

RANJIT SINGH @ JITA AND ORS.

v.

STATE OF PUNJAB

SEPTEMBER 11, 2002

[Y.K. SABHARWAL AND H.K. SEMA, JJ.]

*Indian Penal Code, 1860/Terrorist and Disruptive Activities (Prevention) Act, 1987/Arms Act, 1959:*

Ss. 148, 307/149, 363/149/ss. 3, 5 and 15/s. 25—Alleged encounter—Large scale firing alleged between accused and police party—Accused alleged to have surrendered—Large number of unauthorised arms and ammunition alleged to have been recovered from accused—Accused prosecuted for respective offences—Confession recorded by police officers under s. 15 of TADA Act—During trial accused and defence witnesses denied prosecution case and stated that they were picked up by police from the village—Independent recovery witness declared hostile—Designated Court convicted the accused for offences charged mainly on the basis of confessional statements and testimony of two police witnesses, and sentenced them accordingly—Held, though prosecution alleged 175 rounds to have been fired by police and 157 by accused, not a single injury was found on any side—No evidence to connect the empties with weapons—No evidence to prove the firing except that of two police witnesses—None of independent witnesses supported prosecution—There are vital discrepancies and contradictions between the statements of the two police witnesses—As regards confessional statements, only half an hour period granted to accused to consider whether they should make the statements—Confessional statements were with regard to two incidents, out of which in respect of one incident in a subsequent case Designated Court acquitted the same accused of the charge—It is not safe to base conviction on such confessional statements—Nor can the conviction be maintained on the sole testimony of two police officials—Judgment and order of Designated Court set aside—Accused acquitted.

*Terrorist and Disruptive Activities (Prevention) Act, 1987:*

S. 15—Confession—Recorded by police officer—Time to be given to accused to consider whether he should make a confessional statement—Accused

- A** *in police custody—Officer recording confession giving half an hour time to accused for consideration—Held, in a given case, depending on facts, the recording officer without granting any time may straightaway proceed to record confessional statements—But in case he forms a belief that accused should be granted some time to think over the matter, it becomes obligatory on him to grant reasonable time—The cooling time granted has to be reasonable—The time of half an hour to think over before recording confessional statement cannot be said to be a reasonable period.*
- B**

*Sarwan Singh Rattan Singh v. State of Punjab. AIR (1957) SC 637, relied on.*

- C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 627 of 2002.

From the Judgment and Order dated 27.4.2002 of the Court of Additional Judge, Designated Court, District Jail, Nabha in S.C. No. 41-T/1990.

- D** O.P. Sharma, R.C. Gubrela, K.R. Gupta, Nanita Sharma, Vivek Sharma and Abhishek Atrey, for the Appellants.

V.C. Mahajan, Bimal Roy Jad and Sumita Pandit, for the Respondent.

- E** The following Order of the Court was delivered :

- Six accused, including the four appellants, were forwarded by the Police to the concerned court to stand trial for offences under various provisions of I.P.C., The Terrorists and Disruptive Activities (Prevention) Act (in short 'the TADA Act') and The Arms Act. One of them (Gurbachan Singh) was declared proclaimed offender. Another (Jagmail Singh) died. The remaining four, namely appellants were convicted for the offences for which they were tried. For offences under Sections 307/149 IPC and Section 3 & 5 of the TADA Act, rigorous imprisonment for five years for each of these offences and fine was imposed on each of the appellants. For offences under Section 148 IPC two years' rigorous imprisonment and for offences under Section 363/149 IPC and Sections 25 of Arms Act one year's rigorous imprisonment and fine was imposed on each of the appellants. All the sentences were directed to run concurrently. The appellants have challenged the judgment and order of learned Additional Judge, Designated Court, Nabha, in this appeal filed under Section 19 of the TADA Act.
- F**
- G**

