

CASE NO.:
Appeal (crl.) 219 of 1997

PETITIONER:
LAL SINGH

Vs.

RESPONDENT:
STATE OF GUJARAT & ANR.

DATE OF JUDGMENT: 09/01/2001

BENCH:
M.B.Shah, S.N.Phukan

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

Shah, J.

After trial in TADA Case Nos.2/93, 7/93 and 2/94, by judgment and order dated 8th January, 1997, the Designated Judge, Ahmedabad (Rural) at Mirzapur, Ahmedabad, acquitted 16 accused and convicted 5 accused, appellants herein, namely, A1 Lal Singh, A2 Mohd. Sharief, A3 Tahir Jamal, A4 Mohd. Saquib Nachan and A20 Shoaib Mukhtiar. The appellants were convicted for the offences punishable (1) under Section 3 (3) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA Act) and sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- each and in default to suffer R.I. for 6 months; (2) under Section 120B (1) of IPC and sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- each, in default to suffer R.I. for 3 months. They were further convicted for the offence punishable under Section 3(3) of TADA Act read with Sec. 120B IPC but no separate sentence was awarded. Accused No.1 was additionally convicted for the offences punishable (1) under Section 5 of TADA Act and sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/-, and in default to suffer R.I. for 6 months; and (2) under Section 5 of the Explosive Substances Act, to pay a fine of Rs. 5000/- in default to undergo R.I. for 3 months; (3) under Section 25(1A) of the Arms Act and sentenced to suffer R.I. for 7 years and to pay a fine of Rs.5,000/- and in default to suffer R.I. for 3 months. No separate sentence for A-1 under Section 3(3) of TADA Act, Section 5 of Explosive Substances Act read with Section 120B IPC was passed. All sentences were directed to run concurrently.

Against the said judgment and order, A1 Lal Singh has filed Criminal Appeal No.219/1997, A2 Mohd. Sharief has filed Criminal Appeal No.1409- 1411/1997, A3 Tahir Jamal has filed Criminal Appeal No.407-409/1997, A4 Mohd. Saquib Nachan has filed Criminal No.244/1997 and A20 Shoaib

Mukhtiar has filed Criminal Appeal No.294/1997.

In all, twenty one accused were tried jointly before the trial court on the charge that they alongwith 13 named absconding accused and some unknown Sikh militants hatched criminal conspiracy in India and abroad for subversive and terrorist activities in India and for facilitating creation of Khalistan and liberation of Jammu and Kashmir by violent means during the period between September, 1988 to July, 1992; accused no.1 Lal Singh visited Pakistan on fake Pakistani passport and contacted Inter Service Intelligence (ISI) officials of Pakistan for smuggling of arms, ammunitions and explosives and money for terrorist activities into India; accused No.2 is Pakistani national and ISI agent; accused nos.1 and 2 alongwith Sajjad Alam Raja (absconder) unlawfully indulged in subversive activities, created an organization at Lahore (Pakistan) for liberation of Kashmir and its merger with Pakistan, creation of Khalistan in India by striking terror in people or section of people or to adversely affect the harmony amongst different sections of people, creating hideouts at various places in India with the help of A4 and A20; accused No.2 along with accused No.1 and some unknown Pakistani smugglers facilitated the smuggling of several consignments of arms, ammunitions and explosives into India from Pakistan by illegal means during 1991; A1, A2 and A20 along with some absconders conspired to strike terror by violent means to eliminate BJP/Hindu leaders/police officers and for that purpose procured fire-arms, ammunitions and explosives; accused no.3, 4 and 20 with the help of other accused created hideouts for accused no.1 for intensifying terrorist activities and for arranging transportation; accused no.1 alongwith accused Devendrapal Singh alias Deepak (absconder) while staying at Ahmedabad was in constant touch with accused Gurjit Singh Dhaliwal alias Pal alias Sharma (absconder) in USA. He coordinated the terrorist activities in India on telephone and that at the behest of accused persons huge quantity of arms, ammunitions, explosives and other articles were recovered and found to be in working order, which were of foreign make and sufficient to cause explosions.

According to prosecution, in the year 1984 the terrorism had gone beyond limits and therefore, blue star operation was performed. Just to oppose the action of blue star operation, the dissatisfied and angry Sikh youths started creating disharmony amongst two major groups of Hindus and non-Hindus. I.S.I. of Pakistan started instigating Indian Muslim and Sikh youths for this purpose. ISI contacted certain youngsters in India, who were the members of one organization named SIMI an institution for the purpose of cultural and religious activities amongst Muslim youngsters and to follow the principles of Holy Kuran and to live the life guided by Holy Kuran. For this purpose, ISI took help of Mr. CMA Bashir (absconding) of Kerala having close connection with SIMI. As the area of Punjab and J&K was not safe for the above activities, they chose certain borders of Gujarat and Rajasthan. Accused no.2a Pakistani National and ISI agent entered into India for getting information regarding defence base of India situated at Ambala, Punjab, J&K and for collecting other inside information in connection with defence personnel and army position in India. For this purpose he contacted accused nos.1, 3 and 4. Accused no.1 and 2 were active in furtherance of their conspiracy. They entered into India,

lodged at different places in order to achieve the goal. Both of them created contacts in India with accused no.20 at Aligarh and accused nos.3 and 4 at Bombay. Accused no.1 and 2 visited various places of India including Ahmedabad and Bombay in their fake names. The modus operandi of these two accused persons was to have their activities under false identity. In December, 1991 both the accused reached at Aligarh where they started their activities. Their targets were to create hideouts, to have their own agents, to have their contacts with agents in Pakistan, UK, Canada etc. and to have hideouts elsewhere. It is stated that A1 and A4 visited Madras to survey the stock exchange building to find out the possibility of bomb blast there. It is further stated that accused persons were using various types of vehicles according to their requirement and convenience. Out of those vehicles, one jeep and scooter were recovered from Ahmedabad and one gypsy was recovered from Bombay. During interrogation of accused No.1, two hideouts of accused persons at Ahmedabad came to be known and raid of these hideouts resulted into recovery of arms and ammunitions. At both the hideouts, they were living under different identities. It is further stated that A1 to A4 and A20, in their respective confessional statements, corroborate with each other on various points and items of conspiracy. The statements lend support to prove the conspiracy. The evidence against A3, A4 and A20 shows that they were helping and abetting A1 and A2 in common design.

It is further case of the prosecution that accused No.1 Lal Singh was arrested in the morning of 16.7.92 at Dadar Railway Station while he was alighting from a train. His arrest was shown in RC5/92 in which final report was submitted as no case is made out. For the present case, it is the prosecution story that Mr. Hiralal, the Commissioner of Police, Baroda (Gujarat) got information that one terrorist Inder Pal Singh alias Lal Singh along with other associates was arrested by Bombay Police and the arrested terrorist Lal Singh confessed regarding conspiracy hatched for kidnapping of grand-daughter of V.V.I.P. from Pune and that main leaders were operating from Baroda and other cities of Gujarat. The Commissioner of Police entrusted the work of verifying the said information to Mr. Anopkumar Singh, DCP (PW10). It was decided to send ASI I.C. Raj, PW9 of Chhani Police Station, Baroda working under Mr. Anopkumar Singh, to Bombay for interrogating Inderpal Singh and his associates. After contacting the Police Commissioner, City of Bombay, on 23rd, 24th and 25th July, 1992 ASI Mr. Raj interrogated accused Lal Singh. He was sending information every day with regard to the interrogation to DCP Mr. Anopkumar Singh. On 24th July, 1992 on the basis of interrogation, information was conveyed at Baroda with regard to large scale arms and ammunitions stored at certain premises at Ahmedabad. On receipt of the said information, Mr. Anopkumar Singh rushed to the Commissioner of Police, Baroda. Further, the D.G. Police of Gujarat State was informed immediately on telephone about the said information. The C.P. Baroda also talked about the information with Mr. Surolia, DCP Ahmedabad (PW103). The information was received at night time on 24th July, 1992 and PW7 ASI T.A. Barot located the two premises, namely, Flat No. C-33, Paresht Apartments situated at Narayanagar Road, Paldi and House No.4-A, Usman Harun Society, Juhapura at Ahmedabad and raids were carried out on 25th July in the morning. During raids, large quantity of arms, ammunitions and explosives were recovered from the

said premises. The Ahmedabad police was investigating the crime but considering its seriousness, on 31st July, 1992, the State Government gave consent for investigation by the CBI. On 4th August, 1992, Central Government notified that investigation be carried out by the CBI. The CBI registered the case as RC-6/92, carried out the investigation and also recorded confessional statements of the accused. Finally, after completing the investigation accused were charge-sheeted and tried by the Designated Judge at Ahmedabad.

To prove the charges, the prosecution examined 136 witnesses during the trial and relied upon various documents including confessional statements recorded during investigation.

All the accused persons abjured their guilt, pleaded innocence and stated that they have been falsely implicated in this case. Accused no.1 Lal Singh has stated that he left India in the year 1991 and returned to India in the year 1992 and when he was at Bombay, he was arrested at Dadar Railway Station. He has denied all the allegations levelled by the prosecution and stated that during his arrest his signatures on blank papers were obtained forcefully and that he never gave any confessional statement. During police lock up, he was tortured, his tongue was cut and was injured on the head. The Doctor was required to take 12 sutures on his head injury. It is his say that when he was arrested at Dadar Railway Station at the ticket counter, he was having 350 American dollars and 15 to 16 thousand Indian currency notes. He has disputed the date and time of his arrest.

Accused no.2 Mohd. Sharief admitted that he is a Pakistani National and is Ahmadi Muslim. He has also denied all allegations levelled by the prosecution and stated that during his arrest his signatures on blank papers were obtained forcefully and that he never gave any confessional statement. He has stated that the Pakistan Govt. declared Ahmadi Muslim Community as non-Muslim Community. His father died because of torture exercised by extremist Muslims of Pakistan. He has further stated that Indian Government had sponsored one conference of Ahmadi Muslims at Gurudaspur, Punjab. He wanted to settle at Germany and, therefore, he contacted one Ch. Avtar Ahmad in India for making arrangement for going to Germany. When he was at Delhi Airport and was preparing to leave for Germany via Moscow, he was stopped and later on arrested. From August 1992 till July 1993, he was confined at Lal Quila, Delhi. He was tortured and his signatures were taken on blank papers. Because of threats given by the C.B.I. Officers, he had not disclosed the story of torture when he was produced before the Court. He refused to identify other accused. He also denied to have visited India except in August 1992.

Accused No.3, Tahir Jamal also refused of having any relation with any of the accused. He stated that during the period of remand, no specimen writings were taken from him. Accused No.4, Saquib Nachan has stated that he was arrested from his village. He has also denied all allegations levelled by the prosecution and stated that during his arrest his signatures on blank papers were obtained under pressure and torture. Accused No.20, Shoaib Mukhtiar has stated that he was arrested from Aligarh. C.B.I. officers took his signatures on blank papers after torture and

beating him severely. With regard to the evidence of Azim Varasi, PW87, he has stated that witness was his friend but afterwards their relations became enemical. This happened because he was not ready to marry with the sister of Azim Varasi and further there was some quarrel between them on account of money.

It is not necessary to narrate the defence of rest of the accused who are acquitted.

After appreciating the entire evidence at great length, the learned Designated Judge convicted the aforesaid five accused and gave benefit of doubt to remaining sixteen accused. The Court arrived at the conclusion that the prosecution has proved that: 1. the muddamal arms, ammunitions and explosives produced before the court were recovered on 24.7.92 from C-33, Paresh Apartments and 4-A, Usman Harun Society and the same were recovered on the basis of the information given by the accused no.1 during his interrogation;

2. the link between accused no.1 and absconding accused Manish Agrawal with the premises C-33, Paresh Apartments and/or 4-A of Usman Harun Society and the above two premises or any of the two was used as hideout by accused no.1, absconding accused Manish Agrawal alias Dipak or any of the accused named in the charge-sheet;

3. in pursuance of criminal conspiracy, absconding accused Devendrapal Singh alias Manish Agrawal alias Dipak reached to Ahmedabad in April, 1992 with Rs.2,00,000/- to 3,00,000/- and stayed with accused no.1 in a hired flat no.C-33, Paresh Apartments and in a purchased bungalow no.4-A, Usman Harun Society;

4. for the convenience of the conspirators and for transporting the firearms, ammunitions and explosives, accused no.1, absconding accused Devendrapalsingh alias Manish Agrawal alias Dipak and Dahyasingh Lahoria alias Vijay Pahelvan purchased a Maruti Gypsy No.MH-01-8942 of blue or sky blue colour and a Mahindra Jeep No.MH-04-A2114 from Bombay and these vehicles one after another were put to the disposal of accused no.1 at Ahmedabad;

5. the scooter bearing no.GJ.1.P.9485 was purchased in the name of Ashok Kumar Khanna (accused no.1) from Arvish Auto of Ahmedabad and the same was found on 24.7.92 in the compound of B.No.4-A, Usman Harun Society;

6. accused nos.1 and 2 had entered into India from Pakistan through entry point Bombay Airport in the name of Chaudhari Mohmad Iqbal and Manzoor Ahmad respectively as Pakistani Nationals on 11/12.12.91;

7. their visits at various places in furtherance of criminal conspiracy hatched by A1 to A4 and A20:

(i) the visit of accused nos.1 and 2 at Aligarh and their stay at Aligarh in the month of December, 1991 or round about;

(ii) the visit of accused nos.1 and 20 at Bombay as alleged;

(iii) the visit of accused nos.1 and 4 at Ahmedabad and their stay in hotel Sidhhartha Palace and the stay of accused no.1 in hotel Royal and/or hotel Butterfly at Ahmedabad;

(iv) the visit of accused no.1 and absconding accused Mushahid under assumed names of K. Kumar and M. Husain respectively to Bombay on 30.6.92 and their contacts with accused no.4 to plan out about the bomb blast in Stock Exchange Building at Madras;

(v) the visit of accused no.1 and absconding accused Mushahid Husain to Hotel Balvas International in the names of Murtuzakhan and Anwar;

(vi) the visit of accused nos.1,4 and absconding accused C.A.M. Bashir to Madras on 2.7.92 as alleged and the stay of accused nos.1 and 4 in hotel New Woodland, Madras;

(vii) the visit of accused nos.1,4 and absconding accused C.A.M. Bashir of Stock Exchange Building, Madras on 3.7.92 and the return journey to Bombay on 4.7.92; and

(viii) the visit of accused nos.3,4 and absconding accused Mushahid Husain to Pakistan in the year 1991.

8. accused no.1 had brought 3000 US dollars and Rs.20,000/- in Indian currency and accused no.2 brought 3000 US dollars and Rs.30,000/- in Indian Currency when they entered into India in December, 1991 and ultimately reached to Aligarh;

9. accused no.2 came to India sometimes during March, 1991 to establish contacts with Kashmiri or Sikh Militants for terrorist activities. He again came to India sometimes during October, 1991 to set up hideouts and contacted accused no.1 on phone at Lahore (Pakistan) and after creating base and hideouts, he left for Pakistan;

10. accused no.3, 4 and absconding accused CAM Bashir contacted absconding accused Amir-ul-Azim at Bombay to create hideouts for accused no.1 at Ahmedabad for storing the firearms, ammunitions, explosives etc. and accused no.3 collected 1700 American dollars and subsequently received Rs.7,00,000/- in Indian Currency from him for intensifying the terrorist activities and further that out of this amount the sum of Rs.90,000/- and 1700 pounds were recovered;

11. during February, 1992, absconding accused Devendrapal Singh and Majindar Singh visited Aligarh and accused no.1 informed them that huge consignment of fire arms was being sent for Punjab and arrangement should be made for a motor truck to transport the consignment of weapons from Indo-Pak border and for the purpose accused no.1 gave Rs.10,000/- to accused no.20 for arranging the truck;

12. in the month of February accused nos.1 and 2 came into telephonic contact with absconding accused Daljitsingh Bittoo from Pakistan, who passed on the information for creating hideouts in Ahmedabad for storing, firearms, ammunitions and explosives sent from across the border;

13. during the visit of accused nos.1 and 20 to Bombay they contacted accused no.3 who was already informed about the visit by accused no.1 on telephone and was instructed by absconding accused Amir-ul-Azim;

14. accused no.3 introduced accused no.4 to accused no.1 and they all planned for creating hideouts at Ahmedabad and for this absconding accused Mushahid Husain was contacted;

15. accused nos.1 and 4 visited Ahmedabad on 29.2.1992 in the assumed names as Iqbal and Mohmad S. respectively and met absconding accused Mushahid Husain. Mushahid Husain made arrangement for hiring the House No.82 of Mubarak Society and accused no.1 shifted to Ahmedabad for illegal activities in furtherance of the conspiracy in the first week of March, 1992;

16. on 16.7.92, accused no.1 was apprehended by Bombay police at Dadar Railway Station and at that time during his personal search, 200 US dollars and Rs.30,664/- in Indian currency, one visiting card of hotel Samrat containing various telephone numbers and a driving licence in the assumed name as Kishor Kumar alongwith other articles were recovered;

SUBMISSIONS:

At the time of hearing of these appeals, Mr. Sushil Kumar, learned Senior Counsel appearing on behalf of accused no.1 and 4 has taken us through the material part of the evidence and has contended that the Trial Court ought not to have relied upon the confessional statements of the accused as the same are neither voluntary nor truthful. For contending that confessional statements are not voluntary, he submitted that all throughout accused were kept in police lock-up and during that time their so-called confessional statements were recorded by the Investigating Officers; before recording the confessional statements, the accused were not informed that after making the statements, they would be produced before the Judicial Magistrate and would be sent in judicial custody. It is pointed out that accused No.4 was arrested on 10.10.1992 and thereafter he was kept in police custody and on 7th November, 1992 his confessional statement was recorded. After recording the said statement, he was again sent to police custody till 12th November, 1992. This would apparently indicate that the statements were recorded under coercion and police torture. Further, even after recording the so-called confessional statements, accused were kept in police lock-up and produced before the judicial magistrate after long lapse of time. He further pointed out other circumstances for contending that the confessional statements of accused Nos. 1 and 4 are not truthful and in support of his contention, he has pointed out certain contradictions in the evidence of these witnesses. He submitted that the accused were in police custody for a long period and after getting some evidence, the Investigating Officers have recorded the confessional statements of the accused. If the accused were prepared to make voluntary confessional statements, there was no necessity of calling Mr. Sharad Kumar, S.P. (PW 133) from Delhi for recording their statements at Ahmedabad because in the metropolitan city of Ahmedabad, number of other S.Ps

and/or Magistrates were available. He further submitted that P.W. 133 Sharad Kumar has failed to verify any marks of injury on the person of accused No. 4 before recording the statement. Hence, he submitted that it cannot be stated that the said statements are voluntary and truthful. In support of his contention, he referred to the decision of this Court in Kartar Singh v. State of Punjab [(1994) 3 SCC 569] wherein the Court has laid down certain guidelines, which are required to be followed so that confessional statement obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with the well-recognized and accepted aesthetic principles and fundamental fairness. The learned counsel has pointed out that despite the aforesaid suggestion, the guidelines are not incorporated in the Act or the Rules.

