

WARIYAM SINGH AND ORS.

v.

STATE OF U.P.

SEPTEMBER 19, 1995

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

Terrorist and Disruptive Activities (Prevention) Act, 1987/Rules.

Sections 3,4/Rule 15—Confessional statement—Sending of to the Chief Judicial Magistrate to be transmitted to the Designated Court—Whether mandatory or directory—Held, directory.

Code of Criminal Procedure 1973 :

S. 313—Drawing attention of accused to the confessional statement and corroboration thereof.

Evidence Act, 1872 :

Interested witness—Deposition of—To be weighed with care and caution.

The appellants-accused and one more person B.S. went to the house of one KS and accused him and his family. Later they opened fire hitting KS on his leg. The son of the injured and the other family members also opened fire and the son chased the accused upto 100-150 yards by flashing torch. In that process he was hit by a bullet fired by BS which caused his death. Later, BS died in an encounter with the Police and the remaining three accused were prosecuted before the Designated Court. They were convicted under S. 120B IPC and under Section 3 and 4 of the Terrorist and Disruptive Activities (prevention) Act, 1987 (TADA) and each of them was sentenced to life imprisonment, five years rigorous imprisonment and a fine of R. 1000 (one year's rigorous imprisonment in default) for the respective offences.

In this appeal, it was contended on behalf of the appellants that the confessional statements had not been sent to the Chief Judicial Magistrate in accordance with S.15 of TADA, which is mandatory and the confessional statement could not be looked into by the designated, for non-compliance

A with the mandatory provision; that no specific question was pointedly put
 to the accused under S.313 Cr. P.C. drawing their attention to the confes-
 sional statements on which Prosecution placed reliance, and such omission
 has caused serious prejudice to the accused; that in the absence of cor-
 roborative statements from independent witnesses reliance could not have
 B been placed on the deposition of the father of the deceased, who was an
 interested witness; that the confessional statements were recorded in Hindi
 but the accused did not know Hindi; and since the accused claimed that
 the confessional statements were fabricated, the Court should not have
 relied on the confessional statements in the absence of corroboration.

C Dismissing the appeal, this Court

HELD : 1.1. The provisions in Rule 15 of the TADA Rules relating
 to the procedure to be followed for sending the confessional statement to
 the Chief Judicial Magistrate or the Chief Metropolitan Magistrate for
 being transmitted to the concerned designated court is not mandatory but
 D directory. What is mandatory is that the report must be sent to the
 Designated Court. Accordingly, merely for not sending the said confes-
 sional statement to the Chief Judicial Magistrate for onward transmission
 to the designated court, the said confessional statement need not be
 scrapped on the score of incurable illegality for not following the man-
 E datory provisions of Rule 15 of the said Rules. [812-F]

1.2. In the instant case, such confessional statement had in fact been
 directly sent to go the designated court immediately after recording the
 same. In the aforesaid facts, no prejudice has been caused to the accused
 for not sending the same to the Chief Judicial Magistrate for onward
 F transmission to the Designated Court, The lapse committed in not sending
 the said confessional statements to the Designated Court through the
 Chief Judicial Magistrate is only a procedural irregularity which has not
 vitiated the trial. [812-G-H]

2. It appears that while examining the accused under Section 313 Cr.
 G P.C. the entire gist of the confessional statements were specifically put
 to the accused and it was also pointed out to them that such confessional
 statements had been proved by the Superintendent of Police in his deposi-
 tion. Therefore, the contention that the attention of the accused to such
 confessional statements had not been drawn at the time of examination of
 H the accused under Section 313 Cr. P.C. is factually incorrect. [813-C-D]

3. The Designated Court has rightly indicated that it is the quality and intrinsic worth of the evidence which is to be considered and deposition by the relation or an interested party need not to be discarded as a matter of course. A relation or an interested witness is not incompetent to depose in a criminal case but rules of prudence dictate that deposition of such witness should be weighed with care and caution before accepting such deposition. The deposition of deceased's father gets ample corroboration from the confessional statements of the accused. The very fact that he had sustained injuries in the incident in question also points out that he was present at the place of occurrence and therefore, had occasion to notice that incident. [813-G-H, 814-A]

