

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Fazal Rehman Abdul

Crl.A.No.418 of 2011

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

21.03.2013

JUDGMENT

DR. B.S. CHAUHAN, J.

1. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007, passed by a Special Judge of the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') in the Bombay Blast Case No. 1/93, acquitting the respondent of all the charges.

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 respondent.

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 respondent (A-76) stood convicted.

C. The respondent 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 the 'IPC') read with Sections 3(2)(i)(ii), 3(3), (4), 5 and 6 TADA and read with Sections 302, 307,326,324,427,435,436, 201 and 212 IPC and offences under Sections 3 and 7 read with Sections 25 (I-A), (I-B)(a) of the Arms Act, 1959, 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, the respondent had been charged for persuading his brother-in-law Firoz Amani Malik (A-39) to undergo weapons' training in Pakistan and keeping in his possession 4 handgrenades brought to him by Firoz Amani Malik (A-39) and for handing over the same to Mohd. Jabir (A-93-dead), showing that the same had been smuggled into India for committing terrorist activities.

E. The Designated Court after conclusion of the trial acquitted the respondent of all the charges.

Hence, this appeal.

3. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the respondent had been responsible to send the co-accused to Dubai, and further to Pakistan to have training for handling the arms, ammunition and explosives, and therefore, his acquittal for all the charges is liable to be reversed.

4. On the contrary, learned counsel appearing for the respondent has submitted that the co-accused (A-39), who was brother-in-law of respondent himself, had not been aware of the purpose for which he had been taken to Dubai. The respondent cannot be held responsible for sending Firoz (A-39) for any criminal activity. Thus, the well- reasoned judgment of the Special Judge does not require interference.

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

There is no confession by the respondent accused (A-76).

6. Confessional statement of Firoz @ Akram Amani Malik (A-39) revealed that the said respondent was the brother-in-law of Firoz @ Akram Amani Malik (A-39). The said accused Firoz @ Akram Amani Malik (A-39) had been awarded the death sentence in this very case and his appeal is being heard alongwith this case.

Respondent (A-76) used to advise the said accused (A-39) to go to Dubai and the said accused also expressed his willingness and desire to go to Dubai in the month of January, 1993. He (A-39) got a passport and went to Dubai with Miyaz. After getting a visa they left the airport. One person named Ayub Bhai took them to a building near Kadar Hotel. There they found another person Nasim who took them to a flat on the 2nd floor. Nasim told him there that he would be going to Pakistan and his purpose for this visit would be explained later.

7. Prakash Khanvilkar (PW-513), deposed about the recovery of handgrenades from Mohmed Jabir Abdul Latif Mansoor (A-93). However, he does not make any reference so far as the respondent Fazal Rehman Abdul Khan (A-76) is concerned.

8. The Designated Court after appreciating the entire evidence came to the conclusion that there was nothing on record to show that the respondent though facilitated sending Firoz @ Akram Amani Malik (A-39) to Dubai, had any knowledge of the purpose of going to Dubai or Pakistan for the simple reason that Firoz @ Akram Amani Malik (A-39) himself disclosed that he was told in Dubai that he would go to Pakistan and the purpose for going there would be explained to him later on. The confessional statement of A-39 did not reveal the involvement of the respondent in persuading A-39 to undergo weapons' training in Pakistan.

9. 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.

10. We had been taken through the evidence by Shri Mukul Gupta, learned senior counsel for the appellant, but we do not find any reason to interfere with the cogent reasons given by the Special Judge. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NO. 409 OF 2011

State of Maharashtra ...Appellant

Versus

Manjoor Qureshi Ors. ... Respondents

11. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007 passed by a Special Judge of the Designated Court under the TADA in Bombay Blast Case No. 1/93, acquitting the respondents of all the charges. The respondents had been charged in addition to the common charge of conspiracy under Section 3(3) TADA and Section 120B IPC, read with the other provisions. They were charged with knowingly abetting and facilitating the commission of terrorist acts and acts preparatory to terrorist acts as they had agreed to undergo weapons' training in Pakistan in handling of arms and ammunition and explosives for committing terrorist acts and for that purpose visited Dubai but could not go to Pakistan as arrangement for training there could not be made. They

attended the conspiratorial meeting at Dubai alongwith conspirators to plan the commission of terrorist acts.

12. Mohmed Iqbal Ibrahim S/o Shaikh Ibrahim (A-127) has died. Thus, this appeal stood abated qua him.

13. After conclusion of the trial, the Designated Court acquitted the respondents of all the charges.

Hence, this appeal.

14 Shri Mukul Gupta, learned senior counsel for the appellant-State has submitted that the Designated Court has erred in acquitting the respondents of the charge of conspiracy. The respondents had gone to Dubai to go to Pakistan for having training to handle the arms and ammunition and explosives and this is a matter of chance that they came back as the training could not be arranged but the evidence on record clearly established that they intended to have the training and subsequently to participate in the terrorist activities. Therefore, the appeal deserves to be allowed.

15. Ms. Farhana Shah, learned counsel for the respondents has submitted that there is nothing on record to establish that either of the respondents had any idea or knowledge or they had been informed by any other co-accused that they would be sent for training to Pakistan to handle the arms etc. and rather they had an impression that they would be taught handling the arms to be used for self-defence. Thus, no imputation of conspiracy can be established. The appeal lacks merit and is liable to be dismissed.

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

17. Confession of Shaikh Kasam @ Babulal Ismail Shaikh (A-109): His confession revealed that he was working as an Office Boy in the construction company of Ijaz Khan in 1992. The said office was closed after riots in Bombay in December 1992. Some persons namely Munna, Karimullah, Shehjada used to come to the said construction company of Ijaz and thus the accused developed acquaintance with them. Ijaz used to travel between Bombay and Dubai. On 12.1.1993, Mr. Ethesham (A-58) informed him that Ijaz had come from Dubai and wanted to meet the respondent (A-109). The accused met Ijaz Khan at the house of Haji Yakub in presence of Anwar. Ijaz told them that in case something wrong happens to them

they can talk to him over the telephone. Subsequently, they left leaving Munna and Anwar there. Yakub (AA) later told him that riots were increasing and he would take them out of India for training and using revolvers for saving themselves from the riots. The respondent (A-109) brought his passport from his house and delivered the same to Haji Yakub. Subsequently, the respondent (A-109) went to Dubai alongwith Murad, Ethesham, Shakil, Shahnawaz on 14.2.1993.

Yakub Haji came to meet them and said that training could not be given this time, and it would be done next time. They remained for 15 days in Dubai and their visa expired. They then came back to Bombay. Before going to Dubai, Yakub asked them to take an oath by placing their hands on the Quran that whatever they are doing, it was for the sake of Islam and they would not fight with each other and would not divulge their talks to others.

18. Confession of Sultan-E-Rome Sardar Ali Gul (A-114): He was working as a driver with a Marwari at Walkeshwar. After the demolition of Babri Masjid he lost his job because his employer was afraid of him as he was a Muslim. The accused (A-14) wanted to go to Saudi Arabia for search of work. Therefore, he got his passport ready. In the month of January, 1993, he met Qamar Khan. Ijaz Khan and Ethesham (A-58) talked with them for 5-10 minutes. Then Ijaz told him that he had to go to Ethesham as and when he was called and he would be paid Rs.1,000/-, a pair of clothes and shoes. Ethesham would train him in working a revolver.

On 14.2.1993, he went to Dubai alongwith the others and stayed there for 14 days without any work/training and came back to India. He further disclosed that they were not given any training or any lectures (Taqreer) in Dubai.

19. Confession of Abdul Aziz Abdul Kader (A-126): He also accompanied the other co-accused to Dubai. He corroborated the version of other co-accused for going to Dubai and coming back to Bombay. Yeda Yakub advised him that he should learn to handle the arms as there was tension prevailing all round and the Muslims were being suppressed and beaten everywhere and therefore such training was necessary for their self defence, especially to face the Hindus. Muslims have suffered heavy losses. In case riots occurred in future then by learning the handling of weapons Muslims can effectively deal with Hindus. When he (A-126) was in Dubai he went to see a person who knew to his brother and during the conversation he enquired from the respondent (A-126) the purpose for which he had gone to Dubai. The respondent (A-126) told him that he had come for taking training of handling of arms and on their return journey they would take some goods along

with them to earn some money in India. He cautioned the respondent (A-126) that the work was not good and advised him to go back.

20. Confession of Mohd. Iqbal Ibrahim (A-127): He corroborated the version of other co-accused and had admitted going to Dubai but he was not aware of the purpose for what he had been taken to Dubai. During their stay in Dubai, people used to talk occasionally about weapons. After 10-14 days of reaching Dubai, they came back to Bombay. He had been to Dubai three times earlier. After coming back to India he came to know that he was taken to Dubai for training in handling of arms.

21. Confession of Murad Ibrahim Khan (A-130): He corroborated the version given by other co-accused in the confessional statement that he had gone to Dubai. He further revealed that one day when they were in Dubai, Shakil told him that he would go to Pakistan for weapon training but the arrangement had not yet been finalized. After a few days they came to know that they had been taken for weapon training but arrangements could not be made and they had to return to Bombay and on expiry of their visa they came back.

22. Confessional statement of Shaikh Mohmed Ethesham (A-58): He disclosed that he was a close associate of Yeda Yakub and was involved in all kinds of smuggling activities. He revealed about the smuggling of arms and said that on 7.2.1993 when he was at the place of Hazi Yakub @ Yeda Yakub, and the latter informed him, Akbar, Babulal and Shahnawaz that Muslims had suffered a considerable loss in the riots and that they had to go to Dubai for training of arms and ammunition to protect themselves. He, Shahnawaz, and Babulal were ready to go to Dubai. Thus, they had gone to Dubai but came back without having any training.

23. Confession of Shahnawaz Khan (A-128):

His confessional statement revealed that he had gone to Dubai alongwith other co-accused. He came to know after going to Dubai that they were going for arms' training to be held in Pakistan. However, due to some reason arrangements could not be made for training. Thus, he came to Bombay alongwith other co-accused namely Iqbal, Etheshem, Babulal and Shahid on 1.3.1993 and the remaining persons reached later on.

24. The Designated Court after appreciating the entire evidence has drawn a conclusion that the respondents may be under the impression that they were being

sent there for training of arms so that it can be used in self defence and they came to know only when they were in Dubai that they were being sent for training to Pakistan. However, the training could not be finalized/arranged and they came back to Bombay. Therefore, the learned Designated Court had drawn the inference that as they did not have knowledge that they were going to Pakistan for training in handling of arms they could not be held guilty.

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

26 We have gone through the entire record and we are of the view that none of the respondents was aware of the intention of the conspirators to send the respondents to Pakistan for training to deal with the arms and ammunition rather they had been taken away to Dubai on false pretext and had been misguided. Thus, we fully agree with the inference drawn and conclusion reached by the Designated Court. We find no reason to interfere with the same. The appeal lacks merit and is accordingly dismissed.

CRIMINAL APPEAL NOS. 601 OF 2011

State of Maharashtra through CBI

...Appellant

Versus

Krishna Sadanand Mokal Ors. ... Respondents

27. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA, acquitting the respondents of all the charges under TADA and Arms Act.

28 Facts and circumstances giving rise to this appeal are that all the respondents had been working as police constables in the Police Department of Bombay and at the relevant time, i.e., January 1993 were posted as constables at Police Station, Shrivardhan. After the Bombay blast on 12.3.1993, they had been charged for conspiracy in general as well as under Section 3(3) TADA and other charges for assisting and facilitating the accused persons to smuggle and transport the

contraband articles, i.e., arms and ammunition and permitting the said goods to be taken further in lieu of bribe.

The case against the said respondents had been that on 8th/9th of January, 1993, the arms, ammunition and explosives were smuggled in India and after the landing at Dighi Jetty when the contraband were being transported to Bombay in trucks, the said trucks were intercepted by the police of Shrivardhan Police Station headed by Inspector Patil (A-116). The police checked those vehicles for 10-15 minutes and permitted them to go after completing a detailed bargain with the conspirators/accused and reaching the settlement of the huge amount of Rs.7,00,000/- as a bribe. The accused did not have cash thus, they had given 5 silver ingots as security which were subsequently returned by the police officials to the accused persons after the negotiated amount was paid. The respondents/constables were also put to trial alongwith other co-accused (police officials) but they have been acquitted only on the ground that there was no iota of evidence to show that the respondents herein were also members of the Shrivardhan Police Station which had intercepted those trucks.

Hence, this appeal.

29. Mr. Mukul Gupta, learned senior counsel appearing for the appellant-State has submitted that the respondents were police constables posted at Police Station Shrivardhan and therefore, they were also the members of the party which intercepted the trucks carrying the contraband. The learned Designated Court failed to appreciate the evidence on record and has wrongly acquitted the respondents of the charges leveled against them.

30. Ms. Farhana Shah, learned counsel appearing for the respondents has submitted that it is nobody's case that all the police force posted at Shrivardhan Police Station had gone to check/intercept the trucks carrying the contraband. In the instant case, there is nothing on record to show that either of the respondents was a member of the party which intercepted the trucks carrying the contraband. Thus, the appeal is liable to be dismissed.

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

32. In the confession of Mohmed Kasam Lajpuria (A-136) recorded by Superintendent of Police, CBI at New Delhi Camp, Mumbai, he disclosed that he

was a close associate of Tiger Memon (AA) etc. and had been indulged in various criminal activities including smuggling. He had been participating in the landings and facilitating the transportation of the contraband and smuggled goods. In January, 1993, he planned a landing alongwith Mohd. Dossa, Salim Kutta (A-134), Firoz, Qyum Sajani, Arif Lambu and the landing took place at Dighi Jetty. After getting the contraband goods from the sea to the seashore the same were loaded in two trucks arranged by Uttam Potdar (A-30). The trucks were intercepted by police headed by Inspector Patil and 6-7 constables from P.S. Shrivardhan. Inspector Patil (A-116) asked Saleem and Firoz whether they were landing and transporting the contraband without making any payment to the police. Meanwhile, Uttam Potdar (A-30) also came alongwith one Custom Officer named Gurav (A-82) in a jeep. Uttam Potdar (A-30) spoke to the police people and it was decided that a sum of Rs.8,00,000/- should be paid to the police. As the accused persons did not have Rs.8,00,000/- in cash, the police kept 5 silver ingots with them as a security. Inspector Patil (A-116) asked them to take the silver ingots back after making the payment in cash.

33. Uttam Potdar (A-30) revealed that he was a very close associate of smugglers including Tiger Memon (AA) and Mechanic Chacha (A-136) etc., and had been participating in landing and transportation of the contraband. He was called by Shri R.K. Singh, Assistant Collector (A- 102) on 4.12.1993 through a custom sepoy and asked about the earlier day's landing. Shri Gurav, Custom Inspector (A-82) also had contact with the said accused (A-30) and after negotiating, it was decided to settle the issue of money. Accordingly, the matter was settled and amount was paid to the custom officers. This accused further revealed the mode of payment per landing to the Shrivardhan Police Station as well as the custom police. He revealed the incident on 9.1.1993 when the trucks were intercepted by the Shrivardhan Police. The vehicles were checked by two Hawaldars, named Mali and Muneshwar. He fully corroborated the statement of Mechanic Chacha (A-136) that as they had no money to pay to the police, they paid the silver ingots as security.

34. Dilip Pansare (PW.97) deposed that he was working as a mechanic in the State Transport Corporation at Shrivardhan Depot. He was close associate of Uttam Potdar (A-30). He accompanied Uttam Potdar (A-30) on 9.1.1993 when the vehicles carrying the contraband after landings were intercepted by Shrivardhan Police Station. He deposed that the vehicles after interception were thoroughly checked by two constables. The police team was headed by Inspector Patil (A-116) and there were 6- 7 constables with him. He also gave full details of negotiation/settlement of the amount of bribe for releasing the vehicles and giving

5 silver ingots as security as they did not have the cash. Thus, he corroborated the statement of Uttam Potdar (A-30) as well as of Mechanic Chacha (A-136).

35. In the confessions of Dawood Phanse (A-14), he has deposed that he was a landing agent and was facilitating transportation of smuggled goods of various smugglers in partnership with Sharif Abdul Gafoor Parkar (A-17) including Tiger Memon (AA). This accused (A-14) and Dadabhai (A-17) corroborated the version so far as this case is concerned only to the extent of payment of money to Shrivardhan Police Station for two landings. Mohd. Salim (A-134) corroborated the case to the extent of interception of vehicles carrying the contraband on 9.1.1993 by Shrivardhan Police at Gongdhar Phata. The police team consisted of one Inspector and few constables.

36. If the evidence of all the witnesses is read conjointly, it becomes evident that none of the witnesses had named either of the respondents. The other persons of the police team who had been named stood convicted. The respondents have been acquitted on the ground that in absence of Test Identification Parade or their identification by any of the witnesses/accused in the court, it was not safe to make a guess work that they or either of them could also be member(s) of the said police team which intercepted the contraband. The evidence on record reveal that police team headed by Inspector Patil was having 6-7 constables. There is nothing on record on the basis of which it could be assumed that the respondents were the members of the said team. It is nobody's case that the total strength of the Shrivardhan Police Station was 7 or 8, so it can be presumed that all except one or two might have come. The Sarpanchas of 7 villages in close proximity, deposed in court to falsify the alibi taken by the respondents that they were on police patrolling in their villages. Statements made by the Sarpanchas that none of the respondents had visited their village on patrolling cannot be a proof that the respondents were members of the team, which intercepted the said trucks.

37. The learned Designated Court dealt with the issue elaborately and came to the conclusion that there was no material to connect the respondents with the aforesaid incident and it was not safe to presume that the respondents were also the members of the police team which intercepted the said trucks carrying contraband.

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

39. In view of the above, we do not see any cogent reason to interfere with the impugned judgment. The appeal lacks merit and is, accordingly, dismissed.

CRIMINAL APPEAL NO. 404 OF 2011

State of Maharashtra through CBI

Vs.

Moiddin Abdul Kadar Cheruvattam

40. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007, passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1/93, acquitting the respondent of all the charges.

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

A. In addition to the main charge of conspiracy, he was also charged under Section 3(3) TADA, for collecting the funds for terrorist activities and distributing the same for propaganda against Hindus after the riots in Bombay after demolishing of Babri Masjid in December 1992.

B. The Special Judge under TADA has discarded all the confessional statements on the ground that the officer who recorded the confessional statement of the respondent and other co-accused did not fulfill the requirement of law by giving any warning to the said persons telling (i) that they were not bound to make a confession and (ii) if made, it could be used against them as evidence, and thus acquitted them of all the charges.

