SIMON AND ORS. A

v.

STATE OF KARNATAKA

OCTOBER 16, 2003

[Y.K. SABHARWAL AND B.N. AGRAWAL, JJ.] B

Penal Code, 1860 : Sections 120B, 148, 143, 307, 149 and 302 :

Terrorist and Disruptive Activities (Prevention) Act, 1987 : Sections 3, 4, 5 and 15 : C

Arms Act, 1959—Section 25 :

Procecution for offences u/ss. 120B, 148, 302 and 307 IPC and Section 25 of Arms Act—Assault by fire arms on police party—Resulting in 7 deaths and injuries to many—16 eye-witnesses to the incident— D *Indentification of 3 of the accused by 2 eye-witnesses—Accused not identified by complainant who was accompanying the 2 eye-witnesses—Name of the accused not in original but in the altered FIR—Confessional statement by one of the accused—Cofession made in the presence of Investigating officer immediately after his arrest—Confessional statement* E *of accused interpreted to Recording Officer by Investigating Officer—Conviction by Designated Court relying on the confessional statement of the accused and evidence of the 2 eye-witnesses—On appeal, held : Conviction of accused is not sustainable and they are entitled to benefit of doubt—Evidence of two eye-witnesses and the confessional statement do* F *not inspire confidence—Terrorist and Disruptive Activities (Prevention) Rules, 1987—Rule 15(1).*

Prosecution under Sections 120B, 143, 302, 307, 149 IPC and Section 25 of Arms Act—Name of accused in FIR—No other evidence to G *connect him to the crime—Another accused had the same name—Conviction by Designated Court—On appeal, Held : On the facts of the case, conviction not maintainable—Accused entitled to benefit of doubt.*

Prosecution u/s. 5 of TADA Act—Accused found in possession of gun, gun powder and pellets—Conviction by Designated Court—On appeal, H

held : In the facts of the case conviction not sustainable as prosecution failed to prove possession of gun by accused.

Section 15 of TADA Act—Confessional statement—Recording of—Requirement of amount of time given to accused to think whether he wanted voluntarily to make the statement—Held : there cannot be general practice in such matters—Time for thinking would depend upon facts of each case and likely to differ from one accused to another.

On getting information about Veerappan and his gang, police party, 5 in a car and 22 in a lorry proceeded. The car and lorry were allegedly attacked by the appellant alongwith others with bombs and firearms, resulting in death of 7 people and injuries to many. 76 persons including the appellant-accused were prosecuted. There were 16 eye-witnesses to the incident including PWs 31, 32 and 33. PW33 had lodged the complaint on the basis of which FIR was lodged. Initially FIR was lodged on the day of incident itself. Thereafter altering the Original FIR second FIR was recorded. FIR contained the name of appellant No. 4. PW-33 had seen appellant No. 4 on the scene of incident but he did not identify him in the Court or at any other point of time. PWs 31 and 32 had identified appellant Nos 1, 2 and 3. However, their names did not find place in FIR. Appellants 4 and 5 were not identified by any of the witnesses. There was also another accused by the same name as that of appellant No. 4. Prosecution relied upon 59 confessions. The confessional statement of appellant No. 2 was recorded immediately after his arrest and in the presence of Investigating Officer. He was given only 5 minutes to think as to whether he voluntarily wanted to make the confessional statement. The Investigating Officer alone could understand as to what the accused was stating in Tamil and translated it to the Officer recording the confession in Kannada and again he translated the statement from Kannada to Tamil and read over to the appellant. There was no attempt on the part of the Recording Officer to arrange for an independent interpretor. The statement was not produced before the Magistrate on the next date when the accused was produced before him, but the same was filed later. The copy of the statement was not supplied to the appellant for nearly 7 years. As per PW 120, in the altered FIR, names of some of the accused were collected by referring to previous FIRs.

Appellant No. 5 was prosecuted for the offence for being found in possession of country made gun, gun powder and pellets. The gun was marked as MO-112. According to the testimony of PW-101 he did not seize and pack the gun at the place of apprehension of the accused and it was also not checked whether the gun was in working condition and the description of the weapon was also not noted. On the contrary PW 23 deposed that the seized gun was MO-37; that the portion near the trigger had been damaged; and that he did not find out whether MO-37 could be operated. PW 120 had deposed that before procurement of Panchas gun was taken in possession by the police; and that at the time of appellant's arrest Panchas were not secured.

