

A

PRAKASH KUMAR @ PRAKASH BHUTTO

v.

STATE OF GUJARAT

APRIL 24, 2007

B

[K.G. BALAKRISHNAN CJ. AND G.P. MATHUR, J.]

C

*Penal Code, 1860—Sections 120B, 342 and 365—Conviction under—
On basis of confession made by co-accused—Correctness of—Held: Confession
made was to the effect that the accused in the company of other co-accused
and had pointed towards the victim whereupon other accused took the victim
forcibly which is not proved by other independent evidence—No other
supporting evidence to prove the guilt of the accused—Thus, conviction of
accused not correct and is set aside—Evidence.*

D

According to the prosecution case, the appellant-accused in criminal Appeal No. 526 of 2001 along with other accused kidnapped a business man, confined him and extorted money. Complaint was lodged and investigation was carried out. Few of the accused persons were arrested. One of the co-accused expressed his desire to make confession. His confession was recorded which gave detailed statement regarding the commission of crime. On basis of the confession made by co-accused, the appellant was convicted for the offences punishable under sections 120-B, 342 & 365 IPC. Hence the present appeal.

E

Allowing the appeal, the Court

F

HELD: 1. The confession of a co-accused by itself is not sufficient to hold the other accused guilty. The confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidence, if any, adduced by the prosecution. However, confession is a substantive piece of evidence, but as a 'Rule of Prudence' the court should seek other corroborative evidence to test its veracity. [Para 6] [536-D-E]

G

Haricharan Kurmi v. State of Bihar, [1964] 6 SCR 623 and *State through Superintendent of Police, CBI/SIT v. Nalini and Ors.*, [1999] 5 SCC 253, relied on.

2. In the instant case, the prosecution could not adduce any other

H

supporting evidence to prove the guilt of the appellant. Even based on the confession of the co-accused, the only allegation against the appellant is that he was in the company of the other co-accused and had pointed out towards the victim by making a sign whereupon the other accused over-powered the victim and took him forcibly in the Maruti van. To prove that the appellant was in the company of other accused, there is no other independent evidence. Even though the prosecution adduced other evidence to prove that the victim was forcibly taken and kept in unlawful custody, the complicity of the appellant could not be proved. The prosecution failed to prove the case against the appellant. Therefore, the finding of the Special Judge is erroneous and the appellant is acquitted of all the charges framed against him. The appellants in the other appeals are also acquitted of all the charges framed against them. The appellants on bail, are discharged from the liability of bail bonds.

[Paras 7, 8 and 9] [533-F-G, H; 537-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 526 of 2001.

From the Judgment and Order dated 19.03.2001 of the Designated Court Nos. 3 at Ahmedabad in Terrorist Criminal Case No. 2 of 1997.

WITH

CrI. A. No. 545 & 665 of 2001.

Sushil Kumar, Vinay Arora, Adolf Mathew, Mukesh Kumar, Sanjay Jain, Priyanka Adhyaru, Sudarshan Singh Rawat, Dr. Manish Singhvi, Prakash Kumar B. (for Ashok K. Mahajan) and Anu Mohla for the Appellants.

Yashank Adhyaru, Vibha Datta Makhija, Sadhana Sandhu, Pinky Behera, Hemantika Wahi and K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, CJI. 1. All these appeals arise out of common judgment dated 19-3-2001 of the Designated Court at Ahmedabad for trial of TADA cases in Terrorist Criminal Case No. 33 of 1994 and Terrorist Criminal Case No. 24 of 1996. There were seven accused in Terrorist Criminal Case No. 33 of 1994 and four accused in Terrorist Criminal case No. 24 of 1996. One accused died during the pendency of the case and six accused were convicted for the offences punishable under Sections 120, 365 read with Section 120-

A B of the Indian Penal Code (IPC) and Section 342 read with Section 120-B IPC.

2. The appellant in Criminal Appeal No. 526/2001 was the ninth accused and was convicted for the offences punishable under Sections 120 B, 342 and 365 IPC. All the accused were charged for various offences under IPC, TADA Act and Arms Act. The allegation against the appellant was that on 26-9-1993 at about 2.00 P.M, he alongwith other accused kidnapped one Babulal Misrimal Jain and kept him in confinement for two days and extorted money. The said Babulal Misrimal was the owner of Ratnamani Tubewell Limited at Kalol. On 26-9-1993, he went for a community lunch held at Rani Sati Hall in Ahmedabad. After the lunch he was standing outside the hall with his friends when the accused came in a Maruti-van and accused No. 2 Mohammad Salim (now deceased), accused No. 3 Iqbal Hussain and accused No. 10 Mohammad Atik dragged him into that van. Thereafter they took him to an unknown place and kept in confinement. When Babulal Misrimal was being taken away, some of his friends and relatives standing outside made a hue and cry and it was alleged that accused No. 3 Iqbal Hussain and accused No. 10 Mohammad Atik opened fire by using their revolvers. Babulal Misrimal was taken to Amul Process House at Danilimbad owned by accused No. 6. Thereafter, the accused demanded Rs. 60 lacs from the brothers and relatives of Babulal Misrimal. Finally, the deal was struck at Rs. 25 lacs. The amount of ransom was received and it was shared amongst all the accused. The major share of Rs. 4 lacs was paid to accused No. 1 Abdulwahab. An amount of Rs. 40,000/- was received by accused No. 10 Mohammad Atik. Prosecution also alleged that some of the accused purchased properties making use of the money received from Babulal Misrimal. The accused No. 1 is reported to have also applied for a passport under a fictitious name. Another accused namely, Sherjada died during the course of investigation. Accused Abdul Latif though charge-sheeted died before the charge could be framed against him by the court.