Hence, this appeal.

42. Shri Mukul Gupta, learned senior counsel appearing for the appellant has tried to impress upon us that undoubtedly the warning had not been administered in the first part of any of the said confessional statements but only after reflection period, when the said persons again appeared for making their respective statements they had been warned properly. If Part I and Part II of their statements are read together, it is evident that the said accused persons were fully aware that they were not bound to make the confession and if made, it would be used against them.

43 On the contrary, learned counsel for the respondent (A-48) has opposed the appeal contending that before the confession is recorded, Section 15 TADA and

Rule 15(3) of the TADA Rules, require that the maker of the statement must be explained that he was not bound to make such statement and if so made, would be used against him. Thus, no interference is warranted.

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

45. Evidence against the respondent (A-48):

(a) Confessional statement of respondent (A-48)

(b) Confessional statement of Ahmed Shah Khan Mubarak Shah @ Salim Khan Durani @ Salim Tonk (A-20)

(c) Confessional statement of Aziz Ahmed Mohammed Ahmed Shaikh (A-21)

(d) Confessional statement of Ismail Abbas Patel (A-80)

46. First part of the confessional statement of the respondent (A- 48) recorded on 14.5.1993, reads as under:

“My name is Mohiuddin Abdul Kadar, age 30 years, occupation Sales Representative, Dubai, Place of residence: 52/5, Zakaria Masjid St., Mumbai-9. I passed S.S.C. in the year 1978. I myself informed the Inspector of Crime Branch that I wanted to make the confessional statement voluntarily. I was arrested by the Bombay Police on 3.4.93 from my residence at Dongri in connection with the Bombay bomb Blast case. For this reason, I wanted to give my confessional statement.

I have been explained about my making the confessional statement that the confessional statement, which I am going to make will be used against me.

In this connection, I was given 48 hours. For reflection, I will be produced on 17.5.93, if I want to make the confessional statement.”

Sd/- Sd/-

DCP Accused”

47. Similarly the first part of the confessional statements of co- accused Ahmed Shah Khan Mubarak Shah @ Salim Khan Durani @ Salim Tonk (A-20), Aziz Ahmed Mohammed Ahmed Shaikh (A-21) and Ismail Abbas Patel (A-80) are very cryptic. Further, there is no explanation or warning therein as required by law. Therefore, such confessions are liable to be discarded.

48. This Court in *S.N. Dube v. N.B. Bhoir Ors.*, (2000) 2 SCC 254 held that the compliance of Section 15 TADA and Rule 15 of TADA Rules, is mandatory. It is necessary before making of the confessional statement that the accused must be warned that confessional statement if made will be used against him and further that he is not bound to make the same.

“Writing the certificate and making the memorandum are thus made mandatory to prove that the accused was explained that he was not bound to make a confession and that if he made it it could be used against him as evidence, that the confession was voluntary and that it was taken down by the police officer fully and correctly. These matters are not left to be proved by oral evidence alone. The requirement of the rule is preparation of contemporaneous record regarding the manner of recording the confession in the presence of the person making it.”

The court further clarified that a confessional statement would not be adversely affected if the certificate and memorandum are mixed or the format so prescribed is not used by the recording officer.

49. This Court in *Lal Singh v. State of Gujarat Anr.*, (2001) 3 SCC 221 held that:

“23. In view of the settled legal position, it is not possible to accept the contention of learned Senior Counsel Mr Sushil Kumar that as the accused were in police custody, the confessional statements are either inadmissible in evidence or are not reliable. Custodial interrogation in such cases is permissible under the law to meet grave situation arising out of terrorism unleashed by terrorist activities by persons residing within or outside the country. The learned counsel further submitted that in the present case the guidelines suggested by this Court in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569, were not followed. In our view, this submission is without any basis because in the present case confessional statements were recorded prior to the date of decision in the said case i.e. before 11-3-1994. Further, despite the suggestion made by this Court in *Kartar Singh* case, the said guidelines are neither incorporated in the Act nor in the Rules by Parliament.

Therefore, it would be difficult to accept the contention raised by learned counsel for the accused that as the said guidelines are not followed, confessional statements even if admissible in evidence, should not be relied upon for convicting the accused. Further, this Court has not held in Kartar Singh case that if suggested guidelines are not followed then confessional statement would be inadmissible in evidence. Similar contention was negated by this Court in S.N. Dube (supra), by holding that a police officer recording the confession under Section 15 is really not bound to follow any other procedure and the rules or the guidelines framed by the Bombay High Court for recording the confession by a Magistrate under Section 164 CrPC; the said guidelines do not by themselves apply to recording of a confession under Section 15 of the TADA Act and it is for the court to appreciate the confessional statement as the substantive piece of evidence and find out whether it is voluntary and truthful. Further, by a majority decision in State v. Nalini, (1999) 5 SCC 253, Court negated the contentions that confessional statement is not a substantive piece of evidence and cannot be used against the co-accused unless it is corroborated in material particulars by other evidence and the confession of one accused cannot corroborate the confession of another, by holding that to that extent the provisions of the Evidence Act including Section 30 would not be applicable. The decision in Nalini (supra) was considered in S.N. Dube (supra). The Court observed that Section 15 is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it and that the correct legal position is that a confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also.”

50. In *Bharatbhai v. State of Gujarat*, (2002) 8 SCC 447, this Court held:

“46. In view of the aforesaid discussion, our conclusions are as follows:

A. Writing the certificate and making the memorandum under Rule 15(3)(b) is mandatory.

B. The language of the certificate and the memorandum is not mandatory.

C. In case the certificate and memorandum is not prepared but the contemporaneous record shows substantial compliance with what is required to be contained therein, the discrepancy can be cured if there

is oral evidence of the recording officer based on such contemporaneous record.

D. In the absence of contemporaneous record, discrepancy cannot be cured by oral evidence based on the memory of the recording officer.

47. In the present case, admittedly Rule 15(3)(b) has not been complied. No memorandum as required was made. There is also no contemporaneous record to show the satisfaction of the recording officer after writing of confession that the confession has been voluntarily made. The confession of Accused 7 does not even state that it was read over to him. Thus, the confessional statements are inadmissible and cannot be made the basis of upholding the conviction. Once confessional statements are excluded the conviction cannot be sustained.”

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

52. In view of the above, we are of the considered opinion that the learned Designated Court rightly rejected the confessional statement made by the respondent and the co-accused as the first part of these statements has not been recorded in consonance with the requirement of statutory provisions.

We concur with the view taken by the Special Judge. The appeal lacks merit, and is accordingly, dismissed.

CRIMINAL APPEAL NO.405 OF 2011

State of Maharashtra through CBI ...Appellant

Vs.

Asfaq Kasam Hawaldar ... Respondent

53. This appeal has been preferred against the final judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993, acquitting the respondent (A-38) charged for larger conspiracy and under Section 3(3) TADA.

54. In addition to the charge of conspiracy, Respondent (A-38) has also been charged for the commission of offences punishable u/s 3(3) TADA.

55. The case of the prosecution against him has been that:

A. The accused (A-38) along with his co-conspirators participated in the landing and transportation of arms, ammunition and explosives at Shekhadi, Taluka: Shrivardhan District: Raigad, which were smuggled into the country by Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon (AA) and associates for being used in commission of terrorist acts. ?

B. That the accused (A-38) transported arms, ammunition and explosives which took place on 7.2.1993 which were smuggled into the country by Mushtaq @ Ibrahim @ Tiger Abdul Razak Memon and his associates for commission of terrorist acts in motor truck no. MHT 6745 driven by this accused from Shekhadi to Wangni Tower.

C. The Special Judge after conclusion of the trial acquitted the respondent of all the charges.

Hence, this appeal.

56. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that as the respondent had been the driver of the vehicle which carried the contraband, i.e., arms, ammunition and explosives and therefore, there was no reason for his acquittal by the Designated Court.

57. Per contra, Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that there is nothing on record to show that the respondent was driving the alleged vehicle on that particular day. The registered owner of the vehicle was neither made an accused nor a witness in the case and no material had been placed on record to show that on the fateful day the respondent was driving the vehicle. Thus, the findings of the learned Designated Court do not require any interference.

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

59. Confessional statement of Tulsi Ram Dhondu Surve (A- 62):

He revealed that he was working as a Chowkidar at Wangni Tower and came in contact with the smugglers and facilitated their activities many a times for loading and unloading the contraband smuggled by them. He (A-62) used to serve them tea and food. On being asked by Dawood he (A-62) had agreed to help the smugglers in loading and unloading at the said tower for consideration. On 9.1.1993 at 8 hrs. in the night one Maruti car entered the premises of the tower and Sarfaraz (A-55), son of Dawood Phanse got down from the Car and asked him (A-62) to prepare tea. He prepared tea and served the same to 9-10 persons. Tiger Memon (AA) was also with them. After having tea they went away and came back at 12 o'Clock in the night with one truck and a tempo, a jeep and a Maruti car. Tiger Memon (AA) and his associates Iqbal, Anwar, Munna, Sharif alighted from the vehicles and then the contraband was reloaded from the truck to the tempo. Tiger Memon (AA) had given his men guns and pistols in their hands and after reloading the contraband they all went away. On 7.2.1993, he came to know through Sharif that Dawood Phanse's (A-14) contraband was about to come. The accused (A-62) informed his other colleagues at about 9.30 in the night. He came alongwith More from the tower and waited at the Kuchha road for them. After sometime a truck, followed by three jeeps, a rickshaw and two motorcycles came there. Subsequently, a truck and a jeep carrying some goods also came to the tower. The truck carrying the goods was owned by one Hasan Adhikari, r/o Mhasla and was driven by Asfaq Kasam Hawaldar (A-38). Alongwith the truck, Dawood Phanse (A-62), Dadamiya Parkar (A-17), Sharif Adhikari, Abdul Gharatkar were there in a jeep. Tiger Memon and his above-mentioned associates carrying guns and pistols got down from another jeep. Sarfaraz Phanse (A-55), Khalil Nazir and Sajjad Nazir kept the watch during this period. After transferring the goods from one vehicle to another all vehicles left from there. The wooden packings of the goods were burnt in the ditch near the tower.

60. Deposition of Vyankatesh Hirba (PW.588) stated that he made the recovery of the truck used in the said offence.

61. The Designated Court has acquitted the respondent (A-38) of the said charges only on the ground that the truck was owned by Hasan Adhikari and the prosecution did not consider it proper to make Hasan Adhikari as an accused or as a witness to find out as to whether the respondent (A-38) had been a regular driver with him and as to whether on that particular date he was on duty. No person had identified him as he was driving the said vehicle on the said date. The confessional

statement of Tulsi Ram Dhondu Surve (A-62) was not corroborated by any other witness/accused.

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

63. We find no cogent reason to interfere with the order passed by the Designated Court and the appeal is accordingly dismissed.

CRIMINAL APPEAL NO.394 OF 2011

State of Maharashtra

Vs.

Ismail Abbas Patel

64. This appeal has been preferred against the final judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993, acquitting the respondent charged under Section 3(3) and Section 120B IPC and other provisions.

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

A. In addition to main charge of conspiracy, the respondent was charged as he participated in the conspiratorial meeting at Dubai, and made the arrangement and financed the trip for his co-accused Shaikh Aziz to Dubai. Thus, he was charged under Section 3(3) TADA and various provisions of IPC.

B. The Designated Court after conclusion of the trial acquitted the respondent of all the charges.

Hence, this appeal.

66. Shri Mukul Gupta, learned senior counsel appearing for the State has submitted that there was ample evidence against the respondent of his involvement in the aforesaid offence. However, the learned Designated Court has wrongly acquitted him. Thus, the appeal deserves to be allowed.

67. Per contra, learned counsel appearing for the respondent has opposed the appeal contending that the findings of fact recorded by the court below are based on evidence and by no means, the same can be held to be perverse. Thus, no interference is called for.

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

69. Evidence against the respondent is his own confession recorded under Section 15 TADA and the confessions of co-accused Ahmed Shah Khan Durrani (A-20) and Aziz Ahmed Mohd. Ahmed Shaikh (A-21).

70. The confession of the respondent and other co-accused i.e. A-20 and A-21 has been discarded by the Designated Court for the reason that it had not been recorded strictly in accordance with the provisions of Section 15 TADA and Rule 15 of TADA Rules, 1987. The confessional statement of these accused had been recorded in two parts and there had been some intervening period for re-consideration. While recording the first part of the confession, the officer recording the statement did not inform the accused that he was not bound to make the confession and further that in case he makes it, it would be used against him as evidence.

71. In the first part of the confessional statement of the respondent as his particulars have been described and further stated that he was giving his confession of his own accord. It was further recorded that the accused had been given 48 hours to reconsider. ?

72. Even in the second part of the confession which was recorded on 4.5.1993 the respondent had not been warned that he was not bound to make the confession. Though he was asked as to whether he was making the statement under any pressure and whether he was willing to make the confession but even then he was not warned that he was not bound to make the statement. The certificate issued by the officer regarding the confessional statement mentions the belief of the recording officer that the statement was signed of his own will.

73. Exactly the same is the position so far as the confessional statements of co-accused Ahmed Shah Khan Durrani (A-20) and Aziz Ahmed Mohd. Ahmed Shaikh (A-21) are concerned.

74. The Designated Court has discarded the confessional statements as the same was not in accordance with the said provisions. We concur with the finding of the Designated Court in view of the law laid down by this court in S.N. Dube (supra), where it was held that the compliance of Section 15 and Rule 15 of TADA, 1987 is mandatory. [Vide: Lal Singh (supra) and Bharatbhai (supra)].

75. As there is no admissible evidence on record connecting the respondent (A-80) to the crime, he has rightly been acquitted by the court below. Thus, no interference is required and the appeal is accordingly dismissed.

CRIMINAL APPEAL NO.1033 OF 2012

State of Maharashtra

Vs.

Rukhsana Mohd. Shafi Zariwala

76. This appeal has been preferred against the final judgment and order dated 2.8.2007, passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No.1 of 1993, acquitting the respondent of all the charges.

77. Facts and circumstances giving rise to this appeal are that : In addition to the main charge of conspiracy, the case against the respondent had been that she accompanied Ashrafur Rehman (A- 71) and helped in the transportation of bags containing 85 handgrenades, 350 electric detonators and 3270 live cartridges of AK-56 rifles from Jogeshwari to Musafirkhana, Bombay. She thereby aided and facilitated the distribution of fire arms, ammunition and explosives which were smuggled into India by the co-accused for terrorist activities.

After conclusion of the trial, the Designated Court acquitted the respondent of all the charges.

Hence, this appeal.

78. Shri Mukul Gupta, learned senior counsel appearing for the appellant-State has submitted that the respondent had accompanied her husband while carrying the arms, ammunition and explosives, and thus, she was guilty of facilitating the distribution of arms, ammunition and explosives etc. Hence, the Designated Court erred in acquitting her of all the charges.

79. Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that the Designated Court has examined the entire evidence and came to the conclusion that she had been unnecessarily dragged in the trial. She was not involved anywhere and merely being the wife of absconding accused, she had been forced to face the trial. Considering the parameters laid down by this Court to entertain the appeal against acquittal, the case is not worth for interference. Thus, the appeal is liable to be dismissed.

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

81. Confessional statement of Parvez Nazir Ahmed Shaikh (A-12) revealed about the incident of transportation of the contraband arms and ammunition from Jogeshwari to Musafirkhana. He disclosed that he was a close associate of Imtiyaz and Tiger Memon. He knew Shafi Zariwala, the husband of the respondent who was working as driver of Tiger Memon very well. He revealed his participation on various times in landing and transportation. On 11.3.1993 at 12 noon he went to the house of Tiger Memon. At that time Asgar was also present there. Tiger Memon (AA) gave him two suit cases, two handbags (just like neck hanging bags) and one big suit case and asked him to go to Musafirkhana. He and Asgar took all the goods and kept the same in room no.17 of Musafirkhana and their curiosity got the best of them and they opened the bags and found that one bag contained AK-56 rifles and the other bag contained some handgrenades and pen shaped pipes. They closed the bag and went to Shafi's house and from there went to Mahim. After some time, Shafi also came by jeep and took him (A-12) to his sister-in-law's house at Jogeshwari. Shafi's wife (respondent herein) was also there. Shafi kept 2 AK-56 rifles and some handgrenades in one bag and in the bag he kept some pistols there. The accused (A-12), Shafi, his wife Rukhsana (respondent) and his sister-in-law all left for Mahim at about 8.30 P.M. Shafi dropped them at Mahim and told them to go to Musafirkhana by a taxi and keep those bags in room no.17 and after that came to Shafi's house. He explained that the goods had been kept at Musafirkhana on the instruction of Tiger Memon (AA). He revealed that after the Bombay Blast on 12.3.1993 he had shifted the contraband from room nos.16 and 17 to the lavatory and further how the recovery was made.

82. So far as the incident of transporting the goods from Jogeshwari to Musafirkhana is concerned, Ashrafur Rehman Azimulla Shaikh (A-71) revealed that he had booked two rooms i.e., Room Nos.16 and 17 on the first floor in Musafir Khana. On the intervening night of 11.3.1993 and 12.3.1993 at about 1.00

a.m. Tiger Memon (AA) called him on telephone and asked him to reach Musafirkhana. Tiger Memon met him there. There were three big suit cases and one small suit case, two hand bags, three or four plastic bags containing cartridges, seven machine guns and seven small pistols etc.

He has given some reference to this incident, however, his statement was discarded by the Designated Court in view of the fact that the officer who recorded his statement did not meet the statutory requirement of giving him the statutory warning that he was not bound to make his confession and if made it would be used against him.

83. We have gone through his confessional statement. No such requirement had been ensured and, thus, the same has rightly been rejected by the court below.

84. The Special Judge acquitted the respondent on the grounds: ?“

(a) That there is no corroborative material available to support the contents of the confession of A-12 Parvez Nazir Ahmed Shaikh and further no recovery has been affected from room No. 17 of the Musafirkhana.

(b) That the confession made by A-71 Ashrafur Rehman in support of A-12 Parvez Nazir Ahmed Shaikh's confession is inadmissible because it was not recorded by the Deputy Commissioner of police (hereinafter referred to as DCP) by following the statutory procedure and that A-71 Ashrafur Rehman was not given the requisite warning that he ?was not bound to make confession. Further, the requisite certificate/memorandum as prescribed in Rule 15 (3) of TADA(P) Rules, was also not recorded”.

