

Girdhari Parmanand Vadhava

Vs

State of Maharashtra

Criminal Appeals No. 319 of 1995

(G. N. Ray, G. B. Pattanaik JJ)

23.09.1996

JUDGMENT

G. N. RAY, J.

1. These appeals have been filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA) against convictions and sentences passed by the learned Judge, Designated Court, Nasik in Special Case No. 1 of 1993 by judgment dated 21-9-1994. Five accused including the three appellants were tried for offences under Sections 143, 364, 368, 385, 302 read with Section 120-B and Section 140 IPC and Section 3(2)(i) of TADA.
2. The prosecution case in short is that on 15-9-1992, the complainant Kantilal Katyare returned to his house at about 8.15 p.m. He was then informed by his wife that his grandson Vaibhav had gone with Accused 3 Girdhari who is the appellant in Criminal Appeal No. 319 of 1995 on a scooter to bring the price of casio piano since sold by Vaibhav but Vaibhav had not returned. Suspecting something foul, Vaibhav's father had gone in search of Vaibhav. At about 9.30 p.m., Vaibhav's father Vijay informed the complainant on phone that Vaibhav could not be traced. He had, therefore, gone to the Deolali Camp Police Station. The complainant had also informed the police on phone to search Vaibhav. At about 11.15 p.m. a person talked to the complainant on phone in Hindi informing the complainant that Vaibhav was in their custody and if the amount of Rs two lakhs would be paid, Vaibhav would be released. Vaibhav also talked to the complainant on phone stating that the said persons were severely beating him and would kill him. So he should pay the amount as demanded by them. On enquiry by the complainant, Vaibhav told that he was talking from Deolali Camp. Vaibhav also informed that he was tied with a rope and a revolver was pointed on his head and the said persons were not allowing him to give their phone number or addresses. Vaibhav requested the complainant to save him. The complainant thereafter requested the person who talked to him earlier, not to beat Vaibhav and he also informed that he was prepared to comply with their demand and they would take away the amount or the complainant would himself come with the amount at the place to be named by them.
3. It is the prosecution case that immediately thereafter, the complainant went to the Nasik Road Police Station and informed the matter to the police. Along with the police he had also come to Deolali Camp and they had also gone to the house of Girdhari-Accused 3. But they were informed by the family members of Girdhari that since morning, Girdhari had gone to Bombay. They also searched the houses of the friends of Vaibhav but Vaibhav could not be found.
4. Vijay also searched for Vaibhav but without any success. At about 4.30 a.m. on 16-9-1992, a complaint was lodged expressing apprehensions that at about 7.00 p.m. on 15-9-1992, Vaibhav had

been kidnapped by Girdhari under the pretext of realising the price of the casio piano but later on the accused had demanded ransom of Rs two lakhs. At about 6.00 a.m. on 16-9-1992, the police had come to the complainant's house and informed him that Vaibhav had been brought to Bytoo Hospital. Thereafter, the complainant had gone to the hospital where they found the dead body of Vaibhav. He was wearing only underpants and several injuries including swelling on the neck of the dead body of Vaibhav, were noticed. The complainant was informed that Girdhari, Birju and their colleagues had kidnapped Vaibhav and had taken him to the premises known as Mithun Farm near Deolali Camp and they had killed Vaibhav as the ransom of Rs two lakhs had not been paid to them. Accordingly, a supplementary complaint was recorded as part of the complaint Ex. 21 and Crime No. 323 of 1992 was registered by the police.

5. The investigation had been carried out by Mr Pote, Police Inspector (Crime) Ex. 76, Police Inspector, Mr Sarnaik Ex. 93, Mr Marathe, Police Inspector (Crime) Ex. 95 and Mr Chaudhari, Police Inspector (Crime) Nasik Ex. 98. The investigations made by the police disclosed that Girdhari was apprehended by Police Inspector Dilip Daswani Ex. 25 and Shankar Albard Ex. 74 at about 4.30 p.m. on 16-9-1992 outside Mithun Farmhouse. Accused 1 Ranjit @ Ravindra and Accused 2 Ravi @ Raviraj were also arrested on 16-9-1992 by 2.30 p.m. Accused 4 Major alias Ravindra Mogal was arrested on 29-11-1992. Witness Prabhakar Bawiskar had held identification parade on 25-12-1992 (Ex. 53) in which PW 4 Dilip Daswani identified Accused 5 as per Panchnama Ex. 50. Prabhakar Bawiskar, the Special Judicial Magistrate again held identification parade on 14-1-1993 (Ex. 53) in which witness Shankar Albard identified Accused 5 as per panchnama Ex. 52. Accused 1, 2, 3 and 4 were produced before Shri Bansode, Deputy Commissioner of Police on 4-11-1992 for recording their confessional statements. The said accused were given 48 hours' time for reflection. Thereafter, they were again produced before the Deputy Commissioner of Police on 16-11-1992. These four Accused 1, 2, 3 and 4 had given their confessional statements Exs. 83, 87, 85 and 81 respectively before the Deputy Commissioner of Police.

