

(2007) 04 SC CK 0157

In the Supreme Court Of India

Case No : Criminal Appeal No. 1228 Of 2004, 129, 130 OF 2005

Abdulahab Abdulmajid Shaikh & Ors

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 212, 342, 365, 365A, 384, 395, 465, 471
Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 3, 5, 15, 25(1)(b),
27
Evidence Act, 1872 — Section 3
Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2007) 5 SCR 538 : (2007) 4 SCC 257 : (2007) 6 Scale 127

Hon'ble Judges : K.G. Balakrishnan, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Sanjay Jain, Shivangi, Hemantika Wahi, K. Sarada Devi

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, CJ

1. All these appeals arise out of judgment dated 30-7-2004 of the Additional Designated Judge, Ahmedabad in TADA Criminal Case No. 22 of 1996. 14 accused were tried for the offences punishable under Sections 395, 365, 365-A, 212, 465, 471 read with Section 120-B IPC and also under Sections 3 and 5 of the TADA Act read with Section 120-B IPC. They were also charged under Sections 25(1-B)(a) and 27 of the Arms Act read with Section 120-B IPC. Out of the 14 accused, accused A-1, A-2, A-3, A-7, A-8, A-11, A-12 and A-14 were found guilty of offences punishable under Sections 120-B, 342, 365 and 384 IPC and were acquitted of other offences. The other accused A-4, A-5, A-6, A-9 and A-10 were not found guilty. Accused A-13 died during the pendency of the trial. Criminal Appeal No. 1228 of 2004 has been filed by the accused who have been convicted by the Special Judge. Criminal Appeal No. 129 of 2005 has been filed by the State alleging that the acquittal of the accused-appellants in Criminal Appeal No. 1228 of 2004 for certain other offences for which they were charged

was not justified. Criminal Appeal No. 130 of 2005 is filed against the acquittal of accused A-4, A-5, A-6, A-9 and A-10 of all the offences charged against them.

2. The prosecution case was that the accused persons hatched a criminal conspiracy to kidnap PW 7, Vedprakash Devkinandan Chidipal and extort a ransom of Rs 1 crore from him. One Sherjada (now deceased) called the assistant of A-12, Musakhan @ Babakhan Ismailkhan, A-11, Jahangir Mahammadanwar Saiyed and A-1, Abdulvahab and together they planned to kidnap PW 7 Chidipal. The other accused, namely, A-2, A-3, A-8 and A-14 were also present. In pursuance of their common object, on 22-2-1994 they all went to Pirana Road in a Maruti car, a Maruti van and a Yamaha motorcycle. PW 7 Chidipal was found going in a Maruti 1000 car and his vehicle was driven by one Sangramsinh. The Maruti car wherein some of the accused-appellants were travelling overtook the Maruti 1000 car driven by Sangramsinh and made that car to stop. One of the accused opened the door of the Maruti 1000 car near the driver's seat, pushed the driver from his seat and took control of the vehicle. Two other accused entered the car and sat on either side of PW 7 Chidipal. The car was driven to octroi naka and after some time, driver Sangramsinh was pushed out of the car. PW 7 Chidipal was then moved to a white Maruti van and his eyes were bandaged with cotton. He was taken to a room and confined there for two days. The accused took the telephone numbers of the brothers of PW 7 Chidipal. PW 11, Jaiprakash, brother of Chidipal was contacted and told that he shall not inform the police and a sum of Rs 1 crore was demanded from him. Nobody came forward to give money to the accused. On 24-2-1994, PW 11 Jaiprakash was contacted again and told to reach the house of PW 9, Sattar. PW 11 Jaiprakash and one Shivbhagwan went to the house of PW 9 Sattar in a white Maruti car with four bags. Again, PW 11 Jaiprakash was told to go to Anjuman High School at Astodia and was directed to leave his Maruti car behind a rickshaw. They left the Maruti car behind the rickshaw and came back to the house of PW 9 Sattar Bhai. At about 10.00 p.m. on that day, PW 7 Chidipal came back to his house. Sangramsinh the driver of PW 7 Chidipal went to Vatva Police Station. He gave a first information statement to the Police Inspector and investigation started pursuant to his statement. The Maruti 1000 car owned by PW 7 Chidipal was found parked by the side of the road. It was recovered under Ext. 182-B panchnama. PW 24, Police Inspector searched the house of A-7, Salim Noormahammad Haveliwala and recovered a diary which contained the telephone number of Chidipal Textile Mill. A-9, Prakash Shobhnath was arrested on 2-6-1994 and a sum of Rs 50,000 was recovered in the course of investigation and accused A-1 Abdulvahab, A-3, Najirmahammad Vora, A-5, Salauddin Haveliwala, A-6, Mahammadrafik and A-8, Abdulsattar were arrested. The Yamaha motorcycle allegedly used by the accused was also recovered. The first appellant produced Rs 1,50,000 before the investigating officer. On 11-8-1994, the investigating officer requested the State to invoke the provisions of the TADA Act against the accused and a report was sent to the DCP. PW 27, Shri B.R. Patil was entrusted with the task of investigation.

