

CASE NO.:  
Appeal (crl.) 733 of 2003

PETITIONER:  
Sukhwant Singh @ Balwinder Singh

RESPONDENT:  
State through C.B.I

DATE OF JUDGMENT: 23/09/2003

BENCH:  
N Santosh Hegde & B P Singh.

JUDGMENT:  
J U D G M E N T

SANTOSH HEGDE, J.

This appeal under Section 19 of the Terrorist & Disruptive Activities (Prevention) Act, 1987 (for short 'the TADA Act') is filed against the judgment of the Judge, Designated Court for Rajasthan, Ajmer in TADA Special Case No.8 of 1992. The appellant herein was accused No.4 in the said case and has been held guilty of an offence punishable under Section 120 IPC, Sections 3 and 6(1) of the TADA Act, Section 5 of the Explosive Substances Act, 1908 read with Section 120-B IPC and had been sentenced to a maximum sentence of 5 years' RI under the main count and has also been imposed sentence and fine under various other charges with a direction that all the sentences of imprisonment should run concurrently.

In view of the fact that we are of the opinion that almost all the contentions raised in the above appeal and argued before us are covered against the appellant by our judgment in Jameel Ahmed & Anr. v. State of Rajasthan [2003 (4) Scale 402], we do not think it is necessary to elaborately deal with the facts of the case. Suffice it to say that before the TADA court, the appellant herein who is arrayed as accused No.4 along with 8 other accused persons was charged for various offences like Section 3(3) of the TADA Act, Section 120-B read with sections 5 and 6 of the Explosive Substances Act, Section 9B and 9C of the said Explosive Act. Of the said 9 accused, 3 had pleaded guilty before the TADA court and their case was separately dealt with ending in their conviction based on their plea of guilt, while 6 others were tried and found guilty of various offences mentioned hereinabove; out of which 4 accused, namely, Gyani Pratap Singh A-1, Didar Singh A-2, Jameel Ahmed A-5, Ismail Bhai A-6 challenged their conviction in Criminal Appeal Nos.1308/2002, 215/2003 and 1361/2002, while the present appellant herein and another convicted accused Kulwant Singh A-3 had then not challenged their conviction by the TADA court. In this appeal, Sukhwant Singh @ Balwinder Singh @ Ballu, who was A-4 before the TADA court has challenged the very same judgment. In our earlier judgment reported in 2003 (4) Scale 402, we held thus :

(i) if the confessional statement is properly recorded, satisfying the mandatory provision of section 15 of the TADA Act and the Rules made thereunder, and

if the same is found by the court as having been made voluntarily and truthful then the said confession is sufficient to base a conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(v) The requirement of sub-rule 5 of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement.

In the present case we are aware of the fact that the appellant has not made any confessional statement nor there is any corroboration of the confessional statement of the co-accused implicating this appellant from any other independent source but then we have held in the above reported case that if confessional statement of a co-accused is acceptable to the court even without corroboration then a confession of a co-accused can be the basis of conviction of another accused so implicated in that confession. Therefore the fact that the appellant herein has not confessed or the confessional statements made implicating him by A-1 and A-2 are not independently corroborated, will not be a ground to reject the evidence produced by the prosecution in the form of confessional statement of co-accused provided the confession relied against the appellant is acceptable to the court.

Applying the said principles to the facts of the present case, we notice the confessional statement of Didar Singh A-2 whose conviction was upheld by us relying on the said confession, shows he met the appellant herein sometime around June-July, 1990 in the house of Gyani Pratap Singh and at the behest of said Gyani Pratap Singh and appellant, said A-2 agreed to procure certain explosives to be sent to Punjab and

said Gyani Pratap Singh gave a sum of Rs.8,000/- to the appellant which the appellant, in turn, gave to Didar Singh A-2, and pursuant to the said promise to procure the explosives, A-2 with the appellant went to Basmat where he met a person who was the younger brother of Sushil Kumar to whom A-2 gave the money to get the explosives. At that time, the appellant had told A-2 that he was a Kharku of Punjab and the explosives were needed by him. Having heard this, said brother of Sushil Kumar wanted an extra sum of Rs.2,000 for the explosives to be delivered. As per the statement of A-2, after the said payment was made, they received 10 cartons of explosives from the brother of said Sushil and his servant which they loaded into their vehicle and came back to the Gurudwara. In the said statement, A-2 says the appellant herein had again gone with him sometime on 5th or 6th December, to obtain more explosives. At that time, the appellant had told A-2 that an empty truck was coming from Nanded and they should keep the explosives ready. Thus, from the above statement of A-2 it is clear that the appellant was closely interacting with A-2 in the purchase of explosives for the purpose of sending the same to Punjab. The further statement of A-2 also shows that the appellant was involved in arranging for the vehicle to take the explosives so procured by A-2 and also in loading the said explosives in the truck. This confessional statement of A-2 which we have found to be fit for acceptance, is supported by the confessional statement of Gyani Pratap Singh A-1 who also corroborates the statement made by A-2. Hence we are of the opinion that the prosecution has established the involvement of the appellant in purchase of explosives and the transportation of the same to Punjab.

In the above factual background, we find no merit in this appeal and the same is hereby dismissed.