APPEALS FILED BY THE ACCUSED

(PART – 3)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 555 OF 2012

Ibrahim Musa Chauhan @ Baba Chauhan …Appellant

Versus

State of Maharashtra … Respondent

WITH

Criminal Appeal No. 1129-1130 of 2007

WITH

Criminal Appeal No. 402 of 2008

WITH

Criminal Appeal No. 617-618 of 2008

WITH

Criminal Appeal No. 1631 of 2007

WITH

Criminal Appeal No. 1419 of 2007

WITH

Criminal Appeal No. 1226 of 2007

WITH

Criminal Appeal No. 1422 of 2007

WITH

Criminal Appeal No. 1180 of 2007

WITH

Criminal Appeal No. 1225 of 2007

WITH

Criminal Appeal No. 919 of 2008

AND

Criminal Appeal No. 1393 of 2007

CRIMINAL APPEAL NO. 555 OF 2012

Ibrahim Musa Chauhan @ Baba Chauhan …Appellant

Versus

State of Maharashtra … Respondent

J U D G M E N T

Dr. B.S. Chauhan, J:

1. This appeal has been preferred against the judgments and orders dated 29.11.2006 and 6.6.2007 passed by a Special Judge of the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the `TADA') in the Bombay Blast Case No. 1/1993, by which the appellant (A-41) has been convicted under Sections 3(3), 5 and 6 TADA, as well as under Sections 3 and 7 read with Section 25(1-A) (1-B) (a) of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act'), Section 4(b) of the Explosive Substances Act, 1908 (hereinafter referred to as the 'Act 1908), and Section 9-B(1) (b) of the Explosives Act, 1884 (hereinafter referred to as the 'Act 1884').

2. Facts and circumstances giving rise to this appeal are that:

A. As all the main factual and legal issues involved in this appeal have already been discussed by us and determined in the main connected appeal i.e. **Yakub Abdul Razak Memon v. State of Maharashtra** thr. **CBI** (Criminal Appeal No.1728 of 2007), there is thus, no occasion for us to repeat the same.

B. The Bombay Blasts occurred on 12.3.1993, in which 257 persons lost their lives and 713 were injured. In addition thereto, there was loss of property worth several crores. The Bombay police investigated the said matter at the initial stage, but subsequently the investigation of the same was entrusted to the Central Bureau of Investigation (hereinafter referred to as the 'CBI'), and then upon conclusion of the investigation, a chargesheet was filed against a large number of accused persons. Among the accused persons against whom a chargesheet was filed, 40 accused could not be put to trial as they were absconding. Thus, the Designated Court under TADA framed charges against 138 accused persons. During the trial, 11 accused died and 2 accused turned hostile. Furthermore, the Designated Court discharged 2 accused during trial, and the remaining persons, including the appellant (A-41) stood convicted.

C. A common charge of conspiracy was framed against all the coconspirators 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, hand grenades and high explosives like RDX into India and to distribute the same amongst yourselves and your men of confidence for the purpose of committing terrorist acts and for the said purpose to conceal and store all these arms, ammunition and explosives at such safe places and amongst yourselves and with your men of confidence till its use for committing terrorist acts and achieving the objects of criminal conspiracy and to dispose 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/coconspirators, 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 Santa Cruz, Zaveri Bazaar, Katha Bazaar, Century Bazaar at Worli, Petrol

Pump adjoining Shiv Sena Bhavan, Plaza Theatre and in lobbing handgrenades at Macchimar Hindu Colony.

Mahirn 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) TADA and Section 120-B of Indian Penal Code, 1860 (hereinafter referred to as the IPC) read with Sections 3(2)(i)(ii), 3(3), (4), 5 and 6 TADA and read with Sections 302, 307, 326, 324, 427, 435, 436, 201 and 212 IPC and offences under Sections 3 and 7 read with Sections 25 (1-A), (I-B)(a) of the Arms Act 1959, Sections 9B (l)(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."

D. Additionally, he has been charged for abetting and facilitating acts that were preparatory in nature, for the terrorist acts, by acquiring and distributing AK-56 rifles in the city of Bombay and its suburbs, their magazines, ammunition and also hand grenades to co-accused Sanjay Dutt (A-117) and Salim Kurla (Juvenile) at the instance of Anis Ibrahim Kaskar, an Absconding Accused (hereinafter referred to as 'AA'), brother of notorious smuggler Dawood Ibrahim, and Abu Salim for committing the terrorist acts punishable under Section 3(3) TADA.

E. The appellant (A-41) was also charged with, being in the unauthorised possession of one AK 56 rifle, 635 rounds of

ammunition, 10 magazines of AK 56 rifle, and 25 hand grenades as the same were recovered in the notified area at his instance, and thus he has been charged under Section 5 TADA.

F. The appellant was further charged under Section 6 TADA, Sections 3 & 7 read with Section 25(1-A), (1-B)(a) of the Arms Act, Section 4(b) of the Act 1908 and Section 9-B(1)(b) of the Act 1884, for unauthorisedly being in possession of the aforesaid arms with the intention to aid terrorist acts.

G. The prosecution has examined a large number of witnesses and produced a large number of documents to prove its case, and upon conclusion of the trial, the Designated Court acquitted the appellant of the umbrella charge of conspiracy i.e. charge No. 1. However, he was convicted for the second charge i.e. smaller conspiracy under Section 3(3) TADA and was awarded a sentence of 8 years RI alongwith a fine of Rs.1,00,000/-, and in default of payment of fine, to suffer further RI for a period of three years; under Section 5 TADA, he was sentenced to suffer RI for 10 years alongwith a fine of Rs.50,000/-, and in default of payment of fine, to suffer further RI for a period of one year; under Section 6 TADA, he was sentenced to suffer RI for 10 years and a fine of Rs.1,00,000/-, and in default of payment of fine, to suffer further RI for a period of 3 years; under Section 4(b) of the Act 1908, he was sentenced to

suffer RI for four years alongwith a fine of Rs.25,000/- and in default of payment of fine, to suffer further RI for a period of 6 months, under Section 9-B (1)(b) of the Act 1884, he was sentenced to suffer RI for one year alongwith a fine of Rs. 2,000/- and in default of payment of fine, to suffer further RI for two months.

All the sentences were directed to run concurrently. However, under Sections 3 and 7 read with Section 25 (1-A)(1-B)(a) of the Arms Act, the appellant was convicted, but no separate sentence was awarded.

Hence, this appeal.

3. Shri Shree Prakash Sinha, learned counsel for the appellant has submitted that the confessional statement of the appellant as well as those of the co-accused were recorded by the police forcibly, without meeting the requirements of Section 15 TADA and Rule 15 of the rules framed thereunder. Thus, the same cannot be relied upon. The recoveries purported to have been made were also planted by the investigating agency and cannot be relied upon. The Designated Court erred in convicting the appellant. Thus, the appeal deserves to be allowed.

4. Shri Mukul Gupta, learned Senior counsel appearing for the respondent, has opposed the appeal contending that the confessional

statement of the appellant as well as those of the co-accused, were recorded in strict adherence to statutory requirements i.e. Section 15 TADA and Rule 15 of the rules framed thereunder. The appellant and co-accused have made their confessional statements voluntarily and the conviction of the appellant can be maintained on the sole basis of the confessional statement of the appellant himself. Moreover, a large number of co-accused have named him and have assigned to him overt acts. The recoveries have also been made strictly in accordance with the requirements of Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') and there is no reason to disbelieve the same, as the same were made at the instance of the appellant i.e. on the basis of his disclosure statement made voluntarily. Thus, the appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. **Evidence against the appellant (A-41):**

(a) Confessional statement of the appellant himself.

(b) Confessional statement of co-accused Samir Ahmed Hingora (A-53).

(c) Confessional statement of co-accused Sanjay Dutt (A-117).

(d) Confessional statement of Manzoor Ahmed Sayyed Ahmed (A-89).

(e) Deposition of Pandharinath Hanumanth Shinde (PW.218).

(f) Deposition of Laxman Loku Karkare (PW.45).

(g) Deposition of Hari Pawar (PW.596).

(h) Deposition of Prem Kishan Jain (PW.189).

7. **Confessional Statement of Baba Musa Chauhan (A-41):**

His confessional statement shows that he was well acquainted with the co-accused Salim who used to extort money, and was working for Anis Ibrahim Kaskar (AA), brother of notorious smuggler and gangster Dawood Ibrahim. Salim told the appellant (A-41) on 15.1.1993 to arrange a garage, with respect to which, the appellant (A-41) initially expressed his inability, but after receiving a phone call from Anis Ibrahim Kaskar in the evening at about 7-7.30 P.M., wherein Salim was asked to go to the Magnum Video Office, and meet Samir Ahmed Hingora (A-53). The appellant (A-41) went there alongwith Salim in a blue coloured Maruti 800 Car, and with the help of Samir Ahmed Hingora (A-53) and his partner Haneef, they searched for an appropriate garage. At this time, Salim told the appellant (A-41) that he would keep 2-3 AK 56 rifles with him (A-41) for about 2-3 days, and asked him to stay at home, so that he could bring the arms. On the subsequent morning, Salim came to the house of the appellant (A-41). Abu Salim asked the appellant (A-41)

to drive a white coloured Maruti Van which was parked near the Arsha Shopping Centre and to come near the Magnum office. Salim drove ahead of him in a blue coloured Maruti, after handing over the keys of the van to the appellant (A-41). Appellant (A-41) reached close to the Magnum office in the van. Salim and Samir Ahmed Hingora (A-53) then sat in the van driven by the appellant (A-41), and all those three persons reached the house of co-accused Sanjay Dutt (A-117). Sanjay Dutt (A-117) embraced Salim and Samir Ahmed Hingora (A-53). Salim introduced Sanjay Dutt (A-117) to the appellant (A-41). Sanjay Dutt cleared the passage leading to the garage, shifting the vehicles parked therein to the other side. The van which the appellant (A-41) had driven was taken to the garage in reverse gear. Salim opened the cavity of the car which was under its back seats with the aid of a **'panna'**, and from within, removed 9 AK 56 rifles one by one, and then opened the inside lining of the front door of the car and removed from there 80 hand grenades without pins, then he removed 1500/2000 bullets from the back door. These bullets were packed in brown coloured paper, in packets of 25-30 bullets, which were held together by rubber bands. The hand grenades were also packed in brown coloured paper. There were 56 magazines in the lining of the back door of the car. Sanjay Dutt (A-117) asked Salim why the hand grenades had been brought there, as

it might create a problem in case the same blew up. Salim explained to Sanjay Dutt (A-117) that as the hand grenades did not have pins nothing would happen. Salim made a list of all the articles and asked the appellant (A-41) to keep 3 rifles, 9 magazines, 450 bullets and 20 hand grenades in Sanjay Dutt's Fiat car (A-117) . The appellant (A-41) kept the said arms and ammunition as directed by Salim in the dickey of Sanjay Dutt's car (A-117), locked the dickey and put the key in his pocket. Samir Ahmed Hingora (A-53) kept 20 hand grenades in his car after packing the same into a bag and the appellant (A-41) kept 3 rifles, 16 magazines, 25 hand grenades and 750 bullets and came out with Samir Ahmed Hingora (A-53). The appellant (A-41) left with the remaining arms and ammunition kept in a bag, which he laid under his bed.

Next day, the appellant (A-41) loaded all the bullets in the magazines of the rifles. He could not contact Salim to take away the said arms as no one picked up Salim's telephone. Subsequently, the appellant (A-41) was told by Salim's wife that Salim had gone out of India and that she would talk to him after 2-3 days. The appellant (A-41) told her that Salim had kept some computer parts with him (A-41) and that the same were to be returned to him at the earliest. A-41 went to the house of Salim and told his wife that he wanted to return the said goods at the earliest. On the same night, A-41

received a telephone call from Dubai from Salim informing him that he was coming back to Bombay within 1-2 days, and that after coming back he would collect all the goods. However, Salim did not return from Dubai. So the appellant (A-41) called up his brother-in-law in Dubai and asked him to talk to Salim, and request him to collect his goods, who subsequently informed the appellant (A-41) that Salim was likely to come to Bombay within a day or two and that he would contact him. Immediately thereafter, riots took place in Bombay.

On 16.1.1993 the appellant (A-41) received a telephone call from Salim, who asked him to talk to Anis Ibrahim Kaskar (AA). A-41 contacted Anis Ibrahim, who told the appellant (A-41) to give two guitars and six 'tars' (cord) to Salim Kurla and also, to give him some 'Kadis' and on being told that the 'Kadis' had already been attached to the broom (Jaadu), Anis Ibrahim asked the appellant to give only 6 'tars'. The appellant (A-41) told Anis Ibrahim Kaskar that he did not know Salim Kurla. Then Anis Ibrahim Kaskar told him that Salim Kurla knew the appellant (A-41), and that he would come to the Andheri Post Office in the front of his house. Thus, on his instructions, the appellant (A-41) handed over two rifles and 6 loaded magazines to Salim Kurla. Salim Kurla had told the appellant that these arms were to be given to some one in Beharam Pada.

After 2-3 days, Salim returned to Bombay and came to the appellant (A-41) with his brother Kalam. The appellant (A-41) told him that he had 1 rifle, 25 hand grenades, the remaining bullets and 10 magazines etc. The appellant (A-41) asked Salim to take these remaining articles from him. However, he promised to take them back in the evening, but then did not come for two days.

During this period, the appellant (A-41) learnt from the newspapers that Salim had been arrested by the police while trying to extort money from a Gujarati person. Salim himself came to see the appellant (A-41), and told him (A-41) that Salim Kurla could disclose the name of the appellant (A-41) to the police, and hence, he advised the appellant (A-41) not to disclose Salim's name. The appellant (A-41) became frightened, as he was in the possession of arms. Thus, he immediately shifted the arms to Iqbal Tunda and informed Salim to keep the remaining goods with someone without disclosing his (A-41) name. Salim came to see the appellant (A-41), and he had with him 30 loaded magazines which were wrapped in a plastic/polythene bag and then kept in a cloth bag. He left these magazines with the appellant (A-41) and said that he would send Ayub to collect this ammunition from him. Accordingly, the next night at 9-9.30 p.m. Ayub came with arms including one AK 56 rifle. He kept the magazine and bag in one place. Though, he

returned a part of the arms and ammunition, some material still remained with the appellant (A-41), which was kept in another place. He returned 30 loaded magazines to Salim and Ayub which they kept inside the dickey of their scooter and left.

Salim Kurla was arrested after the Bombay blast and upon his disclosure, the appellant (A-41) was arrested on 28.3.1993. Later on, his father obtained the bag which he had kept with Iqbal Tunda through Hazi Ismail, and the same was produced before the police. He (A-41) further stated that he was not interested in using any arms or keeping the same with him, rather he had been forced to keep the same by the other co-accused, on the pretext that the weapons and ammunition would be collected from him within 2-3 days.

The appellant (A-41) made a retraction statement on 21.12.1993.

8. **The Confessional Statement of Samir Ahmed Hingora (A-53):**

He made a confession that on 15.1.1993, Anis Ibrahim Kaskar had telephoned him stating that the appellant (A-41) and Salim would bring one vehicle loaded with weapons, and that he was to make arrangements for the off-loading and handing over of some weapons to Sanjay Dutt (A-117), and that thereafter, some weapons would be taken back by them for distribution to other persons. Since

his partner Haneef was not in office, he took them to his house. Haneef talked to Anis Ibrahim Kaskar (AA) in Dubai over the telephone, and expressed his unwillingness to carry out his instructions. However, upon the request of Salim, he (A-53) agreed to take him to Sanjay Dutt's house while he was talking to Anis Ibrahim Kaskar over the telephone about the said weapons. Sanjay Dutt hugged Salim and asked him to come the next day with the weapons.

The next day, he (A-53) went to his office and met Salim and the appellant (A-41) and then reached the house of Sanjay Dutt (A-117). Sanjay Dutt asked his driver Mohd. to remove all the vehicles from the garage, and the appellant (A-41) then parked his Maruti van there and asked for a spanner and screw driver. Sanjay Dutt (A-117) asked Mohd. to bring the tool kit from his car and give it to the appellant (A-41). Salim wrapped three AK 56 rifles and some magazines in a bed sheet as per the request of Sanjay Dutt (A-117), and Salim also gave Sanjay Dutt 20-25 hand grenades which were put in a black coloured bag along with other ammunition.

9. **Confessional statement of Sanjay Dutt (A-117)**:

He admitted that one day in the month of January around 9-9.30 p.m., Haneef and Samir Kurla had come to his house alongwith Salim. He had met Salim once or twice earlier also. They told him (A-117) that they would be coming the next day with the weapons that were to be delivered to him and then went away. The next morning, Samir, Haneef and Salim came to his house alongwith one other person, whom he did not know. They had come in a Maruti Van and parked the same in the tin shed which was used by him for parking his own vehicles. One person was sitting inside the Maruti Van. After about 15-20 minutes, he took out three rifles, and they told him that the same were AK-56 rifles. He then brought some cloth from his house and gave it to them. Salim and the person who had come with him, wrapped the rifles in the cloth, and thereafter, gave the same to him. He stated that he could identify, the person sitting in the car and also the hand grenades. He kept these rifles and the ammunition in the dickey of his Fiat Car No.MMU 4372.

10. **Confessional statement of Manzoor Ahmed Sayyed Ahmed (A-89):**

He confessed that he had a blue coloured Maruti 800 bearing No. M.P.23 B-9264. On 22nd/23rd January, 1993, in the evening, Salim contacted him over the telephone and called him to his office

at Santacruz. After reaching there he took him (A-89), to the office of the appellant (A-41) at Monaz Builders and Builders, S.V. Road, Andheri, Opposite the Post Office. He introduced (A-89) to the appellant (A-41), and gave the key of his car to the appellant (A-41) and after about half an hour the appellant (A-41) came back and parked the said car outside the office, and gave the key to Salim and told him that he had kept the bag of weapons in the car. When Salim and (A-89) entered the car, he (A-41) saw that a black bag containing weapons, was kept on the rear seat of the car.

11. **Deposition of Pandharinath Hanumanth Shinde (PW.218) :**

He was the constable posted at the house of Sanjay Dutt (A-117) for security. His statement was recorded in court on 6.11.1997, wherein he deposed about the visit of the appellant (A-41) alongwith Salim and others, to the house of Sanjay Dutt (A-117). He identified the appellant in a TI Parade held after 57 days, as well as in court. He also identified the two persons alongwith Sanjay Dutt. He supported the prosecution's case by saying that Sanjay Dutt had instructed the witness to go to Gate no. 1 for duty, which he had followed. The happenings at Gate No.2 would not be visible to him, while he was standing near the main Gate No.1. It was for this

reason that he had been shifted to a place from where he could not possibly see what was happening.

12. **Deposition of Laxman Loku Karkare (PW.45)** - He was a panch witness in the recovery made on 1.4.1993. When he reached the police station and had agreed to become a panch witness, there were some constables and one more person, who had disclosed that his name was Ibrahim Musa Chauhan @ Baba Chauhan (A-41). He had given the address of his residence. The appellant (A-41) had disclosed to the police in his presence, that he had AK 56 rifles, magazines, grenades and cartridges which he had been concealed, and that he would show them the place of concealment and also produce the weapons. The panchanama was signed by this witness. They reached the place as was explained to them by the appellant (A-41) by police jeep, which was near Andheri Bus Terminus. Subsequently, they found themselves in front of a chawl owned by the appellant (A-41). Then the appellant took them to a lane which was being used as a **dumping ground for waste material,** and removed a bag from underneath a heap of waste. He removed an AK 56 rifle, 635 cartridges and 25 hand grenades, and handed over the same to P.I. Pawar who examined all the articles. The seizure panchanama was prepared by P.I. Pawar.

In his cross-examination he deposed that he did not remember that there was a street light at a distance of 20 feet on the northern side of the open space used as a dustbin. The space was full of waste material when he had gone alongwith the police party and the accused. There were no left over eatables dumped at the place and it was thus, not smelling. P.I. Pawar alongwith the accused had entered the open space. The open space being used as a dustbin was 4 ft. x 4 ft. The accused brought a bag out to the lane from the dustbin. The bag was not in the hands of P.I. Pawar. The accused (A-41) had removed the bag from the dustbin in their presence. He was standing in the lane watching the accused removing the bag from the dustbin.

13. **Deposition of Hari Pawar (PW.596) -** He is the Police officer who made the recovery at the instance of the appellant (A-41), in the presence of Panch witnesses. He has corroborated the version of recovery as stated by PW.45.

14. **Deposition of Prem Kishan Jain (PW.189)-** He had recorded the confessional statement of the appellant. He deposed that the appellant (A-41) had been brought from police custody and sent back to police custody. The witness explained that he was fully aware of the requirement of recording a confession and that he had

complied with all the said requirements while recording the confession of the appellant.