3. A-12 Musakhan @ Babakhan Ismailkhan was arrested by PW 27 Shri B.R. Patil and produced before PW 1, Shri Suroliya, DCP, Ahmedabad as the accused expressed his willingness to make a confessional statement. At the instance of PW 1 Shri Suroliya, DCP, A-12 Musakhan @ Babakhan gave a detailed confessional statement. The rest of the accused were also arrested and finally the charge-sheet was prepared by the police.

4. This being the first appeal filed under the provisions of the TADA Act, we have carefully considered the entire case adduced by the prosecution before the Special Judge and heard the arguments of the learned counsel for the accused-appellants as well as the learned counsel for the respondent State.

6. The learned counsel for the appellant also contended that the confession made by A-12 Musakhan @ Babakhan was not voluntary and he was put under serious pressure and on the very next day he had retracted the confession and that by itself showed that it was not voluntarily made. The learned counsel for the appellant also contended that the Magistrate was very much available to record the statement of A-12 Musakhan @ Babakhan under Section 164 CrPC, but the same was not done and PW 1 Shri Suroliya, DCP recorded the confession and the confession was extracted from him by using extreme pressure tactics.

5. The learned counsel for the accused-appellants strongly urged before us that the confessional statement given by A-12 Musakhan @ Babakhan was not reliable and admissible as it was not voluntarily made. It was also urged before us that the confession made by a co-accused is extremely fragile and feeble type of evidence and it is not substantive evidence under Section 3 of the Evidence Act and is liable to be rejected. It was also urged by the appellant's learned counsel that the confession of the co-accused should not be used against the other accused and it is only to be used as corroborative piece of evidence and that the Court must begin with some other evidence adduced by prosecution and in any case the confession of a co-accused cannot be the sole ground for conviction of the accused. The accused-appellants placed reliance on the observations of this Court in *Haricharan Kurmi v. State of Bihar* [AIR 1964 SC 1184 : (1964) 6 SCR 623 : (1964) 2 Cri LJ 344] . It was further submitted that provisions of Section 15 of the TADA Act could make the confession admissible in evidence, but the "rule of prudence" would require that such evidence shall be supported by other items of evidence.

7. The learned counsel further urged that the fact that the confession was retracted on the very next day is indicative that it was not voluntarily made.

8. We have carefully considered the arguments advanced by the appellant's learned counsel. Merely because the confession was retracted, it need not be taken as a confession made under pressure. The state of mind of the accused at the time of making the confession is the relevant factor. He was arrested by the police and as he expressed his willingness to make a confession, he was produced before the DCP and told that he was not legally bound to give a

voluntary statement and that in case any statement is found to be false, it would be used against him. The DCP had taken all precautions to ascertain that the confession was voluntary. All formalities had been complied with and these facts are incorporated in the confessional statement. All confessions are invariably retracted at a later stage, therefore, the retraction by itself is not a ground to discard the confession by holding that it was not voluntarily made.

9. In the instant case, the confession made by A-12 Musakhan @ Babakhan is running into several pages. He has given the intricate details of the incident and the manner in which the crime was executed. The relevant portion of the confession made by A-12 Musakhan @ Babakhan is as follows:

"... Before one month of the murder of Sherjada, on Piplaj Road, outside Pirana Octroi Checkpost, he had abducted one industrialist. The tip was brought by Vijaybapu residing at Maninagar. Sherjada called me and Atik at the house of Vahab, situated in Devipark during 2 to 2.30 p.m. When we reached there, Sherjada, Vahab, Salim Chipa, Najir Vora, Sattar Ghanti, Salim Tola, Aehmad Behra were present, and told that Chidipal is a big industrialist and he comes in his 1000 vehicle always. His factory is situated on Piplaj Road and it was decided to abduct him. Therefore, taking the Fronti of Vahab, one Yamaha and Maruti van of Sherjada, we left, affixing on it the false number plate. Vijaybapu had given me and Atik one revolver .38 of Vahab. Sherjada and Vahab also had with them their revolvers. Najir Vora was sent to keep watch towards the road leading to Vishala Hotel. We all also went. I, Vijaybapu and Atik sat in the van of Sherjada and Salim Ando was driving it. Sherjada had put on the dress of shepherd. Aehmad Behra was seated in the Fronti of Vahab and Vahab was driving it. We all stayed near one electric sub-station on the road, leading to Piplaj by going via Pirana Excise Post. Najir Vora came at 5 p.m. from Vishala Bridge and told that the industrialist is coming. Therefore, we became alert. After some time, 1000 of that industrialist came. Vahab drove Fronti ahead of said 1000 and Tola drove the van behind it. Driving the vehicle up to some distance, Vahab stopped his vehicle and therefore, 1000 also stopped. We all got down from our vehicle and ran and went near 1000. Sherjada opened the gate of driver's side of the said 1000 and gave him push and removed him from the seat and he himself sat on steering. Vijaybapu took seat on the left side of the driver. The industrialist was seated on the back seat and around him, I and Atik sat. The industrialist and driver were shown revolvers and by giving threats, they were made silent. Vahab drove the Fronti ahead and Sherjada drove 1000. Tola was driving the van. Crossing Pirana excise point, via Suez Farm, we went towards the hospital of infectious diseases. There are trees and there was no movement of anyone. Hence, the vehicles were stopped and the industrialist was taken into the van. 1000 was given to Vijaybapu and he was told to leave it anywhere and come to Devipark. When he went away, we all came to Devipark taking with us said industrialist. Vahab took away revolvers from everybody except Sherjada. Vijaybapu had come after leaving 1000. There, Sherjada and Vahab also made a plan to extort money by taking telephone numbers of friends and relatives of industrialist Chidipal

Vedprakash. Vahab and Sherjada went out for doing telephone. After some time, they returned and told that the work was not complete. Subsequently, for doing telephone, they took Chidipal to Kankaria, and after getting talk with Chidipal from his friends and relatives, they brought him back to Devipark and detained him. After 3 days, Vahab and Sherjada told me and Atik to go in rickshaw at the corner of the street opposite Anjuman High School. There while Maruti Fronti would come and tell to the driver of the said Maruti Fronti code word pen and he would give you the key. I and Atik went in rickshaw to Gol Limda and Vahab and Sherjada came there on motorcycle. Maruti Fronti had come there. Saying code word pen to its driver, he gave key to Atik. Taking the said Fronti, he went to old Muni quarters situated at Gita Mandir and Vahab and Sherjada were driving their motorcycle behind the said Fronti. We parked the Fronti there. I and Atik were sent back in rickshaw and we were told to come to Devipark. When we reached Devipark, at that time, Vahab told Salim Tola to drop the industrialist Chidipal on Isanpur Highway. Tola put the cotton on the eyes of Chidipal and affixed bandage of medicine on it and put black coloured specs on that bandage. On the Yamaha motorcycle of Najir Vora, Atik and Tola dropped Chidipal at Isanpur. Subsequently, Atik told me that for the release of Chidipal, Rs 1 crore is received. Vahab told us that Latif has big share in money. Sherjada was given Rs 17 lakhs. Atik was given Rs 4,00,000. I was given Rs 2.5 lakhs, Salim Tola and Vijaybapu each got Rs 2 lakhs, while Sattar Ghanti and Najir Vora were given Rs 1 lakh each and Aehmad Behra was given Rs 50,000. Vahab told that the said matter is given by Latif from Dubai and he has large share. Rs 60 lakhs are sent to Latif by adjustment and deducting Rs 1 lakh towards expenditure, Vahab told that he had received only Rs 9 lakhs...."

10. The confession made by A-12 Musakhan @ Babakhan gives an account of the kidnapping of PW 7 Chidipal. He mentions about the participation of other accused in the commission of the crime. He also mentions that an amount of Rs 1 crore was demanded and received and while Latif had received a big share in the money and Sherjada was given Rs 17 lakhs, he himself received Rs 2.5 lakhs. In the confession, it is also mentioned as to how the money was transferred to the accused and the places where these incidents happened. From other items of evidence, ample corroboration is found of what A-12 Musakhan @ Babakhan had stated in the confession.

11. The learned counsel for the accused-appellants contended that the confession of a co-accused is not a substantive evidence as against the other accused and even though it is admissible under Section 15 of the TADA Act, it cannot be used for fixing criminal liability of other accused. It was submitted that such confession could only be used as a corroborative piece of evidence and unless there is a primary evidence to prove the guilt of the accused, the confession cannot be used against them. In State v. Nalini [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] this Court held that the confession recorded under Section 15 of the TADA Act is a substantive piece of evidence, but as a "rule of prudence", it could be accepted only when there is corroboration.

12. The learned counsel for the accused-appellants also contended that the confession was not voluntary and, therefore, it is inadmissible in evidence. It was pointed out that though a Magistrate was readily available to record the confession, A-12 Musakhan @ Babakhan was not produced before the Magistrate and PW 1 DCP Shri Suroliya recorded the confession without following the procedure.

