STATE OF TAMIL NADU

v.

SIVARASAN @ RAGHU
@ SIVARASA AND ORS.

OCTOBER 31, 1996.

[G.N. RAY AND G.T. NANAVATI, JJ.]

Criminal Law :

Terrorist and Disruptive Activities (Prevention) Act, 1987: Section 15. Confession—Recording of—By a Police officer—Typewritten confession words "records in writing"—Meaning of—Held: wider meaning had to be given to include typewriting—Confessional statement need not be recorded by Superintendent of Police in his own handwriting—He could take help of another person or instrument like typewriter—But he must not leave work of recording confession to his subordinates—Confession must be recorded in his presence and hearing and under his direct control.

Section 5—Ingredients of—Held: Prosecution must prove accused was in conscious "possession", "unauthorisedly", in "notified area" of any of the specified arms and ammunition—No further nexus with any terrorist or disruptive activity was required to be proved as statutory presumption would arise that said arm or explosive substance was meant to be used for terrorist or disruptive act.

Section 5—Accused found in possession of explosive substances (Gellatine sticks) for their use in Sri Lanka—Accused did not have intention to commit terrorist or disruptive activity within India—Held: Accused rebutted presumption arising out of his unauthorised possession of Explosive substance in a notified area—Acquittal upheld.

Section 5—Explosive substances—Meaning of—Held: could not be given same meaning as under explosive Substances Act—It must be complete article or device capable of exploding—Empty cells or part for making bomb not covered—However, gelatine sticks were explosive substances—Provisions must be construed strictly.

Terrorist and Disruptive Activities (prevention) Rules, 1987: Rule 15(3)(b). Confession—Certificate and memorandum made at the end of—

A *Held: need not be written down by Superintendent of Police himself— Typewritten certificate and memorandum signed by him were sufficient.*

Explosive substances Act, 1908—Section 5.

Ingredients of—Accused found in possession of explosive substances
B *as defined by Act— Such articles were parts of bombs and grenades— Accused did not possess them for any lawful object—Held: All ingredients of offence under S.5 satisfied—Accused guilty of commission of that offence. Section 7—Requirement of—Held: Section did not require sanction but only consent for prosecuting a person—Object of using word "consent"*
C *instead of "sanction" was to have purely subjective appreciation of matter before giving consent—Investigating Officer need not submit statement of witnesses before Collector for obtaining his consent.*

Penal Code, 1860; Section 120-B read with Section 3(3), TADA.

D *Conspiracy—Charge of—Certain articles like incomplete grenades or bombs or their parts and vehicles used in transporting same were recovered from accused—No evidence led by prosecution to prove that accused intended to commit terrorist act within India or to endanger life or cause injury to property in India—Evidence disclosed accused*
E *involved in manufacturing bombs and grenades for their use by LTTE in Sri Lanka Held: the said recovery, even if believed, not sufficient to prove charge of conspiracy—Ingredients of S.3(3) TADA were not satisfied—S.4 of the Explosive Substances Act not applicable.*

Section 309—Attempt to commit suicide—Proof of—Accused admitted
F *that he tried to bite a cyanide capsule when police tried to take him into custody—Offence also proved—Held: acquittal set aside.*

Criminal Procedure Code, 1973:

G *Offence—Under S.4 of Explosive Substances Act, 1908—Accused charged with—Held: accused could be convicted and punished for a lesser offence under S.5 of that Act if ingredients constituting that offence were established.*

H *Interpretation of Statutes :*

Interpretation—Rules of—Strict construction—Held: Statute containing stringent provisions and providing heavier punishments must be construed strictly. A

Words and Phrases :

"Recorded in writing", "typewriting"—Meaning of—In the context of—S.15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. B

"Explosive substances"—Meaning of—In the context of S.5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

"Under his own hand"—Meaning of—In the context of R.15(3)(b) of the Terrorist and Disruptive Activities (Prevention) Rules, 1987. C

"Consent"—Meaning of—In the context of S.7 of the Explosive Substances Act, 1908.

D

The respondents—accused were acquitted of charges under Sections 120-B of the Indian Penal Code, 1860 read with Sections 3(3) and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Sections 4 and 5 of the Explosive Substances Act, 1908. Being aggrieved the appellant—State preferred the present appeal.

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According to the prosecution, the accused who were Sri Lankan nationals and members of Liberation Tamil Tigers Elam (LTTE) came to India without any travel documents. Since then the accused were engaged in obtaining explosive substances, manufacturing bombs and sending them to LTTE in Sri Lanka. On the fateful day when the police were trying to take accused (A-1) into custody he tried to bite a cyanide capsule. On further investigation accused (A-1) was found in the possession of explosive substance (gelatine sticks) for their use in Sri Lanka. The accused were also in possession of explosive substances as defined in Explosive Substances Act, 1908. Such explosive substances were parts of bombs and grenades and the accused possessed them not for any lawful object. Certain articles like incomplete grenades or bombs or their parts and vehicles used in transporting them were recovered from the accused. It was the further case of the prosecution that the accused (A-2 and A-9) had made typewritten confessional statements before the Superintendents of Police, PWs 51 and 53. F G H

A On the basis of the evidence adduced on behalf of the prosecution, the Sessions Judge came to the conclusion that the charges levelled against the accused were not established. The Sessions Judge, therefore, acquitted all the accused for the following reasons:-

(1) The Superintendent of Police should have recorded the B confession in his own handwriting and Section 15 of the TADA Act did not permit him to get it written by someone else on a typewriter even if that was done in his presence. Further, Rule 15 of the TADA Rules required that in case of a written confession the Superintendent of Police should have certified the same in his own handwriting. The confessions were wholly typewritten and they were not recorded in C accordance with Section 15 of the TADA Act and Rule 15 of the TADA Rules and hence were inadmissible.

(2) There was no evidence to show that the accused possessed arms and ammunition and other explosive substances with the intention of committing any terrorist or disruptive activity within D India and hence the accused were not guilty under section 5 of the TADA Act and Section 4 of the Explosive Substances Act, 1908.

(3) The charge of conspiracy was not established on the basis of evidence of the witnesses and confessions of the accused.

E

(4) The charge under Section 309 IPC was void in view of the decision of this Court in P.Rathinam's case.

(5) There was no evidence to prove the charge of conspiracy under Section 120-B IPC read with Section 3(3) of the TADA Act.

F

(6) The sanction given by the District Collector under Section 7 of the Explosive Substances Act, 1908 was not a valid sanction and, therefore, the accused could not be convicted under Section 4 of the Explosive Substances Act, 1908.

