the other

enactments without independent corroboration.” After considering the confessions of the accused in the aforesaid case, it was held as follows:

“81. Therefore, keeping in view the provisions of Section 15 of the Act as interpreted by this Court in Gurprit Singh case, Nalini case, S.N. Dube case, Lal Singh case, Devender Pal Singh case and Jameel Ahmed case, we hold that the appellants are guilty of offence under Section 302 read with Section 120-B IPC and no independent corroboration is required for sustaining their conviction.”

34) In *Jameel Ahmed & Anr. vs. State of Rajasthan*, (2003) 9 SCC 673, this Court held that Section 30 of the Evidence Act has no role to play in deciding the admissibility of confession recorded under Section 15 of TADA.

This Court held that:

“23. it is relevant to note that Section 15 of the TADA Act by the use of non obstante clause has made confession recorded under Section 15 admissible notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure. It also specifically provides that the confession so recorded shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. Apart from the plain language of Section 15 which excludes the application of Section 30 of the Evidence Act, this Court has in many judgments in specific terms held that Section 30 of the Evidence Act has no role to play when the court considers the confession of an accused made under Section 15 of the TADA Act either in regard to himself or in regard to his co-accused.”

35) In *Ahmed Hussein Vali* (supra), this Court, while relying upon *Nalini* (supra), held that if the confession made by an accused is voluntary and true, then it is admissible against the co-accused as a substantive piece of evidence, and that minor and curable irregularities in the recording of the confession like omission in obtaining the certificate of competent office with respect to confession do not affect the admissibility of the said evidence. It was further observed:

“74. ... As far as the admissibility of the confessional statement of A- 27 is concerned with regard to his co-accused in this case, it is not vitiated because of the amendment and it is rightly used as a major evidence for the trial of his co-accused by the Designated Court. As this confessional statement was made complying with all the procedural essentials as provided for by the TADA Act and the Rules it can be a valid ground for the conviction when corroborated with the confessional statement of the other four accused, namely, A-1, A-2, A- 3 and A-20 respectively which have been made prior to the amendment of the Act....”

36) In Mohd. Farooq Abdul Gafur vs. State of Maharashtra (2010) 14 SCC 641, this Court has upheld the conviction, inter alia, relying upon the confession of the accused, as well as the confession of the co-accused in determining the guilt of the accused. The relevant observations in the judgment are as under:-

“76. The confessional statements of Accused 5 and 6 are also relevant to prove and establish the involvement of Accused 1 with the incident. In the said confessional statement, Accused 5 had stated that on 2-3-1999, Faheem informed Accused 5 on the phone that he would be sending two pistols with Accused 1. In fact, Accused 1 came to the house of Accused 5 to deliver the said pistols.

77. It has also come out in the said confessional statement (of Accused 5) that out of the two pistols one was not in order and so the same was returned to Accused 1 and that on 5-3-1999 Accused 5 called Accused 1 who informed him that he (Accused 1) has spoken to Chhota Shakeel over the phone and informed him about the incident on the previous day.

78. Accused 5 has also stated in his confessional statement that Accused 1 informed him that Chhota Shakeel had asked Accused 1 to pay Accused 5 some money. Thereupon, Accused 1 paid Rs 20,000 to Accused 5 at Vakola and Accused 5 and 6 together informed Accused 1 that they were going to Kolkata.

81. The High Court disbelieved the aforesaid confessional statements of Accused 5 and 6 on the ground that the said confessional statements were inadmissible in evidence thereby it reversed the findings of the trial court. The High Court came to the aforesaid conclusion on the basis that there is no evidence to show that any preliminary warning was given prior to the recording of the confessional statements and that in the absence of proof of the fact that a warning was given prior to the recording of the confessional statements, the same were inadmissible in evidence. In our considered opinion the High Court ignored the fact that there is evidence of PW 64, the typist who had deposed that the preliminary warning was in fact given which was so recorded on 23-7-1999.

82. Considering the facts and circumstances of the case we find no reason not to accept the said statement of PW 64, the typist. We also hold that the aforesaid confessional statement of the co-accused could be the basis of conviction under the provisions of MCOCA.

83. We, therefore, hold Accused 1 guilty of all the charges which were already found to be proved and established by the trial court and affirmed by the High Court. So far as the sentence is concerned we, however, uphold and confirm the sentence passed by the High Court and also restore the punishment awarded by the trial court under Section 212 read with Section 52-A read with Section 120-B IPC.

84. So far as the conviction (of Accused 1) under MCOCA is concerned, it is quite clear that conviction could be based solely on the basis of the confessional statement itself and such conviction is also permissible on the basis of the confessional statement of the co-accused which could be used and relied upon for the purpose of conviction.

85. In State v. Nalini¹ it was held by this Court in the context of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (now repealed), which is *pari materia* with Section 18 of MCOCA that the evidence of a co-accused is admissible as a piece of substantive evidence and in view of the non obstante clause, CrPC will not apply.”

37) It is clear that a confessional statement duly recorded by a Police Officer is a substantive piece of evidence and the same can be relied upon in the trial of such person or of the co-accused, abettor or conspirator if the requirements of Section 15 of TADA, and the rules framed thereunder are complied with. The police officer, before recording the confession, has to observe the requirement of Section 15(2) of TADA. A voluntary and truthful confessional statement recorded under Section 15 of TADA requires no corroboration. However, as a matter of prudence, the court may look for some corroboration if confession is to be used against co-accused. It is made clear that whether such confession requires corroboration or not is a matter for the court to consider such confession on the facts and circumstances of each case. If the confession made by an accused is voluntary and true, it is admissible against co-accused as a substantive piece of evidence and minor and curable irregularities in recording of confession, such as omission in obtaining the certificate of the competent officer with respect to the confession do not affect the admissibility of the said evidence.

Retracted Confessions:

38) It has been contended that since the confession of the appellant -

Sanjay Dutt (A-117) has been retracted, hence, it is not trustworthy and it would not be safe to place reliance upon it. It is settled law that a voluntary and free confession, even if later retracted, can be relied upon.

39) In the case of the appellant - Sanjay Dutt (A-117), the retraction statement was not made at the first available opportunity. After the recording of his confession, within 10 days, the accused was released on bail by the High Court, and the accused remained free for a considerable period of time. In fact, the judgment delivered by the Constitution Bench on 09.09.1994 also noted down that the said confession of the accused remained un-retracted. The retractions were made many months after the recording of the confession.

40) In State of Maharashtra vs. Bharat Chaganlal Raghani, (2001) 9 SCC 1, this Court while setting aside the judgment of acquittal recorded by the Designated TADA Court, observed as under:

“58. There is no denial of the fact that the judicial confessions made are usually retracted. Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law.... Corroboration of the confessional statement is not a rule of law but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case.”

41) In Mohd. Amin (supra), this Court considered two issues, viz., (i) whether the confession of an accused can be relied upon or used against the co-accused without corroboration, and (ii) whether confessional statements can be relied upon to convict the accused in spite of their subsequent retraction. It was held that in so far as the retraction of confessional statements is concerned, it is clear that the allegations of torture, coercions and threats etc. by accused were not raised at the first available opportunity, and that the retractions were made after almost a year and were therefore only an afterthought and a result of the ingenuity of their advocates. Accordingly, the retracted confessions were relied upon. It was observed:-

“If the confessions of the appellants are scrutinized in the light of the above enumerated factors, it becomes clear that the allegations regarding coercion, threat, torture, etc. after more than one year of recording of confessions are an afterthought and products of ingenuity of their advocates. The statements made by them under Section 313 of CrPC were also the result of an afterthought because no tangible reason has been put forward by the defence as to why Appellants A-4 to A-8 did not retract their confessions when they were produced before the Magistrate at Ahmedabad and thereafter despite the fact that they had access to legal assistance in more than one way. Therefore, we hold that the trial court did not commit any error by relying upon the confessions of the Appellants A-4 to A-8 and A-10 and we do not find any valid ground to discard the confessions of Appellants A-4 to A-8 and A-10.”

42) In Manjit Singh vs. CBI, (2011) 11 SCC 578, this Court, while considering the question whether retracted confessions of the co-accused could be relied upon to convict the accused, held that the retracted statements can be used against the accused as well as the co-accused provided such statements were truthful and voluntary when made. In the said case, two accused persons made confessional statements and, subsequently, they retracted from their statements. This Court observed:

“87. A confessional statement given under Section 15 of TADA shall not be discarded merely for the reason that the same has been retracted....” It is pointed out that the confession in the present case was truthful and voluntary and has been recorded after strictly following the law and the prescribed procedure, the subsequent retraction

and denial of such confessional statements in the statement of the accused under Section 313 was only as a result of an afterthought.

Corroboration of Confession:

43) A contention was raised by learned senior counsel for the appellant that there was no sufficient corroboration of the confessional statements made by the accused. In reply to the above, the prosecution relied upon the following decisions:-

44) In *Wariyam Singh vs. State of U.P.*, (1995) 6 SCC 458, this Court relied upon the confession made by an accused for convicting him. The confession was alleged to have been fabricated. In para 16 of the judgment, it was held that a part of the confession stood corroborated by the testimony of a witness, and hence there was no reason to believe that the confession was fabricated. This Court held that the allegation of the confession being fabricated was without any basis and the confession could be taken into account while recording the conviction.

45) In *S.N. Dube vs. N.B. Bhoir & Ors.*, (2000) 2 SCC 254, this Court in para 34 observed that the confessions of two accused being substantive evidence are sufficient for considering them and it also received corroboration from the confessions of other accused and also general corroboration as regards the other illegal activities committed by them from the evidence of other witnesses. On the basis of these confessional statements, this Court reversed the orders of acquittal passed by the High Court.

