[2025] 4 S.C.R. 156 : 2025 INSC 376

State (CBI)
v.
Mohd. Salim Zargar @ Fayaz & Ors.

(Criminal Appeal No. 1681 of 2009)

20 March 2025

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Issue arose as regards the correctness of judgment and order of the Special Court acquitting the respondents for offences under Ranbir Penal Code, 1932 and Terrorist and Disruptive Activities (Prevention) Act, 1987.

Headnotes†

Terrorist and Disruptive Activities (Prevention) Act, 1987 – ss.3, 4, 15, 19 – TADA Rules – r.15 – Recording of confessional statement – Non-compliance – Effect – Complaint alleging that Vice Chancellor of Kashmir University and his Personal Secretary were kidnapped by armed terrorists from their official car and subsequently, their dead bodies were recovered – Investigation by CBI revealed that the self-styled Chief Commander of banned militant organization, Jammu & Kashmir Students Liberation Front-JKSLF, along with other members, including accused, entered into a conspiracy to kidnap the deceased to strike terror in the minds of the public, thereby to compel the Government to release their associates, and execution of the hostages if their demands were not met – As the Government did not comply with their demand, hostages were taken to a field where accused-respondent no. 1 fired upon with AK-47 rifle causing multiple bullet injuries on their persons resulting in their death – Special Court discarded the ocular evidence and confessional statements of the accused being inadmissible in evidence and acquitted the accused holding that the prosecution could not prove the guilt of the accused beyond any reasonable doubt – Correctness:

Held: Testimony of the prosecution witnesses coupled with non-recovery of the weapon of offence seriously damaged the prosecution case – As regards recording of confessional statement of respondent no. 1, there is clear departure from the norms which

* Author

renders the confession highly suspect – Record does not contain any statement in the form of questions and answers wherefrom it could be deciphered that respondent no.1 was making the confession voluntarily – Hardly any or no time for reflection was given which vitiated the said confessional statement – Also discrepancy in the date of recording of the confessional statement – This very confessional statement of respondent no.1 was deemed inadmissible and unreliable and rejected by the Special Court in a prior case – Acceptance of the same confessional statement of respondent No.1 would disturb the finding of fact already recorded in the previous criminal trial relating to killing of one – Also, said statement clearly vitiated by non-compliance with the procedural safeguards provided u/r.15 – Furthermore, confessional statements of respondent no.2 and respondent no.6 recorded in the same manner as the confessional statement of respondent no.1, hardly any or no time was given to them for reflection before recording confessional statement – Most crucial ommission completely vitiated the said two confessional statements – Procedural safeguards for recording confessional statement of accused given a complete go-bye – Special Court has stopped short of observing that it was a case of abuse of power and authority – No error or infirmity in the view taken by the Special Court in acquitting the respondents – Ranbir Penal Code, 1932 – ss.118, 120-B, 302, 341, 364, 368, 365 – Arms Act, 1959 – s.3/25. [Paras 11, 22.1-22.3, 24, 25, 25.1, 27, 28]

Terrorist and Disruptive Activities (Prevention) Act, 1987 – s.15 – TADA Rules – r.15 – Provisions dealing with recording of confessional statement – Explained. [Paras 13, 14]

Terrorist and Disruptive Activities (Prevention) Act, 1987 – ss.3(1), 19 – Incident relating to kidnapping and subsequent murder of General Manager of a company in Srinagar allegedly by the respondents after entering into a criminal conspiracy to strike terror in the minds of the general public and thereby to compel the Government to release their associates – Special Court acquitted the respondents for the offences u/s.3(1) of the TADA Act rw ss.120B, 302, 368 and 364 of the RPC – Challenge to:

Held: Weapon of assault not recovered and eyewitnesses deposed that the respondents produced in court were not the accused persons – Entire prosecution case centered around the confessional statement of accused SZ which has already been rejected. [Paras 32, 33]

Case Law Cited

Kartar Singh v. State of Punjab **[1994] 2 SCR 375 : (1994) 3 SCC 569 – followed.**

Sharafat Hussain Abdul Rahaman Shaikh v. State of Gujarat **[1996] Supp. 9 SCR 86 : (1996) 11 SCC 62;** *SN Dubey v. NB Bhoir* **[2000] 1 SCR 200 : (2000) 2 SCC 254;** *Ahmed Hussein Vali Mohammed. Saiyed v. State of Gujarat* **[2009] 8 SCR 719 : (2009) 7 SCC 254;** *Yakub Abdul Razak Memon v. State of Maharashtra* **[2013] 15 SCR 1 : (2013) 13 SCC 1;** *Raja v. State of Tamil Nadu* **[2020] 4 SCR 1112 : (2020) 5 SCC 118;** *Ravinder Singh v. Sukhbir Singh* **[2013] 1 SCR 243 : (2013) 9 SCC 245 – referred to.**

List of Acts

Ranbir Penal Code, 1932; Terrorist and Disruptive Activities (Prevention) Act, 1987; TADA Rules; Arms Act, 1959.