15. In **State of Himachal Pradesh v. Jeet Singh,** (1999) 4 SCC 370 this court dealt with the issue of recovery from the public place and held:

> *"21. The conduct of the accused has some relevance in the analysis of the whole circumstances against him. PW 3 Santosh Singh, a member of the Panchayat hailing from the same ward, said in his evidence that he reached Jeet Singh's house at 6.15 a.m. on hearing the news of that tragedy and then accused Jeet Singh told him that Sudarshana complained of pain in the liver during the early morning hours. But when the accused was questioned by the trial court under Section 313 of the Code of Criminal Procedure, he denied having said so to PW 3 and further said, for the first time, that he and Sudarshana did not sleep in the same room but they slept in two different rooms. Such a conduct on the part of the accused was taken into account by the Sessions Court in evaluating the incriminating circumstance spoken to by PW 10 that they were in the same room on the fateful night. We too give accord to the aforesaid approach made by the trial court."*

16. Similarly, in **State of Maharashtra v. Bharat Fakira Dhiwar** (2002) 1 SCC 622, this Court held:

> *"**22.** In the present case the grinding stone was found in tall grass. The pants and underwear were buried. They were out of visibility of others in normal circumstances.*

> *Until they were disinterred, at the instance of the respondent, their hidden state had remained unhampered. The respondent alone knew where they were until he disclosed it. Thus we see no substance in this submission also."*

17. In view of the above, it cannot be accepted that a recovery made from an open space or a public place which was accessible to everyone, should not be taken into consideration for any reason. The reasoning behind it, is that, it will be the accused alone who will be having knowledge of the place, where a thing is hidden. The other persons who had access to the place would not be aware of the fact that an accused, after the commission of an offence, had concealed contraband material beneath the earth, or in the garbage.

18. In **Durga Prasad Gupta v. State of Rajasthan** thr. CBI (2003) 12 SCC 257, this Court explained the meaning of possession as:

> *"The word "possession" means the legal right to possession (See Heath v. Drown). In an interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness**, (1976) 1 All ER 844.)*
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> *Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge."*

19. In **Sanjay Dutt v. State thr. CBI, Bombay (II),** (1994) 5 SCC 410 this Court considered the statutory provisions of Section 5 TADA and in this regard held:

> *"**19.** The meaning of the first ingredient of 'possession' of any such arms etc. is not disputed. Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood.*
>
> *xxxxxx*
>
> ***25.** The significance of unauthorised possession of any such arms and ammunition etc. in a notified area is that a statutory presumption arises that the weapon was meant to be used for a terrorist or disruptive act. This is so, because of the proneness of the area to terrorist and disruptive activities, the lethal and hazardous nature of the weapon and its unauthorised possession with this awareness, within a notified area. This statutory presumption is the essence of the third ingredient of the offence created by Section 5 of the TADA Act. The question now is about the nature of this statutory presumption.*
>
> *xxxxxxx*
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> ***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."

20. Therefore, the only requirements under the statutory provisions are, that (1) a person must be in possession of some contraband material; (2) the person must have knowledge of his possession i.e. conscious possession; (3) it should be in the notified area. Once possession is established, the burden is on the accused to show that he was not in conscious possession.

21. After considering the entire evidence on record, the learned Designated Court came to the conclusion that the appellant (A-41) was aware that the arms and ammunition which were handled by

him were to be used during riots against Hindus. The father of the appellant (A-41), had collected a bag of contraband kept with Iqbal Tunda through Haji Ismail, and handed over the same to the police. The Designated Court held that the confessions of the co-accused established the role played by the appellant (A-41) in supplying weapons to A-117. The confession of A-117 does not reveal the name of the appellant (A-41), but the same is obvious as A-117 did not know the appellant prior to the said meeting. Thus, it is clear that the fourth person referred to in the confession of A-117 is none other than the appellant (A-41). The Court held that a consideration of the entire evidence leads to the inescapable conclusion that the appellant (A-41) was in unauthorised possession of AK-56 rifles, magazines, ammunition and hand granades, and that he had distributed a part of the material to A-117, kept the hand grenades with himself, and had handed over an AK-56 rifle to Salim Kurla (dead). All the said acts were committed by him at the behest of Salim (AA) and Anees Ibrahim, and thus he has committed an offence punishable under Sections 3(3) and 5 TADA. Being in the unauthorised possession of weapons in a notified area, and having failed to rebut the presumption i.e. that the same were being for the purpose of the commission of a terrorist act, he is liable to be convicted under Section 5 TADA.

However, considering that no nexus was established between the material possessed and distributed by the appellant (A-41), and the material smuggled into the country by the main conspirators, and there being absolutely no other material on record to reveal the nexus between the appellant (A-41) and any other co-accused involved in the said conspiracy, it was held that he could not be held guilty for the offence of conspiracy i.e. for the first charge. The acts committed by the appellant (A-41) do not reveal that the same were being done for the purpose of furthering the object of the conspiracy.

22. We have considered the entire evidence on record and come to the following conclusions:

i. The appellant (A-41) was well acquainted with Abu Salim (AA) who was working with Anis Ibrahim Kaskar (AA).

ii. The appellant (A-41) was asked to arrange a garage, and hence searched for an appropriate garage with co-accused Salim, Hingora (A-53) and his partner Haneef.

iii. The appellant was introduced to co-accused Sanjay Dutt (A-117) at the residence of the latter.

iv. The appellant witnessed the handing over of contraband to the co-accused (A-117).

v. The appellant was in conscious possession of certain contraband items.

vi. The recovery of the contraband material which was effected upon the making of a disclosure statement by the appellant, took place at a dumping ground for waste.

23. The Designated Court convicted the appellant (A-41) on the basis of the evidence as has been hereinabove stated. We find no cogent reason to interfere with the decision of the Designated Court. The appeal is hereby, accordingly dismissed.

CRIMINAL APPEAL NOS.1129-1130 OF 2007

Altaf Ali Sayed …Appellant

Versus

State of Maharashtra through CBI … Respondent

24. These appeals have been preferred against the judgments and orders dated 24.11.2006 and 5.6.2007 passed by a Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, in Bombay Blast Case No. 1/1993 by which the appellant has been convicted under Section 3(3) TADA and sentenced for 10 years rigorous imprisonment and a fine of Rs.50,000/- and in default of payment of fine to further suffer rigorous imprisonment of one year. He has further been convicted for the offence under Section 5 TADA and sentenced to 10 years rigorous imprisonment with a fine of Rs.2,00,000/- and in default of payment of fine to suffer further rigorous imprisonment for 3-1/2 years.

Both the sentences were directed to run concurrently.

25. Facts and circumstances giving rise to these appeals are that:

A. In addition to the main charge of conspiracy, the appellant (A-67) was charged for arranging 13 air tickets in order to facilitate

the traveling of the accused persons for training of handling arms, ammunition and explosives. He has also been charged for knowingly and intentionally storing 2 suit cases containing arms and ammunition, thereby committing the offence punishable under Section 3(3) TADA. The appellant was further charged for possessing arms and ammunition in the notified area of Greater Bombay which were recovered at the instance of Mohd. Hanif Usman Shaikh, thereby committing the offence under Section 5 TADA. And lastly, he was charged with an intent to aid terrorist acts thereby committing an offence under Section 6 TADA.

B. After conclusion of the trial, the learned Designated Court under TADA convicted and sentenced the appellant as referred to hereinabove.

Hence, these appeals.

26. Shri Mukul Rohtagi, learned senior counsel appearing on behalf of the appellant, has submitted that the appellant had not been found guilty of first charge i.e. larger conspiracy and the allegations against him had been regarding keeping possession of handgrenades, detonators and storing the suitcases which had been recovered on his discovery statement. The recovery memo of the alleged articles had not been signed by the appellant and even the story of handing over

the two bags to the appellant is false for the reason that it has been alleged that Amzad Ali Aziz Meharbaksh had given four bags which were returned to Yakub Memon (A-1) as Amzad Ali Aziz Meharbaksh had been discharged by this Court. Thus, the evidence of Mohd. Hanit Usman Shaikh (PW.282) in this regard cannot be relied upon. More so, the prosecution could not produce all 105 handgrenades, alleged to have been recovered from the possession of the appellant as there had been shortage of 20 handgrenades. More so, no explanation had been made by the prosecution as how the key-maker was present on the scene and who had brought him. More so, the panch witness could not be relied upon because his brother is an employee in arms department in police and thus, he could not termed to be an independent witness. The alleged recovery of articles 42 and 43 had not properly been sealed, therefore, there was a possibility of tampering with the contents of the suitcases. Thus, the learned Designated Court erred in convicting and sentencing the appellant. Thus, the appeal deserves to be allowed.

27. Per contra, Shri Mukul Gupta, learned senior counsel appearing on behalf of the State, has submitted that there is sufficient material on record that in the presence of Yakub Memon (A-1), Amzad Ali Aziz Meharbaksh had told the appellant (A-67) that

goods belonging to Yakub Memon (A-1) were to be shifted to some other place and, subsequently, Yakub Memon (A-1) asked appellant (A-67) as to whether the bags had been delivered to him by Amzad Ali Aziz Meharbaksh. The tickets for the co-accused were arranged by Yakub Memon (A-1) through the appellant by sending money and passports to him through Rafiq Madi (A-46). It was Yakub Memon (A-1) who sent three bags to Rafiq Madi (A-46) through appellant (A-67). Yakub Memon (A-1) had instructed on telephone to the appellant for sending the bags to Al-Husseini Building i.e., residence of Yakub Memon (A-1) and his family. The recovery has been made in accordance with law and there is sufficient material against the appellant to convict him for the aforesaid offences, hence, no interference is required.

28. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

29. **Evidence against the appellant:**

(a) Confessional statement of the appellant (A-67)

(b) Confessional statement of Mohd.Rafiq Madi Biyariwala(A-46)

(c) Deposition of Mohd. Hanit Usman Shaikh (PW-282)

(d) Deposition of Prem Kishan Jain (PW-189)

(e) Deposition of Shri K.L. Bishnoi (PW-193)

(f) Deposition of S.J. Satam, Panch witness (PW-37)

(g) Deposition of Waman Kulkarni (PW-662)

(h) Deposition of Woman Dotlkar (PW-420)

(i) Deposition of Asit Devji (PW-341)

(j) Deposition of Anil Prabhakar (PW-506)

(k) Memo Panch Ex. 108

(l) Discovery Panch. Ex. 109

30. **Confessional statement of the appellant (A-67):**

His confessional statement was recorded on 16.4.1993 by Prem Kishan Jain (PW-189), D.C.P. Commandant SRP(F) Group-VI Dhule. The appellant (A-67) deposed that he was a recruiting agent under the name of Altaf Enterprises. He knew Amzad Ali Aziz Meherbux (Discharged accused) and Yakub Memon (A-1). Amzad sent 4 bags of Yakub to be kept with him as per their earlier meeting. He asked them as to what was in the bag and Amzad told him that it contained weapons etc. He also booked tickets for 15-16 persons at the instance of Yakub for which passports and payments were received through Rafiq Madi (A-46). After 10-12 days, Rafiq (A-46) sent him 3 bags of Yakub to be kept with him. When he asked, Rafiq told him that they contained bullets, grenade etc. On 10.3.1993 he returned 5 bags at Al-Husseini Building at instance of

Yakub Memon. He kept the remaining two bags containing weapons and explosives with Mohd. Hanif. The said two bags were recovered by police on 26.3.1993 at his instance from Mohd. Hanif.

31. **Confessional statement of Mohd. Rafiq Madi Biyariwala (A-46):**

The said accused stated that on one occasion the appellant (A-67) was delivered Rs.50,000/- and on another occasion Rs.62,000-63,000/- at the instance of Yakub Abdul Razak Memon (A-1). On 14-15 February, he saw the appellant (A-67) taking away 3 suit-cases in his Maruti Van from nearby garage below the building of Tiger Memon (AA).

Thus, it came in evidence through the confessional statements of A-67 and A-46 that four suitcases were kept in the jeep, which was parked in the residential premises of Amjad Abdul Aziz Meherbux (A-68), (discharged accused) by Abdul Gani Ismail Turk (A-11) and Anwar Theba (AA) at the instance of Yakub Abdul Razak Memon (A-1). Subsequently, the appellant (A-67) took away the four suit cases and kept them in his office, at the instance of Yakub Abdul Razak Memon (A-1). Later, Rafiq Madi Musa Biyariwala (A-46) brought three more suit cases and kept them at the office of the appellant (A-67). Out of the total seven suit cases, appellant (A-67) delivered five suit cases to Yakub Abdul Razak

Memon (A-1) at Al Husseini building. Thus, two suit cases remained in his possession. It has further been disclosed by the appellant that due to the involvement of Yakub Abdul Razak Memon (A-1) in the case, he kept the said suit cases at the residence of Mohd. Hanit Usman Shaikh (PW.282). After the arrest of the appellant, he made a disclosure under Section 27 of Evidence Act (Exh. 108 dt. 26.3.1993) and led Anil Prabhakar (PW-506) and Suresh Satam (PW-37) to the residence of Mohd. Hanit Usman Shaikh (PW-282) from where the following articles were recovered and taken into possession vide Panchnama Ext. 109. The suitcases contained arms and ammunition in large quantities.

32. **Deposition of Mohd. Hanit Usman Shaikh (PW-282):**

Mohammed Hanif Usman Shaikh (PW-282) in his statement disclosed that the appellant (A-67) had given him two suitcases in his office on 22.3.1993 at 9.00 P.M. in closed condition and the appellant (A-67) had asked the witness to keep the said two suitcases and also told that the suitcases were containing Fax machines. He has further revealed that after making the recovery of the suitcases from him the police got them open through the mechanic. The handgrenades were taken out and chits were affixed on each of the handgrenade recovered from the bags. But, Mr. Mukul Rohtagi,

learned senior counsel for the appellant, has submitted that after the recovery of handgrenades, it was not possible to affix chits on each of the handgrenade within such a short time of 50-55 minutes even if 20-30 police officials were involved in that activity. The bundles of wire were kept together and wrapped in a paper. The said packet was tied by means of a string, and the seal of lac was put on the said packet. 65 handgrenades from the bigger suitcase were kept in the same bag alongwith the packet of the bundles of wires, and 40 handgrenades from the small bag were also kept in the same suit case, and the same were tied and sealed. He has further complained that during the course of his custody, his statement was recorded by the police under Section 6 but it was not read over and explained to him by the police either in Hindi, Urdu or in any other language. He was detained by the police in March 1993 for about 20-25 days and was not allowed to return to his house. Moreover, he was tutored and was asked to involve the appellant (A-67) in this case. The witness had been attending the office of the appellant (A-67) in connection with taking the persons abroad. He has also revealed that the two suitcases recovered had been shown to him and he kept their description in mind. Though, the said witness had not been turned hostile but, he was permitted to ask some questions in the nature of cross-examination regarding the happening at the Mahim Police

Station in the month of February/March 1993. On the basis of the above, it has been submitted by Mr. Mukul Rohtagi that the evidence given by Mohammed Hanif Usman Shaikh (PW-282) does not inspire confidence and cannot be relied upon.

33. **Deposition of Premkrishan Dayakrishan Jain (PW.189):**

Premkrishan Dayakrishan Jain (PW.189), D.C.P. Commandant, S.R.P. (F) Group-VI, Dhule, recorded the confessional statement of appellant (A-67). He deposed that when the confessional statement of the appellant (A-67) was recorded on 16th and 18th of April, 1993, he was produced before the said witness by PSI Patil accompanied by a police party. The witness asked the appellant his name and then as instructed by the witness, PSI Patil and police party left the chamber **after removing handcuffs of the appellant (A-67)** and being fully satisfied that his confession was voluntarily recorded. The appellant did not raise any complaint against anybody and said that he was giving his confessional statement voluntarily without any pressure or fear or any inducement given by any person. Thus, two things are clear that on 16/18.4.1993 when the appellant was produced for recording confessional statement, he came from the police custody on 16.4.1993 and, at that time, he was handcuffed, so the witness asked the police officials

who had produced him, to remove the handcuffs. After recording the first part of his confession, he was sent to police custody and not in judicial custody or in the custody of any other independent agency. While on 18.4.1993, he was again produced by the police, having the custody of the appellant handcuffed and it was on the direction of the witness, the handcuffs were removed and his statement was recorded.

34. **Deposition of K.L. Bishnoi (PW-193):**

He has recorded the statement of the co-accused Rafiq Madi (A-46) and deposed that he has made a voluntary confessional statement which was recorded strictly in accordance with law, and he has also pointed out the involvement of the appellant in the crime.

35. **Deposition of S.J. Satam, Panch witness (PW-37):**

He was the Panch witness and he has deposed that he had accompanied the police party alongwith co-accused Rafiq Madi (A-46) who had taken them to Gate No.5, Kashinath Building, and pointed out towards the appellant (A-67) who was arrested therein and arrest memo was prepared.

36. **Deposition of Waman Kulkarni (PW-662):**

He has deposed about sending 9 sealed packets to FSL on 24.8.1993 vide forwarding letter, Ext.2439 and receiving the chemical analysis report, Ext.2439A.

37. **Deposition of Woman Dotlkar (PW-420):**

He has deposed that he was working as Assistant Counter Supervisor of M/s Hans Air Services, and has further deposed regarding booking of 4 tickets by the appellant (A-67) for 11.2.1993 for Dubai and proved Ext.D-3, xerox copy of 3 tickets.

The relevant material by itself does not reveal that Yakub Memon (A-1) disclosed the contents of said bags to the appellant. The further material in confession reveals that bags were given to him on the count of same being luggage of persons which were to be sent to abroad. The evidence reveals the manner in which the appellant had returned 4 bags out of bags given by Amjad Abdul Aziz Meherbux (A-68) and one bag out of bags brought by Rafiq Madi Musa Biyariwala (A-46) on the count of the same being luggage etc. The material reveals that he was not able to return two bags on the count of same being heavy.

38. The confession of the appellant (A-67) further reveals that he had asked Aziz Meherbux (A-68) about contents of bags given by

Yakub Abdul Razak Memon (A-1) and then A-68 had informed him that same were weapons etc. for purposes of taking revenge of losses suffered by Muslims during the riots.

39. Since the appellant (A-67) being in possession of contraband material in an unauthorised manner within notified area and the said material being capable of attracting provisions of Section 5 TADA, it will make the appellant (A-67) liable for commission of offence under Section 5 TADA. However, considering the purpose for which the appellant (A-67) had taken control of said material, i.e. for hiding the same with his friend, it cannot be said that he had committed the said act for either aiding Yakub Abdul Razak Memon (A-1) or abetting any of the acts of Yakub Abdul Razak Memon (A-1). Thus, though the appellant (A-67) by committing such act had contravened provisions of Arms Act and Explosive Act, still his intent behind committing said act being not for helping any terrorist, thus, he cannot be held guilty for commission of any offence under Section 6 TADA.

40. The word 'Possession' has been explained under TADA by this Court in **Durga Prasad Gupta** (supra).

41. In **Kalpnath Rai v. State** (Thr. CBI), (1997) 8 SCC 732, this Court held that in order to meet the essential ingredients of offence under Section 3 TADA *mens rea* must be proved, and it is for this reason that the companies and corporations etc. cannot be prosecuted for the offence under the provisions of TADA. It was further held that the confession of an accused can be used against co-accused only in the same manner and subject to the same condition as stipulated in Section 30 of the Evidence Act, i.e. the accused tried in the same case but for different offences.

42. Shri Mukul Rohtagi, learned senior counsel appearing for the appellant has submitted that two panch witnesses were there, whereas one has been examined, i.e. Suresh Satam (PW.37). His evidence cannot be relied upon for the reason that he was the brother of a Police Constable and thus, cannot be termed as an independent witness. Factually, it is true that the panch witness Suresh Satam (PW.37) himself has admitted that his brother was employee of the police department of Maharashtra. Further, merely having such a relationship does not make him disqualified to be a panch witness, nor his evidence required to be ignored. In **Kalpnath Rai** (supra), this Court has held that the evidence of police officials can be held to be worthy of acceptance even if no independent witness has been

examined. In such a fact-situation, a duty is cast on the court to adopt greater care while scrutinising the evidence of the police official. If the evidence of the police official is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined. (See also: **Paras Ram v. State of Haryana,** (1992) 4 SCC 662; **Pradeep Narayan Madgaonkar & Ors. v. State of Maharashtra,** (1995) 4 SCC 255; **Sama Alana Abdulla v. State of Gujarat,** (1996) 1 SCC 427; **Anil v. State of Maharashtra**, (1996) 2 SCC 589; **Tahir v. State (Delhi),** (1996) 3 SCC 338; and **Balbir Singh v. State,** (1996) 11 SCC 139).