46) In *Lal Singh vs. State of Gujarat*, (2001) 3 SCC 221, this Court upheld the conviction of the accused on the basis of the confessions. It was held that the Nation has been 'facing great stress and strain because of misguided militants and cooperation of the militancy' which was affecting the social security, peace and stability. Since the knowledge of the details of such terrorist conspiracies remains with the people directly involved in it and it is not easy to prove the involvement of all the conspirators, hence, the confessional statements are reliable pieces of evidence. This Court, in para 84, observed as under:

"84. Hence, in case of conspiracy and particularly such activities, better evidence than acts and statements including that of co-conspirators in pursuance of the conspiracy is hardly available. In such cases, when there is confessional statement it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue. For assessing evidence in such cases, this Court in *Collector of Customs v. D. Bhoormall* dealing with smuggling activities and the penalty proceedings under Section 167 of the Sea Customs Act, 1878 observed that many facts relating to illicit business remain in the

special or peculiar knowledge of the person concerned in it and held thus: (SCC pp. 553-55, paras 30-32 and 37) “30. ... that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and—as Prof. Brett felicitously puts it — ‘all exactness is a fake’. El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a- day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered — to use the words of Lord Mansfield in *Blatch v. Archer* (1774) 1 Cowp 63: 98 ER 969 (Cowp at p. 65) ‘according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted’.”

47) In *State of Maharashtra vs. Bharat Chaganlal Raghani*, (2001) 9 SCC 1, this Court mainly relied on the confessional statements of the accused which were also retracted. It was held that there was sufficient general corroboration of the confessional statements made by the accused. The Court found sufficient corroboration in the testimony of the witnesses and the recoveries pursuant to the statements given by the accused. It was also held that once the confessional statements were found to have been made voluntarily, the test identification parade was not significant. It was further held that corroboration is not a rule of law but a rule of prudence.

48) In *Devender Pal Singh vs. State of NCT of Delhi*, (2002) 5 SCC 234, this Court was considering, among other things, whether the accused making the confessional statement can be convicted on the basis of the confession alone without any corroboration. It was held that once it is found that the confessional statement is voluntary, it is not proper to hold that the police had incorporated certain aspects in the confessional statement which were gathered during the investigation conducted earlier. It was held that the so-called retraction by the appellant, was made long after he was taken into judicial custody.

49) In *Ravinder Singh vs. State of Maharashtra*, (2002) 9 SCC 55, this Court held that a confession does not require any corroboration if it relates to the accused himself. It was further held that there was enough evidence to provide general corroboration to the confessional statement. It was also held that minor contradictions in the statements of the accused were of no consequence once the confessions were held to be reliable.

50) In *Jameel Ahmed vs. State of Rajasthan*, (2003) 9 SCC 673, the position of law was summed up by this Court as follows:

“35.(i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement.”

51) In *Nazir Khan vs. State of Delhi*, (2003) 8 SCC 461, this court held that the confessional statements made by the co-accused can be used to convict a person, and that it is only as a rule of prudence that the Court should look for corroboration elsewhere. It was held that:

“27. Applying the principles which can be culled out from the principles set out above to the factual scenario, the inevitable conclusion is that the trial court was justified in its conclusions by holding the accused-appellants guilty. When an accused is a participant in a big game planned, he cannot take the advantage of being ignorant about the finer details applied to give effect to the conspiracy hatched, for example, A-7 is stated to be ignorant of the conspiracy and the kidnapping. But the factual

scenario described by the co-accused in the statements recorded under Section 15 of the TADA Act shows his deep involvement in the meticulous planning done by Umar Sheikh. He organized all the activities for making arrangements for the accused and other terrorists.

52) In Sukhwant Singh vs. State, (2003) 8 SCC 90, this Court upheld the conviction solely on the basis of the confession of the co-accused, without any corroboration, that too in a situation where the accused himself had not confessed. The judgment in the case of Jameel Ahmed (supra) was relied upon. It was held:

“3. In the present case we are aware of the fact that the appellant has not made any confessional statement nor is there any corroboration of the confessional statement of the co-accused implicating this appellant from any other independent source but then we have held in the above-reported case that if the confessional statement of a co-accused is acceptable to the court even without corroboration then a confession of a co-accused can be the basis of conviction of another accused so implicated in that confession. Therefore the fact that the appellant herein has not confessed or the confessional statements made implicating him by A-1 and A-2 are not independently corroborated, will not be a ground to reject the evidence produced by the prosecution in the form of confessional statement of co-accused provided the confession relied against the appellant is acceptable to the court.”

53) In Mohammed Amin (supra), this Court convicted the accused on the basis of their confessions and confessional statements of co-accused. It was held that there is no requirement of corroboration if the confessions are proved to be made voluntarily, and the Rules applicable have been complied with. The following observations are pertinent:

“31. The ratio of the abovenoted judgments is that if a person accused of an offence under the Act makes a confession before a police officer not below the rank of Superintendent of Police and the same is recorded by the officer concerned in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, then such confession is admissible in the trial of the maker as also the co-accused, abettor or conspirator not only for an offence under the Act but also for offence(s) under other enactments, provided that the co-accused, abettor or conspirator is charged and tried in the same case along with the accused and the court is satisfied that requirements of the Act and the Rules have been complied with. Whether such confession requires corroboration depends on the facts of the given case. If the court is convinced that the probative value of the confession is such that it does not require corroboration then the same can be used for convicting the maker and/or the co-accused under the Act and/or the other enactments without independent corroboration.”

54) In Mohd. Ayub Dar vs. State of Jammu and Kashmir, (2010) 9 SCC 312, it was held that even though the guidelines in Kartar Singh (supra), have not been strictly followed, the confession of the accused recorded is admissible against him and can be relied upon solely to convict him. The following observations of this Court are pertinent:

“59. It would, therefore, be clear, as rightly contended by Shri Rawal that merely because the guidelines in Kartar Singh v. State of Punjab were not fully followed, that by itself does not wipe out the confession recorded. We have already given our reasons for holding that the confession was recorded by A.K. Suri (PW 2) taking full care and cautions which were required to be observed while recording the confession.

60. In Ravinder Singh v. State of Maharashtra it has been observed in para 19 that if the confession made by the accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and a conviction of the accused can be solely based on it. It has also been observed that such confessional statement is admissible as a substantive piece of evidence. It was further observed that the said confession need not be tested for the contradictions to be found in the confession of the co-accused. It is for that reason that even if the other oral evidence goes counter to the statements made in the confession, one's confession can be found to be voluntary and reliable and it can become the basis of the conviction.

61. In this case, there is ample corroboration to the confession in the oral evidence as well as the documentary evidence in shape of a chit, which is referred to in the said confession. There is a clear reference that the Personal Assistant, who was a non-Kashmiri and kept a beard, had sent a slip inside. Ultimately, that slip was found by the police, which corroborates the contents in the confession. In our opinion, that is a sufficient corroboration to the confession.

64. All these cases suggest that the only test which the court has to apply is whether the confession was voluntary and free of coercion, threat or inducement and whether sufficient caution is taken by the police officer who recorded the confession. Once the confession passes that test, it can become the basis of the conviction. We are completely convinced that the confession in this case was free from all the aforementioned defects and was voluntary.”

55) In Manjit Singh vs. CBI, (2011) 11 SCC 578, the following observations of this Court regarding the admissibility of confessional statements are pertinent:-

91. In Ravinder Singh case, the Court relying on State v. Nalini, S.N. Dube v. N.B. Bhoir and Devender Pal Singh v. State (NCT of Delhi), held that: (Ravinder Singh case, SCC p. 59, para 17) “17. It is thus well established that a voluntary and truthful confessional statement recorded under Section 15 of the TADA Act requires no corroboration.” This apposite observation by the Bench of two learned Judges in

Ravinder Singh case (supra) should be considered with measured caution and we believe, taking into account the ground realities that it would be prudent to examine the authenticity of a confession on a case-by-case basis.

56) The corroboration as required in the abovesaid judgment can also be found in the case at hand, both in the nature of substantive evidence in the form of the confessions of the co-accused, as well as in the oral testimony of witnesses, including the eye witnesses to the incident who have identified the appellant-Sanjay Dutt (A-117), as well as the co-accused persons, viz., A-41 and A-53.

57) Apart from the evidence contemporaneous to the arrest of the abovesaid three accused and the recovery made from A-124 and subsequent recovery at the instance of A-124 from A-120, are also relevant in respect of all the three abovenamed appellants.

58) It is clear that the sequence of events after the arrest of Sanjay Dutt till the recovery of pistol from A-120, forms part of an unbroken chain inseparably connected to each other. No foul play can be assumed in view of the fact that the events happened in quick succession one after the other, lending credibility and truthfulness to the whole episode. The role and the part played by A-118 and A-124 is also clear from the evidence relied upon by the prosecution in respect of A-117, which corroborates with each other in material particulars and is thus a substantive piece of evidence.

Deposition of Prosecution Witnesses:

59) Apart from the aforesaid evidence, the involvement and the role of the appellant in the conspiracy as stated above is disclosed by the deposition of various prosecution witnesses which are as follows:

Deposition of Shri K.L. Bishnoi (PW-193) PW-193, the then DCP, deposed as under with regard to the confession made by A-117:-

(i) On 26.04.1993, at about 3:15 p.m., A-117 was produced by A.P.I. Shri Sanjay Kadam before him in the room given by Senior P.I. Shri Kumbhar, in the office of DCB, CID, Crime Branch, for recording of his confession and he took the proceedings by asking A-117 certain questions in English and during the same, amongst other replies given by him, he told him that he wanted to make a statement.