List of Keywords

Recording of confessional statement; Vice Chancellor of Kashmir University and his Personal Secretary kidnapped by armed terrorists; Self-styled Chief Commander of banned militant organization called Jammu & Kashmir Students Liberation Front; Kidnap to strike terror in the minds of the public; Execution of hostages; Multiple bullet injuries; Ocular evidence; Confessional statements; Inadmissible in evidence; Testimony of the prosecution witnesses; Non-recovery of weapon of offence; No time for reflection before recording confessional statement; Kidnapping and murder of General Manager of HMT watch company, Srinagar; Weapon of assault; Conspiracy; Safeguards for confessional statements; AK-47 rifle.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1681 of 2009

From the Judgment and Order dated 20.04.2009 of the High Court of Jammu and Kashmir in RC No. 5 of 1990

With

Criminal Appeal No. 1770 of 2009

Appearances for Parties

Advs. for the Appellant:
Ms. Sonia Mathur, Sr. Adv., Ms. Shubhi Bhardwaj, Mukesh Kumar Maroria, Annam Venkatesh, Zoheb Hussain, Rajat Nair, Vivek Gurnani.

Advs. for the Respondents:
Ms. Kamini Jaiswal, Ms. Rani Mishra, Abani Sahu.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

Criminal Appeal No. 1681 of 2009

This is an appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 by the State (CBI) assailing the judgment and order dated 20.04.2009 passed by the 3rd Addl. Sessions Judge, Jammu (briefly 'the Special Court' hereinafter). By the aforesaid judgment and order, the Special Court acquitted the respondents in CBI Case No. RC 5(S)/1990 for the offences under Sections 118, 302, 368 and 365 of the Ranbir Penal Code, 1932 (RPC) and under Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, hereinafter referred to as the TADA Act (since repealed).

2. Genesis of the case can be traced to FIR No. 55/1990 registered at Police Station Nageen, Srinagar under Sections 364, 341 and 120-B of RPC read with Section 3(2) of the TADA Act. The FIR was lodged on the basis of a complaint filed by Shri Ghulam Nabi Dar, a driver of Kashmir University. Informant alleged that on 06.04.1990 at about 04.20 pm, Dr. Mushir-ul-Haq, Vice Chancellor of Kashmir University, and his Personal Secretary Shri Abdul Gani Zargar were kidnapped by armed terrorists from their official car outside the Sadarbal Gate of the University. After taking them in the said vehicle for a short distance towards Lal Bazar on Sadarbal Road, they were shifted to a red Maruti van and taken away.

2.1 Subsequently, dead bodies of Dr. Mushir-ul-Haq and Shri Abdul Gani Zargar were recovered on 10.04.1990. As a result, Section

302 RPC and Section 3/25 of the Arms Act, 1959 ('Arms Act' hereinafter) were added to the FIR.

2.2 Investigation of the case was transferred to the Central Bureau of Investigation (CBI) on the request of the Jammu and Kashmir Government. On the CBI taking over investigation, the case was re-registered as RC 5 (S)/90-SIU.V on 21.04.1990 under Sections 302, 341 and 364 RPC read with Section 3 of the TADA Act and Sections 3/25 of the Arms Act.

2.3 Investigation revealed that Hilal Beg was the self-styled Chief Commander of a banned militant organization called Jammu & Kashmir Students Liberation Front (JKSLF). He along with other members of JKSLF, including accused Javed Shala, Tahir Ahmed Mir, Mushtaq Ahmed Sheikh, Mushtaq Ahmed Khan, Mohd. Hussain Khan and Mohd. Salim Zargar entered into a conspiracy between 31.03.1990 and 06.04.1990 to kidnap Dr. Mushir-ul-Haq, the Vice-Chancellor of Kashmir University and others to strike terror in the minds of the public, thereby to compel the Government to release their associates, viz, Nissar Ahmed Jogi, Gulam Nabi Bhat and Fayyaz Ahmed Wani. The conspiracy included execution of the hostages if their demands were not met.

2.4 On 06.04.1990, at approximately 09.00 a.m., the accused persons grouped together at Aftab's house. They left the house of Aftab in a red Maruti van bearing registration No. JKD-9394 and proceeded towards Kashmir University. They were fully armed. At about 01.20 p.m., the accused persons saw the car of the Vice-Chancellor coming out of the University campus towards the Sadarbal Gate. The vehicle had to stop as the gate was being opened. As it came out from the gate, some of the accused persons forcibly got inside the car of the Vice-Chancellor brandishing their weapons. They overpowered the driver, the Vice-Chancellor, his Personal Secretary and Jamadar, Malook Khan. The vehicle of the Vice-Chancellor was driven towards the Sadarbal side followed by accused Javed Shala and Mushtaq Sheikh in the red Maruti van.

2.5 After travelling some distance, the said vehicle was stopped whereafter the accused persons forced the Vice-Chancellor and his Personal Secretary to come out of the car. The Vice-

Chancellor and his Personal Secretary were thereafter taken to the red Maruti van. Subsequently the two kidnapped persons were taken to different locations and ultimately were taken to the residence of Mohd. Sadiq Rather at Natipura. From there the two kidnapped persons were shifted to the house of accused Shabir where they were kept confined.

2.6 Accused Hilal Beg claimed responsibility for the abduction of Dr. Mushir-ul-Haq, the Vice-Chancellor, and his Personal Secretary Abdul Gani Zargar. In this connection, accused Hilal Beg issued a press release.

2.7 As the Government did not comply with their demand, accused Hilal Beg and his associates convened a meeting on 09.04.1990 at 03.00 p.m. to decide the fate of the hostages.

