

BIHARI MANJHI AND ORS.

A

v.

STATE OF BIHAR

APRIL 15, 2002

[M.B. SHAH, B.N. AGRAWAL AND ARIJIT PASAYAT, JJ.]

B

Terrorist and Disruptive Activities (Prevention) Act, 1987 :

Terrorist and Disruptive Activities (Prevention) Act, 1987—Rules, 1987 Section 15/Rule 15—Recording of confessional statement made to Police officer—Reliability of—On facts, accused person tried for gruesome carnage—Designated Court convicting accused persons on the basis of confessional statement of one of the accused—However, investigating officer not following prescribed procedure under the Rule—Non-identification of accused before the court by police officer who recorded the confession—As such recording of confessional statement by police officer and putting of signature by accused doubtful—Therefore, such confessional statement should not be relied upon.

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Appellants-accused persons along with others were tried by the Designated Court under Terrorist and Disruptive Activities (Prevention) Act, 1987 and Sections 302/149 Penal Code for gruesome carnage where 35 persons lost their lives, some houses/huts were burnt, number of persons were injured. Court convicted the appellants-accused on the basis of confessional statement of one of the accused which was recorded by Police Inspector in the presence of Superintendent of Police. Hence the present appeals.

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Allowing the appeals, the Court

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HELD: 1.1. On facts of the instant case, it Would be difficult to hold that the confessional statement recorded by Police Inspector, who went there for apprehending the accused can be considered to be confessional statement recorded under Section 15 of the TADA Act even though it was recorded in the presence of Superintendent of Police. [1176-C-D]

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1.2. The statement was recorded by the police officers in the presence of the police party at night time between 26th and 27th February, 1992 in the light of the jeep as there was no other light available. It was not sent to

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A the Chief Judicial Magistrate as required under the TADA Rules but was produced for the first time before the Designated Court on 21.3.1997 which was allegedly kept in the police diary. Designated Court holding that the procedure prescribed under Rule 15 was directory, would not mean that Investigating Officer is not required to follow the said procedure. He has to follow the said procedure. If there is delay in sending the statement, the Court

B would consider its evidentiary value by weighing other evidence brought on record by the prosecution. Further, the Superintendent of Police, in whose presence the statement was recorded, as well as Police Inspector who recorded the statement have not identified the accused whose statement was recorded, before the Court which throws a serious doubt with regard to the confessional

C statement being recorded by Police Inspector and putting of signatures by the accused on the same. There is no other evidence so far as co-accused appellants are concerned despite the fact that accused are residents of same village where occurrence took place and no other prosecution witnesses have identified them as the persons present at the scene of offence nor there is any recovery alleged to have been made from them or at their instance. Thus the

D confessional statement ought not to have been relied upon by the Court for convicting the appellants-accused. [1176-E-H; 1177-A-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 752 of 2001.

E From the Judgment and Order dated 8.6.2001 of the Designated Court at Gaya in G.R.C. No. 430 of 1992.

WITH

F Crl. A.No. 765 of 2001.

A. Sharan, Rajiv Datta, Irshad Ahmed, Amit Kumar, Madhu Sharan, S. Chandra Shekhar, Syed Ali Ahmad, Syed Tanweer Ahmad, Rajiv Singh and Sartaj Ali Khan, for Rajesh Prasad Singh for the Appellants.

G H.L. Agrawal and Kumar Rajesh Singh for B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

H **SHAH, J.** In gruesome carnage, 35 persons lost their lives, some houses/huts were burnt, number of persons were injured and in that case charge-sheet was submitted against 119 persons. Out of them, 13 were tried by the

Designated Court of Sessions Judge, Gaya in G.R. Case No. 430 of 1992, Tekari Police Station Case No.19 of 1992 under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "TADA Act") and under Section 302/149 of Indian Penal Code (hereinafter referred to as "IPC") . After recording the evidence, by judgment and order dated 8.6.2001, the Designated Court

- (a) acquitted A-1 Nanhe Yadav @ Dina Yadav, A-10 Nanhak Teli, A-11 Naresh Chamar and A-12 Ramashish Mahto;
- (b) convicted A-5 Veer Kuer Paswan, A-8 Krishna Mochi, A-9 Dharmendra Singh @ Dharu Singh, A-13 Nanhe Lal Mochi and sentenced to death;
- (c) convicted A-2 Bihari Manjhi, A-4 Ramautar Dusadh @ Lakhan Dusadh, A-6 Rajendra Paswan, A-7 Wakil Yadav and imposed life imprisonment;
- (d) convicted A-3 Ravindra Singh and imposed RI for ten years. He has not filed any appeal.