Designated Court rejected all the confessional statements except that of appellant No. 2. 7 accused including 5 appellants were convicted. Appellant Nos. 1, 2 and 3 were convicted for the offence u/ss. 120B, 148, 143, 307, 149 and 302 IPC, and u/s. 25 of Arms Act, 1959. Appellant No. 4 was convicted u/ss. 143, 120B, 302, 307 and 149 IPC and u/s. 25 of Arms Act. Appellant No. 5 was convicted for offence u/s 5 of TADA Act and u/s. 25 of Arms Act. The two other accused were convicted u/s. 5 of TADA Act. Hence the present appeals. The two other accused having already undergone sentence, did not prefer appeal.

Allowing the appeals, the Court

HELD : 1.1. It is not possible to sustain the conviction of appellant Nos. 1, 2 and 3, relying solely on the testimony of PW-31 and PW-32, which does not inspire confidence. Thus, these appellants are entitled to be given the benefit of doubt. [885-H, 886-A]

1.2. The evidence on record shows that on the day of incident itself, PW-31 met PW-112, and disclosed to him the names of these accused. Likewise, the names were also disclosed by PW-31 to DIG who has not been produced before the trial Court. Further, when PWs. 31 and 32, were talking to DIG and when PW-31 narrated the entire incident, including the names of the persons he had seen, to the DIG, PW-33 was also present as per the deposition of PW-31. Not only this, the names were also disclosed to Assistant Commissioner of Police. He

A too was not examined. Further, the evidence of PW-31 also shows that at the spot and thereafter till he remained admitted in the hospital, PW-31 had occasion to meet Special Tax Force personnel and other persons associated therewith who were told the names of the persons who were involved in the encounter. In the light of such overwhelming B evidence, it is highly doubtful that their names would not be disclosed to PW-33 and for that reason they would not find a mention in the F.I.R. Further, it is evident from the evidence that the attack on the car and the lorry was being made from a distance of about 100 ft. from a hillock and having regard to the topography of the area, it is highly doubtful if it was possible to identify the attackers. From the testimony C of the other witnesses, it appears that they could only see the profile of the attackers and not the attackers as such so as to connect them with the commission of the crime. [884-G-H, 885-A-D]

2.1. It is a strange and wholly unwarranted procedure which the D Recording Officer was adopting as a matter of practice in recording confessional statement of the accused. In such matters, there cannot and ought not be any generalization. How much time, if any, is required to be given to an accused to coolly think over whether he wanted voluntarily to make a confessional statement despite knowing E the consequences thereof would depend upon facts of each case and likely to differ from one accused to another. There cannot be any general practice in such matters. The practice adopted by the Recording Officer was, therefore, illegal. [880-E-F]

F 2.2. In the present case, the maker of the confession did not know the language of the Recording Officer and the Recording Officer did not know the language known to the accused. The interpretor was the Investigating Officer himself. It is true that under Rule 15(1) of the TADA Rules, if it is not practicable to record the confession in the language in which such confession is made, the same can be recorded G in the language used by the recording police officer for official purposes or in the language of the Designated Court. There may not be any illegality *per se* in the recording of the confession in Kannada language in the present case for the Recording Officer did not know the language known to the accused, namely, Tamil. But, all the same, H when such a position is noticed, it becomes the bounden duty of the

recording officer, who, in terms of Section 15 of the TADA Act, has to be a police officer not lower in rank than a Superintendent of Police, to make an attempt to arrange an independent interpretor. There is no evidence that any such attempt was made. [882-C-F] A

Gurdeep Singh alias Deep v. *State (Delhi Admn.),* [2000] 1 SCC 498, distinguished. B

