

SUPREME COURT OF INDIA

Jameel Ahmed and Anr. etc.

Versus

State of Rajasthan

30.4.2003

(N. Santosh Hegde and B.P. Singh, JJ.)

Criminal Appeal No. 1308 of 2002.

JUDGMENT

N. Santosh Hegde, J. - All these appeals arise out of a common judgment of the Designated Judge at Ajmer, Rajasthan, made in TADA Special Case No. 8 of 1992. In the said case, the appellants herein along with some other accused were charged by the Deputy Superintendent of Police, CBI/SIC.II, New Delhi for offences under Sections 3(3) and 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'the TADA Act'), Section 120-B IPC; and Sections 5 and 6 of the Explosive Substances Act and Section 9B and 9C of the Explosives Act. After trial the Designated Court held the appellants guilty of offences punishable under Section 120B IPC, Sections 3(3) and 6(1) of the TADA, Section 5 of the Explosive Substances Act read with Section 120B of the IPC and Section 6 of the Explosive Substances Act. Learned Judge also held A-5 guilty of offence punishable under Sections 9-B(i)(b) and 9-C of the Explosives Act. Based on the said conviction, he imposed a sentence of 5 years' RI with a fine of Rs. 1,000 on each count, on these appellants, and in default in the payment of fine, to undergo a further RI for 6 months on each count, on each of them. He also sentenced the appellants for offences punishable under Sections 3(3) and 6(1) of the TADA and imposed a sentence of 5 years' RI with a fine of Rs. 1,000 on each of them, in default to undergo RI for 6 months. He further sentenced the appellants for an offence punishable under Section 5 of the Explosive Substances Act read with Section 120B IPC, and Section 6 of the Explosive Substances Act and imposed and sentence of 5 years' RI with a fine of Rs. 500/- on each count on each of them; in default to undergo RI for 3 months. Nextly, he held A-5 guilty of offences punishable under Sections 9-B(i)(b) and 9-C of the Explosives Act, 1884 and sentenced him to undergo RI for 2 years with a fine of Rs. 500/-; in default to undergo further RI for 3 months. He directed all the substantive sentences to run concurrently.

2. Prosecution case involving these appellants, stated briefly, is as follows :

3. On 20.12.1990, a Police party headed by Sukhpal Singh, PW-9, Inspector, Narcotics Control Bureau, Bhilwara (Rajasthan) intercepted Truck No. PAT 1933 at Octroi Post No. 2, Bhilwara at about 10.30 a.m. The truck was loaded with bananas and there were 3 occupants in the truck. They were Beant Singh, A-7; Jagjeet Singh, A-8; and Sulakshan Singh, A-9. On a search of the truck, PW-9 and his party found 1.25 kg. of opium and one briefcase containing 8 bundles of detonators. Said PW-9 sent a written report to SHO, PS Sadar, Bhilwara, who along with his staff reached the spot and conducted further search of the said truck. Said SHO, Satya Narayan, PW-12 found one

"ENCOR" briefcase which had 8 bundles of electric detonators, and hidden with the load of bananas, he also found 13 cartons of gelatine and 2 bags of calcium ammonia nitrate. On each carton "Noble Explochem Ltd. 595/2, Giriprt Nagpur, Noble Brand Class-III, Division-I, CAT.ZZ" was written in English. On opening the cartons, the officers found 200 gelatines in each of the carton. On questioning the three occupants of the said truck, namely, A-7 to A-9, told the investigating officers that they had no licence to possess these explosives. Thus on the ground that these accused persons had committed an offence under Section 9-B of the Explosives Act, Sections 4 and 5 of the Explosive Substances Act and Section 286 of the IPC, they were arrested. The Investigating Officer, PW-12, took out the samples of gelatine from each carton and electric detonators from each of the carton. On questioning the three occupants of the said truck, namely, A-7 to A-9, told the investigating officers that they had no licence to possess these explosives. Thus on the ground that these accused persons had committed an offence under Section 9-B of the Explosives Act, Sections 4 and 5 of the Explosive Substances Act and Section 286 of the IPC, they were arrested. The Investigating Officer, PW-12, took out the samples of gelatine from each carton and electric detonators from each bundle, as also 1 kg. of Calcium Ammonia Nitrate from each of the bags which were seized, for the purpose of chemical examination. A case under Section 8/18 of the N.D.P.S. Act was also registered against the said 3 accused persons for possessing 1.25 kg. of opium. The Investigating Officer also seized the truck and registered an FIR against these accused persons. It is seen from the records that during the course of investigation, Section 6 of the TADA was also invoked as against these accused.

4. The Ministry of Personnel, Govt. of India, under a notification dated 1.2.1991 and after obtaining the consent of the State of Rajasthan handed over the investigation to the CBI which continued the further investigation. Based on the information received by the CBI and on further investigation, it was found that in the month of June, 1990, Madha Singh, A-10 along with Sukhwant Singh A-4, Kulwant Singh A-3, Gyani Pratap Singh A-1 and Didar Singh A-2 had entered into a criminal conspiracy to procure explosives from Maharashtra and to transport the same to Punjab to indulge in terrorist activities. On further investigation, based on this information, it was found that Beant Singh A-7, Jagjit Singh A-8 and Sulakshan Singh A-9, the persons who were found in the truck seized earlier, along with Ismail Bhai A-6, Jameel Ahmed A-5, Dinesh Kumar A-11 and A. Srinivas A-12 had also joined in the said conspiracy. Further case of the prosecution is that in the months of May-June, 1990, A-1 summoned A-2 in the presence of A-10 and asked A-2 to arrange 2 cartons of gelatine and 100 detonators which A-2 arranged and supplied the same to A-1, A-4 and A-10 at Dunlop Hotel, Latoor Road, Nanded.

5. It is also the case of the prosecution that similar procurement of explosives was also made in the month of July, 1990 by accused A-1 to A-4 from one Dinesh Kumar of M/s. Sushil Explosives. Since this transaction is not relevant for the purpose of these appeals, we need not dilate on the facts of this transaction any further.

6. The prosecution further states that in the month of October, 1990, A-2 met A-1 at Nanded and asked him to arrange for a further quantity of 2-1/2 quintals of gelatine and 400 detonators and two bags of Calcium Ammonia Nitrate. It is pursuant to this demand, A-2 met Jameel Ahmed A-5 at Nanded and asked him for the said quantity of gelatine, detonators and Calcium Ammonia Nitrate. It is stated that A-5 knowing well that these explosives were meant for use by the militants of Punjab, agreed to supply the same for an enhanced sum of Rs. 1,000 per carton of gelatine even though the prevailing market price was just Rs. 650/- as also two bags of Ammonia Nitrate.

7. Prosecution further alleges that these explosives were delivered to A-2 by father of A-5 viz.

Ismail Bhai A-6 which explosives were taken to Nanded by A-2 in the Maruti Van of PW-1 Sanjay Gaware on 12.12.1990 and was stored in a Kholi rented by A-2 at Usman Road, Nanded. Prosecution further says that on receipt of these explosives, A-2 informed A-1 about the same.