G

On behalf of the appellant—State it was contended that the trial court did not correctly appreciate the charge regarding conspiracy; that on an erroneous view of the law the trial court ommitted from consideration the confessional statements; and that the finding regarding the sanction given by the Collector under Section H 7 of the Explosive Substances Act, 1908 was bad being contrary to the

law and the evidence. A

Allowing the appeal in part, this Court

HELD : 1. The expression "recorded in writing" in section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) has a wider meaning. It would include writing down by one's hand B and also writing by other means. Unless the context so requires it would not be proper to give that expression a narrow meaning. In Section 15 the words `recorded in writing' are used to indicate a mode or form of recording the confession. Though the nature of the provision would, justify strict compliance with each of the conditions mentioned therein there is no compelling reason to give such a narrow C interpretation to those words. Though the Superintendent of Police must himself explain to the person making the confession that he is not bound to make a confession and that it may be used as evidence against him if he makes it and though he has himself to question the person making it to form a reasonable belief that he is making it voluntarily it was not intended by the Legislature that the D Superintendent of Police should himself write down the confession without taking any help of another person or an instrument like a typewriter. What appears to have been intended by the Legislature is that the Superintendent of Police should not leave the work of recording the confession to any of his subordinates and that everything in connection with the confession should be done in his presence and E hearing and under his direct supervision and control. Therefore, there is no justification for interpreting the words "recorded by such police officer in writing" to mean recorded by such police officer in his own handwriting. There is no reason why a Superintendent of Police who, for some reason, is unable to write down the confession, cannot take F the help of another person for writing the same. Why cannot a Superintendent of Police, whose handwriting is not good, record the confession by using a typewriter? Typewriting is also writing. A typewritten thing is also a writing prepared with the help of a typewriter. In the instant case the Sessions Judge erred in treating the confessions as inadmissible on the ground that they were not G recorded in accordance with the requirement of Section 15 of the TADA Act. [259 D-H, 260 A,B]

State v. *S.J. Choudhary,* [1996] 2 SCC 428, relied on.

Webster's Comprehensive Dictionary, referred to. H

A **2. The expression "under his own hand" as used in Rule 15(3)(b) of the TADA Rules does not mean in his own handwriting. What is inter alia required to be certified by the police officer is that the confession was taken in his presence and recorded by him. The words `taken in his presence and recorded by him' are significant. Similarly, the words of the memorandum that the confession was taken `in my** B **presence and hearing and recorded by me' are also significant and indicative of the expected manner of recording the confession. They clearly suggest that the confession should be recorded by the police officer in his presence and hearing. The emphasis is on the presence and hearing of the police officer and not on the police officer himself writing down the confession, the certificate and the memorandum.** C **Thus, what is required by sub-rule (3) is that the written confession should not only be countersigned by him but it should also contain the required certificate signed by him. The intention of the Rule clearly appears to be that all the formalities should be performed by him and he should himself certify that he had discharged all the obligations before recording the confession. [260 H & 261 A-D]**

D

3.1. The prosecution must prove that the accused was in conscious "possession", "unauthorisedly', in a "notified" area of any of the specified arms and ammunition. No further nexus with any terrorist or disruptive activity is required to be proved by the prosecution as a statutory presumption would arise that the said arm or explosive E **substance was meant to be used for a terrorist or disruptive act. [265 B,C]**

Sanjay Dutt **v.** *State,* **[1994] 5 SCC 410, followed.**

F **3.2. The TADA Act contains stringent provisions and provides heavier punishments. Therefore, its provisions have to be construed strictly. The TADA Act does not define the expression "explosive substances". The Legislature has not thought if fit to give that expression the same meaning as is given under the Explosive Substances Act. Otherwise, just as it has in case of arms and ammunition referred** G **to the Arms Rules, 1962 it would have referred to the Explosive Substances Act if it really wanted the said expression `explosive substances' to have the same meaning as it has under the Explosive Substances Act. The expression `other explosive substances' is found to be in the company of `bombs and dynamites' and, therefore, the explosive substance contemplated under Section 5 must be of the type** H **of bombs and dynamites. It must be a complete article or device capable**

of exploding. Therefore, neither empty cells nor parts for making a bomb so long as they are not assembled and filled with gun powder or other explosive substance can be said to be an explosive substance as contemplated by that Section. [265 D,E,F] A

4.1. Gellatine sticks which were found from the possession of the accused would be an explosive substance but the acquittal of the accused is confirmed because the evidence shows that no terrorist or disruptive activity was ever intended by him to be committed within India as the evidence discloses that they were to be sent to Sri Lanka and used there. The accused has rebutted the presumption arising out of his unauthorised possession of explosive substance in a notified area. [265 F,G] B C

4.2. The accused were found in possession of explosive substances as defined by the Explosive Substances Act, 1908. Such articles were the parts of bombs and grenades. The clandestine manner in which the accused were making, storing and transporting them is a circumstance sufficient to create a reasonable suspicion that they were not possessed for a lawful object. Therefore, all the ingredients of the offence under Section 5 of the Explosive Substances Act, 1908 are satisfied and the accused are guilty of that offence. Although the accused were charged under Section 4 of the Explosive Substances Act, 1908 and there was no specific charge under Section 5 of that Act, it being a lesser offence, the accused can be convicted and punished under that Section, if the ingredients constituting that offence are established. [266 A-E] D E

4.3. Section 7 of the Explosive Substances Act, 1908 does not require a sanction but only consent for prosecuting a person for an offence under that Act. The object of using the word 'consent' instead of "sanction" in Section 7 is to have a purely subjective appreciation of the matter before giving the necessary consent. It is not necessary for the investigating officer to submit the statement of witnesses to the Collector for obtaining his consent. [266 F,G] F G

5.1. The charge of conspiracy is not established on the basis of the evidence of witnesses and confessions of the accused. Consequently, the circumstance that certain articles like incomplete grenades or bombs or their parts and vehicles used in transporting them were recovered from the accused, even if believed, are not sufficient to H

prove the charge of conspiracy. No other evidence was led by the prosecution to prove that the accused intended to commit a terrorist act in India or to endanger life or cause serious injury to property in India. On the contrary, the evidence discloses that the accused who were involved in manufacturing bombs and grenades were doing so for their use by LTTE in Sri Lanka. Therefore, the ingredients of Section 3(3) of the TADA Act were not satisfied in this case and Section 4 of the Explosive Substances Act, 1908 has no application. [262-H 263-A,B]

5.2. The evidence clearly establishes that when the police tried to take the accused (A-1) into custody he had attempted to commit suicide by biting a cyanide capsule. The Constitution Bench of this Court in *Gian Kaur's case* has overruled the view taken in *P.Rathinam's case* that section 309 IPC is constitutionally invalid. Therefore, the acquittal of accused (A-1) under Section 309 IPC is set aside and he is convicted under that Section. [268 E-G]

Gian Kaur **v.** *State of Punjab,* **[1996] 2 SCC 648, followed.**

P. Rathinam **v.** *Union of India,* **[1994] 3 SCC 394, held inapplicable.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 819 of 1994.