43. It has been pointed out by Mr. Mukul Rohtagi, learned senior counsel appearing for the appellant, that the bags were recovered, though the key was not available and, therefore, it is not the case where the key of the suit cases had been given to the appellant (A-67) and in such a fact-situation, the appellant may not be aware of the contents of the bags as he had not seen its contents. The locksmith was called and he made key and gave it to the police. Subsequent to the opening of the bags, neither the key was kept in safe custody nor was it exhibited or preserved. The locksmith has not been examined. The recovery of bags itself becomes doubtful for the

reason that even if the statements of the panch witness Suresh Satam (PW.37) and Anil Prabhakar (PW.506) are taken into consideration, the recovery was made on 26.3.1993 at 10.00 p.m., though they had started at 5.00 p.m. from a nearby place. Therefore, prosecution has not explained as under what circumstances the police party took five hours to travel such a short distance.

44. The confession of the appellant (A-67) revealed that in the second week of February, he met Yakub Memon(A-1) in office of Amzad Ali Meharbax (A-68) and A-1 asked the appellant (A-67) to book tickets to Dubai for him. Thereafter, Amzad Ali Meharbaksh (A-68) gave the the appellant (A-67) four bags of Yakub (A-1) and after some time Rafiq Madi (A-46) came with money for the tickets. After 10-12 days Rafiq Madi (A-46) came with 3 bags of Yakub to be kept with the appellant (A-67). Upon inquiry from A-68, the appellant (A-67) found out, that the bags contained weapons for taking revenge of the sufferings of Muslims. On 10th March, the appellant (A-67) had taken 5 bags and kept the same in the garage of A-1 at Al-Husseini Building. After bomb blasts, he kept the remaining two bags with Mohd. Hanit (PW-282) from where they were recovered at his instance. Confession of Mohd. Rafiq Musa Biyariwala (A-46) revealed that on two occasions Yakub Memon

(A-1) had given Rs. 50,000/- and Rs. 62000-63000/- to A-46 for giving it to the appellant (A-67), and accordingly A-46 delivered the same to the appellant (A-67) and saw the appellant (A-67) driving away from Al- Husseini Building in red Maruti car with 3 suitcases. Further, Asit Devji (PW-341) and Waman Dotlkar (PW-420) corroborated the incident of booking tickets by M/s Altaf Enterprises i.e. firm of the appellant (A-67). However, the Court **held** that the said instance of booking tickets by the appellant (A-67) cannot lead to the conclusion that he had knowledge of purpose for which travellers were going abroad and thus, the appellant (A-67) was **held not guilty** of first limb of second charge under Section 3(3) TADA.

The recovery of two suitcases containing handgrenades, detonators and wires was effected by Anil Mahabole (PW-506) in presence of Suresh (PW-37), panch witness, on 26.03.1993 from the house of Mohd. Hanif (PW 282) and the same was corroborated by PW-282.

The appellant (A-67) had been told by Amzad (A-68) that these bags contained weapons to be used for taking revenge for Muslims, but still continued to keep the same. The appellant (A-67) was in possession of bags after he shifted them to Hanif (PW 282) as he assumed full control of said bags without any instruction of Yakub (A-1).

It is evident from the record hereinabove, that in the second week of February 1993, the appellant met Yakub Memon (A-1) in the office of Amzad Abdul Aziz Meherbux (A-68) and A-1 asked the appellant to book tickets for Dubai for him. Thereafter, A-68 gave the appellant 4 packets to Yakub Memon (A-1) and after some time, Rafiq Madi (A-46) came with 3 packets of Yakub Memon (A-1) to be kept with the appellant (A-67). On being asked Amzad Abdul Aziz Meherbux (A-68) revealed that the packets contained weapons which had been brought to be used for taking revenge of sufferings of Muslims. The appellant (A-67) had taken 5 bags on 10.3.1993 and kept the same in the garage of Yakub Memon (A-1) at the Al-Husseini Building. The Bombay blast took place on 12.3.1993, and it was after that the appellant has kept the 2 remaining bags with Md. Hanit Usman Shaikh (PW.282) from where they had been recovered by the police on a voluntary disclosure of the appellant and at his instance. The prosecution's case stood corroborated by the confessional statement of Rafiq Madi (A-46), who had also disclosed that he had received a sum of Rs.50,000/- and Rs.62,000/- respectively, from Yakub Memon (A-1) to be handed over to the appellant (A-67) and accordingly, the said amount had been delivered to the appellant by him. He had also

deposed that he had seen the appellant (A-67) taking away the 3 suit cases in red Maruti Car to Al-Husseini Building.

The other evidences of Asit Devji (PW.341) and Waman Dotlkar (PW.420) have fully proved the booking of tickets by M/s. Altaf Enterprises i.e., the Firm of appellant (A-67). Undoubtedly, the evidence on record in respect of booking does not lead to draw an inference, that while booking the tickets he had any knowledge of any conspiracy regarding the Bombay blasts and in view thereof, he had rightly been acquitted of the charges of the first limb of the second charge under Section 3(3) TADA. However, the recovery of 2 suit cases containing the arms and ammunition i.e., handgrenades, detonators and wires etc. was effected by Anil Mahabole (PW.506), on the disclosure of the appellant in the presence of Suresh Satam (PW.37) and on 26.3.1993 from the house of Mohd. Hanit (PW-282). The recovery of 2 suit cases containing the arms and ammunition i.e., handgrenades, detonators and wires etc. stood fully proved by the conjoint reading of the depositions of Anil Mahabole (PW.506), Mohd. Hanit (PW.282) and Suresh Satam (PW.37).

45. We do not find any cogent reason to interfere with the order passed by the Designated Court. The appeals lack merit and are accordingly dismissed.

CRIMINAL APPEAL NO. 402 OF 2008

Mohammed Sayeed Mohammed Isaaq ..Appellant

Versus

State of Maharashtra … Respondent

46. This appeal has been preferred against the judgment and order dated 22.5.2007 passed by the Special Judge of the Designated Court under the TADA for the Bombay Blast, Greater Bombay in Bombay Blast Case No.1/93, by which the appellant has been found guilty and has been convicted under Section 3(3) TADA on two counts and has been awarded a punishment of 6 years alongwith a fine of Rs.15,000/- on each count, and in default of payment of fine to suffer further R.I. for 3 months. However, the punishments have been directed to run concurrently.

47. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, he was charged with the execution of the aforesaid criminal conspiracy, as during the period between December 1992 to April 1993, he had abetted and facilitated various terrorist activities, and more particularly, he had gone to Pakistan to receive weapons training in the handling of

arms, ammunition and explosives for the commission of the terrorist activities, between the dates 22.1.1993 - 15.2.1993.

B. He was further charged for having attended conspiratorial meetings held in Dubai and Pakistan, alongwith the other co-conspirators in order to plan the commission of terrorist acts.

C. After conclusion of the trial, the learned Designated Court found the appellant (A-95) guilty under Section 3(3) TADA only and awarded the sentence and fine, as referred to hereinabove.

Hence, this appeal.

48. Ms. Farhana Shah, learned counsel for the appellant, has conceded to the fact that the appellant had in fact gone to Dubai, without knowing the purpose of such visit, merely upon being asked by the other co-accused to do so, and that he came to know only once when he was in Dubai that he had to travel to Pakistan for receiving training in the handling of arms and ammunition. Even in Pakistan, he was unable to take training properly as he was suffering from various ailments due to which, he was even got abused several times. Learned counsel has admitted appellant's visit to Dubai, but has also submitted that even after returning to Bombay, he did not participate in any overt acts or conspiratorial

meetings. Hence, no charge could be proved against him for attending any such meetings either in India, Dubai, or Pakistan.

Therefore, it has been submitted by Ms. Farhana Shah, that appellant has been exploited by powerful criminals and smugglers, and that he had voluntarily gone to Dubai only in search of a job but, from there he was forced to travel to Pakistan for training. However, owing to the fact that he could not receive training, after returning to India he did not attend any meeting. Thus, he cannot be convicted for the offence punishable under the provisions of TADA.

49. On the other hand, Shri Mukul Gupta, learned senior counsel appearing for the CBI, has vehemently opposed the appeal contending that though undoubtedly, he might not have been involved in any overt act, his involvement in the aforesaid criminal conspiracy cannot be ruled out, hence, the provisions of Section 3(3) TADA would automatically be attracted in light of the facts of the case. Thus, the appeal lacks merit and is liable to be dismissed.

50. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

51. **Evidence against the appellant (A-95) :**

(a) Confessional statement of Mohmed Sayeed Mohmed Issaq (A-95)

(b) Confessional statement of Hanif Mohmed Usman Shaikh (A-92)

(c) Confessional statement of Shaikh Ibrahim Shaikh Hussein (A-108)

(d) Confessional statement of Usman Man Khan Shaikh (A-115)

(e) Deposition of Dilip Suryanashi (PW-225)

(f) Deposition of Amrutkumar Shah (PW-362)

(g) Deposition of Bhagat Singh (PW-382)

(h) Deposition of Achyut Bhalchandra Deshpande (PW-657)

(i) Deposition of Surendra Kumar Sonhd (PW-188)

52. **Confessional Statement of Mohd. Sayeed Mohmed Issaq (A-95):**

His confession was recorded by Shri Surendra Kumar (PW-188), DCP Zone IV Bombay. He has stated that he was told by Yusuf to whom he was acquainted from 1.5 years, that Salim Kurla (A-65, since dead) was making a movie, and that if he (A-95) wanted, he could be assigned the role of a stunt man in such movie. When he contacted Salim (A-65), he (A-95) was told to stay in touch with him as a need might arise for them to travel abroad. As certain material had to be brought back from Dubai, he (A-95) at the behest of Salim Kurla (A-65), went there after being

assured by Kurla, that there would be no risk in doing the same. They were given there 200 Dirhams for expenses. It was only when they reached Dubai, that the appellant (A-95) found out that they had been sent there for weapons' training to take revenge upon the Hindu's. At the said time, the appellant was suffering from Tuberculosis, and therefore, was unable to keep up with the training being provided and, hence, he along with four others, refused to participate in the said training.

53. **Confessional statement of Hanif Mohmed Usman Shaikh (A-92):**

His confessional statement was recorded by Sharda Prasad Yadav, DCP Zone II, Bombay on 28.6.1993 and 30.6.1993. In his confession, he stated that at the instance of Salim (A-65, since dead), he went to Dubai alongwith the appellant (A-95), Hanif Mohmed Usman Shaikh (A-92) and Usman Man Khan Shaikh (A-115) and there they met Ahmed and Farooq, who were introduced to them by Salim and there they stayed in Delhi Darbar Hotel. They were given 200 Dirhams for expenses. Salim and Ahmed called all of them in a room and told that during December 1992 and January 1993, a great injustice had been done to the Muslim community during Bombay communal riots, and in order to ensure that such injustice may not be repeated, they would be imparted

training to handle the arms, ammunition and for that purpose they should be ready to go to Pakistan the next day. All of them were scared, however, under pressure, they went to Pakistan. They were given Rs. 1000/- for expenses. They were imparted training how to handle the arms and ammunition in Pakistan and they came back to Bombay via Dubai.

54. **Confessional statement of Usman Man Khan Shaikh (A-115):**

His confessional statement was recorded by Sharda Prasad Yadav, DCP Zone II, Bombay on 6.7.1993 and 8.7.1993. He had given the version similar to that of Mohmed Hanif Mohmed Usman Shaikh (A-92), as he said that he became acquainted with Salim (A-65, since dead) and Salim took him to Dubai alongwith Mohd. Sayeed Mohmed Issaq (A-95), Shaikh Ibrahim Shaikh Hussein (A-108) and Mohmed Hanif Mohmed Usman Shaikh (A-92). In Dubai, they were taken to Delhi Darbar Hotel. Ahmed, Farooq and Salim told them to go to Pakistan for some work and Ahmed had given them 200 Dirhams for expenses. They were also told that in December 1992 and January 1993, there were atrocities on Muslims and it was essential to learn how to use the sophisticated weapons by the Muslims to defend themselves if such riots occurred again. He went to Pakistan alongwith Mohd. Sayeed

Mohmed Issaq (A-95), Shaikh Ibrahim Shaikh Hussein (A-108) and others and learnt how to use the weapons and after completing the training, they came back to India via Dubai.

55. **Depositions of Dilip Suryanashi (PW-225) and Mohandas (PW-230)** Immigration Officer at the Sahar International Airport, has proved that the appellant left Bombay on 22.1.1993 for Dubai, and he returned on 16.2.1993 from Dubai.

56. After the incident dated 12.3.1993, the appellant left alongwith several other persons under a fictitious name, and stayed at Baroda at a hotel. This has been proved by Amrutkumar Shah (PW-362), the owner of the said hotel. He has stated that as per the entry in the hotel register, Room No.204 had been taken by one Farooq Mohd. Shaikh on 22.5.1993, and that one Mohammed Bhai had also stayed with the said person.

57. **Bhagat Singh (PW-382)**, the receptionist of the hotel has also proved the same stating that he had allotted Room No. 204 to Farooq Shaikh and Mohd. Shaikh.

58. **Mr. Achyut Bhalchandra Deshpande (PW-657),** police inspector, deposed that he had written a letter to the Deputy Commissioner of Police, Zone-III, Greater Bombay on 22.6.1993,

to record his confessional statement. He has admitted in his cross-examination that he did not maintain any diary etc. wherein any such particulars have been recorded. He has also admitted that the name of the accused and the date in the body of said letter, are not in his hand-writing.

59. **Surendra Kumar Sondh (PW-188),** DCP Zone IV Bombay, recorded the confession of the appellant (A-95) on 13.7.1993 and 18.7.1993. He has stated that he was aware of the provisions of Section 15 TADA. He has also admitted that it was improper to continue the custody of the appellant (A-95) during the period that is given for reconsideration, with the same police officer who had produced the said accused before him on 13.7.1993.

60. After appreciating the entire evidence on record, the learned Special Judge found, that the confession of the appellant (A-95) clearly revealed that he had travelled to Dubai at the behest of Salim Kurla (A-65), and that thereafter, he had gone to Islamabad, Pakistan and attended a training camp, where he had acquired training in the operation of arms and ammunition, and that thereafter, he had returned to Bombay via Dubai. The same has been corroborated by the confessions of the other co-accused.

The Court has held that considering that the place of training was a foreign country; the fact that the nature of training acquired was to operate machine guns, AK-56 rifles, hand grenades, RDX, to undertake the preparation of bombs, and to operate rocket launchers etc.; the meetings attended after the said training; the purpose of the training and the oath of secrecy taken by the appellant (A-95); as well as all other relevant factors, it becomes abundantly clear that all the above activities were directed towards the commission of acts of violence against the people of Bombay, and since the same were not directed against any particular person, they could only be for the purpose of the commission of terrorist acts. Hence, the appellant (A-95) had been trained for the commission of terrorist acts.

61. It is evident from the evidence on record and the findings recorded by the learned Designated Court, that the appellant (A-95) had gone to Dubai at the behest of Salim Kurla (A-65) and, thereafter, to Islamabad in Pakistan for attending the training camps and acquired training in handling the arms and ammunition and thereafter, returned to India via Dubai. There is evidence on record that the appellant (A-95) came to know only after reaching Dubai that he had to go with other four co-accused to Pakistan for

taking training as they had to take a revenge for suffering of Muslims, and he was under a coercion that he alongwith others could be arrested by the police of Dubai and, therefore, he had to go to Pakistan for training. Even after coming back, there is no evidence to show that the appellant (A-95) had committed any offence and participated in any other act on the fateful day. Further, as the appellant had obtained training for the commission of the terrorist acts, he cannot be acquitted of the charges under Section 3(3) TADA.

The submissions made on behalf of the appellant that he has served about half of the sentence and it may be reduced as undergone, is not acceptable, in view of the fact that it is mandatory requirement under Section 3(3) TADA to award the punishment to 5 years.

62. We do not see any force in the appeal, it lacks merit and, accordingly, dismissed.

CRIMINAL APPEAL NOs.617-618 OF 2008

Ayub Ibrahim Qureshi …Appellant

Versus

State of Maharashtra Thr. CBI (STF) … Respondent

63. These appeals have been preferred against the judgment and order dated 18.9.2006 and 19.7.2007, passed by a Special Judge of the Designated Court under the TADA in the Bombay Blast Case No.1 of 1993 by which the appellant has been found guilty under Sections 3(3) and 5 TADA and Sections 3 and 7 read with Section 25(1-A) & (1-B) (a) of the Arms Act, and has been awarded a punishment to undergo 5 years RI alongwith a fine of Rs.12,500/-, and in default of payment of fine, he was ordered to suffer further RI for a period of 3 months under Section 3(3), alongwith a similar punishment as was awarded under Section 5 TADA. For conviction under Sections 3 and 7, read with Section 25(1-A) (1-B)(a) of the Arms Act, no separate punishment has been awarded. However, all the sentences awarded were directed to run concurrently.

Hence, these appeals.

64. Fact and circumstances giving rise to these appeals are that :

A. In addition to the first charge of conspiracy, secondly, he was charged for keeping one pistol and 52 rounds for four days in April 1993, which were unauthorisedly given to him by co-accused Nasim Ashraf Shaikh Ali Barmare (A-49) and the same is an offence under Section 3(3) TADA.

B. Thirdly, he was charged for acquiring one pistol and 52 rounds during the aforesaid period from Ashraf Shaikh Ali Barmare (A-49) and for concealing the same within the Railway Terminal Compound, Yunus Manzil, Naupada and that thus, he had been in possession of the said arms and ammunition and has therefore, been charged under Section 5 TADA.

C. Fourthly, he (A-123) has been charged for possession of the aforesaid arms and ammunition and thereby, for contravening the provisions of the Arms Act, and therefore, has committed an offence under Section 6 TADA.

D. Fifthly, he has been charged for the possession of the said arms, and thus, for violating the provisions of Sections 3 and 7, read with Sections 25(1-A) and (1-B)(a) of the Arms Act.

65. Ms. Farhana Shah, learned counsel appearing for the appellant, has submitted that his possession of one revolver and 52 cartridges lasted only a period of 2-3 days. The same had been

handed over to him by Ashraf Shaikh Ali Barmare (A-49), and were later recovered from an open public place, and not from the house of the appellant (A-123). The incident of the blast had occurred on 12.3.1993, and the said recovery was made on 8.4.1993, and hence, the same cannot be connected with the Bombay blast. The material so recovered was in view of the disclosure statement made by the appellant (A-123), and was never produced in court despite an order passed by the Designated Court to this effect. Subsequently, the said contraband were produced, but no explanation was furnished by the prosecution for 20 cartridges that were missing.

66. Mr. Mukul Gupta, learned senior counsel appearing for the CBI, has vehemently opposed the appeal contending that his possession was conscious possession, and that the appellant (A-123) was fully aware of the contents of the bag which was handed over to him by Ashraf Shaikh Ali Barmare (A-49) and contained one revolver and 52 cartridges and was also aware that it was illegal for him to be in possession of such arms and ammunition. The same is punishable under the provisions of TADA. Therefore, the appellant (A-123) has rightly been convicted on the basis of his possession and the present appeal is, therefore, liable to be dismissed.

67 We have considered the rival submissions made by the learned counsel for the parties and perused the records.

68. **Evidence against the appellant (A-123) :**

(a) Confessional statement of Ashraf Shaikh Ali Barmare(A-49)

(b) Deposition of Chandrakant Vaidya (PW-40)

(c) Deposition of Ratansingh Kalu (PW-600)

(d) Deposition of Shri Vishnu Shinde (PW.615)

(e) Deposition of Waman Kulkarni (PW.662)

(f) Deposition of Krishanlal Bishnoi (PW-193)

In the instant case, there is no confessional statement of the appellant Ayub Ibrahim Qureshi (A-123).

69. **Confessional statement of Ashraf Shaikh Ali Barmare (A-49):**

Confessional statement of co-accused (A-49) was recorded by K.L. Bishnoi, DCP (PW-193) under Section 15 TADA, wherein the said accused revealed that in the first week of April, he had given one pistol and 52 rounds to the appellant (A-123) and that the recovery of the same was made by the police on 8.4.1993 at the disclosure statement of the appellant (A-123) in the presence of Panch witnesses.

70. **Deposition of Chandrakant Vaidya (PW-40):**

He was the Panch witness and has deposed that the appellant (A-123) took them to Railway Terminal Compound Yunus Manzil, Naupada, and got the recovery of one pistol and 52 rounds made after digging the earth there. He also deposed about the Panchnama (Ex.127) prepared in this respect by Ratansingh Kalu (PW-600).

71. **Deposition of Ratansingh Kalu (PW-600):**

He corroborated the evidence of Chandrakant Vaidya (PW-40) that the appellant (A-123) took the police party to Railway Terminal Compound Yunus Manzil, Naupada, and on his disclosure, the police recovered one pistol and 52 rounds and he prepared the Panchanama (Ex. 127).

