

# SUPREME COURT OF INDIA

Ahmed Shah Khan Durrani @ A.S. Mubarak S

Vs.

State of Maharashtra

Crl.A.No.1438 of 2007

(P.Sathasivam and Dr. B.S. Chauhan JJ.)

21.03.2013

## JUDGMENT

### **DR. B.S. CHAUHAN, J:**

1. This appeal has been preferred against the impugned judgment and order dated 30.5.2007, passed by Special Judge of the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') for the Bombay Blast, Greater Bombay, in the Bombay Blast Case No. 1/1993, convicting the appellant under Section 5 TADA, and awarding the punishment of 5 years RI, alongwith a fine of Rs.25,000/-, and in default of payment of fine, to further undergo RI for 6 months.

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

A. As the facts of this case and all legal issues involved herein have been elaborately dealt with in the connected appeal i.e. Criminal Appeal No. 1728 of 2007 [Yakub Abdul Razak Memon v. State of Maharashtra thr. CBI], it may be pertinent to mention only the relevant facts and charges against the appellant (A-20).

B. Bombay Blast took place on 12.3.1993 in which 257 persons lost their lives and 713 were injured. In addition thereto there had been loss of property worth several crores. The Bombay police investigated the matter at initial stage but subsequently it was entrusted to the Central Bureau of

Investigation (hereinafter referred to as 'CBI') and on conclusion of the investigation, a chargesheet was filed against a large number of accused persons. Out of the accused persons against whom chargesheet was filed, 40 accused could not be put to trial as they have been absconding. Thus, the Designated Court under TADA framed charges against 138 accused persons. During the trial, 11 accused died and 2 accused turned hostile. Further the Designated Court discharged 2 accused during trial and the remaining persons including appellant (A-20) stood convicted.

C. The appellant had been charged for general conspiracy which is framed against all the accused persons for the offences punishable under Section 3(3) TADA and Section 120-B of Indian Penal Code, 1860 (hereinafter referred to as '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 (I-A), (I-B)(a) of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act'), Sections 9-B(1)(a)(b)(c) of the Explosives Act, 1884. Sections 3, 4(a)(b), 5 and 6 of the Explosive Substances Act, 1908 and Section 4 of the Prevention of Damage to Public Property Act, 1984.

D. In addition to the general charge of conspiracy, he had also been charged under Section 3(3) TADA, under Section 5 TADA for keeping one AK-56 rifle plus two empty magazines and committed an offence in respect of the same under Section 6 TADA, and under Section 3(4) TADA read with Section 212 IPC, for harbouring criminals.

3. After conclusion of the trial, the appellant (A-20) had been convicted under Section 5 TADA, and awarded the sentence as mentioned hereinabove.

, this appeal.

4. Shri Sunil Kumar, learned senior counsel appearing for the appellant (A-20), has submitted that conviction of the appellant (A- 20) under Section 5 TADA, was not warranted in view of the fact that the recovery had not been proved in accordance with law. The disclosure statement alleged to have been made under the provision of Section 27 of the Indian Evidence Act, 1872 (hereinafter called 'Evidence Act') has not been strictly followed. The said alleged disclosure statement did not bear the signature of the appellant (A- 20). There were two panch witnesses, only one has been examined. The panch witness examined in the case had been a stock

witness in the police as he had appeared as a panch witness in other cases. He was the resident of an area in close vicinity of the office of the Crime Branch of the police department. The watchman of the Ghanshyam building from which the recovery had been made, has not been examined. None of the neighbours of that building have been examined as witnesses. There are material contradictions/omissions in the deposition of the witnesses. Even the case number has wrongly been mentioned. The L.A.C. No.22/93 had been manipulated and it was shown as L.A.C.No.23/93. Even the recovery of the AK-56 rifle does not give rise to the presumption of possession. It was further submitted that the confession of the appellant (A-20) had been obtained by coercion by severely beating him. Therefore, the appeal deserves to be allowed.

5. On the contrary, Shri Mukul Gupta, learned senior counsel appearing for the respondent, has vehemently opposed the appeal contending that the confession of the appellant (A-20) has not been relied upon by the Designated Court, therefore, it remains inconsequential. Only one of the panch witnesses had been examined in order to avoid multiplicity. Mere non-examination of the other panch witnesses would not make the case of the prosecution doubtful. The recovery had been made strictly in accordance with law and in case the recovery had been made at the instance of the disclosure statement and from the place on which the appellant (A-20) had control over, the presumption has rightly been drawn, particularly in view of the fact that the appellant (A-20) did not lead any evidence in defence. Thus, the appeal is liable to be dismissed.

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

7. Evidence against the appellant (A-20):

(a) Confessional statement of the appellant (A-20)

(b) Confessional statement of Murad Ibrahim Khan (A-130)

(c) Deposition of Mohamed Ayub Mohamed Umar (PW-72) (d) Deposition of Sahadev (PW-181)

(e) Deposition of Nagesh Shivdas Lohar (PW-356)

(f) Deposition of Shivaji Shankar Sawant (PW-524) (g) Recovery of AK-56 rifle and two magazines

Confessional statement of the appellant (A-20):

8. The confessional statement made by the appellant has not been relied upon by learned Special Judge. Therefore, we are not making any reference to it and it has to be ignored. More so, we do not find any force in the submission made by Shri Sunil Kumar that there had been two FIR's in respect of the same incident as a large number of remand applications had been filed and it is evident from the application that at initial stage it was shown as L.A.C. 23/93, but a correction had been made though without initials by the person who made the correction, but in his subsequent application it had been shown as L.A.C. 22/93. More so, the FIR number connecting this case is the same. Only one FIR had been exhibited in the court as Exhibit 1284-A dated 18.4.1993 and it contains case no. L.A.C. 23/93. Therefore, we do not think that the submission requires further consideration. Confessional statement of Murad Ibrahim Khan (A-130):

9. He had disclosed that he was fully acquainted with Yakub Yeda and the appellant (A-20). Thus, he was having acquaintance with hardened criminals.

Deposition of Mohamed Ayub Mohamed Umar (PW-72)

10. He is a panch witness and a hawker, selling fruits on the footpath near Crawford Market. He deposed that on 17.4.1993 at about 12.45 hours, he was called to the police station by a Hawaldar and there Constable, Shivaji Sawant, P.I. asked him whether he would like to act as a panch witness in a case related to the Bombay Blast. He consented for the same and one more panch witness was also present in the said room. In his presence, accused (A-20) disclosed his name as Salim Khan and he said in Hindi that he was in possession of one AK-56 rifle and two magazines in his workshop the recovery of which he would get effected. The witness further corroborated the entire version of the recovery

The witness further deposed that the police party alongwith the accused (A-20) and the panch witnesses proceeded in the police vehicle and towards the place disclosed by the appellant (A-20) and entered the building pointed out by the appellant (A-20). The said workshop had a loft and one staircase. One police officer went on the loft. Thereafter, all other persons followed him. On the directions of the appellant, cartons, scrap material and gunny bag

were found. The said gunny bag was turned out for emptying the same. One AK-56 rifle and two magazines were taken out of the said gunny bag. The AK-56 rifle and magazines were separately wrapped in brown paper and three packets were prepared and sealed separately. The packets were signed by him, co-panchas and Shri Sawant.

In cross-examination, the witness (PW.72) said that label put up on the recovered goods had his signature and the goods had been seized.

He further denied the suggestion made by the defence that he was the regular panch witness for the police. However, he had admitted that occasionally, he had worked as such and he had been a panch witness in other cases.

Deposition of Shivaji Shankar Sawant, P.I. (PW-524)

11. He deposed that on 17.4.1993, he was interrogating the appellant (A-20) who was arrested in C.R. No. 71/93 alongwith some other police officials. During the said interrogation, the appellant (A-20) consented to make the voluntary statement and in the presence of the panch witnesses and other police officials, the appellant (A-20) made a disclosure statement in Hindi. He recorded the same in the panchnama. The panchnama was read over to the appellant (A-20) and the panch witnesses. It was signed by the panch witnesses and countersigned by him (A-20). He disclosed that the appellant (A-20) had consented to show the place and take out AK-56 rifle and two empty magazines kept by the appellant (A-20).

He further deposed that panchnama of the recovery from the workshop of the appellant (A-20) was correct. The same bears his signature and the signatures of panch witnesses and it was completed on 18.4.1993.

He was a Police Inspector and working as a Dy. S.P. for Protection of Civil Rights, Unit Bombay. He clarified the correction regarding L.A.C.Nos. 22/93 and 23/93 and explained that there was a correction on the L.A.C. numbers. However, he had admitted that he had made that correction while registering the said case though it did not bear his initials and he was not in a position to give any reason for not putting his initials and correction was necessary as there had been some typographical error. He further stated that he arrested the accused formally in L.A.C. No. 23/93 at 1.25 a.m. on 18.4.1993. In paras 65 and 66, he deposed that he did not register any L.A.C.

No. 22/93 and also did not know the name of officer who had registered L.A.C. 22/93.

Deposition of Sahadev (PW-181):

12. He deposed that on 14.5.1993, he received requisition from Worli Police station for recording the confessional statement of the appellant A-20 and he had proved the said confessional statement.

Deposition of Nagesh Shivdas Lohar (PW-356)

13. He has deposed that on 17.4.1993, he alongwith Shivaji Sawant and one Head Constable interrogating the appellant (A-20) in case No.C.R. 71/93. He corroborated that Shri Sawant had asked the appellant (A-20) whether he wanted to make the voluntary statement. Thereafter, appellant made the statement in Hindi. He recorded the statement of the appellant in Hindi in the panchnama which was marked as Exh. 378 and is the same panchanama recorded by him about the statement of appellant (A-20) between 17th and 18th April, 1993.

14. The recovery of the AK-56 rifle and two magazines had been made on 17th/18th April, 1993 and in respect of the same panchanama Exh. 383 makes it clear that Farid Alam Rais Alam Qureshi and Mohamad Ayub Mohamad Umar had been the panch witnesses and in their presence the appellant (A-20) voluntarily made a disclosure statement that the AK- 56 rifle was kept in his workshop. This panchnama was concluded at 23.10 hours on 17.4.1993. The panchnama has been signed by both the witnesses as well as by the Inspector of Police, Shri S.S. Sawant. However, it does not bear the signature of the appellant (A-20). It further shows that in continuation of the same, the search was conducted and it reveals that after making the disclosure statement, the police had taken the accused alongwith the panch witnesses to a closed workshop named as 'Bona Parte' industry belonging to him. The said workshop was having its shutter down and locked and in absence of the key the police forced open the lock and opened the same. The panchas alongwith the accused (A-20) and the police party entered the workshop and found that there was no electricity however, they found that the loft measured approximately 16' x 40' had a loft with a staircase. The appellant (A-20) led all of them to the loft by staircase. On reaching there the appellant (A-20) took out a box and scrap was removed. One AK-56 rifle and empty magazines were found wrapped in gunny sack. The police examined the said material and prepared the recovery memo. The recovery memo contained one AK-56 assault rifle of folding

type butt, in rusted condition but had been greased and two magazines of AK-56 assault rifle with no identification marks and numbers and it was in rusted condition and greased.

15. The Designated Court after appreciating the evidence on record came to the conclusion as under:

“A-20 having not explained the reason of his knowledge of such a contraband articles being kept in a said factory of which he was partner the same will lead only to the inference of himself having kept the same. The same is obvious as A-20 could have knowledge about the same in three contingencies i.e. a) he had kept the contrabands himself b) having seen somebody keeping the same there c) somebody had told him that the same being kept at the said place or having seen himself of such articles being kept at that place. In view of failure of A-20 to give any explanation regarding his knowledge being due to the reasons as stated in the aforesaid clauses b) and c) the same will lead to the conclusion as stated aforesaid. With regard to matter stated in clause c) aforesaid it can be additionally added that since the accused was also partner of the said shop allowing the remaining of such articles at the said place would also attract the liability for the same....]

The same is the case regarding the submission advanced on the basis of A-20 at the time of recovery not having the key of the relevant gala.

In light of the aforesaid discussion it is difficult to accept the submission canvassed that the evidence only establish the knowledge of A-20 of the contraband material lying at the said place and the same does not amount to himself being in conscious possession of the same. Needless to add that the inferences flowing from the statement made by A-20 consciously are not of a nature of denoting himself not being in conscious possession of contraband articles within the notified area....”

16. We have appreciated the evidence on record and the case depends upon the veracity of evidence regarding recovery.

There is sufficient material to show that the recovery had been made at the behest of the appellant (A-20) from the factory owned by a partnership to which he was the partner alongwith one Surjit Singh. In such a fact-

situation, he ought to have explained the reason/source of his knowledge of such contraband articles being kept in his factory.

17. In the instant case, as he has not mentioned that he had seen someone keeping the articles there, or somebody had told him about that, or he had seen the things lying there, the only reasonable inference is drawn that he himself had kept the same at that place. Being a partner of the firm if he was having the knowledge that some contraband were lying in his premises, he ought to have informed the police if he had no guilty mind.

18. So far as the explanation that at the time of recovery he did not have the key, would not be enough to tilt the balance in his favour. The fact that he did not have the key becomes totally redundant, as no conclusion can be drawn that the appellant (A-20) was not in possession of the said premises, and in such a fact-situation, it cannot be held that the appellant (A-20) was not in conscious possession of the contraband material.

19. We do not find any force in the submissions made by Shri Sunil Kumar, learned senior counsel appearing for the appellant (A-20), that the panch witness was the resident of Sitaram building, which was opposite to the office of the Commissioner of Police, or in a very close proximity of the same, and was working on the footpath nearby the said building, and he had acted earlier as a panch witness in test identification parade.

20. The police when searching for a panch witness, need not go to far off place of the police station as the panchnama is required to be recorded in a close proximity of time, when the accused apprehending his disclosure statement. Therefore, on such material suspicion about the credential of the police or panch witnesses cannot be doubted, unless there is some material to prove the contrary. Had it been picked up from a far off place, criticism could have been otherwise as to why the panch witness could not be called from neighbourhood.

21. The panch witness Mohamed Ayub Mohamed Umar (PW-72) could not be held to be a tutored witness or acting at the behest of the prosecution only on the ground that he had also been the witness in another case. It does not give a reason to draw inference that he was a stock panch witness unless it is shown that he had acted in such capacity in a very large number of cases.

22. More so, it cannot be held that Mohamed Ayub Mohamed Umar (PW- 72) was not an independent witness, or acting under the pressure of the police as he was carrying the business illegally without any license. More so, the appellant (A-20) had made the disclosure statement in his presence, he could explain the same. Therefore, it could not be held that he was deposing falsely.

23. We do not see any reason as to why his evidence should not be relied upon. Minor omissions/contradictions regarding labeling and sealing are not really the contradictions which go to the root of the matter. Non-examination of the watchman of Ghanshyam Industrial Estate, or omission of factor regarding electricity being not mentioned in the panchnama, or non-collection of broken lock, are the omissions of trivial nature, and do not warrant any undue importance for doubting the evidence of recovery.

24. Law does not require the witness to corroborate the evidence of an independent witness. Thus, the evidence of Mohamed Ayub Mohamed Umar (PW-72) duly corroborated by the contemporaneous panchnama is trustworthy.

25. As the appellant (A-20) made a statement leading to the discovery of AK-56 assault rifle and two magazines having kept in his workshop and the same had been found concealed on the loft, he cannot escape from the liability of possessing and concealing of the same, thus liable to be punished under Section 5 TADA. We see no reason to interfere with the conclusion drawn by the learned Designated Court. The appeal is accordingly dismissed. CRIMINAL APPEAL NO.912 OF 2007

Aziz Ahmed Md. Ahmed Shaikh

Vs.

State of Maharashtra

26. This appeal has been preferred against the judgments and orders dated 11.10.2006 and 31.5.2007, passed by Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, in the Bombay Blast Case No. 1/93, by which the appellant had been found guilty under Section 5 TADA and on that count, he was sentenced to suffer RI for 5 years, and ordered to pay a fine of Rs.25,000/-, and in default of payment of fine, to suffer further RI for 6 months.

He (A-21) was further convicted under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of the Arms Act, but no separate sentence was awarded for the same.

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

A. In addition to the first charge of general conspiracy, he was charged for attending conspiratorial meetings at Dubai where criminal conspiracy was discussed for distributing arms and ammunition to co- conspirators and for providing funds to them. Thus, he (A-21) was charged under Sections 3(3) and (4) TADA. Further, he (A-21) was charged with unauthorisedly being in possession of one U.S. Carbine 0.300 with three magazines and 28 cartridges in the notified area under TADA, between January 1993 and 5th April, 1993, and thus, charged under Sections 5 and 6 TADA, and further under the provisions of Sections 3 and 7 read with Sections 25(-A), 25(1-B)(a) of the Arms Act.

B. After the trial, the appellant (A-21) stood acquitted of all the charges except charges under Section 5 TADA and under the Arms Act. Hence, this appeal.

28. Shri Mushtaq Ahmad, learned counsel appearing for the appellant has submitted that the appellant had wrongly been involved in the offence and convicted, though there is no sufficient evidence on record, to involve the appellant in the crime. The evidence particularly the confessional statement of the appellant and the depositions of other witnesses particularly, Bhaskar Babu Rao Jadhav (PW-57), Dayandeo Sonaji Geete (PW-320), Vijay Meru (PW-561), and Shivajirao Kondiram Babar (PW-683) etc. are not worth reliance. The confessional statement of the appellant cannot be relied upon, as it was not made voluntarily and truthfully. The appeal deserves to be allowed.

29. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that the appellant was a close associate of Tiger Memon (AA). He was fully involved in the entire episode including the conspiracy. He has wrongly been acquitted for the said charge. Thus, no interference is called for. The appeal is liable to be dismissed.

30. We have heard learned counsel for the parties and perused the record.

31. Evidence against the appellant (A-21):

- (a) Confessional statement of the appellant (A-21)
- (b) Deposition of Bhaskar Babu Rao Jadhav (PW-57)
- (c) Deposition of Dayandeo Sonaji Geete (PW-320)
- (d) Deposition of Vijay Meru (PW-561)
- (e) Deposition of Shivajirao Kondiram Babar (PW-683)

Confessional Statement of appellant (A-21):

32. His (A-21) confessional statement had been recorded, however, the same had been discarded by the Designated Court, thus it cannot be considered. The evidence against the appellant (A-21) remains the recovery of the aforesaid arms and ammunition. In fact, an FIR had been registered on 5.4.1993 at 6.10 p.m. that the appellant (A-21) was found in possession of a Carbine of 30 Caliber of U.S. make, three magazines and 28 cartridges without holding a fire arms license. It was further revealed that on that day, the police got information that the appellant (A-21) who was a resident of Pydhonie, Mumbai was scheduled to come near a mosque opposite Pydhonie Police Station to acquire arms and ammunition of foreign make. On that information the trap was arranged near the Pydhonie Police Station. At about 1.30 p.m. the trap party received the pre-decided signal, on which the appellant (A-21) was searched, however he was not carrying any arms and ammunition with him. He was brought to the DCB, CID office and during interrogation he expressed his willingness to make a voluntary statement. Therefore, two panchas were called from the nearby area and in their presence, the appellant (A-21) disclosed that he had acquired two Carbines of foreign make and some arms and ammunition from one Mujahidan and one of the said Carbine had been concealed at Naryalwadi, Mazgaon. The appellant (A-21) led the police party and Panchas to Naryalwadi Muslim Cemetery (Kabaristan), Mazgaon and from the said graveyard he took out one gunny bag duly tied with a rope. It had been concealed in thickly grown trees and shrubs. On being examined, one single barrel Carbine, 28 cartridges and 3 magazines were found. Panchnamas have made for his disclosure statement as well as for recovery of the said articles.

Deposition of Bhaskar Babu Rao Jadhav (PW-57):

33. He is a panch witness. He supported the case of the prosecution and proved the disclosure statement of the appellant (A-21) as well as the recovery made at his behest. He gave a full description of how the appellant (A-21) made the disclosure statement and how the recoveries were made. It corroborates the version given in the FIR. However, in his cross-examination, he (PW-57) stated that he (PW-57) had prepared the notes for deposing in the court. He had given full details of the incident of 5.4.1993. In cross-examination he had admitted that he had also acted as a panch witness in 3 more cases.

Deposition of Dayandeo Sonaji Geete (PW-320):

34. His deposition revealed that he had accompanied the appellant (A- 21) at the time of recovery alongwith others. He admitted in his cross- examination that he himself had not made any entry in the Station Diary regarding the information received by Senior P.I. Shri Kumbhar about the appellant (A-21). He has further deposed that he could not remember the manner in which the panch witness arrived in the office. The said panch was brought by the police havaldar. The appellant (A-21) had been detained in the office of DCB, CID under suspicion due to the receipt of information that he was to be at Pydhonie for acquiring arms. He also deposed that the office of the Bombay Municipal Corporation was inside the Naryalwadi Kabristan from where the recovery had been made at the instance of the appellant (A-21). He further proved the recovery and denied the suggestions that the appellant (A-21) did not make any disclosure statement nor any recovery had been made at his behest. He has also identified appellant (A-21) in the court.

35. The deposition of Dayandeo Sonaji Geete (PW-320) has been fully corroborated by another police official Vijay Meru (PW-561) in all respects. However, he has admitted that he had not made any entry in the Station Diary regarding the information received by Senior P.I. Shri Kumbhar, nor he was aware how the panch witness arrived and who was the police havaldar who brought the panch witnesses. However, he (PW-561) deposed that he had detained the appellant (A-21) on information that he was to be at Pydhonie for acquiring arms. Appellant (A-21) came there at about 1.30 p.m. and on getting the signal, the police party pounced upon him and apprehended him. Appellant (A-21) was searched but he was not carrying any weapon, however, one Ceiko watch, his driving licence, labour card bearing his photograph of Arab Emirates and some Dirhams and a silver ring were found with him. The inventory of the said articles was prepared and they were seized. The currency in Dirhams was of the value of Rs. 13 to 14 thousand Indian rupees. He was interrogated by A.C.P. Shri Babar

(PW-683) and Senior P.I. Shri Kumbhar. It was during his interrogation that appellant (A-21) expressed his desire to make the voluntary statement regarding fire arms. Thus, two panches were called. The suspect was introduced to the panches. The memorandum panchnama was prepared in respect of his disclosure statement. It was signed by panch witnesses and, thus, he supported the recovery of the articles as narrated by the other witnesses. He had proved the complaint as well as the proforma FIR on the basis of the said complaint. PW.561 registered the said offence as LAC No. 18 of 1993 against the appellant (A-21) for the offences punishable under Sections 3 and 7 read with Section 25 of the Arms Act. Though he was competent to answer as to whether the panch witnesses had been stock witnesses or whether there was any discrepancy in drawing the memorandum panchnama but defence did not ask any question during his cross-examination. He (PW-561) identified the appellant (A-21) on 24.4.1998 in the court and he has denied the suggestion made by the defence that the appellant (A-21) had not made any disclosure statement, nor the recovery of arms had been made on his disclosure statement.

Deposition of Shivajirao Kondiram Babar, ACP (PW-683):

36. In his deposition, he revealed that he had received the information about appellant (A-21) that he would get the weapons near a mosque opposite police station Pydhonie. He had received the information from a secret source on telephone, he recorded the same and passed on the same to the senior officers. He deposed that on 5.4.1993 while he was in his office at Crawford Market, he had received the information from his source on telephone to the effect that appellant (A-21) involved in Bombay blast case was in possession of fire arms and would be available at Pydhonie. Immediately thereafter, he formed a team of police officers and staff and went to the Pydhonie and arrested the appellant (A-21), brought him to the office of DCB, CID at Crawford Market and he (A-21) was interrogated. This witness further supported the prosecution case that he made a desire to make confession voluntarily etc. etc.

37. The recovered material was sent for FSL, and the report Ext. 1940-A was received. According to which US Carbine gun and 28 cartridges sent for FSL were examined. The carbine gun was found in working condition, and it was capable of chambering and firing the cartridges recovered in that offence. So, the report was positive.

38. The appellant (A-21) made a complaint before the Designated Court, and the court directed his medical examination. He was examined and again sent on police remand.

39. After appreciating the entire evidence, the learned Designated Court came to the conclusion as under:

“Since criminal conspiracies are hatched in secrecy and it is extremely difficult to collect the direct evidence about the same the established principles of law indicate that the standard of a proof requiring such type of cases is loosened, unnecessary hard standards regarding the identity of a particular person can't be expected.. ...Thus, considering in proper perspective all the said evidence, no other conclusion will emerge of A-21 having committed all the offences for which he is charged with on the account of commission of overt acts, but the same will lead any prudent man to the legitimate conclusion of A-21 having committed the aforesaid acts for the purposes of furthering the object of conspiracy.”

40. In view of above, the Designated Court found him guilty and imposed the punishment as referred to hereinabove. We find no reason to interfere with the directions of the Designated Court. The appeal is accordingly dismissed.

CRIMINAL APPEAL NO. 1030 OF 2012

State of Maharashtra Through CBI

Vs

Ahmad Shah Khan @ Salim Durani

41. This appeal has been preferred against the judgments and orders dated 11.10.2006 and 31.5.2007, passed by the Special Judge of Designated Court under the TADA, in the Bombay Blast Case No.1 of 1993, by which the respondents (A-20 and A-21) had been convicted under Section 3(3) TADA, and acquitted of the main charge of conspiracy.

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

A. In addition to the main charge of general conspiracy, the respondents were additionally charged under Section 3(3) TADA for facilitating the

commission of terrorist activities etc., as they had agreed to send persons for receiving training in arms, ammunition and explosives and making arrangements by harbouring and concealing their conspirators/terrorists for consideration of money from Tiger Memon (AA). They had further been charged with receiving and keeping in possession of one AK-56 rifle and two empty magazines with intention to use and commit terrorist acts. Further, under Section 5 TADA, for possessing the said AK-56 rifle; under Section 6 of TADA, in respect of the same AK-56 rifle; and lastly, for harbouring and concealing co- accused Javed Chikna, Yakoob Yeda and others terrorists/co- conspirators at Tonk, Rajasthan after the Bombay blast on 12th March, 1993.

B. Both the respondents (A-20 and A-21) had been found guilty for the offence punishable under Section 5 TADA, and awarded the punishment of five years, and ordered to pay a fine of Rs.25,000/- and, in default of payment of fine, to suffer further R.I. for six months. But acquitted for the charge of conspiracy. Hence, this appeal.

43. Shri Mukul Gupta, learned senior counsel appearing for the appellant, has submitted that in spite of the ample evidence against the said respondents (A-20 and A-21) in view of their involvement in conspiracy, the court below committed the grave error in discarding the same. The evidence requires total re-appreciation and the confessional statements of the respondents (A-20 and A-21) and other co-accused have to be taken into consideration. Therefore, the appeal deserves to be allowed.

44. On the other hand, Shri Mushtaq Ahmad, learned counsel appearing for the respondents (A-20 and A-21), has submitted that their confessional statements have rightly been discarded as the same had been recorded in utter disregard to the statutory provisions. The appeal lacks merit and is liable to be dismissed.

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

46. The confessional statements of Ahmad Shah Khan @ Salim Durani (A- 20), Shaikh Aziz Ahmed (A-21), Moiddin Abdul Kadar Cheruvattam (A-48) and Ismail Abbas Patel (A-80) had been relied upon by the prosecution. The same stood discarded completely by the learned Special Judge on the ground that all the confessional statements had been recorded by the Police officer in utter disregard

to the mandatory provisions of Section 15 TADA and Rule 15 of TADA Rules, 1987. The police officer failed to inform the said accused persons while recording their respective statements that they were not bound to make confessional statement and further failed to warn that, in case, they made statements, the same would be used as evidence against them. More so, the required certificate was not attached to the said statements.

47. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

48. In view of the fact that no legal evidence which could be relied upon by the prosecution is available on record, we do not find any fault with the impugned judgment and order. The appeal lacks merit and is liable to be dismissed. More so, the respondents (A-20 and A- 21) have filed appeals, as referred to hereinabove, and they have served 4 years of sentence and deposited the fine. The appeal stands dismissed.?

CRIMINAL APPEAL NO. 1311 OF 2007

Yusuf Khan @ Kayum Kasam Khan

Vs.

State of Maharashtra (through CBI, STF)

AND

CRIMINAL APPEAL NO. 417 OF 2011

State of Maharashtra ...Appellant

Vs.

Yousaf Khan Kasam ... Respondent

Criminal Appeal No. 1311 of 2007

49. This appeal has been preferred against the judgments and orders dated 11.10.2006 and 31.5.2007, passed by the learned Special Judge of the Designated Court under the TADA, in the Bombay Blast Case No.1/93. The appellant (A-31) was charged with general charge of conspiracy, and in addition thereto, he was further charged for participating in landing and transportation of the arms, ammunition and explosives smuggled into India by the conspirators and co-accused at Shekhadi and further for transporting the RDX explosives in his motor tempo No. MCU 4409, which was part of the said consignment and unloaded the same in the godown of co-accused Liyakat Ali Habib Khan (A-85) at MIDC, Thane. The appellant (A-31) was convicted under Section 3(3) TADA, and sentenced for 5 years rigorous imprisonment, alongwith a fine of Rs. 25,000/-, and in default of payment of fine, to suffer further RI for 6 months.

Hence, this appeal.

50. Ms. Farhana Shah, learned counsel appearing on behalf of the appellant, has submitted that the appellant (A-31) has been wrongly convicted for the offences under TADA and the Arms Act. The confessional statements of the co-accused could not be relied upon for the reason as it has been obtained by coercion and it

could not be held to be useful and truthful and, therefore, no worth reliance. The panch witnesses could not be relied upon as they were not the natural witnesses i.e. resident of the said area. Thus, appeal deserves to be allowed.

51. Per contra, Shri Mukul Gupta, learned senior counsel appearing on behalf of the State, has opposed the appeal contending that the stand fully established by the evidence on record, particularly, because of the confessional statements of appellant (A-31), A-64, A- 128 and further stand corroborated by the evidence of PW-2, PW-62 and PW-604. Thus, no interference is called for.

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

53. Evidence against the appellant (A-31) :

- a) Confessional statement of Nasir Abdul Kader Kewal (A-64)
- b) Confessional statement of Shahnawaz Khan (A-128)
- c) Deposition of Usman Jan Khan (PW-2)
- d) Deposition of Padmakar Krishna Bhonsle (PW-62)
- e) Deposition of Ajit Surve (PW-604)

Confessional statement of Nasir Abdul Kader Kewal (A-64):

54. In his confessional statement, he (A-64) has revealed that he had been associated in smuggling activities and had been participating in landing and transportation alongwith co-accused. He had earlier worked in Saudi Arabia and after coming back settled in Bombay. His father-in-law Gulam Dastgir used to run the business of Matka at Bandra and thus, he (A-64) also joined the said business. Subsequently, he came in association of the smugglers and started helping them in landing and transportation. He participated in landing and transportation from Shekhadi on 7.2.1993 and said that the associates of Tiger Memon (AA) were present including appellant (A- 31). At the instance of Tiger Memon, the bags of

arms and explosives brought from the trawler were loaded in a tempo driven by appellant (A- 31).

Confessional statement of Shahnawaz Khan (A-128):

55. Confessional statement of Shahnawaz Khan (A-128) revealed that he participated in landing on 7.2.1993. He (A-128) alongwith co- accused brought the smuggled goods at Seashore and they found that two tempos were already parked there. One tempo was being driven by appellant (A-31). The smuggled goods were being loaded in both the tempos. Tiger Memon (AA), Javed Chikna (AA) and Yeda Yakoob (AA) opened the sacks. The accused (A-128) saw that it contained rifles, hand-grenades and bags containing black coloured powder in it. Bullets were also there. Subsequently, those tempos were unloaded at a building with a tower. The goods were reloaded in the cavity of Commander jeeps. The said vehicles (Jeeps) left for Bombay. One tempo though empty followed the jeep.

56. Usman Jan Khan (PW-2) identified the appellant (A-31) in the court. Usman Jan Khan (PW-2) deposed that appellant (A-31) participated in transportation of smuggled articles. He deposed that on the relevant date they came out of the hotel after having the meal and noticed that Javed Chikna (AA) and Yeda Yakoob (AA), were standing near the white coloured tempo which was being driven by appellant (A- 31). Tiger Memon(AA) told Usman Jan Khan (PW-2) to take a seat in the said tempo with the appellant (A-31). He (PW-2) sat in the tempo and they followed Tiger Memon (AA) and reached Shekhadi Coast at 9 p.m. The smuggled goods had already arrived at the Coast. The same were wrapped in gunny bags. On the instruction of Tiger Memon (AA), the goods were loaded in the two tempos, one of them was being driven by appellant (A-31). The goods were brought by the said tempo to Wangni Tower and were unloaded there. It was at Wangni Tower that the goods were opened and the witness could see AK-56 rifles, its rounds, handgrenades, pistols, magazines and RDX. They were reloaded in the cavity of the jeeps parked there.

57. Padmakar Krishna Bhonsle (PW-62) is the panch witness of the recovery of the vehicle and identified the vehicle recovered by Police Inspector, Anil Prabhakar Mahabole (PW-506). It was recovered at the disclosure statement of the appellant (A-31).

58. Ajit Shivram Surve (PW-604), the Police Officer attached with DCB, CID who had been sent to get the samples prepared on 30.11.1993 by P.I. Shri Pharande, and

he corroborated the incident of collection of samples as described by Asit Binod Ghorai (PW-602). He also named 3 persons who collected the samples as Kulkarni, Malve and Surve. He (PW- 604) further deposed that he prepared the panchnama which was duly signed by the panch witnesses.

59. One application under Section 457 of Code of Criminal Procedure, 1973 was filed by the appellant (A-31) before the Designated Court for release of the tempo and the same was allowed. However, the court passed the order that the vehicle should be thoroughly examined by experts as to whether it contained any traces of the RDX. It was in view thereof, 3 experts took samples on 30.11.1993 and the report dated 12.1.1994 detected traces of RDX. This was corroborated by panch witness, Asit Binod Ghorai (PW-602).

60. After conclusion of the trial, the learned Special Judge came to the conclusion that considering the confessions of the co-accused, Nasir (A-64) and Shahnawaz (A-128), as well as the statement made by Usman (PW-2) there can be no conclusion other than the fact that the appellant (A-31) was involved in the Shekhadi landing and the transportation operation.

61. After going through the evidence on record i.e. the confession of the co-accused (A-64 and A-128) as well as the deposition of the various prosecution witnesses, we find no merit in this appeal. Therefore, it is accordingly, dismissed.  
Criminal Appeal No. 417 of 2011

62. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by Special Judge of the Designated Court under the TADA for Bombay Blast Case No.1 of 1993. The charge against the respondent (A-31) had been framed mainly for conspiracy. He was further charged with abetting and knowingly facilitating the commission of terrorist activities during the period of December, 1992 to April, 1993 by involving himself in landing and transportation of arms, ammunition and explosives smuggled into India by his co- conspirators and the role played by the respondent (A-31) had been, transporting the said explosives landed at Shekhadi by his motor tempo No. MCU 4409 from Alibagh to Thane, which was unloaded in the godown of co-accused Liyakat Khan at MIDC.

63. After the trial, the said respondent (A-31) had been convicted for the main charge under Section 3(3) TADA for transportation of the said explosives and awarded punishment of five years with a fine of Rs.25,000/- but has been acquitted of the charge of conspiracy. Hence, this appeal.

64. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that in addition to the general charge of conspiracy, the respondent (A-31) had been charged for assisting Tiger Memon (AA) and his associates in smuggling of arms, ammunition, handgrenades and explosives and its landing and transportation from Shekhadi on 7.2.1993. The respondent was present at the instance of Tiger Memon and had transported the said contraband in his vehicle. Therefore, as the respondent had been aware of the nature of the contraband, he cannot escape the liability of charge of conspiracy. Thus, the appeal deserves to be allowed.

65. Mr. Mushtaq Ahmad, learned counsel appearing for the respondent (A-31) has submitted that he is merely a transporter and not an associate of Tiger Memon, so he could not be involved in the charge of conspiracy. Thus, the appeal is liable to be dismissed.

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

67. The learned Special Judge dealt with the issue and came to the conclusion that in spite of the fact that the respondent (A-31) transported the contraband in his tempo and took the same to a far distance but there was nothing on record to show that he had knowledge of the kinds of goods transported in his tempo.

68. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

69. From the evidence on record, it becomes clear that Yusuf Khan Kasam (A-31) had participated in landing operation of contraband goods at Shekhadi as he was one of the persons who accompanied Tiger Memon and others and he had also been to Wangni Tower alongwith other associates and contraband material were loaded in tempo. The tempo was taken by him alongwith absconding accused to Mumbra as instructed by Tiger Memon (AA). This version is duly supported/corroborated by Shah Nawaz Khan (A-128) (Ex. 1569-A) and by the evidence of Usman (PW- 2). However, there is nothing on record to show that he was aware as of what kinds of contraband were being transported in his tempo.

70. We are of the considered opinion that no further interference is required and appeal lacks merit and is, accordingly, dismissed.

CRIMINAL APPEAL NO. 1610 OF 2011

Uttam Shantaram Potdar

Vs.

State of Maharashtra

AND

CRIMINAL APPEAL NO.398 OF 2011

State of Maharashtra ...Appellant

Vs.

Uttam Shantaram Potdar ... Respondent

71. Criminal Appeal No.1610 of 2011 has been preferred against the judgment and order dated 23.5.2007 passed by Special Judge of the Designated Court under the TADA, for Bombay Blast, Greater Bombay, in the Bombay Blast Case No. 1/1993, by which the appellant has been convicted under Sections 3(3) and 6 TADA.

72. Criminal Appeal No.398 of 2011 has been filed by the State against the order dated 2.8.2007 by which A-30 stood acquitted of the first charge of larger conspiracy.

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

A. In addition to the main charge of conspiracy, the appellant (A- 30) was charged for overt acts by abetting and knowingly and intentionally facilitating the smuggling the landing of arms, ammunition, hand grenades and explosives in India at Dighi, Mhasla, District Raigad on 9.1.1993. This was done by providing his truck No. MH-06-5533 and mobilizing men, material and resources in connivance with the customs officers and police officials by bribing them and facilitating the safe movements of arms, ammunition and explosives by piloting the motor truck, thus the offences

punishable under Section 3(3) TADA and under Section 6 TADA have been committed.

B. Further, the provisions of the Arms Act, the Arms Rules, the Explosive Act, 1884, Explosive Substance Act, 1908 and the Explosive Rules, have also been contravened, by facilitating the smuggling, landing and transportation of arms etc.

C. After the conclusion of the trial, appellant (A-30) was acquitted of the umbrella charge of conspiracy including of the charge under Section 120B IPC etc. However, he was convicted for charges under Sections 3(3) and 6 TADA. He has been awarded a sentence to undergo R.I. for 10 years alongwith a fine of Rs.50,000/- and in default of payment of fine, to further suffer RI for one year under Section 3(3), and to undergo 14 years R.I. alongwith a fine of rupees one lakh and in default of payment of fine, to further suffer RI for three years under Section 6 TADA.

74. It is pertinent to mention that the appellant (A-30) has already served 14 years imprisonment, and has also deposited the fine. However, the appeal has been preferred by him only to get an acquittal, so as to remove the stigma attached to being convicted for offences as mentioned hereinabove. The State has also filed appeal against his acquittal of the first charge of conspiracy.

75. Shri C.U. Singh, learned counsel appearing for the appellant has submitted that the appellant has wrongly been enroped in the crime. The evidence on record falls short to prove the charges against him. The confessional statements are not admissible as had not been recorded in accordance with law. Thus, the appeal deserves to be allowed, and the stigma of the appellant is to be removed.

76. Shri Mukul Gupta, learned senior counsel appearing for the State has opposed the appeal contending that the appellant was a close associate of Tiger Memon (AA) and his associates. He was involved not only in landing and transportation, but in the larger conspiracy. Thus, the State has filed appeal against the order of his acquittal on the charge of conspiracy. Therefore, the appeal filed by the appellant is liable to be dismissed, and appeal filed by the State deserves to be allowed.

77. We have heard learned counsel for the parties and perused the record.

78. Evidence against the Appellant (A-30):

(a) Confessional statement of appellant (A-30) (b) Confessional statement of Janardhan Pandurang Gambas (A-81) (c) Confessional statement of Jaywant Keshav Gurav (A-82) (d) Confessional statement of Mohd. Sultan Sayyed (A-90) (e) Confessional statement of S.S. Talwadekar (A-113) (f) Confessional statement of Mohd. Kasam Lajpuria @Mechanic Chacha (A-136)

(g) Confessional statement of Jamir Sayyed Ismail Kadri (A-133) (h) Confessional statement of Salim Kutta (A-134) (i) Confessional statement of Faki Ali Faki Ahmed (A-74) (j) Deposition of Dilip Pansare (PW-97)

(k) Deposition of Vyankatesh Hirba (PW-588)

(l) Deposition of Dinesh Nakti (PW-95)

Confessional statement of appellant (A-30):

79. The evidence against the appellant (A-30) is his own confession made on 12th/15th of July, 1993. He has stated throughout that he was a landing agent and involved in smuggling. However, he had no knowledge that arms were being smuggled and he participated in the same, taking it to be smuggling of silver only. The confessional statements of co-accused do not speak of the knowledge of the appellant (A-30) regarding the smuggling of arms and they too, have only deposed about smuggling of silver.

In view of the discussion in Criminal Appeal no.1728 of 2007, the date of the recording of the confession has no bearing so long as the accused are being tried for the same crime in the same trial. After the amendment, confessional statement of co-accused Jamir Sayyed Ismail Kadri (A-133), Salim Kutta (A-134) and Mechanic Chacha (A-136) had been recorded. Jamir Kadri (A-133) stated in his confession on the basis of hearsay that his brother Shabbir had told him that arms would be smuggled into the city, and that the same was also within the knowledge of the appellant (A-30).

His confessional statement was recorded by A.K. Chandgude, Deputy S.P (PW-670) wherein the appellant (A-30) has stated that he was well acquainted with other smugglers like Mohd. Dossa (AA) and Mechanic Chacha (A-136), and he had been acting as a landing agent in smuggling

activities for these smugglers, for a long time. He (A-30) had also participated alongwith the other co-accused like Salim Kutta (A-134) and Mechanic Chacha (A-136) in the smuggling of contraband and in providing landing and transportation facilities on 3.12.1992. On 4.12.1992, he was contacted by Assistant Collector (Customs) R.K. Singh (A-102) through a Customs Sepoy. On reaching there at 8.00 pm, R .K. Singh, Assistant Collector, Custom (A-102) called him in the cabin and asked about the landing that had been made on the previous day upon replying he was told to wait with Custom Inspector Gurav (A- 82). He (A-30) went to Mohd. Dossa on 5.12.1992 and explained to him , and to Mechanic Chacha (A-136), the entire incident. Mechanic Chacha (A-136) gave him (A-30), some money to be paid to the Mhasla Custom Staff, the Shrivardhan Custom Staff, the Murud Custom Staff and also to R.K. Singh (A-102). On the same day he (A-30) handed over the money to some of them.