6. The said accused however at the trial had stated that Birju who had killed Vaibhav by strangulating him with the help of his belt had absconded. All the accused denied the charges made against them and claimed to be tried and they asserted that they had been falsely involved in the case. Accused 1 to 4 also contended that their confessional statements before the Deputy Commissioner of Police were recorded after they were severely beaten and under threat of their being killed and they had not voluntarily given the confessional statements recorded in Exs. 81, 83, 85 and 87. Accused 1 in his statement under Section 313 of the Criminal Procedure Code also stated that absconding accused Birju Indori, PW 3, PW 5 and Carroline themselves formed a gang and Birju was the agent of Katyare family. Accused 2 stated in his statement that though he had no concern with the alleged offences, he was brought by the police from his house at Deolali Camp under the assurance that he would be released on the same evening but he was falsely involved in the said case. Accused 3 Girdhari stated that he was a college student and also worked as a salesman in a cloth store. Accused 4 stated that on 17-9-1992 when he was playing football on cantonment school ground, the police jeep came there and he was brought to Deolali Camp Police Station. He had given his name as Ravindra Mogal Pande but the police were insisting that his name was Virendra Major Pande and were alleging that he was a colleague or companion of the absconding accused Birju Indori. He also stated that he was given a severe beating at the police station and along with him 3 to 4 persons were apprehended by the police. Two ladies, a boy of fair complexion and the said 3 to 4 persons were brought to Mukti Dham where some talks took place between Shri Pote, Police Inspector and the said 3 to 4 persons. He was only detained but the others were allowed to go. He also alleged that he was given electric shock on his private parts. He thereafter became

unconscious and was later on brought to the Civil Hospital, Nasik where his injury was sutured. Accused 5 alleged that in the newspaper he had read about the incident wherein his name was also mentioned as a person involved in murdering Vaibhav. Therefore, along with the said newspaper, he himself had gone to the police station and given his name as Sanjay Mohan Jadhav. The police insisted him to disclose who was Bandy and he pleaded his ignorance. He also alleged that he had been falsely implicated in the said case.

7. PW 10 Carroline has deposed the Mithun Farmhouse belonged to her and PW 3 Pravin was her sister's son. Such fact has also been stated by PW 3 Pravin. Both the said witnesses have deposed that Pravin was staying in Mithun Farmhouse since September 1992. PW 3 and PW 5 have deposed that there was a phone in Mithun Farmhouse and the number of the telephone is 42177. The police has also noted the presence of a telephone in Mithun Farmhouse, number of which is 42177. Ex. 38 is a bill of the said telephone for the period from 6-6-1992 to 5-8-1992 and such phone stands in the name of Carroline, Witness 10. The complainant and his daughter-in-law PW 2 deposed that they have also got a phone, the number of which is 61841. The learned Designated Court has, therefore, held that it has been clearly established that there are two phones respectively at the said two premises namely at Mithun Farm and at the house of the deceased Vaibhav.

8. About the location of Mithun Farmhouse, the depositions of PWs 3, 5, 22-25 get corroboration from the map Ex. 29 and the panchnama of place of offence Ex. 30. It transpires that the place where the incident had taken place is isolated. From the evidence of PW 3 and also from the evidence of PW 10, it is revealed that PW 3 had been staying in Mithun Farmhouse belonging to his aunt, PW 10. Accused 2, 4 and 5 had taken a room on rent on the first floor of the house. The owner of the said Mithun Farmhouse has also deposed that she had let out the first floor of the house to Accused 2, 4 and 5 at a monthly rental of Rs 500. Such deposition stands unchallenged. It has been established by cogent evidence that PW 5 was a friend of PW 3 and the said PW 5 used to come to the said farmhouse to meet his friend PW 3 and the said PW 5 used to come to the said farmhouse to meet his friend PW 3. It is also established that a boy aged about 10 years was engaged as a part-time domestic helper for washing the utensils of PW 3. It also transpires from the deposition of PW 5 that PWs 3 and 5 were reading in the same class and since two years prior to the said incident, PW 5 was visiting PW 3 in the said Mithun Farmhouse quite frequently.

9. It may be stated here that no identification parade was held in respect of Accused 3 Girdhari. The said accused was apprehended by the police and such fact is established from the deposition of PWs 4, 18, 22, 23 and 24. It also transpires that after apprehending Accused 3, he was taken in a police jeep and Accused 3 had led the police to Mithun Farmhouse.

10. The learned Designated Court has observed that in view of such facts there was no necessity of holding any identification parade for Accused 3. From the evidences of PWs 23 and 24, it also transpires that when the police reached Mithun Farmhouse along with Accused 3, the lights inside and outside the house were switched on. PW 23 has deposed that four persons were seen standing in the verandah. One of them was the absconding accused Birju. The said two witnesses have also deposed that on noticing the presence of the police party, Birju had shouted that police had come and they should run away. Such depositions of PWs 23 and 24 also stand corroborated from the evidences of PWs 3 and 5 who had also heard the said statement made by Birju. PW 23 has deposed that PSI Gite chased Birju and he asked the other police personnel to chase the other culprits. PW 23 thereafter chased other persons who were running towards the south. The said PW 23 could apprehend one of them at a distance of 100 feet and produced him before PSI Gite and the person who was apprehended by PW 23 is Accused 1. Similarly, PW 24 has deposed that on being asked by

PSI Gite, he also chased one of the accused who was running towards the east and he apprehended the said accused at a distance of 100 ft. and the person so apprehended is Accused 2.

