

A SHARAFATHUSSAIN ABDULRAHAMAN SHAIKH AND ORS.

v.

STATE OF GUJARAT AND ANR.

NOVEMBER 22, 1996

B [M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

Criminal Law :

Terrorist and Disruptive Activities (Prevention) Act, 1987.

C *Section 15(2) read with Rule 15(3)(b) of Rules—Confession—Recording of—By Police Officer—Police Officer neither gave certificate, in accordance with R. 15(3)(b) of Rules, of his satisfaction or belief about voluntariness of confession after same were recorded nor did he testify about his such satisfaction or belief while being examined as a witness—Held : such*
D *a confession not to be used against accused.*

The appellants were convicted and sentenced under Sections 120-B and 307 of the Indian Penal Code, 1860 read with Sections 3 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Sections 4 and 6 of the Explosives Substance Act, 1908. Hence this appeal.

E The prosecution case was based upon the confessional statements made by the appellants-accused before the Superintendent of Police, P.W. 6, which were recorded under Section 15 of TADA. The Designated Court found the confessions voluntary and true and accordingly passed the order of conviction against the appellants-accused. However, the Superintendent of Police did not give any certificate, in accordance with Rule 15(3)(b) of the Rules framed under TADA, of his satisfaction or belief about the voluntariness of the confessions after the same were recorded. He also did not testify about his such satisfaction or belief while he was examined as a witness.

G Allowing the appeal, this Court

HELD : 1. Apart from the fact that P.W. 6 did not give any certificate, in accordance with Rule 15(3)(b) of the Rules framed under the Terrorist and Disruptive Activities (Prevention) Act, 1987, of his satisfaction or
H belief about the voluntariness of the confessions after the same were

recorded, it is also an admitted fact that while being examined as a witness he did not testify about his such satisfaction or belief. Resultantly, confessions allegedly made by the appellants-accused cannot be pressed into service to prove the charges levelled against them. [89-C-D]

Chandran v. State of Madras, AIR (1978) SC 1574, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 473 of 1996.

From the Judgment and Order dated 26.2.96 of the Designated Court at Ahmedabad in C.T.C. No. 7 of 1995.

U.R. Lalit and Ms. Kamini Jaiswal for the Appellants.

Dr. N.M. Ghatate, (Ms. Rekha Pandey) for Ms. Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. The four appellants along with eight others were tried by the Designated Court, Ahmedabad for offences punishable under Sections 120-B and 307 IPC, Sections 3 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short) and Section 4 and 6 of the Explosive Substances Act, 1908. The allegations against them were that they hatched a criminal conspiracy to let loose a reign of terror in the city of Ahmedabad by hurling bombs on the people of the Hindu community and that pursuant to the said conspiracy they hurled bombs near Sarangpur bus stand on January 27, 1993 as a result of which some members of the public sustained injuries. The trial ended in an order of conviction and sentence recorded against all the appellants under Sections 120-B IPC and 3 and 5 of TADA, two of the appellants under Sections 307 IPC and 4 of the Explosive Substances Act and the other two appellants under Sections 6 of the Explosive Substances Act and of acquittal of the other eight. Aggrieved by their convictions and sentences the appellants have filed this appeal under Section 19 of TADA.

To sustain the charges levelled against the appellants, the prosecution rested its case primarily upon the confessional statements made by each of the above four appellants before Shri D.B. Patel, (P.W. 6) Superintendent of Police, C.I.D. Crime Branch, Ahmedabad which were purpor-

A tedly recorded under Section 15 of TADA. The Designated Court found the confessions voluntary and true and, as they corroborated each other, passed the impugned judgment against the appellants.

B Under sub-section (1) of Section 15 of TADA a confession made by a person before a Police Officer not lower in rank than a Superintendent of Police is admissible notwithstanding the provisions contained in the Code of Criminal Procedure or Indian Evidence Act. Sub-section (2) thereof, read with Rule 15 of the Rules framed under TADA, lays down the procedure to be followed for recording such confession. Sub-rule (3)(b) of Rule 15 enjoins the Police Officer, who records the confession, to make
C a memorandum at the end of the confession to the following effect :

D "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 volutarily 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."

E Admittedly, in none of the four confessions (Ext. 72, 73, 75 and 76), with which we are concerned in this appeal, such a memorandum finds place. The question, therefore, that falls for our consideration is what is the value of such a memorandum and, for that matter, the effect of absence thereof. The answer to this question has been given by this Court in
F *Chandran v. State of Madras*, AIR (1970) SC 1574 while dealing with sub-section (4) of Section 164 Cr.P.C. which lays down the procedure to be followed by a Magistrate in recording a confession and is *pari materia* with the above quoted Rule 15(3), with the following words :

G "But the law does peremptorily require that after recording the confession of the accused, the Magistrate must append at the foot on the record a memorandum certifying that he believes that the confession was voluntarily made. The reason for requiring compliance with this mandatory requirement at the close of the recording of the confession, hearing the confession and observing the demeanour of the person making it that the Magistrate is in the best position to append the requisite memorandum certifying the
H voluntariness of the confession made before him. *If, the Magistrate*

recording a confession of an accused person produced before him in the course of police investigation, does not, on the face of the record, certify in clear categorical terms his satisfaction or belief as to the voluntary nature of the confession recorded by him, nor testifies orally as to such satisfaction or belief the defect would be fatal to the admissibility and use of the confession against the accused at the trial."

(emphasis supplied)

Apart from the fact that P.W. 6 did not give any certificate, in accordance with the earlier quoted Rule 15(3) of his satisfaction or belief about the voluntariness of the confessions after the same were recorded, it is also an admitted fact that while being examined as a witness he did not testify about his such satisfaction or belief. Resultantly, in view of the above quoted observations of this Court, with which we are in complete agreement, the confessions allegedly made by the four appellants cannot be pressed into service to prove the charges levelled against them. Since there is no other evidence on record from which it could be said that the appellant are guilty of the offences for which they were charged and convicted the appeal must succeed.

In the result we allow this appeal, set aside the convictions and sentences of the appellant and direct that they be released forthwith, unless wanted in connection with some other case.

V.S.S.

Appeal allowed.