Subsequently, it was revealed that the rates that were to be paid to the police officers as well as the customs officers per landing were fixed, and were also revised from time to time, and the appellant (A-30) had been very much involved in making the payment. Therefore, it is clear that he (A-30) enjoyed a higher status in the hierarchy of the gang of smugglers, and that he had been assigned an important role of negotiating with customs officers and police officers, to remove any hindrance in the said smuggling. It is also clear that payments were made through him (A-30). The appellant (A-30) confessed, that on 9.1.1993 he, alongwith co-accused Salim Kutta (A-134) and Mechanic Chacha (A-136) had participated in the landing of smuggled goods and when they were coming to Dighi Jetty, on the way he had also met Gurav (A-82), who was driving his jeep. Thereafter, their vehicles were intercepted by Patil (A-116) an Inspector, near Gondghar Phata. In order to negotiate a safe passage for the smuggled goods, Mechanic Chacha (A-136) offered him a sum of Rs.10 lakhs, and when they were asked about the contents of the wooden boxes, Mechanic Chacha (A-136) stated that the same contained watches. On the said day, they had no cash and, therefore, Mechanic Chacha (A-136) took out five silver bricks from the first truck and gave them to Shri Patil, SI of Shrivardhan. The appellant (A-30) drove Gurav's jeep (A-82) and came to Kanghar. There they shifted 170 bricks in the cavities of two trucks from Bombay. After loading the smuggled goods in the truck, the appellant went to Shabbir's residence alongwith Salim Kutta (A-134), Feroz and the driver. They removed 80 bricks from the cavity of the first truck from Bombay, and placed them in this truck. The appellant

(A-30) left a message at the residence of Patil (A-116), stating that he would come with money on the night of the 10th of the month. Thus, he (A-30) subsequently met the said S.I. and it was decided that he would pay a sum of Rs.5 lakhs to the Havalgars and Rs.2 lakhs to the SI separately, and the said amount was paid by the appellant (A-30). Further, in his confessional statement he has revealed that the truck bearing No. MH-06-5533 which was used on 9.1.1993 did not belong to him. One Dilip Hegiste was the registered owner of the said vehicle.

Thus, it is clear that in his confessional statement, the appellant (A-30) does not say anything to the effect that he had no knowledge with respect to the smuggled arms.

Confessional statement of Janardhan Pandurang Gambas (A-81):

80. In his confessional statement he has revealed the presence of the appellant (A-30) and also has deposed about his (A-30) participation in the landing and transportation of the smuggled goods. However, the goods were silver and gold, and it was the appellant (A-30) who had taken the said witness for the landing. He has stated that in addition to the silver and gold and rods kept in the gunny bags, there were 30 black military coloured boxes which were unloaded from the trawler and Mechanic Chacha (A-136) cautioned the labourer to handle the same with care, as the goods were made of glass.

Confessional statement of Jaywant Keshav Gurav (A-82):

81. He was working in the Customs Department at Mahad, and it was his job to prevent illegal smuggling along the sea coast and to nab the smugglers by gathering secret information against them, and further, to register cases against the smugglers. He (A-82) has stated that he had been helping smugglers by taking bribes and facilitating their landing and also the transportation of the smuggled goods. He had a settlement with Rahim Laundriwala that he would be paid Rs.1,60,000/- for silver landing and that the witness would be informed of such landings in advance. The appellant (A-30) had met him in June 1992 and told the witness that he was a landing agent working at Dighi Jetty and that he had informed him (A-82) that there would be landing at Dighi Jetty of silver, by Mohd. Dossa. The smuggled goods would come from Dubai and he (A-82) would be paid Rs.65,000/- for the said landing and appellant (A-30) had paid him this money

after passing the said smuggled goods. This witness has corroborated the confessional statement of the appellant (A-30).

In respect of the incident dated 3.12.1992, i.e. his meeting with R.K. Singh, Assistant Collector, Customs (A-102) where he had bargained for a higher amount, as R.K. Singh (A-102) had told him (A- 82) that he must go to the appellant (A-30) and bring back a sum of Rs.2.5 lakhs. After discussing the same with the appellant, he (A-82) went to Bombay and here he was paid Rs.2.5 lakhs which was to be paid to R.K. Singh (A-102) and Rs.1.5 lakhs was to be paid to the Superintendent. He collected this money and paid the same to the said officers.

In respect of the incident dated 9.1.1993 the witness revealed that he had been informed by R.K. Singh (A-102) that on the said day, Mohd. Dossa would smuggle the goods and that the landing would take place at Dighi Jetty and that he (A-82) must assist him. On that day, the appellant met this witness and informed him regarding the landing that would take place at the night at Dighi Jetty and has thus corroborated the confessional statement of the appellant (A-30) to the extent that they had in fact met in the said manner and that it was the appellant (A-30) who had negotiated with Patil (A-116). It has further been revealed that the appellant (A-30) had driven the car of A-82.

Confessional Statement of Mohd. Sultan Sayyed (A-90):

82. He is S.P. Raigad. In his confessional statement he has corroborated the version of events provided by the appellant, regarding the association of the smugglers with R.K. Singh, Assistant Collector (A-102) and making regular payments of illegal gratification. He has also stated that it was the appellant (A-30) who had been negotiating with the customs and police officers to revise the rates per landing. He (A-90) had accepted a bribe from the appellant (A-30) of Rs.1 lakh out of the total amount of Rs.3.5 lakhs that was paid by the appellant to R.K. Singh (A-102).

Confessional Statement of SS Talwadekar (A-113):

83. He has also corroborated the confessional statement of the appellant regarding silver at Shekhadi sea-coast, in collusion with the customs and police officers including J.K. Gurav (A-82). He has revealed that he had been facilitating the

smugglers in their landings and transportation, and he has also accepted that he had received Rs.1.6 lakhs as was decided earlier for the first landing, for the second and also third landing. He has also admitted to accepting the said amount.

So far as the incident dated 9.1.1993 is concerned, he has named the appellant (A-30) who met him (A-113) and paid him a sum of Rs.40,000/- out of the settled amount of Rs.1.25 lakhs.

Confessional Statement of Mohd. Kasam Lajpuria @ Mechanic Chacha (A-136):

84. His statement corroborates the statement of Salim Kutta (A-134) to the extent that Uttam Potdar (A-30) was the landing agent, and that the accused had (A-136) met Uttam Potdar (A-30) at Mhasla. He (A-136) further corroborated the version of events which included the interception of contraband by the Shrivardhan police; the negotiation of the bribe by Uttam Potdar (A-30); and further the giving of five silver bricks to the police as security.

Confessional Statement of Jamir Sayyed Ismail Kadri (A-133):

85. He has stated that he is the elder brother of Shabbir. He knew the appellant (A-30) who was at that time, working for Mohd. Dossa. During a marriage in his family on 10.1.1993 when a large number of his relatives were visiting, Salim Kutta (A-134) and his friends Feroz and his brother Shabbir had come to his house on a Yamaha Motor Cycle alongwith the appellant (A-30). The appellant (A-30) left after having a discussion with his brother, Shabbir. Shabbir told him (A-133) that silver and weapons would arrive at Dighi Jetty on that day, and this landing was to be supervised by the appellant (A-30). After some time, Shabbir and the other co-accused Salim (A-134), Feroz and the appellant (A-30) started talking about the unloading of the goods to be brought, and after discussing the same for a while, the appellant (A-30) went out to make arrangements for the unloading of the concerned goods. It was on that day that he learnt that the goods were being sent by Mohd. Dossa.

On 9.1.1993 at 7.00 p.m. Shabbir, Salim (A-134) and Feroz left for Dighi Jetty to unload the smuggled goods. He (A-133) stayed at home. They returned at 5 a.m. with three wooden boxes, which were kept by them in the hall of the house, and he then slept there. From their conversation, the witness learnt that there were 300 ingots of silver in total, each of them

weighing 30 Kgs. and 19 ingots which could not be loaded in the truck, and the same were then hidden in the open land of one Subedar who was at the said time, living in Nairobi. On 10.1.1993, the appellant (A-30) came to his house during the night and spoke to Salim (A-134) and Shabbir and went away. From their discussion he (A-133) understood that silver and weapons had been smuggled at Dighi Jetty on the previous night.

He (A-133), alongwith others, brought 19 silver ingots and 15/20 green coloured bags containing tin boxes in a bullock cart, and kept them in their house and then fell asleep. After about two days, Afzal Gadbad, who works in the office of Mohd. Dossa in Bombay, came there and took away the said silver ingots in a jeep. However, the tin boxes remained there. After about a month, upon being asked by Shabbir, the said tin boxes and bags were taken to the first floor of the house of Ali Mian Faki, which was in close proximity to their house. Janardhan Pandurang Gambas (A-81) who is a resident of that area, and a fisherman who had participated in the smuggling with Shabbir, the appellant (A-30) and Abdulla Surati told the witness that the smuggled goods also contained weapons alongwith silver ingots.

Confessional Statement of Salim Kutta (A-134):

86. He has corroborated the confessional statement of the appellant (A-30). However, he (A-134) did not say anything to show that the appellant (A-30) had knowledge regarding the contents of the boxes, particularly as regards the weapons. He stated that the appellant (A-30) was present during the landing at Dighi Jetty and had made arrangements for labour and a boat. After the loading of the landed goods on vehicles, the appellant (A-30) had also participated in negotiations with the police upon being interception by them.

Confessional Statement of Faki Ali Faki Ahmed (A-74):

87. He (A-74) corroborated the fact that the appellant (A-30) was a landing agent and a resident of Mhasla, and that the appellant (A-30) was well acquainted with Shabbir and Jamir (A-133) who were involved in smuggling activities.

88. Deposition of Dilip Pansare (PW.97) – In his deposition, he reveals that he was a childhood friend of the appellant (A-30) and had been working in a government department. However, he had driven the truck containing smuggled goods. He has also deposed that upon interception by Inspector Patil (A-116), a discussion ensued

for half an hour, amongst the appellant (A-30), Gurav (A-82), Shabbir Kadri and Inspector Patil (A-116). He identified the truck, though the owner and the driver of the truck were neither made accused, nor witnesses in this case.

89. Deposition of Vyankatesh Hirba (PW.588)- He was the officer who had effected the seizure of the Tempo bearing number MH-06-5533 on 12.4.93. The appellant (A-30) in his confession has stated that the said tempo was used to transport contraband items which were landed at Dighi Jetty.

90. Deposition of Dinesh Nakti (PW.95) speaks of silver ingots and wooden boxes. He identified the appellant in court

91. A conjoint reading of the confessional statement and deposition of witnesses reveal that appellant (A-30) had been an associate of Mohd. Dossa (AA) and was aware of the fact that Mohd. Dossa (AA) was involved in criminal activities. A-30 was also associate of co- accused Mechanic Chacha, Shabbir, Salim, Feroz and Jamir Sayyed Kadri. A-30 has been working as a landing agent for Mohd. Dossa and others by arranging boats and coolies. A-30 was called to Mhasla on 4.12.1992 wherein he disclosed about the previous day landing to R.K. Singh (A-102), Custom Officer. Subsequent to the said meeting, A-30 received Rs.6.25 lacs from A-136 and paid Rs.1 lac to Mhasla Custom staff, Rs.1.5 lacs to Shrivardhan Custom staff, Rs.1.25 lac to R.K. Singh, Custom Officer. A-30 made arrangements for boats and coolies for another landing scheduled for 9.2.1993 and went to Dighi Jetty on his motorcycle on 9.2.1993. He met Custom Inspector Gurav (A-82) and started driving jeep of Gurav. When the trucks carrying contraband smuggled goods were intercepted by police team headed by PSI V.K. Patil, A-30 told Mr. Patil that the money for earlier landing had been paid to Mali Havaldar who was also member of that police team. It was in his presence that Mechanic Chacha (A-136) offered Rs.10 lacs to PSI Patil and as they did not have money, they gave him 5 silver bricks as a security. A-30 alongwith others shifted 170 bricks in the cavity of two trucks of Bombay and 80 silver bricks were transferred from one truck to another at the residence of Shabbir (AA). He also went to the residence of Shabbir. A-30 left the message at Shrivardhan Police Station that he would come with money on the night of 10.2.1993. In his presence Rs.2 lacs were paid to Patil, PSI at Shrivardhan Naka and Rs.5 lacs were paid to Havaldars. A-30 received Rs.3 lacs from Feroz on the same night to hand it over to Custom Officer of Alibagh and he handed it over to R.K. Singh and Sayyed.

92. After appreciating the evidence on record, the learned Designated Court reached the following conclusions:

?“.....However considering further events which had occurred at Ghonghar Patta i.e. interception of goods by police, allowing the same to be further proceeded after negotiations with smugglers, presence of A-30 who was one of the main person, or effecting landing, his role in the said episode, it is difficult to perceive that at the said juncture A-30 would not have gathered the knowledge of contraband material. Needless to add that in cases of conspiracy it is difficult to expect to have direct evidence and the inference about certain aspects is required to be drawn from established facts circumstances.

Thus having regard to all the aforesaid facets it is difficult to accept that at least at the said place A-30 would not have gathered the nature of contraband goods also sent along with smugglers. It is true that the said further acts committed by A-30 being in the nature of continuing job for which he had agreed i.e. effecting the silver landing the same may not make him liable for being party to the conspiracy to commit the terrorist act or the larger conspiracy for which the charge at head 1st ly is framed. Such a conclusion is obvious as hardly there exists any other material denoting that after completion of job of landing transportation, A-30 having committed any act furthering object of ally conspiracy. However, still now the further act being committed by A-30 being with an expressed knowledge that the contraband material was containing arms ammunitions he will be squarely liable for commission of offence u/s 3 (3) of TADA. Similarly the quantity of the said arms ammunition and the further acts actually committed by A-30 would also make him liable for commission of offence u/s.6 TADA.

..... ?Thus considering the said aspect it will be extremely difficult to accept that policemen would not have been aware about the nature of said goods in trucks which were in the said trucks i.e. silver and arms ammunitions as established by evidence. Such an inference is inevitable as such evidence pertaining to landing clearly denotes of the material being of two different categories i.e. boxes and bachkies i.e. bundles. Having regard to the same it is difficult to perceive that during inspection of trucks at least parcels from each category would not have been inspected by policemen.

.....Having regard to aforesaid even assuming that police party had permitted the said trucks to proceed away without inspection then also they cannot escape the liability arising out of said illegal omission committed by them. In view of the same the knowledge of the nature of contraband goods will be required to be presumed for them.

Now considering the liability of A-136 as revealed from the earlier discussion but without once again repeating the dilution made earlier it can be said that the same having revealed that A-136 had become aware about the nature of goods after he was told regarding the same and the direction of accused Mustafa Dossa by A-134. As dilated earlier, it is clear that though A-136 had continued with the said operation i.e. the operation of smuggling for which he had agreed earlier and in the process having committed the offence u/s.3 (3) of TADA still he cannot be said to be guilty for the offence of conspiracy to which A-134 was said to be party. Needless to add that considering the acts committed by A-136, his liability remained confined to having committed the offence u/s.3(3) and Sec. 6 of TADA.

The case of A-30 also appears to be similar to that of A- 136 i.e. himself being not aware since the beginning of the goods to be smuggled being arms ammunitions and having acquired the knowledge about same during the midst of operation but in spite of the said knowledge having continued the said operation giving rise to the liability for commission of offence u/s. 3(3) Sec. 6 of TADA. At the cost of repetition it will be required to be added that A-136 and A-30 having committed the relevant acts in the month of Jan., 1993 on the dates on which even Tiger Memon had not disclosed his intent regarding the places at which the explosions were to be committed in Bombay and ?themselves having not committed any act other than completing the smuggling operation for which they had agreed they cannot be held guilty for any offence of conspiracy though would be liable for commission of offences as stated aforesaid.”

93. The confession of A-134 does not show that the appellant (A-30) was aware of the contents of the contraband goods were arms and ammunition, either prior to the landing or thereafter. However, considering the event of interception of the said goods by the police and the presence and involvement of the appellant (A-30) in negotiations with the police for clearing the said smuggled goods, it is difficult to believe, that at the said time, the appellant (A-30) did not have knowledge regarding the contraband material. The confession of A-133 however reveals that

he (A-133) had overheard the appellant (A-30) discussing the contents of the contraband after the items had landed.

In case of conspiracy, it is difficult to find direct evidence and thus, inference is required to be drawn from established facts and circumstances.

Hence, it is difficult to accept, that in the said circumstances the appellant (A-30) was unaware of the nature of the smuggled goods. The acts that were further committed by the appellant (A-30), were in the nature of continuing his job in effecting the landing of silver, and the same may not make him liable as a party to the conspiracy to commit terrorist acts. However, certain other acts that were committed by him (A-30), with the express knowledge that the contraband material did in fact contain arms and ammunition, would make him liable for commission of offence under Section 3(3) TADA. Furthermore, the quantity of arms and ammunition, and the further acts committed by the appellant would also make him liable for commission of offence under Section 6 TADA.

94. The examination of the appellant (A-30) under Section 313 of Cr.P.C. reveals that he had assisted in the landing of goods at Dighi Jetty on 9.1.1993, and that he had taken the stand of being involved in the landings of silver even prior to the said event, and that he did not know the nature of the goods that were landed in the said landing. The evidence of PWs 95 and 97 corroborates the fact that landing had occurred at the said time and place. Their evidence reveals that the goods were packed in boxes, or in green coloured cloth bag that had been tied at the mouth, and that thus, they were not aware of the contents. They had acted at the behest of the appellant (A-30) for which they had received payment.

95. The appellant (A-30) was aware that the smuggled goods were arms and ammunition, and even after acquiring such knowledge, he had continued the landing of the said smuggled goods. This makes him liable for commission of offences under Section 3(3) and 6 TADA.

96. His (A-30) role is akin to that of Mechanic Chacha (A-136). Thus, we do not find any force in the appeal and it is accordingly dismissed.

97. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

98. The evidence on record made it crystal clear that A-30 was not only a close associate of Tiger Memon (AA) and acting as a landing agent, but a man of confidence who could negotiate with the police and customs officials to fix the amount of bribe for facilitating the smuggling and transportation of the smuggled contraband. He was a person who had negotiated with the police at Gondghar Phata. He had been fully aware of the nature of contraband, and in spite of coming to know that the contraband contained arms, ammunition and explosives, he continued to help the smugglers. It is also evident that he had close association with Jaywant Keshav Gurav (A-82), officer of the customs department, who had been helping the smugglers by taking a bribe through A-30. Therefore, in view of the above, we do not concur with the findings of fact recorded by the learned Designated Court that A-30 could not be convicted for conspiracy.

99. In the facts and circumstances, the appeal filed by the appellant (A-30) is dismissed, and appeal filed by the State through CBI is allowed. Appellant (A-30) is convicted for the offence under Charge I, and awarded the life imprisonment. The Designated Court is directed to take him into custody and send him to Jail to serve out the remaining sentence, if any.

CRIMINAL APPEAL NO. 1420 OF 2007

Mohd. Rafiq @ Rafiq Madi Musa

Biyariwala

Vs.

State of Maharashtra

AND

CRIMINAL APPEAL NO. 1031 OF 2012

The State of Maharashtra thr. CBI

Vs.

Mohd. Rafiq @ Rafiq Madi Musa Biyariwala

Criminal Appeal No. 1420 of 2007

100. This appeal has been preferred against the judgment and order dated 31.5.2007, passed by Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, by which the appellant (A-46) has been convicted under Section 3(3) TADA. However, Criminal Appeal No.1031 of 2012 has been filed by the State against the said judgment as A-46 stood acquitted of the charge of larger conspiracy.

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

A. In addition to the main charge of conspiracy, the appellant (A- 46) was charged for participation in landing and transportation of arms, ammunition, hand grenades and explosives like RDX to be used in Bombay blast on 12.3.1993.

B. He was further charged for abetting and participating in terrorist activities as the appellant participated in the month of February 1993 alongwith co-conspirators in the landing of arms, ammunition and explosives at Shekhadi. Further he (A-46)alongwith co- accused Asgar Mukadam drove other co-accused to Sahar Airport who had gone for training to Pakistan. Further he delivered motor vehicle having arms, ammunition and explosives at the residence of Amjad Aziz Meharbux and thereby committed a separate offence punishable under Section 3(3) TADA.

C. The appellant was further charged under Section 6 TADA for possessing and transporting arms, ammunition and explosives like hand grenades and detonators from Shekhadi to Bombay in an unauthorized manner.

102. The appellant (A-46)has been convicted under Section 3(3) TADA, and given a sentence of R.I. 5 years and a fine of Rs.25,000/-and in default of payment of fine, to suffer further imprisonment of six months; under Section 6 TADA, a sentence of R.I. 7 years and a fine of Rs.50,000/- and in default of payment of fine, to further suffer one year RI. Both the sentences were directed to run concurrently. Hence, this appeal.

103. Shri Mushtaq Ahmad, learned counsel appearing on behalf of the appellant, has submitted that the appellant (A-46) has wrongly been enroped in the crime, he was no where involved. The confessional statements of the appellant as well as the

co-accused could not be relied upon as it has been obtained by coercion and it could not be held to be useful and truthful. More so, the learned Designated Court failed to appreciate the evidence in correct perspective. Therefore, appeal deserves to be allowed.

104. Per contra, Shri Mukul Gupta, learned senior counsel appearing on behalf of the State, opposed the appeal contending that the appellant had been deeply involved, not only in the landing and transportation of the smuggled goods, but being a very close associate of Tiger Memon(AA), was involved in the conspiracy also for which he has wrongly been acquitted. The evidence on record fully established his involvement in the crime. Thus, appeal lacks merit and is liable to be dismissed.

We have heard learned counsel for the parties and perused the record.

105. Evidence against the appellant (A-46):

- a) Confessional statement of Rafiq Madi(A-46)
- b) Confession of Asgar Yusuf Mukadam @ Munna (A-10)
- c) Confession of Abdul Gani Ismail Turk (A-11)
- d) Confession of Parvez Nazir Ahmed Shaikh (A-12)
- e) Confession of Dawood Taklya Mohammed Phanse (A-14) f) Confession of Dadabhai (A-17)
- g) Confession of Shahnawaz Abdul Kadar (A-29)
- h) Confession of Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64) i) Confession of Altaf Ali Mustaq Ali Sayed (A-67) j) Confession of Gulam Hafiz Shaikh @ Baba (A-73)
- k) Confession of Mubina @ Baya Moosa Bhiwandiwala (A-96) l) Confession of Parvez Mohmed Parvez Zulfikar Qureshi @ Parvez Kelewala (A-100)
- m) Deposition of Usman (PW-2)

Confessional statement of Rafiq Madi(A-46):

106. In his confessional statement, appellant (A-46) has deposed that he used to work as driver for Tiger Memon's family and sometimes, when he was unemployed, used to sell clothes or cassettes on footpath. He worked as driver of Mushtaq Abdul Razak Memon @ Ibrahim @ Tiger for about 10-12 months. Tiger Memon (AA) had been involved in Hawala business and smuggling of gold and silver from Dubai. The appellant (A-46) used to participate in landing and transportation of the smuggled goods and was being paid Rs. 2500/- as salary per month and Rs.3000 to 4000 per landing in addition to salary. Tiger's office stood closed due to riots in Bombay in December 1992 and January 1993, thus, the appellant lost his work like a large number of other youths. One day when he went to the house of Tiger for collection of his salary for December, 1992 he (A-46) was directed to go out for Tiger's work. Appellant (A-46) was not willing to go for the work as he was not feeling well, however being poor he went because of offer of money. Appellant (A-46) went in a jeep alongwith Tiger, Yakub Yeda, Javed Chikna, Usman and his associates for landing of smuggled goods. Dawood Taklya (A-14) was present there alongwith his associates. They waited the whole night but the smuggled goods did not come. They came back and stayed in a Hotel and in the evening they went to the landing point but the articles did not arrive that night also. They came to Alibaug and stayed in a hotel for 2-3 days. On 3.2.1993 night, the appellant alongwith others proceeded from Alibaug and reached the place of landing. Tiger and Yakub were also there. Appellant (A-46) after taking the smuggled goods, which was in boxes came to the Tower in the jeep at 11.30 p.m. On being asked, Shafi told that the boxes contained electronic goods. On 4.2.1993 appellant (A-46) went to the house of Dadabhai (A-17) where Shafi asked the appellant (A-46) to load the articles from the tower. Appellant (A-46) alongwith Dadabhai (A-17) and Shafi reached the tower with a truck and Maruti van and loaded the truck with 59 gunny bags and covered the same with empty gunny bags. Shafi left from there taking the truck. The appellant (A-46) and Dadabhai (A-17) went to the house of Dadabhai (A-17) and slept after having the dinner. On 5.2.1993 the appellant (A-46) went to Mahad and then to Nagothane in Maruti van. The vehicle being driven by Shafi was left at Nagothane. Appellant (A-46), Shafi and Dadabhai (A-17) left for Alibaug to bring Mohd. Hussain. From there Shafi left by jeep instructing the appellant (A-46) to reach at Bandra Talab with Maruti Van near in the evening. There the appellant (A-46) would exchange the van with a jeep given by Riaz. On 6.2.1993 the appellant (A-46) met Anwar at 11 O'Clock in the morning near his house. They went to bungalow of Meharbux (Discharged

Accused) at Mahim in that vehicle. The appellant (A-46) was asked to remove the jeep and park it at the house of Meharbux.

Confession of Asgar Yusuf Mukadam @ Munna (A-10)

107. Asgar Yusuf Mukadam @ Munna (A-10) in his confessional statement has involved appellant (A-46) to the effect that he had been working for Tiger Memon (AA) and he dropped the co-accused (A-10) to Sahar Airport from where A-10 alongwith others went to Dubai.

Confession of Abdul Gani Ismail Turk (A-11)

108. Abdul Gani Ismail Turk (A-11) has disclosed in his confessional statement that appellant (A-46) participated in the landing at Mhasala made by Tiger Memon (AA).

Confession of Parvez Nazir Ahmed Shaikh (A-12)

109. Parvez Nazir Ahmed Shaikh (A-12) stated in his confessional statement that appellant (A-46) was present at Al Husseini Building and money had been paid to (A-46) in his presence.

Confession of Dawood Taklya Mohammed Phanse (A-14)

110. Dawood Taklya Mohammed Phanse (A-14) disclosed that appellant (A-46) told him that his ticket had been booked and he had to leave for Dubai on the same day.

Confession of Dadabhi (A-17)

111. Dadabhai (A-17) disclosed that he alongwith appellant (A-46) and Shafi facilitated and participated in transfer of smuggled goods from Wangni Tower to Bombay.

Confession of Shahnawaz Abdul Kadar (A-29)

112. Shahnawaz Abdul Kadar Qureshi (A-29) disclosed that appellant (A-46) was among the persons who participated in several landings. Appellant (A-46) had come to his residence and told him that his tickets were ready. He (A-46) was

present at the airport and a sum of Rs. 50,000/- was paid to him for distribution among other co-accused.

#### Confession of Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64)

113. Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64) has disclosed that in January, 1993 he had seen appellant (A-46) waiting for co-accused and appellant (A-46) was always seen with Tiger Memon (AA) and used to communicate Tiger's messages. A-46 was also present at the Al- Husseini Building in the intervening night between 11th/12th March, 1993 when the RDX was filled up in the vehicles.

114. Bashir Ahmed Usman Gani Khairulla (Bashir Electrical) (A-13), Altaf Ali Mustaq Ali Sayed (A-67), Gulam Hafiz Shaikh @ Baba (A-73), Gul Mohammed @ Gullu Noor Mohmed Shaikh (A-77), Mubina @ Baya Moosa Bhiwandiwala (A-96) and Parvez Mohmed Parvez Zulfikar Qureshi @ Parvez Kelewala (A-100) have also named the appellant A-46 giving details of his involvement in landings etc.

#### Deposition of Usman Jan Khan (PW-2)

115. Usman Jan Khan (PW-2) has identified the appellant (A-46) in court and also disclosed that he was active participant in landing and transportation.

116. The Designated Court after appreciating the entire evidence on record came to the conclusion that the appellant (A-46) actively participated in the Shekhadi landing and transportation operation of contraband goods i.e. AK-56 rifles, ammunition, RDX etc. smuggled into the country by Tiger Memon (AA). Confession of the appellant (A-46) revealed that he was in employment of the Memon family, however he had been to Shekhadi landing. It could not be accepted that the appellant (A-46) was not aware of illegal business of Tiger Memon (AA) or about the nature of the contrabands smuggled into India. The presence of the appellant (A-46) at the place where the goods were exchanged, at Wangni Tower and concealed into cavities of vehicles for transportation to Bombay, shows that he was a person of very close confident of Tiger Memon (AA). The appellant (A-46) handed over a motor vehicle containing arms and ammunitions at residence of Amjaz Abdul Aziz Meherbux (A-68).

Confessions of co-accused clearly established the involvement of the appellant (A-46) along with Asgar (A-10) for taking co-accused persons,

who were sent for training to Pakistan via Dubai, though he may not be aware of the purpose for which the co-accused were sent to Dubai.

In view of the above well reasoned judgment, we do not find any evidence on record to warrant interference in the conclusion drawn by the Designated Court. The appeal lacks merit and is accordingly dismissed.

Criminal Appeal No. 1031 of 2012

117. This appeal has been filed by the State against the acquittal of the respondent of the charge of larger conspiracy.

118. On the first charge, the learned Designated Court considered the entire evidence as referred to hereinabove and came to the conclusion: "However hardly there being cementing material for establishing nexus of A-46 with conspiracy for which he is charged with and material having remained confined of himself having committed of aforesaid offences, it will be difficult to hold him liable for conspiracy for which he is charged with. The same is obvious as hardly there is any material indicating A-46 having committed any other acts because of which he is said to have further object of conspiracy for which he is charged with."

119. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

120. In view of the above, the appeal is liable to be dismissed.

CRIMINAL APPEAL NOS. 675-681 OF 2008

Suleman Mohamed Kasam Ghavte

Vs.

State of Maharashtra thr. STF, CBI Bombay

121. These appeals have been preferred against the judgments and orders dated 11th, 12th, 16th, 17th October, 2006, 23rd /24th May, 2007 and 1st June, 2007 passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1 of 1993, by which the appellants have been convicted. In view of the fact that each appellant being assigned different acts, has been charged

differently and has been awarded a different sentence, it is desirable to deal with the case of each appellant separately to certain extent.

I. Suleman Mohammed Kasam Ghavte (A-18):

122. The appellant(A-18) has been convicted on two counts under Section 3(3) of TADA, and has been awarded 7 years rigorous imprisonment alongwith a fine of Rs. 25,000/- and in default of payment of fine, to suffer further RI for 6 months on each count.

123. In addition to the first charge of conspiracy, he has been charged for the following offences:

(i) That he has participated alongwith the other conspirators in the landing and transportation of arms, ammution and explosives at Shekhadi, and has smuggled goods into the country to be used for the commission of terrorist acts.

(ii) That, he alongwith co-accused Abdul Rehman Shaikh (A-28) and others transported RDX explosives in Motor Tempo No. MMP-4799 from Shekhadi to Panvel, and the same contained goods that were smuggled into the country by Tiger Memon (AA) and his associates for the purpose of committing terrorist activities.

(iii) That he participated in weapons' training at Sandheri/Borghat. Thus, he has been charged under Section 3(3) TADA and has been convicted and sentenced as mentioned hereinbefore.

124. Ms. Farhana Shah, learned counsel appearing for the appellant has submitted that the appellant was unaware of the fact that the items being landed were those other than silver, and that he realized this fact only later. Furthermore, his confession had not been made voluntarily, but under threat and coercion. Thus, the appeal deserves to be allowed.

125. On the contrary, Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that the appellant has been named by several witnesses of the Shekhadi landing. Moreover, the said vehicle had been seized and the FSL report was also positive as regards the presence of RDX. Therefore, the appeal deserves to be dismissed.

126. We have heard learned counsel for the parties and perused the record.

127. Evidence against the appellant (A-18):

a) Confessional statement of Suleman Mohd. Kasam Ghavte (A- 18)

b) Confessional statement of Abdul Gani Ismial Turk (A-11) c) Confessional statement of Rusi Framroze Mulla (A-125) d) Confessional Statement of Parvez Nazir Ahmed Shaikh (A- 12)

e) Confessional statement of Sayyed Abdul Rehman Shaikh (A- 28)

f) Confessional statement of Liyakat Ali Habib Khan (A-85) g) Confessional statement of Abdul Gafoor Parkar (A-17)

h) Deposition of Babydas Vasu (PW-290)

i) Deposition of Pradeep S. Dalvi (PW-293)

j) Deposition of Abdulmunaf A. Mahimi (PW-294)

k) Deposition of Asit Ghorai (PW-602)

l) Deposition of Ajit Surve (PW-604)

m) Deposition of Moreshwar Thakur (PW-469)

128. Confessional Statement of Suleman Mohd. Kasam Ghavte( A-18):

In his confessional statement recorded on 18.4.1993 and 20.4.1993, the appellant has disclosed that he had been working as a driver. He has stated that he knew of a person named Anwar, who had lived in close proximity to his house right from his childhood. A relative of the appellant (A-18) had asked him whether he would travel to Ajmer Sharif along with Anwar in a Maruti Car. He had thus gone to Ajmer driving the said vehicle with Anwar, who had been working with Tiger Memon (AA) and was also being paid by him. A tempo bearing No. MMP-4799, belonging to a decorator was given to the appellant (A-18) on 5.2.1993. The said vehicle had been driven by

him to take Sayyed Abdul Rehman Shaikh (A-28) and Abdul Gani (A-11) to Mhasla. Dawood Taklya (A-14) and Dadabhai (A-17) were already present at Mhasla. Fifty-sixty packets were loaded into the said vehicle. The said packets were dug out from the land. When the appellant (A-18) touched these packets, he realised that they did not contain silver smuggled from abroad. After collecting the aforementioned goods, he left for Bombay alongwith co-accused (A-55). When they reached Panvel, he realized that Tiger Memon (AA) had also come there in a Maruti car, and as per his instructions, they had then driven to the house of Dawood Taklya (A-14) in Mhasla in order to leave the tempo there. After some time, the appellant (A-18) had returned to Bombay, alongwith Gani (A-11) and others. After 2-3 days on 9.2.1993, he had gone to Mahad driving the said vehicle and had reached there at noon. He had seen a Maruti car and two jeeps parked there, and also saw Tiger Memon (AA), Yakub Haji, Anwar, Javed Chikna, Gani, Shafi and 5-6 other boys. Shafi asked the appellant (A-18) to stop the tempo at a petrol pump situated between Goregaon and Madgaon. At about 6 o' clock in the evening, two boys had come there in a tempo, and had asked the appellant (A-18) to take the said tempo to the Mhasla tower. The appellant (A-18) had then taken the vehicle to Mhasla tower and had reached there at about 9.30 pm. The accused Anwar, Tiger Memon (AA), Shafi, Gani, Dawood Taklya (A-14), Dadabhai (A-17), Javed Chikna and a few other persons had also come there at about 3.00 A.M. Upon the instructions of Tiger Memon (AA), the appellant (A-18) had then taken the vehicle to Chilpara Kalyan, where he had arrived reached at noon. The appellant (A-18) was then asked to leave the jeep at the house of Anwar. He reached the house of Anwar at about 4.00 P.M., left the vehicle there and was paid a sum of Rs.5000/- for the two trips that had been made by the appellant (A-18). From the conversation of Anwar, Tiger Memon and his partner, the appellant (A-18) had understood that the goods which were in the said vehicle were not silver, but something else. After he learnt that the aforementioned accused had been smuggling something other than silver and gold, the appellant (A-18) had stopped working for Anwar.

129. Confessional Statement of Abdul Gani Ismail Turk (A-11):

Abdul Gani Ismail Turk (A-11), in his confessional statement has stated that the appellant (A-18) had been participating in smuggling activities with his consent, and that he had known what was being smuggled. On 7th /8th February, 1993, he (A-11) had gone to the house of Tiger Memon at the Al-

Husseini building in Mahim. Tiger Memon had then taken him to the house of Anwar (AA), where they had met two other persons and he had learnt that the said people were Sayyed Abdul Rehman Shaikh (A-28) and the appellant (A-18), and that the two had a tempo with them. Tiger Memon had given him one lakh rupees and had asked him to go with the appellant (A-18) and to pay the said amount to Dawood Taklya (A-14) and to return with a chemical i.e. "black soap". The said "black soap" was the same chemical that had been brought to the tower on the night of 3rd February, 1993. He (A-11) alongwith the appellant (A-18) and Sayyed Abdul Rehman Shaikh (A-28) had left Mahim at midnight, and had reached the tower the next day at about 11 A.M. An amount of rupees one lakh that had been given by Tiger Memon (AA), was handed over to Dawood Taklya (A-14). The appellant (A-18) along with Abdul Gani Ismial Turk (A-11), and Sayyed Abdul Rehman Shaikh (A-28) had then loaded about 59 bags of the said chemical into the tempo that evening, and had thereafter, left for Bombay. They reached the Welcome Hotel at Panvel at about 11-12 o' Clock at night. They had met Tiger Memon (AA) there and he (A-11) and the appellant (A-18) were directed to instruct Dawood Taklya (A-14) to keep some persons ready for work. They had conveyed the said message to Dawood Taklya (A-14). Dawood Taklya (A-14) had sent his son Sarfaraz (A-55) alongwith the appellant (A-18), Abdul Gani Ismail Turk (A-11) and Sayyed Abdul Rehman Shaikh (A-28) to Bombay.

130. Confessional Statement of Rusi Framroze Mulla (A-125):

He has corroborated the prosecution's version of events regarding the transportation of smuggled goods from Shekhadi to Panvel.

Thus, in their confessional statements the aforesaid accused persons have revealed that the appellant (A-18) had fully participated in the landing and transportation of smuggled goods, which included weapons and not just silver and gold.

131. Confessional Statement of Parvez Nazir Ahmed Shaikh (A- 12):

He (A-12) in his confessional statement has revealed that he had been working with Tiger Memon (AA) in the execution of hawala transactions and that he had been paying money to persons as was directed by Tiger Memon (AA) from time to time. After the Bombay riots he could not attend

the office of Tiger Memon (AA) as the same had been closed. During this period he (A-12), has stated that he, alongwith Ajgar were staying in Shaffi's house and that he would call the house of Tiger Memon's at the Al Husseini building intermittently, but upon his doing so, he was always told that there was no work. Upon the instruction of Tiger Memon (AA) in January, 1993 he had gone to Mhasla and had met Dawood Taklya (A-14) and had also participated in the landing. The smuggled goods were brought from the jetty to the Wangni tower. The men employed by Javed and Yakub who had come from Bombay had then opened the boxes which contained bullets, revolvers, pistols etc. All the contraband were shifted into false cavities in the jeeps and tempos that had been organized, and which thereafter, departed for Bombay. One such jeep had been entrusted to him (A-12). He along with Nasir had been told by Tiger Memon (AA) to wait at Khandala, and one contact number had been given to them. At Khandala, they had gone to Hotel New Taj. A-12 had then tried to contact Tiger Memon (AA) over the telephone, using the said contact number at Hotel Big Splash, Alibagh. However, he was only able to speak to Mohd. Hussain who had advised A-12 to wait there, and had stated that A-18 would come there in the morning. Consequently, the appellant (A-18) had come there with Imtiyaz in the afternoon. With them, A-12 had gone to Bombay, and had been dropped off at Bandra Talab and the appellant (A-18) and Imtiyaz had also left from there.

132. Confessional Statement of Sayyed Abdul Rehman Shaikh (A- 28):

His confessional statement reveals that on 5th February, 1993 at about midnight, when he (A-28) was returning from shooting, the appellant (A-18) had met him on the road itself and had told him (A-28) that Tiger Memon (AA) was calling for him. Tiger Memon (AA) was standing nearby, and hence he met Tiger Memon who had told him to go to Mahim. Yeda Yakub had also been standing there alongwith Tiger Memon. Thus, he has corroborated the statement of Abdul Gani Ismail Turk (A-11).

133. Confessional Statement of Liyakat Ali Habib Khan (A-85): His confessional statement reveals that in the second week of February 1993, his uncle Yakub Khan had asked his father to allow him to keep a few bags, for the period of a few months in their godown at Thane and thus, he had been allowed to do so. After a while, his uncle Yakub Khan, Tiger Memon (AA) and Nisar had come to his house in a jeep and had taken him along with them. After opening the godown of the

factory, two tempos had been taken inside, and it was then that the goods were unloaded. There were 80 packets in gunny bags, and each bag weighed about 30 to 35 Kgs. Tiger Memon had given Liyakat Ali Habib Khan (A-85) a sum of Rs.600/- out of which he had given Rs.200/- to Nisar and thereafter, Liyakat Ali Habib Khan (A-85), Nisar and the appellant (A-18) had gone to the said factory and had then left for Bombay. On the way, the appellant (A-18) had told him that the goods that had kept in their factory were actually explosives.

134. Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), in his confessional statement has disclosed that the appellant (A-18) had in fact been present when 59 packets had been brought into Bombay.

135. Deposition of Babydas Vasu (PW-290):

He had been working in a hotel in Indraprastha at Nage Thana, District Raigad. He has deposed that the appellant (A-18) alongwith others, had come there and had stayed in the said hotel for some time. There are entries to this effect in the hand writing of the appellant (A-18). Room No. 106 had been booked for them in the said hotel. He has produced the register to prove the same, but the said entries are of the year 1992, and not of 1993.

136. Deposition of Pradeep S. Dalvi (PW-293):

He has deposed that he was the registered owner of the vehicle Matador Tempo bearing registration No. MMP-4799 which had been sold to a decorator in 1988. The said tempo, bearing this registration number had been used for the smuggling of various types of contraband, including weapons, from Shekhadi to Panvel by the appellant (A-18).

137. Deposition of Abdulmunaf A. Mahimi (PW-294): He has deposed that he was the brother of Abdul Samad who had been carrying on the business of electrical and mandap decoration, and that the said vehicle had been purchased by his brother Abdul Samad (not examined) between 5.2.1993 and 9.2.1993. The tempo was not found in the campus. The said vehicle had been seized on 30.11.1993, but no samples etc. were taken from the vehicle to determine whether it contained RDX explosives etc. or not.

138. Deposition of Asit Ghorai (PW-602):

He has deposed as a panch witness and has stated that 13 samples were in fact taken after the seizure of the vehicle on 30.11.1993. The samples were then sent for chemical analysis.

139. Deposition of Ajit Surve (PW-604):

He has proved the seizure of the vehicle and the sending of the RDX samples for chemical analysis and also the receipt of the report stating that RDX had been found therein.

140. Deposition of Moreshwar Thakur (PW-469):

He has deposed that the Test Identification Parade had been held in accordance with law, and has further stated that some witnesses had identified the appellant (A-18), as the person who was had been involved in the landing at Shekhadi.

141. After due consideration of the entire evidence on record, the Designated Court came to the conclusion that as the appellant (A-18) was involved in the Shekhadi landings operation, he has committed the offence under section 3(3) TADA. The evidence has also established his involvement in commission of the offence of conspiracy with the object of committing terrorist acts, as the appellant (A-18) had been made aware of the nature of the smuggled goods and had still transported the same. The said act amounts to furthering the object of conspiracy to commit terrorist acts. However it has been held that the appellant (A-18) himself has not committed any act and that he himself has not participated in any conspiratorial meetings, to denote that he was actually a party to the conspiracy to commit serial bomb Blast or a party to the larger conspiracy i.e. the first charge.

142. So far as the appellant (A-18) is concerned, undoubtedly, there is sufficient evidence to show that he was involved in the transportation of contraband. From the facts and circumstances of the case, and after taking into consideration the evidence on record, it cannot be inferred that despite being a close associate of Tiger Memon (AA), he remained unaware of the nature of the contraband. Furthermore, when a person has been transporting goods for a long period of time it is difficult to believe that he would transport the said goods, without ascertaining the exact nature of goods being loaded into his vehicle, particularly, in view of the fact that the vehicle is likely to be checked at several places by the police, as well as by custom officials. Thus, we do not see any cogent reason to hold that the

appellant (A-18) is not guilty of the charges for which he has been punished by the Designated Court.