(ii) During the said proceedings, amongst other, he had explained to A-

117, that he was not bound to make a confession and the same can be used against him in evidence and when A-117 still intended to give the confession, PW-193 gave him 48 hours time to reconsider his decision.

(iii) Exhibit 868 being the true and correct record of the said proceedings made by him with the help of a typist in his presence which was read over to A-117 and confirmed by him as of being correctly recorded, and bearing the signatures of A-117 as well as of PW-193.

(iv) On 28.04.1993, at about 16:00 hours, A-117 was again produced before P.W. 193 in the chamber of Senior P.I. DCB,CID, in the office of Crime Branch, C.P. office by A.P.I. Shri S.A. Khare for further proceedings, and he followed all the procedures mentioned above and recorded the same which is Exh. 868-A.

(v) PW-193 deposed that A-117 confessed that he already had three licensed firearms.

(vi) He developed acquaintance with Anees Ibrahim-brother of Dawood Ibrahim during a film-shooting

(vii) He expressed his desire to have an automatic fire-arm to Samir Hingora (A-53) and Hanif Kandawala (A-40).

(viii) Sanjay Dutt was already acquainted with Salem and he had assured him of delivery of the weapons.

(ix) With the help of above named persons, 3 AK-56 Rifles and 250 rounds were delivered to A-117.

(x) After 2 days, he returned 2 AK-56 rifles and ammunitions, and retained 1 AK-56 and some ammunition.

(xi) A-117 kept the same in a handbag and placed it in the private hall on the 2nd floor of his bungalow.

(xii) On hearing the news of the arrest of co-accused persons, viz., Samir Hingora (A-53) and Hanif Kandawala (A-40), A-117 contacted Yusuf Nulwalla over telephone and asked him that something is lying in a black coloured bag kept in the hall on the second floor of his house, and it should be taken away immediately and to destroy the objects completely.

v) He was picked up by the police as soon as he landed at Bombay. Deposition of PW-193 with regard to the confession made by A-118:-

(i) A-118 is an old and well known friend of Sanjay Dutt (A-117).

(ii) In the month of April, when Sanjay Dutt was in Mauritius, A-118 was asked to destroy certain objects kept at his residence.

(iii) On reaching there, he discovered one AK-56 rifle, two empty magazines, approximately 250 rounds of AK-56, one pistol and one loaded magazine.

(iv) A-118 cutted the rifle into pieces with the help of a hexa-cutting machine.

(v) A-118 took all those things to Kersi Adajania (A-124), who was having a gas-cutter, in order to melt the same.

(vi) A-118 caused disappearance of evidence of an offence which were also unauthorisedly possessed automatic firearms/weapons.

(vii) Next day, he informed A-117 about the completion of the work assigned to him.

Deposition of PW-193 with regard to the confession made by A-124:-

(i) A-124 was very well acquainted with A-117 and A-118.

(ii) A-124 had his workshop in his house where he kept all his tools including the gas cutter.

(iii) A-118 contacted A-124 and said that he wanted to destroy AK-56 and a pistol belonging to Sanjay Dutt (A-117).

(iv) A-124 permitted him to do so.

(v) A-124 personally destroyed AK-56.

(vi) A-124 kept with himself the pistol.

Deposition of Pandharinath H. Shinde (PW-218) The deposition reveals as under:

(i) On 11.01.1993, he was posted on guard duty at the bungalow of Sunil Dutt at Pali Hill, Khar, Bombay.

(ii) He had worked as a Protection Guard at the said bungalow from 11.01.1993 to 19.01.1993. He was on duty during that period for 24 hours.

(iii) On the said day, at about 7:30 a.m., one white maruti van came to gate No. 2 of the said bungalow and three persons were sitting in the said van.

(iv) He identified Ibrahim Musa Chauhan (A-41) and Samir Hingora (A-53) as the persons who were sitting at the back of the said van. Deposition of Manohar Vasudev Shiroadkar (PW-219) At the relevant time, PW-219 was Senior Inspector of Police at Khar Police Station, Bombay. His deposition establishes that PW-218 was posted on Protection Duty at the bungalow of Sunil Dutt.

Deposition of Suresh S. Walishetty (PW-680) PW-680, the Investigating officer revealed as under:-

(i) He deposed that Sanjay Dutt (A-117) expressed his desire to make a voluntary statement. Thereafter, he instructed his staff to make arrangement of two persons to act as panch witnesses. The said persons were Shri Tavade and Shri Sawant (PW 211).

(ii) PW-680 instructed Shri Rajaram Ramchandra Joshi (PW-475), Assistant Inspector of Police to record the panchnama.

(iii) Sanjay Dutt made a voluntary statement in Hindi Language, which was recorded in the memorandum Panchnama Exhibit 1068 by PW-475.

(iv) As per the said disclosure, Sanjay Dutt led the Police party to the House of Yusuf Nulwala (A-118).

(v) Yusuf Nulwala was produced by the officers of Dongri police station after about half an hour after their return to the office of DCB-CID.

(vi) Yusuf Nulwala made a disclosure statement and led the police party to the house of Kersi Adajania (A-124).

(vii) Kersi Adajania made a disclosure statement and produced a spring and a rod which was seized by the police and also led the Police party to A-125.

(viii) A-125 made a disclosure statement and led the police party to the House of A-120 wherefrom a pistol and its rounds were recovered.

Deposition of Rajaram Ramchandra Joshi (PW-475) At the relevant time, PW-475 was working as the Assistant Inspector of Police. In his deposition, he corroborates with the deposition of PW-680 that he assisted him in the investigation relating to Sanjay Dutt and others.

Deposition of Shashikant Rajaram Sawant (PW-211) PW-211 acted as an independent witness and proved the disclosure statements made by the appellants pointing out the recoveries therefrom. The deposition reveals as under:

(i) At about 3:00 p.m., he alongwith Tawade was asked by 3-4 havaldars to act as panch witnesses to which they agreed.

(ii) They were taken to the office of the Crime Branch at Crawford Market.

(iii) He saw Sanjay Dutt present in the said police station.

(iv) He was asked to hear what Sanjay Dutt had to say.

(v) He refers to the disclosure made by Sanjay Dutt to the police.

(vi) Panchnama was drawn by Joshi Saheb (PW-475).

(vii) Sanjay Dutt led the police party to the house of Yusuf Nulwala (A-

118).

(viii) He proved the Panchnama Exhibit 1068-A.

(ix) Yusuf Nulwala was produced by the two constables who was then arrested by Wallishetty (PW-680).

(x) The witness proved the statement made by Yusuf Nulwala to the Police.

(xi) Yusuf Nulwala lead the police party to the house of A-124 who was then arrested by the Police.

(xii) Kersi made a disclosure statement.

(xiii) The witness proved the Panchnama Exhibit 1068-C.

(xiv) He also identified the articles, viz., the Rod and the spring produced by A-124.

(xv) Kersi led the police party to Rusi Mulla (A-125).

(xvi) Rusi Mulla led the Police party to Ajay Marwah (A-120).

(xvii) Ajay Marwah produced the bag containing a pistol loaded with Magazine.

(xix) The witness also proved the panchnama Exh. 1068-E. Deposition of Gangaram Bajoji (PW-265) PW-265 acted as an independent witness and proved Exhibit Nos. 1100, 1100A, 1101 and 1101 A. In his deposition, he reveals as under:-

(i) The witness was approached on 1.5.1993 by Police Havaldars to act as Panch witnesses to which he agreed. He went to the Crime Branc-CID, Crawford market.

(ii) He met PW 680 and PW 475 there.

(iii) Kersi Adajenia made a statement.

(iv) Pursuant to the said statement, Kersi Adajenia produced Gas Cylinder, Gas Cutter, from his workplace-Factory.

(v) Police seized those articles vide seizure memo Exhibit 1100A.

(vi) Upon his return to the Police station, Yusuf Nulwala made a statement before him, PW 680 and PW 475.

(vii) A panchnama was drawn as Exhibit 1101.

(viii) The said accused led the Police party to marine drive and asked the jeep to be halted in front of Shanti Niketan building.

(ix) The accused then took the police party to the stoney area and took out a plastic bag concealed in the gap of one of the stones. He handed over the same to PW 680. The said bag was found to be containing 53 bullets and he also proved Exhibit 1101A.

Deposition of Karmegam Alagappan (PW-472) The deposition of PW 472 reveals as under:

(i) The call records of Telephone No. 6462786 were provided by him.

(ii) Out of 7-8 numbers provided by the Investigating officer, only 6462786 has STD and ISD calls.

(iii) X 572 contains the printout of call records provided by him.

(iv) After the objections were decided, the said call records were marked as Exhibit 2532 collectively.

60) The entire sequence of abovesaid events have been proved Shri Suresh S. Walishetty (PW-680)-the Investigating Officer and Sh. Rajaram Ramchandra Joshi (PW-475)-the Assistant Inspector of Police. The above said incident has also been witnessed and proved by an independent witness, viz. PW-211.

Further, the credibility of the witness has not been shaken despite vigorous cross examination.

Section 27 of the Indian Evidence Act:

61) This Court, while dealing with the law relating to Section 27 of the Indian Evidence Act observed about the possibility and plausibility of such recoveries as followed in State (NCT of Delhi) vs. Navjot Sandhu, (2005) 11 SCC 600 which are as under:-

“142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information

about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.

145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs 10 lakhs from the truck in which they were found at Srinagar is in issue. Learned Senior Counsel Mr Shanti Bhushan and Mr Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the accused informants. Some of the High Courts have taken the view that the wording “a person” excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27.