Mrs. K. Sarada Devi, learned counsel appearing on behalf of Supreme Court Legal Services Committee representing accused no.2, Mohd. Sharief, assailed the version of the prosecution and submitted that accused no.2 wanted to leave Pakistan and settle in Germany and, therefore, he contacted a travel agent Chaudhary Altaf Ahmed and sought his help; in July, 1992, Altaf Ahmed took him and another person to India by train via Attari border and further arranged their stay at Delhi; the said agent arranged his visa and air tickets from Delhi and in August, 1992 when the agent took him to the International Airport (Delhi) to board a flight for Germany via Moscow, he was stopped and later on arrested; that he has no connection with recovery of arms etc. and that there is no evidence to show an agreement between him and other accused to commit an offence. The learned counsel has further argued that the confessional statement of accused no.2 was taken under coercion and to prove this fact, she referred to two paragraphs of statement of accused no.2 recorded under Section 313 Cr.P.C. wherein accused no.2 has stated that CBI officials took him to Ahmedabad for producing before a Magistrate; he was not put any question by Magistrate; he was threatened not to make any complaint; he could not arrange any lawyer as he is a resident of Pakistan; during his custody he was forced to plead guilty but as he did not make any confessional statement, he was mentally and physically tortured; and that against this torture, he went on hunger strike in May, 1994 for sixty days and thereafter on considering his deteriorating health condition, he was shifted to jail hospital. The learned counsel further pointed out certain contradictions in the evidence of prosecution witnesses and sought acquittal of accused no.2.

Mr. R.B. Mehrotra, learned senior counsel appearing on behalf of accused no.3 argued that confessional statement of accused is not voluntary and not in conformity with prosecution case. Therefore, it was not admissible. As such it belies the prosecution case. If it is held to be admissible, its reliability may be tested with great caution. He argued that as per the prosecution story, the role of accused no.3 is very limited. He is charged for creating hideouts for accused no.1 at Ahmedabad for storing fire arms, ammunitions and explosives etc. with the help of accused no.4, Saquib Nachan, C.M. Bashir (absconding) and by contacting Amir-ul-Azim (absconding) at Bombay. The learned counsel argued that accused no.3 never visited any place in India other than Bombay and his native place in district Azimgarh (UP); he has no link with accused no.2;

and that he is not concerned with the arms and ammunitions stored at Ahmedabad or related to the bomb-blast plan of Madras Stock Exchange. Accused no.3 never purchased air tickets for accused nos.1 and 4 for Ahmedabad on 29.2.1992 from Bombay. Further, so far as the question of telephone number mentioned at two flight coupons is concerned, the learned counsel contended that the maternal uncle of accused no.3 is an Islam Scholar, a social worker and an office bearer of many welfare Associations, therefore, there is strong possibility that some one who had purchased the air ticket might be knowing his maternal uncle and had given his telephone number. He further pointed out certain contradictions in the statement of PW87 Sayeed Mohd. Azim Varasi, who is the key witness against accused no.3 to prove his visit to Bombay. The learned counsel next contended that so far as the receipt of amount by accused no.3 through Hawala and accused Amir-ul-Azim is concerned, there is no independent witness to prove the facts that it was received for the purpose of terrorists activities. Moreover, even if this money is attributed to have been found with accused no.3, it has no connection with the conspiracy of exploding bomb or fire-arms etc. for which the accused has been charged under Section 3(3) of TADA Act. Lastly, the learned counsel argued that the trial court has given its findings mostly on the basis of conjectures and surmises; the judgment does not deal with the defence witnesses and is full of discrepancies and factual errors; the facts on the basis of which the conclusions have been reached and inferences have been drawn by the trial court actually do not exist anywhere, neither in the deposition nor in the oral or documentary evidence and not even in the confessional statements; the say of CBI officers has been taken as gospel truth and accused no.3 has been convicted for criminal conspiracy on the basis of philosophical reasons; and, therefore, accused no.3 may be acquitted.

Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of accused no.20 contended that the confession of accused was procured after he was stripped naked and severely tortured for four days and the alleged confession has serious discrepancies, which have been filled up subsequently. In the confessional statement, Aligarh has been replaced for Srinagar and that the certificate has been corrected by white ink where the name of accused no.20 Shoaib Mukhtiar has been substituted for accused no.2 Mohd. Sharief. The very fact that the name has been changed twice in the statement creates a serious suspicion that the recording of the confession may have been a mere paper transaction. Even the existence of gaps and blanks and change of the name of the city in the statement creates a doubt about the authenticity of the alleged confession. Further, there is no oral or documentary evidence on record to show that accused no.20 in any manner aided or abetted the commission of any terrorist act. The case of the accused no.20 is completely at par with that of the other accused who have been acquitted and there is no point of distinction on the basis of which the Designated Court could come to a contrary conclusion. On perusal of the entire evidence and in particular the statements of PW43 Major Singh and PW87 Azim Varasi, it becomes self-evident that A20 was not even aware of the conspiracy of accused no.1 or others to commit any terrorist act. PW43 has only stated that he had seen A20 in the company of A1. He nowhere stated that in his presence any plan for commission of a terrorist offence or any other offence was discussed. The

learned counsel further argued that the confession of co-accused cannot be used against the appellant, particularly in the absence of any other evidence, oral or documentary. The confession is thus incapable of connecting the accused with the alleged offences. He contended that the courts do not begin appreciation of evidence from the confession of a co-accused but consider the weight of substantive evidence and if possible, seek corroboration of the same from such confession. He further contended that the Trial Court on the basis of confessional statement held [in Para 159] that accused no.20 had also undertaken once to arrange for transportation of firearms but ultimately he could not succeed and there is not a whisper about the same by any of the witnesses. Thus, if this fact is excluded from consideration, the statements of PW43 and PW87 do not take the prosecution any further with regard to the knowledge of terrorist activity of A1 or any of the other accused. Lastly, the learned counsel contended that the Trial Court has misread the evidence of PW43 and PW87 in coming to the conclusion that the A20 was a conspirator with A1, A2, A3 or A4 and, therefore, A20 requires acquittal in the instant case.

Lastly, it was common contention of learned counsel for the appellants that unless there is conviction of any one accused under Section 3(2), appellants could not be convicted under Section 3(3) of the TADA Act. Mr. P.P. Malhotra, learned senior counsel appearing on behalf of State (CBI) controverted arguments advanced by the learned counsel for the accused/appellants and contended that the totality of the evidence read with the confessional statements of the accused establishes that they were conspirators; the judgment of the trial court is well reasoned and, therefore, the appeals of the accused require dismissal.

On the basis of the submissions made by the learned counsel for the parties, the contentions raised by them can be divided as under: - 1. Whether before convicting accused under Section 3(3) there should be conviction of someone under Section 3(2) of TADA Act?

2. Whether confessional statements would be inadmissible in the evidence on the ground that (a) they were recorded by the investigating officers or the officers supervising the investigation; (b) the accused were not produced before the Judicial Magistrate immediately after recording the confessional statements; and (c) the guidelines laid down in the case of Kartar Singh are not followed?

3. Whether there is any other evidence led by the prosecution to connect the accused with the crime or corroborating confessional statements?

(1) Whether before convicting accused under Section 3(3) there should be conviction of someone under Section 3(2) of TADA Act?

The learned counsel for the appellants submitted that the conviction of the accused under Section 3(3) of the TADA Act is illegal as none of the accused is convicted under Section 3(2) of TADA Act. In substance it is contended that section 3(3) does not contemplate an act which is independently an offence, but it depends upon commission of

a terrorist act as contemplated under section 3(1). In our view, this submission is without any substance if we refer to the language used in Sections 3(1) and 3(3) of the Act.

3. Punishment for terrorist acts.(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,--

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(ii) if any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

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

(4) Whoever harbours or conceals, or attempts to harbour or conceal any terrorist act shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and shall also be liable to fine.

(5) Any person who is a member of a terrorists gang or a terrorists organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

The aforesaid section provides for various acts which would be considered as terrorist acts and punishment thereof. It also provides for punishment of acts which are not terrorist acts. Section 3(1) enumerates various activities which are considered to be terrorist acts and

sub-section (2) provides for punishment of such acts. Sub-section (3) contemplates acts which are not terrorist acts by themselves, but activities prior or subsequent to the terrorist act. Under this section, a person can be convicted if it is proved that he (a) conspired, (b) advocated, (c) abetted, (d) advised, (e) incited, or (f) knowingly facilitated the commission of a terrorist act or any act preparatory to a terrorist act. Any of these acts by itself constitutes an offence. Therefore, for conviction under sub-section (3), it is not necessary that there should be a conviction under sub-section (2) for a terrorist act. The aforesaid activities are not only abetment of terrorist act, but include other acts which are not covered by the concept of abetment as provided under Indian Penal Code, namely, advocates, advises and any act preparatory to a terrorist act. Further, under TADA Act Section 2(1)(a) defines the word abet in the wider sense as under 2. Definitions(1) In this Act, unless the context otherwise requires--

(a) abet, with its grammatical variations and cognate expressions, includes

(i) the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists;

(ii) the passing on, or publication of, without any lawful authority, any information likely to assist the terrorists or disruptionists and the passing on, or publication of, or distribution of any document or matter obtained from terrorists or disruptionists;

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

This concept of making such activities as offence is not new to the criminal jurisprudence. Chapter V of the Indian Penal Code provides for abetment and punishment for the same. Section 115 deals with punishment in case where abetted offence is not committed. It inter alia provides that whoever abets the offence punishable with death or imprisonment for life shall, if that offence is not committed in consequence of the abetment, be punished as provided thereunder. Similarly, section 116 provides for punishment in case where abetted offence punishable with imprisonment is not committed. Section 118 also contemplates punishment in case where offence is not committed. It inter alia provides for punishing a person who conceals design to commit an offence punishable with death or imprisonment for life inter alia by any act or illegal omission. Similar provisions are there under Sections 119 and 120. Hence, in our view, for convicting the accused under Section 3(3), it is not necessary that someone should be convicted under Section 3(2) for commission of a terrorist act. Therefore, the contention of the learned counsel for the accused that except accused no.1-Lal Singh, no other accused can be convicted under Section 3(3) is without any substance.

(2) Admissibility of Confessional Statements:

Next question would be whether confessional statements are inadmissible in evidence because (a) the statements were recorded by the investigating officers or the officers

supervising the investigation; (b) the accused were not produced before the Judicial Magistrate immediately after recording the confessional statements; and (c) the guidelines laid down in the case of Kartar Singh are not followed. For deciding this contention, we have to refer to Section 15 of the TADA Act and flush out from our mind the concept evolved because of provisions of Evidence Act. The confessional statement recorded by the Investigating Officer is not admissible in evidence because of specific bar under Sections 25 and 26 of the Evidence Act. When that bar is lifted by the Legislature, it would be difficult to hold that such confessional statement is inadmissible. For this, we would first refer to some part of the judgment in the case of Kartar Singh (Supra) where this Court held that if the exigencies of certain situation warrant such a legislation then it is constitutionally permissible. The Court observed [in paragraphs 253, 254 and 255] that in some advanced countries like United Kingdom, United States of America, Australia and Canada etc. confession of an accused before police is admissible and having regard to the legal competence of the legislature to make the law prescribing a different mode of proof, the meaningful purpose and object of the legislation, the gravity of terrorism unleashed by the terrorists and disruptionists endangering not only the sovereignty and integrity of the country but also the normal life of the citizens, and the reluctance of even the victims as well as the public in coming forward, at the risk of their life, to give evidence, the impugned section cannot be said to be suffering from any vice of unconstitutionality. The Court further observed that if there is no breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement, then there should be no room for hyper criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability. The Court also observed a confession made by a person before a police officer can be made admissible in the trial of such person not only as against the person but also against the co-accused, abettor or conspirator provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused, namely, the maker of the confession. The present position is in conformity with Section 30 of the Evidence Act.

The Court finally held that it is entirely for the Court trying the offence to decide the question of admissibility and reliability of confession in its judicial wisdom strictly adhering to the law, it must, while so deciding the question, should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled.

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 (Supra) 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 11th March, 1994. Further, despite the suggestion made by this Court in Kartar Singhs case, the said guidelines are neither incorporated in the Act or the Rules by the 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 Singhs case (Supra) 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 v. N.B. Bhoir and others [(2000) 2 SCC 254] by holding that 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 Cr.P.C.; 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 and others [(1999) 5 SCC 253] the 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 Evidence Act including Section 30 would not be applicable. The decision in Nalinis case was considered in S.N. Dubes case (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.

In the present case, undisputedly when the accused were produced before the Magistrate they did not make a complaint that the confessional statements were recorded under coercion. Further, Rule 15 of the TADA Rules is complied with and each accused making the confession was explained that he was not bound to make it and in case he makes it, it could be used against him as evidence. Further, the officer had also verified that accused was making the confessional statement voluntarily and certificate to that effect is also attached to the said confessional statement. For its reliability and truthfulness, prosecution has produced on record other corroborative evidence, which we would discuss hereinafter.

Once it is held that confessional statements are admissible in evidence, for deciding to what extent such statements are reliable and truthful on the basis of corroborative evidence, we have to refer to the same. The prosecution story revolves around accused no.1 and 2 and all charges against remaining accused are inter-se connected with both these accused. Therefore, we would first refer to some parts of the confessional statements of A1-Lal Singh and A2-Mohd. Sharief.

CONFESSIONAL STATEMENT OF A1-LAL SINGH.

The confessional statement of Lal Singh is exhaustive and narrates the entire history of his activities from his childhood to the date of recording the said statement. He stated his correct and assumed names viz. Lal Singh s/o Bhag Singh, alias Manjit Singh, Iqbal Singh, Aslam Gill, Ashok Kumar, Kishore Pilot, Lalli, Raju, Veer Singh. He was resident of Village Nawapind and was born on 25.2.1960. He failed in his Xth Examination. In 1972, he got made his passport there by inserting his name as Lal Singh and started planning to go abroad. He stated that an agent named Billa, who was known to Kartar Singhs son of his village took him to Bombay for going to Italy in the year 1978 and took Rs.5000/- from him. Billa vanished in Bombay and thus he had to get back to his village. Thereafter, another agent Nirmal Singh r/o village Dade P.S. Fagwara, took Rs. 10,000/- from him and he was sent to Italy via Delhi along with other three boys. There he worked in the vessel LEENA; he used to work as Deck Boy; he stayed in this job from September 1978 to December 1979 and used to save 400 to 500 dollars. He left this job in December 1979 and went to Rome and started working with Gurnam Singh and Major Singh (PW 43) in another vessel ALEXENDER. There he worked till June 1981. On June 1981 when the vessel reached Liverpool, he left the vessel along with Major Singh and other boys and came back to India. He stated that Major Singh was resident of Beeranwal Nawans. After staying for one month at home, he went to Sophia, the capital of Bulgaria, along with Major Singh where they worked as Sailors. From there they went to Toronto, Canada and worked there till June 1984. According to him Operation Blue Star had also taken in June 1984 and for this reason there was resentment in the Sikhs. During that time when he went to Gurdwaras he heard many explosive speeches and that the attack on the Golden Temple was strongly resented. He had narrated his activities with regard to the demand of Khalistan and that he joined Sikh organization giving arms training like AK 47.