From the Judgment and Order dated 10.8.94 of the Principal Sessions Judge and Designated Court at Coimbatore in C.C.No.61 of 1992.

V.R. Reddy, Additional Solicitor General, K.V. Venkataraman, K.V. Viswanathan and V.G. Pragasam for the Appellant.

U.R. Lalit, M.T. George, P.D. Sharma(NP), Ashok Aggarwal, R.G. James and C.S. Ashri for the Respondents.

The Judgment of the Court was delivered by

NANAVATI, J. This appeal arises out of the judgment and order of the Principal Sessions Judge and Designated Court, Coimbatore, in C.C.No. 61 of 1992. As the learned Judge acquitted the accused, the State has filed this appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (herein after referred to as the "TADA Act").

The prosecution case is that Shivarajan alias Raghu (Respondent/ Accused No.1) and Vigneswaran alias Vicky (Respondent/Accused No.2) who were Sri Lankan nationals and members of LTTE came to India sometime in 1989 without any traveling documents. So also, Guna and Dixon who were Sri Lankan nationals and members of LTTE had come to India in the like manner. Since then they were engaged in obtaining explosive substances, manufacturing bombs and sending them to LTTE in Sri Lanka. In the said cladestine activity they were helped and assisted by Respondent Nos. 3 to 9 (Accused Nos. 3 to 9) who are Indian nationals. Tilll the assassination of Rajiv Gandhi on 21.5.91, they could carry on the said activity without any hinderance. Thereafter it became difficult for them to do so as the whole of Tamil Nadu was declared as a Notified Area with effect from 23.6.91, under Section 2(1)(f) of TADA Act and also because the Government of India and the Government of Tamil Nadu tightened security measures within the State of Tamil Nadu. The police was also on look out for Sri Lankans who did not possess passport and visa for staying in India and had also required the house owners to report to it if such Sri Lankans were found to be occupying their houses. Due to such strict measures A-1, A-2 Guna and Dixon found it difficult to obtain accommodation for their residence and for manufacturing bombs and storing them and therefore, they went on changing houses after taking them on rent by making misrepresentations. Since February 1991 A-1 and Guna had taken on rent one house bearing Door No. 11/12 A situated in Shivaji Colony in Coimbatore. Dixon and others were occupying a different house in Coimbatore. As the LTTE was in desperate need of hand grenades and bombs and wanted them to be supplied latest by the end of first week of August 1991, A-1 to A-5 and A-7 to A-9 and Guna met at the house of A-1 in Shivaji Colony and decided to manufacture and send them to Sri Lanka and also to strike terror in the people by using bombs or other explosives and thereby causing damage to Indian property or death or injuries to Indian leaders and other persons if they came in their way. All the nine accused along with Guna and Dixon continued to manufacture different parts of hand grenades and plastic bombs and store them at different places. A-1 and A-2 were required to change their residence from shivaji Colony to a house in Dr. Muthuswamy Colony as the owner of the house objected to their suspicious activities. On 28.7.91, A-1 and A-2 after making necessary arrangements for transporting the hand grenades and plastic bombs manufactured by them with the help of other accused and which were to be filled with explosives at Trichy returned to the house in Dr. Muthuswamy Colony. They found police standing near their house. So they went to another house where some more articles were kept. There

A they came to know that Guna and Dixon had committed suicide as the police had surrounded their house.

In the evening A-1 and A-2 were going on a Kinetic Honda scooter. P.W.1 Pandurangan, a traffic police constable signalled them to stop as he noticed that the scooter was being driven very fast. Instead of stopping the B scooter, A-1 who was driving it, attempted to dash it against him. P.W.1 jumped aside and saved himself. After covering some distance A-1 and A-2 fell down on the road along with the scooter. P.W.1 then went to that place and asked A-1 to show his licence. A-1 challenged him by saying as who he was to ask for a licence. A-1 then said "if this police man is done away with, this police department will then understand". He also threatened C P.W.1 by stating that if he tried to catch him, beat him or sent him out of the country he would destroy the entire Tamil Nadu. P.W.1 suspecting them to be LTTE terrorists, shouted for help and blew his whistle. Thereupon A-1 attempted to start the scooter but it did not start. Hearing the shouts and the whistle two police constables, Sivagnanam and P.W.2 Devasayayam came there. The three police constables with the help of D other persons tried to take both the accused in custody. At that time A-1 took out a cyanide capsule from his pant pocket and attempted to put it in his mouth. P.W.1 pushed his hand aside and the capsule fell down on the road. The police constables then took both the accused to Thoodivalur police station. There P.W.1 lodged a complaint against them under section E 353, 307 and 309 I.P.C. On the basis of this complaint Inspector Angamuthu, P.W.55 started the investigation. On the basis of further information other charges under the TADA Act and Explosive Substances Act, 1908 were also added. During the investigation various incriminating articles like incomplete grenades or bombs or their parts and the vehicles used in transporting the same were discovered at the instance of the accused or F were recovered from their possession.

On these allegations, A-1 to A-5 and A-7 to A-9 were charged for the offences punishable under Section 120-B read with section 3(3) of the TADA Act. A-1, A-3 to A-5 and A-7 to A-9 were also charged for the G offences punishable under Sections 3(3) and 5 of the TADA Act. They were also charged for commission of the offence under Section 4 of the Explosives Substances Act. A-6 was charged under section 5 of the TADA Act and Section 4 of the Explosives Substances Act. A-1 and A-2 were further charged under Section 307 read with Section 34 I.P.C. A-1 was individually charged for the offences punishable under Sections 353 and H 309 I.P.C.

In order to prove the conspiracy the prosecution relied upon the evidence of P.W.21 Prem Kumar, P.W.38 Kumar, confessional statements of A-2 and A-9 and also the evidence of other witnesses who deposed that between the first week of July 1991 and 3.8. 1991 they had either seen some of the accused together or seen them manufacturing, storing and transporting parts of boms and grenades. As the charge against the accused regarding conspiracy was specific that said conspiracy was hatched during that period, in the house bearing Door No. 11/12A of Shivaji Colony, the learned trial judge held that it was necessary for the prosecution to prove that the conspiracy was hatched as alleged. After appreciating the evidence of prosecution witnesses in this behalf the learned trial judge held that the said house was vacated by A-1 on 3.7. 91 and that there was no evidence to show that during the first week of July 1991. When the said house was in occupation of A-1 all the accused had met there and conspired as alleged. The learned trial judge having found that between 11.7.91 and 28.7.91 A-1 and Guna resided in a different house situated in Dr. Munusami Colony and that there was no evidence to show that A-1 to A-5 and A-7 to A-9 and deceased Guna were found together in any place during the period from first week of July to 3.8.91 and had agreed to do any illegal act, held that the charge of conspiracy was not proved.