85. The parameters laid by this Court in entertaining the appeal against the order of acquittal have to be applied.

86. The only allegation against the respondent had been that she had accompanied her husband (AA) while he carried the arms, ammunition and explosives. Further, there is nothing on record to show that she had any knowledge of such arms, and the purpose for which the same had been brought. Further, the sister-in-law of the respondent was neither made the accused nor a witness. Her husband is still absconding. In such a fact-situation, the findings recorded by the learned Designated Court do not warrant any interference. The appeal lacks merit, and is accordingly dismissed.

CRIMINAL APPEAL NO. 594 OF 2011

The State of Maharashtra

Vs.

Sayyed Ismail Sayyed Ali Kadri

87. This appeal has been preferred against the impugned judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA for Bombay Blast, Greater Bombay, in Bombay Blast Case No. 1/1993, acquitting the respondent (A-105) of all the charges.

88. Facts and circumstances giving rise to this appeal are that : In addition to the main charge of conspiracy, the respondent was also charged for having abetted and knowingly and intentionally facilitating the commission of terrorist acts in effecting the landing of contraband goods such as arms, ammunition and explosives at Dighi Jetty on 9.1.1993. He was further charged for concealing contraband at his house and also in the mango grove of Abdul Razak Subedar and further for his involvement in disposal of the said articles at Kandal Gaon Creek.

89. The Special Judge after conclusion of the trial, acquitted the respondent of all the charges.

Hence, this appeal.

90. Mr. Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the respondent being father of Shabir Sayyed Ismail Kadri (AA) and Jamir Sayyed Ismail Kadri (A-133) (dead after being convicted by the Special Judge) was a party to conspiracy and of the plan of committing terrorist acts and was fully aware as the contraband had been concealed in his house with his consent and connivance. He had also participated when the contraband arms and ammunition were shifted from his house to mango grove of Abdul Razak Subedar and concealed there by digging the earth. He was involved in disposal of the said articles in the creek. The Special Judge has wrongly given the benefit of doubt to him. Thus, the appeal deserves to be allowed.

91. On the contrary, Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that even if his sons Shabir Sayyed Ismail Kadri (AA) and Jamir Sayyed Ismail Kadri (A-133) had been involved in the offence, there is

nothing on record on the basis of which it could be held that the respondent had committed any offence. More so, he had been in jail for 2 ½ years during the trial. He is 70 years of age, old and bed ridden person. The incident occurred 20 years ago, so it is not a case warranting interference against the order of acquittal.

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

Respondent accused (A-105) did not make any confession.

Confession of Faki Ali Faki Ahmed Subedar (A-74):

93. The confessional statement of Faki Ali Faki Ahmed Subedar (A- 74) revealed that Shabir had approached him in the 2nd/3rd week of March, 1993 for help as Feroz Khan had come from Bombay and told him that after the riots the situation was very bad in Bombay and some boxes containing fire arms and bags containing cartridges were to be dumped in the creek. He asked for help taking the said articles in the boat. The accused (A-74) agreed. Shabir, his brother Jamir (A-133, since dead), Abdulla Surti and Gambas (A-81) took out three wooden boxes and 6 green coloured bags kept under the straw and loaded them in a boat lying near the shore of the creek and went in the water towards Kandalwada creek. The next day, Shabir came and told him that certain arms, ammunition and cartridges were to be hidden in the mango grove and he wanted the said accused to help him. The accused went along with him. At that time, Gambas, Abdulla Surti, Jamir and Jamir's father were there in his house. After reaching there, they took out 13 coloured bags containing cartridges and guns wrapped in plastic paper and kept there in three bundles from underneath the straw. These articles were put in the pit prepared earlier in the mango orchard of Abdulla Razak Subedar who was living in Nairobi at the time and the pit was covered with soil.

After about a month, he was interrogated by the police, wherein he disclosed about the said 13 green coloured bags containing cartridges and three bundles containing guns had been hidden in the mango orchard of Abdul Razak Subedar. The hidden material was recovered from the said mango grove and it contained 4 country made guns, 12 foreign made guns, 36 magazines and 26 cartridges. Confession of Jananrdan Pandurang Gambas (A-81):

94. He disclosed that he was not able to maintain a good business so some smugglers persuaded him to purchase one new boat and indulge in transportation

of smuggled goods particularly silver and gold through the sea. Shabir used to give him Rs.1000/- for such activities. On 2.12.1993, he was asked by Shabir Kadri to come to the Jetty at around 9.00 p.m., for unloading silver and gold. So he participated in the said landing and brought the goods to the sea shore with the help of Mohd. Chacha (A-136) and Uttam Potdar (A-30) and for that many persons had helped and Uttam Potdar (A-30) gave Rs. 5,000/- to each and every person for their assistance. After the Bombay Blast, one day Jamir (A- 133, since dead) and his brother Shabir called him (A-81) at Agarwada and he was told that goods unloaded on the last occasion contained guns and explosive substances i.e. “gola barood” and had to be hidden beneath the ground and he was directed to remain present in the mango grove after dinner and dig the pit for hiding the contraband. Accordingly, a pit was prepared and three boxes each containing 4 rifles wrapped in gunny bags and 26 boxes of thermal packing were buried in the ground. He was paid Rs.1,000/- for that job. Shabir threatened him not to disclose the fact to anyone. When these articles were buried, Shabir Jamir, Faki Ali Faki Chacha, Abdulla Surti, Sayyed Ismail Kadri, father of Shabir were also present.

95. The recovery of the said material had been made at the instance of Faki Ali Faki Chacha (A-74) from the mango grove.

96. After appreciating the aforesaid evidence the Special Judge came to the conclusion that the respondent (A-105) had not made any confession. So far as the confession of Faki Ali Faki Chacha (A-74) is concerned, it contained reference regarding the presence of one father, but the same does not specifically reveal A-105 being person while the goods were being concealed after taking them from the house of the respondent-accused to the mango grove. The same conclusion was drawn regarding the confession of Jananrdan Pandurang Gambas (A-81). He (A-81) made a passing remark revealing the presence of respondent A-105 at the relevant time. Still the same specifically failed to depict any act committed by him in relation with the contraband goods. More so, there seems to be some contradiction and variance in the sequence of events as given in the aforesaid confessions. Thus, it was difficult to accept that the said material in confession of the co-accused can be accepted without there being any independent corroboration, though the corroboration was required only on material points and not on each and every point. The confessional statement of the aforesaid accused particularly Faki Ali Faki Chacha (A-74) and Jananrdan Pandurang Gambas (A-81) cannot be said to be cogent enough for establishing involvement of the respondent (A-105) in commission of the acts amounting to a criminal offence required to be strictly proved.

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

98. In the instant case, there is no evidence on record to show that the respondent had been involved in the crime in any manner. If his sons had indulged in the offence, his mere presence in his house, where the contraband had been hidden, would not make the respondent responsible.

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

CRIMINAL APPEAL NO. 402 of 2011

State of Maharashtra

Vs.

Mohd. Ahmed Mansoor

99. 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 in the Bombay Blast Case No. 1 of 1993. The respondent has been acquitted of all the charges.

100. In addition to the general charge of conspiracy, the respondent was charged under Section 3(3) TADA.

101. After conclusion of the trial, the Designated Court acquitted the respondent of all the charges.

Hence, this appeal.

102. Shri Mukul Gupta, learned senior counsel appearing for the State argued that the respondent received the co-accused at Dubai and facilitated their stay at Dubai and further facilitated their transit to Pakistan where they took training for handling of arms and ammunition etc. When co-accused came back from Pakistan through Dubai, their transit and stay was again facilitated by him. Therefore, his acquittal of all the charges deserves reversal.

103. Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that there is no iota of evidence showing involvement of the respondent in any overt act or conspiracy. The well reasoned judgment of the Designated Court does not warrant interference by this court.

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

The respondent did not make any confessional statement.

Evidence against the respondent :

Confessional statement of Mohd. Hanif Mohd Usman Shaikh (A- 92):

105. The accused (A-92) revealed that he got a passport in the year 1987 and visited Dubai and other gulf countries several times prior to Bombay Blast. During the riots in Bombay in December, 1992 and January, 1993, he was working as the driver of Salim Kurla. Salim Kurla asked A-92 to go to Dubai. A-92 agreed and he was paid Rs. 1000/- in cash and Salim Kurla agreed to arrange his ticket etc. Ticket of A-92 to Dubai was arranged by Salim Kurla as was done by him for Sayeed, Usman and Ibrahim. All of them reached Dubai. There two persons named Ahmed and Farooq were waiting for them outside the airport. From there, A-92 and other accused were taken to Delhi Darbar Hotel in two cars. On the next day, Ahmed and Farooq came to the hotel and told them that they would go to Pakistan for work. They were also given some money. After 4 days, Salim, Ahmed and Farooq came to the hotel. Salim told them that their air tickets for going to Pakistan were ready. Thereafter, Salim and Ahmed called them and stated that great injustice had been done to the Muslim community in Bombay riots in December 1992 and January 1993. Thus, in order to ensure that it was not repeated, they should be given training of handling of arms/guns and ammunition. They should be ready to go to Pakistan the next day. Salim, Ahmed and Farooq left the hotel. Next day Ahmed and Farooq came to the hotel and delivered their tickets and passports. After some time, Salim also came. The accused (A-92) went with Usman, Ahmed and alongwith others to Dubai airport. On the way, Ahmed gave one yellow coloured cap to Usman (PW.2) and told him to wear the same after reaching Pakistan so that the person who was coming to receive them, would be able to identify them. In Pakistan, they were received at the airport by one Altaf and taken to the training camp in a jungle. During their training, a person named Ahmed came there and enquired about training. After completion of the training, two pathans took them to

unknown bungalow in a jeep. Thereafter, they came to Karachi and then Dubai and stayed in Delhi Darbar Hotel.

Confessional Statement of Shaikh Ibrahim Shaikh Hussain Shaikh (A- 108):

106. He revealed that he was well acquainted with one Ismail and after the riots in Bombay in December 1992 and January 1993, he suffered a loss in business and used to stay at home. On 16.1.1993, Ismail came to his house and asked him if he had a passport and whether he was willing to go to Dubai. Accused (A-108) told Ismail that he had no money. Ismail told him not to worry about money, he would make the necessary payments. So, he got ready to go to Dubai. A- 108 left for Dubai alongwith co-accused and reached Dubai where two persons named Ahmed and Farooq (whose names were disclosed by Salim) were waiting outside the airport. Ahmed told them next day that they had to go to Pakistan for work and Ahmed gave them each 200 Dinars for their expenses. Ahmed and Farooq had been meeting them and facilitated their stay and subsequent transit to Pakistan. Ahmed gave one yellow coloured cap to Usman (PW.2) and told him to wear it in Pakistan so that they would be identified by the person who would come to receive them at the airport. After reaching Pakistan, Usman (PW.2) wore Yellow coloured cap. One person came to receive them, Usman (PW.2) told him that Ahmed and Farooq had sent them from Dubai. They were taken outside the airport and taken to training camp in a jungle. He (A-108) got injured during the training so he was taken to hospital at Islamabad for treatment. He stayed in the hospital for six days. He was brought to Karachi airport from Islamabad by air by one Yusuf and one unknown person and then he reached Dubai. Yusuf took him to the house of Anees Bhai. Ahmed was also present there. The next day the servant of Ahmed took him to Delhi Darbar Hotel where he met other persons. From there, they came back to Bombay.

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

107. He revealed like other co-accused that he had also gone to Dubai and two persons named Ahmed and Farooq were already waiting for them outside the airport. They had facilitated their stay in Dubai and transit to Pakistan. All arrangements were made by them. When the accused came back after having training in Pakistan Ahmed had given him 200 Dinars for expenses. A-115 revealed that the said accused persons got training in Pakistan. During their training, Ahmed came and enquired about their training. After completion of their training, they came back to Dubai and went to Delhi Darbar Hotel and then on

15.2.1993, Ahmed and Yusuf took them to Dubai Airport and then arrived at Bombay.

108. In his statement, Usman Ahmed Jan Khan (PW-2) made reference to Ahmed without giving his full name and address or any other particular, which may be a decisive factor to determine as to whether the respondent was the real person to whom the witness had been talking about.

109. The Special Judge has given benefit of doubt to the respondent (A-132) reaching the conclusion that the prosecution failed to disclose the correct identity of the accused. None of the witness/accused had referred to his full name or address even once. In such a fact-situation, the Special Judge has rightly given him the benefit of doubt.

110. In the facts and circumstances of the case, as the prosecution failed to fix the identity of the accused who had gone to Pakistan for training, we are of the opinion that the respondent has rightly been given the benefit of doubt.

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

112. The appeal lacks merit, and the judgment and order of acquittal does not deserve interference. The appeal is dismissed accordingly.

CRIMINAL APPEAL NO. 1022 OF 2012

State of Maharashtra

Vs.

Rashid Umar Alwar

113. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007, passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1/93, by which the respondent had been convicted under Section 111 read with Section 135 of the Customs Act, 1962, and awarded the sentence of 3 years alongwith a fine of Rs.25,000/-. However, he had been acquitted of the general charge of conspiracy and second charge under Section 3(3) TADA.

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

A. In addition to the main charge of conspiracy, the respondent (A- 27) was also charged for participating in the landing and transportation of the arms, ammunition and explosives, using his motor truck bearing registration No. MWT-6683, on 3.2.1993 from Shekhadi to Wangni Tower. About 59 bags of RDX explosives were taken by him in his truck alongwith other co-accused to the field of Tulsi Ram Dhondu Surve where it was buried and concealed.

B. After holding the trial, the respondent had been acquitted of the charge of conspiracy, however, he has been convicted for the other charges as mentioned hereinabove.

Hence, this appeal.

115. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that there was sufficient evidence against the respondent (A-27), so far as the participation and transportation of the explosives used in the offences is concerned. Therefore, the acquittal under Section 3(3) TADA and of the charge of general conspiracy is unwarranted. The evidence on record makes it evident that he had knowledge that contrabands were not silver but arms and ammunition. Therefore, the appeal deserves to be allowed and the respondent (A-27) should be convicted for the offences punishable under the aforesaid provisions.

116. Shri Mushtaq Ahmad, learned counsel appearing for the respondent (A-27) has submitted that after appreciating the evidence on record, the Designated Court reached the conclusion after that even if the respondent (A-27) had participated in landing and transportation of contraband, he had no knowledge about its contents. In absence of any knowledge that the contraband contained arms and ammunition, conviction under the provisions of TADA is not permissible. The respondent (A-27) has already served 3 years imprisonment, and paid a fine of Rs.25,000/-. Thus, no further consideration of the appeal is required. Therefore, the appeal is liable to be dismissed.

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

Evidence against him:

Confession of the Respondent Rashid Umar Alware (A-27):

118. In his own confession, Rashid Umar Alware (A-27) has admitted that he owned a truck bearing registration No.MWT-6683 and he drove himself. In the first week of February, 1993 he had participated in the landing and transportation of silver at the behest of other co-accused by driving his truck to Shekhadi village and bringing the contraband. He disclosed that his truck was loaded with contraband and when the truck was moving it was followed by a jeep and they reached Wangni Tower. There two persons took him aside and was asked to wait at one place. After unloading some of the goods he drove the truck away from the Tower. The remaining goods were unloaded and the same was kept in one pit in the land. At that time he was kept at a distance from where unloading of the goods could not be seen. He was paid a sum of Rs.20,000/- for transportation etc.

Confession of Dawood @Dawood Takllya Mohammed Phanse @Phanasmiyan (A- 14):

119. He disclosed that he was a very close associate of Tiger Memon (AA) and used to participate in landing and transportation of smuggled goods/contraband. In the first week of February, 1993, five-seven persons with him had gone for landing at Shekhadi. As per the pre-arrangement, Rashid Umar Alware (A-27) was called from Borli with his truck and 35-40 persons were arranged for loading and unloading the goods. The goods were brought from the trawlers to the shore by Tiger Memon (AA) and other persons armed with guns and were loaded in the truck.

Confession of Muzamil Umar Kadri (A-25):

120. He (A-25) disclosed that he reached Borli village on 3.2.1993 and asked Rashid Umar Alware (A-27) to accompany him with his truck. He came driving his truck at the place of landing. Other accused persons were there. They reached Shekhadi and the goods were loaded in the truck.

Confession of Sajjad Alam @ Iqbal Abdul Hakim Nazir (A-61):

121. He corroborated the version given by other co-accused that on 3.2.1993 the landing took place and the contraband was transported by the truck of the respondent (A-27).

He also disclosed that most of the persons were not permitted to see when the loading and unloading took place at Wangni Tower.

Confession of Tulsi Ram Dhondu Surve (A-62):

122. He (A-62) has corroborated the version given by other co-accused disclosing that the said truck used for transportation belonged to Rashid Umar Alware (A-27) from Borli and he himself was driving the truck. The goods brought in the Wangni Tower contained guns and pistols. The work of loading of the goods from the truck in a jeep and tempo started after bringing the same by truck from Shekhadi. Out of the aforesaid goods 59 bags remained. The said bags were taken by the truck of the respondent (A-27) in the field and were unloaded on the steps of the house with the help of the labourers on the field and the same were covered with the soil. When he asked Dawood whether those were the silver bricks, he was told that it was "Kala Sabun". Tiger Memon (AA) intimidated him and warned not to tell to anyone about the same. Tiger Memon took one bundle from the said bundles and saw the same and ascertained as to whether the goods therein were proper or not and threw the plastic bag at that place and packed the same in another bundle and took the same with him. It was learnt later that one truck had arrived on 4.2.1993 in the evening and carried away the remaining 59 bags.

123. The Designated Court after appreciating the entire evidence on record came to the following conclusion:

"Now with regard to submission canvassed on behalf of A-27 and after carefully considering the material in his confession and the same having shown the manner in which he had acted in episode it is crystal clear that he was full aware that he was involved in an illegal operation. Having regard to same and so also having regard to the amount received by him it will be difficult to perceive that he was not aware that he was effecting any illegal operation. Now considering the acts committed by him clearly denotes of himself having transported the goods brought into the country at a place which was not a port and all the facts regarding the said operation the same are sufficient to denote of the same being a smuggling operation. However, there being no express evidence of A-27 having seen the nature of goods transported and the evidence having indicated that he cannot be said to be a person present at Wangni tower when the exchange of material from vehicles to another vehicle was effected for concealing the same in cavity and the person from Bombay being only present along with Tiger Memon and A-14 A-17 his liability would be restricted for commission of offences

under Customs Act he would be required to be held guilty only for commission of offence under Section 111 r/w Section 135(b) of Customs Act and would be required to be held not guilty for commission of other offences including that of conspiracy in view of his acts being not of a nature for coming to the conclusion of the same being for furthering the object of conspiracy of or involvement of A-27 in the same.” (Emphasis added)

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

125. There is no evidence on record to show that the respondent had any knowledge about the nature of the articles smuggled in India. In view thereof, we do not find any cogent reason to interfere with the well-reasoned judgment of the Designated Court. The appeal lacks merit, and is accordingly, dismissed.