11. The learned Designated Court has observed that such depositions of the police personnel are fully reliable and there is nothing on record which may impel the Court to discard such evidence. PW 2 Meena the mother of the deceased, has deposed that Accused 3 Girdhari was working in Deepak Hosiery. She has further deposed that Deepak Hosiery was very close to her house. The complainant and PW 2 Meena have also deposed that there was friendship between the deceased Vaibhav and Accused 3 Girdhari and Accused 3 was on visiting terms with Vaibhav at his residence.

12. The actual incident in holding the deceased for ransom and the incident of murdering him after torturing him brutally and mercilessly assaulting him had taken place inside Mithun Farmhouse. PW 3 the resident of Mithun Farmhouse and PW 5, the friend of PW 3 who was then present in the said farmhouse, have given a detailed account as to how Vaibhav was brought to Mithun Farmhouse by Accused 3 on the pretext of realising the price of a casio piano which was sold by Vaibhav to PW 3 and how thereafter the accused Birju and other accused came down from the first floor and thereafter they started assaulting and torturing Vaibhav to PW 3 and PW 5 have deposed that on two occasions Birju telephoned to the members in the house of the deceased Vaibhav demanding ransom and he also compelled Vaibhav to speak to the members of his family over the telephone that his life was in danger and the persons who had held him for ransom were mercilessly beating him and if the money was not paid as demanded, he would be killed. From the depositions of PWs 3 and 5, it clearly transpires that although Birju took a leading part in holding the deceased Vaibhav for ransom and also demanding such ransom on two occasions after connecting the telephone number at the house of Vaibhav from the telephone kept in the said Mithun Farm, the other accused also played their respective role in assaulting and torturing the deceased after tying PW 3 and PW 5 and threatening them not to utter a word, otherwise they would be killed. Both the said PWs 3 and 5 have deposed that when for the second time the house of Vaibhav was contacted from the telephone kept in Mithun Farm and Birju talked on the telephone, Birju disconnected the telephone and declared that the amount of Rs two lakhs as demanded by him was not going to be paid and Vaibhav should, therefore, be killed to set an example that if the demand of Birju was not met, it would entail a very severe consequence.

13. Both the said witnesses have also deposed that Vaibhav was undressed and seriously assaulted and with the help of the belt of Birju, Birju tried to strangulate him. At one stage, Accused 3 Girdhari cautioned Birju that if the belt would be pulled on so tightly, the boy would die immediately and that should not be done. Birju then replied that the boy should be killed and he started pulling the belt tightly around the neck of Vaibhav with force. At that time all the accused including Girdhari held Vaibhav tightly, who was then desperately trying to free himself, so that Birju could execute the strangulation. Both PW 3 and PW 5 have deposed that after some time froth started coming from the mouth of Vaibhav and when the belt being pulled with great force gave away, the other accused holding Vaibhav released their hold. Vaibhav fell on the ground dead. Both of them have deposed that when for the second time, Vaibhav's house was contacted over the telephone from Mithun Farm, Vaibhav was forced to speak on the phone and Vaibhav had told his mother by saying that mummy should pay the amount as demanded otherwise he would be killed. PW 2 has also deposed to the same effect that when the accused contacted the telephone of the house of Vaibhav for the second time, PW 2 had picked up the telephone and she heard Vaibhav speaking to her over the telephone to meet the demands of the accused otherwise he would be tortured and killed. The demand for ransom as made by Birju over the telephone on the first occasion stands corroborated by the deposition of the complainant who received the said telephone

call.

14. Considering the evidences adduced in the case, the learned Designated Court has come to the finding that the prosecution case was fully established that although the price for the piano had been paid by PW 3 to Accused 3 a day before when such piano was delivered to him, Girdhari Accused 3 acting on a day false pretext to realise the price of the said piano from Mithun Farm took Vaibhav to the said Mithun Farmhouse. Immediately after Vaibhav was brought by Girdhari to the said Mithun Farm, the other accused including the absconding accused Birju came down from the first floor and when Birju enquired as to whether the said boy was from Katyare family and Girdhari answered in the affirmative, Birju said that Girdhari had done an excellent job. Thereafter, attempt to realise two lakhs of rupees by way of ransom was made by the said accused including the absconding accused Birju and having failed to get any assurance from the mother of Vaibhav, who is PW 2 Meena, that rupees two lakhs would be paid as demanded, Birju took the decision that Vaibhav should be murdered to set an example as to what would happen if their demand was not met. Thereafter, the said boy was murdered after being very cruelly tortured and mercilessly assaulted by the accused. The learned Designated Court has come to the finding that the accused were guilty for the offences punishable under Section 120-B IPC and Section 302 read with Section 120-B IBC and also for the offence under Section 3(2)(1) of TADA and he convicted all the said accused for the aforesaid offences. The learned Designated Court has sentenced each of the accused to suffer imprisonment for life on each count by indicating that the sentences would run concurrently.

15. Against the said order of conviction and sentence passed by the learned Designated Court Accused 3 Girdhari has preferred Criminal Appeal No. 319 of 1995 before this Court and Accused 4 Major @ Ravindra Mogal Pande has preferred Criminal Appeal No. 1305 of 1995. The State of Maharashtra has also preferred Criminal Appeal No. 702 of 1993 praying for enhancement of sentence of the convicted accused in view of the grave nature of offences committed by them. All the said appeals have been heard analogously and are being disposed of by this common judgment.