2.8 On 10.04.1990, the two hostages were taken to a field. Accused Salim Zargar fired upon with an AK-47 rifle causing multiple bullet injuries on their persons as a result of which both of them died on the spot. Local police came to the crime scene and recovered 9 empty cartridges of an AK-47 rifle but the AK-47 rifle could not be recovered. On conclusion of investigation (after transfer of the same to the CBI), charge sheet was filed implicating Hilal Beg, Javed Ahmed Shala, Mushtaq Ahmed Sheikh, Mohd. Salim Zargar, Mohd. Hussain Khan, Aftab Lach Khan, Mushtaq Ahmed Khan, Shabir Butt, Hilal Sheikh, Mohammad Ashraf Butt and Gulam Qadir Mir as the accused for committing an offence under Sections 120B read with Section 365 RPC. All the above, except Aftab Lach Khan, were accused of committing an offence punishable under Sections 3(1) and 3(3) of the TADA Act. Accused Aftab Lach Khan was charged with committing an offence under Section 3(3) of the TADA Act. Additionally, Hilal Beg, Javed Ahmed Shala, Mushtaq Ahmed Sheikh, Mohd. Salim Zargar, Mushtaq Ahmed Khan and Tahir Mir were charged under Section 4(2) of the TADA Act. Accused Mohd. Salim Zargar was further charged for committing an offence punishable under Section 302 RPC while accused Hilal Beg was charged under Section 32 read with Section 34 of the RPC.

3. *Vide* order dated 22.04.2000 accused Abdul Aziz Dar, Gulam Qadir Mir, Shabir Ahmed Bhat, Mohd. Sadiq Rather, Mushtaq Ahmed Khan

and Mohd. Salim Zargar (respondents in the present appeal) were charged for committing an offence under Sections 118/302/368/365 of the RPC read with Sections 3/4 of the TADA Act.

3.1 Accused denied their guilt and claimed to be tried. One of the accused persons Tahir Ahmed Mir was discharged on the same day but proceedings were initiated against the other accused persons. During pendency of the trial, accused Hilal Beg passed away.

3.2 To prove its case, prosecution examined a number of witnesses. After considering the evidence and other materials on record, the Special Court *vide* the judgment and order dated 20.04.2009 acquitted the accused persons holding that the prosecution could not prove the guilt of the accused beyond any reasonable doubt. The Special Court discarded the ocular evidence of PW-2, PW-3 and PW-6 as well as the confessional statements of the accused which were held to be inadmissible in evidence.

4. Aggrieved thereby, appellant (State) has approached this Court by filing criminal appeal under Section 19 of the TADA Act, being Crl. Appl. No. 1681/2009. Crl. Appl. No. 1681/2009 was admitted by this Court *vide* the order dated 28.08.2009.

5. We have heard Mrs. Sonia Mathur, learned Senior Counsel for the appellant and Ms. Kamini Jaiswal, learned counsel for the respondents.

6. Learned Senior Counsel for the appellant-State submits that the Special Court relied on a previous decision dated 21.12.2002 in the case of State through CBI Vs. Mohd. Salim Zargar wherein the confessional statement of Mohd. Salim Zargar was held to be inadmissible. In the present proceedings, besides the confessional statement of Mohd. Salim Zargar, there were confessional statements of two other accused persons, namely, Mushtaq Ahmed Khan and Mohd. Sadiq Rather. However, the confessional statements of both the accused persons were rejected due to the following reasons:

i) No statements in the form of questions and answers were recorded by the Recording Officer to conclude that his satisfaction was based on sound material;

ii) No record was maintained by the Recoding Officer to ascertain if the confessional statement was voluntary;

iii) No effort was made to find out if any other Superintendent of Police was available to record the confessional statements;

iv) No letter was written by the Investigating Officer to the Recording Officer requesting the later to record the confessional statements of the aforesaid two accused persons;

v) It is not mentioned that the Recording Officer had given time to the accused persons and at what time the accused persons were produced before him;

vi) Confessions of the accused persons were recorded on the same day when they were produced before the Superintendent of Police;

6.1 Learned Senior Counsel for the appellant submits that for the aforesaid lacunae the Special Court did not accept the confessional statements of Mushtaq Ahmed Khan and Mohd. Sadiq Rather.

6.2 Referring to Section 15 of the TADA Act, learned Senior Counsel submits that if a confessional statement is established as voluntary, truthful and relates to the accused directly, it holds sufficient evidentiary value. In such a case, no further corroboration is necessary. Conviction of the accused can be based solely on such confession. In the present case, the confessions of the accused persons were voluntary, true and those corroborated with each other. Recording Officer Shri AK Suri, PW-12, had followed the procedure mandated under Section 15 of the TADA Act and Rule 15 of the TADA Rules. Therefore, the Special Court was not justified in rejecting the confessional statements of the aforesaid two accused persons.

6.3 Adverting to the rejection of the confessional statement of Mohd. Salim Zargar, learned Senior Counsel submits that the doctrine of issue estoppel cannot be applied in the present case. Salim Zargar was acquitted in a different proceeding *vide* the judgment and order dated 21.12.2002 which was not challenged by CBI. Barring Salim Zargar, parties are different in both the cases. Present trial had arisen out of a completely different incident i.e. kidnapping of Dr. Mushir-ul-Haq, the Vice-Chancellor of Kashmir University, and his Personal Secretary,

Abdul Gani Zargar, from the Sadarbal Gate of the University on 06.04.1990. Therefore, the Special Court fell in error in rejecting the confessional statement of Salim Zargar relying on the doctrine of issue estoppel.

6.4 In any case, in addition to the confessional statement of Salim Zargar, there were confessions of two other accused persons, viz, Mushtaq Ahmed Khan and Mohd. Sadiq Rather which were recorded by the Superintendent of Police on 14.08.1990 and 25.08.1990 respectively. In view of the joint trial of the accused persons, confessions of the aforesaid two accused persons which were made voluntarily and corroborated with each other should have been relied upon.