72. **Deposition of Shri Vishnu Shinde (PW.615):**

He just proved the signature of PSI Shri Pharande on (Ex.2177), forwarded letter to the Chemical Analyzer.

73. **Deposition of Waman Kulkarni (PW.662):**

He deposed that Chemical Analyzer report dated 7.6.1993 (Ex.2177) was received by him on 30.6.1993.

74. **Deposition of Krishanlal Bishnoi (PW-193):**

PW-193, a police officer (DCP), deposed that he had recorded the confessional statement of Ashraf Shaikh Ali Barmare (A-49) which he made voluntarily and all the statutory provisions of TADA were strictly adhered to.

75. After considering the entire evidence on record, the Designated Court held that contraband articles which had been recovered from Ayub Ibrahim Qureshi (A-123), were received from Ashraf Shaikh Ali Barmare (A-49) and the appellant (A-123) concealed the same by digging up the earth in close vicinity of railway station. The appellant (A-123) has accepted the said articles from Ashraf Shaikh Ali Barmare (A-49), knowing the nature of the arms and ammunition. The appellant (A-123) did not make any attempt to rebut the knowledge about the nature of the arms and ammunition. Therefore, the conclusion has been drawn that the appellant (A-123) was in possession of the contraband material unauthorisedly within notified area of Bombay and, thus, committed the offence under Section 5 TADA. Further, the appellant (A-123) committed perpetratory act for commission of terrorist acts and, hence, was held guilty under Section 3(3) TADA. However, considering the quantum of rounds and pistol possessed by the

appellant and the duration for which it was held, he was not found guilty under Section 6 TADA.

76. We have reappreciated the evidence on record and considered the arguments advanced by Ms. Farhana Shah. We do not see any cogent reason to take a view different from that of the learned Designated Court. The involvement of appellant (A-123) in the offences for which the charges have been found proved against him by the Designated Court, stood fully established. Appellant had been given the contraband material by A-49, and he (A-123) was fully aware of the nature of the weapon and cartridges. The relevant Panchnama, i.e., the statement in the memorandum Panchnama, the oral evidence of Chandrakant Vaidya, panch witness (PW-40) and evidence of Ratansingh Kalu (PW-600) connect the appellant (A-123) in concealing the weapon and ammunition.

As the provisions of Sections 5 and 3(3) TADA provide for a minimum sentence of 5 years, this Court cannot award a punishment lesser than what is prescribed under the statute. We do not see any reason to interfere with the impugned judgment and order and appeals lack merit and are, accordingly dismissed.

CRIMINAL APPEAL NO.1631 OF 2007

Mohd. Yunus Gulam Rasool Botomiya …Appellant

Versus

State of Maharashtra … Respondent

77. This appeal has been preferred against the judgment and order dated 30.5.2007 passed by a Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993 by which the appellant (A-47) was found guilty for offence punishable under Section 3(3) TADA and sentenced to suffer RI for 6 years and ordered to pay a fine of Rs.25,000/- and in default of payment of fine ordered to suffer further RI for a period of 6 months under Section 5 TADA, and sentenced to suffer RI for 6 years and ordered to pay a fine of Rs.25,000/- and in default of payment of fine ordered to suffer further RI for a period of six months; and under Sections 3 and 7 read with Section 25(1-A) (1-B)(a) of Arms Act, but no separate sentence awarded on said count.

All the sentences awarded to the appellant (A-47) were ordered to run concurrently.

Hence, this appeal.

78. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant was further charged with keeping in possession one AK-56 rifle, 980 cartridges and 132 magazines of AK-56 rifles between January and April, knowing that they were being smuggled into the country for committing terrorist acts, thereby committing an offence under Section 3(3) TADA.

B. Further, he was charged with the unauthorised possession of firearms in the notified area of Greater Bombay, thereby committing the offence under Section 5 TADA.

C. He was further charged with aiding and abetting terrorists under Section 6 TADA and under Sections 3 and 7 read with Section 25(1-A) and (1-B) (a) of the Arms Act.

79. Mr. Mushtaq Ahmad, learned counsel for the appellant has submitted that the appellant is an auto-rickshaw driver and a simple recovery being made at the behest of the appellant cannot be enough to implicate him. It was further urged that the recovery was made from a public place and therefore, loses its significance. Timings and procedure of recovery are doubtful as signatures of the appellant were not taken on the panchnama. Thus, the appeal should be allowed.

80. Mr. Mukul Gupta, learned senior counsel for the State has vehemently opposed the appeal submitting that the recovery effected on the basis of the disclosure statement of the appellant has been corroborated by several witnesses. Thus, no fault could be found with the impugned judgment. Therefore, the appeal is liable to be dismissed.

81. We have considered the rival submissions made by learned counsel for the parties and perused the record.

82. The evidence against the appellant (A-47) is the recovery of weapons made at his instance. On 2.4.1993 at the instance of appellant, Eknath Jadhav (PW.606) in the presence of Samir (PW.34) Panch Witness prepared the memorandum Panchnama Exh.93. In pursuance of the same, the accused led the Panchas and the Police to the terrace of Raziya Manzil near Radhe Shyam Theatre. Samir (PW.34) in his examination-in-chief stated that bags contained one rifle and six swords, and the blue coloured rexine bag contained 980 cartridges and 32 rifle magazines which were taken out.

83. The police seized the said articles and seizure panchnama (Ext.94) was prepared by Jadhav (PW.606) upon obtaining the

signatures of the panch witnesses. The said articles were sent to FSL for expert opinion and a positive FSL Report was received by the Police.

84. The recovery of arms and ammunition from the appellant (A-47) in a notified area of Greater Bombay has been established by Ekanth Jadhav (PW.606) and Samir (PW.34). The recovery was made at his instance vide Memorandum Panchnama (Ex.No.93) and Seizure Panchnama (Ex.No.94). Since the recovery has been made in a notified area of Greater Bombay, the statutory presumption arose that the arms were acquired by the appellant for the purpose of committing terrorist acts. It is for the accused to discharge the presumption.

85. There is nothing on record to show that Samir (PW.34) and Jadhav (PW.606) would depose falsely against the appellant (A-47) as they had faced the long cross-examination but nothing could surface to make their evidence unworthy of reliance for the matter deposed by them. It was stated by Jadhav (PW.606) in his cross examination that he had not obtained the signatures of the accused on Ex.93, i.e. Panchnama. The depositions made by Samir (PW.34) and Jadhav (PW.606) corroborated the evidence of each other and again their evidence stand corroborated by the recovery of

Panchnama. Samir (PW.34) is an independent and natural witness and merely because he appeared for the prosecution, or he hails from the Worli area, it cannot be presumed that he had been deposing falsely at the behest of the police/prosecution. The information divulged by appellant (A-47) i.e., the one recorded in Panchnama Ex.93 revealed that the appellant had full knowledge regarding contraband material being at a place stated by him. The fact that it had been recovered on the basis of disclosure statement of the appellant (A-47) and he has led the police team to that place proves the recovery. It stands further proved that the AK-56 rifle sent for FSL was an assault rifle in working condition, and the bullets recovered were live bullets. The submission made at the behest of the appellant (A-47) that alleged recovery was from open place and therefore, was not worth credence and the evidence on record failed to establish consensus position by the appellant (A-47) of contraband material, does not hold any merit. More so, merely producing the copy of the passport to show that appellant (A-47) was not resident of the Razia building does not show that the appellant (A-47) had no concern with the premises in Razia building. The recovery has been made from the terrace of the premises in Razia buildings and the contraband material had been found hidden beneath the waste material placed therein. There cannot be any dispute regarding the

timings, as the first Panchnama has been prepared early in the morning at 5 a.m. and then recovery was made later from the place pointed out by the appellant (A-47) himself. Therefore, there cannot be any fault with the timings etc. for the reason that the first Panchnama was prepared at 5 to 5.30 a.m. and the second one was at about 7.00 a.m. to 7.30 a.m. as disclosed by Jadhav (PW.606) in his cross-examination. Thus, it shows that there was recovery of one AK-56 rifle, 980 cartridges of AK-56 rifle, 32 magazines of the same. Entries of the same had been made in the Panchnama giving full details, as to how those articles were found wrapped in gunny bags, rexene etc. and how they were subsequently wrapped after the recovery. Samir (PW.34), the panch witness who identified the recovered articles in the court, pointing out that the said contraband had been recovered at the behest of the appellant (A-47). Letter 'B' had been written on the butt of the AK-56 rifle which was also found on the said rifle when examined in the court.

In his statement under Section 313 Cr.P.C. before the court, the appellant (A-47) denied all the allegations made by the prosecution and stated that he had been falsely roped in. Further, he had not made any disclosure statement nor any recovery had been made at his behest. The Police was searching one Botomiya and arrested the appellant (A-47) though his name is Bhoronliya.

86. The Designated Court after considering the entire evidence on record came to the conclusion that evidence of Samir (PW.34) and Jadhav (PW.606) can be relied upon. The contraband material had been recovered from Razia buildings at the behest of the appellant (A-47) and the recovery was rightly made and Panchnama in this regard was worth reliance. There is neither rule of law nor legal precedent that the signatures of the accused (A-47) is required to be obtained upon the Memorandum Panchnama or the Discovery Panchnama. There is no force in this submission made at the behest of the appellant (A-47). Though, the contraband articles had been recovered from open space but the articles had been concealed under the waste material, so it loses the significance of being recovered from the open space on the terrace. The recovery stood established by cogent evidence.

87. The submission made by Mr. Mushtaq Ahmad, learned counsel appearing on behalf of the appellant that the recovery was made from a public place and therefore, could not be relied upon and cannot be accepted, as it is the accused alone on whose disclosure statement the recovery was made and it is he alone, who is aware of the place he has hidden the same. It cannot be presumed that the other persons having access to the place would be aware

that some accused after the commission of an offence has concealed the contraband material beneath the earth or in the garbage.

88. In **State of Himachal Pradesh v. Jeet Singh** (supra), this Court held:

> *" There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others".*

89. Similarly, in **Gurjinder Singh v. State of Punjab,** AIR 2011 SC 972, this Court held that if a weapon was hidden by digging the earth and could be recovered only be removing the earth, it is not desirable to entertain the argument that recovery had been made from a public place which could have been easily accessible to anyone. The Court further held:

> *"……In our opinion, such trivial mistakes should not give any benefit of doubt or any sort of benefit to the accused. In fact, the recovery was made in the presence of Ajaib Singh, Assistant Sub-Inspector and Balbir Singh, Head Constable. It is also not correct that the memo of recovery was not produced before the Court.*

Exhibit P-46, which reveals the fact about the statement made by the accused in relation to pistol incorporates the entire statement made by the accused. Therefore, the said document itself incorporates the statement made by the accused. Moreover, simply because the recovery was made in the presence of policemen would not adversely affect the prosecution case……."

90. In **State Govt. of NCT of Delhi v. Sunil & Anr.,** (2001) 1 SCC 652, this Court held:

"In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code.

Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses.....The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also

knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

91. In view of the above, merely because the contraband was recovered from a public place, i.e. a place accessible to the public at large, the same does not mean that the recovery is to be discarded. In case, the articles had been hidden by digging up the earth,

covering the same up with garbage or other material, the public may not have taken note of it. The same remained in the specific knowledge of the accused, i.e. where and also the manner in which the said articles were hidden.

Moreover, the recovery cannot be discarded for want of signature of the accused on the recovery memo.

92. In view of above, none of the arguments advanced on behalf of the appellant is tenable. We do not see any force in the appeal. It lacks merit and is, accordingly, dismissed.

CRIMINAL APPEAL NO. 1419 OF 2007

Mohamed Dawood Mohamed Yusuf Khan …Appellant

Versus

State of Maharashtra … Respondent

93. This appeal has been preferred against the judgment and order dated 30.5.2007, passed by a Special Judge of the Designated Court under the TADA for the Bombay Blast Case No.1/93, Greater Bombay, by which the appellant has been convicted under Section 3(3) TADA and has been sentenced to suffer RI for six years, alongwith a fine of Rs. 25,000/-, and in default of payment of fine to further undergo six months RI; and under Section 5 TADA, the same sentence has been awarded. He has further been convicted under the Arms Act, but no separate sentence has been awarded for the same. Both the sentences have been ordered to run concurrently.

94. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant (A-91), in pursuance of criminal conspiracy during the period between January 1993 and April 1993, had agreed to keep in his possession, 3 AK-56 rifles, and 9 empty magazines, which were a

part of the smuggled consignment, at the instance of accused Eijaz (A-137-dead) in an unauthorised manner and thereby, has committed an offence punishable under Section 3(3) TADA; and that he had acquired 3 AK-56 rifles and 9 empty magazines and had kept them in the notified area under Section 2 TADA, and thus, he has been charged under Section 5 TADA.

B. Further, for possessing the said arms, the appellant has also been charged under Section 6 TADA, and under the provisions of Sections 3 and 7 read with Section 25(1-A) (1-B) (a) of the Arms Act.

C. The appellant has been acquitted of the first charge, but has been convicted under Section 3(3) and Section 5 TADA, and also under the Arms Act, as has been mentioned above.

Hence, this appeal.

95. Shri Mushtaq Ahmad, learned counsel appearing for the appellant, has submitted that the conviction of the appellant under the provisions of Sections 3(3) and 5 TADA is not sustainable, as the confessional statement of the appellant, as well as those of the co-accused, are inadmissible in view of the same not being voluntary, and having been made under coercion while in police custody. The confessional statement had also been retracted just

after the filing of the charge sheet. It has further been submitted that the panch witnesses could not be relied upon as they were stock witnesses. Therefore, the conviction is liable to be set aside, and the appeal deserves to be allowed.

96. Shri Mukul Gupta, learned senior counsel appearing for the State has vehemently opposed the appeal, submitting that the confession of the appellant as well as those of the co-accused, which have been relied upon, were made voluntarily. He has further submitted that the retraction is not worth consideration, and that the panch witnesses were not stock witnesses, and that therefore, their testimony deserves to be allowed. Thus, the appeal lacks merit and is liable to be dismissed.

97. We have considered rival submissions made by learned counsel for the parties and perused the record.

98. **Evidence against the appellant (A-91):**

(a) Confessional statement of the appellant (A-91)

(b) Confessional statement of Eijaz Pathan (A-137)

(c) Deposition of Moiddin Kabir (PW-58)

(d) Deposition of Ashok Kumar Harivillas Pandey (PW-59)

(e) Deposition of Hirasingh K. Thapa (PW-278)

(f) Deposition of Vijjay Dagdu Kadam (PW-344)

(g) Deposition of Suresh Ganpath Narathe (PW-522)

99. **Confessional statement of the appellant (A-91) :**

The appellant (A-91), in his confessional statement dated 29.4.1993 has stated that he had been acquainted with Munna (A-24) and Eijaz Pathan (A-137 – now dead). Seven-eight days before Ramzan, at the instance of Eijaz Pathan (A-137), the appellant (A-91) had gone to the office of M.K. Builders. From there, he alongwith Munna and Eijaz had travelled in a Maruti car in which one bag had also been placed. Eijaz had told the appellant (A-91) that the bag contained 3 stun-guns, and that the appellant (A-91) had to keep the same concealed in his house. The appellant (A-91) had taken the said bag, containing the 3 stun-guns and 9 empty magazines, to his house and kept the same in a Godrej almirah. He had falsely informed his family members that the bag contained some cutlery items that belonged to his employer, and had directed that none of them must open it. After eight-ten days, the appellant (A-91) had shifted the stun-guns from one bag to another and had kept the same in his mother-in-law's house, and had told her falsely that the bag contained certain items that belonged to his friend, and that she must not open the same. It had been at his

instance, that the police had made recoveries of the said arms from the house of his mother-in-law.

The above version of events has been corroborated by **Eijaz Pathan** (A-137-dead) in his confession recorded on 21st and 22nd February 2003 by Pramod Mudbhachal, Dy.SP, CBI, STF in all material respects.

A-91 retracted the confessional statement dated 29.4.1993 on 23.12.1993.

100. **Suresh Narathe (PW-522)**, a Sub-Inspector of Police had prepared the disclosure Panchnama Ext. 265 in the presence of Ashok Kumar Harivillas Pandey (PW-59), panch witness, on 9.4.1993, and in pursuance of the said disclosure Panchnama, 3 AK-56 rifles and 9 empty black coloured magazines had been recovered vide seizure Panchnama Ext. 281. The seized articles had been sent to FSL for opinion, vide Ext. 1805 and a positive FSL Report (Ext.1806) had thereafter, been received.

101. **Viijay Dagdu Kadam (PW-344)** – a Sub-Inspector of Police, who had arrested A-91 has stated that on 28.4.1993, the appellant (A-91) had expressed his willingness to make a confession voluntarily, and thus, he had written a letter on the very same day to Shri Lokhande, DCP, for the purpose of recording his

confession. He has proved the letter marked as Ext. X-211, and the contents of the said letter have been found to be true and correct, and the same also bear his signature. He had sent the recovered materials for FSL for examination, vide letter dated 20.4.1993 (Ext. 1805). He has further deposed that on 10.5.1993, he had received an FSL report regarding the articles that had been sent by him, and has stated that the said report was positive.

102. **Hirasingh K. Thapa (PW-278),** watchman of the Navjeevan Society where the appellant (A-91) resided, has corroborated the confession of (A-91) in respect of the visit of Munna (A-24) and Eijaz Pathan (A-137) to the said society on the day that the said weapons had been given to the appellant (A-91). Hirasingh K. Thapa (PW.278) has identified Munna (A-24) in the T.I. Parade (Ext. 1490) held by Vithal Sonawane (PW-465).

103. **Moiddin Kabir (PW-58)** and **Ashok Kumar Harivillas Pandey (PW-59)** were panch witnesses. Ashok Kumar Harivillas Pandey (PW-59) had worked as a watchman at Saldhana Apartments in Chembur for a long time. He has deposed that he had been called to be a panch witness. He has proved the disclosure panchnama, as well as the recovery panchnama, and it was in his presence that the appellant (A-91) had made a disclosure as regards

the 3 AK-56 rifles and 9 empty magazines. Their recovery had been made at his behest from the residence of his mother-in-law. Moiddin Kabir (PW-58) has also corroborated the version of events provided by Ashok Kumar Harivillas Pandey (PW-59).

104. This charge against the appellant has been held to be proved, and the Designated Court has come to the conclusion that Eijaz Pathan (A-137) having received the contraband material within notified area, gave the same to the appellant (A-91), who has agreed to keep the said material with him. It was held that Eijaz Pathan (A-137) having kept the bag of contraband at the house of the appellant (A-91), thereafter the further act of the appellant (A -91) in shifting the same to the house of his mother-in-law clearly shows that he had dominium and control over the same. The accused falsely told his family members and later on to his mother-in-law that the bags contained goods of his friend and the same may not be opened. Hence, the appellant (A-91) being in unauthorised possession of contraband in notified area of Bombay was guilty under Section 5 TADA. Similarly, the appellant (A-91) would also be guilty for commission of offences under Section 3(3) TADA and under Sections 3 and 7 read with Section 25(l-A)

(l-B)(a) Arms Act. More so, recovery was made at his behest and on his disclosure statement.

105. It has been held that considering the manner in which, and the reason because of which the appellant (A-91) had agreed to keep the said contraband at his house, and the fact that the same had not been for the purpose of aiding a terrorist, appellant (A-91) was not held guilty for the offence under Section 6 TADA.

106. Furthermore, considering the fact that the said acts had been committed by the appellant (A-91) at the behest of Eijaz Pathan (A-137), and that the same cannot be said to have been done for the purpose of furthering the object of a criminal conspiracy i.e. first charge, or even a smaller facet of the same, and there being no evidence available to establish the nexus of the appellant (A-91) with such a conspiracy, he was not held guilty of conspiracy i.e. of the first charge.

107. In view of the aforesaid evidence, it becomes clear that the appellant (A-91) had kept in his possession unauthorisedly weapons at the behest of Eijaz Pathan (A-137-dead). The appellant told his mother-in-law and other family members that the goods belonged to his friend, and nobody should open the same. The

recovery of the same at his behest stood proved. The prosecution successfully proved its case and to that extent he has been convicted by the Designated Court. We find no cogent reason to interfere with the judgment of the learned Designated Court. The appeal lacks merit, and is accordingly dismissed.

CRIMINAL APPEAL NO.1226 OF 2007

Ramesh Dattatray Mali …Appellant

Versus

State of Maharashtra … Respondent

108. This appeal has been preferred against the judgment and order dated 21.5.2007 passed by a Special Judge of the Designated Court under the TADA in the Bombay Blast case No. 1/93, Greater Bombay by which the appellant (A-101) has been found guilty under Section 3(3) TADA, and on this count, the appellant has been sentenced to suffer RI for 6 years and also ordered to pay a fine of Rs.25,000/-, and in default of payment of fine to further suffer RI for 6 months.

109. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant (A-101) has been charged with intentionally aiding and abetting terrorists, by allowing them to smuggle and transport arms and ammunition into India from abroad, by the illegal omission of the appellant (A-101) to thoroughly check the motor lorries carrying such arms and ammunition as well as other contraband, though the

same had been intercepted by the police party on the night of 9.1.1993, at Gondghar Phata and had been allowed to carry on, in lieu of the payment of a bribe of Rs.7 lacs, which had been agreed to and accepted by all of them, upon negotiation with terrorists. Hence, the appellant has been charged under Section 3(3) TADA.

B. After his trial, the appellant (A-101) has been acquitted of the first charge, but has been convicted under Section 3(3) TADA and has been sentenced as referred to hereinabove.

Hence, this appeal.

110. Mrs. Anagha S. Desai, learned counsel appearing for the appellant (A-101) has submitted that there is nothing on record to show that the appellant (A-101) had any knowledge regarding the smuggling of arms and ammunition. At most, he may be guilty under the provisions of the Prevention of Corruption Act or of a violation of the Customs Act, or of FERA, but he certainly cannot be convicted under the provisions of TADA. Therefore, the appeal deserves to be allowed.

111. Shri Mukul Gupta, learned senior counsel appearing for the State, has submitted that the Hawaldar Mali, has been specifically named by the co-accused Uttam Shantaram Potdar (A-30), thereby revealing the fact that he had been the one counting the silver

bricks in the truck when the same had been intercepted at Gondghar Phata. Thus, the appeal lacks merit, and is liable to be dismissed.

112. We have considered rival submissions made by the learned counsel for the parties and perused the records.

113. **Evidence against the appellant :**

(a) Confessional statement of Uttam Shantaram Potdar (A-30)

(b) Deposition of Dinesh Gopal Nakti (PW-95)

(c) Deposition of Krishnakant Nathu Ram Birade (PW-96)

(d) Deposition of Dilip Biku Pansare (PW-97)

(e) Deposition of Yeshwant Kadam (PW-109)

(f) Deposition of Vinod Chavan (PW-590)

114. **Confessional statement of Uttam Shantaram Potdar (A-30):**

Uttam Potdar (A-30) in his confessional statement recorded on 15.7.1993, has given details of the landing on 9.1.1993, of the smuggling of the contraband, silver etc. and about the interception of the two trucks carrying the contraband by the police party at Gondghar Phata. It was here that Uttam Potdar (A-30), has revealed that he had given illegal gratification for the earlier landings to Ramesh Mali, Hawaldar (A-101). He (A-30) has

further stated that Mechanic Chacha (A-136) had offered the police party a sum of Rs.10 lacs. Ramesh Mali (A-101) and Ashok Narayan Muneshwar (A-70) had been the ones counting the bricks in the truck. In one truck there had been 175 bricks, and in the other truck there were about 100 bricks and some boxes were also there. Upon being asked, Mechanic Chacha (A-136) had told the police that the boxes contained wrist watches. As the smuggling party did not have cash, Mechanic Chacha (A-136) had removed 5 silver bricks from the truck and had given the same to Havaldar Pashilkar. This version of interception and checking etc. stands corroborated by Jaywant Keshav Gurav (A-82), Mohd. Sultan Sayyed (A-90), Salim Kutta (A-134) and Mechanic Chacha (A-136), to the extent that the smuggling party had in fact been intercepted by the police, and that without naming the appellant, they have described how they had been detained, and subsequently, how they were released after negotiations that lasted about half an hour, and as regards how since they did not have cash, they had delivered 5 silver bricks to the police.

115. **Dinesh Gopal Nakti** (PW-95) and **Krishnakant Nathu Ram Birade** (PW-96) were labourers with Uttam Potdar (A-30), who had been the landing agent in the relevant incident. They have

deposed that on 9.1.1993, they had gone alongwith 12 other labourers to Dighi Jetty, for the said landing. They have further deposed as regards how the goods were smuggled and transported, but they have not named the appellant (A-101) specifically, as being a member of the intercepting police team.

116. **Dilip Biku Pansare** (PW-97) was a mechanic in the State Transport Corporation, but had also been assisting Uttam Potdar (A-30) in his smuggling activities and it was he who had been driving the vehicle carrying the smuggled articles on 9.1.1993 from Dighi Jetty to Bombay. Two trucks carrying smuggled goods had been intercepted by the police party at Gondghar Phata. The vehicles had been stopped and checked. On their asking, the police had been told that the smuggled goods were silver and that there were also some boxes that contained glassware. He has further provided details with respect to how the police party had behaved, but did not name the appellant specifically.

117. **Yeshwant Kadam** (PW-109) and **Vinod Chavan** (PW-590) are the witnesses to the recovery of Rs.15,000/- from the appellant (A-101). In his examination under Section 313 Cr.P.C., the appellant (A-101) has submitted that Vinod Chavan (PW-590) had not made any such recovery, rather, on 21.4.1993 the appellant's

wife had gone to the Shrivardhan Police Station and had given a sum of Rs.15,000/- that had been brought by her by pledging her ornaments with the Mahad Cooperative Urban Bank to avoid harassment, as the same had been demanded by the Police. The Police has shown the said amount to be the amount recovered from the appellant (A-101), by drawing up a false panchnama Exh.563, to this effect.

118. The Designated Court has dealt with all the aforesaid issues, and after appreciating the entire evidence on record so far as the appellant (A-101) is concerned, the Designated Court has held that Uttam Potdar (A-30) has revealed the involvement of the appellant (A-101) in the relevant episode. His confessional statement to this effect stands corroborated by the material in the confessions of Jaywant Keshav Gurav (A-82), Mohd. Sultan Sayyed (A-90), Salim Kutta (A-134) and Mechanic Chacha (A-136), which establishes the presence of the police party of the Shrivardhan Police Station at Gondghar Phata, and further the transportation of contraband goods being permitted in return for the receipt of bribe. Thus, the court has reached the conclusion that the appellant (A-101) was in fact involved in the commission of the offence under Section 3(3) TADA, though he was not found guilty of the general

charge of conspiracy, as has been mentioned in the first general charge.

119. The present case is a clear case where a police party had intercepted and checked trucks carrying the smuggled goods/articles i.e. arms, ammunition and contraband, and has, after negotiating for half an hour, with such party, permitted them to proceed further after receiving the decided bribe amount i.e. silver bricks in lieu of cash which was to be paid later on.

We are unable to agree with the submissions of Ms. Desai, with reference to the retracted confessions not being admissible in view of the law laid down by this court in **Aloke Nath Dutta & Ors. v. State of West Bengal**, (2007) 12 SCC 230.

For the foregoing reasons, the appeal lacks merit, and is accordingly dismissed.

CRIMINAL APPEAL NO.1422 OF 2007

Shaikh Asif Yusuf …Appellant

Versus

State of Maharashtra … Respondent

120. This appeal has been preferred against the judgment and order dated 31.5.2007, passed by a Special Judge of the Designated Court under the TADA in the Bombay Blast Case No.1 of 1993, convicting the appellant under Sections 3(3), 5 and 6 TADA and under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of the Arms Act.

121. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, he has been charged under Section 3(3) TADA, for agreeing to keep in his possession, in the notified area, 4 hand-grenades that had been given to him by the co-accused Nasim Ahmed Ashraf Qureshi (A-49), in an unauthorised manner, which had formed a part of the consignment that had been smuggled into India by the conspirators knowingly and intentionally, for the purpose of committing terrorist acts.

B. The appellant (A-107) has also been charged under Sections 5 and 6 TADA, and Sections 3, 7 and 25(1-A)(1-B)(a) of the Arms Act for keeping the aforementioned 4 hand-grenades that had been given to him by the co-accused Nasim Ahmed Ashraf Qureshi (A-49), in his possession.

C. The appellant has been convicted under section 3(3) TADA and has been sentenced to suffer RI for 5 years, and has been ordered to pay a fine of Rs.25,000/-, and in default to suffer further RI for 6 months. The appellant has also been convicted under Section 5 TADA and has been sentenced to suffer RI for 8 years, and to pay a fine of Rs.50,000/-, and in default to suffer further RI for one year. The appellant has also been convicted under Section 6 TADA and has been sentenced to suffer RI for 8 years, and to pay a fine of Rs.50,000/- and in default to suffer further RI for one year. The appellant has also been found guilty under the provisions of the Arms Act, but no separate sentence has been awarded for the said offences. All the sentences have been directed to run concurrently.

Hence, this appeal.

122. Shri Mushtaq Ahmad, learned counsel appearing for the appellant, has submitted that the appellant has been convicted by

the learned Special Judge merely on the basis of surmises and conjectures and there is no evidence on the basis of which, the said conviction can be sustained. Chandrakant Atmaram Vaidya (PW-40), who has been relied upon for conviction had been a stock panch witness, and had been easily available to the police. The recovery had been made from an open area, to which a large number of persons had access. Therefore, the recovery and the panchnama in respect thereof, including the disclosure statement that has allegedly been made by the appellant cannot be relied upon. The appellant has been handicapped since his childhood, and thus, his right hand is impaired. Furthermore, he has already served more than 5 years in jail. Thus, the appeal deserves to be allowed.

123. Shri Mukul Gupta, learned senior counsel appearing for the respondent, has submitted that the recovery had been made on the basis of the disclosure statement of the appellant, and had been made strictly in accordance with the requirements of Section 27 of the Evidence Act, and therefore, has rightly been relied upon. No fault can be found with the impugned judgment and order. The appeal lacks merit and is therefore, liable to be dismissed.

124. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

125. **Evidence against the appellant (A-107):**

(a) Confessional statement of Nasim Ashraf Shaikh Ali Barmare(A-49)

(b) Deposition of Chandrakant Atmaram Vaidya (PW-40)

(c) Deposition of Ratansingh Kalu Rathod (PW-600)

The appellant (A-107) has not made any confession.

126. **Confessional statement of Nasim Ashraf Shaikh Ali Barmare (A-49)** :

As per the confessional statement of A-49, the appellant (A-107) had gone to Dubai alongwith several other co-conspirators and co-accused to the house of Tiger Memon (AA) and his brother Yakub, and from there he had also gone to Pakistan to receive weapons' training, and had infact, received the same. The appellant had learnt how to explode black soap (RDX) with a safety fuse, or by a battery after inserting into the chemical, a small aluminium coloured detonator. He had returned to India via Dubai. In Dubai, Tiger Memon (AA) had spoken to the appellant and to the other accused, about the atrocities that had been committed by the Hindus, against the Muslims in Bombay, between December,

1992 and January, 1993. After returning to India, the appellant had attended a conspiratorial meeting that had been held at a flat on Bandra Hill Road, on 9.3.1993 alongwith other 10 other accused, including Tiger Memon (AA), Javed Chikna, Anwar and Usman (PW.2).

The appellant (A-107) had participated in filling up RDX which had been duly mixed with steel scrap, alongwith the other co-accused in the intervening night of 11th and 12th March, 1993. On 12.3.1993, Usman (PW.2) had given him 7 hand-grenades, one loaded gun and a small plastic bag that had contained bullets, and had directed him to go on his mission. He had gone to the Sahar International Airport, and had thrown a hand-grenade there which owing to the fact that it could not reach its target, had exploded mid-way. Nasim Ashraf Shaikh Ali Barmare @ Yusuf (A-49) who had been accompanying the appellant (A-107) at the said time, had gotten frightened, and both of them had thus, run away from there on a motor cycle. The co-accused (A-49) had given the appellant (A-107), 4 hand-grenades and had told him to keep the same with him for some time.

127. **Chandrakant Atmaram Vaidya** (PW-40), a panch witness, has deposed that on 8.4.1993, he had gone to the Mahim

Police Station, upon being called there through a police havaldar. Here, P.I. Rathod had told him that the person who was sitting there, was actually an accused in the Worli Blast case, and wanted to make a disclosure statement voluntarily. Upon being asked by the witness, the accused had told him his name, which was Asif Yusuf Shaikh (A-107), and he further told him that he could aid in the recovery of certain bombs that had been hidden by him. The police officer had recorded the statement of the accused and had prepared the memorandum panchnama, which had then been signed by the panch witnesses. On the basis of the disclosure statement of the appellant (A-107), the police party had taken him and the panch witnesses in a van, and the said van had been stopped at a place upon a request made by the appellant (A-107). It was a heap, in which there lay broken tiles. The appellant (A-107) had removed the other things and the tiles, and had taken out a plastic bag which had contained 4 hand-grenades. The police inspector had prepared a panchnama, which had been read over to the panch witnesses and had been duly signed by them. The four labels, that had been duly signed by the police inspector, had then been affixed to these bombs. All of them had then returned to the Mahim Police Station. This witness has admitted in his cross-examination, that he had also been the panch witness in another

enquiry that had been made on 8.4.1993, wherein Ayub Ibrahim Qureshi (A-49) had made a disclosure statement, on the basis of which a recovery had been was made from a nearby area (Exh.127-128). It has further been explained by him, that the place from which the recovery had been made, was an open area and that a large number of persons had access to it. The witness has further stated that after the recovery in the first case was over, the police havaldar had come and taken him back to become the panch witness for another case, as during those late hours, no other panch witness had been available.

128. **Ratansingh Kalu Rathod** (PW-600), a police Inspector corroborated the evidence of Chandrakant Vaidya (PW-40), and has narrated how the disclosure statement had been recorded, how the memorandum panchnama had been prepared and also how, the said recoveries had been made. He has pointed out that at the place of recovery, the accused had removed items from the heaps, and that after digging, had taken a bag containing four hand-grenades. He has also given full details as regards how the two recoveries had been made in a close proximity of time, and from nearby places.

129. In his statement made under Section 313 of the Code of Criminal Procedure, 1973, the appellant (A-107) has pleaded false implication in the said case, and has stated that the said recoveries had not been made at his instance, as he had never been in possession of any hand-grenades.

130. On the issue of recovery, this Court in **State of H.P. v. Jeet Singh** (supra), held :

> *"There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is* ***"open or accessible to others"****. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is* ***disinterred****, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others."* (Emphasis added)

131 In **State of Maharashtra v. Bharat Fakira Dhiwar**, (supra), this court dealt with the issue.

132. Thus, in view of the above, the submission made by Mr. Mushtaq Ahmed, stating that as the recovery had been made from an open place to which all persons had access, cannot be relied upon and is not worth acceptance.

133. Undoubtedly, the appellant's disclosure statement had been made before the police, as well as the panch witness. The fact that he did not disclose the place where the contraband had been hidden remains entirely insignificant, for the reason that he had led the police party to the said place, and that the said recovery had been made at his behest. The open space from where the recovery had been made though was accessible to anybody, it must be remembered that the contraband had been hidden, and that it was only after digging was done at the place shown by the appellant, that such recovery was made. Hence, it would have been impossible for a normal person having access to the said place, to know where the contraband goods were hidden.

134. Nasim Ashraf Shaikh Ali Barmare (A-49) in his confessional statement, has disclosed that he had handed over the remaining hand-grenades to the appellant. As the said contraband could not have been used other than for the aforementioned terrorist

activities, the submission advanced on behalf of the appellant, stating that it was not proved that the contraband so hidden were to be used for terrorist activities, cannot be accepted. In light of the facts and circumstances of the case, it cannot be believed that the appellant had not been aware of the contents of the contraband, even though the same had been wrapped in carbon paper.

Furthermore, had the appellant not been aware of the contents of the contraband, there would have been no occasion for him to hide the same away after digging up the earth, and further to yet again, cover up the said material with earth and heaps of items. Thus, we are of the view that the appellant had been fully aware of the contents thereof.

135. In view of the above, we concur with the conclusion that has been reached by the learned Special Judge. Thus, the present appeal lacks merit, and is accordingly dismissed.

CRIMINAL APPEAL NO.1180 OF 2007

Mubina @ Baya Moosa Bhiwandiwala …Appellant

Versus

State of Maharashtra … Respondent

136. This appeal has been preferred against the judgment and order dated 14.6.2007 passed by a Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993, by which the appellant has been convicted under Section 3(3) TADA, and a punishment of five years rigorous imprisonment with a fine of Rs. 25,000/-, and in default of payment of fine to suffer further R.I. for 6 months was imposed.

137. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant was charged with being an associate of Tiger Memon (AA), abetting and knowingly facilitating the commission of terrorist acts committed on 12.3.1993. She was further charged with facilitating the holding of conspiratorial meetings on 9th and 10th March, 1993

in her flat in Bandra, wherein the terrorist acts came to be discussed and finalised.

B. After conclusion of the trial, the learned Special Judge convicted A-96 as referred to hereinabove.

Hence, this appeal.

138. Mr. Zafar Sadique, learned counsel for the appellant has submitted that it was her brother who was a close associate of Tiger Memon, and after the death of her brother she was given some money for household expenses by Tiger Memon, and she did not work for him or had any knowledge of her involvement in terrorist activities. Thus, the appeal deserves to be allowed.

139. Mr. Mukul Gupta, learned senior counsel for the State vehemently opposed this appeal by stating that her confession itself reveals that she knew that Tiger Memon was a smuggler. Moreover, the fact that conspiratorial meetings were held in her house demonstrates her knowledge of the conspiracy, and being a party to the same she should have also been convicted of the larger conspiracy. Thus, the appeal is liable to be dismissed.

140. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

141. **Evidence against the appellant:**

(a) Confessional statement of the appellant Mubina @ Baya Moosa Bhiwandiwala (A-96)

(b) Confessional statement of Asgar Yusuf Mukadam (A-10)

(c) Confessional statement of Abdul Gani Ismail Turk (A-11)

(d) Confessional statement of Parvez Nazir Ahmed Shaikh (A-12)

(e) Confessional statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)

(f) Confessional statement of Niyaz Mohmed @ Aslam Iqbal Ahmed Shaikh (A-98)

(g) Confessional statement of Zakir Hussein Noor Mohammed Shaikh (A-32)

142. **Confessional statement of the appellant Mubina @ Baya Moosa Bhiwandiwala (A-96):**

The evidence against the appellant (A-96) had been her own confessional statement which revealed that her brother was a close associate of Tiger Memon (AA) and indulged in smuggling activities. Out of that ill-gotten money, he purchased the said flat and other commercial properties and a car. However, subsequently, when he was pursued by the Customs officials on 10.12.1990, he jumped from the said building and died. Subsequently, she had been living in the said flat alongwith her parents and widow of his brother with a minor child. She was unmarried and 22 years of age

at that time. She deposed that after the death of her brother, Tiger Memon (AA) had supported her family financially by paying Rs.10,000/- per month for household expenses which had subsequently been enhanced to Rs.20,000/- on being asked by her father. The car purchased by her brother was being driven by the appellant (A-96). Tiger Memon used to keep his own money at her residence and it ranged from Rs. 1 lakh to 5 lakhs. She further deposed that she personally knew Tiger Memon (AA) and had been visiting him at his residence in Mahim. On 8.3.1993, Shafi came to her house and handed her an envelope. On opening the same, she found three passports and two tickets of Tiger Memon (AA). Out of them, one ticket was of Air Emirates Bombay-Dubai-Bombay and second was of Gulf Air Bombay-Abu Dhabi-Bombay. Both the tickets had been purchased through East West Travels and both of them had been for 12.3.1993. The said tickets and passports had been taken by Asgar (A-10), an associate of Tiger Memon (AA) on 11.3.1993 at 11.00 p.m. from her residence. Samir Ahmed Hingora (A-53), owner of Magnum Videos, sent a sum of Rs.50,000/- to her for household expenses twice. On 9.3.1993, a meeting was held at her residence at 8.00 o'clock in the evening which was attended by Tiger Memon (AA) and his associates. Tiger Memon (AA) was directing his men in the

bedroom of the house for a period of approximately half an hour and she and her family had been sitting outside. Usman (PW-2), Javed, Bashir and Nashir alongwith 10-15 other boys came at her residence. She opened the door. They asked for Tiger Memon (AA) and she replied that he was inside. Tiger Memon (AA) spoke to them, in the bedroom. Appellant was asked to prepare 15-20 cups of tea. After preparing the tea, she knocked the door of the hall; one boy came and took the tea inside. Tiger Memon (AA) and those persons were discussing about the **plan**. They left at about 12.30 in the night. On the next day on 10.3.1993 at about 9.00 or 9.30 at night, those boys came again to her residence at the instance of Tiger Memon and the appellant (A-96) asked them to wait. Then, Tiger Memon (AA) came and discussed the **plan** with those boys. Then all of them left her house at about 12.00 o'clock at night. The police arrested the appellant after 4-5 days of bomb blasts.

143. **Confessional statement of Asgar Yusuf Mukadam (A-10)**:

He has corroborated the confessional statement of the appellant (A-96) to the extent that he had collected the passports and tickets kept with appellant (A-96) by which Tiger Memon (AA) left for Dubai on 12.3.1993, early in the morning.