16. Ms Rani Jethmalani, learned counsel appearing for the appellant-Girdhari, Accused 3 has submitted that Girdhari was admittedly a friend of the deceased Vaibhav and was on visiting terms with Vaibhav. He had only negotiated a deal of selling a casio piano belonging to Vaibhav which PW 3 intended to purchase as he happened to know both of them. In order to secure the price of the said piano sold by Vaibhav to PW 3 he had taken Vaibhav to Mithun Farm. There is no evidence to hold that Girdhari belonged to the group of absconding accused Birju and other accused who used to stay in the first floor of Mithun Farm. It is not unlikely that Birju or other residents of first floor had noticed Vaibhav coming to Mithun Farm and they got down from the first floor with an intention to hold Vaibhav for ransom and Girdhari had no idea of such intention of the other accused including the absconding accused Birju.

17. Ms Rani Jethmalani has contended that when Birju enquired as to whether Vaibhav belonged to Katyare family, Girdhari answered in the affirmative and according to depositions of PWs 3 and 5, Birju expressed his happiness for bringing Vaibhav to Mithun Farm. The learned counsel for the appellant Girdhari has submitted that it was not unlikely that Birju who was a hardened criminal for which evidences have been led, and was contemplating to hold Vaibhav for ransom became happy when for a different purpose, Vaibhav was taken by Girdhari to Mithun Farm and expressed his happiness on seeing Vaibhav brought to the said farm by Girdhari. From such evidence, it cannot be held that Girdhari was a party to the conspiracy to hold Vaibhav for ransom. Ms Jethmalani has submitted that only because PW 3 has deposed that he had paid the price of the piano on the previous day to Girdhari, it cannot be held in the absence of any corroboration, that PW 3 had

actually paid the price. If the price was really paid, it was quite unlikely that Girdhari would take Vaibhav for realisation of the price of the piano only at the risk being exposed that he was dishonest. Ms Jethmalani has further submitted that Girdhari was not supposed to anticipate that there would not be other persons present at Mithun Farm when Vaibhav was taken there because admittedly the said farmhouse was a residential unit. She has submitted that the finding by the learned Designated Court that Girdhari was a party to the conspiracy in holding Vaibhav for ransom and in execution of such conspiracy, he had brought Vaibhav on a false plea of realising the price of the casio piano, is based more on surmise and conjecture than on any convincing and clinching evidence. Hence, conviction of Girdhari on account of conspiracy must be held illegal.

18. Mr Jethmalani has also submitted that even if depositions of PW 3 and PW 5 are taken to be correct on their face value, it clearly transpires from the depositions of PWs 3 and 5 that it was Birju who was commanding everyone to act according to his dictate. Girdhari was asked to connect the telephone at the house of Vaibhav because he knew the number but Girdhari did not make any demand for ransom either on the first or on the second occasion when the residential telephone of Vaibhav was connected. On both the occasions Birju spoke over the phone and demanded ransom. Ms Jethmalani has submitted that it has been deposed by both PW 3 and PW 5 that Girdhari asked Vaibhav to act as per direction of Birju because Birju and his associates were dangerous persons. Such advice of Girdhari, according to the learned counsel, only indicates that being a friend of Vaibhav, he was alarmed and greatly concerned for the well-being of Vaibhav when Birju and his associates came down and held Vaibhav for ransom.

19. Ms Jethmalani has submitted that the overt act alleged against Girdhari is that he had tied Pravin's hands and slapped him when he had enquired as to why Birju and his associates were holding Vaibhav. Such act on the part of Girdhari, according to the learned counsel, may be reasonably explained by indicating that Girdhari did not dare flouting any command of Birju, a notorious and hardened criminal. It is not unlikely that he was afraid that Pravin and his friend might be in grave danger if having witnessed Birju and his associates in holding Vaibhav for ransom, they would try to escape from the place or shout for help.

20. Ms Jethmalani has submitted that Girdhari did not take any part in torturing or assaulting Vaibhav or even treating him with cruelty by pouring beer in his mouth or forcing him to take meat. Both PW 3 and PW 5 have specifically deposed that when Birju tied his belt around the neck of Vaibhav and was attempting to pull the belt with force, it was Girdhari who had cautioned Birju not to pull the belt with force, otherwise Vaibhav would die. Such act of Girdhari clearly reveals that he did not intend that Vaibhav should be killed.

21. Ms Jethmalani has submitted that PW 3 and PW 5 made an omnibus statement that when Birju had declared that Vaibhav should be killed to give a lesson that a dire consequence would follow if Birju's demand was not met, all the accused held Vaibhav tightly and Birju pulled the belt fastened at the neck of Vaibhav with force till he died. The learned counsel has submitted only for such omnibus statement, without specifying individual role of each of the accused as to how and what part of the body of the victim was held by such accused, no conviction for murdering Vaibhav can be based against Girdhari. Ms Jethmalani has submitted that essential ingredients of common object or common intention to murder Vaibhav so far as Girdhari is concerned are totally absent. Unfortunately, the learned Judge of the Designated Court being obsessed with the view that Girdhari hatched a conspiracy for holding Vaibhav for ransom, proceeded on the assumption that he had also taken part in killing Vaibhav.