In the present case, we are not concerned with all the facts stated in the confessional statement and, therefore, it is not necessary to narrate the same. It is his say that in 1988 or thereafter he sought help from one Joginder Singh Sandhu, [World Sikh Organisation leader of Surrey and also the President of Rock Street Gurudwara situated at Vancuoer] to go to Pakistan because government of Pakistan was helping the Sikh students who had gone there after crossing the border. In Pakistan, he made contacts with smugglers whose names are mentioned. During that time, he came in contact with persons working for ISI of Pakistan. Thereafter, he stated about forming of an organization namely K-2 for carrying out terrorist activities. He also came in contact with Sharief (accused no.2) who was working with the military intelligence of Pakistan. At that time, he was informed that Sharief was involved in terrorism in India and some of his men were caught. Subsequently, Sharief introduced him to two persons who were smuggling weapons and explosives in India. Finally, it is his say that in November, 1991 when Daljit Singh Bitto was present in his house, one Amir-ul-Azim came with Tahir (accused no.3) and introduced him. Amir- ul-Azim told him to go to India and also that Tahir was resident of Bombay and a faithful man. It is his further say that in November, 1991 Sharief came back to Lahore with Javed Yousuf resident of Kashmir who was living in Aligarh and they all three decided to work

unitedly for creation of Khalistan and for independence of Kashmir. Thereafter, for him Mohd. Sharief got a bogus passport and obtained a visa in the name of Chowdhary Mohd. Iqbal Ahmad son of Sultan Ahmad. Both of them came to Bombay from Lahore via Karachi by Pakistan Srilanka Flight. The passport and visa of Sharief was also bogus. He was having visa for Calcutta in the bogus name of Mansoor. After reaching Bombay they stayed at the Airport and from there they went to International Airport by Taxi and from there they went to Calcutta by morning flight. After reaching Calcutta they stayed in a Guest House and on the next date i.e. on 14.12.1991 went for obtaining stay permit for three months on Visa. From Calcutta they came to Aligarh by train. From station, they were straightway taken by Barquat Ali Sajjad to Pees Villa building, Doodhpur, where brother-in-law and Mama of Sajjad was staying. After 4/5 days Javed Yousuf came there and helped him in getting a rental house, wherein he alongwith Sharief started living. There, for his contacts he was using telephone number of Saukat Alis P.C.O., who was a resident of Kashmir Karbar of Barullah market. Barqut Ali introduced him to a boy named Shoaib (accused No.20). He further contacted Major Singh (PW 43) on telephone who runs taxi in Delhi. In Feb., 1992 Devendra Pal Singh alias Deepak and Manjinder Singh Issi alias Bhushan came to meet him and told him that large number of weapons were to come in India and so he should manage a truck. He talked to Shoaib (accused no.20) about the truck and also gave Rs.10000/- for repairing of the truck, which was damaged because of accident. Thereafter, he met Amir-ul-Azim, Press Secretary of Jamait-e-Islami at Prof. Amanullahs house at Aligarh. Amir gave the address and telephone number of Tahir Jamal (accused no.3) of Bombay to whom he met earlier in Pakistan. At the end of February, he and Shoaib went to Bombay and contacted Tahir. He also met Tahirs younger brother. He asked Tahir about a house at Ahmedabad for hiding weapons. Tahir arranged his meeting with Raveesh @ Saquib (accused no.4), who accompanied him to Ahmedabad. At Ahmedabad, Raveesh introduced him to a man named Musahid who was having a hardware shop. Musahid took a rented house for him in Juhapura Mubarak Society. Daljeet Bitto told him over telephone to manage some big vehicle for hiding large quantity of weapons. In March, 1992 he sent Musahid to Aligarh to collect Rs.50,000/- from Deepak. In April, 1992 Deepak came at Ahmedabad with 2/3 lakh rupees. Thereafter, he took the flat C-33, Shantivan Parsh Society on rent of Rs.1200/- p.m. He also purchased Flat No.4-A in Usman Harun Society in Juhapura. In the month of April, 1992 Bhushan went to Bombay to buy Zipsy. He was informed by Pyara Singh and Gulzar Singh, who came to Ahmedabad from Pakistan, that one consignment of weapon was to come. Gulzar Singh did not meet him but later on he came to know that Gulzar Singh in reality is Daljeet Bitto. In May, he received two consignments of weapons i.e. one by Daya Singh and second from the house of Karim. Since, Karim and Akbar came to know about Gypsy number, so he sold the same and purchased a Mahindra Jeep. Thereafter, he came in contact with Rajbir. Later on, Rajbir was arrested. Deepak told him that Rajbir is that person who can talk to the government for freeing Jinda by kidnapping the grand daughter of Prime Minister. In June, 1992, he received another consignment of weapons from the house of Karim. He bought a new Bajaj Scooter from Avish Auto. He further purchased a gypsy, earlier owned by Dhanraj Electronics. On 30.6.1992 he along with Musahid came to Bombay by flight and stayed at hotel Balwas. They wanted to meet Raveesh @

Saquib. During the meeting, Raveesh enquired for giving weapons and also for help in training his boys. On 1st July, he alongwith Raveesh went to Madras. Both stayed at hotel Woodland in different rooms. On 4.7.1992 they came back to Bombay by flight. Next day, he went back to Ahmedabad. On 12.7.92 he went to Indore and from Indore to Gwalior. There, he stayed with Harjeet Singh, a friend of Major Singh of Delhi. From Gwalior, he contacted Pal in America and Major Singh in Delhi. Thereafter, on 15.7.1992 he left Gwalior for going to Bombay by train. On 16.7.1992 when he reached Bombay he was arrested. He further stated that at the time of his arrest, he was having Rs.34000/-, 200 American dollars, one bogus driving licence made from Ahmedabad and a card on which phone numbers were written which was seized by the Police. He was also having a cynide capsule, which was not used by him because at that time the same was in his purse. This capsule was provided by I.S.I. Pakistan to meet such situation. He stated that they receive 25/30 lakhs annually from the Sikhs of USA, Canada and England. The amount was being collected and sent to the supporters of Khalistan and other institution. He received the amount through hawala transaction. He also stated that for money he contacted Satinder Pal Singh Gill in Canada, Gurmeet Singh Walia in California, America, Bhajan Singh Bhinder, California and Yadvinder Singh, Jaswant Singh, Basant Singh, Zafarwal, Jagjeet Singh Chauhan, Ajit Singh Khera, Mahal Singh Babbars and others from U.K. He further stated that he was receiving weapons like AK 56 rifles, pistols, explosives, timers, time bomb, rocket, launchers, and ammunition.

It is true that he was all throughout under interrogation of number of officers from various departments including C.B.I. but the story unfolded by him as to his movements in India after December 1991 and prior to 12.12.1991 in Pakistan leaves an impression that the facts stated by him in his statement are having element of truthfulness. Major part of the relevant confession is corroborated by other evidence.

CONFESSONAL STATEMENT OF A2-Mohd. Sharief.

Likewise, A2 Mohd. Sharief has also given exhaustive confessional statement and narrated the entire history of his activities from his childhood to the date of recording the said statement. He admits that he is a Pakistani National and belongs to a well-to-do family. In January, 1987 he joined as Assistant Accounts Officers (Group 16) at Dera Gazi Khan in Water Management Wing. After few months, he was transferred to the Head Office at Lahore. During his stay at Lahore, he came into contact with some Kashmiri militants, who were collecting money from Muslim Welfare Organisations and prominent businessmen etc. for funding the militants operating in Kashmir. He introduced the militants to the businessmen of Lahore and used his political influence to get help for the militants from the business community. He visited India on 20th January, 1991 on a valid passport and visa to visit Delhi in his genuine name alongwith Syed Abdulla Siraji, who was infiltrated with an assumed name of Ahmed Ali. For infiltration of Syed Siraji to India, he took help of his friend Javed Jaida, a Customs Clearing Agent at Railway Station, Lahore. After reaching Delhi, he stayed at Qureshi Guest House and there he came into contact with Furkan Ali @ Bubba r/o Saharanpur, who was a smuggler operating through Atari border. After

site seeing in Delhi, he returned to Pakistan by train on 2nd February, 1991. In Feb., 1991 he met Sajjad Alam Raja, resident of Pokhwa who was involved in arranging finances, weapons and support from the Pakistani authorities to the militants operating in Kashmir. He again entered into India on 12.3.1991, through Attari border on a new passport, with a view to infiltrate four Kashmiri militants. Out of four, only one militant, Yakub could be infiltrated in connivance with the local smugglers and Custom authorities. While staying at Qureshi Guest House, he came in contact with Mohd. Aslam and also Mohd. Ayub Dar @ Ashfaq whom he knew from Pakistan. Mohd. Aslam was finding difficulty in completing the construction work awarded to him by the Indian Oil Corporation at Jet Air Base, Avantipur in J&K state. Mohd. Aslam sought his help in persuading Kashmiri militants to let him complete the work unhindered. He collected copy of feasibility report from Mohd. Aslam of the construction work at Jet Air Base, Avantipur and passed on these documents to Military Intelligence of Pakistan. On his return in April, 1991. Mohd. Ayub Dar @ Ashfaq introduced him to Tahir (accused no.3) and Gullu, local muslims of Delhi. Tahir and Gullu were having 6-1/2 kg. explosives and he advised them to explode the same with the help of remote control devices. They told him that they had caused bomb blasts at Narula Restaurant, Connaught Place, New Delhi and also in a Cinema Hall at Chandni Chowk. In May, 1991, he was asked to work for Pak Military Intelligence on permanent basis to which he agreed. Initially, he was briefed by Pak MI to tell his family that he was going to ISI as an Intelligence Officer and that he was to be posted either in Saudi Arabia or Dubai. Pak MI gave him training in three phases First phase from 11th May, 1991 to 2nd June, 1991; Second phase from 15th June to 15th July, Third phase from 28/29th July to 29th August, 1991. After completion of first phase of training, he met Sajjad and Khwaja Moin-ud- din, SDO Water and Power Development Authority. They discussed plans to help the Sikh militants with him. They further introduced him to Lal Singh, who was operating under a cover name of Iqbal Gill. Lal Singh sought his help in arranging smugglers who could help him in the smuggling of arms, ammunition and explosives from Pakistan to Punjab in India. He agreed to help Lal Singh and arranged his meeting with Shera Jat, a notorious smuggler. On 6th June, 1991, Lal Singh along with Daljit Singh Bitto came to his house and he arranged their meeting with Shera. He also introduced them to some other smugglers. He alongwith Sajjad and Lal Singh formed an organisation called K2, which stands for Kashmir and Khalistan, and agreed to work jointly in India. As per plan, Sajjad and his wife infiltrated into India in early September, 1991 and created a hideout at Aligarh. He himself flew for India on 8th October, 1991 by PIA flight under the assumed name of Manzoor Ahmed and on a new passport. At Bombay, he stayed in Hotel Kalpana, Grant Road. Thereafter, on 17th October, 1991 he went to Aligarh and met Sajjad. Sajjad told him that he was in constant telephonic contact with Lal Singh. Sajjad further informed him that Yasin, Shoaib Mukhtiar (accused no.20), Javed Yousuf and Barkat Ahsani were constantly in touch with him (Sajjad) and that they were in need of weapons for accelerating terrorist activities including killing of BJP/Hindu leaders and police officials in India. He tried to get extended his visa from Delhi and Bombay but he failed to do so. Thereafter, he returned to Aligarh; burnt his passport and decided to stay there in furtherance of task

given to him. From Aligarh, he was in constant touch with Lal Singh and Col. Hafeez-ur-Rehman in Pakistan on Telephone Nos.851981 and 586668 respectively. He returned back to Pakistan on 8th Nov., 1991 to arrange infiltration of Lal Singh to India. With the help of Chowdhary Altaf Hussain, a Member of Provincial Assembly, Punjab (Pakistan), he arranged a passport for Lal Singh in the assumed name of Iqbal Ahmed. He also got issued a fresh passport in his assumed name of Manzoor Ahmed and also arranged a visa for Calcutta. At Lahore, Lal Singh told him about his contact with Amir-ul-Azim, Press Secretary, Jamat-e-Islami, Pakistan and that he has been asked to tell Tahir Jamal (accused no.3) of Bombay to arrange contacts in Bombay and other places for facilitating terrorist activities. Thereafter, he and Lal Singh left Pakistan for going to India on 11th Dec., 1991 by Sri Lankan Flight. In the early hours of 12th Dec., 1991 they reached at Bombay. Thereafter, on 12th itself they took flight for Calcutta. After staying for two nights at two different guest houses near Railway Station, Hawrah, they left for Aligarh by Kalka Mail on 14.12.1991. At Aligarh, they went to the hideout of Sajjad. He along with Lal Singh, Devenderpal Singh @ Deepak, Amarpal Singh @ Videshi and Shoaib Mukhtiar chalked out plans with Javed Yousuf, Barkat Ahsani and Yasin Malik to obtain fire arms for killing BJP/Hindu leaders and police officials in India. In the last week of Dec., 1991, Amir-ul-Azim, Press Secretary, Jamat-e-Islami, Pakistan visited Aligarh and introduced him and Lal Singh to one Prof. Amanullah of Aligarh, who was asked to provide financial assistance. Amir also told them that he had given some amount to Tahir Jamal and promised to send more amount to them through hawala for terrorist activities. In the last week of January, 1992, Daljit Singh Bitto informed him and Lal Singh about a consignment of weapons coming to Jodhpur and that arrangement should be made to collect the same. They called Javed Yousuf, Barkat Ahsani, Yasin and Shoaib Mukhtiar for arranging a truck for the purpose. Shoaib was paid an advance of Rs.15000/- for arranging truck. However, Shoaib could not arrange the truck. On 5th or 6th of March, 1992 Amar Pal Singh @ Videshi and Manjinder Singh @ Bhushan came to his hideout at Aligarh and collected Rs.4 lacs, which were left by Lal Singh at his hideout at Dhora Mafi. This amount was meant for purchase of jeep/truck for transportation of weapons. In March, 1992 he purchased a Yamaha 100 CC Motorcycle from Aligarh in the name of Javed Yousuf. In the 3rd week of March, 1992, Col. Hafiz-ur-Rehman made a telephonic call directing him to leave Aligarh as it was considered that Aligarh was no more a safe place for him. On 26th March, 1992, he contacted Col. Hafiz-ur-Rehman in Pakistan, who informed him that Major Suhail and his four associates had been arrested by the Police and that he should not go to Delhi and Aligarh and that he should stay at Bombay. On 2nd April, 1992 he returned to Aligarh to celebrate Id-ul-fitr with Shoaib Mukhtiar, Barkat Ahsani, Javed Yousuf and Yasin. On 8th April, 1992 police raided at the shop of Javed Yousuf and arrested him. At that time, he was present at Javed Yousuf's house. He immediately left that place and, thereafter, being accompanied with Shoaib Mukhtiar, he went to Kathmandu by bus. On 22nd April, 1992, in Kathmandu, he contacted Pakistan authorities and leaving Shoaib alone in hotel, he went to Pakistan by Flight. Again, on 22nd June, 1992 he left Karchi by air for Kathmandu. In July, 1992 he contacted two persons, namely Puran Bahadur Mallah, and Prakash Chand Thakur, Ex. Ambassador of Nepal to Japan and

former Chief Protocol Officer, Govt. of Nepal, who could provide persons for intelligence purposes. In January, 1993 the above two persons infiltrated into India. He infiltrated on 8th January, 1993 and went to Gorakhpur. He stayed in India upto 25th January and again went back to Kathmandu. On 10th February, he again infiltrated into India and returned to Kathmandu. Thereafter, on 30th April, 1993 Col. Rehman directed him to go to target cities of India. On 3rd May, 1993, he left Kathmandu for going to India and in the morning of 4th May, 1993 he reached at Gorakhpur in the assumed name of Pawan Kumar Sharma. On 6th May, he reached Delhi and thereafter, he went to Amritsar and Pathankot and stayed there for some days. Thereafter, he was again directed by Col. Rehman to go back to Kathmandu. Lastly, he infiltrated to India on 7th June, 1993. On 9th June, 1993 he reached New Delhi. In the morning of 11th June, he went to Agra for seeing Taj Mahal. On the same day, he came back to New Delhi. At New Delhi, he saw press reports that he was wanted by the Indian Police. Hence, he decided to leave for Nepal. On 18.6.1993, he went to Railway Station for going to Gorakhpur and there he was arrested by the Delhi Police.

From the statement, it transpires that till the end of February, 1992, the movements of accused Nos. 1 and 2 were between Aligarh and Bombay. According to the story unfolded by accused nos. 1, 2 and 20 and to certain extent by accused nos. 3 and 4, accused nos. 1 and 20 came to Bombay in furtherance of their activities. Before leaving for Ahmedabad, A1 and A20 were in Bombay and from Bombay A20 left for Aligarh. A1 and A4 came to Ahmedabad and subsequently to Madras. To prove their stay in different hotels, the prosecution has examined witnesses from the concerned hotels.