144. **Confessional statement of Abdul Gani Ismail Turk (A-11):**

His confessional statement revealed that on 7th March, 1993 in the evening, he went to accused Imtiyaz for taking the scooter which he sold to him (A-11), then he came to know that Tiger Memon (AA) had come back to Bombay from Dubai and he wanted to meet him at Al-Husseini building. Abdul Gani Ismail Turk (A-11) went there and met Tiger Memon (AA) at his residence. He was there alongwith his parents and brothers. Subsequently, Shafi took the accused (A-11) with him in the Maruti car. Shafi stopped the car and went to make a call asking accused (A-11) to wait at the house of Mubina alias Baya Moosa Bhiwandiwala (A-96). He (A-11) reached at the flat of Mubina, appellant (A-96). After sometime, Tiger Memon (AA) and Shafi came there. Some other boys were also present there. On the next day on 8.3.1993, he (A-11) went to the house of Tiger Memon and after sometime, both of them went to the house of Mubina, appellant (A-96) by the Maruti car of Tiger Memon. Tiger Memon went up to her flat, though, accused (A-11) remained sitting in the car. Shafi came down from her flat and went towards Jogeshwari taking accused (A-11) in a Commander Jeep and returned after one hour. He (A-11) found one bag in the jeep which contained 2 rifles, 4-6 handgrenades and some bullets. Then

they came back to the flat of Mubina, appellant (A-96). Tiger Memon and other co-accused came down from her flat at about 11.30-12.00 o'clock at night and they left in jeep and Maruti car.

145. **Confessional statement of Parvez Nazir Ahmed Shaikh, (A-12)**:

He deposed that in the second week of February 1993, he alongwith other co-accused brought the contraband smuggled from Dubai to Bombay in a jeep at 11.30 p.m. The jeep was parked at the house of Mubina, appellant (A-96), and he handed over the keys of the jeep to Mubina, appellant (A-96).

146. **Confessional statement of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64)**:

In his confessional statement, he stated that on 9.3.1993 Tiger Memon took him alongwith other co-accused to the flat of Mubina, appellant (A-96) at Bandra, wherein he met all the persons who got training in Pakistan. Again on 10.3.1993, he was called at the house of appellant (A-96) for a meeting. He corroborated the case of the prosecution that conspiratorial meetings were held at the flat of Mubina (A-96) on 10.3.1993.

147. **Confessional statement of Niyaz Mohmed @ Aslam Iqbal Ahmed Shaikh (A-98):**

In his confessional statement, he stated that on 8th and 9th March, 1993, he was asked by Usman (PW-2) to be ready and he went alongwith co-accused Irfan Chaugale to a flat at 3rd floor in a building behind Bhabha Hospital in Bandra. Some other persons were there, including Tiger Memon, Javed Chikna, Bashir, Usman, Sardar Khan and Parvez. After sometime, a girl, the appellant (A-96) who was called by Tiger Memon, brought tea and **served** to all of them.

148. **Confessional statement of Zakir Hussein Noor Mohammed Shaikh (A-32):**

In his confessional statement, he stated that on 10.3.1993, on instructions he went to attend the meeting at Bandra flat alongwith Usman (PW-2). Tiger Memon was sitting there directing the group of boys and assigning them different roles.

149. After appreciating the entire evidence on record, the Designated Court came to the conclusion as under:

> *"51).Since the matters from the said confession are so eloquent that hardly any dilation would be necessary about the same. However, the defence having urged that since A-96 was not present in the relevant meeting in*

which the discussion was made, she cannot be held guilty for commission of any offence. It is urged hence her confession fails to disclose her involvement in commission of offence and as such is liable to be discarded. It is urged that in said event the material in confession of the co-accused revealing that the meeting was held at her house but again not revealing that she was party to the said meeting will not be sufficient to fastening guilt upon her.

52) The aforesaid submissions though apparently appears to be attractive the same does not stand to the reason. Considering matters in entirety in the said confession it is clear that Tiger Memon was also residing in the nearby vicinity. In the said contingencies Tiger Memon holding meeting of such a number of persons at the house of Mubina itself raises a grave doubt about the purpose for which the said meeting was held by him at the said house instead of his own house. Apart from the same, careful consideration of the material in the confession in terms reveal close association developed in between Tiger Memon and A-96. The other material pertaining to keeping tickets of Tiger Memon at her house, Tiger Memon paying money for the expenses himself increasing the said amount upon the say of father of A-96 are the circumstances curiously throwing the light upon the relationship in between them. Even the material in the confession reveals that Tiger, Memon had a talk with his friend after taking him to the bed room in the said house. All the said circumstances are self-eloquent.

53) Furthermore the recital in the confession that after the Tea was taken "the said person were discussing about their plan" is a recital clearly revealing knowledge of A-96 of the meeting being regarding the plan. Since in cases of conspiracy direct evidence would

never be available the said self-eloquent recital is sufficient to infer about A-96 having full knowledge about the purpose for which the said meeting was held by Tiger Memon. Needless to add neither the confession reveals the reason because of which A-96 had allowed. Tiger Memon to take the meeting in her house. Furthermore even a trial, no explanation has been given by A-96 regarding the said respect. Thus considering the said act committed by A-96 conclusion is inevitable about herself knowing full well the purpose of the said meeting had allowed Tiger Memon to hold the same at her house and that too in spite of his house being not far away from the said place. Thus, the same clearly denotes of A-96 having aided and abetted and assisted a Tiger Memon for having a meeting for chalking out final plans of conspiracy hatch. Thus all the said material is sufficient for holding her guilty for commission of offences under Sec. 3(3) of TADA.

54) In the aforesaid context the defense submission that A-96 was not alone residing in the said flat or that her father and other members of her family were also residing at the said Flat and as such she cannot be said to be responsible for granting the permission to Tiger Memon for holding meeting in the said flat as the same might have been given by somebody else i.e. her father etc. also does not stand to the reason. Such conclusion is apparent as the material in her confession does not support such a theory and on the contrary the meeting held under nose on the relevant day clearly signifies the same being held with her concurrence. Needless to add that material in the confession also denotes of affairs of the said House being managed by her after the death of her brother.

55) Since the matters in the confession of A-96 or at least the fact of meeting held in her flat being corroborated material in the confession of accused referred during the discussion made earlier, the said aspect will not need any reiteration. Having regard to the same the matters in her confession which is disclosing her involvement, i.e. the admission in commission of the offence u/s.3(3)of TADA will be required to be taken into consideration and thus will be required to be acted upon. As a result of the same, she will be required to be held guilty for commission of the said, offence.

56) However, even accepting the said material in her confession and even the conclusion arrive about her guilt still it will be necessary to say that the said material cannot be said to be sufficient for holding her guilty for commission of offence of an conspiracy for which he is charge with at a trial. The same is obvious that there exists no evidence of herself having committed any act prior to this meeting and even after the said meeting denoting that she was the Member of the conspiracy. The same is obvious as there is clearly paucity of evidence to establish A-96 having committed any other act furthering the object of such conspiracy. Hence she cannot be held liable for being party to the conspiracy, as even the evidence pertaining to the said meeting reveals that she has not participated in the same and merely sent Tea and allowed Tiger Memon to hold meeting at her residence.

57) Thus, taking into consideration the extent and/or severity of act committed by A-96 and the other relevant factors and having regard to the basic principle behind awarding punishment being to eradicate the element of criminality and not to punish individual human being entertaining same, herself being woman accused, herself having faced a long drawn

prosecution, role played by her cannot be said to be of a severe nature, the probable reason because of which she had committed the relevant acts, herself being not the sole person who had assisted Tiger Memon in the relevant episode and even from said angle, act committed by her clearly appearing to be on much lower pedestal than such a role of facilitation, assistance played by other co-accused in the case, a minimum sentence prescribed under the law i.e. a sentence of R.I. for 5 years and a fine amount of Rs.25,000/- with suitable addition of RI in default of payment of fine for commission of offence u/S.3(3) of TADA, ordered for A-96 would serve the ends of justice."

(Emphasis supplied)

150 There is no evidence on record to show that the appellant (A-96) is the actual owner of the flat where the meeting took place. The appellant (A-96) was simply present in the next room when the meeting was held and she was asked to serve tea. Further, it was her brother who was well acquainted with Tiger Memon (AA) and after his death Tiger Memon(AA) simply gave some money to her family for household expenses and that money was not for her own personal/individual expenditure. Moreover, while serving them tea she might have overheard something about a plan that was being formulated by the co-accused, but not being a party to the meeting she could not have possibly known or understood the plan. According to the prosecution case, she had been given air tickets

by Tiger Memon (AA) to keep and one of the tickets had been taken by him in the early morning hours of the day of the blasts i.e. 12.3.1993. There is nothing on record to show that the appellant (A-96) knew that the blasts were going to take place on that day, or that she had acquired any knowledge that Tiger Memon (AA) would be absconding from India. Moreover, she was not a participant in any overt act in furtherance of the conspiracy.

151. Due to the foregoing reasons, the appellant (A-96) is held to be entitled for benefit of doubt. Thus, we allow the appeal and acquit her for the charge under Section 3(3) TADA. The conviction and sentence awarded by the Designated Court are set aside.

The appellant is on bail. Her bail bonds stand discharged.

CRIMINAL APPEAL NO. 1225 OF 2007

Noor Mohammed Haji Mohammed Khan …Appellant

Versus

The State of Maharashtra (through CBI, STF) … Respondent

152. This appeal has been preferred against the judgments and orders dated 23.11.2006 and 5.6.2007, passed by a Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1/1993.

153. Facts and circumstances giving rise to this appeal are that :

In addition to the main charge of conspiracy, he has also been charged under Section 3(3) TADA, for permitting the co-accused Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon and his associates, to store the contraband/explosive material/RDX in his godown between the 2nd and 9th of February, 1993, and has further been charged under Section 5 TADA, for possession thereof. He has also been charged under the provisions of Section 6 of the Explosive Substances Act, and the Explosives Rules, 1983 for storing and concealing 58 bags of RDX explosive that had been

smuggled into the country by the co-accused, between the 2nd and 9th of February, 1993.

154. The appellant has been convicted under Section 5 TADA and has been awarded a punishment of 5 years alongwith a fine of Rs.1,00,000/-, and in default of payment of fine, to further undergo 3 years RI, and also under Section 201 IPC has been awarded a punishment of 5 years, alongwith a fine of Rs.50,000/-, and in default of payment of fine to suffer further RI for one year. However, both the sentences have been directed to run concurrently.

Hence, this appeal.

155. Shri Shree Prakash Sinha, learned counsel appearing for the appellant, has submitted that the conviction of the appellant which is based on the confession of the appellant, is not sustainable for the reason that the confession itself has revealed, that the appellant had refused to record any confession at the initial stages of recording his confession. The same is evident from the confessional statement itself, and Shri Sanjay Pandey, DCP (PW-429), in light of this, ought not to have recorded his confessional statement at all. The recoveries made at the behest of the appellant cannot be relied upon, as the same do not connect the appellant

with the same in any manner. Furthermore, the recovery has not been made in accordance with law, for the simple reason that the disclosure statement of the appellant, which was recorded under Section 27 of Evidence Act was made simultaneously. The same is shown to have been made at the time, when the appellant had been present before the learned Designated Court, held at the Mahim Police Station itself. While considering his application for remand, no satisfactory explanation could be furnished by the prosecution as regards how remand proceedings, and the recording of the disclosure statement of the appellant could take place together. The evidence suffers from material contradictions, and thus, ought to have been rejected. Therefore, the appeal deserves to be allowed.

156. Shri Mukul Gupta, learned senior counsel appearing for the State, has vehemently opposed the appeal contending that all proceedings had been conducted strictly in accordance with law. Undoubtedly, the confessional statement suggests, that appellant had refused to make a confessional statement. However, upon a cogent reading of the said statement, the impression created by the learned counsel for the appellant stands completely dispelled. The conviction of the appellant is based upon a correct appreciation of

the evidence available. Thus, the appeal lacks merit and is liable to be dismissed.

157. We have considered the rival submissions made by the learned counsel for the parties, and perused the record.

158. **Evidence against the appellant (A-50):**

(a) Confessional statement of the appellant (A-50)

(b) Confessional statement of Shakeel Shahabuddin Shaikh (A-59)

(c) Confessional statement of Munna (A-24)

(d) Deposition of Upendra G. Patel (PW-33)

(e) Deposition of Wilson John Britto (PW-274)

(f) Deposition of Ajit Pratap Singh (PW-291)

(g) Deposition of Fazal Akbar Khan (PW-468)

(h) Deposition of Prakash Dhanaji Khanvilkar (PW-513)

(i) Deposition of Kailas Baburao Dawkhar (PW-518)

(j) Deposition of Dattatray Maruti Wayal (PW-521)

159. **Confession of Noor Mohammed Haji Mohammed Khan (A-50):**

The confession of appellant (A-50) was recorded on 14th/16th May, 1993. The appellant had been 32 years of age at the time of the said incident. The relevant part of his confession suggests that he had acquired land at Kashimira, measuring 1200 sq.mtrs. He

(A-50) had known the co-accused Mohammad Jindran (now dead) and Yeda Yakub (AA). The said plot was taken care of by a watchman who had been appointed by him. The said watchman had been removed by the appellant (A-50) on the basis of certain complaints regarding his behaviour with a local girl, and another watchman had thereafter, been appointed. When he (A-50) had visited the said plot in the last week of February, 1992, he had seen some sacks lying in the shed constructed thereon. The watchman had told him that the said goods had been sent by Mohammad 15/20 days ago, through Shakeel (A-59-acquitted), the driver of Mohammad, by way of a tempo. The appellant (A-50) had not made any further enquiry as regards the same from the watchman, or from Mohammad, with respect to the contents thereof. When he had visited the place for the second time, he had removed the contents, and had seen what looked like black soap. He had then returned to Bombay, and had asked Mohammad about the goods. Mohammed and Shakeel had denied having any information as regards the said goods.

He (A-50) had again visited the site on 16th/17th March, 1993 at Kashimira alongwith Rashid Khan, – a businessman who dealt in chemicals, and had taken out the packet. Rashid Khan, after examining the contents of the packet thereof, had told him that the

same was explosive material. Rashid Khan had taken the packet with him, and had subsequently informed him that the same most certainly contained material for making bombs. By this time, certain material had been seized in Mumbra and due publicity had been given to the same in the newspapers. It had been revealed that the material belonged to Yeda Yakub. The appellant (A-50) had then asked Rashid Khan to help him to destroy the material. Rashid Khan had told him that he knew one Munna, who could help them to destroy the same. The appellant (A-50) had then decided to spend a sum of Rs.5 lakhs, for the purpose of destroying the material as he had apprehensions regarding the incident of recovery of the same material in Mumbra. They had met Munna at the Lion Pencil Resort at Nangla. Munna had been assigned the job of distribution of the material, and the appellant was informed in the evening, that the said work had been completed. The appellant had gone to Bombay and had given a Toyota Corolla car to Rashid Khan, in lieu of payment of a sum of Rs. 3 lacs, and the remaining amount had been paid by Mohammad.

After 3-4 days, he had gone to the site with Shakeel, and the watchman had told him that some of the material had been left behind. He had then put the remaining material in a jeep, had gone with Shakeel, and Shakeel had then thrown the same along

Kashimira Highway, from a bridge at a distance of about 6 Kms. from Kashimira. As some of the said material had fallen down outside of the water channel, the appellant had gone down with the jeep, and had thrown the sacks containing left over material into water and had then driven back to Bombay.

It was on 8th April that Munna had telephoned the appellant (A-50) demanding the balance amount of Rs.2 lacs that had been promised to him stating that, otherwise he (A-50) would face dire consequences. The appellant had then informed Mohammad, who had subsequently informed the police, and they had thus gotten Munna arrested. After some interrogation, the appellant (A-50) had also been arrested.

He (A-50) has further stated that he had not known that the material was actually RDX. Once he had become aware of the same, he had thrown the same into the water, apprehending his arrest by the police. The remaining material had been thrown off the bridge along the Kashimira Highway. He (A-50) had himself taken the police to the said place and had gotten the material recovered from there.

The appellant (A-50) had also made retraction of his confession on 14th/16th May, 1993, at a belated stage.

160. **Confessional statement of Shakeel Shahabuddin Shaikh (A-59):**

According to his confessional statement, he had been working as the driver of Mohammad Jindran (AA). He had been told in the second week of February, 1993 by his employer, that a tempo was parked at Dahisar Checknaka, near the Delhi Darbar Hotel, that contained sacks of cement and that he must unload the same onto a plot that belonged to Noor Khan (A-50), who was a friend of his employer's, i.e. of Mohammad Jindran's. A letter had been given to him, so that the driver of the tempo would permit Shakeel to unload the contents of the said tempo onto the land belonged to Noor Khan (A-50). Shakeel had thus gone there, and had contacted the driver of the parked tempo. He (A-59) had then taken the said tempo and had off loaded the contents of same onto the land of Noor Khan (A-50). There had been about 1200 to 1300 sacks, and also some square type boxes, that were wrapped and had been kept alongwith the said sacks. The same were also unloaded. He (A-59) had telephoned his employer after doing so, and had informed him that the work had been done. The sacks and the boxes had been unloaded at the Noor Khan's place. He (A-59) had accompanied Noor Khan to the site, and had asked the watchman there who were the owner of the material kept in his godown, and it was then that he was told that the same belonged to Mohammad

Jindran, and that Shakeel had brought the material there. Then, Shakeel had told him that he had done so upon the instructions of Mohammad Jindran.

Fifteen days after Eid, Noor Khan (A-50) had gone to the office of Mohammad Jindran, and had asked him about the material kept at his place and had said that he wanted his help to throw it away. Shakeel had been asked by his employer to accompany them. They had gone in a jeep to the Dahisar godown of Noor Khan. There was some waste material in black colour which was filled into a sack by them. Some bags were also kept alongwith the said black coloured waste material. The sack had been loaded by the watchman into the vehicle, and Shakeel, alongwith Noor Khan (A-50) had proceeded from there. After driving for about 10 Kms., their vehicle had been stopped upon the instructions of Noor Khan (A-50) near a bridge, and Shakeel had been asked to throw the sacks. After throwing the same off the bridge, they had left the place. However, after driving for about 1 Km., Noor Khan (A-50) had asked Shakeel where he had thrown the sacks. He was then informed, that the same had been thrown near the water. Noor Khan (A-50) had then instructed him to take the vehicle back, and after reaching the bridge Noor Khan (A-50)

had himself gotten off from the vehicle and had gone under the bridge, lifted the sack, and thrown the same into the water.

Noor Khan (A-50) had gone with Shakeel in the said vehicle, to his residence at Mira Road. After their arrest, Shakeel was the only person who had known that the material thrown by him actually consisted of explosives.

161. **Confessional statement of Munna @ Mohammad Ali @ Manoj Kumar Bhanwar Lal (A-24):**

He had been 26 years of age at the time of the said incident, and has confessed that he had started a hawala business with Eijaz Pathan, who lived in Dubai and that he also had a house in Bombay. Munna (A-24) had developed a close acquaintance with Eijaz Pathan, who belonged to the Kareem Lala Group, and had thus succeeded in committing the murder of Majeed in 1986, and had thereafter, remained absconding for a long time. Subsequently, he (A-24) had been arrested and enlarged on bail. There had been an attempt to kill him, after he was released on bail. He (A-24) had been introduced to Tiger Memon (AA) in 1987, while participating in the unloading of silver at Shekhadi, Shrivardhan. His confession has further revealed that contraband had in fact, been brought into India by Tiger Memon. He had also been instructed by Eijaz from Dubai, to not tell anybody about the smuggling.

In the 3rd week of March, 1993 while he had been staying in Marol, Noor Khan (A-50) and Mohammad Jindran had come to meet him and had said that some packets of RDX were lying in the godown and that the same had to be destroyed. Rashid had told him that for removing the said packets, he had taken a sum of Rs.5 lakhs. Rashid had taken him the next day to the Ghodbunder hotel and there he had met Noor Khan (A-50) and Mohammad Jindran, who had already reached there. They had arranged for a dumper from the Sarpanch of the village Anand Dighe. The material had then been loaded therein, and had been thrown into the sea. He had thrown about 55 packets of RDX into Nagla Bandar. Rashid had given him a sum of Rs.10,000/-. He had subsequently reached the Dawat hotel, to receive a sum of Rs.20,000/- from Noor Khan. However, he had been arrested by the police here.