## II. Sayyed Abdul Rehman Shaikh (A-28)

143. The appellant (A-28) has been convicted on two counts under Section 3(3) TADA for the offence of conspiracy, and has been awarded 7 years rigorous imprisonment alongwith a fine of Rs. 25,000/-, and in default of payment of fine, to suffer further RI for 6 months on each count.

144. In addition to the first charge of conspiracy, he had been charged under Section 3(3) TADA for the following offences: (i) That he participated alongwith the other co-accused in the landing and transportation of arms, ammunition and explosives at Shekhadi, and transported the same from Shekhadi, Mhasla to Shilphata, Bombay in a Motor Tempo, bearing Registration No. MCY-2279. Further, he (A-28) has also transported RDX explosives from Mhasla to the godown of co-accused Noor Mohmed Haji Mohmed Khan and Mohmed Jindran Mumtaz Jindran in Motor Tempo No. MMP-4799, while accompanied by Shakil Shahbuddin Shaikh (A-59). He (A-28) has been convicted and sentenced as mentioned hereinabove.

145. Ms. Farhana Shah, learned counsel for the appellant has submitted that the appellant (A-28) did not own the van in which the goods were transported. Moreover, he has served 3 years out of the total sentence awarded to him, and is now 60 years old. Therefore, leniency should be shown to him. Thus, the appeal deserves to be allowed.

146. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that he was involved in the transportation of arms and ammunition within the territory of India, and owing to the serious nature of the offence committed by him, there should be no leniency. Thus, the appeal deserves to be dismissed.

147. We have heard learned counsel for the parties and perused the record.

148. Evidence against the appellant (A-28):

### a) Confessional statement of the appellant (A-28)

- b) Confessional statement of Abdul Gani Ismail Turk (A-11)
- c) Confessional statement of Dawood Taklya Mohammed Phanse (A-14)
- d) Confessional statement of Sharif Parkar @Dadabhai (A-17)
- e) Confessional statement of Suleman Mohammed Kasam Ghavate (A-18)
- f) Confessional statement of Shakil Shahbuddin Shaikh (A-59)
- g) Confessional statement of Shahnawaz Khan (A-128)
- h) Deposition of Vijay Govind More (PW.137)
- i) Deposition of Uttam K. Kale (PW.190)
- j) Deposition of Dileep M. Katarmal (PW.284)

149. Confessional statement of Sayyed Abdul Rehman Shaikh (A-28):

His statement was recorded by Sanjay Pandey (PW.492), DCP on 23.4.1993 and 26.4.1993. In his confessional statement, he has disclosed that he was a driver by profession and that he had a driving licence. He had known Tiger Memon (AA) for the last 6-7 months and also Anwar, Gani (A-11), Rafique Madi and Haji Yakub. Hazi Yakub was a friend of Anwar's. He had gone to Ajmer alongwith the other co-accused Suleman and Anwar in April 1992, for smuggling activities. After 2-3 months of his visit to Ajmer, upon the instructions of Anwar, the appellant (A-28) had reached Bandra station with one change of clothes. Shafi and Suleman had come there in a Maruti car, in which he (A-28) had also driven alongwith them, till Linking Road. From there, the appellant (A-28) alongwith the others had gone to an open theatre by way of taking a jeep. Tiger Memon (AA) had arrived there alongwith Imtiyaz and Anwar in a blue coloured Maruti car. Anwar had instructed the appellant (A-28) to follow the car of Tiger Memon (AA), and they had gone to Panvel and had reached the Welcome Hotel. Anwar had gone with Tiger Memon (AA). Imtiyaz and the appellant (A-28) were directed to reach the tower alongwith the other co-accused. They had gone to Goregaon, Raigad and had slept there at night. At about 3.30 in the morning, Tiger Memon (AA) had come with a truck carrying Imtiyaz, Anwar, Dadabhai (A-17),

Dawoodbhai (A-14) and about 20-25 labourers. The appellant (A-28) had woken up and realized that there were also two more jeeps and one truck. Silver bricks were removed from the truck that had been brought by Tiger Memon and the same were loaded into all the vehicles standing at the tower. The appellant (A- 28) alongwith Rafique Madi, had taken 18 silver bricks and had thereafter, proceeded towards Hyderabad. In Kolhapur, they had handed over the goods to Pradeep Chandra Jain and had thereafter, returned to Bombay with an empty vehicle.

After this, on 5.2.1993 at about 12.30 A.M., when he was returning from shooting (as he has claimed that he worked in movies, particularly in stunts), he had been called by Tiger Memon (AA), and had been asked to go to Mhasla. Yeda Yakub who was also there, had given him the keys to a Matador tempo, which belonged to Abdul Samad, a decorator in Mahim. He had gone to Mhasla alongwith Suleman (A-18) and Gani (A-11) and there he had met Dawood Bhai who had taken them near the tower, and had told them that the goods had been kept in a pit, and that it would take some time to remove them. Dawood (A-14) had then asked him, alongwith the others to return at around 7-7.30 a.m. with a vehicle. From there he had gone to the house of a lady (school teacher) in Mhasla Village, and had eaten and also rested there. In the evening, they had gone to the tower. It was a moon-lit night, and at the said time Dawood (A-14) and Dadabhai (A-17), alongwith their 10-15 servants had come there and had proceeded to load the goods, i.e. 55-60 sacks into the vehicle that had been brought by him. Some empty sacks were also put in after folding the same over the goods. They had then gone to the Welcome Hotel at Panvel. Tiger Memon had also come there. Tiger Memon had sent Gani (A- 11) and Suleman (A-18) to the Persian Darbar Hotel. Then Tiger Memon had gone inside the Welcome Hotel with the appellant (A-28), they had met one fair and tall person who had brown eyes. The appellant (A-28) had been introduced to him by Tiger Memon (AA), and was also directed to work in accordance with his instructions. On being asked, the appellant (A-28) had disclosed that he (A-28) had also seen the Delhi Darbar Hotel in Dahisar Check Naka. Then, the fair tall man had told the appellant (A-28) to park the said vehicle in front of the hotel, on the other side of the road and had told him that one Shakeel (A-59) would meet him there, who would then unload the vehicle. As per the instructions of Shakeel, the appellant (A-28) had proceeded to park the vehicle. A Nepali had then come there, and some persons had unloaded the goods from the vehicle and had then brought the said vehicle back to the Delhi Darbar

Hotel, after which, the appellant (A- 28) had left for Virar in the said vehicle.

Subsequently on 8.2.1993, at about 6-6.30 in the evening, Anwar had met the appellant (A-28) at Bandra Talab naka and had asked him to go to Mhasla again. The appellant (A-28) had gone there alongwith Yakub. Tiger Memon (AA) had also arrived there after about one hour alongwith a jeep. He had given the jeep to Suleman (A-18) and thereafter, told him to leave. The appellant (A-28) upon the instructions of Tiger Memon (AA), had returned alongwith the vehicle and had handed over the said vehicle to Gani (A-11) and returned to Bandra Talab. Anwar had then paid Rs.5,000/- to the appellant (A-28) in the evening, in lieu of the aforementioned job. The appellant (A- 28) had thus been working continuously for Tiger Memon. However, he had been unaware of the contents or nature of the goods. It was only after the Bombay Blast had taken place on 12.3.1993, and when Tiger Memon's name had appeared in the newspapers, that the appellant (A- 28) had realised that he had committed a mistake by participating in the said landing and transportation, as he thought that perhaps, instead of silver and gold, it had actually been weapons that were smuggled in by him. He was arrested during the shooting of a movie, in which he was working.

150. Confessional Statement of Abdul Gani Ismail Turk (A-11):

His confessional statement has revealed that the appellant (A- 28) had been at the residence of Tiger Memon (AA) at the Al-Husseini building. When he had gone there on 4.2.1993, after about 4-5 days, he had met Suleman Kasam Ghavate (A-18) and Sayyed Abdul Rehman (A- 28). They also had a tempo with them. Tiger had given Gani (A-11) a sum of Rs.1 lakh and had asked him to go alongwith the appellant (A- 28) and Suleman Mohammed Kasam Ghavte (A-18), to pay the said amount to Dawood Taklya (A-14), and while returning, to bring back with them, the black soap. It was the same black soap which had been brought to the tower on the night of 3.2.1993. The tempo was thus loaded by the appellant (A-28), alongwith Suleman Mohammed Kasam Ghavte (A-18) and several others. The same finally contained 59 boxes of chemical, and was brought to Bombay, after which he had met Tiger Memon.

151. Confessional Statement of Dawood Taklya Mohammed Phanse (A-14):

In his confession, he has revealed that after collecting the smuggled goods, he alongwith others, including the appellant (A-28) had reached the tower. Tiger Memon (AA) had instructed all the persons to remain outside, except his own men. Tiger Memon (AA) had even asked the watchman (A-62) to leave. Tiger Memon (AA) had further instructed them to remove all the empty boxes and jute cloth from there, and to burn the same. At the time when they had gone inside, they had seen that the men of Tiger were opening boxes, and that they were placing rifles, pistols, bullets, hand grenades, bundles of wire with white pencils on top of them, and black soap like material on the side. Tiger Memon (AA) was seen sitting on the side and after counting, he would make notes in his diary. Baba, Driver (A-73) and the appellant (A-28), were among the men of Tiger Memon who were opening the cavities of the jeeps and tempos parked there. At this time, Tiger Memon (AA) took out a pencil like thing made of white steel like material, and showed the same to him (A-14) and to Dadabhai (A-17). He had told them that each object was worth Rs.25,000/- and that the same could even be used to explode the Oberoi Hotel.

152. Confessional Statement of Sharif Parkar @ Dadabhai (A-17): His confessional statement has disclosed that on 7.2.1993 Gani (A-11) had come with a tempo. He had been accompanied by Miya @ Suleman Ghavte (A-18) and Sayyed Abdul Rehman Shaikh (A-28). At this time, Gani (A-11) had brought Rs.1 lakh with him and had given the same to Dawood Taklya (A-14). The smuggled goods were loaded into the tempo, which then left for Bombay.

153. Confessional statement of Suleman Mohammed Kasam Ghavate (A-18):

This accused (A-18) in his confessional statement disclosed that he reached Mhasla on 6.2.1993 alongwith appellant (A-28) and A-11, A- 14 and A-17 were already present there. They put 59-63 packets containing powder in a vehicle. While they were coming back they met Tiger Memonn (AA) in Panvel. On 8th February, 1993, A-18 drove a white tempo as directed by Anwar and got off at Panvel. After some time, another yellow tempo, driven by appellant (A-28) arrived there in which A-18 sat and drove upto Mahad. They reached in front of Besawa Hotel in Mahad where another tempo, driven by appellant A-28 appeared and then they went to Mhasla where goods were divided in both the tempos. On their way to Panvel, he saw Tiger Memon (AA) in a car and he asked A-18 to take the tempo to Chilparakalyan. When they reached Chilparakalyan, they met Tiger Memon

(AA). Tiger Memon drove the tempo himself and came back with an empty tempo in half an hour.

154. Shakil Shahbuddin Shaikh (A-59) and Shahnawaz Khan S/o Faiz Mohamed Khan (A-128) in their confessional statements have supported the case of the prosecution, as they have stated that the appellant (A- 28) had participated in the landing and transportation.

155. Deposition of Uttam K. Kale (PW.190) - He deposed that he has recorded the confession of appellant (A-28). On 1.6.1993, appellant (A-28) expressed his willingness to make a voluntary confession because of repentance and denied being induced or coerced. He was given 48 hours to re-think and he recorded his statement on 4.6.1993 as he was busy on 3.6.1993. The said witness identified the confessional statement of A-28 in court.

156. Deposition of Vijay Govind More (PW.137) – He deposed that he was working as labourer at Wangni Tower. He wrongly identified the appellant (A-28) as Anwar and in his statement did not name appellant (A-28) but corroborated in general particulars in respect of transportation of goods smuggled at Shekhadi. He also stated that goods were unloaded at Wangni Tower and shifted in another vehicle and at that time Tiger Memon (AA) and Dawood Taklya (A-14) among others were present.

157. Dileep M. Katarmal (PW.284) in his statement has deposed that A- 17 has purchased a few dozens gunny bags from his shop on 10.2.1993, though he did not name the appellant (A-28) specifically but he corroborated in general particulars the confession of appellant (A-28) wherein he stated that he alongwith Najeeb had purchased 1500 sacks from the said shop.

158. Considering the material contained in the confession of the appellant (A-28), and in those of the aforesaid co-accused, it was held that the same leads to the inescapable conclusion that the appellant (A-28) had infact been involved in the Shekhadi landing operation, and had thus committed the offence under section 3(3) TADA. The evidence also establishes his involvement in the commission of the offence of conspiracy to commit terrorist acts since the appellant (A- 28) was certainly aware of the nature of the contraband material, and had still transported the same, the said act amounts to furthering the object of the conspiracy to commit terrorist acts. However, it was held that the appellant (A-28) had not committed any acts and had not participated in any conspiratorial meetings, to denote that he

had been a party to the conspiracy to commit the serial bomb Blast or the larger conspiracy i.e. the first charge.

159. So far as the appellant (A-28) is concerned, his confessional statement which stands corroborated by the confessional statements of the other co-accused, particularly, Abdul Gani Ismail Turk (A-11), Dawood @ Dawood Taklya (A-14), Imtiyaz Yunusmiya Ghavte (A-15), Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) and Shahnawaz Khan (A-128) reveals his involvement in the Shekhadi landing and further establishes that he had been fully aware of the nature of contents of the contraband and had still transported the same. Such an act tantamounts to furthering the object of the conspiracy to commit terrorist acts. Taking into consideration his close association with Tiger Memon (AA) and his associates, with respect to their smuggling activities, it is difficult to believe that he was unaware of the nature of the contents. Thus, we are of the view that he has rightly been convicted under Section 3(3) TADA by the Designated Court.

III. Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61) :

160. The appellant (A-61) has been convicted under Section 3(3) TADA on two counts, and has been awarded 7 years rigorous imprisonment alongwith a fine of Rs. 50,000/-, and in default of payment of fine, to suffer suitable RI.

161. The appellant (A-61) has been charged for criminal conspiracy, and in addition thereto, has also been charged under Section 3(3) for his participation in the landing at Shekhadi on 3rd and 7th February, 1993 and in the transportation of arms, ammunition, hand grenades and explosives like RDX which were to be used in the Bombay Blast on 12.3.1993, and further, for using his auto rickshaw bearing registration No.MH-06-2243 to bring the aforementioned smuggled items to Bombay. He has been acquitted of the first charge of conspiracy, however, he has been convicted of the second charge under Section 3(3), and has been sentenced as referred to hereinabove.

162. Ms. Farhana Shah, learned counsel for the appellant has submitted that his confession had not been made voluntarily, and that the same had been retracted on 3.12.93 and therefore, must not be taken into consideration. Hence, the appeal deserves to be allowed.

163. Shri Mukul Gupta, learned senior counsel for the respondent, has submitted that even if the confessional statement of the appellant (A- 61) was retracted, the

same has been corroborated by the confessional statements of the other co-accused, as well as by the depositions of various witnesses. Therefore, this appeal deserves to be dismissed.

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

165. Evidence against the appellant (A-61):

- a) Confessional statement of the appellant (A-61)
- b) Confessional statement of Dawood Taklya (A-14)
- (c) Confessional statement of Khalil Ahmed Sayed Ali Nasir (A-42)
- d) Confessional statement of Imtiyaz Yunusmiya Ghavte (A-15)
- e) Confessional statement of Muzammil Umar Kadri (A-25)
- f) Confessional statement of Tulsiram Dhondu Surve (A-62) g) Deposition of Vijay Govind More (PW-137)
- (g) Depositions of Chandrakant Afaraz (PW-111), Vyankatesh Hirba (PW-588) and Shridhar Gawade (PW-151).

166. Confessional Statement of Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61):

His own confession has been recorded by Shri K.L. Bishnoi, DCP (PW.193), wherein he has revealed that he had taken certain persons in his auto rickshaw bearing No. MH-06-2243, to the place of the landing. He had seen that certain materials had been removed in gunny bags from a jeep i.e. 16 rifles and 32 cassettes and that the same were taken into a room where the appellant (A.61) was not allowed to enter. He had been paid Rs.4,000/- for participating in two landings. He has further revealed that on 9.2.1993 Dawood Taklya (A-14) had met him at the Mhasla S.T. Stop and had asked him to come to Mehandari. He (A-61) had taken him to Mehandari where they met Khalil Nazir and Muzammil (A-25). Here, Dawood had told Muzammil to hand over to him 3 rifles and 6 cassettes. Muzammil had then handed over the said weapons in gunny bags. The appellant (A-61), Khalil

and Dawood Taklya (A-14) had gone alongwith the said arms, to Lonery Phata. After sometime Tiger Memon (AA) had arrived there in his blue Maruti car and thereafter, the said goods were shifted to his car.

167. Confessional Statement of Dawood Taklya (A-14): He has disclosed that on the date of the landing, Tiger Memon (AA) had sent him to the place of landing alongwith some persons who had also been given guns by Tiger Memon (AA). Such armed persons were spread over all sides. After sometime the said goods had arrived in a trawler. Persons who had been called from the village then began to unload these goods and bringing them to shore. Khalil and Iqbal (A-61) had also come there with trucks. The entire cargo was loaded into two trucks and thereafter, they all come to T.V. Tower, where the said goods were unloaded. Some time after this, Tiger had instructed them to remove all the empty boxes and jute bags from there and to burn the same. When they had gone inside, they had seen the men of Tiger opening boxes which contained rifles, pistols, bullets, hand grenades, black soap and bundles of wires with white pencils on top.

168. Confessional Statement of Khalil Ahmed Sayed Ali Nasir (A-42):

His statement has disclosed that the aforementioned goods were smuggled. He had gone to the house of Dawood Taklya (A-14) in the afternoon at about 4 p.m. to inform him that the landing of the said goods would take place that night, and that appellat (A-61) should thus be sent to Dawood Taklya at 7 p.m. by Rickshaw. On the said day he had sent appellat (A-61) from Mehandari to Mhasla in his Rickshaw.

169. Confessional Statement of Imtiyaz Yunusmiya Ghavte (A-15):

He has deposed about the landing at Shekhadi in early February. He had gone to Tiger's residence at the Al-Husseini Building, and it was there that he had learnt of the said landing. Shaffi and Rafiq were also present there at such time. From there, they had gone to Shekhadi for the landing alongwith a large number of persons, and after the landing, the goods were brought to the Wangni Tower. The appellat (A-61) had been present at the Tower with his Rickshaw.

170. Confessional Statement of Muzammil Umar Kadri (A-25):

His confessional statement has disclosed that on 3.2.1993, in the evening at about 7.30 p.m. he had been told by Khalil from Mehandari, that he should stay alongwith Suleman (A-18), at a particular house. When he had gone there, he had found Sajjad Alam (A-61) Rickshawala there. The appellant (A-61) had come there after having dropped Dawood Taklya (A-14) and Khalil to Shekhadi. He has further furnished other details regarding the landing on 7.2.1993. He has said that at 11.30 p.m., Dawood (A-14) had come in the rickshaw of the appellant (A-61), and had collected 3 rifles and 6 cassettes which had been kept with him in January, 1993. The remaining 13 rifles and 26 cassettes were recovered by the police from his house later on.

171. Confessional statement of Tulsi Ram Dhondu Surve (A-62): He is a government employee and working at Wangni tower. He has identified A-61 and named him as a participant in smuggling, landing and transporation.

172. Deposition of Vijay Govind More (PW-137):

He has deposed that he was a labourer working at the Tower, and has identified the appellant (A-61) in court as the person who had come to the Tower quite often. He has also named him as a participant in smuggling, landing and transportation.

173. Chandrakant Afaraz (PW-111), Vyankatesh Hirba (PW-588), PSI of the Mhasla Police Station and Shridhar Gawade (PW-151) have proved the Seizure Memo of the autorickshaw and the related panchnama.

174. After due consideration of the entire evidence on record, the Designated Court came to the conclusion that the appellant (A-61) being involved in the Shekhadi landing operation, has committed the offence under section 3(3) TADA. The appellant (A-61) was a close associate of Dawood Taklya (A-14) and had participated and/or assisted Dawood Taklya (A-14) in effecting the said landing. The appellant (A- 61) had also taken Dawood Taklya (A-14) and his other associates to the Shekhadi coast, at odd hours of the night for the purpose of the landing operation. Even prior to the said landing, the appellant (A- 61) had been involved in the concealment of rifles and magazines at residence of Muzammil Umar Kadri (A-25), and thereafter on 9.2.1993, had transported rifles and magazines from the house of Muzammil Umar Kadri (A-25) and had handed over the same to Tiger Memon (AA) at Lonery Phata. The appellant (A-61) had also

received an amount of Rs. 4000/- for the work done by him in the landing operation.

175. The evidence on record clearly establishes the above and thus, the fact that he was one of the main persons who was responsible for effecting the said landing. Hence, he has rightly been convicted by the learned Special Judge under Section 3(3) TADA, and no interference is required in the said order.

#### IV. Tulsi Ram Dhondu Surve (A-62) :

176. He was a watchman at the Wangni Tower which was permitted to be used by the appellant (A-62), for the reloading of weapons and explosives from one vehicle to another. The appellant (A-62) has been charged for criminal conspiracy, and in addition thereto, for his participation in the landing and transportation of arms, ammunition, hand grenades and explosives like RDX to be used in the Bombay blast on 12.3.1993.

He has been further charged with abetting and facilitating acts that were preparatory to the main terrorist acts, in January to February 1993 at Shekhadi and places close by, as well as at Wangni Tower, District Raigad. The main terrorist acts were executed in Bombay on 12.3.1993 in the form of multiple bomb Blast. This was done by the appellant (A-62), permitting Dawood @ Dawood Taklya (A-14), Tiger Memon (AA) and his associates to use the said premises for the purpose of facilitating the smuggling and landing of arms, ammunition, handgrenades and explosives like RDX, which were smuggled into the country by Tiger Memon and his associates on 3rd and 7th February, 1993. The tower was used for re-loading and transportation of the contraband into Bombay and other places.

He has further been charged with permitting Dawood Taklya (A- 14), Tiger Memon (AA) and his associates to conceal 59 bags of RDX explosives in his agricultural field which were removed subsequently by the terrorists.

He has further been charged, being a government servant, of having failed to furnish information in relation to the smuggled weapons, which he was legally bound to do and can therefore, be said to have committed the offence punishable under Section 202 IPC.

177. The appellant (A-62) has been acquitted of the first charge. However, he has been given the sentence of 9 years alongwith a fine of Rs.50,000/- and in default of payment of fine, he has been ordered to suffer further RI for one year under Section 3(3) TADA, and of 6 months alongwith a fine of Rs.5,000/- under Section 202 IPC.

178. Ms. Farhana Shah, learned counsel for the appellant has submitted that the appellant (A-62) was a watchman at the Wangni tower and that he had no knowledge of the contents of the contraband goods. Moreover, he has served over 6 years of the sentence awarded to him. He should at most therefore, be tried under Section 202 IPC. Hence, the appeal deserves to be allowed.

179. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that he was aware of the contents of the smuggled goods as the same had been unloaded in front of him. Therefore, the appeal deserves to be dismissed.

180. We have heard learned counsel for the parties and perused the record.

181. Evidence against the appellant (A-62):

- a) Confessional statement of the appellant (A-62)
- b) Confession of Dawood Taklya (A-14)
- c) Confession of Sharif Abdul Gafoor Parkar (A-17) d) Confession of Munna @ Mohammed Ali Khan (A-24)
- e) Confession of Rashid Umar Alware (A-27)
- f) Confession of Khalil Ahmed Sayed Ali Nasir (A-42) g) Confessional statement of Sajjad Alam (A-61)
- h) Deposition of Harish Chandra Surve (PW.108)
- i) Deposition of Vijay Govind More (PW.137)
- j) Deposition of Ravindra Sarant (PW.145)
- k) Deposition of Vyankatesh Hirba (PW.588)

182. Confessional Statement of Tulsiram Dhondu Surve (A-62):

In his confession, Tulsiram Dhondu Surve (A-62) has disclosed that he had been working as a watchman at the Tower alongwith other employees, namely, Harish Chandra Surve (PW-108) and Vijay Govind More (PW-137). He has disclosed that one and a half years prior to the recording of his statement, one Sharif Adhikari of Mhasla had brought Dawood Phanse (A-14) to him, who had asked the said appellant (A-62) to help them in the smuggling of silver and other goods, by allowing them to keep the same in the Tower for some time, in return for some consideration, and that he had agreed to the same. At night, 9-10 persons had come alongwith Tiger Memon (AA), and one truck and a jeep. They had loaded the goods into a tempo from the truck. At the said time, Tiger Memon (AA) and his associates had been armed with guns and pistols, and after completing the loading they had all left the Tower. The appellant (A-62) had been paid Rs.1000/- for each occasion, which he had shared with other persons. He also received 10 acres of land in his name, which was a benami property, as the same belonged to Dawood (A-14). He has further disclosed that he had also been paid a sum of Rs.2000/- and for two or more trips, a sum of Rs.6000/- which he had distributed among others.

183. Confessional Statement of Sajjad Alam (A-61) : In his confession, he has corroborated the evidence available as regards the meeting with Tulsiram Dhondu Surve (A-62). Though Dawood Taklya (A-14) did not name him, he has corroborated the evidence of the other co-accused by stating that A-62 had been helping them at the Tower for loading and unloading etc. Khalil Ahmed (A-42) has stated that when the smuggled goods were being reloaded, the same consisted of 59 gunny bags containing a cement like black soap, 91 boxes and 7 long canvas bags. Vijay Govind More (PW-137) has deposed that the landing had taken place in February 1993, and that the goods had then been brought to the Tower and that from there, the same were shifted into the jeep. He has identified the appellant (A-62) in court. Ravindra Sawant (PW-145) was the panch witness for the recovery of goods at the Tower, and has also identified A-62 in court.

184. Deposition of Vijay Govind More (PW.137)

He deposed that at the relevant time he was working as labourer at Wangni Micro Wave Tower since 1986 to 1993. In October 1992 he was on duty at

Wangni Tower alongwith Harishchandra Surve. On that day appellant (A-62) was also on duty at the Tower and the appellant (A- 62) told them that one party shall come at the Tower on the said day in the night. Appellant (A-62) after his duty left Wangni Tower for his residence and returned at about 7.30 to 8.30 p.m. At about 9.30 p.m three persons came by a Maruti car at Wangni Tower. Out of them, Sarfaraj Phanse called for appellant (A-62) and asked him to arrange for tea. Appellant and the witness prepared tea. Subsequently, Tiger Memon, Dawood Phanse, Sharif Adhikari, Abdul Gharatkar, Dadamiya Parkar also came there. At about 11 p.m., a truck came at Wangni Tower. Following the same, one tempo and two jeeps also arrived. The goods which had been brought in the said truck were loaded into jeeps and tempo and then all the vehicles left the Tower. Again in February 1993 when the witness was on duty, the appellant (A-62) told him that goods of Dawood Phanse had to arrive. After the duty hours, appellant (A-62) went to his house and again returned to the tower in the evening. At about 8.30 p.m., three persons came by a car. One of them was Iqbal whom the witness had seen at Wangni Tower in earlier trip alongwith others. After about 11 p.m., one truck, two jeeps and a tempo arrived at Wangni Tower. Dawood Phanse, Sharif Adhikari, Abdul Gharatkar, Dadamiya Parkar also came. Just thereafter, Dawood Phanse and his companions arrived in a jeep. This witness identified the appellant (A-62) and other accused, namely, accused nos.14, 17, 28, 42, 60, 61 and 73.

185. After due consideration of the entire evidence on record, the Designated Court came to the conclusion that as the appellant (A-62), was involved in the Shekhadi landing operation, he has committed the offence under section 3(3) TADA. The appellant (A-62) being a watchman of the Wangni Tower i.e. government premises, had allowed the same to be used for purpose of facilitating the smuggling and landing of arms, ammunition, hand grenades and explosives that was organized by Tiger Memon (AA) and his associates. The appellant (A-62) had also permitted the co-accused to conceal 59 bags of RDX explosives in his field. Hence he was held guilty for the offence punishable under Section 3(3) TADA.

186. So far as appellant (A-62) is concerned, the evidence on record, particularly the confessional statement of the appellant (A-62), which has been duly supported by the other material on record, clearly reveals that being a watchman of government premises i.e. Wangni Tower he had allowed the same to be used for the purpose of facilitating the smuggling and landing of arms, ammunition, handgrenades and explosives as organized by Tiger Memon (AA) and his

associates. The evidence further establishes his involvement in concealing 59 bags of RDX explosives in a field existing in his name. Thus, he has rightly been convicted by the learned Special Judge under Section 3(3) TADA and Section 202 IPC. Being a government servant, he has intentionally omitted giving information to the authorities about the offences committed in his presence, which he was legally bound to do. Thus, no interference is required in his order of punishment.

V. Gulam Hafiz Shaikh @ Baba (A-73):

187. The appellant (A-73) has been charged for the offence of criminal conspiracy and in addition thereto, for his participation in the landing at Shekhadi and the transportation of arms, ammunition, hand grenades and explosives like RDX to be used in the Bombay Blast on 12.3.1993, under Section 3(3) TADA and has further been charged under Section 6 TADA for the possession/storage of arms, ammunition and explosives in his garage, in contravention of the provisions of the Arms Act and the Rules thereunder, by transporting such unauthorized arms, ammunitions and explosives from Shekadi to Bombay.

He has been found guilty of the charge under Section 3(3) TADA and has been awarded the sentence of 8 years alongwith a fine of Rs.10,000/-, and in default of payment of fine, further RI for two months. He has further been found guilty under Section 3(3) TADA for facilitating the landing and transportation of the aforementioned contraband, and has been awarded RI for 6 years alongwith a fine of Rs.5,000/- and in default of payment of fine, RI for one month. He has also been found guilty under Section 6 of TADA for possession and storage of the said weapons in his garage and for this he has been given a sentence of RI for 8 years, alongwith a fine of Rs.10,000/- and in default, further RI for two months. All the sentences have been directed to run concurrently.

188. Ms. Farhana Shah, learned counsel for the appellant has submitted that there are contradictions in the statements of the co-accused, and that therefore, they should not be relied upon. Moreover, the confessional statements of the co-accused were taken at odd hours, and there is no other corroborative evidence available against him. Therefore, the appeal deserves to be allowed.

189. Shri Mukul Gupta, learned senior counsel for the respondent has submitted that the appellant (A-73) was aware of the nature of the goods that he had kept in

the false cavities of the vehicles. Moreover, his confession has been corroborated by various co-accused. Therefore, the appeal deserves to be dismissed.

190. We have heard learned counsel for the parties and perused the record.

191. Evidence against the appellant (A-73):

a) Confessional Statement of Gulam Hafiz Shaikh @ Baba (A-73)

b) Confessional statement of Dawood Taklya (A-14)

c) Confessional statement of Imtiyaz Yunusmiya Ghavte (A-15) d) Confessional Statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)

e) Confessional statement of Mohammed Rafiq (A-46) f) Deposition of Vijay Govind More (PW.137)

g) Deposition of Vinod Lokhande (PW.183)

192. Confessional Statement of Gulam Hafiz Shaikh @ Baba (A-73)

. The confession of the appellant (A-73) was recorded by Shri Vinod Balwant Lokhande, D.C., Airport Zone, Bombay on 15.5.1993 and 17.5.1993. In his confessional statement, the appellant (A-73) has disclosed that he has been working in the garage of his maternal uncle since his childhood. His uncle had handed over the garage to him 27 years ago. He had been running the said garage for repairing vehicles. He knew Tiger Memon (AA) and his associates Sunil, Shaffi, Imtiyaz, Anwar, Rafique Madi, Raju Marwari, Riyaz, Majeed etc. They would do the work of smuggling silver. The same was unloaded at the sea-shore near the village Mhasla. The goods were to be brought by trucks to the Tower, and the contraband were then to be unloaded and concealed in the cavities of tempos and jeeps there. The work of the appellant (A-73) was to take the tempo or the jeep full of smuggled silver to its destination, and after this, he was paid a sum of Rs.2,000 to 3,000 for each transportation/landing. In the last week of January, 1993 he had reached the Welcome Hotel, Panvel alongwith the jeep at 8.30 p.m. upon receiving instructions to this effect. Four jeeps and a Maruti car were already parked there. Tiger and Sunil were also sitting in the jeep. The goods were smuggled in the next day with the help of a large

number of persons including Tiger, Shaffi, Anwar, Imtiyaz, Gani and Rafique etc. The truck was then unloaded, and all goods were kept in the tempos and jeeps. There were several green coloured boxes containing black soap, and cartridges. The appellant (A-73) had parked the tempo full of smuggled goods outside his garage in Islampura. The appellant (A-73) had then gone to Persian Darbar Hotel upon being called by Tiger Memon. The appellant (A-73) was asked by Tiger Memon to take the tempo outside his garage to Sankhvi street, opposite Bata Company, near Lokhandi gate near the place where Chilyaki Hotel was situated. He was informed that there would be a boy at the gate who would give him a signal with a white handkerchief upon seeing the said tempo. The appellant (A-73) was told to take the vehicle as per his direction, and unload the goods there. The next day, the appellant (A-73) had taken the tempo to Sankhvi Street to the aforesaid address, and as per the direction, the goods were unloaded there. He had been paid Rs.1000 for this work. The appellant (A-73) has confessed that he had participated in landings of silver, and that it was only on one occasion that weapons had been smuggled.

193. Abdul Gani Ismail Turk (A-11), Dawood @ Dawood Taklya (A-14), Imtiyaz Yunusmiya Ghavte (A-15), and Mohd. Rafiq (A-46) have supported the case of the prosecution by stating that the appellant (A-73) participated in the landing and transportation of the smuggled goods including arms, ammunition etc.

194. Confessional Statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)

In his confessional statement, he has disclosed details of the incident dated 28th /29th February, 1993. He has stated that at 1.30 – 2.00 a.m., the smuggled goods had been were brought in a lorry to the tower, and that Tiger Memon (AA), Yakub (AA), Javed (AA), Dawood Taklya (A-14) and their men and others had also come there. Shafi, Anwar and driver Baba (appellant A-73) had opened the boxes and the same contained hand bombs, wires, rifles, pistols and bullets. The appellant (A-73) and others had put all the weapons and explosives into the cavities of jeeps and tempos. The goods had also contained a chemical, black soap.

195. Deposition of Vijay Govind More (PW.137)

He was labourer at Wangni Tower and he had clearly deposed that appellant (A-73) was involved in the loading and unloading of smuggled goods at Wangni Tower. He identified the appellant (A-73) in court.

196. Deposition of Vinod Lokhande (PW.183)

He has recorded the confessional statement of the appellant and he deposed that it was voluntary and had been made strictly in accordance with law and the confessional statement was forwarded to the Chief Judicial Magistrate, Alibagh.

197. In view of the above, we have to consider whether in light of the evidence on record, the conviction of the appellants can be sustained.

198. All the material on evidence was collected and after appraisal, the Special Judge came to the conclusion that A-73 had in fact been involved in the landing operations of the contraband substances. The evidence against appellant (A-73) includes his own confession wherein he has confessed to being fully aware of the fact that the contraband were shifted from trucks to other vehicles, which contained arms, ammunition and RDX. The Designated Court came to the conclusion that his act of driving the vehicle containing such material could not be for any purpose other than to aid and abet terrorist activities. However, the Designated Court has stated that the said acts had been committed by him in the early phases of the conspiracy, even prior to Tiger Memon (AA) deciding the target of the Blast. The court also went on to say that after this particular incident A-73 had not been involved in any landing job. Therefore, he (A-73) cannot be held guilty for the larger conspiracy, for which the charge firstly, was framed against him.

199. So far as appellant (A-73) is concerned, like other appellants, his involvement and participation in the landing operations of the contraband substances has been clearly established. His own confessional statement has revealed that he, being fully aware of the contents of the contraband, shifted the same from the truck to other vehicles and that in spite of the fact that he knew that the contraband contained arms, ammunition and RDX, he continued to be associated with the other co-accused. Therefore, he has aided and abetted terrorist activities, and we do not see any cogent reason to interfere with his order of conviction as recorded by the Designated Court.

200. In view of the above, we do not find any substance in these appeals and the same stand dismissed.

201. In case, if the appellants are on bail, their bail bonds are cancelled and they must surrender within four weeks from today, failing which the Learned Designated Court under TADA shall take them into custody, and send them to jail to serve out the remaining part of their sentences, as have been awarded by the learned Designated Court under TADA.

CRIMINAL APPEAL NO.600 OF 2011

State of Maharashtra

Vs.

Sayed Abdul Rehman Shaikh

202. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by Special Judge of the the Designated Court under the TADA for Bombay Blast Case No.1 of 1993, by which the respondent has been convicted under Section 3(3) TADA, and awarded rigorous imprisonment for 7 years alongwith a fine of Rs.25,000/-, and in default of payment of fine, to suffer further RI for six months, and secondly RI for 7 years under Section 3(3) TADA, but had been acquitted of the charge of larger conspiracy.

Hence, this appeal.

203. Heard rival submissions by counsel for both parties and perused the evidence on record.

204. The evidence against the said respondent includes his own confession wherein he had disclosed that he was a driver and was acquainted with Tiger Memon (AA), Mohd. Rafiq (A-46), Anwar (AA), Abdul Gani Ismail Turk (A-11), Suleman Mohd. Kasam Ghavate (A-18) and Uttam Potdar (A-30). In April 1992, the accused (A-28) had gone along with Suleman Mohd. Kasam Ghavate (A-18) and Uttam Potdar (A-30) to Ajmer for taking silver. On 5.2.1993 Suleman Mohd. Kasam Ghavate (A- 18) took the accused (A-28) to Tiger Memon (AA) who asked him to go to Mhasla. Yeda Yakub gave the accused (A-28) the keys of a tempo in which the accused (A-28) alongwith Suleman Mohd. Kasam Ghavate (A-18) and

Abdul Gani Ismail Turk (A-11) went to Mhasla. On the next day, at Mhasla the accused (A-28) met Dawood Taklya (A-14) who took him alongwith other co-accused to Wangni Tower and told them that the goods are to be dug out from a pit. After the goods were taken out, they were placed in the vehicle in the presence of Dawood Taklya (A- 14). Then, they came to Nagothane (near Pen) and stayed in a hotel. The accused (A-28) alongwith Tiger Memon (AA) went inside Welcome Hotel wherein they met a man who told the accused (A-28) to park the vehicle in front of Hotel Delhi Darbar at Dahisar Check naka. The accused (A-28) parked the vehicle as directed and the goods were unloaded there with the help of some persons. The accused (A-28) again met Tiger Memon (AA) on 8.2.1993 and went to Mhasla alongwith Anwar and Tiger Memon and brought 1500 sacks from one Gujarati in Pen. On 11.2.1993 Tiger Memon met them at Goa Road and asked Suleman Mohd. Kasam Ghavate (A-18) and the accused (A-28) to accompany him till Kalyan, wherein they handed over the vehicle to Tiger's man, namely, Usman Gani Choudhary. The accused (A-28) was paid Rs.5,000/- for the said job.

205. The said confessional statement was duly supported and corroborated by the confessional statements of Abdul Gani Ismail Turk (A-11), Dawood Taklya (A-14), Suleman Mohd. Kasam Ghavate (A-18) and Uttam Potdar (A-30), Sharif Abdul Gafoor Parkar (A-17) and Shakil Shabbuddin Shaikh (A-59).

206. Uttam M. Kale (PW.190) also supported the prosecutions case to the extent that the confessional statement was given by the accused (A- 28) voluntarily and it had been recorded strictly in accordance with law. The deposition of Sanjay Pandey (PW.492) and Vijay Govind More (PW.137) also supported the case of the prosecution.

207. After appreciating the evidence on record the learned Designated Court recorded the conclusion as under:-

?"574) Thus in light of the reasoning given aforesaid, it will be difficult to accept submission of Ld. Chief P.P. to give maximum punishment to A-18 28 for the reasons canvassed by him and dealt earlier and so also for any other reason, which is also precisely absent. At the cost of repetition, it will be necessary to say that even it is accepted that smuggling of arms, ammunition and explosives substance, even accepted to be very heinous merely on said count awarding maximum punishment to each of the accused involved in such landings de hors considering the extent of act committed by him and thereby assessing the element of criminality exist in him would

amount allowing oneself to be swayed by feeling and would amount of having acted without any logical reasoning behind it. Having regard to the same while awarding punishment to A-18 28 it will be necessary to take into account the gravity of the act committed by both of them and so also the other circumstances relevant to same as urged on their behalf or even otherwise.”

208. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

209. The instant case is similar as that of Suleman Mohd. Kasam Ghavate (A-18) and therefore, we are not in a position to take a view different to the view taken in that case.

The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 406 OF 2011

State of Maharashtra

Vs.

Gulam Hafiz @ Baba

210. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by Special Judge of the Designated Court under the TADA for Bombay Blast Case No.1 of 1993, by which the respondent has been convicted under Section 3(3) TADA and awarded rigorous imprisonment for 8 years with a fine of Rs. 10,000/- and in default of payment of fine, to suffer further RI for 2 months on the first count and on second count he has been awarded under Section 3(3) TADA, a rigorous imprisonment for 6 years with a fine of Rs.5,000/- and in default of payment of fine, to suffer further RI for one month.

211. In addition to the general charge of conspiracy the Respondent (A-73) was charged for participating alongwith his co-conspirators in the smuggling and landing of arms and ammunition at Shekhadi and participating in transportation of the same from Shekhadi to Bombay for committing terrorist activities. He was further charged under the provisions of Arms Act for possessing/storing the

weapons at his garage and unauthorisedly transporting smuggled weapons from Shekhadi to Bombay.

212. After conclusion of the trial, the respondent had been convicted under Section 3(3) TADA, but had been acquitted of the first charge of conspiracy.

Hence, this appeal.

213. Heard rival submissions made by counsel for both parties and perused the evidence on record.

214. The learned Special Judge after considering the evidence on record against the respondent recorded the following findings:- “61-C) Thus considering material in the confession of A-73 and aforesaid co-accused the same leads to the conclusion of A-73 also being involved in Shekhadi landing operations denoted by said material and as such having committed offence under Section 3(3) of TADA for which he is charged at head 2ndly. Similarly, considering said evidence in proper perspective and same and particularly own confession of A-73 squarely denoting that he was fully aware that contraband goods which were shifted from trucks to other vehicles where arms, ammunition, handgrenades and RDX etc. and still himself having transported the same to Bombay by driving vehicle and even in Bombay having committed further acts regarding contraband goods the same clearly indicates that his act were directed to further object of conspiracy to commit terrorist act. No doubt that he has received amount of Rs.1 thousand for work effected by him. However the same will never change character of act committed by him. Similarly the acts committed by him were obviously for purposes of aiding and abetting terrorist accused who were to use the same for commission of terrorist act. A-73 having committed said act by contravening provision of Arms and Explosive Act he was also required to be held liable for offence under Section 6 of TADA for which he charged at head 3rdly. However unlike other accused involved in transportation alike A- 73, A-73 after Shekhadi landing operation had not participated in commission of any act furthering object of any conspiracy. The acts were committed by him during early phase i.e. much prior to even Tiger Memon fixing target for commission of serial blast. A-73 had never been party to any conspiratorial meeting after effecting said landing job nor was involved in any of operation thereafter effected in pursuance of conspiracy to commit serial blast. In view of same though A-73 is found to be guilty for offence of conspiracy the same would be conspiracy to commit terrorist act punishable

under Section 3(3) of TADA or in other words he cannot be held liable for larger conspiracy for which charge at head 1stly is framed against him.”

