

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 482 OF 2005

KISHORE & ORS.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and office report)

Date: 20/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. R.S. Lambat, Adv.

For Respondent(s)

Mr. Sanjay Kharde, Adv.

Mr. S.S. Shinde, Adv.

Mr. Ravindra K Adsure, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

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[Charanjeet Kaur]

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Court Master

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[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 482 OF 2005

Kishore & Ors. .. Appella
nt(s)

Versus

State of Maharashtra .. Respondent
(s)

O R D E R

This is a statutory appeal to this Court against the judgment of the Designated

Court, Special Judge in TADA (P) Act, 6th Additional Sessions Judge, Nagpur. By the

Impugned judgment, the Designated Court convicted eight persons under Sections 3 and 4 of

the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, "TADA Act"),

Section 398 of the Indian Penal Code (for short, "IPC"), Section 307 read with Section 34,

IPC and Section 3 read with Section 25 of the Arms Act. Different sentences were awarded

under different heads of convictions. For our purpose, it is sufficient to say that all the

convicted accused persons were awarded sentences of life imprisonment and fine. Five

convicted accused persons have filed the present appeal.

Briefly, the facts are that on 10th February, 1992, at about 1.30 a.m. there was an

attack on the sub-police station, Laheri. This police station falls in a nexalites affected area.

Head Constable Purushottam was on duty along with Constable Laxman at the police station.

They heard barking

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of dogs. They came out and when they went near the tin shed

where arms and ammunition were stored, some unknown nexalites started firing. Both the

policemen immediately took position and fired in return. They also sounded a lert so that

other policemen could come and join them. In the meantime, the nexalites started firing from

all sides. The policemen took positions on all four sides and started counter firing in return.

This firing from both sides went on upto 3.00 a.m. It is said that the policemen fired about

103 rounds from 303 rifles, 5 rounds from carbine and stengun. Due to the counter firing from

the police, the nexalites who were about 22 to 25 in number and were firing from a distance of

about 150 to 200 feet, escaped in the darkness of the night. Head Constable Purushottam

lodged a compliant at 5.00 a.m. in the morning about the incident. According to him, the

attack on the police station was with intention to commit dacoity of arms and ammunition and

to kill the policemen. On the basis of the complaint an F.I.R. was registered. The entire

affected area was inspected in the presence of two panches. It was found that there were marks

and holes of bullets fired on tin sheets and trees which were at the height of about 4 to 10 feet

from the ground. Some bullets casings of bullets were also found. A spot panchnama was

drawn on the basis of the inspection. Some statements of witnesses were recorded and

investigation was handed over to P.S.I. Gaikwad. Sanction was obtained from Superintendent of Police, Gadchiroli to

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investigate the case under Sections 3 and 4 of the TADA Act and from the District Magistrate, Gadchiroli to investigate under Section 3 read with Section 25 of the Arms Act. During

investigation, statements of several witnesses were recorded and some of the accused persons were arrested. Out of the arrested accused persons, Accused No. 8- Kopa Narango Mahaka

led to the discovery of a weapon called bharmar (muzzle loading gun) which was seized. During the investigation, it also emerged that accused No. 1, namely, Kishor @ Prakash Lalsay

Sedmek wanted to make a confessional statement. His confessional statement was recorded by

Shri S.S. Barwe, S.P., Gadchiroli. The entire case hinges on the said confessional statement

of accused No. 1. For prosecutions under TADA Act, confessional statements have been put

under a separate pedestal. Section 15 of the TADA Act which deals with confessions opens

with a non-obstante clause as per which, the provisions of the Code of Criminal Procedure and

the Evidence Act have been excluded while dealing with confessions under that Section. The

parameters for recording a confession under section 15 of the TADA Act are given in the said

Section. Rules have been framed for purposes of the Act which are called as "Terrorist and

Disruptive Activities (Prevention) Rules, 1987" (for short, "TADA Rules"). Rule 15 of the

TADA Rules contains certain guidelines in relation to recording of confessions under Section

15 of the TADA Act. Both the provisions are reproduced as under :

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Section 15 of the TADA Act

Certain confessions made to Police Officers to be taken into 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 in writing or on any mechanical device like cassettes, tapes or sound tracks 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.

Rule 15 of the TADA Rules -

Recording of confession made to police officers- A confession made by a person before a police officer and recorded by such police officer under

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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 confession 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 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 makes 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.

Sd/-Police Officer."

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far 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."

Learned counsel for the appellant was unable to dispute the fact that the fate of

this entire case hinges on the confessional statement of Accused No. 1, namely, Kishore @

Prakash Lalsay Sedmek. According to the learned counsel for the appellants, the provisions of

Section 15 of the TADA ACT and Rule 15 of the TADA Rules have not been complied with

while recording the confession. The requirements for recording confessions which emerge from

these provisions are :

(i) the confession is to be made before a police officer who

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should not be lower in rank than a Superintendent of Police;

(ii) it should be recorded in hand-writing or on any mechanical device etc. which can reproduce

the recording;

(iii) the co-accused, abettor or conspirator should be charged and tried in the same case

together with the accused making the confession;

(4) the police officer shall before recording the confession explain to the person making it that

he is not bound to make the confession and that if he makes it, it can be used as

evidence against him; and

(5) the police officer should satisfy himself that the confession is being made voluntarily.

From Rule 15 of the TADA Rules, the requirements are -

(1) the confession should be recorded in the language in which it 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;

(2) the confession so recorded shall be shown, read or played back to the person making it and

if he does not understand the language in which it is recorded it shall be interpreted to him in

the language which he understands;

(3) the confession which is written shall be signed by the person who makes it; and

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(4) the police officer has to give a certificate as per pro forma given in the Rulef after recording

the confession.

We have perused the original confession (Exhibit 78) recorded by Shri S.S. Barwe,

S.P., Gadchiroli. He has also appeared as witness as P.W.5. In our view, the confession

statement satisfies all the above requirements.

Learned Counsel for the appellants also drew our attention to Kartar Singh vs.

State of Punjab reported in 1994 (3) SCC 569 (W.P. No. 1833/84 and connected matters)

wherein guidelines have been given regarding recording of confessions. These guidelines are

based on the parameters contained in Section 15 of the TADA Act and Rule 15 of the TADA

Rules referred to above. Nothing has been brought to our notice so as to show that any of the

requirements of these provisions has not been complied with so far as the confession

of Accused No. 1 in the present case is concerned. The confession is required to be sent to the

Chief Judicial Magistrate or the Chief Metropolitan Magistrate by the Superintendent of

Police who records the same. In the present case, the confession was forwarded by the

Superintendent of Police to the Sessions Court which in turn forwarded it to the Designated

Court. In our view this is sufficient compliance of the requirement in this behalf.

Having found the confession in the present case to be perfectly in order, we are

unable to find any fault with the decision of the Designated Court.

Finally, the learned counsel for the appellants submitted that the award of punishment in the present case is too harsh because all the accused have been sentenced to imprisonment for life. The relevant statutory provisions provide for a maximum punishment of imprisonment for life. Looking to the gravity of the offence and the fact that such a large group of persons of which the accused formed part, attacked the police station, we are in agreement with the Designated Court that such activities have to be dealt with with a strong hand. Therefore, we are unable to accept the request of the learned counsel for the appellants that a lenient view should be taken about the punishment awarded.

We find no merit in the appeal and the same is dismissed.

.....J[ARUN KUMAR]

.....J [A.K. MATHUR]

NEW DELHI,
 SEPTEMBER 20, 2005.