Though the prosecution had also relied upon the confessional statements of A-2 and A-9 in order to prove the charge of conspiracy the learned judge did not take them into consideration as he was of the view that they were not recorded in the manner prescribed by Section 15 of the TADA Act and Rule 15 of the TADA Rules and therefore could not be accepted in evidence. In the alternative he held that even if they were accepted as evidence they alone could not be made the basis for conviction of the accused. To prove possession of bombs, grenades and explosive substances by the accused the prosecution had relied upon the evidence of those witnesses who deposed about their having seen the accused either making purchases of raw materials for preparing hand grenades or bombs or manufacturing parts of the bombs or transporting such parts and also of those witnesses in whose presence such parts and explosive substances were recovered. For proving this charge also the prosecution had relied upon the two confessional statements of A-2 and A-9. The learned judge held that the evidence regarding recovery of the articles from various accused was not sufficient. Therefore, this charge was also held as not proved. In the alternative the learned judge held that even if it was believed that such articles were recovered from the possession of A-1 and A-3 to A-9 and eventhough articles siezed by the police were explosive substances as defined by Section 2 of the Explosive Substances Act, there was no

A evidence to show that they were ;possessed either for the purpose of committing terrorist acts or for supporting or abetting terrorist acts or with an intention to endanger life or to cause serious injury to any person in India by means thereof or to cause serious injury to property in India and, therefore, they could not be held guilty under Section 5 of the TADA Act and Section 4 of the Explosive Substances Act. The learned judge also B held that the sanction given by the District Collector, to prosecute the accused under the Explosive Substances Act was not a valid Section and, therefore, also they could not be convicted under Section 4 of the Explosive Substances Act. With respect to the charges under Sections 307, 353 and 309 I.PC. he held that the evidence of P.W.1 Pandurangan, P.W2 Devasayayam P.W.3 Dhansekaran, P.W.4 Arumugam, P.W. 6 V. Arumugam C and P.W.7 Singaram was not acceptable as the version given by them was "artificial and unbelievable". He did not consider the charge against A-1 under Section 309 I.P.C. as the same was held void in view of the decision of this Court in P. Rathinam and Naghbushan Patnaik v. Union of India [1994] 3 SCC 394. The learned Judge, therefore, acquitted all the accused of all the charges levelled against them. Aggrieved by the said order of D acquittal the State has filed this appeal.

The learned counsel appearing for the appellant-State contended that the trial Court did not correctly appreciate the charge regarding conspiracy and, therefore,the finding that conspiracy as alleged is not proved stands vitiated. He also contended that on an erroneous view of the law the trial E court omitted from consideration the confessional statements, Exh.53 and Exh.51 of A-2 and A-9. He also submitted that the finding regarding the sanction given by the District Collector under Section 7 of the Explosive Substances Act is bad being contrary to the law and the evidence. The other findings are challenged on the ground that the evidence relating F thereto has not been correctly appreciated and the reasons given in support thereof are improper and untenable.

On the other hand the learned counsel appearing for the respondents supported the findings on the grounds given by the trial court and submitted that the acquittal of the accused is proper and just and does not call for any G interference by this Court.

We will first consider the charge of conspiracy and the evidence led to prove it. The prosecution case was that as, after the assassination of Rajiv Gandhi on 21.5.91, it became very difficult for A-1, A-2, Guna, H Dixon and others who were engaged in manufacturing hand grenades and

bombs for the LTTE and as the LTTE was in dire need of those bombs latest by the end of the first week of August 1991, the accused met at the house of A-1 and A-2 situated in Shivaji Colony in the first week of July 1991 and hatched a conspiracy by agreeing "to commit illegal acts by illegal means, to strike terror in the people by using bombs and other explosive substances as was likely to cause death and injuries to Indian Leaders and people who might prevent their unlawful activities and also to manufacture grenades and explosive substances in the notified area of Coimbatore."

Thus, the charge framed against the accused was not only that they had conspired to commit terrorist acts but they had also conspired to manufacture explosives like grenades and bombs in the notified area. The learned counsel for the appellant was, therefore, right in his submission that the learned Sessions Judge did not properly appreciate what exactly was the charge against the accused and failed to consider if the charge that they had also conspired to manufacture explosives was proved. He also rightly submitted that the charge against the accused was that the accused had entered into a criminal conspiracy in the first week of July 1991 in House No. 11/12-A of Shivaji Colony and the illegal acts referred to in the charge were committed in pursuance of that conspiracy between first week of July 1991 and 3.8.91 and therefore, the learned Sessions Judge was not right in holding that the charge of conspiracy was not proved as there was no evidence to establish that between 3.7.91 and 3.8.91 the accused had met in the said house and conspired to commit the said illegal acts. In view of this infirmity in the judgment we have carefully considered the evidence keeping in mind both these aspects.

The evidence of P.W.21 Prem Kumar establishes that A-1, A-2 and Guna were in possession of his house in Shivaji Colony in the first week of July 1991. What he has stated is that his house was taken on rent by A-1 and Guna in February 1991 and they vacated it on 3.7.91. But there is no evidence except the two confessional statements (Exhs. 51 and 53), to prove that A-1 to A-5 and A-7 to A-9 had met together in that house any time between 1.7.91 and 3.7.91.

It was not the prosecution case that conspiracy was hatched in any other manner or at any other place. Even with respect to the circumstances relied upon by the prosecution that during that period some of the accused were either residing or moving together or were helping each other, in order to prove by way of an inference that the accused had conspired as

A alleged, it has to be stated that the evidence of P.W.38 Kumar P.W.13, P.W.41 and P.W.45 is neither specific nor sufficient to justify drawing of such an inference. They have generally stated that A-3 to A-9 were helping A-1, A-2 Guna and Dixon in obtaining raw materials or machines required for manufacturing bombs or their parts or they were manufacturing parts required for preparing bombs on orders placed by A-1 or Guna. In absence B of further evidence to show that they had the knowledge or had shared the intention with A-1, A-2, Guna and Dixon that all those acts were being done for manufacturing bombs, no inference can be drawn that they were also party to the conspiracy.

