Raja @ Ayyappan vs State Of Tamil Nadu on 1 April, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2373, AIRONLINE 2020 SC 444

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Bench: Deepak Gupta, S. Abdul Nazeer

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1120 OF 2010

RAJA @ AYYAPPAN … APPELLANT

VERSUS

STATE OF TAMIL NADU … RESPONDENT

JUDGMENT

S. ABDUL NAZEER, J.

1. This criminal appeal filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'the TADA Act') is directed against the judgment and order dated 04.12.2009 passed by the Presiding Judge, Designated Court No.2, Chennai, in Calendar Case No.1/2007, whereby the Designated Court has convicted the appellant and sentenced him to undergo rigorous imprisonment for 2 years under Section 120□B IPC and 5 years 18:47:35 IST Reason:

> each under Section 120□B IPC read with Section 3(3) and 4(1) of the TADA Act and under Section 120□B IPC read with Section 5 of Explosive Substances Act, 1908 and all the sentences imposed were ordered to be run concurrently.

2. The case of the prosecution in brief is that during June 1988, the absconding accused, Ilango @ Kumaran @ Ravi @ Santhosh and Suku @ Sukumaran @ Kumar, had formed an organization at Trichy under the name 'Tamilar Pasarai', with the object of achieving separate Statehood for Tamil

Nadu and to blast Central and State Government buildings with bombs with a view to overawe the Government established by law. The appellant herein and 13 other accused have enrolled themselves in the said organization and they entered into a criminal conspiracy during June 1988 to commit an illegal act and to blast the State Government building in the Secretariat by name 'Namakkal Kavignar Maligai' and in furtherance of the said conspiracy, Suku and Shanmuga Sundaram had undergone a course in electronics at Tamil Nadu Advanced Technical Institute, Trichy, and learnt the mechanism for devising electronic timer, to be used in the time bombs to be manufactured by them.

3. The further case of the prosecution is that during September 1990, the above said Suku had brought electronic printed circuit board, integrated circuit switches, resisters and directed Shanmuga Sundram to device electronic timer device, to be attached to time bomb. The appellant, along with two other accused, wrote slogans in the paper (MO-7) hailing 'Tamilar Pasarai' and kept it near the time bomb on 22.09.1990. The bomb was to be blasted by another accused, namely, Sukku, in a jerrycan (MO-1) containing explosives with timer devices (MO-6), near Namakkal Kavignar Maligai on 22.09.1990. The bomb was noticed before its explosion at about 6.45 a.m. by the Head Constable, G.M. Rajendran (PW-1), attached to Armed Reserves, Madras, and the said bomb was subsequently defused. Thereafter, information was given by PW-1 to the Assistant Commissioner, in-charge of the Fort Police Station, who handed over the investigation to Parthasarathy (PW-21), the then D.S.P., who registered the case initially under Section 4 of the Explosive Substances Act, 1908 and under Sections 2-F(d)(1) and (2) read with Section 13 of the Unlawful Activities (Prevention) Act, 1967. Subsequently, during the course of investigation, the charges were altered against the accused under Section 120-B IPC read with Sections 3(3) and 4(1) of TADA Act and under Section 5 of the Explosive Substance Act, 1908.

4. On 24.09.1990, the place of incident was searched by the bomb disposal squad and the seized items were sent for finger print examination. A request was also made to the Chief Controller of Explosives for examining the explosive substance.

5. The statements of witnesses were recorded in respect of the aforesaid offences on the basis of the information received during investigation. The Inspector of Police C.B.C.I.D., Thanjavore, raided the premises of one Abdul Kalam and handed over his custody to Inspector Raman of 'Q' Branch.

6. On 10.05.1993, PW-26, the then Superintendent of Police, SBCID, received the case file pertaining to Cr. No.1 GO/90, Fort Station, Chennai. Thereafter, he sent the requisition for the extension of remand of the accused Sathish @ Vadivelu and Abdul Kalam, on 04.06.1993 and 14.07.1993 respectively. He gave requisition to the competent authority for sanction to prosecute Abdul Kalam and Vadivelu and obtained the sanction orders. On receiving the statement of the accused, Chandran, he obtained sanction for prosecution of Chandran under the TADA Act on 02.09.1993.

7. After completion of the investigation, the police on 03.09.1993, filed the charge-sheet against the accused Nos. 1 to 14 and the unknown accused, under Section 120-B read with Section 3(3), (4) (1) of the TADA Act and Section 5 of the Explosive Substance Act and Section 7 read with Section

35(1)(A), Section 3 read with Section 25(1)(B) of the Arms Act. Thereafter, the statements of the witnesses were recorded by the Special Judge in the aforesaid case.