2.3. It is the duty of the recording officer to ensure that the confession is made voluntarily and out of free will by the accused without any pressure. Except omnibus statement about the general practice which was being followed by the Recording Officer, there is no evidence of any question or attempt being made by the officer to satisfy himself that the confession was being made voluntarily. This factor becomes, on the facts and circumstances of the case, very important since immediately after the arrest, the accused was produced and the person actively associated with the recording of statement was none other than the Investigating Officer who by nature of things is interested in the success of the prosecution case. Recording of confessional statement is not a mechanical exercise. A duty has been cast and considerable amount of confidence has been reposed on a senior officer under Section 15 of the TADA Act in giving him the duty to record the confession and making such a confession before a police officer admissible in evidence. It is also not in evidence that no person other than the concerned inspector was available to act as an interpretor. Recording Officer was aware that the accused produced before him for recording confession was arrested a few hours prior to the recording of his statement. A perusal of his testimony does not show his awareness about the requirements to be complied with before recording of the confessional statement. It also appears that 59 confessions were recorded in routine one after another. The witness states that within one or two minutes of the recording of confessional statement of one accused, the other accused used to be produced for recording of confession. Having regard to these factors, it is neither possible nor safe to base the conviction of appellant No. 2 only on the confessional statement. That statement does not inspire any confidence. [883-D-H] C D E F G

3. Except a mention of the name of appellant No. 4 in the FIR, there H

is no other material to connect the said accused with the crime and to sustain his conviction. He cannot be convicted merely on account of his name having been mentioned in the F.I.R. Further there appear to be two persons by his name. Under these circumstances, the conviction and sentence of appellant No. 4, cannot be maintained. [877-F-G]

4. The prosecution has to prove by cogent evidence the possession of the specified arms and ammunition in a notified area. A conjoint reading of the testimonies of PW-23, PW 101 and PW 120 shows that the prosecution has miserably failed to prove the possession of gun by appellant No. 5. There is a confusion about the weapon—whether in was MO-37 or MO-112. There is also vital discrepancy as to the place at which the possession of the gun was taken. On the facts of the case, appellant No. 5 is entitled to benefit of doubt. In this view, conviction and sentence of appellant No. 5 is set aside. [879-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 430-432 of 2002.

From the Judgment and Order dated 29.9.2001 of the Special Designated Court, Mysore in Special Case Nos. 44/94, 11/97 and 3 of 1998.

Colin Gonsalves, P. Ramesh Kumar, John Vincent and Ms. Aparna Bhat for the Appellants.

Siddharth Dave, Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered :

The Designated Court, Mysore, under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, "the TADA Act"), trying Special Cases Nos. 44/94, 11/97 and 3/99, convicted and sentenced the appellants in terms of the impugned judgment and order dated 29th September, 2001. These appeals have been filed under section 19 of the TADA Act by five appellants.

Appellant No. 1 Simon was accused No. 10 (A-10), appellant No. 2 Kaliappa was accused No. 25 (A-25), appellant No. 3 Bilavendra was

accused No. 27 (A-27), appellant No. 4 Shekara was accused No. 34 (A-34) and appellant No. 5 Rama @ Ravana was accused No. 79 (A-79) in the cases before the Special Judge of the Designated Court at Mysore.

Accused Nos. 10, 25 and 27 have been convicted for offence under Sections 3, 4 and 5 of the TADA Act, under Sections 120(B), 148, 143, 307, 149 and 302 I.P.C. and also under Section 25 of the Arms Act. On each of them, life imprisonment has been imposed. Accused No. 34 has been convicted for offence under Sections 143, 120(B), 302, 307 and 149 I.P.C. and also under Section 25 of the Arms Act. He has also been ordered to undergo life imprisonment. Accused No.79 has been convicted for offence under Section 5 of the TADA Act besides Section 25 of the Arms Act and rigorous imprisonment of five years has been imposed on him.