The only other evidence led in the case consists of the two confessional C statements (Exhs. 51 and 53). The confessional statement of A-2 (Exh.53) was recorded on 17.8.91 by Superintendent of Police Shri Muthukaruppan, P.W.53. As disclosed by his evidence he had informed A-2 that it was not necessary for him to give such a statement and in spite of that if he gave if, it could be used against him at the trial. Even after ascertaining that he was not compelled to give it, he had given 10 to 15 minutes time to D reconsider. As A-2 had shown his willingness again and as he was satisfied about the he had decided to record it. He had got it written on a typewriter. It was then read over to A-2 and his signatures were taken on each page as he had accepted that it was correctly taken down. He had also signed the statement and the certificate. The suggestions made to him in his cross-E examination that A-2 had not willingly given that statement and that his signatures were obtained on it by force were denied. Nothing could be elicited in his cross-examination which would create any doubt regarding credit worthiness of this witness and genuineness and voluntary character of the confession. The confessional statement (Exh.51) of A-9 was recorded on 3.10.91 by P.W.51 Appadurai. He has also given similar evidence and F denied the suggestion made to him in his cross-examination that he had written down a false confession and obtained signatures of A-9 on it under a threat. No good reason has been given by the learned counsel for the respondents to disbelieve the evidence of this witness also. The evidence of these two witnesses, therefore, establishes that the confessions (Exh. 51 G and 53) were given by A-2 and A-9 voluntarily and were taken down correctly.

The learned Sessions Judge was of the view that Section 15 of the TADA Act requires that the Superintendent of Police should record the confession either in his own handwriting or on any mechanical device like H cassettes, tapes or sound tracks from out of which sounds or images can be

reproduced and the Section does not permit him to get it written by someone else on a typewriter even if that is done in his presence. The learned Judge was also of the view that Rule 15 requires that in case of written confession the Superintendent of Police should, in his own handwriting, certify the same. He, therefore, held that as both the confessions were wholly typewritten they cannot be said to have been recorded in accordance with the requirements of the said provisions. The learned Sessions Judge also held that both the police officers had not exercised their power or discharged their function under section 15 in the manner contemplated by that provision as indicated by the fact that in the heading of each of those statements it is stated that "It is a confessional statement of the accused". According to the learned Judge that would mean that both the police officers had started recording the same before satisfying themselves as to whether the accused were willing to give a voluntary confession. We have already set out the evidence of the two police officers earlier and it clearly transpires therefrom that they had started recording the confessions not only after satisfying themselves that they wanted to confes voluntarily but after giving them 10 to 15 minutes' time for reconsidering their decision. Therefore, the inference drawn by the learned Sessions Judge that the said two police officers had started recording the confessions without properly satisfying themselves regarding the willingness of the accused to make confessions is wholly unjustified. We find that both the officers had, before recording the confessions complied with the requirement of sub-section (2) of Section 15.

We will now consider whether Section 15 of the TADA Act and Rule 15 of the TADA Rule require that the confessional statement should be recorded by the Superintendent of Police in his own handwriting if it is not recorded on any mechanical device. Section 15 and Rule 15 in so far as they are relevant for the purpose of this appeal read as under:-

> "Certain confessions made to police officers to be taken into consideration.(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor of conspirator for an offence under this Act or rules made thereunder.

A (2) ....

Rule 15 reads as under:-

"Recording of confession made to police officers".

B (1) ....

(2) ....

(3) The confession shall, if it is in writing, be-

C (a) signed by the person who makes the confession; and

(b) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true D account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:-

(4) ....

E (5) ...."

A confession made by an accused to a police officer is made inadmissible in a criminal trial both by the Indian Evidence Act and the Code of Criminal Procedure. But while enacting the Terrorist and F Disruptive Activities (Prevention) Act which makes special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for the matters connected therewith or incidental thereto the Legislature has thought it fit to make certain confessions made to police officers admissible in a trial of such person or co-accused, abettor or conspirator G for an offence under that Act or Rules made thereunder. The Legislature has, however, at the same time, provided enough safeguards to protect the interest of the accused. A confession is made admissible only if it is made before a police officer not lower in rank than a Superintendent of Police. It is made admissible if it is recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks H from out of which sounds or images can be reproduced. Such a confession

can be used against a co-accused, abettor or conspirator only in those cases where he is charged and tried in the same case together with the accused making that confession. Before recording a confession the police officer must explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him. A provision is also made that the police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily. The confessions (Exhs. 51 and 53) were recorded in writing. As regards compliance with the requirements of Section 15 the only point in dispute is whether the confessions were "recorded by such police officer.....in writing." The answer depends upon the correct interpretation of the words "recorded in writing". As stated earlier, the learned Sessions Judge has interpreted the word 'writing' to mean in his own handwriting.

According to Webster Comprehensive Dictionary 'to record' means to write down or inscribe or register, as for preserving an authentic account, evidence etc. and 'writing', as a verb, means to trace or inscribe or note down letters, words, numbers etc. on a surface with a pen, pencil or by some other device including stamping, printing or engraving. Thus the expression 'record in writing' has a wider meaning. It would include writing down by one's own hand and also writing by other means. Unless the context so requires it would not be proper to give that expression a narrow meaning. In Section 15 the words 'recorded in writing' are used to indicate a mode or form of recording the confession. Though the nature of the provision would justify strict compliance with each of the conditions mentioned therein we find no compelling reason to give such a narrow interpretation to those words as has been done by the learned Sessions Judge. Though Superintendent of Police must himself explain to the person making the confession that he is not bound to make a confession and that it may be used as evidence against him if he makes it and though he has himself to question the person making it to form a reasonable belief that he is making it voluntarily we do not think that it was intended by the Legislature is that the Superintendent of Police should not leave the work of recording the confession to any of his subordinates and that everything in connection with the confession should be done in his presence and hearing and under his direct supervision and control. We, therefore, do not find any justification for interpreting the words 'recorded by such police officer in writing' to mean recorded by such police officer in his own handwriting. There is no reason why a Superintendent of Police who, for some reason, is unable to write down the confession, cannot take help of another person for writing the same. Why cannot a Suprintendent of

A Police, whose handwriting is not good, record the confession by using a typewriter? Typewriting is also writing. A typewritten thing is also a writing prepared with the help of a typewriter. In the context of Section 45 of the Evidence Act this Court in *State* v. *S.J. Choudhary*, [1996] 2 SCC 428, after observing that a typewriter is a writing machine and typing has become more common than the handwriting, has held that typewriting B can legitimately be said to be including within the meaning of the word 'handwriting'. We, therefore, hold that the learned Sessions Judge committed an error of law in treating the confessions (Exhs 51 and 53) as inadmissible on the ground that they were not recorded in accordance with the requirement of Section 15 of the Act.