**H**

The appellants have been convicted for the incident of encounter alleged to have taken place, according to the case of the prosecution, on 18.8.1989. In brief, the prosecution case is that on 18.9.1989 Inspector Ram Singh received information that some terrorists armed with weapons had entered District Kurukshetra for committing crime. Two police parties were constituted - one headed by S.I. Anil Kumar and the other headed by S.I. Om Prakash, D.S.P. Deep Ram and two independent witnesses Karnail Singh and Surjit Singh were with Inspector Ram Singh along with some other police officials. A Nakabandi was arranged with the instructions to the police officials to start firing when it is so ordered. It was a moonlit night. At about 9.45 p.m., accused Jagmail Singh and other accused including one Gurnam Singh were seen coming armed with weapons. Gurnam Singh has also died. On lalkara being raised by Ram Singh, Jagmail Singh who was ahead of all accused persons was apprehended. The other persons following him took positions and started firing. The police parties also fired in self defence and asked the accused to surrender as they were surrounded from all sides. The firing continued for about one hour. The police team consisted of about 50/60 officials. During the firing 175 shots were fired by the police and 157 rounds by the accused. When all the accused surrendered, their personal search were taken. From Jagmail Singh one AK-47 rifle, 169 cartridges, two magazines were recovered. From the search of Gurbachan Singh one AK-47 rifle, 51 empty cartridges, two magazines and 163 live cartridges of Ak-47 were recovered. Ak-47 rifle was sealed and empties were also sealed. From the search of Baldev Singh, one AK-47 rifle, 49 empty cartridges, one .30 bore pistol and 15 live cartridges of the same bore and 118 live cartridges of AK-47 rifle were recovered. AK-47 rifle and 49 empty cartridges were separately sealed. From Sukhjot Singh, one AK-47 rifle, two magazines, 47 empty cartridges, 127 live cartridges were recovered. Empties and the rifle were sealed. From Ranjit Singh, one .315 bore rifle, 16 live cartridges, two empty cartridges of the same bore were recovered. The recovered 16 live cartridges were sealed. From Gurnam Singh, one .285 bore rifle, three empties and 12 live cartridges were recovered. Empties and rifles were separately sealed. From Satnam Singh, one .12 bore CBBL gun was recovered with 12 live cartridges and two empty cartridges and one .32 bore pistol was recovered. Gun and empties were sealed separately. The accused were not carrying any permit or licence to carry the weapons and the ammunition.

The accused were charged for offences under Sections 148, 307/149, 363/149 IPC, Sections 3 and 5 of the TADA Act and Section 25 of the Arms Act.

A To prove the case prosecution examined DSP Ram Singh (PW1), Surjit Singh (PW), Shri Niwas Vashisht, S.P. (PW5), Surjit Singh Deswal, Addl. S.P. (PW4), Kapoor Singh (PW5), Chander Bhan, Armourer (PW6), DSP Deep Ram (PW7) and Dr. Harbaksh Singh (PW8).

B The defence also examined three witnesses, namely, Jarnail Singh (DW1), Karnail Singh (DW2) and Gurbachan Singh (DW3),

C DW3 has deposed that he is the Lambardar of the village and the accused were picked up by the police from the village and nothing was recovered from them. DW2 has deposed that he was never called by PW1 Ram Singh in connection with the Nakabandi in question and that he along with Surjit Singh were called to Police Station and their signatures obtained there. No recovery was made in his presence. He also stated that no encounter took place between the police and the accused in his presence. Karnail Singh is one of the attesting witnesses to the recovery. To the similar effect is the testimony of DW1-Jarnail Singh. Surjit Singh (PW2) being other independent witness of the recovery also did not support the prosecution and was declared hostile.

E Reverting now to the prosecution witnesses, PW1 has, of course, fully supported the prosecution case. At the same time, however, it deserves to be noticed that although according to the prosecution case 175 rounds were fired by the police and 157 by the accused, the prosecution has not proved even a single injury grievous, simple or minor to anyone - whether on police side or on accused side. There is also no evidence to connect the empties with the weapons. This is despite large recoveries as noticed earlier. From the facts of the case, one gets an impression as if a friendly match was being played. There is no evidence to prove the firing of the shots as aforesaid except the testimony of PW1 and another police official with him PW7 Deep Ram and the confessional statement to which we would advert shortly. As noticed above none of the independent witnesses have supported the prosecution.

G There are also many vital discrepancies and contradictions between the statements of PW1 on one hand and PW7 on the other. But for the view we are taking of the confessional statement which is one of the main basis on which conviction has been based and other circumstances of the case, it is not necessary to delve into the said discrepancies and contradictions by going into details of their testimonies.

H

PW3 Shri Niwas Vashisht, the S.P. is stated to have recorded the confessions of Ranjit Singh and Jagmail Singh on 5.10.1989 under Section 15 of the TADA Act. They were arrested on 18.9.1989. The confessions of Ranjit Singh is Exbt. P-M. It is signed by Ranjit Singh and PW3. The confessions of Jagmail Singh is Exbt. P-N. Likewise it is also signed by Jagmail Singh PW3.

According to the deposition of PW3 in cross-examination, the accused were in police custody 18-20 days prior to recording of their confessional statements. PW3 has deposed that he gave the requisite warning to the accused that they were not bound to make the confessional statement and if they make it will be used as evidence against them, but despite the warning they were prepared and willing to make the statement. After recording the introductory statement in this behalf in question-answer form he still considered it proper to give them some time for rethinking and for this purpose they were allowed to sit in separate rooms for some time and brought to him after about half an hour and expressed their desire to make statement and thereafter the confessional statements were recorded.

Before advertng to the facts said to have been narrated by the accused as recorded in the two confessional statements, it deserves to be noticed that in case the recording officer of the confessional statement on administering the statutory warning to the accused forms a belief that the accused should be granted some time to think over the matter, it becomes obligatory on him to grant reasonable time for the purpose to the accused. In other words, the cooling time that is granted has to be reasonable. What time should be granted would of course depend upon the facts and circumstances of each case. At the same time, however, when the time to think over is granted that cannot be a mere force for the sake of granting time. In a given case, depending on facts, the recording officer without granting any time may straightaway proceed to record the confessional statement but if he thinks it appropriate to grant time, it cannot be a mechanical exercise for completing a formality.