?

215. In view of the fact that there is no evidence to show that the respondent (A-73) ever participated in any of the conspiratorial meetings after the said landing, or was involved in any of the operation thereafter in pursuance of the conspiracy to commit the serial Blast, he could be punished only for smaller conspiracy under Section 3(3) TADA and not for the larger conspiracy for which the charge no.1 had been framed. In the facts and circumstances of the case, the respondent (A-73) had been convicted and awarded sufficient punishment.

216. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

217. In view of the above, we do not find any cogent reason to hold that findings recorded by the learned Designated Court are perverse, warranting any interference by this Court. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 408 OF 2011

State of Maharashtra ...Appellant

Versus

Suleman Kasam Ghavate ... Respondent

218. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA for Bombay Blast Case No.1 of 1993 by which the respondent has been convicted under Section 3(3) TADA on two counts and awarded rigorous imprisonment for 7 years with a fine of Rs. 25,000/- and in default of payment of fine, to suffer further RI for a period of six months on one count and 7 years rigorous imprisonment under Section 3(3) TADA on the second count. However, he had been acquitted of the first charge of conspiracy.

219. The appeal has basically been filed only for enhancement of punishment, or for conviction of the respondent for main charge of conspiracy. In addition to the

first charge, the general charge of conspiracy had been framed for participating in the landing and transportation of contraband at Shekhadi for commission of terrorist activities; for transporting the smuggled contraband, including weapons' through his tempo bearing no.MMP-4799 from Shekhadi to Panvel for committing terrorist acts; and further for participating in weapons training at Shekhadi. Out of the said charges, the charge of participation in weapons' training at Shekhadi was not proved. Hence, this appeal.

220. Heard rival submissions made by the counsel for both parties and perused the evidence on record.

221. The evidence against the said respondent has been his own confession which had been retracted and it had been corroborated by the confessional statements of Abdul Gani Ismail Turk (A-11), Parvez Nazir Ahmed Shaikh (A-12), Sayyed Abdul Rehman Shaikh (A-28), Liyakat Ali Habib Khan and Sharif Abdul Gafoor Parkar (A-17). His involvement in the crime has also been corroborated by the deposition of Uttam M. Kale (PW.190) in whose presence the confessional statement of co- accused had been recorded. Deposition of Vijay Govind More (PW.137), a labourer at Wangni Tower and Sanjay Pandey (PW.492) have also supported the case of the prosecution. The Designated Court appreciated the evidence and held as under:-

“Thus, considering material in the confession of A-18 and aforesaid co-accused the same leads to the conclusion of A-18 also being involved in Shekhadi landing operation as denoted by said material and as such having committed offence under Section 3(3) of TADA for which he is charged at head 2ndly clauses ‘a’ and ‘b’ to the extent of transportation of contraband material of the said landing effected by him. Similarly, considering the manner in which he had acted in the said episode for furthering the object of conspiracy to commit terrorist act as denoted by said material the same also establishes his involvement in commission of offence of conspiracy to commit terrorist act punishable u/s. 3(3) of TADA.

Now taking up work of determining sentence for A-18 28 in light of submission canvassed at Bar, reasoning given during earlier part of judgment and particularly declaration made in consequent to same on 11th of October, 2006 regarding A-18 and 17th Oct., 2006 regarding A-28 reveals that though both of them were charged for commission of offence of conspiracy and for commission of offence under Section 3(3) of TADA i.e.

A-18 on 3 sub-counts A-28 on 2 sub-counts each of them was found guilty for commission of offence only on two sub-counts to the extent as found during the assessment of evidence for commission of offences punishable under Section 3(3) of TADA. Without unnecessarily reiterating every aspect connected with decision arrived accordingly, in short it can be said that both of them are found guilty accordingly mainly due to acts committed by each of them in connection with Shekhadi Landings and/or transportation of contraband goods smuggled by effecting the said landings. The said landing was effected by Tiger Memon on two occasions in month of February, 1993 in which Tiger Memon and his associates at the behest of absconding accused Dawood Ibrahim has smuggled arms, ammunition and explosives and transported same from Shekhadi Coast via Wangni Tower to Bombay.

The evidence surfaced and/or reasoning given thereon earlier also reveal that both A-18 28 since earlier had close association with Tiger Memon and were carrying out the work of Drivers for transportation of smuggled goods and in the questioned landing they had transported the contraband goods in a manner as discussed in the earlier part of the judgment. The reasons given earlier in terms reveal the evidence having established that both of them were men of confidence of Tiger Memon. The same also reveals that they were aware and/or had become aware about the nature of the goods which they were transporting and/or had transported. Having regard to the same and having regard to the fact that both of them, even after acquiring the knowledge had not taken any steps revealing that they were against transportation of such a contraband goods, which was arms and ammunition and RDX material and since the act committed by them being in the nature of furthering the object of conspiracy to commit terrorists act, they were held guilty for the offence of a conspiracy to the said extent. Since, evidence has not revealed that both these accused had committed any further acts after the said transportation and/or thereafter A-18 having stopped the work for Anwar at the behest of whom he was involved in the said work and so also both of them being not connected with any of the operation effected for achieving the object of entire conspiracy i.e. both of them being not involved in acquiring the training, attending conspiratorial meetings, in which the targets were selected etc. they could not be held guilty for commission of offence of conspiracy to commit the serial bomb blast etc.”

222. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

223. We do not see any cogent reason to interfere with the impugned judgment. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 1034 OF 2012

State of Maharashtra .. Appellant

Versus

Tulsi Ram Dondu Surve ... Respondent

224. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by Special Judge of the Designated Court under the TADA for Bombay Blast case, Greater Bombay in B.B.C. No.1 of 1993. The respondent Tulsi Ram Dondu Surve (A-62), has been found guilty for offences punishable under Section 3(3) TADA, and on the said count, has been convicted and sentenced to suffer RI for 9 years and a fine of Rs.50,000/- and in default, to suffer further RI for one year. He has also been found guilty under Section 202 IPC, and sentenced to suffer RI for 6 months and ordered to pay a fine of Rs.5,000/-, and in default of payment of fine, he was ordered to suffer further RI for one month. Both the sentences were directed to run concurrently. However, he has been acquitted for charge of conspiracy. Hence, this appeal.

225. Shri Mukul Gupta, learned senior counsel appearing for the appellant would submit that the respondent (A-62) was a Watchman - a government servant, at Wangni Tower. He had not only facilitated the unloading of goods smuggled in India, rather served the smugglers by taking money as a consideration for this work. He was fully aware of the contraband material but he did not inform the police authorities about the same. Therefore, he ought to have been held guilty of the charge of conspiracy also.

226. On the contrary, Ms. Farhana Shah, learned counsel appearing for the respondent has opposed the appeal contending that he has already served 5 years of sentence. He did not participate in hatching the conspiracy by attending any conspiratorial meetings. Therefore, this Court should not grant any indulgence, taking into consideration the parameters laid down by this Court for hearing the appeal against order of acquittal. The appeal is liable to be dismissed.

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

228. Evidence against respondent:

(a) Confessional statement of respondent (A-62)

(b) Confessional statement of Dawood Phanse (A-14) (c) Confessional statement of Sharif Abdul Gafoor Parkar (A-17) (d) Deposition of Usman (PW.2)

229. Confessional statement of respondent Tulsi Ram Dondu Surve (A- 62) :

In his confessional statement, the respondent revealed that he was working as a Watchman in Wangni Tower. Dawood Phanse (A-14) had become acquainted with him and Tiger Memon (AA) who had been using Wangni Tower for loading, unloading and shifting the contraband from one vehicle to another. Tiger Memon (AA) used to keep the smuggled goods and silver in Wangni Tower. As Harish Chandra Surve (PW.108) and Vijay Govind More (PW.137) had also been working in the same tower as employees, the respondent had persuaded them for helping the smugglers. Payment was made to them from the money received by him for rendering such assistance. He also disclosed that Dawood Phanse (A- 14) had purchased 10 acres of land in the name of the accused- respondent (A-62). In respect of the incident of smuggling, he disclosed that one tempo, jeep and Maruti car arrived at the Wangni Tower. Tiger Memon (AA) and his associates Iqbal, Mobin, Anwar, Munna, Shafi were accompanying the vehicles. Silver bricks were shifted from the truck into the tempo. There were gunny bags and boxes covered with clothes also and about 50 bags out of the aforesaid goods remained unloaded. The said bags were taken by the truck of Alware in the field which was in his name and were concealed in the pits by putting soil on it. Dawood Phanse (A-14) had told him that the contraband was “Kala Sabun”, and he was warned not to disclose the same to any one. Tiger Memon (AA) cut one bundle from the said bundles, and saw the same to ascertain whether the goods were proper or not. He threw the plastic at that place and packed the same in another bundle and took the same with him. Thereafter, on 7.1.1993 again Dawood Phanse had informed the respondent (A-62) that goods were about to arrive and this was being informed to Harish Chandra Surve (PW.108) and Vijay Govind More (PW.137). One truck, three jeeps, one rickshaw and two motor cycles came there alongwith

the accused persons, namely, Dawood Phanse (A-14), Dadamiya Parkar (A-17), Sharif Adhikari (A-60), Abdul Gharatkar (A-34) and Tiger Memon (AA). After 5- 6 days Dawood Phanse (A-14) had paid him Rs.2,000/- for the assistance. Dawood Phanse (A-14) used to give an amount of Rs.1000/- for each of them i.e. accused, Harish Chandra Surve (PW.108) and Vijay Govind More (PW.137).

230. Confessional statement of Dawood Phanse (A-14) : The accused Dawood Phanse (A-14) did not name Tulsi Ram Dondu Surve (A-62) but corroborated the incident of unloading and shifting of goods at Wangni Tower.

231. Same remained the position in respect of the confessional statement of Sharif Abdul Gafoor Parkar (A-17). Even the Deposition of Usman (PW.2) corroborated the same.

232. After appreciating the entire evidence, the Designated Court came to the conclusion as under:

“59-A – The aforesaid material contained in the confession of A- 62 not only reveals his involvement in Shekadi landing transportation but also reveals involvement of A-14, 17, 27, 34, 42, 55, 60, PW 108, PW 137 and Tiger Memon.

59-B - The corroborative material to matters contained in confession of A-62 i.e. his involvement in Shekadi landing transportation operation for which he is charged with is also found in the confession of co-accused no.17.

59-C - Thus considering material in the confession of A-62 and aforesaid co-accused the same leads to the conclusion of A- 62 also being involved in Shekadi landing operation as denoted by said material and as such having committed offence u/s.3(3) of TADA for which he is charged at head 2ndly clause ‘a’ and ‘b’. Similarly the same evidence also establishes his involvement in commission of offences for which charge was framed at head 3rdly i.e. offence u/s.202 of IPC on count of himself in spite of being watchman and Government servant has still knowingly and intentionally omitted to give information about offences committed in his presence being in possession of contraband material unauthorisedly.”

233. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

234. We have given our conscious thought to the facts but are not convinced that the respondent can be held guilty for the charge of larger conspiracy also. We concur with the learned Special Judge so far as the respondent is concerned. The appeal lacks merit and is dismissed accordingly.

CRIMINAL APPEAL NO. 416 OF 2011

State of Maharashtra Through CBI ... Appellant

Versus

Sujjad Alam ... Respondent

235. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by Special Judge of the Designated Court under the TADA for Bombay Blast Case No.1 of 1993 by which the Respondent (A- 61) had been convicted under Section 3(3) TADA and awarded rigorous imprisonment for 7 years with a fine of Rs. 50,000/- However, Respondent (A-61) has been acquitted of the general charge of conspiracy.

Hence, this appeal.

236. Shri Mukul Gupta, learned senior counsel appearing for the appellant, has submitted that the respondent had very close association with terrorists and had been a kingpin in all the terrorist activities and most of the accused in their confessional statements had revealed his involvement. Therefore, he ought to have been convicted for the charge of general conspiracy and, thus, the appeal deserves to be allowed.

237. On the contrary, Ms. Farhana Shah, learned counsel appearing for the respondent, has submitted that the respondent (A-61) has already been convicted and punished appropriately. He has already served 3-1/2 years in prison and had paid fine, therefore, no further punishment is required and the appeal is liable to be dismissed.

238. The evidence against the respondent Sujjad Alam @ Iqbal Abdul Hakim Nazir (A-61) is his own confession. In his confessional statement, he had disclosed that his maternal uncle Khalil Ali Nazir had been involved in landing of silver for Tiger Memon (AA) at Shekhadi Beach. Accused (A-61) used to take Dawood Taklya (A-14) and Abdul Aziz Gharatkar to the place of landing in his auto rickshaw. Accused (A-61) participated in the landing and transportation of the contraband. Accused (A-61) was paid Rs. 2000/- per landing through Khalil. On 20th January, 1993, Accused (A-61) went to the residence of his maternal uncle and found Khalil, Muzammil, Shafi and other Khalil, resident of Shrivardhan present there. They were shifting some goods wrapped in gunny bags from the jeep to a room. At that time, son of Dawood Taklya Sarfaraz (A-55) was also there. Shafi, driver of Tiger Memon(AA), asked accused (A-61) to leave the room. When they opened the gunny bags inside the room, accused (A-61) saw that the bags contained 16 rifles and 32 cassettes (magazines). After coming outside, A-61 saw that Khalil, resident of Shrivardhan, was closing secret cavities in the jeep. Shafi then took that jeep towards Mhasla. The accused (A-61), Khalil and Muzammil took the said arms, ammunition in the auto rickshaw of Muzammil at the residence of Muzammil and dropped the same there. On 3rd February, 1993, his uncle Khalil asked him to help in the landing of contraband for Tiger Memon (AA) in the night. So A-61 went to the place of landing in his auto rickshaw alongwith Dawood Taklya (A-14) and Abdul Aziz. After reaching there, he found 2-3 jeeps carrying Tiger Memon (AA) and 20-25 of his associates. The accused (A-61) was then directed to reach Tower, upon which, he left to wake the people there. On reaching the place the accused (A-61) parked the vehicle on one side of the tower and slept on the back seat. After a long time, Muzammil came to the vehicle and woke him up. Rashid and Khalil also came there. By that time, all the vehicles from Shekhadi had arrived. The associates of Tiger Memon (AA) were unloading and shifting the articles inside the Tower. The accused (A-61) was forbidden to enter inside. After sometime, Dawood, Khalil, Abdul Aziz and accused (A-61) left the Tower in the auto rickshaw. It was in the evening of 9th February, 1993, that the accused (A-61) took Dawood Taklya in his auto rikshaw to Mehandari. From there they took Khalil Nazir from his residence and reached Muzammil's residence. On being asked by Dawood Taklya, Muzammil handed over 3 rifles and 6 cassettes in a gunny bag. All the three accused then took the said weapons and ammunition and came to Lonery Phatta on the highway via Goregaon and handed over the same to Tiger Memon (AA), who had arrived there. After 4-5 days, Dawood Taklya sent Rs.4000/- for both the landings.

239. Confessional statement of Mohd. Phanse @ Dawood Taklya (A-14) – His statement corroborated the version given by the accused (A-61) about the landing at Shekhadi and disclosed the role of accused (A-61) as a participant in the landing and his facilitation in the transportation. According to him, Tiger Memon (AA) was there with 20- 25 persons. Out of them 8-10 persons were carrying pistols in their pockets. Immediately, after the arrival of trawler, accused (A-61) was sent alongwith his auto rickshaw to call Rashid from Borli with his truck so he left. The goods were unloaded and put in the trucks. Immediately, another trawler arrived carrying the goods which were also unloaded. Tiger Memon (AA) made 2-3 boys carrying guns to sit over the goods which were loaded in the truck. Then they had reached Wangni Tower, where the goods were unloaded. When they went inside the Tower, he saw the men of Tiger Memon (AA) opening those boxes and putting rifles, pistols, bullets, black wire, handgrenades and bundles of wire with white pencil on top and “black soap” like material at the side. Tiger Memon (AA) was sitting at their side and counting and noting things in his diary. Once the landing and transportation was over, co-accused (A-14) came back to his village alongwith accused (A- 61) in his auto rickshaw.

240. Confession of Khalil Ahmed Sayed Ali Nasir (A-42) – So far as accused (A-61) is concerned, A-42 in his confessional statement disclosed that on 3rd March, 1993 he and Dawood Taklya (A-14) had reached Mhasla in the autorickshaw of accused (A-61). Then the accused (A-61) was sent to village Borli with autorickshaw to bring the truck and labourers.

241. Confession of Muzammil Umar Kadri (A-25) – On 3rd February, 1993, this accused (A-25) on being called reached in front of Bashir’s house in Borli. Accused (A-61) auto rickshawala also came there sometime later after dropping Dawood Taklya (A-14) and Khalil at Shekhadi. Sometime later, Khalil had come alongwith another Khalil of Shrivardhan on his scooter. Khalil sent accused (A-61) to the tower just before the jeep came and accused (A-25) also went to the tower alongwith Khalil by following the truck. On 7th February, 1993, Dawood Taklya (A-14) had taken him in the auto rickshaw of accused (A- 61), to Shekhadi. In the morning of 7th February, 1993 Dawood Taklya (A-14) had come in the rickshaw of accused (A-61) and took 3 rifles and 6 cassettes which had been kept in his house earlier. The remaining 13 rifles and 26 cassettes had been recovered later on by the police from his house.

242. Deposition of Vijay Govind More (PW.137) – This witness deposed about the incident of February, 1993 stating that Tiger Memon (AA) and his companions

came in jeeps and motorcycles and an auto rickshaw at Wangni Tower. Accused (A-61) was also with them. He also identified the accused (A-61) in court.

243. The Designated Court after appreciating the entire evidence reached the conclusion as under:

“The aforesaid material contained in the confession of A-61 not only reveals his involvement in Shekadi landing and transportation but also reveals involvement of A-14, 15, 17, 25, 27, 34, 42, 55 Tiger Memon.”

244. In addition, the Designated Court also reached the conclusion that the accused (A-61) had no knowledge about the use to which weapons were to be put into. In awarding the punishment, the court took into consideration the role played by the respondent (A-61) and concluded that charge for larger conspiracy could not be made out.

245. It is evident that he was not allowed to enter into the Wangni tower and thus he had no knowledge that arms had been smuggled into India to be used in Bombay Blast, and further, the fact that the arms were kept in the house of Muzammil, and the arms and ammunition had been transported in the vehicle belonging to Muzammil and not in the vehicle of accused (A-61). There is nothing on record to show that accused (A-61) had participated in loading and unloading of the same. His rickshaw had been used for carrying the accused persons. The accused (A-61) had transported the arms, i.e. 3 rifles and 6 cassettes alongwith Dawood Taklya from the house of Muzammil which were subsequently taken from him by Tiger Memon (AA).

246. The scope and ambit of Section 3(3) TADA is very wide. Punishment for the offences under section 3(3) varies from 5 years to life imprisonment depending on the gravity of the overt act done by particular accused. Each of them cannot be held to be at par, as one of them may be instrumental in arranging the landing, another maybe helping in organising and affecting transportation, some may be given supervisory work while other persons might have been engaged as labourers. Therefore, while determining the quantum of punishment the precise act committed by an individual accused is of prime consideration.

247. In the instant case, appellant (A-61) had been found guilty on the single count of participating in landing on two occasions and additionally of being involved in the concealment of arms and ammunition at the house of A-25 and further for the

transportation of some arms from the house of A-25 to Lonery Phata and handing over the same to Tiger Memon (AA). Undoubtedly he had been working as an auto driver and was paid only for that.

248. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

249. The judgment of the learned Special Judge does not require interference. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 512 OF 2008

Abdulla Ibrahim Surti

Vs.

State of Maharashtra thr. CBI-STF, Bombay

AND

CRIMINAL APPEAL NO. 401 OF 2011

State of Maharashtra ....Appellant Versus

Faki Ali Faki Ahmed Ors. ....Respondents AND

CRIMINAL APPEAL NO. 595 OF 2011

The State of Maharashtra ....Appellant Versus

Abdullah Ibrahim Surti ....Respondents

Criminal Appeal Nol. 512 of 2008

250. This appeal has been preferred against the judgments and orders dated 21.5.2007 and 25.5.2007, passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No. 1/93, Greater Bombay, by which the appellants have been convicted under Sections 3(3) and 6 TADA.

In view of the fact that each appellant being assigned different acts, has been charged differently and has been awarded a different sentence, it is desirable to deal with the case of each appellant separately to certain extent.

I. Abdulla Ibrahim Surti (A-66):

251. Appellant (A-66) was charged for concealing 12 AK 56 rifles, 36 magazines and 19500 cartridges of AK 56 rifles which were kept in 3 bags in a cloth and 13 cloth bags were kept in the mango grove of Abdul Razak Subedar. These arms and ammunition had been smuggled into India to be used for terrorist activities and were recovered at his instance on 7.4.1993 from the said place.

He was further charged for disposal of the said arms and ammunition alongwith other co-accused dumping the same in Kandalgaoon creek. And lastly for aiding and abetting the co-accused Shabir (AA) and Jamir (A-133) having possession and carrying fire arms and ammunition under Section 6 TADA.

Appellant (A-66) stood acquitted on the first charge of conspiracy. However, he has been convicted under Sections 3 (3) TADA and awarded RI of five years and a fine of Rs.25,000/-, and in default of payment of fine, to suffer further RI of six months. Under Section 6, has been awarded RI of six years and a fine of Rs.25,000/- and a suitable R.I. for default of payment of fine. Hence, this appeal.

252. Ms. Farhana Shah, learned counsel appearing for the appellant (A- 66) has stated that the appellant (A-66) had no knowledge that the items being transported were arms and ammunition. Moreover, he has not made any confession and the confessional statement of the co-accused cannot be relied upon to convict him. Further it was urged that he (A- 66) has already served 3 years out of the sentence that has been awarded to him. Thus, the appeal deserves to be allowed.

253. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that confessional statement of Faki Ali Faki Ahmed Subedar (A-74) disclosed the involvement of the appellant in disposal of 3 wooden boxes concealed in the cattleshed of Firoz Khan as the latter wanted to dispose of the hidden boxes of weapons and bags of bullets in the creek after the Bombay Blast on 12.3.1993. He explained how the said contraband material was taken in the boat

and thrown in the Kandalwada Creek with the help of some persons including Abdullah Ibrahim Surti (A-66). Therefore, the appeal deserves to be dismissed.

254. We have heard the rival submissions made by learned counsel for the parties and perused the record.

255. Evidence against the appellant (A-66):

- (a) Confessional statement of Faki Ahmed Subedar (A-74)
- (b) Confessional statement of Janardhan Pandurang Gambas (A-81)
- (c) Confessional statement of Jamir Sayyed Ismail Kadri (A-133)
- (d) Deposition of Shridhar Shantaram Borkar (PW-88)
- (e) Deposition of Dattaraybhiku Udarkar (PW-89)
- (f) Deposition of Anil Ramchandra Baswat (PW-90)
- (g) Deposition of Janu Hajari (PW-378)
- (h) Deposition of Vyankatesh Hirba Rane (PW-588)

256. Confessional statement of Faki Ahmed Subedar (A-74): According to this accused, in the 2nd/3rd week of March, 1993, Shabir came to him and asked for help as Firoz Khan had come from Bombay where some communal disturbance had taken place and he had to hide certain boxes of weapons and bags of bullets in the creek. He wanted a boat to take those weapons to the creek. Thereafter, the Shabbir (AA), Jamir (A-133) (dead), appellant (A- 66) and Janardhan Pandurang Gambas (A-81) removed those three wooden boxes and six greenish coloured bags kept under the haystack in their cattle shed and kept them in the boat on the shore. Janya Sarsai was in the said boat. Faki Ahmed Subedar (A-74) showed them torch light while bags and boxes were being carried. Thereafter, Shabir came and told that the bundles of weapons and bags of bullets were to be hidden in the mango groves. At that time, appellant (A-66), Janardhan Pandurang Gambas (A-81), and Jamir Sayyed Ismail Kadri (A-133) (dead) were also present.

257. Confessional statement of Janardhan Pandurang Gambas (A-81):

He disclosed that he had a boat and helped smugglers in landing and transportation and, for that purpose, he had been paid by Shabbir Rs.1000/- for each landing. He stated that on 2nd December, 1992, Uttam Potdar (A-30) came to him and conveyed the message of Shabbir to help him in landing of gold, silver and, accordingly, they went to Dighi Jetty in the night. They found a large number of labourers alongwith Shabbir and Uttam Potdar (A-30) and Mechanic Chacha (A-136) and he participated in landing and transportation and he was paid a sum of Rs.5,000/-. On 9th January, 1993, he was again contacted by Uttam Potdar (A-30) and he went for landing alongwith Firoz Khan, Mechanic Chacha (A-136) and Shabbir Kadri. After the landing Uttam Potdar (A-30), brought 30 bundles wrapped by gunny cloth around the box and 30 bags of military black colour and, at that time, Mechanic Chacha (A-136) said that the boxes contained glass wares so they had to be carried carefully. After the Bombay Blast, he (A-81) went to Shabbir Kadri's house where he told him (A-81) that the goods which landed on that day were contained guns and ammunition and the same were to be hidden into a pit. They dug pits in the mango grove of Shabbir, came back to his house again and wrapped 12 guns, 4 each from 3 boxes, into the gunny clothes and boxes, packing with thermacol and 26 boxes were hidden in the pit. He (A-81) was paid Rs.1,000/- for doing the said work. While hiding the rifles and ammunition, Faki Ali Chacha (A-74), Abdullah Surti (A-66) and Shabbir's father Sayed Ismail (A-105) were also present. They opened 3 wooden boxes in the house of Faki Ali Faki Ahmed Subedar (A-74). Shabbir told him that the same were magazines of guns. Thereafter, Shabbir (AA), his brother Jamir (A-133), Abdullah Surti (A-66), Faki Ali Faki Ahmed (A-74) and he (A-81) went to the boat which was tied near the house of Shabbir, taking 3 boxes, and 6 bags, where Janu Vethkoli was also present who neatly arranged the 6 bags and 3 boxes in the boat. On being asked Faki Ali Faki Ahmed Subedar (A-74) informed him (A-81) that there were bullets in the bags. Subsequently, he was informed that the said goods have properly been kept in the creek water.

258. Confessional Statement of Jamir Sayyed Ismail Kadri (A- 133):

He disclosed that in January 1993, he had participated in the landing alongwith Uttam Potdar (A-30) and, at that time, on 9th January, 1993, he was also informed by Shabbir that silver and weapons would arrive at Dighi Jetty on the same day. He further deposed that some of the smuggled goods

were brought to the house of Shabbir and those wooden boxes and greenish coloured boxes were kept in the house of his (A-133) maternal grandmother for about one month as the house generally used to remain closed. Subsequently, Shabbir said that the boxes had to be shifted to the house of Ali Mian Faki (A-74) which was in close proximity. Janardan Pandurang (A-81), Ali Mian Faki (A-74), Abdulla Surti (A-66), Shabbir and he (A-133) picked up those boxes and bags and took to the house of Ali Mian Faki (A-74).

After 4-5 days of bomb Blast on 12.3.1993, Janardan Gambas (A- 81) and Abdullah Surti (A-66) also arrived at his place. Shabbir told them that the wooden boxes and bags had to be thrown in the water. As per the instruction, he brought the boat near the village and Shabbir, Firoz, Abu Bakar, Janardhan Gambas (A-81), Ali Mian Faki (A-74), Abdullah Surti (A-66) and A-133 loaded three wooden boxes and few green colour bags in the boat from the house of Ali Mian Faki (A-74). Shabbir had said that those boxes and bags have to be thrown in creek near Kandalwada. Next night Shabbir took him (A-133) to the house of Ali Mian Faki (A-74). Janardan Gambas (A- 81), Ali Mian Faki (A-74) and Abdullah (A-66), participated in burying the arms bags and sacks in the mango grove of Subedar.

259. Deposition of Shridhar Shantaram Borkar (PW-88): He was the panch witness to the disclosure statement made by Faki Ali Faki Ahmed Subedar (A-74) on 7.4.1993, and also the recovery of weapons from the mango grove.

260. Deposition of Dattaraybhiku Udarkar (PW-89): He was the panch witness to the statement made by Janu Vetkholi (PW-378) on 8.4.1993, and to the recovery of weapons from Kandalwada creek. He recognised the seizure panchnama Exh. 503 in court.

261. Deposition of Anil Ramchandra Baswat (PW-90): He deposed that he had arranged for a boat and took police party and Janu Vetkholi (PW-378) into Kandalgaon creek, wherefrom three wooden boxes and six military colour bags were found from which weapons and ammunition were recovered.

262. Deposition of Janu Vetkholi (PW-378) :

His deposition revealed that he was earlier an accused but subsequently discharged. He did not name the appellant A-66, however, corroborated the

confessional statement made by all others including Ali Mian Faki (A-74) and Janardan Pandurang Gambas (A- 81).

263. Deposition of Vyankatesh Hirba Rane (PW-588): He had recorded the disclosure statement made by Faki Ali Faki Ahmed Subedar (A-74) in presence of the panch witnesses on 7.4.1993. In the said statement, he had disclosed the location where arms were hidden. Faki Ali Faki Ahmed Subedar (A-74) led the police party to mango grove from where the weapons were recovered. Vyankatesh Hirba Rane (PW-588) recorded the FIR and arrested Janu Vetkholi (PW-378) on 8.4.1993. Janu Vekholi (PW-378) took the police party to the creek from where three wooden boxes and six military coloured boxes were recovered containing weapons.

264. The learned Designated Court after appreciating the evidence came to the conclusion that the involvement of the appellant (A-66) in commission of similar acts was established by the material contained in confession of the appellants (A-74 and A-81) and Jamir Sayyed Ismail Kadri (A-133) and he was held guilty for commission of offences under sections 3(3) and 6 TADA.

265. We find no reason to interfere with the judgment of the learned Special Judge. The appeal with respect to appellant (A-66) lacks merit and is accordingly dismissed.

## II. Faki Ali Faki Ahmed Subedar (A-74) :

266. Appellant (A-74) was further charged for concealing 12 AK 56 rifles, 36 magazines and 19500 cartridges of AK 56 rifles which were kept in 3 bags in a cloth and 13 cloth bags in the mango grove of Abdul Razak Subedar. These arms and ammunition had been smuggled into India to be used for terrorist activities and had been recovered at his instance on 7.4.1993 from the said place.

He was further charged with disposal of the said arms and ammunition alongwith other co-accused dumping the same in Kandalgaon creek.

He was lastly charged with aiding, abetting the co-accused Shabir and Jamir (absconding) having in possession and carrying fire arms and ammunition under Section 6 TADA.

267. He had been acquitted on the first charge of conspiracy. However, he had been convicted under Sections 3 (3) TADA and awarded RI of five years and a fine of Rs.25,000/-, in default of payment of fine, to suffer further RI of six months. Under Section 6, he had been awarded RI of six years and a fine of Rs.25,000/- and a suitable R.I. for default of payment of fine.

268. Ms. Farhana Shah, learned counsel appearing for the appellant (A-74) and Shri Mukul Gupta, learned senior counsel appearing for the State have raised the same contentions which have been raised in respect of Abdulla Ibrahim Surti (A-66).

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

270. Evidence against the appellant (A-74):

- (a) Confessional statement of the appellant (A-74)
- (b) Confessional statement of Janardhan Pandurang Gambas (A-81)
- (c) Confessional statement of Jamir Sayyed Ismail Kadri (A-133)
- (d) Deposition of Shridhar Shantaram Borkar (PW-88)
- (e) Deposition of Dattatray Udharkar (PW-89)
- (f) Deposition of Anil Baswat (PW-90)
- (g) Deposition of Janu Hajari (PW-378)
- (i) Deposition of Rajan Dhoble (PW-585)
- (j) Deposition of Pratap Dighavkar (PW-586)

271. Confessional Statement of Faki Ali Faki Ahmed Subedar

(A-74):

He disclosed that he was a neighbour of Sayed Ismail Kadri (A-105) and his sons Shabir (AA) and Jamir (A-133) indulged in smuggling activities and had connections with Uttam Potdar (A-30). After the bomb Blast on 12th March, 1993, Shabir came to his (A-74) house and asked him to help one Firoz Khan who had come from Bombay and Firoz Khan told him to hide the boxes of weapons and bags of bullets in the creek. Therefore, he wanted his help to take the things upto the boat. Shabir, his brother Jamir (A-133), Abdullah Surti (A-66) and Janardhan Gambas (A-81) removed three wooden boxes and six greenish coloured bags kept under the haystack in their cattleshed and kept it in the boat at the shore. Janu Vetkholi (PW. 378) was present in the said boat. The appellant (A-74) showed them torch light while bags and boxes were being carried. They sailed the boat towards Kandalwada Creek. On the next day, Shabir came and said that bundles of weapons and bags of bullets which were in his possession, were to be hidden in the mango groves. So again in the night the appellant (A-74) along with other co-accused took the 13 greenish coloured bags of bullets of guns and 3 bundles having guns wrapped in the plastic paper from under the haystack and they were buried in the pit dug in the mango grove of Abdul Razak Subedar who was staying in Nairobi at that time and the same was filled and covered by soil and hay. At that time also, the appellant (A-74) had shown the torch light. The appellant (A-74) was taken to the police station after making the inquiry about Shabir (AA) and Jamir (A-133) and the appellant (A-74) disclosed that 13 greenish bags of bullets of guns wrapped in the wax cloth had been buried in the mango grove of Abdul Razak Subedar. The said items were earlier recovered from there on the confessional statement of the appellant (A- 74). He took out the hidden articles from the pit by removing the soil and hay and produced the same. The police seized the arms and ammunition.

272. Confessional statement of Janardhan Pandurang Gambas (A-81):

He has disclosed in his confessional statement that after the Blast, Jamir Sayyed Ismail Kadri (A-133) came to Gambas's (A-81) house and alongwith Abdulla Ibrahim Surti (A-66), Faki Ali Faki Ahmed Subedar (A-74), Shabir and his father (A-105), they hid the weapons in mango grove that landed on 9.2.1993 at Dighi. Thereafter, Gambas (A- 81), Jamir Sayyed Ismail Kadri (A-133), Abdulla Ibrahim Surti (A-66) and Faki Ali Faki Ahmed Subedar (A-74) took out three boxes and six packets from the house of A-74 and placed them in a boat with the help of Janu Vetkholi (PW-378), who took

the boat to Mahendali creek. Faki Ali Faki Ahmed Subedar (A-74) told Gambas (A-81) that the boxes contained bullets and Shabir had informed Gambas (A-81) that the goods had been kept in creek water.

Thus, the confession of Gambas (A-81) corroborates the confession of Faki Ali Faki Ahmed Subedar (A-74) in material respects in so far as the hiding of weapons in mango grove is concerned and also about taking the weapons to a boat and hiding them in creek water after the Blast.

273. Confessional statement of Jamir Sayyed Ismail Kadri (A- 133):

He had participated in the landing at Dighi and he knew that weapons had been smuggled into India. Boxes containing weapons were kept at the house of Faki Ali Faki Ahmed Subedar (A-74) on instructions of Shabir (AA) by Jamir Sayyed Ismail Kadri (A-133), Abdulla Ibrahim Surti (A-66) and Janardhan Pandurang Gambas (A-81). Faki Ali Faki Ahmed Subedar (A-74) alongwith others loaded three wooden boxes and few green bags in the boat of Janu Vetkholi (PW-378), which Shabir and Firoz threw in the Kandalwada creek. Next day, Shabir took Jamir Sayyed Ismail Kadri (A-133) to the house of Faki Ali Faki Ahmed Subedar (A-74), where Abdulla Ibrahim Surti (A-66) and Gambas (A- 81) were already present. They buried the bags containing weapons in the mango grove at a little distance from his house. Jamir Sayyed Ismail Kadri (A-133) was present in the house of Faki Ali Faki Ahmed Subedar (A-74) when police raided his house searching for Shabir after the Blast.

274. Deposition of Shridhar Shanta Ram Borkar (PW-88): He revealed that he was called at the police station by P.S.I. VH Rane (PW.588) through the Constable. When he reached there he found two more persons present in the room and P.S.I. VH Rane (PW.588) told him that one of them was Sonkar, resident of the village. He was told that the second person was arrested in connection with the Bombay Blast and for that purpose P.S.I. Rane wanted the witness to become a panch witness. The witness was examined in his presence. After preparing the panchnama (Ext. 448) he disclosed his name to be Faki Ali Faki Ahmed Subedar (A-74) and he got some recovery effected from Shabir Kadri's compound. Thus, the panchnama was drawn up about the said event (Ext. 449). Thereafter, the witness (PW.88), Co-panch, the said accused (A-74) and VH Rane (PW.588) went to the place at Agarwada as shown by the said accused. After entering the compound he (A-74) said that the weapons were concealed beneath the grass. The accused (A-

74) thereafter removed the grass from the said place and a trench could be seen. The said trench contained three black coloured bundles. A-74 took out the said three bundles. The said trench was also contained 13 military coloured cloth bags. All the said 13 bags were taken out of the said trench. On opening the said trench four rifles and twelve magazines were found wrapped in a gunny bag. The said four rifles were having black colour barrel and wooden colour grip. The rifles were bearing some numbers but the same were illegible as it had been rubbed off. The first military coloured bag contained two rectangular tin boxes, one of the boxes was opened contained 750 cartridges. The second tin box was sealed and the same was not opened in his (PW-88) presence. The remaining 12 military coloured bags contained two rectangular tin boxes each like the boxes found in the first bag and on opening the tin boxes they were found containing 750 cartridges each. The panchnama of the said articles was drawn by P.S.I. Rane (PW.588). One of the rifle out of 12 rifles and one of magazines and five cartridges was taken by the police by way of sample and the same were sealed.

In his cross-examination he has admitted that he had recorded the date 7.4.1993 in his small diary on which day he was made the panch witness. He further deposed that statement of Faki Ali Faki Ahmed Subedar (A-74) was recorded wherein he had disclosed that the arms and ammunition had been concealed by three persons. He has admitted in his cross-examination that he had signed a large number of slips/labels. All the labels signed by him were not pasted upon all the articles.

He further deposed that he was not in a position to identify the boxes or say that the boxes shown to him in the court were the same which had been recovered from the grove of Faki Ali Faki Ahmed Subedar (A-74). He has also admitted that certain newspapers had been used for sealing the recovered articles which were of the date subsequent to the date of recovery i.e. 7.4.1993, for example. Bombay Sakal dated 9.4.1993 and Krushival dated 13.4.1993.

#### 275. Deposition of Dattatray Udharkar (PW-89):

He revealed that he is a recovery witness on 8.4.1993. This witness has deposed that he was called at the police station to act as a panch witness. The accused person arrested by the police was also at the police station. On being asked the accused person disclosed his name as Janu Vethkoli. He disclosed that certain weapons had been hidden in creeks. All the persons

alongwith the police party and said accused and swimmers went in a fishing boat around Kandalwada and they waited till the low tide was complete. As the water recedes the signs of the bags were seen in the water and the mud of the creek. The said bags were of military colour. Three wooden boxes were also seen at some distance away from the said bags. The said six bags and 3 wooden boxes were taken in the boat. The mouth of one of the bags was loose. The said bag was opened. It contained two sealed tin boxes. One of the boxes was opened and found to contain cartridges. Each box contained 30 paper boxes with 25 cartridges each. The second box was not opened in his presence. The box contained 13 magazines. The panchnama of recovery was prepared. However, when the boxes were opened in the court, newspaper in which boxes had been wrapped was of date subsequent to the date of recovery e.g. Nava Kaal dated 13.4.1993. He identified the green colour bag recovered from the creek.

276. Deposition of Anil Baswat (PW-90):

He revealed that he was a panch witness of recovery on 8.4.1993. He went to the creek alongwith Mhasla and Bombay police and one Janu Vethkoli (PW.378) was also in the boat. There they found three wooden boxes and 6 military cloth boxes at the shore of Kandalwada creek. They got down from the boat and brought the said articles and kept them in the boat. They returned to village Pabala by the same boat. In his cross-examination, he has admitted that one of the newspapers used for wrapping the articles was dated 13.4.1993 which is subsequent to the date of recovery.

277. Deposition of Janu Vethkoli (PW-378) :

He revealed that he was earlier accused but subsequently discharged. He had been arrested in connection with Bombay blast and prior to the Bombay blast he had been called by Jamir Sayyed Ismail Kadri (A-133) (dead) to bring his boat. Accordingly, he went to Agarwada with his (PW. 378) boat and Jamir Sayyed Ismail Kadri (A-133) told him to wait there. He reached there and after reaching the sea shore at Agarwada he found that Shabir was present. He was asked to anchor his boat and wait. Accordingly, he waited. Thereafter, Shabir told him that there is a foul smell of things in his house and hence the same is to be thrown away in the sea. Two persons who were present alongwith Shabbir transported the things alongwith them. Shabir kept the same in the boat. The things had been wrapped in a gunny bag.

Shabbir also boarded his boat and the boat was taken in the creek away from the shore. Upon reaching the creek, Shabir threw away the said articles wrapped in the gunny bag in the water. Thereafter, the witness took the boat to the shore of Agarwada. Shabir alighted from the boat and the witness returned to his village. Shabir did not give any money to PW. 378 though he promised to pay the same.

278. Deposition of Rajan Dhoble (PW-585):

In his deposition, he reveals that the recovery from the Kandalwada creek was effected and three wooden boxes were found and opened at the sea shore. The said bags contained 18, 13 and 13 magazines of black colour. The said recovery had been made at the instance of Faki Ali Faki Ahmed Subedar (A-74).

In his cross-examination he (PW-585) admitted that one of the newspapers in which the said articles had been wrapped was subsequent to the date of recovery as it was of 13.4.1993. He is the officer who had arrested Faki Ali Faki Ahmed Subedar (A-74).

279. Deposition of Pratap Dighavkar (PW-586):

He revealed that while interrogating Faki Ali Faki Ahmed Subedar (A-74), the said accused expressed his desire to make a voluntary confession. Thus, on the same day he wrote a letter to the S.P. Raigad requesting him to record his confession and he was produced for recording the confession on 7.5.1993 and it was so recorded.

280. With regard to Faki Ali Faki Ahmed Subedar (A-74), the Designated court came to the conclusion that on the basis of disclosure statement made by the appellant (A-74), 12 AK-56 rifles and 36 magazines and cartridges were recovered from mango groves. The appellant (A-74) was having knowledge about the same due to being involved in shifting the said contraband from the house of Jamir Sayyed Ismail Kadri (A-133) and Shabbir (AA) to said mango groves along with Jamir Sayyed Ismail Kadri (A-133) and other co-accused. It was held that said acts and the further acts of the appellant (A-74) of giving assistance in dumping the cartridges of AK-56 rifles and magazines in Kandalwada creek, would make him guilty for commission of offences under sections 3(3) and 6 TADA

281. We find no evidence on record warranting the interference with the judgment of the learned Designated Court. The appeal with regard to appellant (A-74) lacks merit and is accordingly dismissed.