“A person accused” need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may

be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence.....” It was contended that under Section 27 of the Evidence Act, only recovery of object is permissible and identification of the person instead of the place where the article is to be found cannot attract the provisions of Section 27.

62) The very same situation has been considered by this Court in Jaffar Hussain Dastagir vs. State of Maharashtra, (1969) 2 SCC 872, 875 wherein the following observations are pertinent:-

“4.....In order that the section may apply the prosecution must establish that the information given by the appellant led to the discovery of some fact deposed to by him. It is evident that the discovery must be of some fact which the police had not previously learnt from other sources and that the knowledge of the fact was first derived from information given by the accused. If the police had no information before of the complicity of Accused 3 with the crime and had no idea as to whether the diamonds would be found with him and the appellant had made a statement to the police that he knew where the diamonds were and would lead them to the person who had them, it can be said that the discovery of the diamonds with the third accused was a fact deposed to by the appellant and admissible in evidence under Section 27. However, if it be shown that the police already knew that Accused 3 had got the diamonds but did not know where the said accused was to be found, it cannot be said that the information given by the appellant that Accused 3 had the diamonds and could be pointed out in a large crowd at the waiting hall led to the discovery of a fact proving his complicity with any crime within the meaning of Section 27. The fact deposed to by him would at best lead to the discovery of the whereabouts of Accused 3.

5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles or receiving stolen articles, within the meaning of Section 411 IPC states to the police, “I will show you the articles at the

place where I have kept them” and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact i.e. keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not the discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above statement and that made by the appellant in this case which in effect is that “I will show you the person to whom I have given the diamonds exceeding 200 in number”. The only difference between the two statements is that a “named person” is substituted for “the place” where the article is kept. In neither case are the articles or the diamonds the fact discovered.” Recoveries:

63) The rod and the spring recovered from the possession of A-124 were sent to FSL for examination. The experts opined that the said articles correspond to that of an AK-56 type rifle, but did not correspond to similar components used in AK-47 rifle.

64) The independent witness was given a tape to measure the rod, and the measurement came to be 15 inches which is not one and a half feet, as was recorded and deposed to by the prosecution witness. A contention was also raised with regard to the removal of the seal from the packet. The requisition and the report show that the seal on the packet containing the object was perfect and had not been tampered with. In that event, the said anomaly may not be of much consequence.

65) The prosecution has also established through one independent witness PW-265 that A-118 and A-124 further made statement to the police and pursuant whereof the gas cylinder used in destroying AK-56 was recovered at the instance of A-124 and some of the ammunition of AK-56 were recovered at the instance of A-118.

66) The relevant confession of A-53, wherein he stated that when they reached the house of Sanjay Dutt, he was speaking to Anees over phone, the said call details along with a certified copy of the relevant directory which contains the telephone number of Anees Ibrahim in Dubai has been filed. The call record was pertaining to Tel. No. 6462786. Exh. No. X-572 shows that the said number belongs to Sanjay Dutt. The United Arab Emirates' Telephone Directory which is also exhibited indicates the number as 448585 in the name of Anees Shaikh Ibrahim.

67) It was contended on behalf of Sanjay Dutt that since he has been acquitted of all the charges, the confession ought not to have been relied upon for convicting him for offences other than TADA offences. The answer to the said contention lies in reading together the two judgments of the Constitution Bench of this Court. One is in the case of Sanjay Dutt (II) (supra) wherein this Court considered the entire case of the appellant-

Sanjay Dutt at that stage and opined that although the offence is complete by the unauthorized possession of a weapon in the notified area, a defence would be available to the accused to be taken

at the time of the trial and the Trial Court can consider the same by virtue of Section 12 of TADA. The other case is of Prakash Kumar (supra), wherein this Court held that even if the accused was to be acquitted of the TADA charges, still in a joint trial, the confessions recorded under Section 15 of TADA can be relied upon in respect of the said accused. It was further held that the stage at which the trial can be separated is at the stage of cognizance and not subsequently.

68) The following observation of this Court in the abovesaid judgment is as under:-

In Sanjay Dutt (Supra), this Court held:-

“27. There is no controversy about the facts necessary to constitute the first two ingredients. For proving the non-existence of facts constituting the third ingredient of the offence, the accused would be entitled to rebut the above statutory presumption and prove that his unauthorised possession of any such arms and ammunition etc. was wholly unrelated to any terrorist or disruptive activity and the same was neither used nor available in that area for any such use and its availability in a “notified area” was innocuous. Whatever be the extent of burden on the accused to prove the non-existence of the third ingredient, as a matter of law he has such a right which flows from the basic right of the accused in every prosecution to prove the non-existence of a fact essential to constitute an ingredient of the offence for which he is being tried. If the accused succeeds in proving non-existence of the facts necessary to constitute the third ingredient alone after his unauthorised possession of any such arms and ammunition etc. in a notified area is proved by the prosecution, then he cannot be convicted under Section 5 of the TADA Act and would be dealt with and punished under the general law. It is obviously to meet situations of this kind that Section 12 was incorporated in the TADA Act.

28. The non-obstante clause in Section 5 of the TADA Act shows that within a notified area, the general law relating to unauthorised possession of any of the specified arms and ammunition etc. is superseded by the special enactment for that area, namely, the TADA Act. If however the third ingredient to constitute the offence under Section 5 of the TADA Act is negated by the accused while the first two ingredients are proved to make out an offence punishable under the general law, namely, the Arms Act, then the Designated Court is empowered to deal with the situation in accordance with Section 12 of the TADA Act. Section 12 itself shows that Parliament envisaged a situation in which a person tried under the TADA Act of any offence may ultimately be found to have committed any other offence punishable under any other law and in that situation, the Designated Court is empowered to punish the accused for the offence under such other law. The offence under Section 5 of the TADA Act is graver and visited with more severe punishment as compared to the corresponding offence under the general law. This is because of the greater propensity of misuse of such arms and ammunition etc. for a terrorist or disruptive act within a notified area. If the assumed propensity of such use is negated by the accused, the offence gets reduced to one under the general law and is punishable only

thereunder.

In such a situation, the accused is punished in the same manner as any other person found to be in unauthorised possession of any such arms and ammunition etc. outside a notified area. The presumption in law is of the greater and natural danger arising from its unauthorised possession within a notified area more prone to terrorist or disruptive activities.

37. It is a settled rule of criminal jurisprudence that the burden on an accused of proving a fact for rebutting a statutory presumption in his defence is not as heavy as on the prosecution to prove its case beyond reasonable doubt but the lighter burden of proving the greater probability. Thus, the burden on the accused of rebutting the statutory presumption which arises against him under Section 5 of the TADA Act on proof by the prosecution that the accused was in unauthorised possession of any of the specified arms and ammunition etc. within a notified area, is of greater probability. When the prosecution has proved these facts, it has to do nothing more and conviction under Section 5 of the TADA Act must follow unless the accused rebuts the statutory presumption by proving that any such arms and ammunition etc. was neither used nor was meant to be used for a terrorist or disruptive activity. No further nexus of his unauthorised possession of the same with any specific terrorist or disruptive activity is required to be proved by the prosecution for proving the offence under Section 5 of the TADA Act. The nexus is implicit, unless rebutted, from the fact of unauthorised conscious possession of any such weapon etc. within a notified area and the inherent lethal and hazardous nature and potential of the same. The observations of Sahai, J. alone in Kartar Singh¹ cannot be read to enlarge the burden on the prosecution to prove the implicit nexus by evidence aliunde, or to require the prosecution to prove anything more than what we have indicated.”

69) Similary, in Prakash Kumar (supra), this Court held as under:-

“18. The questions posed before us for the termination are no more res integra. In our view, the same have been set at rest by the three-Judge Bench decision rendered in Nalini. The rigours of Sections 12 and 15 were considered in Nalini case¹ and a finding rendered in paras 80, 81 and 82 (SCC p. 304) as under:

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

81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible ‘in the trial of such a person’. It means, if there was a trial of any offence under TADA together with any other offence

under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences.

82. The aforesaid implications of Section 12 vis-à-vis Section 15 of TADA have not been adverted to in Bilal Ahmed case². Hence the observations therein (at SCC p. 434, para 5) that ‘while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA’ cannot be followed by us. The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial.” (emphasis supplied) We are in respectful agreement with the findings recorded by a three-

Judge Bench in Nalini case.

33. Section 12 empowers the Designated Court to try any other offence with which the accused may be charged under the Code at the same trial provided the offence is connected with such other offence. This section has been brought to the statute-book in consonance with the preamble of the Act, which says “for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto”. (emphasis supplied) Therefore, Section 12 is introduced to take care of the matters connected with or incidental to terrorist activities.

34. A conjoint reading of the two sections as a whole leaves no manner of doubt that one provision is to be construed with reference to the other provision and vice versa so as to make the provision consistent with the object sought to be achieved. The scheme and object of the Act being the admissibility of the confession recorded under Section 15 of the Act in the trial of a person or co-accused, abettor or conspirator charged and tried in the same case together with the accused, as provided under Section 12 of the Act.

35. Counsel contends that Section 12 is only an enabling provision empowering the Designated Court to try and convict for the offences committed under any other law along with the offences under TADA so as to avoid multiplicity of the trial and does not empower the Designated Court to try and convict for other offences, even if the offences under TADA are not made out. Does it mean: “Thou shalt have teeth, but not bite?” We think not. When the courts have the power to try, it is implicit in it that they have the power to convict also. In the present case, sub-section (2) of Section 12 expressly empowered the Designated Court to convict the accused person of such other offence and pass any sentence authorised by the Act — if the offence is connected with such other offence and — if it is found that the accused person has committed any other offence.