CRIMINAL APPEAL NO. 393 OF 2011

The State of Maharashtra ...Appellant

Versus

Sharif Khan Abbas Adhikari ...Respondent

126. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1/93, by which the respondent had been convicted under Section 111 read with Section 135 of the Customs Act, 1962, and awarded the sentence of 3 years, alongwith a fine of Rs.25,000/-, and in default of payment of fine, to suffer further RI for a period of 6 months. However, he had been acquitted of the charge of conspiracy and charge under Section 3(3) TADA.

127. Facts and circumstances giving rise to this appeal are that : A. In addition to the main charge of conspiracy, the respondent was also charged for participating in the landing and transportation of the arms, ammunition and explosives at Shekhadi, Dist. Raigad, for committing terrorist acts and also by shifting the said contrabands from motor truck bearing registration No. MWT-6683 on 3.2.1993 into tempos and motor jeeps at Wangni Micro Tower Mhasla. B. After holding the trial, the respondent has been acquitted of the aforesaid charges, however, convicted for the other charges as mentioned hereinabove.

Hence, this appeal.

128. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that there is sufficient evidence against the respondent so far as his participation in landing and transportation of the arms, ammunition, explosives etc. Therefore, the acquittal under Section 3(3) TADA, and of the charge of conspiracy is unwarranted. The evidence on record makes it evident that he had knowledge that contraband were not silver, but arms and ammunition. Therefore, appeal deserves to be allowed, and the respondent should be convicted for the aforesaid offences.

129. Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that after appreciating the evidence on record, the Designated Court reached the conclusion that even if the respondent had participated in landing and transportation of contraband, he had no knowledge about the nature of those articles. In the absence of any knowledge that those smuggled goods contained arms and ammunition, conviction under the provisions of TADA is not permissible. The respondent had already served 3 years imprisonment and paid a fine of Rs.25,000/-. Thus, no further consideration of the appeal is required. Thus, the appeal is liable to be dismissed.

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

Evidence against the respondent:

Confession of Khalil Ahmed Sayed Ali Nasir (A-42):

131. He disclosed about the incident of landing and transportation on 3.2.1993 that the goods were brought by the truck by Rashid Umar Alware (A-27) who was driving the truck himself. In the said truck other persons namely Abdul Salam Hishamuddin Nazir, Bashir Fakji, Sharif Khan Abbas Adhikari (A-60), Muzammil Umar Kadri and Azimbhai Pardesi were sitting.

Confession of Tulsi Ram Dhondu Surve (A-62):

132. He was the employee at the Wangni Tower. He disclosed that he knew respondent Sharif Khan Abbas Adhikari (A-60), resident of Mhasla and he was the person who brought Dawood @ Dawood Taklya Mohammed Phanse (A-14) to

him 1 ½ years ago. They had persuaded him (A-62) to help in loading and unloading the smuggled silver and other goods in the tower for a handsome consideration. So far as the relevant incident is concerned, he disclosed that some of the persons including Sharif Khan Abbas Adhikari (A-60) came there with contraband at about midnight and thereafter the goods were loaded in the tempo from the truck. They paid Rs.1,000/- each to the said accused, Harishchandra Surve (PW-108), and Vijay Govind More (PW-137), the other employees at the Wangni Tower. He had been informed by Sharif Khan Abbas Adhikari (A-60) regarding the landing and bringing the goods by Dawood Phanse (A-14) and that is why the accused made all the arrangements. Deposition of Harish Chandra Surve (PW-108):

133. He corroborated the version given by Tulsi Ram Dhondu Surve (A- 62) and regarding the said incident he disclosed that he knew all the co-accused/conspirators. The truck loaded with silver bricks came there and the bricks were shifted in the tempo and jeep. Thereafter all the vehicles left the tower. The deal was arranged by Tulsi Ram Dhondu Surve (A-62) on consideration fixed by Dawood Phanse (A-14). The truck of Rashid Umar Alware (A-27) was carrying silver bricks and wooden boxes of square shape. Silver bricks were wrapped in a gunny cloth. Persons in Maruti car were having small size guns. He had not seen the weapons with the persons who had accompanied the jeep and tempo. He further identified Sharif Khan Abbas Adhikari (A-60) in court to be the person who was in the jeep.

Deposition of Vijay Govind More (PW-137):

134. In respect of the incident dated 3.2.1993, he deposed that Tiger Memon (AA), Dawood Phanse (A-14), Sharif Khan Abbas Adhikari (A- 60), Abdul Gharatkar, Dadamiya Parkar (A-17), Sarfaraz Phanse (A-55) were amongst the said persons. He further deposed that Dawood Phanse (A-14), Sharif Khan Abbas Adhikari (A-60) and others were the occupants of one of the jeep and he also identified Sharif Khan Abbas Adhikari (A-60) in court.

135. The Designated court after appreciating the entire evidence on record came to the following conclusion:

“Now carefully considering relevant material from confession of A-42 and A-62 about which excerpts are recited hereinabove it must be said that though same reveals involvement of A-60 in relevant landing operation still close look at the same and so also other evidence does not reveal any

material indicating that A-60 was aware of nature of material which were smuggled during said operation. The same is obvious as hardly there is any material revealing that A-60 was present alongwith Tiger Memon when packets of goods were opened by Tiger Memon on coast. Similarly, evidence is contrary regarding presence of A-60 at Wangni Tower when goods were exchanged. Having regard to same it will be extremely difficult to hold A-60 guilty for offence under Section 3(3) TADA.”

Having regard to fact that prosecution evidence about which detail dilution is made while recording the reasoning regarding the conclusion arrived about guilt of aforesaid accused and the same amongst other having denoted that A-33 and A-56 were owners of the boat which was used in contraband operation, both of them being involved twice in such operation, and even prior to same themselves and so also A-19 being engaged in such activities, the quantity of goods which was transported by A-19 being 48 cartons i.e. approximately 960 Kg. allegedly being silver as told to them, confession of A-14 revealing amount of Rs.24,000/- being paid to boatmen, A-27 having received an amount of Rs.20,000/- for transportation effected by him. A-60 also being involved twice in transportation operation as disclosed from the confession of A-62 and A-42 and even prior to same himself being involved in smuggling operations are the factors for not accepting submissions advanced for showing leniency on the count of financial condition etc. Needless to add that in the event of crimes being committed for earning handsome profits then hardly there would be any scope to show leniency on said count as the same will have an effect of causing erroneous impression of culprits being permitted to acquire the profits by commission of crimes. Needless to add that the same would warrant of levying a sentence of an appropriate amount of fine in addition to the sentence of rigorous imprisonment.” (Emphasis added)

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

137. There is no evidence on record to show that the respondent had any knowledge about the nature of the articles smuggled in India. In view thereof, we agree with the reasoning given by the Special Judge. No interference is warranted on the facts of the case. The appeal is accordingly dismissed.

CRIMINAL APPEAL NO. 391 OF 2011

State of Maharashtra ...Appellant

Vs.

Sharif Abdul Gafoor Parkar @ Dadabhai ...Respondent

138. This criminal appeal has been preferred against the impugned judgment and order dated 2.8.2007, passed by the Special Judge of the Designated Court under the TADA in the Bombay Blast Case No. 1/93, by which the respondent (A-17) stood convicted under Section 3(3) TADA, and was awarded punishment of 7 years RI and a fine of Rs.50,000/- and in default of payment of fine, to suffer suitable RI, under Section 5 TADA, he was awarded 10 years RI and a fine of Rs.50,000/-, and in default of payment of fine, further R.I. for one year; and under Section 6 TADA, was awarded 14 years RI, and a fine of Rs.2 lakhs, and in default, to suffer further R.I. for 3 years. All the sentences were directed to run concurrently.

As the respondent (A-17) has been acquitted of the charge of conspiracy, the present appeal has been filed by the State.

139. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted, that there is ample evidence on record to show that respondent (A-17) was a close associate of Tiger Memon (AA) and was a party throughout in hatching the conspiracy and, therefore, has wrongly been acquitted for the said charge. In the statement of the respondent (A-17) under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.PC.), before the learned Designated Court, he himself admitted that he was fully aware of the contraband and knew that the same was going to be used against Hindus for taking revenge. Therefore, the appeal deserves to be allowed.

140. Shri Sushil Karanjakar, learned counsel appearing for the respondent (A-17) has submitted that the respondent has already served the sentence of 14 years awarded by the Designated Court and paid the fine and did not file any appeal against his conviction. In spite of the fact that the respondent (A-17) was fully aware that the arms, ammunition and explosives that had been smuggled into India by Tiger Memon (AA) would be used for terrorist activities, he was unable to give any other person this information as he had been threatened with dire consequences. Thus, the respondent (A-17) acted under threat and coercion. It was further submitted that the confessions of the co-accused used by the learned Designated Court to convict the respondent (A-17) were made prior to the date of

the amendment i.e. 22.5.1993 except the confession of Nasir Dhakla (A-64). However, the statement of Nasir Dhakla (A-64) cannot be relied upon as there was no corroboration of the same.

Therefore, at such a belated stage there is no reason to entertain the appeal and convict the said respondent for conspiracy, as he had already suffered enough. Therefore, the appeal is liable to be dismissed.

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

Evidence against the respondent (A-17):

Confessional statement of Dadabhai Parkar (A-17):

142. He disclosed that he was a very close associate of Tiger Memon (AA) and used to participate in smuggling activities. He had been called by Tiger Memon (AA) many times for landing etc. So far as the landing on 3.2.1993 is concerned, he disclosed that on instructions of Tiger Memon he contacted R.K. Singh (A-102), the Customs Officer and told him that he was an informant and asked him to come to hotel Big Splash. He (A-102) expressed his inability to come to the hotel Big Splash but assured that his Superintendent, Sayyed (A-90) would come. The accused (A-17) and Tiger Memon (AA) had some discussion with Sayyed (A-90) and Tiger Memon had told him about his programme of landing of smuggled goods. On 3.2.1993, he (A-17) left with co-accused and participated in the landing and brought the smuggled goods. There was some material in the jeep and cardboard boxes which were covered with gunny cloth. Inside the boxes there was packing of plastic and inside, in some boxes hand bombs, wire, rifles and pistols and cartridges were there. Tiger Memon (AA) had been checking those goods and preparing a list. Baba, Anwar, Shafi and others were keeping the arms and ammunition etc. in the cavities of jeep and tempo. Among the goods that were landed there, a chemical by name black soap was also there. As there was insufficient space in the tempo, Tiger Memon (AA) instructed his man to bury 59 bags in the land opposite the tower. The cardboard boxes and empties were handed over to some persons and they destroyed the same by burning them. As to the packages of "black soap" which had been torn, Tiger Memon gave them to him (A-17) and instructed him (A-17) that he had to be careful while burning them as they may explode. He burnt the same and at that time heard the noise of explosion which was very mild. The work was complete by 5.00 a.m. and they left for Bombay.

Again on 9.2.1993 there was another landing and Tiger Memon (AA), Javed, Yakub, Anwar, Shafi, Imtiyaz, Parvez, Mohd. Hussain etc. all proceeded to Wangni Tower. At that time there were 2 tempos, 4 jeeps and one Maruti car. They went to Coastal side at Shekhadi and after receiving the contraband from the trawler they loaded the same in a truck and came to the tower. Two boxes from the tempo were taken out and broken and the goods like pistols, weapons were adjusted in the cavities of the jeep and the empty boxes were burnt. It was on 19.2.1993 that he was paid a sum of Rs.5 lakhs by Asgar Mukadam @ Munna. He also received Rs.9 lakhs from Shafi and one lakh from Gani. So, in total he received Rs.15 lakhs and after deducting all the expenses, the three partners received Rs.70/75 thousand each. Out of the said 15 lakhs, he had paid to Customs Office, Shrivardhan; Customs Office, Murud; Customs Office Adgaon; Mhasla Police Station, Shrivardhan Police Station, Borli Out post, Trawler owners, trucks and to Hamals.

Confession of Dawood @ Dawood Taklya Mohammed Phanse @ Phanasmian A- 14:

143. The said accused (A-14) disclosed that he had been doing the work of landing of smuggled goods of various smugglers in partnership with Sharif Abdul Gafoor Parkar @ Dadabhai (A-17), resident of village Sandheri and Rahim Abbas Karbalekar @ Rahim Laundriwala of village Shrivardhan for last 5-6 years. He (A-14) had been attending the landing of silver for last 2 years for Tiger Memon (AA). He disclosed that he had visited Dubai at the instance of Tiger Memon and met Dawood Ibrahim Kaskar. He did not know Dadabhai (A-17), however, he could identify him as he had seen his photograph in the newspaper several times. Dadabhai (A-17) asked him (A-14) as to whether he was interested to work for him and he (A-14) said that he had stopped the work of silver smuggling. He would transport chemicals/explosives and arms consignments. After pressing his teeth Dawood Ibrahim told him (A-14) that Babri Masjid had been put to martyrdom and they have to take revenge and then asked how much it would cost. Then Tiger Memon (AA) told him that it would cost about 9-10 lakhs. Tiger Memon (AA) asked him (A-14) to make the arrangements fully.

So far as the incident dated 3.2.1993 is concerned, he (A-14) disclosed that Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) called Rahim Laundriwala and said that landing had to take place that evening and asked him to make all arrangements and to talk with Customs officers. He (A-17) disclosed about the landing and bringing the smuggled goods by the trucks. He (A-17)

came with Tiger Memon (AA) in his jeep and reached the tower where Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) and Tiger's men were already present. Tiger's men unloaded the goods from the truck. The boxes contained Rifles, pistols, ammunition, wire, handgrenades, and something looking like black soap. Out of the said boxes, Tiger Memon found something like white pencil and showed it to Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) and told him (A-17) that it could blow up Oberoi Hotel. He (A-14) further disclosed that he (A-17) had loaded the boxes in the truck of Rashid, there were 59 items and he (A-17) asked Rashid to unload them at the spot which had been dug up for this purpose. Two- three days thereafter, Sharif Abdul Gafoor Parkar @ Dadabhai (A-17) told him (A-14) that the black soap had been loaded by him and other persons in the tempo.

Confessional statement of Asgar Yusuf Mugadam (A-10): 144. He (A-10) disclosed that he (A-17) was very close associate of Tiger Memon (AA) and had participated in the smuggling activities etc. and was involved in landing and transportation of silver, arms and ammunition with Tiger Memon (AA). So far as the present respondent (A-17) is concerned, he deposed that Tiger Memon (AA) had told the accused (A-10) that Fifteen Lakh rupees are to be given to Dadabhai (A-17) for landing. The accused (A-10) and Parvez took Rs. 5 lakhs from Chokshi and gave it to Dadabhai (A-17) after going to his residence in Juhu.

Confession of Abdul Gani Ismial Turk (A-11):

145. So far as the present respondent (A-17) is concerned, he stated that he was a close associate of Tiger Memon (AA) who was dealing with the smuggling of gold and silver. He used to go to Mhasla in District Raigad, intermittently. In the first week of September, 1992, he went alongwith Tiger Memon (AA) and others to Mhasla by jeep and Maruti car. On the way, they met Dadabhai (A-17) also. He was indulging in landing and transportation and the respondent (A-17) alongwith 40-50 persons. On about 3rd February, 1993, he disclosed that at about 1 O'Clock in the night, Tiger Memon (AA) came with many persons including Dadabhai (A-17) alongwith a motor lorry and the goods on that lorry were unloaded at one room of Wangni Tower. Tiger Memon (AA) checked all the goods in their presence and they had witnessed 70/80 black coloured boxes of chemical, 250/300 handgrenades, 15/20 small pistols and 60-70 big rifles, wires like electrical wires, empty magazines (cassettes) of rifles and large number of bullets. All these were packed in cardboard boxes, carton and gunny bags. In respect of the incident dated 8th/9th March, 1993, this accused (A-11) disclosed about the presence of the said

respondent (A-17) alongwith other co- accused persons who had already reached by a Maruti-1000 car at Vesava at about 4.30 a.m. There they took 'Sarai' and then went to the hill side in the jungle, where Tiger Memon (AA) was throwing handgrenades in the ditch in order to give training to 5-7 persons. Those persons also practiced on operating rifles. This training went on for two hours. Dadabhai (A-17) was staying downside. When around 5-6 persons assembled there on hearing the sound of gun-firing, Dadabhai (A-17) told them that film shooting was going on the hill, so they went away. Those persons were known to Dadabhai (A-17). It was at that time about 12 O'clock in the noon, those persons after getting training, came down and handed over empty magazines to Dadabhai (A-17) and left for Bombay.

Confessional statement of Parvez Nazir Ahmad Shaikh (A-12):

146. So far as the present respondent (A-17) is concerned, he disclosed that on 3rd February, 1993, after landing the smuggled goods, they were brought to the Wangni Tower in a motor lorry by Tiger Memon (AA) alongwith other co-accused, namely, Shafi, Anwar, Javed, Yakub, Dadabhai (A-17) and Dawood Taklya (A-14) etc. All the goods in the lorry were unloaded in the Wangni Tower and in accordance with the number series written on the packages, all the goods were separated from each other. After shifting the goods/contraband, all the material which was used for packing was burnt by Dadabhai (A-17) and his men, and as there was no space in the vehicles for keeping 59 bags of chemical, they were loaded again in the truck, what happened of those thereafter, he (A-12) did not know. He further deposed that Tiger Memon (AA) had shown a pencil like article and said that this pencil costs Rs.25,000/- and with this pencil, he could explode one Oberoi Hotel. In the entire incident of smuggling on 3rd February, 1993, Dadabhai (A-17) was all along with Tiger Memon (AA) alongwith other persons.