8. On 14.12.1990 at about 10/11 a.m. A-2 was informed by A-1 and A-4 that a truck loaded with oil-seed cakes had come from Punjab for carrying the explosive back to Punjab. On receipt of the said information, A-2 arranged for a Maruti Gypsy No. BIL-4750 and went to his Kholi at Nanded and collected the explosives and proceeded to the place where the said truck was parked and the explosives were transferred to the said truck by A-7 to A-9 who had brought the truck from Punjab. The said truck was then driven to Malegaon where a consignment of bananas was loaded in the truck to be transported to Amritsar and the said truck left for Bhusawal where some more bananas were loaded and on 18.12.1990 the said truck proceeded further towards Punjab. On the way at Mangalwara, Beant Singh A-7 purchased 1.25 kg. of opium. It is during this journey on 22.12.1990 the said truck when it reached Checkpost No. 2 at Bhilwara was intercepted by the staff of the Narcotics Control Bureau as stated above and the contraband articles both opium and explosives were seized.

9. Prosecution contends that the explosives seized from the said truck were examined by the C.F.R.L., New Delhi as also by the Controller of Explosives, Jaipur, who opined that the said explosives were standard industrial explosives. They also opined that Calcium Ammonia Nitrate which is a fertilizer can also be used as an explosive when mixed with diesel/fuel oil which then becomes explosives of class-II as defined in Schedule I of Explosives Rules, 1983. The said authorities also opined that the explosives so seized were marked with the name of M/s. Noble Explosives and also identified the batch number which was traced to M/s. Asian Explosives, Akola.

10. During the course of investigation, it was noticed that M/s. Asian Explosives, Akola of which A-5 was the partner, did not maintain the record of the transaction of gelatine of the aforesaid batches in the records of the firm. Prosecution also states that during the course of investigation, Beant Singh A-7, Jagjit Singh A-8 and Sulakshan Singh A-9 made voluntary confessional statements which was recorded by Ram Vallabh Sharma PW-43 on 4.1.1991 which were marked as Ex. P-126, P-109 and P-128 respectively wherein these accused admitted their guilt and their respective involvement in the offence alleged against them.

11. The prosecution also alleges that Gyani Pratap Singh A-1 also made a confessional statement on 21.2.1991 which was recorded by PW-42, D.R. Meena, Superintendent of Police, and was marked as Ex. P-124 during the trial. According to the prosecution in this confession A-1 voluntarily admitted his involvement in the charges framed against him.

12. It is the further case of the prosecution case that on 20.5.1991 Didar Singh A-2 gave a confessional statement which was recorded by PW-42 and marked as Ex. P-126 wherein this accused not only admitted his personal involvement in the charges levelled against him but also gave details of the involvement of accused A-1 to A-9 in the above case.

13. It is to be noted that originally even though there were many other accused they were not sent up for trial by the investigating agency by showing their names in column 2 of the chargesheet because the investigating agency could not find sufficient material of their involvement. In regard to some other accused persons the Designated Court itself at the stage of framing charges found there was no material to proceed against the said accused hence discharged them.

14. It is also to be noted at this stage that accused A-7 to A-9 who were found transporting the explosives in the truck, not only gave confessional statement as per Ex.P-126, P-109 and P-128 respectively also pleaded guilty at the stage of recording their pleas, hence, were convicted based on their plea of guilt. And there is no challenge to their conviction. A-3 and A-4 who were convicted under the impugned judgment have also chosen not to challenge their conviction. Hence, these appeals are by A-1, A-2, A-5 and A-6 only. It should be noted herein that A-10 had died during trial hence proceedings against him had abated.

15. The prosecution at the trial examined 49 witnesses and exhibited 174 documents. They also produced 12 articles as material objects in the case. The accused persons before the trial court were examined under Section 313 Cr.P.C. and all of them denied the prosecution case. A-1 denied his confessional statement and stated that he was asked to sign on a blank paper and that he did not know Hindi. A-2 stated that his confessional statement is fabricated and he was asked to sign on a blank paper and he did not know Hindi or English. A-3 to A-6 apart from denying their involvement, pleaded that they are totally innocent and have been falsely implicated.

16. Defence examined DW-1, Sulakshan Singh who was A-9 in the trial and had pleaded guilty as their witness and produced 5 documents in their defence. It is based on the material and oral evidence available at the trial that the Designated Court found the appellants guilty as stated above and sentenced them.

17. Though on behalf of the appellants individually separate arguments were addressed, they also had a common attack against the confessional statement allegedly given by the accused as per Ex.P-109, P-124, P-126, P-128 and P-129. The common line of attack in this regard is that these statements are not made at all and/or were incorporated in the blank papers or their signatures were obtained on pre-prepared statements by coercion in language unknown to them. They also contend that recording of the statements by the concerned officers was in contravention of the mandatory requirements of Section 15 of the TADA Act as also Rule 15 of the TADA Rules, therefore the same cannot be looked into. They also contended that the confessional statements even if held to be as admissible, they being weak type of evidence, the same can only be used for corroboration and not as substantive evidence.

18. On behalf of the first accused it is further argued that a careful reading of alleged confessional statement does not show any involvement of this accused in the alleged criminal activities and whatever statement found in the said Ex.P-124 only reflects his innocent act as a Granthi of a Gurudwara in providing certain accommodation and medical assistance to the concerned accused persons, which was done without knowing the object of the visit of these accused to Nanded and when he came to know of their involvement in illegal activities, he had dissociated himself from them. He submitted that in view of the non-inculpatory nature of Ex.P-124 same cannot be treated as a confession. It is also contended de hors Ex.P-124, there is absolutely no evidence to implicate this accused.

19. On behalf of A-2 it is contended that he did not make the confessional statement as per Ex.P-126 and his signature was obtained on a blank paper, and that he does not know Hindi or English and knows only Gurmukhi and from the manner in which his signature was obtained on Ex.P-126 it is clear that the same was obtained on a blank paper therefore his confessional statement not being voluntary and truthful cannot be looked into.

20. On behalf of A-5 and A-6 it is submitted that apart from their involvement found in the alleged

confessional statements which are neither genuine, voluntary nor truthful there is no other material against them. It is further argued that A-5 is a licensed dealer in explosives and A-2 being in the job of blasting rocks was known to him and was purchasing explosives from him for the purpose of his professional work and A-5 had no knowledge that the purchases made by A-2 were for the purpose of use by terrorists and whatever sale of explosives he made to A-2, same was for the purpose of A-2's professional use and in the absence of any other acceptable corroboration of the alleged confession as to the involvement of himself with the terrorist activities, there could be no conviction based solely on the confession of a co-accused.