3. On 26-9-1993 at about 2.30 P.M. Dinesh Ramanlal Shah gave a complaint to the Shahibaug Police Station. They registered the crime and informed the superior Police Officers about the incident. PW 18 visited the scene of occurrence and recovered two empty cartridges from the place and also the chappals and slippers. Police inspector Jivabhai Ratnabai Prajapati (PW 19) took over further investigation. He visited the scene of occurrence and recorded the statements of some of the witnesses who were available. Later, the investigation was handed over to another officer and on 9-4-1994 accused No. 3 was arrested. Thereafter Police Inspector Udaykumar Tribhavan took over the investigation and arrested accused Nos. 6 and 7 on 27-7-1994.

A-4, A-1 and A-2 were also arrested later. On 8-9-1994, the investigation was handed over to ACP, Shri B.R. Patil. He requested for Government sanction for invoking the provisions of TADA Act against the accused. A-8 was arrested on 12-3-1996. Accused Sattar Battery expressed his willingness to give a confession and accordingly the Assistant Commissioner of Police B.R. Patil recorded his confession under Section 15 of the TADA Act. PW 25, B.R. Patil, Assistant Commissioner of Police in Crime Branch at Ahemdabad arrested Babakhan s/o Ismailkhan on 11-1-1995. On 14-1-1995, accused Babakhan (A-11) expressed his desire to make a confession and he was produced before the Deputy Commissioner of Police, Shri A.K. Surolia. On the next date, that is, 15-1-1995, PW 25 was asked to produce A-11 Babakhan and his confession was recorded. Deputy Commissioner of Police, Shri A.K. Surolia gave the confession of A-11 Babakhan in a sealed cover to PW 25 B.R. Patil and asked him to produce A-11 Babakhan, along with the sealed cover containing his confession, before the Chief Metropolitan Magistrate.

4. A-11 Babakhan gave a detailed statement regarding the commission of the crime and the relevant part of the confession is as follows :-

“About quarter and one year, in the ninth month of 1993, during last week, Atik told me that Shejada sits in the office situated opp. Mirzapur Court where Prakash Bhutto is sitting. He told us that on 26th Noon, in Rani-Sati Hall, near Shahibaug, Underbridge, there is Community lunch of Baniya, wherein leading persons are to come and for their abduction, there would be no difficulty and crores of rupees would be obtained. After such talk, Sherjada called me, Atik, Vahab, Iqbal Bhuriyo, Salim Ando and Yasin Chipa of Jamalpur at his home he gave Point 45 Revolver to Atik and Point 38 Revolver to Ibu. The number plate of Maruti-van of Sherjada being No. GJ-9-1045 was affixed and taking it, we went to Rani Sati Hall. Salim Ando was driving the vehicle. We stood at one place. Outside the Hall, Prakash Bhutto pointed out one fat industrialist seated on the scooter by making the sign, whom we identified exactly. Salim Ando took the Maruti-van towards him and brought it near said fat man and stopped it. Lifting the said fat man and while throwing him in the vehicle, some scuffle took place. At that time, Ibu and Atik fired shots from their Revolvers and therefore, people scattered and hence, said fat man was thrown in the vehicle. Applying bandage on his eyes, via Underbridge he was brought to Amul Process House in Dani Limda. There also bandage continued on the eyes of said fat man. Sherjada and Vahab

A telephoned to the friends and relatives at their residence of the fat man, and demanded money. The name of the said fat man was Babulal Sanghvi. On the next day, Vahab told that transaction was over and let us release Babulal. I do not know, what amount was taken for the release of Babulal Sanghvi.. But subsequently Vahab told that Rs. 15/ - lacs were obtained. Latifbhai has told not to make disposal. And B Vahab applied the cotton and the bandage of medicine on the eyes of Babulal and putting Balck-gogles on it, Vahab told Atik, Ibu and Sherjada to take Babulal at Kankaria and get him seated in rickshaw, allowing him to go to Shahibaug. Accordingly, on the motor cycle of C Sherjada, Atik and Ibu seated Babulal Sanghvi and dropped him at Kankaria. Subsequently Vahab gave me Rs. 50,000/- for this work.”

5. Based on the above confession made by A-11 Babakhan, the appellant in Criminal Appeal No. 526/2001 was convicted for the offences punishable under Sections 120 B, 342 and 365 IPC.

D 6. The confession of a co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidence, if any, adduced by the prosecution. [See : *Haricharan Kurmi v. State of Bihar*, [1964] 6 SCR 623, E *Though in State through Superintendent of Police, CBI/SIT v. Nalini and Others.*, [1999] 5 SCC 253, it has been held that confession is a substantive piece of evidence, but as a ‘Rule of Prudence’ the court should seek other corroborative evidence to test its veracity.

F 7. The prosecution could not adduce any other supporting evidence to prove the guilt of the appellant. Even based on the confession of the co-accused, the only allegation against the appellant is that he was in the company of the other co-accused and had pointed out towards the victim by making a sign whereupon the other accused over-powered the victim and took him forcibly in the Maruti van. To prove that the appellant was in the company of other accused, there is no other independent evidence. Even G though the prosecution adduced other evidence to prove that the victim Babulal Misrimal Jain was forcibly taken and kept in unlawful custody, the complicity of the appellant could not be proved. The prosecution has failed to prove the case against the appellant.

H 8. Therefore, the finding of the Special Judge is erroneous. Criminal Appeal No. 526/2001 is allowed and the appellant herein is acquitted of all the

charges framed against him. The appellant, who is on bail, is discharged from the liability of bail bonds. A

9. Criminal Appeal No. 545/2001 and Criminal Appeal No. 665/2001 filed against the same judgment are also accordingly allowed and the appellants therein are acquitted of all the charges framed against them. The appellants, who are on bail, are discharged from the liability of bail bonds. B

N.J.

Appeal allowed.