(3) Other Evidence: Before appreciating the evidence, we would make it clear that if the confessional statements are accepted then it cannot be said that the conviction of the appellants is in any way illegal or erroneous, nor even the learned counsel for the appellants tried for the same. However, in the present case the confessional statements were recorded when all the accused were in police custody by the CBI Officers who were supervising the investigation and after recording the statements, they were not immediately produced before the Magistrate. Therefore, even though the confessional statements are substantive piece of evidence, to appreciate the contention that the said statements are not truthful and reliable, other evidence produced on record including the evidence which corroborates the said statements is required to be considered.

For the purpose of appreciation, other evidence can be divided as under: - (a) Arrest of A1 on 16.7.1992 and on the basis of his interrogation, recovery of large quantity of fire-arms, ammunitions and explosive substances.

(b) Hiring of C-3 Paresh Apartments and purchasing of building 4- A Usman Harum Society stay of Accused No.1 and another person in the said premises.

(c) Stay of A1 and A2 at Aligarh. (d) A1 and A4 going together at Ahmedabad and Madras and their stay in various hotels.

(e) Air Flight manifestos mentioning the names of A1,

A2 and A4 for travels.

(f) Evidence against A2-Mohd. Sharief. (g) Evidence against A3-Tahir Jamal. (h) Evidence against A4, Mohd. Saquib Nachan. (i) Evidence against A20, Shoaib Mukhtiar.

(a) Recovery of large quantity of fire-arms, ammunitions and explosive substances:

Prosecution has examined number of witnesses for establishing recovery of large quantity of fire arms, ammunitions and explosive substance from C-33, Paresh Apartments and 4-A, Usman Harun Society, Juhapura at Ahmedabad. It is the say of the witness PW9 PII.C. Raj, Ex.172 that in July, 1992 he was working as PSI at Chhani police station, Baroda. On 18th July, 1992, PW10 Mr. A.K. Singh, Dy. C.P. (North Zone), Baroda informed him that at Bombay certain terrorists were apprehended and that he should go there and interrogate them with regard to their movements in Gujarat. Mr. A.K. Singh gave him a confidential letter. After reaching at Bombay, he met Mr. Khan, Addl. Commissioner of Police of North Zone, Bombay and delivered the letter given by Mr. Singh, D.C.P. Thereafter, Shri Khan permitted him to interrogate the accused at Santacruz police station. He interrogated A1 Lal Singh on 22nd July, 1992 and recorded his statement. He was sending information regarding interrogation at Baroda by Fax and telephone. During the interrogation of Lal Singh on 23rd July, 1992 he received information regarding the weapons kept by him at Ahmedabad. After completing his interrogation, he reached at Baroda on 28th July, 1992 and handed over the statements recorded at Santacruz police station and his written report to Mr. A.K. Singh. The prosecution has also examined PW10 Mr. Anup Kumar Singh (Ex.174), Dy. Commissioner of Police, Baroda, who stated that in June, 1992 the Commissioner of Police Mr. Hiralal got an information that some terrorists including Lal Singh were arrested at Bombay and were confessing regarding conspiracy of kidnapping of grand daughter of V.V.I.P. from Pune. He also received information that main leaders of this conspiracy Dipak and Vijay Pehlwan were operating from Baroda and other cities of Gujarat. Thereafter, PSI I.C. Raj was sent to Bombay for interrogating terrorists. PSI Raj was informing him from time to time about the progress of interrogation on telephone. On the basis of information received by him on 23rd July, 1992, he contacted the Police Commissioner who in turn talked to Mr. A.K. Tandon Director General of Police, Gujarat State over telephone in his presence. Thereafter, Mr. Hira Lal telephoned to Mr. Surolia (PW103) who was Dy. Commissioner of Police, Ahmedabad in his presence and subsequently he talked to Mr. Surolia and gave detailed information received by him. It is the say of this witness that on 24th July, 1992 in the late hours at night he received information from Mr. Hira Lal that successful raids were carried out at Ahmedabad on the basis of the information given by him. He has also produced on record the report Ex.173 submitted by PSI I.C. Raj. PW-103 Mr. A.K.R. Surolia, Ex.548 has stated that at the relevant time he was S.P. (CID Crime), State of Gujarat in the police head quarters. On 23rd July, 1992 Mr. Hira Lal, Commissioner of Police, Baroda telephoned him in the evening and told him that accused Lal Singh arrested at Bombay had made certain disclosures regarding weapons and some explosives at some places in Ahmedabad and so he should

contact DCP Mr. A.K. Singh Baroda who would dictate the details about the disclosures. Thereafter, Mr. A.K. Singh informed him that Lal Singh and his associates had lived at Ahmedabad for quite sometime at two places i.e. (1) C-33, Paresh Apartments, Narayannagar, Paldi and (2) 4A, Usman Harun Society, Jhuapura, Ahmedabad, and it was likely that arms, ammunitions and explosives were hidden in the said hideouts. He immediately contacted Commissioner of Police Mr. M.M. Mehta in his chamber who directed to work out the details and job of selecting a team. He selected PI Mr. D.S. Sangwan, Astodia police station for the job and the staff under his control. They located the places and reported to him. Thereafter, in the early hours of 24th July, 1992 he went to the areas with his team and after survey, he kept some persons for a watch as the areas were hideouts for terrorists. He also decided to carry out the raids in the said premises in the morning and instructed SI Mr. Tarun Barot (PW7) to arrange for two Panchas and to reach at Paresh Apartments. It is the say of the witness that C-33, Paresh Apartments is a flat on 3rd floor having two rooms and kitchen and it was locked but was opened by breaking open the lock. In the said premises, weapons including AK 56 rifles, pistols, ammunitions etc. were found and seized after preparing recovery memo. Thereafter, they proceeded to the second premises namely 4A, Usman Harun Society, Jhuapura, which was a small bungalow having ground floor. It was also locked and after breaking open the lock, they entered into the bungalow and in presence of the Panchas search was carried out and a large quantity of arms, ammunitions and explosives etc. were recovered. It is his say that as the articles were bulky and in large quantity they called for bags, gunny bags, boxes etc. from the head quarter and seized articles were sent to the head quarter after completing the panchnama, Ex.145. Thereafter, he directed the PI Mr. Sangwan to lodge complaint. In the cross-examination, he has stated that he first visited the site approximately between 2.30 a.m. to 3.00 a.m. and thereafter at about 10.00 am he went to the first premises. It is his say that he has not drawn any formal panchnama for breaking open the lock. He further stated that it took 8 to 9 hours at Jhuapura in raiding the premises and completing the formalities of seizure. He had denied the suggestion that he had not gone to Paresh Apartments and 4A, Usman Harun Society at the time of raid and that all those muddamal weapons were lying with them as they were found unclaimed or the case against Lal Singh is concocted by adjusting the lying mudamal.

The prosecution has then examined PW104 Mr. D.C. Sangwan, PI, Astodia Police Station, Ex.550. It is his say that the police station was under control of DCP (South) Mr. Surolia. On late night of 23rd July, 1992, DCP instructed him to locate and verify Flat No.C-33, Paresh Apartments and 4- A, Usman Harun Society, Jhuapura, Ahmedabad. In early morning of 24th July, 1992 they located the premises and informed the DCP. Thereafter, Mr. Surolia visited both the premises. A watch was kept and it was decided to raid the premises in the morning. However, he could not be a party to the raid because he was required in Sessions Court in connection with one Sessions Trial but for sometime he had gone to Paresh Apartments after attending the Court and thereafter again he had gone to Jhuapura at 1.30 p.m. At that time, weapons were found and the process of preparing panchnama was going on. Panchnama was over at about 12.00 mid night. Mr. Surolia directed him to lodge complaint,

which is produced at Ex.551. It was sent for registration of the offence at Vejalpur police station.

PW7 Mr. Tarun Kumar A. Barot, PSI, Ex.161 has stated that in July, 1992 he was working at Astodia police station. At about 12.30 at night Mr. Sangwan, PI, directed him to locate C-33, Paresh Apartments at Paldi and B.No.4A, Usman Harun Society at Juhapura. After locating those places, DCP Mr. Surolia and PI Sangwan were shown those places. In the morning, he had gone with two panchas at Paresh Apartments in a private vehicle. At that place, DCP Mr. Surolia was present and on his instructions the lock of the main door was broken in presence of the panchas. During the search of the flat following arms and ammunitions were recovered: -

From Flat No.C-33: 1. AK 56 rifles 4 2. Pistols 2 3. Cartridges of AK 56 rifles 200 4. Transistor bombs operated by remote control 3

Necessary panchnama was prepared and after pasting slips, seals were applied on the articles. Thereafter, they went to Bungalow No.4A, Usman Harun Society, Juhapura. Here also, after breaking open the lock of the door, search was carried out and following arms and ammunitions were recovered:

Recovery from Bungalow No.4A: 1. Rocket launchers - 4 2. AK 56 rifles - 31 3. Pistols with magazines - 12 4. Empty magazines of pistols - 1 5. LMG without mark with wooden butt - 1 6. Empty magazine of AK 56 rifles. - 99 7. Empty drum magazines - 1 8. 82.2 grenade of small bulb type of green colour - 35 9. H.E. 36 grenade - 12 10. Hand grenades fuse - 10 11. Plastic explosives packets - 20 12. Packets of explosives of black colour - 34 13. Packets of gelatine explosives - 34 14. Paint tin of small size - 1 15. Orbin explosives sticks for rocket launchers - 8 16. Rockets - 8 17. Magnetics - 4 18. Wire roll for yellow coloured explosives - 5 19. Insulating rolls - 14 20. Boby wire tape - 9 21. Detonator bundles - 3 22. Detonator plugs - 14 23. Cartridges of AK 56 rifles - 5213 24. Fuse plastic rolls make M.700 - 14 25. Hand Grenades - 10

Further 2 biscuits of yellow colour metal like gold were recovered and seized. Outside the bungalow there was a scooter bearing No.GJ-1-P.9485 of Ash colour. It is the say of PW7 that after the panchnama was prepared, both panchas had signed on it in his presence and he had also signed the panchnama. As arms and ammunitions were in large quantity, he had sent a van to the police head quarter to obtain boxes and bags. The packets of the arms seized at Paresh Apartments were also opened and arranged along with the articles found at Juhapura. The boxes and gunny bags were sent to the guard room of the police head quarters. In cross-examination, he had stated that two places were located at 2.30 to 2.45 a.m. and were shown to DCP.

The evidence of the police officers with regard to the recovery of the weapons is fully corroborated by evidence of independent witnesses, namely PW4 Dharmesh Natwarlal Valera, Ex.137, who was studying S.Y. B.Com at the relevant time and was residing at B-16, Paresh Apartments and PW6 Dharmen Harikirshnabhai Dudhiya, Ex.144, who was panch of recovery. It is the say of PW6 that Mr. Akhilesh Sureshchandra Bhagat was second panch, who accompanied him. Recovery of arms and

ammunitions was noted in the panchnama and was signed by him. Nothing material has been found to disbelieve this independent panch. He has denied the suggestion that as a clerk he had occasions to go for inventory or for taking possession. He has admitted that he was doing seasonal business of crackers and kites on the footpath on the naka of his lane without licence. He stated that there was no occasion of any quarrel with police in connection with his doing cracker business. There is detailed cross-examination of this witness but nothing substantial is found to discredit his say. PW4 has stated that A1 and another accused had stayed in Paresh Apartments for 4-5 months. He further stated that the persons staying in C-33 Paresh Apartments used to bring Maruti Gypsy of sky blue colour and that he had not seen them after the raids were carried out.

In view of the aforesaid evidence, it is apparent that prosecution has established beyond reasonable doubt that on the basis of interrogation of A1 Lal Singh at Bombay, by taking prompt action police recovered large quantity of arms, ammunitions and explosive substances. It is stated that raids were carried out in presence of panchas and under supervision of S.P. (CID{Crime}) Mr. Surolia. At the time of hearing of these appeals, learned senior counsel Mr. Sushil Kumar submitted that the prosecution has failed to establish the recovery before the Court because admittedly the seals which were placed on the muddamal articles at Paresh Apartments were removed at Juhapura when other arms and ammunitions were recovered at that place. He also submitted that only one continuous panchnama was prepared for recovery of the said articles even though it is stated that articles were recovered from two separate premises. He, therefore, submitted that arms and ammunitions which were lying in the police station were utilized for falsely implicating A1 Lal Singh.

In our view, there is no substance in the said submission. First seals, which were removed, were affixed again at second premises after arranging and classifying the weapons. Further, there is no reason to disbelieve prosecution witnesses for the recovery of large quantity of arms, ammunitions and explosive substances, which were recovered on the basis of interrogation of A1 Lal Singh. Immediate action was taken for locating the premises and after locating the premises, raids were carried out by S.P. Mr. Surolia. Learned senior counsel has also submitted that no search warrant was obtained prior to search as required under Rule 14 of the TADA Rules. He submitted that no entry was made in the record despite the decision being taken to raid the premises. It is to be stated that raid was carried out by S.P. Mr. Surolia after obtaining directions from Commissioner of Police Mr. M.M. Mehta. He was present at the time of raiding the premises. He was also present when panchnama was prepared for seizure of the articles. Further, the learned Judge has specifically observed that during the examination of the panch, PW6 Dharmen H. Dudhiya, each parcel was opened and panch had identified the slips which were affixed at the time of sealing of the parcel along with his signatures and of the other panch Mr. Akhilesh S. Bhagat. He has also identified the seized articles which were sealed in his presence and has described the premises which were raided and has fully corroborated Mr. Surolia and Mr. Tarun Barot, with regard to seizure of the articles. Therefore, alleged irregularity in mixing of the articles recovered

from Paresh Apartments and bungalow No.4A, Usman Harun Society would not in any way materially affect the seizure of the said articles. It was the prosecution version that in order to classify the weapons or to arrange them in category, the seals which were affixed at C-33, Paresh Apartments were removed and after classification of the arms and ammunition, they were re-sealed. We would also state that in the first part of the panchnama the recovery from the Paresh Apartments is mentioned separately and there is no reason to disbelieve the said part of the panchnama. In view of the overwhelming evidence it appears that before the learned Judge, the defence has not challenged the prosecution evidence qua recovery of arms and ammunitions from two premises but they contended that none of the accused can be linked with the alleged recovery or with the conscious possession of any of the two premises. Before the trial Court much comment was made with regard to the exhibition of the seized arms to the Press in presence of the then Chief Minister of the State of Gujarat. But in our view, exhibition of the said seized articles would not in any way adversely affect the prosecution version that the said articles were seized on the basis of the information received after interrogating A1 Lal Singh on 23rd July, 1992 and immediate action was taken by the police after its receipt on the same night. Further, PW8 Rupsingh, Ex.165, a Senior Scientific Officer in Central Forensic Science Laboratory at New Delhi has inter-alia stated that on 28th August, 1992 his team started examining the seized articles, which were kept in boxes/bags at Police head quarter, Shahibag, Ahmedabad. The inspection was carried out for three days after checking the seals. The seals were found intact, which tallied with the specimen seals of Astodia police station. The report prepared by him is produced at Ex. 167. Further, all these arms were firearms as defined in Arms Act, 1959. In this view of the matter, it would be difficult to accept the contentions of the defence counsel that the seized arms and ammunition were not properly sealed or were not kept at proper place. The seized articles were kept at the police head quarters because of its large quantity. Hence, we hold that on the basis of interrogation of A1 prosecution has proved beyond doubt recovery of large quantities of arms, ammunitions and explosive substances.

(b) Hiring of C-3 Paresh Apartments and purchasing of building 4-A Usman Harun Society stay of Accused No.1 and another person in the said premises: -

To establish that A1 Lal Singh was in possession of flat at Paresh Apartments, the prosecution has led the evidence of PW2 Rohitkumar Rasikkumar Shah (Ex.107), who is having a pan-bidi shop in the name of Shriram Pan Centre in Shantivan area on Narayannagar road. It is his say that in addition to doing his business at Pan shop he was working as a broker for lease, purchase or sale of houses. It is his further say that Bhupendra Ratilal Shah, who is his relative, was owner of C-33, Paresh Apartments and had given keys to him for letting it out. For this purpose, he had a talk with one Tulsidas, who was also doing the work as broker for letting the houses. He brought two persons who were in need of the houses. One was introduced to him as Khanna having a plywood business at Delhi and other stated that he was Raju. In the Court, he identified A1 Lal Singh as Khanna. The flat was shown to them and after taking a deposit of Rs.5000/- it was let out at monthly rent of Rs.1200/-. The keys of flats were handed over to them.