22. Ms Jethmalani has submitted that in any event, conviction of Girdhari under Section 3(2)(1) of TADA is wholly illegal. The learned counsel has contended that from the evidences adduced in the case, it only transpires that Birju was a hardened criminal and he had extorted money on some occasions. Even if it is accepted that Birju and his associates hatched a conspiracy to hold Vaibhav for ransom and formed an unlawful assembly at Mithun Farm and actually held Vaibhav for ransom and made demands for the ransom money and not getting such money tortured Vaibhav with cruelty and ultimately killed him, such criminal activities cannot be held to have been committed to overawe the Government or to strike terror in the people or any section of the people or to do such other acts as mentioned in Section 3(1) of TADA so that the accused may be held to have committed "terrorist act". The criminal activities, alleged by the prosecution, only indicate that the accused including the absconding accused made an attempt to realise ransom from the family of Vaibhav but not being successful to realise the amount demanded, had killed the victim after torturing him. Such act, according to the learned counsel, is at best a crime under the penal law of the land. Only because Birju exclaimed that Vaibhav would be killed to teach a lesson to others that if demand of Birju was not met, the same would entail a serious consequence, it cannot be reasonably held that the said acts would hold the society at large, terror-stricken.

23. In this connection, Ms Jethmalani has referred to a decision of this Court in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47]. In the said case, the accused exclaimed "Presently, Raju and Kesav are having dominance in the town. We would become dadas of the town upon taking lives out of them. Then there would not be any rival to us in the town. Upon commission of murder of Raju and Kesav on account of terror, the people would be scared." The Designated Court held that the materials placed before the court did not disclose offence under Section 3(1) of TADA. According to the Designated Court, the intention of the accused was not to strike terror in the people or a section of the people but only to eliminate Raju and Kesav, their rivals in the underworld, with a view to gain supremacy of the underworld. Upholding the finding of the learned Designated Court, it has been indicated by this Court that "a mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them, cannot contribute offence under Section 3(1) of the Act. That may indeed be fallout of violent act but that cannot be said to be the intention of the perpetrators of the crime."

24. Ms Jethmalani has submitted that Birju might have intended to project himself to be a dreaded and hardcore criminal whose dictate could not be lightly taken but that by itself was not sufficient to make an individual criminal act, even if perpetrated with utmost cruelty, to be an act which was likely to strike terror in the mind of the people at large or a section of people as contemplated under Section 3(1) of TADA.

25. Ms Jethmalani has also contended that even if it can be assumed that Birju committed a gruesome murder by intending that such act would strike terror in the minds of the people or a section of the people so far as he was concerned, there is no material which would warrant a finding that other accused and particularly Girdhari had also intended to strike terror in the minds of the people by associating with Birju in committing the murder of Vaibhav. Girdhari had no track record of criminal activity. There was no occasion for him to project himself as a notorious criminal to strike terror in the minds of the people. Ms Jethmalani has submitted that TADA is a monstrous Act and provisions of this Draconian statute must be construed very strictly so that a crime is not unjustly branded as an offence of "terrorist activity" under Section 3(1) of TADA.

26. Ms Jethmalani has submitted that conviction of Girdhari under Sections 120-B, 302 read with

Section 120-B IPC and under Section 3(2)(1) of TADA is wholly unjustified and he should therefore be acquitted by allowing his appeal.

27. The learned counsel appearing for the other appellants and for accused-Respondents 2 and 5 in the appeal preferred by State for enhancing the sentence, have supported the contentions of Ms Jethmalani. It has been contended by the learned counsel that the absconding accused Birju masterminded the crime. He made demands for ransom and when his demands were not met, he decided to kill Vaibhav to set an example to others as to consequences of not meeting his demand. It is Birju who took out his own belt and fastened the same on the neck of Vaibhav and pulled the belt with force and thus strangled Vaibhav and killed him. From the evidence adduced in the trial, it has clearly come out that it was Birju who dictated other to do certain things and they had to follow such command. Birju was a notorious criminal and it was not possible for the other accused to disobey his command. It is quite evident from the depositions that excepting Birju no one had decided or intended to kill Vaibhav but Birju decided to kill him to project his dreaded image. Even if the accused had helped Birju in holding Vaibhav for ransom, the other accused cannot be convicted for the offence of murder of offence under Section 3(1) of TADA. They may at best, be convicted for only abetting Birju to hold Vaibhav for ransom. The learned counsel have therefore submitted that convictions of the other accused for murder with conspiracy and terrorist activities should be set aside.

28. Mr Tulsi, the learned Addition Solicitor General appearing for the State, has, however, refuted the contentions of Ms Jethmalani and the other learned counsel appearing for the convicted accused. Mr Tulsi has submitted that complicity of Girdhari in the offences for which he has been convicted with other co-accused is clearly established if the following facts, which have been convincingly proved, are taken into consideration : (a) Girdhari had already received the price of the piano from PW 3 on the previous day but on a false pretext of realising the price, he brought Vaibhav to Mithun Farmhouse situated at a lonely place in the evening. (b) When Birju and other accused came down to the ground floor and enquired whether the boy from Katyare family was brought, he answered in the affirmative by addressing Birju as "BOSS" and Birju expressed his happiness for the good job done by Girdhari. (c) When Vaibhav was assaulted by the accused, Girdhari did not raise a voice of protest or even requested Birju and others not to resort to such activity of assaulting and torturing but told Vaibhav that he would act as dictated by the accused by threatening that the accused were dangerous people. (d) In order to ensure that PW 3 and PW 5 would not go out and shout for help he tied the hands of Pravin and slapped him when he protested against rough dealing with Vaibhav. The friend of Pravin was similarly tied by a co-accused. (e) Girdhari connected the telephone at Vaibhav's house so that demand for ransom could be made. (f) When liquor and mutton were brought by the co-accused, Girdhari, on his own, bolted the door from inside so as to ensure that no one could enter. (g) When finally Birju declared that Vaibhav should be killed, the neck of Vaibhav was fastened with the belt and Birju started pulling the same with force to strangle Vaibhav, and Vaibhav had attempted to extricate himself, Girdhari along with other co-accused tightly held Vaibhav in order to facilitate the killing of Vaibhav by strangulation. Girdhari held Vaibhav till he breathed his last.