21. On behalf of A-6 it is contended that apart from the unacceptable confession of the co-accused there is no other material against him which involves him in any one of the offences alleged and that he is not a partner in the firm which allegedly sold the explosives to the accused. It was also contended that A-6 had absolutely no knowledge for which purpose the purchase were being made to A-2 and he only followed the instructions of his son A-5 in delivering the explosives to A-2 and that he was over 82 years of age and in the absence of any definite proof that he had the knowledge of the illegal activities of other accused, he cannot be held guilty.

22. On behalf of the respondents it was contended that the denial of the confessional statement made by the respective accused are all afterthoughts. There is no illegality in the recording of the confessions and the Designated Court rightly relied upon the same for basing conviction. It was also contended that an overall reading of confession Ex.P-124 of A-1 along with other evidence led by the prosecution clearly shows that the accused has admitted his guilt. Even otherwise there is the confessional statement of A-2 which seriously implicates A-1 in the crime which itself is sufficient without any other further material to convict A-1. It is also submitted that so far as A-2 is concerned, the very stand taken by him in 313 Cr.P.C. statement would clearly show that his allegation of obtaining signature on a blank paper is totally false. The respondents also contend that so far as A-5 is concerned his involvement is established by the fact that there was unimpeachable evidence that he sold the explosives to A-2 who did not have the necessary permit to purchase and use the same. That apart, there is other evidence to show that he sold these explosives at a price higher than the normal prevailing price because the explosives were being sold for the use of terrorists. It is also pointed out that this accused has not been maintaining proper account of the sales made by him to A-2 which is also indicative of the fact that he is involved in clandestine sales. It was further argued that the confessional statement of A-2 coupled with other independent evidence clearly implicates A-5 of his involvement in the crime. So far as A-6 is concerned it is contended that though he is not a partner in M/s. Asian Explosives, there is evidence to show that he was involved in the business of illegal sale of explosives and as a matter of fact he had at a point of time collected money from A-2 and arranged for the delivery of the explosives from the magazine of A-5 which was subsequently seized by the Police at Bhilwara, therefore, the evidence produced by the prosecution is sufficient to uphold the conviction awarded by the Designated Court to this accused also.

23. Since the prosecution case in these appeals is primarily founded on various confessions of the accused involving themselves as well as other co-accused, we will first consider the argument of the appellants that, assuming that the confessional statements have been proved to have been made in accordance with law and voluntary and truthful, even then can such confession as be relied upon solely to base a conviction on the maker of the confession, and if so, can it also be used against a co-accused and if so whether such confession requires corroboration need be general or should be of all material facts in the confession. The argument of learned counsel in this regard is that the prosecution should prove the involvement of the accused by other evidence first and the confession

of an accused can only be used as a corroborative piece of evidence and not as a substantive piece of evidence, that too against the maker only. This argument is basically founded on an assumption that Sections 25 to 30 of the Evidence Act also apply to the confession recorded under Section 15 of the TADA Act. In support of this argument, the learned counsel relies on the line of judgments of this Court which considered the scope of Sections 25 to 30 of the Evidence Act and the probative value of such a confession; one of such judgments is *Mohd. Khalid v. State of West Bengal (2002 7 SCC 334)*. The passage relied upon by the appellants in support of this contention of theirs in the said judgment runs thus :

"It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to affect him *as lending support or assurance to such other evidence.*" (emphasis supplied).

24. We do not think this principle laid down by this Court in *Mohd. Khalid (supra)* under Section 30 of the Evidence Act could be applied to confession recorded under Section 15 of the TADA Act. Herein it is relevant to note that Section 15 of the TADA Act by the use of non-obstante clause has made confession recorded under Section 15 admissible notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure. It also specifically provides that the confession so recorded shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. Apart from the plain language of Section 15 which excludes the application of Section 30 of the Evidence Act, this Court has in many judgments in specific terms held that Section 30 of the Evidence Act has no role to play when the court considers the confession of an accused made under Section 15 of the TADA Act either in regard to himself or in regard to his co-accused.

25. In the case of *State v. Nalini & Ors., 1999(2) RCR (Criminal) 682 (SC) : (1999 5 SCC 253)* Justice Quadri in paragraphs 688 and 689 of the report has held :

"688. Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording the confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act.

689. Under Section 15(1) of the TADA Act the position, in my view, is much stronger, for its says,

"a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

On the language of sub-section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him, so it is implicit that the same can be considered against all those tried together. *In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against a co-accused, abettor or*

conspirator charged and tried in the same case along with the accused." (emphasis supplied).

26. Therefore the argument of learned counsel that a confessional statement of an accused made under Section 15 of the TADA Act can be used only to corroborate other substantive evidence produced by the prosecution cannot be accepted.

27. The next question for our consideration in this regard would be whether confession recorded under Section 15 of the TADA Act can be solely relied upon for basing a conviction on the maker of that confession. Learned counsel for the appellants have argued that the confessional statement especially one that is made to the Police Officer being a very weak piece of evidence it is necessary that the court even if it is satisfied that the confession is made voluntarily and truthfully must seek corroboration before it could base a conviction on the maker of the confession. We are unable to accept this argument advanced on behalf of the appellants. The sting 'if any' in this argument is taken away by the wording of Section 15 of the TADA Act. This Section provides that if an accused person is voluntarily willing to make a confessional statement (under) Section 15 of the TADA Act, the same can be made to an officer not below the rank of a Superintendent of Police. The Section further provides that such statement made to the Police Officer shall be admissible in evidence. Once the statement is admissible in evidence then like any other evidence, it is for the court to consider whether such statement can be relied on solely or with necessary corroboration. Therefore, the argument that as a matter of rule such statement u/s. 15 of the TADA Act should not be relied upon without corroboration cannot be accepted. We have already noticed that this provision of law is a departure from the provision of Sections 25 to 30 of the Evidence Act. As a matter of fact, Section 15 of the TADA Act operates independent of the Evidence Act and the Code of Criminal Procedure. The validity of this provision has been upheld by a Constitution Bench of this Court in ***Kartar Singh etc. v. State of Punjab etc., 1994(2) RCR (Criminal) 168 (SC) : (1994 3 SCC 569)***. Therefore if the legislature had thought it fit that in a given set of facts when an accused is charged with an offence punishable under the provisions of the TADA Act is voluntarily willing to make a confessional statement and if such statement is made to and recorded by an officer not below the rank of Superintendent of Police in a manner provided in that Section, the same is admissible in evidence, and if the same is proved in a court of law to be voluntary and truthful in nature, we cannot see why such a statement should be treated as a weak piece of evidence requiring corroboration merely because the same is made to and recorded by a Police Officer. Answering a similar argument raised as to the acceptability of a confession made to a police officer without the support of any corroboration evidence in a TADA case, this Court in ***Devender Pal Singh v. State of NCT of Delhi & Anr., 2002(2) RCR (Criminal) 515 (SC) : (2002 5 SCC 234)*** by a majority judgment held :

"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of Police administration. See ***Aher Raja Khima v. State of Saurashtra (AIR 1956 SC 217)***."

