Supreme Court of India
Mohmed Saleem Alias Chuho ... vs State Of Gujarat on 19 July, 1994
Equivalent citations: 1994 (2) ALT Cri 707, (1995) 1 GLR 121, 1994 (3) SCALE 438, (1994) 5 SCC 369, 1994 Supp 1 SCR 801, 1994 (2) UJ 353 SC
Bench: A Anand, F Uddin
ORDER

1. This is an appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter TADA).

2. The prosecution story, as emerging from the record is that a complaint was lodged by one Jugal Kishore Puran Lal Gupta complainant, with Gomtipur Police Station on 10th July, 1992 alleging that when he was returning after visiting his brother's Video Cassette Library Located near Vivekananda Mills on a bicycle, near Arbuda Mills, he found one unknown person coming towards him. On reaching near the complainant, that person took out a knife and gave him a blow on his abdomen. Two or three more persons came out from a nearby Chawl and asked the assailant to drag the complainant into the Chawl. While being dragged towards the Chawl, he was given one more blow on the left side of this neck. The assailant was also inflicted a knife blow on his back. The complainant, however, managed to free himself and started running towards the four cross-roads. He found one police jeep on patrol duty and the police took him to the hospital. A complaint was thereafter lodged and investigation taken in hand. The co-accused of the appellant was released on bail during the investigation but at the time of the framing of the charge-sheet, the co-accused did not turn up and even the sureties could not be located. On the request of tie Public Prosecutor, the case of the appellant was separated and on 30th July, 1993, the appellant was put up for trial for offences under Section 324 IPC, Section 3(1) of TADA and Section 135(1) of the Bombay Police Act. The Trial Court after recording the evidence led by the prosecution and exhibiting the injury certificate received from the hospital, Ex.P-11 formulated the following three points for consideration:

(1) Does the prosecution prove that on 10th July, 1992 at about 9/30 p.m. near Arbuda Mills situated within Gomtipur Police Station limits the present accused along with the absconding accused Saleem Ibrahin Shaikh Voluntarily caused hurt on the complainant Jugalkishore Puranlal Gupta by means of any instrument for stabbing or cutting, or any instrument, which if used as a weapon of offence, is likely to cause death and has, thus, rendered himself liable for the offence punishable under Section 324 of I.P. Code?

(2) Does the prosecution prove that on the aforesaid date, time and place the present accused by carrying with him any weapon in violation of any prohibitory order committed the offence punishable under Section 135(1) of the Bombay Police Act?

(3) Does the prosecution prove that on the aforesaid, time and place the present accused with intent to strike terror in the people or any section of the people or to alienate any section of the people or to adversely effect the harmony amongst different sections of the people did any act or thing by using lethal weapon like knife or razor in such a manner as to cause, or us is likely to cause death of, or

injuries to, any person or persons and has committed a terrorist ad as defined in Section 3(1) of the TADA (Prevention) Act punishable under Section 3(2) of the said Act?

3. The Trial Court found that the charge against the appellant for the offence under Section 135(1) of the Bombay Police Act was not made out and consequently the appellant (sic) acquitted of the said charge.

4. The injuries which were disclosed in the injury certificate (Ex. P-11), upon admission by the defence, indicated that the complainant sustained an injury of 10 cm x 0.75 cm x 0.75 cm on his abdomen apart from an injury on his back of the size 3 cm 0.25 cm. x 0,25 cm. The injuries received by the complainant undoubtedly show that those had been caused to him by a sharp knife and the designated court, in our opinion, was right in coming to the conclusion that an offence under Section 324 IPC had been made out against the appellant. Leaned counsel for the appellant was unable to point out any infirmity in the finding of the Trial Court. The appreciation of the evidence in so far as the offence under Section 324 IPC is concerned, is proper and we agree with the conclusion arrived at by the designated court with regard to the offence of the appellant punishable under Section 324 IPC.

5. The designated court convicted the appellant for an offence under Section 3(1) of TADA also and sentenced him to 8 years rigorous imprisonment and a fine of Rs. 1500 and in default thereof 3 months rigorous imprisonment. In our opinion the designated court fell in error in finding that the offence under Section 3(1) of TADA had been made out against the appellant. In the established facts and circumstances of the case recourse to Section 3(1) of TADA discloses a clear misuse of the provisions of that Act. There is not an iota of evidence that the injury was caused to the complainant with the intention contemplated by Section 3(1) to achieve the objective envisaged by the said Section. The complainant, at the trial, as a definite improvement over his statement in the F.I.R., while narrating the manner of assault added that after he said to the assailants, that he was a "Muslim", he was let off, Apart from the fact that such an improved version does not inspire confidence because there was no occasion for the Complainant to say so, it appears to us that the prosecution introduced this statement with a view to show that the objective of the assailants was to create communal disharmony so as to invoke the provisions of Section 3(1) of TADA. The complainant has not stated anywhere in his statement, that at any point of time, any of the assailants belaboured him only because they believed him to be a "non-Muslim" or had attacked him for that reason. That apart, the complainant on his own admission "managed to escape from the clutches of the assailants and ran towards the four-cross roads". This would not have been his conduct, if the assailants on coming to know that he is a 'Muslim' had let him off! In the absence of any evidence from which even an inference could be drawn that the assault was made with the requisite intention as envisaged by Section 3(1) of TADA, this attempt on the part of the complainant to give a communal colour to the occurrence was futile and the designated court not have convicted the appellant for an offence under Section 3(1) of TADA. While dealing with the ambit and scope of Section 3(1) of TADA in Criminal Appeal Nos. 732-735 of 1993 etc. etc. Hitendra Vishnu Thakur and Ors. etc. etc. v. State of Maharashtra and Ors. This Court opined:

Thus the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3(1) by means of the weapon etc. as enumerated in the Section and was committed with the motive as postulated by the said Section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA. To bring home a charge under Section 3(1) of the Act the terror or panic etc. must be actually intended with a view to achieve the result as envisaged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or create some fear or terror in the people or a section thereof. But unless the panic, fear or terror was intended and was sought to achieve either of the objectives as envisaged in Section 3(1) the offence would not fall stricto sensu under TADA.

6. In view of the law laid down as above, we find that the conviction of the appellant for the offence under Section 3(1) TADA is not at all sustainable. The conviction and sentence of the appellant for the offence under Section 3(1) TADA is consequently set aside.

7. As a result of the above discussion, this appeal succeeds in part. The conviction and sentence of the appellant for an offence under Section 3(1) TADA is set aside but his conviction and sentence for the offence under Section 324 IPC is upheld.

8. With the aforesaid modification, this appeal is partly allowed.