36. Section 12(1) as quoted above authorises the Designated Court to try offences under TADA along with another offence with which the accused may be charged under CrPC at the same trial. The only embargo imposed on the exercise of the power is that the offence under TADA is connected with any

other offence being tried together. Further, Section 12(2) provides that the Designated Court may convict the accused person of offence under that Act or any rule made thereunder or under any other law and pass any sentence authorised under that Act or the Rules or under any other law, as the case may be for the punishment thereof, if in the course of any trial under TADA the accused persons are found to have committed any offence either under that Act or any rule or under any other law.

37. The legislative intendment underlying Sections 12(1) and (2) is clearly discernible, to empower the Designated Court to try and convict the accused for offences committed under any other law along with offences committed under the Act, if the offence is connected with such other offence. The language “if the offence is connected with such other offence” employed in Section 12(1) of the Act has great significance. The necessary corollary is that once the other offence is connected with the offence under TADA and if the accused is charged under the Code and tried together in the same trial, the Designated Court is empowered to convict the accused for the offence under any other law, notwithstanding the fact that no offence under TADA is made out. This could be the only intendment of the legislature. To hold otherwise, would amount to rewrite or recast legislation and read something into it which is not there.

41. The other leg of the submission is rigours of Section 18 of the Act. Section 18 deals with the power to transfer cases to regular courts. It reads:

“18. Where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.”
(emphasis supplied)

42. It is contended that the words “after taking cognizance” employed in Section 18 of the Act would include any stage of trial including the stage when the judgment is to be delivered. This submission is also misconceived. If it ought to have been the intention of the legislature they could have said so. The legislature deliberately uses the words “after taking cognizance of any offence” to mean that Section 18 would be attracted only at the stage where the Designated Court takes cognizance of offence i.e. after the investigation is complete and charge-sheet is filed. The provisions of Section 209 CrPC on which the counsel for the appellants sought to rely are not in pari materia with Section 18. In Section 209 CrPC the words “after taking cognizance” are absent conspicuously. Section 18 is a filtered provision. The section is attracted only at a stage the Designated Court takes cognizance of the offence. It is at the stage of taking cognizance, the Designated Court is expected to scan the documents and evidence collected therewith. If the Designated Court is of the opinion that the offence is not triable by it, it shall then, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence. In our view, there is no ambiguity in the language used in Section 18. If the submissions of the counsel for the appellant are accepted, it would amount to reading

something into the statute which is not there.”

70) In the case on hand, at the time of taking cognizance by the Designated Court, there were sufficient evidence against the appellants to proceed against them in the joint trial. In the case of Sanjay Dutt, the Designated Court took a view on the basis of his own confession that the weapons were not acquired for any terrorist activity but they were acquired for self-defence, therefore, acquittal was recorded in respect of charge under Section 5 of TADA. We fully agree with the same.

71) For the same reasons discussed above, we are in agreement with the conclusion arrived at by the Designated Court and reject the arguments of the counsel for the other appellants, viz., A-118 and A-124. In the light of the above discussion, we are of the view that the course adopted by the trial Court was correct in view of both the abovesaid judgments of this Court.

Sentence:

72) Coming to sentence, A-117 has filed an additional affidavit dated 24.07.2012 highlighting the circumstances under which he was implicated, relationship of his family members with the victims etc. It is not in dispute that though the appellant was also charged under TADA Act, the fact remains that he was acquitted of those charges and admittedly the CBI has not filed an appeal against the same. As said earlier, the Designated Court convicted him for the offences under Sections 3 and 7 read with Sections 25(1-A) and (1-B)(a) of the Arms Act, 1959. Consequently, in his additional affidavit, the appellant has asserted that he is entitled to seek the benefit of Section 4 of Probation of Offenders Act.

73) The appellant (A-117) asserted that though the prosecution involved him in Bombay Bomb Blast Case that he had knowledge as to the conspiracy and had kept in his possession fire arms and ammunitions as well as hand grenades knowing that the same were from the consignment that had landed for use in the said Blasts, the fact remains that the Designated Court did not accept the prosecution story against him and rejected his involvement in the conspiracy as well as any knowledge of the events as charged. The TADA Court has also held that the prosecution has failed to prove that the alleged arms in possession of the appellant were from the same alleged consignment that was used in the said blasts.

74) It was also contended from the side of the appellant that in the year 1992-93, the appellant and his family members were involved in helping people residing in riots affected areas, more particularly, Behrampada, predominantly having a Muslim population which was objectionable to certain group of persons who were of the opinion that the Dutt family was sympathizers of only the Muslim community. In fact, this leads to an attack on Sunil Dutt in January, 1993 as well as threatening phone calls were being received at their residence, including threats to the family members being killed as well as the sisters of the appellant being kidnapped and raped. This lead to a great and serious apprehension that an attack could be perpetrated upon the Dutt family in view of the fact that Shri Sunil Dutt had already been attacked. This apprehension was clearly set out in the letter of Shri Sunil Dutt to the then DCP of Zone VII dated 06.01.1993, wherein he asked for

enhancing security arrangements further and for more police protection at his house as deposed by PW-219 in this case.

75) It is stated that A-117 had no previous involvement or conviction prior to one in 1992 which ended in acquittal. Thus, according to him, he is not a previous offender or a convict. In the event, this Court releases the appellant on Probation under the provisions of the Probation of Offenders Act, neither any injustice would occasion to anyone as the offence in which he was convicted, is not even a social offence nor any prejudice be caused to the prosecution. He asserted that he is not a habitual offender, and is not likely to commit any offence in future. The TADA Court did not get any opportunity to complain about the conduct of the appellant in 19 years. He further submitted that he has also suffered the agony of long trial of 13 ½ (thirteen and a half) years. The stress and trauma of the same, besides the fact that he has carried the tag of an alleged terrorist for 13 ½ (thirteen and a half) years though unwarranted, and has been deprived of the company of his daughter, is a punishment in itself. He has also stated that he had suffered mentally, physically and emotionally in the last several years.

76) He also informed this Court that he got married again in the year 2008 and is blessed with two children aged 1 and ½ years and they need their father's presence in their life. He further submitted that he has been actively involved in an AIDS charity and raises funds for the free treatment of AIDS patients who cannot afford the same, besides visiting the hospitals/centres. It is further submitted that he is on the Board of Directors of "Save the Children Foundation" and helping in raising funds for children who are needy, orphaned and destitute as their Brand Ambassador for a long time, even prior to his being charged in this case.

77) In view of the above, learned senior counsel for A-117 draws attention of this Court towards the following decisions, viz., *Ved Prakash vs. State of Haryana*, 1981 (1) SCC 447, this Court observed that the social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender.

78) In *Jugal Kishore vs. State of Bihar*, (1972) 2 SCC 633 this Court observed that the modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu.

79) This Court in *Ratanlal vs. State of Punjab*, (1964) 7 SCR 676 has observed to the effect that the Probation of Offenders Act, was enacted with a view to provide for the release of offenders of certain categories on Probation or alter due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of offenders into obdurate criminals as a result of their association with hardened criminals. The above object is in consonance with the present trend in the field of penology, according to which, efforts should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Although, not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of offenders not guilty of serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that offenders

should not be sent to jail, except in certain circumstances.

80) The scope of Section 4 of the Probation of Offenders Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. The same has also been held by this Court in Chhani vs. State of U.P., (2006) 5 SCC 396.

81) Section 360 of the Code of Criminal Procedure does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation of Offenders Act does make such a provision. While Section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under Section 3 or 4 of the Probation of Offenders Act, shall not suffer disqualification, if any, attached to the conviction of an offence under any law. The Code of Criminal Procedure does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the Probation of Offenders Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provisions of the Code.

82) Keeping those information in the form of an additional affidavit, let us consider his claim and eligibility of applying Section 4 of the Probation of Offenders Act.

83) Sub-section 4 of the Probation of Offenders Act contains the words “Notwithstanding anything contained in any other law for the time being in force”. The above non obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have an overriding effect and shall prevail if the other conditions prescribed therein are fulfilled. Those conditions are:

(i) The accused is found guilty of having committed an offence not punishable with death or imprisonment for life;

(ii) The Court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation;

(iii) The accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour.

84) The underlying object of the above provisions obviously is that an accused person should be given a chance of reformation, which he would lose in case he is incarcerated in prison and associates with hardened criminals. It is submitted that the provisions of the said Act are beneficial provisions and, therefore, they should receive wide interpretation and should not be read in a restricted sense vide Ishar Das vs. State of Punjab, 1973 (2) SCC 65.

85) Section 4 of the Probation of Offenders Act applies to all kinds of offenders, whether under or above the age of 21 years. This section is intended to attempt possible reformation of an offender instead of inflicting upon him the normal punishment of his crime. It is submitted that it is settled law that while extending benefit of the said provision, this Court has to exercise its discretion having regard to the circumstances in which the crime was committed, viz., the age, character and antecedents of the offender. It is also settled law that such exercise of discretion needs a sense of responsibility. The section itself is clear that before applying the same, this Court should carefully take into consideration the attendant circumstances.

86) The circumstances and the nature of the offence as analysed and discussed above are so serious and we are of the view that they do not warrant A-117 the benefit of the provisions of the Probation of Offenders Act, however, taking note of various aspects, we reduce the sentence to minimum period, viz., 6 years to 5 years. The appeal is disposed of on the above terms.

87) In respect of A-118, in view of the discussion and the above conclusion, we confirm the conviction and sentence awarded to him by the Designated Court. Consequently, the appeal is dismissed.