6.5 It is further submitted that confessions of the accused persons were recorded in the year 1990 when there were no guidelines prescribed for recording of statements under Section 15 of the TADA Act. Judgment in the case of ***Kartar Singh Vs. State of Punjab***,[1] came much later. Therefore, the procedure prescribed in ***Kartar Singh*** (*supra*) could not have been followed in the present case.

6.6 Learned Senior Counsel submits that Section 15 of the TADA Act provides the substantive legal frame work for recording confessions while Rule 15 of the TADA Rules lays down the procedural safeguards necessary to uphold the validity of such confessional statements. Section 15(2) of the TADA Act should be read with Rule 15 of the TADA Rules. Notably, sub-rule 3(b) of Rule 15 mandates the police officer recording a confession to append a memorandum at the end of the confession. In the present case, Shri AK Suri, PW-12, ensured before recording the confessional statements that the accused were doing so voluntarily and they were duly warned about the legal consequences of such confession. The accused signed every page of the statements and the Recording Officer appended the mandatory memorandum confirming the voluntary nature of the confessions. The certificates, duly signed and sealed, were forwarded to the competent authority. Hence the issuance of the certificates complied with Rule 15(3) of the TADA Rules

1 (1994) 3 SCC 569

reflecting the officer's satisfaction regarding the voluntariness of the confessions.

6.7 That apart, it is further submitted that the confessional statement of Mohd. Salim Zargar was additionally recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.PC) which was duly exhibited during the trial.

6.8 Thus, the confessional statements of Mohd. Salim Zargar, Mushtaq Ahmed Khan and Mohd. Sadiq Rather were recorded following the legal procedure mandated by the statute. Therefore, the Special Court was not at all justified in discarding the confessional statements of the abovenamed accused persons. On the basis of such confessional statements, the guilt of the accused persons stood conclusively established. In the circumstances, learned Senior Counsel submits that the appeal may be allowed setting aside the impugned judgment of the Special Court.

6.9 In support of her submissions, learned Senior Counsel has placed reliance on the following decisions:

i) ***Kartar Singh*** (*supra*);

ii) ***Sharafat Hussain Abdul Rahaman Shaikh Vs. State of Gujarat***;[2]

iii) ***SN Dube Vs. NB Bhoir***;[3]

iv) ***Ahmed Hussein Vali Mohammed. Saiyed Vs. State of Gujarat***;[4]

v) ***Yakub Abdul Razak Memon Vs. State of Maharashtra***;[5] and,

vi) ***Raja Vs. State of Tamil Nadu***;[6]

7. *Per contra***,** learned counsel for the respondents submits that Special Court had acquitted all the accused persons as the only actionable

2 (1996) 11 SCC 62

3 (2000) 2 SCC 254

4 (2009) 7 SCC 254

5 (2013) 13 SCC 1

6 (2020) 5 SCC 118

evidence were the alleged confessional statements of the three accused persons. In so far the confessional statement of Mohd. Salim Zargar is concerned, the same was already rejected by the Special Court *vide* the judgment and order dated 21.12.2002 in a separate TADA proceeding. No appeal was preferred by the CBI against the said acquittal order which was passed following rejection of the confessional statement of Mohd. Salim Zargar. Thus, the said finding had become final. In the present proceeding, prosecution relied upon the same confessional statement which was rightly rejected by the Special Court.

7.1 Learned counsel submits that trial in this case took more than 19 years to complete as the prosecution was very tardy in producing the witnesses before the Court while the accused persons remained in custody as under-trial prisoners. The alleged confessional statements were recorded by one Shri AK Suri, PW-12, who was holding the post of Superintendent of Police, CBI at the relevant point of time and was also supervising the investigation of the present case. Prosecution could not produce any authorization whereby PW-12 was authorized to record the confessional statements. After due consideration, the Special Court discarded the confessional statements of all the three accused persons. While the confessional statement of Mohd. Salim Zargar was rejected because the same confessional statement was relied upon by the prosecution in another trial where it was rejected, in so far the confessional statements of Mushtaq Ahmed and Mohd. Sadiq Rather are concerned, the Special Court expressed serious doubt about the voluntary nature of such confessions.

7.2 Elaborating further, learned counsel for the respondents submits that PW-12 did not testify as to how the accused persons had appeared before him on their own. He was also silent about the production of the accused persons before him and also in respect of any request regarding recording of such confessional statements made to him by the Investigating Officer. The Investigating Officer deposed that he had never arrested the accused persons and had not even produced the accused before the Court. He further stated that he did not ask the SP, CBI (Shri AK Suri) to come for recording the statement of the accused persons. There is no record to show from whose

custody the accused persons were produced before Shri Suri when the alleged confessions were recorded or whether the accused persons made any desire in writing or orally to get their confessions recorded. The testimony of Shri AK Suri also shows that no questions were put to and answers sought from the accused persons before recording their confessions. There is no contemporaneous record to show that questions were put to the accused persons by Shri AK Suri before the statements were recorded. No satisfaction was recorded that the confessional statements were made voluntarily and were truthful. Admittedly, the confessional statements were recorded under compelling circumstances in places which were fortified and heavily guarded, such as, BSF camp and Joint Interrogation Centres.

7.3 Learned counsel for the respondents submits that it is not the case of the prosecution that no other Superintendent of Police was available at the relevant point of time and that only Shri AK Suri was available which necessitated him to record the confessional statements. Learned counsel asserts that Shri Suri was keen and overzealous to get the confessional statements recorded by himself for more than one reason. There is nothing on record to show from whose custody the accused persons were produced before Shri Suri for recording of the confessional statements in the BSF camp and at the Joint Interrogation Centres and at whose instance. There was no independent evidence to support the prosecution case and, therefore, the only way the prosecution could succeed in proving the guilt of the accused persons was to resort to the draconian law for getting the confessions recorded by themselves.