13. We have perused the records and observed that PW 1 DCP Shri Suroliya has followed all procedural formalities before recording the confession. Merely because the confession was retracted later, when A-12 Musakhan @ Babakhan was produced before the Magistrate, that does not mean that the confession was not voluntary in nature. Whether the accused was willing to give a confession voluntarily or not is to be determined from his mental state at the time when he gave the confession. There is nothing on record to show that A-12 Musakhan @ Babakhan was under pressure to give any confession. When he was produced before the Magistrate, he had no case that he was put under pressure or third-degree methods had been used against him to extract the confession. When he was questioned under Section 313 CrPC, he had only stated that he had not given any confession as recorded by PW 1 DCP Shri Suroliya. These facts would indicate that the confession was voluntary and was recorded by PW 1 after apprising him that he was not bound to give a confession and in case he gave the confession, it would be used against him. Therefore, we do not find any force in the contention advanced by the learned counsel for the accused-appellants regarding the inadmissibility of the confession. As stated earlier, there is ample evidence to show that the confession given by A-12 Musakhan @ Babakhan was truthful and gained support from other items of evidence.

14. PW 7 Chidipal the victim had given evidence that on 22-2-1994, he went to his factory at about 10.00 a.m. in a Maruti 1000 car and later when he came back, he got down at Mithakhali at the residence of his relative and from there, he started at 5 o' clock and when the car reached near toll naka, one vehicle overtook his car and stopped in front of his car. PW 7 Chidipal further deposed that 4-5 persons got down from that car and one of them got into his car from the driver's side while another one got into the car from the left front door. Yet another person got into the car and the car was driven towards octroi post. His eyes were shut with a cotton bandage and he was kept in confinement. On the next day, he was asked to give the telephone numbers of his relatives and he talked to his brother. But this witness deposed that he did not know the identity of the kidnappers. The evidence of PW 11 Jaiprakash, the brother of PW 7 Chidipal gives further details as to how the kidnappers were paid money. He deposed that on 22-2-1994 he got a call from the kidnappers and they asked him whether the money was ready. He further deposed that the kidnappers demanded Rs 1 crore. This witness also did not support the prosecution but he admitted that four bags were taken in a car and that car was parked behind a rickshaw whereafter they left the place. This witness would deny having given the bags of money, but his entire evidence would show that kidnappers were

paid money. In the cross-examination, he admitted that he told the kidnappers that Rs 1 crore was ready when they asked him for money over telephone. From the evidence of PW 11 Jaiprakash, it is clear that Rs 1 crore was paid as ransom to the kidnappers. PW 12, Jyoti Prakash is another brother of PW 7 Chidipal who also gave evidence as to how the brothers assembled at his residence and discussed the issue of raising Rs 1 crore. He contacted his friends and relatives to make arrangements of Rs 1 crore, but this witness also did not fully support the prosecution and declined to give evidence regarding the actual payment of money. The evidence of PW 9 Sattar Bhai Abdul Rehman is also very important. He deposed that the victim Chidipal was known to him and this witness used to do some designing work for him. He deposed about the kidnapping of PW 7 Chidipal and about his active participation in the payment of money to kidnappers.

15. From the evidence of these witnesses, it is clear that PW 7 Chidipal was kidnapped and the kidnappers were paid ransom amount for his release. The details of the kidnapping, the manner in which it was done and the extortion of money are all spoken of by the witnesses. In the confession statement, A-12 Musakhan @ Babakhan has given all these details and these details are in perfect consonance with the evidence given by the witnesses. But it seems that all these witnesses were afraid of giving the identity of the accused. A-12 in his confession has given the details of participation of all the accused persons and has also stated that the money was indeed received and shared by them.

16. Taking all these factors into consideration, we do not find any difficulty in accepting the confession made by A-12 Musakhan @ Babakhan. The confession given by him cannot be said to be a figment of his imagination, but appears to be a true account of the events of kidnapping and extortion of money. Therefore, we do not find any illegality in the conviction as recorded against these accused-appellants. Criminal Appeal No. 1228 of 2004 filed by the accused is without any merits and is liable to be dismissed.

17. Criminal Appeal No. 129 of 2005 and Criminal Appeal No. 130 of 2005 are filed by the State against the acquittal of some of the accused and also against the acquittal of some accused for certain other offences for which they were charged. Going by the evidence on record, we do not find any merit in the contentions advanced by the State. The accused have been convicted only for the offences where there was satisfactory evidence against them. As regards acquittal of other accused, we find no merit in the contentions raised by the State. Accordingly, these appeals are liable to be dismissed.

18. In the result, all the appeals are without any merits and are dismissed.