The case of the prosecution, in brief, is that one Kamalanaika, who was a police informer, informed Sub-Inspector Shakil Ahmed that Veerappan and his gang can be found in a particular place selling tusks. This was informed by Shakil Ahmed to Harikrishna, Superintendent of Police. Harikrishna, along which Shakil Ahmed, informant Kamalanaika and three other persons, started from Ramapura, then in Mysore District, on 14th August, 1992 for the place with was intimated by the informant. The three other persons in the car were PC Nagaraju, PW-34, Safiulla, PW-35 and Vrishabendra. According to the instructions of Harikrishna, Superintendent of Police, 22 persons followed his car in a lorry. At about 1.00 PM on 14th August, 1992, on Ramapura Dinnahalli Road, 25 Kms. from Rampura, the car and the lorry were attacked with bombs and firearms. The result was that seven people – three occupants of the car and four occupants of the lorry – died. The persons in the car who died were Superintendent of Police Harikrishna, PSI Shakil Ahmed and informant Kamalanaika. The four persons in the lorry who died were Benagonda, Kallappa, Appachu and Sundara. The prosecution examined various witnesses. Out of the three saviors from the car, PW-34 and PW-35 were produced as prosecution witnesses. Out of those who were in the lorry, the prosecution examined 16 witnesses including PW-31 Mandappa, PW-32 Haumanthappa and PW-33 Devendrappa. PW-32 identified accused No.10 Simon, accused No. 25 Kaliappa and accused No. 27 Bilavendra when they appeared in court. Simon was identified in court by both PW-31 and PW-32. Kaliappa and Balavendra were identified by PW-31 only. Accused Shekara (A-34) and

A accused Rama @ Ravana (A-79) were not identified by any of the witnesses. PW-33 Devendrappa is the complainant on whose complaint the FIR was recorded on the date of the incident itself, namely, 14th August, 1992, at about 5.45 P.M.

B The case was filed against 165 persons. Out of them, 76 were arrested and prosecuted. The prosecution had relied upon 59 confessions that had been recorded. The trial court, however, rejected all the confessions except one that was made by Kaliappa (A-25). The trial court, on consideration of the evidence, convicted 7 accused of which 5 are in appeal before us.

C

Mr. Gonsalves, learned counsel for the appellants submits that the other two accused, namely; accused No. 36, Devojinaik, and accused No. 115, Gulapu, have been convicted for offence punishable under Section 5 of the TADA Act and sentenced to five years' rigorous imprisonment but D they had already undergone the sentence and, therefore, no appeal was preferred by the said two accused. The fact of their having already undergone the awarded sentence has been mentioned in the impugned judgment as well.

E We have heard Mr. Gonsalves, learned counsel for the appellants, and Mr. Siddharth Dave, learned counsel for the respondent-State, and have gone through the material on record.

First we take the case of the appellant Shekara (A-34). The name of this accused is mentioned in the F.I.R. dated 14th August, 1992. According F to the FIR, at about 12.30 p.m. on 14th August, 1992, as per the directions of the Superintendent of Police, Mysore District, who was one of the heads in the Special Task Force constituted for nabbing Veerappan and his gang, the complainant boarded lorry No. KA 10-246 in civil dress. In the said lorry, there were other police officers/officials, as named in the FIR, G including PW-31 and PW-32. Harikrishna, Superintendent of Police, himself drove car No. KA 09-966. Harikrishna asked the lorry to follow the car. The car was going ahead of the lorry. Then the car and the lorry were moving on Meenyam road at a distance of about 25 Kms. from Ramapura, firing sound was heard when the lorry was near Boodikere cross H which was about 1-1/2 Kms. behind Gajanur village. On reaching near the

car, it was found that the car was found parked on the right side of the road and country made bombs were being hurled and repeated firing was being made on the car. It was also noticed that firing was coming from the direction of the left side of the hillock and from front side of the car. The occupants in the lorry jumped down on the road side of the lorry and returned fire on the opposite direction. Country made bombs were hurled on lorry as well. The exchange of fire continued for about an hour from 1 p.m. to 2 p.m. Thereafter, PW-33, Devendrappa, and other named officers went near the car and found that the Superitendent of Police and the sub-Inspector as also other persons, as noticed hereinbefore, had died. Number of persons were injured. Meanwhile, one bus No. TNQ 9316 "C.M.F." that came from Meenyam towards Ramapura was stopped by PW-33. The injured staff and dead bodies were put in the bus. Information of the incident was sent to the police station through wireless. Dead bodies and the injured were handed over to the police officers near Ramapura by PW-33 who returned to the spot along with the PSI and DSP of police station Chamarajanagar to show them the place of incident. It is also noticed that at about 1 p.m., while going towards the spot, at a sharp curve in the deep forest, Veerappan and his associates Arjunan, Mariyappa, Kolande, Shekara (A-34), Govinda, Mani and many others, more than 10 to 15 members, blocked the road by boulders by stopping the traffic and stopped the car and lorry by forming themselves in an unlawful assembly by hurling dangerous country made bombs over the convoy and freely using guns by opening fire. Thus A-34, Shekara, as mentioned in the F.I.R., was seen by PW-33 blocking the road by boulders. PW-33 has, however, not identified Shekara in court or at any other point of time. Except a mention of the name of Shekara in the F.I.R., no other material has been brought to our notice to connect the said accused with the crime and to sustain his conviction. He cannot be convicted merely on account of his name having been mentioned in the F.I.R. Further, we may notice that there appear to be two persons by name of Shekara as is evident from the altered F.I.R. dated 19th March, 1993. One is mentioned there as accused No. 7 – Shekara @ Kulanoor Shekara, S/o Kandan, Kulannor, – and the other the present accused No. 34. Under these circumstances, the conviction and sentence of appellant No. 4, i.e., Shekara (A-34) cannot be maintained.