162. **Deposition of Fazal Akbar Khan (PW-468):**

He had known Rashid and Noor Khan (A-50) for the past 15 years. He had been introduced to Munna (A-24), by Rashid in the third week of March, 1993. Noor Khan (A-50) had come to his residence, and had asked him to take him to Rashid. They had gone to the residence of Rashid at Dreamland Society. Noor Khan (A-50) had told Rashid that somebody had kept some chemicals or

something at his place in Dahisar, and that he wanted his help to destroy the same. The witness, Rashid and Noor Khan had travelled in the car of Noor Khan, to the said place at Dahisar. Here, they had seen 50-60 gunny bags lying in the shed. Rashid had opened one of the gunny bags, and had found that the same contained a black coloured powder. They had then moved to Ghodbunder with one such packet. After reaching there, Rashid had examined the packet, they had collected from Dahisar. However, Rashid had been unable to determine what it was. They had thus returned to the place of Rashid. Then, Noor Khan had asked Rashid to help him to dispose of the said material. Rashid had asked Noor Khan to come to him the next day. All of them had then left the said place. The witness was called by Rashid the next day, to his residence at 10.30 a.m. Noor Khan had also been present there. One other person had also been present there, who was introduced to the witness as Mohammad Jindran. They talked about the disposal of the said material, and subsequently left the said place, asking Rashid to meet at Ghodbunder the next day in the morning. Munna (A-24) was also present there. The witness had stayed in the house of Rashid. He had gone alongwith Rashid and Munna to Ghodbunder and had found Noor Khan (A-50) and Mohammad Jindran there. Noor Khan (A-50) had given a packet

containing some money to Rashid. Noor Khan (A-50) and Mohammad Jindran had stayed in a room of the hotel, while Rashid and Munna had left the said room.

After 10-15 days, Rashid had called the witness from Behrin, and had said that the sacks which had been disposed of contained RDX, and that the witness must not disclose this fact to anybody, or else he would be killed, alongwith all his family members. The witness had then become very scared, owing to the threat that had given to him. The witness has also identified Noor Khan (A-50) in court.

163. **Deposition of Upendra G. Patel (PW-33)**:

He is a recovery witness. He has deposed that in all, a total of three bags had been seized on 18.4.1993. Two bags had been empty. The third bag had contained some black pieces, of which one piece had been taken out and separately packed. At the said time, only one piece had thus been taken out of the bag. The same was weighed and packed in plastic wrap, after which, it was also wrapped in a piece of paper, in the form of a paper bag. The said paper bag had been picked up from a nearby place, under the bridge. His (PW-33) signature had not been on the paper bag in which the black substance had been kept. The paper bag had not

been sealed. In court, he had been unable to say whether the paper in which the blackish lump was wrapped, was the same paper bag in which it had been kept, when the sample had initially drawn at the time of seizure of the goods by the Police.

164. **Deposition of Wilson John Britto (PW-274)**:

He has deposed that he knew Rashid because on one occasion, he had gone to his hotel for a meal. On 23.3.1993, Rashid asked for a room. He had spoken to the senior steward, Ajit Roop Singh from his hotel. He had then telephoned the Juhu Office and had talked with his boss Shri Sunil Naik. The witness had informed Nayak over the phone that one Rashid had come to the said hotel and that he had requested a room. After asking his boss, he and Ajit Roop Singh had given Room No. 1-A to Rashid. Rashid had paid Rs.300/- to the witness, as a tip.

He had not heard any conversation that had ensued between Rashid and his companions during the period in which, they were at the hotel. He knew the names of the three companions of the Rashid. This witness could not identify the appellant (A-50) in court (after a period of 5 years).

165. **Deposition of Prakash Dhanaji Khanvilkar (PW.513)**:

During the said interrogation of the appellant (A-50), he had expressed his desire to make a voluntary statement. The witness had thus secured two panch witnesses, and it was in their presence that the appellant (A-50) had made a disclosure statement in Hindi. The same had been recorded after drawing the memorandum panchanama. As the appellant (A-50) had expressed his willingness to take him to a place for recovery, the witness had also decided to accompany the appellant (A-50) to the particular place, that he wished to point out. Thus, he had gone alongwith the panch witnesses, police officials and the appellant, in a police jeep.

In his cross-examination, he has made it clear that on the said day, he had reached the detection room at 1.00 p.m. and that the appellant (A-50) had been with him from 1.00 p.m. to 6.15 p.m. The panch witnesses had been called at about 3.50 p.m. He has expressed his ignorance as regards whether on the said day, some Judge had come and conducted remand proceedings at the Mahim Police Station between 1.00 p.m. and 3.15 p.m. His deposition has further revealed that he had left the police station with the appellant, and other persons at about 4.15 p.m. and had returned to the Mahim Police Station alongwith his team, the accused and the panch witnesses at about 7.15 p.m. The bridge on the Kaman river

from where the recovery was made, was at a distance of about 35-40 Kms. from the Mahim Police Station. He has denied the suggestion that the appellant (A-50) had not in fact made any disclosure statement when he had been taken to the bridge on the Kaman river etc.

166. **Deposition of Ajit Pratap Singh (PW.291)**:

He was 26 years of age and had been carrying on the business of painting houses. At the relevant time, in the year 1993, he had been working as a waiter in a farm house named, "Royal Retreat" which was situated at Kaju Pada on Ghodbunder road, district Thane. One Shri Kailash Jain, alongwith others had owned the said farm house. Alongwith him, one Shri Wilson Britto (PW-274) had been working there as an assistant. He had worked in the hotel upto 1994. He had known a person by the name of Rashid, son of Lala Seth, who had been carrying on the business of dealing in chemicals near the said farm house. Rashid had been coming to the said hotel alongwith his friends and family members, for meals and also to swim. On 23.3.1993, at about 1.30 p.m. while he had been present at the said hotel, Rashid had come there alongwith 3-4 friends in a car, and had asked the witness to open room No. 1-A for them, and thus, he had opened the said room. Rashid had stayed

in the said room alongwith his friends, and he had served them lunch. While serving them, he had heard Rashid telling the others that the goods which had been kept in the godown of the appellant (A-50), were to be thrown at the earliest into the Nagla creek, by taking the same in the vehicle of Anya Patil, as an investigation by the police was in progress. Rashid had noticed the presence of the witness, and had immediately asked him to leave the room and to close the door. In court, the witness expressed his inability to identify any of these friends, who had been present on that day in the hotel, except Rashid and Munna (A-24) as the deposition had taken place after a period of five years.

167. **Deposition of Dattatray Maruti Wayal (PW.521)**:

He was one of the investigating officers of the case who had taken up the investigation on 5.5.1993 of C.R. No. 14/93 in the Kapurbawdi Police Station. He has deposed that during the investigation, he had recorded the statement of about 35 witnesses, including one Shri Narayan Sitaram Patil (PW-295). He had also come to know, that the land from where the recovery had been made, had been purchased by the appellant (A-50) in the past, and that he had allowed the construction of a godown therein. The appellant (A-50) had been keeping goats in the said godown, and

for such purpose, he had kept a Gorkha watchman named Pratap Singh to look after the said goats. The appellant would visit the said godown.

168. **Deposition of Kailas Baburao Dawkhar (PW.518):**

He is a formal witness and he has recorded the statements of Wilson John Britto (PW-274) and Ajitsingh Pratap Singh (PW-291), who had been working as waiters in the resort where the meeting of accused persons had taken place, in connection with disposing of the explosive material by dumping the same into the Nagla creek. Thus, he has proved the statement of the witnesses that have been recorded.

169. The evidence referred to hereinabove, regarding the ownership and possession of the godown, the dumping of the contraband in the said godown, and the removal and final disposal of the same by throwing it into the Nagla creek, stands fully corroborated by the evidence of the aforesaid witnesses. The said contraband had been destroyed in two installments; one at the Nagla creek, and another at the bridge on the Kaman river. The evidence of the witnesses corroborates the case of the prosecution in entirety. Thus, the case stands proved.

170. We do not find any force in the submissions made by Mr. Sinha, learned counsel appearing for the appellant, to the effect that as the recovery memo did not contain signature of the appellant, the same cannot be relied upon, even though, to fortify such submission, he has placed very heavy reliance upon the judgment of this Court in **Jackaran Singh v. State of Punjab**, AIR 1995 SC 2345, wherein it has been held that the absence of signatures or thumb impressions of the accused upon their disclosure statements, may render the said statements unreliable, particularly, in a case where the panch witness has not been examined at a trial, to testify the authenticity of the same. The judgment relied upon by Shri Sinha is easily distinguishable, as in the said case none of the panch witnesses had been examined, while in the instant case, the panch witness has been examined.

171. In **State of Rajasthan v. Teja Ram & Ors.**, AIR 1999 SC 1776, this Court while dealing with the issue held:

> *"The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel*

for the accused that the signatures of the accused in Exs. P-3 and P-4 seizure memo would vitiate the evidence regarding recovery of the axes.

172. After appreciating the evidence on record, the learned Designated Court came to the conclusion that the appellant had been in the unauthorised possession of 58 bags of RDX material within the notified area, and that he had indulged, alongwith the other co-accused conspirators, in the disposal of the said RDX material by dumping the same into the Nagla creek and the Kaman river. However, the Designated Court has further held, that no nexus could be established between the appellant (A-50) and Tiger Memon (AA). Additionally, the Designated Court has stated that there was also no nexus found between the offences committed in pursuance of the conspiracy as was hatched by Tiger Memon (AA), and the acts of the appellant (A-50).

173. This conclusion stands fortified from the confessional statement of the appellant, as well as from the statements of the other witnesses. The appellant was most certainly had close association with Mohammad Jindran (AA), Rashid and with a few other accused persons. The appellant had spent about Rs.5 lakhs for the disposal of the said material. Rashid, a very close associate

of Tiger Memon (AA) had also been involved in the process of such disposal. The remnants of the RDX were taken from his godown, and thrown into the Kaman river. Being in possession of the said material for a limited time period, renders him guilty for commission of the offence under Section 5 TADA. He is also guilty under Section 201 IPC, as even though he may not have been directly involved in the disposal of the contraband, the same was disposed of upon his instructions, and for this, he had paid a huge amount. The said material had been brought into India at the Shekhadi landing by Tiger Memon (AA), and had been stored in his godown at Kashimira. Therefore, we see no reason to interfere with the order passed by the learned Special judge, and the appeal is accordingly, dismissed.

CRIMINAL APPEAL NO. 919 OF 2008

Mulchand Sampatraj Shah …Appellant

Versus

The State of Maharashtra … Respondent

174. This appeal has been preferred against the judgment and order of conviction and sentence dated 6.6.2007 passed by a Special Judge of the Designated Court under the TADA in Bombay Blast Case No. 1 of 1993, by which the appellant had been convicted under Section 3(3) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA') and awarded sentence of 5 years R.I. and fine of Rs.5 lakhs with suitable additional sentence of rigorous imprisonment in default of payment of fine.

175. Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant was charged under Section 3(3) TADA for facilitating and mobilising funds for the absconded accused Mushaq @ Ibrahim @ Tiger Memon Abdul Razak Memon (AA) and his associates by allowing him to operate his hawala account in the code name

HATHI, and rendering financial assistance to him and his associates which greatly facilitated funding of their various operations in the commission of various acts i.e. serial bomb blasts.

B. After conclusion of the trial, the learned Designated Court convicted the appellant as referred to herein above.

Hence, this appeal.

176. Shri Mukul Rohatgi, Learned Senior Counsel appearing for the appellant, has submitted that the appellant stood convicted under Section 3(3) TADA for facilitation by providing financial assistance to the co-accused Tiger Memon (AA) in various activities. There is no evidence on record that the appellant had any knowledge that Tiger Memon had been indulging in terrorist activities. The Bombay blast took place on 12.3.1993 and a case under TADA had been registered against Tiger Memon and others only after the said incident. The appellant never came to know, nor had any material been placed before the Special Court in the instant case to show that Tiger Memon or any other co-accused in this case indulged in terrorist activities. Even in case the illegal banking business and dealing with money of smugglers and other type of criminals is admitted, the question does arise as to whether in such a fact-situation, the appellant could have been charged/convicted

under Section 3(3) TADA. There is nothing in the confessional statement of the appellant that he had any knowledge that Tiger Memon indulged in any terrorist activity. It is evident from the record that the appellant was involved in acts subsequent to the date of commission of the blasts i.e. 12.3.93.

177. Shri Mukul Gupta, learned senior counsel arguing for the CBI has vehemently opposed the appeal and has submitted that the appellant (A-97) had been rendering financial assistance to Tiger Memon (AA), who was the kingpin of the entire episode which lead to not only the death of numerous innocent people, but also caused the destruction of moveable and immoveable property. The evidence on record makes it abundantly clear that the appellant (A-97) had been handling the financial accounts of Tiger Memon (AA). This amounts to financial assistance as per Section 3(3) TADA. Therefore, he abetted the terrorist activities undertaken by Tiger Memon (AA). Thus, the appeal deserves to be rejected.

178. We have considered rival submissions made by the learned counsel for the parties and perused the records.

179. **<u>Evidence against the appellant</u>:**

(a) Confessional statement of the appellant Mulchand Sampatraj Shah @ Chokshi (A-97)

(b) Confessional statement of Raju Laxmichand Jain @Raju Kodi (A-26)

(c) Confessional statement of Abdul Gani Ismail Turk (A-11)

(d) Confessional statement of Mohmed Rafiq Mianwala @ Rafiq Madi (A-46)

(e) Confessional statement of Asgar Yusuf Mukadam (A-10)

180. **<u>Confession of the appellant Mulchand Sampatraj Shah @ Chokshi (A-97)</u>**:

From the confessional statement it has been revealed that the appellant was doing the business of bank draft discounting in the name and style of `Chokshi' wherein the appellant used to take amount from the public, and to return the same in instalments. At the time of returning the money he used to deduct the commission and, thus, he had been doing illegal banking business. He came in contact with Raju Laxmichand Jain @ Raju Kodi (A-26), who had the business in the market. The appellant also became acquainted with Mohammed Dossa and Tiger Memon (AA). He started the business of money taking and giving with both of them. He had some dispute in money transaction with them because of which he was beaten by them and the matter was settled after paying a sum

of Rs.5 lakhs to them. The appellant was arrested in 1989 for violating the provisions of Foreign Exchange and Regulation Act, 1973 (hereinafter referred to as `FERA'). His house was also raided by the Customs Department in 1989, and since they found some illegal accounts, he was also arrested. The appellant was again arrested in 1991 by the Central Bureau of Investigation (hereinafter referred to as `CBI') in connection with the hawala business with one Mr. Shambu Dayal who was doing hawala business between Bombay and Delhi, and he had furnished some information about the appellant to the department. He was arrested and remained in jail for 7 months. Subsequently, he was enlarged on bail.

In the month of September, 1992 Tiger Memon (AA) told him on telephone that he was sending a huge amount of money through one Farid and the appellant would accept it and hand it over to Keshav Dalpat on getting the receipt. He received a sum of Rs.25 lakhs and the said amount was paid by the appellant to Keshav Dalpat. The said Keshav Dalpat was brought by Raju Kodi (A-26). After 10 days, Tiger Memon deposited a sum of Rs.21 lakhs with the appellant, which was to be given to Namji Dhagwan. In the last week of October 1992, Tiger Memon opened an account with the appellant in the name of HATHI. Raju Kodi

(A-26) had deposited amounts varying from Rs. 5 lakhs to Rs. 1.89 Crores in the said account in November-December of 1992. Immediately, after recording the confessional statement of the appellant, his office was searched and various documents were seized dealing with the HATHI account. Various transactions were recorded totaling almost Rs. 1.9 Crores.

181. **Confessional statement of Raju Kodi (A-26):**

Raju Kodi (A-26) in his confessional statement admitted to his acquaintance with Mushtaq Abdul Razak Memon @ Tiger Memon (AA). In November 1992, as per the instructions of Tiger, A-26 deposited the various amounts in the HATHI account of Tiger maintained by the appellant (A-97) as Hawala transactions. The amounts varied from Rs. 16 Lakhs to Rs. 50 Lakhs in the month of November, 1992 and thus, the total amounted to Rs.181.48 lakh, in the HATHI account of Tiger.

182. **Confessional statement of Abdul Gani Ismail Turk(A-11):**

Abdul Gani Ismail Turk (A-11) in his confessional statement stated that he used to bring and deliver Hawala money, for which he was paid Rs. 5,000. So, he corroborated the prosecution case only to the extent that Tiger Memon (AA) had indulged in Hawala

transactions. A-11 knew the persons, namely, Asgar, Imtiyaz, Rafiq Madi, Salim, Mustaq, Hanif etc.

183. **Confessional statement of Mohmed Rafiq Musa Mianwala @ Rafiq Madi (A-46):**

In his confessional statement A-46 has stated that A-97 had been a very close associate of Tiger Memon (AA) and in the month of February 1993, he went to Chokshi (A-19) at Javeri Bazar, and brought Rs. 4 lakhs from the appellant and gave this sum to Yakub at his office.

184. **Confessional statement of Asgar Yusuf Mukadam (A-10):**

In his confessional statement he has stated that Tiger used to deposit hawala money in the HATHI account with Chokshi (A-97) and he would withdraw some amount of money as and when required. Tiger had further told him at the time of his departure that if Yakub required money, it was to be given from the same account. On 9.2.1993, Yakub asked him to transfer Rs. 25 Lakhs to Irani's account, and Rs. 10 Lakhs to Ohalia's account which was accordingly done by the accused (A-10).

185. The confession made by the appellant (A-97) stood corroborated by the confessional statements of accused Asgar

Yusuf Mukadam (A-10), Raju Laxmichand Jain @ Raju Kodi (A-26) and Mohmad Rafiq Miyariwala (A-46) to the extent that the appellant was doing the hawala business, and had been receiving the money of various persons including Tiger Memon (AA).

186. Legal provisions involved in the case are :

I. Section 3(3) TADA reads as under:

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

II. Section 2(1)(a)(iii) TADA defines the abetment which involved:

> "(iii) the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists."

III. Section 21(2) TADA provides for a presumption which reads as under:

> "(2) In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person **accused of, or reasonably suspected of**, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section." (Emphasis added)

IV. Abetment and harbouring of offenders is also an offence under TADA and various other statutes like NDPS Act, 1985, POTA, 2002 and MCOCA, 1999.

187. All these statutes also provide that raising funds for terrorist organisations is illegal and such activities are punishable. However, the general principle is that a person so involved must be found rendering financial assistance to the accused of terrorist/disruptive activities, or could be reasonably suspected in indulging in such activities. Hawala business is done only on the basis of commission by exchanging money among persons and receiving commission. The appellant (A-97) had been working as a carrier or agent, between the persons indulging in money transactions in India or abroad, without having any knowledge whatsoever, that Tiger Memon or his associates or any other co-accused were indulging in terrorist activities. In the instant case, there is nothing on record to show that the appellant (A -97) indulged in such activities though he might be involved in other illegal activities.

188. The learned Designated Court recorded the finding as under:

"Thus considering the nature of gravity of act committed by A-97 it will be difficult to accept

the submission that the highest punishment as prescribed for the offence should be awarded to him……. It can be further added that no evidence has surfaced denoting A-97 having assisted, abetted in any manner any other act or offences committed by Tiger Memon."

189. In **Kalpnath Rai v. State** (supra), this Court held:

"If Section 3(4) is understood as imposing harsh punishment on a person who gives shelter to a terrorist without knowing that he was a terrorist, such an understanding would lead to calamitous consequences. Many an innocent person, habituated to offer hospitality to friends and relatives or disposed to zeal of charity, giving accommodation and shelter to others without knowing that their guests were involved in terrorist acts, would then be exposed to incarceration for a long period."

190. Similarly in **Kartar Singh v. State of Punjab,** (1994) 3 SCC 569, this Court held:

***"133.** Therefore, in order to remove the anomaly in the vague and imprecise definition of the word, 'abet', we for the above mentioned reasons, are of the view that the person who is indicted of communicating or associating with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists should be shown to have actual knowledge or to have reason to believe that the person or class of persons with whom he is charged to have communicated or associated is engaged in assisting in any manner the terrorists and disruptionists.*

***134.** To encapsulate, for the discussion above, the expressions 'communication' and 'association'*

deployed in the definition should be qualified so as to save the definition, in the sense that "actual knowledge or reason to believe" on the part of a person to be roped in with the aid of that definition should be read into it instead of reading it down and clause (i) of the definition 2(1)(a) should be read as meaning "the communication or association with any person or class of persons with the actual knowledge or having reason to believe that such person or class of persons is engaged in assisting in any manner terrorists or disruptionists" so that the object and purpose of that clause may not otherwise be defeated and frustrated.

Section 3 of Special Courts Act, 1984

135. *Challenging the validity of Section 3 of Act of 1984, it has been contended that the power vested under Section 3(1) on the Central Government to declare by notification any area as "terrorist affected area", and constitute such area into a single judicial zone or into as many judicial zones as it may deem fit, is not only vague but also without any guidance.*

136. *The prerequisite conditions which are sine qua non for declaring any area as "terrorists affected area" by the Central Government by virtue of the authority conferred on it under Section 3(1) of the Act of 1984 are:*

(1) The offences of the nature committed in any area to be declared as "terrorists affected area" should be one or more specified in the Schedule;

(2) The offences being committed by terrorists should satisfy the definition of the nature of the offence mentioned in Section 2(1)(h), namely, indulging in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to commit any of the offences enumerated under any of the clauses

(i) to (iv) indicated under the definition of the word 'terrorist';

(3) The scheduled offences committed by terrorists should be on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Act."