88) Insofar as A-124 is concerned, the Designated Court has convicted him under Sections 3 and 7 read with Sections 25(1-A)(1-B)(a) of the Arms Act, 1959, as well as under Section 201 of IPC and sentenced him to undergo RI for 2 years on both the counts separately. A perusal of all the materials relating to A-124 shows that the Designated Court itself convicted and sentenced him under Section 25(1-B)(a) of the Arms Act along with Section 201 of IPC. While clarifying the same, we hold that there is no substantive evidence for convicting him under Section 25(1-A) of the Arms Act, though the Designated Court has referred to the same while awarding sentence to him. Also, considering his age, i.e. 82 years as on date and taking note of the fact that the minimum sentence for the offence under Section 25(1-B)(a) being one year, while confirming his conviction, we reduce the sentence awarded to A-124 under Section 25(1-B)(a) as well as under Section 201 IPC to 1 year which shall run concurrently. The appeal is disposed of on the above terms.

Criminal Appeal No. 596 of 2011 The State of Maharashtra, through CBI Appellant(s) vs. Ajai Yash Prakash Marwah (A-120) Respondent(s)

89) Heard Mr. H.P. Rawal, learned ASG duly assisted by Mr. Satyakam, learned counsel for the appellant (CBI). None appeared for the respondent.

90) The instant appeal is directed against the impugned judgment and order dated 02.08.2007 passed by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993 whereby the appellant (A-120) has been acquitted of all the charges framed against

him. Charges:

91) 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, handgrenades 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, handgrenades 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 off 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 Bazar, Katha Bazar, Century Bazar 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-120) was also charged for having committed the following offence in pursuance of the criminal conspiracy described at charge firstly:

At head Secondly: The appellant, in pursuance of the aforesaid criminal conspiracy, was found to be connected with the episode of possession of unauthorized arms and hand grenades by A-117, A-118, A- 124 and A-125 and committed the following overt acts:

(a) The appellant, by receiving and keeping in his possession one 9mm pistol and its cartridges, which were smuggled into the country for committing terrorist acts, thereby aided the co-

conspirator and committed an offence punishable under Section 3(3) of TADA.

At head Thirdly: The appellant possessed the above mentioned pistol and its ammunition 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, by possessing the above mentioned arms and its ammunitions with intent to aid terrorists committed an offence punishable under Section 6 of TADA.

At head Fifthly: The appellant, by possessing the above mentioned arms and its ammunitions, committed an offence punishable under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of the Arms Act, 1959.

Conviction and Sentence:

92) The Designated Court, by impugned judgment dated 02.08.2007, after considering the materials placed on record and after adverting to all the contentions raised and submissions made, acquitted him of all the charges framed against him.

Discussion:

93) Against the order of acquittal in respect of all the charges against the respondent (A-120), the CBI has filed the present appeal. The only point for consideration in this appeal is whether the order of acquittal rendered by the Designated Court is justifiable or requires interference by this Court. Keeping the basic principles in mind, in a matter when acquittal is recorded by the trial Court and the grounds on which the Appellate Court can interfere, let us consider and dispose of the above

appeal.

94) It is not in dispute that A-120 has not made any confession and his co-accused A-125 relied on by the prosecution has also not made any confession and even the confessional statements of other co-accused failed to disclose any involvement of A-120 in any manner. The only allegation against the present accused is that of seizure of a box containing a pistol from his house. The Designated Court, after considering the evidence of panch witness (PW-211) regarding the statement made by A-125 and after finding that there was lot of variation in their statements and bereft of materials about the role of A-120 and further finding that different stories have been projected by the prosecution, refused to accept the same.

After analyzing the entire statement of A-125, the trial Court came to a conclusion that the same are insufficient to connect A-120 as being the person who had received the same pistol and rounds.

95) As has been rightly observed by the Designated Court, mere recoveries of a .9mm pistol and the rounds from the bungalow of A-120 would not be sufficient to connect him with the said articles. It is settled law that the recoveries made must be found to have been made as a consequence to the statement made by the accused in custody. In other words, if the nexus in between is not established, the said statement made would be inadmissible in evidence. The Designated Court, after considering the well settled principles and the materials placed concluded that “it will be further necessary to say that scrutiny of the evidence also does not reveals A-120 having purchased .9mm pistol and rounds.....” The Designated Court has also concluded that even if the statement made by A-125 is acceptable, in the absence of any supporting oral and documentary evidence and taking note of the improvement made by panch witness as well as in the statements of witnesses stage by stage “hardly there would be any evidence to connect A- 120 with the relevant contraband articles” and rightly discarded the same.

96) In the light of the categorical finding by the trial Court and after analyzing the materials placed by the prosecution, we fully concur with the said conclusion and according to us, with the above said insufficient evidence, the order of acquittal cannot be lightly interfered in the present appeal, consequently, the appeal filed by the CBI fails and the same is dismissed.

Criminal Appeal No. 1104 of 2007

Samir Ahmed Hingora (A-53)

.... Appellant(s)

vs.

The State of Maharashtra,
thro. Superintendent of Police,
CBI (STF), Bombay

... Respondent(s)

WITH

Criminal Appeal No. 1026 of 2012

The State of Maharashtra,
through CBI (STF), Bombay

.... Appellant(s)

vs.

Samir Ahmed Hingora (A-53)

... Respondent(s)

97) Heard Mr. Mukul Rohtagi and Mr. V.K. Bali, learned senior counsel for A-53 and Mr. H.P. Rawal, learned ASG for the CBI.

Criminal Appeal No. 1104 of 2007

98) The present appeal is directed against the final judgment and order of conviction and sentence dated 29.11.2006 and 01.06.2007 respectively whereby the appellant (A-53) has been convicted and sentenced by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993.

Charges:

99) 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, handgrenades 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, handgrenades 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 off 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 above-said principal charge of conspiracy, the appellant was also charged on other counts which are as under:

At head Secondly; The appellant committed an offence punishable under Section 3(3) of TADA by doing the following overt acts:-

(a) The appellant supplied 3 AK-56 rifles, its magazines, ammunitions and hand grenades to Sanjay Dutt (A-117) at his residence at the instance of Anees Ibrahim Kaskar (AA).

(b) The appellant arranged 7 air tickets from East West Travels by making cash payment at the instance of A-1 to facilitate the escape of members of Memon family to Pakistan via Dubai.

At head Thirdly; The appellant acquired and facilitated transport of the above mentioned arms and ammunitions to A-117 with intent to aid terrorist and thereby committed an offence punishable under Section 6 of TADA.

100) The Designated Court found the appellant guilty on the charges mentioned at head firstly (smaller conspiracy) and clause (a) at head secondly. The appellant has been convicted and sentenced for the above said charges as under:

Conviction and Sentence:

(i) The appellant has been convicted for the offence of conspiracy read with the offences described at head firstly and sentenced to RI for 9 years alongwith a fine of Rs. 1,00,000/-, in default, to further undergo RI for 3 years for the commission of offence under Section 3(3) of TADA. (charge firstly)

(ii) The appellant has been convicted for the offence under section 3(3) of TADA for commission of acts mentioned at clause (a) of head secondly, and sentenced to RI for 9 years alongwith a fine of Rs. 1, 00,000/-, in default, to further undergo RI for 3 years. (charge secondly) Evidence

101) The evidence against the appellant (A-53) is in the form of:-

(i) his own confession;

(ii) confessions made by other co-conspirators; (co-accused); and

(iii) testimony of prosecution witness.

Confessional Statement of Samir Ahmed Hingora (A-53)

102) Confessional statement of A-53 under Section 15 of TADA has been 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. A perusal of his confessional statement states as under:-

(i) The appellant started a Video Library and Mustafa Dossa @ Mustafa Majnoo (A-138)-brother of Mohd. Dossa (AA), was a member of his Library.

(ii) Tiger Memon used to work with A-138 in his shops at Manish Market and became a friend of A-53.

(iii) The appellant started the business of film distribution and production by the name of Magnum in partnership with Hanif Kandawala (A-40)- since deceased.

(iv) Anees Ibrahim Kaskar (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 and Tiger Memon used to meet frequently and discuss matters relating to the business.

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

(vii) 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.

(viii) On 15.01.1993, Ibrahim Musa Chauhan (A-41) and Abu Salem (A-

139) met A-53 at his office, and gave him a message that they have been directed by Anisbhai to see the appellant regarding the handing over of weapons to A-117 at his residence.

(ix) Anis Ibrahim called the appellant from Dubai and told him that A-41 and A-139 are his men and that they will bring one vehicle loaded with weapons and the appellant has to make arrangements for off-loading and handing over the weapons to A-117, and the rest will be taken by them for distribution to other persons.

(x) In spite of the unwillingness of Hanif Kandawala, his partner, in order to carry out the instructions, A-53 took A-139 to the residence of A-

117, where A-117 hugged Abu Salem and asked him about the weapons. A-117 then told A-139 to bring the weapons the next day at 7 am.

(xi) 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.

(xii) At the residence of A-117, A-53 saw that the blue van was containing 9 AK-56 rifles and some hand grenades and 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.

(xiii) 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.

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

103) A perusal of the aforesaid confession shows that the appellant was aware about the goods which were to be off-loaded and also about the purpose for which the same were to be used which fact is clear from his confession, viz., "Anees Bhai telephone to me from Dubai saying that Baba and Saleem are his men. They will bring one vehicle loaded with weapons. You make arrangements for off-loading and hand over weapons to A-117 and the rest will be taken by them for distribution to other persons". Further, in spite of the unwillingness of Hanif Kandawala, he proceeded to help the

co-accused. So the contention of the appellant that he was a mere navigator is misplaced and incorrect.