28. Therefore, the argument of learned counsel that merely because the statement has been recorded by a Police Officer the same should be treated as a weak type of evidence and should not be accepted without corroboration, cannot be countenanced.

29. At this stage we may also notice that the court in a series of cases has held that the confessional statement recorded under Section 15 of the TADA if found by the courts to be truthful and

voluntary, the same becomes a substantive piece of evidence which do not require any corroboration and a conviction can be based without there being any such corroboration so far as the maker of the confession is concerned. See D.P. Singh (supra) - (para 33), *Jayawant Dattatraya Suryarao etc. v. State of Maharashtra (2001 10 SCC 109) paras 49 and 60, Lal Singh v. State of Gujarat & Anr. (2001(1) RCR (Cri) 370 SC) : (2001 3 SCC 221* and *S.N. Dube v. N.B. Bhoir & Ors. (2000(1) RCR (Cri) 848 SC) : (2000 2 SCC 254)*. Therefore the argument that a confessional statement being a weak type of evidence must always be corroborated before basing a conviction, cannot be accepted.

30. Learned counsel for the appellants then contended that though Section 15 of the TADA Act makes confessional statement of an accused admissible evidence against the other accused, still the same cannot be accepted by the Courts without further corroboration on material facts to base a conviction against the co-accused. Even this question in our opinion is not *res integra*. This Court in many cases in which confession recorded under Section 15 of the TADA Act has considered the probative value of a confession made by one accused involving other co-accused. In those judgments, this Court has laid down that in view of the fact that Section 15(1) clearly indicates that the intention of Parliament was to make the confession of an accused substantive evidence against himself and the co-accused and the same can be relied upon to base a conviction against both. However, while doing so this court as a measure of a abundant caution has held it prudent to seek general corroboration of the confession of a co-accused to base a conviction on another co-accused. This Court in *Devender Pal Singh* (supra) by a majority judgment held :

"The Confessional statement of the accused can be relied upon for the purpose of conviction, and no further corroboration is necessary if it relates to the accused himself. However, as a matter of prudence the court may look for some corroboration if confession is to be used against a co-accused though that will be again within the sphere of appraisal of evidence."

31. In *State v. Nalini* (supra) a 3-Judge Bench of this Court considered this question. Wadhwa, J., in that case held that what weight should be attached to such evidence is a matter in the discretion of the court, and as a matter of prudence, the Court may look for some more corroboration if confession is to be used against a co-accused. While Quadri, J. agreeing with Wadhwa, J., held that the rule of prudence would require that the Court should examine the same with great care and should not be relied upon unless it is corroborated by other evidence on record. While Thomas, J. took a contrary view by holding that while confession is substantive evidence against its maker it cannot be used as substantive evidence against the other persons, even if the latter is a co-accused but can be used as a piece of corroborative material to support other substantive evidence. Here we notice that the majority opinion is that such confession of one accused can be used as substantive evidence against another accused but court in its discretion should seek general corroboration to support such confession. In *Bharatbhai @ Jimi Premchandbhai v. State of Gujarat, 2002(4) RCR (Criminal) 445 (SC) : (2002 8 SCC 447)* similar view was taken by this Court holding that a confessional statement of a co-accused is also substantive evidence against his co-accused, (see para 19). This Court in *S.N. Dube's case* (supra) also held that confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also. A contrary view taken by this Court in *Kalpna Rai v. State (1997(4) RCR (Cri) 788 SC) : (1997 8 SCC 732)* was held to be no more a good law following the decision of this Court in *Nalini's case* (supra) by a subsequent judgment of this Court in *S.N. Dube's case* (supra). Therefore we notice that the accepted principle in law is that a confessional statement of an accused recorded under Section 15 of the TADA Act is a substantive piece of evidence even against his co-accused provided the concerned accused are tried together.

32. The requirement of seeking corroboration while using the confessional statement of an accused, against his co-accused has given rise to another argument on behalf of the appellants that the said corroboration should be on all material facts mentioned in the confession and not a mere general corroboration. The respondent of course has argued that this is not the requirement of law and if at all a corroboration is required the same need only be in the nature of a general corroboration. Like the other legal issues involved in this case, we have no difficulty in answering this issue also because of the earlier judgments of this Court with which we are not only bound but are in respectful agreement. In ***Lal Singh etc. v. State of Gujarat & Anr. (2001(1) RCR (Cri) 370 SC) : (2001 3 SCC 221)*** this Court held that "when there is confessional statement it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue."

33. In ***Ravinder Singh v. State of Maharashtra (2002(2) RCR (Cri) 610 SC) : (2002 9 SCC 55)*** this Court held that if corroboration is to be required, then it is sufficient if there is a general corroboration of the important incidents and not that the corroborative evidence itself should be sufficient for conviction. In ***State of Maharashtra v. Bharat Chaganlal Raghani & Ors. (2001(3) RCR (Cri) 549 SC) : (2001 9 SCC 1)*** it was held that a requirement of corroboration even in a retracted confession is not a rule of law but a rule of prudence, and the general corroboration of confessional statement is sufficient to sustain conviction on the basis of such confession. In the case of Nalini (supra) we have already noticed that the majority of the Judges have held that as a matter of prudence Court may look for some corroboration if confession is to be used against a co-accused though that will again be within the sphere of appraisal of evidence. Justice Quadri in his judgment has specifically stated that what is required is only a general corroboration.

34. The above observations of the majority in the case of Nalini (supra) has been accepted in Devender Pal Singh (supra) wherein the Court agreeing with the majority judgment in Nalini's case (supra) held that what is required as corroboration of a evidence of the co-accused is only a general corroboration. Therefore it has to be held that when a confessional statement recorded under Section 15 of the TADA Act is to be used against a co-accused prudence requires that the court should look for some general corroboration, such corroboration need not necessarily be on material facts mentioned in the confession but should be of such nature as to create confidence in the mind of the court to rely upon such confession.