He further stated that the amount of rent given to him alongwith Rs.5000/- was for the month of May and Rajubhai came twice and paid rent for the months of June and July. Police raided the premises on 25th July, 1992 and his statement was recorded after 4 to 5 days at Ellis Bridge police station. Nothing material has been found in the cross-examination of this witness. He stood to the cross-examination with regard to the identification of A1 Lal Singh. PW1 (Ex.102) Tulsiram Govindram has stated that at the relevant time he was doing the business of embroidery and tailoring. He was also doing the work of Estate Broker. In the month of April, 1991, two persons contacted him for hiring a house. One introduced himself as Khanna and other as Raju. Both were speaking Hindi language. He took them to another broker Rohitbhai (PW2), who was his friend and after contacting Rohitbhai, Flat No.33, Paresh Apartments was let out to them at the monthly rent of Rs.1200/- and on deposit of Rs.5000/-. He has identified A1 in the Court as Khanna. Prosecution has further examined PW3 Kantilal Jesingbhai Chauhan (Ex.108) who was working as a Dhobi (Washerman) and doing the business in the name of Raj Cleaners at Jivaraj Park on the naka of Krishnasagar Society. It is his say that one Maruti Wala was coming and giving him clothes for washing and pressing. Number of bills have been produced on record. He has identified A1 Lal Singh as Marutiwala out of two persons who were coming at his shop. PW4 Dharmesh Natwarlal Valera (Ex.137) stated that two persons came to stay in C-33, Paresh Apartments at the end of April, 1992 or in the beginning of May, 1992. Mr. Rohit Bhai Panwala got house let out to them. He has identified one man as a tall with good height, body and smart and other man as short, shyam coloured and having face like an angry man. It is his say that they used to come and go at any time and used to come at late night also. Sometime they used to come in a car or on occasions in auto - rickshaw. They used to bring Maruti gypsy which was of sky colour. They also used to keep the said vehicle opposite to his house. Subsequently, the tall man brought Maruti gypsy of white colour bearing series of GJ-1-K. He has identified A1 Lal Singh as white tall man. This witness is totally independent. He is a student and resident of the same apartments wherein A1 Lal Singh along with other person stayed. There is no reason to disbelieve the evidence of this witness with regard to identification of A1 Lal Singh and the fact that he brought Maruti gypsy of sky colour and thereafter of white colour. PW11 Pratikanother teen-ager, is a resident of C-34, Paresh Apartments and he stated in the same fashion and identified A1 as one of the residents of C-33.

PW39 Fulaji Beharaji Marwadi (Ex.299), Panch of panchnama of seized articles at Paresh Apartments, has stated that he was called by one inspector at Paresh Apartments. In his presence, lock of the flat was opened and three pairs of shoes, one lahanga and some pieces of photographs were found there and the same were seized. His signatures were obtained on panchnama papers alongwith the signatures of another panch. He has identified his signatures. He identified the pair of shoes but he could not identify the pieces of torn photographs.

PW12 Nizamuddin Imambhai Kureshi (Ex.177), who was working as Postman at Railwaypura Post Office, Ahmedabad, stated that his brother-in-law, who was a lawyer had gifted house No.4-A, Usman Harun Society to his sister (PW12s

wife) in March, 1992. They decided to sell this house because they were in need of money. Hence, he informed Haidarbhai Kureshi, who was working as a broker, for the same. After sometime Haidarbhai called him at his residence where four persons were sitting. Out of those, one was Haidarbhai, other was Anwarbhai another broker and remaining two persons were introduced to him as Mohd. Iqbal and Mohd. Salim. Ultimately, after bargain, the consideration for sale of the house was agreed at Rs.53000/-. He identified accused no.1 as Iqbal.

PW5 Hafdarhusain K. Kureshi (Ex.139) is a resident and owner of Bungalow No.1, Usman Harun Society at Vejalpur. He stated that Bungalow No.4A was in the ownership of Nizambhai Kureshi, who was staying at Juhapura and he wanted to sell the said house for a consideration of Rs.60000/-. It is his say that he was broker of purchasing and selling houses and was also constructing the houses and one Anwar Beg used to bring the customers. He brought two persons namely Iqbal and Salim for purchase of the said house. Both of them informed him that they were having transport business and that their vehicles ply between Delhi and Ahmedabad. After preliminary talks, Nizam Bhai and two persons were called at 7.00 pm at his residence. Subsequently, the sale was finalised and sale consideration was paid. He also stated that these persons were coming to the house in Sky colour Maruti car and thereafter they had brought jeep of Mahindra and Mahindra. Their trucks used to come there and they used to park in the open compound. He has identified Iqbalbhai as A1 Lal Singh. In cross-examination, he has admitted that in connection with the incident of finding out of arms from his Society, he along with Anwarbhai was arrested but has denied that CBI has brought pressure on him for deposing falsely. He has identified mudamal jeep and scooter, which were used by the accused. PW23 Gurumukh Nebhandas Harwani (Ex.224), partner-Anand Enterprises, stated that he is dealing in business of selling refrigerators and appliances in Ahmedabad. He has proved sale and delivery of one Kelvinator refrigerator to one Ashok Kumar Khanna and has identified A1 Lal Singh as Ashok Kumar Khanna in the Court.

PW24 Mr. Ambalal, Hirdas Patel, Partner of Dynamic Enterprise (Ex.234), Ahmedabad stated about sale of one refrigeration of Zenith Brand of 165 litres to one Ashok Kumar Khanna on 19.5.1992 by bill Ex.235, which was recovered from 4-A, Usman Harun Society.

With regard to the Mahindra Jeep, which was recovered from Ahmedabad in an open plot behind Kureshnagar Society, the case of the prosecution is that the same was purchased by accused no.1 and absconding accused Dipak alias Manish Agrawal and some other absconding accused. To prove this aspect, the prosecution has examined three witnesses i.e. PW64, PW65 and PW67. PW64 Vinod Kumar Hiralal Sharma (Ex.403), businessman of Bombay, stated that he was registered owner of Mahindra Jeep (Model No.540) bearing Registration No.MH-04-A2114, the registration book of which is Ex.404. He sold this jeep to one Ashok Kumar Khanna, who was introduced to him by one Daljit Singh Shetty of Shetty Motors. He further proved the delivery note of jeep Ex.405, which was written by his brother-in-law. PW65 Ramesh Kumar Ramashankar Sharma (Ex.407) is a practising advocate and brother-in-law of PW64. He has deposed that he wrote the writing Ex.405 for the purpose of sale of Mahindra Jeep

(Model No.540) bearing Registration No.MH-04-A2114, which was owned by PW64 Vinod Kumar Sharma. The Jeep was sold through one Daljit Singh Shetty alias Bablu Shetty, who was dealing in sale and purchase of second hand vehicles at Bombay. The deal was settled for Rs.1,75,000/-. Rs.1,00,000/- was given cash and the remaining amount was promised to be given on sale of Maruti Gypsy, which was given to Daljit Singh Shetty for sale. The person who has signed as Ashok Kumar Khanna, buyer of the jeep was having sufficient height and was also well built. The other person accompanying Khanna was smaller in height. He was shown photographs Ex.255 for identification of purchaser of the jeep but he could not identify the person in photographs as one of the persons who came with Daljit Singh Shetty. PW67 Daljit Singh Tajinder Singh Shetty deposed that he is dealing in sales and purchase of new and old motor vehicles in the name of Shetty Motors at Koliwada, Sayan, Bombay. He has corroborated the evidence of PW64 and PW65 with regard to the sale of Mahinder Jeep to one Mr. Ashok Kumar Khanna for Rs.1,75,000/-. He has deposed that Manish Agrawal (absconding accused) had paid Rs.1,00,000/- in cash to Vinod Sharma (PW64). Manish had told him to get the vehicle transferred in the name of Vijay Kumar alias Ashok Kumar. Manish further told him to keep his Maruti Gypsy No.MH-01-8942 for sale of it. After sale of gypsy, he was required to pay Rs.75000/- to Vinod Sharma and the remaining amount to Manish Agrawal or Rajbir Singh alias Harvinder Singh. On delivery note of Mahindra Jeep, Vijay Kumar had signed as Ashok Kumar Khanna and Rajbir, a witness, signed as H. Singh. On 26.5.1992, he got the maruti gypsy transferred in his name. On 6.6.1992 this maruti gypsy was taken away by anti terrorist squad police of Bombay from his office by saying that the same is stolen one. On seeing both the photographs of Ex.255, he deposed that the person in both the photographs is Manish Agrawal, who indulged in the transaction of sale of Maruti gypsy and diesel jeep Mahindra through him.

In the deposition of above witnesses i.e. PW64, PW65 and PW67, there is no material contradiction with regard to sale of Mahindra Jeep to one Ashok Kumar Khanna. It is also in their evidence that Maruti gypsy was handed over to Daljit Singh Shetty (PW67). However, PW64 and PW65 have not identified any of the persons sitting in the group of accused as Ashok Kumar Khanna.

The learned counsel for A1 submitted that as the witness PW5 Haidarhusain K. Kureshi and PW12 Nizamuddin Kureshi were taken in police custody for the alleged offence, therefore, under police pressure they falsely deposed and identified A1. He contended that there was no reason for not executing a registered sale-deed in favour of A1 and, therefore, the entire story of selling the house in favour of A1 by the wife of PW12 cannot be relied upon. In our view, at present, there is no question of deciding the validity of the sale in favour of A1. The limited question is whether A1 got possession of the said premises from its true owner. There is no reason to disbelieve PW12, who was working as postman at Ahmedabad and PW5 who was a resident of the same Society and was also working as a broker for the sale or purchase of the houses. They are totally independent witnesses. May be, because at the initial stage they were suspected to be involved in the said offence but subsequently as no material was found they were released, would not make their evidence inadmissible. In our view,

the aforesaid evidence clinchingly establishes that A1 along with other persons occupied the aforesaid two premises from where large quantity of arms, ammunitions and explosive substances were found.

(c) Stay of A1 and A2 at Aligarh: -

To prove this fact, the prosecution has examined PW43 (Ex.308) Major Singh who admittedly knows A1 since years. He has inter alia stated that he was resident of village Virowal of district Jalandhar and was staying at Delhi with his family. His brother Harjeet Singh was serving in Indian Army in Arms Regiment No.73 and his other brother Mohinder Singh was driving taxi. He further stated that in 1978, he got passport and went to Rome, where he joined the service of Golden Union Shipping Company, as Assistant to Sailor. There he met ten other Indian boys including A1 Lal Singh who was a Sailor and who belongs to village Nawapind, Akalgadh. He served alongwith him till May, 1981. Thereafter, they were sent to India. Subsequently, he along with Lal Singh and others went to Bulgaria and joined services in other ships. It is his say that he served along with Lal Singh till January, 1984. Thereafter, he came back to India and started Taxi service. He has stated about the previous talks with Lal Singh, who was at Toronto, Canada. He has also stated that he was receiving telephone calls from Lal Singh from 1986 to 1990. In the year 1992, he received a telephone call from Lal Singh at his residence and on enquiry, Lal Singh informed him that he was speaking from Aligarh. When he suggested to meet him, initially he said no but on his insistence he was given address of Aligarh. At Aligarh, he was escorted by a Kashmiri looking boy. Thereafter, he was taken in a house, where Lal Singh was residing. It is his say that at that time in his house, A2 Mohd. Sharief and A20 Shoaib Mukhtiar were present, whom he has identified in the Court. Subsequently, he asked Lal Singh that his name was involved in Air-crash. To that Lal Singh replied that he was not involved. After sometime, he returned to Delhi. Thereafter, he received a telephone call from Lal Singh that one Jaswant Singh would talk to him over telephone. After 2-3 days, Jaswant Singh who was talking from England told him that he was sending some luggage which he should hand over to Lal Singh. The word luggage, according to him, was used for passport. He was again informed by Jaswant Singh that the said luggage would be sent along with one old lady aged about 55 to 60 years, who was not in a position to walk and would be coming, on a wheel chair, by air accompanied by a young girl and that he should meet them at the outer gate and inform the young girl that he was Major Singh. Thereafter, that luggage would be handed over to him and he should pass it to Lal Singh. He did accordingly and got one polythine cover containing khakhi cover and a white shirt. A British passport having photograph of Lal Singh with French cut beard was also found by him in the cover. However, the name on the passport was of Kumar. On receipt of information from Lal Singh, the said luggage was handed over to one Deepak. He identified accused No.1 as Lal Singh. He has identified his photograph on a driving licence. He has also identified photograph of A2 who was with Lal Singh when they met at Aligarh. He has also identified A2 and A20 in the Court. He had denied the

suggestion that he had never met Lal Singh at Aligarh nor he received any telephone from Jaswant Singh or secret method in which he received the luggage (passport). Further, PW44 Harjit Singh (Ex.309), brother of PW43 Major Singh, who was serving at Gwalior in Indian Army was examined to prove that A1 Lal Singh visited Gwalior as his guest on his being introduced as friend of his brother. He stayed alongwith him for three days and left for Bombay on 15th July, 1992. It is his say that he gave his name as Raju when he was at Gwalior. He further stated that Raju made telephone call probably at USA from one STD booth for which he paid charges. The witness has identified A1 as Raju who had been at his place as his guest. PW84 Mohd. Shakatali Saiyadyakubali (Ex.500) stated that he is a resident of Dodhapur, Aligarh. In the year 1991, he was running a STD/PCO booth in Shop No.2 on first floor of Barulla Market. He was having STD and ISD facility. He stated that one Javed was running shop in the name of Kashmir Corner nearby his shop. Javed was making trunk calls to Srinagar from his PCO. In November, 1991, Javed alongwith 2 to 3 persons came to his PCO and requested to allow them to make trunk calls, on his (Javeds) responsibility of making the payment. On inquiry, one of those persons told his name as Iqbal Khan and another as Javed. They were also making international calls. Initially, they were paying cash. Later on, they were using this facility on credit. He has proved some teleguard slips, which prove the trunk calls made by the above persons. He has identified Iqbal Khan as accused no.1. However, he could not identify any of the remaining accused as Javed. Another independent person examined by the prosecution to establish the stay of accused no.2 at Aligarh is PW86 Arifhabib Habibahmad (Ex.507), who was running a computer course at Aligarh. He has produced on record the form filled by Shaikh Javed on 6.1.1992 for getting training in six months computer course. He has also produced on record the receipt of amount received for the said computer course. It is his say that the candidate attended the course for 10 to 15 days and thereafter he left. He has identified Shaikh Javed, the person who had enrolled and attended the course for some days, as accused no.2. The documents bearing the signatures of accused no.2 are produced at Ex.508 and Ex. 509.

The evidence of PW43 Major Singh, who was knowing A1 since years clearly establishes the presence of A1, A2 and A20 at the house of A1 at Aligarh. PW86 Arifhabib Habibahmad also proves beyond reasonable doubt that A2 stayed at Aligarh and joined computer course run by this witness. Similarly, PW44 Harjit Singh proves the movement of A1 from Aligarh to Gwalior, who visited him as being friend of his brother Major Singh. This clinching evidence leaves no doubt that A1 and A2 in furtherance of their conspiracy stayed at Aligarh and were aided by A20.

(d) A1 and A4 going together at Ahmedabad and Madras and their stay in various hotels: -

Before considering this part of evidence, we would refer to the evidence of handwriting expert PW-116 Rajkumar Birsingh Jain (Ex.572), Deputy Government Examiner of Question Documents who has examined various hotel bills having signatures of A1, A2 and/or A4 and also other entries made in the register maintained by the hotels. He also

examined specimen writings of the accused. PW116 has stated that documents of the instant case were received by his office by four different letters of different dates from Superintendent of Police, CBI, S.I.C. II, New Delhi. All these letters were tendered in evidence by this witness as Ex.573, 574, 575 and 576. Exhibits 577 to 580 are his reports. Ex.577 relates to Q.3, Q.4, Q.8, Q.2, Q.6, Q.7, Q.9, Q.11 and Q.11/2 and Q.15 and Q.16. Ex.578 relates to Q.6A. Ex.579 relates to Q.21, Q.21A, Q.22, Q.23 and Q.24.

According to his opinion Ex.577, the writer of S.1 to S.55 Ex.397, which are 55 writings of accused No.1, Lal Singh, also wrote (Q.3) Ex.317, which is entry No.1567 of guests register of hotel Sidhhartha Palace dt.29.2.1992, (Q.4) Ex.240 which is entry No.2058 dt.3.3.1992 in the name of Iqbal Ahmad in entry register No.3 of hotel Butterfly, and (Q.8) Ex.316, which is Bill of hotel Sidhartha Palace, Ahmedabad.

The writer of S.56 to S.105 Ex.464, which are 50 writings of accused no.4, Mohd. Saquib Nachan, also wrote (Q.2) Ex.315, which is entry No.1566 of guests register of hotel Sidhhartha Palace in the name of Mohd. Hamid dt.29.2.1992, (Q.6 & Q.7) Ex.480, which are entries No.1351 and 1352 dt.2.7.1992 of Arrival-departure register of hotel New Woodland, (Madras), and (Q.9) Ex.314, which is carbon copy of cash memo in the name of Mohd. Hamid.

The writer of S.147 to S.184 Ex.466 and 499, which are specimen writings of accused no.3, Tahir Jamal, also wrote (Q.15 and Q.16) Ex.602 and Ex.603, which are the torn pieces of letter.

As per opinion Ex.578, the writer of S.1 to S.55, Lal Singh, also wrote (Q.6A) Ex.259, which is entry in the register of hotel Royal, Sarkhej, (Ahmedabad).

Further, as per opinion Ex.579, the writer of S.185 to S.223 Ex.399, which are specimen writings of accused no.2, Mohd. Sharief, wrote documents (Q.21 & Q.21A) Ex.440, which is Disembarkation card in the name of Ch. Mohd. Iqbal, (Q.22) Ex.441, which is Disembarkation card in the name of Manzoor Ahmad, (Q.23) Ex.445, which is Embarkation card in the name of Manzoor Ahmad dt.8.10.1991, and (Q.24) Ex.508, which is inquiry form for taking computer training of I.C.P.C., Aligarh in the name of Shaikh Javed dt.6.1.1992.