7.4 Learned counsel for the respondents submits that no offence under the TADA Act was made out or proved as against the respondents. It is evident that the accused persons were subjected to harsh interrogation, treatment and unlawful incarceration to make out a case of TADA but without any evidence. Special Court rightly acquitted the respondents. There is no illegality or perversity in the order of acquittal. No case is made out to reverse the order of acquittal.

7.5 Learned counsel has relied upon the decisions of this Court in ***Kartar Singh*** (*supra*), ***SN Dube*** (*supra*) and also in the case of ***Raja*** (*supra*) which clearly lay down the proposition that the

guidelines prescribed by this Court for recording of confessional statements under Section 15 of the TADA Act and Rule 15 of the TADA Rules are mandatory in nature which have to be followed if such confessions are to be relied upon. If the guidelines or conditions are not complied with, such confessional statements cannot be relied upon to convict the accused.

7.6 In the circumstances, learned counsel for the respondents submits that there is no merit in the appeal which should, therefore, be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. Prosecution presented PW-2, Ghulam Mohiuddin Khan, PW-3, Molu Khan, and PW-6, Ghulam Nabi Dar, the driver, as the eyewitnesses. PW-2 and PW-3 in their evidence described the kidnappers as young men with moustaches but could not identify them. PW-6 detailed how armed individuals hijacked the vehicle and later transferred the kidnapped persons to another car but he could not recognize the individuals. Therefore, evidence of the aforesaid witnesses are of not much assistance to the prosecution.

10. Though the medical and forensic evidence confirmed that both the deceased were killed by bullets fired from AK-47 rifle, the weapon (AK-47 rifle) used in the crime could not be recovered. In fact, PW-11 Shri Roop Singh, a Senior Scientific Officer from the Central Forensic Science Laboratory, New Delhi testified that the cartridges recovered and sent to him for forensic examination were from a 7.62 mm AK-47 rifle. However, during cross-examination, he admitted that he had not seen the AK-47 rifle from which the cartridges were fired.

11. It is evident that the aforesaid testimony of the prosecution witnesses coupled with non-recovery of the weapon of offence seriously damaged the prosecution case. Prosecution therefore relied entirely on the confessional statements of Mohd. Salim Zargar, Mushtaq Ahmed Khan and Mohd. Sadiq Rather to prove the case against the respondents.

12. Before we deal with the admissibility or otherwise of the aforesaid confessional statements, it would be apposite to analyse the relevant legal provisions under the TADA Act and the TADA Rules dealing with recording of confessional statements.

13. TADA Act was a special legislation enacted to make special provisions for the prevention of and for coping with terrorist and disruptive activities and for matters connected therewith or incidental thereto. Section 15 provides for certain confessions made to police officers to be taken into consideration. Section 15 is as under:

> *15. 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.*

13.1 Sub-section (1) starts with a non-obstante clause. It says that notwithstanding anything contained in the Cr.P.C. or in the Indian Evidence Act, 1872 ('Evidence Act' hereinafter) but subject to the provisions of Section 15 of the TADA Act, a confession made by a person before a police officer not lower in rank than a Superintendant of Police (SP) shall be admissible in the trial of such person or that of co-accused, abettor or conspirator for an offence under the TADA Act or under the TADA Rules. The recording may be by such a police officer or on any mechanical device, like, cassettes, tapes etc.

Proviso to sub-section (1) says that the confessional statement made under sub-section (1) shall be admissible with regard to the co-accused, abettor or conspirator if they are charged and tried in the same case together with the accused. Sub-section (2) of Section 15 mandates that before recording any confession under sub-section (1), the police officer shall explain to the person making it that he is not bound to make a confession but if he does so, it may be used as evidence against him. Such a 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.

13.2 Thus, sum and substance of Section 15 of the TADA Act is that a confessional statement made voluntarily by a person before a police officer not below the rank of SP shall be admissible in the trial of such person for an offence under the TADA Act.

14. Rule 15 of the TADA Rules lays down the procedure regarding recording of confession made to police officers. Rule 15 reads thus:

15. Recording of confession made to police officers.—(1) A confession made by a person before a police officer and recorded by such police officer under 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 may make 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) insofar 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.

14.1 While sub-rule (1) mandates that the confession under Section 15 of the TADA Act should be recorded in the language in which the confession is made, but if that is not practical, then it should be recorded in the language used by such police officer for official purposes or in the language of the designated court. In any case, the confessional statement shall form part of the record.

14.2 As per sub-rule (2), the confession so recorded shall be shown, read or played back to the person concerned. If he does not understand the language in which it is recorded, it shall be

interpreted to him in a language which he understands. At that stage, the person making the confession shall be at liberty to explain or add to his confession.

14.3 The requirement of sub-rule (3) is that the confession if it is in writing shall be signed by the person who makes the confession as well as by the police officer. Additionally, the police officer shall certify under his own hand that such confession was taken in his presence and recorded by him. He shall also certify that the record contains a full and true account of the confession made by the person. At the end of the confession, the police officer is required to make a memorandum, the substance of which is that the police officer had explained to the person concerned that he is not bound to make a confession but if he does so, the same may be used against him as evidence. The memorandum should contain a certificate of the police officer that he believes that the confession was made voluntarily in his presence and recorded by him; that it was read over to the person concerned who admitted the same to be correct containing a full and true account of the statement made by him.