137. *Unless all the above three conditions are fully satisfied, the Central Government cannot invoke the power under Section 3(1) to declare any area as "terrorist affected area". In other words, in the absence of any of the conditions, Section 3(1) cannot be invoked. Therefore, the contention that Section 3(1) suffers from vagueness and lacks guidance is unmerited."*

191. In view of the above, the law requires that an accused under TADA must abate knowingly the commission of terrorist act and/or he must be rendering financial assistance to such an accused, or could be reasonably suspected of being such accused. Therefore, the question does arise as to whether the appellant had any reason to believe that Tiger Memon and his associates were accused of any terrorist act, or could be reasonably suspected to be such accused.

192 Immediately after the arrest of appellant (A-97), he apprehended that he would be forced to make a confession. Therefore, a large number of letters had been sent to Mr. V.B. Lokhande, DCP, which he had received prior to recording of the confessional statement. This is evident from the letter dated

16.5.1993 written by the counsel of the appellant requesting V.B. Lokhande not to record his confessional statement because the appellant did not want to make any such statement.

193. In the cross-examination of Shri V.B. Lokhande, DCP (PW-183) admitted that he had received letters and telegraphs particularly in reply to question nos. 123, 124. Further, while replying to question no. 125 he stated that he had not made any attempt to ask the appellant before recording his confessional statement whether he (A-97) wanted to make a confessional statement.

194. It is further submitted that confessional statement had been obtained by coercion i.e. beating the appellant. There is ample evidence on record that he had a large number of injuries upon his body at the relevant time. He made a complaint in writing to the court, and the court issued certain directions for his treatment and asked for the report. The confessional statement was recorded on 18.5.1993. He was produced for the first time before the court on 25.5.1993 when the complaint was lodged, and the injury report was given. The report gave the details of various injuries on his buttocks, wrist and lower leg.

195. In this respect, the court passed certain orders which read as under:

> "25.5.1993 :
> …Accused Mulchand Shah is not produced before this court till 4 p.m. as the CMC on duty has referred the accused Mulchand Shah to senior doctor for second opinion…..
> 26.5.1993:
> …..Accused Mulchand Shah produced before the court, the police is seeking further custody of the accused for the purpose of investigation. The accused has produced before the court on 25.5.1993 and he made a grievance that he was assaulted while in police custody. The accused was sent for medical report from G.T. Hospital does support his allegations.
> ……Further police custody of the accused would have definitely help the investigating agency but, the investigation agency having assaulted to third degree method, it will not be safe to remand the accused to their custody instead the investigating agency can interrogate the accused in jail..
> ….The accused is remanded to judicial custody till 22.6.1993."

196. In this respect, a large number of documents had been placed on record to show that complete information regarding the torture had been placed before the court by the counsel. From the relevant part of the letter dated 20.5.1993 written by Shri Pervez M. Rustomkhan, Advocate, to Mr. Pharande, Inspector of Police (Worli), Crawford Market, Bombay, it is clear that not only had the appellant been beaten but his family members had also been beaten and harassed. Even his brother Ramesh Kumar, a handicapped

man, had not been spared. These incidents took place on 12.4.1993, 14.4.1993, 15.4.1993, 16.4.1993, 17.4.1993, 21.4.1993, 22.4.1993, 5.5.1993 and 8.5.1993. It was also mentioned in that letter that the appellant had falsely been implicated in the case and had been tortured and forced to sign some writings under duress and pressure from the police authorities which may be used against him.

197. In **Sahib Singh v. State of Haryana,** (1997) 7 SCC 231, this Court held that `Confession' means:

> ***"39.*** *The Evidence Act contains a separate part dealing with "Admission". This part comprises Sections 17 to 31. "Confession" which is known as a species of "Admission" is to be found contained in Sections 24 to 30.*
>
> ***41.*** *In view of these decisions, it is now certain that a "confession" must either be an express acknowledgement of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts which constitute the offence.*
>
> ***42.*** *Section 24 provides, though in the negative form, that "confession" can be treated as relevant against the person making the confession unless it appears to the court that it is rendered irrelevant on account of any of the factors, namely, threat, inducements, promises etc. mentioned therein. Whether the "confession" attracts the frown of Section 24 has to be considered from the point of view of the confessing accused as to how the inducement, threat or promise from a person in authority would operate in his mind. (See: Satbir*

Singh v. State of Punjab, (1977) 2 SCC 302.) The "confession" has to be affirmatively proved to be free and voluntary. (See: Hem Raj Devilal v. State of Ajmer, (1977) 2 SCC 263) Before a conviction can be based on "confession", it has to be shown that it was truthful.

46. *The Act, like the Evidence Act, does not define "confession" and, therefore, the principles enunciated by this Court with regard to the meaning of "confession" under the Evidence Act shall also apply to a "confession" made under this Act. Under this Act also, "confession" has either to be an express acknowledgement of guilt of the offence charged or it must admit substantially all the facts which constitute the offence. Conviction on "confession" is based on the maxim "habemus optimum testem, confitentem reum" which means that confession of an accused is the best evidence against him. The rationale behind this rule is that an ordinary, normal and sane person would not make a statement which would incriminate him unless urged by the promptings of truth and conscience.*

52. *The confessional statement does not admit even substantially the basic facts of the prosecution story, inasmuch as in the confessional statement, no role is assigned to the appellant while in the prosecution story an active role has been assigned to him by showing that he too was armed with a gun and had gone to the spot and participated in the commission of the crime by firing his gun specially at the injured witness. The confessional statement is not truthful and is part of the hallucination with which the prosecution and its witnesses were suffering. It is accordingly discarded and cannot be acted upon."*

198. The only question is, whether the provisions of Section 21(2) provides that in a prosecution for an offence under sub-

section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume unless the contrary is proved, that such person has committed the offence under that sub-section. Thus, the provision of Section 21(2) can be resorted to, only in case it is proved by the prosecution that the accused rendered any financial assistance to a person who has already been facing the charge of terrorist or disruptive activities or he had reasons to suspect that the person to whom financial help has been rendered was indulging in such activities. Thus, there is a burden on the prosecution first to prove the aforesaid condition. In case, it is successfully proved that the person who render financial assistance to a person accused of terrorist/disruptive activities or suspect to be indulging in such activities, only then the presumption can be drawn.

In such a situation, it is not possible for us to accept the submission of Mr. Mukul Gupta, learned senior counsel appearing for the respondent, that even if a person has rendered financial assistance prior to or during a part proceeding, to the parties indulged in such activities, the provision of Section 21(2) would be attracted. On a literal interpretation of the provision such a construction is not permissible. There is nothing on record to show

that during the time the appellant facilitated the financial transaction of Tiger Memon in the fake account named `HATHI' and that he had reason to suspect that Tiger Memon or his associates were indulging in disruptive activities, or had been accused in such activities. The appellant may be guilty of running and indulging in fraudulent banking activities, or may be violating of provisions of other statutes but cannot be held guilty of the offences under Section 3(3) TADA.

199. In the instant case, there is nothing on record to show that any person could imagine what Tiger Memon (AA) was planning. In fact it was only after 12.3.1993, the date of Bombay blast, that the provisions of TADA could be attracted as far as Tiger Memon (AA) is concerned. Thus, he (A-97) cannot be held to be guilty under the said provisions. There is nothing on record on the basis of which an inference can be drawn, that the appellant (A-97) could reasonably suspect indulgence of Tiger Memon (AA) in terrorist or disruptive activities.

200. Section 2(1)(a)(iii) TADA provides that abet, with its variations and cognate expressions, includes rendering of any

assistance whether financial of otherwise, to terrorists or disruptionists.

201. The learned Designated Court after appreciating all the evidence on record came to the conclusion that the phrase `financial assistance' should not be given a restricted meaning, to include only assistance given by the concerned accused from his own money. The learned court went on to state that even allowing a terrorist to circulate his money should come within the ambit of that phrase, through an illegal account as maintained for Tiger Memon (AA) by Sampatraj (A-97).

202. In the case at hand, as it cannot be held even by stretch of imagination that Tiger Memon (AA) and his associates had been accused of such activities prior to 12.3.1993, or could reasonably be suspected of being indulged in such activities, the provisions of TADA are not attracted so far as the appellant is concerned. Therefore, we cannot agree with the order passed by the learned Designated Court so far as the appellant (A-97) is concerned. The appeal is therefore, allowed. The conviction and sentence awarded by the Designated Court are set aside. The appellant is on bail. His bail bonds stand discharged.

CRIMINAL APPEAL NO. 1393 OF 2007

Ehsan Mohammad Tufel Qureshi …Appellant

Versus

State of Maharashtra … Respondent

203. This appeal has been preferred against the impugned judgment and order dated 29.5.2007, passed by a Special Judge of the Designated Court under the TADA for Bombay Blasts, Greater Bombay, in the Bombay Blast Case No. 1/1993. The appellant has been charged under various heads, including for the general charge of conspiracy. The appellant has been convicted under Section 5 TADA, and has been awarded a sentence of 5 years rigorous imprisonment alongwith a fine of Rs.25,000/-, and in default of payment of fine, to suffer further R.I. for six months, and also under Sections 3 and 7 r/w Section 25(1-A)(1-B)(a) of the Arms Act. However, no separate sentence has been awarded separately for this offence.

204 Facts and circumstances giving rise to this appeal are that :

A. In addition to the main charge of conspiracy, the appellant (A-122) was charged as he had agreed to keep in his possession, one Mauser pistol and 16 live cartridges that had been given to him by Firoz @ Akram Amani Malik (A-39), and also that there had

been certain other acts that were committed by him in pursuance of the general charge of conspiracy.

B. After conclusion of the trial, the learned Special Judge convicted the appellant and sentenced him as referred to hereinabove.

Hence, this appeal.

205. Shri Mushtaq Ahmad, learned counsel appearing for the appellant has submitted that the appellant had been dragged in trial only being relative of Fazal, though he was not involved in the offence. The arms and ammunition alleged to have been recovered from his possession might have been that of Fazal sister's husband. He was sold the weapons by Firoz @ Akram Amani Malik (A-39), and he was not aware of the fact that it was one of arms which had been smuggled into the country to commit terrorist acts. Thus, the appeal deserves to be allowed.

206. Per contra, Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that he was found in conscious possession of the arms and ammunition in the notified area and therefore, the learned Designated Court has rightly convicted the appellant under the provisions of TADA. The appeal lacks merit and is liable to be dismissed.

207. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

208. **Evidence against the appellant (A-122):**

(a) Confessional statement of Firoz @ Akram Amani Malik (A-39)

(b) Deposition of Rohitkumar Ramsaran Chourisa (PW-39)

(c) Deposition of Prakash Dhanaji Khanvilkar (PW-513)

(d) Deposition of Vishnu Ravalu Shinde (PW-615)

209. **Confessional Statement of Firoz @ Akram Amani Malik (A-39)** :

His confessional statement was recorded on 23.4.1993, wherein he has revealed his participation in the conspiracy, and his inclusion thereof, in the Bombay blast. He has further stated that Zakir had given him 4 handgrenades, one pistol and 16 cartridges. He had kept the said weapons with his brother-in-law (sister's husband), Fazal. He had taken back the pistol from Fazal on 29.3.1993, and had thereafter, sold the same to Ehsan – (A-122) for Rs. 15,000/-, but Ehsan had given him only Rs.5,000/-. Ehsan had also been given the cartridges and had been showed how to use them. After the arrest of the appellant, he had been interrogated on 5.4.1993, and it was in the course of this, that he had expressed his

willingness to make a disclosure statement. Therefore, two panch witnesses had been called, and in their presence, he had made his disclosure statement, wherein he has stated that he had given the appellant (A-122), one pistol and 16 cartridges. The said panchnama was duly signed by the investigating officer, the panchas and the accused (A-39) himself.

210. **Deposition of Rohitkumar Ramsaran Chourisa (PW-39):**

The panch witness has deposed that he had been running a pan shop that was situated by the side of the Irani Restaurant which was located within the Cadell Court building, situated on Cadell Road, Mahim. One police constable had approached him and had asked him to accompany him to the Mahim Police Station, as he had been called by the station incharge. The constable had stated that he could not disclose the reason/purpose for which he had been called there, and had only told him that the Inspector would explain the same to him. His friend Ramesh Govalkar had also accompanied him. They had then gone to the Mahim Police Station with the constable. They had been taken to the Detection Room, and upon reaching the same, he had found therein, 7/8 police constables, alongwith one other person who was sitting on a chair. Two persons had also been standing by his side in civilian

clothes. He had been introduced by the police constable to the inspector i.e. to P.I. Hadap and A.P.I. Khanvilkar. The police officers had informed him that the person who was sitting on the chair, was an accused in the Bombay blast case, and that therefore, he (PW-39) may act as a panch witness. He had immediately agreed to the same. He had then been told, that the accused had wanted to make a disclosure statement, and therefore, he must pay close attention to it. The person sitting there had then stated that he was Ehsan Mohmed Tufel Mohmed (A-122). He had further said that one pistol and some cartridges had been kept by him and his associate Salim Shaikh, at a particular place. If the officers would come with him, he would also show them where such material had been kept. A memorandum panchnama to this effect had been prepared and explained to the witness in Hindi and Marathi, and then signed. This witness has also identified the panchnama that had been prepared at the police station on 5.4.1993 (Exhibit 119). He has further deposed that the appellant (A-122), the police officials and the panch witnesses had gone together from Fort Road to Mahim Junction and then to Mahim Causeway, Bandra Reclamation. The appellant (A-122) had stopped at the corner, and had told them that they had to go down to the Creek. The appellant (A-122) had then gone down to the Creek with the police

constables escorting him, as well as the panch witnesses. The same was a dirty place filled with water. The appellant (A-122) had then put his hand in the water, and in one attempt had taken out the plastic bag. Upon opening the bag, the same was found to contain one pistol and eight cartridges. The eight cartridges were separate from the pistol. P.I. Hadap had picked up the pistol, and taken out its magazine. The magazine had also contained eight cartridges. Thus, in all there were sixteen cartridges. The pistol was black in colour, and its name had been rubbed off. On the cartridges, the digits, "11/83" were inscribed. He has further deposed that A.P.I. Khanvilkar had placed the contraband in a plastic bag, and upon this requisite signatures had been duly taken. When the sealed packet was opened, it was found to contain a 7.62 mm pistol with magazine. It also contained sixteen intact 7.62 bottle necked pistol cartridges, having head stamp markings of, "11/83". The witness has identified the pistol as being the same one, that had been recovered from his person, through a seizure panchnama, as also the cartridges and his signature appearing on their labels.

The witness has been cross-examined. A large number of suggestions have been made, and certain contradictions have also been pointed out. However, he has explained everything, and has revealed that he had been able to identify the pistol (Article 48)

because the same was black in colour, and on the body of the said pistol, at the front, only metal had been visible.

211. **Deposition of Prakash Dhanaji Khanvilkar, Police Inspector, (PW-513):**

He has deposed that on 5.4.1993, he alongwith other officers had interrogated the appellant (A-122) at the Mahim Police Station. He had been arrested earlier on the same day in L.A.C. No. 389/93. During his interrogation, the appellant (A-122) had expressed his desire to make a confessional statement. Thus, he had secured two panch witnesses and in their presence, the appellant's (A-122) statement had been recorded in Hindi, and for this purpose, a memorandum panchnama had also been drawn up. He has identified the signatures that had been put on the panchnama by the panchas, and by himself. The appellant (A-122) had also taken them to Mahim Creek to get the recovery effected, and after reaching the Creek, he had gone 3 to 4 feet away from the shore, into the creek water. He had then taken out one plastic bag from the creek water, and had handed over the same to this witness. He had opened the said bag, and found that it contained one foreign made pistol loaded with magazine, containing eight 9 mm rounds in it. The said bag had also contained eight 9 mm loose rounds. He

had taken charge of the said articles. All sixteen loose rounds had the digits "11/83" marked on the base of the cap of the said bullets. The said pistol and magazines had then been packed into a white plastic bag, wrapped with brown paper, and tied with a white string and sealed. A label duly signed by the panch witnesses and the witness had also been affixed to the package. Hence, he has corroborated the deposition of Rohitkumar Ramsaran Chourisa (PW-39).

212. **Deposition of Vishnu Ravalu Shinde (PW-615):**

He has proved the forwarding letter dated 6.5.1993, by which the material so collected had been sent for F.S.L. The other witnesses have also proved the receipt of the said material for F.S.L., and its report has revealed that the pistol had been in working condition, and that all the 16 cartridges were live.

213. In view of the above, it is evident that a pistol had been sold by Firoz (A-39) to the appellant (A-122), and that it had been the accused (A-39), who had taught the appellant how to use the cartridges. It is also evident that the recovery had been effected from Mahim Creek, on the basis of the disclosure statement made by the appellant, as has been deposed by the panch witness (PW-39).

214. The learned Designated Court, after appreciation of the evidence, has held that though the appellant had been in possession of arms and ammunition in an unauthorized manner, the same does not in any way, show the complicity of the accused in the conspiracy relating to the blast of 12.3.1993.

215. We find no cogent reason to interfere with the findings of the learned Designated Court. The appeal lacks merit and is accordingly, dismissed.

216. Before parting with the case, we will clarify that if the accused-appellant(s) whose appeals have been dismissed and are on bail, their bail bonds stand cancelled and they are directed to surrender within four weeks from today, failing which the learned Designated Court, TADA shall take them into custody and send them to jail to serve out the remaining part of their sentences.

.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
March 21, 2013

Annexure 'A'

S. No.	Criminal Appeal	Accused Name and Number	Sentence by Designated Court	Award by Supreme Court
1.	555 of 2012	Ibrahim Musa Chauhan @ Baba Chauhan(A-41)	8 years RI with fine of Rs. 1 lakh; 10 years RI with fine of Rs.50,000/-;10 years RI with fine of Rs.1 lakh; 4 years RI with fine of Rs.25,000/-; and one year RI with fine of Rs.2,000/-	Dismissed
2.	1129-1130 of 2007	Altaf Ali Sayed ((A-67)	10 years RI with fine of Rs.50,000/-; and 10 years with fine of Rs.2 lakhs	Dismissed
3.	402 of 2008	Mohammed Sayeed Mohammed Isaaq(A-95)	6 years RI with fine of Rs.15,000/-	Dismissed
4.	617-618 of 2008	Ayub Ibrahim Qureshi(A-123)	5 years RI with fine of Rs.12,500/-; and 5 years RI with fine of Rs.12,500/-	Dismissed
5.	1631 of 2007	Mohd. Yunus Gulam Rasool Botomiya(A-47)	6 years RI with fine of Rs.25,000/-; and 6 years RI with fine of Rs.25,000/-	Dismissed

6.	1419 of 2007	Mohamed Dawood Mohamed Yusuf Khan (A-91)	6 years RI with fine of Rs.25,000/-; and 6 years RI with fine of Rs.25,000/-	Dismissed
7.	1226 of 2007	Ramesh Dattatray Mali (A-101)	6 years RI with fine of Rs.25,000/-	Dismissed
8.	1422 of 2007	Shaikh Asif Yusuf (A-107)	5 years RI with fine of Rs.25,000/-; 8 years RI with fine of Rs.50,000/-; and 8 years RI with fine of Rs.50,000/-	Dismissed
9.	1180 of 2007	Mubina @ Baya Moosa Bhiwandiwala (A-96)	5 years RI with fine of Rs.25,000/-	Allowed Conviction and sentence awarded by the Designated Court are set aside.
10.	1225 of 2007	Noor Mohammed Haji Mohammed Khan (A-50)	5 years RI with fine of Rs. 1 lakh; and 5 years RI with fine of Rs.50,000/-	Dismissed
11.	919 of 2008	Mulchand Sampatraj Shah (A-97)	5 years RI with fine of Rs.5 lakhs	Allowed Conviction and sentence

				awarded by the Designated Court are set aside.
12.	1393 of 2007	Ehsan Mohammad Tufel Qureshi(A-122)	5 years RI with fine of Rs.25,000/-	Dismissed

All these appeals filed by the accused have been dismissed except Criminal Appeal Nos. 1180 of 2007 (Mubina @ Baby Moosa Bhiwandiwala (A-96) and Criminal Appeal No. 919 of 2008 (Mulchand Sampatraj Shah (A-97). The appeals filed by A-96 and A-97 are allowed. Their conviction and sentence awarded by the Designated Court are set aside and their bail bonds stand discharged.