

CASE NO.:  
Appeal (crl.) 1230 of 1998

PETITIONER:  
BABU KUTTAN R.PILLAI & ANR.

Vs.

RESPONDENT:  
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 15/12/2000

BENCH:  
S.S.M.Quadri, D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

#### J U D G M E N T

D.P. MOHAPATRA, J

This appeal, filed by accused no.1 Babu Kuttan Ramkrishna Pillai and accused no.2 Umesh @ Babu Purshottam Bhatt of TADA ACT Spl.Case No.33 of 1994, is directed against the judgment and order dated 21.8.1998 of the Designated Court at Brihan 'Mumbai under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short TADA Act). In the said case seven accused persons faced trial under Section 120-B read with 307 r/w 34, 307 r/w 114, 307 r/w 149, 387 r/w 34, 143, 144, 147, 148 and 506 (ii), 353 r/w 114 of the Indian Penal Code and Sections 3(2)(ii), 3(3), 3(5), 5 and 6 of the TADA Act and section r/w 25(IB) (a), Section 5 r/w 27 of the Arms Act. The gist of the prosecution case relevant for the purpose of this proceeding may be stated thus: With the growth of industry, commerce and trade in and around the city of Mumbai which generates substantial quantity of wealth, there has been increase of organised activities by gangs of anti-socials to extract money from affluent sections of society like developers, hoteliers and other businessmen by putting them in fear of death and then to demand substantial sums of money commonly known as "Khadani" i.e. protection money. One such gang was operating in the city under Amar Naik @ Bhai, who died a couple of years before the decision in the case at an encounter with the police. The prosecution alleged that in pursuance of a criminal conspiracy between 15.1.1994 to 16.5.1994 the accused persons and others of the gang embarked upon preparatory acts like procuring the information about the names of the builders of M/s Kalpataru Construction Company which was engaged in developing a property at Pali Hill, named Nakshatra Building. PW-7 Sudhir Tambe was the Senior Vice-President of the company with its head office at Nariman Point. He used to sit in the head-office. PW 6 Pachapur, Civil Engineer, was an employee of the company who used to remain at the site to

supervise the construction. As the prosecution story runs, on 15.4.1994 between 11.30 a.m. and 12.00 noon while PW 6 was on duty at the construction site, accused no.3, Nitin Vasant Venugurlekar armed with revolver and accused No.4 Rajindera @ Rajan Mahadeo Margaj armed with a chopper and accused no.5 Jayendra @ Jai Anandrao Jadhav also armed with a chopper visited the site of Nakshatra Building; they threatened the workers at the site, forcibly brought PW 6 Pachapur in a room on the ground floor and man-handled him. Accused no.3, pointing a revolver at him demanded the name, address and telephone number of the builders. PW 6 disclosed the name of PW 7 Tambe and gave his telephone number to them. The accused then asked him to go to the office of the builders at Nariman Point and make the arrangement for a telephonic talk with Tambe. PW 6 rushed to the office and told Tambe of what had happened at the construction site. This was followed by telephonic calls from the accused who wanted to speak to Tambe. Attempts were made by PW 6 and PW 7 to avoid any discussion with the gangsters. Two or three days thereafter when the accused got Tambe on the telephone he (Tambe) gave them some other telephone numbers and asked them to contact those persons including one D.N.Ghosh, the Security Contractor. Eight/ten days thereafter again a telephone call was made to the office of Tambe which was received by PW 6 who was informed by the person making the call that they could not get D. N. Ghosh on the telephone numbers furnished by Tambe. Thereafter PW 6 handed over the receiver to Tambe. This incident was followed by several threats given by the gangsters to workers and also repeated telephone calls made to the Head Office of the company to contact Tambe. The staff of the site office absented from work resulting in virtual closure of construction activity. On 11.5.1994 the deceased Sanjay Patil telephoned to Tambe and warned him that he is wasting time and should meet him without further delay. After some days there was one more similar call from Sanjay Patil and he asked Tambe that he should talk to Bhai and saying so he handed over the receiver to another person who gave his identity as Amar Naik (since deceased), who told Tambe that he should pay Rs.10 lacs. The later pleaded his inability to pay such a heavy sum and after some discussion agreed to pay Rs.5 lacs. He was asked to come to Nakshatra Building site on 16.5.1994 along with money. In the meantime Tambe informed all the happenings to the Addl. Commissioner of Police Mr.Sanjeev Dayal and the then Dy. Commissioner of Police of Zone VII Mr. Rajanish Sheth within whose jurisdiction Khar Police Station fell.