C Another ground on which the learned Sessions Judge held the two confessions inadmissible is that the concerned police officer did not certify the confession 'under his own hand' inasmuch as the certificate was typewritten, the memorandum at the end of the confession was also typewritten and the police officer had merely put his signatures below them and thus, there was non-compliance with the requirement of Rule D 15. The said Rule inter alia prescribe the manner in which the confession made under Section 15 has to be recorded. Sub-rule (3) of the said Rule which is quoted in the earlier part of this judgment provides that if the confession is in writing it has to be signed by the person who makes it and also by the police officer who records the same. It further provides that the police officer shall also 'certify under his own hand' that such confession E was taken in his presence and recorded by him and that the record contains a full and true account of the confession. The police officer is also required to make a memorandum at the end of the confession to the following effect:

> F "I have explained to (name) that he is not found to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, G and it contains a full and true account of the statement made by him.
>
> Sd. Police Officer."

H The learned Sessions Judge has interpreted the expression 'under his own hand' to mean written in his own hand. As the confessions were not

handwritten by the Superintendents themselves the learned sessions Judge held that they were not certified as required by Rule 15(3)(b). In our opinion, the expression 'under his own hand' as used in sub-rule (3)(b) of Rule 15 does not mean in his own handwriting. What is inter alia required to be certified by the police officer is that the confession was taken in his presence and recorded by him. The words 'taken in his presence and recorded by him' are significant. Similarly, the words of the memorandum that the confession was taken 'in my presence and hearing and recorded by me' are also significant and indicative of the expected manner of recording the confession. They clearly suggest that the confession should be recorded by the police officer in his presence and hearing. The emphasis is on the presence and hearing of the police officer and not on the police officer himself writing down the confession, the certificate and the memorandum. Thus, what is required by sub-rule (3) is that the written confession should not only be countersigned by him but it should also contain the required certificate signed by him. The intention of the Rule clearly appears to be that all the formalities should be performed by him and he should himself certify that he had discharged all the obligations before recording the confession. The learned Sessions Judge was, therefore, wrong inholding that the two confessions were inadmissible in evidence as they did not comply with the requirement of Rule 15(3)(b).

Therefore, we will now consider the evidentiary value and the effect of those two confessions. Though A-2 and A-9 have denied while examining under Section 313 of the Code that they had made such confessions we are inclined to believe P.W.51 and P.W.53 that A-2 and A-9 did make those confessions and that they were voluntarily made and correctly taken down. Having gone through the confession (Exh. 53) made by A-2 we find that what he had stated with respect to the conspiracy is as under:-

> "On account of the action taken by the present Tamil Nadu Government, bombs could not be sent to Lanka. There was a talk that bombs are required for ANAIYIRAVU WAR: Bombs have to be sent by the first week of August on any account. Aruchamy, Ramakrishnan, Loganathan, Jayapal, Shanmugam and Ravi promised to help for this."

Apart from the fact that the date on which the said talk took place and the place are not mentioned, it does not contain a clear admission by A-2 that he was present at the time of the talk and that he was also a party to it. Thus, there is no confession by A-2 that in the first week of July

A 1991 in the aforesaid house in the Shivaji Colony he had agreed with A-1, A-3 to A-5 and A-7 to A-9 or any one of them to commit the illegal acts alleged against them. What A-9 in his confession (Exh.51) has stated is that in the first week of July 1991 when he had gone to the house of A-1, A-3 to A-4 had also come and at that time A-1, Guna and two others were also present. There was a conversation amongst them "that severe war was B going on at Cyclone and there are obstructions for sending the bombs manufactured here. They (Ramakrishnan, Aruchamy, raghu, Guna and the two unknown persons) were saying: The spares of the bombs can be united and explosives filled in at Tanjore sea shore; that the bombs which are here should be sent to Lanka within a month if anybody obstructs we should not hesitate to kill them; if they could not be sent before the first C week of August, damage should be caused to the important cities of India and Tamil Nadu in Government offices and Railway Stations with the aid of the bombs manufactured here." He has further stated that he overheard this conversation from an adjacent room, that he left the house after some time and that he completely stopped going to their house thereafter. Thus, A-9 has not inculpated himself as one of the conspirators. Obviously, on D the basis of these two confessional statements neither A-2 nor A-9 nor any of the co-accused can be convicted for the offence of conspiracy to commit a terrorist act or any act preparatory to a terrorist act. So also, none of them can be convicted for conspiring to manufacture explosives like grenades and bombs as the prosecution has failed to establish any meeting E and any agreement between them for that purpose at the time and place mentioned in the charge.

Once the conspiracy as alleged is held not proved on the basis of the evidence of those witnesses who had deposed that they had seen the accused meeting each other and moving together or doing certain acts together and F on the basis of the two confessions, the circumstances that certain articles were found from them, even if believed, cannot be regarded as sufficient to prove that charge. Therefore, the learned Sessions Judge was right in holding that the charge under Section 120-B IPC read with Section 3(3) of the TADA Act has not been proved by the prosecution.

G

In view of the aforesaid discussion of the evidence and the finding the acquittal of the accused under section 3(3) of the TADA Act and Section 4 of the Explosive Substances Act also will have to be confirmed. No other evidence was led by the prosecution to prove that the accused intended to commit a terrorist act in India or to endanger life or cause serious H injury to property in India. On the contrary, the evidence discloses that the

accused who were involved in manufacturing bombs and grenades were doing so for their use by LTTE in Sri Lanka. Section 3(3) of the TADA Act makes that person punishable who 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. as no terrorist act as contemplated by Section 3(3) of the TADA Act was ever intended by any of the accused, obviously, the ingredients of Section 3(3) cannot be said to have been satisfied in this case. Section 4 of the Explosive Substances Act can have no application as the prosecution has failed to establish that any of the accused had the intention to endager life or cause serious injury to property in Inda.

What is next to be considered is whether any of the accused can be held guilty under Section 5 of the TADA Act and Section 5 of the Explosive Substances Act which is a lesser offence as compared to that under Section 4 of that Act. Possession of bombs, dynamites or other explosive substances unauthorisedly in a notified area is made punishable under Section 5 of the TADA Act. Under Section 5 of the Explosive Substances Act also making or possessing any explosive substance, under certain circumstances, is made punishable. The learned Sessions Judge has recorded a clear finding that the prosecution has failed to establish that any incriminating article was found from the possession of A-3 and A-4. We have carefully considered the evidence in this behalf and in our opinion, the prosecution has completely failed to establish that House bearing Door No.359 from which a large quantity of incriminating articles were found was in possession of A-3. The shop from which plastic grenades without gun powder and Gellatine sticks were found and with which A-4 was sought to be connected have not been proved to be in exclusive possession of A-4. The evidence discloses that one Damodarsamy was the tenant of the said shop and that Sathimurthi, Chandrakanth and other Tamilians were working in it and A-4 was occasionally going there to meet Damodarsamy.

