

CASE NO.:
Appeal (crl.) 531 of 2004

PETITIONER:
Hardeep Singh Sohal, etc.

RESPONDENT:
State of Punjab Through C.B.I.

DATE OF JUDGMENT: 28/09/2004

BENCH:
K.G. Balakrishnan & Dr. A.R. Lakshmanan

JUDGMENT:
J U D G M E N T

WITH

CRIMINAL APPEAL NO. 577 OF 2004

K.G. BALAKRISHNAN, J.

The appellants in these two appeals were tried by the Designated Court, Patiala, for various offences such as punishable under Section 120-B, 302, 307, 394 IPC; Section 25 of the Arms Act; and Sections 3(1), 3(2) & 3(3) of the Terrorist & Disruptive Activities (Prevention) Act, 1987 [for short, 'the TADA Act']. Along with these two appellants, one Balwinder Singh @ Fauji @ Pradhan was shown as the third accused, but he was absconding and was declared as a proclaimed offender, not available for trial. The appellants were found guilty by the Designated Court for the offences punishable under Section 120B read with Section 302 IPC and also under Section 3(3) of the TADA Act. Both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 3,000/- with default sentence for six months, for the offence under Section 120-B read with Section 302 IPC. For the offence under Section 3(3) of the TADA Act, they were sentenced to undergo imprisonment for a period of five years each and to pay a fine of Rs.2,000/- with the default sentence of six months. The allegation against these appellants was that they entered into a conspiracy with Balwinder Singh to murder Dr. Megh Raj Goel on 6.2.1992 at about 10 P.M.. Balwinder Singh shot at Dr. Megh Raj Goel and caused him fatal injuries. Dr. Megh Raj Goel died at 6.25 A.M. on 7.2.1992.

According to the prosecution, Dr. Megh Raj Goyal, with his wife Dr. Suman Rani Goel, was running a Psychiatric hospital in Patiala. Both of them had completed their education in psychiatry in England and returned to India in 1989. They started Goyal Psychiatric Hospital at 34, Punjabi Bagh in Patiala and later shifted to 85, Punjabi Bagh in May, 1991. Appellant in Criminal Appeal No. 577, Dr. Surinder Singh Sandhu was already running "Sandhu Nursing Home" in Psychiatry since 1973 and he had almost established a monopoly in the field of treatment of psychiatric patients. When deceased Dr. Megh Raj Goel and his wife started their hospital, it gained popularity, and according to the prosecution, Dr. Surinder Singh Sandhu was adversely affected. The prosecution alleged that the number of patients who were being treated in Sandhu Nursing Home gradually declined whereas there was a steep increase in the number of patients that received treatment in the hospital of the deceased, Dr. Megh Raj Goel. The prosecution further alleged that appellant, Dr. Surinder Singh Sandhu met Dr. Hardeep Singh Sohal, the appellant in Criminal Appeal No. 531 of 2004, and together they hatched a conspiracy and decided to do away with Dr. Megh Raj Goel. Dr. Hardeep Singh Sohal secured the presence of one Balwinder Singh @ Fauji with the assistance of Miss Sawinder Kaur, a staff nurse working in the Rajindra

Hospital, Patiala. The appellant agreed to pay Rs.2 lacs to Balwinder Singh and a sum of Rs.50,000/- was paid as initial payment. On 6.2.1992, Balwinder Singh came to Patiala and saw a Maruti car bearing registration No. PCH 8008 parked near hotel Greens. The owner of the car Surinder Kumar Bajaj was sitting in the car. Balwinder Singh came near the car and fired a shot from his revolver at Surinder Kumar Bajaj through the window of the car causing injury on his right thigh. Balwinder Singh then quickly got into the car and occupied the left front seat of the car and at revolver point forced Surinder Kumar Bajaj to drive the vehicle towards Goyal Psychiatric Hospital. They came near that hospital around 10 P.M. and saw Dr. Megh Raj Goel and his wife Dr. Suman Rani Goyal, who had gone for a stroll, coming towards their hospital. At that point, Balwinder Singh fired two shots from his revolver at Dr. Megh Raj Goel. Dr. Goel fell on the ground and in that commotion Surinder Kumar Bajaj managed to run away from that place leaving his car there. Balwinder Singh then escaped in that car and later the car was found abandoned near the T.B. Hospital. Injured Megh Raj Goel was immediately taken by his wife to the Surgical Centre, Model Town, Patiala and from there to Rajindra Hospital, Patiala. Dr. Megh Raj Goel was operated upon by a team of doctors there, but they could not save his life and he was declared dead at 6.25 A.M. on 7.2.1992.