35. The next legal argument of the appellants is that the confessional statements must always be sent to the CMM or the CJM as required under Rule 15(5) of the Rules, and the non-compliance of the said statutory provision makes the confessions inadmissible. It is true that Rule 15(5) of the TADA Rules states that any statement recorded under Section 15 should be sent forthwith to the Chief Metropolitan Magistrate or the CJM having jurisdiction over the area in which such confession has been recorded and such Magistrate shall, in turn, have to forward the recorded confession so received to the Designated Court which may take cognizance of the offence. A perusal of the scheme of Rule 15 shows that the object of this Rule is to safeguard the interest of the maker of the confession by directing the confessional statement to be taken out of the hands of the Police so that there could be no subsequent interpolation. Rule 15(5) does not ascribe any role to the CMM or the CJM of either perusing the said statement or making any endorsement or applying his mind to these statement. It merely converts the said courts into a post office for further transmission to the concerned designated court, therefore, the object of the Rule is to see that the statement recorded under Section 15 of the Act leaves the custody of the recorder of the statement at the earliest so that

the statement has a safer probative value. In our opinion transmission of the recorded confessional statement under Section 15 of the Act to the CMM or the CJM under Rule 15(5) is only directory and not mandatory. It has been so held by this Court in *Wariyam Singh & Ors. v. State of U.P. (1995(2) RCR(Cri) 597 SC) : (1995 6 SCC 458)*. This judgment of Wariyam Singh (supra) was subsequently followed in a later judgment of this Court in Devender Pal Singh's case (supra). Learned Counsel for the appellants, however, contended that this Court in the case of Bihari Manjhi (supra) had held that non-compliance of Rule 15(5) would vitiate the probative value of such confessional statement. We have carefully perused the said judgments and we do not think this Court in the case of Bihari Manjhi (supra) has said that the requirement of Rule 15 of the Rules is in any way mandatory. In the said case, this Court proceeded on the basis that Rule 15 of the Rules is directory but on the facts of that case it held that it does not mean that the Investigating Officer is not required to follow the said procedure, that because of the facts of that case the Court held that the investigating agency had adopted unjustified methods. Therefore, there is no substance in the argument of the appellants that in the case of Bihari Manji (supra) this Court had taken a different view than the one taken in Wariyam Singh's case (supra). However, in the case of non-compliance of such procedure, the concerned court should examine on facts of that case whether the delay if any, in sending the confessional statement to the concerned Designated Court has given rise to any doubt as to the genuineness of the confessional statement.

36. To sum up, our findings in regard to the legal arguments addressed in these appeals we find :

- (i) if the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the Court as having been made voluntarily and truthful then the said confession is sufficient to base a conviction on the maker of the confession.
- (ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.
- (iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.
- (iv) The nature of corroboration required both in regard to the use of the confession against the maker as also in regard to the use of the same against a co-accused is of general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.
- (v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confession statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement.

37. On the basis of the above findings of ours on the legal issues involved in this case, we will now consider the probative value of the confessional statements relied by the prosecution in this case. We will also examine whether on facts of this case, the confessions Ex. P-109, P-124, P-126 and P-128 were made in accordance with the mandatory requirement of law, and if so, whether they are voluntary and truthful, and if so whether such confessions require corroboration or not.

38. The prosecution has relied on the statement of Gyani Pratap Singh, A-1, as per Ex.P-124 as a confessional statement. The trial court also relying upon the said confession has convicted the appellants and others as also taking note of other evidence led by the prosecution in this case. The said statement of A-1 was recorded on 21.2.1991 by PW-42 D.R. Meena. On behalf of the said accused, learned counsel has argued that the said confession is not genuine, and is in a language not known to the said accused, and also without complying with mandatory requirement of law. It was also contended that the said statement is recorded by Police Officer involved in the investigation of the case, therefore, no reliance should be placed on that statement. It was further contended that assuming that Ex.P-124 is legally recorded, voluntary and truthful even then the said statement cannot be used by the prosecution as a confessional statement since there is no admission of guilt anywhere in the said document involving the maker of the confession namely, A-1. It is submitted that the entire document Ex.P-124 is exculpatory in nature, therefore, the question of treating the said document as a confession does not arise. The further argument addressed on behalf of this accused is that if Ex.P-124 is to be excluded from consideration then the prosecution has not produced any other material whatsoever to prove the charges against A-1.

39. A perusal of this statement Ex.P-124, shows that all that this accused stated is that A-10 Madha Singh was the brother-in-law of his brother, he knew that said Madha Singh was connected with Babbar Khalsa and had visited him sometime in 1990 at Nanded with four of his companions who are also accused in the case and that he provided accommodation to them in a Gurudwara. He admitted that he knew A-2 and also that the said accused worked as a rock blaster. His further statement as per Ex.P-124 is that he came to know sometime in July, 1990 that A-4 was engaged in anti-national activities and had gone back to Punjab with some ammunition. But he states specifically that when he came to know about the nefarious activities of some of these accused persons, he was worried about them and thereafter, he refused to accommodate them. But he admits that he did provide medical assistance to A-10 as also to A-4 when they needed the same even after he came to know of the activities of these persons. This accused in his statement Ex.P-124 further states that when he came to know of the seizure of the explosives by the Rajasthan Police, he told A-2 that he had warned these accused persons not to indulge in such activities but they did not pay any heed to his words, therefore, they will have to suffer the consequences. From a plain reading of Ex.P-124, we find it difficult to come to the conclusion that this document can be treated as a confession of A-1. The basic ingredient of a confession i.e. admission of guilt is absent in the contents of this document. On the contrary, the maker of this statement, namely A-1 specifically exculpates himself by stating that when he came to know of the activities of other accused, he deprecated the same and distanced himself from them. He also states that he had warned these accused persons from indulging in such activities and expressed his feeling that they will have to suffer the consequences of their illegal acts. This is a clear indication of A-1 exculpating himself from the crime rather than admitting any such crime in the said statement. Then again we notice that nowhere in the body of the statement this accused admits any prior any knowledge of the activities of these accused persons or their object of visiting Nanded. He generally states that the accused persons visited him at Nanded and sought for accommodation and since he was a Granthi of a Gurudwara there, he provided them accommodation, therefore, it should be held that a reading of Ex.P-124 does not in any way inculcate A-1 with the crime with which he is charged. Question then

is can this document be treated as a confession under Section 15 of the TADA Act which is otherwise an inadmissible document.

40. Learned A.S.G., however, contends that this statement of A-1 is a self-serving statement to prove his innocence therefore this statement should be read along with confessional statement of A-2 as per Ex.P-126 as also with other evidence led by the prosecution in the trial which would clearly show that A-1 had the knowledge of the object of the visit of A-10 and other accused persons and took an active part in procuring the explosives, making the payment, providing accommodation, medical assistance etc. Therefore, learned counsel submits that these activities of A-1 which can be deduced from his statement coupled with other evidence, is suggestive of his guilt, therefore, his statement should be read in conjunction with the other evidence led by the prosecution to find out whether Ex.P-124 is a confession or not.

41. We do not think we can accept this argument of learned ASG. While considering the contents of Ex.P-124 for the purpose of finding out whether the said statement amounts to a confession or not, the document in question will have to be considered on the basis of the statement found in itself and there is no scope for any external material being taken into consideration to draw an inference that what the accused stated in the so-called confessional statement could be an admission of a guilt. As stated above, in the instant case, we are not able to find any inculpatory statement in Ex.P-124 by itself so far as the maker of the statement, namely, A-1 is concerned and in the absence of which, in our opinion, this document cannot be construed as a confessional statement because at this stage we are not considering the fact whether the prosecution has established its case against A-1 from other evidence. We are at this stage only considering whether Ex.P-124 is confession or not for which we will have to look into the contents of Ex.P-124 only.