As regards possession of incriminating articles from other accused, except A-2 against whom there was no such charge, the learned Sessions Judge has not disbelieved the evidence led to prove that those incriminating articles were either discovered at their instance or were recovered from their houses or premises under their control. He however, did not record any clear finding in this behalf but held that even if their possession is held proved they cannot be said to have committed any offence under sections 3(3) and 5 of the TADA Act or Section 4 of the Explosive Substances Act. With respect to A-1 the learned Judge held that even though

A some of the incriminating articles were discovered on the basis of the information given by him it cannot be said that he was in possession of the same. We have carefully gone through the evidence of P.W.8 Papathy, P.W.39 Balasubramaniam, P.W.55 Inspector Amgamuthu and Mahazars (Exhs, P-21, P-24) and find no good reason to discard their evidence. Even A-1 in his statement under Section 313 has admitted that the B incriminating articles found from the house situated at Dr. Muthuswamy Colony were in his possession. A-2 has also admitted in his statement under Section 313 that those articles were in possession of A-1, himself and deceased Guna. It is, therefore, difficult to appreciate how the learned trial judge could record a finding that those articles cannot be said to have been in possession of A-1. The evidence of P.W.39 Balasubramaniam and C P.W.42 Abdul Azim in whose presence the incriminating articles were discovered or recovered from A-5, A-6, A-7 and A-8 together with the evidence of P.W.55 Inspector Angamuthu and the relevant Mahazars (Exhs. P-23, P-30, P-33 and P-35) clearly establish that the articles noted in the Mahazars were recovered at their instance. On the basis of the said evidence it can be said that the prosecution has proved that A-5, A-6, A-7 and A-8 D were found in possessison of those articles. So also, the evidence of P.W.39 Balasubramaniam, P.W.56 Inspector Nizamuddin and the Mahazar (Exh. P-26) clearly establish that certain molding machines, dyes, Gellatine sticks and detonators were found from the possession of A-9. It was also admitted by A-9 in his statement under Section 313 of the Code that those articles E were found from his custody though his explanation with respect to the possession of Gellatine sticks and detonators was that they were given to him for safe custody under a threat by deceased Guna. In his confession (Exh. P-51) also he admitted that the said articles were seized by the police officers in presence of a witness from his workshop and that he had produced the same. Thus, the possession of the articles which are held by F the learned Sessions Judge to be explosive substances as defined by the Explosive Substances Act, by A-1 and A-5 to A-9 is established by the prosecution beyond any reasonable doubt.

On this finding, the question that arises is whether the charge against G them under Section 5 of the TADA Act can be said to have been proved. The learned Sessions Judge held that as the said articles were not possessed by any of those accused for commission of a terrorist act they cannot be said to have committed that offence. According to the learned Sessions Judge mere unauthorised possession of Explosive substances in a notified area is not sufficient to convict the accused under Section 5 of the TADA H Act and it must further be proved by the prosecution that the accused

possessed the same for commission of a terrorist act. This view taken by the learned Sessions Judge is clearly wrong. It is now held by this Court in Sanjay Dutt v. State , [1994] 5 SCC 410 that in the prosecution for an offence punishable under Section 5 of the TADA Act, the prosecution is required to prove that the accused is in conscious 'possession', 'unauthorisedly', in 'a notified area' of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III (a) of Schedule I to the Arms Rules, 1962 or bombs, dynamite or other explosive substances and no further nexus with any terrorist or disruptive activity is required to be proved by the prosecution as a statutory presumption would arise that the said arm or explosive substance was meant to be used for a terrorist or disruptive act. Though the learned Judge acquitted the accused for the offence under Section 5 of the TADA Act, on an erroneous view of law, their acquittal of the offence under that Section will have to be confirmed as none of them except A-9 can be said to be in possession of explosive substances as contemplated by that Section. The articles which were found from the other accused were either empty cells or the parts required for making a hand grenade or bomb. None of them was capable of exploding. TADA Act contains stringent provisions and provides heavier punishments. Therefore, its provisions have to be construed strictly. TADA Act does not define the expression 'explosive substances'. The Legislature has not thought it fit to give that expression the same meaning as is given under the Explosive Substances Act. Otherwise, just as it has in case of arms and ammunition referred to the Arms Rules, 1962 it would have referred to the Explosive Substances Act if it really wanted the said expression 'explosive substances' to have the same meaning as it has under the Explosive Substances Act. The expression 'other explosive substances' is found to be in the company of 'bombs and dynamites' and, therefore, the explosive substance contemplated under Section 5 must be of the type of bombs and dynamites. It must be a complete article or device capable of exploding. Therefore, neither empty cells nor parts for making a bomb so long as they are not assembled and filled with gun powder or other explosive substance can be said to be an explosive substance as contemplated by that Section. Gellatine sticks which were found from the possession of A-9 would be an explosive substance but the acquittal of A-9 will have to be confirmed because the evidence shows that no terrorist or disruptive activity was ever intended by him to be committed within India as the evidence discloses that they were to be sent to Cyclone and used there. A-9 can be said to have rebutted the presumption arising out of his unathorised possession of explosive substance in a notified area.

It appears that as no separate charge was framed for the offence

A under Section 5 of the Explosive Substances Act and as the learned Sessions Judge was of the view that the sanction given by the District Collector under Section 7 to prosecute the accused for the offences under that Act was not legal and valid he did not examine whether the accused can be said to have committed the lesser offence under Section 5 of that Act. On re-appreciation of the evidence we have come to the conclusion that A-1 B and A-5 to A-9 were found in possession of articles which have been held by the learned Sessions Judge to be explosive substances as defined by the Explosive Substances Act. Even though there was no specific charge under Section 5, it being a lesser offence, the accused can be convicted and punished under that Section, if the ingredients constituting that offence are held established. Section 5 renders any person who makes or knowingly C has in his possession or under his control any explosive substance, under such circumstances has to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, punishable unless he can show that he made it or had it in his possession or under his control for a lawful object. Possession of such articles by A-1 and A-5 to A-9 is held proved by us. The nature of those D articles and the evidence of the witnesses who have been examined to prove that those articles were prepared for manufacturing bombs and also the evidence of scientific expert P.W. 48 Srinivasan clearly establish that they were the parts of bombs and grenades. The clandestine manner in which they were making, storing and transporting them is a circumstance sufficient to create a reasonable suspicion that they were not possessed for E a lawful object. In fact, none of those accused has made any attempt to prove that they had those articles with them for a lawful object. Therefore, all the ingredients of the offence under Section 5 are satisfied in this case and A-1 and A-5 to A-9 are held guilty for commission of that offence.