On 16.5.1994 at about 12.00 noon the deceased Sanjay Patil telephoned Tambe and inquired from him as to what he was going to do about the payment and then Tambe replied that he will be leaving office at about 2.00 p.m. for Pali Hill. Sanjay Patil cautioned him that he should not make any haste and he should wait for his call so that he will take necessary instructions from his boss i.e. Amar Naik. At about 2.00 p.m. on that day there was a telephone call from Sanjay Patil telling that Tambe should not meet him at the Nakshatra Building site but instead he should meet him near the Ceaser Palace Hotel. This telephonic conversation was tape-recorded. Tambe was instructed on telephone that his man shall carry a white plastic bag containing the amount of Rs.5 lacs and shall wait near the entrance gate of Ceaser Palace Hotel and the person coming to collect the said bag will introduce himself as Me Rawanacha Manus Hai. Tambe informed to the DCP all these happenings and handed

over the tape in which the telephonic conversation was recorded by him. The DCP had made the arrangements to keep a regular watch near the building site. PW 1 Sunil Deshmukh was deployed to wait in cognito near the gate of the Ceaser Palace Hotel and to carry the white plastic bag containing bundles of papers which would give an appearance like the bundles of currency notes. The other officers, who were also in cognito, had taken their position at strategic points near the hotel. At about 4.05 p.m. Sunil Deshmukh noticed that one red coloured Maruti van halted in front of the Ceaser Palace Hotel. He noticed three persons getting down from the said van. Those three persons were coming in his direction, and the van went ahead 50 to 60 feets and halted there. The deceased Sanjay Patil and the accused no.7 Babu Sidhram Gaikwad got down from the said van and accused no.6 Mohamed Ismail was sitting on the driver seat in the van. The three accused persons i.e. accused no.1 Babu Kuttan Pillai, accused No.2 Umesh @ Babu Bhatt and the absconding accused Ramchandra Negi approached PW 1. He enquired from PW1 about his identity and when PW 1 replied that he has been sent by Tambe Sahib. PW 1 Sunil Deshmukh then asked that person who are you (Tum Kaun Hai) and then the accused no.2 Umesh Bhatt told him that Hum Rawan Ke Aadmi Hai. Thereafter accused no.1 Babu Kuttan extended his hand towards PW 1 who delivered the bag to him. At this juncture the police officers who were standing nearby in cognito rushed to the place and surrounded the three persons. When the police officers were trying to overpower them the deceased Sanjay Patil @ Avinash Amanna and the accused no .7 Babu Sidhram Gaikwad came forward with revolvers in their hands and threatened the police party by saying they should leave their men or else the policemen will be killed. Saying so they fired in the direction of the police party. At this point PW 1 took out his revolver and pointed it in the direction of the accused and told them we are all policemen and you should throw away your revolvers else we will fire. Even then the accused persons fired some rounds in the direction of the police party, then PW 1 and one other officer tried to rush towards them but they sat in the said Maruti van and sped away from the place.

After the situation calmed down, the police drew the panchnamas Ex.22 in presence of some witnesses and conducted personal search of the three culprits. On such search accused no.1 Babu Kuttan Pillai was found to possess the plastic bag containing the paper bundles (Art.1), accused no.2 Umesh Bhatt was found to possess a big Rampuri knife which was hidden at the waist under the pant by left side.

After completion of investigation the police submitted the charge-sheet. The three persons at the spot were remanded to the police custody. Subsequently, the other accused persons were also arrested. They were put to test identification parade. The learned Trial Judge on appreciation of the evidence on record convicted accused no.1 Babu Kuttan Ramkrishna Pillai and the accused no.2 Umesh @ Babu Purshottam Bhatt for the offence punishable under section 395 of the Indian Penal Code and sentenced each of them to suffer rigorous imprisonment of 5 years and to pay a fine of Rs.500, in default of payment of fine to undergo further Rigorous Imprisonment for 6 months. They were also convicted under Section 120 B of the IPC but no separate sentence was passed. They were acquitted of the

other offences with which they were charged. The remaining accused persons i.e. accused nos. 3,4,5,6 and 7 were acquitted of all the charges framed against them. Accused nos. 1 and 2, have filed this appeal assailing the judgment passed by the Designated Court at Brihan Mumbai, convicting/sentencing them as above.

On a reading of the judgment under challenge, we find that the learned trial Judge has considered the entire case led by the prosecution in great detail and after discussing the charges framed against the appellants under sections 3(2), 3(3) and 3(5) of TADA Act, rejected the prosecution case on that count. Thereafter the learned trial Judge in paragraph 17 onwards considered the question of what offence was made out against the appellants. After a detailed discussion of the relevant evidence placed by the prosecution and after examining it in the light of the contentions on behalf of the defence, the learned trial Judge believed the testimony of PW 1- Sunil Deshmukh, PW 7 - Tambe and PW 9 - L.J. Kamble and came to hold that the appellants are guilty of the offence of criminal conspiracy punishable under section 120-B and the offence of dacoity punishable under section 395 IPC and convicted them thereunder and imposed the punishment as noted earlier.

We have perused the evidence of these witnesses. We do not find that the appreciation of evidence made by the learned trial Judge suffers from any illegality nor can findings recorded by him be said to be perverse. The learned trial Judge has given cogent reasons for accepting the evidence lead by the prosecution against the appellants and for rejecting the contentions raised by the defence. We are not satisfied that the judgment of the learned trial Judge calls for interference by this Court. Accordingly the appeal is dismissed.