Next, we taken up the case of appellant No. 5, Rama @ Ravana (A-79). This accused has not been convicted for the offence in relation to

A the incident dated 14th August, 1992. He has been convicted for offence under Section 5 of the TADA Act for which 5 years rigorous imprisonment has been imposed. According to the case of the prosecution, this accused was found on 25th March, 1994 in a from land at Sulwadi village in possession of country made gun, gun powder and pellets. PW-101 arrested
B him along with another and seized gun and gun powder etc. The gun that was seized from A-79 was marked as MO-112. Mazhar has been marked as Exhibit P-50. According to the testimony of PW-101, he did not seize and pack the gun at the gun at the place of apprehension of the accused. He also did not check whether the gun was in working condition. At that time, he also did not prepare any mazhar. The accused was brought from
C the place of apprehension which was about 13 to 14 Kms. away to the police station Ramapura. The description of the weapon was also not noted. In contrast, PW-23 has deposed that the gun that was seized was MO-37. PW-23, who was a mechanic in a work shop, was summoned to the police station. In the police station, PW-23 deposed that he saw the accused
D holding a country revolver and gun powder in a plastic cover. He has further deposed that a portion near the trigger had been damaged. The mazhar, Ext. P-50, was prepared and signed by PW-23. It was further deposed that he did not find out whether MO-37 could be operated or not.

E Then, we have the testimony of the Investigating Officer, PW-120, who has deposed that by the time panchas were procured, the gun was taken in possession by the police. He has further deposed that there were houses at a short distance from where the accused was arrested but he did not secure panchas at the time of arrest. According to this witness, the gun
F had been taken in possession at the time of the arrest. There is no other relevant evidence except the testimony of the aforesaid three witnesses.

Though Mr. Dave, relying upon the Constitution Bench judgment of this Court in *Sanjay Dutt* v. *State through C.B.I. Bombay (II),* [1994] 5 SCC 410, contends that the prosecution for securing conviction for offence
G under Section 5 of the TADA Act has merely to prove possession of specified arms and ammunition in a notified area and has not necessarily to prove that the same was meant to be used for terrorist or disruptive activity. The Constitution Bench has opined, "No further nexus of his unauthorised possession of the same with any specific terrorist or disruptive
H activity is required to be proved by the prosecution for proving the offence

under Section 5 of the TADA Act". The prosecution has, however, to prove by cogent evidence the possession of the specified arms and ammunition in the notified area. In the present case, a conjoint reading of the testimonies of PW 23, PW 101 and PW-120 shows that the prosecution has miserably failed to prove the possession of gun by accused No. 79. As earlier noticed, there is a confusion about the weapon – whether it was MO-37 or MO-112. There is also vital discrepancy as to the place at which the possession of the gun was taken. On the facts of the case, the appellant No. 5 is entitled to benefit of doubt. In this view, we set aside the conviction and sentence of appellant No. 5, Rama @ Ravana (A-79).