14.4 Sub-rule (4) deals with a situation where the confession is recorded on any mechanical device. Since in the present case, the confessional statements were not recorded on any mechanical device, this provision may not have much relevance.

14.5 Sub-rule (5) mandates that every confession recorded under Section 15 of the TADA Act shall be sent forthwith to the jurisdictional Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, who shall forward the recorded confession so received to the designated court (special court) which may take cognizance of the offence.

14.6 Thus, Rule 15 deals with the procedural aspect regarding recording of confession made to police officers under Section 15.

15. As noticed above, TADA Act was enacted by the Parliament to deal with the menace of terrorism and related disruptive activities. It contained a special provision in the form of Section 15 which permitted confessional statement recorded by a police officer not below the rank of SP to be admitted as evidence in the trial of the person

making the confessional statement or the trial of the co-accused, abettor or conspirator if they are tried together in the same case as the person making the statement.

16. In criminal jurisprudence, developed over a century, confessions made to a police officer are inadmissible in evidence. Under Section 25 of the Evidence Act, a confession made to a police officer by a person accused of an offence shall not be proved against him. Power to record confessions is given to a Judicial Magistrate. Strict and rigorous guidelines have been laid down to record such judicial confessions under Section 164 Cr.P.C. Such safeguards are founded on the well-settled principle that confession is an admission of guilt. Ordinarily, nobody would like to admit his guilt as he is fully aware that the same would be used against him. That apart, an accused has a constitutional and fundamental right against testimonial compulsion. Therefore, Section 15 of the TADA Act completely altered the fundamental rules of evidence.

17. V*ires* of the TADA Act was challenged before the Supreme Court in ***Kartar Singh*** (*supra*). A Constitution Bench of this Court while upholding the validity of Section 15 of the TADA Act as well as the entirety of the Act, however, laid down certain guidelines so as to ensure that 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 compliance with well-recognized and accepted aesthetic principles and fundamental fairness. These guidelines are as follows:

> *263. However, we would like to lay down following guidelines so as 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:*
>
> *(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;*
>
> *(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;

(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;

(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;

The Central Government may take note of these guidelines and incorporate them by appropriate amendments in the Act and the Rules.

17.1 This Court further clarified that though it is entirely for the court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must satisfy itself that there was no trap, no track and no importune seeking of evidence during the phase of custodial interrogation. The court should also satisfy itself that all the required conditions are fulfilled. This Court further emphasized that in order to ensure a higher level of scrutiny *vis-a-vis* applicability of TADA Act there should be a screening committee or a review committee both at the central level as well as at the state level.

18. In the case of ***SN Dube*** (*supra*), a two Judge Bench of this Court negatived the contention of the defence that a confession under Section 15 of the TADA Act should be recorded in two phases i.e. the preliminary part containing the record of how and for what purpose the person was forwarded and the questions and answers put to him for ascertaining his voluntary willingness to make a confession even after being told that the confession may be used against him as a piece of evidence; and the second part which contains the actual confessional statement. Contention of the defence was that it is the second part which has to be regarded as the actual confessional statement and not the preliminary part. Therefore, the obligation to explain and ascertain is to be performed while recording the real confessional part. Such explanation and ascertainment done earlier when the preliminary part was recorded cannot be regarded as proper compliance with the requirement of Rule 15(2). The police officer must explain and give the statutory warning before the actual confessional part starts and it is at that point of time that he has to ascertain by questioning the person making it that he is making the confession voluntarily.

18.1 The aforesaid contention of the defence was repelled by this Court in the following manner:

30. ...Therefore, the contention that when the confession is recorded in two parts, only the second part can be regarded as the confession and while recording the

second part the police officer should give the statutory warning and then ascertain if the person concerned is making it voluntarily, cannot be accepted. The requirement of law is that before recording the confession the police officer should ascertain by putting questions to the maker of it that he is making the confession voluntarily and he should also explain to him that he is not bound to make the confession and that if he makes it that can be used against him as evidence. In this case DSP Shinde had put questions to each of the accused who was brought before him to ascertain if he was willing to make a confession voluntarily and had also given the statutory warning to him on that day. Even after the accused had shown his willingness to make a confession Shinde had given him time not exceeding 48 hours to think over his readiness to make the confession. When the accused was brought to him again he had again ascertained if he was still ready and willing to give a statement. He had also asked him if he was making it under any pressure or coercion or threat. Only after the accused had replied in the negative he had told the accused to say whatever he wanted to state about Suresh Dube's murder. In view of these facts and circumstances it is not possible to uphold the finding recorded by the trial court and to accept the contention raised on behalf of the respondents that while recording the confessions of the accused Shinde had committed a breach of Rule 15(2).

19. ***Shiraj Ahmed*** (*supra*) is a case where a two Judge Bench of this Court while considering the admissibility of a confession recorded under Section 15 of the TADA Act referred to the exceptional nature of Section 15 and the guidelines laid down by the Constitution Bench in ***Kartar Singh*** (*supra*). This Court held that any confession made in defiance of the safeguards would not be relied upon by a court. This Court held thus:

50. From the aforementioned statements of law enunciated by this Court, it is apparent that considerable amount of confidence has been reposed in the senior police officials for recording the confessional statement. A confessional statement to police is not admissible under the general

law connected with administration of criminal justice, which is made admissible under the TADA Act, and, therefore, strict compliance with the procedure prescribed under Section 15 of the TADA Act read with Rule 15 of the TADA Rules is expected to be followed. Any confession made in defiance of the safeguards provided therein, would not be relied upon by a court. The confession should be made voluntarily without there being any force or pressure put on, or allurement or inducement given to, a person who is voluntarily admitting his guilt. Under Section 25 of the Evidence Act, a confession made to the police officer is not admissible in evidence to be considered by a court. Although there are certain exceptions in the preceding provisions, but the fact remains that as a rule a confession made to the police officer is not made admissible under the Evidence Act. The idea appears to be that any statement made to a police officer who is connected with the investigation and prosecution of a person, would not be taken as evidence. Under Section 15 of the TADA Act, if a confession made by the accused to a police officer not lower than the rank of Superintendent of Police is made admissible, it would still be a confession made to the police officer, and thus inbuilt safeguards have been provided under Section 15 of the TADA Act read with Rule 15 of the TADA Rules so as to lend credence to the confession made to the police officer, it being voluntary and without any force or pressure and allurement or inducement. The Constitution Bench of this Court in Kartar Singh has also laid down the condition to establish the voluntary nature of the confession.

x x x x x x x x x x

52. From a bare reading of the above certificate, it is clear that it is necessary for the police officer to certify that he has explained to the accused that the accused is not bound to make a confession and if he does so such confession may be used as evidence against him. It is further required to be recorded that he believes that the confession was voluntarily made. He has to record that the confessional

> *statement has been taken in his presence and heard and recorded by him. The confessional statement should be read over to the person making it and admitted by him to be correct and it should be certified that it contains a full and true account of the statement made by the accused. The certificate which is required to be given by the police officer is not a mere formality, but it is for the purposes of ascertaining that the police officer has recorded the confession keeping in mind and being fully aware of the fact that the confession recorded by him is a voluntary confession and with the information available to the accused that he is not bound to make such confession and if he does so it will be used as evidence against him. A duty is cast on the police officer who is to record the confession to bring at the relevant time these facts to the notice of the person whose confession is going to be recorded.*

20. In the case of ***Ajit Singh*** (*supra*), a two Judge Bench of this Court again considered admissibility of confessions recorded under Section 15 of the TADA Act. Observing the draconian nature of Section 15, this Court emphasized that TADA Act is a harsh penal statute and its provisions must, therefore, be construed in that perspective. Referring to an earlier decision, this Court observed that Section 15 is a clear departure from the general law that a statement made to a police officer is not permissible in evidence. Adverting to ***Kartar Singh*** (*supra*), it was observed that the Constitution Bench while upholding the *vires* of Section 15 repeatedly dealt on the severity of the said provision as one laying down altogether a new procedure and emphasized that provisions of the TADA Act and the TADA Rules must be scrupulously observed with particular reference to the provisions relating to recording of confessions. In the facts of that case, it was noticed that 15 to 30 minutes time was given to the accused for reflection before the actual confessions were recorded. This Court held that sufficient cooling off time was not given to the accused. It was also found that there was no evidence on record that the confessional statements were submitted to the concerned Magistrate. In the circumstances, this Court observed as under:

> *13. Applying the aforesaid principles to the facts of the present case, we are of the opinion that adequate time had*

not been given to any of the accused as they had been in police custody for almost 45 days in each case We also observe that there is no evidence on record to suggest that the special report envisaged under sub-rule (5) of Rule 15 had been submitted to the Magistrate. The confessions cannot, therefore, be taken into account for any purpose.

21. Having surveyed the law on the subject, let us now advert to the three confessional statements.

22. The confessional statement of Mohd. Salim Zargar (respondent No. 1) was recorded on 16.09.1990 (sic) by PW-12, Shri AK Suri, SP. The following memorandum was appended to the confessional statement:

The person named above who is presently lodged in BSF camp at Srinagar voluntarily expressed his willingness before me to make a clean-breast of his guilt. It was explained to him that he is not bound to make any confession and that if he does so, it may be used against him as evidence. Even after this he is willing to make a confession of his guilt. On further questioning him I have satisfied myself that he is making the confession voluntarily.

Sd/ 16.09.90
(A.K. SURI)
SUPTD OF POLICE
CBI/SIC-U, NEW DELHI.

22.1 From the above, it is seen that respondent No. 1 was lodged in a BSF camp at Srinagar where his confession was recorded. But there is no mention where the confession was recorded. Further, the time when the confession was recorded was not mentioned. PW-12 also did not mention whether he had afforded any time to respondent No. 1 to reflect before making the confession which is most crucial. This statement is as vague as it can be. Thus, there is clear departure from the norms which renders the confession highly suspect.

22.2 The record does not contain any statement in the form of questions and answers wherefrom it could be deciphered that PW-12 had reason to believe that respondent No. 1 was making the confession voluntarily. Further, in his evidence PW-12 stated that he was posted as SP, CBI in New Delhi. He was on a

visit to Srinagar on 06.08.1990 when respondent No. 1 was produced before him. Confessional statement of respondent No. 1 was recorded on the same day i.e. on 06.08.1990 at the BSF camp. It is thus apparent that since the confession was recorded on the same day, hardly any or no time for reflection was given which has vitiated the said confessional statement. There is one more aspect which needs to be noted. The certificate appended to the confessional statement is dated 16.09.1990 whereas PW-12 in his evidence stated that he had recorded the confession of respondent No. 1 on 06.08.1990. This is again a grave discrepancy.

22.3 It may be mentioned that this very confessional statement of respondent No. 1 was rejected by the Special Court in a prior case concerning the killing of one BK Ganju (File No. 6/CH, CBI Vs. Mohd. Salim Zargar, decision dated 21.12.2002) where the said confessional statement was deemed inadmissible and unreliable.