### III. Janardhan Pandurang Gambas (A-81):

282. Appellant (A-81) was further charged for participating and assisting the co-accused Mechanic Chacha (A-136), Shabir and Jamir Kadri (A-133), Feroz Khan and co-accused Uttam Potdar (A-30) in smuggling, landing and transportation of arms, ammunition and explosives smuggled in India on 9.1.1993. He was further charged with aiding and abetting, wanted accused Shabir and Jamir Kadri (A-133) and Faki Ali Faki Ahmed Subedar (A-74) in concealing 12 AK 56 rifles, 36 magazines and 19500 cartridges of AK 56 rifles in the mango grove of Abdul Razak Subedar, knowingly and intentionally that these arms and ammunition had been smuggled into the country for committing terrorist acts. Lastly he was charged with aiding and abetting co-accused Abdullah Ibrahim Surti (A-66), Faki Ali Faki Ahmed Subedar (A-74), Sayed Ismail Sayed Ali Kadri (A-105) etc. in disposal of arms and ammunition by dumping the said consignment of arms and ammunition in Kandalgaon Creek which was recovered on 8.4.1993.

283. After conclusion of the trial, appellant (A-81) stood convicted and sentenced to suffer RI for 6 years and a fine of Rs.50,000/-, and a suitable R.I. for default of payment of fine under Section 3(3) TADA and further sentenced to suffer RI for 3 years and a fine of Rs.25,000/- for conviction under Section 111 read with Section 135(b) of the Customs Act, 1962.

284. Ms. Farhana Shah, learned counsel appearing for the appellant (A-81) and Shri Mukul Gupta, learned senior counsel appearing for the State have raised the same contentions which have been raised in respect of Abdulla Ibrahim Surti (A-66).

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

286. Evidence against the appellant (A-81):

a) Confessional statement of the appellant (A-81)

b) Confessional statement of Faki Ali Faki Ahmed Subedar (A-74)

c) Confessional statement of Jamir Sayyed Ismail Kadri (A-133)

d) Confessional statement of Mechanic Chacha (A-136)

e) Deposition of Tikaram Shrawan Bhal (PW-191)

287. Confessional Statement of Janardhan Pandurang Gambas (A-81):

In his own confession he has admitted that he was a fisherman and used to help Shabir and Jamir Kadri (A-133) in smuggling. He participated in landing on 9.1.1993 at Dighi Jetty wherein arms and ammunition had been smuggled into the country with Uttam Shantaram Potdar (A-30), Mechanic Chacha (A-136) etc. and facilitated their transportation. He further confessed that he rendered assistance in hiding the said weapons in the mango grove of Abdul Razak Subedar alongwith Abdullah Ibrahim Surti (A-66), Faki Ali Faki Ahmed Subedar (A-74), Sayed Ismail Sayed Ali Kadri (A-105) etc. He further said that he helped Shabir, Abdullah Ibrahim Surti (A-66), Faki Ali Faki Ahmed Subedar (A-74) in taking the boxes from the house of Faki Ali Faki Ahmed Subedar (A-74) containing weapons and hiding them in mango grove. He has also admitted that he was told by Shabir (AA) that the boxes contained guns and further admitted that he had been informed by Faki Ali Faki Ahmed Subedar (A-74) that the boxes contained bullets.

288. Confessional Statement of Faki Ali Faki Ahmed Subedar (A-74):

In his confession he has admitted that he had met the appellant (A-81) at the house of Shabir and took the smuggled goods from there with the help of appellant (A-81), duly assisted by Abdullah Ibrahim Surti (A-66) and Jamir Sayyed Ismail Kadri (A-133).

289. Confessional Statement of Jamir Sayyed Ismail Kadri (A-133):

He disclosed that in January 1993 he met Uttam Shantaram Potdar (A-30), Feroz Abdul Rashid Khan and Salim (A-134) and on 9.1.1993 Uttam Shantaram Potdar (A-30) came to his house on motorcycle and asked his help in landing work.

So far as appellant (A-81) is concerned he disclosed that the wooden boxes and green coloured bags after being smuggled into this country were kept in the house of the maternal grandmother of Shabbir and were then shifted to the house of Faki Ahmed Subedar (A-74) with the help of appellant (A-81), Faki Ali Faki Ahmed Subedar (A-74) and Abdulla Ibrahim Surti (A-66). He further deposed that it was with the help of Abdulla Ibrahim Surti (A-66) and the present appellant (A-81) that the goods were loaded in the boat which were to be dumped in the sea. It was duly supported by Janu Vethkoli (PW.378). He has also deposed that appellant (A-81) assisted in hiding weapons in the mango grove after taking away the same from the house of Faki Ahmed Subedar (A-74).

290. Confessional Statement of Mechanic Chacha (A-136):

He does not name the present appellant (A-81) directly but disclosed that it was on the instructions of co-accused that weapons were hidden by Shabir. There are further depositions of Janu Vethkoli (PW.378), T.S. Bhal (PW.191), Shridhar Borkar (PW.88), Dattatray (PW.89), Anil Baswat (PW.90) and Ashok (PW.670) to support the allegations against the present appellant A-81.

291. Deposition of Tikaram Shrawan Bhal (PW-191): He has recorded the confessional statement of Gambas (A-81) as well as the confession of Faki Ali Faki Ahmed Subedar (A-74). He had deposed that he had recorded the same strictly in accordance with law, and it was a voluntary confessional statement and after recording the same he had given time to re-think as required in law, and after recording the confession, the same was forwarded to CJM, Alibagh on 21.5.1993.

292. The issue whether confessional statements made by Faki Ali Faki Ahmed Subedar (A-74) and Janardhan Pandurang Gambas (A-81) were voluntary, had been considered by the Designated Court in its judgment and after considering all the objections it came to the conclusion that Faki Ali Faki Ahmed Subedar (A-74) and Janardhan Pandurang Gambas (A-81) had made confessional statement voluntarily as T.S. Bhal (PW.191), S.P., Raigad has deposed that the appellant (A-81) was produced by Ashok Krishanji Chandgude (PW.670) before him on 20.5.1993 and after asking certain questions to him, T.S. Bhal (PW.191) was fully satisfied that appellant (A-81) wanted to make a voluntary confession. He was again asked to be produced on 21.5.1993 and on that day appellant (A-81) narrated the entire matter and his confession has been recorded verbatim. The Designated

Court rejected the suggestion in his (A-81) Section 313 Cr.P.C. statement before the court that he had never been produced before T.S. Bhal (PW.191) on either of the two days as claimed by the prosecution and his thumb impression had been obtained on blank papers while he was in custody of Alibagh Police Station. The theory was rejected.

293. After appreciating the evidence on record the learned Designated Court came to the conclusion that the involvement of the appellant (A- 81) in landing at Dighi Jetty is established, but there is hardly any evidence to reveal that the appellant (A- 81) had knowledge of contraband goods being arms and ammunitions, and thus the appellant (A- 81) cannot be held liable for offence under Section 3(3) TADA on said count i.e. first limb of second charge, but guilty for offence punishable under Section 111 read with Section 135(b) of Customs Act, 1962 for the same.

However it was held that the appellant (A-81) after having acquired the knowledge about nature of said contraband being arms and ammunition and still having committed acts mentioned in second and third limbs of second charge i.e. concealment of weapons in mango groves and dumping of cartiridges and magazines in Khandalgaon creek, he would be guilty for commission of offence under Section 3(3) TADA for the said offences.

294. More so, the Designated Court has taken into consideration the other confessional statements of other accused to support the prosecution case. We are not inclined to interfere with the judgment of the Designated court. The appeal with reference to Gambas (A-81) lacks merit and is accordingly dismissed.

#### IV. Sayed @ Mujju Ismail Ibrahim Kadri (A-104):

295. Appellant (A-104) was further charged with aiding, abetting and knowingly and intentionally facilitating the commission of terrorist acts by transporting AK 56 rifles in his motor jeep No. MH-06-A-9175 from Mhasla to Bombay and delivering it to co-accused. He was further charged for possessing and concealing five plastic boxes containing initiating devices of hand grenades smuggled into India for committing terrorist acts, thus charged under Section 3(3) TADA. He was lastly charged with contravening the provisions of Arms Act and Rules and acquiring the possession of fire arms and ammunition and five plastic boxes containing initiating devices of hand grenades, thus charged under Section 6 TADA.

296. He was acquitted of first charge of criminal conspiracy. However, he was convicted under Section 3(3) TADA and sentenced to suffer 5 years RI and a fine of Rs.10,000/- and a suitable R.I. for default of payment of fine.

297. Ms. Farhana Shah, learned counsel appearing for the appellant (A- 104) has submitted that the appellant has not made any confession that can be used against him and placing a heavy reliance on the confessional statement of the co-accused is erroneous. Moreover, the appellant has already served 3 years of the sentence that was awarded to him. Thus, the appeal should be allowed.

298. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that the recovery was made at the behest of the appellant and his knowledge of the place where the contraband material was kept implicates him in the present case. Therefore, the appeal deserves to be dismissed.

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

300. Evidence against the appellant (A-104):

- (a) Deposition of Laxman Nakti (PW-91)
- (b) Deposition of Vasant Jadhav (PW-484)
- (b) Deposition of Dayanand Dhome (PW-573)
- (c) Deposition of Pratap Dighavkar (PW-586)

301. Deposition of Laxman Nakti (PW-91):

He proved the recovery of arms and ammunition on 17.4.1993 wherein he deposed that recovery was made at the behest of disclosure statement of appellant (A-104). He has further deposed that the police party whom the said witness accompanied was led by appellant (A- 104) to a lavatory in the courtyard of the house of Subedar. He removed the dry leaves on the ground at the said place and thereafter took out a plastic bag which was below the said dry leaves. The mouth of the said bag was closed by tying the same by means of a string. It was a green colour plastic bag and the same was opened

and five tin boxes of similar size were recovered. He has also proved the disclosure panchnama.

302. Deposition of Vasant Jadhav (PW-484):

He revealed that he was incharge of bomb detection and disposal squad. On 18.4.1993, P.S.I. Gahrte from Mhasla Police Station came to his office with a letter sent by Sub-Divisional Officer, Raigad and a plastic box. He examined the material suspected to be explosives in the plastic box. He sent it for FSL and received the report. (Ext. 2650).

303. Deposition of Dayanand Dhome (PW-573):

In his deposition, he revealed that he was instructed to seize motor jeep bearing registration No. MH-06-A-1 in connection with C.R.No. 6/1993 and he was the person who arrested appellant (A-104) in the presence of two panchas and the panchnama was prepared (Ext. 1996). He has also deposed that on being interrogated, appellant (A- 104) gave information regarding explosives which were recovered in presence of the panch witnesses. It was recovered from the lavatory of the house of Subedar. It contained a military colour bag containing five plastic round shape boxes. The panchnama was prepared and it was proved before the court.

304. Deposition of Pratap Dighavkar (PW-586):

He revealed that he instructed P.S.I. Gahrte to send the explosives seized on 17.4.1993 for Bomb Disposal Unit, Santacruz and he proved the letter by which the said explosives were sent for disposal. (Ext. 2024). He (PW. 586) further deposed that the sample was taken out of the recovery and sent for FSL report.

305. The learned Designated Court after appreciating the evidence concluded that the appellant (A-104) having knowledge of said articles being kept at said place reveals his authorship of keeping them at said place. The same not being rebutted by the appellant (A-104) would lead to conclusion of him being in possession of contraband material and liable for commission of offence under section 3(3) TADA i.e. second limb of second charge.

However, it was held that there being no sufficient evidence to establish offence under section 6 TADA, he cannot be held liable for the same. Similarly there being no evidence to establish that the appellant (A-104) transported AK-56 rifles in motor jeep from Mhasla to Bombay i.e. first limb of second charge, he cannot be held guilty for the same.

306. We find no cogent evidence on record requiring interference with the judgment of the learned Designated Court. The appeal with reference to the appellant (A-104) lacks merit and is accordingly dismissed.

V. Srikrishna Yeshwant Pashilkar (A-110):

307. Appellant (A-110) was further charged for allowing the accused persons to smuggle and transport arms and ammunition into India for the purpose of committing terrorist acts, by illegal omission to thoroughly check the motor lorries carrying arms, ammunition and other contraband though intercepted by them on the night of 9.1.1993 at Gondghar Phata. He was further charged with failing to seize the aforesaid motor truck and its contents in lieu of bribe of Rs.7 lakhs agreed by all of them on negotiation with the co-accused Uttam Potdar (A-30), Custom Inspector Gurav (A-82), thereby, facilitating the commission of terrorist activities on 12.3.1993. Thus, charged under Section 3(3) TADA.

308. He was awarded sentence of 6 years under Section 3(3) TADA and a fine of Rs.25,000/-, in default of payment of fine, to suffer further RI of 6 months. He has already served more than 3 years.

309. Ms. Farhana Shah, learned counsel appearing for the appellant has submitted that the appellant (A-110) has not made any confession and reliance on the confessional statement of the co-accused by the learned Designated Court was erroneous. Thus, the appeal deserves to be allowed.

310. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that Uttam Shantaram Potdar (A-30) established the presence of the appellant (A-110) during the incident of interception of trucks at Gondghar Phata therefore, the appellant was involved in allowing arms and ammunition to be transported into India. Thus, the appeal deserves to be dismissed.

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

312. Evidence against the appellant (A-110):

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

(b) Deposition of Dilip Pansare (PW-97)

(c) Deposition of other witnesses

313. Confessional Statement of Uttam Potdar (A-30): In his confessional statement, he stated that as the smuggling party did not have money to pay to the police when they were intercepted while smuggling the contraband, five silver bricks from the first truck were given to the appellant (A-110) who was specifically named by the co-accused (A-30).

In the confessional statements of co-accused Dawood Taklya Mohammed Phanse (A-14), Jaywant Keshav Gurav (A-82), Salim Kutta (A- 134) and Mechanic Chacha (A-136) though did not name the appellant (A- 110) specifically but they corroborated the version of the prosecution of interception by the police of Shrivardhan Police Station headed by Vijay Krishnaji Patil (A-116) and alongwith silver bricks, some wooden boxes were also in the truck.

314. Deposition of Dilip Pansare (PW-97):

In his deposition he revealed that he was working as a mechanic in the State Road Transport Corporation and was a childhood friend of Uttam Potdar (A-30) who used to help him in transporting and smuggling the goods alongwith others. He had brought the truck for transporting the smuggled contraband on 9.1.1993 and when they were bringing the contraband in two trucks one of them was being driven by him. They were intercepted by the police of Shrivardhan Police Station at Gondghar Phata junction. He (PW 97) stopped the vehicle on getting the signals by the police. The appellant (A-110) got down from the jeep and he heard the appellant (A-110) shouting to take out the key of the said vehicle and bring the driver to him. He (A-110) came near the truck and took away the keys of the first truck. Other police men started shouting that there was silver in the truck. Mechanic Chacha (A-136), Shabir Kadri and Uttam Potdar (A-30) negotiated with the officer Vijay Krishnaji Patil (A-116) for about half an hour. Gurav, the Customs Officer

(A-82) also arrived and after negotiating for about half an hour, five silver bricks were taken from the truck in the police jeep by Hawaldar and the key of the truck was returned to the said witness (PW. 97).

315. Sujjat Peoplankar (PW-158), Bhaskar Boda (PW-159), Gopichand Sathnag (PW-160), Tukaram Kalankar (PW-161), Ganpat Giri (PW-162), Anant Lad (PW-166) and Dhiryasheel Koltharkar (PW-167) have deposed that the defence taken by Vijay Krishnaji Patil (A-116) and the appellant (A-110) that they had gone to a village for patrolling was false as none of them had reached that village on that day.

316. The learned Designated Court after appreciating the evidence came to the conclusion that landing of contraband material took place at Dighi Jetty on 9.1.1993 during night time and goods were transported from said Jetty in two trucks. The said contraband contained arms and ammunition, AK-56 rifles and bullets etc. The police party of Shrivardhan had intercepted the convoy carrying said contraband at Gondghar Phata. Furthermore it was held that confessions of co-accused and Dilip Bhiku Pansare (PW-97) reveal the identity and involvement of the appellant (A-110) in the landing episode. However, it was further held that the appellant (A-110) was member of police party headed by his superior Vijay Krishnaji Patil (A- 116) and though the appellant (A-110) could not be said to be responsible for taking decision of permitting further transportation of said goods, however taking into account the fact that he had not reported about Vijay Krishnaji Patil (A-116) to higher officials, reveals that he had also connived with Vijay Krishnaji Patil (A-116) in performing said acts.

317. We find no evidence on record requiring interference with the judgment of the learned Designated Court. The appeal with reference to appellant (A-110) lacks merit and is accordingly dismissed.

318. So far as the serious objection that when the contraband material, arms and ammunition recovered at the disclosure statements of the appellants were opened in the court the material they were wrapped were subsequent to the date of recovery i.e. 8.4.1993. This has been explained fully in the court by Pratap Dighavkar (PW-586). He deposed that as some of the samples had to be taken out of the recovered material and sent for FSL report, it was re-opened on 18.4.1993 and samples had been sent for FSL. Thus, the contraband materials recovered on the disclosure statement of these appellants were further wrapped in newspapers.

So, it was quite possible that newspapers upto 18.4.1993 could have been used. None of the appellants had put any further question on possibility of tampering of the evidence to the said witness (PW- 586), though he proved the letter with which the contraband materials were sent for FSL and the FSL report itself, but none of the appellants put any question in his cross-examination on the possibility of tampering of the material etc. He was the only person who could have explained all the questions raised by the appellants before us.

More so, Ms. Farhana Shah, learned counsel for the appellants could not satisfy the court as under what circumstances none of the appellants could raise this issue before the learned Designated Court.

In view of the above, the contention raised does not have any force. The appeal is dismissed accordingly.

Criminal Appeal Nos. 401 and 595 of 2011

319. These appeals have been preferred by the State against Abdullah Ibrahim Surti (A-66), Faki Ali Faki Ahmed Subedar (A-74) and Janardhan Pandurang Gambas (A-81), who were acquitted of the charge of larger conspiracy. The evidence against all the three respondents had elaborately been dealt with in the connected appeal filed by them. The learned Designated Court has dealt with the issue after considering the entire evidence on record and appreciating the depositions as well as the confessional statements made by the parties.

320. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: State of Rajasthan v. Darshan Singh @ Darshan Lal, AIR 2012 SC 1973).

321. In view of the above, we do not see any cogent reason to interfere with the order of the Designated Court so far as the acquittal of the respondents on a

particular charge is concerned. The appeals lack merit and are liable to be dismissed.

CRIMINAL APPEAL NO. 171 OF 2008

Ashok Narayan Muneshwar

Vs.

State of Maharashtra through STF,CBI

AND

CRIMINAL APPEAL NO. 172 OF 2008

Arun Pandari Nath Madhukar Mahadik ...Appellant

Versus

State of Maharashtra through STF, CBI, ... Respondent

AND

CRIMINAL APPEAL NO. 403 of 2011

State of Maharashtra ...Appellant

Versus

Ashok Narayan Muneshwar Ors. ... Respondents

Criminal Appeal No. 171 172 of 2008

322. These appeals have been preferred against the judgments and orders dated 26.9.2006 and 21.5.2007, passed by the Special Judge of the Designated Court under the TADA for the Bombay Blast, Greater Bombay, in the Bombay Blast Case No. 1/1993, by which the appellants have been convicted under Section 3(3) TADA.

They have been acquitted of the first charge of conspiracy, but have been convicted under Section 3(3) TADA and have been sentenced to suffer RI of 6 years alongwith a fine of Rs.25,000/-, and in default of payment of fine, to suffer further RI for six months. They have already served a sentence of 4 years and 3 months.

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

A. In addition to the first charge of conspiracy, the appellants have been charged for intentionally aiding and abetting terrorists, by allowing them to smuggle and transport arms and ammunition into India for the purpose of committing terrorist acts, by their illegal omission to thoroughly check motor lorries carrying arms, ammunition and other contraband, though the same had been intercepted by their team on the night of 9.1.1993, at Gondghar Phata, and for their failure to seize the aforesaid motor truck and its contents, in lieu of a bribe of Rs. 7 lakhs which had been agreed to and accepted by them, after negotiations with terrorists and their associates. Thus, they have been charged under Section 3(3) TADA.

B. After conclusion of the trial, the learned Designated Court held the appellants guilty and awarded punishment as referred to hereinabove.

Hence, these appeals.

324. Shri P.K. Dey, learned counsel appearing for the appellants, has submitted that sufficient evidence on record does not exist to convict the appellants. In their confessional statements, Uttam Shantaram Potdar (A-30) and Jaywant Keshav Gurav (A-82), have not made any reference to the smuggling of arms and ammunition, infact, they have spoken of the smuggling of silver. Therefore, the question of framing any charge against the present appellants under TADA, in view of such confessional statements could not arise. Moreover, the memorandum annexed to the confessional statement is a part and parcel of the confession, and the same has to be filled up simultaneously, and not subsequently.

So far as the confessional statement of Uttam Shantaram Potdar (A-30) is concerned, the said memorandum had been sent subsequently. Thus, the same was in violation of the statutory provisions of TADA and, the TADA

Rules, particularly, as the same was not in compliance with the requirements of sections 15(3)(b) and 15(5) of the TADA Rules.

The said confessional statement required a certificate under Rule 15(4), and such a certificate was not annexed by the officer recording the confessional statements of Uttam Shantaram Potdar (A- 30), Jaywant Keshav Gurav (A-82) and Salim Kutta (A-134). The confessional statement of Salim Kutta (A-134) was recorded on 19.8.1995, and the same was sent to the CMM on 24.8.1995. Therefore, the same is not valid. It has also been contended that after the recording of the confession on 19.8.1995 at Ahmedabad, Salim Kutta (A- 134) had been brought to Bombay by the CBI to the STF office, and that subsequently, he had been taken back to Ahmedabad on 24.8.1995 and that here, he was produced before the CMM Ahmedabad.

325. Shri Mukul Gupta, learned senior counsel appearing for the respondent, has submitted that these two appellants have failed to perform their duty. They had not checked the boxes, they had only counted the bricks in the trucks. The previous amount of bribe of Rs.25,000/- was enhanced to a sum of Rs.10 lakhs after a negotiation of about half an hour. Therefore, the matter is not one of mere negligence, but of intentional facilitation of the accused persons in the smuggling of arms and ammunition into the country.

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

327. Evidence against the appellants:

- (a) Confessional statement of Uttam Shantaram Potdar (A-30)
- (b) Confessional statements of Dawood Taklya (A-14) and Dadabhai (A- 17)
- (c) Confessional statement of Jaywant Keshav Gurav (A-82)
- (d) Confessional statement of Salim Kutta (A-134)
- (e) Confessional statement of Mechanic Chacha (A-136)
- (f) Deposition of Dilip Bhiku Pansare (PW-97)

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

(h) Deposition of Pramod Mudbhatkal (PW-681)

(i) Deposition of other witnesses

328. Uttam Shantaram Potdar (A-30), Jaywant Keshav Gurav (A-82), Salim Kutta (A-134) and Mechanic Chacha (A-136) in their confessional statements, while narrating the incident of the interception of trucks at Gondghar Phata, have stated the presence of 5-7 police officials in the party, headed by VK Patil (A-116), though they have not specifically named the appellants. This police party further allowed the goods to go past, without proper checking after negotiating a bribe to the tune of Rs.7 lakhs. As the smugglers did not have said amount of Rs.7 lakhs with them at the said time, they had given five silver bricks that had been smuggled in the landing, to the police as security and subsequently, upon making them payment of the said amount to the officials, the silver bricks had been returned to the smugglers.

Confessional statement of Uttam Potdar (A-30):

329. He has stated that on 9.1.1993, at night, after the smuggling of the goods, they had been intercepted by the Shrivardhan police near Gondghar Phata. Upon inquiry, Shri Patil (A-116), SI of the Shrivardhan Police Station, had asked Salim (A-134) why the money promised to them had not been paid, as regards the earlier landing. Uttam Potdar (A-30) had told him that he had given the said money to Ramesh Mali Hawaldar. SI Patil (A-116) had seemed very annoyed. Mechanic Chacha (A-136) had then offered a sum of Rs. 10 lakhs to Hawaldar Ramesh Dattatray Mali (A-101) and Hawaldar Ashok Narayan Muneshwar (A-70), who were counting the silver bricks that had been loaded into the truck. There were 175 bricks in one truck, and in the other, there were about 100 bricks and also some boxes. Upon being asked by the Hawaldar to reveal the contents of the boxes, Mechanic Chacha (A-136) had said that the boxes contained watches and that as there was no cash, Mechanic Chacha (A-136) had taken out five silver bricks from the first truck and had given them to Pashilkar, policeman. Thus, Uttam Potdar (A-30) has specifically named the appellant, (A-70) as a member of the party who had counted the silver bricks.

Confessional statement of Jayawant Keshav Gurav (A-82):

330. In his confessional statement, he has corroborated the confession of Uttam Potdar (A-30), pointing out that he had also reached the place where the police had intercepted the two trucks carrying the smuggled goods, and that at such time, the police Sub- Inspector Patil had asked Jaywant Keshav Gurav (A-82) what should be done, and that the police thereafter, upon negotiating for about half an hour had, released the detained trucks.

331. Dawood Taklya (A-14) and Dadabhai (A-17) in their confessional statements, have revealed that a sum of Rs.25,000/- each had been given on two separate occasions to the Shrivardhan Police Station to seek assistance in the organisation of the landings.

332. Salim Kutta (A-134) and Mechanic Chacha (A-136) have supported the case of the prosecution, and have corroborated the confessions of Uttam Shantaram Potdar (A-30) and Jaywant Keshav Gurav (A-82). Deposition of Dilip Bhiku Pansare (PW-97):

333. In his deposition, he has revealed that he had participated in the landing with Uttam Potdar (A-30). He had been driving the truck carrying the smuggled goods on 9.1.1993 from Dighi Jetty, and he has corroborated the confessional statement of Uttam Potdar (A-30) to the extent that Pashilkar (A-110) had taken the key to his vehicle, and that after checking the contents of their truck, some police personnel had shouted out that the same was silver. Mechanic Chacha (A-136) had also come there and he had negotiated with Vijay Krishanji Patil (A-116) who had also been present at that time. Uttam Potdar (A- 30), Jayant Keshav Gurav (A-82) from Customs and Mechanic Chacha (A- 136) etc. had talked to the police for about half an hour, and as the smuggling party did not have cash with them, five silver bricks had been given as security to them. The police had searched the first truck for a long time, while they had taken only 10 minutes to check the second one.

334. The appellant (A-70) had produced a sum of Rs.30,000/- on 24.4.1993 in presence of two witnesses, namely, Yeshwant Kadam (PW- 109) and Vinod Chavan (PW-590), who had been brought by his father-in- law, and in this respect, a panchnama (Ext. 565) was prepared. As regards the same, Yeshwant Kadam (PW-109) has deposed that he had been unable to identify the accused who had

produced the said cash, which had been seized under the panchnama (Exh. 565) in court.

335. The appellant's (A-99) house had been searched in the presence of the panch witnesses Yeshwant Kadam (PW-109) and Chandrashekhar (PW- 622), who were police-men, and from the said house, a sum of Rs.59,200/- had been recovered. In this respect, a panchnama was prepared in the presence of the aforementioned two panch witnesses.

336. Sujjat Peoplankar (PW-158), Bhaskar Boda (PW-159), Gopichand Sathnag (PW-160), Tukaram Kalankar (PW-161), Ganpat Giri (PW-162), Anant Lad (PW-166) and Dhiryasheel Koltharkar (PW-167) have deposed, that both the appellants (A-70 and A-99) had not come to their village on patrolling duty. These witnesses were produced by the prosecution to disprove the version of the defence's alibi, to the extent that they had not been present in the police party which had intercepted the smuggled goods, rather, they had been on patrolling duty. The present appellants (A-70 and A-99) may be correct in contending that simply because these witnesses had not seen the appellants in their village, the same cannot be taken to mean that the appellants had not been on patrolling duty.

Deposition of Pramod Mudbhatkal (PW-681):

337. He was an officer of the CBI who had been associated with the investigation of the Bombay Blast. He has deposed that Omprakash Chhatwal (PW-684) had been a member of the team investigating the Bombay Blast. Pramod Mudbhatkal (PW-681) had arrested Mechanic Chacha (A-136) under the supervision of Omprakash Chhatwal (PW-684), and that he (PW-684), had recorded the confessional statement of Mechanic Chacha (A-136) and that Pramod Madbhatkal (PW-681) had requested him (PW-684) to record his confessional statement and that he had chosen him because he (PW-684) was conversant with the matter.

338. After appreciating the evidence on record, the learned Designated Court came to the conclusion that the police party of Shrivardhan had intercepted the convoy carrying said contraband near Gondghar Phata. The entry in the log book of the police jeep has revealed that the same had been driven by the appellant (A-99), and this has not been disputed by the appellant (A-99). Hence, it is clear that appellant (A-99) had been driving the said police jeep when the party was headed by Vijay Krishnaji Patil (A-116). Furthermore, it has been held that the confessions of the

co-accused and of Dilip Bhiku Pansare (PW-97) clearly reveal the involvement of the appellants in the landing episode.

It has also been held that the appellants had infact been members of the police party headed by their superior Vijay Krishnaji Patil (A-116), and that though the appellants cannot be held to be responsible for taking the decision to permit the further transportation of said goods, however, taking into account the fact that they had not reported Vijay Krishnaji Patil's (A-116) behaviour to higher officials, and further, the recovery of a large amount of money from them, clearly reveals that they had also connived with Vijay Krishnaji Patil (A-116) to commit the said acts. Thus, they are liable under section 3(3) TADA. However, as Vijay Krishnaji Patil (A- 116), was primarily responsible for the decision taken by the police party and also for the handling of the negotiations, the appellants cannot be held guilty for commission of the offence of conspiracy, as they were acting in accordance with the instructions and directions of Vijay Krishnaji Patil (A-116).

339. We find no cogent reason to interfere with the decision of the learned Designated Court. The appeals lack merit and are accordingly dismissed.

Criminal Appeal No. 403 of 2011

340. This appeal has been preferred against the respondents only on the limited issue that the respondents have been acquitted by the Special Judge of the Designated Court under the TADA for the charge of conspiracy.

341. Shri Mukul Gupta, learned senior counsel appearing for the appellant-State has submitted that these respondents were police constables who had been posted at the relevant time at the Shrivardhan Police Station. They had intercepted the contraband (arms, ammunition and explosives etc.) at Gondghar Phata. They had checked the two trucks carrying the said contraband for about 15 and 10 minutes respectively, and that despite the fact that the arms had been packed differently as compared to the silver, they had omitted to inspect the said goods properly. Moreover, the fact that that they had asked for enhancement of the amount of bribe to be paid to the police for each landing, indicates that they were aware of the contents of the contraband (arms, ammunition and explosives) as well, which gave them this bargaining power. Furthermore, the Customs Inspector had issued a warning to all authorities, stating that he had definite information that arms and

ammunition would be brought in by sea, owing to which they should remain alert and ensure proper checking. Therefore, they ought to have been convicted for the charge of conspiracy as well.

342. On the contrary, Shri P.K. Dey, learned counsel appearing for the respondents, has submitted that since the respondents had been subordinate to the actual recipients of the bribes, which had been taken to facilitate the landing of the contraband, they themselves had been unaware of the fact that arms and ammunition could have been brought into the country once the vehicles had been checked. They may have been negligent in the performance of their duties, but by no stretch of the imagination, can it be held that they had also conspired in the execution of the transaction. They have been convicted under Section 3(3) TADA and their appeals have been heard alongwith this appeal. Hence, no further consideration is required, particularly keeping in mind the parameters that have been laid down by this court for interference against an order of acquittal. Therefore, this appeal is liable to be dismissed.

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

344. After appreciating the entire evidence, the learned Special Judge reached a conclusion that though these respondents-constables may have been negligent in the performance of their duties, they cannot be held to be parties to the conspiracy. The learned Special Judge has taken a view that as their presence had been established at the place of interception, a case under Section 3(3) TADA can be established as a result of the cumulative effect of the said evidence. However, in view of the fact that there is nothing on record to show their involvement in the conspiracy, or of them having committed any overt acts in the execution of such conspiracy, the question of convicting them for conspiracy does not arise. As their acts do not transcend beyond their presence and their negligence in the interception and checking of the vehicles, they are entitled to the benefit of doubt as far as the conspiracy is concerned. All the constables were of inferior ranks, and were acting under the instructions of the officers who had been present at the spot. Despite the fact that all the four respondents had been members of the police party, and were hence responsible for allowing the further transportation of the smuggled contraband goods, there appears to exist some distinction between the cases of the said accused, and of Vijay Krishnaji Patil (A-116), the head of the police party, without whose consent and connivance the said goods could not have been

permitted to be transported any further. Therefore, in his presence, the respondents-constables cannot be held as responsible for taking the decision to permit the further transportation of the said goods. Thus, they are liable only for the offences punishable under Section 3(3) TADA.

345. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: State of Rajasthan v. Darshan Singh @ Darshan Lal, AIR 2012 SC 1973).

346. We have given our conscious thought to the said reasoning that has been given by the learned Designated Court, and we are of the view that the same does not require any interference. The appeal lacks merit and is dismissed accordingly.

CRIMINAL APPEAL NO. 1630 OF 2007

Liyakat Ali Habib Khan

Vs.

State of Maharashtra

AND

CRIMINAL APPEAL NO. 1029 OF 2012

State of Maharashtra ... Appellant

Versus

Liyakat Ali Habib Khan ... Respondent

Criminal Appeal No. 1630 of 2007

347. This appeal has been preferred against the judgment and order dated 30.5.2007 passed by Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, in Bombay Blast Case No. 1/1993, convicting the appellant under Section 3(3) TADA, and awarding the punishment of 5 years RI with a fine of Rs.25,000/- and in default of payment of fine, to further suffer 6 months RI. He was further convicted under Section 5 read with Section 6 of Explosive Substances Act, 1908 and awarded the punishment of 4 years RI alongwith a fine of Rs.10,000/-, and in default of payment of fine, to suffer further RI of two months. Both the sentences were directed to run concurrently.

348. Facts and circumstances giving rise to this appeal are that : A. In addition to the main charge of conspiracy, the appellant (A- 85) was charged under Section 3(3) TADA, for facilitating the commission of terrorist acts by allowing Mushtaq @ Tiger Abdul Razak Memon, Yakoob Khan @ Yeda Yakoob Wali Mohmed Khan and their associates to store 80 cartons of RDX explosives in his godown at M.I.D.C. Thane Belapur, which had been smuggled into India for committing terrorist acts. The appellant is also charged for aiding and abetting in carrying and transportation of RDX explosives from his godown. He was further charged under Section 5 TADA for possessing the said explosives unauthorisedly in Greater Bombay, Thane district. He was also charged under Section 6 TADA for contravening the provisions of the Explosives Act, 1884; Explosives Substances Act, 1908; and Explosives Rules 1983, by keeping in his godown the said 80 cartons of RDX explosives. Lastly, he had been charged under Section 4 read with Section 6 of the Explosives Substances Act, 1908 for having possession of the 80 cartons of RDX explosives stored in his godown. B. After the conclusion of the trial and appreciating the evidence, the appellant was acquitted of some of the above-mentioned charges. However, he was convicted under Sections 3(3) and 6 TADA as referred to hereinabove.

Hence, this appeal.

349. Shri Mushtaq Ahmad, learned counsel appearing for the appellant has submitted that the appellant could not have been convicted under the provisions of TADA at all for the reason that the godown wherein the alleged explosives had been stored did not belong to him. He was neither the owner of the godown, nor did he have any control over it. It belonged to his father who knew the other co-accused and it was on the instructions of his father that the appellant accompanied

them at the time of storing. More so, the appellant was not informed at any stage about the contents of the cartons and did not become aware of the same until the end. Therefore, the conviction is liable to be set aside.

350. Per contra, Shri Mukul Gupta, learned senior counsel appearing for the respondent has vehemently opposed the appeal submitting that the appellant was aware of the contents of the cartons. While initially he may not have known, he was informed by the co-accused Suleman, while returning from the godown that the cartons contained explosives. Thus, the facts and circumstances of the case do not warrant any interference by this court and, therefore, the appeal is liable to be dismissed.

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

352. Evidence against the appellant:

(a) Confessional statement of the appellant Liyakat Ali Habib Khan (A-85)

(b) Confessional statement of Murad Ibrahim Khan (A-130) (c) Confessional statement of Suleman Mohd. Kasam Ghavate (A- 18)

353. Confessional statement of the appellant Liyakat Ali Habib Khan (A-85):

At the time of incident the appellant was 34 years of age and he had voluntarily made the confession disclosing that his father had taken the godown at M.I.D.C., Thane, Belapur Road, in which construction took place and appellant had been working therein. He was closely acquainted with the other co-accused and Yakoob Khan (AA), his uncle, had come along with other co-accused Tiger Memon and Nisar to his father in the second week of February, 1993, and requested him to allow them to keep some goods for few months in the godown at Thane. They were permitted by his father to store the goods. They had gone there but could not open the lock of the godown. Therefore, they called the appellant at midnight and subsequently came to his house in a jeep and took him (A-85) with them. He also met Javed Chikna, Anwar Izaz and other co-accused on the way. He was directed by his uncle to keep watch for a tempo which was bringing certain goods. He waited for a while but the tempo did not arrive. So he went inside the

factory and slept there. Thereafter, Tiger Memon (AA) alongwith Nisar came to the factory in the jeep of Tiger Memon (AA) and tried to open the lock. As they could not open the lock they had to break it with an axe. However, subsequently they came to know that it was not the correct godown. Thus, Tiger Memon called at his (A-85) residence and asked the correct number of his factory. Subsequently, they went to the correct factory and opened the same. They took the tempo which had the goods inside the factory and unloaded the same. It contained 80 packets in gunny bags each packet weighed about 30/35 Kg. Tiger Memon paid him Rs.600/- out of which he had paid Rs.200/- to Nisar. Then the appellant washed the jeep alongwith Nisar and Suleman and left for Bombay. On the way, Suleman told him that the goods which were kept in the factory were explosives.

In the beginning of March 1993, Tiger Memon came and took 6 packets in his car and 6 more packets were later taken by the appellant from the factory and delivered to him. They had put the material in a car and left it in the parking of Rahat Manzil. On the next morning, when he reached there, he could not find the car at that place. Two-three days before 17.2.1993 Tiger Memon (AA) and his companions transferred the remaining explosives from the factory to some other place. He came to know that in fact the explosives had been shifted from his godown prior to 12.3.1993.

In this case, his brother Iliyas was aware that the goods concealed in their godown were explosives and just after the Bombay Blast on 12.3.1993 Iliyas had driven Yakoob Khan to airport on 17.3.1993.

#### 354. Retraction:

He (A-85) retracted his confession after moving an application on 8.12.1993 stating that he came to know only after the charge sheet had been filed on 30.11.1993 that he had made a confession and in fact no confession had ever been made by him. He was forced to sign a readymade prepared statement which was never even read over to him and he signed the same because he had been in illegal custody of the police since 20.3.1993.

355. Confessional statement of Murad Ibrahim Khan (A-130): He made the confessional statement on 3.4.1995 wherein he has given the complete depiction of involvement of the appellant. He (A- 130) stated that after returning from Dubai,

he started working with Majid Bhai whose nephew Liyakat (A-85) introduced him to Tiger Memon (AA). Later, he (A-130) found out that Tiger Memon was a smuggler. Liyakat was told to meet Tiger Memon at a petrol pump in Mumbra where he (A-130) accompanied him. When Tiger Memon (AA) reached there, he spoke to Liyakat about something and he (A-130) was told to wait at the petrol pump for sometime, while Liyakat (A-85) and Tiger Memon (AA) went to the factory. They returned having some packets which were kept by Liyakat (A-85) in Tiger Memon's car. Tiger Memon left with the items and Liyakat (A-85) again went towards the factory asking him (A-130) to wait for Majid Bhai at the petrol pump. Once Liyakat (A-85) returned from the factory, he, Majid and Murad (A-130) went to their residence.

356. Confessional statement of Suleman Mohd. Kasam Ghavate (A-18):

In the confessional statement of Suleman, the same has deposed that Liyakat A-85 was involved in the case and he went on to identify him.

357. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) in reply to Question Nos. 280, 284 and 308, the appellant (A-85) replied that he had made a confessional statement; the confessional statement did not contain his signature. He was in the lock up of Matunga Police Station, and was forced to sign on the said papers because he was told by the police that if he did not comply they would harass and torture him. He was frightened, disturbed and therefore, succumbed to the said demand. He was not aware of what was falsely forwarded to C.M.M. He was innocent. He had not committed any offence. The police had falsely implicated him in the case. The bomb blast was the outcome of the desire of the God.

358. After considering the evidence on record, the Designated Court recorded the finding as under:

(i) That initially A-85 himself was not aware regarding the material which was stored in the said godown.

(ii) After being shown the relevant material he had become aware of the nature of contraband material. (iii) Still he did not take any steps regarding the same i.e. informing to the police, etc.

(iv) His said acts would definitely amount of having committed the offence under section 3(3) TADA having regard to wide definition of abetment given under TADA.

(v) His confession revealed that the material kept in his godown was ultimately taken away by Tiger Memon later on also denotes that though the material was in the godown of A-85 or his father still all the time possession of the same had remained with Tiger Memon. In view of the same A-85 could not be held guilty for commission of offence under Section 5 TADA for which he is charged with.

(vi) The same was the case regarding commission of offence under Section 6 TADA for which he is charged with.

(vii) However, he himself still having allowed to continue the said material in his godown till the same was taken away by Tiger Memon, would make him liable for commission of offence under Section 5 read with Section 6 of Explosive Substances Act. (viii) A-85 was found guilty mainly due to few incidental acts committed by him in connection with contraband goods smuggled during Shekhadi landings.

(ix) The evidence surfaced and/or reasoning given thereon revealed that A-85 was closely related to absconding accused Yeda Yakoob and deceased accused Majid Khan i.e. nephew of said persons. The role played by him was confined to himself having provided and helped Tiger Memon for storing contraband goods i.e. RDX material in the godown of his father at Mumbra.

(x) He had not committed any act either with landing or with any of other operations effected in pursuance of conspiracy. Needless to add that evidence having denoted that the material stored at the godown being later on taken away by Tiger Memon, A-85 cannot be also said to have in possession of such contraband material. However, to the limited extent A-85 had committed offence under Section 3(3) TADA.

359. Much has been argued by Shri Mushtaq Ahmad, learned counsel appearing for the appellant that whatever may be the factual and legal position in the case, the appellant is a mentally challenged person and there is sufficient material on record

to show the same. He has been suffering from the delusion and hallucination and had been treated in various hospitals. While dealing with the remand application vide order dated 8.12.1993, the learned Magistrate made the endorsement to the effect that “appellant was suffering from mental illness”. Even the order dated 19.10.1995 passed by the learned Designated Court takes note of his mental illness stating that he was not in good mental condition and his health has deteriorated. The appeal is accordingly dismissed.

The appellant has already served 3 years and 4 months. However, we find no cogent reason to interfere with the conclusion of the Designated Court.

Criminal Appeal No. 1029 of 2012

360. The respondent herein stood acquitted of the charge of conspiracy. Hence, the State has preferred this appeal.

361. Shri Mukul Gupta, learned senior counsel appearing on behalf of the appellant, has submitted that in spite of the fact that there was clear cut evidence against the respondent of his involvement in the conspiracy, he has wrongly been acquitted by the Designated Court. He is a nephew of Yakoob Yeda (AA), who had been a close associate of Tiger Memon (AA) and had not only permitted to use his godown for storing the arms, ammunition and explosives but had also accompanied them when such goods were shifted from there. Thus, the appeal deserves to be allowed.