29. Mr Tulsi has submitted that when PW 3 told Vaibhav and Girdhari that he had paid the price of the piano on the previous day, Girdhari did not protest against such attention. It is, therefore, quite evident that Girdhari brought Vaibhav to the said secluded place, namely, Mithun Farmhouse in the evening on a false pretext of realising the price of the piano from PW 3. Birju and other accused were waiting for arrival of the boy from Katyare family and when Girdhari brought Vaibhav, they all came down from the first floor and after ascertaining the identify of the boy thanked Girdhari for

doing an excellent job. If the fact of bringing Vaibhav to the said secluded place on a false pretext is considered along with subsequent events that followed in the context of the specific role played by Girdhari, there is no manner of doubt that he was a party to the conspiracy to hold the boy for ransom and played his role in executing the conspiracy.

30. Mr Tulsi has submitted that Girdhari knowingly became a member of an unlawful assembly and played a positive role in executing the game plan to realise ransom from the family members of Vaibhav. Mr Tulsi has also submitted that when Vaibhav was mercilessly tortured and assaulted and the belt of Birju was fastened around the neck of Vaibhav and Birju declared that Vaibhav would be murdered and started pulling the belt with force, Girdhari did not remain as a silent spectator but along with other co-accused he tightly held Vaibhav so that he could not extricate himself for which he was then making efforts, and he held Vaibhav tightly till he was brutally murdered. Mrs Tulsi has submitted that at the first phase of attempt to strangulate Vaibhav, Girdhari requested Birju not to pull the belt with much force otherwise Vaibhav would die immediately. Such conduct of Girdhari, according to Mr Tulsi, may be explained by indicating that in all probability Girdhari had desired that attempt to realise ransom money should be continued by keeping Vaibhav alive. Even if it is assumed that Girdhari did not, up to that moment, intend to kill Vaibhav but when the decision was taken by Birju that Vaibhav would be killed, he shared the common intention of killing Vaibhav by playing an active role in holding Vaibhav tightly to facilitate the act of killing.

31. Mr Tulsi has submitted that whether an act is committed with an intention to strike terror in the people or a section of people or not is to be gathered from the commission of the act and surrounding circumstances. In the instant case, it has come out in evidence that Birju was a dreaded and hardcore criminal. he had already extorted money from others by threatening them. Birju made a demand for a large sum of money, namely, rupees two lakhs from the family members of Vaibhav who was held for ransom by Birju and other co-accused. Birju decided that Vaibhav should be killed in order to strike terror in the society by sending a clear message that the demand made by the gang of Birju was not to be stifled in any manner and if the demand was not met, the innocent person held for ransom would be killed.

32. Mr Tulsi has submitted that the fact in Niranjana Singh case [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] as considered by this Court was entirely different. In Niranjana Singh case [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] the accused really intended to gain supremacy in the underworld by killing his rivals who were also underworld dons thereby intending to cow down any other rival of the accused. In the facts of that case, both the learned Designated Court and this Court held that the evidence adduced in the case did not warrant any finding that the accused had, in fact, intended to strike terror in the minds of people or a section of people. Mr Tulsi has submitted that even in Niranjana Singh case [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] this Court has clearly indicated that : (SCC p. 88, para 10)

"It would have been a different matter if to strike terror some innocent persons were killed. In that case the intention would be to strike terror and the killings would be to achieve that objective."

Mr Tulsi has submitted that in the instant case an innocent boy, held for ransom was brutally killed with a clear intention to strike terror in the minds of people in that locality so that a command of the gang led by Birju was to be acceded to without protest otherwise an innocent person would be mercilessly killed. Such activity by indicating clear intention constitutes offence of terrorist activity under Section 3(1) of TADA.

33. In this connection, Mr Tulsi has referred to the decision of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087]. In that case, this Court has considered the import of "terrorist activity" as contemplated under Section 3(1) of TADA by indicating that terrorism has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes terrorism. It may be possible to describe it as use of violence when its most important result is not merely physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or to terrorise people and the society and not only those directly assaulted. Mr Tulsi has submitted that the murder of the innocent boy on failure to meet the exorbitant demand of money immediately, was committed with an avowed intention to strike terror in the society and such wanton act of killing cannot but bring about shock and fear psychosis in the minds of people, thereby bringing the offence within the parameter of "terrorist activity" under Section 3(1) of TADA.