In *Sarwan Singh Rattan Singh v. State of Punjab*, AIR (1957) S 637, where a magistrate granted about half an hour to accused to think over and soon thereafter recorded the confessional statement, this court reiterated that when accused is produced before the magistrate by the Investigating Officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him

A to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case.

B This Court further held :- "However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded. In our opinion, in the circumstances of this case it is impossible to accept the view that enough time was given to the accused to think over the matter."

C The present case as noticed earlier, relates to incident of alleged encounter dated 18.9.1989. The confessional statements recorded by PW3 record two incidents. First the confession records about incidents by same accused which had allegedly taken place in same village on 11.9.1989. The incident dated 11.9.1989 was subject matter of Sessions Case no. 6-T of 17.1.91 before Additional Judge Designated Court, District Jail Nabha.

E In respect of incidents dated 11th September, 1989 the appellants and two other accused were charged for offences under Sections 148, 452, 323 read with Sections 149, 427 read with Sections 149, 506 IPC and for offences under Section 3 of the TADA Act. The confessional statements proved by PW3 and PW4 also contain admission of guilt by these accused in respect of incidents dated 11th September, 1989. The SHO, Inspector Anil Kumar who inspected the spot and prepared the site plan etc. and made recoveries and conducted a part of investigation of incidents of 11th September, 1989 was the same, namely, Inspector Anil Kumar, who headed one of the team in the encounter which is subject matter of the present appeal. The investigation of the said case was also taken upon by Inspector Ram Singh who is PW1 in the present case. Ram Singh had arrested all these accused on 18.9.1989 evidently in relation to both the cases, namely, one subject matter of the present appeal and the other which was subject matter of Sessions case no. 6-T of 17.1.1991. The first part of the confession records the incident dated 11.9.1989 and second part records the incident dated 18.9.1989, namely, the encounter that had taken place which led to the appellants' conviction in the manner aforestated.

H The earlier sessions case resulted in appellants' acquittal by judgment

dated 20.10.1992 passed by Addl. Judge, Designated Court, District Jail, Nabha. That judgment was placed on the record of the Designated Court by the appellants. It is Ext. D-1. Unfortunately, there is not even a whisper about the judgment dated 20th October, 1992 in the impugned judgment and order of the Designated Court convicting the appellants. A

The learned counsel for the respondent has not been able to explain the reason why the confession which purports to admit both the incidents was not placed and relied upon in the earlier case. The only submission made in that regard is that the defence did not as any question in the present case from the prosecution witnesses. On the facts of the case as noticed, that is hardly an explanation. B C

PW4 Surjit Singh Deswal was an Addl. Superintendent of Police. He admitted that in the administrative hierarchy PW3 was above him and on oral directions of PW3 he recorded the confessional statements of accused Satnam which is Ext. P-5 and accused Gurnam (Exbt. P-5/3). Like PW3, he gave to the accused 20 to 30 minutes to think over whether they wanted to give the confessional statements, this time was given after the accused were administered statutory warning in the similar fashion as was done by PW3. It seems to be quite strange that both the officers though recorded confessional statements of two accused each separately thought that half an hour or 20 minutes would be sufficient cooling time to be given to the accused who are being brought before them from police custody of 18-20 days and had expressed, according to these officers, their willingness to make confessional statements. D E

There is another aspect of recording of confessional statements by PW4. As already noticed he was Addl. S.P. In the administrative hierarchy he was lower in rank than PW3 shri Niwas Vashisht, S.P. Learned counsel for the State has not been able to show any rule, regulation or other provision to establish the status of PW 4 - a police officer, an Additional Superintendent of Police. Nothing was brought to our notice to establish that he was a police officer not lower in rank than the Superintendent of Police. It was, however, submitted by the learned counsel that even if the two confessional statements recorded PW4 are kept out of consideration still the conviction can be upheld only on the basis of confessional statements recorded by PW3. We have already expressed hereinbefore our views in respect of the confessional statements recorded by PW3. F G

In the facts and circumstances of the present case the grant of half an H

- A hour to the accused to think over before recording their confessional statement cannot be held to be a reasonable period. We do not think that is safe to base conviction on such confessional statements. Further, on the facts of the present case, conviction cannot be maintained on the sole testimony of two police officials. It may also be noticed that although PW6 Chander Bhan, Armourer,
- B was examined by the prosecution to prove that the weapons were in working conditions, no effort was made to prove that the ammunition or the empties matched the weapons.

- C For the aforesaid reasons, we are unable to sustain the conviction of the appellants. Therefore, the impugned judgment and order of Additional Judge, Designated Court, District Jail, Nabha, dated, 27th April, 2002 is set aside and the appeal allowed, accordingly. The appellants shall be set at liberty forthwith, if not required in any other case.

R.P.

Appeal allowed.