5. One of the accused made a petition before the Designated Court on 23.10.1991 stating therein that except the Punjabi language, he could not follow any other language. Such application was however rejected by the Designated Court by holding that all the accused understand Hindi. The confessional statements were recorded on 14.5.1990. But none of the accused raised any objection against recording of confessional statements in Hindi by contending that they could not follow what had been recorded. It is only on 23.10.1991 i.e. almost after 1 1/2 years after recording confessional statements only one of the accused made such application. As a matter of fact, various lengthy questions were put to the accused under Section 313 Cr. P.C. and such questions were answered by them and none of the accused expressed any difficulty in understanding the questions and answering them. [814-B-E]

4. The confessions made by the accused have been proved by the Superintendent of Police, who recorded the same, being examined as PW. 8. A part of the confessional statements also stands corroborated by the deposition of deceased's father. It cannot be said that the confessional statements were fabricated and hence could not be accepted. [815-C]

Pyarelal Bhargava v. The State of Rajasthan, AIR (1963) SC 1094, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 524 of 1994.

From the Judgment and Order dated 10.1.94 of the Designated Judge Pilibhit in Special Case No. 17 of 1992.

A N.A. Siddiqui for the Appellant.

Anis Ahmad Khan and A.S. Pundir, for the Respondent.

The following Order of the Court was delivered :

B This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, hereinafter referred to as TADA, is directed against the judgment dated 10th January, 1994 passed by the Designated Judge (Sessions Judge), Pilibhit in Special Case No. 17 of 1992. By the impugned judgment the appellants have been convicted under
C Section 120B of the Indian Penal Code and also under Sections 3 and 4 of TADA. For the offence under Section 120B IPC, a sentence of life imprisonment has been passed against each of the accused and sentence of life imprisonment has also been passed against each of the accused under
D Section 3 of TADA. For the offence under Section 4 of TADA, each of the accused has been sentenced to suffer five years rigorous imprisonment and also a fine of Rs. 1,000, in default, one year's rigorous imprisonment. The said special case No. 17/92 was instituted against the appellants after obtaining necessary sanction from the competent authority in respect of an incident which had taken place on 17.4.1990 at 10 P.M.

E The prosecution case in short is that PW 1 Kashmir Singh, his son Balkar and other members of the family were sitting in their house and the three accused together with Balwinder Singh, since deceased, came there and after accusing Kashmir Singh and members of the family, the accused opened fire hitting Kashmir Singh on his leg. Balkar Singh the son of Kashmir Singh and other members of the family present there also opened
F fire and the said son chased the accused upto 100-150 yards by flashing torch. But the said Balkar Singh was hit by the bullet fired by Balwinder Singh which caused his death. Later on, Balwinder Singh also died in an encounter with police and the remaining three accused were prosecuted before the Designated Court.

G According to the prosecution case, all the three accused made confessional statements before the Superintendent of Police and such confessional statements are Exhibits 26, 27 and 28. The Superintendent of Police deposed as PW 8 and he specifically stated that the accused made voluntary statements; they were given time to reflect before making such
H voluntary statements and it was ensured by him when there was no other

person present when such confessional statements were made. The accused statement were also warned by the Superintendent of Police that the confessional statements would be used against them and they might be convicted for such confessional statements.