Confessional statement of Mohomed Iqbal Mohomed Yusuf Shaikh (A-23):

147. He disclosed in respect of the incident of landing/transportation, and corroborated the statements of other co- accused and disclosed that Dadabhai (A-17) was present and participated in the said activity and he (A-17) was present when the bomb was thrown by Tiger Bhai and Mehmud while training certain persons on the hillock. After hearing the sound after the explosion, Tiger Memon (AA) told Dadabhai (A-17) that the said hillock was not safe. Then Dadabhai (A-17) took them to another place. The said hill was far away from the earlier place in the jungle. Tiger Memon (AA) made the accused (A-23) and other persons practice

gun firing by rifle AK-56. After having training, they came down the hill and found Dadabhai (A-17) standing there near the car and from there they came back to Bombay.

Confessional statement of Shanawaz Abdul Kadar Qureshi (A-29):

148. He corroborated the other co-accused and he disclosed that when landing took place, they brought the contraband and started unloading and separating the goods which were wrapped in gunny bags. The rest of the 50-60 big boxes which were very big, were again loaded in the same truck by them. The empty cartons were burnt by Dadabhai (A-17) and his men. After loading the articles, the truck left.

Confessional statement of Bashir Ahmad Gani Khairulla (A-13):

149. He disclosed that when they went for landing, Tiger Memon (AA) was accompanied by various co-accused including Dadabhai (A-17).

Confessional statement of Manoj Kumar Bhanwar Lal Gupta (A-24):

150. He disclosed that at about 4.00 p.m., on 2nd February, 1993, Tiger Memon (AA) came to the Mhasla Tower alongwith 25 boys including Dadabhai (A-17).

Confessional statement of Muzammil Umar Kadri (A-25):

151. He disclosed that Dadabhai (A-17) was the partner of Rahim Laundrywala and Dawood Taklya (A-14) and he had seen all of them near the Wangni Tower.

Confessional statement of Syed Abdul Rahman Kamruddin Syed (A-28):

152. He disclosed the involvement of Dadabhai (A-17) alongwith others in the purchase of sacks for loading and unloading from a firm.

Confessional statement of Khalil Ahmed Sayed Ali Nasir (A-42):

153. He disclosed that respondent (A-17) was a close associate of Dawood Taklya (A-14) and Rahim Laundrywala.

Confessional statement of Mohammed Rafiq @ Rafiq Madi Musa Biyariwala (A-46):

154. He disclosed that during the relevant period of 3rd February, 1993, they had been staying at Alibagh alongwith respondent (A-17). He left with Shafi for Sandheri village. The lorry also followed them. On reaching the village Sandheri, Dadabhai (A-17) loaded 40-50 bundles of empty gunny bags in the lorry. Dadabhai (A-17) loaded the truck with 59 gunny bags. The said accused and Dadabhai (A-17) went to the house of Dadabhai (A-17) in Maruti car and found two jeeps already parked near the house.

Confessional statement of Sujjad Alam Abdul Hakim Nazir (A-61):

155. He corroborated the version of the other accused in respect of the loading and unloading at Wangni Tower on 3rd February, 1993 and disclosed that Dadabhai (A-17) was also present there.

Confessional statement of Tulsi Ram Dhondu Surve (A-62):

156. He disclosed about the loading and unloading of contraband at Wangni Tower and participation of Dadabhai (A-17) alongwith other accused.

Confessional statement of Nasir Abdul Kadar Kewel @ Nasir Dhakla (A-64):

157. He corroborated the version of Tulsi Ram Dhondu Surve (A-62) in all material respect.

Confessional statement of Gulam Hafiz (A-73):

158. He was a hotel employee and disclosed that at the relevant time, respondent (A-17) who was a landing agent of Tiger Memon (AA), and smuggler of gold and silver, came there to the hotel alongwith a person and from there they went to Wangni Tower.

Confessional statement of Mohamed Sultan Sayeed (A-90):

159. He disclosed about the meeting in the hotel with Dadabhai (A-17) and he has called the said accused to furnish some information about landing etc. as he wanted to give secret message to Shri R.K. Singh, Assistant Collector (A-102). He (A-90) also disclosed that this accused (A-17) was son-in-law of A.R.Antulay's sister.

Confessional statement of Mohd. Parvez Zulifkar Qureshi (A-100):

160. He also corroborated the version of other witnesses/accused, in all material respect and supported the case of the prosecution.

Evidence of Usman (PW-2) :

161. According to his deposition, the witness himself was involved in anti-social activities. He knew respondent (A-17). It was respondent (A-17) who booked the room in hotel Big Splash for the boys of Tiger Memon(AA). Respondent (A-17) helped Tiger Memon (AA) in collecting bags from the trawler. He was the person who had supplied the boys, for loading and unloading the contraband and after shifting the goods, the empty boxes of RDX etc. were destroyed by respondent (A-17). This witness also identified the respondent (A-17) in court.

Evidence of Vijay Govind More (PW-137) :

162. According to this witness, the respondent (A-17) was involved in the smuggling and in the incident of February 1993. He was the agent of landing and transportation with Dawood Phanse (A-14) and had brought the goods to Wangni Tower. Therein, it was shifted from truck to tempos.

163. Harish Chandra Surve (PW-108) corroborated the version given by the respondent (A-17) and he (PW.108) deposed that he had come on the relevant date, i.e., on 3rd February at Wangni Tower alongwith Dawood Phanse (A-14) in jeep and he participated in shifting the goods from truck to tempos. He identified respondent (A-17) in the court.

164. Narendra Thale (PW-141) is the employee of Hotel Big Splash and deposed that respondent (A-17) booked the rooms in Hotel Big Splash and thus, corroborated the version given by Parvez Nazir Ahmed Shaikh (A-12).

165. Vijay D. Kadam (PW-344) supported the version of other witness/ accused and particularly in respect of booking the rooms in Hotel Big Splash by respondent (A-17).

166. Dileep M. Katarmal (PW-284) deposed that he was the Manager of the Company from where the jute bags were purchased in bulk and it was respondent (A-17) with his son Mujib Sharif Parkar (A-131) who had purchased the bags.

167. Jahi S. Kirkire (PW-285) corroborated the version of Dileep M. Katarmal (PW.284) in respect of purchase of gunny bags. Suresh Meecheri (PW.485) is the recovery witness.

168. The aforesaid evidence was considered and appreciated by the learned Designated Court, which recorded the following conclusions:-

i) Respondent (A-17) was guilty of the offences charged directly against him which in its term established his engagement to carry out the object of the conspiracy and it made him guilty in the conspiracy charge also.

ii) Respondent (A-17) was fully aware about the nature of goods smuggled into India that it contained rifles, pistols, bullets, detonators, hand-grenades etc.

(iii) That in spite of the knowledge of nature of contrabands/smuggled goods, respondent (A-17) continued with the operation which he had undertaken.

(iv) Applying the test of judicial pronouncements by this Court, respondent (A-17) was party to a conspiracy for which charge at head firstly was framed against him.

(v) Hardly there was any evidence to reveal that respondent (A-17) was present in the meeting which had taken place in Hotel Big Splash by Tiger Memon.

(vi) Though there was some evidence which created suspicion of high degree regarding involvement of respondent (A-17) in conspiracy for which charge at head firstly was framed, respondent (A-17) was not liable for conspiracy as it was not proved that he was a party to the agreement for commission of illegal acts. As he had not been the party to such meeting, he could not be held liable for conspiracy on the said count alone.

(vii) Respondent (A-17) had effected the landing and continued with the said landing in spite of acquiring the knowledge of said landing being not of silver and being of arms, ammunitions and explosive substance. He was not liable for offence of conspiracy as his act had not transcended beyond effecting the said landing for which he had agreed before knowing precise nature of goods to be smuggled.

(viii) Respondent (A-17) did not do anything to furthering the object of conspiracy. Therefore, he could not be held liable for the offence of conspiracy. Thus, he did not act for furthering the object of conspiracy and was not liable for the said offence. More so, he did not participate in the crime committed at Bombay in furtherance of the object of conspiracy.

The aforesaid findings make it crystal clear that they were mutually inconsistent and could not be in consonance with each other.

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

170. The respondent (A-17) while making his statement under Section 313 CrPC answered the court as under:

“I knew that all the weapons and explosives were to be used in Mumbai and that Bombay Blast were to be brought about at various places and that revenge on Hindus was to be taken. But since Tiger Memon had threatened him he did not disclose the same to anyone.”

171. The Special Judge recorded the finding that the respondent did not do anything to further the object of conspiracy. However, landing was not of silver and gold, but of arms, ammunition and explosives. The respondent was fully aware of the nature of the smuggled articles and also the purpose for which the contraband goods had been smuggled into India. Even after having such a knowledge, his close association with Tiger Memon (AA) confirmed and he participated and facilitated the transportation of the said articles.

In such a fact-situation, the Special Judge was not justified in acquitting the respondent (A-17) of the charge of conspiracy. The appeal is allowed. The respondent is convicted for the charge firstly, and awarded the life imprisonment. He 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. 1027 OF 2012

State of Maharashtra

Vs.

Manoj Kumar Bhanwarlal Gupta

172. This criminal appeal has been preferred against the impugned judgments and orders dated 5.6.2007 and 2.8.2007 passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No. 1/93, by which The respondent (A-24) has been acquitted of the charge of conspiracy and has been convicted under Section 3(3) TADA and has been awarded the sentence of 7 years RI and a fine of Rs.50,000/-, and in default of payment of fine to suffer further RI for a period of one year. Further, under Section 5 TADA, he was awarded 10 years imprisonment and a fine of Rs.1 lakh, and in default of payment of fine to suffer further RI for three years. He was further found guilty under Section 6 TADA and was awarded the sentence of 14 years and a fine of Rs.1 lakh, and in default of payment of fine to suffer further RI for three years. He was also convicted under Section 3(3) TADA and Section 201 IPC, and was awarded 5 years imprisonment and a fine of Rs.25,000/-, and in default of payment of fine to suffer further RI for a period of six month. All the sentences have been directed to run concurrently.

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

A. In addition to the main charge of conspiracy, the respondent (A- 24) was charged under Section 3(3) TADA, for his participation in weapons' training conducted by Tiger Memon for handling arms, ammunition and explosives which took place at Sandheri and Bhorghat, (Dist. Raigad) and his association in smuggling, landing and transportation of the arms, ammunition and explosives on 3rd and 7th February, 1993; thirdly, he was charged under Sections 5 and 6 TADA for having possession of 2 pistols, one revolver and one country made pistol unauthorisedly; and lastly for his involvement in disposal of 59 packages of explosives i.e. RDX, by engaging the services of others and throwing them at Nagla Bunder Creek. He (A-24) was thus found guilty under Section 3(3) TADA and Section 201 IPC.

B. After conclusion of the trial, the respondent was held guilty of the charges as referred to hereinabove, but has been acquitted of the charge of conspiracy.

Hence, this appeal.

174. Mr. Satya Kam, learned counsel appearing for the appellant has submitted that the involvement of the respondent (A-24) had been from the very beginning and he had been in close association of Tiger Memon (AA) and was involved in hatching the conspiracy, assisting him in landing and transportation of arms, ammunition and explosives. Therefore, he ought to have been convicted for the first charge. Thus, the appeal deserves to be allowed.

175. On the contrary, Ms. Farhana Shah, learned counsel for the respondent (A-24) has submitted that he had already served the sentence of 14 years and deposited the fine, and has already suffered a lot. Therefore, it is not warranted to entertain this appeal against his acquittal in view of the parameters laid down by this Court in this regard. Therefore, the appeal is liable to be dismissed.

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

177. Evidence against the respondent (A-24):

- (a) Confessional statement of Manoj Kumar Bhanwarlal Gupta (A-24)
- (b) Confessional statement of Imtiyaz Yunusmiya Ghavte (A-15)
- (c) Confessional statement of Noor Mohammed Haji Mohammed Khan (A-50)
- (d) Confessional statement of Nasir Abdul Kader Kewal @Nasir Dakhla (A-64)
- (e) Confessional statement of Tulsi Ram Dhondu Surve (A-62)
- (f) Confessional statement of Mohd. Dawood Mohd. Yusuf Khan (A-91) (g) Confessional statement of Shahnawaz Abdul Kadar Qureshi (A-29) (h) Confessional statement of Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58)
- (i) Deposition of Mohd. Usman Jan Khan (PW.2)

178. Confessional statement of Manoj Kumar Bhanwarlal Gupta (A-24) :

His confessional statement was recorded on 30.4.1993 and 9.5.1993. The respondent (A-24) in his confessional statement had disclosed that he had been indulged in the criminal activities since very young age and had committed murders and was indulged in Hawala business with Ijaz Mohd. Sharif @ Eijaz Pathan @ Sayyed Zakir (A- 137-dead) who was living at that time in Dubai as well as in Bombay. He had murdered Majeed in 1986 and absconded. He had also committed the murder of one Hameed alongwith Dawood Shamsheer Aziz. Even though, he had been arrested several times in most of the cases but, he had been granted bail.

In July 1989, he had murdered Kamaljit Singh as per the instructions of Ayub and then murdered one Mahmood who had murdered his friend Kailash Jain in Udaipur, Rajasthan. However, in these cases he remained absconding. Further in January, 1992, he came back to Bombay and started Hawala business and at that time he stabbed a person named Hallu and remained absconded. He had developed close association with Tiger Memon (AA). On 2.2.1993, Tiger Memon, Hazi Yakoob @ Hazi Yeda Yakoob (AA) accompanied by 20-25 persons went to Mhasla tower and met Dawood @ Dawood Taklya Mohammed Phanse @ Phansmiya, (A-14) and Dadabhai (A-17) there. They all went to Shekhadi alongwith Tiger Memon where he (AA) alongwith others went in the sea and came back with certain bags. The bags were containing AK- 56 rifles, handgrenades, magazines and pistols.

Tiger Memon gave him (A-24) one AK-56 rifle, 2 loaded magazines and 1 bag containing handgrenades. Tiger Memon asked him (A-24) to sit alertly on the sea-shore and also explained to him the procedure of using the handgrenades by removing its pin. After some time, a truck came there and the goods were shifted from boats into the truck. He went to Mhasla Tower by another jeep where the packets were unloaded and opened. There were AK-56 rifles, handgrenades, pistols and cartridges in those packets. He had seen those packets containing black soap. The black soap was unloaded in two tempos and weapons and cartridges were loaded in jeep and tempos in the cavities made therein. Altogether, there were five jeeps and two tempos for all these goods. On the instructions of Tiger Memon, the vehicles left in different directions. Tiger Memon and Haji Yeda Yakoob told him (A- 24) to stay in the house of Hazi Yakoob at Khar, and he (A-24) stayed there.

Respondent (A-24) again participated in the second landing on 9.2.1993 wherein unloading of goods started and were unloaded within two hours.

Tiger Memon (AA) brought the goods to Mhasla Tower and left next morning for Bombay. Tiger Memon (AA) paid him (A-24) a sum of Rs.20,000/- for the job. Ijaz Pathan (A-137) telephoned him from Dubai and warned him not to disclose it to anybody. Further, Respondent (A-24) was contacted by the co-accused for the disposal of 59 packets stored in a godown and he had taken Rs. 5 lacs for doing the job and got the said goods destroyed through his persons in Nagla Bunder Creek. He (A-24) disclosed that the contraband used in Bombay Blast were the same which had been unloaded at Shrivardhan.

179. Confessional statement of Imtiyaz Yunusmiya Ghavte (A-15):

He (A-15) has disclosed that on 3.2.1993, Tiger Memon and other people were there at Shekhadi, and Munna (A-24) was also one of them. They were carrying bags on their back. When the bags were opened it contained AK-56 rifles, handgrenades, magazines, cartridges and explosives. Tiger Memon was noting down the calculation of the unloaded articles in his diary. He (A-15) has disclosed that in the second week of February 1993, Munna (A-24) was given two rifles at the instance of Bhai which were brought by him in a suitcase. The accused witness, Shaikh Ali, Munna (A-24) and three other persons were asked to sit in the tempo containing 84 bags of the explosives.

180. Confessional statement of Noor Mohammed Haji Mohammed Khan (A- 50):

He has also made the disclosure statement in respect of the disposal of the 59 bags containing RDX in a godown which were thrown with the help of Munna (A-24) at the instance of Rashid Khan. He (A- 50) has disclosed that he asked Rashid Khan to help him in arranging the said material. Rashid told him that he would get it done through his friend Munna (A-24), who has a large number of boys to do the said job. They decided to pay Munna (A-24) a sum of Rs.5 lakhs for throwing the material and the 59 packets containing RDX in the Nagla Creek by the boys of Munna (A-24).

181. Confessional statement of Nasir Abdul Kader Kewal @Nasir Dakhla (A-64):

This accused (A-64) has disclosed about the landing at Shekhadi in which Munna (A-24) had participated with others. He (A-64) has disclosed about the full participation of Munna (A-24) in landing and transportation of arms and ammunition brought from Shekhadi to Bombay in the tempo of Haji and

further disclosed that he had always been moving alongwith Tiger Memon (AA) during the said operation.

182. Confessional statement of Tulsi Ram Dhondu Surve (A-62):

This accused had disclosed about the incident at Wangni Tower on the relevant date and disclosed that Munna (A-24) was with Tiger Memon at Wangni Tower alongwith other persons, and they first unloaded the contraband at Wangni Tower and then uploaded it in the jeep and tempo and most of the persons were armed with guns and pistols there.

183. Confessional statement of Mohd. Dawood Mohd. Yusuf Khan (A-91):

This accused has disclosed that 7-8 days before Ramzan in 1993 he went to M.K. Builders, Bandra on the instructions of Ijaz Bhai (A- 137) from Bombay and there he met with Dev who contacted Ijaz Bhai (A- 137) and told him that A-24 had arrived. At that time Ijaz (A-137) and Munna (A-24) came out of the office, and gave him the key of the vehicle parked outside. They all boarded the vehicle and Munna (A-24) sat in the back seat. He (A-24) saw a black bag lying on the back seat and Ijaz (A-137) told him about the three stunguns lying inside the bag, and asked him to keep them in his house for some time. When they reached Kurla, Ijaz (A-137) asked Munna (A-24) to leave. Thereupon, Munna (A-24) took the bag from the back seat and handed it over to the accused witness (A-91).

184. Confessional statement of Shahnawaz Abdul Kadar Qureshi (A-29):

He (A-29) has disclosed that on the last days of January or in the first week of February, 1993, Javed Chikna asked (A-29) to accompany him to receive the smuggled goods of Tiger Memon. They went to Jetty and found three boys there including Munna (A-24), who also participated in the landing and transportation.

185. Confessional statement of Shaikh Mohmed Ethesham Haji Gulam Rasool Shaikh (A-58):

This accused (A-58) has disclosed that Munna was in close association of Tiger Memon and of other co-accused, and was staying in the house of Haji Yakoob @ Yakoob Yeda (AA).