8. It was the further case of the prosecution that on 24.05.2007, PW-28, Superintendent of Police, Ashok Kumar, 'Q' Branch, CID Head Quarters, Chennai, came to know about the arrest of the appellant-accused by the DSP 'Q' Branch Tanjavore, in connection with the Mannarkudi P.S. Cr. No.954/94 and as the appellant was involved in the subject case, the investigating officer was informed to take necessary steps for the same. Accordingly, PW-26 took steps for the police custody of the appellant from 25.07.2007 to 27.07.2007. During the police custody, the appellant voluntarily wished to give his confessional statement and as such he was produced before PW-28, Superintendent of Police, on 26.07.2007 with a requisition, Ex. P-55 by PW-27. On 27.07.2007, PW-28 recorded the confession of the accused, observing the formalities under Section 15 of the TADA Act, as Ex. P-56 and P-57. PW-28 made an appendix as per the said provision and the appellant was handed over to the DSP to be produced before the Court. All the proceedings were sent in a sealed cover to the Chief Metropolitan Magistrate through special messenger on 27.07.2007.

9. Thereafter, the charges were framed against the appellant, read over and explained to him. However, while questioning, the appellant denied the charges. The prosecution examined as many as 28 witnesses to prove the case against the accused. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973. The appellant was permitted to be examined as DW-1. He filed the documents Ex. DW-1 to DW-7. As stated earlier, the Designated Court has convicted the appellant in the aforesaid terms.

10. Shri S. Nagamuthu, learned senior counsel appearing for the appellant, has submitted that the Designated Court has relied on the confession (Ex. P-57) of the appellant for his conviction. PW-28 who recorded the alleged confession, had not scrupulously followed the guidelines laid by this Court in Kartar Singh v. State of Punjab1. The confession had not been recorded in a free atmosphere. The prescribed procedure under the TADA Act and the rules made thereunder had not been followed while recording the confession. It was also submitted that the confession was not admissible in evidence as it was not voluntary. In this connection, he has taken us through the oral evidence of the parties. It was further submitted that the accused had retracted the confession subsequently. Therefore, even if the confession is admissible, it is a weak piece of evidence and the same cannot be the sole evidence for conviction in the absence of corroboration from independent sources. It was also submitted that the confession of the co-accused (Ex. P-26 and P-27) are not admissible in evidence because there was no joint trial of those two accused with the appellant. The 1994 (3) SCC 569 confession of the co-accused is not substantive piece of evidence. The proviso to Section 15(1) of the TADA Act, introduced by amending the said section in the year 1993 which, in fact, supplements Section 30 of the Evidence Act, mandates that there should be a joint trial. Therefore, he submits that the conviction of the appellant by the Designated Court is unsustainable in law.

11. On the other hand, Shri Jayant Muth Raj, learned Additional Advocate General, appearing for the respondent-State, has supported the impugned judgment of the Designated Court.

12. We have carefully considered the submissions of the learned senior counsel made at the Bar and perused the materials placed on record.

13. The Designated Court has convicted the appellant on the basis of the confession of the appellant made on 27.02.2007 (Ex. P-57) and the confession statement of the two other co-accused (Ex. P-26 and P-27).

14. Therefore, the first question for consideration is whether the appellant has made the confession (Ex. P-57) voluntarily and truthfully.

15. The law of confession is embodied in Sections 24 to 30 of the Indian Evidence Act, 1872. The confession is a form of admission consisting of direct acknowledgment of guilt in a criminal charge. In this connection, it is relevant to notice the observations of Privy Council in Pakala Narayana Swami v. Emperor2 which is as under:

> ".....a confession must either admit in terms of an offence, or at any rate substantially all the fact which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not by itself a confession...."

16. It is well-settled that a confession which is not free from doubt about its voluntariness, is not admissible in evidence. A confession caused by inducement, threat or promise cannot be termed as voluntary confession. Whether a confession is voluntary or not is essentially a question of fact. In State (NCT of Delhi) v. Navjot Sandhu3 this Court has elaborately considered this aspect as under:

> "29. Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his 1939 PC 47 (2005) 11 SCC 600 conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide Taylor's Treatise on the Law of Evidence, Vol. I.) However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of the confession. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration. So also the authority recording the confession, be it a Magistrate or some other statutory functionary at the pre-trial stage, must address himself to the issue whether the accused has come forward to make the confession in an atmosphere free from fear, duress or hope of some advantage or reward induced by the persons in authority. Recognising the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in police custody, the Evidence Act has excluded the admissibility of a confession made to the police officer."