We now revert to the cases of the remaining three appellants, namely, A-10, A-25 and A-27. The names of these three accused were not mentioned in the F.I.R. that was recorded on 14th August, 1992. Their names, however, were included in the altered F.I.R. that was registered on 19th March, 1993 by adding the offences under Sections 3, 4 and 5 of the TADA Act and including the names of various other accused, including the appellants. In all 38 accused were named therein. We do not know under what rule, regulation or law, the altered F.I.R. was registered. None was pointed out. Be that as it may, the names of these three accused find mention only in the altered F.I.R. Accused No. 10 has been identified in court by PWs. 31 and 32. They have deposed to have seen him on 14th August, 1992 as members of the Veerappan gang attacking the police party. PW-31 has also deposed to have seen A-25 and A-27 in the similar manner at the spot

PW-31, PW-32 and PW-33 were travelling together in the lorry. The evidence also show that in the lorry they were seated next to each other. The testimonies of these witnesses were recorded in the year 2001. The conviction of these three appellants is based mainly on the testimony of the two police personnel, PW-31 and PW-32. In the case of Kaliapa (A-25), the confession said to have been made by him immediately after arrest on 24th April, 1993 has also been relied to convict him for the offences for which he has been charged. The said confession was recorded by PW-108. Undoubtedly, in a case of this nature, where attack of the magnitude and type reference whereof has been made hereinabove, is afflicted on the police party, the direct evidence, if any, is likely to be of *only police*

A personnel. The presence of any one else on the spot is unlikely in a case of this nature. All the same, the evidence has to inspire confidence. In the absence thereof, conviction cannot be sustained. Before, however, we refer to the evidence of PW-31 to PW-33 and some other witnesses, we would examine and consider the confession made by A-25.

B

The confessional statement of A-25 was recorded by PW-108. The accused was arrested on 24th April, 1993 at 6.45 a.m. His confession was recorded on the same date at 9 a.m. The same officer, in fact, recorded as many as 90 confessional statements out of which 59 pertain to the instant case. All other confessional statements have been rejected by the trial court.
C The common feature of recording of confession of almost all the accused is the factum of recording their statements almost immediately after the arrest.

We have perused the testimony of PW-108. He has deposed that he
D used to give five minutes, as a matter of practice, to any accused to think over on being produced before him, if after five minutes the accused still expressed his desire to make the confession, the officer used to proceed and record the statement. To say the least, it is a strange and wholly unwarranted procedure which the officer was adopting as a matter of
E practice. In such matters, there cannot and ought not to be any generalisation. How much time, if any, is required to be given to an accused to coolly think over whether he wanted voluntarily to make a confessional statement despite knowing the consequences thereof would depend upon facts of each case and likely to differ from one accused to another. There cannot
F be any general practice in such matters. The practice adopted by PW-108 was, therefore, illegal.

Reverting now to the confessional statement in question, the record shows that the said statement was not produced before the Magistrate on the next date when the accused was produce but it was filed on 26th April,
G 1993.

Rule 15(5) of the Terrorist and Disruptive Activities (Prevention) Rules, 1987 (for short, TADA Rules) requires that every confession recorded under Section 15 of the TADA Act shall be sent forthwith to the
H Chief Metropolitan Magistrate or the Chief Judicial Magistrate having

jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence. It is also apparent that even the copy of the confessional statement was not supplied to the accused for nearly seven years. It was supplied only on 6th January, 2000. The prosecution evidence in the case commenced on 25th November, 1999. Before 6th January, 2000, 28 prosecution witnesses had already been examined. The charge sheet in the case was filed on 7th April, 1994. The confessional statement was not filed along with the charge sheet. We may notice the difference between the rejected confessional statements and the confessional statement in question made by A-25. In his statement, the following passage appears at the end of the confession.

> "I informed Sri. Kaliappa @ Watchman Kaliappa, S/o. Kuppuswamy, 35 years, Nallur in Tamil that there was no necessity for him to make a statement, and that this statement can be used in evidence against him. He has given the statement voluntarily. I have heard this statement personally and recorded it in my own hand. The statement of Kaliappa contains true and definite facts."

In the confessions made by other accused which have not been accepted by the trial court, the statement to the aforesaid effect is absent.