186. Deposition of Mohd. Usman Jan Khan (PW.2):

He has deposed that in December 1992, riots took place in Bombay and Javed Chikna was wounded by a police bullet and was admitted in the hospital. He (PW.2) and Shahnawaz visited him there. While attending the funeral of the son of Aziz, he met Shafi, the driver of Tiger Memon. Shafi spoke in confidence with Javed Chikna and Javed Chikna took the witness accused alongwith him on the next day to the coastal area where Tiger Memon's goods were coming. He (PW.2) had participated in the landing and transportation alongwith the other persons and Munna (A-24) was also one of them. He had met Tiger Memon in hotel Big Splash in Rooms nos. 51, 54 and 55 booked. They stayed there and at that time they were told by Tiger Memon that the government failed to stop the humiliation of Muslims, thus, he had arranged some arms and ammunition from Pakistan which were to reach on that day. In the said meeting, a large number of persons were there including Munna (A-24).

He has also deposed his participation in landing on 3rd and 7th February, 1993 in which the arms, ammunition, particularly AK-56 rifles, pistols and handgrenades had been smuggled. Karimullah was also there. They had brought the material to Wangni Tower. After unloading and opening the same they were again shifted in the jeeps and tempos, and were brought to Bombay. Munna (A-24) was also in the party.

187. The Special Judge had recorded the finding that the corroborative material supported his involvement in the Shekhadi landing and transportation, and he was absconding alongwith other accused. However, he was acquitted from the first charge on the basis of following reasons:

“Due to his involvement in Shekhadi landing he could be convicted under Section 3(3) TADA, but it would be significant to note even the evidence pertaining to Shekhadi landings and acts committed by Munna (A-24) in connection with said landings for which he had been held guilty clearly reveal that Munna (A-24) was not the main person responsible for effecting the said landing nor had played any prominent role except escorting Tiger Memon who was effecting the said landing and the goods which were to be landed and were to be transported from Shekhadi to Wangni Tower and thereafter to Bombay. Even considering the role played by Munna (A-24) who participated in the said landing clearly appeared to be on much lower pedestal than the other who were primarily responsible in organizing and effecting the said landing i.e. Tiger Memon, A-14, A-17, A-15 and few

more. Even considering his further acts for which he has been held guilty under Sections 5 and 6 of TADA, it was clear that same were not committed by him in pursuance of any conspiracy of Bombay Blast. Further, considering the quantum of contraband arms and ammunitions of pistols, revolver and country made pistol he could be found guilty for commission of offences under Sections 5 and 6 TADA. Even considering his role played by him in disposal of RDX, it was clear that though he was involved still he was not the main person in disposal of the said RDX or the same was the material which was brought in Shekhkadi landing by Tiger Memon and stored in the godown. His involvement was only that he had been upto hotel at Ghodbunder. He had hardly played any prominent role in disposal of any RDX and had allowed his name to be used by other accused for knocking handsome amount of money from Noor Mohammed Haji Mohammed Khan (A-50) in whose godown such material was found stored. Evidence further revealed that he could receive only a sum of Rs.10,000/- out of the amount of Rs.5 lakhs which was taken by accused Mohd. Jindran and Rashid Khan from Noor Mohammed Haji Mohammed Khan (A-50) for disposal of the said material. Therefore, he cannot be held responsible for acting in pursuance of main conspiracy and his case would definitely fall on lower pedestal than such other accused persons who were repeatedly committed different acts in pursuance of main conspiracy.”

(emphasis added)

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

189. From the confessional statement made by the accused it can be ascertained that he (A-24) was aware of the arms and ammunition being landed. He stated that he was given arms and further, was told to sit on alert. He also stated that Tiger Memon (AA) even taught him how to use handgrenades and also paid him for his services. He was also later contacted by co-accused for the disposal of 59 packets stored in a godown and was paid Rs. 5 lakhs for the same. He further revealed that the contraband used in the Bombay Blast of 12.3.1993, was the same as had been landed by him and other co-accused at Shrivardhan. Co-accused Imtiyaz (A-15), Noor Mohammed (A-50), Nasir Dhakla (A-64), Tulsi Ram (A- 62) Dawood Yusuf (A-91), Shahnawaz (A-29) and Ethesham (A-58) have corroborated the knowledge of the respondent and the fact that he was present when the landing was taking place.

190. The involvement and participation of Munna (A-24) was throughout the main conspiracy. The order of the learned Designated Court acquitting him on the charge of larger conspiracy is perverse, in view of the evidence on record. Therefore, conspiracy stands proved. Judgment to that extent is set aside and the appeal is allowed, and the sentence is enhanced to 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. 597 OF 2011

State of Maharashtra through CBI

Vs.

Sarfaraj Dawood Phanse

191. 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 the Bombay Blast case, Greater Bombay, in the Bombay Blast Case No. 1/93, by which the respondent has been convicted under Section 3(3) TADA and acquitted of the main charge of conspiracy.

192. In addition to the main charge of conspiracy, the respondent (A- 55) has been found guilty for offence punishable under Section 3(3) TADA, and on the said count, he has been convicted and sentenced to suffer RI for 9 years, alongwith a fine of Rs.25,000/-, and in default, to suffer RI for 6 months. However, the respondent has been acquitted of the first charge of conspiracy.

Hence, this appeal.

193. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that acquittal of the respondent on the charge of conspiracy is unwarranted and uncalled for as large number of co- accused, particularly, Abdul Gani Ismail Turk (A-11), Suleman Mohammed Kasam Ghavate (A-18), Ibrahim (A-41), Sajjad Alam (A-61), Tulsi Ram Dhondu Surve (A-62), Mohd. Sultan Sayyed (A-90) and the depositions of Harish Chandra Surve (PW-108) and Vijay Govind More (PW-137) specifically revealed a very deep involvement of the

respondent in the offence and the evidence is sufficient warranting his conviction for the charge of conspiracy also. Therefore, the appeal deserves to be allowed.

194. On the contrary, Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that he had already served the sentence of 10 years, though awarded the sentence of 9 years, and also deposited a fine of Rs.25,000/-. There is nothing on record to implicate the said respondent in conspiracy, as he had no knowledge as what was going to happen, and he had no intention to participate in the offence, for which he has been charged so far as the conspiracy is concerned. Therefore, no further conviction is required.

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

196. Respondent has not made any confessional statement. Confessional statement of Abdul Gani Ismail Turk (A-11) :

197. The confessional statement of Abdul Gani Ismail Turk (A-11) revealed that on 8th/9th February 1993, Suleman Mohammed Kasam Ghavate (A-18) and (A-11) returned to Mhasla from Panvel after meeting Tiger Memon (AA), when they were carrying the goods brought from Mhasla and went to the house of accused Dawood @ Dawood Taklya Mohammed Phanse (A- 14), and thereafter accused Sarfaraj Dawood Phanse (A-55) had accompanied Abdul Gani Ismail Turk (A-11) and Suleman Mohammed Kasam Ghavate (A-18) to Bombay and they dropped Sarfaraz Dawood Phanse (A- 55) at the guest house at Bandra at the say of Dawood Phanse (A-14). Confessional statement of Dawood @ Dawood Taklya Mohammed Phanse (A- 14) :

198. The confessional statement of Dawood Phanse (A-14) revealed that after his arrival from Bombay, Sarfaraz Dawood Phanse (A-55) told him that the absconding accused Shafi had been to their house and told that he had kept the weapons in the house of Muzammil Umar Kadri (A- 25).

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

199. The confessional statement of Suleman Mohammed Kasam Ghavate (A- 18) disclosed that the said accused had been to Mhasla alongwith Abdul Gani Ismail Turk (A-11) and Uttam Shantaram Potdar (A-30) for bringing the part of the goods which had been smuggled in the first landing operation. He also corroborated the meeting of Abdul Gani Ismail Turk (A-11) and Suleman Mohammed Kasam

Ghavate (A-18) with Tiger Memon (AA) at Panvel and had given the message of Tiger Memon (AA) to Dawood @ Dawood Taklya Mohammed Phanse (A-14) and thereafter taken the accused (A-55) alongwith him to Bombay.

Confessional statement of Sajjad Alam (A-61):

200. The confessional statement of Sajjad Alam (A-61) revealed that on 20.1.1993 that said accused (A-61) had gone to the house of his grandmother and at that time he found accused Muzammil Umar Kadri (A- 25) present taking 16 rifles and 32 magazines by a jeep alongwith accused (A-55).

Confessional statement of Tulsi Ram Dhondu Surve (A-62):

201. The confessional statement of Tulsi Ram Dhondu Surve (A-62) disclosed that during the second landing and transportation operation of contraband goods organised by Dawood @ Dawood Taklya Mohammed Phanse (A-14) and Tiger Memon (AA), accused (A-55) was also present near Wangni Tower alongwith other co-accused.

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

202. The confessional statement of Mohd. Sultan Sayyed (A-90) disclosed that on 12.2.1993, respondent (A-55) had been to the rest house at Mhasla and enquired about R.K. Singh, Assistant Custom Collector (A-102). The respondent (A-55) was carrying one plastic bag containing Rs.3 lacs with him which he handed over to R.K. Singh.

203. The Designated Court after considering the entire evidence came to the following conclusion:

“53-B) Thus considering material contained in confessions of above stated accused and so also evidence to which brief reference is made in the later part it can be safely said that A- 55 who is son of main landing agent responsible for Shekhadi landing i.e. A-14 was involved not only in said landing but so also even earlier to same in committing nefarious activities. Needless to add that as denoted by further dilation involvement of A-55 in commission of acts for which he is charged at head 2ndly and, consequently in commission of offence u/sec. 3(3) of TADA Act is squarely borne from the same.

With regard to argument canvassed that material in above referred confession or that of witnesses pertaining to events which had occurred at Wangni Tower not disclosing any positive overt act on part of A-55 or that at time of exchange of goods he was not at Wangni Tower or that he was only travelling on motor cycle etc. and as such himself being involved by Investigating Agency in case only because he is son of A-14 does not appeal to mind after considering in proper perceptive relevant material. Even accepting that A-55 was then moving on motor cycle still considering time of dead night at which he was doing so, place at which he was moving etc. clearly shows falsity of all said submissions after considering material in entirety disclosing acts committed by A-55. The same considered upon earlier acts of A-55 in concealment of weapons at his house in absence of his father etc. his participation in going to house of A- 42 as disclosed by aforesaid material clearly repels all said submission.

However, even carefully considering all material/evidence available against A-55 and same having not transcended beyond acts committed by him in facilitating Dighi landing and/or transportation of goods smuggled and same failing to disclose any material showing his nexus with conspiracy for which he is charged with or conspiracy for which his father A-14 held to be guilty it will be extremely difficult to accept that his guilt for same can be said to have been established by prosecution only on basis of his guilt found to be established for commission of offence u/sec.3 (3) of TADA Act". (Emphasis added)

204 We do not see any cogent reason to interfere with the impugned judgment applying the parameters laid down by this court for interference against the order of acquittal. The evidence on record disclosed his involvement and association with Tiger Memon (AA) in landing and transportation, but that is because his father Dawood Phanse (A-14), was the landing agent. The appeal lacks merit, and is accordingly, dismissed.

CRIMINAL APPEAL NO. 407 OF 2011

The State of Maharashtra through CBI

Vs.

Ayub Ibrahim Patel

205. This appeal has been preferred against the judgments and orders dated 10.11.06 and 31.05.07, passed by the Special Judge of the Designated Court under the TADA for the Bombay Blast case, Greater Bombay in Bombay Blast Case No.1/93, by which the respondent Ayub Ibrahim Patel (A-72) has been found guilty for the offences punishable under Section 3(3) TADA and on the said count has been convicted and sentenced to suffer RI for 5 years alongwith a fine of Rs.25,000/- and in default, to further undergo RI for 6 months. He has also been found guilty under Section 5 TADA and has been sentenced to suffer RI for 10 years and has been ordered to pay a fine of Rs.50,000/-, in default of payment of fine, he has been ordered to suffer further RI for one year. The Respondent has further been found guilty under Section 6 TADA, and has been sentenced to suffer RI for 10 years and has been ordered to pay a fine of Rs.50,000/-. In default of payment of fine, he has been sentenced to suffer further RI for one year. The Respondent also stands convicted under Sections 3 and 7 read with Section 25(1-A)(1-B)(a) of the Arms Act. However, he has been acquitted of the charge of conspiracy.

Hence, this appeal.

206. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the respondent had been found to be in the unauthorized possession of 20 hand grenades, which were part of the consignment of arms that had been smuggled into India by the terrorists. The said hand grenades were recovered from his house upon his disclosure statement. Therefore, he ought to have been held guilty for the charge of conspiracy.

207. On the contrary, Shri S.P Sinha, learned counsel appearing for the respondent has submitted that the respondent has not preferred any appeal against his conviction on any other charges. He has already served out the sentence that was awarded to him, and has also paid the fine. After appreciating the evidence on record, the Special Judge has acquitted the respondent of the charge of conspiracy. The facts of the case do not warrant any further interference. Thus, the appeal is liable to be dismissed.

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

209. Confessional statement of Baba alias Ibrahim Mussa Chauhan (A- 41) revealed that he was well acquainted with Abu Salem (AA), and Anis Ibrahim Kaskar, brother of Dawood Ibrahim. On 15th January 1993, Salem telephoned him

(A-41) to find a garage equipped with closed shutters. In this regard he (A-41) spoke to Salem and Anis Ibrahim Kaskar several times. Salem asked him (A-41) to keep 2/3 AK-56 Rifles for a few days and also told him that they should be kept by him (A-41) at his house. On 16th January, 1993 Salem came to his house and then they went to the house of Sanjay Dutt (A-117) and delivered some of the contraband arms to him. A bag containing 20 grenades was kept by him (A-41) in the car owned by Sameer (A-53) and a bag containing 3 Rifles, 16 Magazines, 25 hand grenades and 750 bullets was taken by him (A-41). The said goods were not taken back by Salem as promised, so he (A-41) contacted Salem to take it back. A-41 received a message to give 2 AK-56 Rifles, 6 Magazines to Salem Kurla. After some time Salem met A-41 and the latter informed Salem that remaining goods were kept with a man named Ayub residing at Oshivara. At that time Salem had 30 loaded magazines wrapped in a plastic bag and he handed over the bag over to A-41 and told him (A-41) that he had spoken to Ayub via telephone and asked him to keep the goods with A-41. Accordingly, on the same day Ayub came with a bag containing 1 AK -56 Rifle, which along with magazines and a bag was kept at one place. After 2/3 days, Salem came to A-41 and handed over a vehicle asking him to leave it at a place near Ram and Shyam Talkies at Jogeshwari and hand over the vehicle to Ayub and there were further instructions for Ayub to keep all the goods except hand grenades in the car and to leave the car near the office of Salem. A-41 handed over the car to Ayub and conveyed the message. After Bombay blast, Salem Kurla was arrested and on his information police arrested A-41 on or about 28th of March 1993. After his arrest, the father of A-41 obtained the bag which he had kept with Ayub through Haji Ismail and produced it before the police.

210. Recovery panchnamas – Exts.154-155 make it clear that Sub- Inspector Nerlekar had interrogated the accused Ayub Ibrahim Patel (A-72) and he expressed his desire to make the disclosure statement. At that time, two Panchas were called through the Constable and in their presence, Ayub Ibrahim Patel (A-72) made the statement that he had concealed the hand-grenades, the recovery of which he would get effected. The recovery was made and proved by Nerlekar (PW.605) and the panch witness (PW.44). According to the said witnesses, after recording the disclosure statement, i.e., the panchnama, the accused (A-72) led the Panchas and police team to room no.202 on the second floor of Noora Building in Dalwai compound, opposite Ajit Glass Factory Oshiwara(West). The appellant (A-72) rang the door bell of the said room and the door was opened by one lady and she was introduced by A-72 as his wife named Smt. Kausar. Thereafter, Ayub Ibrahim Patel (A-72) led the panchas and police in the said room and took out a plastic bag from a steel cupboard near the eastern wall of the house. The said bag contained 20 hand-grenades. The same was handed over to the Sub-Inspector

Nerlekar (PW – 605) who drew a panchnama and left for Worli Police Station with the hand grenades.

211. The Special Judge after appreciating the entire evidence summarised the whole case against Ayub Ibrahim Patel (A-72) as under: “However, after carefully considering the matters from the said confession reveals that A-41 had handed over the bag containing 25 hand grenades to Iqbal Tunda and had informed about the same to Salem and Iqbal Tunda had informed him of the same being kept with Ayub residing at Oshiwara still there appears full substance in the criticism advanced by the Id. Defence counsel that hardly there exists any material on record to come to the conclusion that the person by name Ayub from Oshiwara referred in the said confession is A-72. There is also further substance in the defence criticism in such an eventuality 25 hand grenades could have been found with A- 72.....Thus considering the aforesaid evidence of recovery and particularly statement made by A-72 showing his authorship in keeping the relevant hand grenades and apart from same A-72 at the trial having not given any other explanation about the reason because of which such hand grenades were in his house or his knowledge about the same all the said factors establishes himself being in possession of such contraband material attracting the provisions of Sec. 5 of TADA. Now considering the statutory presumption arising out of the relevant facets established and the same having remained unrebutted at the trial will safely lead to only conclusion of A-72 of having possessed the same for the purpose of terrorist act or terrorist activity. The same is apparent in view of the law regarding the same as explained by the Hon’ble Constitutional Bench of the Apex Court in the decision in the case of Sanjay Dutt v. State of Maharashtra reported in 1995(5) SCC 410. In view of the same A- 72 will be required to be held guilty for commission of offence u/s 5 of TADA.

Though the aforesaid evidence clearly establishes of A-72 to be in possession of such contraband material within notified area still there being no evidence to come to the conclusion that the same were part parcel of the consignment smuggled into country by co-conspirators for commission of terrorist acts for which the charge at head 1stly is framed, A-72 cannot be held guilty for the said conspiracy. However, possessing huge quantity of hand grenades considered with other evidence not denoting involvement of A-72 in any terrorist activity also leads to the conclusion of the same being either kept with him for storage purpose and/or for assisting some other co-conspirators for commission of terrorist acts. Needless to add that the same is also suggestive of A-72 having made the preparation for commission of terrorist acts. In view of the same A-72 will be also required to be held

guilty for commission of offence u/s. 3 (3) of TADA. Similarly considering the quantity of hand grenades found in possession of A-72 the same also denotes of himself having committed offence u/s. 6 of TADA and so also the offence punishable u/s.3 7 r/w Sec. 25(1-A) (I- B)(a) of Arms Act.