P.W. 1 Kashmir Singh, who himself was injured in the incident, stated in his deposition that out of the three person who came with arms to his house he knew Balwinder Singh, since deceased; and one of the appellants Bassan Singh. The said persons accompanied by another came to his house and threatened him by saying that they would kill him and the members of the family. It was stated by the said Kashmir Singh that the said persons became angry with Kashmir singh and the members of his family because of the recovery of arms and ammunition by the police on the basis of the statement made by the said Kashmir Singh on a previous occasion. He has also stated that when the accused fired shots with the rifles carried by them he was hit on his leg and in defence, Subedar and the said Kashmir Singh also fired from their rifles and his son Balkar Singh also fired with a SBBL gun and Guljar Singh also fired with a DBBL gun. But when Balkar Singh chased the accused by flashing his torch, he sustained bullet injury fired by the Balwinder Singh causing his death on the spot.

It may be stated here that the F.I.R. was lodged in this case within 1 1/2 hours of the incident in the police station which was 4 1/2 kms. away from the incident. Excepting Kashmir Singh, other witnesses examined in this case in support of prosecution case are police personnel. In the statement under Section 313 of the Code of Criminal Procedure, the accused denied the prosecution case. No witness, however, was examined on behalf of any of the accused. It transpires from the cross-examination that the accused tried to make out a case that the confessional statements were manufactured on places of papers in which the police had taken thumb impression of the said accused.

The learned designated court, after considering the evidences adduced in the case and materials on record, *inter alia*, came to the finding that the confessional statements had been voluntarily made by the accused and the case of manufacturing such confessional statements as sought to be made cannot be accepted. On a finding that the prosecution case was proved on the basis of the evidences adduced in the case, the learned Designated Court convicted the accused and passed the order of sentence

A as indicated hereinbefore.

B Mr. Siddiqui, the learned counsel appearing for the appellants has contended that the confessional statements had not been sent to the Chief Judicial Magistrate in accordance with Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules, 1987. It may be stated here that the said confessional statements had been sent directly to the designated court. PW.8 Superintendent of Police. Who had recorded the confessional statement, has deposed that he sent the confessional statements on the very same day when the confessional statements were recorded by him to be dispatched to the Designated Court, it is also not in dispute such confessional statements were promptly received by the designated court.

C Mr. Siddiqui has submitted that to safeguard any tampering with the confessional statements the rule provides that such confessional statements shall be sent to the Chief Judicial Magistrate or to the Chief Metropolitan Magistrate, as the case may be, and such Magistrate, in his turn will send such confessional statement to the concerned designated court. He has submitted that the requirement of sending confessional statements recorded by the police officer to the C.J.M. being mandatory, the confessional statement can not be looked into by the designated court for non compliance with the said mandatory provisions.

D It, however, appears to us that the provisions in Rule 15 of the said TADA Rules relating to the procedure to be followed for sending the confessional statement to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate for being transmitted to the concerned designated court is not mandatory but directory. What is mandatory is that the report must be sent to the designated court. Accordingly, merely for not sending the said confessional statement to the Chief Judicial Magistrate for onward transmission to the designated court, the said confessional statement need not be scrapped on the score of incurable illegality for not following the mandatory provisions of Rule 15 of the said Rules.

E In the instant case, such confessional statement had in fact been directly sent to the designated court immediately after recording the same. In the aforesaid facts, no prejudice has been caused to the accused for not sending the same to the Chief Judicial Magistrate for onward transmission to the designated court. The lapse committed in not sending the said confessional statements to the designated court through the Chief Judicial

Magistrate is only a procedural irregularity which has not vitiated the trial. A

Mr. Siddiqui has also contended that in the instant case, no specific question was pointedly put to the accused under Section 313 Cr. P.C. drawing the attention of the accused that they had made confessional statements, which were being relied on by the prosecution. According to him such omission on the part of the learned Designated Court has caused a serious prejudice to the appellants thereby vitiating the trial. He has submitted that as a matter of fact the court has relied on the said confessional statements for convicting the appellants. B