Aforesaid opinion lends assurance to what is stated by witnesses who have produced hotel Bills and other documents.

PW46 Harish Pursotamdas Shah, Accountant of Hotel Sidhhartha Palace, Ahmedabad, stated that he is working in Hotel Sidhhartha Palace for the last 10 years; the hotel has maintained a Guest Register in a prescribed form and they were keeping Bill Books in duplicate; original bill is given to the customer and the duplicate is kept on the file of the hotel. On seeing the Ex.314 and Ex. 316, he stated that these are the bills of the hotel, the back portions of which are signed by him. PW47 Manohar Balvant Narvekar Ex.313, a Receptionist of Hotel Sidhhartha Palace, Ahmedabad stated that in their hotel, registers are maintained with regard to the check-in and check-out of the customers. He has stated about the entry Nos.1566, Ex.315 and 1567, Ex.317 made in the hotels register in the name of Mohd. S son of Hanif on 29.2.1992 and Iqbal Ahmed

respectively and that both these persons stayed in hotel up to 3.3.1992; they had put their signatures in the check-in and check-out columns of their respective entries. This witness further stated about the bill Ex.316 issued in the name of Iqbal Ahmed and the bill Ex.314 issued in the name of Mohd. Hamid. Both these bills were prepared by him and these bills also bear the signatures of both the customers i.e. Iqbal Ahmed and Mohd. S. Hamid. He has identified accused no.1 as the person who stayed in the hotel in the name of Iqbal Ahmed and accused no.4 as the person who stayed in the hotel in the name of Mohd. S. Hamid. The handwriting expert PW116 has opined that Lal Singh, accused no.1, the writer of specimen writings S1 to S55, Ex.397 wrote (Q.3) Ex.317 which is entry No.1567 of guest register of hotel Sidhhartha Palace dated 29.2.1992 and (Q.8) Ex.316 which is bill of hotel Sidhhartha Palace, Ahmedabad. Both these exhibits bear the signature of Iqbal Ahmed, who was identified as Lal Singh. Likewise, Saquib Nachan, accused no.4, the writer of specimen writings S56 to S105, Ex.464 wrote (Q.2) Ex.315 which is entry no.1566 of guest register of hotel Sidhhartha Palace dated 29.2.1992 and (Q.9) Ex.314 which is bill of hotel Sidhhartha Palace, Ahmedabad. Both these exhibits bear the signature of Mohd. S. Hamid, who was identified as Saquib Nachan.

PW30 Mohd. Javed Ex.258 Manager of Hotel Royal, Sarkhej, Ahmedabad stated that Iqbal Ahmed visited the hotel alone on 3.3.1992 at 11.00 a.m. and he checked out at 6.30 p.m. on the very day. He proved the visit of Iqbal Ahmed on seeing the entry No.206, Ex.259 made in the hotels register. He further proved the bill no.129 Ex.260, which shows that Rs.100/- were charged from the customer Iqbal Ahmed. He identified A1 Lal Singh as the person who visited the hotel as Iqbal Ahmad on the relevant day. The handwriting expert opined that the signature on check-in and check-out entries Ex.259 made in the register of the hotel in the name of Iqbal Ahmed bear his signature.

The next witness PW25 Gulam Haidar (Ex.239), Partner of Butterfly Hotel, Ahmedabad has stated about the way of maintaining the record by the hotel. He was shown entry register of the hotel butterfly and on seeing the entry no.2058 (Ex.240) made therein, he stated that on 3.3.1992 at 7.00 p.m. one Iqbal Ahmed came in the hotel accompanied with two persons, out of which one was a local person namely Mushahid. He further stated that the customer stayed in the hotel up to 6.3.1992. The check-in and check-out entries bear signature of the customer. The witness stated that hotel is also maintaining a separate bill book for STD calls made by the customers. On seeing the bills no.704 Ex.244 and Ex. 245, he stated that the customer Iqbal Ahmed had made telephonic call to Aligarh over No.0571-28576 on 3.3.1992 and 5.3.1992 respectively. He identified accused no.1 as the person who stayed in the hotel as Iqbal Ahmed and accused no.3 Tahir Jamal as one of the persons who accompanied Iqbal Ahmed. The handwriting expert PW116 has opined that signature on check-in and check-out entries Ex.240 made in the register of hotel in the name of Iqbal Ahmed bear his signature. From the prosecution version, it appears that the witness has committed mistake in identifying accused no.3 as one of the persons who accompanied Iqbal Ahmed as it is not the prosecution story that A3 Tahir Zamal came to Ahmedabad alongwith accused no.1.

PW77 Raghuvirchandra Amarnath Laher (Ex.469), who was General Manager of hotel Grant, Bombay firstly stated about maintaining of record by the hotel and about the duty of the receptionist. On seeing the entry No.59501 dt.28.2.1992 he stated about the entry of one guest namely Mr. H. Iqbala resident of Aligarh, in hotel Grant. He further stated that H. Iqbal left the hotel on 29.2.1992 at 12 noon. He has further stated about Ex.470, which is receipt memo. By this receipt memo, the register containing the entry made in the name of H. Iqbal was taken away by the CBI Officer on 16.8.1992. PW88 Sureshbhai Ramnikhbhai Master Ex.515 receptionist of hotel Grant, Bombay, on seeing the entry no.59501, Ex.516 made in the guest register stated that on 28.2.1992 one guest Mohd. Iqbal arrived at 14.00 hrs. He has stated that in the guest register, name M. Iqbal is mentioned and that he has come from Aligarh. He left the hotel on the next day i.e. on 29.2.1992 at 12 noon. He has identified A1 as M. Iqbal. Even though the opinion of the handwriting expert-PW116 is not positive yet there is no reason to disbelieve the evidence of PW88.

PW79 Vishwanathan Ex.479 Receptionist of Hotel New Woodland, Madras stated about visit of A1 and A4 in their hotel under the name of Mohd. S.A. and Kishore Kumar on 2.7.1992 at 6.00 p.m. He further stated that both the persons left the hotel on 4.7.1992. On seeing the entries Ex.480 made on page no.131 of arrival register of the hotel, he stated that both the above persons were allotted room nos.1351 and 1352 respectively. Both the entries bear signatures of both the customers. He has identified accused no.1 and 4 as the persons who stayed in the hotel. He stated that accused no.4 is the same person who had written entries in the arrival register of the hotel. PW116 has given positive opinion (Q.6 and Q.7) pertaining to entries, Ex.480, made in the arrival-departure register of the hotel, which were written by Mohd. S.A., who was identified as accused no.4.

To prove the visit of A1 and A4 at Madras, the prosecution has further examined PW97 Shrinivas Samugham, who was Security Guard at Stock Exchange Building, Madras between December, 1990 to September, 1993. He stated that on 3.7.1992, he was on duty at visitors gallery on 4th floor of the building. On that day, two persons came to the visitors gallery and desired to go inside. He instructed them to obtain passes from 3rd floor. Then the said persons obtained passes and went inside. After coming out from the visitors gallery, they enquired about drinking water. He told them that water is available on 3rd floor in staff lunch room. Thereafter, they went away. One of them was looking like Punjabi and was having turban and other was having beard and moustaches. He has identified A1 as that Punjabi man and A4 as Muslim like person. With regard to identification of A1 and A4 much reliance cannot be placed because of time lag.

PW78 Silas Benjamin Ex.471 was working as Receptionist-cum- Cashier of Hotel Heritage, Bombay in July, 1992. On seeing the entry at page no.637 of the guest book of hotel Heritage, he stated that one guest in the name of Kishor Pilot arrived in the hotel on 4.7.1992 at 8.30 a.m. and he was allotted room no.404. The entries in the guests register were filled in by the guest and he was expected to check out on 6.7.1992. However, he checked out on 5.7.1992 at 11.00 a.m. The guest registration card no.637 mark 86/44

is Ex.472. The witness was not in a position to identify Kishor Pilot.

In our view, from the above said evidence, it is quite clear that A1 and A4 stayed together in different hotels at Ahmedabad and Madras.

(e) Evidence with regard to record of Air Flights against A1, A2 and A4:-

PW68 Shahjad Ex.433 is a Station Manager for Air Lanka (Airways) at Bombay Airport. On the basis of the manifest Ex.434 of Karachi Colombo (Via Bombay) flight No. UL-182 dated 11.12.1991, he has stated that two passengers had travelled in that flight under the names of Iqbal C.M. and Ahmad M. PW69 Sudhakar Nivrutti Tilekar (Ex.436) is sub-inspector in the State of Maharashtra. In the year 1991-92 he was in the Special Branch-II (Immigration) in the office of Commissioner of Bombay and was posted at Sahara International Airport. He has deposed about the procedure of routine check up of passengers. He has proved Ex.336, the visa application form in the name of Ch. Mohd. Iqbal of dated 26.11.1992. PW70 Suresh Bapurao Gayakwad, Ex.443, Asstt. Police Inspector Police Station Matunga stated that in October, 1991 he was working as Sub Inspector-cum-Immigration Officer at Sahar International Airport, Bombay. He has proved the visa form and TRP of Manzoor Ahmad (accused no.2) issued on 8.10.1991. He has produced Ex.338, which is visa application and bears his stamp and signature; Ex.444 TRP and Ex.445 is disembarcation card. Ex.445 card was tendered before him by the passenger and he put his stamps on the same. He had also put the R.P. No.36740 dated 8.10.1991 on the card. PW82 Shyam Prahlad Huilgol, Controller Reservation, Bombay has been examined by the prosecution to prove that passengers Chaudhari Iqbal and Manzoor Ahmad had travelled from Bombay to Calcutta by flight No.IC-175 (Bombay Calcutta) dated 12.12.1991. He was controller of that flight on the relevant day. He has proved the manifest Ex.496 and that Chaudhari Iqbal and Manzoor Ahmad had travelled at Sl. Nos.62 and 35 respectively. PW71 Mrs. Pushpa Shantaram, a Senior Traffic Assistant of Indian Air Lines has stated that she had prepared passengers manifest, Ex.452 of flight No.IC-133 (Bombay-Ahmedabad-Indore-Bhopal-Bombay) and that two passengers named Mohd. S. (A4) and Iqbal M (A1) had travelled from Bombay to Ahmedabad by that flight on 29.2.1992. Similarly, PW35 Nikhil Mahendrakumar Bhavsar, Traffic Assistant of Indian Airlines, had made the manifest of passengers of Flight No.IC604 (Ahmedabad Bombay) on 3.3.1992 and has proved travelling of one person named Mohd. S. (A4) in this flight from Ahmedabad to Bombay. PW37 Jagdishbhai Karsanbhai Baria, Sr. Traffic Assistant of Indian Airlines proved the entries at page no.3 of passenger manifesto of flight no. IC614 (Ahmedabad-Bombay) dated 30.6.92 stating the names of Mr. K.Kumar and Mr. M. Hussain in the manifest. PW72 Shaikhmohmad who at the relevant time was working as Senior Traffic Asstt., Santacruz has stated from the Manifest of Passengers for IC-613 that on 1.7.1992-one passenger in the name of Hussain M had travelled and was having two way ticket i.e. Ahmedabad-Bombay Sector. PW73 Mrs. Vrinda Jairam Shetti, who at the relevant time was working as Traffic Assistant, Santacruz produced Passenger Manifest of IC-171 Bombay Madras Sector and stated the travelling of one passenger in

the name of Kumar K. from Bombay to Madras in the said flight on 2nd July, 1992.

Aforesaid evidence lends assurance to the confessional statements of A1, A2 and A4 for their travel from one place to another in different fake names. (f) Evidence against A2, Mohd. Sharief:-

PW136 Dharampal Singh, who was Dy. S.P. CBI in SIC Branch, New Delhi at the relevant time, stated that he took over the investigation of RC.6.(S)/92 on 11.11.1992. During investigation, he arrested accused Mohd. Sharief on 19.6.1993, who was initially arrested by Delhi Police in some other crime. He applied for the custody and remand of accused Mohd. Sharief, which was allowed by the Metropolitan Magistrate, Delhi. During interrogation, accused Mohd. Sharief expressed his wish to give confessional statement voluntarily and, therefore, he was produced before P.C. Sharma, SP CBI, SIC II, New Delhi on 8.7.1993 and his confessional statement was recorded. A2 has confessed that he is a Pakistani national and ISI agent. He visited India several times in different fake names. He also disclosed that the entire conspiracy was hatched by him alongwith A1 Lal Singh and others as narrated earlier. He inter alia stated that he was arrested by Delhi Police on 18th June, 1993, when he went to Railway Station for going to Gorakhpur. His statement was recorded after prolonged custody at Lal Qilla and constant physical and mental torture. As per his say, firstly he visited India on 20th January, 1991 on a valid passport in his genuine name. After reaching Delhi, he stayed at Qureshi Guest House. Thereafter, he returned to Pakistan in February, 1991. He again entered into India on 12th March, 1991 through Attari Border on a new passport. Again he stayed at Qureshi Guest House. He returned in April, 1991. Pakistan MI gave him training in three phases. Thereafter, he came to India on 8th October, 1991 by PIA flight under the assumed name of Manzoor Ahmed and on a new passport. At Bombay he stayed in Hotel Kalpana at Grant road. Thereafter, he went to Aligarh. He returned back to Pakistan on 8th November, 1991. Again he along with Lal Singh left Pakistan for going to India on 11th December, 1991 by Sri Lankan Flight. After reaching Bombay, they went to Calcutta by flight and subsequently went to Aligarh on 14th December, 1991 by train. Finally, he came to India on 7.6.1993. On 9th June, 1993 he reached New Delhi. When he was leaving for Nepal, he was arrested on 18th June, 1993. To prove the entry of A2 Mohd. Sharief in India in the month of March, 1991, the prosecution has examined PW52, Ex.334 Mr. Surendrasingh Kartarsingh Kadian, who was serving as Upper Division Clerk in the Ministry of External Affairs of Central Government. He has produced visa application Ex. 340 and carbon copy Ex.341 dated 5.3.1991 having photograph of A2 Mohd. Sharief. There is no reason not to accept the aforesaid original documents produced on record. We would only mention that the learned counsel for the appellant has contended that photograph on the said applications can be substituted and that there is no evidence that the said photographs are of A2. In our view, this submission is without any substance because it is difficult to believe that official record can be tampered by substituting the photograph of A2 on the original visa application. In any case, for that purpose there is no basis. Secondly, with regard to the photograph accused has not disputed and on behalf of accused no such suggestion was made to the

witness.

The prosecution has also examined PW60 Ex.379 Navalkishore Jayadayal Asstt. PSI, Delhi CID Pak Section, who has stated that he was maintaining the register for arrival and departure of persons who were coming from Pakistan. Entry No.833, Ex.380 in the said register pertains to Mohd. Sharief son of Umardin which is in hand writing of SI Bhup Singh. This entry Ex.380 corroborates Ex.340 and Ex.341. It also shows that Mohd. Sharief was staying in Qureshi Guest House. For proving the stay at the Qureshi Guest House, the prosecution has examined PW51, Ex.327 Dilavarhussain Sardarali, who stated that he joined the service at Qureshi Guest House situated in Bazar Chitli Kabar, Jama Masjid, Delhi, as Manager-cum-Receptionist from 1990 till 1992. He stated that if a passenger is a foreigner, the entries are required to be made in foreigners register and if foreigner is a Pakistani national, hotel has to submit one C form containing necessary information to CID Pak Section, New Delhi. He further stated that in the said Guest House, most of the foreigners were Pakistani nationals and some of them were Bangladeshi. On reception counter, they were verifying three things (1) passport, and the necessary endorsements made on it, (2) temporary permit issued in small slip and (3) visa document. They were further verifying as to whether the initial visa was for Delhi and if the visa or first permit is of Delhi, only then they were allowing the passengers to stay in their guest house. This witness has established the stay of A2, Mohd. Sharief at Qureshi Guest House, who came to Guest House on 16.3.1991 and left on 5.4.1991. Thereafter, Mohd. Sharief again visited the Guest House on 10.4.1991 and left on 15.4.1991. He again arrived at Guest House on 20.4.1991 from Madras and left on 21.4.1991. Entries in this regard were made in the register of Guest House. He has further stated about visit of Furkan Ahmad son of Mohmad Ismail and Khurshidabegam, the alleged relatives of Mohd. Sharief, to the Guest House on 26.3.199 and of Mohd. Ashfak on 21.4.1991. On that day, Mohd. Sharief was not having money with him. Mohd. Ashfak assured the Guest House officials including PW51 that he will make the payment within couple of days. Thereafter, Mohd. Ashfak was arrested and the amount due to Mohd. Sharief was deducted from his (PW51s) salary by the owner of the Guest House. He has identified A2 as Mohd.Sharief, who had stayed in his guest house. Further, as stated earlier, his stay at Aligarh is also established by the evidence of Major Singh PW 43 and PW 86 who was running a computer course at Aligarh.