42. Since we have come to the conclusion that Ex.P-124 by itself is not a statement of confession, because of its exculpatory nature, we need not consider the other grounds of attack made by the appellant on the making of Ex.P-124 or the alleged statutory violations in preparing the said document.

43. Be that as it may, learned A.S.G. contended that de hors the aid of Ex.P-124, A-1 is liable to be convicted on the basis of the confessional statement of A-2 Ex. P-109. Learned counsel submits that from the statement of Didar Singh, A-2, as per Ex.P-126, it is crystal clear that A-1 was actively involved in providing accommodation to other accused persons knowing fully well the illegal object of their visit to Nanded and in helping them to procure the explosives by recruiting A-2 and providing financial and medical assistance to the said accused as also to transport the said explosives to Punjab. Therefore, from the said statement of A-2 as per Ex.P-126, a conviction is liable to be based against A-1 even without corroboration. He also submits that if there was any need at all for any corroboration, the same according to him is found in the confessional statements of A-7 to A-9 i.e. Ex.P-109, P-128 and P-129 respectively as also from the oral evidence of PW-24.

44. As noticed earlier, so far as A-2's a confession is concerned, it is the confessional statement of a co-accused, and on facts and circumstances of this case we think it is not safe to base a conviction on A-1 unless we are able to find some corroboration of general nature at least from the other evidence led by the prosecution in this case. Though the learned Additional Solicitor General has contended that there is sufficient corroboration for the confession of A-2 in the other evidence led by the prosecution, we are unable to find any such corroboration in the other evidence led by the prosecution to support the confessional statement of PW-2 as per Ex.P-126. We are also unable to find any corroborative piece of evidence of even general nature in the confessions of other accused

persons to implicate this accused. All that the other evidence produced by the prosecution including the confessions of A-7 to A-9 shows that A-1 provided accommodation, financial and medical help. This by itself will not help the prosecution because as contended on behalf of A-1, there is no material to show that A-1 had the knowledge of the motive of other accused. No other material on record except Ex.P-126 connects A-1 with A-5, A-6 or of that matter with other accused in regard to the procurement and transport of the explosives. Thus what remains is only the confession of A-2, a co-accused, which as observed by us hereinabove requires corroboration and having found none even generally, we think it not safe to base the conviction of A-1 solely on the basis of Ex.P-126.

45. We will next take up the case of the prosecution as against Didar Singh, A-2. As stated above, even in regard to the confessional statement of Didar Singh, A-2 as per Ex.P-126, learned counsel appearing for the said appellant has contended that the same was never made by the said accused and his signature was taken on a blank paper and that this accused had no knowledge of Hindi. It is also contended that the fact that he had signed Ex.P-126 in Gurumukhi, itself shows that he had no knowledge of Hindi. Learned counsel has contended that apart from the above suspicious circumstance attached to the said statement of A-2, the statement in question was not sent to the CJM, Jaipur as required under Rule 15(5) of the TADA Rules, therefore, the same being contrary to the statutory requirement is inadmissible in law. It is also contended that A-2's signature is found in the margin of Ex.P-126 which itself shows that the signature was taken on a blank paper.

46. As far as the argument of non-compliance of Rule 15(5) of the Rules is concerned, we have held the same to be directory and not mandatory. On facts, we notice that even though the confessional statement as per Ex.P-126 is not sent to the CJM or the CMM, the same has reached the Designated Court without delay, therefore, there is no reason to even suspect that the said confession has remained with the Police, for an unduly long period, so as to suspect the genuineness of the same, hence this argument is rejected.

47. Learned trial Judge while considering the attack on Ex.P-126 as to its genuineness and truthfulness in the impugned judgment has held that the allegation that A-2 did not know Hindi, cannot be true. For this purpose he relied upon the evidence of D.R. Meena, PW-42 who recorded the said confessional statement of A-2 and noted that the said witness had specifically stated that he verified and found out that A-2 knew Hindi, both to write as well as to read. He also noted from the said evidence that the accused first signed the last page after the statement was read over to him and thereafter in the other pages, he signed in the margin. This explanation in the evidence of PW-42 as accepted by the learned trial Judge in the absence of any other material in support of A-2's allegation sounds plausible to us also.

48. It is also to be noticed that this accused has taken contradictory stand in regard to the recording of his confessional statement. In an application filed before the CJM he had contended that his signature was taken on a blank upper while in his Section 313 Cr.P.C. statement before the trial court he stated that his signature was taken on papers in which statement in Hindi was already written which statement he had not made. These two contradictory statements themselves are sufficient to belie the stand of the accused that the statement as per Ex.P-126 was not made by him.

49. We notice from the evidence of PW-42 and the endorsements made in Ex.P-126 that PW-42 had put all the required preliminary questions to this accused to find out the voluntariness of the statement and satisfied himself about the same. He had also cautioned this accused as to the consequences of making such statement and made it known to him that it was not mandatory for him to make such a statement. He has also attached a certificate that he was satisfied that the said

statement was voluntary as required by the Act and the Rules. The evidence on record clearly shows that PW-42 even though was in some way connected with the investigation has not shown any extraordinary interest in recording confessional statements. In this regard we may notice that PW-42 had also recorded the confessional statement of A-1 in this case and from a perusal of which we have held that there is no inculpatory admission of A-1 in that statement. If really PW-42 was the type of officer who will prepare false confessional statement he would have also indulged in such misconduct in the case of A-1 also. That apart, on behalf of A-2 no special reasons have been pointed out why PW-42 should have indulged in getting a false confessional statement. This also supports the case of the prosecution that the allegation of fabricated confession is an afterthought. That apart, as it happens very often it is the common defence of a person making confessional statement to deny the same or retract from the same subsequently and to allege compulsion in making such statement. In this background, we think the trial court rightly rejected the attack as to the genuineness of Ex.P-126. We are also of the opinion that the contents of Ex.P-126 are truthful and sufficient enough to accept the prosecution case as against A-2 and the same do not require any further corroboration. Be that as it may, ever otherwise the evidence led by the prosecution apart from the confessional statement in the form of oral evidence of PW-1 Sanjay Gaware and PW-24 G.P.S. Dhaliwal also establishes the involvement of A-2 in the crime, therefore, we are in agreement with the trial court that the prosecution has established the guilt of A-2 beyond all reasonable doubt.

