

Kishore Prabhakar Sawant and Others

Vs

State of Maharashtra

Criminal Appeal No. 943 of 1998

(G. T. Nanavati, S. R. Babu JJ)

26.11.1998

JUDGMENT

NANAVATI, J. -

1. This appeal was filed by three appellants. Kishore, Appellant 1 died on 21-11-1998 and therefore his appeal has abated. The appeal by appellants Dinesh and Hemant only now survives.

2. The appellants along with Kishore (now dead) and one Subhash Gawade were tried by the Designated Court for Greater Bombay for offences punishable under Sections 120-B, 307 read with Section 34 and Section 307 read with Section 114 of IPC, Section 3 read with Section 25(1-B)(a) and Section 5 read with Section 27 of the Arms Act, 1959 and Sections 3(2)(ii), 3(3), 3(5), 5 and 6 of the TADA Act, 1987. Subhash Gawade died during the pendency of the trial before the Designated Court. All those accused were alleged to be members of the gang of dreaded gangster Arun Gawli. It was also alleged that the said gang is involved in collecting "khandani" from innocent persons under the garb of protection money. It was the prosecution case that on 28-2-1993, Subhash Gawade had telephoned PW 3 Himmatlal Dholakia and demanded Rs. 5 lakhs from him as "khandani". The said demand was repeated three to four times thereafter. Again on 2-3-1993 in the afternoon, while Himmatlal Dholakia, was in his office, Subhash Gawade telephoned him and told him to keep ready Rs. 5 lakhs by 4.00 p.m. and that he would reach his office by that time. Himmatlal instead of succumbing to the threat approached the police and lodged a complaint. A trap was arranged by the police. Himmatlal was asked to stand near the gate of his office building known as "Gheewala Building". The police remained near about that place. At about 4.00 p.m., Subhash Gawade went there on a scooter. After parking it, he started walking towards Himmatlal. Soon thereafter, the two appellants and Kishore came there in an autorickshaw. Immediately after alighting from it, Subhash Gawade fired a shot in the air and shouted in Marathi and Hindi (translated into English by the Court) that : "None should dare to come forward and if anyone does so, he will be done away with. Did you not recognise me ?" The police immediately swung into action and was able to overpower and arrest them even though an attempt was made by Subhash Gawade to run away and had also fired one more shot while doing so.

3. At the trial, prosecution relied mainly upon the evidence of three eyewitnesses, PW 6 Tapasi who had arranged the raid, PW 3 Himmatlal who had been threatened and PW 1, the Constable who had accompanied Tapasi, to prove its case. Tapasi deposed about the incident and also about the recovery of weapons and other articles from the spot. The Designated Court after appreciating the evidence held that their evidence was believable and that their evidence established that Kishore had committed the offence punishable under Section 5 of the TADA Act and also under Section 25(1-B)(a) of the Arms Act. The appellants Dinesh and Hemant were found to have committed the

offence punishable under Section 3(2)(ii) of the TADA Act. They were convicted accordingly and sentenced to suffer imprisonment for five years and to pay a fine of Rs. 500 each.

4. Learned counsel for the appellants has challenged the conviction of these appellants on the ground that the version of the eyewitnesses is not believable at all and even if their evidence is believed, it does not constitute the offence punishable under Section 3 of the TADA Act.

5. We have carefully gone through the evidence of the three eyewitnesses and we find that their evidence has remained unshaken. It does not suffer from such infirmity as would create any doubt regarding its acceptability. Himmatlal had no reason to falsely involve the accused. It is highly improbable that he would have done so at the instance of the police or anyone else, knowing fully well whom he was accusing. The material on record does not show that he was in any way connected with the police. No good reason could be advanced by the learned counsel for the appellants for not accepting the evidence regarding their having been caught at the spot. As the appellants were caught on the spot, the question of their identity does not arise. Even after lengthy cross-examination of the three eyewitnesses, the defence was not able to establish anything that can create a doubt regarding involvement of the appellants and the other co-accused. If the evidence is believed, it can be said with reasonable certainty that what they did amounted to commission of a terrorist act. As a result of what they did, the nearby shopowners closed their shops and went away. Passers-by on the road had run away from that place, though some remained at that place. Public tranquillity was thus disturbed. The way the appellants behaved clearly indicates that they wanted to create fear in the mind of Himmatlal and the persons present at the place of the incident. It was a busy public road. In view of the facts and circumstances established by the prosecution, it can be said without any doubt that the intention of the accused was to create terror so that they could carry on their terrorist activity in future also without being opposed by members of the public. We are, therefore, of the view that the conviction under Section 3 is quite legal and proper. The appeal is, therefore, dismissed.