Confessional Statements of co-accused:

104) Apart from his own confession, the involvement of the appellant has also been disclosed in the confessional statements of the following co-

accused. The legality and acceptability of the confessions of the co-accused has already been considered by us in the earlier part of our discussion. The said confessions insofar as they refer to the appellant (A-53) are summarized hereinbelow:

Confessional Statement of Ibrahim Musa Chauhan @ Baba (A-41) Confessional statement of A-41 under Section 15 of TADA was recorded on 23.04.1993 (12:45 hrs.) and 25.04.1993 (13:05 hrs.) by Shri Prem Krishna Jain (PW-189), the then DCP, Zone X, Bombay. The said confession shows that:

(i) On 15.01.1993, A-41 and A-139 went to the office of Magnum in order to meet A-53 upon the instructions of Anees who was in Dubai.

(ii) A-53 along with A-41, A-139 and later with A-41 searched for garages in Pali Hill areas, Bandra as suggested by Anees Ibrahim.

(iii) A-53 and A-139 left together on 15.01.1993.

(iv) On 16.01.1993, A-139 came to his house in the morning and they reached the office of A-53 at around 06:30-06:45 a.m. A-139 and A-41 sat in one car followed by the car of A-53 to the house of Sanjay Dutt (A-117).

(v) A-139 opened the van at the residence of A-117 and took out 9 AK-56 rifles, about 80 hand grenades and around 1500/2000 bullets in the presence of A-53 and A-117.

(vi) A-139 kept 3 rifles, 9 magazines, 450 bullets and 20 hand grenades in the car of A-117.

(vii) A-53 kept 20 hand grenades in his car. A-53 also gave a long sports bag to A-41 in which 3 rifles, 16 magazines, 25 hand grenades and 750 bullets were kept.

(ix) A-53 dropped A-41 to his car and after that they left the residence of A-117.

A perusal of the confessional statement of A-41 shows that the appellant helped the co-accused persons to look for a garage where the weapons could be off-loaded and after that they were to be distributed to various persons.

Confessional Statement of Mobina @ Baya Moosa Bhiwandiwalla (A-96)

(i) On the directions of Tiger Memon, owner of Magnum Videos (A-53) had sent Rs. 50,000/- to her residence on one or two occasions.

(iii) After the blast, the owner of Magnum Videos (A-53) had sent Rs.

50,000/- for help.

The above confession of A-96 shows that the appellant was in touch with Tiger Memon even after the blasts and on his instructions, he sent Rs. 50,000/- to A-96 for help.

Confessional Statement of Sanjay Dutt (A-117) Confessional statement of A-117 under Section 15 of TADA was recorded on 26.04.1993 (15:30 hrs.) and 28.04.1993 (16:00 hrs.) by Shri Krishan Lal Bishnoi (PW-193), the then DCP, Zone III, Bombay. The said confession reveals as under:

(i) A-117 knew A-53 and he was acting in one of his films. A-53 used to frequently come to his house for taking dates.

(ii) A-53 and A-40 repeatedly told A-117 to acquire a firearm from them.

(iii) In mid-January, A-53, A-40 and A-139 came to the house of A-117 at around 09:30 p.m. and told him that the weapons will be delivered the next day. Next day, they again came in the morning with one more person to the residence of A-117.

(iv) At the residence of A-117, in the presence of A-53, A-139 took out weapons and handed it over to him.

(v) A-53 came to his house along with A-40 after 2-3 days when A-117 returned 2 AK-56 rifles to them.

The confession of A-117 corroborates in material particulars with the confession of other co-accused persons.

Deposition of Prosecution Witness:

105) Apart from the aforesaid evidence, the following prosecution witness deposed as under:

Deposition of Pandharinath Hanumanth Shinde (PW-218) The relevant material in his evidence is as follows:-

(i) PW-218 identified A-53 in the TIP held on 27.05.1993 at the office of Crime Branch.

(ii) PW-218 identified A-53 in the Court.

106) Upon perusal of the entire evidence, it is clear that the appellant was closely associated with Tiger Memon and Anees Ibrahim Kaskar (AA).

Further, inspite of the unwillingness shown by his partner - Hanif Kandawala (A-40), the appellant helped the co-accused searched for garages where the weapons were to be off-loaded and concealed whereafter they were to be distributed to A-117 and other persons. In addition to the same, the appellant was also associated with co-accused even after the blasts which fact is clearly discernible from the confession of A-96 wherein she stated that after coming back to her house, her father informed her that owner of Magnum Videos (A-53) had come and gave Rs. 50,000/- for help.

107) Mr. Rohtagi, learned senior counsel for the appellant pointed out that without establishing the pre-requisites as held in the case of State vs. Nalini, (1999) 5 SCC 253, it is only on the ground of acquaintance with the main conspirators and alleged knowledge acquired on phone that after handing over weapons to A-117, the balance would be taken for distribution, for which the appellant has been erroneously convicted under Section 3(3). We are unable to accept the said claim. We have already pointed out the appellant's proximity with Anees Ibrahim. It was on the instructions of Anees that the arms were delivered to Sanjay Dutt and because of the relationship of Anees and Tiger/Dawood Ibrahim, it establishes a strong link between A-53 and Anees. Though it was argued that there was no proximity between the appellant and Anees, materials relied on by the prosecution clearly prove their relationship. Further, their relationship cannot be simply construed as a business relationship. The materials placed on record by the prosecution, relied on and accepted by the Special Judge show that the appellant was guilty of distributing arms to persons other than Sanjay Dutt. The finding recorded by the trial Judge is that A- 53 not only distributed weapons to A-117 but also to third parties.

108) The CBI has successfully placed materials to show that the appellant was responsible for arranging garages for the storage of weapons. We have already adverted to the confessional statement of A-41 wherein in categorical terms it was asserted that A-53, the present appellant, along with A-41 and A-139 searched for garages in Pali Hill areas, Bandra where the weapons could be off loaded and after that they were to be distributed to various persons as suggested by Anees Ibrahim. In view of the same, the argument of the learned senior counsel for the appellant is liable to be rejected. The confessional statement of A-41 also shows that the appellant helped the co-accused persons to look for garages. In such circumstance, it cannot be claimed that at no point of time A-53 was ever aware of what was to be stored in the garages.

109) Mr. Rohtagi, learned senior counsel disputed the admissibility of confession made by the appellant and voluntariness of his statement. The Designated Court, on going through the evidence of the officer who recorded his confession, the procedure followed, opportunity given to the appellant, rejected the similar objection raised before him. Upon going through all the materials, we agree with the reasoning of the Special Judge and we are of the view that there is no flaw in the procedure while recording the confession of the appellant.

Appeal by the State of Maharashtra through CBI:

Criminal Appeal No. 1026 of 2012

110) Though Mr. Rawal, learned ASG, prayed for conviction of A-53 for the charge framed at head firstly, i.e., larger conspiracy, in view of the above discussion, we are satisfied that the materials available establish his involvement only to the extent of the smaller conspiracy and the Designated Court was justified in arriving at such conclusion and we fully agree with the same, hence, the appeal filed by the State is liable to be dismissed.

Sentence:

111) According to learned senior counsel for A-53, out of 9 years of sentence awarded, he has completed 6 ½ (six and a half) years and there are several extenuating circumstances for reduction of the sentence. They are:

- (i) The appellant is a sick person suffering from cardiac problems since 2001;
- (ii) He has 6 stents in his arteries;
- (iii) The appellant, in addition to heart disease, is a diabetic patient (on insulin). While diabetes on its own may not be a major ailment, it assumes far greater seriousness when coupled with a serious heart ailment.
- (iv) The appellant has already faced protracted trial for 13 ½ (thirteen and a half) years on day to day basis. In fact, he has continued attendance after conviction as per bail conditions for further 5 years;
- v) The entire business and goodwill of the appellant has been lost.
- vi) The appellant has already served about 6 ½ (six and a half) years (without remission).

112) Taking note of all these aspects and of the fact that the CBI was not able to establish the charge relating to major conspiracy and also that out of the period of 9 years, A-53 has served nearly six and a half years of sentence and in the light of the ailments and taking note of the fact that the minimum sentence prescribed is 5 years, while confirming the conviction, we reduce the sentence to the period already undergone.

113) The appeal filed by the accused is disposed of on the above terms.

The appeal filed by the CBI is dismissed.

Criminal Appeal No. 1001 of 2007

Zaibunisa Anwar Kazi (A-119) ... Appellant(s)

vs.

The State of Maharashtra,
through Superintendent of Police,
CBI-STF, Bombay

... Respondent(s)

WITH

Criminal Appeal No. 392 of 2011

The State of Maharashtra,
through CBI

... Appellant(s)

vs.

Zaibunisa Anwar Kazi (A-119)

... Respondent(s)

114) Mr. Sushil Kumar, learned senior counsel appeared for the appellant (A-119) and Mr. Rawal, learned ASG duly assisted by Mr. Satyakam, learned counsel appeared for the respondent (CBI).

Criminal Appeal No. 1001 of 2007

115) The instant appeal is directed against the final judgment and order of conviction and sentence dated 28.11.2006 and 14.06.2007 respectively whereby the appellant (A-119) has been convicted and sentenced to rigorous imprisonment for 5 years by the Designated Court under TADA for the Bombay Bomb Blast Case, Greater Bombay in B.B.C. No.1/1993. 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, handgrenades 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, handgrenades 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 off 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 1/2 (one and a half) years. (charge fourthly)

118) The Designated Court acquitted the appellant (A-119) on the first and third charge. Challenging the conviction A-119 filed Criminal Appeal No. 1001/2007 and Criminal Appeal No. 392/2011 has been preferred by the prosecution challenging the acquittal of the appellant on the charge of conspiracy alone.