Based on the information given by Dr. Suman Rani Goel, the police registered a case under Section 307 read with Section 34 IPC and Section 25 of the Arms Act. Subsequently, offences under Section 382, 302 IPC and Section 4 and 5 of the TADA Act, 1987 were added. Balwinder Singh was arrested by Inspector Gurnam Singh, SHO Police Station Civil Lines, Patiala on 8.4.1992 at about 7.30 P.M. in connection with a case registered against him under Section 302 and 382 IPC and Section 25 of the Arms Act. A point thirty two bore country-made revolver with six live cartridges were recovered from him. On interrogation, Balwinder Singh made a voluntary confession and admitted having committed the murder of Dr. Megh Raj Goel. Section 4 and section 5 of the TADA Act were added to the case registered earlier and the District Suptd. of Police City Patiala, Shri Ajaib Singh recorded the confessional statement of Balwinder Singh under Section 15 of the TADA Act, 1987. Balwinder Singh was remanded to police custody from time to time and according to prosecution on 3.5.1993 Balwinder Singh was taken on transit remand to District Sangrur in connection with another case and there he escaped from the police custody on 5.5.1993 while being taken for effecting recovery of arms and ammunition, for which a case had been registered against him at Police Station Bhawanigarh in District Sangrur. The prosecution would further contend that Balwinder Singh could not be traced and he was declared a proclaimed offender by an order passed by the Judicial Magistrate First Class, Patiala, on 24.10.1994. Based on the confessional statement of Balwinder Singh, the present appellants Dr. Hardeep Singh Sohal and Dr. Surinder Singh Sandhu were arrested by police on 19.4.1993 and the investigation continued. In the meantime, Dr. Suman Rani Goyal, wife of deceased Dr. Meghraj Goyal, filed a writ petition before the High Court of Punjab & Haryana alleging that police were not vigilant in investigating the case and she prayed for investigation being done by the Central Bureau of Investigation. In pursuance of the order passed by the High Court of Punjab & Haryana on 9.7.1996, the investigation of the case was entrusted to the C.B.I. and they conducted the further investigation. After completion of the investigation, the C.B.I. submitted the charge sheet. On the side of the prosecution PW-1 to PW-47 were examined. Appellant Surinder Singh Sandhu, when questioned under Section 313 Cr.P.C., alleged that he had been falsely implicated. He stated that he had secured MBBS Degree from the Punjab University and D.P.M. from Ranchi University and that he had put in 43 years of experience as a Psychiatrist and had worked in various hospitals. He also stated that his professional income from 1986 to 1992 had been constantly increasing. Hardeep Singh Sohal, the appellant in Criminal Appeal No. 531 of 2004, when questioned under Section 313 Cr.P.C., deposed that he is an Orthopaedic Surgeon and he was Head of Orthopaedics Department, Govt. Medical College, Rajindra Hospital, Patiala. He stated that he had had a brilliant academic career and served in different medical colleges in Punjab. He also deposed that his son Harmandeep Singh was killed by the police while he was travelling in a car along with other members of the family. He stated that the police had fired from behind and hit on the head of his son, who died on the

spot. He further stated that he had raised a hue and cry regarding the cold-blooded murder of his son and the senior police officers assured that action would be taken against the guilty persons, but it is on account of this that the police had become inimical towards him. He denied having any connection with Balwinder Singh and stated that he did not know Miss Sawinder Kaur. He also stated that he had no social or professional dealings with the other appellant, Dr. Surinder Singh Sandhu.

On the side of the defence, DW-1 and DW-2 were examined.