In light of discussion made hereinabove Point Nos. 170 to 173 will be required to be answered in consonance with the conclusion arrived during the said discussion i.e. A-72 having committed all the said offences for which the said points are framed but for the reasons stated hereinabove. However, hardly there being any evidence of A-72 of having committed the said offence in pursuance of conspiracy for which he has been charged due to nexus of material found with him being not established with the material smuggled for commission of Serial bomb Blast and there being no other evidence he will be required to be absolved from the offence of conspiracy for which he is charged with". (Emphasis added)

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

213. From the above discussion it is evident that Baba Chauhan (A-41) had given 20 hand grenades to one Ayub resident of Oshiwara. However, he has also disclosed that after his arrest on 28th March, 1993, the said contraband had been produced before the police by his father through Haji Ismail. In view of the above, the conclusion reached by the learned Designated Court that there is nothing on the record to establish that Ayub of Oshiwara could be Ayub (A-72), does not require interference. In such a fact-situation, the respondent (A-72) is entitled to benefit of doubt, so far as the charge of conspiracy is concerned. The appeal lacks merit, and is accordingly, dismissed.

CRIMINAL APPEAL NO. 1025 OF 2012

State of Maharashtra

Vs.

Mohd. Shahid Nizamuddin Qureshi

214. 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 in the Bombay Blast Case No.1 of 1993, by which the said respondent has been

convicted under Section 3(3) TADA, and has been awarded a sentence of 10 years rigorous imprisonment, alongwith a fine of Rs. 25,000/-, and in default of payment of fine, to further undergo RI for six months. He has been acquitted of some of the other charges including the main charge of conspiracy.

Hence, this appeal.

215. Shri Mukul Gupta, learned senior counsel appearing for the appellant, has submitted that there is enough evidence to show the deep involvement of Mohd. Shahid Nizamuddin Qureshi (A-135) in the said crime and, therefore, he ought not to have been acquitted for the charge of conspiracy.

216. Ms. Farhana Shah, learned counsel appearing for the respondent (A-135), has submitted that he has already suffered tremendously. He has served 11-1/2 years of sentence, though he was awarded only 10 years rigorous imprisonment, and has also deposited the fine. He has not filed any appeal against his conviction, as he has reconciled himself with his fate. There is nothing on record to show that the accused (A-135) had any knowledge of the contraband, or how the same was going to be used. He had no intention to harm any one. Thus, the findings recorded by the Designated Court on this issue, do not require any interference.

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

218. The confession of the accused (A-135) was recorded, however, the same has been discarded by the Special Judge on the ground that the police officer who had recorded the confessional statement, had not ensured compliance with Section 15 TADA and Rule 15(3) TADA Rules, 1987.

219. However, as far as the charge of conspiracy is concerned, the other evidence is of Nasir Abdul Kader Kewal @ Nasir Dakhla (A-64) who has revealed, that in either at the end of January 1993 or in the beginning of February 1993, at the instance of Tiger Memon (AA), Javed Chikna, the accused (A-64) etc., had participated in the landing of contraband goods such as rifles, bullets, handgrenades, detonators, RDX etc. at the Shekhadi coast. The said goods had been transported to the Wangni Tower, and here, the bags containing the contraband had been opened and weapons, cartridges etc., had thereafter been concealed in fake cavities of the vehicles that had been arranged for the transportation of the smuggled goods into Bombay. During the said operation, the accused (A-135) had actively participated alongwith Javed Chikna, and various

other associates. He has further disclosed that 3-4 days after the first landing, a second landing had taken place, in which the contraband were smuggled in through Shekhadi coast, in which yet again, the accused (A-135) had actively participated. Usman (PW.2) has also deposed that the accused (A-135) had in fact, participated in the said landing, as well as in the transportation of the contraband material.

220. However, a question does arise with respect to whether the accused (A-135) had been aware of the contents of the contraband, and whether he had known the purpose for which the weapons etc., had been smuggled into India. As per the material on record, it becomes evident that Tiger Memon (AA) and his close associates, including the accused (A-135), had first gone to Hotel Big Splash at Alibagh, and from there they had gone to the seashore to participate in the said landing. At this time, the close associates of Tiger Memon (AA), had been fully armed with AK-47/56 rifles, revolvers, magazines and cartridges. They had taken up positions near the seashore to prevent any kind of interference. The goods had then arrived in large packets, which had been unloaded with the help of some villagers who were already present there, as the same had been deployed by Dawood @ Dawood Taklya Mohammed Phanse(A-14). After the loading of the goods into a truck, the contraband had been brought to Wangni Tower. All the packets had been taken inside the tower, and when the same had been opened, it had become evident that the packets contained explosives, cartridges and arms. These arms had then subsequently, been filled into secret cavities that had been created in the jeeps, and were then taken away. After 2-3 days, Yeda Yakub, Riaz Khatri, Munna Jadia, Ehtesham (A- 58), Akbar and Karimullah had gone in a Maruti van and had picked up Nasir (A-64). Yeda Yakub had told them that more arms were scheduled to arrive for Tiger Memon (AA) at the Shekhadi coast, for the purpose of which, they would have to go there. They had thus, participated in the second landing as well, and had brought in the said goods. At such time, the associates of Tiger Memon (AA) had also been present there, alongwith Shahid Qureshi (A-135). Following the orders of Tiger Memon (AA), the packets of arms and explosives had been loaded into a jeep and a tempo, and had been taken to Bombay.

221. The deposition of Usman Ahmed Jan Khan (PW-2) has revealed that Tiger Memon (AA) had convened a meeting at the hotel Big Splash, and had expressed his desire to take revenge for the demolition of the Babri Masjid. Shahid (A-135) had also been present at the said meeting. From the hotel, they had left for Shekhadi Coast in jeeps. At about 11 p.m., Tiger Memon (AA) and his associates, including the accused (A- 135) had gone to high sea, in a boat. The said boat had taken them to a big red speed boat. Tiger Memon (AA) had gone over to the other

boat, and had brought out seven bags of military colour from the said speed boat. The bags had contained guns, pistols and handgrenades, and also AK-56 rifles.

222. The Designated Court, after appreciating the entire evidence on record with respect to Nizammudin Qureshi, has recorded the following conclusion:

“All said evidence considered in proper perspective clearly reveals close association of A-135 with Tiger Memon and/or himself man of confidence of Tiger Memon. All said evidence considered in proper perspective clearly reveals involvement of A-135 in Shekhadi landing episode.

Similarly entire evidence having remained confined to act committed by A-135 of assisting and aiding Shekhadi landing and transportation operation and there existing no cementing material revealing his involvement in conspiracy he will be required to be held not guilty for offence of conspiracy for which charge is framed at head 1st ly.”

223. Undoubtedly, the respondent had participated in the landing at Shekhadi when the contraband were smuggled into India. However, as the evidence on record as well as the findings recorded by the Designated Court remain to the effect that he had not been aware of the articles smuggled, he cannot be held liable for punishment for conspiracy.

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

225. We concur with the finding recorded by the learned Designated Court, and find no reason to interfere with the order passed by the Special Judge. The appeal lacks merit, and is accordingly dismissed.

CRIMINAL APPEAL NO. 599 OF 2011

State of Maharashtra

Vs.

Shaikh Mohd. Ethesham

226. 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 (A-58) was found guilty under Section 3(3) TADA and awarded a sentence of 10 years with a fine of Rs.25,000/- with suitable RI in default of payment of fine, for the commission of offence of conspiracy to commit terrorist act; and further sentenced to suffer RI for 10 years with a fine of Rs. 25,000/- with suitable RI in default of payment of fine, for the commission of offence punishable under Section 3(3) TADA, for commission of such acts as abovesaid. However, he has been acquitted of the general charge of conspiracy i.e. first charge.

227. Facts and circumstances giving rise to this appeal are that : A. In addition to the general charge of conspiracy, the respondent (A-58) had been charged under Section 3(3) TADA, firstly on the ground, that he had participated and assisted Tiger Memon (AA) and his associates in smuggling, landing and transportation of arms, ammunition etc., into India for the purpose of terrorist activities. Secondly, he had assisted in landing at Shekhadi on 3rd and 7th February, 1993 and had further agreed to undergo a training in Pakistan for handling of arms, ammunition and explosives for committing terrorist acts and had even attended a conspiratorial meeting at Dubai to plan commission of terrorist acts. B. After conclusion of the trial, the Designated Court convicted the respondent as referred to hereinabove, but acquitted of the charge of larger conspiracy.

Hence, this appeal.

228. Shri Mukul Gupta, learned senior counsel appearing on behalf of the State, has submitted that the respondent had been a very close associate of Tiger Memon and had participated in landing and went to Dubai for the purpose of getting training in handling of arms, ammunition and explosives, attending the conspiratorial meetings at Dubai. Therefore, the learned Designated Court under TADA, committed an error in acquitting him of the first charge of larger conspiracy. Thus, the appeal deserves to be allowed.

229. Ms. Farhana Shah, learned counsel appearing on behalf of the respondent, has opposed the appeal contending that the respondent had already served the sentence of 10 years and paid the fine. He did not file any appeal against the conviction. Though he went to Dubai for going to Pakistan for having training in handling of arms, ammunition and explosives, but did not get any training whatsoever, and his acts were prior to hatching of the conspiracy. He did not participate in any of the illegal activity/conspiracy subsequent to coming back from Dubai. Therefore, the order impugned does not need any interference whatsoever.

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

231. The evidence against the said respondent (A-58) is disclosed in the confessional statements of Nasir Abdul Kadar Kewal @ Nasir Dhakla (A-64), Shaikh Kasam @ Babulal Ismail Shaikh (A-109), Sultan-E-Rome Sardar Ali Gul (A-114), Abdul Aziz Shaikh (A-126), Mohd. Iqbal Shaikh Ibrahim (A-127), Shahnawaz Khan Faiz Mohd. Khan (A-128) and Murad Ibrahim Khan (A-130). The said confessional statements revealed that the respondent (A-58) had participated in the landing at Shekhadi. He was present at the Wangni Tower at the time of shifting the contraband and had also participated in second landing at Shekhadi. He had also attended the meeting in a partially constructed building in Khar and agreed to go out of India for receiving the arms' training in Pakistan. He went to Dubai on 14.2.1993, but could not go to Pakistan and stayed in Dubai for 14 days and returned to India on 2.3.1993. While in Dubai, he had taken an oath of secrecy that he would not disclose anything about the conspiracy to anyone.

The aforesaid evidence also stands corroborated by the evidence of Usman Ahmed Jan Khan (PW-2) and Prakash Ramugade (PW-207).

232. The Designated Court after appreciating the entire evidence on record reached the conclusion as under:

“Thus considering material in the confession of A-58 and aforesaid co-accused the same leads to the conclusion of A-58 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 `a`. In the said context it is necessary to add that considering evidence pertaining to Shekhadi landing in proper perspective and role carried out by A-58 in the same and during said operation contraband material being opened at the sea shore and so also exchanged from truck to other vehicles at Wangni Tower, the defence submission that A-58 was not aware about nature of contraband material to be brought etc. does not appeal to mind. Needless to add that considering material in confession of other co-accused regarding Shekhadi landing episode it is difficult to accept such submission. Needless to add that A-58 was man of close confidence of Tiger Memon is being also revealed from fact of himself being given weapon during relevant operation. Similarly A-58 himself having participated in said operation in which large quantity of arms, ammunition and explosives were smuggled into India leading to legitimate conclusion of same being brought for

commission of terrorist act and still A-58 thereafter having agreed to undergo weapon training in operating arms, ammunition in foreign country and in said process having gone to Dubai but being required to return in view of further arrangements being not made clearly denotes A- 58 was party to conspiracy to commit terrorist act punishable u/sec. 3(3) of TADA Act.

However all said acts committed by A-58 being much prior to main conspiracy of committing serial blast having taken final shape i.e. during conspiratorial meetings held in month of March, 1993 and A-58 after returning from Dubai having not participated in any act furthering object of larger conspiracy for which charge at head 1st ly in framed he cannot be held liable for larger conspiracy and he will be required to be held guilty for conspiracy to commit terrorist act as stated aforesaid.”

(Emphasis added)

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

234. In view of the fact that the respondent has already served the sentence of 10 years and paid the fine, therefore we are not inclined to allow this appeal. It is accordingly dismissed.

CRIMINAL APPEAL NO. 395 of 2011

State of Maharashtra

Vs.

Farooq Illiyas Motorwala

235. This appeal has been preferred against the final judgment and order dated 2.8.2007, passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993, by which the respondent has been found guilty for the offences under Section 3(3), and awarded 13 years RI with a fine of Rs.25,000/- and in default of payment of fine, to suffer further RI for 6 months. He was also convicted under Section 3(3) TADA, and awarded 7 years RI with a fine of Rs.25,000/-, in default of payment of fine, to suffer further RI for 6 months.

However, he has been acquitted of some other charges including the larger conspiracy.

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

A. In addition to the main charge of conspiracy, the charge against the respondent was that in pursuance of the conspiracy, he visited Dubai on a fictitious passport No. H-118352, obtained by him in the name of Kazi Salim Illyas and participated in conspiratorial meeting held at Dubai alongwith other co-accused Mohmed Jamil Omar Khatlab (PW- 1) (approver), who had been recruited for undergoing weapons training in Pakistan.

B. After conclusion of the trial, the Designated Court convicted the respondent as referred to hereinabove, but acquitted of some charges including the larger conspiracy.

Hence, this appeal.

237. Shri Mukul Gupta, learned senior counsel appearing for the appellant has submitted that there was sufficient material on record to show the involvement of the respondent in larger conspiracy and the Special Judge has committed an error in acquitting him for the said charge. Thus, the appeal should be allowed.

238. On the contrary, Mr. S.P. Sinha, learned counsel appearing for the respondent (A-75) has submitted that the respondent has been awarded 13 years' rigorous imprisonment and a fine of Rs. 50,000/-. The respondent has already served the sentence and also deposited the fine. Therefore, at such a belated stage, this court should not interfere against the order of acquittal, in view of the parameters laid down by this court, for entertaining the appeal against acquittal. Thus, the appeal is liable to be dismissed.

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

240. Evidence against the respondent (A-75):

(a) Confessional statement of the respondent (A-75)

(b) Confessional statement of Mohd. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134)

(c) Deposition of Mohd. Jabir Umar Khatlab (PW-1) (d) Deposition of Tota Tiwari (PW-340)

(e) Deposition of Rajan Dhoble (PW-585)

Confessional statement of the respondent (A-75):

241. He disclosed that he indulged in smuggling of goods and used to go to Dubai frequently. He was introduced by his friend Latif Bagwala to Tahir Merchant. The respondent (A-75) had a passport, however, he obtained another passport in a fictitious name i.e. Kazi Salim Illyas Majid Rajkotwala and on a fictitious address. On 15.1.1993, he went to Dubai on the passport obtained in a fictitious name and attended the meetings with Tahir Merchant. Respondent (A-75) called his friend Mohd. Jamil Omar Khatlab (PW.1) (approver) to Dubai and sent him to undergo arms' training in Pakistan. Respondent (A-75) returned to Bombay on 27.2.1993 and Mohd. Jamil Omar Khatlab (PW.1) also came back after having training in Pakistan in handling weapons. After the Bombay blast, Mohd. Jamil Omar Khatlab (PW.1) had told him (A-75) that a person had come from Tahir Merchant and asked him to keep guns and pistols.

Confessional statement of Mohd. Salim Mira Moiddin Shaikh @ Salim Kutta (A-134):

242. The said co-accused did not name the respondent (A-75) specifically. However he corroborated that there were 7 conspiratorial meetings held in Dubai at the behest of Dawood Ibrahim and Mustafa Majnu and an oath was administered to them for taking revenge from Hindus for the damage of Babri Masjid.

243. Mohd. Jamil Omar Khatlab (PW-1) deposed that on 11.2.1993, respondent (A-75) took him to Tiger Memon (AA) at Al-Husseini Building. Tiger Memon (AA) told them that during December 1992 and January 1993, Muslims had greatly suffered. Babri Masjid was demolished and Indian Government remained a mere spectator. So they should take revenge. Thereafter they were administered oath to take revenge. He further disclosed that Tiger Memon had told them that he would teach a lesson to the Indian Government by exploding bombs at various places and attack people with rifles and for that purpose he wanted persons who can participate in such actions. At this juncture, Mohmed Jamil Omar Khatlab (PW.1)

and respondent (A-75) had agreed to participate. Mohd. Jamil Omar Khatlab (PW.1) told Tiger Memon (AA) that he did not know how to handle arms. Thereafter, the respondent (A-75) told Mohd. Jamil Omar Khatlab (PW.1) that he would be sent for weapons training in Pakistan where I.S.I. would train them and Mohd. Jamil Omar Khatlab (PW.1) agreed to go to Pakistan for the same. Tiger Memon (AA) had told them that young Muslims from all over India would be sent to Pakistan for weapons' training and they decided to destroy the society and create panic and for that purpose he would get all the required assistance from Pakistan. They were also administered oath again by Tiger Memon (AA) that none of them would disclose any information about the plan. On 20.2.1993, Mohd. Jamil Omar Khatlab (PW.1) got a phone call from the respondent (A-75) from Dubai who instructed him to reach Dubai on 24.2.1993. He was also informed that one Walter D'Souza, friend of respondent (A-75) would hand over the passport of Mohd. Jamil Omar Khatlab (PW.1). On 24.2.1993, he (PW.1) received the passport and he left for Dubai on 25.2.1993. This witness also identified the air tickets etc. in the court. Mohd. Jamil Omar Khatlab (PW.1) further deposed that he reached Dubai airport on 25.2.1993 at about 4.45 p.m. and respondent (A-75) and one Tahir Bhai received him at the airport and Tahir Bhai had made arrangements for his stay at Dubai. On 26.2.1993, a meeting of Tahir Merchant with the respondent (A-75) took place at the flat of Tahir Merchant and in the said meeting Tahir Merchant told Mohd. Jamil Omar Khatlab (PW.1) that he had to leave for Islamabad where he would be given military training to fight against Hindus and particularly for throwing bombs and operating fire arms.

244. The case of the prosecution was further corroborated by the Investigating Officer as well as by the panch witnesses, particularly, Tota Tiwari (PW-340) and Rajan Dhoble (PW-585) and the documents (i.e his fictitious passport, embarkation and disembarkation cards.) which facilitated the journey of the respondent (A-75) from Bombay to Dubai and Dubai to Bombay.