362. Per contra, Shri Mushtaq Ahmad, learned counsel appearing on behalf of the respondent, has submitted that the respondent could not have been convicted under the provisions of TADA at all for the reason that the godown where the arms, ammunition and explosives had been stored, did not belong to the respondent. He was neither the owner of the godown nor did he have any control over it. It belongs to his father who had never been an accused. The respondent had been harassed merely being the nephew of Yakoob Yeda (AA) and he had been convicted for other charges and, hence, no interference is called for.

363. Heard learned counsel for the parties and perused the record. Confessional statements of A-18, A-85 and A-130 have already been referred to and appreciated in the connected appeal.

364. The Designated Court has dealt with the issue elaborately and recorded the findings as under:

“Thus, considering material in the confession of A-85 and aforesaid co-accused the same leads to the conclusion of A-85 though was not involved in Shekhadi landing operation he was involved in allowing his place i.e. godown of his father for storing explosive substances in large quantities.

However, considering the manner in which A-85 had figured in commission of the relevant acts it will be difficult to come to the conclusion that he was involved in the conspiracy for which the charge at head 1st ly is framed or even otherwise. Hence, he will be required to be held not guilty of the said offence due to not only paucity of evidence for the same but his involvement being not even spelt for the same.”

365. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

366. In view thereof, we do not find any cogent reason to interfere with the judgment of the Designated Court. The appeal is, accordingly, dismissed.

CRIMINAL APPEAL NO. 207 OF 2008

Mujib Sharif Parkar

Vs.

State of Maharashtra

AND

CRIMINAL APPEAL NO. 415 OF 2011

State of Maharashtra thr.C.B.I. ...Appellant

Vs.

Mujib Sharif Parkar ... Respondent

Criminal Appeal No. 207 of 2008

367. This appeal has been preferred against the impugned judgment and order dated 24.5.2007 passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No. 1/1993, by which the appellant has been convicted under Sections 3(3) TADA and sentenced to 5 years rigorous imprisonment with a fine of Rs. 25,000/-, and in default to undergo further RI for six months.

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

A. In addition to the main charge of conspiracy, the appellant was charged in connection with the purchase of gunny bags for transportation of contraband landed at Shekhadi, for commission of the offence under Section 3(3) TADA during the period between December 1992 and March 1993. Thereby, having abetted knowingly and intentionally facilitated the commission of terrorist act and preparatory acts thereof. The facilitation and transportation of the contraband, arms and ammunition landed at Shekhadi between 8th/9th of February, 1993, which had been smuggled to India by Tiger Memon (AA) and his associates.

B. The appellant was convicted and sentenced as referred to hereinabove.

Hence, this appeal.

369. Ms. Farhana Shah, learned counsel for the appellant emphasised the fact that the identity of the appellant could not be discerned and this should create doubt in the mind of the court. Thus, the appellant was entitled for benefits of doubt. The appeal deserves to be allowed.

370. Shri Mukul Gupta, learned senior counsel for the state has submitted that the appellant purchased empty gunny bags which were later used to transport the contraband items in the territory of India. Therefore, the appellant was involved with Tiger Memon (AA). Thus, the appeal is liable to be dismissed.

371. We have heard learned counsel for the parties and perused the record.

372. Evidence against the appellant (A-131):

- a) Confessional statement of Sayyad Abdul Rehman Shaikh (A-28)
- b) Deposition of Usman Jan Khan (PW.2)
- c) Deposition of Dileep Madhavji Katarmal (PW.284) d) Deposition of Jalil Sharif Kirkire (PW.285)
- e) Deposition of Ananth Shankar Rane (PW.286)

373. Confessional statement of Sayyed Abdul Rehman Shaikh (A-28)

His confessional statement was recorded by Shri Sanjay Pandey, Deputy Commissioner of Police, on 23.4.1993. In his statement, he gave full details of smuggling, landing and his participation in smuggling activities even in February, 1993 with Tiger Memon (AA). He (A-28) revealed that it was 3 a.m., when Mujib (A-131) came to Mhasla where the witness was sleeping. Mujib (A-131) said that they have to go to said shop. On that very same night at about 3 O'clock, he (A-28) and the appellant (A-131) left for said shop by Yellow Mitsubishi and reached there at about 6 O'clock and from there they bought 1500 sacks from one Gujarati. From there on 10.3.1993 around 12-12.30 p.m., they went to Visawa hotel. After about one and half hours, Tiger Memon (AA) alongwith Yeda Yakub came there. Tiger Memon (AA) brought the appellant (A-131) with him to a hotel on Mahad Road. One white Mitsubishi was parked there. Tiger Memon said that many people were present there, so goods could not be shifted in another vehicle and thus, he asked them to go to Mahsla. In Mhasla after unloading the goods from white Mitsubishi, the rolls of sacks and goods were uploaded half-half in both the vehicles. Mujib (A-131) got down there itself.

374. Statement of Usman Jan Khan (PW.2) – Approver – who was a co- accused in the instant case. His confessional statement was recorded in which he did not name the appellant (A-131) and did not involve the appellant in any overt act. However, he turned as an approver and he was examined as PW.2 wherein he deposed that he knew the notorious persons like Nasir Dakhla (A-64), Manoj Kumar @ Munna Bhavarlal Gupta as Munna (A-24), Riyaz Abu Bakar Khatri, Mujib Sharif Parkar as Dadabhai's son (A-131) etc. He identified the appellant (A-131) in the court.

While giving the details of landing at Shekhadi, he deposed that the witness participated in the landing and it took place at about 11 p.m., one boat came to the coast and contacted the party waiting for smuggled goods. Tiger Memon (AA) alongwith witness and 5- 6 persons, namely, Yeda Yakub, Javed, Anwar, Shahid, Munna sat in the boat and went towards high sea for half an hour. The boat reached near the speed boat. Tiger Memon (AA) went over to the speed boat and after five minutes he passed over seven bags of military colour from the speed boat to them and came back to the boat. Then they left for the coast with the seven bags and on reaching the coast, Tiger Memon (AA) went to a hut on the coast with the seven bags. In the hut, Dadabhai (A-17), Dawood Taklya (A-14) and Dadabhai's son (A-131) were present. Tiger Memon opened the seven bags with the help of these persons. The bags were containing AK-56 rifles, handgranades and pistols. The witness was given a pistol. Tiger Memon (AA) told them that within a short time goods like arms and Kala Sabun would be brought from the sea. Tiger Memon instructed them to attack any person who was an outsider and comes towards them. The goods came in boats. Villagers unloaded the goods from the boat and reloaded in a truck which was standing there. The villagers were persons of Dawood Taklya (A-14) and Dadabhai Parkar (A-17). After the goods were unloaded and reloaded in the truck, the villagers left the place. Then they proceeded towards Wangni Tower and reached there in about one and half hours. It was located in a lonely and deserted place. Tiger Memon got the goods unloaded from the truck and goods were kept in a room in Wangni Tower. On the instruction of Tiger Memon (AA), the packages were opened and seen to contain AK-56 rifles, handgranades, pistols, cartridges, magazines of AK-56 rifles and wires. The witness (PW.2) enquired from Javed about the wires and Kala Sabun. Tiger Memon (AA) told him that Kala Sabun was an explosive and the wires were detonators. Tiger then instructed them to put the rifles and other items in the cavities of the jeeps and in the tempo. The bags in which these items were brought were burnt by Dawood Taklya (A-14), Dadabhai Parkar (A-17) and his son (A-131) in the backyard on the instructions of Tiger Memon (AA). Tiger Memon (AA) instructed Dawood Taklya (A-14) to conceal the boxes of Kala Sabun.

375. Deposition of Dileep Madhavji Katarmal (PW.284) - He was serving as a Manager in the firm which was carrying on the business of gunny bags etc. He gave description about two persons one old and one young who had come to his agency/shop for purchasing the sacks in the first part of February 1993, and they purchased the sacks vide bill Nos. 635 and 636 on 4.2.1993 and bill Nos. 650 and 651 on 10.2.1993 in the name of Dhanaji Sakharam Pawar. The witness produced

the counterfoil of the said bills which were marked Exhibits 1139 and 1146. The said bills were in his handwriting and contained his signatures.

376. Deposition of Jalil Sharif Kirkire (PW.285) - He was the driver of the vehicle in which the sacks had been taken. He deposed that he had shifted the gunny bags and was paid a sum of Rs.475/- towards the hire charges. However, he did not identify any of the accused.

377. Deposition of Ananth Shankar Rane (PW.286) - He was an official of CBI and his deposition is only to the extent that he searched for Dhanaji Sakharam Pawar in whose name the bills had been issued for purchasing the gunny sacks but in vain.

378. The learned Special Judge appreciated the entire evidence particularly that of the confessional statement of Sayyed Abdul Rehman Kamruddin Sayed (A-28), depositions of Dileep Madhavji Katarmal (PW- 284) and Jalil Sharif Kirkire (PW-285) and other witnesses and reached the conclusion that the respondent (A-131) was involved in landing and was present in arms training at Sandheri and was also involved in purchase of gunny bags. However, Sayyed Abdul Rehman Kamruddin Sayed (A-28) did not disclose the full name of accused (A- 131), rather referred to as Muzib.

379. From the aforesaid evidence, it is evident that the appellant (A- 131) was the son of Dadabhai (A-17) who was a close associate of Tiger Memon (AA) and indulged in smuggling activities and participated and facilitated in the landing and transportation of contraband. The appellant (A-131) had participated in purchasing the gunny bags as well as in transportation and had been fully aware of the contents therein as is evident from the deposition of Usman (PW.2). The appellant (A-131) knew that the gunny bags contained AK-56 rifles, handgranades, arms etc. The appellant (A-131) purchased the gunny bags in the fake name of non-existing person twice. If all the evidence against him is read conjontly, the inference may be that the gunny bags were used to carry the arms which were smuggled to India and transported to Bombay.

380. In view of the above, conviction of the appellant under Section 3(3) TADA is justified. The appeal lacks merit and is accordingly dismissed.

Criminal Appeal NO. 415 of 2011

381. This appeal has been preferred against the same impugned judgment and order dated 2.8.2007 passed by the Designated Court by which the respondent has been convicted under Section 3(3) TADA and awarded rigorous imprisonment for 5 years with a fine of Rs. 25,000/- and in default of payment of fine, to suffer further RI for 6 months. However, he has been acquitted of the general charge of conspiracy. Hence, this appeal by the State.

382. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that in addition to the general charge of conspiracy, the respondent (A-131) had been convicted for assisting the Tiger Memon (AA) and his associates in smuggling of arms, ammunition, handgrenades and explosives like RDX in India at Shekhadi, Dist. Raigarh and by purchasing empty gunny bags in the name of fictitious firms. Therefore, he has wrongly been acquitted of the charge of conspiracy.

383. Ms. Farhana Shah, learned counsel appearing for the respondent (A-131) has submitted that the basic evidence against the respondent (A-131) was the evidence of Usman (PW.2) who had been an accused and turned to be an approver and he did not refer to the respondent (A-131) in his confessional statement. More so, his evidence has not been corroborated by any other person. He had been involved in the case merely being the son of a landing agent of Tiger Memon (AA). The evidentiary value of the approver requires corroboration. Therefore, the appeal lacks merit and is liable to be dismissed.

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

The entire evidence against the respondent (A-131) has been referred to and as appreciated in the connected appeal no.207 of 2008, hence, for brevity sake does not require to be referred to herein.

385. So far as the charge of conspiracy is concerned, as accused A-131 had not transcended beyond the aforesaid acts having assisted and abetted Shekhadi landing and transportation operation and there was no other overt act and it was difficult to hold that he was involved in conspiracy. There was nothing to show that he committed any act furthering the object of conspiracy, beyond rendering assistance to the operation organized by his father alongwith other partners. The

same made it extremely difficult to attribute knowledge of object of conspiracy to A-131. Therefore, he was given the benefit of doubt regarding the said charge and was held not guilty of conspiracy.

386. In view of the above, as the identity of accused (A-131) had not been fully disclosed by some of the accused and witnesses and even Usman (PW.2) who had involved respondent (A-131) in many activities did not mention his name in the confessional statement given by him. He (PW.2) further clarified in cross examination that he could not give any reason for not mentioning the name of the accused (A-131) in his confessional statement. Therefore, the respondent becomes entitled to the benefit of doubt.

387. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

388. More so, the evidence of Usman (PW.2) requires corroboration in view of the law laid down by this Court in *Mrinal Das Ors. v. State of Tripura*, (2011) 9 SCC 479.

In view of the above, we reach the inescapable conclusion that the appeal lacks merit. Thus, it is accordingly dismissed.

CRIMINAL APPEAL NO. 2173 of 2010

Mohammed Sultan Sayyed

Vs.

State of Maharashtra thr.CBI

389. This appeal has been preferred against the judgment and order dated 2.8.2007 passed by the Designated Court under the TADA for the Bombay Blast Cases, Greater Bombay, in Bombay Blast Case No. 1/1993, by which the appellant has been convicted under Section 3(3) TADA.

390. Facts and circumstances giving rise to this appeal are that: A. In addition to the main charge of conspiracy, the appellant (A- 90) was charged for knowingly facilitating the commission of terrorist acts i.e. the bomb blast on 12.3.1993, and

intentionally aiding and abetting Dawood Ibrahim Kaskar, Mohmed Dossa and Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon and their associates by attending the meeting that was held at Hotel Persian Darbar on 6.1.1993 alongwith other co-accused Ranjit Kumar Singh (A-102), Baleshwar Prasad and Customs Superintendent Yashwant Balu Lotle (PW.154), wherein the said Customs agents agreed to allow Mohd. Dossa and his associates to carry out their smuggling activities upon the payment of a sum of over Rs.7,80,000/- per landing; in furtherance of which, Mohd. Dossa and his associates smuggled into Bombay, arms and ammunition for the commission of terrorist acts at Dighi on 9.1.1993. The appellant (A-90) and the other co-accused, facilitated the smuggling and transportation of arms, ammunition and explosives by their non-interference in lieu of the payment of bribe amounts, in spite of the fact that they had specific information and knowledge of the fact that arms, ammunition and explosives were to be smuggled into India by terrorists, and that as customs officers were legally bound to prevent the same. Charges were framed under Section 3(3) TADA. B. After the conclusion of the trial, the learned Designated Court found the appellant (A-90), guilty of charge under Section 3(3) TADA, and imposed upon him, a punishment of 7 years alongwith a fine of Rs. 1 lakh, and in default of payment of fine, to suffer further RI for 3 years. A cash amount of Rs.1,35,000/- from muddernal Art. No. 343 (B), 343(C) and 343(D) which was recovered from his house, has also been forfeited. However, he was not found guilty of any other offences.

Hence, this appeal.

391. Shri Mushtaq Ahmad, learned counsel appearing on behalf of the appellant (A-90), has submitted that there is no legal evidence on the basis of which the conviction of the appellant (A-90), can be sustained. It was further submitted that his confessional statement has never been recorded, and that he had never been presented before the officer who is purported to have recorded his confessional statement, on the contrary, such recording was done by resorting to 3rd degree methods, and that he was forced to sign the papers upon which his purported confessional statement was recorded. All the other evidence is not worthy of acceptance, as he had mostly met the other main accused only upon the instructions of R.K. Singh, Assistant Collector of Customs (A-102). Thus, the conviction is liable to be set aside, and the present appeal deserves to be allowed.

392. Shri Mukul Gupta, learned senior counsel appearing for the State, has vehemently opposed the appeal and submitted that the appellant (A-90) had made an admissible confessional statement, and that no 3rd degree methods were used to obtain the same. Thus, the appeal deserves to be dismissed.

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

394. Evidence against the appellant (A-90):

(a) Confessional statement of the appellant (A-90)

(b) Confessional statement of Dawood @ Dawood Taklya Mohammed Phanse @ Phansmiyan (A-14)

(c) Confessional statement of Uttam Shantaram Potdar (A-30) (d) Confessional statement of Mohmed Salim Mira Moiddin Shaikh @ Salim Kutta (A-134)

(e) Confessional statement of Mohmed Kasam Lajpuria @ Mechanic Chacha (A-136)

(f) Confessional statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)

(g) Deposition of Sitaram Maruti Padwal (PW-146)

(h) Deposition of Madhukar Krishna Dhandure (PW-153) (i) Deposition of Yashwant Balu Lotale (PW-154)

(j) Deposition of Shivkumar Ramanand Bhardwaj (PW-470)

395. Confessional Statement of the appellant (A-90):

His own confessional statement was recorded on 29.4.1993 (First Part) and 30.4.1993 (Second Part) by Shri C. Prabhakar, Superintendent of Police, Thane Rural Camp, Alibag (Raigad) (PW.186). In his confession, he has stated that he had been working as the Superintendent of Customs at Alibag

in January-February, 1993 and that he had accompanied the accused R.K. Singh, Assistant Collector of Customs (A-102) on 6.1.1993 to Hotel Persian Darbar, alongwith Shri Lotle (PW.154), where negotiations had taken place with the accused Mohd. Dossa and his associates, regarding the amounts that were to be paid to various officials for the landing of smuggled goods, and where it was finally settled that Mohd. Dossa would pay a sum of Rs.7,80,000/- for each landing. On 8.1.93, the appellant (A-90) had seen Mohd. Dossa, whom he had met on 6.1.1993, talking to R.K. Singh (A-102) in his office. He was introduced by R.K. Singh (A-102) to Uttam Potdar (A-30), a landing agent, in the third week of January. R.K. Singh (A-102) had instructed the appellant (A-90) to approach Uttam Potdar (A-30), who had handed over one plastic box to the appellant (A-90), which he had given to R.K. Singh (A-102). R.K. Singh (A-102) had given a sum of Rs.1 lakh to the appellant (A-90) as part payment for the earlier landing made in the first week of December, 1992 and also for the one on 9.1.1993. For the said landings, R.K. Singh (A-102) had been paid a sum of Rs.3.5 lakhs on 19.1.1993. The appellant (A-90) had gone to the rest house at Shrivardhan, and there he had met R.K. Singh (A-102). At the said rest house, Dawood Phanse (A-14) had also met R.K. Singh (A-102). R.K. Singh (A-102) had given instructions to the appellant (A-90) on 2.2.1993, to reach Hotel Big Splash and contact Dadabhai Parkar (A- 17), as he had told R.K. Singh (A-102) that a landing was likely to take place on 5/6.2.1993 at Bankot Creek. Subsequently, Dadabhai (A- 17) informed him (A-102) that the work of the landing had been delayed as a dead body had been found at the said place. The appellant (A-90) had accompanied R.K. Singh (A-102) and Inspector Padwal on 12.2.1993, and all of them then reached the residence of Dadabhai Parkar (A-17), held a meeting with him and then returned to the Mhasla rest house, where Sarfaraz (A-55), son of Dawood Phanse (A-14) met R.K. Singh (A- 102) and handed over to him a plastic bag containing Rs.3 lakhs. Uttam Potdar (A-30) had also come to the rest house and spoke to R.K. Singh (A-102). R.K. Singh (A-102) had given a sum of Rs. 15,000/- to the appellant (A-90) on 13.2.1993, and had told him that the said money was being paid against the landing which had taken place on 3.2.1993 at Shekhadi. He further stated that the ill-gotten money amounting to Rs.1,35,000/- for a total of four landings, had been kept with the father-in-law of the appellant (A-90), Shamsuddin Rajinsaheb Inamdar.

396. Confessional statement of Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmian (A-14):

He has revealed that a sum of Rs.3 lakhs was paid to the Alibagh Customs Office when the appellant (A-90) had visited his house on 14/15.2.1993 alongwith Inspector Padwal.

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

He has revealed that he had been paying bribes to the appellant (A-90) and to various custom officers for each landing, and that he had also paid the staff of Shrivardhan Customs, a sum of Rs.1.5 lakh. A sum of Rs.3 lakhs had also been given to him by Firoz to distribute among all the other officers. The staff of Shrivardhan Customs made a complaint stating that the said amount was too low, and hence, the accused (A-30) had paid a sum of Rs.10,000/- from his own pocket, for all, to Sayyed, Customs Superintendent, the appellant (A-90), Rs.2.5 lakhs to R.K. Singh (A-102) and Rs. 1 lakh to the Alibagh staff. He further revealed that the money that he had given to the appellant (A- 90), was from his own share.

398. Confessional Statement of Mohmed Salim Mira Moiddin Shaikh @ Salim Kutta (A-134):

He has stated that in the first week of January, 1993, three custom officers, including R.K. Singh (A-102), Sayyed (A-90) and one other officer, had come to Hotel Persian Darbar where the said accused (A-134) was present with Mohd. Dossa, Mohd. Kaliya, Abdul Qayum and Mohd. Mental. Mohd. Dossa had discussed his landing operation and the amount that was to be paid for each landing as a bribe to them alongwith the customs officers. It was finally agreed, that a sum of seven to eight lakh rupees would be paid by Mohd. Dossa to the customs officers for each landing. The customs officers had also asked Mohd. Dossa to provide certain goods that could be shown as seized. Immediately thereafter, a landing took place for the purpose of which, the accused (A-134) went to the customs office at Alibagh. The appellant (A-90) was present at the office, and they informed the appellant (A-90) that Mohd. Dossa's landing would take place at Dighi Jetty. The appellant (A-90) went and called R.K. Singh (A-102) from his residence, and the accused (A-134) then told him about the landing. Both of them (A-

90 and A-102), gave their permission for the same. In pursuance thereof, the said landing took place, and Uttam Potdar (A-30) made all the requisite arrangements. Four trucks participated in the landing operation.

399. Confessional statement of Mohmed Kasam Lajpuria @ Mechanic Chacha (A-136):

According to him, Mohd Dossa, Salim Kutta (A-134), Firoz Qayum Sajli, Arif Lambu and Mechanic Chacha (A-136) had gone from Panvel to Bombay and had attended a meeting at Hotel Persian Darbar. After sometime, customs officers R.K. Singh (A-102), the appellant (A-90), and 4-5 other customs officials were preparing to leave office in a white Ambassador and a jeep. After their departure, he came to know from Mohd. Dossa, that in the aforementioned meeting, an amount of Rs.7-8 lakhs had been fixed for payment to customs officials as a bribe, for a single landing. Upon the instructions of Mohd. Dossa, this accused (A-136) reached, alongwith the other accused from Bombay to Mhasla, Alibagh as the said landing was to take place there, on 9.1.1993. They had already been told to make all requisite arrangements for the same, alongwith Uttam Potdar (A-30), Shabbir Qadri after talking to R.K. Singh (A-102), the appellant (A-90) and also other customs officials.

400. Confessional statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17):

He has disclosed facts in relation to the landing at Shekhadi. He was informed by Tiger Memon (AA) that a landing would take place on 3.2.1993. Additionally, Tiger Memon had told him to contact Assistant Collector R.K. Singh (A-102) over the phone, to tell him that he was an informant and that he wanted to provide to him certain information, for which he should come to Hotel Big Splash. R.K. Singh (A-102) told him that it was not possible for him to come there, but he would send his Superintendent and in pursuance thereof, the appellant (A-90) had gone there. Tiger Memon and co-accused (A-17) engaged in certain discussion, and Tiger Memon told him that there was some landing work on the said date. He further stated that they had received Rs.15 lakhs to be distributed among officers, as per the instructions of Dawood Takliya (A-14), out of which a sum of Rs. 2 lakhs was paid to R.K. Singh (A-102), Inspector Padwal and to the appellant (A-90).

401. Depositions of Sitaram Maruti Padwal(PW-146), Madhukar Krishna Dhandure (PW-153) and Yashwant Balu Lotale (PW-154) :

They are customs officials and have deposed and approved that Assistant Collector R.K. Singh (A-102) and the appellant (A-90), alongwith other Custom officers of the Alibagh Division went to the Persian Darbar hotel. There was a meeting held at the said hotel, and there were talks held with Mohd. Bhai for about half an hour.

402. Deposition of Shivkumar Ramanand Bhardwaj (PW-470):

He has stated that in January 1993, he had received certain information from the DRI Bombay, to the effect that some ISI syndicates who were located in the Middle East and also in Bombay, may try to smuggle contraband and arms into the districts of Bombay, Raigad and Bassin. After receipt of said information, he had sent DO letter (Ext. 1536) to the Assistant Collector R.K. Singh (A-102) and others, and had also given instructions over the telephone. This DO letter was proved by Pradeep Kumar (PW-471). The said letter was received by R.K. Singh (A-102) and this information was further circulated to all the Superintendents working under his jurisdiction.

403. In the statement made under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C. '), the appellant (A-90) has completely denied the recording of his confessional statement by Chaturvedula Shstri (PW-186), while answering the questions put to him. The appellant (A-90) refused to acknowledge most of the incriminating material that was pointed out to him by the Designated Court. The Designated Court considered the same in great detail, appreciating it alongwith the cross-examination of Chaturvedula Shstri (PW-186). The appellant (A-90) has further stated under Section 313 Cr.P.C. that in his confessional statement, his signatures were forcibly obtained on 1.5.1993, and subsequently on 3.5.1993 at a few places, when a sentence was inserted in the margin of page 3. The same were obtained in the office of SP T.S. Bhal, P.W.191, through force and by torturing the appellant (A-90).

404. However, after considering everything on record, the learned Designated Court came to the conclusion that there was no manipulation in his confessional statement, and that the same had voluntary been made by appellant (A-90). His

explanation was that, after recording his confessional statement, Chaturvedula Shstri (PW-186) had sent it to the CJM, who had not accepted the same, and had returned it. Therefore, there was manipulation. Such an averment was rejected by the Designated Court, pointing out that the same had been sent directly by Chaturvedula Shstri (PW-186) to the Designated Court, Pune, which had received it directly. Therefore, the question of any kind of manipulation did not arise. Thus, the confessional statement cannot be termed as a manufactured document, as has been claimed by appellant (A-90).

405. The evidence on record leads to the conclusion that the appellant (A-90) had participated in the meetings held at Hotel Persian Darbar on 6.1.1993 in connection with landings. The appellant accepted a huge amount of money as his share of illegal gratification from co-accused R.K. Singh (A-102) permitting the other accused persons for landing on 9.1.1993, and part of the same had been recovered from the appellant. The appellant (A-90) also participated in the meeting at Hotel Big Splash, wherein Sharif Abdul Gafoor Parkar @ Dadabhai Parkar (A-17) and Tiger Memon (AA) were present and therein the negotiations took place for Shekhadi landing. As the said landing took place the involvement of the appellant becomes apparent. The evidence further disclosed that the landings contained contraband goods i.e. sophisticated arms, ammunition and explosives and the same could not be used for any purpose other than commission of terrorist acts.

406. We find no reason to interfere with the judgment of the Designated Court. The appeal is dismissed accordingly.

CRIMINAL APPEAL NO. 1632 of 2007

Ranjit Kumar Singh

Vs.

State of Maharashtra thr. CBI

407. This appeal has been preferred against the judgments and orders dated 18.9.2006 and 19.7.2007 passed by Special Judge of the Designated Court under the TADA for the Bombay Bomb Blast Cases, Greater Bombay, in Bombay Blast Case No. 1/1993. The appellant (A-102) has been convicted under Section 3(3) TADA and has been awarded the sentence to undergo rigorous imprisonment for 9

years alongwith a fine of Rs. 3,00,000/- and in default of payment of fine, to suffer further RI for 4 years.

408. Fact and circumstances giving rise to this appeal are that : ?A. In addition to the first charge of general conspiracy, the appellant (A-102), who was an Assistant Customs Collector (Alibagh), the adjoining district of Raigad, where three landings took place was charged under Section 3(3) TADA for attending the conspiratorial meeting at the Persian Darbar on 6.2.1993, alongwith co-accused Mohmed Sultan Sayyed (A-90) and Customs Superintendent Ahmed Alimed (PW-317), in which the wanted accused Mohd. Ahmed Dossa (AA), Mohmed Jaipuria and Mohmed Kasam Lajpuria @ Mechanic Chacha (A-136) were also present and had agreed to allow Mohd. Ahmed Dossa (AA) and his associates to continue with their smuggling activities within his (A-102) jurisdiction in return for the payment of Rs.7.8 lakhs per landing. In furtherance of the same, Mohd. Ahmed Dossa (AA) and his associates smuggled ammunition for the commission of terrorist acts. B. Furthermore, he has also been charged for facilitating the smuggling and transportation of arms, ammunition and explosives by Tiger Memon (AA) and his associates on 3rd February and 7th February, 1993 at Shekhadi owing to which, arms, ammunition and explosives were brought into the country for the commission of terrorist acts. He had received specific information and knowledge, that arms, ammunition and explosives were being smuggled into the country. Hence, he has been charged under Section 3(3) TADA, and was found guilty vide judgments and orders dated 18.9.2006 and 19.7.2007.

Hence, this appeal.

409. Mr. Sushil Kumar, learned senior counsel appearing for the appellant (A-102), has submitted that the appellant (A-102) has been acquitted of the first charge of general conspiracy, and a finding of fact has been recorded by the Designated Court, that there was no evidence on record to show that the appellant had accepted any bribe from any of the smugglers or their landing agents etc. The confessional statement of the appellant has been rejected by the Designated Court on the ground that it was recorded by the Inspector of Police, and such person has not been accepted as a competent authority under Section 15 TADA, to record such statement. Therefore, such a confession cannot be taken into consideration. Eight co-accused in their confessional statements have named the appellant stating that the landing agents of the smugglers had been in contact with him and that they had been paying to him, amounts as were fixed per landing. However, the statements of

three co-accused i.e. Uttam Shantaram Potdar (A-30), Mohmed Salim Mira Moiddin Shaikh @ Salim Kutta (A-134) and Mohmed Kasam Lajpuria @ Mechanic Chacha (A-136) were recorded subsequent to the date of amendment dated 22.5.1993. Therefore, the confessional statements of five other co-accused, which were recorded prior to the date of the said amendment, cannot be relied upon. The contents of the confessional statements of the aforementioned three co-accused do not inspire confidence and cannot be relied upon. The appellant (A-102) has wrongly been convicted under Section 3(3) TADA and awarded a sentence of 9 years alongwith a fine of Rs.3 lakhs. The appellant has already served about 7 years of imprisonment, and has also deposited the fine. Moreover, other officers of the Customs Department were also convicted in this case, particularly, Jaywant Keshav Gurav (A-82), Mohmed Sultan Sayyed (A- 90), Somnath Kakaram Thapa (A-112) (dead) and Sudhanwa Sadashiv Talwadekar (A-113), and among them, Somnath Kakaram Thapa (A-112) (dead) who was a superior officers to the appellant (A-102), and also others who were his subordinates, have been awarded a lesser sentence. A sentence of 8 years was awarded to Jaywant Keshav Gurav (A-82) and of seven years to Mohmed Sultan Sayyed (A-90). Hence, his sentence should be reduced to the period already undergone.

410. Shri Mukul Gupta, learned senior counsel appearing for the respondent, has vehemently opposed the appeal contending that the confessional statements of all the co-accused, though recorded prior to the date of amendment, must be relied upon. The Collector of Customs Shiv Kumar Bhardwaj (PW-470) informed the appellant (A-102) over the telephone on 25.1.1993 that he (PW-470) had received definite information through Intelligence that arms and ammunition would be smuggled into India alongwith silver and gold and that landings of the same would take place within the territorial jurisdiction of the appellant (A-102). Hence, he must take all necessary precautions and seize both, the weapons as well as the contraband silver and gold. Undoubtedly, the appellant (A-102) regularly informed the Collector about the progress made by him in this regard, but did not take any actual effective measures, instead, he spent his time bargaining and taking bribes from the smugglers, to facilitate the landing and transportation of the said goods. Hence, no leniency must be shown to him. The appeal is liable to be dismissed.

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

412. The confessional statement made by the appellant has rightly been rejected by the Designated Court, and we do not wish to spend further time on this issue. This, being the first appeal, it becomes necessary for us to re-appreciate the evidence on record while considering the same.

413. Evidence against the appellant (A-102) :

- (a) Confessional statement of the appellant (A-102)
- (b) Confessional Statement of Uttam Shantaram Potdar (A-30)
- (c) Confessional Statement of Jaywant Keshav Gurav (A-82)
- (d) Confessional statement of Mohd. Sultan Sayyed (A-90):
- (e) Confessional Statement of Mohd. Salim Mira Moiddin Shaikh (A- 134)
- (f) Confessional Statement of Mohmed Kasam Lajpuria (A-136)
- (g) Confessional Statement of Dadabhai Abdul Gafoor Parkar (A-17)
- (h) Deposition of Shivkumar Bhardwaj (PW-470)
- (i) Deposition of Yashwant Balu Lotale (PW-154)
- (j) Deposition of Sitaram Maruti Padwal (PW-146)
- (k) Deposition of Madhukar Krishna Dhandure (PW-153)
- (l) Deposition of Tikaram Shrawan Bhal (PW-191)

414. Confessional Statement of Uttam Shantaram Potdar (A-30):

He has corroborated the statement of the co-accused in respect of the meetings held, and the acceptance of bribe. He has stated that on 4.12.1993, a Customs Sepoy had come to him and had told him that he had been called to Mhasla. On reaching there at 8.00 p.m., the Assistant Collector R.K. Singh, appellant (A-102), called him to his chamber and on enquiry, A-30

disclosed about the previous landing dated 3.12.1992. On 5.12.1992, appellant (A-102) was paid Rs.2.5 lacs for landing. In January 1993, Superintendent Sayyed was given Rs.2.5 lacs to give the same to appellant (A-102).

415. Confessional Statement of Jaywant Keshav Gurav (A-82):

The accused (A-82) was working with the Customs Department, and his job was to prevent smuggling along the sea-coast, to nab smugglers by collecting secret information against them and to file cases against them as well. Shri R.K. Singh (A-102) had been the Assistant Collector of the Marine Preventive since September 1992. In December, 1992, a letter was received by customs officials stating that it was likely that smuggling of weapons would take place along the Western coast. The accused (A-82) knew Dawood Phanse (A-14), Uttam Potdar (A-30), Rahim Laundriwala, and Shabir Kadri who were all working as landing agents for smuggling activities in the said area. On 3.12.1992, the accused (A-102) came to Mhasla. The accused (A- 82) met the appellant (A-102) and discussed about a landing on 2.12.1992. The appellant (A-102) had a talk also with Dawood Phanse (A-14) at the Mhasla rest house. The appellant (A-102) called him (A- 82) and told him to go to Bombay the next day, to collect money from Uttam Potdar (A-30).

After 2-3 days Uttam Potdar (A-30) came to his room at night at Shrivardhan, and gave him Rs.4,00,000/- and a direction to pay out of the said amount, a sum of Rs.2,50,000/- to the appellant (A-102) and Rs.1,50,000/- to the Superintendent. He (A-82) handed over the money to the appellant (A-102) in a building near the post office and thereafter, returned to Shrivardhan. On 9.1.1993, he (A-82) met the appellant (A-102) and the appellant (A-102) told him that Mohd. Dossa's landing was going to take place and directed him (A-82) to help him.

416. Confessional statement of Mohd. Sultan Sayyed (A-90): He was the Superintendent Customs Preventive, Alibagh. Some time in the month of November, 1992, the appellant (A-102) had told M.S. Sayeed (A-90) that Rs.1,00,000/- was to be recovered from Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmিয়ian (A-14) towards penalty. A-90 then directed Dawood Mohammed Phanse (A-14) to pay the said amount, failing which his name would

be intimidated to the Collector, Raigad. In December 1992, the appellant (A-102) and one Inspector Padwal forced him to accept a sum of Rs.35,000/- towards the smuggling of silver on 2nd December, 1992 at Dighi. When he refused to accept the same, the appellant (A-102) threatened to spoil his confidential report. As regards the landing on 2nd December, 1992, Inspector Gurav (A-82) paid a certain amount to the appellant (A-102). On 6.1.1993 he (A-90), alongwith the appellant (A-102), Customs Superintendent Lotale (PW-154) reached Hotel Persian Darbar, where three persons including Mohammed Dossa (AA) were already present. From their discussion, he learnt that the appellant (A-102) had demanded a sum of Rs.10 lakhs for each landing. In the 3rd week of January, 1993, the appellant (A-102) called (A-90) into his office and introduced him to Uttam Shantaram Potdar (A-30), and he learnt that A-30 had given the appellant a sum of Rs.3,50,000/-. On 2.2.1993, the appellant (A-102) told the co-accused (A-90) to go to Hotel Big Splash. There he met Dadabhai (A-17) who told him that a landing might take place at Bankot Khadi on 5th/6th February, 1993. On 3rd and 4th February, 1993, Dadabhai told the co-accused (A-90) to deliver a personal message to the appellant (A-102) to the effect that as a dead body had been found at his work place, the said work had been postponed, and that further, he would contact the appellant (A-102) before the job was to be done. Dadabhai (A-17) told (A-90) that he was the son-in-law of A.R. Antule.

On 12.2.1993 co-accused (A-90) learnt that Dawood Phanse's son (A-55) had paid the appellant (A-102), Rs.3.5 lacs. On 13.2.1993, the appellant (A-102) had paid a sum of Rs.50,000/- to (A-90) for the landing at Shekhadi on 3.2.1993.

#### 417. Confessional Statement of Mohd. Salim Mira Moiuddin Shaikh (A-134):

In his confessional statement, he (A-134) has stated that he had gone to Hotel Persian Darbar alongwith Mohd. Dossa, Mohd. Kaliya, Abdul Qayum and Mohd. Mental, and had met Customs Officers including the appellant (A-102). At the said meeting, it was decided that Rs.7- 8 lakhs would be paid for each landing to the said Customs Officers by Mohd. Dossa. A few days later, Mohd. Dossa told the Customs Officers that a large quantity of arms and ammunition would be brought at Mhasla, for which arrangements were to be made. He (A-134) and Feroz informed the appellant (A-102) of the said landing on the instructions of Mohd. Dossa.

418. Confessional Statement of Mohmed Kasam Lajpuria (A-136):

He (A-136) stated that the appellant (A-102) had been present at the meeting held at Hotel Persian Darbar on 6.1.1993, where it was decided that Rs.9-10 lakhs would be paid to the Customs staff for one landing. Mohd. Dossa instructed Salim and Feroz to make arrangements for Dighi landing after talking to appellant (A-102).

419. Confessional statement of Sudhanwa Sadashiv Talwadekar (A-113):

He (A-113) did not name the appellant (A-102), but corroborated that the landing took place on 9.1.1993.

420. Confessional Statement of Dadabhai Abdul Gafoor (A-17):

In his confession, A-17 disclosed that he used to facilitate the landings of smuggled goods, and that he had been working with Tiger Memon (AA) and Dawood Taklya (A-14) for the past 1-1/2 years. The last two jobs involved the landing of weapons and explosives. On 3rd February, 1993, he (A-17) contacted appellant (A-102) on telephone on the instructions of Tiger Memon (AA) and asked him to meet Tiger Memon at Hotel Big Splash. The appellant (A-102) sent Superintendent Sayyed (A-90) who negotiated with Tiger (AA), and Tiger told him that he had some work that day.

421. Deposition of Shivkumar Bhardwaj (PW-470):

In his statement, he has revealed that he had received information from the Directorate of Revenue Intelligence (DRI) that a big quantity of automatic weapons would be smuggled into India by the ISI alongwith contraband, gold and silver within 15-30 days at Vasai, Dadar Pen around Bombay, Shrivardhan, Bankot, Ratanagiri and along the southern beaches of Goa. In view thereof, he had sent letter dated 25.1.1993 (Ext. 1536) to the appellant (A-102), and had also spoken to him over the telephone on the very same day, and had cautioned him to keep a close watch and remain highly alert regarding the possibility of the landing of arms alongwith the other contraband. He (PW-470) had further advised A-102 to pay close attention to the situation, and to make an attempt to seize the weapons as well as the contraband. In the event of seizure of such goods, the officer (A-102) would

be rewarded, and a lucrative reward would also be given to the person who furnished any requisite information, and that it was for this purpose, that the officers of the customs department were mixing closely with the smugglers so as to win their confidence and dupe them into giving them such information. The witness further revealed that the appellant (A-102) and Sh. S.N. Thapa (dead), had kept him informed about the steps taken in this regard.

422. Deposition of Yashwant Balu Lotale (PW-154):

In his statement he has revealed that he and the appellant (A- 102), were working as Assistant Collectors of Customs and he has deposed that he had gone alongwith the appellant (A-102) and M.S. Sayyed (A-90) on 6.1.1993 after leaving the Alibagh office and that they had carried out the work of collecting intelligence by patrolling areas until 1.00 a.m. on 7.1.1993. Thus, he has deposed in favour of the appellant (A-102).

423. Deposition of Sitaram Maruti Padwal (PW-146): He was inspector of Customs and was called by the appellant (A- 102) to his cabin in September 1992, and he (A-102) had enquired as to whether the penalty of Rs.1 lac imposed upon Dawood Phanse (A-14) had been recovered. The witness, after checking the record, informed the appellant (A-102) that the penalty had not been recovered. On 11.2.1993, three parties were formed for patrolling and in one such party, he (PW-146) was also included. The appellant (A-102), Sayyed (A-90) and the witness (PW-146) had gone to the residence of Dadabhai (A-17). On being informed, Dadabhai Parkar (A-17) came and met the appellant (A-102) who remained seated in the car. A discussion had ensued between Dadabhai (A-17) and the appellant (A-102). From there they came to the Rest House, where A-102 met a person sent by Dawood Phanse (A-14).

424. Deposition of Madhukar Krishna Dhandure (PW-153): In the year 1993, appellant (A-102), was the main officer at the customs office in Alibagh. On 6.1.1993, at about 5.00 p.m. he went for patrolling alongwith A-102.

425. From the evidence referred to hereinabove, the prosecution has established the case against the appellant (A-102) as: - The appellant knew Mohd. Dossa, Tiger Memon and their landing agents and had been allowing the accused persons to smuggle contraband goods into India, for which he was getting hefty bribes. -

There had been a meeting on 6.1.1993 which was attended by the appellant (A-102), alongwith Sayyed, Mohd. Dossa and other persons. It was decided in the meeting that 7-8 lacs would be paid to the Custom Officers for each landing.

- Landing took place on 9.1.1993, for which the appellant had been informed by Mohd. Dossa through Salim and Feroz that the landing would take place on that date.

- Arms and ammunition sent by Mustafa Majnu landed at Dighi Jetty on 9.1.1993.

- Appellant (A-102) received illegal gratification from the accused persons for this landing and had received the bribe for the landing done on 2.12.1993 by Mohd. Dossa.

- Appellant (A-102) knew about the landing which took place on 3.2.1993 and 7.2.1993 at Shekhadi.

- Appellant had received the information from Sh. Bhardwaj, Collector of Custom on 25.1.1993 that I.S.I. Syndicate located in Middle East and Bombay may try to smuggle contraband and arms in the Districts of Bombay, Raigad and Thane. Despite this specific information he allowed Tiger Memon (AA) and his persons to smuggle arms, explosives etc. in India.