17. Section 15(1) of the TADA Act is a self-contained scheme for recording the confession of an accused charged with an offence under the said Act. This provision of law is a departure from the provisions of Sections 25 to 30 of the Evidence Act. Section 15 of the TADA Act operates independently of the Evidence Act and the Criminal Procedure Code. In Kartar Singh (supra) a Constitution Bench of this Court while upholding the validity of the said provision has issued certain guidelines to be followed while recording confession. These guidelines have been issued to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with the well-recognised and accepted aesthetic principles and fundamental fairness. These guidelines are:

> "(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;
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> (2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;
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> (3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;
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> (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

This is necessary in view of the drastic provisions of this Act. More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts. (5) The police officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure."

18. In Jameel Ahmad v. State of Rajasthan4 this Court has held that when an accused charged with an offence under the provisions of the TADA Act, is voluntarily willing to make a confessional (2003) 9 SCC 673 statement and if such statement is made and recorded by an officer not below the rank of Superintendent of Police in a manner provided in that section, is admissible in evidence. The findings recorded in this case are as under:

> "35. To sum up our findings in regard to the legal arguments addressed in these appeals, we find:
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> (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 truthfully then the said confession is sufficient to base a conviction on the maker of the confession.
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> (ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.
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> (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.
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> (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 a 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.
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> (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."

19. Bearing these principles in mind, let us consider as to whether the confession of the appellant was voluntary and truthful. The appellant was examined as DW□1. In his evidence he has stated that

he was arrested on 19.05.2007, when he was returning from Chennai airport. He was detained for two days and was taken to Trichi, "Q" branch office and was kept there for one day. During this period, he was allegedly tortured by the police. On 22.05.2007 he was produced before the Judicial Magistrate, Trichi, and was remanded by the court till 25.07.2007. PW-27 made an application requesting for police custody of the accused for five days and obtained police custody from 25.07.2007 to 27.07.2007. On 25.07.2007, when the appellant was sitting in the police vehicle, Mr. Rajendran, 'Q' Branch Inspector, told him that he should sign certain papers, otherwise he would be killed in police custody. When he was brought before the Designated Court, on the same day, he informed the same to the learned Judge and gave a petition (Ex. D-1) stating that he was tortured by the police and that he had nothing to do with the alleged incident. When he was again produced before the Designated Court, after recording the confession statement, he gave a petition (Ex. D-2) stating that he has not made any incriminating statement before PW-28.

20. On 26.07.2007, PW-29 produced the appellant before PW-28. PW-28 during his cross-examination has stated that until the accused was produced on 26.07.2007, the accused was in police custody. On 26.07.2007, though it has been recorded that a number of questions were put to the accused and the answers were elicited, there is no record to show that the appellant-accused was warned as required under Section 15 of the TADA Act and Rule 15(3) of the TADA Rules. During his cross-examination PW-28 has stated that he gave warning to the accused which was not supported by any contemporary record, namely, Ex. P-56 dated 26.06.2007. As it is seen in Ex. P-57, only two questions were asked to the appellant and answers elicited, which do not reflect any warning as required under the TADA Act and the TADA Rules. The evidence of PW-28 is that he gave the same warning which he had given on 26.07.2007. There are no contemporary records to show that the warning was made on 26.07.2007 or 27.07.2007. The second question asked on 27.07.2007 (per Ex. P-57) assumes much importance. In this question PW-28 has only explained to the accused that he had been produced only to record his statement. He did not explain to the accused that he had been produced to record the confession.

21. It was contended by the learned Additional Advocate General, appearing for the respondent, that the footnote appended to Ex. P-56 would satisfy Section 15 of TADA Act and Rule 15 of TADA Rules. It is necessary to notice here that complying with these rules is not an empty formality or a mere technicality as these provisions serve a statutory purpose to ensure a fair trial as guaranteed under Article 21 of the Constitution of India. The entire proceedings on record should reflect application of mind into various surrounding circumstances including questions and answers elicited from the accused. Mere recording in a certificate will only amount to technical observance of the rule but that will not prove the voluntariness of the statement. In law, it is not the technical observance of the rules but it is the real satisfaction about the voluntariness of the confession is sine qua non.

22. It is also necessary to state here that the confession recorded by the police officer is undoubtedly equated to a confession recorded by a Judicial Magistrate under Section 164 Cr.P.C. Thus, the said confession is a substantive piece of evidence. Therefore, all the safeguards which are to be followed by a Magistrate should have been followed by the police officer also. It is well-settled that the satisfaction arrived at by the Magistrate under Section 164 Cr.P.C. is, if doubtful, then, the entire

confession should be rejected.

23. In the instant case, it is evident that from out of the questions put by PW-28 and the answers elicited and the manner in which the accused has made the statement are all the foundations upon which it is to be found out as to whether the statement was made voluntarily or not. If the certificate is not supported by any of the above inputs, then the certificate needs to be rejected. The police officer cannot record such a certificate out of his own imagination and the entire proceedings should reflect that the certificate was rightly given based on the materials. In the present case, there is nothing on record to prove the voluntariness of the statement. Ex. D-1 and D-2 and other circumstances would go to show that the appellant could not have made the statement voluntarily. Therefore, the confession statement of the appellant requires to be rejected.

