

CASE NO.:
Appeal (crl.) 805 of 2001

PETITIONER:
RAVINDER SINGH @ BITTU

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT: 30/04/2002

BENCH:
U.C. Banerjee & Y.K. Sabharwal

JUDGMENT:

Y.K. Sabharwal, J.

In this appeal filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act) against the judgment of conviction and order of sentence passed by the Designated Court, only one of the accused viz. Ravinder Singh @ Bittu is the appellant. By the impugned judgment and order, the appellant and one Nishan Singh have been convicted for offence under Sections 3 and 4 of the TADA Act read with Section 120 IPC, Section 302 read with Section 34 IPC and Section 3 of the Explosives Substances Act, 1984. They have been sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- each in respect of these offences and in default suffer rigorous imprisonment (RI) for a period of six months each. They have also been convicted for offence under Section 392 read with Section 34 IPC, Section 25 of the Arms Act and Section 307 read with Section 34 IPC and sentenced to suffer RI for a period of 10 years and to pay fine of Rs.1,000/- each and in default suffer RI for six months and for the other two offences RI for a period of five years each with a similar fine and RI in default in payment of fine. The sentences have been directed to run concurrently.

The impugned judgment further directs the release of the approver Kulvinder Singh @ Kinda and acquits accused Hardeep Singh of all the offences for which he was charged. No appeal has been preferred by Nishan Singh. We are, thus, concerned in this appeal with the case of the prosecution against Ravinder Singh @ Bittu only.

The number of incidents as projected by the prosecution before the designated court were seven, i.e., (1) Hatching of conspiracy in September, 1991 by the appellant, Nishan Singh, Hardeep Singh, approver and deceased Pradhan Singh; (2) commission of robbery at Sharma Petrol Pump on 22nd October, 1991; (3) commission of robbery at Mohadi Petrol Pump, on 25th October, 1991; (4) Firing on police jeep on 25th October, 1991 and killing of three police personnel; (5) Preparation of Bomb; (6) Train Bomb blast on November 8, 1991 at 10.45 p.m. resulting in death of 12 and injuries to 65 persons; and (7) Encounter with the police and firing by the accused and police on 2nd December, 1991 resulting in death of Pradhan Singh and arrest of accused Nishan Singh.

The designated court has held that the appellant committed the robbery on 22nd October and 25th October, 1991; fired on police jeep resulting in killing of three police personnel; is guilty of the bomb blast resulting in deaths and injuries as above and escaped in the encounter which resulted in death of Pradhan Singh and arrest of Nishan Singh. No separate finding has been given on hatching of conspiracy. Further the appellant has neither been held to be guilty of preparation of bomb for which only Pradhan Singh has been held guilty nor for firing on police in encounter on 2nd December, 1991.

Brief Prosecution Version :

Pradhan Singh with the appellant and Nishan Singh came to Maharashtra and they along with Hardeep Singh went to the house of Kulvinder Singh, the approver, in September, 1991 a

nd planned some activities. The first incident is of forcible taking of jeep No.MGR-9097 and going on it to Chandrapur. On 22nd October, 1991 at 9.15 p.m., they committed dacoity at Sharma Petrol Pump at Bharanj by showing to the staff a pistol and AK-47 and looted a sum of Rs.2,500/-. On 25th October, 1991 at about 11.45 p.m., they looted Mohadi Petrol Pump and took away Rs.17,142/-. After looting the petrol pump, while they were going towards Nasik, their jeep was chased by the police which had received message through control room and as a result of firing from the jeep on police the driver Sanap, ASI Pardeshi and PC Pardhi were killed. On 8th November, 1991 the appellant kept a bomb in VT Ambarnath local train and as a result of its blast, 12 people lost their lives and 65 were injured. Deepali (PW-3) identified the appellant as a person who was sitting in front of her and was inserting his hand in a cloth bag which was under his seat. He left the cloth bag and got down from train at Thane. Bomb blast took place at Kalyan Railway Station at 10.45 p.m. The accused were taking shelter at the house of one Jagtar Singh in Arvind Nagar locality at Chandrapur. Police Inspector Rajjak along with the staff surrounded the house for the whole night of 1st December, 1991 and entered the house on the morning of 2nd December, 1991 after alerting his staff.