50. At this stage, we may take note of the fact that accused A-7 to A-9 have also made confessional statements as per Ex.P-109, P-128 and P-129 and based on those statements, they have also pleaded guilty and have been convicted which conviction and sentence have become final since the same was not challenged. The court below has treated the statements found in these confessional statements as corroborative pieces of evidence to support the confession made by A-2. Learned counsel for the appellants have contended that a confessional statement of a co-accused cannot be used as a corroborate piece of evidence if the court comes to the conclusion that the confession of an accused requires corroboration from other sources to accept the same. In other words, the argument of learned counsel for the appellants is that confession of one accused cannot be used as a corroborative piece of evidence to support the confession of another accused. Their contention is that if corroboration is necessary then the same should be not from a confessional statement of a co-accused but should be from other sources. We do not think there is any force in this argument. As noticed hereinabove, Section 15 of the TADA Act has statutorily made the confessional statement of an accused as an evidence admissible against a co-accused, therefore, it is futile to contend that if corroboration is necessary to accept a confessional statement of an accused, the same cannot be found in another confession of a co-accused in the same trial, unless, of course, the Court on facts and circumstances of a case considers it necessary to seek corroboration from an independent source. However, if both the confessions are of such quality that the Court does not consider it safe to act on such confessions then like any other piece of evidence the confessions of co-accused cannot be used even for corroborating another confession of another accused on the principle that one doubtful piece of evidence cannot be corroborated by another doubtful piece of evidence. Therefore, in our opinion, an acceptable confession of a co-accused can be used as a corroborative piece of evidence in a trial under TADA Act, even to corroborate a confession of another accused in the same trial.

51. On facts of the case, learned counsel then argued that the confessional statements of accused A-7 to A-9 as per Ex.P-109, P-128 & P-129 are not made in the same trial in which these appellants were tried. They contend since accused A-7 to A-9 pleaded guilty, they were convicted by the trial court at the stage of recording of their pleas, therefore, the trial of those accused got separated from that of the appellants, hence the trial leading to conviction of A-7 to A-9 is different from the trial in

which the appellants were tried. This argument is based on the proviso to Section 15(3) of the TADA Act.

52. Learned ASG opposing this contention submitted that all these appellants including A-7 to A-9 were sent up for trial in one chargesheet, the Designated Court took cognisance of the offence against all these accused together, all charges were framed by a common order, the recording of pleas was also simultaneous and more importantly, there has been no order separating the trial of A-7 to A-9 from the other accused persons which includes the appellants herein. Learned counsel relied on Section 229 of the Cr.P.C. to contend that it is not always obligatory on the part of the trial court to convict a person at the stage of recording of the pleas based on his plea of guilt and the court has the choice of convicting accused persons who plead guilty either at the stage of recording of plea or even at the final stage when the trial in regard to the other accused persons concludes. Therefore, the mere fact that the trial court chose to convict A-7 to A-9 at the stage of recording pleas would not amount to separating their trial from that of the other accused including the appellants herein unless there was a separate order to the effect that the trial of A-7 to A-9 was separated.

53. Having considered the argument of learned counsel for the parties on this question we find no substance in this argument of the appellants. As contended by learned Additional Solicitor General, there has been no order separating the trial of A-7 to A-9 from that of these appellants and the facts narrated by learned A.S.G. clearly show that the same trial continued even after A-7 to A-9 were convicted based on their pleas. Therefore, the argument of learned counsel for the appellants that A-7 to A-9 were not tried in the same trial as the appellants cannot be countenanced.

54. In regard to the case of Jamel Ahmed, A-5, the argument of learned counsel for the said appellant is that apart from the confession of A-2 there is no material whatsoever to show that this appellant had any knowledge as to the purpose for which A-2 purchased the explosives. It is argued that A-2 was a regular customer of this appellant and was purchasing the explosives for the purpose of his professional work therefore assuming that some of the explosives sold by this accused person was proved to have been transported to Punjab for use by the terrorists, there is no material to establish that this accused had any knowledge that the explosives were meant for the use of terrorists, therefore this accused cannot be accused of either conspiring or abetting any terrorists activities. It was contended that A-5 is licensed dealer in explosives therefore it is in the normal course of his business he had sold the explosives to A-2. It is also contended that there is no material to connect the explosives seized at Bhilwara with the explosives sold by this appellant to A-2. It is also contended confession of A-2 being a confession of a co-accused, the same should not be relied upon without corroboration and there being no corroboration, the appellant is entitled to succeed in this appeal.

55. We have already considered the probative value of the confession of Didar Singh, A-2, made as per Ex.P-126 and have held that the same is made voluntarily and the contents are truthful. We have not accepted the contents of the said confession as against A-1 not because the contents are not truthful but because we felt it is prudent to seek some corroboration generally in the evidence led by the prosecution to support the contents of the confession of A-2 against his co-accused (A-1). In this background, if we discuss the confession of A-2 we find that he has stated that Jameel Ahmed A-5 owned a shop in Akola in the name of Asian Explosives and in July, 1989, A-5 met him and said that he would provide him with explosives for his work and requested him to buy explosives from him. It is thereafter Jameel Ahmed A-5 and his servant started delivering the explosives to him. It is the further statement in the said confession that A-5 used to come to Nanded once a month to collect the cost of explosives supplied and would find out the future requirement for the purpose of such

future delivery. A-2 also states in the said statement that A-5 was normally being paid in cash or when required A-5 used to sell him explosives on credit basis. It is the further statement of A-2 that around 28/29.11.1990 Jameel Ahmed A-5 came to his house when he told Jameel that terrorists of Punjab required 2-1/2 to 3 Qtls. of gelatine and 400 detonators and were ready to pay a sum of Rs. 1,000 per carton, A-5 agreed to sell the said quantity of explosives but told him that he did not have ready stock therefore he will make arrangements for the same. It is the further statement in Ex.P-126 that on 2/3.12.1990 A-2 made a telephonic call from Akola to telephone No. 4878 from a PCO to A-5 but he could speak only to Ismail Bhai A-6 father of A-5. He was told by said Ismail that A-5 had told him about A-2 but he had not received the goods then therefore they were not able to send the goods to Nanded. It is the further statement of A-2 that thereafter on about 9/10.12.1990 he again telephoned to A-5 but again could not talk to him but Ismail Bhai A-6 told him certain goods, detonators and Calcium Ammonia Nitrate bags will be sent to A-2 soon and that subsequently the said goods were delivered and stored in a room rented by A-2 at Usman Road. From the above confessional statement of A-2 it is seen that A-5 was known to A-2 and was supplying explosives knowing very well that A-2 had no licence for using the same. It can also be noticed that sometime around September, 1990 on a request being made by A-2 for supply of certain quantities of gelatine and detonators for use of terrorists in Punjab, A-5 knowing the object of purchase, agreed to supply the same. It is also to be noticed since it has come in evidence that the prevailing price of gelatine at that point of time was Rs. 650 per carton, A-5 had agreed to accept the enhanced amount of Rs. 1,000 per carton which is also indicative of the fact that A-5 knew that these explosives were being used for some more serious offences, rather than illegal blasting of rocks, because the price which he collected from A-2 for this supply was more than the price he used to get from A-2 for his normal purchase. It is further seen that whenever it was not possible for A-5 to be present at the time of delivery of explosives, he used to instruct his father Ismail Bhai A-6 to supply the explosives as agreed by him with A-2. Whether A-6 actually knew about the purpose of sale is different matter which we will consider separately when his case is taken up, but suffice it to notice at this stage that from the confession of A-2 it is established that A-5 knowingly that the explosives will be used by the terrorists of Punjab, supplied explosives to A-2.