24. The second question for consideration is whether the statement of two other co-accused (Ex. P-26 and P-27) is admissible in evidence.

25. The confession statement of the co-accused was recorded by the Superintendent of Police (PW-20) in Crime No.160/1990. The appellant was absconding, hence the proclamation order was issued by the trial court and thereafter the case was split against the appellant. A separate trial was conducted against the appellant and the impugned judgment convicting the appellant-accused has been passed by the Designated Court.

26. The contention of the learned Additional Advocate General, appearing for the appellant, is that the appellant cannot take the advantage of his own wrong to thwart the object and purpose of Section 15 of the TADA Act.

27. Learned senior counsel appearing for the appellant has submitted that the confession statements of the two co-accused are not at all admissible in evidence because there was no joint trial of those two co-accused with the appellant. Therefore, Ex. P-26 and Ex. P-27 are not admissible in evidence.

28. Section 30 of the Indian Evidence Act mandates that to make the confession of a co-accused admissible in evidence, there has to be a joint trial. If there is no joint trial, the confession of a co-accused is not at all admissible in evidence and, therefore, the same cannot be taken as evidence against the other co-accused. The Constitution Bench of this Court in Kartar Singh (supra), while considering the inter-play between Section 30 of the Indian Evidence Act and Section 15 of the TADA Act held that as per Section 15 of the TADA Act, after the amendment of the year 1993, the confession of the co-accused, is also a substantive piece of evidence provided that there is a joint trial.

29. In State v. Nalini and others5 Justice Quadri has held that a confession of an accused made under Section 15 of the TADA Act is admissible against all those tried jointly with him. It has been held thus:

> "688. Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording the confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the Rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act.
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> (1999) 5 SCC 253
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> 689. Under Section 15(1) of the TADA Act the position, in my view, is much stronger, for it says, ' "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 either in writing or on any mechanical device like cassettes, tapes or soundtracks 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." On the language of sub-section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him, so it is implicit that the same can be considered against all those tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused."

30. In Jameel Ahmad (supra), this Court has reiterated the above position as under:

> "30.....Therefore we notice that the accepted principle in law is that a confessional statement of an accused recorded under Section 15 of the TADA Act is a substantive piece of evidence even against his co-accused provided the accused concerned are tried together."

31. In the instant case, no doubt, the appellant was absconding. That is why, joint trial of the appellant with the other two accused persons could not be held. As noticed above, Section 15 of the TADA Act specifically provides that the confession recorded shall be admissible in trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. We are of the view, that if for any reason, a joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case. We are of the further opinion that if we are to accept the argument of the learned counsel for the respondent-State, it is as good as re-writing the scope of Section 15 of the TADA Act as amended in the year 1993.

32. In Ananta Dixit v. The State6 the Orissa High Court was considering a similar case under Section 30 of the Evidence Act. The appellant, in this case, was absconding. The question for consideration was whether a confession of one of the accused 1984 Crl. L.J. 1126 persons who was tried earlier, is admissible in evidence against the appellant. The Court held that the confession of the co□accused was not admissible in evidence against the present appellant. The Court held:

> "7. As recorded by the learned trial Judge, the accused Narendra Bahera, whose confessional statement had been relied upon, had been tried earlier and not jointly with the appellant and the co□accused person Baina Das. A confession of the accused may be admissible and used not only against him but also against a co□accused person tried jointly with him for the same offence. Section 30 applies to a case in which the confession is made by accused tried at the same time with the accused person against whom the confession is used. The confession of an accused tried previously would be rendered inadmissible. Therefore, apart from the evidentiary value of the confession of a co□accused person, the confession of Narendra Behera was not to be admitted under Section 30 of the Evidence Act against the present appellant and the co□accused Baina Das." We are in complete agreement with the view of the High Court.

33. We are of the view that since the trial of the other two accused persons was separate, their confession statements (Ex.P□26 and P□27) are not admissible in evidence and the same cannot be taken as evidence against the appellant.

34. In view of the discussion made above, the Designated Court was not justified in convicting the appellant. The appeal is accordingly allowed. The judgment and order dated 4.12.2009 passed by the Presiding Judge, Designated Court No.2, Chennai, in Calendar Case No.1/2007, is hereby set aside and the appellant□accused is acquitted for the offence for which he was tried. This Court by order dated 25.19.2010 had granted the bail to the appellant. Hence, the question of releasing him does not arise. The bail bond executed by the appellant and the surety, if any, stands cancelled.

.....J. (S. ABDUL NAZEER) .....J. (DEEPAK GUPTA) New Delhi;

April 1, 2020.