426. After considering the entire evidence on record, the learned Special Judge came to the conclusion as under:

“265) Without making any unnecessary dilation about the self- eloquent evidence about which the relevant excerpts are cited earlier it can be safely said that considering the act committed by these 4 accused as reflected from same i.e. participation of A-102 90 in Persian Darbar meeting and negotiating with smugglers about the bribe amount to be paid and granting them a charter to smuggle the contraband articles or in fact any thing, the act of A-82 inspite of being present on the spot of interception of goods by police, instead of seizing the same allowing the same to be transported further and in most clandestine manner piloting the convoy carrying the contraband goods on its way to destination upto a particular spot, advising

the policemen in clandestine manner etc., and of A-II3 though not being directly connected with said landing readily willingly accepting his share of booty from the bribe amount received for the said landing and thereby denoting his implied connivance for the said operation seized earlier; not revealed otherwise in view of himself being not directly involvement in commission of act and considering the further acts committed by A- 90, 82 and 113 regarding Shekadi landing and so also to some extent by A-102 clearly reveals themselves having committed the offence u/s. 3(3) of TADA for which each of them has been charged with at this trial.

266) However, the careful consideration of said evidence and even after taking into consideration the fact that A-102 and A- 90 had participated in Persian Darbar meeting; still the evidence having fall short of themselves having connived with the conspirators in this case for commission of said act for the purposes of conspiracy, it will be difficult to hold them or an of ?them liable for offence of conspiracy for which each of them has been charged with on the basis of evidence surfaced regarding Dighi landing episode and so also about Shekadi landing episode about which the discussion is made later on. 267) Truly speaking receipt of bribe amount for allowing the said operation considered from proper angle also connotes that the act committed by the A-102, 90, 113 82 being primarily for receipt of bribe amount by misusing/abusing their official position would definitely fallout of sphere of the conspiracy for which the relevant operation was organized and effected by other co-accused. The same is obvious as conspirators always join the conspiracy or become members of conspiracy due to being interested in either furthering the object of conspiracy or achieving the object of conspiracy.

The payment of the money for commission of act which may have a semblance of furthering object of conspiracy will still not make the concerned liable for offence of conspiracy. The same is apparent as the act committed by them would be for the purposes of receiving the said payment and not mainly for furthering the object of conspiracy. It is true that their such acts as ruled earlier would amount to commission of offence of an abetment or assistance et for commission of terrorist act by other conspirators and they could be held liable for the same but still they cannot be said to be involved in the conspiracy. In view of the aforesaid, none of the A-102, 90, 113 82 can be said to be guilty for commission of offences of

conspiracy for which the charge at head 1st ly is framed against them or even otherwise for any smaller conspiracy. However, by way of abundant caution it will be necessary to record that aforesaid observations is limited to above stated 4 accused from Customs dept., and the same is not in relation to A-102 i.e. Addl. Collector of Customs whose case clearly appears to be different i.e. his connection with Tiger Memon being spelt from evidence revealed during Shekadi landing, there being hardly any evidence of himself having received....”

427. There is enough evidence on record to show the involvement of the appellant (A-102) in facilitating the smuggling of arms, ammunition and explosives within his jurisdiction in lieu of payment of illegal gratification. We find no reason to interfere with the conclusion of the learned Special Judge. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 271 OF 2008

Sudhanwa Sadashiv Talavdekar ...Appellant

Vs.

State of Maharashtra ... Respondent

428. This appeal has been preferred against the judgments and orders dated 2.11.2006 and 29.5.2007 passed by the Special Judge of the Designated Court under the TADA for the Bombay Blast, Greater Bombay in the Bombay Blast Case No.1/93, by which the appellant (A-113) has been found guilty and has been convicted under Section 3(3) TADA and has been sentenced to undergo RI for 8 years alongwith a fine of Rs.2,00,000/- and in default of payment of fine, to suffer further RI for 3 years.

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

A. In addition to the main charge of conspiracy, he has also been charged under Section 3(3) TADA for aiding, abetting, and knowingly facilitating the smuggling of arms, ammunition and explosives, which were smuggled into India while he was posted as the Superintendent of Customs, Shriwardhan Circle of the Alibagh Division, Raigad Dist. Maharashtra.

B. Upon the conclusion of the trial, the appellant (A-113) was found guilty under Section 3(3) TADA and has been convicted and sentenced as mentioned hereinabove. He (A-113) was however, acquitted of the general charge of conspiracy.

Hence, this appeal.

430. The appellant appeared in person and argued that his confession was obtained by coercion and was retracted within 20 days. There are contradictions in the statements made by both the witnesses, Dawood Taklya Mohammed Phanse @ Phanasmian (A-14) and Sharif Abdul Gafoor Parkar @ Dadabhai (A-17). Therefore, their confessions cannot be relied upon. He had falsely been enroped in the case. Thus, the appeal should be allowed.

431. Shri Mukul Gupta, learned senior counsel appearing for the State has vehemently opposed this appeal, and has submitted that the appellant had been named specifically in the confessional statements by the co-accused. He was taking illegal gratification in lieu of not seizing contraband goods that were being smuggled into the country, which was within his power and also his duty. Thus, the appeal should be dismissed.

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

433. Evidence against the appellant (A-113):

- a) Confessional statement of the appellant
- b) Confessional statement of Jaywant Keshav Gurav (A-82)
- c) Confessional statement of Dawood Taklya Mohammed Phanse @ Phanasmian (A-14)
- d) Confessional statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17)
- e) Confessional statement of Mohmed Sultan Sayyed (A-90)

- f) Confessional statement of Uttam Shantaram Potdar (A-30)
- g) Confessional statement of Nasir Abdul Kader Kewal @Nasir Dakhla (A-64)
- h) Deposition of Yashwant Balu Lotale (PW-154)
- i) Deposition of Usman (PW-2)
- j) Deposition of Bharat Hiramal Jain (PW-165)
- k) Deposition of Dipak Balkrishna Rauth (PW-149)
- l) Deposition of Chandrashekhar (PW-591)
- m) Deposition of Shivkumar Bhardwaj (PW-470)

434. Confessional Statement of S.S. Talwadekar (A-113): The evidence against the appellant (A-113) is his own confession made on 2nd/4th May, 1993 which was recorded by Tikaram S. Bhal (PW.191). In his confessional statement, he has admitted that he had gone several times to the house of Rahim Laundriwala alongwith Jaywant Keshav Gurav (A-82) and that he was closely associated with Dawood @ Dawood Taklya Mohammed Phanse @ Phansmiyan (A-14) and Bashir Mandlekar, who were landing agents. He (A-113) would seek information about smuggling and also about the collecting of money for facilitating the landing and transportation of smuggled contraband silver and gold. He (A-113) had gone to the house of Rahim Laundriwala alongwith Jaywant Keshav Gurav (A-82), Customs Inspector and had taken an amount of Rs.1,60,000/- from him which he (A-113) had distributed to others, and had kept a sum of Rs.72,000/- for himself. For each landing, he (A-113) was paid an amount of Rs.1,60,000, which he would distribute among the others, while keeping a substantial share for himself. However, for the landing on 3.12.1992 he had received only Rs.1,50,000/- from Uttam Shantaram Potdar (A-30), and after distribution of amounts to other officers, his own share became limited to only Rs.45,000/-.

After the riots between December, 1992 and January, 1993 in Bombay, Rahim Laundriwala had told him (A-113) that the situation was very tense,

however, despite this, the said landing would take place. The appellant (A-113) proceeded on leave from 9.1.1993 to 23.1.1993, and learnt only subsequently, that a landing had taken place on 9.1.1993. Despite the fact that he had been on leave on the said date, he (A-113) had received a sum of Rs.40,000/- from Uttam Shantaram Potdar (A-30). The appellant (A-113) had also received a message from Rahim Laundriwala that another landing of silver would take place on 29.1.1993 at Shekhadi, but subsequently, he was informed that the said landing could not take place.

Regarding the incident of the landing on 2.2.1993, the appellant (A-113) has stated that he had gone alongwith Jaywant Keshav Gurav (A-82), Customs Inspector, to Shekhadi. In fact, in light of the fact that he had received directions from his superior officers, to be on guard, as it was likely that arms and ammunition would be smuggled alongwith silver and gold, he had gone to Shekhadi. It was dark at about 10.30 - 11.00 p.m., and when the appellant (A-113) reached the said place, with Jaywant Keshav Gurav (A-82), Customs Inspector. Here, he found Rahim Laundriwala and Dawood Taklya Mohammed Phanse @ Phansmiyan (A-14), who introduced him to Tiger Memon (AA). Tiger Memon asked the appellant (A-113) whether he was the Superintendent Inspector, and when the appellant (A-113) answered in the affirmative, Tiger Memon told him (A-113) that he had been trying to contact the appellant for 2-3 days, however he had failed in his attempts to do so. The appellant (A-113) also asked Tiger Memon whether he was smuggling weapons etc. To the said question, Tiger Memon (AA) replied that he would never indulge in such activities. The appellant (A-113) has further confessed that even for the said landing, Jaywant Keshav Gurav (A-82), Customs Inspector, had received a sum of Rs.1,60,000/-, which had been distributed, and the appellant in turn, had received a sum of Rs.54,000/- as his share. He has further stated that he had spent all the money that he had received from the smugglers from time to time. He has provided details of the passbook account numbers of his son, which were recovered by the CBI.

435. According to the confessional statement of the appellant (A- 113), he had been associated with the smugglers and had also met Tiger Memon (AA). He had been receiving money, distributing the same amongst other officers, and had also been spending it himself. However, his case is that he was on leave from 9.1.1993 to 23.1.1993. Subsequently, he had met Tiger Memon (AA). He (A-113) had been receiving money regularly and had even been paid his share for landings that had

taken place while he was on leave. He retracted his statement on 24.5.1993 (after 20 days, in writing, which was prepared by his advocate Hegde), stating that he had been asked to simply sign papers, and that he had not actually made any confessional statement.

436. Confessional statement of Jaywant Keshav Gurav (A-82): In his confessional statement recorded by Tikaram S. Bhal (PW.191), he has deposed that he had been working with the appellant (A-113) who was the Superintendent (Customs) and has corroborated the confessional statement of the appellant (A-113), regarding visiting Rahim Laundriwala and collecting money from him. He has made a statement that once he, alongwith the appellant (A-113), had gone to the house of Rahim Laundriwala and that the latter had paid an amount of Rs.1,60,000/- to the appellant (A-113), and that the said amount was distributed amongst employees and Inspectors at the Custom Office, including to Jaywant Keshav Gurav (A-82). He (A-82) has further narrated similar incidents of visiting the house of Rahim Laundriwala, the collection of money by the appellant and the distribution of the same to other officers on 17.9.1992, and in the month of September 1992, the first week of October 1992, and in the first week of November 1992.

437. Confessional statement of Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14):

Dawood Taklya Mohammed Phanse @ Phanasmiyan (A-14) has implicated the appellant (A-113) in his confessional statement Exts. 855 and 855A which has been duly accepted by the Designated Court. Here, he has made statements regarding the payment of money, and the full co-operation of the appellant in activities connected to smuggling, landing and transportation.

438. Confessional statement of Sharif Abdul Gafoor Parkar @ Dadabhai (A-17):

He is also a landing agent. Similarly, Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) has made disclosure statements regarding the acceptance of money by the appellant (A-113), and the distribution of the same amongst officers before him. He has deposed that a sum of Rs.2.20 lakhs had been given collectively to the appellant and to Jaywant Keshav Gurav (A-82).

439. Confessional statement of Mohmed Sultan Sayyed (A-90):

He has supported the case of the prosecution to the extent that he had also gone along with the appellant (A-113) to Jaywant Keshav Gurav (A-82), Customs Inspector, where they had met Dawood Taklya Mohammed Phanse @ Phanasmian (A-14) and R.K. Singh, Assistant Collector of Customs (A-102).

440. Confessional statement of Uttam Shantaram Potdar (A-30): He has supported the case of the prosecution to the extent of the landing at Shrivardhan, and the payment of money to Mohmed Sultan Sayyed (A-90).

441. Deposition of Yeshwant Balu Lotale (PW-154):

He is the Customs Department official who was examined to verify the version of events narrated by the appellant (A-113), and after examining the office record, he has deposed that the appellant (A-113) was on leave only on 9.1.1993. He did not therefore, support the case of the appellant stating that he had been on leave from 9.1.1993 to 23.1.1993.

442. Nasir Abdul Kader Kewal @ Nasir Dakhkla (A-64) has also supported the case of the prosecution against the appellant.

443. Deposition of Usman (PW-2) :

He has deposed that it was on 2.12.1992 when the landing had taken place, that two persons from the Customs Department had come at the time of the said landing. Though he did not name the appellant (A-113), he has corroborated the confessional statements of the appellant (A-113), and of Jaywant Keshav Gurav (A-82), Customs Inspector.

444. Deposition of Bharat Hiramal Jain (PW-165): It has been proved that he had received a sum of Rs. 2.25 lakhs by way of seven cheques between December 1992 and April 1993 from the appellant for booking a flat.

445. The depositions of Deepak Balkrishna Rauth (PW.149) and Chandrashekhar (PW.591) have proved the aforementioned amounts of cash, through pass book entries.

446. Deposition of Shivkumar Bhardwaj (PW-470):

He has stated that in January 1993, he had received information from the DRI Bombay to the extent that some ISI syndicates located in the Middle East and in Bombay, would try to smuggle contraband and arms into the districts of Bombay, Raigad and Bassin. After receipt of the said information, he had sent DO letter (Ext. 1536) to the Assistant Collector R.K. Singh (A-102) and others, and had also issued instructions to them over the telephone. This DO letter was proved by Pradeep Kumar (PW-471). The said letter was received by R.K. Singh (A- 102), and the same information was further passed on to all the Superintendents working under his jurisdiction.

447. The learned Special Judge after appreciating the entire evidence on record came to the conclusion that:

“Thus considering material in the confession of A-113 and aforesaid co-accused the same leads to the conclusion of A -113 also being involved in Shekhadi landing operation as denoted by said material and as such having committed offence u/s. 3(3) of TADA for which he is charged at head 2nd ly clause 'b'. Since case of A-113 is more so over akin regarding his liability to Shekhadi landing with that of A-82 as both of them were at Shekhadi coast instead of again repeating said discussion it can be safely said that for same reason of which A-82 has been found guilty for commission of offence under Section 3(3) of TADA Act A-113 will be required to be held guilty. Needless to add that for same reason as stated in said discussion evidence pertaining to receipt of bribe amount and/or recovery of same during course of investigation and as tabulated about is not threadbare discussed. Thus on basis of all material surfaced at trial A-II3 will be required to be held guilty for commission of offence u/s.3(3) of TADA Act. Needless to add that similarly as that of A-82 or even A-102 he can not be held guilty for offence of conspiracy for which he is charged with.”

(Emphasis added)

448. The evidence on record clearly shows the involvement of the appellant in landing. His role is the same as that of Jaywant Keshav Gurav (A-82) as he was responsible to prevent any smuggling, rather he had indulged in that and accepted the bribe permitting the smugglers to bring not only gold and silver but also arms,

ammunition and explosives. The fact of investment of money taken by him as illegal gratification stood proved by the evidence of Bharat Hiramal Jain (PW-165) and Deepak Balkrishna Rauth (PW-149) and he could not furnish any satisfactory explanation for such investment.

The learned Designated Court has rightly reached the conclusion so far as his involvement in the offence punishable under Section 3(3) TADA is concerned.

In view of the above, we do not find any force in the appeal. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 598 of 2011

State of Maharashtra through CBI ...Appellant

Versus

Jayawant Keshav Gaurav Ors. ...Respondents

449. This appeal has been preferred by the State against the final judgment and order dated 2.8.2007 passed by Special Judge of the Designated Court under the TADA in the Bombay Blast Case No.1 of 1993, by which the respondents/accused (A-82, A-90, A-102, A-113) have been convicted for the offences punishable under various provisions of TADA and other Acts, but have been acquitted of the general charge of conspiracy under TADA.

In view of the fact that each respondent being assigned different acts, has been charged differently and has been awarded a different sentence, it is desirable to deal with the case of each respondent separately to certain extent.

450. Shri Mukul Gupta, learned senior counsel appearing for the State, has submitted that all the four respondents, were officials of the Customs Department. They had been warned by their superior officers that arms and ammunition were going to be smuggled into the country through the sea; and they were therefore, required to take all possible preventive measures and to remain constantly alert. Despite the said warnings, the respondents demanded higher bribes from the

smugglers for the purpose of permitting their landings and transportation, and therefore, they ought to have been convicted for the first charge of conspiracy as well.

451. Per contra, Ms. Farhana Shah, Shri Mushtaq Ahmad and Ms. Afshani Pracha, learned counsel for the respondents, have submitted that the respondents have already been convicted under various Acts, and considering the participation of the individual respondents in the said crimes, punishments have been awarded to them, as deemed appropriate. Therefore, no further sentence is required.

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

#### I. Jayawant Keshav Gaurav (A-82)

453. The first respondent has been charged, in addition to the main charge of conspiracy, for facilitating the transportation of arms and ammunition by piloting two motor trucks laden with arms, ammunition and explosives, in order to ensure safe passage of the same, in a jeep belonging to the Customs Department, bearing registration No. BLB 4352, from Gondghar Phata to Kanghar, and for permitting the accused Uttam Shantaram Potdar (A-30), to drive the aforesaid government jeep for the said purpose on the intervening night between 9th/10th January, 1993. The said acts amount to the abetment of Mohd. Dossa and his associates for smuggling arms, ammunition and explosives, which were brought into the country for the commission of terrorist acts, and hence, abetment of the said attacks. Additionally, he has been charged for facilitating the smuggling and transportation of arms, ammunition and explosives by Tiger Memon (AA), on the 3rd and 7th February, 1993. Thus, the charge is one under Section 3(3) TADA. He (A-82) has been convicted under Section 3(3) TADA and has been awarded RI of 8 years alongwith a fine of Rs. 1 lakh, and in default of payment of fine, to further undergo RI for 3 years. He has filed Criminal Appeal No. 271 of 2008 against the said order of conviction, even though he has served the sentence for a period of 8 years, and has paid the fine.

454. The learned Designated Court, after appreciating the entire evidence on record, came to the conclusion that the confessional statement of Jayawant Keshav Gaurav (A-82) has revealed his involvement in the Shekhadi landing, and in the transportation of the smuggled contraband, alongwith various other co-accused,

particularly, Dawood Taklya (A-14), Uttam Shantaram Potdar (A-30), Ranjit Kumar Singh Baleshwar Prasad (A-102), Sudhanwa Sadashiv Talwadekar (A-113), Vijay Krishnaji Patil (A-116) and Tiger Memon (AA) and has held as under:

“Since all the said material is so self eloquent that same will need no dilution for coming to conclusion as stated aforesaid. Amongst other the same reveals that A-82 being participant in commission of offence ?regarding Dighi landing. A-82 being also recipient of bribe amount. A- 82 alongwith A-113 being present at Shekhadi coast when landing was to be effected hardly they had taken any steps for preventing same and on the contrary their conversation with Tiger Memon clearly reveals that instead of taking matter seriously they were interested in making fun of Government missionary to which they were party and were required to act diligently for protecting economy of Nation. However as observed earlier and taking into account act committed by A-82 who was of lower rank of officers of Customs Department of which higher officers were involved in conspiracy he can not be said to be guilty for offence of conspiracy for which charge at head 1st Iy is framed against him at the trial. Needless to add that same is apparent that there is paucity of evidence regarding knowledge of A-82 of contraband goods being arms, ammunition and explosives and purposes for which same was brought. So also he can not be said to be guilty for offence of conspiracy for serial blast as acts committed by him was much prior than even fixing of targets for serial blast by Tiger Memon. Such conclusion is further fortified by fact of A-82 having not found to have committed any other act after said landing and excepting act of nabbing culprits which would never have been feasible in view of he himself having abetted acts committed by them.”

455. The aforesaid findings by the learned Special Judge make it crystal clear, that he (A-82) was guilty of facilitating such landings and transportation as being a Customs Inspector, he was the recipient of a bribe amount. He (A-82) had conversations with Tiger Memon (AA) and had further allowed Uttam Potdar (A-30) to drive a customs car. However, as he (A-82) was an officer of a lower rank in the Customs Department, it was his superior officers who were actually involved in the conspiracy. His involvement was to the extent of the offence punishable under Section 3(3) TADA, which includes conspiracy to a certain extent, as well as of offences punishable under the Indian Penal Code; the Explosives Act; the Explosives Substances Act; and the Arms Act etc. Thus, despite the fact that he

himself had been involved in abetting the landing and transportation of contraband, he could not be held guilty of the larger conspiracy. The appeal with respect to Jayawant Gauruv (A-82) was hence, dismissed.

## II. Mohd. Sultan Sayyad (A-90)

456. In addition to the main charge of conspiracy, he was also charged for attending the meeting that had been held at Hotel Persian Darbar on 6.1.1993, alongwith co-accused Ranjit Kumar Singh Baleshwar Prasad (A-102) and Customs Superintendent Lotle (PW-154). At the said meeting, he (A-90) had allowed Mohd. Dossa and his associates to carry on their smuggling activities, and had further facilitated their landing at Dighi on 9.1.1993, which was within his territorial jurisdiction. He was further charged for the same and also for permitting smuggling activities of Tiger Memon (AA) and his associates on 2.2.1993. After meeting Tiger Memon (AA) and his associates at Hotel Big Splash on 2.2.1992, he had further facilitated the landings of arms, ammunition and explosives at Shekhadi on 3.2.1993 and 7.2.1993.

He has been convicted under Section 3(3) and has been awarded a punishment of 7 years RI alongwith a fine of Rs.1 lakh, and in default of payment of fine, to further undergo RI for 3 years. He has already served the sentence and deposited the fine.

457. After appreciating the entire evidence on record, the learned Special judge came to the conclusion that:

“Truly speaking receipt of bribe amount for allowing the said operation considered from proper angle also connotes that the act committed by A-102, 90, 113 82 being primarily for receipt of bribe amount by misusing/abusing their official position would definitely fall out of sphere of the conspiracy for which the relevant operation was organized and effected by other co- conspirators for commission of terrorist act. The same is obvious as conspirators always join the conspiracy or become members of conspiracy due to being interested in either furthering the object of conspiracy or achieving the object of conspiracy. The payment of the money for commission of act which may have a semblance of furthering object of conspiracy will still not make the concerned liable for offence of conspiracy. The same is apparent as the act committed by them would be for the

purposes of receiving the said payment and not mainly for furthering the object of conspiracy. It is true that their such acts as ruled earlier would amount to commission of offence of an abetment or assistance etc. for commission of terrorist act by other conspirators and they could be held liable for the same but still they cannot be said to be involved in the conspiracy. In view of the aforesaid, none of the A-102, 90, 113 82 can be said to be guilty for commission of offences of conspiracy for which the charge at head 1st ly is framed against them or even otherwise for any smaller conspiracy. However, by way of abundant caution it will necessary to record that aforesaid observations is limited to above stated accused from Customs dept., and the same is not in relation to A-112.”

458. As the learned Special Judge has dealt with the said issue elaborately and has placed the respondents at par, we do not see any cogent reason to take a view contrary to the view that has been taken in the case of the co-accused Jayawant Keshav Gaurav (A-82).

### III. Ranjitkumar Singh Baleshwar Prasad (A-102)

459. In addition to the general charge of conspiracy, he (A-102) has been charged similarly to accused (A-90), for attending the meeting that was held on 6.1.1993 at Hotel Persian Darbar alongwith the other accused, and for thereafter allowing the smugglers to continue their smuggling activities within their territorial jurisdiction in lieu of payment of Rs.7.80 lakhs per landing. In furtherance thereof, the contraband, including arms and ammunition were smuggled into India, on 9.1.1993 within the limits of their territorial jurisdiction. He was further charged with facilitating the transportation of arms, ammunition and explosives on 3.2.1993 and 7.2.1993. Thus, he has been convicted under Section 3(3) TADA and has been awarded the punishment of imprisonment for 9 years, alongwith a fine of Rs. 3 lakhs, and in default of payment of fine, to further undergo RI for a period of 4 years. The respondent (A-102) has presently served out more than five years of the punishment awarded to him and has also deposited the fine.

460. After considering the entire evidence on record, the learned Special Judge came to the conclusion as under:

“265) Without making any unnecessary dilation about the self- eloquent evidence about which the relevant excerpts are cited earlier it can be safely

said that considering the act committed by these 4 accused as reflected from same i.e. participation of A-102 90 in Persian Darbar meeting and negotiating with smugglers about the bribe amount to be paid and granting them a charter to smuggle the contraband articles or in fact any thing, the act of A-82 inspite of being present on the spot of interception of goods by police, instead of seizing the same allowing the same to be transported further and in most clandestine manner piloting the convoy carrying the contraband goods on its way to destination uptil a particular spot, advising the policemen in clandestine manner etc., and of A-II3 though not being directly connected with said landing readily willingly accepting his share of booty from the bribe amount received for the said landing and thereby denoting his implied connivance for the said operation seized earlier; not revealed otherwise in view of himself being not directly involvement in commission of act and considering the further acts committed by A- 90, 82 and 113 regarding Shekadi landing and so also to some extent by--A-102 clearly reveals themselves having committed the offence u/s. 3(3) of TADA for which each of them has been charged with at this trial.

266) However, the careful consideration of said evidence and even after taking into consideration the fact that A-102 and A- 90 had participated in Persian Darbar meeting; still the evidence having fall short of themselves having connived with the conspirators in this case for commission of said act for the purposes of conspiracy, it will be difficult to hold them or an of ?them liable for offence of conspiracy for which each of them has been charged with on the basis of evidence surfaced regarding Dighi landing episode and so also about Shekadi landing episode about which the discussion is made later on.

267) Truly speaking receipt of bribe amount for allowing the said operation considered from proper angle also connotes that the act committed by the A-102, 90, 113 82 being primarily for receipt of bribe amount by misusing/abusing their official position would definitely fallout of sphere of the conspiracy for which the relevant operation was organized and effected by other co-accused. The same is obvious as conspirators always join the conspiracy or become members of conspiracy due to being interested in either furthering the object of conspiracy or achieving the object of conspiracy.

The payment of the money for commission of act which may have a semblance of furthering object of conspiracy will still not make the concerned liable for offence of conspiracy. The same is apparent as the act committed by them would be for the purposes of receiving the said payment and not mainly for furthering the object of conspiracy. It is true that their such acts as ruled earlier would amount to commission of offence of an abetment or assistance et for commission of terrorist act by other conspirators and they could be held liable for the same but still they cannot be said to be involved in the conspiracy. In view of the aforesaid, none of the A-102, 90, 113 82 can be said to be guilty for commission of offences of conspiracy for which the charge at head 1st ly is framed against them or even otherwise for any smaller conspiracy. However, by way of abundant caution it will be necessary to record that aforesaid observations is limited to above stated 4 accused from Customs dept., and the same is not in relation to A-102 i.e. Addl. Collector of Customs whose case clearly appears to be different i.e. his connection with Tiger Memon being spelt from evidence revealed during Shekadi landing, there being hardly any evidence of himself having received....”

461. In view of the opinion expressed hereinabove, as regards the other accused, we are not able to accept the appeal filed by the State in respect of Ranjitkumar Singh Baleshwar Prasad (A-102) either.

#### IV. Sudhanwa Sadashiv Talwadekar (A-113)

462. He has been charged, in addition to the first charge, for knowingly facilitating the smuggling of arms, ammunition and explosives by Dawood Ibrahim, Tiger Memon (AA) and their associates, for the purpose of committing terrorist activities by way of their non- interference in lieu of payment of illegal gratification made to them, despite the fact that he was in possession of specific information and had knowledge of the fact that arms, ammunition and explosives were likely to be smuggled into the country for facilitating terrorist activities. He has been convicted under Section 3(3) TADA and was awarded the punishment of imprisonment for 8 years RI, alongwith a fine of Rs. 2 lakhs, and in default of payment of fine, to further undergo RI for 3 years.

463. The learned Special Judge after appreciating the entire evidence on record came to the conclusion that:

“Thus considering material in the confession of A-113 and aforesaid co-accused the same leads to the conclusion of A -113 also being involved in Shekadi landing operation as denoted by said material and as such having committed offence u/s. 3(3) of TADA for which he is charged at head 2nd ly clause 'b'. Since case of A-113 is more so over akin regarding his liability to Shekhadi landing with that of A-82 as both of them were at Shekhadi coast instead of again repeating said discussion it can be safely said that for same reason of which A-82 has been found guilty for commission of offence under Section 3(3) of TADA Act A-113 will be required to be held guilty. Needless to add that for same reason as stated in said discussion evidence pertaining to receipt of bribe amount and/or recovery of same during course of investigation and as tabulated about is not threadbare discussed. Thus on basis of all material surfaced at trial A-113 will be required to be held guilty for commission of offence u/sec. 3(3) of TADA Act. Needless to add that similarly as that of A-82 or even A-102 he can not be held guilty for offence of conspiracy for which he is charged with.”

(Emphasis added)

464. This accused (A-113) has already served 6 &#189; years and has deposited the fine. Being at par with the other co-accused, in this present appeal, no further interference is required.

465. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court’s acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: State of Rajasthan v. Darshan Singh @ Darshan Lal, AIR 2012 SC 1973).

In view of the above, we do not see any cogent reason to interfere with the order of the Designated Court so far as the acquittal of the respondents on a particular charge is concerned. The appeal lacks merit and is liable to be dismissed.

CRIMINAL APPEAL NO. 1439 OF 2007

Khalil Ahmed Sayed Ali Nazir

Vs.

State of Maharashtra Through CBI

AND

CRIMINAL APPEAL NO. 1035 of 2012

State of Maharashtra

Vs.

Khalil Ahmed Sayeed Ali Nasir

Criminal Appeal No. 1439 of 2007

466. This appeal has been preferred against the judgments and orders dated 18.9.2006 and 19.7.2007, passed by Special Judge of the Designated Court under the TADA in the Bombay Blast Case No.1 of 1993. The appellant (A-42) was guilty for the offence of conspiracy to commit terrorist acts i.e. part of charge from charge firstly, punishable under Section 3(3) TADA, and on the said count, the appellant was convicted and sentenced to suffer rigorous imprisonment for 10 years, and was ordered to pay a fine of Rs.50,000/-, and in default of payment of fine, was ordered to suffer further RI for a period of one year. The appellant was also found guilty for the offence punishable under Section 3(3) TADA, for the commission of such acts as were found to be proved from charge at head secondly, and he was convicted and sentenced to suffer RI for 10 years and was ordered to pay a fine of Rs.25,000/- and in default of payment of fine, was ordered to suffer further RI for a period of six months. He was further convicted and sentenced for 10 years R.I. with fine of Rs.50,000/- under Section 6 TADA; and convicted under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of the Arms Act, but no separate sentence for the same was awarded. However, all the sentences have been directed to run concurrently.

467. Facts and circumstances giving rise to this appeal are:

A. In addition to the main charge of conspiracy, the appellant was charged for his involvement in the Shekhadi landings on 3.2.1993 and 9.2.1993 including the transportation of smuggled arms, ammunition and explosives from Shekhadi to Wangni Tower and further during the period of February-March 1993 for keeping in his possession, two 9 mm pistols, 3 magazines and 25 rounds without a valid licence, which were recovered on 26.3.1993 from his residence. In view of his possession of the aforesaid arms and ammunition, he was further charged under Section 6 TADA.

B. After conclusion of the trial, the learned Designated Court held the appellant guilty and awarded punishment as referred to hereinabove.

Hence, this appeal.

468. Mr. Mushtaq Ahmad, learned counsel appearing for the appellant, has submitted that the court below has over emphasized the evidence of recovery which is not worth reliance for the reason that the same did not bear the signature of the appellant/accused (A-42). Moreover, the panch witness was a stock witness, and therefore, his evidence is not credible. It was also submitted that the confession of the appellant (A-42) was not voluntary and that the same was obtained by way of coercion and that the entire case is concocted. Therefore, the appeal deserves to be allowed.

469. Mr. Mukul Gupta, learned senior counsel appearing for the State has opposed the appeal, submitting that the participation of the appellant (A-42) in the landing has been corroborated by the confessional statements of various co-accused; and that the appellant (A-42) was well acquainted with persons indulging in regular smuggling activities. Furthermore, it was also submitted that the said confessional statement was recorded strictly in accordance with the law, and therefore the same must be relied upon. Moreover, the recovery was made on the basis of the disclosure statement of the appellant, and the fact that the same did not bear his signature would not make it inadmissible. Thus, the appeal lacks merit and is liable to be dismissed.

470. We have considered rival submissions made by learned counsel for the parties, perused the evidence on record and also the impugned judgment.

471. Evidence against the appellant:

- a) His own confessional statement
- b) Confessional statement of Muzammil Umar Kadri (A-25)
- c) Confessional statement of Dawood @Dawood Taklya Mohammed Phanse @Phanasmiyan (A-14)
- (d) Confessional statement of Sajjad Alam @Iqbal Abdul Hakim Nazir (A-61)
- e) Confessional statement of Tulsiram Dhondu Surve (A-62)
- f) Confessional statement of Rashid Umar Alware (A-27)
- (g) Depositions of Vijay Govind More (PW-137), Laxman Loku Karkare (PW-45), Hari Baburao Pawar (PW-596)

Confessional statement of appellant (A-42):

472. The appellant (A-42) in his confessional statement stated that he was an agriculturist and owned land in Medandi and that he indulged in agricultural and smuggling activities. He (A-42) used to smuggle for Tiger Memon (AA). He had worked as a welder in a defence workshop in Kuwait during 1976-1987. Thereafter, he had worked in Saudi Arabia in the year 1991 as a caterer in a hotel. Thereafter, he started his own workshop. He (A-42) had participated in the landing and transportation of smuggled goods, particularly, silver bricks etc. which had taken place on 3.2.1993, alongwith Dawood Taklya (A-14) and Abdul Salam Hishamuddin Nazir who belonged to his village. Appellant (A-42) gave a complete description of how the goods were smuggled and deposed that they reached Shekhadi at about 11.00 P.M. The material had already landed before they reached, and thereafter, the said material was loaded into a truck. Tiger Memon (AA) was also present. The said material was filled into 196 boxes and these boxes were then sealed by wrapping them up in Bardan (Jute bags). The appellant (A- 42) sat with

the driver while transporting the said goods and they were hence, brought into Bombay. The appellant (A-42) stated that it was only after returning from Shekhadi and after the transportation of the smuggled goods was complete, that he was informed by Hasan and Azim that the landed material was not silver, but arms and ammunition, hand grenades, black soap and cartridges. He further admitted that he was given Rs.5,000/- by Dawood Taklya (A-14) as a reward for participating in the landing. Tiger Memon (AA) had threatened everybody that in the event that anyone disclosed details about the said landing to any other person, his family would be eliminated. He further stated that on 22.3.1993, Dawood Taklya (A-14) had come to his house and had given him a bag for safe-keeping, stating that he would collect the same later, as the police was searching for him. He (A-14) informed the appellant (A-42) that the bag contained 2 revolvers and also some other material. Dawood Taklya (A-14) was arrested by the police, and during his interrogation, he disclosed to the police that 2 revolvers were lying with the appellant (A-42). Thus, the police came to his house, and the appellant (A-42) then took out the revolvers from a place in front of his house where he had hidden the same, and handed them over to the police.

Confessional statement of Muzamil Umar Kadri (A-25):

473. He disclosed the participation of the appellant (A-42) in the Shekhadi landing on 3rd February. He also stated that in January 1993, Rahim Laundrywala alongwith Shafi had come to the house of the appellant Khalil (A-42) by jeep, and had called him there. Shafi had told him to keep certain goods at his house. After being asked by the co-accused, Shafi informed him that the goods were actually 16 rifles and 32 cassettes. When he expressed his inability to keep them, he was threatened with dire consequences and therefore, he kept the said goods in his house. Thus, A-25 has stated that in January 1993, the witness was forced to keep the arms and ammunition upon coercion by Rahim Laundrywala and Shafi. At the said time, the appellant (A-42) was also present with them and had also participated in the landing at Shekhadi.

Confessional statement of Dawood Taklya (A-14):

474. He supported the case of the prosecution regarding the participation of the appellant (A-42) in the landing at Shekhadi. Before the landing took place, the appellant (A-42) had negotiated with the Mhasla Custom Inspector, Kadam and the said Custom Officer had told the appellant (A-42) that the goods must be

dispatched after 2.00 A.M., and accordingly, the said landing had taken place. This accused (A-14) has stated that after participating in the landing, he returned to his home alongwith the appellant (A-42), and others in the rickshaw of Iqbal and that this accused (A-14) had given to the appellant (A-42) a sum of Rs. 50,000/- which was to be paid at the Mhasla Police Station, which the appellant (A-42) confirmed was paid the next day. The witness further deposed that the appellant (A-42) was also paid a sum of Rs.2,000/- for participating in the landing. Confessional statement made by Sujjad Alam (A-61):

475. He stated that the appellant (A-42) had participated in the landings at Shekhadi on several occasions and that the witness was paid Rs.2,000/- per landing through the appellant Khalil (A-42). He further stated that he had seen the appellant (A-42), and the other co- accused (Tiger's men), taking out goods in gunny bags from a jeep and bringing the same into a room in the house of the appellant (A-42). At the said time, the son of accused Dawood Sarfaraz (A-55), was also present. The accused (A-61) had also seen the appellant removing 16 rifles and 32 cassettes (Magazines), from the bags and later on, the accused had seen the appellant (A-42) sitting in the jeep and closing the secret cavities in the jeep. The said jeep was then driven away by Shafi. On 3.2.1993, the accused (A-14) was told by the appellant (A-42) that his maternal uncle had told him that there was a landing of Tiger's goods that night and therefore, the two of them went for the said landing alongwith several other persons, and participated in the landing and transportation of the smuggled goods. It was only after the work, including the transportation of the said goods was over, that Taklya (A-14) had gone alongwith the appellant (A- 42) to his house.

On the afternoon of 9.2.1993, Dawood Taklya (A-14) met the witness at Mhasla S.T. Stop and asked him to come to Mhedandi. He took him to Mhedandi, from where he picked up the appellant (A-42) from his house, and then they reached Muzammil's residence. There Dawood Taklya (A-14) told Muzammil (A-25) to hand over to him, 3 rifles and 6 cassettes. The said armaments were handed over by Muzammil (A-25) while wrapped in a gunny bag, and after taking the same from him, all of them came to Lonery Phata on the highway. After a while, Tiger Memon (AA) also arrived there and they shifted the bag containing rifles and ammunition to his car. On the said day, in the evening, Khalil (A-42) came to him (A-14) and told him that they had to go for the landing in the evening, and the witness has given

a full description of their participation in the said landing on 9th February at Shekhadi.

Confessional statement of Tulshiram Dhondu Surve (A-62):

476. He was an employee at the Wangni Tower where he was working as a watchman alongwith co-accused Harishchandra Laxman Surve and labourer Vijay Govind More. They were paid to let the smugglers keep contraband items in Wangni Tower. During the loading, at the relevant time, Sarfaraz Phanse (A-55) and Khalil Nazir (A-42) were keeping watch while on a motor cycle. The goods were unloaded, repacked and taken away. On being asked, Dawood Taklya told him that the smuggled goods were not silver bricks, but were black soap and guns. He was warned not to disclose this factum of keeping smuggled goods in the Wangni Tower to anyone. Thereafter, he stated facts regarding the second landing on 2.2.1993 and also as regards helping the smugglers, wherein the appellant (A-42) was also present alongwith Tiger Memon and his associates, and they were fully armed with guns and pistols. The appellant (A-42) was keeping watch.

Confessional statement of Rashid Umar Alware (A-27):

477. He supported the case of the prosecution regarding the participation of the appellant (A-42) to the extent that he was the owner of the truck in which the smuggled goods were brought from Shekhadi to Wangni Tower, and then to Bombay. According to him, the goods were taken to Wangni Tower and after unloading a part of the said goods, he was asked to wait outside. The remaining goods were then unloaded and the same were kept in one pit dug into the land. At the time of keeping the goods in the pit, the accused was taken away so that he could not see what was being put there. A person, whom this witness does not know, then gave him Rs. 13,000/- for the said transportation work and assured him that the balance amount would be paid after two days. After two days, a balance amount of Rs.7,000/- was paid to him by the appellant (A-42).

Other evidence:

478. The prosecution's version of events was further supported by Vijay Govind More (PW-137) and he also identified this appellant (A- 42). The recovery of pistols has been reported from him, which has also been duly supported by Laxman Loku Karkare (PW-45).

479. Laxman Loku Karkare (PW-45), panch witness, in his examination- in-chief stated that on 26.3.1993 he was in village Mhedandi and was called by P.I. Pawar (PW-596) to stand as panch witness. Pawar (PW- 596) brought a person from the police van who disclosed his name to be Khalil Ahmed Sayed Ali Nazir (A-42) to the witness. Khalil (A-42) led the police party and the panchas to his house. At his house, in a cupboard in the sitting room, the police found two pistols, 34 rounds wrapped up in newspapers, and 2 small magazines.

480. Hari Baburao Pawar (PW-596), Police Inspector, supported the case of the prosecution and stated that on 26.3.1993, he had gone to the village of Mhedandi and had arrested the appellant (A-42) and also Muzammil Umar Kadri (A-25). Thereafter, the appellant (A-42) had showed the police party and the panch witnesses his house, and there they had made a recovery of 2 foreign pistols, 2 empty magazines and 34 cartridges from a cupboard in the sitting room. He had prepared a panchnama and had obtained the signatures of the Panchas on the same. (Ext.162).

481. The signature of the accused is not required on the seizure memo. In State of W.B. v. Kailash Chandra Pandey, (2004) 12 SCC 29, this court held :

“10.... The first reason given by learned Single Judge was that no signature of the accused was taken on the seizure list. It has been stated by the prosecution witnesses i.e. by the investigating officers that the accused refused to sign on the seizure list. No accused can be forced to put his signature and the prosecution cannot force him to append his signature on the seizure memo if he refused to sign. Therefore, just because the accused did not append the signature on the seizure memo that cannot be a ground to improbabilise the prosecution story.”

482. Similarly, in State of Rajasthan v. Teja Ram Ors., (1999) 3 SCC 507, this Court held as under:

“Learned counsel in this context invited our attention to one step which PW 21 (investigating officer) had adopted while preparing the seizure-memos Ex. P-3 and Ex. P-4. He obtained the signature of the accused concerned in both the seizure-memos. According to the learned counsel, the aforesaid action of the investigating officer was illegal and it has vitiated the seizure.

He invited our attention to Section 162(1) of the Code which prohibits collecting of signature of the person whose statement was reduced to writing during interrogation..... No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. (Tahsildar Singh v. State of U.P., AIR 1959 SC 1012; and Razik Ram v. Jaswant Singh Chouhan, AIR 1975 SC 667). But if any investigating officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witness's testimony in the court would thereby become contaminated or vitiated. The court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act, 1872....

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.....”.

483. The submission made by Shri Mushtaq Ahmad that the evidence of recovery cannot be relied upon for the reason that the same did not bear the signature of the appellant/accused (A-42), is not worthy of being accepted [Vide: State of Rajasthan v. Teja Ram Ors., (supra); and Prasad Ramakant Khade v. State of Maharashtra, (1999) 8 SCC 493 (para 8)]

484. After appreciating the evidence on record, the learned Designated Court came to the conclusion that the confession of the appellant (A-42) revealed that on 3.02.1993, Dawood Taklya (A-14) had informed him that a landing would take place in the evening, and thereafter, the appellant (A-42), Nazir (AA) and Dawood Taklya (A-14) had gone to Shekhadi Coast. Thereafter, the appellant (A-42) had gone to the village of Borli to bring back men and a truck for the landing, and he had returned to the coast in the truck of Rashid Umar Kadri (A-27) with A-27, Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61), Bashir Ahmed Usman Gani

Khairulla (A-13), Sharif Khan Abbas Adhikari (A-60), Muzammil Umar Kadri (A-25) and Azim Pardeshi at midnight. The landed goods were taken to Wangni Tower. At the tower, the same were loaded into tempos and jeeps, and the appellant (A-42) sat by the side of the driver. The contraband items were then taken to Bombay, and the appellant (A-42) was told by Hasan and Azim that said goods were not silver, but rifles, handgrenades, black soap and cartridges. On 22.03.1993, Dawood (A-14) came to house of the appellant (A-42) and gave to him, one bag telling him that it contained 2 revolvers. Dawood (A-14) disclosed to the police that he kept the said revolvers with the appellant (A-42), and the same were recovered from the appellant (A-42).