F With respect to the finding regarding sanction we are of the opinion that the learned Sessions Judge was not right in treating it as not legal and valid. Section 7 does not require a sanction but only consent for prosecuting a person for an offence under the Explosive Substances Act. The object of using the word "consent' Instead of "sanction" in Section 7 is to have a purely subjective appreciation of the matter before giving the necessary G consent. To prove the consent the prosecution had examined P.W.52 Balachandran who was then acting as the P.A. of the District Collector. He has deposed about the requisition sent by the investigating officer and the reports and other documents sent along with it and consideration of the same by the District Collector before giving his consent. In his cross-examination he stated that he had not noticed in the relevant file statements H of witnesses. Relying upon this answer given by the witness the learned

Sessions Judge held that in absence of such statements the District Collector cannot be said to have applied his mind properly to the facts of the case before granting the sanction. From the evidence of the witness and the copy of the proceedings of the Collector it appears that the Inspector of Police had sent his report regarding the evidence collected by him together with a copy of the FIR, the reports of the Forensic Department and other connected record. Thus, the Mahazars under which the "explosive substances" recovered and seized by the police from different accused were placed before the Collector and on consideration of all that material the Collector had given his consent. We do not think that for obtaining consent of the Collector for prosecuting the accused for the offence punishable under the Explosive Substances Act it was necessary for the investigating officer to submit the statements of witnesses also, who had deposed about the movements of the accused and their activity of manufacturing bombs and grenades. We, therefore, hold that the consent given by the Collector was quite legal and valid.

A-1 and A-2 were also tried for the offence punishable under Section 307 read with Section 34 IPC. In order to establish this charge the prosecution had examined P.W.1 Pandurangan who had deposed about the manner in which A-1 was found driving his Kinetic scooter in a rash and negligent manner, his signalling him to stop the vehicle and A-1 trying to dash the scooter with him. The prosecution had also led evidence of P.W.2 Devasayayam, P.W.4 Arumugham, P.W.6 V. Arumugham and P.W.7 Singaram to corroborate the evidence of P.W.1 Pandurangan. The learned Sessions Judge disbelieved the evidence of these witnesses on the ground that the version given by them was artificial and unbelievable for the reasons that (1) the accused had not sustained any injury (2) no damage was noticed on the scooter (3) the FIR did not refer to the presence of the three independent witnesses and (4) though Singaram and Radhakrishnan were cited as eye-witnesses the prosecution examined only Singaram. P.W.2 Devasayayam had helped P.W.1 Pandurangan in taking A-1 and A-2 in custody and had accompanied P.W.1 to the police station. His statement was also recorded soon after the FIR was prepared. In the FIR the name of Singaram was mentioned as an eye-witness. The learned Sessions Judge has disbelieved the evidence of Singaram also on the ground that he did not depose about the presence of the other three witnesses. We find that the learned Sessions Judge has not properly read the evidence of P.W.7. He has referred to the presence of P.W.6. In his evidence he has stated that he was in the shop of P.W.6 along with Radhakrishnan. No other reason has been given by the learned Sessions Judge for disbelieving the evidence

A of those witnesses. It is quite likely that A-1 having lost the balance after making an attempt to dash the scooter against P.W.1 Pandurangan could not keep the scooter standing while stopping it. That appears to be the reason why the scooter and A-1 and A-2 fell down on the road. The scooter had stopped running and that is borne out by the evidence of those witnesses and that explains why neither A-1 nor A-2 had received any injury nor B was there any scratch noticed on the scooter. Thus, none of the grounds given by the learned Sessions Judge for holding the version of the witnesses as artificial and unbelievable can be regarded as a good ground. The said finding is partly based upon the misreading of the evidence and partly upon the reasons which are not proper. We, therefore, hold that the charge against A-1 that he had tried to dash the scooter against P.W.1 Pandurangan C is established beyond reasonable doubt. However, in absence of any evidence or circumstances it is not possible to infer that the intention of A-1 was to attempt to murder P.W.1 Pandurangan. Therefore, we maintain his acquittal under section 307 but set aside his acquittal under Section 353 and convict him for that offence.

D A-2 had neither done nor uttered anything on the basis of which it can be said that he had shared the intention of committing the offence punishable under Section 307 with A-1. His acquittal, therefore, under Section 307 read with Section 34 has to be maintained.

E The evidence of P.W.1 Pandurangan and P.W.2 Devasayayam clearly establishes that when they tried to take A-1 into custody he had attempted to commit suicide by bitting a cyanide capsule. A-1 in his statement made under Section 313 of the Code has also admitted that he had tried to bite a cyanide capsule when he was caught by the police though his version regarding the other part of the incident is different. The evidence of P.W.1 F and P.W.2 thus receives corroboration from the said statement of A-1. The prosecution, therefore, can be said to have established beyond any reasonable doubt that A-1 had attempted to commit suicide. The learned Sessions Judge has acquitted A-1 as he considered the said charge as void in view of the decision of this Court in *P. Rathinam* v. *Union of India,* G [1994] 3 SCC 394 wherein it was held that Section 309 is unconstitutional. The Constitution Bench of this Court in a subsequent decision in *Gian Kaur* v. *State of Punjab* and other connected matters [1996] 2 SCC 648 has overruled the view taken in the case of P. Rathinam (supra) that section 309 IPC is constitutionally invalid. Therefore, on the facts which are not only proved but are also admitted by A-1 the acquittal of A-1 under Section H 309 IPC has to be set aside and he will have to be convicted under that

Section.

Accordingly this appeal is partly allowed. Acquittal of all the accused for the offence punishable under Section 120-B IPC read with Section 3(3), TADA Act, for the offences punishable under Sections 3(3) and Section 5 of TADA Act and Section 4 of the Explosive Substances Act and that of A-1 and A-2 under Section 307 read with Section 34 IPC is confirmed. The acquittal of A-1 for the offence punishable under Section 353 IPC is set aside and he is convicted for commission of that offence and is sentenced to suffer rigorous imprisonment for a term of one year. He is also convicted under Section 309 IPC and is sentenced to suffer simple imprisonment for a term of six months. He is also convicted for the offence punishable under Section 5 of the Explosive Substances Act and is sentenced to suffer rigorous imprisonment for two years. A-5 to A-9 are also convicted for the offence punishable under Section 5 of the Explosive Substances Act and they are ordered to suffer rigorous imprisonment for a period of one year. All the sentences imposed upon A-1 are directed to run concurrently.

V.S.S. Appeal allowed in part.