23. This Court in the case of ***Ravinder Singh Vs. Sukhbir Singh***,[7] examined the principle of issue estoppel. That was a case arising out of a prayer for quashing of criminal proceedings under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This Court explained the principle of issue estoppel in the following manner:

> *25. The principle of issue estoppel is also known as "cause of action estoppel" and the same is different from the principle of double jeopardy or autrefois acquit, as embodied in Section 300 CrPC. This principle applies where an issue of fact has been tried by a competent court on a former occasion, and a finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or res judicata against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might*

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be permitted by Section 300(2) CrPC. Thus, the rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties...

24. Therefore, applying the aforesaid principle the confessional statement of respondent No. 1 could not have been relied upon by the prosecution and was rightly rejected by the Special Court. Acceptance of the same confessional statement of respondent No.1 would disturb the finding of fact already recorded in the previous criminal trial relating to the killing of one B.K. Ganju. In any case, the said statement is clearly vitiated by non-compliance with the procedural safeguards provided under Rule 15 and enumerated in ***Kartar Singh*** (*supra*).

25. This brings us to the confessional statements of respondent No.2, Mushtaq Ahmed Khan, and respondent No. 6, Mohd. Sadiq Rather. While the confessional statement of Mushtaq Ahmed Khan was recorded on 14.08.1990, that of Mohd. Sadiq Rather on 25.08.1990. Confessional statements of the above two respondents were recorded in the same manner as the confessional statement of respondent No.1; the only difference being that statement of respondent No. 2 was recorded at the Joint Interrogation Centre (JIC), Srinagar, whereas statement of respondent No. 6 was recorded at JIC, Kot Bhalwal, Jammu. The memorandum appended to their confessional statements did not contain the time of recording of confession and from where they were produced; and also as to whether any time was given to the said respondents for reflection before recording of the confessional statements. This is a most crucial omission which has completely vitiated the confessional statements. That apart, no statements in the form of questions and answers were recorded by PW-12 to ascertain the voluntary nature of the confessional statements made by respondent Nos. 2 and 6. In addition to the above, nothing has been placed on record to show any authorization to PW-12 to record the confessional statements of the above respondents.

25.1 PW-12 in his evidence deposed that he was on a visit to Srinagar on 14.08.1990 when respondent No. 2 was produced before him in the JIC and he had recorded the confession of respondent No. 2 on that day itself. Similarly, PW-12 stated that he was on a visit to Jammu on 25.08.1990 when respondent No. 6 was produced before him in the JIC where

he had recorded the confession of respondent No. 6 on that day itself. Therefore, it is evident that since the confessional statements of the above two respondents were recorded on the same day of production, hardly any or no time was given to them for reflection which has completely vitiated the said two confessional statements.

26. ***Kartar Singh*** *(supra)* says that confession should be recorded in a free atmosphere. Recording of confessional statements in a heavily guarded BSF camp or in a JIC where the atmosphere for an accused would generally be daunting and overbearing cannot be said to be in a free atmosphere. It has come on record that the confessional statements so recorded were not accepted by the Court of Chief Judicial Magistrate whereafter those were sent directly to the Special Court which again is an infraction of the statute.

27. The Legislature had reposed great faith in the fairness and uprightness of the higher police officials in the rank of SP and above while conferring the drastic power of recording confessional statements of the accused persons upon them making the same admissible in evidence subject to fulfillment of the procedural safeguards. But we are afraid, in so far the present case is concerned, the procedural safeguards were given a complete go-bye. The Special Court has stopped short of observing that it was a case of abuse of power and authority. It is indeed a sad reflection as to how investigation and trial unfolded in this case where truth and justice, both for the victims and the accused, remained elusive. It is not for nothing that such draconian provisions have since been repealed. We say this and no more.

28. Thus, in view of the discussions made above, we do not find any error or infirmity in the view taken by the Special Court in acquitting the respondents. This is not even a case of plausible view. No other view is possible. Consequently, there is no merit in the criminal appeal which is accordingly dismissed.

CRIMINAL APPEAL NO. 1770 OF 2009

29. This appeal under Section 19 of the TADA Act by the State (CBI) assails the judgment and order dated 20.04.2009 passed by the Special Court in CBI Case No. RC 6(S)/1990 acquitting the respondents for the offences under Section 3(1) of the TADA Act read with Sections 120B, 302, 368 and 364 of the RPC.

30. This Court *vide* the order dated 11.09.2009 had admitted the instant criminal appeal and directed listing of the same with Criminal Appeal No. 1681 of 2009. However, Criminal Appeal No. 1770 of 2009 (State Vs. Tahir Ahmed Mir and Anr.) was dismissed by this Court *vide* the order dated 04.12.2023 for non-prosecution *qua* respondent No. 1.

31. This criminal appeal arises out of the incident relating to kidnapping and subsequent murder of Shri H.L. Khera, the then General Manager, HMT Watch Factory, Srinagar allegedly by the respondents after entering into a criminal conspiracy to strike terror in the minds of the general public and thereby to compel the Government to release their associates.

32. Like the previous criminal appeal, here also the weapon of assault was not recovered. That apart, the eyewitnesses deposed that the respondents who were produced in court were not the accused persons. Ultimately, the entire prosecution case centered around the confessional statement of Mohd. Salim Zargar (respondent No. 2) recorded by Shri A.K. Suri (PW-3 here) which we have already rejected in Criminal Appeal No. 1681/2009.

33. For the reasons stated while dismissing Criminal Appeal No. 1681 of 2009, the present criminal appeal also fails and is accordingly dismissed.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Nidhi Jain