1.

2. Evidence

119) The evidence against the appellant (A-119) is in the form of:-

(i) confessions made by other co-conspirator; (co-accused); and

(ii) testimony of prosecution witnesses.

120) Confessional Statements of co-accused:

A brief account of the evidence brought on record in respect of A-119 is summarized as under:

Confessional Statement of Manzoor Ahmed Sayed Ahmed (A-89) Confessional statement of A-89 under Section 15 of TADA has been recorded on 24.05.1993 (11:15

hrs.) (Part I) and 26.05.1993 (Part II) (17:30 hrs.). The confession of A-89 with respect to the appellant is summarized hereunder:

“A-89 and A-139 went to the first floor of 22 Mount Mary, Vidhyanchal Apartment and handed over the bag to a lady and told that the bag contains arms for causing riots and they were sent by Anis Bhai and that they would take the bag after some days. After saying so, he gave the bag to that middle aged lady. The lady opened the bag and after seeing its contents, closed the same and took it inside the room”.

121) Upon perusal of the aforesaid confession, it is clear that the appellant was in conscious possession of arms and ammunitions and explosives in a notified area of Bombay, and was also aware about the purpose for which they were to be used, that is, to cause riots in Bombay.

On the other hand, according to counsel for the appellant (A-119), the confession of A-89 cannot be relied upon since it has no evidentiary value. On the other hand, Mr. Rawal, learned ASG while relying on the decision of this Court in Mohd. Ayub Dar vs. State of Jammu and Kashmir, (2010) 9 SCC 312 contended that the conviction and sentence under charge secondly and fourthly is fully justified. He relied heavily on the following conclusion arrived at by this Court which reads thus:

“59. It would, therefore, be clear, as rightly contended by Shri Rawal that merely because the guidelines in Kartar Singh v. State of Punjab were not fully followed, that by itself does not wipe out the confession recorded. We have already given our reasons for holding that the confession was recorded by A.K. Suri (PW 2) taking full care and cautions which were required to be observed while recording the confession.

60. In Ravinder Singh v. State of Maharashtra it has been observed in para 19 that if the confession made by the accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and a conviction of the accused can be solely based on it. It has also been observed that such confessional statement is admissible as a substantive piece of evidence. It was further observed that the said confession need not be tested for the contradictions to be found in the confession of the co-accused. It is for that reason that even if the other oral evidence goes counter to the statements made in the confession, one's confession can be found to be voluntary and reliable and it can become the basis of the conviction.” In addition to the proposition of law mentioned above, the acceptability of confession of co-accused has already been discussed and considered in the earlier part of our judgment, there is no need to repeat the same once again.

Other evidence:

Deposition of Dilip Bhandur Gosh (PW-283)

122) PW-283 deposed as under:

- (i) At the relevant time, he was working as the watchman in the Vidhyanchal Society.
- (ii) He further deposed that he will be able to identify the occupants of the said society in the year 1993
- (iii) He stated that the appellant was residing on the first floor of B Wing of the said society
- (iv) He identified the appellant before the court.

The aforesaid evidence corroborates the fact that the appellant was staying on the first floor of the Vidyanchal Building.

123) Upon appreciation of the entire evidence, the Designated Court held as under:

“32) With regard to the case of A-119 there appears similarity in many of the aspects with A-89. With regard to the defence criticism of the material evidence against her being in shape of material in confession of A-89 all the dilation made about the submissions canvassed that conviction cannot be made on the basis of material in confession of co-accused would be applicable. In the said context, it will be necessary to add that material in the confession of co-accused being now held to be substantive piece of evidence and considering the circumstances relevant to the role played by A-119 i.e. only 3 persons being present when the relevant act of taking and storing the weapons was effected and thus there being no other corroborative material, which could have been available the said matters in the confession will not be liable to be discarded on the count of there being no corroborations as stated earlier. Now considering the period in which the relevant had occurred and the period after which the police had received the information, merely because evidence does not reveal of any material being found at the house of A-119 will not be a ground for discarding the said material in the confession of A-89. As a matter of fact, event the said material itself reveals that the said weapons were to be kept with her and were to be collected back by Abu Salem; non-finding of weapon with her clearly appears to be insignificant circumstance.

33) Thus the evidence having clearly denoted that weapons were kept with her for storage purpose and they were to be collected back, A-119 cannot be said to be in possession of contraband material as all the time the possession of the said weapons would have been that of main conspirator who had kept the same with her. In view of the same, alike A-89 she cannot be said to be guilty for commission of offence under Section 5 of TADA and the relevant sections under the Arms Act, for which she is charged at the trial. Similarly, for the same reasons because of which A-89 cannot be said to be guilty for offence of conspiracy. She also cannot be said to be guilty for commission of such offence. It is indeed true that considering the role played by her in storing the weapons in her house or even for A-89 being also instrumental for

taking the said weapons does create a strong suspicion of both of them being man of confidence of prime conspirator. However, since shrouding of suspicion cannot take the place of proof and there being paucity of material that both of them had knowledge of object of any particular conspiracy both of them cannot be held guilty for commission of offence of conspiracy. Thus, alike A-89 she will be also required to be held not guilty for commission of offence for which she was charged at head firstly.

34) However, considering the repeated participation of A-119 in allowing absconding accused Anees Ibrahim to store the weapons at her house or with her, herself taking up the weapons in spite of knowing the purpose for which the same were sent by Anees, the evidence pertaining to second occasion clearly revealing that the weapons were 2 AK-56 Rifles and the ammunition and thereby all the evidence establishing that the same being brought to India for commission of terrorists Act i.e. by and for the terrorists, act committed by her will clearly fall within the four corners of Section 3(3) of TADA.

Similarly, her act of keeping such a material in the house, even after knowing the purpose for which the same were brought to India clearly reveals that by the same she was aiding and abetting the terrorists by contravening the provisions of the Arms Act. As such she will be required to be held guilty for commission of offence under Section 6 of TADA.

35) As a result of the aforesaid discussion, Point No. 163 to 166 and so also relevant points framed for offence of conspiracy will be required to be answered in consonance with conclusions arrived during the aforesaid discussion i.e. affirmative for holding A-89 and A-119 guilty for offence under Section 3(3) of TADA and A-119 also guilty for offence under Section 6 of TADA and negative with regard to the other charges framed against them at a trial. Thus Point No. 163 to 166 stands answered accordingly.”

124) The above discussion shows that the Designated Court convicted the appellant under Section 3(3) and Section 6 of TADA only on the basis of the confessional statement of A-89 and the evidence of PW-283 Chowkidar (watchman in the building). Admittedly, the appellant, at no point of time, had made any confession admitting her guilt. Equally, it is not in dispute that no recovery has been affected from her house. The only incriminating circumstance against her is the statement of A-89 that while handing over a plastic bag, he mentioned that it contains AK-56 rifle and other arms. It is also his claim that after knowing the contents, she received the same and kept it in her house.

125) Taking note of all these aspects, absolutely, there is no case insofar as the main conspiracy against her and we are satisfied that the Designated Court has rightly acquitted her of the main charge i.e. charge firstly. However, upon perusal of the entire evidence, the judgment passed by the Designated Court is upheld to the extent of Charge secondly and fourthly.

126) In view of the minimum sentence of 5 years prescribed under Sections 3(3) and 6 of TADA, we have no other option, but to confirm the conviction and sentence as awarded by the Designated Court. Consequently, the appeal fails and is accordingly dismissed.

Appeal by the State of Maharashtra through CBI:

Criminal Appeal No. 392 of 2011

127) Though Mr. Rawal, learned ASG, prayed for conviction of A-119 for the charge framed at head firstly, i.e., conspiracy, in view of the above discussion, we are satisfied that the Designated Court was justified in arriving at such a conclusion and we fully agree with the same. Hence, the appeal filed by the State is liable to be dismissed.

128) The appellants-accused concerned are directed to surrender within a period of 4 (four) weeks from today in order to serve the remaining period of sentence. The Designated Court is directed to take appropriate steps for their custody in case of failure to comply with the above said direction.

129) For convenience, we have reproduced the conclusion arrived at in respect of all the appeals dealt with under this part in Annexure 'A' appended hereto.

130) We must in the end express our deep gratitude to learned senior counsel/counsel for both sides who rendered relentless assistance and support to the Bench in arriving at its decision. Their efforts are salutary and we record our appreciation for the same.

.....J. (P. SATHASIVAM)J. NEW DELHI; (DR. B.S. CHAUHAN)
MARCH 21, 2013.

Annexure 'A'

S.No.	Criminal Appeal	Accused Name and Number	Sentence by Designated Court	Award by Supreme Court
1.	1060/2007	Sanjay Dutt (A-117)	RI for 6 years	Reduced to RI for 5 years
2.	1102/2007	Yusuf Mohsin Nulwalla (A-118)	RI for 5 years	Confirmed
3.	1687/2007	Kersi Bapuji Adajania (A-124)	RI for 2 years	Reduced to RI for 1 year
4.	596/2011 (By State)	Ajai Yash Parkash Marwah (A-120)	Acquitted	State appeal dismissed
5.	1104/2007 with 1026/2012 (By State)	Samir Hingora (A-53)	RI for 9 years	Reduced to the period already undergone.
6.	1001/2007 with	Zaibunisa Anwar Kazi (A-119)	RI for 5 years	Dismissed Confirmed

	392/2011				
	(By State)			Dismissed	