56. The next question for our consideration then will be has the prosecution adduced any corroborative evidence in support of the confession of A-2 even generally, to persuade us to accept that part of the confessional statement which implicates A-5. In this process, it is seen that apart from the confessional statement there is the evidence of PW-1 Sanjay Gaware which shows that at time mentioned in the confessional statement, he had travelled to the shop of A-5 at Deepak Chowk along with A-2 and he was also present as stated in the confessional statement when A-2 gave money to Ismail Bhai A-6 as also while collecting the explosives from the magazine belonging to A-5. Evidence of this witness corroborates the statement found in Ex.P-126 to the extent that certain explosives were collected from the magazine belonging to A-5 and the costs of the said explosives were paid in the shop of A-5 to A-6 though A-5 was not present at the shop. The agreed price of the explosive of Rs. 1000 was known to A-6 because he was told so by A-5 therefore this fact corroborates the statement in the confession of A-2 that Rs. 1,000 per carton was agreed to be paid because the explosives were going to be used by the terrorists of Punjab. This apart, PW-14 in his evidence stated for the period between January, 1990 and December, 1990 (the relevant period) Asian Explosives of which A-5 was a partner, had not sent their statement/returns. This witness being Joint Chief Controller of Explosives was aware of that fact because he had examined the register of the firm of A-5. Evidence of PW-14 is further supported by evidence of PW-23 K.T. Lokhande who was Controller of Explosives at Nagpur at the relevant time who has also stated that Asian Explosives in its registers had kept the relevant columns blank, contrary to the requirements

of law which in the normal course would have recorded the batch No. and date of consignment received by it, which failure also indicates Asian Explosives of which A-5 was In-charge Partner was concealing the fact of receipt of explosives and the sale thereof to prevent the identification of the explosives sold by him to A-2. This omission in the register which pertains to the date when he sold the explosives to A-2 also indicates the guilty mind of A-5. Further the evidence of PW-30 who had rented 2 rooms to A-2 as also evidence of PW-24 Gursewak Pritam Singh (G.P.S. Dhaliwal) shows that A-5 was visiting A-2 at the relevant point of time. The fact that the prosecution has established that A-5 had supplied two bags of Calcium Ammonia Nitrate to A-2 also supports the prosecution case that the supply of explosives made by A-5 to A-2 was not for use by A-2 in rock blasting because the said Calcium Ammonia Nitrate is not an explosive which can be used for the said purpose of rock blasting as is evident from the report of chemical examiner.

57. From the above material we are satisfied that the prosecution has produced material which could be treated as evidence generally corroborating Ex.P-126 which in our opinion is sufficient to establish the guilt of A-5.

58. We now take up the case of A-6, father of A-5. In regard to this accused person, apart from the confession of A-2 Didar Singh as per Ex.P-126 the prosecution relies on the evidence of PW-1 Sanjay Gaware which according to the prosecution, sufficiently corroborates the confession of A-2. In his confessional statement as per Ex.P-126 A-2 has stated that after he struck a deal with A-5 as to the supply of explosives to be used by the terrorists in Punjab, he telephoned to A-5 sometime around 2/3.12.1990 but could get only his father Ismail Bhai (A-6) who told him that A-5 had told him about the supply of explosives but the ready stock was not available. Again on 9/10.12.1990 when A-2 telephoned A-6 told him that explosives will be sent as soon as possible. Then on 11.12.1990 when he went to the shop of A-5 he found A-6 was sitting there and when A-2 reminded A-6 about the telephonic talk A-6 told him that A-5 had told him about the same. The confessional statement at this stage states : "Ismail Bhai enquired from me as to whether I am talking about the same explosives which are to be given to the kharkuous of Punjab. On my saying, Ismail Bhai told me that Jameel (A-5) had already told him about this". The confession then goes on to say that A-6 collected the cost of explosives at Rs. 1000 per carton and in total Rs. 12,000 for 12 cartons. Thereafter he sent one of the employees of the firm with A-2 to the magazine of the firm to collect the explosives. The statement made in Ex.P-126 in regard to A-2 going to the shop, paying money to A-6 and A-6 sending a servant with A-2 to the magazine of the firm to collect the explosives is supported by PW-1 Sanjay Gaware but his evidence does not establish the statement attributed to A-6 in the confession that he asked A-2 whether the explosives are meant for terrorists of Punjab. If we could solely rely on the confession of A-2 then the contents of the same would certainly implicate A-6 also of the charges framed against him. But in view of the fact that we have as a measure of the prudence decided to seek corroboration to the confession of A-2, we find no corroboration in the evidence led by the prosecution for the fact that A-6 had knowledge that the explosives were being purchased by A-2 to be used by the terrorists of Punjab. De hors the statement in the confession, no other evidence is led to show that A-6 had the knowledge that the explosives are being purchased by A-2 to be used by the terrorists of Punjab. It is true that in regard to A-5 we have accepted the other corroborative piece of evidence, which could be argued is also available against A-6 but it is not so because A-6 is neither the owner nor partner of the firm which sold explosives to A-2, he was only helping his son A-5 in the transaction of the firm as and when required on a casual basis. When A-6 spoke to A-2 it has come in evidence that he specifically told A-2 that he will be informing A-2 of the arrival of explosives as desired by A-5. Even on the date when he collected the money and sent one of the servants of the firm with A-2 to collect the explosives, it has come in evidence that A-6 did so because he was told to do so by his son. Even the

excess amount collected by way of Rs. 1000 per carton from A-2 was done by A-6 because he was asked to do so by A-5. Thus there is no evidence even indirect other than the solitary statement found in the confession of A-2 that A-6 had the knowledge that the delivery of explosives was for and on behalf of Punjab terrorists. Since A-6 was not a partner of the firm, no adverse inference can be drawn against A-6 on the ground of the deliberate failure to make entries as to the receipt and sale of explosives in records of the firm. For these reasons we say that the prosecution has failed to produce any corroborative evidence in addition to the confessional statement of A-2 therefore by the standard adopted by us for relying on the confession of A-2 to base a conviction on the co-accused, we find it difficult to uphold the conviction of A-6.

59. For the reasons stated above, we allow Crl.A. No. 215 of 2003 filed by Gyani Pratap Singh and Crl.A. No. 1308 of 2002 filed by Ismail Bhai (A-6). If the appellants are in custody, they shall be released forthwith, if not required in any other case. If they are on bail, their bailbonds shall stand discharged.

60. We confirm the conviction and sentence imposed on Jameel Ahmed (A-5) in Crl.A. No. 1308 of 2002 as also on Didar Singh Saini in Crl. A. No. 1361 and the said appeals stand dismissed. If these appellants are on bail, their bailbonds shall stand discharged, and they shall be taken into custody to serve out the remainder of their sentences.

Appeals dismissed.