A-25 has made a detailed confession giving the names of various members of the gang. The confession also gives the names of many persons who supplied money, food articles and information to Veerappan gang. Almost hundred names and a substantial number out of them with their parentage have been mentioned in the confessional statement made by A-25. Further, it appears that all through the recording of the said statement, the Investigating Officer, Inspector Shri Venkataswamy, was not only present but he alone could understand as to what the accused was stating in Tamil and translating it to PW-108 in Kannada language in which that statement was recorded. Likewise, in the reverse direction, it was translated from Kannada language to Tamil language by the said Inspector and read over and explained to the accused Kaliappa. This is evident from the documents itself, the relevant part whereof reads as under :

A "This statement of Kaliappa @ Watchman Kaliyappa, S/o. Kuppuswamy, Nallur, 35 years, Padiachi gounder, which was given in Tamil was got translated by me through Hanur Inspector Sri Venkataswamy into Kannada and after understanding it, I recorded the same. Likewise the recorded statement was translated
B into Tamil through Venkataswamy and it was read over and explained to Kaliappan who admitted to be correct and difinite and I am satisfied about the statement"

The present case thus shows that the maker of the confession did not
C know the language of the recording officer and the recording officer did not know the language known to the accused. The interpretor was the Investigating Officer himself. It is true that under Rule 15(1) of the TADA Rules, if it is not practicable to record the confession in the language in which such confession is made, the same can be recorded in the language
D used by the recording police officer for official purposes or in the language of the Designated Court. The first part of Rule 15(1) mandates the recording of the confession invariably in the language in which it is made. When it is not practicable, it can be recorded in other language as aforementioned. There may not be any illegality *per se* in the recording of the confession in Kannada language in the present case for the recording
E officer did not know the language known to the accused, namely, Tamil. But, all the same, when such a position is noticed, it becomes the bounden duty of the recording officer, who, in terms of Section 15 of the TADA Act, has to be a police officer not lower in rank than a Superintendent of Police, to make an attempt to arrange an independent interpretor. There is
F no evidence that any such attempt was made. We have a confessional statement made by an accused immediately after arrest on being given five minutes to think and thereafter recording the confession in the presence of Investigating Officer who alone knows what is stated by the accused as the Superintendent of Police does not know Tamil and
G for that reason the statement is translated by the Inspector to his superior officer.

Reliance has been placed by learned counsel for the State on the decision of this Court in the case of *Gurdeep Singh alias Deep* v. *State*
H *(Delhi Admn.),* [2000] 1 SCC 498 wherein, in paragraph 23, this Court dealt

with the effect of the presence of a police personnel in the room in which the confessional statement was recorded by Superintendent of Police. That was a case of a Police Constable holding the chain of the handcuffs of the accused at the time of recording of confession. Considering the angle of security as also the angle of keeping the accused in custody and other factors noticed on the facts of that case, it was held by this Court that the presence of a constable in a room could not, in fact or in law, be construed to be such a factor so as to hold that the confessional statement was not made voluntarily. The said decision has no applicability to the facts and circumstances of the present case of the presence of the Police Inspector – Investigating Officer and the role played by him in the manner above stated. It is well settled that the confession has to be voluntary and all precautions provided for in Section 15 and Rule 15 have to be strictly adhered to.

It is the duty of the recording officer to ensure that the confession is made voluntarily and out of free will by the accused without any pressure. Except omnibus statement about the general practice which was being followed by PW-108, there is no evidence of any question or attempt being made by the officer to satisfy himself that the confession was being made voluntarily. This factor becomes, on the facts and circumstances of the case, very important since immediately after the arrest, the accused was produced and the person actively associated with the recording of statement was none other than the Investigating Officer who by nature of things is interested in the success of the prosecution case. Recording of confessional statement is not a mechanical exercise. A duty has been cast and considerable amount of confidence has been reposed on a senior officer under Section 15 of the TADA Act in giving him the duty to record the confession and making such a confession before a police officer admissible in evidence. It is also not in evidence that no person other than the concerned inspector was available to act as an interpretor. PW-108 was aware that the accused produced before him for recording confession was arrested a few hours prior to the recording of his statement. A perusal of the testimony of PW-108 does not show his awareness about the requirements to be complied with before recording of the confessional statement. It also appears that 59 confessions were recorded in routine one after another. The witness states that within one or two minutes of the recording of confessional

A statement of one accused, the other accused used to be produced for recording of confession. Having regard to these factors, it is neither possible nor safe to base the conviction of A-25 only on the confessional statement. That statement does not inspire any confidence. Accordingly, we decline to take into consideration the said document.

