

Khudeswar Dutta

Vs

State of Assam

(G. T. Nanavati, V. N. Khare JJ)

02.04.1998

JUDGMENT

NANAVATI J

1. The appellant has been convicted by the Designated Court, Assam, in TADA Sessions Case No.126/93. On his pleading guilty to the charge that on 22.10.91 in the notified area, he was found in possession of two guns and two cartridges which were intended to be used for carrying on terrorist and disruptive activities.
2. Learned counsel for the appellant has challenged the conviction on the ground that the Designated Court wrongly construed the statement of the appellant as an admission of guilt.
3. The charge framed against the appellant was "That you on or about 22.10.91 kept concealed DBBL gun No. 7083 and 42250 with 12 Bore two cartridges (red in colour) without licence or authority for using the same in terrorist and disruptive activities and there" by committed an offence U/s.5 of TADA (P) Act." After framing the charge, the question that was put to the appellant was that" on 22.10.91 Police/Military recovered from your Engar Khowa house SBBL Gun No.7083 and SBBL Gun NO.42250 and `120 Bore Cartridge 2 Nos. led by you."
4. To this question, the appellant replied as under:

"It was recovered from the house of other person which is situated at a distance of one and half/two K.M. distance from my house. One Sri Atul Nath President, Anchalik Parisad of ULFA directed to keep that in that house. I lead the Police but I am not extremist and I am not connected with the occurrence".
5. Treating this answer as an admission of guilt, the Designated Court convicted him. Immediately after the order of conviction and sentence was passed, the appellant gave an application to the court complaining that he had no lawyer to assist him, that the court had also not appointed any Lawyer to assist him and that he was fully ignorant about the case and had no idea about law. He also stated that he had not understood anything about what the learned Judge had asked him. Thereafter, he stated that he wanted legal aid to be provided to him. The Designated Judge, thereafter, passed an order upholding the submission of the learned Special public Prosecutor that the court having passed the final order of conviction and sentence had no jurisdiction to deal further with the case. The second order is also challenged by the appellant.
6. We are of the opinion that the Designated Court committed a grave error of law in convicting the

appellant on the basis of the answer given by him. It was alleged against the appellant that the said fire arms were recovered from his Engar Khowa house. While replying to that allegation he clearly stated that it was recovered from the house of another person situated at a distance of 1-1/2 to 2 kms. from his house. Though he stated that "one Shri Atul Nath, President, Achalik Parishad of ULFA, directed to keep that in that house", he did not say that Atul Nath had directed him to keep those fire arms in that house. While admitting that he led the police to that house, he denied that he was an extremist and that he was connected with the "occurrence". If these statement made by th appellant were considered carefully by the Designated Court, it would have realised that they did not consitute an admission of guilt. Only inference that can be drawn from the answer given by the appellant is that he knew that the said two guns and the cartridges were kept at that place but mere knowledge that they were kept at that place cannot amount to conscious possession of those things. It is, therefore, obvious that on the basis of the said answer it was not proper to convict the appellant under Section 5 of the TADA Act.

7. We, therefore, allow these appeals, set aside the conviction under Section 5 of the TADA Act and direct the trial court to proceed further with the trial after providing legal assistance to him.

8. In view of the facts and circumstances of this case, we direct the Designated Court to dispose of the case against the appellant as early as possible.