Pradhan Singh, Nishan Singh and the appellant started running from the backside of the house. PSI Supare who had taken position at the backside of the house fired on Pradhan Singh who fell near the compound wall. In the said incident, Nishan Singh was arrested on the spot and the appellant escaped. The appellant was arrested on 6th July, 1992. Nishan Singh made a confessional statement on 24th April, 1992 and the appellant on 1st December, 1992.

The prosecution to substantiate the charges examined 63 witnesses. The designated court for holding the appellant guilty has, inter alia, relied upon the evidence of Deepali (PW-3), the approver Kulvinder Singh (PW-1), and the confessional statement of the appellant.

It may be noticed that the confessional statement made by the appellant was retracted by him only during recording of his statement under Section 313 of the Code of Criminal Procedure.

The main emphasis in the submissions of Mr. Murlidhar, learned counsel for the appellant, was to demolish the prosecution case in respect of conviction and sentence of the appellant in the bomb blast case. It was rightly so for the reason that the acquittal of the appellant in respect of other incidents would be of no or little consequence if his conviction in bomb blast case is maintained, wherein he has been awarded life imprisonment.

There is three type of evidence against the appellant. Firstly, the confessional statement of the appellant. Secondly, the evidence of the approver, Kulvinder Singh (PW-1) and that of his co-accused, Nishan Singh, involving the appellant. Thirdly, the evidence of Deepali who identified the appellant in the test identification parade and stood by that while appearing in court as PW-3.

In the recording of confessional statement made by the appellant by the Superintendent of Police, the requirements of law that the statement is not made under pressure and informing the appellant that it can be used against him as evidence and that he can be convicted on the basis of the said statement and further that the appellant voluntarily and willingly was ready to confess about the offences committed by him, were duly complied with. The compliance of these legal requirements is not under challenge. We are also satisfied about the compliance of these safeguards.

In his confessional statement besides preparation of the bomb by Pradhan Singh, the appellant has stated that he took the bag containing the bomb to the Kurla Railway Station and boarded the local train for Ambarnath; took seat in the compartment and prior to Thane Railway Station, connected the wire of the time-bomb and kept the bag below the seat on which he was sitting and when Thane Railway Station came, leaving the bag, he got down from the train and took the bus from Thane to Neral and went to the house of Kulvinder Singh. He further stated that Pradhan Singh was present in the house of Kulvinder Singh and he told him about keeping the bomb and on the next day, he came to know from the newspaper report about the explosion of the bomb and death of the people.

The confession was retracted four years later at the time of recording of statement of the appellant under Section 313 of the Code. Sections 17 to 31 in Chapter II of Part I of the Indian Evidence Act, 1872 deal with admissions and relevance, effect and consequence thereof.

Sections 24, 25, 26, 28 to 30 deal with confessions. Confession is a specie of admissions. Sections 25 and 26 make a confession made by an accused before a Police Officer inadmissible. Section 15 of the TADA Act is an exception to the provisions which make the confession inadmissible. A confession made by a person to a Police Officer not lower in rank than a Superintendent of Police and recorded in the manner provided in the section is admissible in the trial of such person or co-accused, abettor, or conspirator for an offence under the TADA Act or Rules made thereunder.

In the present case, we are concerned with the confession made by the appellant under Section 15 of the TADA Act and recorded in the manner provided therein.