34. Mr Tulsi has also submitted that to establish a charge of conspiracy, knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. When the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so long as it is known that the collaborator would put the goods unlawfully obtained to unlawful use. For such contention, Mr Tulsi has referred to the decision of this Court in *State of Maharashtra v. Som Nath Thapa* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : (1996) 3 Scale 449]. Mr Tulsi has submitted that in the instant case it was clearly declared by Birju that Vaibhav would be held for ransom and as a matter of fact he was held for such ransom. Thereafter demand for ransom money was made from the family members of Vaibhav who was also tortured and compelled to speak over the phone to the members of the family to pay the money demanded by the accused. When the family members failed to meet the full amount as demanded immediately, decision to kill Vaibhav was taken and he was killed and in such act of killing each of the accused had played a role. Mr Tulsi has, therefore, submitted that the convictions of each of the accused as made by the learned Designated Judge are fully justified and no interference with such convictions is warranted.

35. Mr Tulsi has submitted that the innocent boy was cruelly tortured and murdered by assaulting him mercilessly, kicking on his private parts, forcing him to consume liquor and meat and thereafter killing him by strangulation after undressing him and giving burn injuries on some parts of his body with cigarette butt. Such extreme cruelty in committing the murder of an innocent schoolboy makes the offence of murder as one of the rarest cases for which extreme penalty for death is wholly justified. Mr Tulsi, however, has fairly submitted that quantum of punishment is primarily the concern of the Court and is to be decided by delicately balancing the aggravating and mitigating circumstances in committing the crime by evaluating the evidence adduced in a case. He has submitted that Birju, the absconding accused, no doubt masterminded the crime and took the leading role and also tortured the boy with extreme brutality and ultimately killed him by strangulation, the other accused also helped him in perpetrating the crime and some of them also tortured the victim by assaulting him and compelling him to consume liquor and meat. Hence, all of them also deserve exemplary punishment for the murder of an innocent boy.

36. After giving our careful consideration to the facts and circumstances of the case and the

evidences through which we have been taken by the learned counsel appearing for the parties, it appears that a young schoolboy was brutally murdered after subjecting him to various physical and mental tortures with utmost cruelty. The deceased Vaibhav was taken from his home by Accused 3 Girdhari to Mithun Farmhouse which was situated at a lonely place. It has been clearly established by the deposition of the mother of the deceased PW 2 Meena that Girdhari was a friend of the deceased and was on visiting terms with Vaibhav. It has also come out in the evidence that Girdhari negotiated for the sale of a casio piano which belonged to Vaibhav and purchased by PW 3 who was also known to Girdhari. According to PW 3, he had paid the price of the said piano on the previous day when such piano was delivered by girdhari. Even then, on a false pretext that the price of the piano would be realised by Vaibhav from PW 3 by coming to his house at Mithun Farm, Vaibhav was taken to the said Mithun Farm by Girdhari. When Girdhari told PW 3 that the owner of the said casio piano had come with him to realise the price of the said piano, PW 3 immediately replied that why would the owner come when he had already paid the price for the said piano to Girdhari on the previous day. Girdhari did not make any protest against such assertion about the payment of price of piano by PW 3. Such assertion by PW 3, without any protest by Girdhari, stands corroborated by the deposition of PW 5. It is, therefore, quite evident that Girdhari had received the price from PW 3 but on a false plea of realising the sale price of the piano, he induced the deceased Vaibhav to come with him to Mithun Farmhouse.

37. It has also come out in the evidence that Birju and other accused were present in the first floor of the said farmhouse where Vaibhav was taken by Girdhari. It has also been proved that immediately after the arrival of Vaibhav, Birju and other accused came down from the first floor and ascertained from Girdhari as to whether the boy from Katyare family had come with him. When Girdhari answered in the affirmative by addressing Birju as 'BOSS', Birju expressed his happiness by saying that Girdhari had done a good job. Although it has been contended by Ms Jethmalani that simply because Birju expressed his satisfaction for bringing Vaibhav by Girdhari to the said Mithun Farmhouse, it cannot be presumed that Girdhari was a member to the conspiracy to hold Vaibhav for ransom, we are not inclined to accept such submission of Ms Jethmalani. It has already been indicated that when Girdhari had realised the price of the piano, there was no necessity of bringing Vaibhav for realisation of the price of the said piano from PW 3 residing in the said Mithun Farm, situated in a lonely place. It has also come out in the evidence that Birju was not residing in the first floor but at that time he was also present at Mithun Farm when Vaibhav was taken there. The satisfaction expressed by Birju by thanking Girdhari for doing an excellent job for bringing Vaibhav, a son of Katyare family, indicates that Birju and other accused had been waiting for Girdhari who was expected to bring the only son of his parents in Katyare family. It will be significant to note in this connection that Birju did not cause any enquiry as to who was the boy but he definitely caused the enquiry as to whether or not the boy brought by Girdhari was a member of the Katyare family. This fact coupled with subsequent events and the role played by Girdhari in threatening Vaibhav with serious consequences if he would not listen to the dictates of Birju and his associates and his overt act in slapping Pravin and asking him to remain quiet and also tying his hands so that he could not go out of the Mithun Farm and thereafter connecting the residential telephone of Vaibhav from the telephone at Mithun Farm so that the demand for ransom could be made, in our view, clearly indicate that Girdhari had conspired that Vaibhav after being taken to Mithun Farmhouse would be held for ransom to extort money from Katyare family. It is true that Girdhari himself did not assault Vaibhav and also did not torture him like some of the co-accused, but he had taken an active role in holding Vaibhav tightly when Birju had decided that Vaibhav would be killed and started pulling with force the belt which was fastened around the neck of Vaibhav. Both PW 3 and PW 5 have specifically stated that Girdhari along with other accused held Vaibhav tightly when he was trying to