245. The learned Designated Court after appreciating the entire evidence held:

“19. Thus, considering all the aforesaid self-eloquent matters revealed from the evidence of PW-1, the same squarely reveals the manner in which A-75 had taken PW-1 to Tiger Memon. It is significant to note that upon Tiger Memon telling the matters narrated in clause (3), PW-1 had expressed to him that he was not knowing to operate weapon and thereafter A-75 had told PW-1 that he will be sent for weapon training at Pakistan where ISI will help him in training and PW-1 had agreed for going to Pakistan for weapon training.

20. Since the further matters stated in further part of evidence of PW-1 having revealed the manner in which he had been to Dubai, A-75 along with Tahir Bhai had been to the airport for receiving him and the further acts committed by A-75 and the fact of PW-1 having been to Pakistan and having participated in training programme, clearly reveals PW-1 was initiated in conspiracy by A-75 i.e. the conspiracy to which he was party since earlier. Needless to add that all the said material clearly establishes A-75 having committed the offence under Section 3(3) of TADA for which he was charged with and so also himself being in conspiracy for commission of terrorist acts as observed earlier during the discussion made in Part-10.

21. Though the aforesaid evidence clearly reveals involvement of A-75 in a conspiracy to commit terrorist acts and himself having initiated PW-1 in the said conspiracy still the evidence reveals that A-75 had not committed any act after 26th February 1993 for furthering the object of conspiracy to which he was party or to the larger conspiracy for which he has been charged at head firstly.

22. Now considering the evidence which has surfaced at trial, it is clear that the targets for commission of bomb Blast at Bombay were discussed by Tiger Memon for the first time to other co-conspirators in the meetings which had taken place after 6th of March, 1993 at the house of Babloo or Mubina. Thus, there being hardly any evidence on record of A-75 being aware that the serial bomb Blast were to be committed by committing explosions at such place and/or himself having not participated in any other operation after 26th February, 1993, though the evidence reveals his involvement in conspiracy still the same does not transcend further than establishing involvement of A-75 in the conspiracy other than commission of terrorist acts made punishable under Section 3(3) of TADA. Since knowledge of the object of conspiracy is the vital part for determining liability of conspirator in a conspiracy to commit the offences and even though some suspicion might be arising due to the acts committed by A-75 also being involved in larger conspiracy as every conspirator need not know every act to be committed by other conspirators or the other conspirators still the same cannot take the place of proof of involvement of A-75 for the larger conspiracy.”

(Emphasis added)

246. The Special Judge while dealing with the sentence part observed:

“Thus guilt of A-75 for offence of conspiracy has remained confined to the extent of himself being guilty for offence of conspiracy to commit terrorist act. Needless to add that it was neither prosecution case nor any evidence has surfaced on record revealing that either A-75 had participated in any of the further operation which were effected for furthering the larger object of conspiracy and/or himself being aware that the explosions were to be committed in Bombay by the co- conspirators.

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Thus in light of reasoning given aforesaid, it will be difficult to accept submission of Id. Chief P.P. to give maximum to A-75 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 inducting such person into conspiracy is a heinous act still merely on said count awarding maximum punishment to accused responsible for same de hors considering the extent of other acts committed by him and thereby assessing the element of criminality existing in him would amount allowing oneself to be swayed by feelings and would amount of having acted without any logical reasoning behind it. Needless to add that an adult person joining any conspiracy would be always due to such decision taken by him the entire liability of his such a decision cannot be fastened upon other who have advocated with him for joining such a conspiracy. Having regard to the same, while awarding punishment to A-75 it will be necessary to take into account the gravity of the act committed by him and so also the other circumstances relevant to same as urged on his behalf or even otherwise.

However, at the same time the relevant facet spelt from evidence that A-75 had not committed any terrorist act at any point of time or after 24th Feb., 1993 any act furthering the object of conspiracy for which he has been found to be guilty or furthering object of larger conspiracy of which outcome was Serial Bomb Blast.”

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

248. The Special Judge recorded the finding that the respondent did not do anything to further the object of conspiracy. However, he was involved in sending Mohd. Jamil Omar Khatlab (PW-1) to Dubai and further to Pakistan for getting initiated in the training of weapons. The respondent received the co-accused at the airport and attended 7 conspiratorial meetings held in Dubai. Admittedly, the respondent who travelled to Dubai had a fictitious passport for a particular purpose. He further went to Pakistan and undertook the training in handling the arms, ammunition and explosives. He met Tiger Memon (AA) in Dubai, who told him that they would teach a lesson to the Indian Government by exploding bombs etc. However, the learned Designated Court did not convict him on the charge of conspiracy. Such a conclusion is not worth acceptance and the said finding being perverse, is liable to be set aside.

The appeal is allowed. The respondent has now been convicted for the charge first and awarded the life imprisonment. He 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. 397 of 2011

State of Maharashtra through CBI

Vs.

Mohd. Rafiq Usman Shaikh

249. This appeal has been preferred against the final judgment and order dated 2.8.2007 passed by the Special Judge of the Designated Court under the TADA in Bombay Blast Case No.1 of 1993, by which the respondent/accused has been convicted for the offences punishable under Section 3 (3) TADA and awarded 7 years RI with a fine of Rs.15,000/- and in default of payment of fine, to suffer further RI for 3 months on each count. However, he has been acquitted of the general charge of conspiracy.

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

A. In addition to the main charge of conspiracy, the appellant (A- 94) was charged under Section 3(3) TADA, as he had visited Pakistan alongwith other co-conspirators via Dubai and underwent training in handling of arms,

ammunition and explosives with the object of committing terrorist acts and even attended the meetings at the residences of Nazir Ahmed Anwar Shaikh @ Babloo (AA) and Mubina Bai where plans for committing terrorist acts were discussed/finalised. Further, he had also taken oath in the name of Quran while in Dubai, not to disclose to anybody about the conspiracy.

B. After conclusion of the trial, the respondent was held guilty of the charges as referred to hereinabove but has been acquitted of the charge of conspiracy.

Hence, this appeal.

251. Mr. Mukul Gupta, learned senior counsel appearing for the appellant has submitted that the Special Judge was not justified in imposing such a lenient punishment in view of the fact that the respondent (A-94) had gone to Pakistan and acquired the knowledge in handling of arms and ammunition during training. He had attended the conspiratorial meetings wherein conspiracy was not only hatched, but plans for committing terrorist acts were also given final stage. Moreover, he had taken oath as to non-disclosure of information about the conspiracy in the name of Quran in Dubai. Therefore, the appeal deserves to be allowed.

252. On the contrary, Ms. Farhana Shah, learned counsel appearing for the respondent has submitted that the respondent (A-94) had been awarded 7 years RI which he has already served. He had also deposited the fine imposed upon him. The deposition of Mohd. Usman Jan Khan (PW.2) is not worth reliance for the reason that he was also an accused who, subsequently turned to be an approver. Moreover, Mohd. Usman Jan Khan (PW.2) had not named him (A-94) specifically as being present in the conspiratorial meeting on 10.3.1993 and there is no material even on record to show that the respondent (A-94) was present on 11.3.1993 in the conspiratorial meeting at Al-Husseini building. Therefore, the respondent (A-94) cannot be discriminated against, as his role had been like all others particularly, Gul Mohamamed @ Gullu Noor Mohmed Shaikh (A-77), Mohmed Hanif Mohmed Usman Shaikh (A-92), Mohmed Sayeed Mohmed Issaq (A-95), Shaikh Ibrahim Shaikh Hussein (A-108) and Usman Man Khan Shaikh (A-115) except that none of the above named accused had participated in the conspiratorial meetings.

Moreover, in spite of the fact that on 10.3.1993, the respondent (A-94) was present in the conspiratorial meeting and accepted a sum of Rs.5,000/- from Tiger Memon (AA), he did not participate in any overt act on the fateful day i.e. 12.3.1993, when the Bombay Blast took place. Therefore, no

interference is required with the impugned judgment and order, and enhancement of punishment is not warranted.

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

254. Evidence against the respondent (A-94):

- (a) Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94)
- (b) Confessional statement of Bashir Ahmed Usman Gani Khairulla (A-13)
- (c) Confessional statement of Nasim Ashraf Sherali Barmare(A-49) (d) Confessional statement of Parvez Mohmed Parvez Zulfikar Qureshi (A- 100)
- (e) Confessional statement of Shahnawaz Abdul Kadar Qureshi (A-29)
- (f) Confessional statement of Zakir Hussain Noor Mohd. Shaikh (A- 32)
- (g) Confessional statement of Abdul Khan (A-36)
- (h) Confessional statement of Firoz @ Akram Amani Malik (A-39)
- (i) Confessional statement of Niyaz Mohamed (A-98)
- (j) Deposition of Mohd. Usman Jan Khan (PW-2)
- (k) Deposition of Jagdesh Lohalkar (PW.237)
- (l) Deposition of Ramchandra (PW.231)

255. Confessional Statement of Mohd. Rafiq Usman Shaikh (A-94) - He has disclosed that he was of 25 years of age and used to wash cars and fill petrol. He lost his job 7-8 months prior to Bombay Blast. On 16.2.1993, one Mohmed Jabir Abdul Latif Mansoor (A-93) (now dead) told the respondent (A-94) that his ticket to Dubai had been arranged for 17.2.1993 and he (A-94) went to Dubai by an Air India flight on 17.2.1993. He was received at Dubai airport by a fair looking man with a beard at Dubai airport. The respondent (A-94) stayed in a hotel with five other persons who had gone there for the same purpose, namely, Haji Yakub, Anwar, Bashir and Nasir Dhakla. Four more persons had joined them there, and on

the advice of Tiger Memon (AA) they went to the airport on 20.2.1993 to go to Islamabad. They reached Islamabad where they were received by a person who took them to a hilly jungle area where tents had already been pitched. On the next day, Javed Chikna told the respondent (A-94) to get ready for pistol and machine gun training and advised him to learn all those weapons, as atrocities had been committed on Muslims in Bombay. Respondent (A-94) participated in the training and came back to Dubai from Islamabad on 1.3.1993. He also took oath in the name of Quran in Dubai along with other conspirators not to reveal any information about the training etc. to anyone. Respondent (A-94) returned to Bombay on 3.3.1993. On 10.3.1993, respondent (A-94) had participated with other conspirators in a conspiratorial meeting at Mubina's place at Bandra, where targets were discussed and groups were assigned particular duties and each participant was given a sum of Rs.5,000/- by Tiger Memon (AA).

256. The aforesaid confessional statement of the respondent (A-94) was further corroborated by the confessional statement of Bashir Ahmed Usman Gani Khairulla (A-13) to the extent that he revealed the presence of respondent (A-94) in the conspiratorial meeting on 10.3.1993 at Bandra, and that Tiger Memon (AA) had given everybody a sum of Rs.5,000/- in the meeting.

257. Confessional statement of Nasim Ashraf Sherali Barmare (A-49) - He has revealed the version given by respondent (A-94) to the extent that he (A-94) had attended the training in Pakistan and further he (A-94) attended the meeting at Bandra on 10.3.1993, and each of the participants was given a sum of Rs.5,000/-.

258. Confessional statement of Parvez Mohmed Parvez Zulfikar Qureshi @Parvez Kelewala (A-100) – He has also disclosed the similar facts as given by the respondent (A-94) in his confessional statement to the extent that the respondent (A-94) attended the arms' training in Pakistan.

259. Confessional statement of Shahnawaz Abdul Kadar Qureshi (A-29) - He has revealed that the respondent (A-94) had gone to Pakistan for arms training via Dubai and attended the meeting in Dubai. He had also taken on oath in the name of Quran that he would not reveal any information about conspiracy to anyone and that he was told in that meeting by Tiger Memon (AA) that his tickets were ready for evening flight for Bombay.

260. Confessional statement of Zakir Hussain Noor Mohd. Shaikh (A- 32) - He has disclosed that respondent (A-94) had joined other conspirators for training in Pakistan and took an oath in Dubai in the name of Quran.

261. The same version stood corroborated further by the confessions of Abdul Khan @ Yakub Khan Akhtar Khan (A-36), Firoz @ Akram Amani Malik (A-39) and Niyaz Mohmed @ Aslam Iqbal Ahmed Shaikh (A-98).

262. Mohd. Usman Jan Khan (PW.2) has deposed that he knew the respondent (A-94) and he identified him in court. He has further deposed that the respondent (A-94) had attended the arms' training in Pakistan.

263. Jagdish Shantaram (PW.237) and Ramchandra (PW.231) have also proved the departure of respondent (A-94) from Bombay to Dubai on 17.2.1993 and his arrival in Bombay on 3.3.1993 respectively.

264. The Special Judge after appreciating the entire evidence came to the following conclusion:

“109. Now considering the matters stated in the confession of A- 94 the similar phenomenon is found therein and hence detailed dilation regarding same is avoided. The same also alike the confession of A-64 though reveals that A-94 had initially agreed to go to Dubai for the purposes of trip ultimately in a similar manner (but alongwith different person). He had reached the said training camp in which A-64 was acquiring training along with other persons. Similarly, the same also reveals of A- 94 and his companion being cleared at Islamabad airport in the similar manner. As a difference the material on page of confession of A-94 reveals that in Pakistan A-94 had acquired the knowledge that he has to take training and at the said juncture absconding accused Javed Chikna had told him the purpose for which the said training of operating pistols and machine gun was to be taken. Now visualizing the situation then prevailing between India and Pakistan in the year 1992 and still A-94 having continued to take training and/or not making any protest about the same even later on also clearly reveals of himself having joined the band of said. Thus, considering all the material contained in confession of other accused and concerned evidence it is amply clear that the person with beard who had met A-77 and A-94 at Dubai was none else but Tiger Memon.

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111. Now considering further material in the confession of A-94 the same in terms reveals the promptness in which he has gone to Pakistan and acquired

training at the said place. On the said backdrop considering the earlier recitals in the confession that he had gone for a trip clearly appears to be not only inconsistent with other matters stated in the confession but the same clearly appears to have been belied by other material stated in the said confession. Thus the said recitals will be liable to be discarded. After discarding the said recitals and considering in proper perspective other material the same clearly reveals that A-94 having agreed for acquiring training at Pakistan and for the said purpose he had promptly gone and acquired the same.

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113. [...] The same being not directed against any particular person the said fact clearly reveals that the same cannot be said to be of any other purpose rather than for commission of terrorist acts. The aforesaid fact is also fortified by the further material contained in the confession regarding the manner in which A-94 had taken an oath and the matters then told by Tiger Memon.

114. Thus, considering all facets from confession of A-94 about which few are discussed hereinabove, it can be safely said that the same squarely establishes the guilt of A-94 in commission of offence for which charges are framed against him.

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118. In the premises aforesaid i.e. in the light of discussion made hereinabove, it can be safely said that A-16, A-29, A-32, A-36, A-39, A-49, A-52, A-64, A-77, A-92, A-94, A-95, A-98, A-100, A-108 and A-105 had been to Pakistan via Dubai themselves and as agreed had received training in handling of sophisticated arms, ammunitions, explosives for commission of terrorist acts and in said process A-77, A-92, A-95, A-108 and A-115 had attended meeting themselves and/or the remaining also had taken on oath of secrecy and were involved in planning in commission of terrorist act after returning to India and/or utilizing the training acquired by them and thus having committed offence punishable u/s 3(3) of TADA and so also offence of conspiracy all the points under the discussion i.e. point Nos. 22, 23 and 24, will be required to be answered in affirmative against each of them.”

TADA COURT ON SENTENCE of A-94

“519. Now considering the case of A-94 from them, though same apparently appears to be different than the remaining five due to himself having participated in the meeting on 10th of March, 1993, the close look at the evidence and particularly his confession does not reveal himself having committed any further act or any evidence denoting that he had acquired knowledge of further activities to be committed in pursuance of conspiracy to which other members in said meeting were party and in future the said members having indulged in commission of further acts furthering the objects of the larger conspiracy to which other said members are found to be guilty. Needless to add that though confession of A-94 reveals that said meeting was attended by Tiger Memon, PW-2, Javed Chikna, Bashir, A-32, A-38 and 14-15 others, the said material does not transcend further other than showing that small groups were formed at said meeting and the members of said group were discussing the matters amongst themselves and Tiger Memon had given Rs.5000/- to each of participant of the said meeting. Curiously enough material fails to denote commission of any further act by A-94 making him liable for being a party to larger conspiracy in pursuance of which further preparatory acts for commission of Serial Bomb Blast was committed. Needless to add that the material reveals that A-94 was enquired whether he was knowing driving and he had replied in negative. The material in the confession also reveals that on 14th of March, 1993, A-16 had told A-94 that Tiger Memon had caused the bomb explosions and has ran away etc. Thus, careful consideration of said material though reveals that case of A-94 is somewhat different still at the same time the same fails to establish of the same being materially different and/or being on higher pedestal than other 5 accused concerned with present discussion.

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526. Thus, considering acts committed by each of aforesaid 6 accused and out of them involvement of A-94 being slightly more than others but having regard to the crucial fact that in spite of all of them at certain point of time having become party to conspiracy to commit terrorist act, in pursuance of same or otherwise having acquired the necessary training surreptitiously in a foreign country for commission of terrorist act and thus each of them having acquired/gained sufficient potential for commission of terrorist act but in fact none of them having committed such act and each of them having remained continuously in custody for a long period of 5-6 years after arrest upto their release on bail and the same having reduced the potential acquired

by each of them for commission of heinous crime and same in turn having resulted in protecting the society at large from such potential gain and even after release of said accused on bail, their conduct being not indicative of themselves having attempted to use potential gain by them for causing any danger to society at large and in fact the act committed by all of them having not resulted in causing any danger to society and other matters stated by them during their statement recorded upon quantum of sentence will deserve not giving any much harsher or the maximum punishment to them. The same would be necessary as the conduct of these accused after their release on bail in some what indicative of there being eradication of the element of criminality because of which they had committed the crime.”

265. This Court has laid down parameters for interference against the order of acquittal time and again and the same have to be followed herein.

266. In view of the fact that the respondent (A-94) had gone to Pakistan and took training in handling the arms, ammunition and explosives and also attended the conspiratorial meeting at Dubai and took oath in the name of Quran not to divulge any information regarding the conspiracy, it is abundantly clear that the respondent was aware of the purpose of training in Pakistan and he undertook the training there without any protest.

267. We are of the view that the Special Judge committed an error in not convicting the respondent for the larger conspiracy. Therefore, the appeal is allowed and he is awarded life imprisonment. He 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.