The fact that Dr. Megh Raj Goyal died of bullet injuries at 6.25 A.M. on 7.2.1992 is not disputed. The Special Judge found the present appellants guilty of murder on the basis of the evidence of confession of Balwinder Singh @ Fauji recorded by PW-34 Sham Lal Gakhar. Apart from this confession, there is no other reliable evidence either to prove conspiracy by the appellants or their involvement in the crime. To prove the conspiracy, the prosecution relied on the testimony of PW-32 Sawinder Kaur. PW-32 is a staff nurse in the Rajindera hospital at Patiala. Appellant Dr. Sohal was an Orthopaedics doctor in that hospital. PW-32 deposed that Dr. Sohal requested her whether Balwinder Singh could be asked to meet him within two-three days. PW-32 and Balwinder Singh thereafter went to the house of Dr. Sohal. She further deposed that Dr. Sohal had some discussion with Balwinder Singh and at that time she was with the wife of Dr. Sohal whom she knew previously. PW-32 also deposed that at that time one more person was present in the house along with Dr. Sohal and she later identified him to be the other appellant, Dr. Sandhu. She also said that when Balwinder Singh left the house, he was holding a small packet with him. PW-32 further deposed that Balwinder Singh met her later and when she asked him as to what work he had with Dr. Sohal, he replied that Dr. Sohal wanted to kill a person and that Balwinder Singh had done so and that Dr. Sohal had paid Rupees fifty thousand to him and he wanted to get the balance. PW-32 also deposed that she was astonished to hear about this incident and she came to know that Dr. Megh Raj Goyal had been murdered. PW-42 is another witness who spoke about the extra judicial confession of Balwinder Singh. PW-42 is the wife of deceased Megh Raj Goyal. She deposed that in April, 1993 she received a telephonic call from one of her relatives who told her that the police had apprehended a person who had confessed to have murdered Dr. Megh Raj Goyal. PW-42 went to the police station where she saw a person in handcuffs. PW-42 told the Inspector Gurnam Singh that he was the same person who had shot her husband. She asked Balwinder Singh what was the reason for killing her husband. To that Balwinder had replied that it was a job assigned to him by Dr. Sohal and he also stated that PW-32 Sawinder Kaur was working as a nurse in the Rajindera hospital where Dr. Sohal was working and that he had received the message from Dr. Sohal through PW-32 and thereafter met Dr. Sohal, who told him that after the arrival of Dr. Megh Raj Goyal at Patiala, the practice of Dr. Sandhu was badly affected and, therefore, he wanted to do away with Dr. Megh Raj Goyal and that Rupees two lakhs was demanded by Balwinder Singh out of which Rupees fifty thousand was paid and the balance was to be paid after the commission of the murder.

The extra-judicial confession allegedly made by Balwinder Singh can only be considered under Section 30 of the Indian Evidence Act 1872. The extra-judicial confession cannot be admitted in evidence as Balwinder Singh was not tried along with the appellants. It is interesting to note that though a charge-sheet was filed against Balwinder Singh, in the judgment he is shown as a proclaimed offender. According to the prosecution, Balwinder Singh was arrested on 18.4.1993. PW-45 Gurnam Singh, who was the Station House officer of the police station civil lines, Patiala, along with a Sub-Inspector and three Constables was on patrol duty near N.I.S. chowk, Patiala on 18.4.1993. They came to know that one taxi driver who had committed various crimes had been roaming in the city in a vehicle without registration number. In the meanwhile, one maruti car without registration number came and the same was intercepted and its driver was taken into custody. He was in possession of a point thirty two bore revolver loaded with five live cartridges. He told them that his name was Balwinder Singh. According to the prosecution he escaped from

custody and was later declared as a proclaimed offender. The counsel for the appellants contended that Balwinder Singh was killed in a fake encounter by the police, for which a criminal case also is filed against some of the police officers. In any case, Balwinder was never tried along with the present appellants. The extra-judicial confession made by Balwinder Singh could have been taken into consideration only when he was tried along with the present appellants.

The other item of evidence relied upon by the Special Judge is the confession of Balwinder Singh recorded by PW-34 Sham Lal Gakhar, an IPS officer, who was the then Superintendent of Police, Patiala. He deposed that on 18.4.1993 while he was on patrol duty, PW-45 Gurnam Singh met him and told that they had apprehended one Balwinder Singh with a point thirty two bore revolver and on his interrogation he had told about his involvement in various crimes, including the murder of Dr. Megh Raj Goyal. Balwinder Singh was produced before PW-34 and he recorded the confession of Balwinder Singh. The confession of Balwinder Singh so recorded was marked as Exh. PAA. In the confession statement, Balwinder has given the details of his involvement in the crime.