In Kalpnath Rai v. State (Through CBI) [(1997) 8 SCC 732] it was observed that the confession made by one accused is not substantive evidence against a co-accused. It has only a corro

borative value. In the present case, we are, however, primarily concerned with the confession made by the maker, i.e., the appellant himself. Besides this confession, there is also a confession made by co-accused Nishan Singh which too implicates the appellant in commission of the offence of the bomb blast in the train. The observations made in Kalpnath Rai's case were considered in State through Superintendent of Police, CBI/SIT v. Nalini & Ors. [(1999) 5 SCC 253], a decision by a three Judge Bench. It was held that the confession recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. In this view, the observations in Kalpnath Rai's case do not represent the correct position of law.

In S.N. Dube v. N.B. Bhoir & Ors. [(2000) 2 SCC 254] referring to Nalini's case, it was observed that Section 15 of the TADA Act is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it.

In State of Maharashtra v. Bharat Chaganlal Raghani & Ors. [(2001) 9 SCC 1], overturning partially the judgment of acquittal passed by the designated court and relying upon the confessional statement made by accused 5 and 6, they were convicted. It was observed that there is no denial of the fact that judicial confession made are usually retracted but retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law. The decisions in the case of Nalini and S.N. Dube were cited with approval.

Again in Jayawant Dattatray Suryarao v. State of Maharashtra [JT 2001 (9) SC 605] making a detailed reference to the aforementioned decisions, the contention urged on behalf of the accused with regard to the admissibility and evidentiary value of the confessional statement was dispelled. It was held that the confessional statement is a substantive piece of evidence.

It is thus well established that a voluntary and truthful confessional statement recorded under Section 15 of the TADA Act requires no corroboration. Here, we are concerned primarily with the confessional statement of the maker. The weight to be attached to the truthful and voluntary confession made by an accused under Section 15 of the TADA Act came to be considered again in a recent three Judge Bench decision in Devender Pal Singh v. State of N.C.T. of Delhi & Anr. [JT 2002 (3) SC 264]. It was held in the majority opinion that the confessional statement of the accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself.

There can be no doubt that a free and voluntary confession deserves the highest credit. It is presumed to flow from the highest sense of guilt. Having examined the record, we are satisfied that the confession made by the appellant is voluntary and truthful and was recorded, as already noticed, by due observance of all the safeguards provided under Section 15 and the appellant could be convicted solely on the basis of his confession.

Faced with the aforesaid confessional statement made by the appellant and the legal position regarding its admissibility as a substantive piece of evidence, Mr. Murlidhar contended that as there are inherent contradictions in the confessional statement of the appellant when compared with the confessional statement made by the co-accused, Nishan Singh, the learned designated court committed serious illegality in convicting the appellant by relying upon his confessional statement. Besides that of the appellant, we have also gone through the confessional statement of Nishan Singh. For more than one reason, we are unable to accept the contention of Mr. Murlidhar. Firstly, the confessional statement made by the appellant is

not required to be examined with reference to the confessional statement made by Nishan Singh and, therefore, there is no question of contradictions between the two confessions. Independently, it could not be shown as to why the conviction of the appellant could not be maintained on the basis of his confessional statement. Secondly, the confession made by the appellant requires no corroboration. Thirdly, the confession has been found to be truthful and voluntary. Fourthly, in our view, there is general corroboration regarding the implication of the appellant in the confessional statement made by Nishan Singh and there are no material contradictions in the two confessional statements. The minor contradictions in the statement of Nishan Singh when compared with that of the appellant are of no consequence. Learned counsel was unable to show that the confession was not voluntary. The circumstances like non-mention of going to the house of the approver by Nishan Singh or non-reference by him of

Kulvinder Singh in his confessional statement does not cast any doubt on the truthfulness of the confession. Similarly the non-mention of the name of the appellant by Nishan Singh at the time of encounter on 2nd December, 1991 in his statement is also of no consequence insofar as the conviction of the appellant in the bomb blast case is concerned. It is worth

while to notice that if in this regard, Nishan Singh was to be believed as stated in his confessional statement that only he and Pradhan Singh were in the house of Jagtar Singh when encounter took place which resulted in his arrest and killing of Pradhan Singh, then we see no reason why and how in the documents prepared soon thereafter by the police, presence of a t

third person at the time of encounter would be shown particularly when the appellant was arrested much later, i.e., on 6th July, 1992.