free himself from the clutches of Birju, so that killing by strangulation was facilitated. Ms Jethmalani has submitted that when initially Birju tightened his belt around the neck of Vaibhav and was pulling it, Girdhari requested Birju not to pull with force otherwise Vaibhav would die immediately. According to Ms Jethmalani, such act on the part of Girdhari only reflects that Girdhari did not intend to kill Vaibhav. Such submission cannot, however, be accepted because of the subsequent role of Girdhari. If after making such statement Girdhari had not taken any active role in helping Birju to commit the murder of Vaibhav, the said statement of Girdhari perhaps would have indicated about his intention not to kill Vaibhav. In our view, in all probability, as submitted by Mr Tulsi, Girdhari wanted that Vaibhav should be kept alive for some more time so that the ransom amount would be realised by keeping him detained. But when Birju after talking to the mother of Vaibhav declared that the amount as demanded by Birju was not going to be paid by the family of Vaibhav and Vaibhav should be killed so as to set an example that if the demand of Birju and his associates was not met it would invite death and then proceeded to kill Vaibhav after undressing him and torturing him brutally, Girdhari along with other accused actively assisted Birju in murdering Vaibhav by holding Vaibhav tightly till he breathed his last. It may also be indicated here that when searches were made by the members of the family to trace out Vaibhav, the family members had also gone to Girdhari's house because Vaibhav had left his home in the company of Girdhari. On enquiry at the house of Girdhari, the family members disclosed that Girdhari had left for Bombay in the morning. The fact remains that Girdhari had not left for Bombay but he was very much in the town itself. It is quite likely that in view of the conspiracy to hold Vaibhav for ransom, Girdhari knew that he would not come back to his home at night and presumably to explain his absence from his home, he had made a false representation to the members of his family that he would go to Bombay.

38. It has been clearly proved by PW 3 and PW 5 that all the accused including Girdhari had taken part in killing Vaibhav after holding him for ransom and attempting to realise money from the family of Vaibhav. From the evidence, it has transpired that Birju was a dreaded criminal. He had extorted money from other persons on previous occasions. He also masterminded the crimes committed by the accused including Girdhari and had also taken the leading role and finally killed Vaibhav by strangulating him with his own belt. But from the evidence adduced in the case, it has also been clearly established that all the other accused including Girdhari conspired to hold Vaibhav for ransom when he would be brought to Mithun Farm. All the said accused were also actively associated with Birju in murdering Vaibhav.

39. A crime even if perpetrated with extreme brutality may not constitute "terrorist activity" within the meaning of Section 3(1) of TADA. For constituting "terrorist activity" under Section 3(1) of TADA, the activity must be intended to strike terror in people or a section of the people or bring about other consequences referred to in the said Section 3(1). Terrorist activity is not confined to unlawful activity or crime committed against an individual or individual but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country. In the instant case, the intention to strike terror in the minds of the people can be reasonably inferred because Birju declared such intention in no uncertain terms by indicating that Vaibhav should be killed in order to send the message to the people in the locality that if the demand of Birju and his associates was not met, extreme consequence of killing of an innocent person would be resorted to. In order to send such message to the society, it was decided that Vaibhav would be killed and Vaibhav was killed for giving effect to the intended threat to the people. If an innocent boy is killed only because the demand for ransom amount was not met by the family members, such killing cannot but send a shockwave and bring

about terror in the minds of the people of the locality. In Niranjana Singh case [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] this - Court has also indicated that killing of underworld dons who were held to be rivals of the accused for gaining supremacy in the underworld cannot be held to have been intended to strike terror in the minds of the people or a section of the people but it will assume altogether a different dimension if in order to strike terror in people or a section of people some innocent persons are killed because in that case, the intention to strike terror will achieve that objective. It is the impact of the crime and its fallout on the society and the potentiality of such crime in producing fear in the minds of the people or a section of the people which makes a crime, a terrorist activity under Section 3(1) of TADA. In our view, in the facts of the case, the learned Designated Judge has rightly convicted the accused for offences under Section 3(1) of TADA besides convicting each of them under Section 120-B and Section 302 read with Section 120-B of the IPC. We may, however, indicate here that in any event, for the offence of murder the accused have been convicted and sentenced to life imprisonment. It will be of little consequence so far as sentence part is concerned, if the conviction under Section 3(2)(1) of TADA is not made.

40. So far as the other co-accused are concerned, some of them had even tortured Vaibhav both physically and mentally apart from taking active role in holding Vaibhav for ransom and murdering him. Hence, convictions of all the accused for the aforesaid offences are fully justified and no interference is called for against such convictions.

41. So far as the question of quantum of punishment is concerned, it appears to us that it was Birju who had masterminded the crime and had taken the leading role in committing the crime. Although other accused who faced the trial in the absence of Birju, since absconding, are also guilty of the offences under Sections 120-B and 302 read with Section 120-B of the IPC and Section 3(2)(i) of TADA, in the facts of the case, it does not appear to us that their offence in murdering Vaibhav can be held to be an offence for murder in the rarest of rare cases. The learned Designated Court has, therefore, rightly passed the sentence of life imprisonment against the accused. We, therefore, dismiss the appeals preferred by the convicted accused and also the appeal preferred by the State for enhancing the sentences.