The counsel for the appellants strongly urged before us that the confession allegedly made by Balwinder Singh under Section 15 of the TADA Act is inadmissible in evidence. It was also contended that the same was recorded in complete defiance of the provisions of TADA Act and the Rules framed thereunder and that mandatory provisions have not been followed. Therefore, the confession statement is to be completely eschewed from consideration.

Before considering the admissibility of the confession, it is relevant to note the various provisions of the TADA Act. Previously, under Section 21 of the TADA Act, a presumption could be drawn as to the commission of offence on the accused based on the confession made by the co-accused. Section 21 of the TADA Act, prior to 1993, was to the following effect :

"21. Presumption as to offences under Section 3 ----(1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved\027

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(c) that a confession has been made by a co-accused that the accused had committed the offence; or

(d) that the accused had made a confession of the offence to any person other than a police officer,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence."

By Act No. 43 of 1993, clause (c) of Section 21 of the TADA Act was deleted and original Section 15 of the TADA Act also was amended by the very same Act, i.e. Act No. 43 of 1993. Original sub-section (1) of Section 15 of the TADA Act was as follows :

"15. Certain confessions made to police officers to be taken in consideration ---(1) Notwithstanding anything in the Code or in

the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this Section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder :

As aforesaid, by Act No. 43 of 1993, it was amended and the amended provision is as follows :

"15. Certain confessions made to police officers to be taken in consideration ---(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this Section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder :

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section(1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

A perusal of these provisions would show that by Act No. 43 of 1993, certain serious changes have been made in the matter of admissibility of confession made by a co-accused. Prior to the Amendment Act 43 of 1993, if a confession had been made by a co-accused that he had committed the offence, the Designated Court could draw a presumption that the accused had committed such offence, unless the contrary was proved. This provision was completely taken away and instead of that the confession of a co-accused recorded under Section 15 of the TADA Act was made admissible subject to certain conditions. One major change that was brought into effect was that such confession recorded under Section 15 of the TADA Act by a co-accused could be made use of against that accused provided the co-accused is charged and tried in the same case together with the accused. The scope and ambit of the confession recorded under Section 15 of the TADA Act was considered elaborately by a 3-Judge Bench of this Court in *State vs. Nalini* (1999) 5 SCC 253. The majority decision in that case was that the confession recorded under Section 15 of TADA Act is a substantive evidence, although *Thomas, J.*, relying on the earlier decision of this Court in *Kalpna Rai vs. State (Through CBI)*, (1997) 8 SCC 732 held that even if confession of an accused is admissible under Section 15 of TADA Act, it is not a substantive piece of evidence and cannot be used against a co-accused unless corroborated by other evidence. However, the majority consisting of *Wadhwa and Quadri, JJ* held that Section 15 of the TADA Act starts with a non obstante clause as it says that neither the Evidence Act nor the Code or Criminal Procedure will apply and this was certainly a departure from the ordinary law and when the legislature enacted that the Evidence Act would not apply, it would mean all the provisions of the Evidence Act including Section 30 and, therefore, confession recorded under Section 15 of the TADA Act is admissible against the co-accused as a substantive evidence. However, it was clarified that substantive evidence does not necessarily mean substantial evidence. It is the quality of the evidence that matters.

Section 15 of the TADA Act as amended by Act 43 of 1993 clearly stipulates that the confession recorded under Section 15 of the TADA Act is admissible only if the confessor is charged and tried in the same case together with the co-accused. After the amendment of 1993, the addition of the words "co-accused, abettor or conspirator" and the insertion of the new 'proviso' to the effect that "the co-accused, abettor or conspirator is charged or tried together with the accused" clearly shows that the confession could be considered by the court only when the co-accused who makes the confession is charged and tried along with other accused.

Unfortunately, Balwinder Singh @ Fauji is alleged to have escaped from custody by 4th or 5th of May, 1993 and the charge itself was framed by the court later and Balwinder Singh was treated as a proclaimed offender by the Special Judge. The Special Judge relied on the decision reported in Esher Singh vs. State of Andhra Pradesh 2004 AIR SCW 1665 and held that merely because one accused died before charges were framed, that does not affect the confessional statement. The learned judge was also of the view that by operation of Section 30 of the Indian Evidence Act, the confession of the co-accused could be made use of. The stand taken by the Special Judge is incorrect. We do not think that Esher Singh's case (supra) lays down the law that a confession recorded under Section 15 could be made use of as admissible evidence even if the co-accused, who made the confession was not charged or tried along with other accused. On the other hand, the decision clearly states that after the amendment, the designated court could use the confession of one accused against another accused only if the following two conditions are fulfilled :

- (1) The co-accused should have been charged in the same case along with the confessor.
- (2) He should have been tried together with the confessor in the same case.