Reverting now to the evidence of the approver, it was pointed out by learned counsel for the appellant that the confession of the approver was recorded by the Police Officer on 4th September, 1992, his statement before the Special Judicial Magistrate after grant of pardon was recorded on 28th February, 1996 and deposition in Court as approver as PW-1 was recorded from 1st to 3rd October, 1996. It was also pointed out that although Kulvinder Singh was arrested on 15th July, 1992, an application for grant of pardon was made by him before the designated court more than three years later i.e. on 28th December, 1995 and pardon was granted by the designated court by order dated 2nd February, 1996. With the assistance of learned counsel for the parties, we have gone through various statements of the approver. Mr. Murlidhar contends that on these three dates, different, contradictory and inconsistent versions were given by him. It was thus contended that the evidence of approver is not reliable.

The other illegalities highlighted by Mr. Murlidhar in the evidence of the approver were (i) failure of the Magistrate to record the statement of the approver upon grant of pardon as a witness i.e. in the presence of the accused being violative of Section 306(4)(a), Cr.P.C.

(ii) different contradictory and inconsistent version in the statements given on different dates as above and (iii) confession being exculpatory. It is not necessary to examine these issues and express opinion thereupon. It is not on the testimony of the approver alone that the conviction has been based. Assuming the contentions of learned counsel to be correct without going into it, it deserves to be noticed, as already observed, the conviction herein can be based on the confession made by the appellant himself without anything more. We would, therefore, keep out of consideration the approver's evidence.

Let us now revert to Deepali Chauhan (PW-3) who lost her leg below the knee in the bomb blast in the train and also her husband who was killed as a result thereof. She has given a detailed version of the manner in which the appellant was inserting his hand in the cloth bag which had in it the bomb with a view to fix the wire. She also identified the appellant in the test identification parade held on 6th September, 1992 being the person who was sitting in the train opposite her. The appellant was arrested on 5th July, 1992. Delay of two months in conducting test identification parade has been satisfactorily explained. Though some confusion seems to have erupted on account of a person sitting in the train being 'sardarji' as distinguished from 'punjabi' having haircut and slightly grown beard but the same is of no consequence in the facts and circumstances of the present case particularly when the conviction is not based on the sole testimony of PW-3. The version given by the appellant in his confessional statement finds sufficient corroboration from the testimony of PW-3.

It is true that PW-3 must have seen the appellant as deposed by her only when he was sitting in the train opposite her but what is to be kept in mind is that the memory and power to recapitulate differs from person to person as also from situation to situation. Here the situation is that after she noticed the manner of handling the bag by the appellant and leaving the bag behind while getting down from the train and the blast taking place soon thereafter wherein she suffered the injuries as above and lost her husband. Under these circumstances, the criticism to her identification of the appellant is without any substance so also the criticism to her testimony on the basis of minor contradictions. The identification made by PW-3, on the facts and circumstances of the case, cannot be faulted on the ground of delay of few months. Further, as noticed earlier as well, even if corroboration was to be required, though not necessary in the present case in view of the confessional statement of the accused, then too, it would be sufficient if there is a general corroboration of the important incidents and not that the corroborative evidence itself should be sufficient for conviction.

We see no reason to discard the confessional statement of Nishan Singh and of the evidence of PW-3 and of course the confessional statement of the appellant and as such the conviction deserves to be maintained. Looking from any angle, the conviction of the appellant does not deserve to be disturbed.

We, however, place on record our appreciation for the pains taken by Mr. Murlidhar in marshalling the facts and preparation of the same and it has been a very able presentation before this Court.

But in view of the discussions noticed above, we find no illegality in the judgment under appeal. As such the appeal stands dismissed.

.....,J.
[U.C. Banerjee]

.....,J.
[Y.K. Sabharwal]

April 30, 2002.

JUDIS