(g) Evidence against A3, Tahir Jamal:-

Tahir Jamal, A3 in his confessional statement has stated that he worked in SIMI as President, Secretary and Treasurer in different periods. He has stated that after his retirement from SIMI, when he was in Lahore, he was introduced with Amir-ul-Azim, Press Secretary of Jamaat-e-Islam, Pakistan with whom he had discussion about political situation in India and Pakistan, particularly problems of Punjab and Kashmir where terrorism continued. Next day he was introduced with Iqbal who was speaking in Punjabi. His photograph was shown to him and he identified him as the same person who had been introduced to him in Lahore. Amir-uI-Azim wanted him to help him in India for hiring a house for him. He went to Karachi from Lahore and

then came to Bombay in December 1991 for Conference of SIMI. He went to see off Amir-ul-Azim at Delhi Airport for Karachi. While en-route, Amir-ul-Azim asked him to help in publicity of cause of Kashmir habitants and gave him a packet of money saying that it would be useful in the proposed activity. The packet contained 1700 pounds which he took and came back home. Then he went to his native place, village Liandih in January 1992 and came back in the end of the month. After return, his brother Jaffar Jamal told him that one Iqbal had tried to contact him repeatedly from Aligarh. He has stated that he called him at his residence where he came with one more person called Swab. Then Iqbal requested him to hire a house at Ahmedabad for safe keeping of weapons, explosives smuggled into India from Pakistan for terrorist activities. He also told him that he would transport the weapons to Punjab and Kashmir in trucks. Iqbal also stated that this matter should be kept secret. Next day he shifted Iqbal to Hotel Grant and went to the house of Sakib. He told Sakib about Iqbal and his requirement of a house at Ahmedabad. He brought the air tickets for Iqbal and Saquib. After about one week, Amir-ul-Azim telephoned him that he was sending Rs.5 lakhs for a house at a place near Paydhoni Police Station. He reached the place and collected Rs.5,80,000/- . Next day he went and met Saquib and informed him that money had been received and gave him Rs.1 lakh. He spent some amount and Rs. 2,15,000/- was kept in the almirah. Then he went to his village and came to Bombay after Ramzan Id. and again went to his village for some marriage. From there he wrote a letter to his brother Jaffar through Asif and sent the key of the almirah saying that out of the money in almirah Rs.1,00,000/- should be given to Saquib and the balance may be kept back. It was also conveyed that there were 1700 pounds in the almirah which should be kept safe. Thereafter, he was arrested by the police from his village.

His statement gives the account of income and expenditure incurred in the activities. The fact of recovery of 1700 pounds and substantial cash is mentioned in the statement. The opinion of hand writing expert PW116 as regards Ex. 602 (Q.5) and 603 (Ex.6) is positive. PW83 Gulamhasa Habibulla Ahengar was working as a Branch Manager of J&K Bank at Ahmedabad and in his presence the specimen hand writings of A3 were taken. He has identified A3 as the person who had executed the specimen writings in his presence at Karanj Bhavan, Ahmedabad.

PW135 Jafar Jamal Ex.676 is brother of A3 Tahir Jamal and a resident of Millatnagar, Andheri (West), Bombay. His native village is Luniadih of District Azamgarh, UP. He came to Bombay in 1982 and shifted to Millatnagar, Andheri (West). It is his say that he was staying in the flat belonging to his maternal uncles son. His maternal uncle was also having another flat. His brother Tahir Jamal was residing with his maternal uncle. For sometime, Tahir had gone to Delhi but he was not knowing that for what reason he had gone there. He has stated that his brother Tahir Jamal was connected with SIMI and was Secretary of SIMI at Delhi. He further gave some names of his brothers companions like Salim Khan, Ibrahim and Saquib Nachan (A4). In August, 1992 he came to know about arrest of his brother Tahir Jamal. He has stated that on 12.8.1992 the CBI Officers raided their house after the arrest of Tahir and recovered some papers and diaries relating to Tahir. With regard to the seized documents, he admitted his signatures on Exhibits 601, 602

and 603, which also bear the signatures of Ariff and Ansar. In the cross-examination by Public Prosecutor, he denied of having produced Rs.90000/- in Indian Currency and 1700 pounds before CBI Inspector. It is his say that he was detained and interrogated by the police at Santacruz police station, Bombay and at Ahmedabad for some days in connection with this case.

PW127 Harbhajanram Shantaram, Dy. S.P.-CBI, S.I.C. II Branch, New Delhi, stated that on 14th August, 1992 he took over the investigation of RC No.5-S/92 from Mr. M.K. Zha, Dy. S.P., who was camping at Bombay. He further took over the custody of five accused including accused no.1 of this case, who was in custody at Santacruz police station. On 21.8.1992 he recovered papers relating to sale of vehicle No.MH.01.8942 from Daljit Singh Shetty (PW67). On 26.8.1992 he, accompanied with Inspector Mr. J.C. Prabhakar, carried out search of the house of Jafar Jamal for recovery of certain amount. The search was carried out under the instructions of DIG Mr. M.L. Sharma. Jafar Jamal requested not to carry out search and agreed to handover the amount and other incriminating documents. Jafar Jamal took out Rs.90000/- and 1700 pounds and some pieces of torn letters. Thereafter, Jafar accompanied him to Santacruz police station, where he handed over the amount, torn pieces of letters and two pieces of paper by affixing the same on a paper. Pieces of papers were written in Urdu Script. Jafar Jamal read over those papers and Sub-Inspector of Bombay police wrote the same in Hindi. A production memo Ex.601 was prepared for pieces of papers and currency notes, which is signed by Jafar Jamal and two witnesses namely Mohd. Aarif and Ansar Ahmad. He and Inspector J.C. Prabhakar also put their signatures on the same. He further stated that torn pieces of letter affixed on a plain paper are Ex.602. The two pieces of paper are Ex.603. He further stated that he formally arrested Lal Singh in this case i.e. RC.6-S/92. He has denied the suggestion that during police remand of Lal Singh any third degree method was adopted. Rather, accused Lal Singh had tried to cut his tongue by his own teeth and tried to hit his head with iron bars of lock up room. Doctor was brought for treatment of Lal Singh and two CBI officers were posted in the lock-up room of Lal Singh for his safety.

According to the prosecution, Tahir Jamal A3 was mainly dealing in financial transactions and as contact point. The amount of Rs.90,000/- and 1700 pounds were recovered from his house. The prosecution has further led the evidence that on 12th August, 1992 Flat No.6/208, Almadina Apartments was raided by CBI officers and from that place they recovered some papers, diaries and the documents written by A3 Tahir Jamal. The relevant document upon which reliance is placed to connect A3 is Ex.602. It is in the form of a letter written in Urdu addressed to his brother Jafar Jamal. This letter inter alia mentions that work is in progress and that they were facing money crises. It is also written that witness should not pay to Saquib from the fund of karobari. Under torn pieces of letter, it is mentioned that one envelope may contain 18 to 1900 pounds, which is an exclusive property of one gentleman, only his exclusive property. PW87 Syed Mohd. Azim Varasi, a totally independent witness also establishes that A3 was connected with A1 and A20. He has also deposed that A20 had asked him to contact his friend Tahir Jamal, A3 and thereafter they met at Bombay Central Railway Station. Shoaib Mukhtiar, A20

introduced A1 Iqbal and A3 Tahir Jamal to him as his friends.

(h) Evidence against A4, Mohd. Saquib Nachan:-

He has stated in his confessional statement that in 1981 he joined SIMI and during his association with SIMI he came in contact with Tahir Jamal, A3. During 1990, he visited Pakistan twice. His real purpose was to meet Salahuddin Sudani and Abdur-Rahim-Rasool Sayyef to discuss ways and means to train Muslim youths in arms, ammunitions and explosives. Till 1991 he was sending Sikh youths to Pakistan for military training. Throughout this period, he was in touch with A3. In December 1991 he came to Bombay to attend SIMI Conference where he met Amir-ul-Azim along with Bashir and Tahir. Azim told that Iqbal would meet them and asked them to arrange hideouts for him at Ahmedabad so that the weapons which were to be smuggled from Pakistan could be safely stored. In February 1992, he had gone to Masina Hospital, Byculla where Tahir Jamal- A3 came looking for him. He told him that Iqbal had come to Bombay and met him. He was supposed to go to Ahmedabad and that he should accompany him. He met Iqbal at Grant Hotel where he was staying and discussed Ahmedabad plans. On 29.2.92, he and Iqbal left for Ahmedabad. On reaching there, they stayed at Sidhhartha Hotel in separate rooms booked in their names. On 3.3.92, Iqbal asked for change of hotel, so they shifted to Hotel Butterfly where Iqbal took one room and he went to Bombay. At the end of June 1992, Iqbal arrived at Hotel Balwas, Bombay. His photograph was shown to him and he identified that photo as that of Iqbal and he put his initials on it also. He met Iqbal who asked him to look for a person at Madras who can help him in blowing up the Madras Stock Exchange. On 2.7.1992, he along with Bashir and Iqbal left for Madras by I.A. Flight. He and Iqbal stayed in Woodland Hotel. Next day they all surveyed the Stock Exchange Building and Iqbal told them in detail about his plan of blowing it up by means of a remote controlled bomb. Since, he was not feeling well, he expressed a desire to go to Bombay. Iqbal agreed to come with him and told him that whenever he has to contact him, he should ring up one Sharma in USA introducing himself as Raveesh. After some time he came to learn about Iqbals arrest in Bombay through newspapers. Apprehending his arrest, he absconded till he was arrested.

Prosecution has established that A4 accompanied A1 at Ahmedabad and stayed along with him in hotels, that too in different fake names. Prosecution has also led evidence of his travels from Bombay to Ahmedabad and Ahmedabad to Bombay lending assurance to his confessional statement that he travelled by air from Bombay to Ahmedabad and from Ahmedabad to Bombay by producing passengers manifests. Flight coupon Ex.450 and Entry No.1567 in the guest register of hotel Sidhhartha at Ahmedabad in the name of Mohd. S. have been proved beyond reasonable doubt by the prosecution in support of their case. Further, prosecution has produced evidence regarding their stay at Ahmedabad, i.e. registers and bill books of various hotels signed by A1 and A4. By the evidence of PW79 Vishwanathan, Receptionist of Hotel New Woodland, Madras, prosecution has established that A1 and A4 stayed in that Hotel. The entries of register Exs. 315 and 317 (mark Q-2 and Q-3) were sent to the handwriting expert.

PW75, the handwriting expert has proved his signatures. The entries Ex.315 and Ex.317 also stand proved by PW116. Further, A1 and A4 had travelled in fake names and came from Ahmedabad on 29.2.1992. If A4 was not at all connected with A1 there was no necessity of travelling together in fake names. In travel manifest Ex.452, the name which is mentioned as Mohd. S. is proved by Ex.450.

(i) Evidence against A20, Shoaib Mukhtiar:-

A20 Shoaib Mukhtiar in his confessional statement has stated that he was a resident of Aligarh. In the month of February, 1991 Barkat Ahsani came to Aligarh and opened a shop known as Ahsani Colour Lab. He was friendly to Mohd. Mujib Shamshi and Mohd. Habib Shamshi who were residents of Chowk Sheikh Dawood in Aligarh. Through these two persons he came to know Barkat Ahsani. Before opening shop in Aligarh, Barkat Ahsani was doing business in Srinagar. He shifted his business to Aligarh because of disturbances in Srinagar. He started visiting the shop of Barkat Ahsani alongwith his friends Mujib and Habib. He was introduced to Javed Yousuf by Barkat as his friend. Javed had also opened a shop. He had come to India to create a situation which could destabilize the Govt of India in the States of Punjab and Jammu and Kashmir. Sometime in the third week of December 1991, when he had gone to Barkat Ahsani's house, he found two persons sitting with Barkat Ahsani. They were introduced to him as Javed and Iqbal, businessmen from Pathankot. After 2/3 days he took them to their house. Then they started meeting frequently and he came to know that Javed's real name was Mohd. Sharief and that Iqbal's real name was Lal Singh and they were the same persons who had formed K-2 for the purpose of destabilizing Govt. of India particularly in the States of J & K and Punjab. In the month of September/October 1991, in the shop of Barkat Ahsani, he was introduced to Sajjad who talked about the atrocities on Muslims in India. He has again stated that in the house of Javed Yousuf, they agreed to procure weapons for killing BJP/Hindu leaders/Police Officials in India so that they may strike terror amongst the people and alienate Muslims from Hindu community. Knowing their terrorist activities, on their request, sometime in the end of December 1991 or in the beginning of Jan. 1992 he had arranged accommodation for Lal Singh and Mohd. Sharief in the house of Amir Hassan at New Sir Syed Nagar, Aligarh. In 1992, he had arranged for another accommodation for them as the earlier was not found to be good by them. He stated that in the house of Lal Singh and Mohd. Sharief, they made plan to obtain fire arms for committing terrorist activities including killing of BJP leaders, Police Officials; to locate houses at different places in India for concealing weapons, for increasing terrorist activities in India and to recruit young boys for going to Pakistan for training in handling of weapons etc. In the last week of January 1992 or beginning of February 1992, Lal Singh, Mohd. Sharief and Salim informed him that large consignment of weapons was to be collected from Jodhpur and for collecting the weapons a truck was immediately required. Lal Singh gave him Rs.10,000/- and requested to arrange a truck for the purpose. Despite his efforts he could not arrange for a truck. On 27.2.92, he and Lal Singh left Aligarh by Gomti Express for Delhi. Thereafter, Mohd. Sharief and Javed Yousuf met him. Mohd. Sharief gave them two tickets for Bombay and in the evening of 27.2.92, they left New Delhi by Rajdhani Express for Bombay. On 28.2.92, they reached

Bombay Central Railway Station and hired a taxi and went to Tahir Jamals house from where he contacted Mohd. Azim Varasi on telephone who was working in Tarapore Atomic Power Project as Scientific Officer. Azim Varasi met them at Bombay Central Railway Station. There Lal Singh gave him a ticket for Aligarh and told him that Shafiq @ Deepak would be coming to Bombay and that he should go to Aligarh and help Mohd. Sharief and Deepak to look after their interests in Aligarh. On 2.3.92, he reached Aligarh where he met Mohd. Sharief. It is stated by A20 that on 10/11.3.92 he and Deepak came to Delhi by train and proceeded to Bombay by the evening flight. He requested Azim Varasi to arrange one room flat for Shafiq at Bombay. For one week, they stayed at the house of Varasi. Varasi arranged for a room (flat) through a property dealer at a monthly rent of Rs.1100/-. They left Bombay on 17/18.3.92. In April 1992, he received a call from Lal Singh at his residence that he wanted to talk to Mohd. Sharief and Javed Yousuf next day. He called them the next day at his residence where Lal Singh informed them that the consignment of arms, ammunitions and explosives would be arriving Ahmedabad shortly and that they should be ready for receiving the same and also to strike at the targets. On 9.4.92, he and Mohd. Sharief left for Muradabad enroute to Nepal after getting the news of arrest of Javed Yousuf. On 14.4.92, they reached Kathmandu and stayed in Hotel Ice Land. From Kathmandu he returned to Betia on 17.4.92 and stayed for 2 weeks. From there he went to Pune. During his stay at Pune, he got financial help from Kamal Mehboob and Anand Pratap Singh. From Pune, he went to Kathmandu sometimes in the end of March 1993. From Kathmandu he reached Gorakhpur on 15.1.94 to his relations house, i.e. Iqbal Ahmed, Advocate and stayed till 17.1.94. He was arrested by Gorakhpur Police on 18.1.1994. In his confessional statement, he has stated that he was aware that A1 was interested in the creation of Khalistan and A2, who is Pakistani national, was interested in separation of Kashmir and that A1 and A2 were interested in transporting fire-arms and explosives. His presence at the house of A1 in company of A2 at Aligarh and his meeting with A1 and A3 at Bombay is established by leading evidence of independent witnesses.

PW43 Major Singh has specifically stated that along with A1 and A2, accused No.20 was also found at Aligarh at the house of Lal Singh. PW87 Sayeed Mohd. Azim Varasi, a Scientific Officer in Tarapur Power Project Group with Nuclear Power Project Corporation of India at Bombay has stated that he was knowing Shoaib Mukhtiar-A20, who is resident of Aligarh. He became friend of Shoaib Mukhtiar at Aligarh and during his study of B.Sc. Engineering, he took help from Shoaib Mukhtiyar. In 1991, he shifted to Bombay. Whenever he used to visit Aligarh, he used to meet Shoaib. In December, 1991 he received a call from Shoaib in his office from Bombay asking him to contact his friend, Tahir Jamal, at Millatnagar. But since it was not possible for him to contact Tahir Jamal A3, they decided to meet at Bombay Central Railway Station. Shoaib Mukhtiyar was there alongwith his friends. Shoaib introduced Iqbal-A1 and Tahir Jamal-A3 as his friends. Thereafter, he (PW87) and Shoaib went to meet M.N. Ansari, uncle of Shoaib and his two friends went away at some unknown place. They took dinner there. He has further stated that he met Shoaib in January, 1992 and thereafter, Shoaib met him again in the month of March, 1992 alongwith his friend Shafik Ahmad. They stayed with him for about five to six days. They were having

samples of locks etc. with them for business purpose. Shoaib and Shafik were in need of one room house. He arranged one house for them through one broker against payment of Rs.16000/- on account of advance rent and brokerage. After some days, Shoaib made call to him and asked to cancel the said rent deal. He has further identified A1 as Iqbal and A3 as Tahir Jamal. It is to be noted that the witness has specifically stated that A1 and A3 were introduced by A20 as his friends. IN SUCH CASES, TO WHAT EXTENT BURDEN OF PROOF IS ON PROSECUTION? : In the light of the aforesaid evidence led by the prosecution next question for consideration is whether the accused have been rightly convicted.