Another important contention urged by the appellant's counsel is that PW-34, while recording the confession violated the mandatory provisions regarding the manner in which the confession is to be recorded. Under Section 28 of the TADA Act, Terrorist and Disruptive Activities (Prevention) Rules, 1987 are made. Rule 15 regarding recording of confession made to police officers reads as under :

"15. Recording of confession made to police officers---(1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confessions so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession.

(3) The confession shall, if it is in writing, be ---
(a) signed by the person who makes the confession; and
(b) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this

confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him."

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) insofar as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence."

The constitutional validity of Section 15 of the TADA Act was challenged. A Constitution Bench of this Court in *Kartar Singh vs. State of Punjab* (1994) 3 SCC 569 upheld the constitutional validity of the said provision. The contention urged in *Kartar Singh's* case (supra) was that the procedure in the TADA Act is the antithesis of a just, fair and reasonable procedure and this power could be abused to extort confession by unlawful means by using third-degree methods. This plea was rejected on the ground that sufficient safeguards have been made in the rules as to the manner in which the confession is to be recorded. Rule 15 extracted above would show that confession shall be in writing and signed by the person who makes the confession. The police officer shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession and the proforma of such certificate also is appended to Rule 15.

Exh. PAA does not contain such a certificate having been given by PW-34. It is true that PW-34 had put certain questions to the accused as to whether he was aware that the statement which he wants to make could be used against him and on the basis of the same he will be sentenced. The officer also asked him whether there is any pressure, fear on him and he answered in the negative. However PW-34 did not give the certificate at the end of the confession. The certificate should have specifically stated that he had explained to the person making the confession that he was not bound to make the confession and if he does so, the confession he may make may be used against him and that he believed that this confession was voluntarily made and it was taken in his presence and recorded by him and was read over to the person making it and admitted by him to be correct, and it contained a full and true account of the statement made by him.

This Court has in a series of decisions deprecated the practice of non-observance of this provision and held that such violation would be inadmissible. In *Bharatbhai @ Jimi Premchandbhai vs. State of Gujarat* (2002) 8 SCC 447, this Court held that Rule 15(3)(b) of the TADA Rules was not complied with and no memorandum as required was made. There was also no contemporaneous record to show the satisfaction of the recording officer after writing of confession that the confession was voluntarily made or read over to the accused. Thus, the confessional statement was inadmissible and cannot be made the basis for upholding the conviction.

In *S.N. Dube vs. N.B. Bhoir* (2000) 2 SCC 254, this Court held that writing the certificate and making the memorandum under Rule 15(3)(b) to prove that the accused was explained that he was not bound to make a confession and that if he made it, it could be used against him as evidence; that the confession was voluntary and that it was taken down by the police officer fully and correctly are all matters not left to be proved by oral evidence.

In any view of the matter, Exh. PAA confession made by Balwinder Singh to PW-34 is inadmissible in law and cannot be used against the appellants. So also, the extra-judicial confessions allegedly made to PW-32 and PW-42 suffer from the same infirmity.

In our opinion, the Special Judge seriously erred in admitting the confession as an item of evidence against the appellants. Apart from the evidence of the confession, the prosecution attempted to prove the motive of these appellants to do away with Dr. Megh Raj Goyal. But motive by itself is not sufficient to prove the guilt of the accused. The prosecution could not lay its hands on any item of evidence that may come under Section 10 of the Evidence Act, i.e. anything having been said, done or written by any of the appellants in reference to their common intention to kill Dr. Megh Raj Goyal. Though voluminous evidence was adduced by the prosecution, there is none which would come within the parameters of admissible item of evidence.

This is an unfortunate case where a young doctor was killed. As Balwinder Singh could not be jointly tried with the appellants, the entire evidence of confession recorded under Section 15 and the extra-judicial confessions have become inadmissible and in the absence of any other reliable evidence the appellants are only to be acquitted of the charges framed against them. In the result, these appeals are allowed. The appellants are acquitted of all the charges framed against them and directed to be released forthwith, if not required in any other case.