Therefore, the learned Designated Court held that the aforesaid evidence lead to the inescapable conclusion that the appellant (A-42) was involved in the Shekhadi landing operations and had committed offences punishable under sections as mentioned hereinabove. Having regard to the fact that Dawood @ Dawood Taklya (A-14) had chosen the appellant for the purpose of keeping 2 revolvers with him and the fact that the appellant (A-42) had readily kept the same, reveals that he was a man in which the prime accused had confidence with respect to the conspiracy. However, since he had committed the aforementioned relevant acts much prior to the date of the bomb blasts and had not participated in any meetings, nor was he connected with the same in any manner, and the fact that the acts were committed by him at a time when even the targets of the Bomb blasts had not been fixed, he could not be held guilty for the offence of larger conspiracy i.e. first charge.

485. We find no cogent reason to interfere with the decision of the Designated Court. The appeal is accordingly dismissed.

Criminal Appeal No. 1035 of 2012

486. The respondent in this appeal stood acquitted of the charge of conspiracy. Hence, the State preferred this appeal.

487. Shri Mukul Gupta, learned senior counsel appearing for the appellant-State has submitted that the evidence against him has been his own confession, wherein he had admitted his role in the facilitation of the landing and transportation of contraband goods from Shekhadi, alongwith Tiger Memon (AA) and his

associates. The said contraband was transported by Tiger Memon (AA) into Bombay, and further, the aforesaid arms were recovered from his residence. The confessional statement of the respondent has been corroborated by the confessional statements of Dawood Taklya (A-14), Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), Muzammil Umar Kadri (A-25), Rashid Umar Alware (A-27), Sajjad Alam @ Iqbal Abdul Hakim Nazire (A-61) and Tulsiram Dhondu Surve (A-62). The deposition of Prakash D. Pawar (PW- 185) who recorded his confession, Harish Chandra Surve (PW-108), an employee of the Wangni Tower, Vijay Govind More (PW-137), an employee of the Wangni Tower, Waman Kulkarni (PW-662) and Hari Pawar (PW-596) also corroborated his confession. Hence, the respondent ought to have been convicted for the charge of conspiracy.

488. Shri Mushtaq Ahmad, learned counsel appearing for the respondent has opposed the appeal contending that the learned Designated Court has already considered the matter and, following the parameters already laid down by this Court, reached the conclusion that the respondent was not guilty of the first charge. The facts of the case do not warrant interference by this court. Thus, the appeal is liable to be dismissed.

489. The Designated Court after appreciating the entire evidence on record, came to a conclusion as under:

“Thus considering material in the confession of A-42 and aforesaid co-accused the same leads to the conclusion of A-42 also being involved in Shekadi landing operation as denoted by said material and as such having committed offence u/s 3(3) of TADA for which he is charged at head 2nd ly clause `a`. Similarly the same evidence also establishes his involvement in commission of offences for which charge was framed at head 3rd ly and 4th ly on count of himself being in possession of contraband material unauthorisedly i.e. commission of offence under Arms Act and u/s 6 of TADA for which he was charged with. Similarly having regard to the fact that A-14 has chosen him for keeping the 2 revolvers with him and himself having readily kept the same considered in proper perspective also reveals that role played by A-42 was not restricted for Shekadi landing and transportation operation but he was a man of confidence of the prime accused involved in conspiracy and himself was also involved in conspiracy. However, himself having committed relevant acts much prior to Serial Bomb blasts i.e. in the month of February 1993 and there being paucity of

evidence to reveal his connection with the same in any manner, himself having not been to Bombay, nor participated in conspiratorial meeting, the acts committed by him were committed at the juncture when even the targets for Serial bomb blast were not fixed lead to the conclusion of himself being party to criminal conspiracy to commit terrorist act punishable u/s 3 (3) of TADA and himself being not party to the entire larger conspiracy for which the charge at head 1st ly was framed against him.”

490. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

491. As the respondent has been awarded sufficient punishment under different heads of Section 3(3) and 6 TADA, and the said offences themselves are a part of the conspiracy, and the learned Designated Court has divided the conspiracy into various components, considering the present case, where the accused were either involved in participating in various conspiratorial meetings, receiving training in the handling of arms, their active participation in the throwing of bombs or parking of vehicles fitted with explosives, or where the accused persons participated only in the landing and transportation of contraband, but were not aware of the contents of the said contraband, and further, another category where the accused had knowledge of the contents of the contraband, but did not participate either in the conspiratorial meetings held, or in any actual incident of any terrorist activity, and has awarded different punishments accordingly, we do not see any cogent reason to allow the said appeal. The appeal is hence, dismissed.

CRIMINAL APPEAL NO. 203 OF 2008

Shahnawaz Hajwani Ors. ...Appellants

Versus

State of Maharashtra ... Respondent

WITH

CRIMINAL APPEAL NO. 396 OF 2011

State of Maharashtra thr. CBI ....Appellant

Versus

Shahjahan Dadamiya Hajwane @ Ors. ....Respondents

AND

CRIMINAL APPEAL NO. 414 OF 2011

State of Maharashtra thr. CBI ....Appellant

Versus

Issaq Mohd. Hajwane ....Respondent

Criminal Appeal No. 203 of 2008

492. This appeal has been preferred by Shahnawaz Hajwani (A-106), Sikkandar Issaq Hajwane (A-111) and Issaq Mohammed Hajwane (A-79), against the judgment and order dated 25.5.2007, passed by Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, in the Bombay Blast Case No. 1/1993. The first and second appellant (A-106 and A-111) have been convicted under Section 3(3) TADA, and awarded the punishment of 5 years RI, alongwith a fine of Rs.10,000/-, and in default of payment of fine, to further suffer RI for two months.

The third appellant (A-79) has been convicted partly for charge first of conspiracy under Section 3(3) TADA, and has been awarded 7 years RI, alongwith a fine of Rs.25,000/-, and in default of payment of fine, to further suffer RI for 6 months. Under Section 3(3) TADA, he has been awarded 5 years RI, and a fine of Rs.10,000/-, in default of payment of fine, to further suffer RI for two months. Under Section 6 TADA, he has been awarded 7 years RI, and a fine of Rs.25,000/-, in default of payment of fine, to further suffer RI for six months. He had been convicted for charge at head fourthly, but no separate sentence has been awarded under Sections 3 and 7 read with Sections 25(1-A) (1-B)(a) of the Arms Act. He (A-79) had further been convicted under Section 201 IPC and awarded a sentence of 5 years and a

fine of Rs.10,000/-, in default of payment of fine to suffer further RI of 2 months.

493. In addition to the general charge of conspiracy, all the three appellants had been charged for their overt acts in connection with the Sandheri training episode. Appellant No. 1 (A-106) and appellant No.2 (A-111) had been charged only for participating in the training with arms and ammunition with Tiger Memon (AA) at Sandheri Hillocks on 8.3.1993, while appellant No.3 (A-79) had also been charged under various heads of having possession of 13 handgrenades unauthorisedly between 1.4.1993 till 3.4.1993, with the intent to aid terrorist activities. Fourthly, under Sections 3 and 7 read with Section 25 (1- A)(1-B)(a) of the Arms Act, which he had dumped in the sea coast abutting Gandharwadi village which had been recovered at his instance between 1.4.1993 and 3.4.1993.

Hence, this appeal.

494. Shri Sushil Karanjekar, learned counsel appearing for the appellants, has submitted that impugned judgment and order of conviction is not sustainable for the reason that recovery memo cannot be relied upon and the recovery had not been made in accordance with law. The learned Special Judge erred in recording the findings that the appellants had participated in the training for handling of arms at Sandheri on 8th January, 1993. In view of the fact that the appellants have not participated in acquiring any knowledge in handling of arms is meaningless and, therefore, their participation in the training cannot be relied upon. In view of specific findings recorded by the learned Designated Court that the appellants were not even known the contents of the contraband, their conviction under any provision of TADA is not sustainable. Therefore, the appeal deserves to be allowed.

495. On the contrary, Shri Mukul Gupta, learned senior counsel appearing for the respondent, has vehemently opposed the appeal, contending that the findings of facts recorded by the learned Special Judge do not warrant any interference, as the same are opposed on appreciation of evidence, and the same cannot be held to be perverse. Recovery had been made in accordance with law. The participation of the appellants in the training of arms at Sandheri Hillock on the relevant date is proved by cogent evidence. The appeal lacks merit and is liable to be dismissed.

496. We have heard learned counsel for the parties and perused the records.

497. Evidence against the appellants:

- (a) Deposition of Mahadeo Yeshwant Jadav (PW-103)
- (b) Deposition of Ashok Vasant Vichare (PW-104)
- (c) Deposition of Harishchandra Keshav Pawar (PW-105)
- (d) Deposition of Rajaram Ramchandra Kadam (PW-106)
- (e) Deposition of Namdev Pundlik Mahajan, A.P.I. (PW-587)
- (f) Deposition of Chandrakant Sambhaji Pawaskar (PW-609)

Deposition of Harishchandra Keshav Pawar (PW-105)

498. He is a resident of the village Sandheri. He deposed that on 8.3.1993 just after Holi, he heard gunshot noises made by several persons at about 9.00 a.m. when he was sitting at State Transport bus stand of his village Sandheri. He (PW-105) went alongwith his friends Shahnawaz Hajwani, Juber Hajwani, Inayat Hajwani and Ashfaq Ramzani towards the site known as Chinchecha Mal on the hillock towards the western side of Sandheri which is 1 K.M. from the said bus stand. He (PW-105) saw many cardboard targets fixed at different places around the hillock. Two-three guns were being used for firing. The guns were of arms length. He (PW-105) knew three persons out of 8-10 persons present there. They were Issaq Hajwane (A-79), Hamid Dafedar (now dead) and Sharif Parkar (A-17). He (PW-105) was present at the said place for a short while as Hamid Dafedar rushed to them and threatened them that if they did not leave they would be killed. Hence, the witness (PW-105) and his friends ran away. He identified the said three named persons in the court including Issaq Hajwane (A-79).

Deposition of Rajaram Ramchandra Kadam (PW-106)

499. He (PW-106) is a resident of village Sandheri aged 71 years. He deposed that just after Holi on 8.3.1993 he (PW-106) was present at village Sandheri and after hearing the gunshots he went towards Chinchecha Mal, a place nearby Gardav Wadi of village Sandheri at about 9.30 to 10.00 a.m. After reaching there he (PW-

106) saw cardboard targets were fixed near the hillock which were of square shape and approximately 2 &#189; feet in size. Some persons were sitting at the said Mal, they got up and asked him to leave the said place immediately otherwise he (PW-106) would be shot dead. The persons who had threatened him were not known to him. However, five persons amongst the persons who were sitting there, were residents of his village and they included Issaq Hajwane (A-79), Shahnawaz Hajwani (A- 106), Sikkandar Issaq Hajwane (A-111), Hamid Dafedar, and Sharif Parkar. The said witness (PW-106) identified all the five persons in court.

#### Deposition of Ashok Vasant Vichare (PW-104)

500. He (PW-104) was a resident of village Falsap, 3 K.ms. away from Sandheri and deposed that he (PW-104) knew the appellant (A-79) for a long time and on 1.4.1993, he was called to Goregaon Police Station by a Constable who told him that he must be the panch witness to the disclosure statement of Issaq Hajwane (A-79) who was in their custody. Thereafter, the appellant (A-79) made a disclosure statement, according to which, the police officials, the appellant (A-79) and both the panch witnesses reached near Sandheri Jetty when the appellant (A-79) asked the driver to stop the vehicle. They got off the vehicle and the appellant (A-79) took a lead and all other persons followed him and reached Sandheri Jetty on foot. The appellant (A-79) took a stone and threw the same at a particular spot in the water and told them that they had thrown handgrenades and empty cartridges within the vicinity of the place at which he had thrown the stone. Thereafter, divers/swimmers and boatmen were called to the said place by the police. The search by the divers/swimmers continued upto 3.00 p.m. but they were only able to find two handgrenades. Search was conducted with the help of the naval squad which commenced search at 10.00 a.m. and continued upto 6.00 p.m. in the presence of panch witnesses and they found four handgrenades and seven empty cartridges from the creek water. The panchanama of the said recovery was drawn at the said place at about 6.00 p.m. The same was read over to the co-panchas and it was signed by them. On the next day search was again conducted by the naval squad and they found, 72 empties. The same had been of yellow colour and were of size of an empty cartridge for a rifle. Some of them were bearing markings “71/71”. Some of them were having marking “661/71” and some of them were of “991/72”. In respect of the same, the panchanama was drawn which was read over to the panchas and signed by them.

#### Deposition of Namdev Pundlik Mahajan, A.P.I. (PW-587)

501. He deposed that while he was on duty on 28th/29th March, 1993 in Goregaon Police Station, he was informed by one of the police officials that in connection with the Bombay Blast that had occurred on 12.3.1993, Sharif Parkar had brought some bullets from Bombay and carried out firing practice with an AK-56 rifle at Sandheri Hillocks on 8.3.1993. He had immediately given the said information to S.P., Shri T.S. Bhal who instructed him to go to the said place. He alongwith other police officials reached Sandheri at 2.00 p.m. and found that the incident had occurred at Chinchecha Mal in the hillocks of Sandheri. Next day, on the instructions of Shri T.S. Bhal he reached Sandheri Village at about 6.00 a.m. Three police officials and 20 constables had already reached the said place. He inspected the said spot and drew up the panchanama. He recovered three empty cartridges of a rifle bearing some marking on it, six lead pieces, the broken branches of the tree, the targets prepared out of a cardboard, the stones bearing the marks of bullets and these articles were wrapped in a paper. The packet was tied with sutli and it was sealed. The panchnama was read over to the co-panchas and it was signed by him and other co-panchas.

He had further deposed that on 30.3.1993 while recording the statement of some persons, the residents of Sandheri he got the clue about the involvement of one Hamid and Shahjahan, the residents of Sandheri in the incident of training at Sandheri hillocks on 8.3.1993.

He deposed that in spite of his best efforts he could not trace out the accused on 31.3.1993. However, on 1.4.1994 he got the information that Hamid, Shahjahan, Issaq Hajwane and Sikkandar Issaq Hajwane had taken shelter in the Sandheri forest. He reached there alongwith other police officials and found them and brought them to Goregaon Police Station for inquiry. After being satisfied that they were accused involved in C.R. No.6/93, they were arrested at 10.15 a.m.

On the same day, at about 10.30 a.m. Issaq Hajwane (A-79) expressed his desire to make voluntary statement. The witness immediately called two panch witnesses for drawing the panchnama. He deposed that one panch witness was Ashok Vichare (PW-104), and he did not remember the name of the other panch witness.

Deposition of Chandrakant Sambhaji Pawaskar (PW-609)

502. He is a police officer and deposed that he had taken over the investigation from Namdev Mahajan (PW-587) on 2.4.1993, and subsequently recorded the statement of Rajaram Ramchandra Kadam (PW- 106) and Tukaram Babu Nagaonkar (PW-176) and others. He further deposed that on 17.4.1993, he sent the articles recovered from Chinchecha Mal to a Chemical Analyst with a forwarding letter for carrying out the examination and sending a report. He further deposed that on 17.4.1993 he had not seen the empty cartridges but had described markings on the said empties in Exh.2112 on the basis of the description of the empty cartridges in Panchnama i.e. Exh.539. The said empty cartridges sent to Chemical Analyst for examination on 17.4.1993 were bearing marking "661/71" and the panchnama shown to him does not reveal any empty cartridge bearing marking "661/71" being seized under the same panchnama.

#### Deposition of Mahadeo Yeshwant Jadav (PW-103)

503. He is an agriculturist. He was called on 29th March, 1993 to act as a panch witness by the police from Goregaon Police Station. He deposed that he alongwith Shri Patil reached Chinchecha Mal at about 9.00 a.m. Some 4-5 police officials were already present at the place. The police asked the panch witnesses to collect broken branches, pieces of cardboard, three empty cartridges, six lead pieces and pieces of stones lying on the ground and the police took charge of the said articles. The police effected the writings about the said things and signatures of the panch witnesses were obtained on the writings. The said writings were read over to them by the police before their signatures.

504. After appreciating the entire evidence, the learned Designated Court recorded the finding that the appellant (A-79) could not furnish any explanation that he had no knowledge of said contraband material for some other reason, and his possession of such articles for such a long period considered along with his participation in the training programme leads to no other conclusion than himself being party to conspiracy to commit terrorist act.

However, having regard to fact that there exists no other evidence of commission of any act by the appellant (A-79) and there is no evidence of him having been to Bombay or having participated in conspiratorial meetings, it would be difficult to accept that knowledge of commission of serial bombs blasts in Bombay can be attributed to him. Since there is a

paucity of evidence to show that the appellant (A-79) had any knowledge regarding the places at which the explosions were committed in Bombay, he cannot be held liable for the offence of larger conspiracy for which the charge at head firstly is framed against him. However, considering the acts and offences committed by him and particularly the retaining of such a contraband material and disposing the same definitely establishes himself being a party to conspiracy to commit terrorist act punishable under Section 3(3) TADA.

505. The said material which was sent for chemical analysis particularly live handgrenades were defused, as deposed by Pramod Kisanrao Dhaware (PW-598). He also issued a certificate that 13 handgrenades had been defused which were given to Shri V.M. Ghadshi .

506. From the evidence referred to hereinabove, it is evident that Harishchandra Keshav Pawar (PW-105) named three persons from his village participating in the arms training at Sandheri hillocks and one of them had been Issaq Mohmed Hajwani (A-79). Rajaram Ramchandra Kadam (PW-106) named all the three appellants to be members consisting of 8-10 persons participating in the training of arms and ammunition in Sandheri hillocks on 8.3.1993 and he identified all the three appellants alongwith others in the court. The other co-accused, particularly, Abdul Gani Ismail Turk (A-11), Dawood @ Dawood Taklya Mohammed Phanse @ Phansmiyan (A-14) and Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), in their confessional statements had also named all the three appellants as participants in the arms training on 8.3.1993 at Sandheri hillocks. The evidence of the aforesaid persons is trustworthy as we do not see any reason to discard the same at least to the extent of participation of these three appellants in arms training on 8.3.1993 at Sandheri hillocks.

In view of the above, the appeal is dismissed.

Criminal Appeal No. 396 of 2011

507. The respondents (A-106 A-111) had been acquitted of the charge of conspiracy. Hence, the State has filed appeal against them.

508. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the said respondents had been very closely associated with terrorist

activities and had participated in the training at Sandheri with Tiger Memon (AA). Therefore, they ought to have been convicted for the charge of conspiracy also.

509. On the contrary, Shri Sushil Karanjekar, learned counsel appearing for the respondents (A-106 and A-111) has vehemently opposed the appeal, contending that they were convicted and have served substantial part thereof. The respondents (A-106 and A-111) did not participate in the training at Sandheri, and at the most, they could be held to be silent spectators of the training and therefore, could not be involved in the offence. Thus, the appeal is liable to be dismissed.

510. None of the said respondents (A-106 and A-111) has made any confession. The evidence against them regarding the training at Sandheri is only by Rajaram Kadam (PW-106), who had deposed in the court that on 8.3.1993, some people were being trained in handling of arms at Chinchecha Mal in the morning at about 10 a.m. As there was continuous firing he went to the said hillock in order to find out what was happening. There he saw two persons armed with guns standing at the said place and 5-6 persons were sitting at Chinchecha Mal. He also saw a cardboard target fixed nearby the hillock. One person with the beard from the persons who were sitting there got up and asked him to leave the hillock otherwise he would be shot by the gun. The witness (PW-106) was frightened and immediately returned to his village. He did not know the person who had threatened him or the other persons who were having the arms. About 4 to 5 persons from his village were amongst the persons who were sitting at the said place at that time including these two respondents (A-106 and A-111). He identified both the respondents (A-106 and A-111) in court as the persons sitting at Chinchecha Mal.

511. The learned Designated Court after appreciating the evidence came to the conclusion that there was sufficient evidence to convict the respondents (A-106 and A-111) under Section 3(3) TADA, as they also facilitated Tiger Memon (AA) in other aspects, but merely sitting at the hillock, did not mean that they participated in the training and therefore, it could not be the basis of assuming that they were party to the training programme.

512. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

513. In view of the above, we do not see any cogent reason to take the view contrary to the view taken by the learned Special Judge, considering the parameters laid down by this court for entertaining the appeal against the order of acquittal. The appeal lacks merit, and is accordingly, dismissed.

Criminal Appeal No. 414 of 2011

514. The respondent (A-79) had been acquitted of the charge of conspiracy. Hence, the State has filed appeal against him.

515. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that there was enough evidence and particularly, the confessional statement made by Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), and the depositions of Mahadeo Jaswant Jadav (PW-103), Ashok Vichare (PW-104), Harish Chandra Pawar (PW-105), Rajaram Kadam (PW-106), and Namdev Pundlik Mahajan (PW-587), to convict the respondent for the first charge of conspiracy. Thus, the court below committed an error in acquitting the respondent from the said charge, and thus on that count, the respondent should be convicted.

516. Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that considering the parameters for interference in an appeal against the order of acquittal, no interference is required. The respondent has already suffered sufficiently, and he has been convicted on various other charges. Thus, the appeal is liable to be dismissed.

517. The Designated Court after appreciating the entire evidence came to the following conclusion:

“However, case regarding A-79 clearly appears to be different. There exists an evidence denoting that in consequent to information given by A-79, 13 handgrenades and empties were recovered/seized by police during the period from 1.4.1993 to 3.4.1993 from the sea coast at Gandharwadi. The said facet considered on the backdrop that training programme had taken place on 8th of March, 1993 or thereabout leads to the conclusion of A-79 having the knowledge of such a contraband article in the month of April 1993 and the same being recovered from the place shown by him. Now considering in proper perspective the information furnished by A-79 his knowledge of such material lying at the said place and the reason because of which he was

having the same i.e. his authorship in dumping the material at the said place. All the said evidence clearly reveals that all the said material must have been with A-79 after the training programme was complete and/or at least the said evidence and the ultimate act committed by him reveals that himself having dominum and control over the said material and hence consequently being in possession of same. Thus having regard to the said facets leads to no other conclusion that A-79 being also guilty for offence under Section 6 of TADA, offences under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of Arms Act and Section 201 IPC.

In addition to same and having regard to fact that no explanation had come forward from A-79 that he was having knowledge of said contraband material for some other reason and his possession of such articles for such a long period considered along with his participation in the training programme leads to no other conclusion than himself being party to conspiracy to commit terrorist act. However, having regard to fact that there exists no other evidence of commission of any act by A-79, himself being not a resident of Bombay, no evidence of himself having been to Bombay or having participated in conspiratorial meeting, it will be difficult to accept that knowledge of commission of serial bomb blasts in Bombay can be attributed to him. Since there is a paucity of evidence to show that A-79 was having any knowledge regarding the places at which the explosions were committed in Bombay he cannot be held liable for the offence of larger conspiracy for which charge at head firstly is framed against him. However, considering the acts and offences committed by him and particularly the retaining of such a contraband material and disposing the same definitely establishes himself being party to conspiracy to commit terrorist act punishable under Section 3(3) of TADA.

The court further held:

The same discloses that A-79 was found guilty for commission of offence of conspiracy to commit terrorist act, punishable under Section 3(3) of TADA and he was also found guilty on four other counts for commission of offences under Sections 3(3) and 6 of TADA, Sections 3 7 read with Section 25(1-A)(1-B)(a) of Arms Act and Section 201 IPC.

Without unnecessarily reiterating every aspect connected with decision arrived accordingly, in short it can be said that each of the said accused was found guilty accordingly mainly due to acts committed by him in connection with Sandheri training Episode which has taken place on 8th of March, 1993 at Borghat and Sandheri in which prime absconding accused Tiger Memon had organised a training camp for imparting a training of handling arms, ammunition and handgrenades to the persons taken from Bombay and so also local persons from the area of Sandheri.

The evidence surfaced and/or reasoning given thereon earlier also reveals that all the aforesaid accused persons were local residents and were not from Bombay. The same also does not disclose that they had any prior connection with Tiger Memon or any of the prime accused involved in this case, prior to their participation in training programme or even thereafter. Similarly, the evidence does not disclose any of these accused having been trained in handling of handgrenades. Though it is true that evidence have surfaced regarding Tiger Memon having imparted such a training of throwing of handgrenades at a place by name Manjeri Ghat, Waghjai etc. still the same does not disclose that the same was imparted to any local person and on the contrary evidence discloses that the same was given to the persons, who were taken by Tiger Memon from Bombay to said place.

It is significant to note that though A-79 has been held guilty accordingly still no evidence has surfaced on the record of A-79 having used the handgrenades with him for the purposes of commission of any terrorist acts of committing explosion or any other acts to further the objective of conspiracy to which he was a party. It is further significant to note that no evidence has surfaced on the record to reveal that A-79 held guilty for offence of conspiracy or even A-106 A-111 at any point of time had been to Bombay for commission of any act furthering object of criminal conspiracy, to which A-79 was found to be a party. Needless to add that acts committed by each of the accused were confined to Sandheri and the same had never transcended beyond the said area and none of them and particularly A-79 is not found to have committed any act in the area of Bombay i.e. the place at which serial blasts were committed, resulting into deaths of and/or injuries to many. Having regard to all the aforesaid facets and particularly taking into consideration the extent of acts committed by A-79 he was found guilty for offence of conspiracy to the extent i.e. only for offence of conspiracy to

commit terrorist acts made punishable under Section 3(3) of TADA or in other words A-79 was not found guilty for a party to a conspiracy for the acts for which the charge at hand firstly was framed against him. Since elaborate reasoning for coming to such a conclusion, being already recorded in the earlier part of the judgment and so also the aspect of framing such elaborate charge, etc. being also recorded explained during the said earlier part of reasoning and so also while making a common discussion the earlier part of the sentence part of judgment and so also while discussing about awarding sentence to accused, who had acquired the training at Pakistan i.e. A-77, 92, 94, 95, 108, 115, it will be wholly unnecessary for once again repeat the said reasoning. As stated earlier prosecution has demanded for giving maximum penalty prescribed under the law for all the aforesaid accused who according to prosecution i.e. A-106 to A-111 falling in second group while A-79 falling in the first group made by learned Chief Public Prosecutor i.e. the group of accused found guilty for commission of offences under TADA and so also under other enactments. During the discussion made earlier for reasons already given it has been already ruled that such a blanket attitude cannot be taken while determining the sentence for such accused placed in said group as different penalty ranging from 5 years to life imprisonment with fine has been prescribed under TADA for commission of various acts/offences as prescribed under Section 3(3) of TADA including for offence of conspiracy to commit terrorist acts made punishable under the same.”

518. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

519. In view of the fact that after appreciating the entire evidence the learned Special Judge reached the conclusion that the case of respondent (A-79) was entirely different from the other co-accused, particularly those who had not participated in the training of arms. It was further held that respondent (A-79) had knowledge of the said contraband material being arms and ammunition and had been brought for terrorist activities and he was found in possession of the handgrenades and empties; it was further found that A-79 had thrown the same in the creek water to absolve himself of the offences. We are of the view that the Special Judge was not justified in acquitting him from the first charge of larger conspiracy merely on the ground that he did not know about the places where the bombs had to be thrown and he was not the resident of Bombay and did not

participate in the conspiratorial meetings. The finding of fact recorded by the Special Judge is also contradictory as the court held that he participated in the arms' training at Sandheri. However, he observed that the evidence does not disclose that any of those accused had been trained in handling of handgrenades.

520. In view of the fact that there is sufficient material on record that the respondent participated in the training of handling the handgrenades, there was no occasion for the learned Special Judge to take such a view.

In view of the above, the appeal stands allowed. The respondent is awarded life imprisonment. The respondent is directed to surrender before the learned Designated Court within a period of four weeks to serve out the remaining sentence, failing which the Designated Court will secure his custody and send him to jail to serve out the sentence.

CRIMINAL APPEAL NO. 1423 OF 2007

Shah Nawaz Khan

Vs.

State of Maharashtra

AND

CRIMINAL APPEAL NO. 1032 OF 2012

State of Maharashtra

Vs.

Shah Nawaz Khan

Criminal appeal No. 1423 of 2007

521. This appeal has been preferred against the judgment and order dated 31.5.2007 passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast cases, Greater Bombay in Bombay Blast Case No.1/93, by

which the appellant (A-128) has been convicted under Section 3(3) TADA, on two counts, and has been awarded a sentence of 10 years, alongwith a fine of Rs.25,000/- , on each count. Further, all the sentences have been directed to run concurrently.

522. In addition to the main charge of conspiracy, the appellant was charged for participating in and assisting Mushtaq @Ibrahim @ Tiger Abdul Razak Memon, and his associates in the landing and transportation of arms, ammunition and explosives which were smuggled into India for the purpose of committing terrorist acts, at various points such as, Shekhadi, Taluka Shrivardhan, District Raigad on 3rd and 7th February, 1993, and further for agreeing to undergo weapons' training in Pakistan in the handling of arms, ammunition and explosives for committing the said terrorist acts and for this purpose, he travelled to Dubai, and attended conspiratorial meetings held there in these regards.

523. Shri Mushtaq Ahmad, learned counsel appearing on behalf of the appellant (A-128), has submitted that he was only 21 years of age at the time of the aforementioned incident, and that he had falsely been implicated in the case, as he was not involved in any overt act, nor he had gone to Pakistan for any weapons' training. A-128 was arrested at Bhusawal, and his conviction cannot stand for want of evidence against him. Some of the co-accused in their confessional statements, named merely 'Shahnawaz' and in addition to the appellant, there is also another convict named 'Shahnawaz Qureshi'. Therefore, there has been confusion regarding the identification of the appellant (A-128). Hence, this appeal deserves to be allowed.

524. On the contrary, Shri Mukul Gupta, learned senior counsel appearing on behalf of the respondent, has vehemently opposed the appeal contending that the confessional statement of the appellant (A- 128) has been corroborated by the confessional statements of various other co-accused, particularly, Dawood Taklya Mohammed Phanse (A-14), Munna @Mohammed Ali Khan @ Manojkumar Bhavarlal Gupta (A-24), Ashfaq Kasim Havaldar (A-38), Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58), Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64), Shaikh Kasam @ Babulal Ismail Shaikh (A-109) and Salim Kutta (A-134). The appellant (A-128) had admittedly gone to Dubai, and participated in conspiratorial meetings held there, and had also been closely associated with the main conspirators and further that he had met Tiger Memon (AA) and others several times. Therefore, no interference is called for.

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

526. Evidence against the appellant:

- a) His own confessional statement
- b) Confessional statement of Munna @Mohammed Ali Khan @ Manojkumar Bhavarlal Gupta (A-24)
- c) Confessional statement of Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58)
- d) Confessional statement of Shaikh Kasam @Babulal Ismail Shaikh (A-109)
- e) Confessional statement of Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64)
- f) Confessional statements of Sultan-E-Rome Sardar Ali Gul (A- 114), Abdul Aziz Abdul Kader (A-126), Mohmed Iqbal Ibrahim (A- 127), Eijaz Mohd. Sharif @ Eijaz Pathan @ Sayyed Zakir (A-137), Murad Ibrahim Khan (A-130)
- g) Depositions of Harish Chandra Surve (PW-108), H.C. Singh (PW- 474), Massey C. Fernandes (PW-311) and Vijay Govind More (PW- 137)

527. Confessional statement of the appellant (A-128): In his confessional statement dated 12.5.1994, he deposed that in 1991, he was living in Chandshahwali Dargah, Pawai, a place where he had been residing for a long time and that here he met a person named Karimullah. After leaving his job in White Star International, the appellant (A-128) met Karimullah and asked him to get him (A-128) a job. He (A-128) was taken to the office of Eijaz Pathan of M/s Famous Construction but was not successful. Then the appellant met Babulal (A-109) and Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A- 58), who was also associated with Karimullah and developed a visiting relationship with them. After the demolition of the Babri Masjid, Karimullah called the appellant (A-128) through Shaikh

Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58), and met him (A-128) in a flat near Rajasthan Hotel, Bombay, in the last week of January, or the first week of February, 1993. At such time, several other accused were also present in the flat. He learnt later on, that the said flat belonged to Yeda Yaqub. Karimullah assured the appellant (A-128) that he would find some work for him and also gave him Rs.500/- for household expenditure. After 2-3 days, when he went to meet Karimullah, he found large number of other co-accused sitting in the said flat, and saw that they were getting ready to go somewhere. Akbar asked the appellant (A-128) to go with them. They all proceeded in a blue coloured commander Jeep. While going with them, he also saw Tiger Memon (AA) and other persons moving alongwith them in another jeep. He was told by Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58) that the persons in the other jeep who were traveling with them were Tiger Memon, Javed Chikna, Tahir Takalpa, Nazir, Bashir Khan, Salim Kurla, Rahat Ali and Mansoor Ahmad. He was told by Akbar that they were going to Shrivardhan to collect weapons etc., which had been ordered by Tiger Memon (AA) for the Bombay blasts. All the persons including the appellant (A-128) and Tiger Memon (AA) reached Shekahdi at 8.00 p.m. After reaching the Beach, Tiger Memon removed a rifle from a black bag and gave the same to Javed Chikna, Karimullah and Nasir. After sometime, Tiger Memon, alongwith a few co-accused, particularly, Jawed Chikna, Yeda Yaqub, Dawood Takalya and some labourers went into the Sea in a trawler which was already been parked there, and returned after 15-20 minutes with some goods. They took 3- 4 rounds to the Sea and back, and brought sacks with them each time they returned. Tiger Memon opened some sacks and the appellant (A- 128) saw that they contained rifles, hand grenades and plastic bags containing a black coloured powder in them. Bullets were also among the said contraband, which were kept by Tiger Memon in his Maruti car. After that they left the said place and travelled for about an hour and reached a building which looked like a factory with a big tower. After reaching there, the sacks were kept outside once unloaded from the tempo. Some packets containing rifles and plastic bags were kept in the cavities in the Commander jeeps. At 5 a.m. they left the said tower and reached Mahad from where they left for Bombay on the instructions of Tiger Memon (AA). The appellant (A-128) was sitting in the tempo alongwith Karimullah. The appellant (A-128) got down from the tempo upon the instructions of the other co-accused and the tempo was taken to Mumbra and its contents were emptied there by Yeda Yakub. He further said that after a few days Karimullah asked the appellant (A-128) over the telephone whether he had a passport, and as the answer provided by him was in the affirmative, he (A-128) was called alongwith his passport. When he went to meet

Karimullah with his (A-128) passport, he found some of the other co-accused present in Karimullah's flat. He (A-128) handed over his passport to Karimullah and asked why it was required, he (A-128) was then told that he (A-128) had to go to Dubai for weapons' training. The appellant (A-128) subsequently left for Dubai on 15.2.1993 on the ticket arranged by the co-accused. He went there alongwith seven other co-accused. They went to Dubai by an Air India flight and reached there at 6.00 o'clock in the evening. They got their visa and went to the flat of Eijaz Pathan on the 8th floor of a building near the Sea. The next day some other accused also reached there. Accused Yeda Yakub met them on a few occasions and told them that he was in the process of making arrangements for them to go to Pakistan where they would receive their training. However, he (A-128) could not go to Pakistan as the said training could not be arranged, and hence, he (A-128) returned to Bombay on 1.3.1993. He (A-128) was arrested from Bhusawal when he was with his newly wedded wife. However, he had not committed any overt act so far as the Bombay blasts dated 12.3.1993 are concerned.

528. It is evident from his confessional statement that he was unemployed at the relevant time. He (A-128) was closely connected with Karimullah and the other co-accused. He (A-128) was fully aware that the co-accused were smuggling silver, as well as the arms and ammunition. He had gone to Dubai for the purpose of traveling further to Pakistan for weapons training. He (A-128) could not go to Pakistan but waited for 15 days in Dubai and later returned to Bombay. His expenses for traveling to Dubai and back were met by the co-accused. He participated twice in the landing and transportation of arms and ammunition. His confessional statement makes it abundantly clear that his statement was voluntary. He was given sufficient time to re-think and was allowed to stay in the CBI office for a period of 48 hours, and he (A-128) made it clear that during this period no body had met, pressurised, threatened or intimidated him.

Confessional statement of Munna @Mohammad Ali (A-24):

529. The said co-accused corroborated the prosecution's case to the extent that the appellant (A-128) had in fact, participated in the landing at Shekhadi.

530. Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58), had been staying alongwith Eijaz Mohd Sharif @Eijaz Pathan @ Sayyed Zakir (A-137) at the house of Haji Yakub during the riots that took place in the month of January, 1993 in Bombay, alongwith some other persons including the appellant (A-128).

During that period, Munna (A-24) told the appellant (A-128) and the other co-accused that he had received a telephone call from Eijaz Bhai asking him to unload the Tiger's silver. The accused (A-58), alongwith other co-accused participated in the landing at Shrivardhan. He (A-58) further stated that at the time of such landing, Tiger Memon had given him a pistol, and one AK-47 rifle each to Munna and Karimullah and a revolver to the appellant (A-128) to be used in the event of any intervention during the landing. However, the said weapons were returned after the landing was completed.

531. Babulal (A-109) supported the case of the prosecution to the extent that the appellant (A-128) visited Dubai alongwith the other co-accused.

532. Nasir Abdul Kader Kewal (A-64) has supported the version of events that show the participation of the appellant (A-128) in the Shekhadi landing.

533. This prosecution case also stood corroborated by Sultan-E-Rome Sardar Ali Gul (A-114), Abdul Aziz Abdul Kader (A-126), Mohmed Iqbal Ibrahim (A-127), Eijaz Mohd. Sharif @ Eijaz Pathan @ Sayyed Zakir (A- 137) and Murad Ibrahim Khan (A-130).

534. Harishchand Laxman Surve (PW-108) and Vijay Govind More (PW-137) were employed as watchmen, and they have also deposed against the appellant (A-128) as regards his presence there alongwith the other co-accused when they came to Wangni Tower from Shekhadi with arms etc. Evidence of witnesses:

535. In addition thereto, the case of the prosecution has been supported by H.C. Singh (PW-474), Superintendent of Police, CBI who recorded the confessional statement of the appellant (A-128) and Massey C Fernandes (PW-311), a former employee of Hans Pvt. Ltd. who arranged tickets for Shahnawaz Khan (A-128) and others, and Vijay Govind More (PW-137), an employee of Abu Travel Agency, who deposed to the effect that 11 persons' tickets were arranged by him and that payment for the same was made by the co-accused.

536. The appellant (A-128) made a retraction of his confessional statement on 1.7.1994 i.e., within two months of making such confessional statement, stating that he never made any statement at all and that he had been forced to make a confessional statement and was also forced to sign on blank papers. He had hence been falsely implicated in the said case.

537. In his statement under Section 313 of the Code of Criminal Procedure, 1973, while replying to Question Nos. 218 and 292, he denied his participation in the Shekhadi landing of weapons and in the transportation of the same to Bombay. He also denied that he had gone to Dubai to execute a certain conspiracy and in fact, rather suggested that he had gone there on a business trip.

538. Upon consideration of the entire evidence on record, the Designated Court held that the same leads to the inescapable conclusion of the appellant (A-128) being involved in the Shekhadi landing operation as has been denoted by the said material and has thus committed an offence under section 3(3) TADA. It was further held that considering the evidence of the said landing, and the role carried out by the appellant (A-128) and ultimately the fact that he himself had continued with the said operation, and had not provided any information about the same to any proper authority, the defence's contention that earlier he did not know the purpose for which he was going to Shekhadi, or that he was not aware that the arms and ammunition were to be smuggled, is liable to be rejected. The confession of the appellant (A-128) itself reveals, that during the course of said operation he became fully aware of the nature of the contraband goods i.e., the same being arms and ammunition. The appellant (A-128) being taken to Bombay for the execution of the said operation, and thereafter being sent to Dubai for training denotes that he was a man in whom Tiger Memon (AA) had confidence, as he did in the other conspirators.

However since the appellant (A-128) committed the aforementioned relevant acts much before the main conspiracy of actually committing the bomb blasts planned and had not participated in any meetings or committed any acts in furtherance of the said main conspiracy, it was held that he could not be held guilty for the offence of larger conspiracy i.e. first charge, but is required to be held guilty for the conspiracy to commit terrorist acts as aforementioned.

539. We find no evidence on record warranting interference with the judgment of the learned Designated Court. The said appeal lacks merit and is thus, accordingly dismissed.

Criminal Appeal No. 1032 of 2012

540. Though respondent has been convicted for various offences, he has been acquitted of the charge of conspiracy. Hence, the State has preferred this appeal against the order of acquittal.

541. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the evidence against the respondent (A- 128) has been his own confession, and confessional statements of Sultan-E-Rome Sardar Ali Gul (A-114), Abdul Aziz Abdul Kader (A-126), Mohmed Iqbal Ibrahim (A-127), Shaikh Kasam @ Babulal Ismail Shaikh (A- 109), Manoj Kumar Gupta (A-24), Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58), Eijaz Mohd. Sharif @ Eijaz Pathan @ Sayyed Zakir (A-137), Nasir Abdul Kader Kewal (A-64), Murad Ibrahim Khan (A-130), and further depositions of H.C. Singh (PW-474), Harish Chandra Surve (PW-108), Ifthihar Ahmed Iqbal Ahmed (PW-317), Abdul Gafoor (PW-197) and Chaturbhuj R. Rode (PW-222). Thus, he ought to have been convicted for the first charge.

542. Shri Mushtaq Ahmad, learned counsel appearing for the respondent has submitted that the Designated Court has considered the entire evidence, and after appreciating the same, it came to the conclusion that the respondent was not guilty of the first charge of conspiracy. In view of the parameters laid down by this court, no interference is required against the order of acquittal. Hence, the appeal is liable to be dismissed.

543. After appreciating the entire evidence, the Designated Court came to the conclusion that the respondent (A-128) had participated in landing and transportation of arms, ammunition and explosives. It was also concluded that he (A-128) had agreed to undergo weapons' training in Pakistan for committing terrorist acts. He also attended a meeting at Dubai alongwith co-conspirators to plan commission of terrorist acts. Thus, the respondent (A-128) was found guilty of conspiracy only to the extent of commission of terrorist acts punishable under Section 3(3) TADA, and not of the larger conspiracy as he could not go to Pakistan for training for handling of arms and ammunition. He (A- 128) had been acquitted of the charge of larger conspiracy for the reason that he did not participate in any act after his return from Dubai on 1.3.1993.

544. The parameters laid down by this court in entertaining the appeal against the order of acquittal have to be applied.

545. We do not find any cogent reason to interfere in the matter. The appeal lacks merit and is accordingly dismissed.

546. Before parting with the case, we may clarify that if the accused- appellant(s) whose appeals have been dismissed and are on bail, their bail bonds are 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.