At this stage, we would reiterate submissions of Mr. Sushil Kumar, learned senior counsel for A1 and A4, that A1 Lal Singh was arrested on 16.7.1992 by PW56 in CR 423/92 of Santacruz Police Station but the case was registered prior to his arrest. A1 was interrogated by PW9 at Santacruz Police Station on 22.7.1997 and his statement was also recorded but no FIR was registered. A1 made a confession to PW128 on 12.9.1992 and report under Section 169 CrPC was submitted on 10.12.1992 in RC 5 but there is no evidence on record of the same. He was never told that his confession may be used against him in TADA Case. Further, confessional statement is not recorded in CR No.423/92. He has not stated about his visiting Madras Stock Exchange and about his getting the places with the help of A4, where arms were recovered. The submission of learned counsel that A1 has not stated in his confessional statement about his visit at Madras after verification of the said confessional statement, appears to be incorrect because A1 has specifically stated that he along with Raveesh and his friend went to Madras by flight and stayed at different rooms in hotel Woodland. They came back to Bombay on 4.7.1992 by flight.

Further, we would state that presuming that there is some irregularity with regard to the recording of FIR it would not vitiate recording of his confessional statement. The report under Section 169 CrPC submitted in RC5/92 on 10.12.1992 has no bearing on the present case. Further, for this purpose there is evidence of PW56 Shamrav Baburav Jedhe, Sr. P.I. Crime Branch, CID, Greater Bombay, who stated that at the relevant time he was posted as Police Inspector in Anti Terrorist Squad, North Region, Bombay. In the year 1985, there was a bomb blast of Kanishka Air Craft in Canada and Lal Singh was wanted in that case and intelligence had provided photographs and other information of Lal Singh to them. On 15.7.1992, Mr. A. A. Khan, Addl. P.C. directed him to arrest Lal Singh, who was reported to be coming at Dadar Railway Station by Dadar-Amritsar Express on 16.7.1992 at 5.00 a.m. After due preparation, they apprehended Lal Singh outside Dadar Railway Station. Lal Singh told his name as Keshore Kumar. In the presence of two panchas namely Mohd. Imran and Stivan Fransis, he took personal search of Lal Singh and prepared panchnama Ex.350, which bears his signature and signature of both the panchas. The driving licence found in the pocket of Lal Singh, which was issued by RTO, Ahmedabad in the name of Keshore Kumar was also seized, which is Ex.351. The visiting card of Hotel Samrat, Ahmedabad found in the purse of Lal Singh is Ex.352. He further stated that he recovered Rs.30664/- and 200 American dollars from the possession of Lal Singh. He has identified A1 Lal Singh as

the person who was arrested by him. Thereafter, Lal Singh was taken to Santacruz Police Station and he was arrested for the offence C.R. No.423/92, which was registered prior to the arrest of Lal Singh as he was wanted in that case. Further, PW124 Mithileshkumar Avadhnarayan Zha, who at the relevant time was Dy. S.P. C.B.I. New Delhi stated that the investigations of RC.5.S/92 and of the instant case were being conducted simultaneously. In any case, if these are considered as irregularities, the same are of no significance as they would not in any way affect the prosecution case. As stated earlier, qua A1 the evidence, apart from his confessional statement, is in abundance. In short, during his interrogation it was revealed that in two premises at Ahmedabad, he had kept large quantity of arms, ammunitions and explosive substances. The evidence on this aspect is that of police officers with regard to the raid and seizure. Apart from the evidence of police officers including SP A.K.R. Surolia (PW103) who conducted the raid, with regard to the stay of A1 in the said premises, there is evidence of independent panchas which supports the prosecution version. For hiring of the premises C-33, Pares Apartments and for purchasing of the house 4A, Usmanharun Society, Ahmedabad, there is unimpeachable evidence on record. Further, prosecution has led evidence with regard to the stay of A1 and A4 in hotels at Ahmedabad and Madras.

For A2, learned counsel submitted that the evidence against A2 nowhere indicates that A2 visited Delhi and Aligarh for establishing contacts for alleged conspiracy and that prosecution has not led any independent evidence to connect the accused with the recovery of the arms etc.

In our view, this submission is required to be considered from different angle in view of the fact that A2 is a Pakistani national. If a foreign national is found staying in the country without valid passport and visa and his movements from one place to another with A1 are established and from the premises occupied by A1, large quantities of arms and ammunitions etc. are found, it would be prudent and reasonable to draw inference of criminal conspiracy. The learned Sr. Counsel Mr. Sushil Kumar submitted that prosecution has not proved beyond reasonable doubt all the links relied upon by it. In our view, to say that prosecution has to prove the case with a hundred percent certainty is myth. Since last many years the nation is facing great stress and strain because of misguided militants and co-operation to the militancy, which has affected the social security, peace and stability. It is common knowledge that such terrorist activities are carried out with utmost secrecy. Many facts pertaining to such activities remain in personal knowledge of the person concerned. Hence, in case of conspiracy and particularly such activities, better evidence than acts and statements including that of co-conspirators in pursuance of the conspiracy is hardly available. In such cases, when there is confessional statement it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue. For assessing evidence in such cases, this Court in *Collector of Customs, Madras & Others v. D. Bhoormall* [1974 (2) SCC 544] dealing with smuggling activities and the

penalty proceedings under Section 167 of the Sea Customs Act, 1878 observed that many facts relating to illicit business remain in the special or peculiar knowledge of the person concerned in it and held thus: 30. that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it all exactness is a fake. E1 Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent mans estimate as to the probabilities of the case.

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

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the persons concerned in it. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.

37. For weighing evidence and drawing inferences from it, said Birch, J. in *Queen v. Madhub Chander*, (1873) 21 WR Cr. 13 at p.19 there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited.

Learned senior counsel Mr. K.T.S. Tulsi appearing for A20, submitted that the trial court has given the benefit of doubt to 16 co-accused despite their confessional statements and there was no reason for the Court not to give benefit of doubt to A20. He submitted that confessional statement of A20 was recorded under coercion and torture and that confessional statement is having serious discrepancies. He also pointed out that presuming that A20 was found in the company of A1 at Aligarh or at Bombay, this would not indicate that he was involved in any criminal conspiracy with A1 or A2. It is his contention that confession of other co-accused cannot be used against the appellant.

We have already dealt with confessional statement in earlier paragraphs and, therefore, we do not want to repeat the same. Confessional statements are held to be admissible in evidence. With regard to the confessional statement of co-accused, it has been held that it can be relied upon.

The next question would be whether benefit of doubt ought to have been given to A20. It is well understood that concept of benefit of doubt is vague. Since years it has been considered that before granting benefit of doubt to the accused, doubt should be reasonable one which occurs to a prudent man and not to a weak or unduly vacillating or confused mind. On this point in *Vijayee Singh and Others v. State of U.P.* [(1990) 3 SCC 190] this Court succinctly observed thus: - There is a difference between a flimsy or fantastic plea which is to be rejected altogether. But a reasonable though incompletely proved plea which casts a genuine doubt on the prosecution version indirectly succeeds. The doubt which the law contemplates is certainly not that of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It must be the doubt of the prudent man who is assumed to possess the capacity of separate the chaff from the grain. It is the doubt of a reasonable, astute and alert mind arrived at after due application of mind to every relevant circumstance of the case appearing from the evidence. It is not a doubt which occurs to a wavering mind.

In that case, the Court also referred to the following observations in *Miller v. Minister of Pensions* [(1947) 2 All E.R.372] by Lord Denning, J.: That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course, it is possible but not in the least probable, the case is proved beyond reasonable doubt.

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land. In such type of terrorist activities if arms and ammunitions are recovered at the instance of or on disclosure by accused, it can be stated that presumption of innocence would not thereafter exist and it would be for the accused to explain its possession or discovery or recovery and would depend upon facts of each case which are to be appreciated on the scales of common sense of a prudent man possessing capacity to separate the chaff from grain. In such cases, as stated by Lord Denning J., law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If it is established on record that A20 was found in company of A1 and A2 at Aligarh and that at Bombay also he had introduced himself as friend of A1 and A3 to PW87, who is his childhood friend, then it would be reasonable to infer that he was co-conspirator and assisting A1 and A2, as stated in his confessional statement.

The learned senior counsel Mr. Sushil Kumar further contended that Rule 14 of the TADA rules was not followed in this case, which contemplates procedure of issuing warrant authorizing any police officer above the rank of constable to enter and search the place in the manner specified in the warrant and to seize anything found in or on such place,

which the police officer has reason to believe, has been or is being, or is intended to be, used for the purpose of or in connection with any such contravention or offence. Power to issue search warrants by a District Magistrate under Rule 14 is, to some extent, similar to the power which could be exercised under Section 94 of the Cr.P.C. This contention was not raised by the learned counsel for the accused before the trial court, may be, because at the time of carrying out the search, there was no pending case under the TADA Act and that police officers were entitled to carry out the search and seizure under Section 165 of the Criminal Procedure Code. The search and seizure was carried out by higher officer, namely, S.P. C.I.D., Crime Branch. Further, exercise of such power by the District Magistrate does not take away the authority of the police officer to search under Section 165 of the Cr.P.C. In the present case, there is no question of application of Rule 14 of the TADA Act as at that stage, no case for the offence was pending. Being cognizable offence, on the basis of information received that large quantity of arms and explosive substances were stored in the premises, the police officer was entitled to exercise power under Section 165 Cr.P.C. Hence, we find no force in this contention.

The learned counsel pointed out that before carrying out the raids neither FIR was registered and even after breaking open locks the procedure is not followed. It is true that in this case FIR was registered after carrying out the raids. For this contention, it has been pointed out on behalf of the prosecution that before raids were carried out there was no certainty that arms and ammunition would be recovered. These raids were carried out only on the basis of information received after interrogation of A1 Lal Singh. Secondly, the raid was carried out in the presence of higher officer, namely Mr. A.K.R. Surolia, Dy. C.P (PW103). For breaking of locks in the said premises, there is no question of different procedure in such cases. For this purpose panchnama was prepared and it is mentioned that after breaking open the locks, search was carried out. Learned counsel further submitted that there was no justifiable reason to deposit the arms and ammunitions which were found in the said two premises at the police head quarter. It is the say of the witness that muddamal arms and ammunitions were deposited at the police head quarter because of its large quantity. It is quite possible that there may not be sufficient space at the police station where FIR was registered. In any case, for the purpose of safety if the muddamal articles are deposited at the police headquarters, it cannot be said that the recovery is in any way vitiated.

The next contention that Rule 15 of TADA Rules has not been followed also does not carry any weight. For this purpose, we would refer to the evidence of PW128, PW132 and PW133. PW128 Satishchandra Rajnarayanlal, who was S.P., CBI II, Punjab Cell at New Delhi in 1992 stated that he registered the offence R.C.6-SII/92. He recorded the confessional statements of A1 Lal Singh Ex.620 and A3 Tahir Jamal Ex. 618 alongwith other accused. Before recording confessional statements, he ascertained from every accused whether they were voluntarily ready to give confessional statements. Necessary questions were put to them and time was given to them to think over the matter. After being satisfied that they were willing to give voluntary confessional statements, he recorded their confessional statements. PW132 Padamchandra Laxmichandra Sharma, who was

SP CBI SIC.II at the relevant time stated that when he took over the charge of this case RC.6.(S)/92 from Mr. Satishchandra, this case was on the last phase. Dy. S.P. CBI, D.P. Singh (PW136) had produced A2 Mohd. Sharief and A20 Shoaib Mukhtiar before him on 8.7.1993 and 6.2.1994 for recording their voluntary confessional statements, which are Ex.650 and Ex.654 respectively. Before recording their statements, he warned them of the consequences of making confessional statements and further gave them time to think over the matter. On being satisfied that they wanted to give confessional statements, he recorded their statements. PW133 Sharadkumar Laxminarayan, DIG Police, CBI, SIC II Branch, New Delhi stated that in the year 1992 he was S.P. in the same branch at New Delhi. On 5th November, 1992 he was directed by DIG M.L. Sharma to proceed to Ahmedabad in order to record statement of A4 Saquib Nachan under Section 15 of TADA Act. On 6th November, 1992 after reaching at Ahmedabad, Saquib Nachan was produced before him. He put necessary questions to A4 Saquib Nachan. Before recording confessional statement, he ascertained from him whether he was voluntarily ready to give confessional statement and warned him that if he made confessional statement, the same can be used against him. He also apprised the accused that he is not bound to make such statement. When the accused replied that he wanted to make clean admission of guilt, he recorded the confessional statement of A4 Saquib Nachan. From the above evidence, it is clear that Rule 15 was fully followed by the witnesses, who recorded the confessional statements of accused.

In view of the aforesaid evidence, the prosecution has proved its case beyond reasonable doubt against the appellants who are convicted by the trial court.

(1) For accused no.1, the evidence as narrated above proves, beyond reasonable doubt, his involvement in criminal conspiracy. He moved from one place to another in India in different fake names; he along with other persons went to Ahmedabad, hired C-33, Pareesh Apartments and got transferred building 4A in Usmanharun Society, Juhupura, Ahmedabad. On the basis of his interrogation, the police at Ahmedabad raided the premises and found large quantity of arms, ammunitions and explosive substances. His stay at Ahmedabad in the said premises is established without any shadow of doubt by examining independent witnesses including residents of aforesaid two premises, the washerman and other persons. He was staying in the name of Ashok Kumar Khanna or Iqbal. His stay in different hotels is also established. The purchase of Mahindra Jeep and Maruti Gypsy is also proved. Therefore, it cannot be said that the trial court erred in convicting him for the offences punishable under Section 3(3) and 5(1) of the TADA Act as well as Section 120B IPC and under Section 25 (1) (a) of Arms Act.

(2) Against accused no.2, apart from his confessional statement, it is proved that he is a Pakistani national. He moved from one place to another in India. He stayed at Aligarh with A1 and in Qureshi Guest House at Delhi in different names during different period. Hence, there is no reason to discard his confessional statement that he was I.S.I. agent and that he was involved in terrorist activities and hatched conspiracy with A1.

(3) For accused no.3, apart from proving his confessional statement, prosecution has proved that he was

found in the company of A1 and A20 at Bombay. From his premises, the letter written by him (Ex.602 and 603) was found indicating his secret activities.

(4) For accused No.4, apart from his confessional statement, it is proved that he accompanied A1 at Ahmedabad and Madras and stayed in different hotels in different names. He was present at Aligarh alongwith A1 and A2. He was also absconding.

(5) Similarly for A20, in addition to confessional statement, the prosecution has led the evidence to establish his association with A1 and A2 at Aligarh. Thereafter, he went to Bombay and introduced A1 and A3 as his friends to his friend PW87.

The next question would be with regard to the conviction of A3, A4 and A20 for the offence punishable under Section 3(3) of the TADA Act. In our view, there cannot be any doubt that A3, A4 and A20 have conspired alongwith A1 and A2 in their preparatory terrorist activities. Apart from conspiring, A4 specifically accompanied A1 at Ahmedabad for the purpose of finding hide out. He also accompanied A1 at Madras for surveying the Madras Stock Exchange. If A4 was not at all connected with A1, there was no necessity of travelling together in fake names. For accused nos.3 and 20, it is true that apart from their confessional statements, role proved against them in conspiring with A1 is limited. However, A3, Tahir Jamal had kept substantial amount for carrying the expenditure incurred in these activities. The torn letter Ex.602 and 603 establishes that he was involved in secret karobar. In this view of the matter, it cannot be said that their conviction under Section 3(3) of the TADA Act is in any way illegal or erroneous. However, considering the role played by A-3, A-4 and A-20, we think interest of justice would be served if their sentence is reduced from life imprisonment to R.I. for 10 years.

In the result, Criminal Appeal No. 219 of 1997 filed by A-1 Lal Singh and Criminal Appeal Nos. 1409-1411 of 1999 filed by A-2 Mohd. Sharief are dismissed and their conviction and sentence as imposed by the learned Designated Judge are confirmed. Conviction of A-3 Tahir Jamal, A-4 Mohd. Saquib Nachan and A-20 Shoaib Mukhtiar for the offence under Section 3(3) of TADA Act is confirmed, but their sentence is modified to the extent that they are directed to suffer R.I. for 10 years for the same and to pay a fine of Rs. 10,000/- each and in default to suffer R.I. for 6 months. However, their conviction and sentence under Section 120B and 120B (1) of I.P.C. imposed by the Designated Court are maintained. Hence, Criminal Appeal No. 244 of 1997, Criminal Appeal No.294 of 1997 and Criminal Appeal Nos. 407-409 of 1997 filed by A-4, A-20 and A-3 respectively are allowed to the aforesaid extent only.