PETITIONER:
MANORANJAN SINGH

Vs.

RESPONDENT:
STATE OF DELHI

DATE OF JUDGMENT: 19/02/1998

BENCH:
G.T. NANAVATI, S.P. KURKUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Nanavati, J.

This appeal is directed against the judgment and order passed by the Additional judge, Designated Court, Delhi, in Sessions case No. 149/93 (arising from FIR No. 190/93 of Tilak Nagar Police Station). The learned Judge had convicted the appellant under Section 5 of the TADA Act and also under Section 5 of the Explosive Substances Act, 1908. For the offence punishable under Section 5 of the TADA Act, the appellant has been sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/-. For the offence punishable under Section 5 of the Explosive Substances Act, he has been sentenced to suffer rigorous imprisonment for three years.

It was the prosecution case that the police had information that some terrorists of Punjab were to carry out explosions in various parts of Delhi and therefore, they were keeping a watch at Vishnu Garden, Rajouri Garden and Tilak Nagar. A watch was also kept on appellant who was residing in a house bearing No. F-167, near Vishnu Garden, as some unknown persons were seen visting his house. On 6.4.93, the police party consisting of Inspector Babu Singh, Inspector Nand Kishore and Sub-Inspector Satish Kumar decided to raid the premises in which they suspected that explosive material was kept. They, therefore, went to the house of the appellant and took him to the office of the Operation Cell in Lodhi Colony for interrogation. The appellant made a disclosure statement that Joginder Singh with whom he had good contacts had taken a house on rent bearing No. C-44, near Vishnu Garden and they had kept some explosive material in that room. It was opened by a keep which was with the appellant. The appellant then pointed out a raxine bag containing one dalda tin containing 2 Kgs. of RDX and one timer device. All these articles were seized by the police; and, after competing the investigation, charge-sheet was filed against the appellant and two other, namely, Gurmeet Singh and Joginder Singh. As Joginder Singh was not traced, the trial proceeded against Manoranjan Singh and Gurmeet Singh. The trial court acquitted Gurmeet Singh as it was not proved that he had taken that room on lease and as

in possession of it. The trial court believed the evidence of PW 1- Babu Singh. PW7 - Nand Kishore and PW 12 - Satish Kumar and held that the appellant was in conscious possession of the RDX recovered from that room. The trial court also believed th at the said RDX was recovered on the basis of the disclosure statement made by the appellant. The appellant was, therefore, convicted as stated above.

It was contended by the learned counsel for the appellant that the trial court committed a grave illegality in relying upon the disclosure statement alleged to have been made by the appellant as the appellant was not an 'accused' when he had made that statement nor was he in custody of police when he made that alleged statement. We find that no offence was registered against the appellant when he was taken to the police station for interrogation nor was any accusation made against him. He was not in custody of the police when he made the disclosure statement. The learned counsel is, therefore, right in his submission that Section 27 was not applicable in this case and recovery should not have been treated as having been made on the basis of the disclosure statement of the appellant.

But, we see no reason to disbelieve the evidence of the said three witnesses who have categorically stated that the key was produced by the appellant and with it the lock of that room was opened. The witnesses have also stated that after opening the room the accused had pointed out the raxine bag containing dalda tin from which RDX was found. From this evidence. We are of the view that the appellant was rightly convicted by the trial court. Hence, we see no reason to differ from the findings recorded by the trial courts.

We, therefore, maintain the conviction of the appellant and also the substantive sentence of imprisonment imposed upon him. However, in view of the facts and circumstances of this case. We set aside the sentence of fine. Subject to this small modification in the order of sentence, this appeal is dismissed.