A-2 Bihari Manjhi, A-4 Ramautar Dusadh @ Lakhan Dusadh, A-7 Wakil Yadav have filed Criminal Appeal No. 752 of 2001; A-6 Rajendra Paswan has filed Criminal Appeal No. 765 of 2001; A-5 Veer Kuer Paswan, A-8 Krishna Mochi, A-9 Dharmendra Singh @ Dharu Singh, A-13 Nanhe Lal Mochi have preferred Criminal Appeal No.761 of 2001 and also there is a Death Reference Case No.1 of 2001 against A-5 Veer Kuer Paswan, A-8 Krishna Mochi, A-9 Dharmendra Singh @ Dharu Singh, A-13 Nanhe Lal Mochi.

By this judgment and order, we are disposing of Criminal Appeal No.752 of 2001 and Criminal Appeal No. 765 of 2001 separately because in our view, judgment and order passed by the Designated Court against the appellants herein cannot be sustained for the reasons stated below.

The Designated Court convicted the aforesaid four accused only on the basis of the confessional statement Ex.2 dated 27.2.1992 of A-2 Bihari Manjhi. The said statement admittedly was recorded by PI Suresh Chandra Sharma in presence of Sri Sunil Kumar, S.P. Gaya, and Birendra Kumar Singh O/C Bodh Gaya Police Station. The Designated Court held that the confessional statement of Bihari Manjhi was recorded by the Superintendent of Police and in his inculpatory statement he has named A-4, A-6 and A-7 as participants and since confessional statement is admissible, there is no reason to disbelieve

A the same and, therefore, the participation of all accused in the carnage is well proved. Thereafter, the Court observed that A-6 was named as participant by PW6 and PW7 and this gets corroboration from their statement under Section 161 Cr.P.C. recorded by the Police. No doubt, the learned Judge hastened to add that as the witnesses were terrorised, they have evaded either to name or to identify them in the court but on the basis of the confessional statement B he held them guilty and convicted them under Section 3(1) of the TADA Act and also for the offence punishable under Section 302/149 IPC and sentenced them to suffer life imprisonment. The Court also negated the submission made by the learned counsel for the accused that in the statement recorded under Section 313 Cr.P.C. accused Bihari Manjhi A-2 has denied to have C made any such statement before Superintendent of Police, by holding that on each page of confessional statement there is signature of A-2 Bihari Manjhi and, therefore, there is no reason to disbelieve the evidence of Superintendent of Police.

D In our view, in the facts of the present case, it would be difficult to hold that the confessional statement recorded by Police Inspector, who went there for apprehending the accused, can be considered to be confessional statement recorded under Section 15 of the TADA Act even though it was recorded in presence of Superintendent of Police. So-called statement was recorded by the police officers in presence of the police party at night time at about 2.30 E a.m. between 26th and 27th February, 1992 in the light of the jeep as there was no other light available.

Further, admittedly, the statement was not sent to the Chief Judicial Magistrate as required under Rule 15 of the TADA Rules. The statement was produced for the first time before the Designated Court on 21.3.1997 which F was allegedly kept in the police diary. Dealing with this contention, the Designated Court held that the procedure prescribed under the Rules was directory. In our view, even though this Court has held the procedure prescribed under Rule 15 as directory, that would not mean that Investigating Officer is not required to follow the said procedure. He has to follow the said procedure. G If there is delay in sending the statement, the Court would consider its evidentiary value by weighing other evidence brought on record by the prosecution. It is to be stated that in our country under Constitution, there is separation of judiciary from executive and if lapses on the part of the Investigating Officer are condoned and such statements are used for convicting the accused then the liberty of the citizens would not be safe. It appears that H instead of collecting any material or evidence for connecting these accused

with the crime, investigating agency has adopted unjustified method. A

Further, PW2 Sunil Kumar, Superintendent of Police, in whose presence the statement was recorded, as well as PW17 Suresh Chander Sharma who recorded the said statement have not identified "A-2" Bihari Manjhi before the Court. This would throw a serious doubt with regard to the said confessional statement being recorded by PW17 and putting of signatures by A-2 Bihari Manjhi on the same. There is no other evidence so far as co-accused appellants are concerned despite the fact that accused are residents of same village where occurrence took place and no other prosecution witnesses have identified them as the persons present at the scene of offence nor there is any recovery alleged to have been made from them or at their instance. In the aforesaid circumstances and for the infirmities, we are in agreement with the submission of learned counsel appearing for the accused-appellants that the said confessional statement ought not to have been relied upon by the court for convicting the accused-appellants. B C

In the result, Criminal Appeal No.752 of 2001 filed by A-2 Bihari Manjhi, A-4 Ramautar Dusadh @ Lakhan Dusadh, A-7 Wakil Yadav and Criminal Appeal No. 765 of 2001 filed by A-6 Rajendra Paswan are allowed and the judgment and order convicting the appellants is set aside and they are acquitted of the offences for which they were charged and it is ordered that they be released forthwith, if not required in any other case. D

N.J.

Appeals allowed.