B

Now we consider the main evidence, i.e. of PW-31 and PW-32 the basis whereof the appellants have been convicted. It may be recapitulated that out of sixteen eye witnesses, only two witnesses (PW-31 and PW-32) have named these three accused, A-10, A-25 and A-27. Regarding others C having not named them, learned counsel for the State, with reference to the testimony of PW-34, PW-35, PW-38, PW-39 and PW-40, explains that since these witnesses had received grievous injuries and, therefore, not naming of these accused by these witnesses does not throw any doubt much less a reasonable doubt on the case of the prosecution. But, the injuries were also suffered by PW-31 and PW-32. Be that as it may, even if we D reject the submission urged by Mr. Gonsalves on behalf of the appellants that the non-mention or non-identification of the accused by the other eye witnesses throws a doubt on the case of the prosecution in general and on the testimony of PW-31 and PW-32 in particular, on the facts of the case as we would presently notice it makes hardly any difference.

E

We have already noticed that PW-31, PW-32 and PW-33 travelled in the same lorry. They were sitting next to each other. From the testimony of PW-31 and PW-32, it appears that they had known these three accused earlier. If that is so, the non-holding of test identification parade would be F of no consequence. But, at the same time, if PW-31 and PW-32 had seen these three appellants throwing bombs and firing as part of the members of the Veerappan gang, they would have disclosed their names to PW-33 and their names would have been mentioned in the F.I.R. The evidence on the record shows that on 14th August, 1992 itself, PW-31 met Inspector G Venkataswamy, PW-112, and disclosed to him the names of these accused. Likewise, the names were also disclosed by PW-31 to DIG Srinivasan. However, DIG Srinivasan has not been produced before the trial court. Further, when PW-31 and PW-32 were talking to DIG and when PW-31 narrated the entire incident, inclulding the names of the persons he had H seen, to the DIG, PW-33 Devendrappa was also present as per the

deposition of PW-31. Not only this, the names were also disclosed to Uttappa, Assistant Commissioner of Police. He too was not examined. Further, the evidence of PW-31 also shows that at the spot and thereafter till he remained admitted in the hospital, PW-31 had occasion to meet Special Tax Force personnel and other persons associated therewith who were told the names of the persons who were involved in the encounter. In the light of such overwhelming evidence, it is highly doubtful that their names would not be disclosed to PW-33 and for that reason they would not find a mention in the F.I.R. Further, it is evident from the evidence that the attack on the car and the lorry was being made from a distance of about 100 ft. from a hillock and having regard to the topography of the area, it is highly doubtful if it was possible to identify the attackers. From the testimony of the other witnesses, it appears that they could only see the profile of the attackers and not the attackers as such so as to connect them with the commission of the crime.

Further, from the testimony of PW-120 M.C. Mariswamy, Police Inspector of Ramapura Police Station, from 12th August, 1992 to 10th March, 1994, it seems that in the second F.I.R. (altered F.I.R.), the names of some of the accused were collected by referring to previous F.I.Rs. filed against Veerappan and others. The relevant part of the testimony of PW-120 read :

> "When I took up the investigation of this case, I referred to the FIR filed in this case. It is true that the complainant who filed the first FIR is said to be an eye witness to the crime. I have not examined the complainant. It is true that in the FIR names and No. of accused is mentioned. It is true that in the FIR names of 7 accused persons with another 10 to 15 accused involved is mentioned. In the 2nd FIR submitted the names of 38 accused besides other is mentioned. Names of some of the accused were collected by referring to the previous FIRs., filed against A-1 and others. The names of remaining accused persons are involved through the information from the informants. Informants are not examined in this case."

In view of the aforesaid circumstances, it is not possible to sustain

A the conviction of these three accused as well relying solely on the testimony of PW-31 and PW-32 which does not inspire confidence. Thus, these appellants are also entitled to be given the benefit of doubt.

For the aforesaid reasons, we set aside the impugned judgment and
B order of the Special Judge of the Designated Court, Mysore. The conviction and sentence of the appellants are thus set aside. The appellants are directed to be released forthwith, if not required in any other case.

The appeals are, accordingly, allowed.

KKT. Appeals allowed.