In our view, the contention of Mr. Siddiqui cannot be accepted. It appears that while examining the accused under Section 313 Cr. P.C. the entire gist of the confessional statements were specifically put to the accused and it was also pointed out to them that such confessional statements had been proved by the Superintendent of Police in his deposition. Therefore, the contention that the attention of the accused to such confessional statements had not been drawn at the time of examination of the accused under Section 313 Cr. P.C. is factually incorrect. In that view of the matter, the decisions cited by the learned counsel for the purpose of showing that failure of the court in not drawing the attention of the accused about incriminating materials while examining him under Section 313 Cr. P.C. causes serious prejudice to the accused vitiating the trial, have no application in this case. C D E

It has also been contended by the learned counsel for the appellants that Kashmir Singh is an interested witness being the father of the deceased. In the absence of corroborative statements from other independent witnesses, no reliance should be placed on the deposition of the said Kashmir Singh. In our view, such contention, in the facts of this case, should not be accepted. Kashmir Singh himself is an injured witness and we have not noted any infirmity in his deposition. The learned Designated Court has rightly indicated that it is the quality and intrinsic worth of a evidence is to be considered and deposition by the relation or an interested party need not to be discarded as a matter of course. A relation or an interested witness is not incompetent to depose in a criminal case cut rules of prudence dictate that deposition of such witness should be weighed with care and caution before accepting such deposition. We may also indicate here that the deposition of Kashmir Singh gets ample corroboration from F G H

A the confessional statements of the accused. The very fact that Kashmir Singh sustained injuries in the incident in question also points out that he was present at the place of occurrence and therefore, had occasions to notice the incident.

B Mr. Siddiqui has also submitted that the confessional statements were recorded in Hindi but the accused did not know Hindi. Hence, they could not understand what was recorded as their alleged confessional statements. Darshan Singh made a petition before the Designated Court on 23.10.1991 stating therein that except the Punjab Language, he could not follow any other language. Such application of Darshan Singh was, C however, rejected by the learned Designated Court by holding that all the accused understood Hindi. We may also indicate here that the confessional statements were recorded on 14.5.1990. But none of the accused raised any objection against recording of confessional statements in Hindi by contending that they could not follow what had been recorded as their confessional D statements. It is only on 23.10.1991 i.e., almost after 1 1/2 years after recording confessional statements only one of the accused namely Darshan made such application before the designated court and the same was rejected by the designated court by holding that the accused could follow Hindi. As a matter of fact, various lengthy questions were put to the accused under Section 313 Cr. P.C. and such questions were answered by E them and none of the accused expressed any difficulty in understanding the questions and answering them. Hence the said contention of Mr. Siddiqui cannot be accepted.

F Mr. Siddiqui has also submitted that as the accused came out with a case that the confessional statements were fabricated, the court should not have relied on such confessional statements in the absence of corroboration. In this connection, he has relied on a decision of this Court in *Pyarelal Bhargava v. The State of Rajasthan*, AIR (1963) SC 1094. In that case, this Court considered the case of a retracted confession and it has been G indicated by this Court that the retracted confession may form the legal basis of conviction if the court is satisfied that it was true and was voluntarily made. It has however been indicated in the said decision that court shall not base a conviction on such retracted confession without corroboration. This Court has also indicated that though it is not a rule of H law, but such course is followed as a rule of prudence. It has however been indicated specifically in the said decision that it cannot even be laid down

as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.

A

B

In the instance case, the confessions made by the accused have been proved by the Superintendent of Police, who recorded the same, being examined as PW 8. A part of the confessional statement also stands corroborated by the deposition of Kashmir Singh. Accordingly, we do not find any difficulty in rejecting the said confessional statement simply because it was alleged by the accused that confessional statements were fabricated. We may also indicate here that the said allegation of fabrication is without any substance and cannot be accepted.

C

D

In the aforesaid facts, we do not find any reason to take a contrary view. The appeal therefore, fails and is dismissed.

The appellant No. 3 has been released on bail during the pendency of the appeal. In view of the dismissal of the appeal, the should be taken into custody to serve out the sentence.

E

G.N.

Appeal dismissed.